NOMINATION OF JUDGE MARION J. HARRON

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

CONFIRMATION OF NOMINATION OF MARION J. HARRON TO BE A JUDGE OF THE TAX COURT OF THE UNITED STATES

APRIL 14, 19, MAY 12, 13, AND JUNE 23, 1949

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NOMINATION OF JUDGE MARION J. HARRON

THURSDAY, APRIL 14, 1940

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:10 a. m., pursuant to call, in room 312, Senate Office Building, Senator Walter F. George, chairman, presiding.

Present: Senators George, Byrd, Lucas, Hoey, McGrath, Millikin, Brewster, Martin, and Williams.

The CHAIRMAN. The committee will please come to order.

The second nomination we have this morning is that of Judge Marion J. Harron of California to be a member of the Tax Court of the United States. Judge Harron is here and counsel representing Judge Harron is also here.

Certain complaints have been lodged toward the confirmation of Judge Harron and the committee will be glad at this time to hear all those who have anything to submit. I have no regular list of witnesses, although we have been furnished with the names of those who have expressed an interest in appearing. Among those are the names of members of the section on taxation of the American Bar Association.

I will ask Mr. Sutherland or Mr. Kilpatrick to decide which is to be the first to be heard on this matter.

STATEMENT OF H. CECIL KILPATRICK, CHAIRMAN, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.

Mr. KILPATRICK. Gentlemen, I would like to appear first and then have Mr. Sutherland and the other witnesses follow.

The CHAIRMAN. You may be seated.

Mr. KILPATRICK. Thank you, sir.

The CHAIRMAN. Will you identify yourself for the record, please?

Mr. KILPATRICK. I am H. Cecil Kilpatrick, a lawyer engaged in the practice of law in the District of Columbia. I appear here as chairman of the section of taxation of the American Bar Association.

I assume it is not necessary to tell you, gentlemen, of the interest that the American Bar Association has in judicial appointments. The association, as you probably know, works largely through its committees and sections devoted to particular fields in which their members are interested. The section of taxation, which has a membership of something over 3,000 lawyers at the present time, is made up of lawyers who are primarily interested in the field of Federal taxation and its administration. These lawyers are scattered throughout the United States.

For years the members and the active officials of that section have interested themselves in the Tax Court or the Board of Tax Appeals, as it was formerly known.

In the year 1946 the house of delegates of the American Bar Association, which is the governing body, delegated to the officers and council of the section of taxation the authority on behalf of the American Bar Association to make recommendations to the President for appointments to fill vacancies on the Tax Court and at the February meeting this year of the house of delegates we were further authorized on behalf of the organization to oppose the nomination of any appointee we deemed not fit for office.

The council, having voted to oppose the nomination or confirmation of Judge Harron, whose name at that time was not pending before the Senate, expressed its opposition to the appointing authorities and is now here to oppose the confirmation of that appointment.

The witnesses who will follow me, Mr. Sutherland, Mr. Phillips, Mr. Miller, and Mr. Morris, will tell in detail of the way that the bar association has gone about its study of these appointments and our investigation of the judge whose name is before you.

I might begin by stating some of these general considerations and not go into the specifications about which the complaint is to be made. I might say, however, that in 1946 when we were authorized to make recommendations for appointment, Mr. William A. Sutherland of Atlanta, Ga., was elected chairman of the section of taxation at that meeting. The committee which he appointed was made up of the following people: Mr. Percy W. Phillips was made the chairman of that committee. Mr. Phillips was for 6 years a judge of this same court. He was twice elected chairman of our section of taxation and he has been engaged actively in tax practice ever since his resignation from the court.

Also on that committee was Mr. Robert N. Miller, former solicitor of the Bureau of Internal Revenue and one of the founders of the section of taxation. Then there was George Maurice Morris, the first chairman of the section of taxation and later president of the American Bar Association. Mr. Sutherland himself was active in the deliberations of that committee. Mr. Weston Vernon, Jr., of New York is also a former chairman of the section on taxation.

When I was elected chairman of the section of taxation last year, I appointed a similar committee to carry on. I reappointed Mr. Phillips as chairman of that committee. In addition to Mr. Phillips I named as members Mr. Miller, Mr. Morris, and Mr. Sutherland, already mentioned, and also Mr. Dana Latham of Los Angeles, a former member of the legal staff of the Chief Counsel of the Bureau of Internal Revenue, and Mr. Wright Matthews, of Dallas, Tex., formerly Deputy Commissioner of Internal Revenue.

The initial job for this committee began along in the year 1947. We knew that the terms of four judges would expire in June of 1948, Judges Disney, Harlan, Harron, and Hill. This committee of which I have spoken worked diligently, and we presented to the President a list of names of people considered competent to fill those four vacancies. We included in that list the names of Judges Hill and Disney, both of whom have been appointed and confirmed since that time. We did not include the names of either Judge Harlan or Judge Harron.

When we got the authority to oppose appointments based upon the studies that our committee had carried on and after full conference and discussion with the officers and council of the section of taxation, it was decided to oppose actively the confirmation of Judge Harron but not of Judge Harlan.

Senator LUCAS. When did the bar association first delegate to this committee the authority to investigate judges?

Mr. KILPATRICK. In 1946, Senator, we were given the authority to recommend the names of suitable people for appointment when vacancies arose.

Senator LUCAS. Is that the first time that the bar association ever made recommendations of this kind?

Mr. KILPATRICK. Yes. That was the first time.

Senator LUCAS. Why has the bar association not been active before this?

Mr. KILPATRICK. I would say it is due to two things, one that there had been no feeling of dissatisfaction with the appointees who had been named and two, these are all busy lawyers, they should have sooner gone to the house of delegates and asked for that and we did not do it until 1946. I know of no other answer than that, sir.

Senator LUCAS. All right.

Mr. KILPATRICK. The American Bar Association of course has a committee on judicial selection for Federal courts in general and Mr. John Buchanan of Pittsburgh is chairman of that committee; that is a small committee and they exercise that same authority in fields other than this.

At the risk of being too fundamental, I would like to say something briefly about the nature of this court we are talking about. It is one of the most important courts of record in the United States. Despite its original name, "Board of Tax Appeals," it has always functioned as a court. Its trials are held just like trials are held in the United States district courts without a jury. Of course, we have no juries here. Because of the volume of work, it is necessary that hearings be conducted by a single judge. There are 16 judges, one of whom is the presiding judge. The other 15 judges travel around the country and hold these circuit hearings. But, the procedure is exactly the same as that of any other court.

The decisions of the individual judge become the decisions of the court unless the presiding judge orders that the decision be reviewed by the full court and, as I say, because of the volume of the work, it is impossible for the full court to review a great majority of the cases, particularly fact cases.

For example, in the fiscal year 1948, 4,402 petitions were filed in the Tax Court and the amounts of tax in controversy aggregated over $221,000,000. So it has a very important place in our judicial system.

We felt that it was of the utmost importance that trials in this court should be conducted in a judicial manner; that counsel should receive a fair and dignified treatment; and that the record should be set down as made, so that the citizen gets his day in court as we think the American tradition demands.

Our investigations of trials by the judge whose name is before you now indicated that those rules of fair trial were constantly being

violated, and that is the basic ground for our objection to the confirmation.

I might say that the conclusion that she is not qualified was the unanimous conclusion of the officers and council of the section of taxation, as it had been of this committee which reported to it. But I want to make two points clear:

First, our objection is in nowise based on the fact that the incumbent is a woman. In the list of people recommended to the President by us there are the names of two women lawyers whom we considered fully qualified. We had assumed that a woman would be appointed to this job. Judge Matthews, who preceded Judge Harron, served for 12 years on the Tax Court with general satisfaction to the bar and the public.

Second, our selection of names was made without any political consideration at all. We had heard the criticism, of course, that of the 16 judges on the Tax Court only 4 are Republicans, but we were not considering that aspect; we were looking for people qualified to do this important job. I might mention the two women whom we recommended, and I assume they are Democrats. They are both employed in the Tax Division of the Department of Justice, but that was not the reason for their selection by us. All that we seek, in other words, and it is not a pleasant task for lawyers practicing constantly before that court, is to defeat, if we can, or help defeat the appointment of one whom we unanimously believe unqualified for the office. I say this in general terms and naturally you will want specific support for the statement and the witnesses who will follow me will give it.

I simply wanted the committee to know the way in which we approached the problem. We are trying to do a job in the public interest. There is nothing personal; there is nothing having to do with the sex of the appointee or with politics.

The American Bar Association is a national association of lawyers with a membership in excess of 40,000. Its policies are controlled by a house of delegates the membership of which includes representatives from all of the States, the larger city bar associations and several group organizations of the bar such as the National Association of Attorneys General. I do not believe that, before this group, there is any need to emphasize the representative character of the association or its interest in the judicial system of the United States and in the maintenance of a high standard of judicial appointments.

Much of the work of the American Bar Association is carried out through committees and sections. These sections are subdivisions of the general membership, whose members are interested in a particular subject. There are, for example, sections dealing with administrative law; corporation, banking and mercantile law; criminal law; insurance law; international law; judicial administration; labor relations; legal education and admission to the bar; mineral law; municipal law; patent, trade-mark, and copyright law; public utility law; real estate, probate, and trust law; and taxation. These sections draw into their membership lawyers from all parts of the United States who are members of the American Bar Association interested in the special field covered by the section. Each of these sections operates through officers, an elected council of from 10 to 13 members, committees, and an annual meeting of the membership. The action of any section or of any committee of the American Bar Association

is subject to approval by the house of delegates of the association or of its board of governors.

The section of taxation has a membership of over 3,000 lawyers. These members come from all over the United States. They are, primarily, interested in the field of Federal taxation, and the administration of the tax laws. For many years, the members of this section have interested themselves in the personnel of the Tax Court, formerly known as the Board of Tax Appeals. As individuals, we have, without exception heretofore, recommended the reappointment of the judges of the court.

In 1946 the section recommended, and the house of delegates of the American Bar Association adopted, a resolution, which I will read, authorizing the officers and council of the section of taxation to suggest the names of qualified persons for appointment to the Tax Court. [Reading:]

RESOLUTION

Adopted by House of Delegates of the American Bar Association in October 1946

Resolved, That the section of taxation be authorized to bring before the appropriate authorities the considerations that require nominating authorities to exercise single-minded diligence in seeking appointees to the Tax Court who will serve the public in that capacity with the highest possible degree of usefulness; and be it further

Resolved, That the influence of the section as such shall not be used to promote the nomination of any special person, but the representatives of the section may submit a list of not less than four names—listed in alphabetical order and without indication of any preference—of persons, who, if they assume this office, would be fully competent. Any such submission of names is to be accompanied by a statement to the authorities that the list is not submitted in the interest of any one of the persons named but in the public interest, and that the appointment of any equally qualified person, not on the list, would fully satisfy the concern of the section that no appointment should be made to the Tax Court of any person unless he has already demonstrated exceptional ability and diligence as a lawyer or a judge and unless he is fully qualified physically and mentally to adjust himself to the heavy intellectual burdens incident to the Tax Court office.

At a meeting of the house of delegates in February of this year, the 1946 resolution was amended by adding a provision, which I will read, that the officers and council should oppose nominations to the Tax Court whenever such nominations appear to be contrary to the public interest. [Reading:]

AMENDMENT OF FEBRUARY 1, 1949

Be it further

Resolved, That the officers and council of the section of taxation be authorized to oppose the nomination or confirmation of any person as a judge of the Tax Court who, in the opinion of the council of the section, is not fully competent for any reason to serve in that capacity.

Mr. William A. Sutherland, then chairman of the section of taxation, appointed a committee on appointments to the Tax Court. He named as chairman of that committee Mr. Percy W. Phillips, of Washington, D. C., 6 years a member of the Board of Tax Appeals and twice elected Chairman of the section of taxation. The other members of that committee, all of whom served actively in its work, were Robert N. Miller, of Washington, D. C., formerly Solicitor of the Bureau of Internal Revenue; George Maurice Morris, of Washington, D. C., a former chairman of the section of taxation and an ex-president of the American Bar Association; William A. Sutherland, of Atlanta, Ga., the then chairman of the section; Weston Vernon, Jr.,

of New York City, a former chairman of the section; and myself, I then being vice chairman of the section.

Upon my election as section chairman, I reappointed Mr. Phillips as chairman of the committee on appointments to the Tax Court, and named as members Messrs. Miller, Morris, and Sutherland, already mentioned, and also Mr. Dana Latham, of Los Angeles, a former member of the legal staff of the Chief Counsel of the Bureau of Internal Revenue, and Mr. Wright Matthews, of Dallas, Tex., formerly Deputy Commissioner of Internal Revenue.

The term of four judges of the Tax Court expired on June 2, 1948. Mr. Sutherland and Mr. Phillips will testify about the detailed investigation made by the committee and the section, which led them, first, to recommend to the President last year a list of candidates for the four impending vacancies, which list included the names of Judges Disney and Hill, but not the names of Judges Harlan and Harron, and, secondly, to present the association's opposition to the confirmation of Judge Harron. Each of these particular recommendations was unanimously adopted by the officers and council.

However, before these others testify, I would like to state for the record the general considerations which have led us to the conclusion that the confirmation of this nomination would not be in the public interest.

The Tax Court is described in the laws as "an administrative agency in the executive branch of the Government." However, its importance is not to be judged by this terminology alone. It is one of the most important courts of original jurisdiction in the United States. It is a court of record and holds hearings and operates in precisely the same manner as a district court sitting without jury.

The testimony is taken before a single judge of the court, and that judge renders the decision of the court. That decision can be reviewed by the 16 judges of the court, if it is referred to the court by the presiding judge, but the volume of work is such that only those cases which are deemed to involve questions of general importance are passed upon by the entire court.

The volume of that work and the size of the cases considered by it are indicated by the fact that, during the fiscal year 1948, 4,402 petitions were filed involving aggregate deficiency tax determinations of $221,899,013.40.

The Tax Court holds hearings in Washington and throughout the United States. As I have stated, all such hearings are held before a single judge, and the impressions of the court which the public and lawyers receive are those which are created by the judge holding the hearing. It is of transcendent importance that trials be conducted in a judicial manner, that counsel, both those for the taxpayer and the Commissioner of Internal Revenue, receive fair and dignified treatment, that the record of the procedure be set down as it is made, and that taxpayers have demonstrated to them that their day in court means everything the American tradition implies.

While an appeal from the Tax Court is permitted to the United States circuit courts of appeals, those courts are not inclined to reverse decisions upon questions of fact, and at best an appeal is expensive. In the district courts the citizen is protected by the right to trial by jury. In the Tax Court, generally speaking, the facts on

which the decision rests are those found by the single judge who tries the case.

Fortunately, the other 15 judges of the court, reviewing the legal aspects of a proposed opinion, act as a sort of filter against the admission of legal errors. The facts, however, are controlled by the record made at the trial. A domineering, irascible, or intemperate judge can play havoc with the making of the record.

It should be stated very positively that the objections which are made to Judge Harron are not based on the fact that she is a woman, and we not only do not object to the appointment of a woman as judge of the Tax Court, but favor such appointments. For a full term of 12 years Miss Annabel Matthews served the court as a judge in a very satisfactory manner until she was replaced by Judge Harron. The list of names submitted to the President and other officers of the Government by our group included those of two women lawyers who were deemed by representatives of the association to be fully qualified by experience, training, and temperament to serve as judges of the Tax Court. We assume, and have assumed at all times, that a woman would be appointed to this vacancy.

In the selection of people qualified, we have given no consideration to political affiliations. The two women whom we have recommended are, I assume, Democrats, since they are both presently employed in the Tax Division of the Department of Justice. In making our selections, we paid no attention to the criticism that only 4 of the 16 judges of the court are Republicans.

What we seek is to prevent the reappointment of one who has demonstrated a complete lack of judicial temperament, and the appointment in her place of some lawyer possessing the qualifications necessary to perform the duties of a judge of this important court in a creditable manner.

The conclusion that Miss Harron does not have the necessary qualifications is the unanimous conclusion of the committee on appointments to the Tax Court and of the officers and council of the section of taxation, all of whom participated actively in the study and discussions of her record on the bench.

As I have stated, Mr. Sutherland and Mr. Phillips will testify as to the details of that investigation, and Mr. Miller and Mr. Morris, who also participated actively in our committee's work, are present and ready to testify if time permits.

The CHAIRMAN. Are there any questions of Mr. Kilpatrick?

Senator HOEY. Yes, Mr. Chairman.

The CHAIRMAN. Senator Hoey.

Senator HOEY. You said there are 16 judges on the Tax Court?

Mr. KILPATRICK. Yes.

Senator HOEY. There were four appointed last year?

Mr. KILPATRICK. Yes.

Senator HOEY. Justices Disney, Harron, Harlan, and Hill?

Mr. KILPATRICK. Yes, sir.

Senator HOEY. Two were confirmed last May?

Mr. KILPATRICK. Yes, sir.

Senator HOEY. Judge Harron who has served since 1930, was not passed upon and Judge Harlan also. They were just given interim appointments?

Mr. KILPATRICK. Yes, sir.

Senator HOEY. They are both serving on the court without confirmation having been made?

Mr. KILPATRICK. Yes, sir.

Senator HOEY. I did not hear the first part of your statement. Did your committee disapprove of Judge Harlan also?

Mr. KILPATRICK. Senator, disapprove is hardly the word, when we were approving people for these vacancies we did not recommend Judge Harlan.

Senator HOEY. Are you opposing?

Mr. KILPATRICK. We are not opposing.

Senator HOEY. The only nomination that you are opposing is that of Judge Harron?

Mr. KILPATRICK. Yes, sir.

Senator MCGRATH. Why did you select Judge Harlan as one of those to be withheld last year? Why was he not approved together with these other two judges?

Mr. KILPATRICK. Becaue we did not feel that he was as good a judge as the other two judges, sir.

The question of the quality of a judge, his knowledge of the law, and things of that sort are questions of opinion. It was the vote of our group, and I am quite sure that it was not unanimous, not to include his name in the list of those recommended for appointment. But, when it came to the question of opposing the appointee after the President has appointed him, our council voted not to oppose Judge Harlan.

Senator MCGRATH. Was it not represented by your group that you thought that four should be appointed but that two should be Democratic and two Republican?

Mr. KILPATRICK. Absolutely not.

Senator MCGRATH. Was that representation made to anybody?

Mr. KILPATRICK. Never.

Senator MCGRATH. Who did you discuss this with last year besides the Treasury Department? Did you discuss with anybody in the Congress?

Mr. KILPATRICK. I did not; no sir.

Senator MCGRATH. Do you know whether any of the members of your committee did?

Mr. KILPATRICK. I do not know.

Senator MCGRATH. That is all.

Senator MILLIKIN. Mr. Chairman, if I may, I would like to assume for the Republican members of this committee the responsibility last year for suggesting that two of the members be Republicans.

Senator HOEY. You had no objection to that?

Senator MCGRATH. That was the Senator's suggestion, did you submit it to this committee?

Senator MILLIKIN. Most forcefully.

Senator MCGRATH. Apparently you got the same idea that the bar association committee had and these two ideas came up simultaneously. Did you transmit your ideas to the bar association?

Senator MILLIKIN. I did not receive the suggestion from anyone, it was automatic out of my own nature.

The CHAIRMAN. I believe that Mr. Sutherland is next. Will you identify yourself for the record?

STATEMENT OF WILLIAM A. SUTHERLAND, LAST RETIRING CHAIRMAN OF THE SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.

Mr. SUTHERLAND. My name is William A. Sutherland. I am a member of the firm of Sutherland, Tuttle, and Brennan, practicing law in Washington and Atlanta.

I was chairman of the section of taxation of the American Bar Association from 1946 to 1948. I had been chairman of the committee which brought into the meeting of the tax section of the association in Atlantic City the recommendation that the house of delegates should authorize us to recommend persons for appointment to the Tax Court whom the bar considered qualified to fill those positions. The reasons why we happened to take that action at that particular time was because the bar was very much dissatisfied with the appointments that had been made just previously to some vacancies on the Tax Court. Two men had been appointed whom the bar did not feel should have been appointed. One was Judge Harlan. We do not feel that a man of his age and lacking any previous experience in the tax field and having very little judicial experience should be placed in a position which requires the sort of exercise of one's mind and ability that the Tax Court requires.

We suggested, certainly by inference, by leaving his name off the list of persons whom we recommended for the four vacancies which occurred in June 1948, that we did not think then that he was qualified.

However, Senator, I am sure you realize there is a great difference between the bar making a recommendation of an appointee whom it considers qualified and opposing a confirmation of the appointment which the Executive makes.

We realize fully that the appointing power for all of the judiciary is in the Executive and we have never wanted in any way to infringe upon that power. It would be very unbecoming in the bar association to attempt to do that and it was with great reluctance that we concluded that we must vigorously oppose the confirmation of the judge whose nomination is now before you. We did it only for the reason which I will explain to you in the course of my remarks.

Senator MCGRATH. Last year you thought it necessary to oppose the nomination of Judge Harlan. I assume you opposed him because he was not on your list?

Mr. SUTHERLAND. We did not have any authority from the bar association actively to oppose. I talked to Senator Millikin and told him why these people had been left off our list. I would very much hope now that this committee considering the qualifications of Judge Harlan would attempt to have someone more competent appointed in his place, but that is different from the bar coming here to oppose his confirmation. You get into the realm where opinion naturally plays such a large part that it is difficult, on the grounds of lack of legal ability and training, in a brief hearing to make out a case that would be very impressive unless a man was just so perfectly terrible that there could not be any question about it. Generally people of that sort are not appointed.

There is nothing in the record of Judge Harlan indicating he should not be confirmed, such as we have in the record of Judge Harron, which

it is easy to make clear. There has been no conduct unbecoming of a judge on the part of Judge Harlan, so far as I have ever heard.

It is very interesting and if you will let me go into the questionnaire which I sent out and the replies that we received, I think you will immediately understand the difference between the two situations and you will understand our reason for not opposing Judge Harlan, despite the fact that we have not withdrawn in any way from the opinion that we had when we made the original recommendations.

I would like to say this, Senator: It is the view of everybody in the bar association that any person who has been filling a judicial office like that of a judge of the Tax Court, and filling it well, should be reappointed to the position at the expiration of his term. That is certainly the practice that the bar association in my local community has followed; and although we have elective judges there it is the rarest thing for a judge who has been doing a good job to have any serious opposition for reelection. That is largely because the bar feels that people should be continued in judicial office when they have been serving properly and we certainly share that view. At least I do, and I think all of the members of our group do.

Senator McGRATH. Are you going to read into the record the letter which you sent out soliciting opinions?

Mr. SUTHERLAND. Yes, sir.

I would like to answer one question. I agree with everything Mr. Kilpatrick said except one thing which is not a part of anything to which we have given study. You asked him why the bar had not earlier asked authority to recommend and oppose appointees to judicial office. I have understood—and Mr. Morris, when he testifies, can probably answer more fully than I can—that there has been a great fear that that power might be misused and particularly that the bar association might become a vehicle for urging the candidacy of some particular person.

You can realize what a terrible thing that would be for the bar association. Consequently, when we asked for permission to recommend appointees to the Tax Court, we included in the resolution a provision that we must recommend at least 4 persons for each vacancy and we have construed that to mean that when there were 4 vacancies we must recommend at least 16 persons. We are not urging the appointment of any particular person and we are not prepared to oppose the appointment of any particular person unless such person is disqualified for the position.

Senator LUCAS. May I interrupt with a question?

The CHAIRMAN. Yes.

Senator LUCAS. May I ask you, sir, whether or not this committee now becomes a permanent part of the bar association to the end that all appointees from here on will be investigated by this particular committee as far as the Tax Court is concerned?

Mr. SUTHERLAND. Certainly, sir, if there is any question on the part of any officers of the association as to the qualifications of anybody who is to be appointed. I think generally that there will be an investigation in case of vacancies on the Tax Court and the recommendation of appointees.

There is one change in that I personally feel we may want to make later. Suppose as was the case with Judge Disney and Judge Hill, we feel that an incumbent should be reappointed, we should probably

not have to recommend 4 persons for such a vacancy but should be permitted to recommend the incumbent alone if we so desire. I would hope that sometime we would have our authority changed in that respect; otherwise I would like to see it remain as it is.

Senator LUCAS. May I ask you one further question? Are there any other committees of the American Bar Association which deal with any judges other than of the Tax Court?

Mr. SUTHERLAND. There is a special committee of the bar association which has been and I think is now headed by Mr. Buchanan of Pittsburgh which makes recommendations for and against appointees to all of the Federal courts other than the Tax Court.

Senator LUCAS. How long has that committee been in existence?

Mr. SUTHERLAND. That committee was authorized the year after we received our authorization at Atlantic City. There had been some considerable discussion, I think, about the creation of that committee previous to that time. Mr. Morris will be able to explain that to you more fully than I can.

Senator MCGRATH. The members of this investigating committee may conceivably investigate anyone of these judges when their terms run out and they are composed of active practitioners before these judges, are they not?

Mr. SUTHERLAND. Yes, sir.

Senator MCGRATH. Do you feel that the knowledge that you may be the one to investigate the judge later on can be of considerable influence in considering the matters that these members bring before that court?

Mr. SUTHERLAND. I certainly would feel that it would be a bad practice if the present committee were made a standing committee with the same personnel throughout. I am sure that if you will ask any of the members of the present committee about its task, that you would not find that any of us would ever wish to have anything like that come into the picture.

Of course, I must confess that a judge may decide a case for one of these persons because he feels that person may make an investigation of him; but if a decision were made under such circumstances, which was at all out of line, I think that the man himself would be most critical of it and certainly the other members of the committee would be. We understand that this is a very delicate power. That is the reason why the bar association has so long refrained from taking any steps to permit such action. But, I believe that if you will go through our records completely as to how this job was done, you will certainly feel that it was done in the same public spirit in which your committee investigates these appointees.

That was certainly my feeling about the job and I think I can speak for all of the persons on the committee. You will have a chance to hear from three other members of the committee who will follow me.

Senator MCGRATH. Do these committeemen continue from year to year or serve 1 year?

Mr. SUTHERLAND. They are appointed to serve 1 year. Mr. Kilpatrick explained that he had kept some of the members on the committee that I had appointed and that he had added two members that I had not had on the committee. I think it would be certainly the practice of the succeeding chairmen to change the personnel of

the committee from time to time. There is no vested right to any such office as this. If you only knew how much work the present members have done and what a thankless task it has been you would realize that anyone who has served is not anxious to serve again.

I felt that it was a great imposition to ask Mr. Phillips to serve, but I knew of his interest in the Tax Court and I knew of the vigor with which he tackled a job and he had not been asked to tackle a job for the association since he retired as chairman of the section in 1946. I imposed on him and he has spent weeks and weeks on this.

Senator McGRATH. I am sure that this committee does not resent any group that brings any information to it. But would you not think it would be better practice that when an appointment came up, the committee would be appointed at that time rather than have a standing committee from year to year?

Mr. SUTHERLAND. Senator, that is probably true. I think that is a wise suggestion which we shall take into consideration. As a matter of fact this committee is of no long standing. I waited too long to appoint the committee and the committee waited too long to make the investigation which had to be made.

I did not prepare this questionnaire until November 7, 1947, and the vacancies which had to be filled were occurring on June 2, 1948. The delay in getting out the questionnaires and in appointing the committee required us to rush a great deal more than I think we should have rushed. I felt very remiss in my duty in not having started it moving earlier.

Actually, one of our great troubles was in finding people whom we considered qualified, who would take a position such as this where there is no proper provision for retirement pay and only a 12-year term. We spent quite a long time getting a list of 16 persons whom we could recommend. I think all of us wished at the end of it that we had been able to get better people on the list.

Senator McGRATH. Thank you.

The CHAIRMAN. All right, Mr. Sutherland, you may proceed.

Mr. SUTHERLAND. Now, let me pause before going into this questionnaire to repeat one thing. Mr. Kilpatrick said that it should be emphasized that there is no person connected with this work who has any objection to a woman being appointed to any judicial position if she has the qualifications for the position. Miss Matthews' service on the Tax Court was, I believe, quite satisfactory in the view of all the people on this committee, all of whom knew something of her work. We have no objection to the appointment of any other qualified woman to this job. We do feel, however, that sex should not be made a basis for a reappointing to the job of a person who we believe is not qualified for the work.

The questionnaire which I sent went to all members of the tax section and quoted the resolution from the bar association, authorizing us to do this work. I can read that, if you wish Senator.

Senator McGRATH. I think it is important.

Mr. SUTHERLAND. To read it or put it in the record?

Senator McGRATH. I rather understand that there may be some complaint against the judge because she in turn solicited support for her nomination among lawyers who practice before the court and if that is so, if that is going to be charged, I think it only fair to have this read into the record as an indication that since support was solic-

ited against her she had no recourse except to meet that by the same kind of procedure.

She could apply to the practitioners as you applied to the practitioners, for her defense.

Mr. SUTHERLAND. Senator, may I say that this questionnaire was not sent out to solicit anything against anybody. It was sent out to ask information of the bar as to whether each of these four persons was qualified.

Senator MCGRATH. The letter will speak for itself.

The CHAIRMAN. Suppose you read it into the record.

Mr. SUTHERLAND. I will.

WASHINGTON, D. C., *November 7, 1947.*

To Members of the Tax Section:

As many of you are aware, the tax section of the American Bar Association, under a resolution adopted by the association at its annual meeting at Atlantic City in 1946, has a responsibility in connection with appointments to fill Tax Court vacancies. The text of the resolution is as follows:

"*Resolved*, That the American Bar Association authorizes the officers and Council of the Section of Taxation to bring before the appropriate authorities the considerations that require nominating authorities to exercise single-minded diligence in selecting appointees to the Tax Court who will serve the public in that capacity with the highest possible degree of usefulness; be it further

"*Resolved*, That the influence of the section of taxation shall not be used to promote the nomination of any special person, but the officers and Council of the Section may submit a list of not less than four names—listed in alphabetical order and without the indication of any preference—of persons who, if they assume this office, would be fully competent; any such submission of names to be accompanied by a statement to the authorities that the list is not submitted in the interest of any one of the persons named but in the public interest, and that the appointment of any equally qualified person, not on the list, would fully satisfy the concern of the section that no appointment should be made to the Tax Court of any person unless he has already demonstrated ability and diligence as a lawyer or a judge and unless he is fully qualified physically and mentally to adjust himself to the heavy intellectual burdens incident to the Tax Court office."

Then I underscored the next three lines.

As a member of the section of taxation, you will assist the officers and council of the section by mailing the second page of this letter back to the section chairman after stating your views on the blanks provided or on the reverse side of the sheet, also giving your name and address. Recommendations as to appointments should be made in the near future because appointments to the Tax Court in some cases have been made months in advance of the actual vacancy. We should like to have your answers within the next 2 weeks. If you desire that your answers be kept confidential, please so indicate and your desire will be respected.

1. The names of the Tax Court judges whose terms expire next June are listed below. Please indicate opposite each judge's name whether or not you favor renomination.

	Should be renominated	Should not be renominated	No opinion
Judge Richard L. Disney			
Judge Byron B. Harlan			
Judge Marion J. Harron			
Judge Samuel B. Hill			

2. If the renomination of any one or more of the judges seems unwise to you, please give your reasons below or on the reverse side of this sheet, and if the reasons have to do with any case or cases in which the judge in question has served, please give citations, and a brief statement as to the circumstances which

you have in mind. Likewise, if you consider that any one of the judges deserves especial commendation, a brief statement of your reasons will be helpful.

3. If you can suggest the name of any other person whom you would be willing to recommend as a specially fit person, and who would accept the position if offered, please give the following data: Age; place of domicile; education in detail, with dates; nature and duration of experience as a lawyer in active practice; how much of this experience, if any, was in representing the Government; extent of experience in the taxation field; a brief statement as to reasons why you believe the person should be chosen for this important service.

Your prompt reply will be appreciated.

W. A. SUTHERLAND, *Chairman.*

Now, Senator, I do not know of any way in which information could be solicited in any more unprejudiced way than that. The same information was requested with reference to each judge in exactly the same manner.

We received 274 replies to the questionnaires a percentage of about 11½ percent of those to whom the questionnaire was sent—about 2,400 members of the tax section, scattered over the country. If you have ever sent out questionnaires you know that however interested people are expected to be, you do not get a heavy percentage of replies. We did get 274 replies. I would like to tell you how their answers were divided for each of the judges. The number expressing no opinion as to each judge was as follows: Disney, 121; Harlan, 152; Harron, 113; Hill, 139.

Senator MCGRATH. No opinion?

Mr. SUTHERLAND. No opinion. You will notice that there were several less who expressed no opinion about Miss Harron than about any of the other judges.

Now then we come to the list of those persons who favored reappointment of each of these judges.

Senator MCGRATH. What is your opinion about the 89 percent that did not reply? Are we to assume that they had no objection to any of these judges?

Mr. SUTHERLAND. I think you are in a position to assume several things. In the first place there were a lot of them who would not have known much about Miss Harron or any of the other judges. We have a lot of people in the tax section who do not try many cases before the Tax Court. A lot of them probably never try any tax cases at all. There are a great many of them who would not have known anything about these particular judges. There are also some of them, no doubt, who are opposed to some of the judges who would not say anything, because while we said we would keep the replies confidential, lawyers are much more scary, it seems to me, than others, and some no doubt would not reply on that account.

I would take it that a large percentage did not reply because they did not pay enough attention to the questionnaire or who did not know whether they wanted to reply or not and put it aside and forgot it.

Senator LUCAS. May I ask a question?

The CHAIRMAN. All right, Senator.

Senator LUCAS. Did your committee, after sending out this questionnaire and receiving this information, give any weight whatsoever to the 89 percent who failed to answer?

Mr. SUTHERLAND. None whatever, Senator.

Senator LUCAS. They paid no attention to it at all?

Mr. SUTHERLAND. None whatever because we figured that most of those people, even if they had replied, might be like some of those who did reply but expressed no opinion and we had a limited time. I think you will have a better idea when you see all these figures turned out.

Senator LUCAS. I know how the 274 turned out because they answered the questionnaire, but it does seem to me that if you are going to send out some 2,400 questionnaires and you get only 274 replies, you ought to be able to give some weight somehow, to the folks who refused to answer that questionnaire. You cannot say that they are all for this appointee, and you cannot say that they are all against.

Senator MILLIKIN. Mr. Chairman?

The CHAIRMAN. Senator Millikin.

Senator MILLIKIN. How many members of the Tax Court are there?

Mr. SUTHERLAND. Sixteen.

Senator MILLIKIN. Since there are 16 members and since the hearings are held before individual judges, it would be very strange indeed if a large percentage of all the people that you queried had had experience directly qualifying them to give you an opinion on one particular judge or two particular judges, would it not?

Mr. SUTHERLAND. That is true, Senator. I never tried a case before any of these four judges myself and I specialize, or claim to specialize, in tax practice, and certainly I devote most of my time to it.

Senator MILLIKIN. I may suggest that a man might be very active as a practitioner and spend a lifetime before that court and never draw any particular judge?

Mr. SUTHERLAND. That is true.

Just let us consider the way people answer questionnaires. I adopted the practice, when I became Chairman of the Tax Section, of sending out card questionnaires to find out what committees members were interested in serving on, if any. I asked them to please send a card telling me whether or not they were interested in serving. I attached a card where all they had to do was tear it off, check it, and mail it. We thought we were doing an excellent job when we got back 30 percent replies to that. You just do not get 100 percent replies.

Senator LUCAS. It might be possible that a great many lawyers take the same position on questionnaires that the Senator from Illinois does and throw them into the wastebasket.

Mr. SUTHERLAND. We were not the least bit surprised by the fact that we did not get back more than 274 or more than 11½ percent.

Senator MARTIN. Mr. Chairman?

The CHAIRMAN. Senator Martin.

Senator MARTIN. I might say that 50 percent of the people did not even take the time to vote for the President of the United States.

Mr. SUTHERLAND. Senator, I would want to give you a division of the vote of the members who did express an opinion, because we thought that was significant. Of those expressing an opinion Disney was favored by 139, Harlan by 98, Harron by 57, and Hill by 109.

Senator MILLIKIN. Will you give us those figures again?

Mr. SUTHERLAND. The number favoring each judge was: Disney, 139; Harlan, 98; Harron, 57; and Hill, 109.

Now, of those expressing an opinion and opposing one or more of these judges, Disney was opposed by 14, Harlan by 24, Harron by 104,

and Hill by 26. In other words, while a large percentage of those expressing an opinion favored the reappointment of the other three judges, in spite of the age of Judge Hill, there was nearly a 2 to 1 vote, or 104 to 57, against Miss Harron. There is another significant thing about those replies. As I told you, and as Mr. Kilpatrick indicated, the basic objection to Miss Harron is that she is lacking in judicial temperament. She is not able to have her mind operate in any normal way under pressure.

Senator McGRATH. If I get these figures properly, Judge Harlan had a better percentage favoring his appointment than Judge Hill, and yet you chose Judge Harlan to be one of those placed aside last year and favored Judge Hill?

Mr. SUTHERLAND. Your percentages are fairly close, sir, but the percentage favoring Judge Hill was slightly higher. And of the people opposing Judge Hill, a number had the same sort of doubt which we had, which was about his age. We had a great deal of discussion about that. There was no question about thhe qualification of Judge Hill. Of the 26 opposing him, of whom 16 stated reason, 11 said he was too old.

Senator McGRATH. Would that not indicate that percentagewise Judge Harlan had more support for reappointment than Judge Hill and yet in the face of these figures you chose to oppose Judge Harlan last year and favored Judge Hill so that you are not following your own figures?

Mr. SUTHERLAND. Senator, I believe that 109 to 26 (for and against Judge Hill) is a little better than 98 to 24 (for and against Judge Harlan). I have not multiplied it out, but I think the percentages are quite close. We certainly did not intend when we sent out these questionnaires to base our action merely on the number of persons opposing a particular judge without any further analysis. You would not have asked us to do that.

As I said, I think 11 of the persons opposing Hill did so on account of age. We knew that that was a disadvantage, but we also knew that Judge Hill for many, many years had done a fine job as judge of the Tax Court. We talked to a number of judges on the Tax Court who said that he carried quite a load, and we felt that he could still carry quite a load. Following the principle to which we all adhere, that any person in judicial office rendering satisfactory service should be continued in office, we recommended his reappointment.

Senator McGRATH. Then you did weight these figures by other considerations?

Mr. SUTHERLAND. Certainly we did not simply run them through an adding machine.

Senator McGRATH. But you did not give any weight to the fact that 89 percent of your members were not sufficiently interested to reply?

Mr. SUTHERLAND. That is a criticism of the bar to my mind and not a commendation or criticism of any of the persons about whom we were seeking information.

Senator McGRATH. I do not mean to make it a criticism of the committee, I am criticizing the procedure that you went through. You are attempting to give great weight in opposing the nomination to a very small percentage of the replies to the questionnaire. You lay great importance on those replies and no emphasis on the fact that

probably 90 percent of those who did not answer might well be said to be in favor of the appointment. You gave weight to age and temperament and other considerations, but you gave no weight whatsoever to the fact that a large number of your practitioners were disinterested in your poll. If that is the situation, then how much weight do you expect us to give to the poll that only produces this kind of return?

Mr. SUTHERLAND. Senator, I believe if you will observe the difference between the replies of those who did reply about Miss Herron as compared to the others that you would give great weight to it. Certainly out of those who expressed an opinion there must be great weight attached to the fact that 104 out of 161 expressing an opinion were opposed to her appointment whereas the percentage was the other way on every other person. I do not know what weight to give to the 88½ percent of the people who did not answer those replies.

Senator MCGRATH. I hope you will excuse me but I am a little prejudiced against polls.

Mr. SUTHERLAND. I would certainly be prejudiced against polls, sir, if we were going to run the replies through an adding machine without any consideration of the other factors. But of those opposing the 4 incumbents on the basis of lack of judicial temperament, there was 1 vote against Disney and 1 vote against Harlan and none against Hill, and 36 against Miss Harron out of the 48 who gave reasons for their opposition to her. Of course there were a number who expressed opposition and did not give reasons. Out of 49 who gave reasons for opposing Judge Harron, there were 36 who stated in one form or another that she was completely lacking in any proper judicial temperament and that her trials were not conducted in a way to reflect credit on any court. Those opposing Judge Harron used such phases as "unjudicial, intemperate, impatient, impolite, discourteous"; "abusive of counsel and intellectually and temperamentally unfit"; "unjudicial temperament"; "complete lack of judicial attitude"; "inexcusable conduct in the courtroom * * * interferes with the conduct of cases by counsel * * * embarrasses counsel in the presence of their clients"; "guilty of bad manners toward counsel"; "acts on emotion"; "utter lack of judicial temperament, common sense, or courtesy"; "arrogant, highly temperamental"; "not temperamentally qualified"; "temperament is not of judicial character"; "temperamentally unfit to be a judge * * * outbursts would have been intolerable in a 10-year-old child"; "hopelessly unfitted by temperament to function properly in a judicial capacity * * * loss of temper, discourtesy, and arbitrary behavior toward counsel and witnesses * * * outbursts bordering on the hysterical"; "tyrannical, arbitrary, quarrelsome, meddlesome"; "out of patience with a proceeding from start to finish"; "emotional, unstable"; "handles her trials in a disgraceful fashion, insulting both attorneys and witnesses"; "outbursts * * * reflected upon the dignity of the court"; "lacks judicial temperament"; and the like.

Now when you get a group of replies and get 36 of that kind in this group who oppose and with reference to all of the other 3 judges you get 2 of that kind, I would say that it would go a long way if you had already heard of your own knowledge of a great many of these situations, a great many of these happenings, and then you circularize

the tax bar impartially as to 4 judges and get replies adverse to 1 judge which are entirely out of keeping with the replies as to the others.

I personally feel it is to be given great weight.

Senator LUCAS. Did any of these 36 who advised this committee that this lady was temperamentally unfit also advise the committee as to how their cases were terminated, whether successfully or unsuccessfully?

Mr. SUTHERLAND. Senator, Mr. Phillips who has done the larger part of the detailed work in the analysis of these replies is better able to answer that. I can say that there were a number of those opposing her who said in effect: In spite of the fact that I won my case, that is not any way to run a trial. There have been a number of people who have been successful litigants who are in the list of people opposing appointment. Of course, you must also take this into consideration: I think that if you would analyze the replies with reference to the judges as to whom we got the favorable replies, you would no doubt find that a number of the favorable replies came from lawyers who had lost cases before the judge favored.

Judge Disney is the only one with whom I had had any contact, and he had decided the one case which I handled before him in a manner which I thought might have been improved on. I think the character of this committee is such that anybody on it would vigorously condemn opposition to any one of these judges on account of a decision that the judge might have rendered for or against his client.

Senator LUCAS. Do you propose to read into the record the report of those who favored Miss Harron?

Mr. SUTHERLAND. Most of those favoring stated no reason. I believe we can get the list. What I quoted from persons opposing was only to give you the general character of opposition.

Senator LUCAS. You have selected these 36 people who reported to you that she was temperamentally unfit?

Mr. SUTHERLAND. Yes.

Senator LUCAS. I was wondering whether or not it would not be equally important for this committee to ascertain what those who favored her reappointment said about her judicial temperament.

Mr. SUTHERLAND. We will be delighted to give you those. I think there are very few, but we would be delighted to give them to you.

(See pp. 22 and 106.)

Senator LUCAS. I understood that there were 57 who favored her reappointment and 104 against her. Out of 104 there were 36 who said she was completely lacking in judicial temperament and I should like to know what the 57, or a number of that 57 who favored her said about her judicial temperament.

Mr. SUTHERLAND. Senator, we will get that information for you. My recollection is that there were only 49 persons who gave any basis for their opinion at all. Many of the questionnaires were just checked opposite "oppose reappointment" or opposite "favor reappointment." I think there were only 49 giving reasons, and that leaves 13. If there are any reasons assigned in the favorable replies, we shall be glad to get you the complete report.

Senator LUCAS. Do you not think that if the Bar Association wants to present the complete facts, they should do that?

Mr. Morris. (American Bar Association). Mr. Chairman, Mr. Phillips has that exact information for which the Senator is inquiring.

The CHAIRMAN. I see.

Mr. SUTHERLAND. Senator, we did the best job we could to find out whether these four people were qualified or unqualified and I feel that the procedure we followed was the proper way to proceed with it.

If there are any further questions, I will be glad to answer them.

The CHAIRMAN. Are there any further questions of Mr. Sutherland?

(The prepared statement of Mr. Sutherland follows:)

STATEMENT OF WILLIAM A. SUTHERLAND, LAST RETIRING CHAIRMAN OF THE SECTION OF TAXATION, AMERICAN BAR ASSOCIATION

My name is William A. Sutherland. I am a member of the firm of Sutherland, Tuttle, & Brennan, practicing law in Washington and Atlanta. I was chairman of the section of taxation of the American Bar Association from 1946 to 1948. I appear here in opposition to the confirmation of Miss Marion J. Harron who has been nominated for another term as a judge of the Tax Court of the United States. Mr. H. C. Kilpatrick, who succeeded me as chairman of the tax section, has already described in some detail the organization and operation of the American Bar Association and the section of taxation, and there is no need for me to repeat what has been said. But since I was the chief officer of the section during the time when it was concluded Miss Harron was not qualified for reappointment, and in view of the fact that I appointed the committee on whose study and recommendation the officers and council of the section recommended that she be not reappointed, I think it is appropriate that I should state in some detail my connection with the present opposition and what has motivated the officers and council of the section in its decision to oppose Miss Harron's confirmation.

Before doing that, however, I would like to pause for a moment to make two points clear beyond any possibility of misunderstanding:

(1) The officers and council of the section of taxation are not opposed to the appointment of qualified women lawyers to judicial office. That should be clear from the fact that two women lawyers now in the employ of the Department of Justice were included in the list of 16 persons recommended by the section of taxation as qualified for appointment to the four vacancies in the Tax Court which occurred on June 2, 1948. I am personally very pleased to see women in larger numbers entering the legal profession, and I am interested to see that they receive the consideration which their individual merit deserves. On the other hand, I am strongly opposed to the appointment to judicial office of any person not qualified to fill that office, and I strenuously object to sex being made a basis for placing or keeping unqualified persons in judicial office. The progress of women in the legal profession is greatly hindered by placing and keeping in judicial office any woman completely lacking in essential qualities required by the office.

(2) In the next place it should be clearly understood that the American Bar Association fully recognizes that the choice between qualified persons for appointment to the Tax Court or any other Federal court is a choice which is invested in the Executive, and the tax section of the American Bar Association fully recognizes this fact and has had no thought of attempting to arrogate to itself the choice of any particular individual for judicial office nor the choice of any group of individuals from who that choice is to be made.

When the four vacancies in the Tax Court occurred in June 1948, the tax section recommended 16 persons whom they considered qualified to fill these vacancies. There was no thought of confining the President's choice to these 16 persons. We are happy to see any qualified person appointed to these vacancies and shall be glad to see any qualified person, man or woman, as the President may choose, appointed to the vacancy which now exists by the expiration of Miss Harron's term on June 2, 1949.

Our sole purpose is to see that the Tax Court is made up of judges qualified by character and temperament, training and ability to perform the arduous tasks that evolve upon that court, and as in the case of all other judicial offices it may be assumed that the bar generally is in favor of the reappointment to a judicial position of a person who has demonstrated the qualifications necessary to the proper performance of the duties of that office.

I shall now proceed to state my connection with the tax section's opposition to Miss Harron. I had been the chairman of the committee which brought into the meeting of the section of taxation at Atlantic City in October 1946 the resolution there adopted by the house of delegates which authorized the tax section to make recommendations for the filling of vacancies on the Tax Court, requiring that at least four qualified persons be designated for each vacancy. The first vacancies to occur following the adoption of this resolution were the four vacancies on June 2, 1948, of which Miss Harron's position is one, the others being the positions held by Mr. Hill, Mr. Disney, and Mr. Harlan. Shortly after the beginning of my second term as chairman in the fall of 1947, I discussed with some of the acting and former officers of the section the manner in which we could best proceed to determine who should be recommended for the vacancies to occur on June 2, 1948. It was assumed by all of us that any of the four persons then serving who were properly qualified for reappointment would be recommended for reappointment, and therefore the first task which confronted us was to determine which of such persons were qualified for reappointment. In order to do this, I decided to circularize the entire membership of the tax section (then numbering about 2,400), to ascertain their opinion of the then incumbents. I felt it important that this be done by the chairman of the section rather than by the committee chairman.

For this purpose I prepared a questionnaire to the section, copy of which is attached hereto marked exhibit A. An examination of that questionnaire will show that it was written in such a manner as to be most fully calculated to produce truthful answers from all of the persons questioned as to the qualifications of the four judges whose terms were expiring and whose names were listed in alphabetical order. There were no distinctions whatever made between the four judges, and no suggestion in the letter of any opinion as to any of the judges. We simply wanted to know from each person whether he had any opinion whether the judge should or should not be nominated and, if he did, we asked him to indicate that opinion. If he had no opinion we asked to have that fact indicated.

Replies were obtained to 274 of these questionnaires, a percentage of about 11½ percent of those to whom the questionnaire was sent. We considered this a fair percentage of replies to such a questionnaire. Of those replying a number expressed no opinion as to one or more of the judges as follows:

No opinion expressed: Disney, 121; Harlan, 152; Harron, 113; Hill, 189.

Of those expressing an opinion as to the judges listed, the following numbers favored or opposed the appointment of each of the four judges:

Favored: Disney, 139; Harlan, 98; Harron, 57; Hill, 109.

Opposed: Disney, 14; Harlan, 24; Harron, 104; Hill, 26.

It will thus be noted that while the reappointment of the other three judges was favored by a large majority of those expressing an opinion, the appointment of Miss Harron was opposed by a vote of almost two to one. The persons voting against any of these judges had been requested to state the reasons for their opposition. Of those replying the following gave reasons for opposition to each of the judges: Disney, 6; Harlan, 10; Harron, 48; Hill, 16.

The general tenor of the objections of those expressing opposition to the reappointment of Miss Harron and stating reasons therefor was that she was lacking a temperament suitable for a trial judge. Thirty-six of the forty-eight giving reasons for their opposition to the appointment of Miss Harron placed their opposition upon the ground that Miss Harron was lacking in judicial temperament, whereas of the opponents to the other three judges only one of those opposing Judge Disney and Judge Harlan and none of those opposing Judge Hill stated any such ground of opposition. Those opposing Judge Harron used such phrases as: "unjudicial, intemperate, impatient, impolite, discourteous"; "abusive of counsel and intellectually and temperamentally unfit"; "unjudicial temperament"; "complete lack of judicial attitude"; "inexcusable conduct in the courtroom * * * interferes with the conduct of cases by counsel * * * embarrasses counsel in the presence of their clients"; "guilty of bad manners toward counsel"; "acts on emotion"; "utter lack of judicial temperament, common sense, or courtesy; "arrogant, highly temperamental"; "not temperamentally qualified"; "temperament is not of judicial character"; "temperamentally unfit to be a judge * * * outbursts would have been intolerable in a 10-year-old child"; "hopelessly unfitted by temperament to function properly in a judicial capacity * * * loss of temper, discourtesy, and arbitrary behavior toward counsel and witnesses * * * outbursts bordering on the hysterical"; "tyrannical, arbitrary, quarrelsome, meddlesome"; "out of patience with a proceeding from start to finish"; "emotional, unstable"; "handles her trials in a disgraceful fashion, insulting both attorneys and witnesses"; "outbursts * * *

reflected upon the dignity of the court"; "lacks judicial temperament"; and the like.

Having made some analysis of the replies to this questionnaire in my office, I then requested a committee, headed by Mr. Percy W. Phillips as chairman, and made up of George Morris, former president of the American Bar Association and former chairman of the tax section, Weston Vernon, former chairman of the section of taxation, and Mr. Kilpatrick, then vice chairman and now chairman of the section, and Mr. Robert N. Miller, a member of the council, to go over the questionnaires and make such further analysis and investigation as would be necessary to enable the committee to recommend to the officers and council of the section what action should be taken on the recommendation for reappointment of the four incumbents and on the recommendation of other persons sufficient to make up a list of 10.

I had asked Mr. Phillips to head this committee because I knew there would be a very substantial amount of work to be done; I knew that he was interested in appointments to the Tax Court; and he had not been asked to do any other work which required a substantial amount of time after he retired as chairman of the tax section.

The committee met several times and there was generally full or near full attendance. It was the view of all of the committee that it would be wise, among other things, for Mr. Phillips to ask the reaction of all the persons who in the last few years had tried cases before Miss Harron and Judge Harlan as to their opinions of these judges and the grounds of any opinions expressed. At the committee's request Mr. Phillips undertook to make this investigation and to secure such other information as he could secure with reference to these two incumbents and other persons who might be considered for appointment to the Tax Court.

The committee discussed the information thus collected and on the basis of all of the information assembled, reached the unanimous conclusion, among others, that it should recommend to the officers and council of the section that Miss Harron be not recommended for reappointment and her name was omitted from the list of persons recommended as qualified for appointment to the four vacancies.

The recommendation of the committee was fully discussed by the council and officers and committee chairmen of the section, a group of approximately 35 persons, at their meeting in Washington in March of 1948. The officers and council of the section then unanimously approved the action of the committee in omitting Miss Harron's name from the list of those recommended on the ground that she was not qualified for reappointment. There was not a single dissent from this conclusion.

As you know, notwithstanding the recommendation of the bar association, Miss Harron along with the other three incumbents, two of whom had been on the list of those recommended as qualified, was renominated to the Tax Court.

When, at the Chicago meeting of the American Bar Association in January of 1949, authority was obtained from the association for the officers and council of the section actively to oppose the confirmation of nominees to the Tax Court not qualified for appointment, the officers and council of the section were unanimous in concluding that Miss Harron's confirmation should be opposed and the officers were so directed and it is upon that direction that we are now here.

I feel that it is most important to the maintenance of the proper respect for the Tax Court that Miss Harron be not confirmed. I think it is important too for the Federal judiciary of which the Tax Court is in practical effect a part. I feel also that the rejection of her nomination will be helpful to the position of women in the legal profession. It is certainly not to the advantage of women in the legal profession that one of their number entirely unqualified by temperament and disposition for judicial office should be in a position of such importance. The many recommendations which you have received, no doubt, from women's organizations urging the confirmation of Miss Harron's appointment is due, I believe, entirely to the fact that the persons making those recommendations are not familiar with Miss Harron's past record and the impression which she has made on persons who have tried cases before her.

I hope it is clear from what I have said that the opposition to Miss Harron does not arise from any personal animosity on the part of any one and is not based upon the judgment of any single individual and does not depend in the slightest degree upon any opposition to women in public or judicial office. The opposition arises from the considered and unanimous judgment of the officers and council of the American Bar Association, acting in a public capacity, that Miss Harron is lacking in the proper qualifications for the office to which she has

been appointed. For your information the present officers and council of the tax section are the following:

Officers:

Chairman: H. Cecil Kilpatrick, American Security Building, Washington 5, D. C.
Vice chairman: Morton P. Fisher, American Building, Baltimore 3, Md.
Secretary: George D. Brabson, Donnell Building, Findlay, Ohio.
Section delegate to house of delegates: William A. Sutherland, Ring Building, Washington 6, D. C.

Council:

The officers ex officio.
William A. Sutherland, Washington 6, D. C. (Last retiring chairman.)
Dana Latham, Los Angeles 13, Calif.
William A. McSwain, Chicago 3, Ill.
Merle H. Miller, Indianapolis 4, Ind.
Robert N. Miller, Washington 5, D. C.
Frank M. Cobourn, Toledo 4, Ohio
John Paul Jackson, Dallas 1, Tex.
James K. Polk, New York 5, N. Y.
Thomas N. Tarleau, New York 5, N. Y.

The CHAIRMAN. We will hear at this time from Mr. Phillips. Please identify yourself for the record.

STATEMENT OF PERCY W. PHILLIPS, ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.

Mr. PHILLIPS. My name is Percy W. Phillips. I reside in Maryland and have my office in the District of Columbia, where I specialize exclusively in the practice of tax law.

Before going on with my prepared statement I should like to answer the question of Senator Lucas. There was only one person in the questionnaires who explained his reason for reporting in favor of the renomination of Judge Harron. I am not sure that I have with me the information to state but that reply was substantially to this effect:

> I appreciate that I shall be in the minority in voting in support of Miss Harron. I know of her rudeness to counsel and witnesses in the trial of cases, nevertheless, I believe that she is one of the most intelligent judges in the Tax Court and that her ability, integrity, and industry outweigh the criticism which may be leveled at her because of her conduct of trial. In her social life Miss Harron is a hail-fellow well met. I am at a loss to explain the Jekyll-and-Hyde psychology.

That is not verbatim but practically verbatim, of the one reply explaining a vote in favor of Judge Harron.

The CHAIRMAN. There was only one out of the number who gave any reason that stated a reason for his opinion?

Mr. PHILLIPS. That was the only one who stated a reason for his opinion.

Senator LUCAS. In other words, only 1 out of 57 who supported her gave any reason?

Mr. PHILLIPS. That is right, sir.

The CHAIRMAN. Others might have supported by merely checking, are we to infer that?

Mr. PHILLIPS. That is the way it was done.

The CHAIRMAN. But without assigning a reason?

Senator MCGRATH. Fifty-seven supported without assigning reason?

Mr. PHILLIPS. That is right, sir.

The CHAIRMAN. All right, Mr. Phillips, you may proceed.

Senator MARTIN. Mr. Chairman, I think it is rather important to ask, how many stated reasons for objecting?

Mr. PHILLIPS. Mr. Sutherland gave that figure before. I believe it was 36.

Mr. SUTHERLAND. Forty-nine gave reasons so if one was in favor it would be 48.

Senator MARTIN. Forty-eight, as I understand it then, took the trouble to state reasons why they opposed her confirmation and one out of those favoring her reappointment stated reasons why she should be reappointed, is that correct?

Mr. PHILLIPS. That is correct, sir.

The CHAIRMAN. All right, Mr. Phillips, you may proceed.

Mr. PHILLIPS. In 1925, shortly after the organization of the Board of Tax Appeals, I was appointed as a member of that Board. The name has since been changed to the Tax Court of the United States, without any change in the jurisdiction or functioning of the organization. Throughout my testimony I am liable to use the terms "Board of Tax Appeals" and "the Tax Court" interchangeably. I have become so accustomed to the name "Board of Tax Appeals" that it is rather difficult for me to use the title "Tax Court." My term having expired in June 2, 1926, I was reappointed at that time for 10 years but I did not serve out the full term. I resigned in March 1931 to reenter private practice.

Since 1931 I have been engaged in the practice of law, specializing in the handling of Federal tax matters. This includes advising with clients, conference work before the various divisions of the Bureau of Internal Revenue and the Treasury Department, and trials before the Tax Court.

My clients are scattered throughout the United States and my work brings me in contact with businessmen, lawyers, accountants, and Government tax men throughout the United States and especially in the portion east of the Mississippi River.

For over 10 years I have been active in the work of the American Bar Association, and especially in the work of its section of taxation. For many years I served as a member of the council of the section of taxation. I think since the organization of the council in 1939 I served as a member of the council of the section of taxation until my term of office as a member of the house of delegates of the association expired in 1946 at which time I became ineligible for election, to the council for the section.

For the years 1945 and 1946 I was chairman of the section of taxation, and during the next 2 years I was its representative in the house of delegates of the American Bar Association.

In the course of my experience as a member of the Board of Tax Appeals and as an active officer of the section of taxation of the bar association, I have acquired a very extensive acquaintance throughout the United States with lawyers who are interested in the field of Federal taxation.

I may say that they talk to me much more frankly than I believe they would talk to this committee which is a matter of regret to me that they will not talk so frankly on the record.

At the present time, I am serving as chairman of a committee of the section of taxation of the American Bar Association on appointments to the Tax Court.

I think I ought to say to your committee that my interest in appointments to the Tax Court goes back to the time of my original appointment as a member of the Board of Tax Appeals in 1925, and my reappointment in June 1926. It has been my firm conviction that it is in the public interest that a judge, whether of a State or Federal court, who has satisfactorily performed the duties of his office should be reappointed. But no judge has a vested interest in continuing in office. The public interest is the primary consideration and this interest is not best served if a judge does not enjoy the confidence and respect of the community or does not perform his duties in a satisfactory manner.

In 1946, and while I was chairman of the section of taxation of the American Bar Association, the tax bar of the country became very much concerned about appointments to the Tax Court. This concern had existed for some time, but not to the extent manifested by 1946. The concern had to do both with the belief that a good judge should be reappointed, and that vacancies should be filled by persons with the qualifications of a good judge.

As chairman of the section, I appointed a committee, of which Mr. William A. Sutherland was chairman. That committee brought in a report which has been covered in previous testimony, the substance of which was that the section of taxation should have authority to make recommendations for appointments to the Tax Court to those charged with the duty of investigating or making such appointments.

I had the privilege of presenting that matter to the house of delegates of the American Bar Association in 1946, and it was adopted. At about the same time, my second term of office as chairman of the section of taxation expired and I became one of the "elder statesmen" of the section, available for such duties as might be assigned to me.

Incidentally, in answer to the question of one of the Senators about other committees of the association that do this same work, I believe it was Senator Lucas who asked about that, the committee of the association on appointments to judicial office, which is now headed by Mr. Buchanan, of Pittsburgh, was discussed in the same meeting of the house of delegates in October 1946 at which the section of taxation was given authority to make recommendations with respect to appointments to the Tax Court. It was not adopted at that time because the house delegates did not feel that the details of the plan had been sufficiently worked out. The matter was referred back to the committee that was considering it and at the next spring meeting of the association, I cannot give you the month, but it was in the spring of 1947, the committee of the association was authorized to take action with respect to appointments to the Federal court.

The terms of 4 judges of the Tax Court were to expire on June 2, 1948.

Senator LUCAS. May I interrupt you there, sir, just a moment? Going back to the original question I asked of Mr. Sutherland, the American Bar Association has been in existence for how long?

Mr. PHILLIPS. Longer than I can remember, Senator.

Senator LUCAS. This is the first time, in 1947, that the bar association ever took action of this kind?

Mr. PHILLIPS. I believe that is true.

Senator LUCAS. What was the real basis back of that? What was the excuse that caused the bar association to venture on this innovation,

so to speak, appointing committees to make these recommendations?

Mr. PHILLIPS. I could only guess as to that and your guess would be as good as mine.

Senator LUCAS. We do so much guessing around here that I would prefer not to.

Mr. PHILLIPS. I know about the section of taxation.

Senator LUCAS. That is rather a speculation here in my own mind as to why the bar association, which has existed throughout all these years, finally determined in 1947 that it was necessary to go out and do this. I am wondering what motivated the action?

Mr. PHILLIPS. I do know that for some time, and when I say "some time," I mean a matter of years, rather than months, the question had been considered by the American Bar Association and that the matter of protecting the recommendations from political considerations was one of the factors involved.

Senator LUCAS. I did not get the last part?

Mr. PHILLIPS. The matter of keeping the bar association from becoming a political football was a matter which I think was given some consideration but Mr. Morris can probably answer the question better than I can because he was intimately connected with the affairs of the association in that regard.

Several months before June 2, 1948, Mr. Sutherland, who had succeeded me as chairman of the section, conducted informal discussions with a number of the officers and ex-officers of the section, as to the manner in which the sentiment of the tax bar should be determined with respect to recommendations for appointment to the Tax Court. No formal committee was set up at that time. It was determined that a questionnaire, including a poll, should be sent to each of the members of the section of taxation. This was done under date of November 7, 1947.

Now that questionnaire has been read to you and I do not need to repeat it or the substance of it. Shortly after this questionnaire was mailed a committee on Tax Court appointments was set up by the chairman. The committee included all of the former chairmen of the section, the then chairman and vice chairman of the section and Mr. Robert Miller, a former solicitor of the Internal Revenue Bureau and regarded by all of us as the dean of the tax bar of the country. I was asked to serve as chairman of that committee and I assure you that if I had then known of the amount of work which would be involved and the trials and tribulations of the chairman of that committee, I would never have taken the job.

The replies to the poll with respect to the judges of the Tax Court whose terms were about to expire were first tabulated in the office of the chairman of the section. A study was made and digests prepared of the opinions expressed. The committee of which I was chairman then went to work on the matter. There was some objection to all of the judges but, after considerable investigation, which included interviews with persons in a position to know, we reached the conclusion that the few objections to the renomination of Judges Disney and Hill were not substantial.

Now in view of other questions, I think I ought to say that the bulk of objections to Judge Hill was because of his age. Judge Hill had served for many years on the Tax Court and he had acquired an invaluable experience, he was doing a very good job. The judges of

the Tax Court assured us that he was carrying more than a full load of work. The only sound objection that we could find was age, although there was some objection that the judge was pro-Government or something of that sort, but that can be disregarded, because that is a matter of opinion, some lawyer may lose his case and feel that way, but very little weight was given to a few people who said that a judge was pro-Government and you can discard that.

There really was no sound reason why Judge Hill should not be reappointed and there was every reason except for his age why he should be reappointed. It was our understanding that Judge Hill had given reassurances that he did not expect to continue in that office for more than a few years. In other words, he did not expect to attempt to fulfill his full 12-year term. Taking everything into consideration the committee was unanimously of the opinion that Judge Hill should be recommended for renomination.

There were some objections to Judge Disney but they did not appear to be substantial. Some question had been raised as to what the feeling of a lawyer might be for a judge who had decided a case against him. Mr. Sutherland said that Judge Disney decided a case against him in which he was interested. Judge Disney also decided a case, one of the largest that we have had in the United States Tax Court, against us. But, that does not change my opinion of Judge Disney. He may decide a case against me but to my way of thinking, that does not subject him to criticism on my part except perhaps in respect to that one case, and certainly would not lead me to feel that a judge who has done a good job should not be reappointed just because he happened to decide a case against me.

We lawyers win cases which we should never win and lose cases which we should never lose.

As I said, it was an unanimous opinion of the people who passed upon this that Judges Hill and Disney should be reappointed. There was what we regard as substantial objection for the reappointment of Judge Harlan, a well-founded objection which I will speak of in a moment. And approximately two-thirds of those voting were opposed to the appointment of Judge Harron.

The committee did not confine its efforts to obtain information to the poll or to the members of the section of taxation. There was correspondence with lawyers who had tried cases before the several judges and personal conversations with those in a position to know, including judges of the Tax Court and attorneys in the office of the chief counsel of the Bureau of Internal Revenue who represented the Government before the Tax Court. At the same time, the committee conducted a very extensive investigation of the many persons whose names had been submitted to it as qualified for appointment to the court.

You will recall that we were required to submit to the President the names of four men for each vacancy. There were a large number of names submitted to us and a very, very thorough investigation was made of the qualifications of all those persons.

In the course of its deliberations, the committee held several conferences, most of which were attended by all of the members. It prepared a report for the council of the section of taxation in which it recommended that the section of taxation should recommend to the

President the names of 16 persons, all of whom were well fitted to serve as judges of the Tax Court. The list included the names of Judges Disney and Hill, but did not include the names of Judges Harron or Harlan.

A meeting of the council of the section of taxation and of the chairmen of the several committees of the section was held in Washington on March 20, 1948. That meeting was attended not only by the membership of the council of the section but by the chairman of the several committees of the section, and the recommendations of the committee on appointments to the Tax Court were considered, discussed and amended by the entire group which consisted of some 40 or 45 active practitioners from all parts of the United States. The action of the group was unanimous with respect to the judges whose terms were expiring.

Later, on the same day, the council of the section met and adopted a resolution which has been previously submitted to you.

Senator MILLIKIN. Mr. Phillips, I do not quite understand, to what did the unanimous voting apply? What was the question?

Mr. PHILLIPS. The action of the council of the section with respect to the four judges whose terms were expiring. The group was not unanimous with respect to the other names that were to be submitted to the President. There were some differences of opinion with respect to some of the men whose names were to be submitted to the President. We were confining the list to 16 names. Two of them were sitting judges and that meant 14 names. There was some, not a great deal, but some, dissension in the group with respect to what names should be submitted to the President outside of the two sitting judges.

Senator MILLIKIN. But as to the four?

Mr. PHILLIPS. As to the four, the opinion of all present at that meeting, some 40 or 45 lawyers throughout the United States, was unanimous.

Senator MILLIKIN. Was it by vote or by what action?

Mr. PHILLIPS. No formal vote was taken of the 45, a formal vote was taken of the Council which consists of the 15.

Senator MILLIKIN. I am speaking of the 45?

Mr. PHILLIPS. Of the 45 there was no formal vote, it was an open discussion.

Senator MILLIKIN. What was the opinion of the 45?

Mr. PHILLIPS. That Judges Hill and Disney should be recommended for reappointment and that Judges Harlan and Harron should not be recommended for reappointment.

Perhaps to make this complete, I might call attention to the fact that we all know that the President sent up all four names to the committee, to the Senate; that two of the names had been confirmed and two of them resulted in no action being taken, and those two are pending before this group at this time.

At a meeting of the American Bar Association in Chicago in January of this year, the officers of the section of taxation were authorized and instructed by the association to oppose the confirmation of the appointment of Judge Harron. I appear before this committee for that purpose as chairman of the committee appointed to present the views of the association.

Before discussing the objections which the association has to the confirmation of the appointment of Judge Harron, let me deal with the nomination of Judge Harlan. The officers and council of the section of taxation did not recommend his reappointment. At that time Judge Harlan had served on the Tax Court for about 2 years, having been appointed to fill a vacancy. At the time of his appointment he was approximately 60 years of age. I believe it was 59 or 60, I am not quite certain of the age.

He had had no special experience, of which we could learn, in the field of Federal taxation, and it did not appear that his 2 years of service had especially qualified him in that field.

It was felt that it would be in the public interest that, rather than reappoint a person of that age, he was then 61, with no special qualifications for the position, either a younger man or a man experienced in the tax field should be appointed.

Senator LUCAS. Let me ask you right there. Do you take the position that only those who are experienced in the tax field ought to be appointed as judges?

Mr. PHILLIPS. No, sir. If they are sufficiently young so that they can acquire this experience and then have a long term of service ahead of them, we would feel quite satisfied with an inexperienced man. On the other hand, if the man is advanced in age, it is pretty hard for an old dog to learn new tricks and if the man is advanced in age and it is going to take him 4 or 5 years to become experienced in what is regarded as an expert field, and certainly treated by the courts as a field for experts, by the time he has fully qualified in that field he is ready to retire and the public has had very little real service from him.

Senator LUCAS. You would take that position regardless of his experience as a lawyer? In other words, if a man is 57 or 60 years old, you do not believe it is in the interest of the public to appoint a man of that age?

Mr. PHILLIPS. We think that the public interest would be better served, let me put it that way, by appointing an equally qualified man who is younger. Or, by appointing a man of the same age who is experienced in the field, perhaps. I do not mean to say that a man of that age cannot become a good judge. In the Tax Court there have been two or three men who have been appointed with no previous expereince in the tax field who have made excellent judges but they were somewhat younger than 60 when they were appointed.

Senator BYRD. Do you think that Judge Harlan has made a good judge?

Mr. PHILLIPS. This would be only a personal opinion. My personal opinion is that Judge Harlan is an industrious, intelligent, hard-working judge; that his opinions have been about average, not outstanding but about average.

Senator BYRD. Are you opposing the confirmation?

Mr. PHILLIPS. I am not; I am explaining the reasons why we felt we ought not to recommend him. But, politics being what they are and not being certain what we might get as a substitute for Judge Harlan, we felt we should not oppose his nomination once it was sent up by the President. We are not happy about the fact that his name was sent up, but we are not sure that we would be better satisfied with another.

Senator LUCAS. It would be pretty difficult to satisfy the American Bar Association or any other group that comes before a committee of this kind. The individual that you men look for is almost impossible to find with the salary he gets to settle down here.

Mr. PHILLIPS. We found 14, Senator.

Senator LUCAS. You did not agree on those 14.

Mr. PHILLIPS. I think I can say this, that we agreed on 13 of the 14 but when we came to the last place there was a little disagreement as to whether a practicing lawyer or professor should get on that list.

Senator LUCAS. As I understand it there were just 15 in this council that agreed on this many, am I right on that?

Mr. PHILLIPS. When it came to council action we were all in agreement. I am speaking of the 40 or 45 people who were discussing this.

Senator LUCAS. 40 or 45 lawyers in the tax section? In other words, they agreed that these would be all right for the Tax Court?

Mr. PHILLIPS. They represent probably those who are most actively interested in tax practice.

The CHAIRMAN. You say they come from all parts of the country?

Mr. PHILLIPS. Yes.

Senator WILLIAMS. Did I understand you to say that you preferred an appointment of a younger man in order that he might become more experienced?

Mr. PHILLIPS. These appointments are for 12 years and we feel that younger men, I do not mean too young, in the early twenties or anything of that sort, but a man in his late thirties or early forties, with outside experience, he has 20 years of good service ahead of him and he can acquire experience and continue to serve for many years.

Senator WILLIAMS. How long do you think it takes for a judge to get the experience in order to become a good judge?

Mr. PHILLIPS. Well, to acquire the specialized knowledge in a specialized field it is a matter of years. I would not say the number of years but taxes have a long history in back of them. The judge on the Tax Court may be dealing with the tax law as it exists today or as it existed 10 years ago and nobody is better able to understand that than your committee as regards the changes that have taken place.

Senator WILLIAMS. The reason that I asked that was because I understood that you had reference to a man having no prior knowledge, just an attorney?

Mr. PHILLIPS. That is true.

Senator WILLIAMS. How many years does it take him to acquire a reasonable knowledge of that field?

Mr. PHILLIPS. My judgment would be about 5 years.

Senator WILLIAMS. What happens in the meantime on those decisions that he renders? I was wondering if it would not be a good idea that we require some knowledge of the tax law in addition to being a member of the bar.

Mr. PHILLIPS. There is this possibility, he can consult with the other judges and each judge is entitled to one or two legal assistants and the briefs of parties educate him in the particular field and if he goes too far off in his decision, the presiding judge can refer it to the entire court and they can rewrite it for him.

Senator WILLIAMS. Do you feel that some experience in the tax field should be a part of the qualifications?

Mr. PHILLIPS. It is very helpful, but I would not lay it down as an absolute requirement if the man is young enough to still acquire that and have enough service ahead of him.

Senator WILLIAMS. You do not think that these 5 years would render any hardship on the litigant while he is practicing?

Mr. PHILLIPS. Most of these attorneys are practicing with other lawyers.

Senator WILLIAMS. I was not speaking about the attorneys, I was speaking about the clients or patients.

Mr. PHILLIPS. You wonder how expensive he would be to the clients?

Senator WILLIAMS. That is right because they do not come back.

Mr. PHILLIPS. Most of the men that become really experienced in the tax field are working with other men and acquire that experience gradually with supervision from others.

Senator WILLIAMS. And they educate him in this process during these 5 years?

Mr. PHILLIPS. That is true, sir. You have the same problem in any profession.

The CHAIRMAN. All right, Mr. Phillips, you may proceed. We have only a few minutes left before we will have to recess.

Mr. PHILLIPS. It was believed that the appointment of any of those recommended by the council would give the public better service over a period of years than the reappointment of Judge Harlan.

The council of the section therefore believed that it should not recommend his renomination. It is recognized, however, that appointments are not always made with an eye to special fitness for the position. Considering all the circumstances, the representatives of the association determined that it would not oppose the confirmation of Judge Harlan but that it should state to your committee the reasons which governed its action in not recommending to the President his renomination.

In the case of Judge Harron, it was the unanimous opinion of those charged with the duty of acting for the American Bar Association that her reappointment would be prejudicial to the public interest and to the good name and the public standing of the Tax Court. We have been instructed by the action of the association which has previously been outlined, to appear before your committee and oppose her confirmation.

May I say that this decision was not arrived at lightly. All of the members of our group believe firmly in the reappointment of judges who have demonstrated ability. We also appreciate the weight attached to the fact that Judge Harron is a woman and that we shall be accused of opposing her on that ground. This factor has had no weight in the decision which has been reached.

Judge Harron's predecessor on the Tax Court was Miss Annabel Matthews. She served a full 12-year term on the Board of Tax Appeals and performed her duties with great credit. I was a member of the Board during a part of her term and in a position to know. It was a matter of surprise and regret to those of us who were interested in the Tax Court that she was not reappointed.

We take it for granted that, in view of the history of the Tax Court, a woman will be appointed to one of the judgeships. Our organization has no objection to such a procedure; in fact, we welcome

the opportunity to demonstrate again that a qualified woman can fulfill such an important office with credit to her sex.

Senator McGRATH. In line with that statement, if that is the way you really feel about it, you might have had more than 2 women on your list of 15 or 16. If you expected a woman to be appointed, why did you not submit a list of women?

Mr. PHILLIPS. Because it is difficult to find a list of women who have qualified in the tax field.

The CHAIRMAN. You did recommend two?

Mr. PHILLIPS. We recommended two.

Senator WILLIAMS. I understood you to say that experience in the tax field was not one of the requirements?

Mr. PHILLIPS. So long as we can find them with experience, we would prefer that.

Senator WILLIAMS. But it is not a requirement?

Mr. PHILLIPS. No, it is not a requirement but we have found two women lawyers who appear to possess judicial qualities and who are experienced in this tax field and they are both in the Department of Justice, they have argued many cases in the circuit court of appeals and in the Supreme Court and have done a very good job.

Senator MILLIKIN. What is the percentage of your association's membership, so far as women are concerned?

Mr. PHILLIPS. I cannot answer that. My guess is that we have three or four women members. You mean in the association as a whole?

Senator MILLIKIN. Yes.

Mr. PHILLIPS. I could not answer that, but in the tax section we have three or four.

Senator MILLIKIN. It occurred to me that perhaps there would be some difficulty in finding qualified ladies and that relatively there are very few to pick from.

Mr. PHILLIPS. The percentage would probably have to be expressed with a decimal point in front of it.

The CHAIRMAN. All right, you may proceed, Mr. Phillips.

Mr. PHILLIPS. We do not believe that a judge is entitled to reappointment merely because she is a woman and regardless of all other considerations. Neither do we believe that the cause of woman's position in the profession can be aided if persons appointed to important office are not truly representative in their profession or capable of conducting their office in a becoming manner.

Briefly stated, the objection is that Judge Harron is unfit by reason of temperament to hold judicial office.

To be more specific, the grounds which led to this conclusion might be summarized as follows:

One, her actions upon the trial of cases frequently do not conform to accepted judicial procedure, result in great confusion of the record, and effectively prevent a proper presentation of evidence and a proper trial of cases before her; in short, her trial conduct is such that the parties are often, in truth, denied their day in court.

Senator McGRATH. Do you have any figures on the number of reversals that Judge Harron has had? I take it that you can appeal on the basis of these practices?

Mr. PHILLIPS. There have been some appeals taken on the basis of these practices. It has been very difficult, however, to take them because one of the characteristics of Judge Harron appears to be to have the court reporter strike from the record many of these practices.

Senator MCGRATH. Is that not in itself ground for appeal, due to the fact that you do have a record?

Mr. PHILLIPS. How are you going to get the record?

Senator MCGRATH. Summons the reporter to testify that the record was changed.

Mr. PHILLIPS. I suppose it could be done.

Senator MCGRATH. Has it been done?

Mr. PHILLIPS. I do not know. I do not know of any case in which it has been done.

Senator MCGRATH. If this practice is a glaring misconduct on the part of the judge, I should think that somebody along the line would have raised the question in a higher court.

Mr. PHILLIPS. It is the sort of thing that in an individual case is very difficult to lay your finger on but when it is repeated in case after case after case, a pattern emerges.

Senator MCGRATH. Do you know, Mr. Phillips, whether other judges on that court change their records?

Mr. PHILLIPS. I have heard no complaints on that ground. I have heard of no instances of that kind or any complaints either.

Senator MCGRATH. Has any formal complaint ever been made to Judge Harron of this practice?

Mr. PHILLIPS. Yes, sir.

Senator MCGRATH. Has your committee gone to her and spoken to her about these matters?

Mr. PHILLIPS. Our committee?

Senator MCGRATH. Yes.

Mr. PHILLIPS. We are not charged with that duty, that would be the duty of the private litigant.

Senator MCGRATH. You have a committee here now that recommends judges and attempts to secure information as to whether they are qualified. Do you have any committee that would discuss with sitting judges complaints that your bar might have against them? Is it not a practice of the bar association to have committees that take up with the presiding judge or the individual judge complaints that members of the bar might have generally?

Mr. PHILLIPS. Such matters as change of rule or procedure.

Senator MCGRATH. Even such matters as delayed decisions and matters of that kind? Do you not have a committee when there is a complaint of that nature which goes to the presiding judge of this court and makes the complaints?

Mr. PHILLIPS. We had a committee at one time to deal with rules and we may have to deal with relations in Tax Court.

Senator MCGRATH. As far as you know these matters have never been taken up officially either with Judge Harron or the presiding judge of the Tax Court?

Mr. PHILLIPS. I think not.

Senator MCGRATH. So this is the first time?

Mr. PHILLIPS. It is impossible for the tax section to represent private interests.

Senator MCGRATH. But if the members of your association, your section, have complaints that are as serious as these, or as these seem to be and are as general as you appear to make them, do you not believe that some formal action should have been taken by your section to bring this to the presiding judge of the Tax Court?

Mr. PHILLIPS. I think you are probably right and we should enlarge to do that.

Senator MCGRATH. It never has been done?

Mr. PHILLIPS. It never has been done.

Senator MILLIKIN. Will you have records as to important alterations of the records?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Are you prepared to testify on that point, Mr. Phillips?

Mr. PHILLIPS. I am prepared to submit them to you. I suppose I might as well do that now, although it is a little out of order.

The CHAIRMAN. Do not take it up out of order.

Mr. PHILLIPS. I will deal with it later.

The CHAIRMAN. We will not have the time before noon recess.

Mr. PHILLIPS. I have a substantial amount of testimony and I doubt that I can finish before the recess.

Senator LUCAS. Will you submit to this committee alterations of records on the part of the judge which have jeopardized the interests of the client?

Mr. PHILLIPS. You can form your own conclusion as to the effect of them.

Senator LUCAS. That to me is pretty serious if that is happening and I should like to have whoever is going to testify along that line give the real facts in that without generalities.

Senator MILLIKIN. Mr. Chairman, I would like to have the witness give his opinion whether it is customary to alter records, to correct grammar, also whether it is customary to alter records if there is agreement between the judge and attorneys.

Mr. PHILLIPS. That is customary and it is usually done either by motion or stipulation of parties.

Senator MILLIKIN. Will your evidence go beyond that and show alterations beyond the point of stipulation?

Mr. PHILLIPS. It will, but it will be necessary for this committee to issue subpenas to the persons who will testify to that practice. I have the names and I will ask, before I conclude my testimony, that the committee authorize subpenas to require those people to appear and testify.

I will at this time, however, offer to the committee a letter from a gentleman whom you all know, and I believe respect, which has to do with that situation. I have had photostatic copies of that letter made. He is one of the few lawyers who have authorized us to use his name and has not asked that his communication be kept in confidence.

Would you like to have that letter read into the record?

The CHAIRMAN. We would be glad to have that read into the record and I think after that we will have to recess.

Mr. PHILLIPS. The letter is on the letterhead of Reed, Smith, Shaw & McClay, Union Trust Building, Pittsburgh, Pa., dated April 8, 1949, and reads as follows:

Percy W. Phillips, Esq.,
506 Southern Building, Washington 5, D. C.

DEAR MR. PHILLIPS: I have your letter of April 7, regarding the possibility of my appearing before the Senate Finance Committee to testify against the confirmation of Judge Harron for reappointment to the Tax Court.

I wish that I could take advantage of your suggestion, but I have not been well and am not in a position to go to Washington next week. I had an experience with Judge Harron 8 or 9 years ago which I shall never forget. I represented Senator Lawrence Phipps in four tax cases, which were tried before her in Denver, and I never in my life have witnessed a greater display of rudeness and ignorance on the part of a judge. She talked continuously through the proceedings and would allow neither Government counsel nor myself to develop our cases as we thought best. For example, at that time I had had nearly 40 years' experience in active trial work and I thought that I knew how to qualify an expert witness, but she read me a lecture on that subject that filled several pages of the record. When the trials were finished, she impounded the stenographer's record of the proceedings and changed it radically, so as to eliminate a large part of the tirades to which she had subjected counsel.

She is entirely unfit to occupy any judicial office.

Please feel free to offer this letter in evidence or to use it in any way that you see fit.

Faithfully yours,

DAVID A. REED.

The CHAIRMAN. He was a former Senator from Pennsylvania?

Mr. PHILLIPS. He was a former Senator from Pennsylvania and I believe was a member of this committee.

The CHAIRMAN. He was an honored member of this committee for a number of years and very able and capable lawyer.

Mr. PHILLIPS. As my subsequent testimony will develop and as the witnesses whom I hope this committee will authorize be subpenaed will testify, I believe, this letter simply summarizes what is a common practice—I will not say common, I will say frequent occurrence—in Judge Harron's trials.

The CHAIRMAN. Mr. Phillips, we will have to go at this time to the floor and the committee will reconvene at 2 o'clock this afternoon.

Mr. PHILLIPS. Yes, sir.

(Thereupon, at 12 noon, the committee recessed to reconvene at 2 o'clock of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p. m., at the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

STATEMENT OF PERCY W. PHILLIPS, ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.—Resumed

The CHAIRMAN. You may proceed, Mr. Phillips.

Mr. PHILLIPS. I had started to detail the grounds of the objections to the confirmation of Judge Harron and I had reached the point where I stated that she has caused the stenographic record of trials before her to be altered and has suppressed or destroyed the record.

The third specification, her reputation for dictatorial, arbitrary, and capricious action upon the bench has injured the judicial standing of the Tax Court.

Four, she has reduced here usefulness as a judge of the Tax Court by reason of the following considerations:

(*a*) When it is learned that a calendar of cases is to be tried before her, many counsel find reasons for continuing their cases to some future trial calendar;

(*b*) She has been unable to retain the services of the several law assistants who have been selected by her or assigned to her, and her production of opinions has thereby been seriously reduced.

Senator MILLIKIN. Mr. Chairman, may I ask a question in regard to that last specification?

The CHAIRMAN. Yes.

Senator MILLIKIN. I think a very rapid turn-over in assistants is not particularly indicative of anything. Is it your point that that rapid turn-over has occurred because her assistants cannot work with the lady?

Mr. PHILLIPS. Something to that effect has been the common rumor among employees of the Tax Court. I think probably Miss Harron could enlighten you on that herself or perhaps the presiding judge of the Tax Court could. That is the common rumor among the employees of the Tax Court. There is no question whatever that there is a fairly rapid turn-over.

(*c*) Trials have been conducted on such a basis that it has been necessary to order new trials.

Secondarily, and only secondarily, the statistics we have been able to obtain indicate that her record for production is below average for a healthy and active judge of the court, and that her record on appeal has been poor.

Now I would say that we tried to prepare statistics by going through the published opinions and checking those against the record and we thought that we had done a fair job. I learned, however, that our statistics are substantially different from the official statistics of the Tax Court, and that indicates either that they are prepared on a different basis or that we overlooked something in the preparation of our statistics. But since that is only a secondary reason, it becomes rather immaterial. Your committee can undoubtedly obtain the statistics of the Tax Court to determine whether or not the record on appeals is any better or worse. I do not think it is materially worse than that of any other judge. I will say this, however, that I am advised that no hearings have been held by Miss Harron for the last 14 months. A count of the opinions which she has rendered which have been published, and the law requires that the opinions be made public, shows that in the fiscal year end June 30, 1948, there were only 14 written opinions and that in the 9 months since June 30, 1948, there have been either 15 or 16 opinions written by Judge Harron. So that during the last year and 9 months there have been something less than 30 opinions turned out by Judge Harron and no hearings have been held for a period of 14 months.

Senator MILLIKIN. Mr. Chairman, do we know whether the judge has been holding hearings of unusual length?

Mr. PHILLIPS. I have no indication that she has.

At this time I should like to enlarge upon some of these grounds.

Conduct of hearings. The statute provides:

> Notice and opportunity to be heard upon any proceeding instituted before the Board shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Board neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Board upon review, except upon a specific order of the Chairman. Hearings before the Board and its divisions shall be open to the public, and the testimony, and, if the Board so requires, the argument shall be stenographically reported.

That is from section 1116 of the Internal Revenue Code.

As you know the petitioner always has the burden of proof except in fraud cases or asserted transferee liability. I would like to point out this that counsel for the parties, knowing the issues and the available evidence are usually in a position to expedite any trial by stating the questions involved and by calling witnesses and offering testimony and stipulations in their logical sequence; that is the orderly procedure in a trial. It is customary for the Tax Court to follow this procedure with the judge ruling on objections and making such inquiries and examination as may be necessary to clear up doubt or cover some point which the court may consider important.

On rare occasions the judge may have occasion to reprimand counsel or to take steps to expedite the trial. With experienced counsel it is seldom necessary.

Now that is what usually happens in the orderly trial of the case as we all know.

On frequent occasions, but not on all occasions, trials before Judge Harron have not followed the procedure outlined. Counsel may not be permitted by her to state the issues. In such instances, Judge Harron outlines them, sometimes well, sometimes erroneously. Time is lost and tempers are frayed. Often counsel are not permitted by her to conduct the examination of witnesses.

Judge Harron takes over this function and, because she is not familiar with the evidence available, time is lost. The examination goes off into matters having no bearing on the case. If the type of evidence available is not what the judge thinks should be offered, counsel and witnesses frequently are subjected to lectures and to criticism by her. The trial of cases frequently takes much more time than would be taken in an orderly procedure.

The judge becomes impatient at the time consumed; she insists that counsel expedite the hearing, sometimes fixing a time limit. After a few hours, the record is so confused that no one has a definite idea of what facts have been proven, and what facts, which should be proven, are not in the record.

Finally, Judge Harron frequently orders the official reporter to omit portions of the record. This not only leaves counsel in doubt as to his record, but makes it impossible, on appeal, to have an accurate record of what transpired below.

Senator MILLIKIN. Mr. Phillips, are these requests for deletions from the record made in open court or are they made outside the presence of counsel?

Mr. PHILLIPS. Sometimes they are made in open court and sometimes outside of court. Apparently the consent of counsel is asked and it is usually very difficult for counsel to deny that to the judge who is going to consider and decide the case, embarrassing at least to

him to be asked. I am not certain whether in the case of Senator Reed it was done in court or out of court, the letter, I think indicates that it was done out of court and without consent.

What the testimony which we expect to show to this committee, if we are permitted to subpena counsel in some of these cases and the court reporter in some of the cases, will show as to that, I am not certain; but I think that there will be at least two instances where the action was taken out of court.

We felt that while we as a group could safely rely on the reaction which we received from the poll and the opinions which have been expressed, nevertheless a duty was owing to this committee of Congress to produce evidence. Some of this we will have to produce by subpena but it was possible to go to the records of the trials conducted by Judge Harron and extract from those instances of all of this type of conduct, repeated instances of this type of conduct of which we are speaking, except the elimination from the record and there we only find discussion off the record or something of the sort inserted and we do not know whether it was done by consent or whether it was done afterward.

It is not possible for our committee to submit to the Finance Committee the detailed evidence, opinions, and comment which have formed the basis of our opinion that the reappointment of Judge Harron would represent an injustice to the taxpayers of the country, their counsel, and to the standing of the Tax Court. This is necessarily so because the only way in which information and reaction could be obtained was in confidence. Lawyers hesitate to publicly criticize a judge in office for fear of reprisals. That confidence must be respected.

Our association representatives felt that while they could properly rely upon the reaction received in confidence as a result of the poll of the membership, and the investigation made, a duty was owing to your committee to produce evidence to substantiate the opinions expressed by the membership of this section of the association. This evidence will, we believe, substantiate beyond any doubt each of the grounds which have led to the conclusion that the appointment of Judge Harron must be opposed in the public interest.

There is a great deal more evidence of the same kind which would be available if our committee had the facilities, the money, and the time to gather it. It will be necessary to ask the cooperation of your committee through the use of subpenas.

Generally there are two types of off-the-record discussion. In one the judge says, "Off the record." In other words, the discussion is preceded by the words "off the record" and then the discussion will take place in these records.

In other instances there is no indication that there is a discussion to take place off the record, there is just a note by the reporter, "Discussion off the record." So that whether that was done by consent or done afterward, we have no way of knowing from looking at the record later.

I have prepared for the committee a digest of eight cases tried before Judge Harron, this digest being made up from the record which is on file in the Tax Court. Whether in any of these cases matter was eliminated from the record or not; in other words, whether the record was worse than appears, I do not know. We are relying upon the

record as it is filed in the court. I may say to the committee, that if time permitted, there is no question from preliminary examination that I have made of other cases, that we could furnish two or three times as many examples as we have in here. This, however, took all of the time which I had expected to spend on a winter vacation, because when I realized the job that had been wished on me and realized that it was going to be difficult to produce witnesses who would testify against a sitting judge, and that something had to be done if we were to bring this picture before you, we made these digests.

These are not complete in any sense, but they are submitted as an example of the type of record made and of the type of conduct of Judge Harron in the trial of a case. In each case I have noted the docket number and that the transcript of the record itself would be available in the records of the Board of Tax Appeals.

I have not copied the complete record because some of those cases took 3 or 4 or 5 days and what I have done is to attempt to digest and then emphasize, set out the general situation, and emphasize the particular parts of the record indicating the conduct of which we complain. For the benefit of the committee which is probably not going to want to read, or would be reluctant, I should say, to read, this volume, I have attempted very briefly to digest what is disclosed in here, but your committee will appreciate that this is first a digest of a very large record and this is an attempted summarization and is very sketchy. The committee, however, can satisfy itself in any instance by an examination of the record in the Tax Court.

I would like to offer as a part of my testimony this digest of the record in eight cases tried before Judge Harron in the Tax Court.

The CHAIRMAN. You may do so; but would it not be wise and helpful to illustrate precisely?

Mr. PHILLIPS. I shall proceed to do that now.

The CHAIRMAN. Make some case?

Mr. PHILLIPS. Yes.

The CHAIRMAN. You need not read them all to the committee, but something should be read.

Mr. PHILLIPS. Yes.

The CHAIRMAN. That may be made a part of the record.

(The information is as follows:)

ESTATE OF JULIUS B. WEIL, PAULINE P. WEIL, E. J. STERN, AND M. E. KILPATRICK, EXECUTORS

Docket No. 4052

Memorandum Decision June 17, 1946

This case was called for hearing before Judge Harron at Atlanta, Ga., on April 17, 1946, at 12:35 p. m. The taxpayer was represented by M. E. Kilpatrick, Esq., of Atlanta, Ga., and the respondent by Edward L. Potter, Esq. This is one of the briefest records of any case tried before Judge Harron. The first six pages of the transcript are quoted verbatim for the purpose of showing a typical instance of the manner in which Judge Harron turns a trial into an inquisition. Counsel was not permitted to state the issues, as is customary in all courts. It would have been very simple for the court to have permitted counsel to state that all of the issues had been covered by a stipulation, with one exception, and then to have permitted a statement with respect to that exception. This would, perhaps, have taken 5 minutes. Instead, 6 pages of the transcript are devoted to the inquisition by which Judge Harron learned that all but one issue was stipulated.

It should be stated that in this case no damage was done, except that counsel may have been upset at the implied insult to his ability to state the issues to the court. The case is quoted in full, however, as an example of the approach made by Judge Harron to the trial of cases and her inability to permit counsel to proceed in the usual and customary manner. The first six pages of the transcript read as follows:

"The CLERK. Docket No. 4052, Estate of Julius B. Well, Pauline P. Well, E. J. Stern, and M. E. Kilpatrick, Executors. For the petitioner, Marion Smith.

"Mr. KILPATRICK. No. M. E. Kilpatrick.

"The CLERK. M. E. Kilpatrick. And your address is?

"Mr. KILPATRICK. In the Hurt Building.

"The CLERK. And you are duly admitted to practice before this tribunal?

"Mr. KILPATRICK. Yes, sir. Marion Smith is not appearing. I am here in his place.

"The COURT. This is not Marion Smith appearing?

"Mr. KILPATRICK. No, your Honor. It isn't. I am M. E. Kilpatrick, from the same firm.

"The COURT. You are in his office?

"Mr. KILPATRICK. Yes, Your Honor. M. E. Kilpatrick.

"The COURT. All right. Mr. Kilpatrick appearing. You haven't filed notice of appearance in this case. You will have to do that afterward—not now. Take that up with the clerk afterward.

"In this case we have a deficiency in the estate tax to the amount of $105,388.28. The deficiency in the estate tax results from several determinations. Now, Mr. Kilpatrick, what determinations are conceded by the estate and what determinations are left in the contest?

"Mr. KILPATRICK. Your Honor, I think it will be helpful if I review the several issues that were——

"The COURT. That will take up too much time. Will you please take out a copy of the Notice of Deficiency.

"Mr. KILPATRICK. Yes, I have a copy here.

"The COURT. Have you the 90-day letter?

"Mr. KILPATRICK. I have, Your Honor.

"The COURT. Will you turn over to the statement?

"Mr. KILPATRICK. Yes.

"The COURT. Have you got that?

"Mr. KILPATRICK. Yes, Your Honor.

"The COURT. Do you see that exhibit for basic tax disclosed by return?

"Mr. KILPATRICK. Just a moment. What page are you on?

"The COURT. I tried to give you that. Have you got the 90-day letter?

"Mr. KILPATRICK. Yes.

"The COURT. Turn it over.

"Mr. KILPATRICK. Yes.

"The COURT. Right in back of that is the first page of the matter.

"Mr. KILPATRICK. Yes.

"The COURT. And right near the top of the page it says 'Estate tax liability assessed and deficiency.'

"Mr. KILPATRICK. Yes.

"The COURT. And underneath that it says 'Net estate tax—three sixty-five'—have you got that?

"Mr. KILPATRICK. Yes.

"The COURT. And there are your adjustments beneath that. That increases your value of your net estate to $1,089,014.

"Mr. KILPATRICK. That is correct, Your Honor.

"The COURT. And above that, the adjustments. Now, what adjustments in that little column are you conceding as being correct and what ones are you contesting.

"Mr. KILPATRICK. Your Honor, I will comply with what Your Honor wishes. There are only five issues and I can explain them in about 5 minutes. Most of them are eliminated.

"The COURT. Are you contesting the $8,132.80?

"Mr. KILPATRICK. The schedule A is real estate but that real estate we are not contesting.

"The COURT. Are you contesting schedule B, the $557,065?

"Mr. KILPATRICK. I have, and that has been disposed of by stipulation which will be filed, the value of the 33 shares of Coca-Cola bottling works stock which is being stipulated.

"The COURT. What of the item, $557,000, is that a valuation on some Coca-Cola stock?

"Mr. KILPATRICK. Mainly a valuation on Coca-Cola. There were some smaller items to which error was not assigned.

"The COURT. That was the main item?

"Mr. KILPATRICK. Yes.

"The COURT. That is all right. And there is no issue before the court to be decided with respect to that determination?

"Mr. KILPATRICK. No issue at all.

"The COURT. All right. Schedule F: $16,137.45.

"Mr. KILPATRICK. I will have to see the return to see what schedule F is, Your Honor. I think it is miscellaneous profits.

"The COURT. If you will go back to the counsel table and put it down you can work with it. You can find out what schedule F is. Turn to page 2. Schedule F is household goods—refund of insurance.

"Mr. KILPATRICK. No issue on schedule F.

"The COURT. All right. Not contested. Schedule G. $50,000.31.

"Mr. KILPATRICK. Schedule G is in issue to be decided by the Tax Court.

"The COURT. It has to do with insurance policies.

"Mr. KILPATRICK. That is correct, Your Honor.

"The COURT. That is contested?

"Mr. KILPATRICK. That is correct, Your Honor.

"The COURT. Schedule J: Attorneys' fees, $15,000.

"Mr. KILPATRICK. That was originally an issue but the stipulation covers that.

"The COURT. Covered by stipulation. Schedule K, which is $81,063.

"Mr. KILPATRICK. That was originally an issue, if Your Honor please, and that is covered by the stipulation.

"The COURT. That has to do with deductions taken for debts?

"Mr. KILPATRICK. That's correct, Your Honor.

"The COURT. That is covered by stipulation?

"Mr. KILPATRICK. That is correct.

"The COURT. So there is really only one issue left in the case?

"Mr. KILPATRICK. That is correct, Your Honor.

"The COURT. All right. You have a stipulation of facts, do you?

"Mr. KILPATRICK. Yes, we do, Your Honor.

"The COURT. Try to shorten the time because we have run overtime. Will you offer your stipulation?

"Mr. KILPATRICK. Yes; I offer the stipulation.

"The COURT. Are there any exhibits attached?

"Mr. KILPATRICK. Yes, Your Honor; the photostatic copies of the two insurance policies involved and a copy of the will.

"The COURT. The stipulation is received and made a part of the record. May I see it, please. And this is the stipulation that takes care of the issues that were originally pleaded that have been set out?

"Mr. KILPATRICK. That is correct, Your Honor.

"The COURT. Will you make your statement relating to the issue remaining to be decided?"

A further interesting sidelight developed at the end of the short hearing. The court asked counsel to state cases on which he relied. Counsel stated those cases, including some memorandum decisions of the Tax Court. Such memorandum decisions have the same force and effect as any other decision of the Tax Court, but are not published in the bound volumes of decisions because they are considered by the court to be relatively unimportant to other taxpayers as precedents. However, those opinions are regarded as sufficiently important to be published unofficially by two tax services and, naturally, are cited and relied upon in later cases, since they are precedents. Judge Harron, however, stated (p. 19):

"A memorandum opinion by the Tax Court is an opinion you are not supposed to cite in your briefs? You know?"

If this is, as it appears to be, an indication that Judge Harron is not prepared to follow the precedent laid down in memorandum decisions of the court, it is an unfortunate fact, to say the least.

On the same page, the court asks:

"Now, who is the judge who wrote the opinion in the Fiske and the Monroe cases you are relying on as the controlling case?"

These were both decisions of the Tax Court (or the predecessor Board of Tax Appeals). The question is a clear indication that decisions of the Tax Court are

made by individual judges, rather than by the court as a whole, and that therefore great weight must attach to the action of the individual judge.

HARBOR HOLDING CO.

Docket Nos. 106028–106031, incl.

Memorandum Decisions, 1942

This case was tried before Judge Harron at Los Angeles on June 2, 3, 4, and 5, 1941. The petitioner was represented by Joseph D. Brady, Esq., and the respondent by E. A. Tonjes, Esq.

The taxpayer owned stock of Van Camp Corp. The shareholders of the taxpayer had received an offer for the stock of Van Camp Corp. The taxpayer did not enter into any agreement to sell the stock. It was completely liquidated in December 1938 and its assets distributed to its shareholders who thereupon proceeded to sell the Van Camp stock. The question involved was whether the sale had been made by or should be attributed to the taxpayer corporation for tax purposes, so that it would be taxable upon a gain or loss upon the sale, or whether the only tax of the transaction occurred when the taxpayer was liquidated, and again when its stock was sold by its shareholders. The position of the Government in the case was that there had been, in effect, an agreement by the taxpayer corporation to sell the stock while the taxpayer corporation was still in existence, and that, under a large number of decisions, the taxpayer corporation realized a gain upon the sale, although before the sale took place it had been liquidated and its stock distributed to its stockholders who then carried out the sale. Mr. Tonjes, for the Commissioner of Internal Revenue, was attempting to build up his case out of circumstantial evidence. Both he and the counsel for the petitioner had been constantly interrupted in the presentation of their case by Judge Harron. At this point the following took place (pp. 148–151 of the record):

"The MEMBER. Just at this moment I want to say the record up to this point does not show what the transaction was or what the stockholders had in mind when Mr. Harris took these certificates of stock around and had them endorsed by some of the stockholders.

"Mr. TONJES. No, Your Honor, I appreciate it does not, and it might be difficult to understand, but I think this is probably as orderly a way of proceeding as we can.

"The MEMBER. Well, I just want that little note to be in the record so when I read it I will——

"Mr. TONJES. It is at least more chronological

"The MEMBER. When I read the record I will wonder what all this testimony is about, really, and I am just saying for the record that evidently a great deal is to be explained thereafter, probably through the respondent's presentation of its case.

"Mr. BRADY. If Your Honor please, I am not disposed to offer objections because I made full disclosure of all facts, as Government counsel will tell you, but when Mr. Tonjes speaks of this being the most orderly procedure, the very fact that Your Honor has a question in her mind shows it is the most disorderly way of trying this case.

"The MEMBER. Whose fault is that?

"Mr. BRADY. I respectfully submit that it is the fault of Mr. Jonjes in putting on the witness after our case.

"The MEMBER. You haven't closed your case yet.

"Mr. BRADY. As far as our direct testimony is concerned, and this is not proper cross-examination.

"The MEMBER. Well, Mr. Tonjes, you might try and get finished with your real cross-examination of Mr. Goodspeed and then proceed with your case. Now, I am really sorry that counsel for the petitioner feels that, according to their theory of the case, whatever discussion the stockholders had between themselves is so immaterial that the petitioner doesn't want to present it. It would certainly make a better record in this case, I should think, if the petitioner had disclosed at some time early in this proceeding—after all, we spent a whole day with the case—stating that these stockholders apparently had made some kind of a plan. They must have. There can't be any doubt about it. The very fact that Mr. Goodspeed visited those other stockholders, that Mr. Harris took stock around,

that there was correspondence, as Mr. Goodspeed has just said, shows Mr. Goodspeed and the other stockholders had something in mind.

"Mr. Goodspeed's last testimony means very little. He says 'Yes,' he went to San Pedro and he visited people; he had written many letters and he had discussed many things. What does that mean? There are no facts in a statement of that kind.

Mr. BRADY. If Your Honor please, we are trying a tax case having to do with liabilities of a corporation, the Harbor Holding Co. Now, what Mr. Goodspeed, who may have been a stockholder of Harbor Holding Co., did on his own or in connection with other stockholders, to my way of thinking, has no binding effect upon the Harbor Holding Co., or anything to do with its tax liability, unless it is brought out as a part of the respondent's case.

"The MEMBER. Well, I would like to call your attention to the fact that the corporation is nothing in this instance than its stockholders. Mr. Henderson, from his own testimony, knew nothing, was very literal in answering questions. The record will show that to almost every question that he was asked on cross-examination he knew nothing. He had no idea why Mr. Goodspeed was writing letters to him or why stock was to be issued in different denominations to stockholders of the Van Camp stock. He knew nothing about it. It is perfectly clear that Mr. Goodspeed knows everything about these transactions, and yet petitioner has——

"Mr. BRADY. Your Honor is right in that regard.

"The MEMBER. I am right, you say?

"Mr. BRADY. You are right. Mr. Goodspeed does know everything about the transaction.

"The MEMBER. I don't think the petitioner, after spending 1 day in presenting his case, has done any more than to present evidence relating to a routine liquidation of a corporation, all the facts of which could have been stipulated. Those facts are mechanical.

"Mr. BRADY. They are, your Honor.

"The MEMBER. Yet the petitioner presents the case upon a theory that the Board will be better able to decide the case if it knows nothing about what was going on.

"Now, from your standpoint, that may be the way to present the case, but from my standpoint, after spending 1 day listening to the case, I have witnessed a very nice display of fencing.

"Mr. BRADY. I didn't hear that last statement.

"The MEMBER. Fencing; the game of fencing. Petitioner is fencing about, avoiding presenting certain facts. The respondent is waiting for petitioner's case to be finished so that he can go ahead.

"Now, I want to hear the facts in this case as soon as possible. There isn't any real reason why it should take any more than today to finish the hearing of this case. I don't believe this case is such a complicated case, Mr. Tonjes.

"Mr. TONJES. From your point of view it isn't."

As stated before, the situation was that Mr. Tonjes, for the Commissioner, was trying to establish by circumstantial evidence that there had been substantial agreement for the sale of the stock of Van Camp before the corporation was dissolved. He was trying to do this by a cross-examination of a witness introduced by the petitioner. The court apparently criticizes him for his inability, through cross-examination of an adverse witness, to immediately establish all of the evidentiary facts on which he was relying to establish his position. Previous testimony had fully established that the situation was complicated and not capable of development by a few simple questions. At page 161 of the record the judge went off on a tangent to inquire into facts about which neither counsel was interested. Apparently the court also found that the matter was of no importance because after a sharp verbal exchange with the witness and two discussions outside of the record, the point raised by Judge Harron was dropped without any statement for the record. The record on this point is as follows (pp. 161–163):

"The MEMBER. I see. Of course, Mr. Goodspeed's testimony on the point was very vague, Mr. Brady. He is inclined to be a little vague in his statements, anyway. The record will show that.

"Mr. BRADY. I think that is true. I think Mr. Tonjes and I are in agreement that that phase is not material here but, however, we want your Honor to know anything you are curious about.

"The MEMBER. I will ask you to look into the stock books and find out if any of these certificates prior to 1921 were once in the names of the same people, or some of the same people, to whom the stock was reissued in 1938.

"Do you understand what I mean?

"Mr. GOODSPEED. I think Your Honor misunderstood the purport and the effect of my testimony.

"The MEMBER. I wish you wouldn't say 'misunderstood,' because if there are any facts I don't know after listening to this case for 1 day, there is no misunderstanding on my part; it is a failure of counsel to get into the record a clear statement of the facts. I have been following the evidence very carefully. Now, I have tried to fill in the gaps in some of the evidence, and your statements, Mr. Goodspeed, are so vague in many places that I have to fill in the facts; but I am not misunderstanding anything, Mr. Goodspeed. I am just trying to get you to tell me what the facts are by a process of, perhaps, not stating some of them accurately because I would like to know what the facts in the case are.

"Mr. GOODSPEED. Counsel, as I understand it, has failed to state those details clearly and specifically and have failed to examine any of them so that I could answer them clearly and specifically for the reason that it is not part of the theory of either the plaintiff's case or the defendant's case, and for that reason we haven't gone into it very specifically or clearly.

"I was very glad to do it if appropriate questions were put to me and were held to be in order, but Your Honor has obviously misconceived the facts.

"The MEMBER. Mr. Goodspeed, you are only taking up the record. You are not adding any factual material to the record.

"Now, if you want to run up the record with argument, all right, but it is of no value. If you want to introduce any evidence on the point, I would be glad to have it introduced.

"Mr. GOODSPEED. I am not in charge of the case. I am here primarily as a witness.

"The MEMBER. No one has asked you to speak at the present time, either.

"Mr. GOODSPEED. Well, I arose for the reason that Your Honor obviously, to my mind, misunderstood what I had testified to as a witness.

"The MEMBER. Where are the stock books?

"Take this off the record, please.

"Discussion outside the record.)

"Mr. BRADY. Your Honor, Mr. Goodspeed confirms my thought on the subject, namely, that these 1,134—this is off the record.

"(Discussion outside the record.)

"The MEMBER. Proceed.

"Mr. TONJES. I was going to call Mr. Henderson, but I don't see him.

"Mr. BAIRD. I will get him."

Throughout the case the judge was constantly occupying the position of counsel for the petitioner, counsel for the respondent, and interlocutor. Very little opportunity was left to counsel for either party to develop their case. For example, the following is quoted from pages 272–273 of the record:

"The MEMBER. Mr. Soemo, I would like to ask you about the notes you received.

"When Mr. Henderson testified this morning he stated he received five notes for $8,510 each from Mr. Goodspeed, and presumably Mr. Goodspeed got them from you.

"Now, have you any records on that?

"The WITNESS. Yes, ma'am [passing document to the member].

"The MEMBER. Well, these notes are all for $8,563. Were there some notes for $8,510?

"The WITNESS. [Pause.]

"The MEMBER. Well, there may be some discrepancy. Will you look at this, please, Mr. Tonjes? This is a part of your case.

"Mr. TONJES. Yes.

"The MEMBER. There is a receipt, I believe, for five notes in the amount of $8,563, and they are notes of the Van Camp Sea Food Co. in favor of Maude C. Reynolds.

"Mr. BRADY. Mr. Henderson never got these, Your Honor.

"The MEMBER. All right. I want to get my question answered.

"The WITNESS. This is the document [indicating].

"The MEMBER. I want you to find out what the answer to the question is.

"The WITNESS. This is it [indicating].

"The MEMBER. Does this interest you, Mr. Tonjes? I asked the question and, if the fact is of any interest to you, I would like to have you proceed. Personally, the case has no interest to me as an individual whatever. I think it is a very uninteresting case."

Again, at pages 324–327, at pages 459–461, and at 465–466:

Pages 324–327:

"Mr. TONJES. I wish Mr. Brady would let me try my case and he try his end of it.

"Mr. BRADY. None of these are material, but Your Honor wants to know the materiality.

"The MEMBER. You say there is a reply to this by Mr. Works, Mr. Brady?

"Mr. BRADY. I believe there is, and you have a photostat of it.

"The MEMBER. I think I will have to request Mr. Tonjes—although, of course, you are entitled to proceed within certain limits the way you want to, but there are some limits. I cannot follow the evidence that you are producing at the present time. Mr. Goodspeed is correct, that letters are being offered that perhaps should be read into the record, but customarily we don't read letters into the record, simply to save the cost of the record, but ordinarily I would like to say, I don't have this kind of a problem.

"Supposing you get together all of these letters, Mr. Tonjes. You have issued a subpena calling for the production of certain letters?

"Mr. TONJES. That is correct.

"The MEMBER. It is your purpose to show by correspondence that at certain dates these parties were either carrying on negotiations or had arrived at certain agreements.

"Now, I think that will probably be better if all the letters are assembled and we all have an opportunity to look at them, and then we will make a record. As far as I can see there is no reason for having the witness do any more than identify the letters or testify in some way to lay some foundation which may be necessary, but that can be done after all of these letters are assembled. Now, we might as well get them all together.

"Mr. TONJES. It is my purpose to go a little further than that, Your Honor.

"The MEMBER. How many letters have you?

"What is your purpose, then?

"Mr. TONJES. My purpose is to show that by November 23 the escrow agreements were prepared; that on the 2d day of December 1938 certain escrow agreements were transmitted to Mr. Goodspeed; that on——

"The MEMBER. Just to shorten this, ordinarily in the trial of a case the attorneys have assembled their documentary evidence, grouped it, and they are able to indicate what they intend to prove by not only one document but several documents, and for some reason or other they are able to go ahead with a great deal more facility than you are ready to go ahead. I don't know whether you found difficulty in getting your material together or not. You may have. You may have had some adverse witnesses. I don't know. But I really don't understand why we have to proceed in quite such piecemeal fashion.

"Now, if you will get it all together and then make a statement for the record of what your offer of proof is, that will be on the record all in one piece, but I have got to definitively prevent any more of this discussion on the record and——

"Mr. TONJES. I haven't been saying anything, Your Honor.

"The MEMBER. Direct you to proceed so that we are going to have a good record, and also so we will be able to save a little time.

"Mr. TONJES. I have a document that I think is competent and admissible in evidence.

"The MEMBER. It has already been received in evidence.

"Mr. TONJES. Very well. It relates to the activities of Mr. Goodspeed. I want to know what he did pursuant to the receipt of this letter.

"The MEMBER. If we had 6 months for the trial of this case you could take all the time you seem to want to take.

"Mr. TONJES. I will have to take it anyway. My duty is to present this case, and I don't have any alternative in that matter. It may not suit the Board's convenience, but it is unfortunate. That is the best I can say.

"The MEMBER. Now, Mr. Tonjes, there are limits within which you can proceed, and you know what the limits are. Now, don't press the lenience of the person who is hearing this case as well as the other people who are here by indicating that you are going to go as far as you want to go, because you won't be able to go as far as you want to go.

"Mr. TONJES, I will make the offer, and if Your Honor sees fit to exclude them, I will have to protect the record. I am sorry.

"The MEMBER. Off the record.

"(Discussion outside the record.)

"The MEMBER. Now, before we proceed, I want to make a brief summary of some of the evidence that has already been received.

"On what date were the four Van Camp stock certificates split up into the new shares; was that December 28, 1938?

"Mr. TONJES. December 28, I believe.

"The MEMBER. December 28, 1938.

"Mr. BRADY. Except as to the prior preferred, and that was December 29."

Pages 459–461:

"The MEMBER. I do think it is unfortunate that some attorneys in the trial of cases seem to think that if they introduce many little separate pieces of evidence and lay a foundation for introducing the documents, get them identified, and then they think that they have presented a case.

"Now supposing the person who hears your case isn't diligent. Supposing the person who hears your case isn't very bright. You have got a lot of little pieces of evidence thrown in and you haven't tied your evidence together in the record. You haven't built up a pattern in the record which shows the interrelations of your little bits of evidence. When somebody asks you the purpose of introducing piece of evidence, your purpose isn't just to show the facts involved in that piece of evidence. It is to prove your case. What are you trying to prove?

"Now, you finally come out and say that you are trying to prove that on December 16 all of the parties interested in a sale represented by a contract in the form of escrow instructions from all the parties to the transaction had really been completed: that on December 16 there was a complete meeting of minds and the contract really became a contract.

"Now, if that is what you are trying to prove, Mr. Tonjes, Mr. Brady has pointed out that that letter doesn't prove it.

"Is that what you are trying to prove?

"Mr. TONJES. Unfortunately, Your Honor, I can't prove, and have no intentions of trying to prove that the parties to these various agreements had, during the month of December, such an iron-bound contract or agreement that at least some of them couldn't have recanted and changed their minds and not gone through with the transaction. I can't prove that. I would like to, but I just can't do it. But I am trying to prove, and I think I have been successful in proving in showing, that the parties had agreed on prices, which is usually a pretty important element in a contract.

"The MEMBER. What parties?

"Mr. TONJES. The parties who had been negotiating; Mr. Goodspeed on behalf of his clients, Mr. Mayock, Mr. Phister, and Mr. Works.

"The MEMBER. Your purpose, if you stated it clearly, would be to show that on December 16, 1938, Mr. Goodspeed representing a small group of holders of Van Camp stock as vendors had agreed with the representatives of the Van Camp Sea Food Co. as vendees as to the price to be paid for the particular block of stock that his group held?

"Mr. TONJES. That is correct.

"The MEMBER. Well, you didn't say that. You see, that is the only thing we are finding fault with you about.

"Mr. TONJES. I am sorry I have been clumsy in stating it, Your Honor, but that is what I am trying to get at."

Pages 465–466:

"The thing I am very fearful about in this case is that counsel is going to make so many discussions and ask to have so many conclusions drawn from the evidence that haven't been shown to be the inevitable conclusions to be drawn in the record. He seems to be convinced that he has enough evidence, but he hasn't made any effort to tie it together or summarize it, and I think that is too bad. That cerainly would help me a great deal in my consideration of the case.

"Mr. TONJES. I think I can straighten out many of these things if not all of them in my brief, Your Honor."

During the course of the testimony Judge Harron had shown an interest in a collaternal suit which had been mentioned in some of the testimony. The counsel for the parties offered in evidence a stipulation of certain facts and a copy of the record in the suit, subject to an objection by counsel for the petitioner that all of the stipulated facts were immaterial to any issue before the court. After a discussion to clarify the facts stipulated, the following took place (p. 377):

"Mr. TONJES. Is the stipulation of facts accepted or rejected on the ground of immateriality as Mr. Brady stated?

"The MEMBER. What is going on here. You don't offer a stipulation and then ask to have objections ruled upon."

(NOTE.—This is a very frequent occurrence in cases brought before the Tax Court and in civil court proceedings where there is no dispute about the facts but there is a dispute as to whether the facts have any relationship to, or should be considered in, the proceeding before the court.)

"Have you made a stipulation or haven't you? * * *

"Mr. BRADY. I agreed that certain facts were true, but I said they were not relevant to the issues here.

"The MEMBER. All right; so be it. I am not going to consider that as an objection. You can't stipulate with one side of your face and object with the other side of your face as far as I can see. You may be able to. I understand what you mean."

There follows the record at pages 516 522. The petitioner had called as a witness an internal-revenue agent. The respondent's counsel first objected to testimony on the ground that is was immaterial and later on the ground that the testimony was prohibited by Treasury Department regulations. Counsel for the petitioner agreed that the witness need not testify. The judge, however, was not satisfied to let the matter drop where both counsel were willing to let it fall. The judge then took over as shown by the record.

"WILLIAM L. HUGHEY, a witness called in rebuttal by and on behalf of the petitioner, being first duly sworn, was examined and testified as follows:

"The CLERK. State your full name, please.

"The WITNESS. William L. Hughey.

"Direct examination by Mr. BRADY:

"Q. You are a United States internal revenue agent, Mr. Hughey? A. That is right.

"Q. Have you been—for how many years last past have you been such? A. Four year.

"Q. Did you make an examination of the income-tax return of Harbor Holding Co. for the year 1938?—A. I did.

"Q. And did you recommend the assertion of a deficiency in the amount of $17,202.70?

Mr. TONJES. That is objected to, Your Honor, as being immaterial. How the Commissioner determined the deficiency or whether Mr. Hughey had anything to do with it is entirely immaterial.

"The MEMBER. What is the purpose of the question you are about to ask the agent?

"Mr. BRADY. I am going to explain to the agent, if Your Honor please, petitioner's exhibits 15 and 16 which just went into evidence with respect to which Mr. Tonjes the other day, before they were exhibits, interrogated Mr. Henderson, and ask Mr. Hughey if he saw those at the time he was making his investigation.

"The MEMBER. Now, what issue in the case does this have any relation to?

"Mr. BRADY. It has to do with adjustment C, if Your Honor please, on the statement attached to the deficiency notice.

"The MEMBER. And that just relates to what kind of an item?

"Mr. BRADY. It reads, 'The following attorneys' fees incurred as an expense in connection with the sale of shares of capital stock of Van Camp Sea Food Co., Inc., are allowed as deductions from your taxable income: Goodspeed, McGuire, Harris & Pfaff, $12,507.50; L. S. Anderson, $500.'

"I just want to show by this witness that it was those bills that led him to make this adjustment which worked in favor of the taxpayer but, I think, he will admit that his description of what the fees were is erroneous.

"Mr. TONJES. If Your Honor please——

"The MEMBER. Well, of course, if you wanted to do that, you probably would have to ask him if he wrote up that description.

"Mr. BRADY. I will.

"Q. Did you, Mr. Hughey, write up that description which is item C in the explanation of adjustments?—A. May I refer to my regional report?

"Q. Surely.

"Mr. TONJES. First, I think it should be stated that he prepared that letter.

"The MEMBER. Refer to your regional report. I think you are both trying to get at the same thing.

"Mr. TONJES. At this time, Your Honor, I would like to object to this witness testifying on the ground that he is prohibited from testifying by the Treasury Department regulations, they not first obtaining the permission of the Treasury Department. I believe that is regulation 12.

"Mr. BRADY. Very well.

"Neither I nor my clients like to violate the regulations of the Treasury Department.

"The MEMBER. This is a witness that has been sworn in and the objection wasn't timely. He was sworn in and the examination started. He has been sitting in this courtroom throughout the hearing, and if he violates the rule of the Treasury Department he might be fired, but it is of no concern of mine, and I can't see any reason why he can't answer this question. He has with him his original report. I am not quite sure, however, that I understand what difference it makes if the deduction was allowed or was treated in such a way, Mr. Brady, that it operated in favor of the taxpayer. The problem to you is that the description in the statement attached to the notice of deficiency doesn't square with the facts. Now, what is the importance of that to you?

"Mr. BRADY. Simply, Your Honor, that I want Your Honor to have the facts, all of the facts, correctly, and I have satisfied myself from talking with Mr. Hughey that he will give Your Honor the answer that he based that statement on those bills.

"The MEMBER. Again, what is the materiality if he based his statement on the bills? In other words, what really is troubling you about this? You know these statements attached to the notice of deficiency very frequently are inadequate from many standpoints. I don't need to explain that to you. You know it.

"Mr. BRADY. That is true.

"The MEMBER. It is the pleadings in the case which frame the questions and not what has been said in the statement attached to the notice of deficiency. Ordinarily we don't receive in evidence these preliminary reports of the agents, and if I was fairly satisfied that this thing you are getting at now would serve some good purpose, I would let it come into the record even though Mr. Hughey isn't supposed to testify under the Treasury Regulations.

"Mr. BRADY. Maybe we can save Mr. Hughey's status if Mr. Tonjes will agree that that statement is not to be taken in this case as evidence of the truth thereof.

"Mr. TONJES. I can't stipulate to that, Mr. Brady. This is the commissioner's determination, and my job is to defend it, and I can't at this time admit that that is not the truth. I have no information which indicates to me that that is not an accurate statement.

"The MEMBER. Let's see, you are troubled about (b) or (c)?

"Mr. BRADY. (c).

"The MEMBER. (c) says: 'The following attorneys' fees incurred as an expense in connection with the sale of shares of capital stock of Yan Chang Soy Food Co., Inc., are allowed as deductions from your taxable income' and now what is your point?

"Mr. BRADY. He didn't actually do that either.

"The MEMBER. My suggestion to you would be this: If that statement is in the notice of deficiency, and under the rule is presumed to be correct until proved to be otherwise, and if petitioner's exhibits 15 and 16 establish the fact that the statement is erroneous, then you have met your burden of proof by the introduction of these exhibits, and it is really immaterial whether this agent looked at them or not.

"Now, following your approach to this, in meeting your burden of proof in every case, you would bring in the revenue agent and make him testify he made a mistake. That isn't done and isn't considered necessary. So I think you are being a little overdiligent. I should think that so long as the record shows that you are relating petitioner's exhibits 15 and 16 to correct the statement in (c) that that ought to be sufficient for any purposes.

"Mr. BRADY. May I have the record show that in addition to the other purposes for which 15 and 16 were introduced that it is for that additional purpose?

"The MEMBER. Very well.

"Mr. BRADY. And may I point out for sake of the record, so that it will be apparent, that the figure of $12,507.50 in item (c) of the explanation of adjustments is made up of 3 figures on the last page of exhibit 15 which total $12,507.50, namely, cash from A. S. Henderson, trustee, to Mr. Paul Valley, $200; cash from A. S. Henderson, trustee, $10,000; and the balance of $2,257.50. That is all on that.

"Is that satisfactory?

"Mr. TONJES. I have nothing to say, Mr. Brady.

"Mr. BRADY. Thank you, Mr. Hughey.

"(Witness excused.)

"The MEMBER. I guess this will be apparent when your brief comes in. I understand there wasn't any issue about the item. It had been allowed as a deduction. I don't know what difference it makes.

"Mr. BRADY. It assumes that the Harbor Holding Co. made the sale. Mr. Hughey was giving the corporation a break on his theory that it was the corporation that sold this stock.

"The MEMBER. Oh.

"Mr. BRADY. I was going to add that he was reducing it again by the amount of these fees. Since we contend it wasn't a corporation that sold the shares of stock, we don't want the record to indicate it was. We don't want any statement of Mr. Hughey's to stand."

Comment: Counsel for both parties in this proceeding were experienced trial lawyers. It is the custom of such lawyers to prepare their cases in advance in order to bring out the material facts with competent evidence. Each side is presumably entitled to his day in court to prove his case. The record shows that instead of permitting the parties to present their respective cases and the evidence in support of their positions, the court constantly interfered and interrupted, taking over the examination of the witness, going off on tangents which had no materiality to the case, requiring the introduction of documents when the parties were satisfied either that such matters were immaterial or that the oral testimony sufficiently covered the matter. The result was a trial which took the greater part of 4 days when the case should have been tried in from 1 to 2 days; a very confused record, with several "discussions off the record"; criticism of the witnesses and of counsel, and such interference with counsel for the respondent that he was wholly unable to get into the record the testimony which he needed to build up his case.

It is believed that it is the duty of the court to permit parties to try their cases and to bring out the material evidence on which they rely, if that evidence can be produced in a competent manner; that the court has the privilege of clarifying the record or further examining the witnesses or asking for further material evidence. However, it is not believed that the function of the court goes to the point where the court can exclude counsel from the examination of witnesses, practically take over the conduct of the case, conduct most of the examination and cross-examination, and make it impossible for counsel for either party properly to develop his case.

O. WILLIAM LOWRY ET AL., 3 T. C. 730

Docket Nos. 112391-112392

This case was tried before Judge Harron at Grand Rapids, Mich., on October 28, 1943.

In 1933, three individuals, Lowry, Sligh, and Matthewson, acquired a plant at Holland, Mich., and organized a corporation to engage in the business of manufacturing and selling furniture, each owning one-third of the capital stock. The stock was restricted in that it could not be offered to an outsider unless it was first offered to the other stockholders. Matthewson took no active part in the management of the corporation. In January 1937 Matthewson sold his shares to Lowry and Sligh and withdrew from the corporation. At that time Lowry and Sligh discussed the matter of doing business in some form other than the corporate form for the purpose of reducing taxes. In May 1937 Lowry transferred half of his shares in the corporation to his wife. On December 1, 1938, Sligh transferred half of his stock in the corporation to his wife. On December 10, 1938, a plan for the complete liquidation of the corporation was adopted by the stockholders. On December 16, 1938, a partnership agreement was executed. Under the partnership agreement the two husbands became general partners, and the wives became limited partners. On the same day a certificate of limited partnership was signed and filed with the county clerk. All of the properties of the corporation were formally transferred to the partnership.

The Commissioner of Internal Revenue treated all of the income of the partnership as taxable to the husbands. The question involved was whether this treatment was correct or whether a portion of the income was taxable as income of the wives. There was no question that all of the formalities involved in a corporate dissolution and in the organization of a limited partnership had been met and that there was a limited partnership under the laws of Michigan which

was operating the property and that the wives were limited partners under the State laws.

All of the foregoing facts were established by testimony, including voluminous documentary evidence. The taxpayer was represented by Morton Keeney, Esq., and Frank E. Seldman, Esq., both of Grand Rapids, Mich., and the Commissioner of Internal Revenue by Melvin S. Huffaker, Esq., and Philip M. Clark, Esq., of Detroit, Mich. After a trial, lasting several hours, which had developed the facts stated above, the counsel for both parties had completed their examination of the taxpayer who was then on the witness stand. Thereupon, the following occurred (pp. 119–135):

"The COURT. You are an industrial engineer?—A. Yes.

"Q. You are not a financial engineer, are you?—A. No, by no means.

"Q. Did you originate this complicated plan or metamorphosis?—A. No.

"Q. Is that the right word; who originated it?—A. Let me be sure of what plan. Our plan of reorganizing our company?

"Q. You know what a metamorphosis is?—A. A gradual change or complete change.

"Q. Who originated it?—A. I think it was partly my idea that we change from a corporation to a partnership?

"Q. It is not your line of work.—A. No, but I made inquiries, I think—

"Q. Can you answer my question? Where did you get the idea?—A. I really can't say just where I got the idea. I talked to several people, I talked to them about the idea.

"Q. The idea?—A. The idea, the plan to change the corporation.

"Q. Whom did you talk to?—A. I talked, I believe, originally, I think the first one I ever talked to about the partnership was my brother.

"Q. What caused you to talk to him about it, what started your thinking on the subject?—A. Of the partnership?

"Q. Yes.—A. I think we thought that the corporate plan was not especially designed for a small, closely held company.

"Q. What put you wise to that?—A. Certainly, I had known about partnerships for many years before I was in this organization, and I know many people who had partnerships.

"Q. Do you know why the corporation was considered a good idea for business? Why do people usually carry on business in the form of corporations?—A. Because the corporation is an entity in itself and the liabilities of the owners of the corporation, the stockholders, is limited to their interest in the corporation. That was the reason we originally thought of it.

"Q. You don't really know very much about stockholders' liabilities, do you? You are not a lawyer?—A. No; in a general way.

"Q. Technically, I don't suppose you could tell me.—A. Stockholders' liability is limited to the amount of the holdings which he has in the corporation.

"Q. Well, now, your business is furniture manufacturing. That is a business that requires machines, isn't it; saws, do you have power saws, power tools?—A. Yes.

"Q. Forming machines, shapers?—A. We have never had to worry about an arm being cut off, but we cover that by workman's compensation insurance, but we realize there are other liabilities.

"Q. In a business of this kind, it is ordinarily considered an idea to carry on a business in corporate form?—A. Yes.

"Q. How long has the business been carrying on as a corporation?—A. It has been carried on from its inception of 1933, December, until December, 1938, it was carrying on, roughly, five years as a corporation.

"Q. What was it in 1937 that made you begin to think about changing, what made you begin to think about it in 1937?—A. Well ,you see, Mr. Mathewson then was a stockholder, a third stockholder, in our corporation. He was not active at all, and he put in money and we put in money and he had a great deal of other holdings besides his stock in this company, and he was not interested in keeping an investment in a partnership where he had no instrument, I would say, to show and represent his holdings. Under that condition, it was not agreeable to any of us to have him as a partner. As soon as we disposed of Mathewson's interest, purchased it, we immediately began, or shortly after that, we began to investigate the possibility of entering into a partnership.

"Q. You don't know a great deal about income taxes?—A. I don't know a great deal about it; I know a smattering of quite a few things, but I wouldn't say I am an expert.

"Q. You don't know very much about the difference between the corporation and partnership?—A. The liability; you mean the personal liability?

"Q. I mean, you would't know of anything of your own knowledge, the difference between the business in revenue accounts as they apply to partnership and as they apply to corporations?—A. Not if I had nothing to refer to, any counsel or advice. I know about taxes on a corporation; there is a corporate tax.

"The Court. You said you knew there was a tax benefit between the corporate form and the partnership form. Where did you get that knowledge?—A. I guess I got it from school.

"The Court. Didn't you testify that there would be a tax saving if you gave up your corporate form of business and went over into the partnership. Where did you get that information? A. Studied, in the first place, in college.

"The Court. Do you make your own income tax returns?—A. No.

"Q. If you know so much about taxes, why don't you?—A. I don't claim to know.

"Q. Where did you get your information about the advantages of changing your corporate business into a partnership business? I want you to answer that question.—A. Well, I frankly will admit that we consulted counsel on this, but I will not admit that I didn't know that a corporation did have to pay a corporation tax that a partnership did not have to pay. The partnership is not taxed as a partnership the same as a corporation is taxed as a corporation.

"Q. Now, about this time, or since, have you ever heard in your trade, field, that other people were changing their corporate form? Did you discuss it among your business associates? Is that where you got the idea?—A. I think I have had it.

"Q. Are there any other companies in this locality that you were in that have given up the corporate form?—A. Yes, there is the Campbell Manufacturing Company. I didn't know it until a short time ago.

"Q. Do you know of any other instance where they did?—A. I know of many other instances that are partnerships, but I don't know that I know of many—yes, I do. I know of another furniture company who changed, and I know of a company in Holland, I think they are changed; I know they are a partnership. I don't know whether they changed from a corporation. I wouldn't say that.

"Q. It is getting to be a general practice in this locality?—A. I couldn't answer that. I don't think so.

"Q. You haven't heard?—A. Not to call it a general practice; I don't have any other cases.

"(Witness excused.)

"The Court. Mr. Seidman, will you take the stand?

"Frank E. Seidman, being called by the court, was duly sworn and testified as follows:

"By the Court:

"Q. Mr. Seidman, how long have you been engaged in work here?—A. Since 1910.

"Q. You are a C. P. A.?—A. I am.

"Q. How long have you had Mr. Lowry and Mr. Sligh as clients?—A. I think, August, 1933, or 1934; I am not sure.

"Q. Did you suggest to them that it would be a profitable thing for them to change from a corporation to a partnership?—A. I did, at some time.

"Q. Did you hear Mr. Sligh testify?—A. I did.

"(Whereupon the court read a paragraph from the agreement.)

"Q. Is that true?—A. That is true.

"The Court. Mr. Lowry, will you take the stand again, please? Did you get your idea about changing your corporation into a partnership from Mr. Seidman?—A. I suggested it to him; I don't think he suggested it.

"Q. Did Mr. Seidman suggest to you that you change your corporate business into a partnership?—A. Yes.

"Q. He did?—A. Yes.

"The Court. If a corporation declares dividends, every stockholder must be treated equally. A partnership does not declare dividends; one of the differences of the two forms is that in order to distribute the earnings of the corporation, dividends must be declared in order to distribute the earnings. In a partnership, it is not necessary to declare dividends. As a matter of fact, it is for the partners to determine how much they should draw and how much they should leave in the partnership. What were your wife's withdrawals from the earnings of the partnership? Let me be very direct about that. Was it your expectation that she will

not withdraw any earnings from the partnership in substantial amounts but will leave them there for an estate?—A. No, it is not.

"Q. Is it your idea that she will draw during the partnership in absolutely equal amounts to your withdrawals?—A. It is not absolutely necessary.

"Q. We can't tell from that answer. I am reframing the question. Is it your intention that she will draw equal amounts of the earnings of the partnership?—A. I would say, substantially.

"Q. In 1939, she did not, and in 1940 she did not?—A. That is right.

"Q. You don't like to go beyond that?—A. She drew substantially in 1940 during the latter part.

"The COURT. Well, of course, that is true.

"Q. Do you intend to continue this partnership?—A. Yes.

"Q. You are going to carry it on?—A. Yes. The limited partnership, you mean?

"Q. Yes.—A. Yes.

"Q. You have been advised, yourself and Mr. Sligh, as I understand it, the wives are limited partners?—A. Yes.

"Q. But you and Mr. Sligh are general partners?—A. That is correct.

"Q. Do you consider that Mrs. Lowry is entitled to the same amount of earnings of the corporation when her liability is less than yours?—A. Yes; I made her the gift.

"Q. However, your liability is much greater than hers; isn't it?—A. Yes.

"The COURT. The reason I am asking these questions, Mr. Lowry, is because we have more of this sort of cases, and this is the only part of the country in which this question came up. I am interested in knowing what reason was for these cases in northern Michigan. That is why I ask you if you knew how many other concerns were doing it.—A. I really don't. I know of others who are partnerships, but I don't know if they changed.

"The COURT. The plan is unrealistic in the business world.—A. There are a good many partnerships.

"The COURT. Not where the wives are partners.—A. I know several where it is.

"Q. Here in Michigan?—A. I can answer, I know more of them here.

"Q. Now, did you increase the plant or equipment at all since 1938?—A. Well, not a great deal; no.

"Q. You haven't had any need for additional capital?—A. No.

"The COURT. This plan is interesting from a test standpoint. It puts the family income about the same. These cases are the test cases and there are very few of them.

"Mr. SEIDMAN. I think there have been quite a few heard by the Tax Board court.

"The COURT. I had 1 case in 10 of this kind.

"Mr. SEIDMAN. May I call Your Honor's attention to the Nathan case in Michigan, Detroit; the Schreiber case; I have a list of cases here on a husband and wife partnership and some limited partnerships. The very specific question that Your Honor has been stressing on the limited partnership has been very broadly discussed in the recent Nathan case.

"The COURT. It might be that the corporate form of carrying on business is on its way out. It does not say anything in the statute about making wives partners.

"Mr. SEIDMAN. There is nothing in December 1938 about that.

"The COURT. I have no further questions. I did want you to indicate your ideas came from Mr. Seidman.—A. Can I clarify? I certainly didn't intend to state that Mr. Seidman suggested the idea of making the partnership. I meant to say that my connection with this firm——

"The COURT. Your idea of making your wife a member of the partnership?—A. Did you ask me that?

"The COURT. I asked you about the plan you have here. I have no further question.

"Mr. HUFFAKER. I would like to ask one question.

"Q. Do you have any business in Zeeland, Mich.?—A. That is correct.

"Q. What kind of business is that?—A. Corporation.

"Q. What is the nature of that business?—A. That is very similar; at least, it was a very similar business when we organized.

"Mr. KEENEY. This examination is objected to. I ask that those three questions and answers be stricken from the record as wholly irrelevant.

"Mr. HUFFAKER. I believe you asked the witness a question as to whether he had any other business connection or a similar question of that nature, and the answer, as I recall, was 'No.'

"The COURT. I believe the question was whether he had any other business connection.

"Mr. KEENEY. I don't think I went into any other business interest excepting the business that is involved in this case.

"Mr. HUFFAKER. May I withdraw the questions? I am sorry. I would like to make a statement for the record. It is my impression that there so far has not been presented to the Tax Court a question of taxability of limited partnerships. Do you know?

"Mr. SEIDMAN. There are any number of cases; the Nathan case——

"The COURT. I do want to discuss this with Mr. Seidman by way of something like oral legal argument at the end, if we have an opportunity, but I think this is just interrupting the record. I wouldn't ask Mr. Lowry so many questions excepting he didn't understand me, and I wanted him to understand that I really meant that I wanted a fair answer to what I thought was a fair question. Now, if there are no further questions, Mr. Lowry may step down.

"(Witness excused.)

"Mr. SEIDMAN. If I understand correctly, the Court has ordered the three questions stricken from the record?

"The COURT. I will order them stricken. I don't think the questions and answers went far enough even to give the Court any glimmer of an idea about anything.

"Mr. KEENEY. Now, if the Court please, it is my duty as I see it to protect the interests of my clients. I believe that in order to do so, I should note an exception upon this record. First, to the calling by the Court of Mr. Seidman. Second, to the character of the examination of Mr. Lowry by the Court. And third, to the remarks of the Court as to the character of this litigation in connection particularly with other litigation wholly unrelated to this litigation as it comes before the Court here at Grand Rapids.

"The COURT. May I inquire, Mr. Keeney, specifically what your objection was, your last objection?

"Mr. KEENEY. I object specifically to the Court's remarks that this seems to be a very common practice in northern Michigan, to form partnerships of this kind, and remarks of that general character.

"The COURT. Well, I have six cases on this calendar involving this same question and it happens that in almost all of those cases you are associated with the counsel and so I made that statement of my knowledge solely of this case. Have you any objection to that?'

"Mr. KEENEY. I think the Court's remarks made it evident that Your Honor was drawing inferences from the statement that my colleague was in all these cases before the Court.

"The COURT. What inferences do you draw from that?

"Mr. KEENEY. I am unable to determine from the Court's remarks the exact nature of the inferences to be drawn.

"The COURT. I will have to ask you to be clear in your objections and that word 'inferences.' I will ask you to be clear about the word 'inferences.'

"Mr. KEENEY. It seems to me as I heard the Court's remarks that the inference was to be drawn from those remarks that my colleague was engaged in some manner improperly in advising clients.

"The COURT. I have no such intention. As I stated, this is a test case, you understand this is a test case; do you not?

"Mr. KEENEY. I do understand that this is a test case and in view of the very large number of husbands and wives the Lendstrum case in New York, for instance, that law is almost the same as in Michigan.

"The COURT. Let me be perfectly clear in this. It is my honest opinion that this is a test case. Of course, we all make mistakes but that is my honest opinion that this and all cases of this caliber are test cases. They are to test this question; namely, whether for income tax purposes limited corporations, limited partnerships, in which the wives of the business partners are members, are recognized for income tax purposes. That is the test question in these cases. That is the test question because that is the explanation given in the 90-day letter and you have heard the 90-day letter in this case and you will find out that the Commissioner makes the statement, 'Inasmuch as they render no service, etc.' Now, the only opportunity that I have to talk to the person who is really most interested in these cases is in the courtroom. We travel all over the United States and serve the convenience of the taxpayers. The taxpayers want the administration to know that they have a greater interest than the attorneys and accountants have. It is their tax liability. Now, the reason I asked Mr. Lowry the questions I did was because I honestly wanted to know whether he had a conviction about this or whether the idea had come to him from a specialist in tax

matters. That is what I wanted to know. Now, the suggestion was made, he said, by Mr. Seidman. Now, if you have any objections as counsel in this case to my view that this, and, as I say, other cases are test cases, and that I have that into the record in this case, apparently, that the plan was adopted at the suggestion of Mr. Seidman, we feel that nothing we said was incorrect. If you decide you would like to have a new trial, I would like you to decide by tomorrow morning. We only travel over the country to serve the taxpayer. The only way we can judge is to ask questions to enable us to try for the right things and we try to arrive at the right thing by knowing the facts and only the facts. We are trying to get the truth and only the truth to the best of our ability. If, after we have done all of that, which involves a great deal of very hard work, traveling over the country and hearing cases at night and going on short lunches and listening intently to these cases and doing everything we can to give the taxpayers of the country the best service that can be given, if they are not satisfied, they have a right to go before the Commissioner of the United States. We will give the taxpayers the very best consideration that can be provided and it would be too bad after there has been so much done, if the counsel is not satisfied. It would be too bad. Then, after arriving at this, it would be very much better to be fair with the taxpayers in court and determine these things. Now you think that over.

"Mr. KEENEY. Very well, Your Honor."

The case was closed on October 28, at which time the parties were instructed to file briefs at dates set by the court.

However, the record shows (at pp. 151–153) that 2 days later, on October 30, 1943, the following statement was entered by the court:

"The COURT. Before the hearing is concluded, I would like to say that I now feel that Mr. Lowry did not understand the scope of my original questions, and this led to my misunderstanding Mr. Lowry's answers to my questions, with the result that we have had a prolonged series of questions and colloquy between the court and counsel.

"I would like to say that I am thoroughly satisfied with Mr. Lowry's testimony and do not criticize him in any way for what was probably a natural misunderstanding in answering my questions. I think if he had gotten the gist of the inquiry, he would have given me the answers that I expected, and I would not have inquired of Mr. Seidman.

"With the respect to my comments about the particular interest of this case, I would like to make one further observation and, in doing so, I would like to remove some of the implications that may be found in my previous remarks, and, due to a new policy of the Bureau of Internal Revenue, this type of case is coming before the Tax Court, and it is, no doubt, an accident that the cases first appeared on our calendar in Detroit and in Grand Rapids; but, even so, I cannot be sure about that. No doubt, these cases will arise from all over the country. I see nothing wrong in the situations or in the facts that have been presented in this case or in some other cases on the calendar, and the question which arises in these cases is entirely special to revenue considerations. I want counsel to understand that my attitude toward the question and toward the particular case now being heard is entirely objective, and I do not have in mind any belief that the parties involved or their advisers proceeded in any questionable way, and I have not intended to criticize the taxpayers or their advisers.

"I have one further comment I would like to make. It is not unusual in our cases for counsel to ask to testify, and, because they ask for that privilege frequently, the courts have often asked counsel to testify; and in calling Mr. Seidman to the stand I have not deviated from our procedure. I wish to thank Mr. Seidman for complying with my request because he was entitled to ask for recognition of the privilege of not testifying with respect to his communications with his clients. He was very gracious in taking the stand willingly, and in answering my questions frankly. I have not the remotest criticism of Mr. Seidman. I would like to say that our courts regard him as one of the outstanding practitioners in the country, and he enjoys the very great respect of those with whom he comes in contact in the Government.

"Finally, I think very little weight needs to be given to any of the record which began with my questions of Mr. Lowry, and, for my purpose, my considerations will be limited to the record which ends with the end of the cross-examination of the last witness by Mr. Huffaker.

"Mr. KEENEY. May I state, for the purpose of the record, that the exceptions which were taken by me on behalf of the petitioners are withdrawn, and may I add, also, that it is a great personal satisfaction to me to do so."

Comment: The statement entered by Judge Harron in the record 2 days after the case had been closed, and last quoted above, speaks for itself and sufficiently establishes that 2 days later she regretted her earlier indiscretions.

Aside from the implication that the two counsel for the Government were incapable of presenting the Government's case, and her insistence that the taxpayer testify to his conferences with his attorney, and her act in calling the taxpayer's attorney to testify as to transactions between attorney and client as a witness for the court, the judge implied throughout her examination of the taxpayer that the taxpayer was lying on the witness stand, with no evidence or basis to support such an assumption and contrary to the probability that the taxpayer, an educated businessman, knew that partnerships were taxed in a different manner from corporations. It is significant that the court, after 2 days of further consideration of her conduct, stated (p. 153):

"I think very little weight needs to be given to any of the record which began with my questions of Mr. Lowry, and, for my purpose, my considerations will be limited to the record which ends with the end of the cross-examination of the last witness by Mr. Huffaker."

RICHARD LAW, 2 T. C. 623

Docket No. 110,169

This case was tried before Judge Harron on September 21, 23, and 24, 1942, in Seattle, Wash. The taxpayer was represented by John Caughlan, of Seattle, Wash., and the Commissioner of Internal Revenue by Messrs. Alva Baird and Arthur L. Murray.

The petitioner was charged with the receipt of certain moneys, in the nature of a bribe, in a labor relations case, and was also charged with fraud in his return. After a substantial amount of testimony had been received, including the testimony of the petitioner-taxpayer, a character witness for the petitioner was called. Mr. Baird, in examining the witness, said:

"Now, Mr. Anderson, counsel (for petitioner) has injected into this case something we had hoped it would not be necessary to develop. He put the matter squarely at issue and we have no alternative. I will ask you whether or not you know that Dick Law (the petitioner) had been convicted of burglary and served a term in the penitentiary at Salem, Oreg.

"The MEMBER. Now, I do not understand that statement about the injection of a new issue into the case of the petitioner." For 10 pages (276-286), plus a discussion which took place off the record, the judge expresses doubt as to the propriety of the question. Mr. Baird pointed out that the court had conflicting testimony as to the receipt by the petitioner, or his failure to receive, certain money, and that his credibility was involved. Counsel for the plaintiff had interposed no objection to the question and was willing that it should be answered. At pages 284-285, Judge Harron stated:

"Perhaps it would have been better if the witness to prove character had been called before the petitioner had testified."

Comment: The case is not especially important except as showing the attitude of Judge Harron toward her position as judge. The credibility of the plaintiff as a witness was definitely at stake, and the question was directed on cross-examination to a witness called by the plaintiff solely as a character witness. Counsel for the petitioner interposed no object to the question, clearly indicating either his belief that the question was pertinent or his desire that the question, having been asked, should be answered. The judge, of her own volition and without any objection from the attorney for the petitioner, undertook to discuss the propriety of the question, and in so doing consumed 12 pages of the transcript and at least one-half hour of the time of the court.

CLAUDE PATTERSON NORRIS, 7 T. C. 980

Docket No. 8782

This case was tried before Judge Harron in Atlanta, Ga., on April 19, 1946. The taxpayer was represented by Hugh Roberts, Esq., of Atlanta, and the respondent by D. D. Smith, Esq.

The underlying facts were that the petitioner was a woman with no business experience who had inherited certain real property. Her husband was a retired stockbroker. In 1942 they entered into a written agreement by which Mrs. Noble agreed to pay her husband an annual salary of $3,600 for his services in attending to her business affairs. He did this during the years 1942 and 1943.

Mr. Noble had authority to draw checks upon Mrs. Noble's bank account, but did not draw a check to pay himself for services rendered in 1942 until March 1943. However, he considered his salary as constructively received in 1942 and reported it as so received on his 1942 income-tax return. In a similar manner, he did not draw a check to pay himself for 1943 services until March 1944. The Commissioner refused to allow Mrs. Noble to deduct the amount paid to her husband on the ground, among others, that it was not paid during the taxable year.

Of her own motion, Judge Harron caused one Thomas D. Seals, a certified public accountant of Atlanta, Ga., to be called as a witness "for and on behalf of the petitioner," whereupon the following transpired:

"The Court. Mr. Seals, it seems foolish for Mr. Noble to be drawing a check in the year following the year he contends that he is rendering these services. There doesn't seem to be any reason why he shouldn't draw a check for $300. He's on the cash basis. There does not seem to be any reason why he should be reporting this income on the constructive receipts basis. Therefore, instead of doing this in a direct and simple way, it is being done in a way that causes a lot of confusion and appeal to the Tax Court. Any sense or good reason for that?

"The Witness. Well, there is a reason, whether it has sense or not, but Mr. Noble had charge of Mrs. Noble's bank account; when and as he wanted——

EXAMINATION

"By the Court:

"Q. Well, he seems to be a very smart, intelligent businessman, and you are his accountant, aren't you?—A. Yes.

"Q. Did he discuss these matters with you?—A. He does at the end of the year. I only make out Mrs. Noble's income tax.

"Q. You make out Mrs. Noble's income tax?—A. And Mr. Noble's.

"Q. What? You said you make out the income-tax return, Mrs. Noble?—A. I do.

"Q. Do you make out the income-tax return for Mr. Noble?—A. I do. And I see them at the end of the year, usually in January or February.

"Q. Well, that's no excuse. If you made out a return for Mr. Noble in 1942 and for Mrs. Noble in 1943, then when it came to 1943 you knew what their problem was in filing a return. So that, I don't think, is a very reasonable explanation of handling this in this way. It is an awkward way for the taxpayers.—A. Well, the answer to this is that they paid it in 1942 for 1942 in the early part of 1943.

"Q. Why?—A. That I don't know. They only came to me in the early part of 1943 when I was ready to make out their 1942 tax returns.

"Q. They did the same thing in 1943, didn't they?—A. They did but the reason for 1943 was to be consistent and if they disallowed the one for 1942——

"Q. That is like the Chinese joke, two Wongs don't make White. Two wrongs don't make a right.—A. A consistency is not wrong.

"Q. That is the most difficult question in this case. I assume you are a certified public accountant?—A. I am.

"The Court. Mr. Smith, on this point can you help us any? Mrs. Noble has an income that is adequate to pay Mr. Noble for his services; I presume that——

"The Witness. Yes, if you are asking me.

"The Court. Isn't there a problem here, Mr. Smith?

"Mr. Smith. Yes; there is a problem there.

"The Court. It's equally important.

"Mr. Smith. It is. One of the problems in that connection—I don't think it has any bearing on what we are talking about—but counsel for the petitioner is under the impression that I might have misled the court by not directing the court's attention to the fact that there was a recomputation reflected in the deficiency notice of 1942 which disallowed the $3,600 item and a computation of the 1943 tax which disallowed. That is a matter of computation. And I make the statement at this time for the benefit of the petitioner.

"The COURT. But the deduction has been taken for each of the years and in each instance it has been disallowed?

"Mr. SMITH. That's right.

"The COURT. I understood.

"Mr. SMITH. I was certain that you did. But counsel for the petitioner seemed uncertain.

"The COURT. But the point is that $3,600 payment for services rendered in 1942 was paid in 1943?

"Mr. SMITH. That is correct.

"The COURT. But it was reported, as I understand it, in Mr. Noble's income-tax return in 1942?

"Mr. SMITH. That's right.

"The COURT. Although he hadn't received it and it was deducted by Mrs. Noble in her 1942 return although it hadn't been paid.

"Mr. SMITH. And they filed joint returns, I might add, your Honor, and I have the returns here which I am going to offer.

"The COURT. That was error. And then I suppose the same thing happened in 1943?

"Mr. SMITH. That is true.

"The COURT. The services were rendered in 1943. Mr. Noble wasn't paid anything in 1943. And he drew a check to pay himself in 1944. He reported it in the joint return in some way in 1943 and deducted it from 1943. Well, that was error also.

"Mr. SMITH. I am going to stand corrected there. I was looking at the 1940 and 1941 returns. The 1942 returns are separate.

"The COURT. Is that a mistake?

"Mr. SMITH. Yes.

"The COURT. Otherwise the situation has been described?

"Mr. SMITH. That's right.

"The WITNESS. Your Honor, may I suggest this: In 1943 Mr. Noble came to me about that, and if we had paid him that would have given him two cash payments by Mrs. Noble in 1942. He didn't want to claim $7,200 in 1943, and if we had paid him monthly, he would have received in cash $7,200. That was not the idea at all.

"The COURT. That is something that indeed has to be explained. I understand that this agreement was entered into in January of 1942.

"The WITNESS. The contract.

"The COURT. And if so, there is no reason in the world why Mr. Noble shouldn't have been paid month by month in 1942.

"The WITNESS. I didn't know about it until I saw him at the end of the year which was the early part of 1943. And I did advise him as long as he had paid one in 1943, not to pay two and form a double deduction.

"The COURT. Well, Mr. Noble may have fallen into error, but whether your suggestion cures the error is one of the issues in this case.

"The WITNESS. Well, he actually did pay one in 1943, and if the 1942 was disallowed, it would be allowable in 1943 because it was a cash payment by Mrs. Noble in that year.

"The COURT. Well, that might be a solution. But strictly speaking it isn't, because payment in 1943 is for services rendered in 1942, and payment in 1944 is for services in 1943.

"The WITNESS. But if you are going to stick strictly to cash receipts disbursement basis, if she had paid him twice in 1943, he would have been entitled to $7,200.

"The COURT. Well, Mr. Seals, I wouldn't want to go to you for advice. That's all. Excuse me for saying so. I mean, your understanding of reporting income on the cash receipts and disbursement basis is erroneous if that represents your opinion and your solution to the problem here."

Comment: (1) The reason why the court should have called the witness of its own motion is not clear. At best, it was an unusual procedure.

(2) The witness, a certified public accountant, was required by the court to state the advice which he had given to his client. No question of fraud was involved. This is again an unusual procedure.

(3) The accountant testified that since 1942 compensation had been paid to Mr. Noble in 1943, when he was first called into the case, he had not wished Mr. Noble to receive 1943 compensation in 1943 for fear that it would result in the receipt of excessive income in one year. He had advised Mr. Noble to be consistent in the matter and to pay for 1943 services in 1944. In this manner, there would be no "doubling up" of income in a single year and the failure

to receive any income in another year. There would be a consistent pattern throughout the years. Nevertheless, Judge Harron saw fit, gratuitously, to say of a qualified certified public accountant:

"Well, Mr. Seals, I wouldn't want to go to you for advice. That's all. Excuse me for saying so. I mean, your understanding of reporting income on the cash receipts and disbursement basis is erroneous if that represents your opinion and your solution in the problem here."

ESTATE OF HENRY T. SLOANE

Docket No. 108473

Memorandum Decision—June 8 1944

Unreported memorandum decision entered April 4, 1944; vacated May 30, 1944. Reconsidered and memorandum decision entered June 8, 1944.

This case was tried before Judge Harron in New York City on January 18-27, 1943.

One of the issues involved was the value of the stocks of four closely held corporations. The case was tried by Allen H. Pierce, Esq., representing the taxpayer, and Thomas Lewis, Esq., representing the Commissioner of Internal Revenue. Both attorneys have had very substantial trial experience.

Reference is made to pages 352 to 370 of the transcript of testimony. Financial statements of the corporations, certified by Lybrand, Ross Bros. & Montgomery, had been introduced into evidence. The witness was one of the partners or employees of that firm. Counsel for the respondent, at an earlier time, had referred to a Dun & Bradstreet report of one of the corporations which indicated that approximately $500,000 had been spent to improve the efficiency of two plants of one of the corporations, and that the funds had been provided from current earnings without the necessity of additional financing for the corporation. This report had not been introduced into evidence. The report did not state, nor did the Commissioner claim that such expenditures had been charged against operating income in determining earnings of the company; only that current earnings had been sufficient to provide the funds without seeking additional investment captial. It is apparent from the record that Judge Harron conceived the idea that counsel for the parties had overlooked something; that large capital expenditures had been charged to earnings, thus decreasing the earning power of the company and understating its capital assets, and that the accounting firm had certified the statements of the corporation, despite such an impropriety. Counsel started to clear up any such misunderstanding, whereupon Judge Harron interrupted. The following transpired:

"Judge HARRON. Now, I think it has been made clear from some other statement of yours that the real reason you have offered exhibits 20 to 33 is to supplement earlier exhibits. Let's have the numbers of those exhibits. They are the reports made by the Lasser accounting firm?

"Mr. PIERCE. That is right.

"Judge HARRON. Showing the balance sheets, earnings, and profits, and so forth, of W. & J. Sloane Co. and its affiliates?

"Mr. PIERCE. That is right.

"Judge HARRON. And those are your exhibits 15, 16, 17, 18, and 19, and the reason you have offered exhibits 20 to 33 is because Mr. Lasser stated when he testified the other day that some of the material in his reports was based upon the audit reports of the Sloane-Blabon Corp. that had been made by Lybrand, Ross Bros. & Montgomery. So you want to show the audit reports of the Lybrand, Ross Bros. & Montgomery firm as showing what Mr. Lasser relied upon in making his reports that are covered by exhibits 15 to 19.

"Now, in that connection let the record show that exhibits 20 to 33 are deemed to be material only for their corroborative value. They are not introduced for any other reason than exhibits 15 to 19 were introduced.

"Now will you proceed.

"By Mr. PIERCE:

"Q. Mr. Hardie, you made these audits personally?—A. Yes, sir.

"Q. And you are thoroughly familiar with the books of the Sloane-Blabon Corp.?—A. Yes, sir.

"Q. For those years?—A. Yes, sir.

"Q. 1934 to 1938?—A. Yes.

"Q. At an earlier point in this proceeding reference was made to an instrument identified as respondent's exhibit B for identification, and thereafter certain questions were asked which tended to cast doubt——

"Judge HARRON. Now, never mind about all of that. This witness isn't concerned with the effect of anything that has gone before. Mr. Lewis, will you kindly give Mr. Pierce respondent's exhibit identified as B?

"Mr. LEWIS. He has it.

"Mr. PIERCE. Yes, I have it.

"Judge HARRON. Now, it is a proper thing for you to ask this witness some questions and let him answer them, and let him do it with a free and open mind, without your suggesting anything to him.

"Mr. PIERCE. All right.

"Judge HARRON. Let his testimony stand by itself and we will see how it squares up with what has gone in the prior record.

"Mr. PIERCE. All right.

"By Mr. PIERCE:

"Q. On page 3 of the exhibit designated as respondent's exhibit B for identification, there is the following statement. There appears a statement in the first full paragraph on that page, and I will ask you to read——

"Judge HARRON. Mr. Hardie, is this a Dun & Bradstreet letter?

"The WITNESS. Yes.

"Judge HARRON. An analytical report. It happens to be an analytical report on the Sloane-Blabon Corp.?

"The WITNESS. Yes.

"Judge HARRON. Now, they make some comments on expenditures that were made by the Sloane-Blabon Corp. The comment is as follows: 'Through the years 1936 and 1937 substantial expenditures were made' (that is, by the Sloane-Blabon Corp.) 'to improve the efficiency of two plants now in operation, approximately $500,000 being spent. According to officers interviewed the outlays were charged to current operations and prevented any working capital increase.'

"Now, have you some comparative statements here for the years 1936 and 1937?

"The WITNESS. Yes.

"Judge HARRON. Now, Mr. Pierce, will you please provide the witness with those statements? We will have him locate in his accounting reports this expenditure, if he can, first.

"Mr. PIERCE. Yes.

"By Mr. PIERCE:

"Q. Will you produce the reports, that is, exhibits 20 to 33, and have you your work papers also? That might be——A. No; but I have the detailed reports for these years which I will need to answer this question.

"Judge HARRON. Now, was there an expenditure in 1936 for plant in operation?

"The WITNESS. Just a moment, please. I want to——.

"Judge HARRON. I will finish the question. Was there an expenditure in 1936 to improve plants in operation?

"The WITNESS. Yes.

"Judge HARRON. That was charged to current expenditures?

"The WITNESS. No, Your Honor.

"Judge HARRON. It was not?

"The WITNESS. No, Your Honor.

"Judge HARRON. Was there such an expenditure charged for 1937, the next year?

"The WITNESS. No, Your Honor.

"Judge HARRON. There was not?

"The WITNESS. No.

"Judge HARRON. Was there an expenditure of $500,000, or amounts which aggregated $500,000, for plants that was made at any time?

"The WITNESS. And charged to expense?

"Judge HARRON. No; I am not talking about how it was charged. Was there such an expenditure?

"The WITNESS. Well, between the years 1934 and 1938 there was. There was more than $500,000.

"Judge HARRON. This report refers to the years 1936 and 1937. Do you find in those two years expenditures that would aggregate $500,000?

"The WITNESS. I find a good deal more. I find $127,000 in 1936 and $775,000 in 1937 added to plant.

"Judge HARRON. Will you read the answer?

"(The reporter read the question.)

"Judge HARRON. Well, you couldn't identify any $500,000 item, could you?

"The WITNESS. No, Your Honor. There isn't any.

"Judge HARRON. You couldn't break it down?

"The WITNESS. No, Your Honor. There isn't any $500,000 item.

"Judge HARRON. Do your reports show that any expenditure to improve the efficiency of plants was charged to current operation? Would you be able to check that actually, or couldn't you?

"The WITNESS. I can tell you what we show as the total charge for the year, each year, for maintenance and repairs.

"Judge HARRON. But from what you have before you now you couldn't state under oath whether any of that total amount which would be a current operations charge included any amount that was really spent for—well, improvement of plant, or capital improvements, as distinguished from current expenditures? You would have to have the books, wouldn't you?

"The WITNESS. Well, that is one of the purposes of an audit. It is to distinguish between what the company adds to its capital and what it puts in expense—that is, items of plant. Now, such things——

"Judge HARRON. Don't people sometimes have to decide whether an expenditure falls into one class or another?

"The WITNESS. That is right, they do.

"Judge HARRON. And the officers of the company do decide that?

"The WITNESS. That is right.

"Judge HARRON. You would have to go back to your detailed sheet to show what made up each detailed item that came to a total of what is the figure here?

"The WITNESS. You mean the repair figure?

"Judge HARRON. Yes.

"The WITNESS. You have repairs here.

"Judge HARRON. A total repair figure for 1936 of $201,574. Now, you can't from this report, which is exhibit——

"The WITNESS. That is not an exhibit.

"Judge HARRON. Exhibit 25 is the summary of this report. Does this report that you have show what items go into that total of $201,574?

"The WITNESS. No.

"Judge HARRON. All right. I don't see how the witness can answer this line of questions.

"Mr. PIERCE. Let me ask a couple of questions.

"By Mr. PIERCE:

"Q. You stated that it was the purpose of an audit to discover whether a proper classification has been made. In other words, whether the officers were putting something in the expense that properly ought to be in capital. Is that correct?—A. Yes.

"Q. Now, if you found on your examination of the books that the officers had done it, that they had shown as expense an item which properly belongs to capital, do you note it on your audit?—A. In the first place, we try to get the corporation to change it and not leave it as an expense, but to capitalize it.

"Judge HARRON. Mr. Pierce, I don't think you understand what I arrived at when I finished. The witness does not have there in front of him his detailed work sheets to show what items went into the figure that was finally agreed upon as the figures covering repairs. Don't you see? Now, for your own information, I will exclude any testimony from this witness unless he produces his work sheets, because it is common business practice for management to decide whether the border-line expenditures go into current expenditures or capital expenditures, and this witness cannot give us testimony regarding policy, and his answers may not embody any conclusions.

"Now, I don't care what this witness testifies to. I wouldn't believe him if he said that just because that figure is labeled current expenditures there isn't any doubt. He can't come in and testify to that unless he proves it. Now, either let it go, or tell him to bring in the books of the company.

"Mr. PIERCE. Your Honor, for the purposes of the record, I am certain that I can get all that I need from the witness, and I should like to be permitted to ask two or three questions.

"Judge HARRON. I have given you my ruling.

"Mr. PIERCE. Then may I make an offer of proof?

"Judge HARRON. What is the materiality of that? You know you have a big job ahead of you.

"Mr. PIERCE. Yes, Your Honor.

"Judge HARRON. Your job is to show there isn't a deficiency of $3,000,000,000 in estate tax.

"Mr. PIERCE. Yes.

"Judge HARRON. I know you are in the habit of taking a long time to try cases, and I am going to help you in this case. I am going to help you overcome that difficulty of yours. I want to be thoroughly convinced that all these little details you are worrying about really get down to the heart of your burden of proof.

"Now, we have got one stock here. That is the Sloane Manufacturing Co., the holding company. It owns part of the stock of Sloane-Blabon. Now, we have an opinion here as to the value of Sloane Manufacturing Co. stock. It is a very fully explained report of the expert's opinion of value.

"Now, something came out in cross-examination about a Dun & Bradstreet report. I don't think it is important. The report hasn't even been offered in evidence yet. It has only been marked for identification. You are attempting to refute something that isn't even in evidence.

"Now, before you make any offer of proof I want to know what your problem is.

"Mr. PIERCE. The problem is this, Your Honor.

"Judge HARRON. I want to know what it is with the big, large issue of the case, and the big, large issue is what is the fair market value of the Sloane Manufacturing Corp. stock? That is what this is in connection with; is that right?

"Mr. PIERCE. That is right.

"Judge HARRON. All right.

"Mr. PIERCE. I can only say, Your Honor, I tried before the case started to plan the order of evidence and how to put it in, and I tried to do it in a way to save the time of the court and the witnesses and Government counsel, for we all wish to hold it down.

"Now, when we are putting on two expert witnesses; and the second one is going to cover much of the ground of the first; when we examined the first witness as to his opinion of value, it developed that a great deal of the cross-examination developed over points that I think are collateral and ill-founded.

"Judge HARRON. Now, you have no business, Mr. Pierce, as an attorney, in arriving at any judgment about that, because you know that the rule is that the cross-examination of an expert witness may be very, very wide. Now, let me refer——

"Mr. PIERCE. I will concede that.

"Judge HARRON. No; let's get this out of the way, because you are going to have the problem right through this case. Let's get it over with. Let's refer to Jones on Evidence.

"Paragraph 389 page 589 of Jones on Evidence:

"'CROSS-EXAMINATION OF EXPERTS—LATITUDE ALLOWED

"'The party cross-examining an expert witness is by no means confined to the theory on which the adversary is conducting his examination. He may go into details and may put the case before the expert in all its phases. He has the right to leave out the hypothetical question of facts assumed by the counsel on the direct-examination if he deems them not proof and he also has a right to add to the question what facts he thinks the evidence establishes. The inquiry on cross-examination is to be allowed as wide a range as may be reasonable to test the skill and ability of the witness. Even on direct-examination witnesses are allowed to state the reasons for their opinions, and clearly the same latitude is allowable on cross-examination.

"'The extent to which an examination may go in respect to collateral matters rests entirely on the discretion of the court, and the exercises of such discretion will not be reviewed on appeal unless abused.'

"Mr. PIERCE. I have no quarrel with that rule.

"Judge HARRON. Now, there is the general rule. Even so, on direct-examination a witness states the facts. On cross-examination the weaknesses of his statements are brought out. On redirect-examination the witness is given a further opportunity to establish his position. Isn't that correct?

"Mr. PIERCE. That is correct.

"Judge HARRON. All right. Now, valuation is a question of fact, and as we go along, if you want to prove certain facts, I would like you to proceed to do

it as expeditiously as possible. It is impossible, during the hearing of a case of this kind, for you to cover every possible little discrepancy. All that you can be expected to do is prepare the case and present it, and you do the best you can. When you finish presenting your case, at the very end you tie together all the loose ends. But while we go along let's not call in a little witness here and there to pick out the little point and try to debate it out.

"Your case has hardly started. You have had one expert witness. Now, you have called this gentleman to testify about a matter that I can't see is very much to worry about.

"Mr. Lewis,, are you going to introduce in evidence the Dun & Bradstreet report, exhibit B for identification?

"Mr. LEWIS. I hadn't intended to, Your Honor, but so much fuss has been made about it maybe I shall. The only purpose of it was to show what the previous witness had taken into consideration and what——

"Judge HARRON. Do you recall what brought out this reference to the Dun & Bradstreet report?

"Mr. LEWIS. In a general way. I asked the witness if he had taken into consideration the possibility that there had been large expenditures to plant charged to expense, not erroneously charged, but charged in any manner.

"Judge HARRON. You haven't established as a fact that there were any charges to current expense of capital items.

"Mr. LEWIS. I admit that.

"Judge HARRON. Well, I don't think Mr. Pierce has anything to refute. No one has testified to anything to the point that there were any charges to current operating expenses of capital items on the books of the Sloane Blabon Corp. Now, what are you refuting?

"Mr. PIERCE. I am not refuting. I am building a positive fact here because I want to eliminate all this discussion from the cross-examination of the next witness.

"Judge HARRON. Now, we are all finished with that. I have told you before that I cannot let this witness come in here and make a conclusion from these reports, that this figure represents anything that is supposed to refute what is apparently a hearsay statement in this Dun & Bradstreet's report. If you ask him what the custom generally followed is, that is the most that he can testify to. But the point isn't in issue.

"Now, the witness is testifying from a report that is not in evidence. This refers to the year 1936. Will you please refer to the summary balance sheets that have been introduced in evidence for the year 1936, for that is all we have to go by.

"Now, is there any item in exhibit 31 which gives the total amount of expenditures during the year for repairs?

"The WITNESS. Yes; right there [indicating].

"Judge HARRON. That appears——

"The WITNESS. In the condensed income account.

"Judge HARRON. What page?

"The WITNESS. Page 2.

"Judge HARRON. What amount was expended for repairs during the year 1936, as shown by that exhibit 31?

"The WITNESS. For maintenance and repairs, $201,574.22.

"Judge HARRON. Did you have any rule or guide in determining what constitutes maintenance and repairs?

"The WITNESS. Yes. Anything that is not a new item. That is, entirely new. Such things as replacements which do not add to capital value, and consequently they are included in repairs.

"Judge HARRON. Now, do you have in this account any other item that shows any capital expenditures during the year for plant and equipment?

"The WITNESS. No. The capital items wouldn't be in the income account. They are added to the plant account on the balance sheet.

"Judge HARRON. Is there anything in the balance sheet in exhibit 31 that would show there were any additions to plant and equipment?

"The WITNESS. No; because this balance sheet is only the plant and equipment at the end of the year. A comparison between that figure and the previous balance sheet would show additions.

Judge HARRON. Well, we have a balance sheet for the year ending 1935. It must be exhibit 30. Is that correct?

"The WITNESS. That is correct.

"Judge HARRON. Well, now, comparing the balance sheets of conditions at the end of 1935 and 1936, was there an expenditure in 1936 for plant and equipment?

"The WITNESS. Yes, Your Honor.

"Judge HARRON. How much?

"The WITNESS. During the year ended December 31, 1930, there was added to the plant account $127,705.98. The plant accounts were reduced by four items. Delivery equipment, fully depreciated and eliminated, $1,478.01. Items sold including——

"Judge HARRON. Well——

"The WITNESS. In other words, the net figures between this and this is the additions less deductions.

"Judge HARRON. What is the net amount of the figure?

"The WITNESS. The net additions during the year were $58,030.06.

"Judge HARRON. Now, do you want to ask the witness anything else?

"Mr. PIERCE. I beg your pardon?

"Judge HARRON. Do you want to ask the witness anything else?

"Mr. PIERCE. Yes; I want to ask him two questions.

"By Mr. PIERCE:

"Q. If there had been a large expenditure of items which you as an accountant recognized as proper capital expenditures that had been put in the income account, you would have found it, would you not?—A. Yes; in the course of the audit.

"Q. You went through the books very thoroughly and checked the various items?—A. Yes.

"Q. And where you do find such charging of capital items to expense, how do you treat them on your reports?—A. Well, first of all, we try and have them put in the capital account.

"Q. By all means?—A. By a journal entry crediting expense and debiting the capital account.

"Q. I mean, by requesting the officers to change it?—A. Yes, yes.

"Q. And if you are unsuccessful in convincing them, what happens?—A. Then in that case the certificate on the balance sheet would be qualified, and there would be a note on the balance sheet and income and surplus accounts disclosing that fact.

"Q. That is the regular practice of Lybrand, Ross Bros. & Montgomery in its accounts?—A. If such a situation arose; yes.

"Q. Are there any such qualifications or notations on any of these papers you have mentioned?—A. No, sir.

"Q. Is it the purpose of an audit to discover such items regardless of what the officers may do?—A. Yes, sir.

"Judge HARRON. Well, it may not be the purpose, but you mean you do find things out as you go along?

"The WITNESS. We do look for them, too.

"By Mr. PIERCE:

"Q. And are you satisfied, or can you state that as a result of your examination and from your examination and analysis of the various items that you are certain that there was no such charge of capital items to the expense account as suggested in Respondent's Exhibit B for identification?—A. Well, if you are referring to an item of $500,000 I am definitely satisfied that there was no such item charged to expense that should be capitalized, or anything like that amount.

"Q. If it was half that amount——A. No; not half that amount.

"Q. Or $100,000?—A. No; not $100,000.

"Q. If it was anything more than a trivial amount would the same answer apply?—A. Yes.

"Mr. PIERCE. That is all.

"Cross-examination by Mr. LEWIS:

"Q. Now, Mr. Hardie, no one here has suggested that anyone erroneously charged anything to expense or to repairs or to maintenance. It is not a question of whether the officers made a mistake and charged erroneously to repairs or maintenance items that should have been charged to capital. Of course, if such an error had been made in your audit you would have fixed it up and either had it credited on the books or else noted it on your report?—A. Yes.

"Q. That being accepted as true, is there any way from your reports that you can tell that items were properly charged to expense in a certain amount which were used for certain purposes?—A. Well, if you take these five reports there for the 5 years you will find that the amount which is included in the income account as maintenance and repairs is practically the same figure for each of the 5 years.

"Q. That would indicate there were no unusual charges in any of these years?—A. That is right.

"Q. Have you investigated any prior or later years with reference to such charges?—A. In all of the audits that I was responsible for of Sloane-Blabon, that was always done.

"Q. So that the problem we have been fussing about is a very simple one—that is, whether the apparent repairs and maintenance charges in 1936 and 1937 were normal charges for this business? That about answers the question, doesn't it?—A. I have not been fussing about anything.

"Mr. PIERCE. I object to the question.

"The WITNESS: I have not been fussing about anything.

"By Mr. LEWIS:

"Q. That is true, isn't it?

"Mr. PIERCE. I ask him to clarify the question.

"Mr. LEWIS. Do you object to the question?

"Mr. PIERCE. Yes. Read it.

"(The reporter read the question.)

"Judge HARRON. You agree to the latter part of the question?

"The WITNESS. Yes; I agree to the latter part.

"By Mr. LEWIS:

"Q. The point I am making is, anyone looking at the balance sheets or income report could ascertain by comparing one year's expense and maintenance with another year's expense and maintenance whether there was anything abnormal in the expenditures of any one year, couldn't he?—A. Yes; the statements would disclose that.

"Judge HARRON. I think we can tell that now, looking at the statements in evidence.

"The WITNESS. They don't explain it. I think the figure is the same straight through.

"Mr. LEWIS. That is all.

"Redirect examination by Mr. PIERCE:

"Q. And you are satisfied that these earnings truly reflect the condition of the company as found upon your audit?—A. Yes, sir.

"Q. And these audits truly reflect the proper classifications as between capital and earnings?—A. Yes.

"Mr. PIERCE. That is all."

Thus, after what must have consumed at least an hour of the court's time, and could undoubtedly have been cleared up by counsel within 10 minutes, as it was done after the witness was returned to counsel, ended a tempest in a teapot.

After the witness was excused, the following occurred:

"Mr. PIERCE. May we have a recess before I call my next witness?

"Judge HARRON. Before we take a recess, I want the next witness sworn in so we can be started on that. Who is your next witness? What is he going to testify?

"Mr. PIERCE. He is an expert.

"Judge HARRON. You are getting back to the main body of your case. I wish you would stick to that. I wish you would present your case, and when you are all finished presenting your case, then I wish you would pick up all the loose ends you want to. I want to hear what the petitioner's case is right from the beginning to the end.

"Mr. PIERCE. We have a rather complex case, and I have tried to figure it out in an orderly manner.

"Judge HARRON. It is going to be complex while it is being tried, and after you have finished with the presentation of your case, and Mr. Lewis has finished with the presentation of his case, it is all going to be much simpler than it appears to be right now, and after you have had opportunity to study the record and write a brief it is going to be much simpler. I know that is the way these cases work out. They appear to be very troublesome during the trial, but it all irons itself out in the end. If we just follow the rules and stick to them it would come out all right.

"Now, call your next witness and have him sworn in, and then we will take a recess."

At pages 743 and 744, the judge advised counsel for the petitioner at some length as to the manner in which he should try his case.

At the conclusion of the case, the court made the following statement:

"This trial has extended over 6½ days. We have a long transcript and 84 exhibits for the petitioner and about 8 for the respondent.

"Unfortunately the record is full of a great deal of raw material, a great deal that has not been reduced to any finished or concrete form which could be easily adapted and used in drafting findings of fact.

"I do not propose to do the work that will be required in analyzing every exhibit and in reading this transcript from cover to cover. It is a job which counsel now starts. For that reason I have given a rather long time during which briefs may be prepared.

"I shall take into consideration the facts as are set forth in the proposed findings of facts by each counsel in his brief. I shall use only a minimum necessary amount of time to check the correctness of those facts as stated in each counsel's brief.

"I shall not make any independent analysis of accounting and audit reports or of any other reports that have been introduced excepting the reports written by the experts. All analysis of accounting reports should have been made by counsel. They should have been summarized and reduced to a simple review and submitted in evidence. It is now the duty of counsel, if they care to, to make those analyses. If they are going to rest entirely on the reports that have been prepared by experts and not make any analysis of these other large quantities of raw materials themselves, I am not going to do it. The rule is that I may take into consideration or I may ignore the opinions of experts. If I choose to ignore the opinions of experts, if I think their opinions have been too artificial, or their methods have been too artificial, I may hold there has been a failure of proof.

"In other words, I shall take a more severe attitude in this case than I have probably taken in any case in 6 years. I am not so sure whether the case should have ever been tried. I think this court has been burdened with an unnecessarily long record. I don't think counsel for the petitioner ever seriously tried to settle this case by presenting all the facts to the counsel for the respondent and by having any deliberations with him in the nature of pretrial conference. If there has been a good pretrial conference in this case with the counsel for the petitioner who had the burden of proof, submitting to the counsel for the respondent in advance his summaries of the facts that he has introduced in this case, I have no question at all in my mind that we would not have had to have any trial for more than probably a half-day on the issue of valuation. The cost to the taxpayer, which is the estate in this proceeding, must be enormous. The time of the court that has been taken has been long. The time of counsel required in this case has been long.

"I think it really is too bad that we had to spend 6½ days on this case. I have a great deal of work to do, and whatever I have said, which has been a very liberal statement, I want it understood on the record I am not going to disregard the rules of evidence; I am not going to disregard the statute; I am not going to disregard any of my duties; but I want to make it clear to counsel that they can't unload on my shoulders the work they should have done really in the preparation of this case. This was a good first draft, this trial was. The preparation was not complete, and it is too bad. Counsel began preparing this case at just about the time the first notice of hearing went out.

"That is all I have to say.

"The hearing is concluded. Do your best and work on your briefs."

Comment: (1) It is interesting to note that counsel for the petitioner stated:

"I tried before the case started to plan the order of evidence and how to put it in, and I tried to do it in a way to save the time of the court and the witnesses and Government counsel, for we all wish to hold it down."

As seems to be customary in many cases presented before Judge Harron, counsel is constantly interrupted in his presentation of the case and the trial goes off at a tangent on some matter which may be material or immaterial under the inquisition of Judge Harron. The example cited from pages 352-376 of the transcript is typical.

(2) Judge Harron complains that:

"The record is full of a great deal of raw material, a great deal that has not been reduced to any finished or concrete form which could be easily adapted and used in drafting findings of fact."

This is typical of any case in which a great deal of documentary evidence must be introduced into the record, and is not a proper subject of complaint.

(3) Complaint is made that accounting reports should have been summarized and reduced to a simple review and submitted in evidence. Any such sum-

marization would have been subject to objection as not the best evidence. This fact should have been recognized by the court, and counsel should not have been criticized for relying upon the best evidence instead of preparing his case upon the basis of secondary evidence, which counsel, if not the judge, realized could have been excluded on objection.

(4) The statement of the court that "I shall take a more severe attitude in this case than I have probably taken in any case in 6 years" can scarcely be called a judicial attitude, indicating, as it does, an intention to punish someone; probably the petitioner who would have the burden of proof.

(5) The statement "I don't think counsel for the petitioner ever seriously tried to settle this case by presenting all the facts to the counsel for the respondent and by having any deliberations with him in the nature of pretrial conference" is wholly without support in the record; is an impeachment of counsel for the petitioner on the ground that he has failed in his duty to the client in an attempt to settle the suit short of trial; and carries the implication that counsel for the petitioner is unnecessarily litigating something which could have been settled. The records of the Tax Court, and its predecessor, the Board of Tax Appeals, are full of decisions upon questions of value, indicating that settlement of such issues, where judgment is involved, is not always possible. Here the amount involved was very substantial and the possibilities of settlement therefore smaller.

(6) Before any deficiency is determined by the Commissioner of Internal Revenue, the Commissioner examines the records of the taxpayer. He has access to all books of account and financial statements necessary to determine a valuation. The implication of Judge Harron that counsel for the petitioner might have presented the facts to the counsel for the respondent, represents an unjust criticism. The respondent always obtains such underlying facts before making a determination of value of the stock of a closely held corporation.

A. AUGUSTUS LOW

Docket No. 2100

Memorandum Decision—September 12, 1944

This case was tried before Judge Harron in New York City on April 17 and 18, 1944. The taxpayer was represented by J. Theodore Cross, of Utica, N. Y., and the respondent by Laurence F. Casey.

The taxpayer was vice president of Brooklyn Edison Co., in charge of personal relations with a group of others under him, and also an officer in other power companies. The issue was his right to deduct certain expenses which the Commissioner had disallowed as being personal expenses and which the taxpayer claimed as business expenses or as expenses connected with the production of income. In this case, as in others, the court took a very active part in superseding the functions of counsel for the parties, directing the trial and controlling the evidence to be submitted. At page 24, after oral argument had been made and before any evidence had been introduced, the following took place:

"The COURT. Before you proceed, I would like to ask the respondent to introduce the returns now.

"Mr. CASEY (attorney for the Commissioner of Internal Revenue): If Your Honor please, I wasn't wanting to introduce the returns. There is a schedule attached here and I think they contain a lot of self-serving characterizations of the nature of expenditures.

"The COURT. You introduce that anyway, Mr. Casey."

(Which Mr. Casey then did.)

From that point on the court took over most of the examination and cross-examination, permitting counsel to ask few questions. At page 88 Mr. Cross called on the respondent's counsel to produce certain tax returns from his files, whereupon the following occurred:

"Mr. CROSS. We will offer in evidence the two returns from the Government's file.

"The COURT. You have a problem there that we can't work out now. Will you go ahead with your testimony."

(The respondent had made no objection to the introduction of the returns in evidence.)

During the next several hours the record consists of a regular "dog fight," in which counsel, the court, and witnesses all take up an unlimited amount of time. Counsel were constantly interrupted in their presentation of their case. At page 135, the following takes place:

"The COURT. I am going to stop at a quarter of 1 and if all your direct evidence isn't in, it's exceedingly too bad because you have the burden of proof but you are not proceeding to expedite your presentation. You had a lot of time to present your case yesterday afternoon and you are now interfering with the schedule that we have before us for this afternoon. I can't give you an unlimited time in this case."

The attitude of the court to a witness, a responsible business executive, is typified by the following from page 138:

"The COURT. Then why did you testify yesterday that the Hitchins Corp. sold some pieces out of their land to amusement or resort owners?

"The WITNESS. I did not, Your Honor.

"The COURT. You did. * * *

"The WITNESS. If you will excuse me, I recall no such testimony.

"The COURT. In other words, if you did testify, you will retract that testimony.

"The WITNESS. Gladly.

"The COURT. I said, if you did.

"The WITNESS. Gladly."

During the presentation of the petitioner's testimony the court asked the respondent's counsel if he had certain corporate returns. The following transpired (p. 140):

"The COURT. I will call on respondent to offer them all in evidence

"Mr. CASEY (attorney for the Commissioner). All of them?

"The COURT. All of them. * * *

"Mr. CASEY. May I offer them as part of my own case, Your Honor?

"The COURT. I want you to produce them now. Have you got them here?

"Mr. CASEY. I think I have. They are a little out of order. I intended to ask questions on cross-examination with respect to them."

It is quite evident that counsel for the respondent expected to use these returns for the purpose of upsetting the witness on cross-examination, if possible. The introduction of the returns would constitute a warning to the witness that his testimony would have to be consistent with such returns. By action of the court, the respondent was deprived of the opportunity to test the accuracy and truthfulness of the testimony of the witness.

The evidence referred to a running account between petitioner and his corporation. The respondent's counsel had completed his cross-examination when the following took place (pp. 179–182):

"Mr. CASEY. That is all of this witness, Your Honor.

"The COURT. Aren't you interested in this running account between the taxpayer and the Hitchins Corp.?

"Mr. CASEY. Well, frankly, Your Honor, I don't think it is our position to go forward with proving what the account shows. We brought out that he received something of value from the company during the year. If that is rebuttable, it is proper redirect examination, I suppose.

"The COURT. Well, of course, you have in this case, I think, the question of whether or not, assuming that this corporation carries on any business, and we will grant for purpose of argument that it does, and you will also grant for the purpose of argument, that the petitioner performs services to the organization in the nature of managerial services. He is not paid any salary so he says but he now refers to a running account between himself and the corporation. I wonder whether his testimony that he receives nothing from the corporation is borne out by that account.

"The fact is that this account casts doubt upon his testimony on that point. The corporation, assuming that it doesn't pay the petitioner any salary, nevertheless requires him to spend a fairly large amount of money, railroad fares, hotel or miscellaneous, trips, telephone calls, running up to $1,000.

"Now, under ordinary circumstances, for—when an individual receives no salary, gives his time and his services to a corporation, the corporation would reimburse him for those expenditures. The same was—his time was performed for the services of the corporation and those expenditures were the corporation's expenditures, not the petitioner's. Of course, the petitioner will argue that as an officer of the corporation the amounts he expended for the business of the corporation become his business expenses.

"Now, there is a question whether that rule applies and if the facts would support that argument. However, this corporation doesn't report any taxable income. The corporation doesn't get any tax advantage from increasing its deductions for operating expenses, of course.

"I wonder whether, now that we have this much in the evidence, that petitioner has some kind of an account with the corporation, whether that doesn't throw—throw a grave doubt upon all of his testimony that he never received anything from the corporation.

"What does he have an account with the corporation for? It seems to me that is within the scope of cross-examination and that you ought to finish the record on the point.

"Mr. CASEY. Well, we have established that he did get certain value in the item of food and lodging. That is in the record. The return also shows that he got certain stock and the value of the stock is in the record, that would be all that his account would show that he received, I believe.

"The COURT. Have you ever seen the account, Mr. Casey?

"Mr. CASEY. No, Your Honor.

"The COURT. You are sure what the account shows, are you?

"Mr. CASEY. That is the inference from his testimony. I haven't seen it. It hasn't been offered in evidence. I don't know whether petitioner will make it available or not.

"The COURT. It is your duty on cross-examination to bring out all the evidence that will refute the theory of the taxpayer. Now, please go ahead and refute the evidence of the witness on this account."

There followed examination in considerable detail, all of which established that no salary was received and that the account was made up of other items. All of this further examination substantiated the general testimony of the witness.

The taxpayer was claiming the right to deduct certain expenses. The Commissioner had disallowed these expenses on the ground that they were not deductible business expenses of the taxpayer. The court suggested that these expenses might properly have been charged by the taxpayer to the corporation and paid by it. The court suggested that this might have been done by carrying the matter in the running account with the corporation. At page 101, the following took place:

"The COURT. Then the debt of the corporation would be reduced, of course, if you charged the corporation with these travel expense items?

"The WITNESS. The debt would be increased, Your Honor.

"The COURT. The debt of the corporation to you would be increased?

"The WITNESS. Yes, Your Honor."

The above is quoted as indicating a lack of understanding of even rudimentary accounting.

The decision was in favor of the Commissioner. The taxpayer appealed to the circuit court of appeals and, among its grounds, stated as follows:

"7. The Tax Court of the United States erred upon the hearing before it in unduly restricting and limiting the time of and the opportunity for petitioner and his counsel to properly present the evidence of and development of petitioner's case, to the petitioner's prejudice.

"8. The Tax Court of the United States erred upon the hearing before it by repeatedly assuming the examination of petitioner by extensive questioning of petitioner, both upon examination and cross-examination, upon issues not placed before the court by the parties, all to the prejudice of the petitioner.

"9. The Tax Court of the United States erred upon the hearing before it in propounding, raising and itself seeking to prove by examination of petitioner and by introduction of exhibits on behalf of the parties, new issues to the end of establishing on the court's own sole action that * * *, to the surprise and prejudice of the petitioner."

Comment: The real picture of this case cannot be adequately presented by extracts from the record. It can scarcely be characterized as a trial. While the circuit court of appeals affirmed the action of the Tax Court and the decision was probably right, the petitioner certainly was justified in feeling that he had been denied an opportunity to properly present his case, and in his feeling that the court was acting as a prosecutor instead of a judge.

Incidentally, a case which should have been presented in 2 hours, took the greater part of 2 days.

ILLINOIS WATER SERVICE CO., 2 T. C. 1200

Docket No. 100404

The first hearing in this case was held at New York City on February 27, 1941, before Judge Harron. The petitioner was represented by Messrs Francis L. Casey, Richard H. Appert, and Russell D. Morrill, all of 14 Wall Street, New York City; and the respondent by Mr. Z. N. Diamond. The case for the petitioner was presented by Mr. Casey. Both Messrs. Casey and Diamond are lawyers of substantial experience in trial work and before the Tax Court and the Board of Tax Appeals.

The case involved the basis of property for purposes of depreciation. Two or more complicated reorganizations had taken place and the basic question was whether the basis of the property for depreciation was its cost to an original company or whether, in any of the reorganization steps, the property had acquired a "stepped up" basis.

At page 15 of the transcript on the original hearing Judge Harron stopped the opening statement of counsel for the petitioner on the ground that his position could be stated in his brief. Having thus stopped the petitioner in his statement of the case, the court then said:

"Well, respondent's theory seems to be more reasonable of the two theories, and I would think respondent's theory was the sounder of the two theories. I would say that right now before hearing the case. I think that perhaps there is a law question here. I do not know how the decisions on this problem have gone, but I would think that it would be pretty well in agreement as to your facts. Have you got a stipulation of facts?

"Mr. CASEY. Yes; we have, Your Honor, and rather voluminous exhibits attached to the stipulation which we are prepared to submit in evidence."

The stipulation was received and the petitioner proceeded to introduce witnesses.

The stipulation consisted of 30 pages with 68 paragraphs and with many exhibits attached.

Following the hearing the petitioner filed a printed brief of 53 pages. The respondent filed a mimeographed brief of 61 pages. The petitioner filed a reply brief of 21 printed pages. Respondent filed a reply brief of 17 mimeographed pages, and the respondent filed a request for findings of fact of 17 mimeographed pages.

On August 4, 1941, an order was entered directing a rehearing. A memorandum accompanying this order recites that the record is voluminous and is not clear. It states in part:

"It is not satisfactory for the Board's consideration of this proceeding to have before it so large a body of documents without such a record as would be made if the documents were offered at a trial, rather than merely put before the Board as appendages to a stipulation which now seems to be something other than an agreed statement of facts."

A further hearing was held in New York City on November 24, 26, and 27, 1941. At page 3 of the transcript, counsel states in effect that the parties are unable to agree as to the ultimate facts; that the evidentiary facts are as stated in the stipulation, exhibits and testimony before the court, and that the ultimate conclusions of fact must be found by the BOARD from the evidentiary facts. Counsel offered to go through the record to help the judge. At this point the judge states:

"You ought to be a little more careful in your statements. I didn't ask you to draw up any statement of facts which the Board could adopt as any findings of fact. I set this case down for hearing in order to get the facts. The case has never been tried. All that you have ever done is to unload on the Board about 25 pounds of paper. This case was never submitted on a stipulation of facts. What you call a stipulation of facts is almost useless. I have told you before that the Board of Tax Appeals has too much work to do to do your work. If you want to try this case, I am here to try it. After the facts have been presented to the Board, I will make a findings of fact and I will make the findings of ultimate fact which are the most important findings. I want you to present to me the facts that you want me to take. As it is, you want me to take about 3 weeks to dig out of your 25 pounds of paper all of these facts. I have explained that to you before. I guess we don't need to say anything more about your stipulation of facts."

There followed 3 days during which the counsel for the parties attempted to explain the documents and transactions to the judge. Every time counsel got a

good start, the judge interrupted and then criticized for not making a plain, simple statement of the facts.

At page 33, the member was trying to limit Mr. Casey to a single transaction, while Mr. Casey was stating that it was part of his case, that the court consider the entire transaction and not merely one element of it. At this point the following happened:

"The MEMBER. The trouble between you and me, Mr. Casey, is that I would never take up the time of the court the way you want to take up my time. If the opposing counsel were in agreement that documents had been executed and agreements had been held and facts stipulated had been referred to in the agreements, then I would appear before the court that I wanted to decide the case, and then I would have briefly described the surrounding picture, and I think I would be able to do it in just about an hour and a half, or 2 hours' statement, but you just don't want to try the case that way. I guess there is no answer to the problem of why lawyers try cases the way they do. * * * I shall never again permit an attorney to have a record of this kind, because instead of trying your case, I am now asking you to explain a situation and you are not trying your case and you have never tried your case. I suppose there are some courts that let lawyers just get away with murder on the theory that the court has plenty of time. The court does not have the time.

"Mr. CASEY. I regret very much that it was not tried to your satisfaction. Our desire was to save time in stipulating these exhibits.

"The MEMBER. You will never understand until I get all finished, so that when we get all finished maybe my point will become clear to you, and I am going to try to explain to you how I think you should have tried your case, but I don't think you will ever adopt my suggestion. I think you will go into court and do the same thing all over again. It's part of the game to confuse the court so that the court will adopt your particular viewpoint, and not give the court a simple statement of what later has transpired. If the court can be befuddled and confused so as to see and think in some way that a theory is correct, the way you present it, that is what you want to do. It is immaterial whether the court decides the case right or not, just so that the court is somehow or other confused enough to think the particular advocate's theory is right, and then the next court can straighten it out, and the next court, and that is why lawyers get large fees, I suppose, because it prolongs the litigation. The trial court does not ever get the case tried and so it makes a mistake, and the next court has to unravel the record and sometimes send the case back to the trial court to be retried; but if you think in submitting a lot of documents in this way is trying a case, it is not my standard of good procedure or good practice.

"Mr. CASEY. I resent the charge that I have tried the case for the purpose of confusing the court or have prolonged it for the purpose of a fee, and neither of those charges are true, and, as a matter of fact, I can only lose by confusing the court and can only win by having the facts clear. It was only for the purpose of having the complete picture before you, and not scraps or excerpts of documents, that they were all put into the record, and many of them—counsel for respondent insisted on putting all of them in so that the whole statement would be before the court, and I did not try the case for the purpose of confusing you or for the purpose of any fee."

The counsel continued their efforts to educate the member as to the issues and the evidence. A small amount of additional oral testimony was taken. At the end of 148 pages the court apparently began to understand the issue, for at pages 149–150, the court said:

"Well, I think now that we request a finding of fact in your brief, that it will appear that you make a pretty good description of your own picture of the facts of the transaction. I think the whole trouble was that respondent just was not willing to accept your running description of what happened and found that a little bit dangerous."

On the third day of the rehearing, Mr. Diamond for the Government was allowed to explain his theory of the case; 14 pages of transcript without a single interruption. Mr. Casey was allowed to reply; 12 pages without an interruption. Counsel then exchanged arguments for another six pages of transcript, whereupon the court said:

"I think that this is one of the advantages of oral argument in a case of this kind, and I suppose that you have raised these points in your briefs?" (p. 184).

Near the conclusion of the 3-day hearing, the court said:

"I think it just as well not to argue any more about the interpretation to be given. I am satisfied that I can locate them and fit them into a picture in my

own opinion. This further hearing should enable me to dispose of the case soon. * * * I regard this supplemental hearing in a way as taking the place of my office work."

And at page 201, the member stated:

"Your proposed findings discussed the facts, I can see now, quite adequately, although before I have been able to go over all the exhibits I just did not know."

There were numerous notes of discussion off the record. The decision by the Tax Court, consisting of 37 printed pages, appears in 2 T. C. 1200. The court found the petitioner to be correct in part and incorrect in part.

Comment:

1. The case was complicated in its facts, and there can be no criticism of Judge Harron for ordering oral argument.

2. The court criticized Mr. Casey because he should have been able to present, in its opinion, a narrative statement of the facts in from 1½ to 2 hours. At the original hearing the court had shut off his argument after about 15 minutes, stating that he could state his position in a brief, which was done. At the rehearing the court constantly interrupted the efforts of counsel to explain the case, prolonging the hearing and unjustly criticizing counsel for their efforts.

3. At the opening of the case on the original hearing and without allowing counsel for the petitioner to complete his statement, the court prejudged the case, stating that she thought the respondent's theory was the sounder, that she would state that right now before hearing the case, although in the next breath the court stated that, "I think perhaps there is a law question here," and then stated, "I do not know how the decisions on this problem have gone."

4. The criticism of counsel for the petitioner that the effort was to mislead the court was wholly gratuitous, unjudicial, prejudicial, and without foundation. The burden is upon taxpayer's counsel to establish that his position is right and that the position of the Commissioner of Internal Revenue is wrong. The taxpayer can win only if he can clearly establish the facts. Confusion and doubt can only work for the benefit of the respondent, the Commissioner of Internal Revenue. Furthermore, the stipulation of facts had been prepared by two competent counsel; one representing the taxpayer, the other the Commissioner. Their interests were diverse. It is inherent in such a situation that each party will put into the stipulation all that is believed to aid his position. Often, matter will get into the stipulation which the court will consider immaterial, but that it is immaterial is a matter for the court to decide and is a part of the duty of the court.

5. The charge that counsel is attempting to confuse the court and thus engender further litigation and greater fees is, in effect, disposed of as unjust when the court admits she can now see that the matter is covered by the briefs—which she apparently had not studied.

6. The court criticized counsel for submitting the case on a stipulation of facts and exhibits. At the original hearing the court indicated that it should be possible to submit the case on a stipulation. At the further hearing the court criticized the stipulation as not being a stipulation of the facts, and criticized counsel for not stipulating other or different facts. But the court still found it possible to fully consider and decide the case on the same record of which the court was so critical.

7. There are indications that the court had not attempted to study the briefs of the parties, the whole purpose of which would be to assemble and discuss the evidence included in the stipulation. For the court stated, at page 184, "I suppose that you have raised these points in your briefs?"

8. The criticism of the court with respect to the inadequacy of the stipulation of facts was severe and unjustified, as disclosed by the later statements of the court that she now understood the situation, and the fact that the court was able to make adequate findings of fact and decision.

At the close of the hearing the judge concedes that she can now see that the situation is covered by the brief; thus establishing, by her own admission, that the insult to counsel was improper.

Mr. PHILLIPS. In the first of these, which is the estate of Julius B. Weil, Docket No. 4052, and I might say that some of these by themselves are not important, the point is that the nine cases paint a part of a picture. Judge Harron taking up five pages of the record at the opening of a hearing to learn by questioning that all issues involved, except one, had been settled by stipulation. Had counsel been

permitted in an orderly fashion to state the issues, this would have been stated in one or two sentences. A touch of unconscious humor is added when the judge, at the end of her 15 or 20 minutes of questions and answers, says: "Try to shorten the time because we have run overtime."

In the same case the judge warns counsel that he must not cite a decision of the Tax Court which had not been published in the bound volumes of its decisions. Now the Tax Court issues opinions; it has discretion under the law to either publish those in its bound volumes or not to publish them as it sees fit. Those which are not published by the Tax Court are published by two private tax services, maybe more, but I know of two.

This decision on which counsel was drawing was a decision of the Tax Court but had not been published in the bound volumes. Judge Harron indicates that counsel may not rely upon such an opinion and, of course, that is wrong. We have the same thing in the district courts and the circuit courts, not all of the decisions are published but you can rely upon them if you can find them and they are still a decision of the court.

Then we have the Harbor Holding Co., Docket No. 106028.

Judge Harron, in an altercation with counsel and witness because testimony was not being produced upon a matter which both counsel knew, and the judge later admitted, was not material to the case.

Reporter's note of constant "discussion outside the record." I do not know what that means.

Judge Harron taking over the examination of the witness and the production of evidence.

Criticism of Government counsel for proving a case, dependent upon circumstantial evidence, "in a piecemeal fashion." What other course could counsel follow? Now in that case the Government counsel was attempting to prove something not susceptible to direct proof and it all depends on developing circumstantial evidence and he was doing his best to bring out all his circumstantial evidence to establish his point, but he was severely criticized by the court for not bringing it all out at once and proceeding in a piecemeal fashion.

Attention is directed to the "lecturing" of counsel at pages 14 to 16 of the digest (pp. 459–461 of the transcript).

Counsel having offered a stipulation of admitted facts, subject to an objection that, while true, they were not relevant to any issue. Judge Harron failed to understand the situation and refused to rule upon the objection. She said to counsel, "Well, you have either stipulated with counsel or you have not. What have you done?"

The fact was that the parties were in agreement that the facts were true but the objection had been reserved to their materiality.

In this case, instead of permitting counsel to examine witnesses in an orderly manner, the judge "took over," constantly interfering and interrupting, going off on tangents on immaterial matter, requiring the introduction of documentary evidence which both parties agreed was immaterial or had been covered by oral testimony, and otherwise confusing the record and the attorneys to the point where the Government counsel was forced to say:

> My duty is to present this case, and I don't have any alternative in that matter. It may not suit the Board's convenience, but it is unfortunate. That is the best I can say.

Then we have the case of O. William Lowry, Docket No. 112691.

Senator MILLIKIN. Mr. Chairman, do you happen to know the attorneys in that case?

Mr. PHILLIPS. The attorney for the petitioner was Joseph D. Brady of Los Angeles and the attorney for the Government was E. A. Tonjes.

Senator MILLIKIN. I was just wondering whether you had an opinion as to whether they were competent counsel?

Mr. PHILLIPS. I think they are both competent counsel.

In the case of O. William Lowry, Docket No. 112691, we have a situation where the judge conducts an inquisition, I think that is the only term we can use, to determine whether a taxpayer or his counsel first thought of the idea of dissolving a corporation and organizing a partnership to succeed to its business, requiring the witness to testify as to conferences with his counsel, calling counsel as a witness "by the court" in an effort to impeach the client, and 2 days later entering a statement in the record which is, in effect, an apology, a statement that the evidence was immaterial and a statement that it will not be considered.

Senator MILLIKIN. Did counsel object?

Mr. PHILLIPS. I beg your pardon?

Senator MILLIKIN. Did counsel object at the time?

Mr. PHILLIPS. I believe he did not. It is pretty hard to tell, however. Here are several pages of discussion back and forth between counsel and the court which becomes very argumentative and it is quite clear that counsel does not like it very much. If your question is, did he object to his being called as a witness, no, there was no objection to his being called.

Senator MILLIKIN. Did he object to the court's line of inquiry?

Mr. PHILLIPS. Yes. In substance he did but there is no formal objection, although in substance the argument between himself and the court indicates that. It becomes pretty much of a dog fight in here rather than a trial.

In the case of Richard Law, Docket No. 110169, the petitioner in that case was charged with failing to report bribes as income, and had called character witnesses. One was asked by Government counsel whether he knew that the petitioner had been convicted of burglary and had served a prison term. Remember this is a character witness who had been called by the petitioner and he was asked whether the petitioner who had called him as a character witness knew he had served a prison term. Counsel for the petitioner had no objection to the question and wanted it answered. For 10 pages plus, "discussion off the record," Judge Harron expresses doubt as to the propriety of the question. Nobody raised any doubt as to whether the question should be asked or answered. She concludes that it would have been better if the character witness had been called before the petitioner had testified.

Now the details of all of this are in this enlarged abstract. The matter is important only as showing the attitude of Judge Harron. The conclusion that is to be drawn from all of this is that she is not content to be a judge and let the parties present their case by their counsel.

The next is the case of Claude Peterson Noble, Docket No. 8782. This same characteristic is evident in this case. Here Judge Harron called a witness on her own motion. At the close of his testimony,

in which he stated what advice he—a C. P. A.—had given his client, the judge gratuitously said:

I wouldn't want to go to you for advice. That's all. Excuse me for saying so, I mean, your understanding of reporting income on the cash receipts and disbursements basis is erroneous if that represents your opinion and your solution to the problem here.

That becomes a little bit worse, this gratuitous lecturing of the accountant when we find that another judge of the Tax Court decided that the accountant's view of the law was right and cited in support of that a decision of the Supreme Court of the United States.

There seemed to be no reason why the judge should have insulted the witness she had called. Injury is added to insult when she was wrong by as large a margin as a controlling decision of the Supreme Court.

Senator MILLIKIN. Mr. Phillips, you are not criticizing the error in law, as I understand, but you are rather criticizing what you claim is a gratuitous insult?

Mr. PHILLIPS. Gratuitous insult to counsel and to the witness whom she had called of her own motion without either party producing him. And as I say, the insult is even worse when you consider that she was wrong.

Then we have the Estate of Sloane, Docket No. 108473. This case took several days for trial. The record is replete with constant interruptions, lectures, criticism, and wandering off on immaterial matter by Judge Harron. We are reminded of statements of counsel in other cases when the experienced counsel in this case states:

I can say only, Your Honor, I tried before the case started to plan the order of evidence and how to put it in, and I tried to do it in a way to save the time of the court and the witnesses and Government counsel, for we all wish to hold it down.

There was a lecture by the court ending with the warning:

"I shall take a more severe attitude in this case than I have probably taken in any case in 6 years—

which can scarcely be called a judicial attitude.

There were unfounded and unsupported charges that "I think" counsel had never tried to settle the case before trial by presenting all the facts to Government counsel, especially in the light of the fact that Government agents always make an examination before proposing additional taxes, are hard to justify or understand.

Next we have A. Augustus Low, Docket No. 2190. Judge Harron takes an active part in superseding counsel for the parties, and exercising their function of trying the case. Government counsel had certain returns in his file, which he evidently wished to "keep under wraps" until the taxpayer had testified, apparently in the hope that some conflict would appear. Moreover, the return contained what Government counsel considered as self-serving declarations.

Nevertheless, the court insisted on her own action, that Government counsel introduce the return in evidence. When Government counsel demurred, Judge Harron instructed: "You introduce that anyway." From the beginning the "trial" or, as the statute calls it, the hearing, was an inquisition conducted by the judge, with occasional interludes in which counsel recaptured the witnesses.

The court, having consumed most of the time with her own questioning, took occasion to insist that the case be expedited.

The next case and the last, is Illinois Water Service Company, Docket No. 100414. In this case, without having heard any of the evidence and without allowing petitioner's counsel to complete his statement of the case, which involved the tax effect of two successive complicated corporate reorganizations, the judge stated:

> Well, respondent's theory seems to me the more reasonable of the two theories, and I would think respondent's theory was the sounder of the two theories. I would say that right now, before hearing the case. I think that perhaps there is a question here. I do not know how the decisions on this problem have gone.

Now if that is not prejudgment of a case, I do not know what is and especially without hearing any of the testimony and without knowing what the decisions on the point involved were.

What possible judicial purpose could such a statement serve, so early in the case? The tendency to jump to conclusions, without evidence and without knowledge on the complicated law involved, is very evident. Should the petitioner expect a fair decision from such a prejudged start?

After this case had been tried by counsel and briefs had been submitted to the court, it was set down for argument and further hearing, probably very properly so because it was a very complicated case and it would be helpful, I would think to the judge to have an argument on the case so as to straighten out some of the facts. But, the hearing developed into one in which both counsel were trying to explain the case to the judge, who was constantly interrupting their arguments.

During the course of the argument she accused counsel of trying to becloud the issue, of trying to mislead the court, and of extending litigation to earn greater fees. On the third day counsel was permitted to proceed without interruption for about half an hour. At that point the court indicated that she understood the matter and made the revealing inquiry:

> I suppose that you have raised these points in your brief.

And near the end of the hearing the judge confessed:

> Your proposed findings discuss the facts, I can see now, quite adequately, although before I had been able to go over all the exhibits I did not know.

These same exhibits and briefs had been before the court for a substantial period before the case was set for rehearing.

Now those statements should be considered in connection with the charges made by the judge during the course of argument in which she accused counsel of trying to becloud the issue and trying to mislead the court and trying to extend litigation to earn greater fees because after the thing is all over, she now comes through and admits in effect that she had not studied the briefs and that now she can see that if she had studied the report she could have understood it. The record contains no apology to counsel.

We believe that a study of these records will demonstrate to any impartial person familiar with the trial procedure that Judge Harron's actions in these cases did not conform to accepted judicial procedure. If her action in one or more can be justified or seems unimportant in itself, the fact is that a pattern of procedure is disclosed. She takes over the function of counsel for the parties. She dominates the proceeding. She prevents the development of the evidence in an orderly and logical manner. She has not prepared the case, does not know the available evidence, confuses the record, herself, the witnesses

and counsel, and effectively prevents a proper trial and the presentation of proper evidence. She insults counsel and witnesses without cause. She calls witnesses on her own motion, and conducts her court as if she were an investigating and prosecuting attorney, rather than a judge, charged with the duty of allowing the parties to have their day in court in which to present their cause.

That, of course, is my own summarization of what these records disclose.

This morning there was read into the record a summarization of some of the characteristics of Judge Harron, some of the statements which had been made with respect to Judge Harron's conduct. It might be summarized by saying that she has a reputation for dictatorial, arbitrary, and capricious action upon the bench. No one can read the record in the cases cited without reaching the conclusion that this reputation is deserved. It is fair to say that those who know Judge Harron in her social contacts report her to be a charming person. I told you this morning of the gentleman who in his reply supported her confirmation and said he was unable to explain the Jekyll and Hyde personality that appears to exist there. All of the reports that we have is that, off the bench, Miss Harron is a very charming lady.

We feel, however, that the taxpayers of the country and their counsel and witnesses are not deserving to such treatment. But, more important, her usefulness as a judge is impaired. Few wish to try cases before her. We are advised that she has held no hearings during the past 14 months. This cannot be because she is working on pending cases for reports show only 20 opinions written since July 1, 1947, a period of 21 months.

I next speak of the matter of employees and the constant change which has taken place and that has been covered.

Unless your committee feels that the evidence which has been produced today is sufficient to dispose of the pending nomination, our committee requests that subpenas be issued for the attendance before this committee of from 10 to 15 persons whose names and addresses will be furnished. Some of these persons have knowledge of other cases in which the stenographic record of the hearing was changed by order of Judge Harron, or the record otherwise altered. Some have knowledge of instances of unjudicial conduct such as took place in the eight cases referred to above, and otherwise.

All have knowledge which we believe should be made available to this committee. The presiding judge of the Tax Court, and his predecessor, undoubtedly have information which should be before your committee.

We ask that the committee authorize subpenas to bring these persons before it. Several of them come from distant points, and it had not seemed reasonable to ask that they be subpenaed to appear today, with the prospect that your committee already had sufficient witnesses scheduled to use the time which might be available.

We would ask that your committee issue subpenas for, as I say, from 10 to 15 persons whose names we will submit.

The CHAIRMAN. Will you indicate what you expect them to testify to?

Mr. PHILLIPS. We expect them to disclose alterations of the record and other instances of conduct on the bench such as those disclosed by the records which we have made digests of.

The CHAIRMAN. All the names that you are going to give us you expect to develop those facts?

Mr. PHILLIPS. That is right, sir.

Senator MILLIKIN. Do they have first-hand information?

Mr. PHILLIPS. Yes, sir.

That closes my statement, Mr. Chairman.

The CHAIRMAN. Do you have any questions, Senator Millikin?

Senator MILLIKIN. No thank you, Senator.

The CHAIRMAN. Please furnish that list so that we may take it under advisement and have it available for the first executive session that we can hold.

Mr. PHILLIPS. Yes, sir. There are still two or three about whose testimony we are uncertain, for example, there are two court reporters whom we wish to locate but court reporters are not a stable group and they apparently wander from town to town and some are hard to lay hands on.

Senator MILLIKIN. Mr. Phillips, may I ask under the rules of the court, is there any requirement that the reporter's notes be checked?

Mr. PHILLIPS. None that I know of.

The CHAIRMAN. The reporter is an officer of the court, is he?

Mr. PHILLIPS. No; he is a contract reporter.

The CHAIRMAN. Contract reporter?

Mr. PHILLIPS. The court contracts for the reporting.

The CHAIRMAN. The court as a court, not the individual judges?

Mr. PHILLIPS. The court as a court and then as individual judges go out on circuit to hold these hearings; the contract reporter makes his arrangement to either send one of his reporters from Washington to accompany the court or he makes some arrangement with the local reporting concern to have their reporter handle it.

The CHAIRMAN. Will you include in this list the names of any of the reporters who might be available?

Mr. PHILLIPS. We know of one who will be available. There are two whose whereabouts we are trying to locate. We have not located them as yet.

The CHAIRMAN. Thank you.

The CHAIRMAN. Next we have Mr. Morris. You may be seated, sir.

STATEMENT OF GEORGE M. MORRIS, ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.

Mr. MORRIS. Mr. Chairman, my name is George M. Morris, and I am a member of the bar of the District of Columbia and a member of the committee which is presenting this evidence.

This is a very unpleasant task and I do not think any of these gentlemen, including myself, would participate in it if it were not for what it seems to us, its importance. In the first place, no sensible lawyer likes to complain against a sitting judge, the very process of being a judge seems to increase the experience of the incumbent and improve the judicial process and capacity of the incumbent.

In the second place, it is no pleasure to come here and protest against the recommendation of the Chief Executive of the country and his advisers.

In the third place it is unpleasant to come here and complain against the conduct of a judge who happens to be a woman.

In the fourth place, this is a very time consuming operation. The gentlemen on this committee have spent hours and hours and hours and days in trying to make a fair investigation of the persons who were up for reappointment to the positions they hold on the court and the persons who might be qualified to do the job. There is no compensation for that sort of thing except the hostility of the persons who are affected by adverse recommendations but somebody has to do these things. If an individual comes in who has had an unfortunate experience with the judge, he is immediately accused of bias, a personal hatred, personal reasons.

If there is not some agency which objectively can set forth the opinion of a number of people, the reports of their experiences, the job is not done and the confirming power does not have the advantage of information which it properly should have regardless of the decision it makes.

But, this thing is important and it is important in several respects. It is very important to the tax-collecting system of this country. As the members of the committee know, the income tax and the excess-profits tax are founded primarily upon voluntary assessment. A study which Mr. Robert N. Miller and I made some years ago disclosed that over a period of 10 years the average additional money collected as a result of additional assessment, proceedings before the Tax Court, prosecutions in the district court, was only 17 percent of the money that was paid in. In other words, 83 percent of the money came in by the voluntary assessment of the taxpayers.

It is of enormous importance that the confidence of the people be maintained in the tax system and that the individual in the event of error or prejudice will have his day in court. When he gets in court he is entitled to an adequate, calm, consideration of what he thinks are the errors of the Commissioner of Internal Revenue who is the individual whose additional assessment has brought him into court. His counsel is entitled to courteous treatment. Nearly all of these questions that come before the Tax Court are involved as to facts, they are involved as to the law. That is one of the reasons that they been impossible of settlement through the administrative process before they reach the Tax Court.

On the other hand, the citizen who comes in is entitled to know that the representative of the Commissioner of Internal Revenue, counsel for the Commissioner, receives a dignified hearing; that he is pursuing a public duty; that the judge takes the position that this man is here because it is his duty to be here and he is doing the best he can.

If counsel for the taxpayer, counsel for the Commissioner, receive treatment from the court which indicates the court's lack of belief or confidence in the selection of the Commissioner's attorney, the selection of the taxpayer's attorney, the citizen is dismayed.

It is enormously important that the actual day to day contact between the citizen and the judge be up to the best standards of judicial procedure and that everybody be satisfied that the thing is being fairly done so far as human capacity permits it to be done regardless of what the outcome may be. These 16 judges travel all over the country and they sit, except in very rare cases alone. They give the tempo, they

give the impression, to the people of how the tax system is working, once the matter becomes a question for judicial consideration. The conduct of these judges is as important as the conduct of any single judge sitting anywhere.

My interest in this thing, in this particular matter, became aroused some 28 years ago. At that time as a much younger individual I went to the American Bar Association and said, "We need a committee of this association which should concern itself primarily with matters of procedure and administration in the Federal tax field." A committee was created and on that committee I served for a great many years. Again and again it was suggested that the committee ought to take a position, an active public position, with respect to the appointment of the members of the then Board of Tax Appeals and of the Tax Court.

For one, I was always opposed to that position and there were always enough people who felt that that was a sound position. It was our function at that time as a committee of five or seven members to examine into administrative and procedural questions and not concern ourselves with personalities.

However, as an individual, sometimes requested by the appointing authority, sometimes on my own volunteering, I supported every appointment made to the Tax Court which was a reappointment of a sitting judge. This is the first time in 26 years that it has seemed to me justified to oppose the appointment or reappointment of a sitting judge.

As the small committee of the American Bar Association developed into a section in which men came in from all over the country, and which in 1946 there were over 2,000 members and of which there are now over 3,000 members, it became apparent that there were being gathered together the members of the active tax bar, the men who appeared before the United States Tax Court, and that out of that group it might be possible to ascertain recommendations, ascertain facts, with respect to the judges who were proposed for appointment; those who were proposed for reappointment and many other men and women who might be qualified for appointment.

Therefore, I subscribed to the procedure which was set up by these gentlemen at the time Mr. Sutherland was chairman of the tax section, followed by Mr. Kilpatrick, for ascertaining the opinion of the practicing bar on these matters. I examined with such meticulous care as I could the working of the actual machinery of the gathering of that opinion to the end that there should be no political aspect to it, to the end that the merely disgruntled lawyer, because of the unfortunate outcome from his point of view of the case, would not have a word that was above the word of anybody else. The machinery was put into operation and from my observations was carried out as carefully, as objectively, as that sort of thing could possibly be done.

As the result of that, these opinions which you have heard here, these statements of facts, commenced to pour in. My attention was first called to the possibly inadequacy of the judge under discussion by casual conversations arising from two or three different sections of the country.

I remember on three different occasions hearing men say, when this judge was appointed to hear cases in their community and to hear their cases, words which I would not care to repeat for the record.

The general effect of the remarks was one of substantial regret that that judge had been assigned and the discussion of ways in which the case scheduled to be heard before that judge might be continued with the hope that it would be heard before some other judge.

Now, these were not merely complaints or expletives used because a new man was on the court. They grew in volume and they continued over a considerable period and continue to the present day.

I wish that it was not the function of myself and the other gentlemen on the committee to come before you but somebody must come here, somebody must say these things, and unless they are said with an intent of complete objectivity, they do not have the vigor and the force that they should have. The net of this situation is that, regardless of the correctness of the decision or the opinions of this particular judge, which may result from a discussion with the other 15 members of the court, or discussion in chambers, the wide variety of evidence coming from all parts of the country and coming informally from the Government as well as from the taxpayer's counsel, demonstrates this individual does not have the temperament to sit as a judge.

I regret personally that this case is a case which involves a woman. I am very much in favor of promoting the capacity and recognizing the ability of the many able women lawyers there are in this country. In the tax field unfortunately, women have not yet become prominent in private practice. Most of the women who have appeared as tax informed and able people have come up through the Government ranks. They have there demonstrated their ability. Two of the women recommended by this committee, of the 16 persons, are women with those backgrounds.

In the opinion of the committee and in the opinion of all the advisers of the committee, those women are competent. There may very well be many others, but I can assure your committee that so far as the members of the committee of which I am a member are concerned, and so far as I am personally concerned, I am not in the slightest degree hesitant about the appointment of a woman and in fact I favor on the membership of that court a woman judge.

The CHAIRMAN. Any questions, Senator?

Senator MILLIKIN. No.

The CHAIRMAN. Thank you, very much.

Mr. MORRIS. Thank you very much, gentlemen.

The CHAIRMAN. Our next witness is Mr. Miller. Mr. Miller, will you identify yourself for the record?

STATEMENT OF ROBERT N. MILLER, ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.

Mr. MILLER. I am Robert N. Miller, practicing lawyer in the District of Columbia. Twenty-eight years ago I held a position in the Treasury which is now called chief counsel to the Bureau of Internal Revenue. I have been in touch with the work of the taxation section of the American Bar Association for a long time, and with the practicing bar in the tax field for a long time, and I am now a member of the council of the taxation section.

I am a member of the committee appointed to deal with appointments to the Tax Court and have attended all its meetings.

In carrying out the mandate to make up a list of 16 persons qualified to fill four vacancies which were occurring on the Tax Court last June, the nonpolitical character of the committee's approach was, in my judgment, very remarkable. The fact is that the men engaged in this work have watched the Tax Court now during its whole life and their sole effort in all of this has been to keep the Tax Court out of politics and to see that appointments are made on merit alone.

At the outset we decided, first, that there should be women on our list and we were fortunate in finding two, one of them a Mrs. Davis and the other a Miss Goodner, both of them with a long background of actual practice and both doing splendid work in the Department of Justice—on the Government side, by the way.

In the second place we determined to recommend for reappointment any incumbent judge if that judge is at all qualified for reappointment. As has been stated, we feel that a great deal is gained for the public interest in the experience of a judge. Reappointment should be made if at all possible.

Now to be very concise and turning to Judge Harron, I think that three extracts from letters written to our committee about her give the key to the special problem that is presented to your committee now. One of these letters said:

> Opinions not bad, but she handles her trials in a disgraceful fashion, insulting both attorneys and witnesses.

Another letter says:

> She writes competent opinions but seems to suffer from temperamental unfitness and creates too much difficulty in the trial of cases. It would not be in the public interest that she be reappointed.

The third letter states—and this is one that has been partially quoted previously here:

> Strangely enough, her out-of-courtroom personality is a sharp contrast to her courtroom demeanor. Away from the court Judge Harron is a hail-fellow-well-met and has a great deal of personal charm. Not being a psychoanalyst, I am at a loss to explain this split personality.

Now, coming back to my own reaction, I have only pleasant impressions of her personality. I never saw her in court at any time, but the evidence—not merely in these letters but in many other testimonies we have had from all over the country of those who have had an opportunity to observe the way in which she conducts hearings and trials—is far too strong for us to disregard. This difference between her courtroom personality and her personality outside the courtroom seems to explain something that might otherwise be hard to explain, the favorable view held of her qualifications by some very competent and high-grade lawyers, you will find them to be men whose natural interest is in the theoretical development of tax law and particularly in published opinions, rather than men especially interested in the technique of trials.

Since the most important of all the issues here is as to her methods of conducting trials rather than as to her competency to write opinions up, our committee felt forced to the conclusion that we have to give greater weight to the views of those who have actually seen her conduct trials in disputed cases, involving the testimony of witnesses, rather than to the views of people who only looked at the published opinions. It is true, also, that persons inclined to tempera-

mental outbursts may on many occasions show no evidence of instability.

Now it is certainly true, and this is something that has not been quite fully explored in these hearings, that a judge has two very different kinds of work. On the one side, we have courtroom work and on the other side, what might be called desk work, the work of looking at the record, studying it and writing an opinion. A judge must be qualified, obviously, as to both kinds of work. Just one will not do. Certainly the judge's function in hearings and trials is a very important one because the whole case, both in the trial court and on appeal, turns on the record that is there made by the parties.

In other words, when counsel for one side introduces evidence and makes his statement and counsel for the other side introduces evidence and makes his statement, the record so contributed to by each is not merely for the one judge that is trying the case. The aim is to make a record such that when the case comes to be considered, as many of them are, by the whole Tax Court, the full record will be there and the full court can decide whether the attitude of the trial court as to what is material and what is not material was right or wrong. And if the case is appealed to a higher court, the only way one of the parties, who has worked out what he thinks ought to be put into the record, can get a complete review is to have the whole record there.

The consensus as to Judge Harron expressed by people who have had full opportunity to judge her courtroom work, seems to be overwhelmingly that her service has fallen short of the necessary standard for courtroom work. Senator Reed's letter to the effect that parts of the transcript of the proceedings were omitted at the order of the judge without consent of counsel, as I understood, fits in with repeated complaints as to the same difficulties experienced by other lawyers who have tried cases before her.

These are not mere isolated acts that are complained of. They are rather put forward by those who complain as examples of an attitude of taking over the privileges of counsel, and of resisting the making of a record for examination by other minds at some later time. No judge of any court should need to be told that any litigant has the right to have the record show exactly what happened at the trial so that if the litigant desires to appeal he has the whole record before the higher body.

Almost invariably the complaints that I and other members have heard as to curtailing the record without consent have related to parts of the record taken at times when Judge Harron talked roughly to witnesses or counsel. Those were the things that seemed to have been deleted.

Finally we are very much impressed with the fact that this is a 12-year appointment. The prospect of having a judge for 12 years whose attitude for courtroom work is subject to widespread criticism would be serious not only from the standpoint of a particular litigant trying a case before the court but because of its effect on the reputation and prestige of the Tax Court. The reputation and prestige of the Tax Court is, as Mr. Morris pointed out, a matter of tremendous import to our whole taxation system.

Thank you, gentlemen.

The CHAIRMAN. Senator Millikin?

Senator MILLIKIN. No questions.

The CHAIRMAN. Thank you, sir.

May I ask the spokesman for the committee of the bar association if there are any other witnesses who now desire to be heard?

Mr. KILPATRICK. There are not, Mr. Chairman. That concludes our list of witnesses from the bar association who are available today.

The CHAIRMAN. Colonel McGuire.

STATEMENT OF O. R. McGUIRE, ATTORNEY, APPEARING ON BEHALF OF JUDGE MARION J. HARRON, WASHINGTON, D. C.

The CHAIRMAN. Colonel McGuire, are you appearing in behalf of Judge Harron?

Colonel McGUIRE. That is right.

The CHAIRMAN. Do you wish to appear now, or call other witnesses now before this committee has determined whether it will bring other witnesses?

Colonel McGUIRE. Yes; we will go ahead now if it suits the convenience of the committee.

The CHAIRMAN. It suits the committee, but we wish to have you indicate whether you desire to know whether other witnesses would be called before the committee.

Colonel McGUIRE. If they are called, of course, we will have a chance to answer any opposition witnesses, I take it?

The CHAIRMAN. Yes, sir.

You heard the request for certain witnesses?

Colonel McGUIRE. Yes, sir.

The CHAIRMAN. Although we do not have the names.

Colonel McGUIRE. Yes.

The CHAIRMAN. You may proceed.

Colonel McGUIRE. I want to make a very short statement, and introduce one or two documents at this point and then give the chairman a list of the witnesses as I would like to have them be called in that order, and I fixed that order because some of them are out-of-town witnesses, and would like to get away this evening.

The CHAIRMAN. You may be seated.

Colonel McGUIRE. Thank you.

I want to introduce here an affidavit executed April 1, 1949, by Joseph D. Brady, who was one of the attorneys that Mr. Phillips referred to in one of the cases mentioned, and where Senator Millikin, I believe, asked him the names of counsel.

I also have a copy of a letter dated February 26, 1948, by this same Mr. Brady of the firm of Brady & Nossaman of Los Angeles, Calif., which he wrote to the President, urging the nomination of the judge for reappointment.

Now, this is one of the occasions where Mr. Phillips made reference and said he did not think it was properly tried. I should like to read the affidavit into the record.

The CHAIRMAN. You may do so.

Colonel McGuire. The affidavit reads as follows:

BRADY & NOSSAMAN
Los Angeles, 13

AFFIDAVIT

STATE OF CALIFORNIA,
County of Los Angeles, ss:

To Whom It May Concern:

Joseph D. Brady, being first duly sworn, on oath deposes and says: I am a member of the State Bar of California, was admitted to practice before the Board of Tax Appeals in 1924, and am now admitted to practice before the Tax Court of the United States. For the past 27 years I have made a point of reading practically every opinion rendered by the courts in income, gift, and estate matters, and have thus had an opportunity to form impressions as to the quality of opinions rendered by judges in such cases. I make the following statement for the information of any congressional committee or other agency which may be investigating the Honorable Marion J. Harron's qualifications for reappointment as a judge of the Tax Court of the United States.

I have known Judge Harron since about the year 1941 when, representing the taxpayer, I tried the 1938 income-tax case of Harbor Holding Co. of Nevada. That case involved a complicated factual situation and the drawing of a line in a reasonably close case. During the trial Judge Harron evinced a laudable desire to be certain not only that the record contained all of the pertinent facts but also that she should understand them. The Memorandum Findings of Fact and Opinion, ultimately promulgated by her, evidenced industry, carefulness, and ability. To be sure, Judge Harron's method of conducting the trial fell somewhat short of the high standards universally followed by, for example, Hon. Arthur J. Mellot, formerly judge of the Tax Court and now a United States district judge, and many of her brethren on the Tax Court, but there was never any basis for questioning her fairness or impartiality or ability.

An impartial survey of Judge Harron's judicial output, the quality of her opinions, and the record of affirmances of her cases on appeal as contrasted with reversals, will, I believe, disclose industry, impartiality, and judicial ability of a high order.

As of this date, Judge Harron has had nearly 13 years of experience in deciding tax cases. Such cases require and deserve a special competence for their correct decision. Notwithstanding whatever faults or shortcomings Judge Harron may have been thought to have had in the past, no one can fairly criticize her decisions, and it may well be doubted whether any possible successor to her present office will be nearly so well qualified.

My partner, Walter L. Nossaman, has executed an affidavit with reference to Judge Harron's qualifications. Mr. Nossaman, who recently concluded a year of service as president of the Los Angeles Bar Association, is regarded by the California Bar as one of its outstanding lawyers. He is highly fitted by education, experience, and learning to appraise the quality of judicial opinions. I have heard Mr. Nossaman, on repeated occasions, express the opinion that Judge Harron's opinions are of high quality.

Considering all factors it is my belief that Judge Harron's shortcomings are far outweighed by her undoubted possession of the fundamental requisites of an able judicial officer.

JOSEPH D. BRADY.

Subscribed and sworn to before me, this 1st day of April 1949.

JULIA M. FITZSIMMONS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires February 17, 1952.

I have an affidavit by Judge Nossaman which I would like to submit subsequently for the record.

(The affidavit will be found on p. 173.)

Colonel McGuire. Now, this letter by Mr. Brady to the President reads as follows:

BRADY & NOSSAMAN,
Los Angeles, February 26, 1948.

The PRESIDENT,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: I write to urge the reappointment of Hon. Marion J. Harron as a judge to the Tax Court of the United States.

The writer has specialized in tax matters for over 25 years and has tried a large number of cases before the Tax Court and its predecessor tribunal, the Board of Tax Appeals. He makes a practice of reading practically every opinion rendered by the Tax Court, including memorandum opinions.

No one who reads the carefully considered opinions written by Judge Harron can fail to recognize that her ability, training, and experience abundantly fit her for the difficult work of deciding tax cases.

My partner, Walter L. Nossaman, who becomes president of the Los Angeles Bar Association this evening, has asked me to state that he concurs in the views expressed above and joins in urging Judge Harron's reappointment.

Respectfully,

JOSEPH D. BRADY.

I also wish to put in the record at this point, because of the prior testimony, a letter dated March 15, 1948, a typewritten copy, on the letterhead of the American Bar Association, section of taxation, whereon it lists the officers, including some of the gentlemen who were here this afternoon, and the letter is signed by Percy W. Phillips, chairman of the committee on taxation, a witness here.

It is addressed to Mr. Crooker, of Houston, Tex., who is a member of the firm of Fulbright, Crooker, Freeman & Bates.

Senator MILLIKIN. What is the date of the letter?

Colonel McGUIRE. March 15, 1948. That is subsequent to the letter which Mr. Sutherland read into the record that he had sent out as chairman of the taxation section. The letter is as follows:

AMERICAN BAR ASSOCIATION

ORGANIZED 1878——SECTION OF TAXATION——1947–48

OFFICERS

Chairman: William A. Sutherland, Ring Building, Washington 6, D. C.
Vice chairman: H. C. Kilpatrick, American Security Building, Washington 5, D. C.
Secretary: Robert C. Vincent, 15 Broad Street, New York 5, N. Y.

SECTION DELEGATE TO HOUSE OF DELEGATES

Percy W. Phillips, Southern Building, Washington 5, D. C.

COUNCIL

The officers, ex officio.
Percy W. Phillips, Washington 5, D. C., last retiring chairman.
David A. Gaskill, Cleveland 14, Ohio.
Lawrence K. Green, Boston 9, Mass.
Dana Latham, Los Angeles 13, Calif.
William A. McSwain, Chicago 3, Ill.
Merle H. Miller, Indianapolis 4, Ind.
Robert S. Miller, Washington 5, D. C.
Frank M. Osborn, Toledo 4, Ohio.
John Paul Jackson, Dallas 1, Tex.

WASHINGTON 3, D. C., *March 15, 1948.*

DEAR MR. CROOKER: The records of the Tax Court of the United States show that you were the attorney of record in a case tried before Judge Harron. At the present time I am acting as chairman of a committee of the section of taxation of the American Bar Association charged with the duty of making recommendations to the President with respect to appointments and reappointments to that court. It would be very helpful to that committee if you would be willing to express your opinion with respect to the judicial qualifications of Judge Harron, and would be especially helpful if there are any references to the record

which you could make which you believe would be helpful to the committee in forming its judgment.

Sincerely yours,

PERCY W. PHILLIPS,
Chairman of Committee.

[Stamped:] Fulbright, Crooker, Freeman & Bates. March 19, 1948, Houston, Tex.

The date is important in view of Mr. Sutherland's testimony.

Mr. John H. Crooker, of this firm in Houston, Tex., by letter dated March 22, 1948, replied to Mr. Percy W. Phillips, chairman of the committee, as follows:

FULBRIGHT, CROOKER, FREEMAN & BATES,
Houston 2, Tex., March 22, 1948.

Hon. PERCY W. PHILLIPS,
Chairman of Committee, Washington 5, D. C.

DEAR SIR: Receipt is acknowledged of your recent letter stating that I tried a case before Judge Harron and asking me to express my opinion with respect to her judicial qualifications, et cetera—your letter indicating that expressions of the kind invited would be helpful to your committee in making recommendations with respect to appointments to the Tax Court.

In addition to the actual trial of my case, I was present in court when Judge Harron called the docket for announcements and also observed the trial of one case just prior to my own. This was my only opportunity to observe Judge Harron, except in the actual presentation of the case which I tried before her. Judge Harron conducted her court with befitting dignity and decorum, but without undue strictness of formality. She gave evidence of possessing thorough acquaintance and familiarity with tax laws, tax questions, and procedure in tax cases; she seemed to readily grasp the questions upon which decision in the case would depend; she tactfully kept the lawyers on both sides "on the track" of relevant questions and avoided any wandering astray; and, on the whole, she gave evidence of considerable legal ability and judicial temperament.

From all that I know of Judge Harron she is properly equipped to perform the duties of a Judge of the Tax Court and, for whatever my small opinion may be worth, I am pleased to commend her to the favorable consideration of your committee.

Respectfully submitted.

JOHN H. CROOKER.

That is not the "only one" favorable letter they said they had from which they read an extract to this committee. They did not mention this letter.

Now, on April 13 I sent this telegram to Mr. John H. Crooker, Sr., Second National Bank Building, Houston, Tex.:

As counsel for Judge Harron I inquire whether Percy Phillips, Washington, has made further inquiry of you since his letter of March 15 and your reply of March 22 last year and has he at any time since requested you to appear at a hearing before Senate Finance Committee considering Harron's nomination for reappointment?

O. R. MCGUIRE.

I received a reply the same day addressed to me at my office in the Southern Building, which reads as follows:

Percy Phillips of Washington has not communicated with me since his letter of March 15 last year. Neither he nor any one identified with him has requested my appearance at any hearing on Judge Harron's reappointment. My reply to Phillips of March 22 last year must have reached him since it was not returned. Please feel free to use these facts and copy of my reply to Phillips at hearing or otherwise.

JOHN H. CROOKER.

Now, if you please, Mr. Chairman, I would like Judge Harron to be called. Of course, the chairman will understand that she has not had time to refer to these cases, not knowing which cases would be brought up. Naturally, she wants a chance later to make a reply thereto.

The CHAIRMAN. Very well.

STATEMENT OF JUDGE MARION J. HARRON, TAX COURT OF THE UNITED STATES, WASHINGTON, D. C.

Judge HARRON. Senator George, Senator Millikin, and Senator Hoey, I have prepared a statement which I would like to read to you. I would like to say before I read this statement that during the past year very much of what this committee has heard this morning has come to me from various sources but never at any time during the term of my office of 12 years has counsel in any case come to me or filed a motion dealing with any of the matters which have been covered, particularly in Mr. Phillips' statement.

I would bring to your attention that during the past 6 weeks Mr. Phillips has been examining, himself, the record in the Harbor Holding Co. case, in the Estate of Julius Weil, in the case of Mr. Richard Law, in the Illinois Water Service case, and any other cases which he has mentioned. Not only that, the chairman of another committee, a subcommittee of his section, Mr. Harry B. Jones has also examined the record in one of these cases, and I would like, Mr. Chairman, to say that having been asked many times in the past 12 years to rule upon whether a statement in court was hearsay evidence, I would like to ask you, in view of your own judicial experience, to consider whether a great deal of the statement which has been made here this morning was hearsay evidence, and not only that, statements taken out of the context of transcripts.

I do ask, Senator George, that I be given an opportunity to reply in particular to some of the matters which my opponent who has spoken here this morning has mentioned, because as I listened to the statement which was made to you, I observed several things which represented the conclusions of the gentleman who was speaking. They did not represent the conclusions of anyone else and, furthermore, it is my opinion that those conclusions were very largely formed by reading the transcripts of cases in which he was not counsel and in which I would venture to say he had not even read the findings of fact and opinion and may not have known how the case was decided in the end. It has, of course, presented a picture to this committee which I can only express some surprise about, excepting that anyone who serves in public office knows that he has some critics.

Not one of the gentlemen who have appeared before you this morning has ever appeared before me in the trial of any case in the Tax Court, and I do not know whether anyone of these gentlemen have at any time even sat in the courtroom during the call of motions or the call of calendar, or during the trial of cases, with the exception of Mr. Percy Phillips.

In that matter, Mr. Chairman, to be perfectly complete in my answer, I would say that the only time Mr. Phillips ever appeared in my courtroom was when his partner appeared to file a motion asking to have a case transferred from my division of the court for the reason that I had in chambers called both counsel to a proceeding to advise

them that the court, under the direction of the presiding judge, would have to make a statement at the hearing with respect to an improper motion which had been made on appeal in which Mr. Phillips' partner, Mr. Ivans, alleged that the Tax Court and myself had taken improper judicial notice sub silentia of the record in another case, which had not been done, and because of this fair statement to counsel, to both counsel, before a hearing under a remandment, when that hearing was held as noticed, this motion was filed which the presiding judge denied, and the case is now pending before me.

That is the only time that Mr. Phillips has ever appeared in my division of the court, and until that time and day I have never seen Mr. Phillips.

Now, if I may proceed, then, Mr. Chairman, to read my statement. I may at the end wish to answer a few of the allegations which have been made here in order that they may have some immediate reply and that you may be able to give some weight to the reply without waiting for a reply which I would like to give later in order to be very complete and very specific about it.

For close to 13 years I have served as a member of the United States Board of Tax Appeals and the Tax Court of the United States, following the receipt of the commission on June 22, 1936, and the receipt of an ad interim of President Truman in July of 1948.

The Committee on Finance of the Senate, in voting favorably in 1936 upon the nomination it had then received, reposed in me a special trust and a high confidence. I have performed the duties of my office faithfully, to the best of my ability, and with absolute integrity. I am pleased to have this opportunity to report to this honorable committee upon my service in office.

During my original term of office, I heard and submitted to the presiding judge of the court my findings of facts and opinions upon the law in 529 cases. This production of work has been in the upper half of the court which has 16 judges. At the end of 11 years, my production over that period was sixth highest on the court; and at the end of 12 years, was eighth, the last year having been occupied with cases which required more time than the ordinary run of cases, and having been encumbered with the inevitable interruptions which attend the last months of a term of office.

The appeals from my decisions have been of a comparatively small number and percentage, under 20 percent, so that for the most part the decisions of the Tax Court which have been made through myself have disposed of the controversies.

Senator MILLIKIN. May I ask a question, Mr. Chairman?

The CHAIRMAN. Certainly.

Senator MILLIKIN. What is the percentage of appeals of the court as a whole?

Judge HARRON. The above percentage of less than 20 percent of all cases decided, I would think, is above average of the court but, Senator Millikin, I did not undertake to make that study. I would be very much surprised if less than 20 percent of decided cases is not above the average as we receive these statistical reports yearly and have a general impression of the number of cases that are appealed and which cases are affirmed or reversed. That percentage of appeals is small.

Now, I did make a comparison with the record of Judge Disney and Judge Hill for reasons which I will develop later. Judge Disney's record in that respect was below mine, 28 percent of his decisions were appealed, and 29 percent of Judge Hill's decisions were appealed. So that out of the three of us who have served the same time and been trial judges during that 12 years, I have the smallest percentage of decisions appealed.

Is that satisfactory for the present?

Senator MILLIKIN. That will do for the time being.

Judge HARRON. Would you like to have me advise you as to that?

Senator MILLIKIN. I think it would be an interesting statistic from your own viewpoint.

Judge HARRON. I had intended doing it but, Senator Millikin, there has been a limit of time that I could spend in preparing for this, too.

Since the correctness of the decisions of a trial judge are tested by their standing upon review by the appellate courts, as well as by the extent of the appeals taken, it is properly observed that out of 529 decisions only 20 stood reversed at the end of the term of office, and 509 were not questioned.

Seven decisions were reviewed by the Supreme Court, among them the Gerald A. Eubank case, and the Francis E. Tower case, the latter becoming the leading case on the taxation of income of the so-called family partnership. Decisions were affirmed by the Supreme Court which, in several instances, reversed the circuit court's reversal. In one case, John Stuart, the Supreme Court reversed the circuit court below, but remanded the case to the Tax Court with directions to the parties to consider the issue under section 22(a), in the light of the Clifford case, which the parties had not done before the Tax Court. That is to say, excepting for the remandment of the John Stuart case, none of the decisions of the Tax Court made through myself have ever been reversed by the Supreme Court.

The record of any one judge of the Tax Court is not readily evaluated without comparison with the records of the other judges. However, a true comparison of one judge's record cannot be made with that of all of the other 15 judges for two reasons: Some judges serve as the presiding judge for 4 years, during which period they decide almost no cases. Also, the staggered terms of office result in unequal periods of tenure. And so, in order to give this committee a true and accurate comparison, it appeared to me that that could be best achieved by making a comparison of my own record with the record of Judges Disney and Hill, all of us having been appointed at the same time, in June of 1930, and all of us having served as trial judges during that entire period.

I would like to state at this time, and this point was mentioned earlier today, I believe one of our opponents stated that he could not reconcile what he had thought were the statistics of my work with his own research. Now, the reason for that is this: The statistics of the Tax Court relating to the work of the judges are not made public, but the statistics of each judge's production and the appeals taken from the decisions are submitted monthly and annually to each judge, and those of the others are available for study. At my request the comparative statistics have been given to me by our statistical clerk under official signature. These are official records of the Tax Court. In order that my record could be known and understood by interested

officials prior to the expiration of my term of office, statistics were compiled as then complete for an 11-year period. Now they are complete for 12 years. Of course, the record varies from year to year. The record of the 11-year period, as well as the 12 year period, is here submitted because two compilations were prepared for me during the past year.

Now, during 11 years in production, Judge Disney decided 618 cases, and he was fourth in production on the court. I decided 516 cases, which made me sixth in production, and Judge Hill decided 509 cases, which made him seventh in production.

During the past year my production has been less than normal for several reasons, and I would be glad to answer questions, but I do not think the committee wants me to go into a great deal of detail about these things.

Judge Disney again was fourth in production, Judge Hill seventh in production, and I was eighth in production. Judge Disney, then, for 12 years had decided 664 cases, Judge Hill for 12 years 531 cases, and Judge Harron for 12 years 529 cases.

Now, the record on appeals for the 11-year period. I will give you my own record first because it stands the highest in this list of three. There were 97 cases decided on appeal in 11 years, which was 18 percent of all the cases decided; 78 were affirmed, 80 percent; 14 were reversed, or 14 percent; 3 were modified, or 3 percent; and 2 were remanded, or 2 percent.

Judge Disney had 174 cases decided on appeal, which was 28 percent of all the cases decided; 122 affirmed, which was 70 percent; 37 reversed, which was 21 percent; 12 modified, which was 7 percent; and 3 remanded, which was 2 percent.

Judge Hill, 148 cases decided on appeal, which was 29 percent of all cases decided; 100 affirmed, or 67 percent; 34 reversed, or 23 percent; 11 modified, or 7 percent; and 3 remanded, or 2 percent.

Now, for the 12-year period in the comparison of the three judges my record was still the highest, 109 cases decided on appeal, which was 20.6 percent of all cases decided; 84 cases affirmed, which was 77 percent of those appealed; 20 reversed out of 529, which was 18.3 percent of those appealed; 3 modified; and 2 remanded.

Judge Disney, 180 cases decided on appeal, which was 28.4 percent of all cases decided; 134 affirmed, which was 74 percent of those appealed; 40 reversed, which was 21 percent of those decided on appeal; 12 modified, or 6.3 percent; 3 remanded, or 1.6 percent.

Judge Hill, 163 cases decided on appeal, 30.6 percent of all decisions; 111 affirmed, or 68.6 percent of all those appealed; 36 reversed, or 22 percent of those appealed; 13 modified, or 8 percent; and 3 remanded, or 1.4 percent.

As the members of this committee know, the Tax Court has a review procedure with the court. Each division judge files his findings of fact and opinion in a case with the presiding judge, who is elected by the judges. Also, the judges meet weekly in conference, to review the opinion which the presiding judge refers to the conference. Each judge must study, prior to the weekly conference, an agenda of from 6 to 10 cases, and thereafter in the conference discuss and vote upon the cases under the consideration of the entire court.

In the work of the court, each judge is called upon to contribute to the execution of certain general court matters. In all of these aspects

of our work I have fully executed my duties by contributing to the discussions in the conference and, from time to time, writing dissenting opinions or receiving a case under a reassignment to write for the majority of the court, their prevailing opinion. In several instances the views which I have expressed under dissenting opinions have been approved by appellate courts in their review and reversal of the majority view of the Tax Court.

I have served on the rules committee of the court for 12 years. I have endeavored in every respect to cooperate in whatever work of the court has called for joint effort. But in the decision of cases, I have been steadfast to my convictions about the law of the case, and where the majority of my brethren have not agreed, I have asked for reassignment of the case and written a dissenting opinion.

Senator MILLIKIN. Mr. Chairman?

The CHAIRMAN. Yes.

Senator MILLIKIN. Judge Harron, have you any statistics on the number of your cases that have been reviewed by the whole board in relation to similar statistics for other judges?

Judge HARRON. The time that would be required to prepare that kind of analysis, Senator Millikin, would really be considerable. I can say this, however, and I am glad that you have asked that question: The question that you have in mind is to what extent are the opinions of any one judge reviewed by the whole court, and why. I think the committee may not understand, I do not see how it could, that the review of cases by the full court is determined very much by the case itself, by the questions in the case. In other words, the questions that we have to decide are often very close. Sometimes there may appear to be a conflict between the holding made in one judge's opinion and that which has been decided prior to his opinion. We have to decide questions of first impression all the time. The Revenue Act, now the Internal Revenue Code, is amended rather frequently and so the first interpretation of new provisions come to us. It is a rule of the court that whenever there is a question of first impression to be decided, a very close question on a case involving a very large deficiency, a really large deficiency, a case where the presiding judge has determined that almost all cases within that class should be reviewed by the court, then he automatically sends those cases to the court conference for review.

For example, when the family-partnership issue first came before the Tax Court, every case involving a question of whether a business arrangement should be recognized for tax purposes was sent to the full court for consideration. We were recently given jurisdiction over the renegotiation of war contracts. Almost every case that has come under the Renegotiation Act has been reviewed by the court conference.

You can see, then, that there is a rule or principle that applies, and from that I would say that the statistics would not be very helpful because it is a run of luck as to whether you got a series of cases with those questions or not. A case which is purely a fact case ordinarily is not sent to the full court for review.

For example, a case involving the deductibility of compensation of officers of a corporation, that is a fact case. The presiding judge reviews the findings and facts and opinion of every judge of the court, and he determines whether the case should be sent to the full court for review. But, where the question is chiefly a fact question, the presid-

ing judge reviews it and if he reapproves your report, that then makes it the opinion of the full Tax Court.

Senator MILLIKIN. It occurred to me that since you considered it relevant to bring out how many times you have been reversed by upper courts, that it also might be relevant to determine how many times you have been reversed by your own colleagues.

Judge HARRON. Yes. I think that is an interesting question, and one that I can answer easily.

I have just come to the part of this statement where I said that in the decision of cases I have been steadfast to my convictions about the law of the case. Where the majority of my brethren have not agreed, I have asked for reassignment of the case, and written a dissenting opinion. There have been two instances where I bowed to the views of the majority and rewrote the opinion, but later it was reversed.

In the court conference, after the report of the case on the agenda is discussed, a vote is taken, and unless the case involves overruling a prior decision, a majority vote of the court will adopt that report. If your report is not adopted by the conference, then you have the right to ask the presiding judge to reassign that case to another division of the court, and then another judge will consider it, and write what appears to be the view of the majority, and then the judge who heard the case writes a dissenting opinion.

Senator MILLIKIN. Is the report in opinion form when it goes to all of your colleagues?

Judge HARRON. Yes; it is a finished product.

If what you have in mind, Senator, is to what extent I have been reversed by my colleagues, if I may say so, the question is not posed properly. You are not reversed by your colleagues. The presiding judge may make suggestions to you. If you think that points are well taken, you will adopt them. If you think that you differ, you will ask to have the case referred to the whole court for review.

Now I would say that I have not, on the whole, in 12 years, considered that this was a problem of any kind. I believe that a large percentage of the cases of mine which have been reviewed by the full court have been adopted. If they were not adopted, I asked for reassignment and wrote a dissenting opinion, but I recall having done that in only two or three cases.

Does that answer your question?

Senator MILLIKIN. Yes.

Judge HARRON. There is one other point that I think should be cleared up.

Suppose the presiding judge approves the finished product of one of the trial judges, and findings of fact and opinion are either entered as a memorandum opinion—that means, not printed—or promulgated.

We have this distinction between opinions, because the presiding judge and Chairman of the Board of Tax Appeals felt that the expense of printing all of the opinions of the Tax Court would be too great, and therefore the presiding judge attempts to indicate, if the judge who writes the opinion does not do it himself, whether the opinion should be printed or not, but we do not print cases that are pure fact cases, where the question of law really has been decided, and for that reason a great many opinions of the judges are memorandum opinions.

It has not been until recently that the tax services thought they would reprint these opinions, and the time will come, I believe, when the Tax Court will have to print its memorandum opinions.

Also, on that point, the memorandum opinions are not authority. They are not cited, and in the instance that Mr. Phillips just mentioned to you, when I said to counsel, "Do not cite a memorandum opinion in your brief," I was advising him correctly. We never cite our own memorandum opinions in our opinions.

Senator MILLIKIN. Do not the judges take judicial notice of their own opinions?

Judge HARRON. We certainly do.

Senator MILLIKIN. May not counsel invite you to take judicial notice of your own opinions?

Judge HARRON. Certainly he may. But I would have to go back to the record because, no doubt, the point was that I cautioned counsel not to rely entirely on memorandum opinions, and that is proper, because a memorandum opinion decides a case where the principle of law has been decided. That is, there is a leading case. That is what was meant by that admonition to counsel; that is, "Please cite the leading case and not just the memorandum opinions."

Senator MILLIKIN. May I suggest that there might be a case where, say you developed a hornbook principle, but the application of a principle to the fact might be very important to the case before you.

Judge HARRON. Certainly.

Senator MILLIKIN. In that kind of case would you deny counsel the right to invite you to take judicial notice of a Tax Court case?

Judge HARRON. I have never done so and I never would. I made a suggestion to counsel, and for some reason or other, that has been picked upon to criticize; and also, the excerpt from the transcript was read as though it were an admonition and a prohibition and everything else. It was not.

We have a problem, however. We have noticed an increasing tendency of counsel to cite memorandum opinions to us. It is a policy of all of the judges of the Tax Court to caution counsel not to rely too greatly on the memorandum opinions. Whether that policy is correct or not, I do not know. Perhaps there are those who are appearing here today who would think that that policy is incorrect. But it is the policy of the court itself, and not a policy I have formulated, and I was only following it.

Senator MILLIKIN. I will indulge in a matter of irrelevancy, if I may.

It occurs to me that the Tax Court takes a lot on itself when it assumes to advise the legal profession as to what are the leading cases which you must consider here, and nothing else.

Judge HARRON. I beg your pardon, sir, but it does not suggest to them that any one case is a leading case. Counsel knows what the leading cases are.

Senator MILLIKIN. I suggest that our published cases are the cases which we want to hear, but cases which may involve the same principle but a different fact situation are cases which we do not care to hear, and I suggest the Tax Court is swelling itself a little bit when it adopts a procedure of that kind. That is not aimed at you; you have already stated it is a Tax Court rule.

Judge HARRON. If you do not mind following that a bit longer, because I would be doing some injustice to my own court if I left that impression with you, let us say this:

The Supreme Court decides a leading case. It is Lucas versus Earl. It has to do with the taxation of income to the person who earns the income.

That case involves such a fundamental principle that that rule has been applied in a great many other cases down the line by circuit courts, and when we say "Please cite the leading cases" counsel knows what we mean, Mr. Senator. It is not just the published cases of the Tax Court; it is the leading cases in the field.

Now, if counsel is dissatisfied with the findings of fact and opinion of one of the trial judges of the court after it has been issued, he may file a motion with the presiding judge and ask for a review by the whole court. Now, he has to raise something in his motion that is substantial, or the presiding judge will not grant that motion because he has already reviewed the case.

Do I make that point clear?

Senator MILLIKIN. Yes.

Judge HARRON. This report to you would not be complete if I omitted some discussion of the wide venue of the court, the conditions under which trials must be conducted, the great size of the bar of the Tax Court, the remedies which are available to dissatisfied counsel under the rules of procedure of the court, the great variety of issues which comes before the court and the size of the court's docket.

I shall now refer to these matters briefly, as they have come within my experience as a judge of the court.

As this committee knows, an average of 3,000 cases are docketed each year in the Tax Court, of which 1,000 or less are tried for decision on the merits. Also the sessions of the Tax Court are held in 50 cities, in only two of which does the Tax Court have its own courtroom and quarters. In all of the other cities, the Tax Court is assigned for limited periods to the courtrooms of other courts, Federal or State. In almost every instance, in my own experience, the period during which my division of the Tax Court could occupy an assigned courtroom was strictly limited to a 1-week or 2-week period.

Calendars are set by the presiding judge with the expectation that a certain percentage of cases will be settled. The estimate is often less than results, so that the number of trials will be greater than was anticipated for the fixed trial period.

In this situation, the calling of the calendar may present many complications, and the number of cases which must be set for trial in a single day or several days will be larger than local courts customarily allow. The conduct of trials thus becomes burdened with the time factor and it becomes necessary for the court to sit long hours, as well as to ask counsel to endeavor to accommodate themselves to the calendar. Both the court and counsel must endeavor to accommodate themselves to this trial factor to the extent that it can be done without depriving the parties of the hearing to which they are entitled. Undue delays, failure to be ready to proceed to trial when the court can proceed, serves to deprive other litigants of the use of valuable time, or to waste the court's time.

May I interrupt myself, Mr. Chairman? Do you desire to recess at 4 o'clock?

The CHAIRMAN. No, we have no fixed hour. However, we may be compelled to recess on call of the Senate.

Judge HARRON. Thank you, sir.

Now, I have always followed a system of setting the trials of cases for a fixed day and a fixed hour on the day that the calendar is called, and I have done this in order to save counsel and witnesses the loss of time and the necessity for waiting to have their cases called. Sometimes the time schedule does not work out as expected and counsel must wait for their cases to be heard. But, on the whole, this system has worked out very smoothly, and I think that counsel have expressed some appreciation to the court for being willing to hear a case late in the day in order to conclude a trial, or even to hear a case during a night session. We are often pressed to continue cases, but we sit in some cities only once a year, or from 6 to 8 months apart, so that the judges of the court always insist upon very good reasons for the continuance of cases. With our limited use of courtrooms, if it becomes necessary to have long hearings, we do so rather than put a case over for a year, or for 6 months.

The understanding and seasoned members of the bar of the Tax Court—and I say, "the understanding and seasoned members of the bar of the Tax Court"—take into consideration the problems of the court as a traveling court. However, many attorneys appear before the court infrequently, and they are accustomed to a more leisurely schedule, to conventional hours, and they are often not fully acquainted with either the procedures of the Tax Court or with the close questions of tax law which come before us. It is to be expected that we may be severely criticized for the necessary arrangements which conditions beyond our control impose upon us by the less understanding members of the bar, who happen to encounter the pressures of crowded calendars. We have little choice in these matters and must suffer such criticism, nevertheless.

There are thousands of attorneys and accountants admitted to practice before the Tax Court, and I repeat, thousands.

Recently I had a schedule made of the number of counsel who had appeared before me in 12 years. I find that I have held sessions of the court in 28 different cities, in many of which I have held sessions only once. I find that 730 attorneys, including some certified public accountants, have appeared before me in these 28 cities, of which 589 represented taxpayer-petitioners and 141 represented the Commissioner of Internal Revenue. Over one-fifth, that is, about 153 attorneys who have appeared before me as representatives of taxpayers appeared in the trials of cases in New York City. In other cities from 8 to 73 counsel appeared.

I would like to emphasize that; 589 attorneys have appeared before me representing taxpayers and 141 have appeared before me representing the Government.

I believe there was some reference to 46 letters this morning.

I find also that of the counsel representing petitioners, 513 have appeared before me only in one trial, 513 in only one case each, out of a total of 529; 55 have appeared before me in two trials each; 10 have appeared in three trials each; 10 have appeared in four trials each; and 1 has appeared in six trials. That is because of

the wide venue of the court, because of the number of judges on the court, and because of the size of the tax bar.

Of course, the attorneys in the office of the chief counsel of the Bureau of Internal Revenue appeared with greater frequency, and some of those who appeared before me as counsel for the Commissioner are now in private practice. The comparison is interesting.

For example, of the Government's counsel, one has appeared in 23 trials; three have appeared in 19 trials each; 17 have appeared in five trials each, 20 have appeared in four trials each and 46 have appeared in one trial each. That is just a sample.

Another interesting point is that of the 589 who have appeared before me representing petitioners, 54 were certified public accountants, 3 were officers of corporations; 5 represented themselves, pro se. I can recall one case where a young woman, Annette Loughran (40 B. T. A. 252), 27 years old, appeared before me in San Francisco to present her own case, a laywoman. It was a very difficult case, involving the question of whether she was the head of the family when her mother and her mother's second husband lived with her in a home which she maintained with her own income that she received from her father.

She presented her own case with some aid from the court, and the evidence that was thus produced resulted in a decision in her favor, which the court reviewed and which was not appealed. In connection with the Nation-wide venue of the Tax Court, and the great size of its bar, there is another matter to which I desire to call your attention.

Within some cities and States a tax bar is developing or has developed within the past 10 or 15 years, but these groups of lawyers who specialize in the practice of tax law are not large compared to the entire bar of the locality or State.

If I may use an example, this is reflected by the American Bar Association itself. It has 40,781 members, of which only 3,000 are members of the section on taxation.

Also, in the tax bar groups, in the States and in the cities, some are leaders while a great many have become associated in the group for their professional enlightenment.

Again, using an illustration, in the section on taxation of the American Bar Association, which is here represented today, there are 3 officers—a chairman, vice chairman, and secretary—and then there is a council of 9 members, out of a membership of 3,000 in this section and 40,781 in the entire American Bar Association.

Judges of the Tax Court, holding sessions of the court in many cities, as infrequently as once in 10 or 12 years, do not know the bar of that city, nor the tax bar, if there is an organized tax bar.

I have appeared in some cities only once in 10 or 12 years, and I have had more than the average assignments of calendars for trial in the court. I have at times had as many as 97 cases pending before me because I have been out on circuit, hearing cases within about an 8-week interval in Washington. I think there was some suggestion made that I had not been hearing cases recently. The calendars are assigned by the presiding judge, and when a judge becomes too burdened with a list of cases, if he goes out again on hearings and receives more cases, that is going to delay disposition of cases that are pending.

Now, it happens that when these terms of office expire, four every 2 years or so, it has always been the experience of the Tax Court that the work of the judge whose term is expiring is upset in some way.

So, in 1945, I had to take the calendars of Judge Van Fossan and some of the other judges who were up for reappointment. I remember that year I went to New York in February, Pittsburgh in May, San Francisco in July; and one of the heaviest calendars that I had in 12 years I had in Pittsburgh. But I was out on circuit throughout the country hearing more cases than some of the other judges of the court were.

Now, traveling as we do, we do not know the bar of the city we go into, nor the organized tax bar, and, vice versa, the lawyers in that city do not know the judge. Another factor is important—many lawyers who appear in the Tax Court are not tax specialists, and even today many appear for the first or second time in all their years of practice. Here is a condition which makes the gulf between the Tax Court bench and the local bars of the various cities wide. Add to these the problems described above, of a traveling court, there is much room for lack of understanding on the part of both a visiting judge and an alien bar. I am sure that in 12 years there have been many instances where this situation has fostered some ill will toward myself because of some matter in the course of a trial which would not be of any real concern to a seasoned Tax Court lawyer, acquainted both with the judge and the close question of tax law.

Now, may I here reply to something?

About 2 years ago I heard cases in Atlanta, Ga., for the first time during my term of office. During the course of the trial of the Claude Patterson Noble case, it was necessary for me to check the notice of deficiency, the explanations, the issues that were raised and in so doing, I found that aside from the issue which was being tried, but related to it, an accountant who had been advising a taxpayer had so advised the taxpayer that the taxpayer lost the right of a deduction in one year, for which the taxpayer had a perfect right.

It was carelessness, it was unfortunate. I pointed it out to the accountant and, in the course of doing that I asked him to take the stand, and asked him some questions.

I said to him: "I think that it is very unfortunate that with this taxpayer on a cash basis you have allowed her to defer making a payment of some salary to her husband in the following year."

She intended paying him a salary for 1 year's services, and delayed the payment until the following year unnecessarily and lost a deduction.

Well, my gracious, issues come before the Tax Court where the taxpayer is greatly aggrieved because a deduction is not allowed, and in this case I noticed that the accountant had misadvised his client so that she lost the benefit of a deduction. That comment was made in passing, and it was not related to the main question in the case.

The case was decided by Judge Leech, under a reassignment, where the case was reviewed by the full Board, and that was because Judge Leech and I disagreed on the authorities to be applied, and I wrote a dissenting opinion.

But I only would point out here that my opponent has been highly inaccurate in his statement about the Claude Patterson Noble case.

Now, no doubt, he has received some criticism from the accountant in that case, because that was the first time I had ever held court in that city, and on that occasion the accountant had bad luck; on another occasion he might not have the same reaction to what it was necessary for me to point out to him.

Senator MILLIKIN. May I get it clear, Judge, as to how the case was constructively served by your examination of the accountant?

Judge HARRON. I was inquiring about the main issue. The main issue, as I recall it—and I would like to make a reply later because these cases have been decided quite aways back, for instance, the Senator Phipps case was tried in Denver in 1939—in the Claude Patterson Noble case, the taxpayer, Mrs. Noble, had owned some property and the question was whether she was engaged in the business of operating real estate. Also, she was the partner, if I recall correctly, in an undertaking business. But she never participated in that business at all. She hired her husband to carry on her business activities, and she was claiming that she was engaged in these business activities; and related to the question that we had to decide there was the question of the payment of her husband for some of the services. But the taxpayer conceded one issue out of the case, but since the husband was employed in the management of properties to which the question in the case related, it was pertinent to observe that one issue in the case had to be conceded, because of the accountant's error.

Does that answer the question?

Senator MILLIKIN. Not quite. It is not clear to me yet how you advanced the case by examining the accountant.

The reason I asked the question is because I understood you awhile ago to say that what had been done by the accountant was beyond the power of correction. There was nothing you could do about it.

Judge HARRON. Then I have not made this clear. Of course I did not set out to point that out. There would be no purpose served in it at all. I was inquiring about a matter that was material to the issue which I had to decide. In the course of inquiring about that, I made the comment, but I would certainly not take up my own time in examining an accountant about an issue which had been stipulated out of the case. I certainly would not do that. I stumbled on to that in the course of asking about two facts which related to the issue to be decided. That is why it is so very difficult, it seems to me, for my opponent to pick excerpts out of the transcript, because you have got to see the purpose of the inquiry, and you cannot tell that sometimes without reading more of the transcript than just something that was brought to the attention of counsel.

Senator MILLIKIN. Was the effect of your remarks a criticism of the accountant?

Judge HARRON. No; I think it was an observation. Perhaps it would be a matter of opinion whether it was a criticism. It was an observation.

Senator MILLIKIN. Would it be a matter of opinion whether he had correctly advised his client?

Judge HARRON. That was a fact.

Senator MILLIKIN. That he had or he had not?

Judge HARRON. That he had not correctly advised his client.

You understand, again, Senator, that the Tax Court allows certified public accountants to appear before it, and they realize that they are

not trained, nor do they have the experience to try tax cases. So they carry a case up to a certain point and then they ask an associate to try the case before the Tax Court.

Now, in this particular instance, I think that the attorney who had been asked to assist the tax counsel was a very outstanding attorney in Atlanta, but the examination of the accountant was material to the issue that was being tried.

Senator MILLIKIN. Did you initiate the examination yourself?

Judge HARRON. I would have to go back and look at the record to see that.

Senator MILLIKIN. As I remember the allegation is that you summoned the accountant on your own initiative, and made a witness of him.

Judge HARRON. There would be nothing improper about that. It is part of the duty of the court to inquire into the facts of the case.

Senator MILLIKIN. Maybe there is nothing improper about it, Judge, but the allegation is, if I understood it correctly, that you sort of took control of the case by summoning a witness that had not been summoned by either party, and that you proceeded to examine him on a matter which was not relevant to the case before you, and that in the presence of his client—and I may not be sure of that—you delivered what was a gratuitous criticism of the gentleman.

Judge HARRON. That is the opinion that someone has about it, but the opinion I think has been formed without complete acquaintance with the facts, without knowing what was involved in the trial of the case, without knowing what the position of the accountant was in the case, and all of that. In other words, the committee has been given the opinion of someone who was critical.

Senator MILLIKIN. May we assume that when you appear again that you will have refreshed your own memory on the case and tell us more about it?

Judge HARRON. Yes, indeed. I shall be glad to and I intend doing that.

The CHAIRMAN. Judge, since you referred to the matter, may I ask you if Mr. Marion Smith was counsel in that case?

You referred to an outstanding attorney in Atlanta.

Judge HARRON. You mean counsel for the petitioner, the taxpayer, or do you mean counsel for the respondent?

The CHAIRMAN. Was he interested in the case as a lawyer?

Judge HARRON. I recall the name of a Marion Smith, but I do not know whether he was counsel in that case. Mrs. Claude Paterson Noble's brother-in-law was counsel in the case, and there may be a Government attorney by the name of Marion Smith.

The CHAIRMAN. No; he is not a Government attorney. He was an outstanding lawyer in Georgia, who is now dead.

Judge HARRON. Then I would say, Senator, that he was not counsel in the case.

I would remind the committee that in many instances the Tax Court is called upon to decide the meaning of tax statutes before any other court has had an opportunity to determine them. Also, and more importantly, the Tax Court is subject to review by 11 United States courts of appeal and by the Supreme Court of the United States. Also, the taxpayer may pay his tax and in certain instances

institute suit to recover the tax in one of the many United States district courts, or in the United States Court of Claims. Very frequently the determination of a tax claim turns upon narrow issues of fact. The Tax Court judge writing an opinion in any case, as well as the Tax Court itself, must consider the bearing of all the applicable cases decided in the other courts I have mentioned, upon the issue which we are called upon to decide. As might be expected, sharp issues may arise between court and counsel, and among the members of the Tax Court as to the applicability or nonapplicability of the decisions of the 13 reviewing courts and in the many instances where suits have been brought and reduced to final judgments in the Federal district court and in the Court of Claims.

Further, while the Supreme Court of the United States has as one of its grounds for review on certiorari differences in opinions between two or more circuit courts of appeal, that Court does not always grant certiorari in such cases and it sometimes happens that there are outstanding conflicting judgments in courts of equal authority.

I come now to the court's procedures, because I know that the members of this committee must desire to know whether the problems to which I have referred do, in fact, militate in any respect against the complete consideration of the problems of our taxpayers.

First, no cases are decided from the bench. This is because written findings of fact must be made from the record, and no judge has the authority to decide any case without first submitting his report to the presiding judge.

Second, very seldom is the argument on the law made at the trial, which is limited to the presentation of evidence.

Third, after a case is decided, the decision does not become final for 90 days. Under the rules of the court, motions may be filed to correct the transcript, for further trial, to transfer to another division of the court for rehearing, for reconsideration, to correct or enlarge upon the findings of fact, and for review by the entire court. Although such motions must be timely, there is ample time to file them after a trial is concluded, but before briefs are filed, 60 to 90 days being allowed to file briefs; or after an opinion has been entered, but before 90 days expires.

And this brings me to the last part of my report to you.

During the entire time of my service on the court there have been almost a complete absence of the various kinds of motions to which I have referred. There have never been motions to correct the transcript; there have never been any motions to restore to the record any material which allegedly had been omitted from the record; there have never been any motions for rehearing or retrial; and, furthermore, there has never been an appeal in any case excepting one, where any question has been raised about the record in the case, the trial of the case, or the correctness of rulings in the case, and I would like to say also that no one, neither the presiding judge nor any colleage of mine on the court, or any counsel, who could consider himself friendly and kind, has ever come to me, during 12 years, and laid before me the criticisms which have been presented to you today.

Now, in the one case which was appealed, in 12 years, referring to alleged impatience with counsel, the Second Circuit Court of Appeals

in *Low* v. *Nunan*, that is the appeal from the A. Augustus Low case, which was referred to today, 154 Fed. 2d, 261, said as follows:

> Taxpayer complains that the judge at the trial showed such impatience with taxpayer when testifying as to indicate prejudice. But most judges, being human, sometimes disclose impatience when witnesses are unduly repetitious or excessively detailed. Such displays of impatience should usually be restrained in the presence of a jury. But, in the absence of a jury, they are not to be taken as signs of improper bias. We know that, when on the bench, we sometimes manifest, orally or otherwise, symptoms of boredom, but are nevertheless able to decide in favor of the party whose lawyer has taxed our patience, if his case is meritorious.
>
> We have considered other alleged errors which we regard as not worth discussing.
>
> Affirmed.

There are two exceptions to a record which shows an almost complete absence of motions which counsel would file if there were a prevailing situation during 12 years of the kind that my opponent has endeavored to present a picture of to this honorable committee this morning. There have been two exceptions, and both exceptions were extreme and unusual.

In one case which I heard in San Francisco, in 1938, the petitioner's counsel was an attorney who had a predilection for making big issues out of small matters. When an intemperate motion for review of the opinion which I had written, and which the presiding judge had approved, was filed after the opinion had been served on the parties, I withdrew from the case.

Judge Opper of the Tax Court held a further hearing in that case after I vacated my memorandum opinion, and restored the case to the general calendar in San Francisco.

There was a question in that case over the admissibility of the testimony of a lawyer. There was a claim that his testimony was privileged. When Judge Opper went to San Francisco to hear the case he struck the evidence which I had held was admissible. The respondent, the Government, again produced the same witness. The same objection was made. Judge Opper made the same ruling I made. Then he considered the case. He decided the two questions in the case in the same way that I had decided them, but the case was then reviewed by the full court, and I did not participate in the case. Even so, for several years this lawyer in San Francisco carried on a personal attack against me and I very properly ignored it.

When I received official notice that this hearing on this nomination would be held, for the first time I inquired about that attorney and about the procedure which he had followed, and I learned that he, several years ago, filed a most extreme and intemperate motion against the late Judge Saint Sure of the district court in the northern district of California; and that he is known for doing that sort of thing.

The other instance, and I say there are two exceptions to these motions indicating any dissatisfaction, relates to the case of Eleanor Funk, which is now pending before me, in which the partner of Mr. Percy Phillips, Mr. J. S. Y. Ivins, is counsel.

In that case, Mr. Ivins asked to have the case transferred to another division of the court. The presiding judge denied it. In that case, the facts were stipulated and the case was submitted to Judge Disney. Judge Disney's report in the case was voted down in the

court conference, and the case was assigned to me to write the view of the majority of the court. Judge Disney wrote a dissenting opinion, thereby indicating that he believed that the issue should be decided for the petitioner, whereas the majority of the court believed that the issue should be decided for the Commissioner.

On appeal, Mr. Ivirs made a wholly unwarranted argument, and thereafter I spoke to him about it, and he then filed a motion.

The motion was not a motion of bias and prejudice, it would not conform to the rule of the district court, but it was a motion to transfer the case to somebody else, and the presiding judge denied that motion.

Those are the two instances, and the only instances.

If there are any questions the committee would like to ask me about these two instances, I would be glad to answer them.

In conclusion, may I say that a presiding judge in a trial court must maintain order in the court. Otherwise the proceedings would be something less than judicial proceedings. Moreover, the judges of the Tax Court are called upon to apply equal and exact justice as between the United States Government, on the one hand, and the taxpayer, on the other hand. It is the business of the judge to do nothing less than justice. If that is to be attained, sometimes, in the process of securing all of the relevant and material evidence, the court itself must interrogate witnesses and ask questions which trial counsel may not have asked, for one reason or another.

I have never consciously embarrassed counsel, and I have endeavored to avoid the appearance of being unduly critical or stern with any counsel in a proceeding before me; but if the issue is presented to me that I must fail to do something less than exact justice under the law and the facts, or perhaps hurt the feelings or the pride of some trial counsel, whether he represents the Commissioner or Internal Revenue or the taxpayer, I have thought that my duty was plain, namely, that under my oath of office I am required to obtain the facts.

In undertaking the duties of my office, I executed an oath that I would "well and faithfully discharge the duties of the office." I have done so. I have devoted myself fully and diligently to the execution of my duties; and being possessed of good health, physical endurance, and the energy with which a person is endowed between the ages of 33 and 46 years, I have carried on my duties during the entire period during the usual working hours and during much overtime. I have never been sparing of time, either in my office work or in the trials of cases.

I have never permitted personal attitudes to encroach upon the impartial, objective, and impersonal consideration which is required in my judicial consideration of the causes before me.

In the exercise of my duties as a presiding officer in the trials of cases, I have used my discretion in matters in which the interests of the real parties to the litigation would be best served, and if in so doing it has been necessary to place the interests of the real parties to the proceeding ahead of the sensitiveness of counsel, I have done so. I have never made any ruling or any statement which I did not consider necessary to the proper trial of a case, and necessary to *my* understanding of the case.

Whenever, as must happen occasionally, I have differed with counsel, I have relegated that to the day thereof, and no difference during

any trial have ever been carried over into my considerations of the case itself.

I have observed carefully the proprieties which should be observed by a person who occupies a judicial position, limiting my associations to a few friends and eschewing familiarity with members of the bar and litigants. I have not curried the favor of any member of the bar, nor attempted to make myself popular among them.

On the other hand, I have respected their position as members of the bar of the Tax Court, I have endeavored to be considerate of their needs and convenience, particularly of their time and of their meritorious requests under motions.

I have endeavored in all respects, Mr. Chairman, during the entire period of my service in office, to be worthy of the high confidence of the President of the United States and of the United States Senate.

The CHAIRMAN. Are there any questions?

Senator MILLIKIN. Mr. Chairman, I assume that the judge will return for further testimony, and I would like to question the witness, but I would prefer to defer it until after we know whether or not we are going to have the other witnesses. There is no use in running a double hearing on this matter.

The CHAIRMAN. Very well.

Colonel McGuire, have you a witness that you wish to call?

Colonel MCGUIRE. Yes, Mr. Chairman; we have several.

The CHAIRMAN. I should say that if we hear them, we may be called to the Senate almost at any moment.

Colonel MCGUIRE. Mr. Chairman, would you hear them tomorrow?

The CHAIRMAN. I do not think we will be sitting tomorrow because of Good Friday, and my understanding is that the Senate is expecting to adjourn tonight or some time this afternoon over until Monday, and it would be very difficult and a rather heavy hardship to place on members of the committee to come back on Good Friday. Otherwise the chairman would be here, but I think we will be going over until Monday.

Colonel MCGUIRE. Mr. Chairman, may we proceed until you are called?

The CHAIRMAN. Yes; if that is your desire.

However, before you proceed with your witness, Congresswoman Mary T. Norton desires to make a brief statement for the record.

STATEMENT OF HON. MARY T. NORTON, A REPRESENTATIVE IN THE UNITED STATES CONGRESS FROM THE STATE OF NEW JERSEY

Representative NORTON. Mr. Chairman, as a woman who is very much interested in all women who are holding governmental appointive or elective positions, I am here to respectfully endorse the nomination of Judge Marion Harron for reappointment to the United States Tax Court.

Judge Harron has served with ability and distinction during the past 12 years. Her record stands as among the best. She has earned reappointment on that record.

Judge Harron did not seek the appointment in 1936. She was selected after consideration had been given to several others. Her high scholastic record—Phi Beta Kappa, doctor's degree from the

University of California Law School, on the faculty of the Institute of Law at Johns Hopkins, and an unusual experience in the field of business and corporation law and taxation, peculiarly fitted her for the position to which she was appointed in 1936. Her record on the Board of Tax Appeals during her 12 years of service proves how right were those who endorsed her appointment. Their judgment was absolutely correct.

Women all over the country are interested in this appointment, judging from the number of letters I have received. They are interested in women who have the kind of ability and integrity that Judge Harron has demonstrated through her years of service in a critical and demanding position.

We ask no favors on the score of sex, but we expect fair and just consideration.

We know that any woman who succeeds in a high appointive or elective position must be just a little above the general average of man or woman.

We believe that Judge Harron has, by her own record, proved that she is far above the general average and, speaking for myself and a great many other women, we respectfully and heartily urge this committee to unanimously confirm the nomination of Judge Marion Harron to succeed herself to the United States Tax Court.

The CHAIRMAN. Colonel McGuire, will you call your next witness?

Colonel MCGUIRE. Mr. Chairman, the next witness is Mr. Joseph J. Klein.

STATEMENT OF JOSEPH J. KLEIN, ASSOCIATE PROFESSOR OF TAXATION AT THE COLLEGE OF THE CITY OF NEW YORK

Mr. KLEIN. Mr. Chairman, I have prepared a statement which, if I may, I will adhere to in the main.

I appreciate your wire notifying me of my scheduled appearance today. I should like to make a comprehensive but, nevertheless, brief statement regarding the judicial competence of Judge Marion J. Harron. For this purpose, I go to the official record and invite you to look at it with me. My statement is based, of necessity, upon her judicial output, to wit, the cases decided by her during her term of office, first as a member of the United States Board of Tax Appeals and later when the Board became the Tax Court of the United States, as a judge of that court.

First, a word about this witness' own qualifications to pass judgment on the competence of a judge of the Tax Court.

He is a member of the bars of New York, the United States Supreme Court, the Tax Court, and others. Among the bar associations of which he is a member is the American Bar Association, and its section on taxation. He is a certified public accountant of the State of New York, and a doctor of philosophy in economics. He has practiced accounting for approximately 40 years and law for over 25 years. During most of his professional career, he has specialized in Federal and State taxation. He has been unofficial adviser to the Commissioner of Internal Revenue; he has been tax editor of the New York Globe (and Associated Newspapers, Inc.); he is associate professor of taxation at the College of the City of New York; he has been president of the New

York State Society of Certified Public Accountants; a member of the governing body of the American Institute of Accountants and chairman of the tax committee of the American Society of Certified Public Accountants; and of the New York State Society of Certified Public Accountants.

He has assisted the Federal attorney in tax fraud cases and has also assisted the Department of Justice in civil tax issues. He inaugurated what was probably the first course in Federal taxation in any college in the country; he is the author of Federal Income Taxation, a recognized text for a number of years, and a number of annual supplements thereto; he has written and lectured extensively on taxation; as early as in connection with the consideration of the Revenue Act of 1918, he appeared before congressional committees, and has since then so appeared on a number of occasions. He was among the active proponents of the legislation which resulted in the creation of the United States Board of Tax Appeals and, when its continuance was in question, was among those most active in urging its continuance. He is a practitioner before the Tax Court, a student of its decisions and, because of his interest in the said court, is familiar with its work and with many of the practitioners of its bar.

In addition to what I have said here about myself, I would like to add the following:

I was chairman of the Renegotiation Board of the United States Army Engineers, North Atlantic Division, during the war, and in that capacity I had to exercise, if not judicial, at least quasi-judicial functions and, of course, like every other lawyer, I have had occasion to sit in, by way of arbitrating disputes which either had come in before the court, or which might make a court adjudication unnecessary.

As you know, Judge Harron was appointed to the Board in 1936. I had met her shortly before then, and I was intensely interested to observe how the youngest member of the tribunal, a woman at that, whould handle the complicated issues of fact and law which are constantly presented to the Board in an unending volume, which would test the stamina and physical and mental endurance of any judge. And, let me hasten to add, many of the issues thus presented here are by persons who have had no training and very little experience in trial procedure. Only the truly competent advocate, for petitioner as well as for respondent, is capable of rendering the help and assistance to which a court—especially an overworked one—is entitled.

There are a few very practical and objective tests of judicial competence. I shall mention but two:

(1) The results on appeal; and

(2) The impression on a qualified reviewer of a judge's findings and opinions.

I hope you will not consider me immodest when I refer to myself as a qualified reviewer.

I believe when you have an opportunity to read what I have tried to do in taxation, you will forgive me for that reference to myself.

Now I propose to apply the foregoing two tests to Judge Harron, as disclosed by the public record; this record is equally available to those gentlemen, some of them friends of mine, the opponents, as Judge Harron has referred to them in her statement.

The official record shows that Judge Harron decided 516 cases by June 30, 1947. I do not have the later figures. In number of decisions, she stood sixth in a court of 16, as she has told you. She also told you that of these 516 cases, 419, or over 80 percent, were not appealed.

I am familiar with the ancient three-fold category of lies in which statistics takes top place.

I believe, as I shall show you in a moment, that my friends among the opponents, unwittingly, misread the significance of some of the figures they employed.

It is not an unfair inference that the litigants in most, if not all, of these 419 unappealed cases, were either satisfied with the results of the hearings, or had no grounds for appeal. That is not universal, but I think, Your Honors, that that is a fair inference.

Of the 97 cases appealed, 78 were affirmed, over 80 percent, and here are the statistics which are unassailable: Judge Harron decided a large number of cases; over 96 percent of all of her decisions were either not appealed, or, if appealed, were affirmed. That figure, sir, I believe, it is fair to emphasize, and I ask you to bear in mind and keep in mind that figure as you pass upon her competency as a judge.

I will not repeat what she has already told you. Of course, I did not know what she would say about how she fared on appeal to the High Court, but there is the official record: not a single reversal.

With respect to those statistics of the opposition that I criticized, reference was made to the fact that a bare 11 percent of replies to the questionnaire was not a matter of concern to a group which I am sure intended to be impartial. Incidentally, I am a member of the American Bar Association, and I believe I pay dues to the section on taxation, Mr. Phillips, in the rear of the room, affirms, but I must hasten to add, please do not misunderstand me to mean by that that these gentlemen of the opposition speak for me or reflect my sentiments. They certainly do not.

I would like to tell them, perhaps Your Honors do not require it, something about statistics in the field of psychology. I may be wrong, because I am replying on memory now, but I am quite positive that I am correct when I say that the percentage of those who respond to a questionnaire of the sort in evidence represent at least five times as great a number from among those who have grievances or believe they have grievances, than from those who remain silent.

Applying that sort of test—it is a rule to remember—to those who did not respond, the silent 89 percent, I should say that among the 89 percent that remained silent, that ignored the request for information, from their own body, had no grievance. Not all of them, of course not. I agree that some will not stand up and be counted, but the great majority of them, unless the statistical differential which I pointed out here does not apply to this situation—a most unwarranted assumption—it means that the great majority of those who remained silent must be counted as not against the confirmation of Judge Harron.

Senator MILLIKIN. How would you reconcile the much larger number of those who complained against Judge Harron as against the smaller number of other nominees under the same questionnaire?

Mr. KLEIN. I have not had a chance to examine these figures. My guess is, perhaps you gentlemen can show me that I am wrong, but I doubt it, that practically only those who spoke against Judge Harron,

the great majority who spoke against Judge Harron, were those who responded to the balance of the questionnaire.

Senator MILLIKIN. Would you permit an interruption?

Mr. KLEIN. Of course, sir.

Senator MILLIKIN. How many of those who were against Judge Harron voiced the reasons for their opposition?

Mr. SUTHERLAND. There were 48 who voiced the reasons. There were 49 who stated reasons for their opinions, and Mr. Phillips gave the only one who was in favor, so that made 48 who gave reasons.

Senator MILLIKIN. And how many gave reasons on the other nominees?

Mr. SUTHERLAND. Most of the other reasons that I remember were on account of Judge Hill's age.

Of those replying, the following gave reasons for opposition to each of the judges: Disney, 6; Harlan, 10; Harron, 49; and Hill, 16; and I recall 11 of that 16 were on account of age.

Senator MILLIKIN. Those were responses to a single interrogatory?

Mr. SUTHERLAND. That is right. Those were not opposing, but who gave their reasons for their opposition or favor.

Senator MILLIKIN. Will you put in the record again the total number of opposition, with or without reasons, as to each of the nominees?

Mr. SUTHERLAND. Disney, 14; Harlan, 24; Harron, 104; and Hill, 26.

Senator MILLIKIN. Mr. Klein, I thought that might have some bearing on your psychological argument.

Colonel MCGUIRE. May I call the Senator's attention to the letter I put in from Talbot Smith and the correspondence of which they apparently did not count? Of course, that leads to the question of whether that was in the same class.

The CHAIRMAN. We have that in mind.

Mr. SUTHERLAND. May I clear that up now? We have gotten a number of other letters, and Mr. Phillips may have had some favoring letters. That letter Mr. McGuire read was not in answer to that questionnaire. It was in answer to some other inquiries sent out at a later time and on which we did not attempt to give statistics. We did not make the statement that only one person favored Judge Harron and gave the reason. We made the statement, which is true, that only one of the persons who answered the questionnaire, and answered favoring Judge Harron, gave the reasons.

Mr. KLEIN. Senator, to respond to the question, because it is not my intention to sidestep it, I think it bears out the belief that those who are aggrieved, and surely some of these feel themselves aggrieved, do respond, and therefore those who remain silent, by the same token, are either not aggrieved or not sufficiently aggrieved, or, as I gave you that relationship of 5 to 1, those who do not have a chip on their shoulders, or do not feel that criticism is warranted, remain silent.

Senator MILLIKIN. The thing that bothers me with that argument is that these replies which have been tabulated, and which you have heard, arose from a single interrogatory.

Mr. KLEIN. I grant you that if I were doing it, and I were intent upon getting complete coverage, I would add at least two follow-ups to the first interrogatory. Nevertheless, I feel, and I may be wrong, that the first interrogatory invoked every adverse response. Those

who were just aching to say something against Judge Harron did not need more than one invitation to speak.

Senator MILLIKIN. I am not casting any judgment on the thing at all, but out of that you have heard the statistics of opposition to these various nominees, and the statistics as to where there was an affirmative expression of opinion.

Mr. KLEIN. Yes, sir.

If I may depart from what I intended to say, let me add to the rumors which the opposition has put into the record. I was told, before I came to Washington, by a friend who knew I was coming, that Judge Harron threw an inkwell at a lawyer in open court. I asked, of course, "Was the inkwell filled?" "Did she hit the target?" I would like to see the corpus delicti.

In another case, beside that inkwell-throwing episode, I heard that an attorney had heart-failure in one of her cases. I asked, "Were you there?" "No, I heard about it." Someone else told me he had heard that story, too, and this is about what it amounted to as I tracked it down: A lawyer, who was in Judge Harron's court while another was being criticized for infraction of rules, is supposed to have said—this is rumor, I am not responsible for the quotation—"If she had said that to me, I would have had a heart attack."

Senator MILLIKIN. Mr. Klein, a fellow listened to a speech in the Senate and shot himself.

Mr. KLEIN. Reference was made sometime ago, or this morning, I think, to the reprisal that some lawyers may fear for openly opposing any sitting judge. I think of a reverse situation.

Here I am speaking, and very happy to speak, on behalf of Judge Harron, which means that she will never sit in one of my cases, because she will certainly disqualify herself, and I would love to try cases before her. I have tried two, and possibly three.

Now, I told you a few moments ago that there were two approaches to this problem of passing judgment on the competency of a judge.

This morning you were told by some "time" expert—I have forgotten who he was—that it takes about 5 years of apprenticeship to convert a good lawyer in to a fair tax judge. That is probably true. I am guessing, that is probably true of the average person. But how about this nominee?

When your nominee, Judge Harron, had served a scant half-year she rendered the decision in the case of Julius E. Lilienfeld (35 B. T. A. 391), which involved the taxability of income derived from assigned patents. She held that the assignee was liable. I thought that she was wrong and so did six dissenters, among whom were some of the oldest and most experienced members of the Board.

Within the very same week the Supreme Court decided a similar basic assignment issue in an entirely unrelated case, and reached a conclusion which the youngest member of the Board had, in effect, anticipated (*Blair* v. *Commissioner*, 300 U. S. 5).

While one decision does not make a judge, a gifted legal prognosticator might have suggested that the new judge was one to reckon with.

Within 2 years, along about half that 5-year alleged ordinary apprenticeship period, Judge Harron was called upon to decide another assignment case, in which the petitioner relied on the Lilienfeld-Blair

decisions, which I have already mentioned. Here she reached a contrary conclusion—2 years of maturity—with three dissents.

That decision, Gerald A. Eubank, 39 B. T. A. 583—and I understand the attorney for the petitioner is before this honorable body today, disclosed remarkable judicial maturity; the apt citations show thoroughness in research; the reasoning displays a grasp of fundamental tax law, and ability to make fine but necessary distinctions; moreover, the case embodied the characteristics of so many Board of Tax proceedings, namely, a great variety of dissimilar but apparently like facts, among which the judges must differentiate. The Circuit Court of Appeals for the Second Circuit—that is my own circuit up home—reversed, with Circuit Judge Patterson, later distinguished Secretary of War, dissenting (110 Fed. 2d, 737). Then, in two companion cases, *Helvering* v. *Horst* (311 U. S. 112) and *Helvering* v. *Eubank* (311 U. S. 122) the circuit court was reversed and Judge Harron's decision was again vindicated, in a close question involving taxability of income to assignor or assignee.

Reference was made by Judge Harron to that series of family partnership cases growing out of attempted tax-saving devices. It is only fair to say that the temptation to lessen the incidence of the tax, where family income could be divided, is often quite irresistible, in view of the more favorable tax climate in the community property States, but you gentlemen changed that in the 1948 act, by the equitable splitting-of-income provisions.

In one of these early family partnership cases, Judge Harron, in my hearing, was terrifically criticised at the time—I do not mean criticism in the unchivalric sense, because they were motivated by the best, I am sure, of professional instincts, but on professional grounds. I am tempted to quote: "She was all wet," according to one attorney. That was Francis E. Tower (3 B. T. A. 396) which came to Judge Harron in 1944. *Commissioner* v. *Tower* (327 U. S. C. 280) became and still is the leading case on the subject.

Marion J. Harron, now almost 8 years a tax judge, when this happened, handled the facts and the applicable law with a sure and masterful hand. The reader is left in no doubt as to the pertinent facts nor as to the law which she believes is involved.

The Circuit Court of Appeals, Sixth Circuit, reversed and remanded.

Then the Supreme Court reversed the circuit court and affirmed the decision of the Tax Court. Throughout the High Court's opinion is found repeated approval of Judge Harron's conclusions of law (although Judge Harron's name is not mentioned once) based upon the facts in evidence.

I think enough has been shown, based upon the record available to everybody, to establish that your nominee, despite her comparative youth, even today, is already a seasoned and able judge whose decisions are firmly grounded in the law and based on salient facts elicited from complicated evidence. Here we find no indication of careless or indifferent or mediocre or inexpert functioning; on the contrary, on the basis of these cases, the evidence is ample, convincing, and conclusive of intelligence, application, expertness, and skill in the art of judging.

When the Supreme Court speaks, and the Commissioner is wrong, there is no argument about that. He must change his regulations.

When the Tax Court speaks, he very frequently ignores its findings, unless they are persuasive and convincing.

An instance of this type of Tax Court influence is found in general counsel's memorandum 19884 (C. B. 1938–1, 290), which resulted in revocation and modification of a number of earlier rulings relating to gains from sales of inherited property.

This general counsel's memorandum was expressly predicated on Judge Harron's decision, rendered as early as 1938, in the case of William H. Slack (36 B. T. A. 105).

Skipping all intervening years, we come to January 1949, where we find that the Commissioner, in Internal Revenue Bulletin 1949–3 (February 7, 1949), issued T. D. 5684, amended his regulations relating to income from endowment policies to adopt, as a new rule, the holding in Judge Harron's decision in George H. Thornley (2 T. C. 220). This case may be referred to as an illustration of Judge Harron's mature craftsmanship in analyzing complicated facts, marshalling the evidence, simplifying the issues, stating and applying the governing law.

No evidence exists that the board attempted to assign "easy" cases to its youngest member, upon her appointment, in 1936. It is probably a fair assumption that her ability and independence of judgment were soon recognized by the presiding member of his associates. I stress that, gentlemen, and you will see why in a moment. From the very beginning, Judge Harron gave promise of developing into a capable and independent judge. As to her early independence of judgment, I might cite the John Thomas Smith cases (40 B. T. A. 387, 42 B. T. A. 505), and as to evidence of her early achievement of manifest judicial craftsmanship, I might mention the Lehigh Valley Railroad case, (45 B. T. A. 1379).

May I say, in passing, to the members of this honorable body, if they want in relatively short time to get the feel of what this Tax Court is up against in complication of facts, to read that Lehigh Valley Railroad case.

I think there are involved something like 8 or 10 separate issues, each one subdivided into a dozen or more difficult parts.

The first John Thomas Smith case was decided in August 1939. The issues involved alleged losses from the sale of securities to petitioner's wife and from the sale of securities to a wholly owned corporation, both transactions having occurred prior to the closing of the loophole against such loss deductions.

The board allowed the losses. I might say, gentlemen, that I am talking about the independence of her judgment. Here Judge Harron vigorously dissented in a 23-page opinion, concurred in by four of the other members.

A reading of the dissent can leave no doubt of the nominee's independence of judgment, competence to marshal facts, and develop logical arguments in support of her contentions. A case involving the same taxpayer and the second of the two issues, which originated in the district court, was decided 6 months later by the United States Supreme Court, *Higgins* v. *Smith* (308 U. S. 473).

Again, although the high court does not mention Judge Harron's dissent, it was abundantly clear that its conclusion is the same as hers, 6 months earlier. Thereafter, the board vacated its decision and the parties were again heard. The board then modified its earlier decision by disallowing the loss, resulting from the sale by petitioner

to his wholly owned corporation, but brought in some other matters, and again Judge Harron dissented in her by now characteristically convincing fashion. The board's second decision in the case was appealed to the second circuit, which reversed and remanded.

Again, it would seem clear that Judge Harron's dissent found favor in the appellate court.

As illustrative of her early judicial craftsmanship, I have mentioned the Lehigh Valley Railroad case. By August 1939, the date when her memorandum opinion in this case was issued, she had fully "arrived." Probably no qualified reader of that case, at the time of the time of the issuance of the decision, could doubt Judge Harron's capability as a tax judge. I venture the opinion that no judge of her court could have done a better technical job of simplifying an almost unbelievably complicated mass of factual material, stating the facts, setting forth the issues of law, and disposing of them in lucid, succinct, and convincing fashion. I venture that opinion, gentlemen, and I go further. I venture that no judge of that court would say he could do a better job in that case, if he were asked.

There are many more decisions of Judge Harron's which I could cite in proof of her outstanding skill and ability as a judge, but I fear that I have already occupied too much of your busy calendar.

Permit me, for a reason that I shall make clear at once, to refer to a final case: J. D. and A. B. Spreckels Company (41 B. T. A. 370), decided in February 1940.

This body was considering plugging up loopholes, involving among other things a situation such as this: Where a corporation or a group of corporations would buy for $1, as in this case, another corporation, in order to get a million dollars more or less of loss.

Judge Harron decided that the acquisition lacked the necessary business purpose, and refused to approve the manifest tax-reducing objective of the transaction.

May I remind the honorable chairman of this committee that when he made his report on the Revenue Act of 1943, in Senate No. 627, page 59, he displayed his great learning in the law, not only by citing the leading cases referred to, United States Supreme Court cases, but the one non-Supreme Court case that he selected for citation as an example of something that ought to be remedied, was Judge Harron's Board of Tax Appeals decision, and I do not at the moment recall any other similar report of your body which relied on decisions other than the high or appellate courts.

I conclude by calling to your attention an exhaustive review of the functions and evolution of the Tax Court in *Dobson* v. *Commissioner* (320 U. S. 489).

The Supreme Court, writing in 1943, when Judge Harron had served 7 years, refers to the Tax Court as "independent," its hearings as "fair," the quality of its deliberations as "evidenced by careful opinions," recognizes the establishment of "a tradition of freedom from bias and pressures," and states that the tribunal is dealing "with a subject that is highly specialized and so complex as to be the despair of [other] judges."

Here we have a judge who has been a member of the Tax Court for over 7 years, when the High Court spoke as I have just quoted. Not a syllable of that characterization has been withdrawn during the intervening 6 years. Despite the criticism voiced here this morning,

who can say how much of the Supreme Court's high praise is due to Judge Harron's services on the Tax Court bench? After all, the High Court's criterion, as is mine in this testimony, is the record of the Tax Court, as revealed in its published decisions. The High Court and this witness, would appear to be not in agreement with the gentleman who spoke in opposition.

It is respectfully submitted that a judge who has shown the degree of competence disclosed by the acceptance of 497 out of 516 of her decisions, and whose judicial talent and fitness have been so clearly demonstrated by the altogether inadequate review of a few of her decisions by the speaker, should be retained on the bench.

I sincerely hope that this honorable committee will confirm the nomination of Judge Harron for reappointment to the Tax Court.

Thank you, gentlemen.

The CHAIRMAN. Thank you very much.

Colonel McGuire, will you call your next witness, please?

Colonel McGUIRE. Mr. Chairman, I would like to call Mr. Wilson now.

The CHAIRMAN. Very well.

I think perhaps we should make this announcement now.

We will not reconvene Monday at 10, but on Tuesday. Monday is a very busy day, it follows a brief holiday, and it would be very difficult to get a committee of the Senators here, I am afraid, for a Monday morning hearing.

STATEMENT OF RICHARD W. WILSON, ATTORNEY, NEW YORK, N. Y.

Mr. WILSON. I shall make my comments very brief, Mr. Chairman, because of the late hour, and the fact that both sides of the question have already been well discussed. I should at the outset like to present to you two communications addressed to you as chairman of this committee by two well-known tax lawyers in New York, in favor of Judge Harron's reappointment.

The CHAIRMAN. Thank you, sir. Would you desire these letters placed in the record?

Mr. WILSON. Yes.

The CHAIRMAN. That may be done.

Mr. WILSON. The first letter is from Arthur B. Hyman, as follows:

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR GEORGE: It has just come to my attention that the President has nominated Judge Harron for a full term as judge of the United States Tax Court, and that the nomination is before your committee for your consideration, and that opposition to her confirmation has developed. I have been requested to express my views on the subject to your committee.

No doubt you will remember me. I have been in practice for 45 years and in the course of that practice it has fallen to me, as a member of my firm, to specialize more or less in taxation. I have been before your committee and also the Ways and Means Committee.

I understand that Judge Harron's record in the Tax Court is excellent and that the main objection advanced against her confirmation is that she is lacking in judicial temperament and has been, upon occasion, discourteous to members of the bar. I met Judge Harron just before she took her place on the Tax Court bench. I found her highly intelligent, very personable, and not without humility.

One of the members of my firm tried a case before her in which I was a witness and through the trial of which I was continually present. In that trial she conducted herself in a manner which left nothing to be desired. I have read her opinions, with some of which, as is to be expected, I was not in accord. They displayed ability and understanding of the subject dealt with of a very high order. It may be easily possible that, as she grew in knowledge and experience, she became less tolerant of divergence of views, and less patient with the inability of applicants to strip their controversies of irrelevant matters. In my long experience at the bar, I have seen many examples of this attitude and, while I do not condone it, it should not militate too strongly against a judge unless it is a chronic ailment.

I cannot believe that such a thing is possible in the case of Judge Harron. I met her recently and questioned her on the subject. She said that no doubt she had had colloquy with counsel, but she was not conscious of having offended them by word or action, and no one had ever suggested to her that she was incurring anyone's ill will by her action or attitude on the bench. She was exceedingly regretful that she had given occasion for such complaint.

I am a member of the American Bar Association and inclined to support any position they take, provided I have assurance that they have heard all the evidence available. I doubt very much that they have, and it is important, therefore, that a thorough investigation be made as to the sources of the complaint against Judge Harron and the extent to which they are justified. I am sure that they do not come from those who have been successful before her.

Judge Harron has intelligence, legal ability, and now has acquired experience in the Tax Court, which is of great value. I am sure that the criticism concerning her judicial conduct has made a deep and lasting impression upon her. Her qualifications must be weighed against the criticism and we should not lightly deprive ourselves of the services which she is capable of rendering.

Yours respectfully,

ARTHUR B. HYMAN.

The other letter is from Mr. Jacob Mertens, Jr., attorney, as follows:

MY DEAR SENATOR GEORGE: I understand that the reappointment of Judge Marion J. Harron to the Tax Court of the United States is under active consideration by your committee. I respectfully offer my strong endorsement of her reappointment.

In the course of over 25 years of specialized practice of the law of Federal taxation, I have written rather extensively on that subject, including among such works a 13-volume treatise on the law of Federal income taxation. In so doing, I have had an unusual opportunity to study and appraise the decisions and opinions of the Tax Court judges. The opinions of Judge Harron have reflected to a high degree a comprehensive grasp of the factual and legal issues and an impressive knowledge and understanding of the law of Federal taxation to be applied thereto. Her selection and use of controlling authorities has been keen and to the point.

From the incisiveness of the reasoning in her opinions I have gathered that they were based on much independent thought and research, unprejudiced by the inadequacies of presentation of either counsel, but resting rather on the clear applicability of the law to the facts at hand.

I do not recall having at any former time urged acceptance of my personal views as to judicial appointments, but I feel obligated to do so in this instance, because of an earnest conviction that it would be a serious blow to the members of the tax bar as well as to the intelligent development of tax law if Judge Harron's long experience on the tax court bench and her high qualifications for the office were not accepted as requiring her reappointment.

Respectfully yours,

JACOB MERTENS, Jr.

Mr. Chairman, one of the speakers made the comment that he came here reluctantly. I come before this committee with the greatest of pleasure, and with the feeling that it is a privilege to be here.

After practicing at general law in California and Montana for some 8 years, I was appointed a trial attorney in the chief counsel's office of the Bureau, where I remained until the early part of 1937.

I went into the Bureau in August 1927. The first 18 months I was in the so-called Civil Division, which is work before the Federal courts,

trials of cases, and then I was transferred to the Appeals Division which is the Division which conducts the cases on behalf of the Commissioner before the then Board of Tax Appeals.

The first 13 months of my time in the Bureau was spent in a number of different Federal courts, assisting the United States attorneys in presentation of tax cases on behalf of the Government.

I mention that fact because it assumes importance in view of my observations and experiences during the later years before the Board.

From October 1, 1928, until March 1935, I was away from my post of duty in the trial of cases almost as much as I was here, and when I was here, I was trying cases before the Board in Washington.

In 1935 I was transferred again to the Civil Division, so that I was not appearing before the Board when Judge Harron was first appointed and assumed her duties.

Since 1937, I have appeared before Judge Harron in two or three cases; one I lost, one I won; but I have been in her court on numerous occasions, generally on calendar calls, and I have had occasion to and have observed her conduct, particularly as it was directed toward counsel.

I have never observed any of the so-called misconduct testified to here today. I know nothing about those cases in which those things occurred. I was not present and I have no knowledge of them.

Now, when I first began to appear before the Board, principally in the field, that is, in other cities, on what we called field trials, there were at that time 40 or 50 so-called trial attorneys who would go out to whatever city the Board was conducting hearings, and we would try these cases on behalf of the Commissioner. I appeared on numerous occasions before all of the then members. I have not appeared before a number of the new appointees since 1937 because when you are on the outside and representing taxpayers, a very small fraction of the work ever brings you before the Tax Court. The great bulk of your cases and controversies are disposed of through settlement in the Bureau.

The approach of counsel, the attitude of counsel, before the Board of Tax Appeals was and still to a certain degree is vastly different than the approach of that same counsel in the Federal district court. In the first place, the Board started out, as it is, an independent agency. It is not a court of record. The name was changed 4 or 5 years ago, but its functions remain the same.

Counsel, frequently those attorneys in the various cities who stood high in their profession, would come before the Board of Tax Appeals because their client wished them to personally handle a tax controversy. Their demeanor very frequently was one of, "Well, this is more or less of a conference body; it does not assume or have the dignity of a court before, which I am accustomed to practice." No place in the world was that more apparent than in New York City where I have been practicing since 1937.

Now, during that period, from 1928 to 1935, I tried cases for the Board, and before all of its then members in a number of different cities on the west coast, the North, and the South. I witnessed a number of unpleasantries, and I engaged in some. The adage that it takes two to make a fight is just as applicable to an unpleasantry in a tax court as it is any other place. The fault may well have been in some of the cases with the judge. I think, however, in more

instances it was due to the failure of counsel, in the first instance, to control his witnesses, or perhaps because of his lack of knowledge of Board procedure, to make statements which perhaps the judge misinterpreted, and thereby instituting what became a very heated discussion during which remarks were made on both sides that perhaps just as well might have been later deleted, since they did not go at all to the merits of the case.

I have had cases before the Board on behalf of the Commissioner where the record was changed, but those changes consisted of deletions of discussions, exchanges of remarks that had nothing to do with the merits of the case, and the record was just as complete without them as it was with them.

I must make my position clear on this point. Two wrongs never make a right. The fact that counsel may often have been guilty of starting a fight would not condone the judge's loss of temper and resulting heated remarks, of course. The position of the opposition here today is that out of the present 16 judges, and going back through those who have been on the Board and retired or resigned or died in office, only 1 has been guilty of this outstanding misconduct, which they say renders her unfit to hold this office. With that conclusion I cannot concur, because of my own personal experience over a period of years, constantly trying cases before the Board on behalf of the Commissioner, and being a witness to exchanges not always complimentary.

I have been told by certain of the members during the course of some of those trials, in no uncertain language, to either change my line of questioning or to do this or to cease doing that—and I did, and that promptly terminated the difficulty and we resumed the trial.

Had the members of the Board originally been vested with the power, as the State and Federal courts possess, of imposing penalties for contempt, I think that would have had a salutary effect, even back in those years, upon the conduct of certain of the counsel.

Of course, the Tax Court today really has no real power of that sort. I believe a few years ago they were given the right to suspend an offender for 60 days.

Senator MILLIKAN. Do you mean that the Tax Court has no power to prevent a contempt of court?

Mr. WILSON. It has no power to impose a fine or imprisonment. Its only power is to suspend one who is guilty of misconduct before it in open court, for a period of 60 days. I believe I am correct in that statement, and that has only been in the last few years. Originally it did not even have that power.

Some reference was made today to a former member, Miss Matthews, the first woman to sit on the Board of Tax Appeals.

I was personally acquainted with Miss Matthews, in addition to appearing before her on a good many different occasions, and I have personal knowledge that at the conclusion of certain matters, trials, or motions, immediately after the Board had adjourned, Miss Matthews was in a state of such emotional upset that she could hardly speak, and her comment to me was, "If I were a man, I would take care of this." The opposition would have this committee believe that Judge Harron has at different times and under certain circumstances been guilty of suddenly blowing up or of taking the case out of coun-

sel's hands, of rudeness, insulting counsel, and the other offenses that they have enumerated.

I think it is a fair statement, justified by the history of the Board from its inception to the present day, that Miss Harron has been confronted at different times and in different proceedings with the same situations that have confronted every other member of the Board, or of the present Tax Court.

If it has been her custom to fight back, that may not be justifiable, but it is human nature. It does not seem to me that the verbal battles, whatever ones there have been, are of a nature, or that her conduct at those times and places are of a character to justify any conclusion that Judge Harron is unfit to continue in her present capacity.

If the standing and reputation of the Tax Court of the United States has been or is being impaired by her presence as a judge, the United States Supreme Court is wholly unaware of that fact, as based on comments it has made in certain decisions which were referred to by one of the preceding speakers.

I thank you very much for the privilege of appearing before this committee.

The CHAIRMAN. Are there any questions of the witness? If not, thank you very much.

Colonel MCGUIRE. Mr. Chairman, may I call Mr. Huffaker, from Detroit, Mich., because he cannot come back if he cannot be heard today or tomorrow.

The CHAIRMAN. Very well; you may proceed.

STATEMENT OF MELVIN HUFFAKER, ATTORNEY, DETROIT, MICH.

Mr. HUFFAKER. Mr. Chairman, for the record my name is Melvin Huffaker of the firm of Smith & Huffaker, of Detroit, Mich.

After having heard the testimony of everyone all day long, and there probably has been more light than heat, there seems to be absolutely no question concerning Judge Harron's ability to judge a case correctly, and I think that is clear from the remarks of everyone that has spoken here today.

The question would seem to be resolved into whether or not Judge Harron's judicial temperament is appropriate and becoming to a judge.

I was with the Bureau of Internal Revenue, and I tried cases before Judge Harron on many occasions—that is, on three or four calendars, with perhaps some four to six cases each—and I did get to know quite well Judge Harron's attitude and actions, and I believe I had also, up until 1945, tried cases before almost every judge on the Tax Court.

Every judge has his or her peculiarities. Some have a few more than others. They are all human, and when they are rubbed the wrong way they may respond the wrong way, or might feel differently on different occasions, but nevertheless by and large I believe that what comments could rightfully and truthfully be made concerning Judge Harron—and I could make a few myself against Judge Harron, and practically against every other judge at one time or another—would all resolve themselves into really small items in the day's work and

the year's work of an attorney, and I think it depends upon the individual whether it hits him the wrong way at the time or whether it passes over him.

I know at times I have tried cases before Judge Harron up until 11 o'clock at night. There can be no question in my mind as to her physical ability to take punishment because I think the rest of us were about ready to call it a day around 5 or 6 o'clock. But Judge Harron had more vitality, I am sure, than any of the counsel appearing before her.

Something was said here today about records being deleted, and about eliminations.

I happen to be counsel in one of the cases cited, that is, the Lowry case, and that happened to occur, I think the record will show, at about 10 o'clock in the evening.

I can see Mr. Lowry on the stand now as well as I can see you gentlemen here. Judge Harron asked him a question, where he got the idea to form this partnership.

"Well," he said, "I didn't get it anywhere. It was my own idea."

After repetition of the same question of about at least a dozen times, the accountant was called to the stand and asked if he knew where Mr. Lowry got the idea. The accountant stated that he had talked it over with Mr. Lowry.

Then Mr. Lowry was recalled to the stand, and upon questioning, he stated:

> I did not understand what you meant. I would have told you all the time that I consulted with my accountant and my banker, but after all, it was my idea; it was my idea, not theirs. I listened to them and formed my own idea.

That was a misunderstanding which occurred late one evening at about 9 or 10 o'clock, and at that time, gentlemen, anything can happen anywhere. I would not put too much significance as to whether it is in court or any other place, although it is an item.

I came here with no written statement. I will be glad to answer any questions.

I think I have tried about as many cases before Judge Harron as any other attorney. Everything I would say might not be flattering, but certainly anything I would say about any judge might not be 100 percent flattering, and I believe Judge Harron stacks up pretty well and right at the top with Tax Court judges. Certainly as to ability, I would put her in the top bracket.

It is pretty hard to judge a person temperamentally unless you are on the spot and get the feel of the courtroom at the time a remark is made, many of which we all regret after they are said, but nevertheless to err is human, and we all do it, whether judges or someone else.

I am sure Judge Harron calls the balls as she sees them. I have seen her do things and say things that certainly would indicate she was not running for an office or for a popularity contest, and I am sure that Judge Harron is eminently fair-minded, and that she will react in the way she earnestly and honestly believes, without playing favorites on any side. Of course, I do not always agree with Judge Harron's opinions. You cannot practice before any judge for any length of time and agree with all of the opinions because you have spent too much time writing briefs trying to convince the court otherwise.

However, by and large, I could point to only one or two cases where I thought Judge Harron was not correct in the result, but I think that we can rule on all of those things by what has been said today.

I believe the gentlemen from the bar association have, I am sure, admitted that Judge Harron is very capable and her opinions are as good and full of meat and as full of fact as any judge on the Tax Court. I also believe that most of the comments that were made today by the gentlemen would fall more appropriately during the first so-called 5-year period of limitation or exemption that was discussed today. I would think that most of those flare-ups, if any, or whatever else was supposed to have taken place, were in the first years of the judge's career, rather than in the last 5-year period.

I believe that is about all I have to say, gentlemen, unless there are any questions.

Senator MILLIKIN. Mr. Chairman, I should like to ask the gentleman if he has been present at any other trials where there were flare-ups with Judge Harron on the bench?

Mr. HUFFAKER. It is pretty hard to recall, Senator, because in almost any trial with any judge there may be occasions often close to so-called flare-ups, and disagreements and arguments. The Lowry case is the only case I have been personally present when anything akin to a flare-up did occur. As I say, that was under circumstances I will never forget myself. It was very late at night.

Incidentally I have heard Judge Harron make comments to one side or the other, and Judge Harron treats one side just the same as the other.

When I was Government counsel, I would be in line for criticism, as well as others. I have not tried a case before Judge Harron since I entered private practice, but I do know quite well the feeling of attorneys all over, and I do know some attorneys who I would say are a bit thin-skinned and pay a little more attention to a thing like that. They usually are individuals who do not try too many cases before the Tax Court. When they get into a strange court and are feeling their way around, it is much easier to offend anyone like that than it is to the dyed-in-the-wool attorneys who have done a lot of practising and would not pay much attention to comments that would be said to them, whereas an outsider coming in might pay attention to them.

I might also add that I have seen Judge Harron take a case and practically make it for the taxpayer, simply because the taxpayer's attorney had not the experience in trial work; and I have seen cases where she made a case for the taxpayer that would have gone out of the window for lack of sufficient evidence to find for the taxpayer.

I believe that anyone will feel the same way. If she were pro-Government, or protaxpayer, I would say in my own mind that she is protaxpayer, if either. But I have seen her save cases from going by default, for the taxpayers, at different times.

Senator MCGRATH. On that point, is it not a fact that the bar association, if not as an organized effort, but through members of the bar association, has advocated that only members of the legal profession be permitted to practice before the Board of Tax Appeals?

Mr. HUFFAKER. I am sure that is so. My partner, Thomas Smith—and probably the Senator knows him—has been rather active in that, and I believe legislation has now been proposed using the "grandfather" clause.

Senator McGRATH. Is it not a fact that last year we legislated on that subject and just permitted nonmembers of the bar to practice if they have been previously admitted to practice?

Mr. HUFFAKER. I believe that that was proposed but to my knowledge, that has not yet become a law.

Senator McGRATH. You are probably right, but I know there was great discussion in the Judiciary Committee on that matter.

Is it not a fact that the reason the bar association has advocated this change is because they felt that many clients were not properly represented when they went before this court?

Mr. HUFFAKER. They could have felt that way because that is correct.

Senator McGRATH. Therefore, if so, would a judge on this court not only be justified, but duty-bound to protect taxpayer petitioners, to more or less take over when the judge felt that the client was not being properly represented before the court?

Mr. HUFFAKER. That is correct. No judge could conscientiously do otherwise, because so many taxpayers cannot know what counsel they are choosing, and as the saying goes, "Taxation is practically eminent, and also eminently practical."

It means quite a bit to taxpayers. I have seen it on the other side. Any judge that permits a case to be closed without full facts, if the full facts are available, although not brought out, I would say was not doing full justice to the Tax Court, or to the taxpayer, or to the profession.

Senator McGRATH. From your experience, can you say that this particular court, because of the nature of the people that practice before it, perhaps presents many more instances where a judge would have to take part in the trial, than would be found in the ordinary process of a trial in a Federal court, where both sides were represented by members of the bar?

Mr. HUFFAKER. I am sure that is correct, and is much more patience-trying, than practicing before the Federal courts, or any circuit court I am familiar with. It is the type of practice in which, if a certified public accountant or an attorney is not familiar with tax law and tax problems, but may be familiar with some types of procedure—they just do not know how to handle a case—it is apparent to anyone that they do not understand the tax angles, or they would not proceed the way they do, and someone has to help them out because the taxpayer should not be penalized for not having been clairvoyant in choosing counsel.

Senator McGRATH. This next question is meant for the record and it is not necessary that you answer.

It seems to me that we have a situation here where the bar association on the one hand states to us that clients are not being adequately represented in the Tax Court, because they are not being represented by members of the bar, and on the other hand, complaining that a judge in the Tax Court comes to the assistance of clients when they are inadequately represented.

I do not require an answer to that.

Senator MILLIKIN. Mr. Chairman, I would like to ask the witness if he knows of any case where a petitioner has complained because Judge Harron made the case for him?

Mr. HUFFAKER. No. A petitioner, of course, would not complain, I would not think, if the court made the case for the petitioner.

On the other hand, I do know of times when, as a Government attorney, I was anything but pleased to have things brought out that the petitioner's attorney did not, although I felt just as good about it because I, too, would like to see cases tried on their merits, rather than technicalities.

Senator MILLIKIN. It would appear to me that the petitioner would complain if the case was obstructed by the judge, and not when the case was helped by the judge.

Mr. HUFFAKER. That would likely be the case of course. The court might run the risk of just doing opposite to what was being intended to accomplish, that is possible. But I do not know of any case where a petitioner has been in the position of which I spoke, and complained.

The petitioner may have had embarrassing questions asked, and lost the case thereby, and complained. Those I heard a few of; yes. Of course, that would be a situation where such a complaint would possibly arise.

(The following was submitted for insertion in the record:)

SMITH & HUFFAKER,
Detroit, Mich., February 21, 1949.

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: A recent issue of Standard Federal Tax Reports contains the statement that the nomination of Marion J. Harron, of California, for reappointment to the Tax Court of the United States, was sent to the Senate on February 10, 1949. I would very much like to present some facts and observations which might be helpful to you, as chairman of the committee, in arriving at your conclusion concerning confirmation of Judge Harron's nomination.

I am now a tax attorney, in private practice, although for many years I was an attorney in the chief counsel's office, Bureau of Internal Revenue. My original appointment to the chief counsel's office was given me by Justice Robert Jackson, who was then assistant general counsel of the Treasury Department. From 1941 to October 1945, I was stationed with the chief counsel's office, central division, at Detroit, Mich., where my duties were the preparation for, and trial of, tax cases before the Board of Tax Appeals, now the Tax Court. During those years, I tried many tax cases before Judge Marion J. Harron, and I had occasion to get to know Judge Harron quite well. With this in mind, I would like to make comment in behalf of her reappointment to the Tax Court.

Every year that passes makes each of us more aware of the serious nature and practical effect of Federal tax matters. We need good and effective tax laws, together with able and straight-thinking personnel in the tax administration and in the courts to make the tax program most efficient. Sound, judicial interpretation becomes a highly important factor in clarifying and interpreting our tax laws, and in creating a favorable attitude on the part of the taxpayer toward his Government. No system of taxation can be truly effective unless the taxpayers at large feel that any tax contest between them and their Government will be ably and impartially decided if and when they have their day in court.

Judge Harron has the happy faculty of being able to think straight. She also possesses a knowledge of general, as well as tax, law; and although I do not know of her personal background, I would judge she had considerable experience in the business world prior to the time she became a judge of the Tax Court. I have attended hearings before Judge Harron concerning involved matters of business management, operation, and production problems, and Judge Harron appeared to be equally versed in those matters as she was with the tax considerations and effects. Such business or commercial experiences which Judge Harron must have had are decidedly a real asset to any judge hearing and deciding issues on such practical matters as are involved in Federal taxation.

Most tax cases involve questions of fact, and no tax matter can be intelligently decided without a full and complete statement of all of the pertinent facts. I have invariably felt impressed with the time and attention which Judge Harron would give to seeing that the record contained all known facts having a bearing on a given case. She happens to have the remarkable ability of sensing and understanding the issues of a tax case, coupled with a keen and inquiring capacity in developing and ascertaining relevant facts pertinent to a given situation. I would imagine that the statement of facts contained in Judge Harron's cases are in more detail than those of most, if not all, of the other Tax Court Judges. I would say a good example of Judge Harron's opinions is the case of *George H. Thornley*, reported in 2 TC 220 (1943). I chose this case as an example primarily because the Treasury only last month amended its regulations to adopt the rule in the Thornley case. Incidentally, the new rule following Judge Harron's opinion deals with the taxation of endowment proceeds which are payable in installments, commonly referred to in tax circles as "the 3 percent annuity rule."

Regarding the number of cases decided by Judge Harron, I would expect that she hears and decides perhaps more than do most of the judges of the Tax Court, and I believe that a very high percentage of her cases which are appealed have been affirmed by the circuit courts.

A reading of Judge Harron's decisions reveals features quite characteristic of her. They show to me a conscientious effort to state all of the facts in detail, followed by logical assumptions or conclusions. In addition, when dissenting, she usually writes a complete opinion, clearly setting forth her reasons for not agreeing with the majority, and I, personally, have felt that her reasoning was often preferable to that advanced in the majority opinion.

Inasmuch as Judge Harron has had long years of experience as a judge of the Tax Court, you may consider that the foregoing comments add little or nothing to what you already know. However, I have given you these observations in a spirit of trying to be of some assistance to you in considering an appointment involving such a high degree of responsibility and trust.

If you or any member of your committee should care for any further statements or views from me, I shall be very happy to respond fully.

Respectfully yours,

MELVIN S. HUFFAKER.

The CHAIRMAN. Thank you very much.

Colonel McGUIRE. Mr. Chairman, I have one more witness to be heard.

The CHAIRMAN. Very well.

STATEMENT OF HARRY J. RUDICK, ATTORNEY, NEW YORK, N. Y.

Mr. RUDICK. Mr. Chairman, my name is Harry J. Rudick. I am a member of the law firm of Lord, Day & Lord, of New York.

I have been a member of many taxation committees of the Bar Association, National, State, and local, and for 3 or 4 years I was chairman of the taxation committee of the association of the bar of the city of New York.

I am also a professor of law at New York University. I have practiced in the Tax Court for upward of 20 years, and I have tried many cases there, two of them before Judge Harron, both of which she decided against me. One of them was *Kubank* v. *Commissioner*, about which Judge Harron has herself testified.

I had her decision reversed in the Circuit Court of Appeals for the Second District but the Supreme Court reversed the circuit court of appeals and reinstated Judge Harron's decision.

The other case was the Estate of Hamauer against Commissioner, which she also decided against me. I appealed to the circuit court of appeals, which affirmed and then the Supreme Court denied review.

In both of these cases, her conduct of the hearing was completely exemplary.

The Eubank case was tried under stipulation of facts, so there was nothing to do but make a statement of the issues and some oral argument. She did not interfere with either counsel's statement of the case, or with the oral argument.

In the Hanauer case there were five or six witnesses. Again Judge Harron did not interfere with the opening statements of counsel, either myself or the Government counsel; she did not interfere with the calling of the witnesses or the conduct of the trial in any manner, and there was cross-examination of the witnesses, and at no time was there action in the courtroom that was improper.

Like Mr. Phillips, I have traveled around the country a good deal and talked to tax lawyers around the country and some of them have complained to me about Judge Harron's courtroom demeanor, but not one of them has ever asserted that these defects of temperament which she is said to exhibit in the courtroom have ever interfered with her impartial and proper exercise of the judicial function.

Even the gentlemen who have appeared in opposition seem to concede that her decisions are sound, even if her courtroom manner is perhaps not.

I think all of us who are lawyers know that there are judges who are sometimes irascible, short-tempered, and impatient but, if otherwise qualified, we do not conclude they are unfitted to sit on the bench.

In my opinion Judge Harron's alleged imperfections in the courtroom, such as they are, are far outweighed by her capabilities as a judge. As to her knowledge and her impartiality, fairness, industriousness, integrity, I do not think anyone questions those, and I think her nomination should be confirmed.

There is one other point I wish to make: There were rumors that she could not get along with her secretaries. One of her ex-secretaries is now employed by my firm, and works directly under my supervision. I have talked with him about Judge Harron and he said that he never had any difficulty with her.

Senator MILLIKIN. Perhaps she had difficulty with him?

Mr. RUDICK. Not so far as I know. She did not discharge him; he left of his own accord.

The CHAIRMAN. Are there any further questions?

Senator MILLIKIN. Mr. Chairman, as the allegations have developed so far, it seems to me that it comes down to the single question of judicial temperament, that is, in the conduct of hearings, and possibly the related question of deletions in the record of perhaps important matters.

I have heard no allegations that challenge the good character of Judge Harron or assert that her level of intelligence is not equal to the job, or that her production is not satisfactory, except that there has been some question about that in the last year or so.

The question does center on her temperament for the job.

Mr. RUDICK. I think the defects of temperament, assuming they exist, and I have no personal knowledge—my knowledge is hearsay—are far outweighed by her other capabilities.

May I add that of the people who complained to me about her judicial demeanor—and there were not many—I do not think more

than five or six—never until today did I ever hear any charge that she had improperly changed the record in a case. No one ever complained to me about that.

The CHAIRMAN. You realize the importance, do you not, of having an absolutely truthful record in a lawsuit, if you are to get anywhere with a case?

Mr. RUDICK. I do, indeed, and no one has ever asserted that she had improperly changed a record.

The CHAIRMAN. I am not intimating she has, but that charge, if it were established, would be a very serious one.

Mr. RUDICK. I believe so; yes, sir.

The CHAIRMAN. I spent a good deal of my life on the bench, and I also spent some of it in the trial courts, before I went to the reviewing court, and I know how utterly impossible it is to get anywhere with a case if a judge is disposed to color his record.

Mr. RUDICK. On the other hand, is it not reasonable to assume that if there had been any improper alteration of the record, that would have been ground for appeal by the party prejudiced thereby?

The CHAIRMAN. Not necessarily so, because it is impossible to make it appear if the judge does not want a record that reports with absolute verity what went on. It is just impossible to do it. I am speaking now out of my experience in the trial court and as a reviewing court. I am not saying that the charge is true in this case, you understand. But I have had experience with colored records, and yet there was nothing very much that counsel could do about it. It is one of those things that is beyond the reach of judicial process in a practical sense.

Senator MILLIKIN. Mr. Chairman, may I make this observation? I have not understood that anything has been alleged here that Judge Harron has altered the factual or the law part of the record; but that she has deleted those things that concerned alleged outbursts of temper. If that has occurred, it has added to the difficulties of judging whether she does have judicial temperament.

Mr. RUDICK. She certainly has not done it in all cases, because in the appellate court decision from which she quoted, the appellate judge took notice of the fact that counsel for the losing party had alleged that she had acted improperly. So the record there must have contained the asserted objectionable material. I got the impression this morning that she was being charged with deletion of the record without the knowledge or the consent of counsel.

Senator MILLIKIN. I understand that, but I was talking to the type of the deletion.

Mr. RUDICK. I see.

Senator MILLIKIN. If I am not clear on that, I would like to have some more testimony. I have not understood that Judge Harron has eliminated any crucial fact situation from the record. What I understand is that she has deleted those things allegedly that would show violent outbursts of temper and interference with the conduct of the case; things of that kind.

Mr. RUDICK. We know from that one case that she did not do it in that case.

Senator MILLIKIN. I reached no conclusions on it but, if my impression is not clear on the import of the allegations, I would like to be clarified on it.

The CHAIRMAN. I think, Senator Millikin, you have the right concept of what evidence we have received as bearing on that point. I do not mean to intimate any opinion on the facts of the case at all, but I do mean to say that if any judge is disposed to give you a colored record, you are helpless. It does not make any difference what theory you have. There might be an occasional case where you could overcome that, but it is a very difficult process. Practicing law is hard enough without having to overcome those hurdles.

I am not speaking of Judge Harron on that, because that matter is just one of the phases of what is before us, and I am certainly passing no judgment on it. I do think that Senator Millikin has suggested that, as I interpret the testimony at least, the deletion went to evidence of impatience or ill-temper, or something of that kind, matters that might have a bearing on that, rather than on the actual merits of the case, and since Judge Harron does not have a jury, it is difficult, as the court said, to see how that influences the court very much.

If there are no other witnesses, we can conclude the hearing for today.

Colonel MCGUIRE. Mr. Chairman, may I inquire whether you expect to go into executive session before the next hearing?

The CHAIRMAN. We will have to determine whether certain witnesses will be brought down, and we will probably be able to do that on Monday.

Colonel MCGUIRE. We have a number of witnesses, of course, yet to be heard.

The CHAIRMAN. We are not closing the hearing. We are recessing the hearing over until Tuesday, rather than Monday.

Colonel MCGUIRE. If you are going to consider any such question in executive session before we meet again, Judge Harron would like to be heard very briefly on that particular point, that is, about the change in the record.

The CHAIRMAN. We are not going into that. The only thing we may have to have a meeting on is to decide whether or not the witnesses who were asked to come this morning will be called or not. I do not know what that testimony would be, but we certainly would not go into evidence on that point.

Colonel MCGUIRE. Mr. Chairman, I would like to suggest, as an experienced trial lawyer, both in Government and private practice, that this business of striking material from a record, when you are having the trial before a court and not before a jury, that is, when you are before a judge or a commission, is a matter of very frequent occurrence, where there is some outburst between counsel and the court, and I can bring up here any number of reporters who have been reporting here in Washington for 25 or 30 years, who will testify that that is done regularly.

The CHAIRMAN. If they strike anything that goes to the merits of the cause, that is my position, which I have been speaking about.

Colonel MCGUIRE. I do not understand in this testimony that there is any testimony that she did strike out material that bore upon the merits of the case.

The CHAIRMAN. I have not said so.

Colonel MCGUIRE. I understand you have not said so.

The CHAIRMAN. The evidence is in the record. What it is, we will have an opportunity to reexamine.

Colonel McGUIRE. I might mention with reference to the letter that was placed in the record this morning from Senator Reed, that the trial of that case occurred in 1939, after the judge had been on the bench 3 years; that Senator Reed did not file a motion with the court for a correction of the record; that he took the cases to the circuit court of appeals and her opinion was affirmed, and that he applied for certiorari and certiorari was denied.

The CHAIRMAN. Is there anything else to come before the committee at this time?

Mr. PHILLIPS. Mr. Chairman, I think it would have to be understood that if the executive session is held on Monday, that the witnesses could not possibly be available on Tuesday, since many of them come from distant cities.

The CHAIRMAN. We are not planning on a session at all, but we will have to make the decision sometime between this hour and Tuesday at 10 o'clock, whether we bring those witnesses, and at that time we can advise you. There are other witnesses here of Colonel McGuire's, to be heard.

Mr. PHILLIPS. In other words, the witnesses under subpena will be heard at a later date than Tuesday?

The CHAIRMAN. They will have to be; yes.

We will recess now until 10 o'clock Tuesday.

(Whereupon, at 5:55 p. m., the committee was recessed, to reconvene at 10 a. m. Tuesday, April 19, 1949.)

NOMINATION OF JUDGE MARION J. HARRON

TUESDAY, APRIL 10, 1940

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 312, Senat Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George (chairman), Johnson, Hoey, McGrath, Millikin, Butler, Brewster, Martin, and Williams.

The CHAIRMAN. At the time of recess, we were hearing the witnesses in behalf of Judge Harron.

Colonel McGUIRE. I believe it was agreed that you would call your witnesses. You may call your next witness, if you wish.

Colonel McGUIRE. Thank you, Mr. Chairman. I will call Mr. Arent.

STATEMENT OF ALBERT E. ARENT, ATTORNEY, WASHINGTON, D. C.

Mr. ARENT. Mr. Chairman and members of the committee, my name is Albert E. Arent. I practice law here in Washington in the Ring Building, as a member of the firm of Posner, Berge, Fox & Arent. I am a member of the New York and District of Columbia bars.

Senator George and members of the Senate Finance Committee, having had personal experiences in trying cases before Judge Harron, which contrast rather sharply with some of the remarks I heard here last week, I am happy to have the opportunity to tell this committee what those experiences were.

As a matter of fact, 12 years ago I tried my very first case before Judge Harron; and, despite the fact that I was plenty green and must have tried her patience, she was very fair and indulgent, and the memory of that case is still a very pleasant one.

That experience was repeated in subsequent cases. I had five cases in all before Judge Harron.

In one case, I recall the attorney on the other side tried repeatedly to get in some evidence which I thought was inadmissible, and my objections were sustained. As the attorney continued to come back with the same line of questioning, Judge Harron finally took over the questioning herself. She had asked a few questions which seemed to me were going to bring out more cleverly and indirectly the same thing I had succeeded in excluding through the attorney.

I therefore got to my feet and objected to the Judge's line of questioning, pointing out that the case was of considerable importance to the Government, and that I felt constrained, in protecting the interests of the Government, to object to the judge's line of questioning, and asked that the last question be withdrawn.

Judge Harron looked a bit surprised, as I recall, and overruled my objection. Then a half smile crossed her face; she asked one more question, and ceased that line of questioning.

It seemed to me that with that experience I would never have any fear of the case being taken away from me.

In other cases, I never had occasion to face that particular problem.

I was very much impressed with Judge Harron's legal ability and courage as a judge in connection with the Eubank case, which ultimately went to the Supreme Court.

Senator MILLIKIN. Would you please spell the name of that case?

Mr. ARENT. E-u-b-a-n-k. It was a question of assignment of income. The authorities were in great confusion on it. There was dictum in the circuit court to which this case could be appealed, which could have suggested that the chances of not being reversed were greater if the judge took the position of the taxpayer. Judge Harron dug deeply into the case, held it a long time, went back to first principles, and succeeded in carrying the Tax Court, I believe, about 13 to 3, with her on that case. That was reversed in the Second Circuit Court, and the Supreme Court upheld her. I think it is a very distinguished piece of legal work.

If I may comment in passing, I have tried cases for the Bureau of Internal Revenue and the Department of Justice for 9 years, and a few cases in private practice in 4 or 5 years since, and there have been a good many occasions when I heard judges dress down lawyers, take over the questioning and even strike matters from the record.

I remember particularly one instance in which a judge expressed his opinion of the court of appeals in his jurisdiction perhaps a little too freely, and, after doing so, asked that it be stricken from the record.

I do not know the details of the matters to which the gentlemen were referring last week, but I should like to point out that in general these things do occur. Sometimes they are thoroughly justified; sometimes they represent human frailty, and I feel personally that they are somewhat less important than the permanent things, like fairness in reaching the final judgment, where I think Judge Harron's distinguished record in more than 500 cases shows that she is fair and objective and does reach sound judgment. She shows ability to analyze the facts and the law; she shows ability to write sound and understandable decisions, and she has now acquired experience in tax law, which is hard to get and which is an asset which should not lightly be discarded, in my opinion.

I have only one final comment. I heard some reference last week about the striking of matters from the record. I get the impression that the matters primarily are remarks of the judge.

Now, the striking of such material, which amounts to cleaning up the record, might be regarded as a fairly serious matter if the judge's conduct was under attack at the time, if the counsel, for example, was seeking to make something on appeal, or seeking a new trial, based upon the judge's conduct, but I hope in considering these matters that this committee will not overlook the fact that the issue which is before this committee was not involved at that time at all. No one was questioning Judge Harron's conduct as a judge, and it would seem to me that if she cleaned up the record a bit, as I have known other judges to do, it might have been done for reasons of personal pride or out of

respect for higher standards of judicial dignity than human frailty always permits.

Thank you.

The CHAIRMAN. Are there any questions of the witness? If not, thank you, Mr. Arents.

Colonel McGuire, will you call your next witness, please?

Colonel McGUIRE. Mr. Chairman, I have asked Mr. Ward, of Ward & Paul, reporters in Washington for many years, to make a short sttaement with respect to his experience in reporting many commissions and board and courts, as to what the practice is with respect to striking material from the record.

The CHAIRMAN. Do you mean that you are qualifying him as an expert witness?

Colonel McGUIRE. Yes, sir. He will state his experience.

STATEMENT OF JESSE L. WARD, WASHINGTON, D. C.

Mr. WARD. Mr. Chairman and members of the committee, my name is Jesse L. Ward, of Washington, D. C., member of the firm of Ward & Paul, shorthand reporters.

Mr. Chairman, I would not attempt to qualify as an expert. Colonel McGuire asked me to appear before this committee today to state something with regard to the practice of presiding officers in hearings before commissions, boards, courts, and so forth, in controlling what goes into the record.

First, I should state that my firm has had contracts to report the hearings for a great many departments of the Government. At one time we had the contract to report the hearings of the Board of Tax Appeals, which is now the United States Tax Court, and I would guess that we have had at one time or another practically every one of the Government agencies around Washington, in addition to some congressional committees, occasionally.

This work is done under contract, and the contract has specifications that govern the conduct of the reporter. I think without any exception that all of the contracts have a provision that states the examiner or presiding officer, representing the board or commission or department having the reporting done, shall have control of the record. In other words, that the reporter shall take down everything that is said at a hearing, unless instructed not to do so by the examiner or the presiding officer.

In making the transcript, the reporter shall transcribe everything that is spoken during the trial or hearing, except such matters as the reporter may be instructed to omit by the presiding officer or examiner. There is nothing in those instructions or regulations that provides for changing the record at all, but the presiding officer is always understood to control what is put on the record and what is not. If it is put on the record, the presiding officer or examiner is understood to control what the reporter shall transcribe, and what he should leave untranscribed.

As I understand it, that is about all I have been requested to state. That is the practice in all the Government agencies.

With reference to courts, you gentlemen are all lawyers, and you know as well as I do what the practice is.

The CHAIRMAN. Are there any questions of Mr. Ward?

Senator MILLIKIN. Mr. Chairman, I should like to ask the witness: Is it also the practice for the reporters to keep their notes?

Mr. WARD. Yes, Senator. Reporters are supposed to keep their notes for several years, at least. The regulations, I think without exception, specify a minimum number of years that reporters shall keep their notes.

Senator MILLIKIN. The reporter does not change his notes; does he? In other words, he may alter the transcript, but the notes remain unchanged?

Mr. WARD. That is absolutely right. He should not alter the transcript, Senator, I might say. He should merely leave out of the transcript that which he has been instructed by the examiner or presiding officer. That may be considered altering. In other words, if properly instructed, he can omit certain phrases he has taken down, but he cannot change his notes.

Senator MILLIKIN. According to your testimony, he does what the judge tells him to do. However, all I am saying is that the reporter retains his own notes as they were, without any changes?

Mr. WARD. That is absolutely right; he makes no change in his notes.

Senator MCGRATH. For what period does your contract provide that the transcript notes be retained?

Mr. WARD. Senator, they vary. I think the minimum is 1 year and the maximum is 5 years. I do not believe there is any provision for a period beyond 5 years. I might say that different commissions and boards have different rules and regulations with regard to the retention of notes.

Senator MCGRATH. In other words, it would not be unreasonable if notes were not available over a period of 5 years?

Mr. WARD. No, Senator; they would not likely be retained longer than that period. Many do not retain them longer than that for the reason that, when a reporter is paying rent for office space, the notes become a very expensive item to carry on hand or store.

Senator MCGRATH. What would you say is the average length of time that notes are kept in your own firm?

Mr. WARD. In our own firm, we have a minimum of, I would say, three years at least, excepting in the case of congressional committee open hearings, which are printed. In the latter case, we generally do not keep the notes longer than a year.

Senator MCGRATH. Could you tell us with what degree of frequency presiding officers, including judges, exercise the right of changing records? In other words, does it happen with great frequency or in the majority of hearings that are transcribed?

Mr. WARD. No, Senator; it is very seldom. I do not know of any case where they really changed the record.

Senator MCGRATH. I am speaking now about corrections, or a deletion of some remark that has been made.

Mr. WARD. It is extremely seldom, Senator. It would be very difficult to say. It is very seldom, but it does happen occasionally. In other words, some examiners and some presiding officers are much more meticulous with respect to the record than others.

To cite you an example, I know in one case which we had, the first hour of the session every day was devoted to the discussion of whether or not the proper word had been used to express the exact meaning. There it was not a question of correcting the reporter's notes, it was a correction of the language of counsel or the member of the court, and each one has his own ideas.

To illustrate, we had one case before the Federal Trade Commission in which the examiner would not let in more than one-tenth of the testimony that was adduced. In other words, he would not permit the reporter to make the transcript more than one-tenth of the testimony. It became such a notorious case, that finally the Commission agreed that the reporter could take down the testimony and make two transcripts, one official transcript for the Commission, which contained only that part which the examiner said should go in the record, and then for the counsel representing the respondent, I suppose, they could make a complete verbatim transcript of everything that happened. That particular case, I believe, consisted of about 30,000 pages. The case extended over several years, but my firm did not have the contract all of the time.

Senator McGRATH. There is another practice that examining officers indulge in which differs a little bit from what you are talking about. You are talking now about the situation where something has been said, becomes a part of the record, and later it is taken out. There is another practice pretty well engaged in whereby the presiding officer, or members of the committee, before they make their statements, ask that it be off the record, in which case I always notice that the reporters stop taking notes. They respect that sort of request. That is rather general in transcription work, is it not?

Mr. WARD. That is true in congressional hearings, Senator, and before various commissions, too, where there is not a jury present.

Senator McGRATH. Is that not also pretty general in courts? In other words, have you not often heard a judge say "Don't take this down, it is off the record"?

Mr. WARD. That is true, Senator, if there is not a jury present. If it is a jury case, the reporter should take down everything that the jury hears.

Senator McGRATH. Directing ourselves to the problem at hand, there are no juries in the Tax Court cases?

Mr. WARD. That is right.

Senator McGRATH. You have had a lot of experience in the Tax Court, have you not?

Mr. WARD. Yes, sir. That is, I have had much experience with the work of the Tax Court, as the contractor, but not so much reporting myself.

Senator McGRATH. And what I have just illustrated happens generally, does it not?

Mr. WARD. It happens all the time, Senator, and many times a day.

Senator McGRATH. Also, very often, if the judge forgets to say "Off the record" before he makes a remark aside, he may correct it later. So it comes out to the same thing, whether he takes it out of the record after it is put in, or prevents it from going into the record in the first place.

Mr. WARD. That is correct, Senator. The judge has control of the record. In other words, the judge or examiner has complete control of the record.

Senator MILLIKIN. Mr. Ward, in the type of case mentioned by Senator McGrath, both counsel would be present, would they not, where there is such an occurrence in the courtroom?

Mr. WARD. Yes, Senator Millikin. I do not know of any case where a judge or examiner asked the reporter to delete something from the record in the absence of one or other of the counsel. I do not know of any case such as that.

Senator MILLIKIN. Senator McGrath was speaking of an instance where the judge instructed the reporter to go off the record.

Senator MCGRATH. That is right, during the course of the hearing.

Senator MILLIKIN. In that kind of a case, it would be done in the courtroom, and the counsel would be present, and if anyone did not like it, he would object?

Mr. WARD. Certainly, Senator.

Senator MILLIKIN. And if he objected, I assume that the court would permit some sort of a record entry that would show the objection?

Mr. WARD. Yes, sir.

Senator MILLIKIN. If not, he could make an offer and cover himself as best he could.

Mr. WARD. I think it is the reporter's duty, regardless of what controversy comes up as to what should or should not go in the record, to put it down and be governed by the presiding officer as to what he transcribes. In that way it would be available to the appellate court or to the lawyer aggrieved.

Senator MILLIKIN. These changes that you speak of that are made in the judge's chambers, those are mostly to correct grammar and things of that kind, are they not?

Mr. WARD. Oh, yes, sir. Senator, I do not recall any that were made in the judge's chambers. In other words, unless a judge specifies in the open courtroom that something should be left out, the reporter transcribes the proceedings as his notes read. Then the corrections are made by the judge or someone else, and not by the reporter. They do not call the reporter in. I do not know of a case where the reporter has been called in and asked to make certain changes in his record.

I might say that they do have what are called "errata sheets" in the long-drawn-out investigations, where both sides agree to make certain corrections in the record. Sometimes one side may not agree, and then it is up to the board or commission to pass on whether it shall or shall not be changed.

Senator MILLIKIN. You do not remember any case where the judge, out of the presence of counsel, and before the typing of the notes, requested the deletion of something from the record?

Mr. WARD. No, sir; I do not.

The CHAIRMAN. Are there any other questions of Mr. Ward? If not, very well, Mr. Ward. Thank you, sir.

Colonel McGuire, will you please call your next witness?

Colonel MCGUIRE. Mr. Chairman, I will call Mr. Coote.

STATEMENT OF WESLEY A. COOTE, SHORTHAND REPORTER, WASHINGTON, D. C.

Mr. COOTE. Mr. Chairman and members of the committee, my name is Wesley A. Coote. My business address is Columbia Reporting Co., 631 Pennsylvania Avenue NW., Washington, D. C.

During the period May 27, 1946, to June 12, 1946, at Pittsburgh, Pa., I personally reported the 27 cases before the Tax Court of the United States, heard before Hon. M. J. Harron, Judge. The court was in session every week day, including Memorial Day, from 9:30 or 10 o'clock each morning, until about 10 o'clock or later in the evening, with the usual luncheon and dinner recesses.

During the course of the consolidated hearing in the matter of Charles W. Heppenstall, Sr., Docket 5437, and Samuel B. Heppenstall, Jr., Docket 7028, heard June 4 to 7, 1946, certain proceedings took place, which on June 7, 1946, Judge Harron instructed me in chambers to physically strike from the record.

The contract under which I was performing my duties at that time contained the following specification, among others:

(a) (6) No part of the proceedings in any hearing, notes of which have been taken, shall be omitted from the transcripts unless the judge presiding so directs.

In accordance with that specification I omitted the afore-mentioned part of the proceedings from the transcript of the case. I asked Judge Harron if she would place her written instructions in my notes at the point where she wished the material stricken, and the following appears in my shorthand notes at that point:

Portions here to be shown as off the record by agreement of Mr. W. A. Seiffert, chief counsel for petitioners, and Mr. Hobby McCall, on June 7, 1946.

M. J. HARRON, *Judge.*

PITTSBURGH, *June 7, 1946.*

Mr. Hobby McCall was counsel for the Bureau of Internal Revenue, respondent in the matter.

To the best of my recollection this was the only instance during that calendar I was requested to physically strike any material from the record. If there were any other instances of physically striking part of the proceedings, they occurred immediately after the stricken material was recorded and were so stricken by me in accordance with such a ruling from the judge presiding, and in the presence of all counsel in the courtroom.

Paragraph (*a*) (6) of the contract specifications provides further:

The reported shall record * * * everything spoken during a hearing, unless the judge presiding shall direct otherwise.

Under this specification of the contract I was required to refrain from recording any part of the proceedings which took place after the judge presiding directed "Off the record," until such time as the judge presiding again directed "On the record."

The official transcripts filed with the Tax Court of the United States contain a complete record of the proceedings in every case heard during the calendar in question, with the exception of the parts of the proceedings which were physically stricken under written instructions from the judge presiding in the Heppenstall matter.

However, in March 1948, I prepared a transcript of that stricken material for my own use, in connection with a request from the office of the chief counsel of the Bureau of Internal Revenue, respondent in the case, to read that and other parts of the record of the proceedings. Such transcript is available for the information of your committee if you so desire.

The contract for reporting services in connection with the Tax Court of the United States requires that the reporter's notes remain available for a reasonable length of time. In cases where the transcript has been filed with the court and copies have been supplied to all parties to the proceeding, 2 years is considered a reasonable length of time to keep such notes available. Accordingly, the reporter's notes in the Hoppenstall case were destroyed in January 1949, which was over 2½ years after the case was heard.

Mr. Chairman, that is all I have to say.

The CHAIRMAN. You say that you have the corrected transcript, which you made subsequently?

Mr. COOTE. I have a transcript of those portions that were physically deleted, Mr. Chairman.

The CHAIRMAN. Only of those portions?

Mr. COOTE. That is right, sir.

The CHAIRMAN. Of course, the full transcript is of record, I presume, somewhere in the court?

Mr. COOTE. The full transcript is of record with the Tax Court of the United States, Mr. Chairman.

The CHAIRMAN. Have you that deleted portion, that you reproduced, with you here?

Mr. COOTE. Yes, Mr. Chairman.

The CHAIRMAN. Is it attached to your brief?

Mr. COOTE. Yes, Mr. Chairman.

The CHAIRMAN. You say you were directed or requested to make some additional parts of the transcript in this particular case to which you have referred at Pittsburgh?

Mr. COOTE. Yes, that is right, Mr. Chairman.

The CHAIRMAN. By whom were you requested to do that?

Mr. COOTE. I believe it was Mr. Leming and Mr. McCall of the Bureau of Internal Revenue.

The CHAIRMAN. When was that request made of you?

Mr. COOTE. It was in March 1948, just at Eastertime. It was just about a year ago now, Mr. Chairman.

The CHAIRMAN. It was more than a year after you had actually made the record?

Mr. COOTE. It would be about 21 or 22 months after I had first taken the record; yes, sir.

The CHAIRMAN. Why was it a subject matter of inquiry at that time, and why were you requested to make a new transcript or furnish whatever evidence that you were requested to furnish?

Mr. COOTE. Mr. Chairman, I do not know just exactly why I was requested to furnish it, but at that time I received a call from the chief counsel's office, and I was requested to look up my original notes and supply a transcript of any portions that had been physically deleted from the record. Also, they wanted transcripts of certain material they thought was in the record, which actually was not in the record, because it was off-the-record discussion.

The CHAIRMAN. What I am trying to get at is why had it become a subject of inquiry 21 months after you had taken the record and presumably had completed your job, within a reasonable time, at least, after the hearing. Do you know what occasioned the inquiry?

Mr. COOTE. No; I do not know why they inquired, Mr. Chairman. All I could do is guess at that, sir.

Colonel MCGUIRE. Mr. Chairman, may I say that Mr. Wenchel is here as a witness, and he, I believe, was general counsel at the time this occurrence took place, and I will put him on the witness stand shortly. The reporter would not know what the reason was.

The CHAIRMAN. He might know. I am asking for matters of his own knowledge.

Mr. Coote, so far as you know, the request was made to you by the general counsel of the Commissioner of Internal Revenue; is that right?

Mr. COOTE. That is right, sir.

The CHAIRMAN. And that was some 21 months after you had actually made the record in this case?

Mr. COOTE. Yes, sir.

The CHAIRMAN. Are there any questions of the witness?

Senator MILLIKIN. Yes, Mr. Chairman.

Mr. Coote, I notice in your statement here that Judge Harron instructed you in chambers to physically strike from the record certain parts of the record; is that correct?

Mr. COOTE. That is right, sir.

The CHAIRMAN. Was anyone present in the chambers except yourself and Judge Harron?

Mr. COOTE. I do not think so, sir, unless the clerk of the court may have been present. That I cannot remember.

The CHAIRMAN. Were any of the lawyers present?

Mr. COOTE. No, sir.

The CHAIRMAN. I notice you had a notation put upon your notes as follows:

> Portions here to be shown as off the record by agreement of Mr. W. A. Seiffert, chief counsel for petitioner, and Mr. Hobby McCall, on June 7, 1946.
>
> M. J. HARRON, *Judge*.
>
> PITTSBURGH, *June 7, 1946*.

Did you know of your own knowledge that Mr. Seiffert and Mr. McCall had agreed that those portions were to be stricken from the record?

Mr. COOTE. No, sir; that is why I asked Judge Harron if she would sign the notes for me, in order that I would have a complete story in my notes. I might say that I made that request out of an abundance of caution.

Senator MILLIKIN. You demurred in doing this without that sort of notation?

Mr. COOTE. Senator, I do not think I actually demurred. I requested it, and there was no question on Judge Harron's part. She immediately complied with my request.

Senator MILLIKIN. At any time subsequently, did any counsel interested in the case ask you for that part of the record?

Mr. COOTE. This request from the chief counsel's office of the Bureau of Internal Revenue was from Mr. Hobby McCall, along with others. At least, Mr. McCall was there when I came over to read the notes.

Senator MILLIKIN. Was he supplied with that part of the record?

Mr. COOTE. No, I read that part of the record, but I said that I would not supply a transcript of it unless I received an order from authority, either as high as Judge Harron, who tried the case, or a judge of higher jurisdiction, the presiding judge of the Tax Court. I never received any order, so it was not supplied.

Senator MILLIKIN. You never received that kind of authority, so you never supplied that part of the transcript?

Mr. COOTE. That is right, sir.

Senator MILLIKIN. That part of the transcript is attached to your testimony here?

Mr. COOTE. That is right, sir. That is the transcript I wrote up for my own use so that I could read it from typewritten form, instead of my shorthand notes.

Senator MILLIKIN. You reported how many cases that were being tried before Judge Harron?

Mr. COOTE. I reported 27 at that calendar.

Senator MILLIKIN. What would you say is the custom of Judge Harron, compared to other judges, as to what might be called taking over the case, and asking questions of the witness?

Mr. COOTE. I do not know if I am competent to judge that, Senator. I noticed that the first witness your committee heard this morning, mentioned Judge Harron taking over the questioning of one witness. I would say that is not at all unusual.

Senator MILLIKIN. Did you at any time advise anybody that in the record you prepared for Judge Harron, questions by the judge appear more frequently than in the normal course of trials before other judges?

Mr. COOTE. Did I ever inform someone?

Senator MILLIKIN. Yes.

Mr. COOTE. I believe when I was asked about that I said "Yes, it was my opinion that I had more colloquy in Judge Harron's cases than I do in other cases before the judges of the Tax Court."

Senator MILLIKIN. While you were in Pittsburgh, attending those cases, did you witness any incident that might go to the allegation that Judge Harron is a lady of bad temper?

Mr. COOTE. Again, that is pretty difficult for me to answer, Senator. If I had a specific instance recalled to my memory, perhaps I could answer your question.

Senator MILLIKIN. Were you witnessing or taking down the record in a case where one of the counsel started to leave the case, or did leave the case, during its progress, because he was apparently dissatisfied with the way things were going, and as he was about to leave the courtroom, Judge Harron demanded that he return, or that she would see that he was disbarred, or something to that general effect?

Mr. COOTE. I remember the last few words of your question, Senator.

Senator MILLIKIN. Can you tell us of the incident?

Mr. COOTE. It is a long time ago, Senator, and I cannot remember exactly, but I remember at one time during the calendar one counsel was about to leave the courtroom for some reason or other, and I remember Judge Harron calling to him and telling him that if he did not come back and continue with his case she would take steps to have him disbarred, or something to that effect. That is all I remember about it.

Senator MILLIKIN. You do not recall the circumstances under which he started to leave the courtroom? Did he leave the courtroom, or did he come back?

Mr. COOTE. I cannot remember for certain, Senator, but I am sure that he would come back, so I believe he did.

Senator MILLIKIN. The substance of the judge's direction to this lawyer was "Come back or I will take steps to have you disbarred"; is that correct?

Mr. COOTE. According to my recollection; yes, Senator.

Senator MILLIKIN. And you do not remember, on thinking about it, what the particular things were that occurred that caused the lawyer to want to leave the trial while it was in progress?

Mr. COOTE. No, sir; I do not know. All I remember is something of that nature taking place.

Senator MILLIKIN. I think, Mr. Chairman, while we have the witness that we should authenticate by his testimony—he is the only one capable of authenticating it—these excerpts which were omitted from transcripts and which appear as annexes to his statement.

The CHAIRMAN. Yes, I was undertaking to do that and asked the witness if the stricken portions of the record were attached to his statement.

Mr. COOTE. Mr. Chairman, the portions to which you refer are attached to my statement, if you wish it for the use of the committee. I attached it for that purpose.

The CHAIRMAN. I wanted you to identify it.

Will you please, then, turn to page 1 of what, I suppose, might be called an exhibit. Your statement is three pages, and then follow portions of the record which were deleted pursuant to the instructions of the judge presiding in the case, as stated, at Pittsburgh, June 4, 1946.

Will you please identify those?

Mr. COOTE. Mr. Chairman, there are eight numbered pages of the portion to which you refer, and they consist of the testimony that I deleted from the transcript of the record in the Heppenstall case at the request of Judge Harron.

The CHAIRMAN. And these pages do correctly set out exactly what took place at the hearing of the case and the deletions noted in this statement that you are furnishing this committee; is that correct?

Mr. COOTE. That is right. That is an actual transcript of the portions that appeared in my shorthand notes and which I did not transcribe into the official record.

The CHAIRMAN. And it gives in detail all that occurred in regard to that particular incident in that hearing; is that correct?

Mr. COOTE. That is right, sir.

Senator MILLIKIN. Mr. Chairman, I suggest that the witness read the deleted parts of the record, which he has set forth here, because that will probably be our only opportunity to get at it.

The CHAIRMAN. Yes. Turning to page 1, Mr. Coote, suppose you read to the committee that part of the record which you have transcribed for the use of the committee.

Senator MILLIKIN. May I ask if what you are going to read is that part of the record affected by the notation which you described a while ago.

Mr. COOTE. Yes, sir.

The CHAIRMAN. Will you read aloud at this point, beginning where certain instructions were given to you?

Mr. COOTE. Yes.

At this point these instructions in the handwriting of Judge Harron appear in the reporter's notes, and said instructions are signed M. J. Harron, Judge:

Portions here to be shown as off the record by agreement of Mr. W. A. Seiffert, chief counsel for petitioner, and Mr. Hobby McCall, on June 7, 1946.

M. J. HARRON, *Judge.*

PITTSBURGH, *June 7, 1946.*

The CHAIRMAN. At that point, Mr. Coote, had there been any request made of you before to eliminate any portions of the record?

Mr. COOTE. No, sir.

The CHAIRMAN. At the first suggestion that anything be eliminated or deleted, you requested the judge to make this notation in your record; is that correct?

Mr. COOTE. That is right.

The CHAIRMAN. And the judge did make the notation which you read?

Mr. COOTE. That is correct, sir.

Colonel MCGUIRE. Mr. Chairman, may I make a little statement there?

The CHAIRMAN. Yes.

Colonel MCGUIRE. Mr. Chairman, the young lawyer who was involved there as counsel for the commissioner was a young man, as was shown from the testimony, and this testimony went to his competency to handle that kind of a case. He is now in private practice in one of the States of the Union. At the time Judge Harron had this portion deleted from the record, I am told it was done in order not to injure the young man, and yet bring the matter to the attention of the bureau; that is, of sending out an untrained lawyer to handle this kind of a case.

I question if it would not be doing the young man an injury, perhaps—at least I would like to have the committee consider that—if it comes out in a public hearing as to his lack of training in this matter. It does not go to the merits of the Heppenstall case in any way whatsoever. It merely concerns his capacity to handle a case of this type.

The CHAIRMAN. Of course, the committee will be judge of that, Colonel, and we have no desire to reflect on anyone who is not a party to this matter, or anyone who is a party. We are simply trying to get the facts.

Will you proceed to read what you did delete, Mr. Coote?

Mr. COOTE. Mr. Chairman, the portions shown as off the record are as follows:

The COURT. I think the simplest thing for us to do is to have Mr. Grimes try the case and testify at the same time. You have the exhibits, and you have been assisting in the trial of this case from the beginning, Mr. Grimes. Now I am going to ask you to give these exhibits to the clerk to have them marked, and Mr. McCall, you can sit down; and you might suggest to Mr. Allen or Mr. Miller that hereafter I do not consider it—and I do not think the other judges of the Tax Court consider it—good form for an expert witness in the case to be assisting in the trial of a case.

Now, you have been sitting at counsel table throughout the trial of this case, assisting Mr. McCall and now you are the expert witness. It is difficult for you to be both the expert witness and the representative of the Government trying this case.

That is the end of the first portion that was stricken.

After the first deletion that I read, ending with "Government trying this case," the following was left in the official transcript:

The COURT. I do not know how we are going to go on if Mr. McCall isn't going to be able to get these in evidence, distribute them to counsel and to me, and enable you to testify so you can refer to the exhibits identified by letter, as you testify.

The CHAIRMAN. Would you be able to identify Mr. McCall? What connection did he have with the case?

Mr. COOTE. Mr. McCall was the counsel for the Bureau of Internal Revenue, the respondent in the matter.

The CHAIRMAN. And Mr. Allen?

Mr. COOTE. Mr. Allen, I believe, is division counsel in that district.

The CHAIRMAN. And Mr. Miller?

Mr. COOTE. He is associated with the division counsel's office. I am not sure of their titles.

The CHAIRMAN. And Mr. Grimes?

Mr. COOTE. Mr. Grimes was the expert witness, appearing in support of the Government's case.

The CHAIRMAN. Very well. Now, then, will you proceed, please?

Mr. COOTE. Further matter physically stricken from the record at this point is as follows:

The WITNESS. I shall not defer to Your Honor's suggestion that I try the case. I am not an attorney and I am not going to try the case.

The COURT. I think you can very well advise Mr. Hartford Allen and Mr. Miller that when there is a deficiency in the case of $370,000, and when a taxpayer is put to the trouble of having to employ expensive expert witnesses, who take several days in the trial of the case, and who think the case is important enough to have in the courtroom at the counsel table four attorneys and one accountant, that then the Government is entitled to be represented by a lawyer who has some experience in trial work.

I make that statement for the record. I would like you to convey it to Mr. Allen and Mr. Miller.

Mr. MCCALL. I will convey that myself, Your Honor.

The COURT. Now, you are going to try the case.

Then the official transcript continues, as follows:

The COURT. Mr. McCall, you may proceed.

The official transcript continues, for I do not know how many pages, until a short recess was taken.

During the recess, the following discussion took place, in the judge's chambers, and was prefaced with the instruction from Judge Harron to insert a heading in the transcript, "During the recess the following was stated into the record, so as not to cause Mr. McCall any embarrassment."

Apparently, it was later decided not to make this a part of the record.

Senator MILLIKIN. Was anyone present beside yourself when Judge Harron gave that instruction?

Mr. COOTE. Senator, do you mean when she gave the instruction not to make this a part of the record?

Senator MILLIKIN. It states "During the recess the following discussion took place in judge's chambers, and was prefaced with the instruction from Judge Harron to insert a heading in the transcript 'During the recess the following was stated into the record so as not to cause Mr. McCall any embarrassment.'"

Then you go on and say, "Apparently, it was later decided not to make this a part of the record."

Who was present in the judge's chambers when that occurred?

Mr. COOTE. I cannot be absolutely certain, Senator, but I feel sure that there was only Judge Harron, Mr. McCall, and myself present in chambers during that recess.

Senator MILLIKIN. Mr. McCall was there?

Mr. COOTE. Oh, yes.

(After reading the transcript, Mr. Coote submitted the following explanation of the above reply:)

I thought Senator Millikin was referring to the instruction to insert the heading in my notes. If that is so, then my answer remains the same as recorded. However, if the intent of his inquiry was to elicit from me the facts as to who was present when "apparently it was decided not to make this a part of the record," then my answer should have been to the effect that there was no one present other than Judge Harron, myself, and perhaps the clerk, when I received instructions to delete that further material from the record. The material under that heading in my notes was stricken in accordance with the judge's instructions which I stated at page 239 of this transcript.

Senator MILLIKIN. Thank you.

Mr. COOTE. The stricken material is as follows:

The COURT. Mr. McCall, when were you admitted to the bar?
Mr. MCCALL. In 1943.
The COURT. In what month?
Mr. MCCALL. April.
The COURT. In what State?
Mr. MCCALL. The State of Texas.
The COURT. Were you employed in any law office?
Mr. MCCALL. Prior to my being admitted to the bar?
The COURT. Before or after.
Mr. MCCALL. Before and after, yes, ma'am.
The COURT. For how long?
Mr. MCCALL. Before being admitted to the bar, I was employed as a lawyer, part-time basis, while going to law school. This is all of record in my record in the chief counsel's office.
The COURT. I want it of record in this case. And afterward?
Mr. MCCALL. After finishing my military service, I was employed in a law firm as an attorney.
The COURT. For how long?
Mr. MCCALL. From the beginning of my terminal leave in September of 1945 to March 1946.
The COURT. How long were you in the service? What is the date of your induction?
Mr. MCCALL. The date of my induction was March 9, 1942.
The COURT. What was the date of your discharge or separation?
Mr. MCCALL. My terminal leave began September 15, 1945. That leave terminated December 5, 1945.
The COURT. Your terminal leave ended on December 5, 1945.
Mr. MCCALL. Yes, ma'am.
The COURT. When did you obtain a position in the Bureau of Internal Revenue?
Mr. MCCALL. March 1, 1946.
The COURT. Did you obtain your position here in Pittsburgh?
Mr. MCCALL. I was sent to Pittsburgh.
The COURT. What time did you take up your duties in Pittsburgh?
Mr. MCCALL. March 1, 1946.
The COURT. So the calendar in this case was called on May 27, 1946, and you came to Pittsburgh on March 1, 1946. Have you ever tried a valuation case before?
Mr. MCCALL. No, Your Honor.
The COURT. How many calendars of the Tax Court have been held here since March 1, 1946?
Mr. MCCALL. This is the second one.
The COURT. Were you assigned any cases on the March calendar?

Mr. McCALL. I was not.

The COURT. You were not?

Mr. McCALL. I was assigned one that was settled.

The COURT. This is the first calendar of the Tax Court in which you have ever had any cases?

Mr. McCALL. That is correct.

The COURT. And I believe, in addition to the case that is now being heard, the Hoppenstall case, you have appeared in just one other case on this calendar?

Mr. McCALL. No, Your Honor, I have tried two. One is the Koppers case and the other was the O'Hommel case.

The COURT. In the Koppers case the facts were mostly stipulated?

Mr. McCALL. All the facts that were in the case were admitted in the pleadings, Your Honor.

The COURT. There was practically no trial in the Koppers case, as far as your part of the work was concerned.

So that the only conclusion I can draw from that is that Mr. Miller has assigned you, Mr. McCall, to try a case involving a deficiency of $370,000, and it is the second case which you have been assigned to try before the Tax Court, and it is the first case that you have been assigned to try before the Tax Court that involves a substantial deficiency and a long trial, a trial of four days where we have something like 70 exhibits in the record, and where, as counsel for the Government, you have had the duty and the responsibility of having to handle a great many exhibits, so that you are wholly unprepared by experience to take care of the job of offering and organizing and having marked for identification important exhibits in the case of the Government. That is no fault of yours, Mr. McCall, but I had to stop you during the trial because none of us could follow the testimony of the witness, who is not an easy witness.

No matter who had been trying the case, Mr. Grimes is not an easy witness to follow. He is an economist. He is an engineer. His ability to describe his economic data and economic analysis is not one of his strong points, and he is the kind of witness who would need to have the help of a trial attorney representing the Government.

So that I just want to say for the record, and I am saying this during the recess to you alone, but for the benefit of Mr. Miller and to Mr. Hartford Allen, and Mr. Wenchel, if he desires to read it, that I think you, Mr. McCall, as a fine young man with a good record, an excellent personality, and a courteous young gentleman, have been put in an unfair position in being asked to try this case, and if, in the course of the trial, the court has had to stop you and tell you you are not offering your exhibits in such a way that the court or lawyers could follow the testimony, it was a matter of necessity and one which I think was unfortunate, and I regret having had to do, but I criticize strongly your superiors for assigning you to this case.

Mr. McCALL. May I say something, Your Honor?

The COURT. Yes.

Mr. McCALL. I am quite sure Mr. Miller and Mr. Allen have considered myself quite qualified for the job, and I have held myself out to be so qualified and I personally consider myself qualified to try this case.

The COURT. All right.

(At the conclusion of the recess, the hearing was resumed.)

The CHAIRMAN. Are there any further questions?

Senator MILLIKIN. Mr. Coote, I would like to identify clearly that part of what you are submitting which was confined to the recess. Where does that start?

Mr. COOTE. That begins with the interrogatory to Mr. McCall: "Mr. McCall, when were you admitted to the bar?" and continues to the completion.

Senator MILLIKIN. It was during the recess?

Mr. COOTE. That is right, Senator.

Senator MILLIKIN. Was it in the courtroom or in chambers?

Mr. COOTE. It was in chambers.

Senator MILLIKIN. And all of what you have read that follows the interrogatory which you have just mentioned took place in the chambers?

Mr. COOTE. That is right, sir.

Senator MILLIKIN. Who was present there?

Mr. COOTE. I am not absolutely certain if anybody else was present other than Mr. McCall, Judge Harron, and myself. Mr. Miller or Mr. Allen may have been present, but I cannot remember.

Senator MCGRATH. This is not the same case to which reference has been made, where the attorney was going to leave the courtroom?

Mr. COOTE. No, sir.

Senator MCGRATH. This was Government counsel?

Mr. COOTE. That is right, sir.

Senator MILLIKIN. Do you remember the name of that case that the Senator has referred to?

Mr. COOTE. I do not know, sir. There were 27 cases, Senator, and I could not possibly remember.

The CHAIRMAN. If there are no further questions, you may be excused, Mr. Coote. Thank you, sir.

Colonel McGuire, will you please call your next witness?

Colonel MCGUIRE. Mr. Chairman, I will call Mr. Wenchel.

STATEMENT OF J. P. WENCHEL, ATTORNEY, WASHINGTON, D. C., FORMER CHIEF COUNSEL OF THE BUREAU OF INTERNAL REVENUE

Mr. WENCHEL. Mr. Chairman and members of the committee, my name is J. P. Wenchel. I am practicing law in the District of Columbia, and I was formerly chief counsel of the Bureau of Internal Revenue.

Does the committee want to ask me any questions at this time in the Heppenstall case? My name was mentioned in that, and I was chief counsel at that time. I know something about it.

The CHAIRMAN. I raised a question about it because it struck me as a bit unusual that some 21 months after the case had been tried the reporter was asked to furnish an additional transcript of some portions of the record, or something that had been in the record, and I think he said that was done at the request of your office.

Mr. WENCHEL. That I cannot answer, because I resigned on June 30, 1947.

As I understood the witness, he said the request came 22 months after the episode occurred.

The CHAIRMAN. That is right. That is what I meant to say.

Mr. WENCHEL. I did not send for it. I do not know why it was sent for, but the matter was brought to my attention at the time, and I declined to do anything about it (1) because it was not relevant to the issues involved, and (2) I was very much annoyed, as Judge Harron apparently had been, by Mr. McCall's superiors designating him to try such an important case, with so little experience.

Therefore, I refused to do anything about it. Incidentally, I might say that the Government won the Heppenstall case.

Senator MILLIKIN. Do you get a moral out of that?

The CHAIRMAN. I am still a bit curious to know, after such a lapse of time, why this request was made for the deleted excerpts from the record. You say you did not have anything to do with it?

Mr. WENCHEL. I had nothing to do with that, Mr. Chairman.

The CHAIRMAN. Do you know the reason why?

Mr. WENCHEL. No. This morning was the first time I heard about that.

Senator MCGRATH. Would you be competent to testify that this request was made at approximately the time Judge Harron was being considered for reappointment?

Mr. WENCHEL. Well, 22 months thereafter; yes.

Senator MCGRATH. The request was made, as I understand, in March of 1948, which is just about the time that the Bureau was going to make a recommendation for the reappointment of four judges on this bench. We know from the testimony here that there were complaints. A lot of these complaints went to the Bureau as well as to us, that the judge had deleted testimony in certain cases.

From your experience, could you testify that if a complaint of that kind came to you in connection with the reappointment of the judge that it might be logical for you to send for that record and survey it and see if there had been an improper deletion?

Mr. WENCHEL. Yes, I would say so, particularly in that matter, because I think there was a suggestion that I send for the record at the time.

When I questioned those involved and found what had occurred, as indicated by me a while ago, it was clear to me that (1) the deleted part did not go to any of the issues involved, and (2) I thought that the judge had some basis to be annoyed. I was annoyed, too.

Senator MCGRATH. You say this complaint did come to you? You did not taken any action on it?

Mr. WENCHEL. No.

Senator MCGRATH. But that complaint would have gone into the judge's personal file, would it not?

Mr. WENCHEL. You mean the chief counsel's files?

Senator MCGRATH. Yes, sir.

Mr. WENCHEL. No.

Senator MCGRATH. Would that complaint that came to you in any way find its way to the personal file, where it might come to light at the time she was being considered for reappointment?

Mr. WENCHEL. No, it was a verbal complaint, and the chief counsel's office keeps no files on the court.

Senator MCGRATH. That is correct. You would not know whether the complaint had gone to the source where files are kept of personal complaints against judges?

Mr. WENCHEL. No. I certainly made no record of it.

Senator MILLIKIN. The complaint could have been sent to the President and relayed down to the Bureau?

Mr. WENCHEL. Yes, sir.

Senator MILLIKIN. You have no recollection of who made the complaint?

Mr. WENCHEL. Yes, the complaint was made to me at the time by one of the men in the Appeals Division; I am not certain which one it was. It occurred at one of my staff meetings one Friday morning. That is the only time the matter was ever discussed before me.

Senator MILLIKIN. Then the complaint, as far as you know, did originate in your own staff?

Mr. WENCHEL. No.

Senator MILLIKIN. Or did the member of the staff merely voice a complaint which had come to the attention of the staff?

Mr. WENCHEL. That is right.

Senator MCGRATH. Did you find it difficult at that particular time, because there was a war, to get experienced attorneys to try the Government's cases?

Mr. WENCHEL. Yes, that was postwar, and it was difficult, of course, to secure attorneys. But there were other attorneys who could have been assigned to this case.

Senator MCGRATH. You would criticize, as the judge did, your subordinate and Mr. McCall's superiors for assigning him to this particular case?

Mr. WENCHEL. That is right. I did, but I took no further action about it.

Senator MCGRATH. Do you recall Mr. McCall as a competent tax attorney?

Mr. WENCHEL. He is a bright young man, but he was not quite ready for it at that time.

Senator MILLIKIN. What was the subsequent appeal history of the case?

Mr. WENCHEL. I do not remember, Senator.

Senator MILLIKIN. Can someone in the committee room tell us what happened to the case after it left Judge Harron?

Colonel MCGUIRE. It was decided, Senator, it became the opinion of the Board, and no appeal was taken.

Mr. PHILLIPS. I believe this case was referred to another judge.

Senator MILLIKIN. Will someone testify to that later?

Mr. PHILLIPS. I believe we can, but that is my recollection of the case.

Colonel MCGUIRE. We can present you a copy of the opinion, if you care for it.

Senator MILLIKIN. I was not so much interested in the opinion as I was as to what happened to the case later on.

Colonel MCGUIRE. It was not appealed, so I am told. Another judge wrote the opinion. Judge Harron asked for a reassignment.

Senator MILLIKIN. Did Mr. McCall continue in the presentation of the case after the incident which we have been discussing?

Colonel MCGUIRE. I do not remember, Senator. I think the case was completed by Mr. McCall. I think he presented the case for the Government.

Senator MILLIKIN. Is there any question as to whether Mr. McCall completed the case, because the reporter can tell us whether he completed the case.

Mr. COOTE. No, I could not. I lost control of the case immediately after I prepared the transcript. I do not know who wrote the briefs.

Senator MILLIKIN. No. I mean during the conduct of the trial?

Mr. COOTE. Yes, he continued the case to its conclusion.

Mr. WENCHEL. I hardly need, I think, to belabor the point as to Judge Harron's ability as a lawyer or as a judge. Everyone has agreed here before this committee that her decisions, the amount of work performed, and the type of work she produces is of the highest order. Personally, I would place it among the highest of the court.

Really, the only two questions, as far as I have been able to learn, are based on her (1) conduct in court, and (2) alterations of the record.

Now, as to her conduct in court, I probably have noticed her work more than any single attorney while I was chief counsel which was during most of the period of her office. It was my custom from time to time to go into the various courts where cases were being tried, not to observe the judges, but to observe my attorneys, particularly in cases like young McCall. Had I been in Pittsburgh, I would have dropped in just to see how McCall would conduct himself.

Incidentally, I probably would have taken him off that particular case and put him on a smaller case. The reason for that is—I need hardly tell you gentlemen—that it is not given to every lawyer to be a trial lawyer. He may be a very excellent lawyer, he may be a desk lawyer, but has no business being in the courtroom. Very few lawyers are both trial men and desk men.

So, I was bound to notice her conduct, and I never noticed anything objectionable. All judges vary in their attitude, but I always had the view that she was very fair, particularly to young men, that is, both Government and taxpayers' counsel.

She was not any different than some of the other judges, some of the older judges on the bench, or, indeed, some of the judges in the district and State courts.

I might add here that it has been my observation and experience, particularly when I was younger, that it is the better judges who take the cases away from the lawyer when they think he is not trying it properly, because, after all, it is the judge's function to see that justice is done.

I have in mind one of the best district judges in the United States, and he has done it invariably. He is still on the bench, and it is typical, I would say, of the better judges to do it.

So also with regard to changes in the record. There never has been, to my knowledge, any substantial change made in the record. The changes that have been made are such changes that occurred in the Heppenstall case. Those changes do not go to the issues involved. They merely consist of striking out the irrelevant matter. If the judge has blown off a little bit, and the judge thinks that does not belong in the record, then it is deleted, but never have I heard that any real issue, anything that would go to the decision of the case, has been deleted.

A number of attorneys have talked to me about the various judges and their criticism of Judge Harron is not substantially different from three or four other judges of the Tax Court who do that very thing.

I would like to say one more thing. I think men do not like to be criticized by women, and I think that is the real gravamen of her offense, because being criticized by a male judge is bad enough, but when a woman takes it over, it is just adding insult to injury. I do not mean to say that the objection here is because she is a woman. I think any other woman would have been subjected to the same criticism, more so than a man.

Senator McGrath. You do not limit that to a courtroom, do you?

Mr. Wenchel. No; I do not limit that to a courtroom. I think man, whether we like to admit it or not, is very vain, and it is bad enough to be criticized by another man, but when a woman takes it over, it does not set so well.

Some statement has been made with regard to the small number of cases that Judge Harron has heard or decided during the last year or

so. I think that is perfectly natural, because from time to time the presiding judges have complained to me that the system of appointing these judges every 12 years is bad, because it takes a certain length of time for a judge to complete his docket. The presiding judge is very careful not to give them any cases that might run over their time of reappointment, because, if they are not reappointed, then the case is thrown back 2 or 3 years. I think that accounts in a large way, if not entirely, for her small production during the past year.

The CHAIRMAN. Are there any questions of the witness? If there are no other questions, Mr. Wenchel, we thank you, sir.

Colonel McGuire, will you call your next witness, please?

Colonel McGUIRE. Mr. Chairman, I will call Miss Carolyn E. Agger.

STATEMENT OF CAROLYN E. AGGER, ATTORNEY, WASHINGTON, D. C

Miss AGGER. Mr. Chairman and members of the committee, my name is Carolyn E. Agger. I am a lawyer, and I practice here in Washington. My address is 1614 I Street.

I have specialized for about the past 10 years in the law of Federal taxation. About half of that time has been with the Government Tax Division of the Department of Justice, and about the last 5 years or so I have been with private practice.

I have known Judge Harron professionally and socially for more than that time, about 12 or 15 years. There has been some testimony before you that no one could work for her, that her clerks would not remain with her. I worked under the immediate supervision of Judge Harron here in 1935, as a young woman for a number of months, and I would like to say that while she is exacting, if you work conscientiously with her, you have no difficulty whatever. I had none, and there were several others about my age who were working with her. I was the only woman; the rest were men, and the men had no difficulty either. They were competent boys.

Now, in my Government service and in my private work, I have had experience in writing briefs and arguing cases before the circuit court of appeals, and in my private experience I have had some experience in the trial of cases before the Tax Court.

Outside of reading Judge Harron's opinions, along with those of the other judges of the Tax Court, my main acquaintance with her work has been in connection with two appeals, in which I participated, from decisions of hers.

As you know, in the work of writing briefs and preparing for argument on appeal, it is necessary to study the record very closely. I did that in these two cases in which I participated on the appeal. One of the cases was an estate-tax case which involved reciprocal trusts. The other was an income-tax case, which involved a great many different financial transactions. The facts were extremely difficult, and it also involved a rather novel principle of law at that time.

Judge Harron, in conducting these hearings in these two matters, showed an ability and a competency to grasp these facts—which were difficult—and to understand the principle of law which would be necessarily involved.

The hearings in both cases were conducted with decorum, the counsel for both sides were given full opportunity to present their evidence, to examine and cross-examine, the records that were produced at these

hearings were full and complete, and, as you know, that is very important in the matter of appeals. It is a great comfort to pick up a record and find it is complete and one in which you do not find missing facts.

The counsel and the witnesses were treated with courtesy by the judge. From these records in these two cases in which I participated in the appeals, it seems to me that the hearings were as well conducted as any of those at which I have been present or in which I have taken part in the Tax Court, which were conducted by other judges.

I want to thank the committee for letting me appear here today to speak on behalf of Judge Harron, because, as one of the relatively few women of the tax bar, it has always been a matter of profound gratification to me to see another woman doing what I thought was a very good job on the bench.

Thank you.

The CHAIRMAN. Are there any questions? If not, thank you very much for your appearance.

Colonel McGuire, will you call your next witness, please?

Colonel McGUIRE. Mr. Chairman, I will call Mr. Algire.

STATEMENT OF E. CLYDE ALGIRE, ATTORNEY, WASHINGTON, D. C.

Mr. ALGIRE. Mr. Chairman and members of the committee, my name is E. Clyde Algire. My residence is 4801 Connecticut Avenue NW., Washington, D. C. I am engaged in the practice of law in the partnership of Dudley, Algire, Jones & Ostmann, with offices in the Dupont Circle Building.

I might say I have been engaged in the private practice of law since August 1, 1948. Prior to that time I was employed in the office of the chief counsel of the Bureau of Internal Revenue.

I have known Judge Harron since she was originally appointed to the Board of Tax Appeals, which is now the Tax Court of the United States. During her tenure in office, to July 1, 1948, when I resigned from the Government service, I was employed in the office of the chief counsel for the Bureau of Internal Revenue, as a trial attorney, assistant division counsel, and division counsel.

While I was employed as a trial attorney, my headquarters were in Washington, D. C. As assistant division counsel and division counsel, I had headquarters in New York, in the New York division.

From June 1941 to July 1, 1948, I was division counsel of that division. As division counsel, I was personally in charge of all tax litigation before the Tax Court of the United States which arose within the State of New York. That division is the largest division of the eight divisions which existed, up to the time that I resigned. The statistics roughly show, during my tenure, that the New York division handled from 20 to 25 percent of all the cases in the United States pending before the Tax Court which involved about one-third of the amount of taxes in litigation.

The figures on the amount in litigation would run over $100,000,000.

In these capacities, I had an excellent opportunity to observe Judge Harron both on and off the bench. I have personally appeared before her as trial counsel for the Bureau of Internal Revenue and as division counsel I was in charge of the cases tried before her in the State of New York, and this required that I spend considerable time in court during these trials. At all times within my knowledge Judge

Harron conducted herself with proper dignity and with the dignity, I think, befitting her office. I have always found her to be fair and impartial in her decisions, and in her treatment of counsel who appeared before her. In my opinion, she possesses outstanding legal ability, particularly in the field of tax law. I think that the soundness of her decisions is demonstrated by her excellent record with respect to those which were reviewed by appellate courts. In my opinion, she has proven her ability as a judge of the Tax Court over a period of approximately 13 years.

I believe the interests of both the Government and the taxpayers would be best served by her reappointment to the office of that court for another term.

The statements I have made are based upon my personal knowledge. I have not taken into account in any way matters of hearsay which have come to my attention. So far as I personnaly know, she has always conducted herself properly, and as far as I know there has been no time when she unduly criticized counsel or when she unduly questioned witnesses, and I am quite sure that she has never called a witness of her own in any case that was tried in the New York division.

The New York division also has an office in Buffalo, N. Y., and calendars are held there at least once a year, and I know of at least one calendar on which Judge Harron presided, and I was present at that calendar practically the entire time in the courtroom, and I saw nothing out of place at all.

Now, since New York is a large division, and the calendars are held there for at least 6 months of the year, twice a month, and the other 3 months, probably once or twice a month, Judge Harron has sat in New York, I am sure, oftener than she has sat in any other city. I think she has probably sat there as frequently as any other judge on the Tax Court, because I remember there was a period there when she came to New York quite frequently. I think during that period of time and in her hearings in New York, if she had been guilty of all misdemeanors or derelictions as charged here, it would have cropped out in New York, because the New York attorneys are not the easiest men in the world to try a case with.

If there are any questions, I shall be glad to answer them, Mr. Chairman.

Senator MILLIKIN. Mr. Chairman I would like to ask the witness, how many hearings presided over by Judge Harron have you personally attended?

Mr. ALGIRE. I could hardly answer that, because I really do not know. But I can say this much, that I have been present in the courtroom as division counsel some time during each calendar. How many of those trials I was present in, I do not know.

Senator MILLIKIN. Would you, as head of the dicision, and division counsel, sit through the entire case?

Mr. ALGIRE. No; I do not think so.

Senator MILLIKIN. You would go in and check up to see how things were going?

Mr. ALGIRE. In-and-out proposition, that is right.

Senator MILLIKIN. You do not remember how many cases?

Mr. ALGIRE. I do not remember. I might say if anything had been done which was terribly wrong, one of the counsel in the office who was

trying the case would have told me about it, and I cannot recall an instance when they ever criticized Judge Harron more than the normal criticism of a judge if they get a bad ruling, or something of that sort. I cannot recall ever having such a charge made against her. I do not think I ever tried a case personally before her in New York. I have in Washington. But I was present a great many times in the courtroom at the time she was sitting.

The CHAIRMAN. Thank you very much.

Colonel McGuire, have you a witness that you wish to be heard before 12 o'clock?

We must go at 12 o'clock.

Colonel MCGUIRE. We have one witness, Mr. Chairman. I might take some of the time that is left. He cannot complete in 10 minutes.

Mr. PAUL. It may be a little over 10 minutes, Senator George.

The CHAIRMAN. We will be very glad to hear you, but they probably will be ringing a bell.

Mr. PAUL. I am familiar with the bell.

Colonel MCGUIRE. I have some documents that I want to put in the record. I could use up the time.

The CHAIRMAN. Very well.

Colonel MCGUIRE. During the short period that has elapsed since the last hearing, I have undertaken to make some examination of the cases to which Mr. Phillips referred in his testimony, and I have a memorandum here relating to five of the eight.

I should like to tell the committee what I find in those cases.

At the previous hearing, Mr. Phillips criticized specifically Judge Harron's conduct of the hearings of certain cases. An examination of the record in these cases indicates that there is room for a good deal of difference of opinion as to the validity of this criticism.

A thorough analysis of the criticism in the context of the record in these cases, it seemed to me, would take far too much of this committee's time. At this time, I want to point out a few particular instances which show that the criticism has been much sharper than the facts warrant. There are many other such instances, but I shall merely give a few examples. If the committee would find it helpful, we should be glad to provide in due time a detailed and complete analysis of the cases which have been criticised.

Now, he criticized the Illinois Water Service Corp. case, decided in 1943, and reported in 2 T. C. 1200.

In that case, Mr. Phillips accused Judge Harron of having prejudiced the issue when she stated at the end of the opening statements of both counsel that the Government's theory seemed more reasonable to her, although she indicated that there was a question on the subject.

It seems to me that the proof of the pudding is in the eating. When Judge Harron decided the case, it was in the taxpayer's favor, even though at the outset its theory had seemed less persuasive to her. The history of this case does not seem to indicate the "tendency to jump at conclusions" which is the conclusion drawn from the incident by Mr. Phillips, and reported to this committee.

As to the Claude Peterson Noble case, decided in 1946, and reported in 7 T. C. 960, Mr. Phillips indicated that Judge Harron had acted improperly in calling a witness upon her own motion.

Now, the facts, as shown by the record, are that the witness, an accountant, had previously interjected himself into the proceeding

and had volunteered information. After he had made several remarks Judge Harron asked that he be sworn.

If the accountant was going to testify, as he insisted upon doing, I do not see what she could do other than to ask that he take the oath required of all other witnesses. That is particularly shown in the transcript on pages 69 and 70.

As to the Richard Law case, decided in 1943, 2 T. C. 623, Mr. Phillips criticized Judge Harron for discussing the propriety of the form of a question directed by Government counsel to a character witness. The question dealt with the taxpayer's prior conviction on a criminal charge. Judge Harron, early in the discussion, indicated her concern that the trial be correct and fair to the taxpayer, who had been charged with fraudulent evasion of taxes. This is very close to a criminal charge, although it involves a civil penalty and the judge's concern that the taxpayer not be prejudiced by the form of the question does her great credit, in my judgment. Mr. Phillips apparently felt that Judge Harron's concern was unjustified because the taxpayer's counsel did not object to the information being elicited. The fact is that the taxpayer's counsel did object to the form of the question, even though he thought it proper to have the information brought out. That is shown at transcript pages 280 and 281.

Mr. Phillips quotes a statement of counsel found in the record of the Estate of Sloane case, decided in 1944, 3 T. C. M. 358, and makes the inference, as I understand him, that Judge Harron has disrupted the order of proof by her interruptions.

Counsel's statement on its face and when read in its context does not suggest that the judge was responsible for disrupting the order of proof. Any fair reading of this lengthy record shows that counsel's own actions in examining expert witnesses on the value of stock without first introducing evidence of the facts upon which their opinions were based, and the repeated objection by Government counsel to this procedure, contributed much more in the way of necessary interruption, than any of Judge Harron's actions. This was a complicated and difficult case, and on a number of occasions Judge Harron stated to the taxpayer's counsel that she would like to help him in any way she could in simplifying his difficult problems of proof.

Now, in the case of Harbor Holding Co. of Nevada, 1942, I placed in the record at the last session an affidavit by counsel in that case in support of Judge Harron. That case, too, was decided in 1942, and reported in 1 T. C. M. 59. The principal criticism of Mr. Phillips' is that there were constant discussions off the record.

Mr. Phillips indicated that he did not know what that meant. I think it is clear from the transcript that the direction that the discussion be off the record was made in open court. In no case was there any objection from either counsel.

On several occasions the discussion off the record was at the request of counsel themselves. This is not hearsay, this is what the transcripts actually show. In this case also it is said that Judge Harron "severely criticized" the Government counsel for introducing his evidence piecemeal. This criticism, brought about by an objection by the taxpayer's counsel, appears to be the following, transcript page 324:

The MEMBER. I think I will have to request Mr. Tonjes—although, of course, you are entitled to proceed within certain limits the way you want to, but there

are some limits. I cannot follow the evidence that you are producing at the present time. Mr. Goodspeed is correct, that letters are being offered that perhaps should be read into the record, but customarily we don't read letters into the record, simply to save the cost of the record, but ordinarily I would like to say, I don't have this kind of a problem.

Supposing you get together all of these letters, Mr. Tonjes. You have issued a subpena calling for the production of certain letters?

Now, I cannot regard that as severe in any sense of the word.

As to the Low case, referred to by Mr. Phillips, that was decided in 1944, reported in 3 T. C. M. 859, 929.

Mr. Phillips emphasized that Judge Harron examined the taxpayer at great length. This case involved the deductibility of certain expenses, which appeared to be in the nature of personal expenses rather than business expenses, for which the taxpayer was claiming a credit.

As we have pointed out, Judge Harron's conduct of the Low case was reviewed by the Circuit Court of Appeals for the Second Circuit. That court reviews more Tax Court records than any other court in the country.

The circuit court of appeals, charged with a major responsibility for supervising the administration of trials, ruled specifically on Judge Harron's examination of the taxpayer and found it unobjectionable (*Low* v. *Nunan*, 154 F. 2d 261).

A quotation from the circuit court's decision bearing upon this point was included in Judge Harron's testimony, and I will not repeat it. It is available for all of you.

I could make a much longer and detailed analysis of these criticisms and point out to the committee how certainly there could be profound disagreement as to the importance of the specific criticisms with reference to the issue before you. However, I think that this brief analysis will give you a sufficient idea of the background and circumstances of the incidents which have given rise to the criticisms we have heard here.

As I have said, we would be glad to give the committee a complete and full analysis of all the cases where there has been criticism if this is desired by the committee. In fact, possibly the committee can secure the records themselves.

How much further do you wish to go, Mr. Chairman?

The CHAIRMAN. It will be necessary to report to the Senate. How many additional witnesses do you have?

Colonel MCGUIRE. I have one witness, and a good many affidavits to introduce.

The CHAIRMAN. Would it be convenient to come back at 2:30 o'clock this afternoon?

Colonel MCGUIRE. It will be for us.

The CHAIRMAN. Very well. We will recess until 2:30 this afternoon.

(Whereupon, at 12 o'clock noon, the committee was recessed, to reconvene at 2:30 p. m., this day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., at the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

Colonel McGuire, you may proceed.

Colonel McGUIRE. Senator, at the last meeting you raised the question, and there was some question in your own mind about memorandum opinions of the Tax Court.

In an article in the American Bar Association Journal for June 1945, Hon. J. Edgar Murdock, then presiding judge of the Tax Court, wrote, at pages 298 and 299, as follows:

> All of the opinions of the court are published, in that they are made public, but memorandum opinions are not published, in printed form or included in the bound volumes of the reports of the court. The presiding judge also decides whether an opinion is or is not to be printed. The memorandum opinions—that is, the ones that are not printed—are supposed to be limited to those having no value as a precedent. They include any case decided solely upon the authority of another, cases involving subjects already well covered by opinions appearing in the bound volumes of the reports, failure of proof cases, and some others * * * If counsel finds in a memorandum opinion some precedent of value, he may cite it effectively in his brief, even though the opinion does not appear in the bound volumes of the reports of the court.

That is apparently the official position of the court with respect to precedent.

Senator MILLIKIN. Did I understand you to say that he may not cite the memorandum opinion?

Colonel McGUIRE. He may.

Senator MILLIKIN. He may cite in the brief, but do I understand you to say that he may not cite it to the judge?

Colonel McGUIRE. Yes; he may cite it to the judge, but he is not to rely upon it too heavily, as you can see from this, and that is what Judge Harron apparently stated to counsel.

Senator MILLIKIN. As I recall, that particular handling of memorandum opinions is an effort to cut down the overwhelming bulk of our reports.

Colonel McGUIRE. That is right.

Senator MILLIKIN. Of course, it does present a difficult problem.

The thought that occurred to me—and I have no fixed opinion on it—was that if a memorandum opinion has a fact situation in it, to which this old hornbook law may apply, that, of course, is exactly the kind of a precedent the lawyer is looking for, and it seems to me he should be permitted to cite them.

Colonel McGUIRE. He could, and she told him that, but that he need not rely upon it too heavily.

Now, may I make a personal observation there?

As Senator George knows, and probably you do not, for many years I was counsel to the Comptroller General of the United States. That office publishes a volume of opinions or decisions annually, but including few of the number of decisions that were rendered, because decisions that involve perhaps a difference in facts but an application of the same rule of law or a similar rule of law were not published. We had many office memorandum opinions between divisions of the office, the general counsel's office, and the Comptroller's personal office, and in many instances we would write memoranda to the division chiefs, telling them how to dispose of cases. And they were not to be cited in the office, and apparently a similar situation obtains in the tax court.

The CHAIRMAN. What is the objection to the memorandum opinion? I mean, what is the basis? Is it not considered by any save the judge who writes it, or is it that the whole court does not hear all the facts?

Colonel McGuire. No, the objection to it is that they have so many opinions involving the same rule of law that in order to reduce the expense of printing—Congress wisely limits the money appropriated for the printing of opinions—they have to eliminate something. So they eliminate these that involve the same rule of law or purely fact questions. Although, as they say, if counsel finds he can rely on it, he can cite it.

As I understand it, Judge Harron's statement to counsel was a matter of caution: "Do not rely too heavily on the memorandum opinion," which is in line with what was said in the statement by Presiding Judge Murdock heretofore quoted.

The Chairman. My experience was, from several years' work on the court, that almost anybody can write an opinion, but few people can write a memorandum decision that really hits the case.

Colonel McGuire. That is true, because oftentimes you decide the case—and I know that—and fail to place in the memorandum the real reason on which you are deciding the same. I have done just that many times.

The Chairman. Yes, but you can always accompany a memorandum opinion by an equally brief statement of the facts, and you are not very far wrong if you put the two together right.

Colonel McGuire. That is right.

The Chairman. I was just curious to know, and I did not know what the practice was in the Tax Court.

Colonel McGuire. I think it is the same in most of the other agencies.

Now, we made a strenuous effort, because of the former official position of ex-Senator Reed, to locate the reporter who transcribed the testimony in the Phipps case in Denver, Colo., in September of 1939. We wrote to the Government reporter, who is the man who usually reports Government proceedings in Kansas City, Mo., by the name of Leslie Lincoln, and I will read his reply:

April 18, 1949.

Hon. Marion J. Harron,
Judge, the Tax Court of the United States,
Washington 25, D. C.

Dear Madam: This will acknowledge receipt of your phone call of Saturday in regard to locating the court reporter who reported the Phipps cases at Denver, Colo., in September 1939, before you as a member of the former Board of Tax Appeals (now the Tax Court of the United States) and having such reporter transcribe any portion of her notes which was not transcribed and included in the official stenographic record of such cases.

The reporter who reported these hearings was Mrs. Ella Creel. Although she was with me a good many years, about 5 years ago she quit the reporting profession, moved to California, and was married. I have spent the last 2 days attempting to find her, and had to do so through other parties, no one in Kansas City having her address.

Just this morning I received the enclosed telegram from her which, I believe, is self-explanatory. It is unfortunate that the shorthand notes are not in existence, but actually, these were saved for 5 years and, except for the particular situation in this instance of Mrs. Creel (now Porter) removing to California, we would probably still have them.

Yours very respectfully,

Leslie Lincoln.

The telegram which Mrs. Porter sent to him is dated April 18, 1949, and addressed to Leslie Lincoln, 7325 Main Street, Kansas City, Mo.

I reported Phipps cases Denver, September 1939; destroyed shorthand notes upon coming to California in 1944. I remember the cases well because there were

two United States Senators in them, and it being my first reporting before a woman judge. I recall there were a few exchanges between counsel and Judge Harron which I was later asked to delete from the record. Any such remarks not transcribed by me had nothing to do with merits of case, did not consist of testimony, and were what I considered trivial and proper to be omitted, and assumed, without question, that all parties at the conclusion of hearing were agreeable to such deletion. In fact, they were no different in nature than other colloquy which I have been requested to delete by countless judges, commissioners, and examiners of the various Government agencies, which I reported many years.

ELLA CREEL PORTER.

I have here a copy of the brief which Senator Reed and his associates, two in number, submitted to the United States Circuit Court of Appeals, Tenth Circuit.

Senator MILLIKIN. Mr. Chairman, I invite attention to the fact that the reporter assumes quite a little omniscience in this telegram. She states that the remarks had nothing to do with the merits of the case, which is a rather large-sized judgment to be exercised; she says it did not consist of testimony, which is another opinion of some magnitude; and she also states what she considered trivial and proper to be deleted.

Colonel MCGUIRE. Being like others, of course, she had to speak from experience.

Senator MILLIKIN. I doubt whether any of those matters properly come under the function of the reporter.

Colonel MCGUIRE. Senator, we had here a reporter who was on the witness stand, and who stated that he did not know whether he was qualified to answer the question or not.

I have here a copy of Senator Reed's brief, and of his associates, which they filed in the United States Circuit Court of Appeals for the Tenth Circuit.

The hearing at Denver at that time was in the Tenth Circuit; that is, the headquarters of the Tenth Circuit Court of Appeals.

In this brief, which I will leave with the committee, Senator Reed claimed as a specification of one of his points to be relied upon in the appeal that:

Where the Board of Tax Appeals commits substantial errors and misconstrues the facts, making erroneous findings therefrom, this court as a reviewing tribunal, on the basis of the entire record, should correct the error.

That was his point.

In his brief, under that point, he has point IV:

A consideration of the record as a whole demonstrates that this is a proper case for review.

I will read a paragraph, which is the meat in the argument:

A fundamental rule of law is that an individual is entitled to a fair hearing before an administrative board. In the present case, one only has to read the transcript of record to ascertain that the board member approached this case with a biased and hostile attitude at the outset. The record is replete in showing that the board member, time after time, interrupted, interfered and commented upon the evidence in a manner which no administrative tribunal should be permitted to do. It is submitted that a reading of the transcript of record can lead to no other conclusion than that the member, by her prejudging of the cause of issue, did not afford petitioner a fair hearing in the matter before the board.

As I said last week, the meat in the coconut concerning this case is that it was heard by Judge Huxman, Judge Bratton, formerly a Sena-

tor, and Judge Phillips, in the Tenth Circuit Court of Appeals, after argument by counsel. It is reported in 127 Federal (2d) 214, 220, on March 23, 1942.

Now Judge Phillips wrote a dissent in the case. Judge Huxman and Judge Bratton concurred in the affirmation of the decision of the board.

Then counsel applied for certiorari to the Supreme Court of the United States, and on October 12, 1942 (317 U. S. 645), the certiorari was denied.

Of course, being a lawyer myself, I might say that we all reserve the privilege of criticizing the courts when they decide against us. We do not like it sometimes, but I have an affidavit here by an old gentleman, who is much older than we, who has become philosophical about the matter. I now read it.

Senator MILLIKIN. May I ask a question now? Did the dissent of Judge Phillips touch on the particular point?

Colonel MCGUIRE. Neither one of the opinions touched upon it. In other words, they apparently considered there was no substantial basis to the point.

Senator MILLIKIN. No cause for reversal?

Colonel MCGUIRE. Yes. They did not notice it in the opinion. I read the opinion hurriedly. But I gave you the citation, so that the members of the committee could check on it if they wish.

Senator MILLIKIN. Thank you.

Colonel MCGUIRE. This affidavit is dated April 4, 1949, in the county of San Francisco, State of California, and it is made by Mr. Eustace Cullinan, who is a member of the firm of Cushing, Cullinan, Trowbridge, Duniway & Gorrill. I might say that I have known Mr. Cushing very well. He was a very prominent lawyer on the west coast.

Mr. Cullinan states:

My name is Eustace Cullinan. I am and since 1898 have been a member of the California bar, entitled to practice in all the courts of that State. I am a member of the bar of various Federal courts and, since 1910, of the Supreme Court of the United States. I have been in active practice more than 50 years. I was admitted to practice before the Board of Tax Appeals (now the Tax Court) on September 4, 1925. I am a senior partner in the firm of Cushing, Cullinan, Trowbridge, Duniway & Gorrill, of San Francisco, one of the oldest law firms in San Francisco. While I do not specialize in tax cases, nor does my firm, we have had a number of cases before the Tax Court and its predecessor, the Board of Tax Appeals.

The only case which I have tried before Judge Marion J. Harron, of the Tax Court, was the Bloomfield Ranch case, docket No. 5007, which was tried in San Francisco on July 10, 1945. That was a case of importance to our clients and to my firm. It involved large amounts of income tax directly and indirectly.

Judge Harron wrote the opinion of the Tax Court which decided in favor of the Government. I thought the decision was erroneous and we appealed to the United States Circuit Court of Appeals for the Ninth Circuit, which, in due course, affirmed the Tax Court.

Our firm, for our clients, then applied to the United States Supreme Court for a writ of certiorari, which was in due course denied. I am still of the same mind about the decision, though I seem to be out of step with the courts. I recite these facts to show that I have no predisposition to help Judge Harron in return for favorable decisions rendered.

I never met Judge Harron before she came to California for the Bloomfield trial, and have never seen her since, except for one occasion on March 31, 1949, when she called at my office to ask whether I have been approached by persons opposing confirmation of her reappointment to the Tax Court. I told her truth-

fully that I had read or heard that her confirmation had been delayed, but knew nothing more about the matter.

Judge Harron told me that the opposition was based on charges that she lacked the judicial mind and temperament and was discourteous to counsel practicing before her. I then volunteered to make an affidavit that, in the course of the Bloomfield case (my only opportunity for observing her judicial work), I had found her courteous to counsel on both sides and, while I disagreed with her decision, I certainly could not say that her conduct of the trial or her memorandum of findings of fact and opinion indicated any lack of judicial capacity or fairness, nor that the Circuit Court of Appeals made any criticism of her work.

I make this statement now as a matter of fairness to Judge Harron. In my half century of practice I have met attorneys who could never conceive that any judge could decide a case against them unless he was prejudiced or incompetent, but most attorneys are not in that category, nor am I.

In my opinion, if we expect judicial officers to decide cases impartially and with intellectual integrity, we should defend them against unjust criticism even when we are in disagreement about the merits of a decision.

Of course, the Senators know that it is now customary for judges to make any recommendation about the confirmation of another judge. But I have here copies of two letters, one dated February 7, 1949, on the letterhead of the United States Court of Appeals for the Sixth Circuit from Florence E. Allen. It is addressed to Mrs. George A. Meekison, of Napolean, Ohio. The copy was sent to Judge Harron, and I present it to the committee.

Judge Allen states as follows:

DEAR MRS. MEEKISON: I have your letter of February 4, asking me concerning the record of Judge Marion Harron. Inasmuch as many of Judge Harron's decisions have come to this court for review, I am well acquainted with her work. She is able, intelligent, and highly industrious. I am informed on very good authority that she has an excellent work record in what, after all, is a very hard-working court. I consider that Judge Harron has done an excellent piece of work, and that her integrity and standing are a credit to us all.

Very sincerely yours,

FLORENCE E. ALLEN,
United States Circuit Judge.

The other letter is by Presiding Judge John D. Martin of the United States Court of Appeals for the Sixth Circuit. That letter is addressed to Judge Camille Kelley of the Juvenile Court, 616 Adams Avenue, Memphis, Tenn.

MY DEAR JUDGE KELLEY: In reply to your letter of February 12, received today, requesting my candid opinion of the ability and record of Judge Marion Harron of the United States Tax Court, I can unhesitatingly say that I consider her one of the most competent and efficient members of that important tribunal.

For more than 8 years, during which I have been a member of the United States Court of Appeals, I have had frequent occasion to review her work. I have found it outstandingly good.

Judge Harron has acute powers of analysis and the faculty of applying logical legal principles to facts found. She is clear and logical in her reasoning, is well equipped in her knowledge of law; and is extremely fair-minded and careful in weighing the facts of a case. To express myself colloquially, I think that as a jurist she is "tops."

With kindest personal regards, I am,

Respectfully and sincerely yours,

JOHN D. MARTIN.

I have another letter here, dated May 4, 1948, on the letterhead of Clarence M. Charest, and it was addressed to you, Senator Millikin, when you were chairman of the committee. I should like this to go into the record:

MY DEAR SENATOR MILLIKIN: I understand that the Senate Finance Committee is considering nomination of Judge Marion J. Harron to another term of the

Tax Court of the United States. In that connection, I venture to submit the following unsolicited comments:

For more than 20 years I have been in close contact with the Tax Court of the United States (formerly the United States Board of Tax Appeals). During the year 1925 I was head of the Appeals Division in the Office of the General Counsel of the Bureau of Internal Revenue, which represented the Government in the trial of appeals before the Tax Court. From October 1927 to June 1933 I was general counsel of the Bureau of Internal Revenue and as such was in charge for the Government of all litigation before the Tax Court. Since June 1933 I have practiced law in the District of Columbia, specializing largely in Federal taxes. The nature of my practice has kept me in close contact with the Tax Court and has required me to read and be more or less familiar with its decisions. I mention these facts solely for the purpose of giving the background for the opinions expressed herein.

It is my considered opinion that Judge Harron is one of the ablest members of the Tax Court. She is a sound thinker and diligent, conscientious, and thorough in her work. I have never tried a case before her but have been present at many trials in her court and have been impressed with her conduct of the proceedings. Her production record speaks for itself, and the decisions she has rendered are of a uniformly high order. While I have no statistics in this connection, I am confident that, in percentage of appeals and reversals, Judge Harron's record compares favorably with that of other members of the Tax Court.

I believe that tax practitioners have a high regard for the Tax Court of the United States, its past record, and its uniform impartiality. Judge Harron has served well and faithfully for almost 12 years and during that period has gathered knowledge and experience which it would take a newly appointed member many years to acquire. The more than 500 decisions handed down by Judge Harron are the best evidence of her ability, judgment, and industry.

It would be deplorable, in my opinion, if the approval of Judge Harron's nomination should rest on any other consideration that her record as a judge. That record, I believe, has been a fine one, and I sincerely hope your committee will confirm the nomination.

Yours sincerely,

C. M. CHAREST.

Referring to the statement I read to the committee just before the luncheon recess, I should like to make of record at this point, the title, the report number, the names of counsel in those cases which were referred to by Mr. Phillips and to which I referred. I will take this entire number.

Estate of Weil v. *Comm'r.* (5 T. C. M. 504 (1946)); M. E. Kilpatrick for the petitioners: E. L. Potter for the respondent.

Harbor Holding Co. of Nevada v. *Comm'r.* (1 T. C. M. 59 (1942)); J. D. Brady for petitioners; E. A. Tonjes for the respondent.

I remind the committee that I placed in the record last week an affidavit from Mr. Brady advocating the confirmation of Judge Harron's reappointment.

Estate of Sloane v. *Comm'r.* (3 T. C. M. 358, 555. (1944)); Allin H. Pierce for the petitioners; Thomas H. Lewis, Jr., for the respondent.

A. Augustus Low v. *Comm'r.* (3 T. C. M. 850, 929 (1944)); J. Theodore Cross for the petitioner; Laurence E. Casey for the respondent.

Law v. *Comm'r.* (2 T. C. 623 (1943)); John Coughlan for the petitioner; Alva C. Baird and Arthur L. Murray for the respondent.

I have here an affidavit from Mr. Murray to be submitted later.

Illinois Water Service Co. v. *Comm'r.* (2 T. C. 1200 (1943)); Francis L. Casey, Richard H. Appert, and Russell D. Morrill for the petitioner; Z. M. Diamond for the respondent.

I have an affidavit to be submitted for Mr. Diamond.

O. William Lawry v. *Comm'r.* (3 T. C. 730 (1944)); Morton Keeney and Frank B. Seidman for the petitioner. Philip M. Clark and Melvin S. Huffaker for the respondent.

Mr. Hutfaker was before the committee last week for Judge Harron.

Noble v. *Comm'r*, (7 T. C. 980 (1946)); Hughes Roberts for the petitioner; D. D. Smith for respondent.

I make a point of that because it has already been testified here that there is an appropriate procedure under the rules for any attorney to file a motion with the Tax Court to correct the record and that none of these attorney filed any such motion, and Mr. Phillips was not counsel in any of the cases.

This affidavit was executed April 13, 1949, by Mr. Z. N. Diamond, of 20 Exchange Place, Borough of Manhattan, city and State of New York. The affidavit is as follows:

Z. N. Diamond, of 20 Exchange Place, Borough of Manhattan, city and State of New York, being duly sworn, deposes and says:

That he is a member of the firm of Olvany, Eisner & Donnelly, with offices at 20 Exchange Place, city and State of New York.

That he is a member of the bars of the States of Pennsylvania (admitted November 30, 1931) and New York (admitted March 10, 1947) and of the District of Columbia (admitted February 20, 1948); and that he has been admitted to practice in numerous United States district courts, including the eastern district of Pennsylvania, the western district of Pennsylvania, the district of Maryland, and the northern district of West Virginia, and that for over 18 years he has been actively connected with the litigation of cases in both the State and Federal courts and that he is a member of the bar of the Supreme Court of the United States.

That for over a decade he has specialized in Federal tax practice, both in the Bureau of Internal Revenue and in private practice. That in the period from May 1, 1939, to the date of his resignation from said Bureau in August 1945 he engaged in the trial of tax cases before the Tax Court of the United States as attorney for the Commissioner of Internal Revenue, and tried numerous cases before various members of that court. That since his return to private practice he has tried cases in the Tax Court on behalf of taxpayers. That he has on several occasions tried cases before Judge Marion J. Harron, who has been nominated for reappointment as judge of the Tax Court.

That because of the foregoing extensive litigation experience, including the trial of cases in the Tax Court both on behalf of the Commissioner of Internal Revenue and private litigants, deponent feels that he is thoroughly qualified to express an opinion as to the qualifications of Judge Marion J. Harron to be a member of the bench of the Tax Court. That he is of the opinion that Judge Harron is eminently qualified to be a judge of the Tax Court, that she is exceptionally able and conscientious in the discharge of her judicial duties; that she is impartial and thoroughly grounded in tax law, and that her opinions are characteristically and consistently clear, lucid, and well reasoned.

That it is the further opinion of this deponent that Judge Harron's reappointment to the bench of the Tax Court will serve to maintain the prestige which that court has enjoyed both among the members of the Tax bar and judiciary; and that as a matter of sound administrative policy a sitting judge who has demonstrated competence in the discharge of his judicial functions should be continued in office.

Z. N. DIAMOND.

The next affidavit is by Mr. Andrew B. Trudgian, of 350 Fifth Avenue, Borough of Manhattan, city and State of New York. The affidavit is as follows:

Andrew B. Trudgian, of 350 Fifth Avenue, Borough of Manhattan, city and State of New York, being duly sworn, deposes and says:

That he is a member of the bar of the State of New York and of the District of Columbia, a member of the bar of the Southern District of New York, the Tax Court of the United States, and the Supreme Court of the United States;

That he has been an attorney for over 25 years, is a member of the American Bar Association and the New York County Lawyers Association, and has tried many cases before what is now presently the Tax Court and formerly the United States Board of Tax Appeals, and has also tried tax cases before the district courts and argued many such cases on appeal before the circuit courts

of appeal both in New York and Massachusetts, as well as having appeared before the Supreme Court of the United States;

That at the present time deponent is general counsel of J. P. Stevens & Co., Inc., located at 350 Fifth Avenue, New York, N. Y.;

That deponent has appeared in one case before Judge Harron involving a unique and undetermined legal point under the tax statutes, and was treated with every courtesy and consideration, and the opinion rendered by Judge Harron was sustained on appeal;

Deponent respectfully submits that he has read various opinions of Judge Harron in other cases and they have been very clear and able; that in his opinion Judge Harron is well qualified for the position of judge of the Tax Court of the United States, and a valued member of that court, and it is his opinion that Judge Harron should be retained on the bench of the court.

ANDREW B. TRUESDALE.

The next affidavit is one executed April 11, 1949, by Mr. Talbot Smith of Ann Arbor, Mich. Mr. Smith's affidavit follows:

Talbot Smith, being duly sworn, deposes and says that he is a member of the firm of Burke, Burke & Smith of the city of Ann Arbor, county of Washtenaw, State of Michigan; that on or about April 8 he received a letter from the Honorable Percy W. Phillips, which letter took for granted your deponent's opposition to Judge Harron and suggested that your deponent testify as to such opposition, if willing, before the Senate Finance Committee at its hearing upon Judge Harron's confirmation on April 14;

That your deponent and his partner, Louis Burke, are engaged in the trial of the case of *Hildinger* v. *Hildinger* in the Washtenaw circuit court on such date, which case involves out-of-State client and witnesses and an outside judge, the local judge having disqualified himself, and cannot be postponed; that for such reason your deponent cannot appear in person to protest the Honorable Percy Phillips' opposition to Judge Harron or to assure the committee of your deponent's entire confidence in, support of, and high regard for Judge Harron and to urge her confirmation.

Further deponent saith not.

TALBOT SMITH.

Further, I have the letter to which he refers in the affidavit, the original letter on the letterhead of the American Bar Association, section of taxation, signed by Mr. Phillips, which I will read for the record. It is addressed to Talbot Smith, Esq., Ann Arbor Trust Building, Ann Harbor, Mich.

DEAR MR. SMITH: You will recall that last year we had some correspondence with respect to the reappointment of Judge Harron of the Tax Court. At that time you expressed opposition to this appointment.

Despite the fact that the American Bar Association recommended the reappointment of only two of the judges of the Tax Court whose term was expiring on June 2, 1948, the President renominated all four of such judges. The Senate confirmed the reappointment of the two judges whose reappointment had been advocated by the association. It took no action with respect to the two judges whose renomination had not been recommended by the association. These were Judges Harron and Harlan. Following the recess of the Senate, the President made recess appointments of Judges Harron and Harlan and resubmitted their names to the Senate in February. The Senate Finance Committee will hold a hearing on Thursday, April 14, at 10 a. m. At this hearing the American Bar Association will oppose the confirmation of Judge Harron. It will neither oppose nor advocate the confirmation of Judge Harlan.

The principal support for Judge Harron comes from various women's organizations throughout the country. It is based upon the right of a woman to be a judge, which the association does not oppose. The association assumes that a woman will be appointed and, in fact, has recommended two qualified women lawyers. But this opposition is politically powerful. Congress has been flooded with letters from women, and if we wish to secure the appointment of a better qualified judge, the opposition to Judge Harron will have to become vocal.

Several officers of the section of taxation will testify on April 14. The members of the Senate Finance Committee have expressed interest in and a sympathetic reception to our cause. But the feeling has been expressed that if the

lawyers of the country are, in fact, opposed to this appointment, they should be willing to stand up and declare themselves. So the burden is squarely on us to produce the testimony. We are certain of some testimony from lawyers and reporters, but if we are going to be sure of the correct answer, we should have something more than a feeble showing. The showing should be so overwhelming as to dispel any doubt in the minds of the committee and build up a record on which the Senators can justify the refusal to confirm a Presidential appointment.

We all know of the feeling against Judge Harron, and we should be willing and able to demonstrate it by testimony. I am writing to ask whether you would be willing to appear and testify to your experience and impressions, and whether you would be willing to ask others in your city to do so. I think the fear of any reprisal can be disregarded, for I do not see how Judge Harron could conscientiously permit an attorney to try a case before her who had opposed her confirmation. In such a situation, either she or the presiding judge should put the case over to the next calendar.

The officers of the association who have devoted a very substantial amount of time to this matter, expect and feel that they deserve the support of the bar as a whole. In one sense this is a test to determine to what extent the bar is entitled to interest itself in better appointments, and if this test fails, the outlook for the future is not too bright. In that connection, we must all have in mind that several of the Tax Court judges are well along in years and that in the next few years there will be a substantial replacement.

If you would be willing to testify, either voluntarily, on invitation of the committee, or pursuant to a subpena from the committee, I wish you would advise me and we will attempt to make the necessary arrangements. The same is true for others who may be interested and willing to testify. The probabilities are that only the officers will be heard on April 14 and that other testimony will be heard later.

His affidavit I read, protesting to this committee against the opposition of Mr. Phillips, and here is the letter in reply that Mr. Talbot Smith, of Ann Arbor, Mich., wrote to Mr. Phillips, April 12, 1949:

MY DEAR MR. PHILLIPS: Under date of April 6, 1949, you addressed to me a letter asking that I express my views with respect to the qualifications of Judge Marion J. Harron for the Tax Court of the United States. In this letter you seemed to assume that I was opposed to Judge Harron's appointment and confirmation, but you have misinterpreted my feelings about Judge Harron. Since I assume your committee is anxious to obtain a true sampling of opinion at the bar respecting Judge Harron's qualifications, regardless of whether the members of the bar expressing such opinions speak favorably or unfavorably, I shall be glad to give you my opinion, as requested by you.

Judge Harron heard a case in which my firm was interested in Detroit. The case was tried by my trial partner, Louis E. Burke, but I was present in court during the trial, and observed the proceedings. After mature deliberation, I want to say to you and would like you to pass on to your committee, that I think Judge Harron is one of the finest judges that I have ever observed in a courtroom. She is courteous, dignified, and patient. Her attitude at all times is one expressing the utmost consideration for the litigants and their counsel. At times, it is true, she questioned the parties before her rather searchingly, but it is my opinion and that of my associates, that such questioning is helpful to all of us, since it serves to clear up matters in the case which, particularly, in tax cases, may be somewhat involved.

I think I should add for your information that we lost our case before Judge Harron, but as a seasoned lawyer, you know that we can't win them all. We don't make the facts. If we get a fair hearing before a competent and unbiased judge, I don't think we can ask any more. That is what we got and that is why I think she should be confirmed.

Very truly yours,

TALBOT SMITH.

Senator MCGRATH. Do you know how many similar letters were sent to other lawyers in the United States?

Colonel MCGUIRE. I have no idea, Senator. It would be interesting to know how many similar replies they received and did not present

here. I think it would be well to issue a subpena for the production of copies of all letters sent by the committee and of all replies received so that we may ascertain that.

Mr. KILPATRICK. Mr. Chairman, may I be heard on behalf of the bar association in answer to that last remark?

The CHAIRMAN. Do you wish to be heard now or wait until the end of Colonel McGuire's testimony?

Mr. KILPATRICK. At the end, Mr. Chairman.

The CHAIRMAN. You may proceed, Colonel.

Colonel McGUIRE. The next affidavit is from Benjamin P. DeWitt. The affidavit is as follows:

Benjamin P. DeWitt, of 120 Broadway, New York, N. Y., being duly sworn, deposes and says: That he is an attorney and counselor at law admitted to practice before the Supreme Court of the United States, the Treasury Department, the Tax Court of the United States, all of the courts of the State of New York and all of the courts of the State of New Jersey; that he has been engaged continuously in the practice of law for the last 30 years; that he is a member of the American Bar Association, the New York State Bar Association, the Bar Association of the City of New York, the New York County Lawyers' Association and a governor of the Lawyers' Club in New York City; that he has appeared on tax matters before the Treasury Department, the Tax Court of the United States and the Supreme Court of the United States.

That one of his cases in the Tax Court came on for hearing before Judge Marion J. Harron, who is now being considered for reappointment to that court. That Judge Harron in the conduct of the trial of the case was affable, courteous, and considerate, quick to grasp the issues involved and prompt in rendering a decision. She displayed unusual courtesy, consideration, and patience in the treatment of witnesses who appeared and in all respects impressed your deponent as a judicial officer above the average in temperament and ability.

Your deponent has been informed that a letter has been sent to certain attorneys who appeared before Judge Harron by a committee purporting to try to obtain the opinion of attorneys practicing before Judge Harron with respect to her qualifications for judicial office. Your deponent did not receive any such letter asking for his opinion. If any such letter had been received by your deponent, he would have expressed the opinion of Judge Harron's ability and qualifications in the manner in which they have been expressed in this affidavit.

BENJAMIN P. DEWITT.

Sworn to before me this 12th day of April 1940.

ELLA SHEEHAN, *Notary Public.*

The next affidavit is by George M. Naus, as follows:

George M. Naus, being duly sworn, deposes and says:

"I am, and for many years have been, a member of the bar of the State of California, of all Federal courts in California and of the Supreme Court of the United States, and continuously since the year 1925 have been admitted to practice, and from time to time have practiced, before the United States Board of Tax Appeals and the successor Tax Court.

In the year 1938, I represented American Foundation Co., a corporation, as a petitioner before the United States Board of Tax Appeals (now Tax Court of the United States), which case is reported, 40 B. T. A. 541. Miss Harron was the Board member who presided at that hearing. I have never appeared before here in any other matter at any time.

It so happens that that proceeding was, as my recollection goes, the first reported case before any court or quasi-judicial tribunal involving any question under the then newly added personal holding company section which were first enacted as a part of the Revenue Act of 1934. Personal holding company controversies under that revenue act, and under all the revenue acts enacted since, have always been tax controversies of difficulty, both in interpretation and application of the text of the statutes and in the complications of facts necessarily presented by the type of case.

In the American Foundation Co. case, to which I have referred, it was evident to me that Miss Harron, the presiding Board member, was a lawyer of excellent ability. She is a good judge, of fine ability and integrity and I am glad to endorse her for reappointment to the Tax Court.

I have been practicing law in general litigation practice for more than 30 years and have had wide experience in all types of litigation before both State and Federal tribunals. In the course of that experience I was for 2 years (1928 and 1929) the chief assistant United States attorney for the northern district of California and during those 2 years represented the United States in all types of cases, including tax cases, in both the district court and in the circuit court of appeals. Before and after those 2 years, I have had much experience in that field in private practice and feel that I have acquired a competence to form a sound opinion with respect to judges and presiding officers. Miss Harron is a sound and good judge.

In the case that I tried before her (the American Foundation case), she conducted the trial in a good, judicial manner and in accordance with the standards expected from judges by lawyers who, as I have, have had long experience in the trial of cases in the Federal courts.

GEO. M. NAUS.

The next affidavit is by Mr. Maurice Austin, of New York City; it is dated April 13, 1949, and it is as follows:

Maurice Austin, being duly sworn, deposes and say:

I am an attorney at law and certified public accountant. I have been a member of the New York Bar since 1937 and a certified public accountant since 1929. I am admitted to practice in the Federal courts and the Tax Court of the United States. Since 1929, I have specialized and practiced very largely, as certified public accountant, and later as attorney, in the field of income, estate, and gift taxes.

I am a member of the executive committee and council of the American Institute of Accountants and past chairman of its committee on Federal taxation, and am a past vice president and past chairman of the committee on Federal taxation of the New York State Society of Certified Public Accountants. I am a member of the taxation section of the American Bar Association.

I have been a member of an advisory committee on administration of section 722 established by the chief of staff of the Joint Committee on Internal Revenue Taxation and have been a member of an advisory committee on income and excess profits taxes to the Tax Legislative Counsel of the Treasury Department. I have testified before committees of Congress on matters relating to internal-revenue taxation.

From 1928 to 1944, I was instructor and lecturer at the College of the City of New York in the department of accountancy, largely in Federal taxation. Since 1942, I have been professor of law in Federal taxation on the graduate faculty at Brooklyn Law School. I have lectured and spoken on taxation at institutes and conferences on Federal taxation at New York University, Harvard University, Duke University, University of Miami, Pennsylvania State College, Rhode Island State College, Practicing Law Institute, and numerous certified public accountants' societies and bar associations. I am the author of Outline of Federal Income and Excess Profits Taxes on Corporations (1943).

I have tried a number of cases in the Tax Court of the United States. Only one of these was tried before Judge Marion J. Harron. This case involved two issues, requiring several hours of trial. Judge Harron's conduct of the trial was in all respects fair and unexceptionable and in accord with high judicial standards. While waiting for other cases to be disposed of, I have to some extent had occasion to observe Judge Harron on the bench, with none but favorable impressions.

As a matter of course I follow closely all decisions of the Tax Court, and I have been impressed with the soundness and lucidity of Judge Harron's opinions, and the realistic approach and analytical ability to weed out and deal with the essential issues which her opinions display.

Based on my own experience, that of one of my partners who has tried cases before Judge Harron, on my familiarity with her decisions, the fact that so few of her decisions have been reversed on appeal, and the fact of her invaluable 12 years' experience on the bench of the Tax Court, I unhesitatingly and unreservedly recommend and support the reappointment of Marion J. Harron as judge of the Tax Court of the United States.

MAURICE AUSTIN.

The next affidavit is by Mr. Granville S. Borden, and it reads as follows:

I, Granville S. Borden, being first duly sworn, desire to state for the consideration of the Committee on Finance of the United States Senate, with respect to the nomination for reappointment to the Tax Court of the United States of Marion J. Harron, the following, which I would testify to if I were called to appear before the committee:

I have appeared as counsel in cases which were heard by Judge Harron when she presided over sessions of the Tax Court in San Francisco. If there is any question about her ability to preside properly over the trial of a tax case, I desire to say that it has been my experience both in the cases in which I was counsel and in cases which I observed the trial of while sitting in her courtroom, that she exercised proper judicial skill and demeanor.

In my cases I felt that I had full opportunity to present my evidence; I received, as counsel, the usual consideration and courtesy which members of the bar expect from judicial officers. It happens that the cases in which I was counsel were decided against me, but the findings of fact were correct and the opinions showed the proper consideration of the law and were well-reasoned opinions.

As a special attorney in the Appeal Division of the Office of the Chief Counsel for 3 years, and as an attorney specializing in taxation for the past 20 years, I have read many opinions of the Tax Court of the United States (formerly the United States Board of Tax Appeals). Some of these opinions have been written by Judge Harron. These decisions by Judge Harron are proof to me that she has a comprehensive knowledge of Federal income tax law; that she surveys the recorded facts comprehensively and intelligently; that she renders her decisions on the basis of sound judgment as to their relative materiality, and relevancy.

GRANVILLE S. BORDEN.

The next affidavit is by Mr. Louis Janin, and reads as follows:

Louis Janin, being first duly sworn, deposes and says that if he were called as a witness in the hearings on the nomination of Marion Harron to the Tax Court of the United States, his testimony before the committee, in response to appropriate questions would be as follows:

(1) I now am and since March of 1938 have been an attorney specializing in taxation matters, with my office in San Francisco, Calif.

(2) As such, I am familiar with the organization and functions of the Tax Court of the United States and with the work of the judges thereof, and have tried cases before the majority of said judges, including said Marion Harron.

(3) As a partner of Adolphus E. Graupner, a former member of the United States Board of Tax Appeals and tax specialist, I participated with him in the trial of a case before said Board, Marion Harron presiding, in San Francisco, in 1939, to wit, *Vesta Peak Maxwell* v. *Commissioner of Internal Revenue* (Dockets 86186 and 86187), memorandum opinion entered February 7, 1940. (Memorandum opinions are not officially published, but this can be found in B. T. A. Memorandum Decisions, 1940, par. 40081 (Prentice-Hall).)

(4) One of the issues involved and presented by affiant was a bad debt question of considerable factual and evidentiary complexity, involving, among other factors, the financial and corporate history of a corporation which had been reorganized 5 times within the space of 2 years, all of the successive corporations have very similar corporate names. The president of these corporations was the petitioner's principal witness on this issue and was exceedingly confused as to which corporation had done what. The member herself participated actively in the examination of this witness in an endeavor to clarify his testimony, and called a recess to enable him to refresh his recollection. The member also criticized affiant in the following terms: "I don't see why counsel comes to trial so poorly prepared," but later apologized with a statement to the effect that the responsibility for the difficulties involved in the trial were obviously the fault of the witness rather than of counsel.

(5) Affiant is of the opinion that this proceeding was fairly heard and fairly decided, and that the active intervention of the member in the examination of the aforesaid witness was necessary to that end.

(6) Affiant knows of his own knowledge of several instances, and by relation from other tax counsel of several other instances, in which said Marion Harron has evinced asperity and impatience in the trial of matters before her, the same

being impartially directed to counsel for the taxpayer or counsel for the Commissioner, but does not know and has not heard of any instance in which such conduct prevented a full and adequate hearing of the controversy.

(7) Affiant is familiar with many of the opinions and decisions of said Marion Harron as a member of the United States Board of Tax Appeals and as a Judge of the Tax Court of the United States, and is now and always has been of the opinion that the opinions written by her and the decisions entered pursuant thereto have been reached after a careful and intelligent endeavor to decide the controversies in a fair and impartial manner and in accordance with the evidence presented and the law applicable thereto.

LOUIS JANIN.

Subscribed and sworn to before me this 7th day of April 1940.

MARIE KANE,
Notary Public In and For the City and County of San Francisco, State of California.

Incidentally, Mr. Chairman, I might say that all of these affidavits were written in the States and none in the District of Columbia.

The CHAIRMAN. Colonel, Mr. Paul advises that he is going to be compelled to leave. Do you wish to call him at this point?

Colonel MCGUIRE. Yes; I will call him now.

The CHAIRMAN. Come around, Mr. Paul. You may proceed, sir.

STATEMENT OF RANDOLPH E. PAUL, ATTORNEY, WASHINGTON, D. C.

Mr. PAUL. Mr. Chairman and members of the committee, I will briefly state my qualifications as a witness before I begin my testimony.

I am a member of the bar of the State of New York and the District of Columbia.

I have practiced tax law for about 30 years. I was originally admitted to the bar in 1914. I was General Counsel and tax adviser to the Secretary of the Treasury in the period from 1914 to the spring of 1944. I am the author of a number of volumes on taxation, and I have lectured at a number of institutions, law schools, including Harvard, Yale, and a number of others. I thank the chairman for calling me at this time because I have got to get back to my office. I have a client there waiting for me and it is a great help to interpolate my testimony at this time.

Having appeared so many times before this committee, I am sensible of the privilege of appearing here today to give my testimony on the qualifications of Judge Harron. I also feel a sense of responsibility about giving my testimony which is somewhat special, because of my view of the Tax Court as a very important court. I agree with what my friend Mr. Morris testified as to the importance of that court, and I think it is very important because these terms which are now up for confirmation before this committee are 12-year terms, and we are therefore selecting a judge here today for quite a long period of time, to a very important court.

I have a very high opinion of Judge Harron. I think she is a very industrious judge, perhaps sometimes a little too industrious, in prolonging trials to great length, but in all her work, I think she has exhibited a good mind, I think her opinions are sound, with the virtue, in frequent instances of being short. I think she analyzes the facts of these rather complicated cases presented to the Tax Court, and previously to the Board of Tax Appeals, with great care and diligence.

I think it is a very important point in this proceeding before you for confirmation that she has had 12 years of experience. That is im-

portant because of the importance of the court, and I think it is also especially important today because I think we can expect a great volume of litigation before this court in the next few years, perhaps partly on account of some of the laws that have gone through this committee in the last few years.

I take it that there is not very much question about that aspect of Judge Harron's work. I have listened to the testimony here as carefully as possible, and it seems to me that the issue has pretty well narrowed down, as I think Senator Millikin observed the other day, to the question of whether Judge Harron has the proper degree of judicial temperament, and also as to her conduct in the courtroom.

I want to say that I believe thoroughly that a judge's conduct in a courtroom should be dignified, fair, and in all respects courteous to counsel and to witnesses. I go along completely with that view of how trials should be conducted, so that what I say after this will be upon that premise.

At this point I perhaps should say that although I have tried quite a number of cases before the Tax Court and the previous Board of Tax Appeals, I never appeared before Judge Harron except on one occasion, and that was very early in her career as a judge—I would say it was about the year 1937.

It was in the case of the Brown Shoe Co. The appearance was abbreviated by the fact that after the original call of the calendar and one or two postponements of the calendar on account of a motion that was made by Government counsel, the case was settled, so we did not proceed to trial. The settlement negotiations ensued upon some discussion of the motion itself.

I have, however, been in courtrooms on a number of occasions when Judge Harron was presiding, and it has always appeared to me that she conducted herself in a wholly dignified manner, and as befits a judge of this court. I also, like Mr. Phillips, have quite a wide acquaintance throughout the United States, both among tax lawyers and otherwise, and I have not heard any complaints that I can specifically remember against the conduct of Judge Harron in the courtroom.

I would like to say perhaps that I could imagine—I am here departing from my own observations—that the judge's patience sometimes may have been tried. The trial of these tax cases is a very exacting job, as you Senators know. As Senator McGrath pointed out, it is perhaps a special duty of Tax Court judges to do all they can to elicit the facts.

I was curious, after the testimony the other day, to look up the law on this point, to see whether my assumption is correct, that it is to some degree the duty, in fact, of judges, to ask questions of witnesses.

Personally, I have had very few trials where the judge presiding at the trial did not ask questions of the witnesses on his own account.

It seems to me quite clearly to be the established law, that it is not only proper for a judge of the Tax Court, but it is the duty of the judge.

That has been stated in American Jurisprudence in the following language:

> Indeed it has been declared to be the duty of the court to propound such questions to reluctant witnesses as will strip them of the subterfuges to which they resort to avoid telling the truth.

and in another case, I though the same doctrine was put rather succinctly in the following sentence:

> A judge should not be a mere automatic oracle of the law, but a living participant in the trial, and so far as the limitations of his position permit, should see that justice be done.

Now, I cannot say very much about this question of possible deletions from the record, except that I would like to say to the committee that it is a fairly common occurrence in at least the trials in which I have participated, to have some deletions made of unimportant, trivial material, which does not contribute to the issues before the court.

I had one experience in the Chicago district court, the northern district of Chicago, at one time, for whatever help it may be to the committee.

It was a tax case, being tried before that district court. In the course of the trial, the attorney for the Government, whose name I would rather not mention, was rather severely reprimanded by the judge for being inadequately prepared. At the end of the trial he was very much concerned. He came to me and asked if I had any objection to deleting that part of the record. Of course, I said that I had no desire to get him in trouble with his superiors, and at any rate, I consented. I do not know what was done about it, because I never checked the record afterward in that respect.

I have listened here, as I have said. I first started to count the names of the witnesses, and the trials which they represented. I am afraid I have lost count, but it is true to say that upwards of 30 trials are represented here by witnesses who appeared before Judge Harron.

A great many others who appeared before Judge Harron have submitted affidavits or otherwise communicated to the committee their view that her conduct in the courtroom has been entirely proper.

Now, it seems to me strange that no one has appeared before this committee, at least while I have been attending, who had ever tried a case before this judge, and who has complained of her courtroom conduct.

She has testified that 730 attorneys appeared before her. Some number of those who appeared before her have testified that her courtroom conduct was proper. No one has yet testified before this committee that it was improper.

One or two people have communicated their views to the committee, and perhaps others have also done so, although I have no knowledge of that.

So, what do you have in the whole picture? You have 3,000 members of the American Bar Association tax section. To those members, I understand, a questionnaire was sent. Something like 11 percent responded. There was some disparity, and it is unquestionably true that Judge Harron received less affirmative votes among those responding than did Judges Disney, Harlan, and Hill. The total votes opposed to Judge Harron, responding to that questionnaire was, I believe, 104. Those were, in a sense, if you please, anonymous votes, names not disclosed.

A great many people, perhaps as many as 104, although I have not kept track lately, have appeared before this committee, or subscribed their names under their statements that they think the judge is qualified.

Nobody, on the other hand, who testified before this committee, representing the American Bar Association, has ever tried a case before Judge Harron.

That record before the committee means a lot to me, and it means simply this: That if any association or any group of lawyers wants to have an influence, which I think it should have, in the selection of judges, that influence has to be exerted by means of appearances before the committee. People who are opposed to Judge Harron should come here and give personally, or give their opinions over their signatures, so that the committee may judge of the exact nature of any complaint made, so that the committee may, if they appear here, have an opportunity to cross-examine them. That has not been done.

I therefore respectfully and very sincerly urge upon the committee that the nomination of Judge Harron be confirmed.

The CHAIRMAN. Are there any questions? If not, thank you very much, Mr. Paul.

Mr. PAUL. Thank you, Mr. Chairman.

The CHAIRMAN. Very well, Colonel McGuire, you may proceed.

Colonel MCGUIRE. Mr. Chairman, I do not wish to burden the committee with too many of these affidavits.

Senator MCGRATH. As I understand, you are simply going to complete putting in these affidavits. You have no other witnesses?

Colonel MCGUIRE. No; I have no other witnesses. But I want to read an affidavit that I had Judge Harron prepare under oath. These charges made against her were not under oath. I have had her prepare an affidavit under oath, and perhaps I could read that now.

The CHAIRMAN. Very well, you may do so.

Colonel MCGUIRE. The affidavit of Judge Harron which I referred to is as follows:

Marion J. Harron, being duly sworn, deposes and says:

Since June of 1930, I have presided over the trials of about 550 cases (some of which are still pending before me), either as a member of the United States Board of Tax Appeals, or as a judge of the Tax Court of the United States. I have never, in any proceeding, directed the official court reporter, or stenographer, to delete, or modify, or change, any of his notes of what was actually said during the trial of a proceeding by any attorney, or any witnesses, or anyone whose statements were transcribed by the reporter. I have never attempted to or in fact edited any notes taken by a reporter for transcription into the official report of a proceeding relating to the evidence, statements of witnesses, or statements of counsel. I have never "impounded" a reporter's notes taken during the trial of any proceeding before me for any purpose. I have never given any direction to a reporter to strike from his notes any statements of my own, or to modify any statements of my own, which constituted rulings upon motions of counsel, comments on the evidence, comments on testimony, or comments upon any matter relating to the cause at trial, or relating to any matter about which any comment of my own, as a presiding judicial officer, related to my conduct of the trial; that is to say, all of a reporter's notes taken during the trial of every case which I have heard having to do with the trial itself have stood just as the reporter took his notes so that the official transcript was accurate and correct for every purpose—the purposes of the parties, of the Tax Court, of Board of Tax Appeals, and of any appellate court. No "colorable" record has ever been issued of any proceeding which I have heard in my entire service.

I am able to recall only 4 cases where I directed the reporter to delete certain statements of myself to an attorney representing a party to the proceedings, the names of which are set forth below. I am able to recall the general nature of my statements to an attorney and my reason for directing the reporter to delete my statements. The reasons are given below. It is in the contract which was used by the Board of Tax Appeals and was and is now being used by the

Tax Court, with reporting concerns which are employed to make the official record of proceedings before said tribunals, that the presiding judge may direct a reporter to omit from the official record a part of a proceeding, notes of which the reporter has taken. The provision in the reporting contracts is a follows:

"Specifications: A, paragraph 6. The reporter shall record, either stenographically or by some other recognized method or system of speedy reporting, everything spoken during a hearing, unless the judge presiding shall direct otherwise.

"* * * No part of the proceedings in any hearing, notes of which have been taken shall be omitted from the transcripts unless the judge presiding so directs.

The statements which I made in the four cases which I recall were to an attorney about his lack of preparation of the case and the difficulties to both the court and the client which were at the time resulting therefrom, or were about the attorney's method of proceeding on some matter which I believed to have been in error, which error I deemed it necessary to point out to the counsel during the trial in order that he would then correct the error and proceed in the way which I, as the presiding officer, deemed necessary in the interests of a proper and adequate trial. Such statements should have been made off the record, the official report showing "off the record," or in chambers, but were made in the courtroom. Before the end of the trial, I directed the reporter to delete such remarks of my own and the colloquy resulting from my comments from the official record. It is a common and not unusual thing for a presiding officer in the proceedings of trial courts and commissions to do this, and I did so only when it came within the permissible area of statements of the presiding officer which may properly be stricken from a record, under established custom, by the presiding officer himself. My reasons for so directing the reporter in the 4 instances which I recall were: (1) The statements of myself were in the nature of "off-the-record" remarks which were not material to the proceeding but related only to the attorney and his method of proceeding, or his preparations and procedure, and the reporter had taken notes on my comments before I thought to indicate that my statements were intended to be or should have been "off the record," (2) such statements of myself to an attorney may have appeared to be critical of him if left in the record and out of my consideration for the attorney, so that he would not feel embarrassed in any respect, I concluded that such statements of myself should be treated ex post facto as "off the record" and, therefore, directed the reporter to strike them from the official transcript.

The notes of the reporters in three of the four proceedings have been destroyed. Therefore, I cannot now state whether or not my remarks to any attorney were stricken with his agreement and that of opposing counsel. However, the notes of the reporter in one case show that my remarks were stricken with the consent of both counsel to the proceeding.

Mr. Chairman, I interpolate at this point to state that I placed those in the record this morning through Mr. Coote.

In that case, the attorney to whom my remarks were addressed was representing the Commissioner of Internal Revenue; he was very young; and the case was his first trial of any consequence. I had my remarks stricken out of consideration for his youth, his inexperience, and his status in an organization where his superiors might find cause, because of my remarks, which were critical, to further criticize him. I am submitting with this affidavit, the reporter's transcript of my remarks, which I directed him to strike.

That is already in evidence.

I am submitting, also, a telegram from the reporter in the Phipps cases relating to the striking of my remarks to the counsel for the petitioner in one of those cases (which one it was, being beyond my recollection, and the notes having been destroyed).

The names of the four cases, and the year in which each one was heard, are as follows:

1. Rome Son, heard in San Francisco, September 30, 1938: The taxpayer was represented by an attorney, Percy E. Towne, and an accountant, Myrtle Cerf. My statement was addressed to Mr. Cerf about his lack of preparation. There was no appeal from the decision of the Board of Tax Appeals, and petitioner did not file any motion objecting to having my remarks stricken from the record, or objecting to the trial or anything pertaining thereto.

2. Murray Baldwin, heard in San Francisco in 1938: The taxpayer's attorney was Mr. Allen Spivock. There was occasion to make comments to Mr. Spivock, who is not a tax lawyer, about his lack of wisdom in endeavoring to prove the fair market value of some small property in Texas as of some date close to the year 1935 through the owner's son who had not seen the property since 20 years prior to about 1935, the valuation date. Mr. Spivock did not file a motion to have my comment to him restored to the official record. There was an appeal in the Baldwin case, but no question on appeal was raised relating to the stricken comment of myself.

3. Lawrence C. Phipps, heard in Denver in September of 1939. There were separate trials in two Phipps cases, Nos. 83804 and 88241. The Honorable David E. Reed represented the taxpayer. I had occasion to address comments to him regarding the customary method of qualifying an expert witness. Out of respect to his status, I directed my remarks on this matter stricken. No objection was made then or thereafter by motion or verbally.

4. Charles W. and Samuel B. Heppenstall, Nos. 5437 and 7028; heard in Pittsburgh in June 1946. Counsel for the Government was Mr. Hobby H. McCall. He was inexperienced and caused real difficulty in the testimony of his own expert witness by failing properly to have certain exhibits marked. I had occasion to make certain remarks to him in chambers but had the reporter take them down. By agreement of Mr. McCall and petitioner's counsel, my remarks were omitted from the record. The reporter's notes of them are submitted with this affidavit.

In some instances, counsel file stipulations to correct the record where the reporter has made errors of some sort. In no instance have such stipulations ever referred to the matter here discussed.

With respect to any instance where I have directed the reporter to strike any comment of my own made during a trial, no objections were ever made to me, and no motions of objection were ever filed in the case.

MARION J. HARRON.

Colonel McGUIRE. Now with respect to the matter of interrogating witnesses by the judge, for a number of years I served as chairman of the committee on administrative law of the American Bar Association, and Dean Roscoe Pound was on the committee with me. I believe one year he was chairman of the committee and I served under him. A strong friendship has grown up between us, so when this issue arose and I found out what it was really about, I wrote him a letter and asked him what he thought of the right of a judge to question witnesses.

All of us know who Dean Pound is. He is now dean emeritus of Harvard University Law School. His letter is dated April 4, 1949, and it is as follows:

DEAR COLONEL MCGUIRE: Certainly there can be no qestion of the right, and indeed the duty, of a judge to question witnesses and question counsel so as to be able assuredly to understand witnesses and counsel, to be sure that the facts about which a witness is testifying are completely brought out, and that in case of opinion evidence the bases of the opinion are completely developed.

The idea that a judge is to be simply an instrument of maintaining order and seeing that the mechanical requirements of the hearing are duly adhered to is out of line with the common law, with the best usage of common-law courts, and with the whole tendency of the better judges of today. It is true, there have been occasional judges who misused their power of asking questions to the extent of something like heckling. But such things have been rare, and this ought not to be urged against legitimate use and even regular use of the power of interrogation by judges.

The judge must be assured that he thoroughly understands what the witness has to say, the basis of the witness' knowledge, and the things about which not having been asked he says nothing where if he were asked important facts would come out. In the same way, in my experience counsel prefers to have questions put to him so that he may perceive wherein he has failed to make the judge understand his point, or where there is something in the judge's mind which he could answer if it were brought home to him.

In other words, it is no fault in a judge to be zealous to bring out all the evidence fully and be sure that the arguments of counsel are well understood and that counsel are advised of things that may trouble the judge in order that they may be answered. It seems to me too late in the day to be thinking in terms of the automaton judge who used to be urged as a model 50 years ago.

What I have said above is well borne out by the opinions of Mr. Justice Stern in the Supreme Court of Pennsylvania in *Commonwealth* v. *Watts* (358 Pa. St. 92 on pp. 95–96). On page 96 the court says: "It is always the right and sometimes the duty of a trial judge to interrogate witnesses, although, of course, questioning from the bench should not show bias or feeling or be unduly protracted. Here the witness' veracity was extremely doubtful and the trial judge was justified in probing into her story in order to ascertain whether it had in fact any basis of truth; in doing this he did not transcend permissible limits."

With cordial regards,

Yours very truly,

ROSCOE POUND.

The next affidavit is by Wilbur H. Friedman, and it is as follows:

Wilbur H. Friedman, being duly sworn, deposes and says:

I am a member of the law firm of Proskauer, Rose, Goetz & Mendelsohn, 11 Broadway, New York 4, N. Y. I am admitted to practice before the United States Supreme Court and in the District of Columbia.

For the past 17 years I have been specializing in the practice of taxation; in 1930 and 1931 I was law clerk to Hon. Harlan F. Stone, Associate Justice of the United States Supreme Court, and in 1931 and 1932 I was attorney in the Office of the Solicitor General of the United States Department of Justice.

I am a member of the American Bar Association and of its committee on taxation, partnership subdivision; I am chairman of the committee on taxation of the New York County Lawyers' Association and am a member of the committee on taxation of the bar association of the city of New York. I am a lecturer at New York University and am a member of the planning committee of the New York University Institute on Federal Taxation.

I am furnishing this affidavit in support of the nomination of Marion J. Harron for reappointment as a judge of the Tax Court. I have myself tried only one case before Judge Harron. This case, involving two taxpayers, involved exceedingly complicated issues of fact and law, and the trial took an entire day. Judge Harron rendered a memorandum opinion on March 31, 1939, Docket Nos. 80028 and 85907, Alfred L. Rose, et al. and Walter Mendelsohn, and following a dispute with respect to the rule 50 computation, wrote a published opinion, reviewed by the Board, which appears in 41 B. T. A. 1078, entitled Alfred L. Rose, et al. Judge Harron's two opinions in this case indicate an ability to digest complicated facts and to unravel complicated questions of law. Her conduct of the trial was competent and judicial. It is my recollection that I have been present in the courtroom on other occasions when Judge Harron presided, such as at the call of the calendar, and I did not observe that her conduct was other than appropriate and judicial. I have also examined the "Memorandum relating to Judge Harron" setting forth the record of her activities on the court from July 1, 1936 to July 30, 1947. In the light of this record, and of my knowledge of her conduct as set forth above, it is my belief that Judge Harron's renomination should be confirmed.

WILBUR H. FRIEDMAN.

The next affidavit is by James T. Tynion, which is as follows:

James T. Tynion, being duly sworn, deposes and says:

That he is an attorney and counselor at law, duly admitted to practice in all courts of the Sate of New York, and is a member of the firm of Conboy, Hewitt, O'Brien & Boardman, with offices at 30 Broadway, New York, N. Y.; that deponent is admitted to practice before the Tax Court of the United States; that deponent as attorney for the petitioner in the matter of *Drayon Cochran* v. *Commissioner* (Docket No. 8800), tried said case before Hon. Marion J. Harron in New York City on June 2 to June 6, 1947, inclusive. Said case was consolidated for hearing with the matter of *Boicen* v. *Commissioner*, and the court was faced with the problem of evaluating the stock of a closely held corporation for gift- and estate-tax purposes on two different dates, and the trial of the action involved the consideration of testimony by a large number of witnesses and a large number of documentary exhibits. Throughout the hearing, Judge Harron manifested a fine judicial temperament and at all times

evidenced a real interest in the testimony adduced and dealt fairly and courteously with counsel. In deponent's opinion, Judge Harron's ability and experience as a trial judge facilitated and expedited the conduct of the trial and by convening court early and not adjourning until very late in the day it was possible to complete the presentation of the case on the dates mentioned above. The opinion rendered by Judge Harron was a model of careful study of all factors involved and showed that the court had thoroughly analyzed the evidence, both oral and documentary.

Your deponent is informed that your honorable committee is conducting hearings in the matter of the reappointment of Judge Harron and as the engagements of deponent are such that it is impossible for him to go to Washington at the present time, he is taking the liberty of offering this affidavit as a statement of his opinion that Judge Harron by experience, ability, and judicial temperament is entitled to reappointment and your deponent respectfully urges that your committee act favorably on her nomination.

JAMES T. TYNION.

Mr. Chairman, I have here also an affidavit from Mr. Arthur L. Murray, of the county of Los Angeles, State of California, executed April 6, 1949. He was one of counsel in a case of *Law* v. *Commissioner* (2 T. C. 623), to which Mr. Phillips referred in his testimony.

Mr. Murray's affidavit is as follows:

Arthur L. Murray, being first duly sworn, deposes and says:

I am a member of the State bar of California and am, and since April 2, 1945, have been, in the active practice of law, at Los Angeles, Calif., specializing in taxes. Prior to that time I was an attorney in the office of the Chief Counsel of the Internal Revenue Bureau for 12 years. Before that I was attached to various audit sections of the Internal Revenue Bureau for 14 years, so that, all together, I was engaged in Federal tax work, in the Internal Revenue Bureau for a period of 26 years.

I represented the Commissioner of Internal Revenue in the trial of cases before Judge Harron at various times, after her appointment to the then United States Board of Tax Appeals in 1936, when her division of the court sat in the State of California and in the State of Washington. I tried 14 cases before Judge Harron prior to the time I left the Government service.

I understand that there will be a hearing before the Finance Committee on the qualifications of Judge Harron to serve as a judge of the Tax Court and, if I were called as a witness by the committee and were asked my opinion of her ability, I would have to say, based upon my own experience, that she is an able, diligent, and honest judge, with the ability to decide issues in a sound and impartial manner. I consider that her written opinions are excellent.

It has come to my attention, by hearsay, that some of the members of the tax bar are extremely critical of Judge Harron's method of conducting a trial. This matter has been discussed in my presence and I have given considerable thought to the criticism, as I have heard it. In my own experience, however, in the trial of the 14 cases, I can recall only one instance where, in colloquy between Judge Harron and counsel, she was unusually insistent upon counsels' going into more detail about a statement of the question than I, as one of the counsel, had intended to do at that time, expecting, rather, to cover the matter in the written brief that would be filed after the trial of the case. That case, which was on the calendar of the Tax Court in Seattle, in about 1942, was the *Pacific Refrigerating Co.*, case (Docket No. 235). That case involved a very complicated issue, which both counsel had agreed to submit on an agreed stipulation of facts. When the case was first called Judge Harron refused to accept the case because, as she stated, she was unable to understand the issue from the statements of counsel, and she continued the matter. When the case was again called she refused to accept it until, after considerable colloquy between herself and both counsel, she concluded that she understood the issue.

Soon after I returned to my headquarters in San Francisco, after the close of the Seattle calendar, I received a telephone call from a Mr. Allen Splvock, who was attorney for the petitioner in a Board of Tax Appeals case entitled Murray Baldwin, Ex., Docket No. 86,050, which had previously been heard by Judge Harron but in which I took no part, and he asked me if I had not had some unpleasant experience with Judge Harron during the recent trials in Seattle. I was surprised that Mr. Splvock even knew that I had appeared there. I cannot

now recall exactly what I said to Mr. Spivock at that time but the most I could possibly have said was that Judge Harron, during the opening statements for the Pacific Refrigerating Co. case, had been very insistent, from the bench, upon thoroughly understanding the issue before she would accept the case on the basis of the agreed stipulation of facts. Within the last month it has come to my attention that Mr. Spivock, in a complaint against Judge Harron which he filed during 1943 in the United States District Court for the Northern District of California, and with which the members of the committee may be acquainted, listed me as one who could "testify to further instances of said member's malfeasance in office and inefficiency * * *" and undertook to refer to my own experience in the Pacific Refrigerating Co. case as proof of his contentions, and to quote from the record in that case certain of the colloquy between Judge Harron and both counsel. I was surprised to learn that Mr. Spivock had used my name in a public document, particularly with the assumption that my own experience would lead me to conclude that Judge Harron was inefficient and guilty of malfeasance in office. Nothing ever occurred in any case in which I participated that could lead me to conclude that Judge Harron was either inefficient or guilty of malfeasance in office. A correct interpretation of the portion of the colloquy between Judge Harron and myself in the Pacific Refrigerating Co. case, which is quoted on page 11 of exhibit "B" attached to Mr. Spivock's complaint, is not, in my opinion, detrimental to Judge Harron unless the refusal of a judge to take a case under submission without understanding the issue is subject to criticism.

Senator MILLIKIN. Mr. Chairman, I should like to ask just for my own enlightenment, just what is the procedure for accepting or not accepting, after, I assume, it has been assigned to a judge?

Colonel MCGUIRE. It comes to this, Senator. The case is assigned to a judge to try it. Counsel for the Government and counsel for the taxpayer get together and they agree upon a stipulation of facts. They do not put in any evidence. They want the court to take the case on stipulations. Sometimes they do not stipulate all the facts but stipulate the facts covering some particular issue, evidence being taken as to the balance of the case.

In this instance, as I understand it, there was a stipulation to which was attached a large number of exhibits. The stipulation really was attaching exhibits and then it was expected that the judge would study the exhibits and finally arrive at what the issue was. She objected to that and insisted that the facts be made clear to her as to what was involved in the case and what the facts were with respect to the issues, and so forth.

Senator MILLIKIN. Would not any deficiency in the stipulation become apparent during the progress of the case, and whereupon would not the judge be in a position to direct the submission of additional evidence or whatever may be needed to make the issue clear?

I do not quite understand the initial refusal to accept a case.

Colonel MCGUIRE. She did not refuse to accept a case. It was to accept the stipulation, really. Of course, she could take it that way and then mull over the stipulations for sometime and finally conclude that there would have to be evidence taken. But that would mean the case would not be heard until the next time a traveling judge went to the Pacific coast. The object is to get the facts clearly upon the record at the hearing to which it has been assigned so that when the case is brought back to Washington, and the judge begins to prepare the opinion, there will be no necessity of going out and taking further evidence in the case.

Senator MILLIKIN. Was it somewhat in the nature of a pretrial conference?

Colonel MCGUIRE. Something of that sort, yes, sir, where agreements as to certain facts are reached. But usually in pretrial confer-

ences the judges insist upon the facts being made clear; or they will sometimes stipulate a few documents into the record. But in this instance all of the facts had been stipulated which the attorneys proposed to place before the court; in other words the stipulation of facts wast just like a case stated as in chancery, for instance.

Senator, I do not know whether you are a lawyer?

Senator MILLIKIN. I understand the rule of stipulation of fact. I think I understand that very well. It comes to me as a matter of surprise that the judge determines the weight of the stipulation of fact and its usefulness in the case before you really get into the case.

Colonel MCGUIRE. You see, there is no getting into the case if she is going to accept the stipulations assuming they stipulate all the facts. The next time she gets into it it will not be until briefs are presented to her that she will write her opinion.

You have no jury here. The judge is the trier of the facts and the judge is duty bound, in the interest of the taxpayer as well as the Government, to be sure that he or she has the facts before he or she accepts the case.

It was not clear from this stipulation what the facts really were.

Senator MILLIKIN. I think you have clarified that all right.

Colonel MCGUIRE. To continue Mr. Murray's statement:

It is true, as the said quotation indicates, that I became very impatient, stating that I had been in the Internal Revenue Bureau service for 23 years and I believed I knew how to state an issue, but I also stated, on the record, that "it took me a full day to understand this case."

Since my name has been used, and since I know there have been some discussions as to the method of Judge Harron's conduct in the trial of cases, I would like to repeat what I have stated above: that she is, in my opinion, an able, diligent, and honest judge; that she writes excellent, sound, and impartial opinions; and that, unless her diligence in insisting upon understanding issues, and in thoroughly understanding the application thereto of the evidence presented, as trial of such case progresses, is unreasonable, she has always, in my 14 appearances before her, conducted herself in a reasonable and proper manner.

ARTHUR L. MURRAY,
Los Angeles 13, Calif.

I think those of you who have had judicial experience will appreciate how important it is for the judge to understand the facts.

Senator MILLIKIN. Colonel, I am sorry that I have to leave, and I will be glad to read the rest of your presentation in the record.

Colonel MCGUIRE. Thank you, Senator.

The next is the affidavit by Louis E. Burke, of Ann Arbor, Mich., who is a tax attorney of a good many years' experience. Mr. Burke's affidavit is as follows:

Louis E. Burke, being duly sworn, deposes and says that he is a member of the firm of Burke, Burke & Smith, of the city of Ann Arbor, county of Washtenaw, State of Michigan;

That in such capacity your deponent personally tried the Paul Green tax case in the city of Detroit before the Honorable Marion Harron, of the Tax Court of the United States; that your deponent was and is thoroughly satisfied with the judicial qualifications and personal and judicial temperament exhibited by Judge Harron at the said trial, although your deponent lost the case which was tried;

That your deponent has scheduled for trial in the circuit court for the county of Washtenaw on April 14, 1949, the case of *Hildinger* v. *Hildinger*, which said case involves out-of-State clients, witnesses, and an out-of-circuit judge, and which cannot be postponed;

That your deponent is a member of the American Bar Association and has seen the letter addressed to your deponent's partner, Talbot Smith, by the Hon-

orable Percy W. Phillips, of the city of Washington, D. C.; that your deponent wishes to inform the committee by means of this affidavit, since your deponent cannot appear in person, that so far as your deponent is concerned in his membership in the American Bar Association the Honorable Percy W. Phillips does not think for him, does not speak for him, does not make recommendations for him, and has never addressed to him one word of inquiry regarding the qualifications of the Honorable Marion Harron, and that if the said Percy W. Phillips purports to speak for your deponent as a member of the American Bar Association, any such statement is not in accordance with the facts.

Further deponent sayeth not.

LOUIS E. BURKE.

Subscribed and sworn to before me this 11th day of April A. D. 1940.

/s/ MARGARET L. ECKEL,
Notary Public, Washtenaw County, Mich.

My commission expires March 6, 1953.

Mr. Chairman, Mr. Joseph J. Klein was a witness before this committee at the last hearing, but he executed an affidavit and I will ask that it be received in evidence without my reading it. It is in substance his testimony, but it is under oath.

The CHAIRMAN. Very well, Colonel, that will be done.

(The affidavit follows:)

STATE OF NEW YORK,
City and County of New York, ss:

Joseph J. Klein, of 60 East Forty-second Street, borough of Manhattan, city and State of New York, being duly sworn, deposes and says:

He is a member of the bars of New York, the United States Supreme Court, the Tax Court, and others. He is also a certified public accountant of the State of New York. He has practiced accounting for approximately 40 years and law for over 25 years. During most of his professional career, he has specialized in taxation. He has been unofficial adviser to the Commissioner of Internal Revenue; he has been tax editor of the New York Globe (and Associated Newspapers, Inc.); he is associate professor of taxation at the College of the City of New York; he has been president of the New York State Society of Certified Public Accountants, a member of the governing body of the American Institute of Accountants, and chairman of the tax committees of the American Society of Certified Public Accountants and of the New York State Society of Certified Public Accountants. He has assisted the Federal attorney in tax-fraud cases and has also assisted the Department of Justice in civil-tax issues. He inaugurated what was probably the first course in Federal taxation in any college in the country; he is the author of Federal Income Taxation (a recognized text for a number of years) and a number of annual supplements thereto; he has written and lectured extensively on taxation, as early as in connection with the consideration of the Revenue Act of 1918; he appeared before congressional committees, and has since then so appeared on a number of occasions. He was among the active proponents of the legislation which resulted in the creation of the United States Board of Tax Appeals, and, when its continuance was in question, was among those most active in urging its continuance. As practitioner before the Tax Court, as a student of its decisions, and as one who, because of his interest in the said court, is familiar with its work and with many of the practitioners of its bar, he verily believes that he is in a position to express considered views which may be helpful to the honorable members of the Senate Committee on Finance in its consideration of the instant nomination.

Your deponent has tried at least two cases before Judge Harron; on a number of occasions he has sat in her courtroom while the calendar was being called and while cases were being presented; he has discussed Judge Harron's judicial work with quite a number of practitioners. On the basis of his personal observations, on the basis of his study of Judge Harron's judicial record as disclosed by the number of decisions rendered by her, the very small number (absolutely and relatively) reversed on appeal, and the absence of any Supreme Court reversal, on his understanding that despite the ease and facility with which such motions may be made, there have been not more than a very few motions to review her decisions by the entire court (most of which were denied by the presiding judge) and only two motions to have a case transferred to another division (the presiding judge denied one motion, and because of the intemperate tone of the

other, she herself withdrew) on all of these grounds, deponent submits that there is no valid ground for opposing confirmation of a judge who has served for a full term of 12 years. Affirmatively, deponent expresses it as his considered opinion that Judge Harron should be retained on the bench because she has been a conscientious, hard working judge; because she has shown herself ever eager to expedite the business of the court; because she has demonstrated herself to be learned in tax law, able to determine the true issues involved in cases presented and aptly to apply the governing law thereto, and, not only that, but also to express her legal conclusions in clear and unambiguous language—for all of which reasons he has a distinct impression of a pattern of soundness in her decisions. Deponent has heard of rumors reflecting on your nominee's judicial conduct or temperament, but he, himself, has witnessed no such conduct; on the contrary your deponent himself has always been treated by Judge Harron with commendable judicial consideration, courtesy, and understanding, and so have witnesses and counsel in his presence.

It is respectfully submitted that no experienced judge should be denied the privilege of continuing in office, or the Government deprived of the services of such a judge, except for clear lack of judicial capacity and competence or for gross judicial misconduct, and that not only are such factors absent in the instant situation, but, on the contrary, there is here disclosed a record of judicial accomplishment that justifies high commendation and approval.

JOSEPH J. KLEIN.

Sworn to before me this 12th day of April 1949.

[SEAL] SADIE GOLDSTEIN,
Notary Public.

Colonel McGUIRE. The next affidavit is by Mr. Samuel Taylor, of San Francisco, and it reads as follows:

Samuel Taylor, being first duly sworn, deposes and says: I am an attorney, a member of the California State bar, and I have been engaged exclusively in the practice of tax law. From February 1939 to February 1943, I was an attorney with the Bureau of Internal Revenue and since that date I have been in private practice. In 1941, while with the Bureau of Internal Revenue as counsel to the technical staff in Los Angeles, I tried the case of Nathaniel Shilkret before Judge Harron. The opinion in this case was promulgated on May 19, 1942, and is reported in 46 B. T. A. 1163.

I have a very distinct recollection of that trial, and I considered then and I consider now that I received a fair trial and that Judge Harron acted impartially and judicially in its conduct.

The decision in the case was in favor of the Commissioner of Internal Revenue. The case was appealed by the taxpayer to the United States Court of Appeals for the District of Columbia which affirmed the decision below. The decision of the court of appeals is reported in 138 Federal Reports (2d) 925 (1943).

The Shilkret case has become a leading case on domicile for tax purposes and has been frequently cited.

I have tried no cases before Judge Harron since I have been in private practice.

SAMUEL TAYLOR.

Subscribed and sworn to before me this 12th day of April 1949.

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires August 27, 1951.

I have also an affidavit from Mr. Walter L. Nossaman, as follows:

Walter L. Nossaman, being first duly sworn, on oath deposes and says: I am a member of the State bar of California and am admitted to practice before the Tax Court of the United States. I make the following statement for the information of any congressional committee or other agency which may be investigating the Honorable Marion J. Harron's qualifications for reappointment as a judge of the Tax Court of the United States.

I have known Judge Harron since the early part of 1948, and have been present in her court on one or two occasions, but have never tried a case at which she presided. I have a reasonable acquaintance, going back over the period of her service as member of the Board of Tax Appeals and later as judge of the Tax

Court of the United States, with the opinions which she has rendered in those capacities and with her judicial record generally.

Criticisms of Judge Harron relating to matters of demeanor—an attitude said to be at times critical of lawyers trying cases before her, or manifesting impatience with their method of presenting their cases—have come to my attention, but I have heard nothing which reflects upon Judge Harron's fairness, impartiality, or conscientiousness as a judicial officer or her learning, industry, or ability as a judge or lawyer. It is my belief that her opinions show that she possesses the fundamental judicial qualities of fairness, impartiality, and adequate learning, and that her record entitles her to the respectful consideration of any committee or other agency inquiring into her qualifications.

(Signed) WALTER L. NOSSAMAN.

Mr. Chairman, I have another affidavit executed April 12, 1949, by Mr. Clyde C. Sherwood of the city and county of San Francisco, State of California, which is as follows:

Clyde C. Sherwood, being first duly sworn, deposes and says:

That he is an attorney at law, a member of the State bar of California, and duly admitted to practice before all of the courts of record of the State of California. That he is also duly admitted to practice before the Federal courts of the ninth circuit, the Tax Court of the United States, United States Customs Court, and the Supreme Court of the United States. Affiant states that if he were called before the Committee on Finance of the United States Senate and asked to testify in connection with the hearings on the reappointment of Judge Marian J. Harron to the Tax Court of the United States, his testimony would be in substance, as follows:

I have been admitted to practice law approximately 24 years. About one-half of this period was spent in general practice. During the second half I have specialized in tax law. While in general practice I tried hundreds of cases in the various State and Federal courts. Since I have been specializing in tax law I have tried numerous tax cases before the United States districts courts and the Tax Court of the United States. A partial and incomplete check of my files discloses 16 cases tried before the Board of Tax Appeals or the Tax Court of the United States before 7 different members of the Board or judges of the court. Two of these cases were tried before Judge Harron. While waiting for my cases to go on trial I had occasion to watch Judge Harron conduct portions of several other trials. In my opinion, she made a conscientious effort to give each party a fair trial. She appeared extremely solicitious that every taxpayer should have a full opportunity to present all relevant evidence and upon several occasions she called counsel's attention to deficiencies in his proof and suggested additional evidence. She had a very crowded calendar and was obviously making every effort, consistent with affording the taxpayers an adequate opportunity to be heard, to expedite the trial. She was inclined to take a very active part in the trial and endeavor to clear up each controversial point disclosed by the evidence as the trial proceeded. I have tried cases before many judges, including some in the Tax Court who were at least as active in the direction of the trial and the interrogation of witnesses as Miss Harron. I have heard some criticism made of Judge Harron's method of presiding over her court. In my opinion, most of the criticisms were basically due to the fact that Judge Harron is a woman. Men attorneys seem instinctively to dislike to receive direction from a woman, while the same comments and directions from a man would have been received as a matter of course. Any comments made by Judge Harron to counsel concerning the trial of a case would probably have been accepted with grateful appreciation from a male judge by most attorneys. Judge Harron's direct approach to the issues seemed to prove especially disconcerting to attorneys who were incompetent or unprepared. On the other hand, competent tax lawyers who had their cases well prepared seemed to appreciate the attention and alert interest with which Judge Harron followed the evidence. In my opinion such alert interest is preferable to the nonchalant indifference shown by some judges who regard the proceedings with bored indifference.

In conclusion, allow me to say that I feel that Judge Harron has made an excellent record as a judge and that her ability and experience are such that she will be even more valuable as a judge during her second term.

CLYDE C. SHERWOOD.

I have here a letter of April 11, 1949, from Edward S. Reid, Jr., of Miller, Canfield, Paddock & Stone, attorneys, of Detroit, Mich., which is addressed to you, Mr. Chairman, and sent to me. Mr. Reid's letter is has follows:

DEAR SENATOR GEORGE: I understand that the reappointment of Judge Harron to the Tax Court is pending before your committee. I take great pleasure in recommending her confirmation. I only regret that pressure of affairs prevents my appearing before your committee in her behalf.

I have practiced before the Tax Court since the organization of its predecessor, the Board of Tax Appeals. In 1945 I had a case before Judge Harron when the Tax Court was in Detroit on circuit, and I am pleased to state that Judge Harron's conduct of the proceedings was courteous and judicial in the best sense of the word. Furthermore, the proceeding was expeditiously determined, with carefully considered opinion. It was not a stipulated case, but was a fully adversary proceeding with the taking of testimony.

Judge Harron is obviously competent in her specialized field. In my opinion, her reappointment will help maintain the high standards of the Tax Court and will be a benefit to the people of the United States.

Sincerely yours,

EDWARD S. REID, Jr.

I have a letter by Mr. C. W. Tillett, of Charlotte, N. C., dated April 4, 1949. Mr. Tillett's letter states:

DEAR SENATOR GEORGE: I wish to endorse Judge Marion Harron for reappointment to the United States Tax Court. I urge that she be confirmed.

Because Judge Harron has been on the court for a number of years and during that time has proven herself to be an efficient and competent judge, it is, in my opinion, in the public interest that she be continued in her position. I am satisfied that it makes for stability of the law to continue in office competent judges, and I know of no area of the law where stability is more important than in the area of tax law.

Yours very truly,

C. W. TILLETT.

I have a copy of a letter of April 12, 1949 on the letterhead of George S. Atkinson, of Dallas, Tex., which was sent by Mr. Atkinson to the chairman of the Senate Judiciary Committee, and a copy sent to Judge Harron.

The CHAIRMAN. It was transmitted this morning to this committee by a member of the Senate Judiciary Committee.

Colonel McGUIRE. I would like to read that into the record.

DEAR SIR: It is my understanding that the Judiciary Committee of the Senate, of which you are chairman, will conduct hearings soon on the matter of confirming the appointment of Marion J. Harron as Judge of the Tax Court of the United States.

The writer has specialized in the practice of law on Federal taxation for about 20 years. I have practiced before the Tax Court of the United States, formerly the United States Board of Tax Appeals, since it was created and I have had occasion to study the opinions of the different members of the United States Board of Tax Appeals and the judges of the Tax Court of the United States, as well as to appear before the court in numerous cases.

I consider that Judge Harron is a splendid judge. She is a brilliant lawyer. She is patient and painstaking on the bench. She writes well reasoned and logical opinions. I heartily recommend her for your favorable consideration. I consider that it would be a serious loss to the court should her appointment fail of confirmation, as the court would lose the benefit of her valuable training and experience before she becomes a judge and the valuable experience she has had as a judge of the court.

With best wishes, I beg to remain,

Sincerely yours,

GEO. S. ATKINSON.

I also have a letter dated March 29, 1949, signed by Mr. Louis E. Burke, of Detroit, Mich., who has tried cases before Judge Harron. The letter is addressed to you, Mr. Chairman, and sent to me to present. The letter is as follows:

DEAR SENATOR GEORGE: I am given to understand that Judge Marion J. Harron has been reappointed by the President to the Tax Court, and that hearings upon her confirmation will be held before the Senate Finance Committee commencing April 14. I am further advised that certain opposition has developed to Judge Harron and that it would be particularly appropriate, in view of the issues which have been raised, if I were to transmit to you my opinion respecting her conduct of cases in court.

In May of 1945 I represented Paul G. Greene, of this city, in a matter before the Tax Court which was heard in Detroit by Judge Harron on May 22 of that year. I think that I should preface the remarks that I am about to make with a statement that I have been trying cases in various courts in this part of the country for about 25 years, and that during this time I have handled all of the trial work for this firm, which has an active trial practice. I think you will agree with me that I have seen something of the conduct of cases by various trial judges during that period of time, and I think I am in a position to make a fair appraisal of the merits or demerits of a trial judge.

I want to say to you, and I should like you to pass on to the honorable committee of which you serve as chairman, that I regard Judge Harron's conduct of her court as praiseworthy in the extreme. She was courteous to counsel she presided with dignity, and I am convinced was conscientious and fair in her rulings. I say to you without hesitation that I would be glad to try a case before Judge Harron again at any time.

I am told that one of her alleged lack of qualifications is "too extensive interrogation of witnesses and counsel." This kind of criticism I am utterly unable to comprehend. If I am not ready to be extensively interrogated when I go into court, I don't go there. If my client isn't ready for extensive interrogation, he had better go to another lawyer. Some judges interrogate more than others, but I have felt for many years that interrogation of this kind does nothing more than get all of the facts before the court, and after all that is what we are there for. In tax cases, particularly, where the facts are often complex and involved, interrogation by the court is helpful to all of us.

The transcript in my office of the Paul Greene case discloses that Judge Harron questioned all of us to some extent, but this did not make enough of an impression on me that I recalled it until I looked up the transcript.

In closing, I think that I should also point out that I lost the case which Judge Harron heard. I have passed the time in my life and in my practice when I bear any rancor or ill feeling toward anyone when I lose a case. After all, I don't make the facts. Judge Harron was fair with me and I liked the way she conducted her court and I think it would be a pity if the honorable committee did not unanimously recommend her reappointment. She is an excellent judge. I believe it is the duty of all lawyers to see that the best possible appointments are made to the bench and it is for this reason that I urge your favorable report upon Judge Harron.

Very respectfully,

LOUIS E. BURKE,

Colonel McGUIRE. Now, if I may, I should like to file with the committee, and not ask to go in the record, opinions of the Tax Court in the Claude Patterson Noble case, the O. William Lowry, petitioner, case, the Illinois Water Service Co. case, and the Richard Law, petitioner, case. All are opinions written by Judge Harron, of cases referred to in this testimony.

The CHAIRMAN. You may file them with the clerk, but they are not to go in the record.

(The documents referred to may be found in the files of the committee.)

Colonel McGUIRE. Thank you, Mr. Chairman.

Judge Harron referred to the case of Eleanor M. Funk in her testimony.

Mrs. Eleanor M. Funk was the wife of Mr. Funk, that is, Wilford J. Funk, of the Funk & Wagnalls people.

Mr. Funk's case was presented to the Board of Tax Appeals with a deficiency assessment against him on account of a trust. That case was heard and the Board ruled that Mr. Funk was not chargeable with the tax.

Thereupon the Bureau prepared a deficiency assessment against Mrs. Eleanor M. Funk, and that case was submitted on a stipulation of facts.

It was first assigned to Judge Disney, and he wrote an opinion, and I understand that the majority of the Tax Court disagreed with his opinion and the case was reassigned to Judge Harron and she wrote the majority opinion, in which, I think, 10 judges concurred and 6 concurred in the dissenting opinion written by Judge Disney. It was a division of 10 to 6.

The case was taken to the Court of Appeals of the Third Circuit, which reversed the case and returned it for further proceedings, reported as *Eleanor M. Funk* v. *Commissioner* (163 F. (2d) 796, 803), involving a deficiency assessment of $77,194.

Judge Harron stated in her testimony that when it came back to her it was the first time that she had seen Mr. Phillips. He had never appeared before her, but he was there attending the hearing at which his partner, Mr. Ivins, was representing Mrs. Funk.

In order to make the record clear, I want to present to this committee a copy of the Board's opinion in the Mrs. Eleanor Funk case; the majority opinion and the minority opinion. The circuit court's opinion published in 163 F. (2d) 796, 803.

The CHAIRMAN. Very well, you may file that with the clerk.

Colonel MCGUIRE. Then, also, I present a copy of the transcript which shows that.

(The documents referred to may be found in the files of the committee.)

When the case came back, Judge Harron called counsel before her and there were further proceedings. Mr. Ivins was asking for judgment on the recomputation of the taxes, on the basis of the Third Court of Appeals' decision. That was resisted by the Government, which filed a motion to set the case down for hearing.

Judge Harron allowed the Government's motion. Then an affidavit was filed by Mr. Ivins with Judge Harron, equivalent to an affidavit of bias and prejudice, which it really is not, setting forth reasons why counsel believed the case should be transferred to another division of the court.

Judge Harron refused to act upon that motion and said it would have to be acted upon by the presiding judge.

The presiding judge did act upon it at a later date, denied the motion, and the case is now before Judge Harron. I want to present this copy of the transcript of the hearing for the record, and ask, after it has served the purpose of the committee, that I may have it back, so that it may be returned to the Tax Court files.

The CHAIRMAN. You may do so, and I shall ask the clerk of the committee to make a note that it is to be returned to you.

Colonel MCGUIRE. Mr. Chairman, that concludes our presentation of evidence on behalf of Judge Harron, unless there are some further proceedings required by the committee, or the committee hereafter

receives any evidence on the part of the representatives of the tax section of the Bar Association.

The CHAIRMAN. In that event, you will be duly notified, colonel, of course.

Colonel MCGUIRE. And we will have an opportunity to answer whatever they present?

The CHAIRMAN. Yes, sir.

Colonel MCGUIRE. Thank you very much, Mr. Chairman.

The CHAIRMAN. You are quite welcome. Thank you for your appearance here.

Now, do you wish to put anything in the record, Mr. Phillips?

Mr. PHILLIPS. There will be further material which we should like to submit on behalf of the American Bar Association. There are a few of these matters that might be covered this afternoon, I believe, if you wish to go ahead, but I do not believe all of them can be covered this afternoon.

The CHAIRMAN. Would you be able to proceed in the morning?

Colonel MCGUIRE. Mr. Chairman, I have a case in the court of appeals that I have to argue on the day after tomorrow. I should like, if possible, to have tomorrow to prepare for that argument. Friday would be all right.

The CHAIRMAN. I perhaps misunderstood Mr. Phillips. Have you something now that you wish to put in the record, at this time?

Mr. PHILLIPS. It probably would be better if we could submit all of our material at one time, Mr. Chairman.

The CHAIRMAN. At some subsequent date?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. I understand.

In the event there is a subsequent hearing, of course, both sides will be duly notified. We will try to fix that at some convenient time. I am anxious, of course, to get this matter to the full committee as soon as possible, in order that it may be passed upon.

Mr. Phillips, I thought you had something here that you wanted to put in the record this afternoon, before we did recess the hearing.

Mr. PHILLIPS. It would be probably better to wait, Mr. Chairman.

The CHAIRMAN. Very well.

We will recess the hearing to a future date, of which both the nominee and those who are opposing the nomination will be duly notified.

That concludes all the hearing at this time.

(Whereupon, at 4:25 p. m. the committee was recessed, subject to the call of the Chair.)

NOMINATION OF JUDGE MARION J. HARRON

THURSDAY, MAY 12, 1949

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10 a. m., pursuant to call, in room 312, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George (chairman), Connally, Hoey, McGrath, Millikin, Martin, and Williams.

The CHAIRMAN. The committee will come to order.

We resume this morning with the hearing on confirmation of nomination of Judge Harron.

Will Mr. Hobby H. McCall please come forward?

STATEMENT OF HOBBY H. McCALL, ATTORNEY, DALLAS, TEX.

The CHAIRMAN. Mr. McCall, do you have a statement that you wish to read?

Mr. MCCALL. I have, Mr. Chairman.

The CHAIRMAN. Perhaps that would be the best way to start. You may proceed.

Mr. MCCALL. Mr. Chairman and Senators, my name is Hobby H. McCall. I am a lawyer engaged in private practice in Dallas, Tex. I have an LL. B. degree from the School of Law, Southern Methodist University; I am a member of the Dallas Bar Association, the State Bar of Texas, and the American Bar Association. I appear here in answer to a subpena issued by this committee.

From March 1, 1946, until 2½ months ago, I was employed as an attorney by the Bureau of Internal Revenue.

I was located in Pittsburgh, Pa., in the office of the counsel to the eastern division, technical staff. The position I held with the Bureau is that position which is often referred to as "special attorney, Office of the Chief Counsel." My duties as such were to prepare the cases assigned to me for trial before the Tax Court of the United States; to try the cases so prepared; to write the briefs on the cases tried before the Tax Court, and when called upon, to assist the members of the technical staff in an advisory capacity and in the negotiations for settlement of the cases assigned to me.

I have read the testimony heretofore heard by this committee on April 14 and April 19 of this year relative to the confirmation of the nomination of Marion J. Harron to be a judge of the Tax Court of the United States. I noted that in the testimonies of Mr. Wesley A. Coote, shorthand reporter, of Washington, D. C., Mr. J. P. Wenchel, an attorney, Washington, D. C., and in an affidavit submitted by

Judge Harron, certain allusions were made to the cases of the Estate of Charles W. Heppenstall, Sr., Docket No. 5437 and Samuel B. Heppenstall, Sr., Docket No. 7028. Those cases were consolidated for hearing and submitted on oral testimony and documentary evidence to the subject division of the Tax Court of the United States, at Pittsburgh, Pa., on June 4, 5, 6, and 7, 1946. I represented the Commissioner in these cases.

The petitioner's original brief in these cases was filed on August 15, 1946; the respondent's answer brief was filed October 1, 1946, and the last brief in the cases, being the petitioner's reply brief, was filed on November 29, 1946. The cases involved the valuation of the capital stock of a closely held corporation for purposes of the gift tax.

On January 31, 1947, the Tax Court entered a memorandum finding of facts and opinion. The opinion was written by Judge Le Mire of the Tax Court. We in the Pittsburgh office considered the case a definite victory for the Commissioner of Internal Revenue, and I am certain that counsel for the petitioners so considered it. I assume that this committee desires to question me relative to that consolidated hearing. It is my desire to cooperate to the fullest extent possible.

With reference to the afore-mentioned testimonies, I find I am not in complete agreement with some important details about which the afore-mentioned witnesses testified. The committee is aware, however, that it has now been almost 3 years since the cases were heard by the Tax Court, and it is highly improbable that any two people could agree completely in recounting events that long ago.

As to Mr. Coote's testimony: While I was in Washington in the spring of 1948 in connection with another matter which had arisen in the Heppenstall cases, certain officers in the chief counsel's office became interested in knowing the contents of portions of the record in the cases which had been deleted. It is true that several officers of the Office of the Chief Counsel including myself did attempt to obtain the deleted portions of the record in those cases. We were referred to Mr. Coote personally.

Mr. Coote was the reporter. Mr. Coote was finally reached by telephone and was requested to bring the subject deleted portions of the record to the Office of the Chief Counsel in Washington. On the same day pursuant to the request, Mr. Coote came to the office, and at that time informed us that he would be unable to show any of us the portions deleted unless he had absolute authority to do so from the Tax Court. He did, however, read the passage previously referred to and appearing in the record of this hearing, which is as follows:

Portions here to be shown as off the record by agreement of Mr. W. A. Selffert, chief counsel for the petitioner, and Mr. Hobby H. McCall, on June 7, 1946.

M. J. HARRON, *Judge.*

PITTSBURGH, *June 7, 1946.*

No one, including myself, was critical of Mr. Coote for the position taken in refusing to read the deleted parts of the record.

Senator MILLIKIN. Will you please state that again, please?

Mr. MCCALL. No one, including myself, was critical of Mr. Coote for the position taken in refusing to read the deleted parts of the record.

However, Mr. Coote was informed that he would be called again later. At the meeting that I attended he did not read the deleted

portions for the aforestated reason, and I personally never did see or read the deleted portions until I examined the testimony of this hearing. I was not present again at a meeting with Mr. Coote, inasmuch as I had pressing business at Pittsburgh and had to return that day. Before my return, I was requested by the chief counsel to write him a memorandum upon my return setting out therein my recollections as to what appeared in the deleted portions of the Heppenstall record. I complied with the request.

It is noted that the instruction by the court to the reporter is dated and signed by the court June 7, 1946; that is, the portion that I just quoted. June 7, 1946, was a Friday. The Heppenstall cases were concluded late in the evening of the 7th. I didn't discuss the record in the Heppenstall cases with Judge Harron until after the conclusion of another of my cases on Saturday, May 8, 1946. At the judge's request I met with her in chambers. The judge stated that she had obtained the agreement of counsel for the petitioners to delete those parts of the record which were uncomplimentary of me. She requested that I so agree. The passages were not definitely identified at that time.

Senator CONNALLY. You mean those passages which reflected on you or her?

Mr. MCCALL. The passages in the record reflected on me, sir.

Senator CONNALLY. All right.

Mr. MCCALL. As I recall, I informed the judge that I did not feel that I had the authority to make such an agreement, and that I would have to leave it to the discretion of the court.

Senator Connally, when I say "reflected on me," those were statements made by the court which were uncomplimentary of me.

Senator CONNALLY. I see.

Senator MARTIN. Mr. Chairman?

The CHAIRMAN. Senator Martin.

Senator MARTIN. Mr. Chairman, I think in fairness to the witness it was not anything uncomplimentary to your integrity or anything of that kind, but it was as to your experience as a lawyer. You were not here the other day when that was given. There was no reflection on his integrity.

Senator CONNALLY. I am sure of that because I know the family for several generations.

Mr. MCCALL. That part of the record is in the transcript of the proceedings.

The CHAIRMAN. Yes.

Mr. MCCALL. As to the parts of the deleted record of the Heppenstall cases about which Mr. Coote testified on page 246 of the transcript of these proceedings, it is shown that the court asked a witness for the Government, who was then on the stand, to have certain exhibits marked and to conduct the trial of the case; the court asked me to "sit down." When considered in connection with the preceding passages of the court proceedings, it can be seen that the court did this because of her irritation at the method I was employing in introducing certain documentary evidence. This irritation on the part of the court came as a complete surprise to me, because for 2 days previously in the same trial counsel for the petitioners used the method I was at that time employing, namely, having the expert witness testify relative to a

document or documents without having them previously marked for identification by the clerk. Petitioners had introduced, by this method, exhibits 23 through 31 and exhibits 32 through 66 on June 5 and June 6, respectively.

As the lawyers of this committee know, the accepted method for introducing documentary evidence is to have the subject document marked by the clerk for indentification before offering testimony relative to it.

However, in the interest of time, this method is often dispensed with by the Tax Court. The trial had been conducted on that basis until the episode here in question. After this dilemma had been reached, I twice requested the court to tell me how the court wished to proceed. The court twice refused with these words: "I don't know. You are here to try the case for the Government"—page Nos. 532 and 533 of the transcript to the proceedings of the Heppenstall cases.

Two, the court had continually throughout the proceedings charged all parties that time was an important factor. In this connection, at one point, the court made the following statement:

> Before we recess, Mr. McCall, you have now used 1 hour in cross-examination and I am going to have to ask you to complete your cross-examination of this witness with some rapidity, because we will go on with the case tonight and we will finish this case tomorrow, so I expect we will have two night hearings. Now, the time limit on the trial will be 10 o'clock tomorrow night and you have the alternative of either using up all your time for cross-examination of expert witnesses or presenting your own expert witnesses, so I will leave it to you to make that choice during the recess (p. 329 of the transcript of testimony of the Heppenstall cases).

Of course, my case in chief had not yet begun.

Still relative to the portion of the deleted record appearing on page 246 of the transcript in this proceeding; the court was critical of the fact that Mr. Grimes, an expert witness, then on the stand, had been sitting at the counsel table and assisting me in the trial of the case. Good or bad form, I have seen that done before and after the Heppenstall cases by counsel for both sides and by counsel of varying degrees of experience.

I have seen quite a few valuation trials and I have tried four valuation cases myself. After all, I believe, an expert witness is not in court for the purpose of proving or disproving disputed facts; he is there to give his opinion as to an ultimate fact, such as in this case, the value of the stock in question, and his methods of approach to what might be the subject of his opinion.

An expert's assistance in cross-examination of another expert can be invaluable. In the Heppenstall cases the expert witnesses for the petitioners assisted counsel, although they did not physically sit at the counsel table. Maybe they did not sit at the table because there wasn't room for them.

Contrary to Mr. Coote's recollection previously at this hearing—page 255 of the trar.script of this proceeding—the court's interrogation of me during recess relative to my experience, qualifications, and so forth, was made in the courtroom, not in chambers.

Senator MILLIKIN. Let me get that straight. What happened in the courtroom?

Mr. MCCALL. The interrogation, Senator, that appears in the record of this proceeding.

Senator MILLIKIN. Did it happen in the courtroom during the proceedings?

Mr. MCCALL. No, sir; it happened during the recess.

Senator MILLIKIN. During recess?

Mr. MCCALL. That is right.

I am somewhat disturbed by the fact that Mr. Wenchel testified in this hearing relative to the Heppenstall cases, in justifying the court's actions, that he thought that the judge had some basis to be annoyed and that he was annoyed too—page 258. Also he made other remarks concerning my handling of the cases.

I received a copy of a letter written by Mr. Wenchel on July 15, 1946, 8 days after the conclusion of the hearing in the Heppenstall case, which was addressed to Mr. Hartford Allen, Division Counsel, Philadelphia, Pa. It is as follows:

JULY 15, 1946.

In re C. W. Heppenstall, Docket No. 5437.

Mr. HARTFORD ALLEN,
Philadelphia 7, Pa.

DEAR MR. ALLEN: I am enclosing for the information of Mr. McCall and yourself copy of a memorandum addressed to me June 12, 1946, by Mr. John Alden Grimes, valuation engineer in this office, which will explain itself.

In a conference with Mr. Grimes in this office July 12, 1946, concerning the matter, it was agreed no further steps or action would be taken concerning the context of his report pending a decision of the case by the Tax Court. Mr. Grimes again took occasion to compliment the able manner in which Mr. McCall had represented the Government in this proceeding and I know of no reason why Mr. McCall should be disturbed by the incident so far as this office is concerned.

Senator MILLIKIN. Mr. Chairman, may I back up for just a moment?

The CHAIRMAN. Certainly.

Senator MILLIKIN. The remarks which were critical of you occurred in the courtroom during the recess?

Mr. MCCALL. Senator, the testimony of this proceeding shows that there were two separate instances which were described, one of them occurring during open court and the other occurring during the recess.

Senator MILLIKIN. Do you intend to identify those incidents according to when and where they happened?

Mr. MCCALL. Well, I think I can.

Senator MILLIKIN. The reason I am asking these questions, is because, after reading the record, it was not clear in my mind just when these incidents occurred.

Mr. MCCALL. If I could have a copy of the proceedings of the committee, I think I could do it rapidly. I believe it is the record in volume 2. Thank you.

That part of the deletion that begins on page 246 of the transcript of this hearing (p. 136, printed hearing) took place in open court while the court was in session.

Senator MILLIKIN. While the court was in session?

Mr. MCCALL. While the court was in session during the hearing.

Senator MILLIKIN. I see.

Mr. MCCALL. That portion of the deleted record that took place in the open court is concluded on page 248 of the transcript of this proceeding (p. 137, printed hearing).

Of course that has remarks throughout by the members of this committee and answers by Mr. Coote.

Now that part of the deleted portions of the Heppenstall record that represented what took place during the recess in court begins on page 250 of the proceedings of this committee.

The CHAIRMAN. That was during a recess period?

Mr. MCCALL. Yes, Mr. Chairman.

The CHAIRMAN. Was the courtroom vacated or do you recall?

Mr. MCCALL. Well, I recall that it took place this way: The judge stepped down from the bench and called me over to where the reporter was and we stood over the Stenotype machine and this took place Now, as to how many people were in the courtroom, I could not say, it was just like any courtroom is during a recess, people moving around.

Senator MILLIKIN. Was the Judge talking in a loud way?

Mr. MCCALL. I would not say in a loud way, Senator. I would say it was in conversational tones.

That portion that took place during the recess ends on page 254 of the transcript of this proceeding (p. 139, printed hearing).

Senator MILLIKIN. Now were there any conversations along the same line in the judge's chambers?

Mr. MCCALL. No.

Now, if I may, I will continue the reading of Mr. Wenchel's letter to Mr. Allen of which a copy was sent to me.

The evidence is that Mr. McCall's conduct was gentlemanly in all respects and unusually courteous to the court.

Very truly yours,

J. P. WENCHEL, *Chief Counsel.*

That letter enclosed about an 8-page memorandum from Mr. John Alden Grimes addressed to Mr. Wenchel through Mr. F. T. Donahoe, head, Engineers and Auditors Section and through Mr. Owen W. Swecker, head, Appeals Division.

Senator MILLIKIN. What is the purpose of the memorandum, is it the procedure to make a report of a case in that way?

Mr. MCCALL. It is not, Senator.

If the committee wishes, I will read the memorandum.

The CHAIRMAN. Is it pertinent here?

Mr. MCCALL. Yes, sir; it is, I think.

The CHAIRMAN. Let us hear it.

Mr. MCCALL. The letter is as follows:

JUNE 12, 1946.

Memorandum for Mr. J. P. Wenchel.

Through: Mr. F. T. Donahoe, head, Engineers and Auditors Section; Mr. Owen W. Swecker, head, Appeals Division.

In re: C. W. Heppenstall, Sr., Docket No. 5437; S. P. Heppenstall, Sr., Docket No. 7028, Pittsburgh, Pa.

The appended report to you in letter form covers facts of record and facts not on the record but personally known by me, together with some personal comments and opinions which I have attempted to express without bias in spite of considerable anger.

Judge Harron of the Tax Court publicly insulted and humiliated Mr. Hobby H. McCall. No public official should be permitted to indulge in such practices with respect to any young and able attorney, and particularly with respect to a veteran of World War II whose lack of trial experience is wholly attributable to long service in the armed forces of the United States. I ask permission to bring this matter to the attention of the American Legion with a view to giving

publicity to the matter, unless Judge Harron apologizes to Mr. McCall in as public a manner as she used in her insult.

There also is the matter of court prejudice to consider as it affects the possible collection of some half-million dollars of gift and estate taxes. I do not believe that Judge Harron can or will render a fair decision based upon the evidence of record but will render a decision adverse to the Government because of the spiteful attitude she displayed toward Mr. McCall. I recommend request for a review of the evidence and record by the entire judgeship of the Tax Court.

Senator MILLIKIN. Who wrote this memorandum?

Mr. MCCALL. This is to Mr. J. P. Wenchel, written by John Alden Grimes, valuation engineer in the Bureau of Internal Revenue.

Senator MILLIKIN. He was a witness during the controversy?

Mr. MCCALL. He was a witness during the controversy.

The CHAIRMAN. Was he present during the whole trial?

Mr. MCCALL. He was, Mr. Chairman. He was on the stand when the episode began.

The CHAIRMAN. He was under examination?

Mr. MCCALL. That is right, sir.

The CHAIRMAN. All right, you may proceed.

Mr. MCCALL. The letter continues as follows:

The record in the Heppenstall cases should be a particularly good one for a test of the Tax Court's customary practice of admitting subsequent events in evidence as confirmatory of opinion evidence allegedly based upon known facts as at fixed dates of valuation. If the Tax Court is wrong, it should know it, and if it is right, we should know it. This is a pure question of law and does not involve any factual issue. If the Tax Court decides against the respondent in the Heppenstall case, I recommend appeal on the legal issues of the admissibility subsequent events as evidence of value or as evidence confirmatory of opinions of value.

JOHN ALDEN GRIMES, *Valuation Engineer.*

Senator MARTIN. Mr. Chairman?

The CHAIRMAN. Yes.

Senator MARTIN. To whom is that memorandum written?

Mr. MCCALL. To whom?

Senator MARTIN. Yes.

Mr. MCCALL. The memorandum is addressed, "Memorandum for Mr. J. P. Wenchel."

The CHAIRMAN. He was the general counsel?

Mr. MCCALL. Chief counsel.

Senator MARTIN. I see.

Mr. MCCALL. Now that which I have just read is the letter transmitting an 8-page memorandum which is pertinent.

The CHAIRMAN. The memorandum itself?

Mr. MCCALL. Yes, sir.

The CHAIRMAN. You may read that. Let us get that in the record.

Mr. MCCALL. The memorandum is as follows:

Through: Mr. F. T. Donahoe, head, Engineers and Auditors Section; Mr. Owen W. Swecker, head, Appeals Division.

In re C. W. Heppenstall, Sr., Docket No. 5437; S. P. Heppenstall, Sr., Docket No. 7028, Pittsburgh, Pa.

Mr. J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

DEAR MR. WENCHEL: This report concerning events during the trial of the above-entitled cases is written partly by request of Miss Harron, judge of the Tax Court of the United States, and partly of my own volition to give background material precedent to that request. The report is written while my memory is still very fresh as to the matters related.

The two cases involve proposed deficiencies of $390,187.50, entirely dependent upon the value of gifts of stock of the Heppenstall Co. made in 1942. This is a closely held family company founded in 1889 and with a highly successful record of earnings and growth. In 1940, 1941, and 1942, the yearly earnings of the company were between $250 and $275 per share of its stock. Value reported for gift-tax purposes by each petitioner was $275 per share and the deficiency is based upon a valuation of $1,250 per share by the Commissioner.

C. W. Heppenstall personally owned over 50 percent of the stock and had the power to liquidate the company prior to August 20, 1942, when he made gifts of more than half of his stockholdings. C. W. Heppenstall died on January 15, 1945, and value determined for gifts made on August 20, 1942, may be expected to serve as a guide in the valuation of similar shares of stock for estate-tax purposes. Messrs. Booth, Siefert, and Wallerstedt of Reed, Smith, Shaw & McClay, represented this petitioner. They refused to stipulate anything in spite of repeated offers by counsel for the respondent to stipulate all facts known as at date of valuation, and to check all subsequent facts and to object only to their materiality as evidence.

The other petitioner, S. P. Heppenstall, was a minority stockholder who made gifts on December 30, 1942, and was represented by Bialas & Ryan as counsel. In this case, it was stipulated that any opinion evidence as to value as at August 20, 1942, in the C. W. Heppenstall case should be considered to apply also to value as at December 29, 1942, in the S. P. Heppenstall case, and the cases were consolidated for trial on that basis on motion by Mr. Ryan which was not opposed by the respondent.

The gifts by C. W. Heppenstall were made on August 20, 1942. On February 22, 1943, a gift tax and information returns had been prepared on the basis of a $275 value per share valuations by Mr. Stephens, certified public accountant for the Heppenstall Co. On February 25, 1943, there were alleged arm's length sales of 260 shares of the stock at $275 per share by the donor and three of his donees.

Mr. Chairman, the memorandum is lengthy; it is eight pages long and in the next several paragraphs it goes into detail and deals with personalities that are not before this committee. I do not think the committee would be interested in that portion; however, I will read it if the committee desires.

The CHAIRMAN. Suppose you simply put that into the record and then read such parts as you desire to read and it can all go into the record.

Mr. MCCALL. I will do that.

(The remainder of the memorandum is as follows:)

These sales ostensibly were made through a broker, Mr. Hulme of Glover & MacGregor, and photostats of canceled checks from this broker to the Heppenstalls were placed in evidence, all dated February 25, 1943, and all stamped by banks as paid before March 1, 1943. The Phillips family of Butler, Pa., and corporations controlled by that family purchased 200 of the 260 shares. Both broker and purchasers were clients of Reed, Smith, Shaw & McClay. At date of the alleged sales, a nephew of B. D. Phillips, head of the Phillips clan, either was or recently had been an attorney in the employ of Reed, Smith, Shaw & McClay. He also purchased some of the stock as did an aunt by marriage of Mr. Siefert of the same law firm. At no time did any broker other than Mr. Hulme sell a share of the stock of Heppenstall Co. insofar as Mr. Hulme knew and insofar as the record shows. Outside of the flurry of sales at or about the date of filing the gift tax return, there were practically no sales of shares before or after August 20, 1942, until August 1945, when most of the stockholdings of the S. P. Heppenstall family were sold to the company at $425 per share, following an alleged family dispute.

The circumstances, above related, and the sales price equivalent to but 12 or 13 months' earnings per share of the stock, created considerable doubt as to the bona fide nature of the sales in the minds of representatives of the respondent. Every effort was made to ascertain the facts, including examination of the bank accounts of Mr. and Mrs. Hulme and of Glover & MacGregor, and examination of the books and records of the Heppenstall Co. The stock of the firm of Glover & MacGregor was almost entirely owned by Mr. and Mrs Hulme

and that firm borrowed approximately $52,000 from Mr. and Mrs. Hulme to finance the purchases, and the personal bank accounts of Mr. and Mrs. Hulme did not appear adequate to make such a loan insofar as our examination disclosed.

The stock account of Mr. Hulme on the stock ledger of Heppenstall Co. is followed by the caption "our nominee." This account was placed in evidence by respondent toward the close of the trial and R. B. Heppenstall, now president of Heppenstall Co., and executor of the estate of C. W. Heppenstall, was placed on the witness stand by petitioner to explain the caption "our nominee." He admitted at least twice that Hulme was the nominee of the four members of the C. W. Heppenstall family who sold stock of the company on February 25, 1943. Mr. Hulme testified over the objection that the caption of "our nominee" on the stock ledger of Heppenstall Co. meant that he was the nominee for Glover & MacGregor rather than nominee for Heppenstall Co. The rule of law by which he was permitted to testify as to what books of the Heppenstall Co. meant, is not known to the writer.

The respondent's counsel in these cases was a young lawyer named Hobby McCall, a veteran of 3½ years of combat service who recently has entered Bureau employ, and a graduate of SMU law school in 1942. While he obviously must lack trial experience, he is a very intelligent and hard-working young man of fine personality and, in my opinion, he did a trial job in these cases of which any attorney in the employ of the Bureau could be proud. He acted with utmost courtesy to the court under very trying circumstances. I worked with him from May 7 to 12 and from May 27 to June 4, 1946, when the cases went to trial in the afternoon as well as during the trial from June 4 to June 7, 1946. On June 6, the Tax Court held evening session until 11 p. m. and on June 7 until around 9 p. m. when the trial of the Heppenstall cases was completed.

The court then had been in session since May 27, with several night sessions and full day's hearings on Memorial Day and Saturday. The docket was very heavy, and the court was making every effort to complete the docket within 3 weeks' allotted time. I state these facts as slightly extenuating circumstances which should be considered in judging facts hereafter stated.

From the start of the trial of the Heppenstall cases it was quite evident that the court was distressed by the fact that the respondent was represented only by a very young attorney while an array of three experienced lawyers and two certified public accountants entered appearances for the petitioners. I assisted Mr. McCall by taking notes on petitioners' testimony, marking exhibits, and occasionally, as technical adviser, by suggesting questions to be used by him in cross-examination. Expert witnesses for the petitioner sat in the jury box and acted in similar technical advisory capacity to counsel for the petitioners during court recesses but did not sit at counsel table which was crowded with attorneys of record for the petitioner.

Mr. McCall and I conferred on the various phases of the case during the pretrial period. We concluded that the Tax Court would accept facts subsequent to the August 29, 1942, date of valuation, as admissible evidence, but that it should not permit valuation witnesses to rely upon subsequent facts as basis for opinions of value (*Couzens* v. *Commissioner*, 11 B. T. A. 1040, 1165). We also agreed that the prectice of the Tax Court must be wrong in admitting subsequent events as evidence confirmatory of opinions based upon events known at date of valuation, if the Supreme Court of the United States was right in its decision in *Ithaca Trust Co.* v. *United States* (279 U. S. 151).

Mr. McCall attempted to protect the interests of his client by objecting to all facts subsequent to August 29, 1942. The petitioner introduced 11 exhibits over such objection which showed subsequent events to the end of 1945. The court was asked to grant a continuing objection to the introduction of evidence of such type, but did not do so, which left Mr. McCall no recourse except to repeat his objection with the offer of each exhibit. The court became more and more irritated by these objections but continued to accept exhibits showing subsequent events through 1945. In objecting to the eleventh exhibit, Mr. McCall stated that he understood the exhibits were to be used by expert witnesses by the petitioner as fact upon which they could rely in forming opinions of value as at August 29, 1942, and that it would be an error of law to allow that to be done. The court then ruled that data concerning 1943, 1944, and 1945 would have to be eliminated from exhibit 11, but received those subsequent facts in evidence as petitioner's exhibit 12, and further held that expert witnesses could rely upon subsequent events to October 31, 1942, the end of the fiscal year of Heppenstall Co., as basis for opinions of value as of August 29, 1942.

The hypothetical question directed by counsel for petitioner to his experts included events subsequent to October 31, 1942, and certain subsequent events not known until 1943 and 1944, including renegotiation of war contracts and a loss of a subsidiary company, Heppenstall-Eddystone Co. Before proceeding with any cross-examination of either of the two experts, Mr. McCall moved to strike their testimony on the grounds that their opinions were based on events subsequent to the date of valuation, and these motions the court denied with convincing appearance of irritation.

Mr. Parker, first valuation witness for the petitioner, took approximately 8 hours on direct testimony. He produced a great many exhibits and computed about 50 widely differing values by various methods, some of which he said had little or no merit. He concluded his testimony by saying the stock in question was worth $300 per share in his opinion but did not relate that opinion to any of his computations of value.

The court questioned Mr. Parker in the course of his direct examination on certain phases of his computations. During a recess Mr. McCall and I were standing at counsel's table waiting for the judge to depart, and she stopped and told us that the reason she questioned this witness was because, in her long experience as a judge, she had never found one Bureau attorney who was any good on cross-examination. I must have loooked as startled as I felt, because she hastily amended her original statement to say there were one or two exceptions, not named. Mr. McCall said nothing, but I told the court her questioning had been very helpful.

Mr. McCall directed his cross-examination of Mr. Parker almost exclusively to the methods used by Mr. Parker in arriving at his opinion of value. He attempted to get Mr. Parker to state how he arrived at his opinion and what factors he considered and the relative weights he attached to such factors, but with no success. He was relying upon decisions of the Tax Court and of the Supreme Court of the United States which rule that the opinions of witnesses on questions of value are to be judged in accordance with the reasoning disclosed and in accordance with the criteria used. Mr. Parker admitted that none of the companies which he compared with the Heppenstall Co. were comparable with it, but he would not state to what extent, if at all, his opinion was premised on earnings, dividends, net worth, net current assets, or any other criteria, or upon which, if any, of his numerous computations of value he placed greatest reliance. On direct examination, he customarily had stated that if you compute the value in a certain manner you get such a result, usually without stating that such manner of computation was proper or improper in his opinion.

The Court turned her back to the witness and ostentatiously read documents in other cases during the entire cross-examination of Mr. Parker and gave every appearance of hearing none of it. At the end of an hour of cross-examination the Court practically demanded that Mr. McCall stop, under threat to cut his time short, when he presented respondent's case if he did not cease his cross-examination of Mr. Parker. The court then recessed, and I advised Mr. McCall to discontinue the cross-examination because Mr. Parker was very evasive and we had covered nearly all of the matters of importance and could do nothing except irritate the court by repetitious questioning, and because we could expect no help from the court, such as direction that Mr. Parker answer questions instead of evading them.

During that recess I was informed by the clerk of the court that the judge wished to speak with me. I assumed of course that the clerk meant Mr. McCall and me, but was informed that Mr. McCall was not included. The court questioned me as to how much experience Mr. McCall had had, and I did not know. The court then stated that Mr. McCall was too inexperienced to try a case of this size against the array of legal talent opposed to him, and that it was useless for him to waste the court's time by cross-examining experts for the petitioner. The court requested that I conduct the cross-examination and trial of the case, and I refused even to consider such procedure. I did not mention this request to anyone at the time, as I thought it would only be a further undeserved humiliation to Mr. McCall, and that it undoubtedly would impair the efficiency with which he was presenting the respondent's case.

That evening, as we were leaving the Federal building, Judge Harron and the clerk of the court rode down in the same elevator with us, and in the ground-floor elevator lobby the court questioned Mr. McCall and ascertained that he had graduated from law school in 1942 and that he had served 3.5 years in the Army. The court informed Mr. McCall that the opinions of experts were weighed according to the methods they used and that he should direct his cross-examination to method rather than to detail. I informed the court that his cross-

examination of Mr. Parker had been directed exclusively to method and hardly at all to detail, which seemed to surprise Her Honor. I said further that Mr. Parker had computed 50 or more widely variant values by radically different methods, and that Mr. McCall had been trying to ascertain the method or methods upon which Mr. Parker relied, since the sum and substance of Mr. Parker's testimony was that, considering everything, the answer is $300 per share. The court remarked, "Well, that is the only kind of answer you will get in any decision by this court" and departed. If the court had listened to any of the cross-examination of Mr. Parker, it was not apparent from this episode.

Mr. Hossack was the other valuation witness for the petitioner, and his testimony was a brief version of Mr. Parker's testimony, but was based upon comparisons with fewer companies which Mr. Hossack considered to be comparable to the Heppenstall Co. He likewise would not or could not state the criteria or method used in arriving at his opinion that the Heppenstall stock had $275 per share value as at August 29, 1942, and a very brief cross-examination developed that fact. The court did not object to the time consumed in cross-examining Mr. Hossack.

After Messrs. Parker and Hossack had concluded their testimony, they were recalled at a later time to testify that they had not considered the 1944 loss of a subsidiary company in arriving at their opinions of value. Such testimony was permitted over objection by Mr. McCall that petitioners' counsel were cross-examining their own experts. Neither witness testified that he disregarded the renegotiation of 1942 was contracts completed late in 1943, or that he disregarded other events subsequent to August 29, 1942, which he was asked to consider in the hypothetical question.

I was called to the witness stand as the second and last opinion witness for the respondent. I completed statement of qualifications in 15 minutes and the court then recessed from 12:45 to 1:45 p. m. for lunch. Before resuming, the court asked me how long it would require for my direct testimony, and I said, "One hour or perhaps an hour and a quarter at most," and that I would make every possible shortcut. I had arranged my statistical schedules in consecutive order and asked Mr. McCall to take copies for me as I began to refer to them and to pass one copy to the judge, one copy to the opposing counsel, and the original to the clerk, and that we would save time by offering all of the schedules at the conclusion of my testimony as one exhibit illustrating my testimony and showing the facts upon which I relied. This met with the utter disfavor of the court, who refused to accept the copies handed to her. I had completed most of my statement as to how I arrived at my opinion of value, when the court told Mr. McCall that he did not know how to try a case, and directed him to step down. Mr. McCall said, "As the court pleases," and sat down. When Mr. McCall was directed to step down from the case the court had requested me to inform Mr. McCall's superiors of the fact that she considered him incompetent. Mr. McCall respectfully informed the court that he would convey that message himself. I then was directed to ask myself questions and answer them as a witness, but told the court (as I had done previously under somewhat similar circumstances during a recess) that I would not follow the court's direction, since I was not an attorney and was not admitted to practice before the Tax Court.

There being no Bureau attorney in court other than Mr. McCall, the court either had to stop the trial or permit Mr. McCall to proceed, and the latter alternative was chosen. The apparent hostility of the judge to the presentation of respondent's case continued throughout the trial.

I have endeavored to make the preceding statement as factual as possible. The official record of the trial should disclose the more important facts which I have recited, unless the record has been deleted by instruction of the court. I anticipate that some deletions of that nature may be made, in view of the following incident. At an early time during the trial the petitioners were painting a very distressing picture of the Heppenstall Co., and the court said from the bench that it would not pay $1,280 per share for stock of the Heppenstall Co. There were other remarks made by counsel both for the petitioner and for respondent and by spectator witnesses for the petitioner then viewing the proceedings from the jury box. The court seemed to entertain some doubt as to the propriety of her comment and asked permission of counsel to strike the entire episode from the record, explaining that of course everyone must realize she had simply been joking. The reporter stated that he had understood that this portion of the trial was off the record and that he had not reported it.

Mr. McCall in my presence reported to Mr. Miller and Mr. Allen that the court considered him incompetent to represent the Bureau before the Tax Court. I do not agree with the opinion expressed by Miss Harron, and so stated to Mr. Miller and Mr. Allen. I think a review of the record will confirm any opinion that the respondent's case was ably presented by Mr. McCall. I ask that copies of this report be sent to Messrs. Allen, Miller, and McCall.

JOHN ALDEN GRIMES,
Valuation Engineer.

The CHAIRMAN. You may now read such parts of it as you think are pertinent, Mr. McCall.

Mr. MCCALL. I am quoting from page 3 as follows:

The respondent's counsel in these cases was a young lawyer named Hobby McCall, a veteran of 3½ years of combat service who recently has entered Bureau employ, and a graduate of SMU law school in 1942. While he obviously must lack trial experience, he is a very intelligent and hard-working young man of fine personality and, in my opinion, he did a trial job in these cases of which any attorney in the employ of the Bureau could be proud. He acted with utmost courtesy to the court under very trying circumstances. I worked with him from May 7 to 12 and from May 27 to June 4, 1946, when the cases went to trial in the afternoon as well as during the trial from June 4 to June 7, 1946. On June 6, the Tax Court held evening session until 11 p. m. and on June 7 until around 9 p. m., when the trial of the Heppenstall cases was completed.

The court then had been in session since May 27, with several night sessions and full day's hearings on Memorial Day and on Saturday. The docket was very heavy, and the court was making every effort to complete the docket within 3 weeks allotted time. I state these facts as slightly extenuating circumstances which should be considered in judging facts hereafter stated.

From the start of the trial of the Heppenstall cases it was quite evident that the court was distressed by the fact that the respondent was represented only by a very young attorney while an array of three experienced lawyers and two certified public accountants entered appearances for the petitioners.

I might interpose here that that is the customary situation for Government lawyers to be confronted with many counsel for the petitioners, because the Government just does not have the personnel to allocate more than one lawyer at the most except in very unusual cases. It was nothing unusual for that situation to be present.

Now, continuing with the memorandum:

I assisted Mr. McCall by taking notes on petitioner's testimony, marking exhibits, and occasionally, as technical adviser, by suggesting questions to be used by him in cross-examination. Expert witnesses for the petitioner sat in the jury box and acted in similar technical advisory capacity to counsel for the petitioner during court recesses but did not sit at counsel table which was crowded with attorneys of record for the petitioner.

Mr. McCall and I conferred on the various phases of the case during the pretrial period. We concluded that the Tax Court would accept facts subsequent to the August 29, 1942, date of valuation, as admissible evidence but that it should not permit valuation witnesses to rely upon subsequent facts as basis for opinions of value (*Couzens* v. *Commissioner*, 11 B. T. A. 1040, 1165). We also agreed that the practice of the Tax Court must be wrong in admitting subsequent events as evidence confirmatory of opinions based upon events known at date of valuation, if the Supreme Court of the United States was right in its decision in *Ithaca Trust Co.* v. *United States* (279 U. S. 151).

Mr. McCall attempted to protect the interests of his client by objecting to all facts subsequent to August 29, 1942. The petitioner introduced 11 exhibits over such objection which showed subsequent events to the end of 1945. The court was asked to grant a continuing objection to the introduction of evidence of such type but did not do so, which left Mr. McCall no recourse except to repeat his objection with the offer of each exhibit. The court became more and more irritated by these objections but continued to accept exhibits showing subsequent events through 1945. In objecting to the eleventh exhibit, Mr. McCall stated that he understood the exhibits were to be used by expert witnesses by the peti-

tioner as fact upon which they could rely in forming opinions of value as at August 29, 1942, and that it would be an error of law to allow that to be done. The court then ruled that data concerning 1943, 1944, and 1945 would have to be eliminated from exhibit 11, but received those subsequent facts in evidence as petitioners exhibit 12, and further held that expert witnesses could rely upon subsequent events to October 31, 1942, and end of the fiscal year of Heppenstall Co., as basis for opinions of value as of August 29, 1942.

Mr. Chairman, I am skipping several paragraphs.

The court questioned Mr. Parker——

I am interposing this remark. Mr. Parker was an expert witness for the petitioner. Mr. Parker is the president of the Flushing Savings Bank in New York.

The court questioned Mr. Parker in the course of his direct examination on certain phases of his computations. During a recess Mr. McCall and I were standing at counsel's table waiting for the judge to depart and she stopped and told us that the reason she questioned this witness was because, in her long experience as a judge, she had never found one Bureau attorney who was any good on cross-examination. I must have looked as startled as I felt because she hastily amended her original statement to say there were one or two exceptions—not named. Mr. McCall said nothing but I told the court her questioning had been very helpful.

Senator MILLIKIN. Was that taken down by the reporter?
Mr. MCCALL. It was not, Senator, this was during a recess.

Mr. McCall directed his cross-examination of Mr. Parker almost exclusively to the methods used by Mr. Parker in arriving at his opinion of value. He attempted to get Mr. Parker to state how he arrived at his opinion and what factors he considered and the relative weights he attached to such factors but with no success. He was relying upon decisions of the Tax Court and of the Supreme Court of the United States which ruled that the opinions of witnesses on questions of value are to be judged in accordance with the reasoning disclosed and in accordance with the criteria use. Mr. Parker admitted that none of the companies which he compared with the Heppenstall Co. were comparable with it, but he would not state to what extent, if at all, his opinion was premised on earnings, dividends, net worth, net current assets, or any other criteria, or upon which, if any, of his numerous computations of value he placed greatest reliance. On direct examination, he customarily had stated that if you compute the value in a certain manner you get such a result, usually without stating that such manner of computation was proper or improper in his opinion.

The court turned her back to the witness and ostentatiously read documents in other cases during the entire cross-examination of Mr. Parker and gave every appearance of hearing none of it. At the end of an hour of cross-examination the court practically demanded that Mr. McCall stop, under threat to cut his time short when he presented respondent's case if he did not cease his cross-examination of Mr. Parker. The court then recessed and I advised Mr. McCall to discontinue the cross-examination because Mr. Parker was very evasive and we had covered nearly all of the matters of importance and could do nothing except irritate the court by repetitious questioning, and because we could expect no help from the court such as direction that Mr. Parker answer questions instead of evading them.

During that recess I was informed by the clerk of court that the judge wished to speak with me. I assumed, of course, that the clerk meant Mr. McCall and me, but was informed that Mr. McCall was not included. The court questioned me as to how much experience Mr. McCall had had, and I did not know. The court then stated that Mr. McCall was too inexperienced to try a case of this size against the array of legal talent opposed to him, and that it was useless for him to waste the court's time by cross-examining experts for the petitioner. The court requested that I conduct the cross-examination and trial of the case and I refused even to consider such procedure. I did not mention this request to anyone at the time, as I thought it would only be a further undeserved humiliation to Mr. McCall and that it would undoubtedly impair the efficiency with which he was presenting the respondent's case.

That evening as we were leaving the Federal building, Judge Harron and the clerk of court rode down in the same elevator with us, and in the ground floor elevator lobby the court questioned Mr. McCall and ascertained that he had graduated from law school in 1942 and that he had served 3.5 years in the Army. The court informed Mr. McCall that the opinions of experts were weighed according to the methods they used and that he should direct his cross-examination to method rather than to detail. I informed the court that his cross-examination of Mr. Parker had been directed exclusively to method and hardly at all to detail, which seemed to surprise Her Honor. I said further that Mr. Parker had computed 50 or more widely variant value by radically different methods and that Mr. McCall had been trying to ascertain the method or methods upon which Mr. Parker relied, since the sum and substance of Mr. Parker's testimony was that, considering everything, the answer is $300 per share. The court remarked, "Well that is the only kind of an answer you will get in any decision by this court," and departed. If the court had listened to any of the cross-examination of Mr. Parker, it was not apparent from this episode.

Mr. Chairman, I am now skipping portions of the memorandum. I continue from the memorandum again as follows:

I was called to the witness stand as the second and last opinion witness for the respondent. I completed statement of qualifications in 15 minutes and the court then recessed from 12:45 to 1:45 p. m. for lunch. Before resuming, the court asked me how long it would require for my direct testimony and I said 1 hour or perhaps an hour and a quarter at most, and that I would make every possible shortcut. I had arranged my statistical schedules in consecutive order and asked Mr. McCall to take copies from me as I began to refer to them and to pass one copy to the judge, one copy to the opposing counsel and the original to the clerk, and that we would save time by offering all of the schedules at the conclusion of my testimony as one exhibit illustrating my testimony and showing the facts upon which I relied. This met with the utter disfavor of the court, who refused to accept the copies handed to her. I had completed most of my statement as to how I arrived at my opinion of value, when the court told Mr. McCall that he did not know how to try a case, and directed him to step down, Mr. McCall said, "As the court pleases," and sat down. When Mr. McCall was directed to step down from the case the court had requested me to inform Mr. McCall's superiors of the fact and that she considered him incompetent. Mr. McCall respectfully informed that court that he would convey that message himself. I then was directed to ask myself questions and answer them as a witness but told the court (as I had done previously under somewhat similar circumstances during a recess) that I would not follow the court's direction since I was not an attorney and was not admitted to practice before the Tax Court.

There being no Bureau attorney in court other than Mr. McCall, the court either had to stop the trial or permit Mr. McCall to proceed, and the latter alternative was chosen. The apparent hostility of the judge to the presentation of respondent's case continued throughout the trial.

I have endeavored to make the preceding statement as factual as possible. The official record of the trial should disclose the more important facts which I have recited, unless the record has been deleted by instruction of the court. I anticipate that some deletions of that nature may be made, in view of the following incident. At an early time during the trial the petitioners were painting a very distressing picture of the Heppenstall Co., and the court said from the bench that it would not pay $1,280 per share for stock of the Heppenstall Co. There were other remarks made by counsel both for the petitioner and for respondent and by spectator witnesses for the petitioner then viewing the proceedings from the jury box. The court seemed to entertain some doubt as to the propriety of her comment and asked permission of counsel to strike the entire episode from the record, explaining that of course everyone must realize she had simply been joking. The reporter stated that he had understood that this portion of the trial was off the record and that he had not reported it.

Mr. McCall in my presence reported to Mr. Miller and Mr. Allen that the court considered him incompetent to represent the Bureau before the Tax Court. I do not agree with the opinion expressed by Miss Harron, and so stated to Mr. Miller and Mr. Allen. I think a review of the record will confirm any opinion that the respondent's case was ably presented by Mr. McCall. I ask that copies of this report be sent to Messrs. Allen, Miller, and McCall.

JOHN ALDEN GRIMES,
Valuation Engineer.

I might add that 4 months after this trial, I received a promotion in pay grade from the chief counsel and continued to receive promotions annually until I resigned this year. I received from the chief counsel an efficiency rating of "Excellent," which is the highest of five possible grades, for the period April 1, 1946, to March 31, 1947, which period includes the dates of the trial of the Heppenstall cases. I never thereafter failed to receive a rating other than "Excellent."

Mr. Chairman, I will be delighted to answer any questions that I am able to answer.

The CHAIRMAN. Any questions.

Senator CONNALLY. Are you the son of John McCall or Sam McCall?

Mr. MCCALL. John.

The CHAIRMAN. Where is your home?

Mr. MCCALL. Dallas, Tex.

The CHAIRMAN. You are not a voluntary witness?

Mr. MCCALL. I was subpenaed by this committee.

The CHAIRMAN. You came in response to a subpena?

Mr. MCCALL. That is correct, sir.

Senator CONNALLY. I just want to say, Mr. Chairman, that I do not happen to know the young man very well, but I know his father who is an eminent lawyer, frequently in Washington, and I know his other relations and have known them for a great many years. Those that I have known are men of ability, integrity, and standing in our State.

Mr. MCCALL. Thank you, Senator.

Senator MCGRATH. After the trial was concluded, did you make any complaint to your superior about Judge Harron?

Mr. MCCALL. I did not consider it necessary inasmuch as Mr. Grimes' memorandum came through in a very few days. My superiors were completely apprised of what went on.

Senator MCGRATH. Did you find any fault with the deletions made in the record?

Mr. MCCALL. Did I find any fault with them?

Senator MCGRATH. Yes. Do you now consider that any of these deletions went to the merits of the case?

Mr. MCCALL. Definitely not.

Senator MCGRATH. They did not?

Mr. MCCALL. No; other than possibly depriving the Commissioner of a basis for appeal on the basis of prejudice. Of course that does not go to the merits of the valuation of the case.

Senator MCGRATH. You took no steps to have the record restored to its original status?

Mr. MCCALL. I did not.

Senator MCGRATH. You do not regard what was said during recesses of the court as being any part of the case or as being proper to be put into the record?

Mr. MCCALL. I think it was improperly a part.

Senator MCGRATH. The remarks of the court in the corridor were also not a part of the case?

Mr. MCCALL. They were not a part of the case other than being contributive to the atmosphere and surroundings of the case, if I make myself clear.

Senator MCGRATH. Well, you would not say that the judge in any case showed an attitude outside the courtroom that might be over-

friendly to one party or another, that that could be put in as a part of the record of the case?

Mr. McCALL. I do not think it should be a part of the record.

Senator MILLIKIN. Would it be made a part of the record if you were appealing on the grounds of prejudice?

Mr. McCALL. I do not know the answer to that question. The part of the record that was in the record originally possibly could be restored. I do not know the answer to that question.

Senator McGRATH. The outcome was favorable to the Government?

Mr. McCALL. We won the case.

Senator McGRATH. There was no ground to appeal?

Mr. McCALL. I do not know, I am not a member of the Bureau, but up until the time I left, there was no desire to appeal the case.

Senator McGRATH. From your experience, however brief it may have been, you knew the strain under which this particular court was working and the pressure of business?

Mr. McCALL. I know that it was a heavy docket.

Senator McGRATH. And you appreciate that the court was probably pushing all the lawyers at the same time to try to dispose of their cases?

Mr. McCALL. Time was certainly an element as was emphasized.

Senator McGRATH. Were you ever called to Washington to discuss this matter?

Mr. McCALL. On that occasion that I mentioned, I was in Washington and we made an attempt to get portions of the record that have been read into the record in this proceeding.

Senator McGRATH. How long was that after the trial of the case?

Mr. McCALL. That was in the spring of 1948 in the month of April or the month of May.

Senator McGRATH. What was the occasion that caused you to come to look at the record at that time?

Mr. McCALL. Mr. Oliphant wanted to see it. He was then the chief counsel.

Senator McGRATH. Do you know, of your own knowledge whether or not he might then have been considering the reappointment of Judge Harron?

Mr. McCALL. That was certainly never mentioned.

Senator McGRATH. Did it seem strange to you at that time that so long after trial of a case that he would want to review the record with you?

Mr. McCALL. Well, it did not seem strange. I can say this that I knew, I think everyone was aware, that the terms on the Tax Court were expiring, four of them, I believe.

Senator McGRATH. So in your own mind you concluded that that was probably the reason why he was going into it?

Mr. McCALL. No, I do not conclude that that was the reason. I know that it was common knowledge at that time.

Senator McGRATH. Did you have any reason——

Mr. McCALL. Let me straighten it out to this extent? I talked to the chief counsel on that occasion and I did not ask him why he wanted it and he did not tell me.

Senator McGRATH. You had not had a previous experience of review of a record so long after the case had been tried, had you? Was not the fact that Mr. Oliphant sent for you and wanted to go over that record rather peculiar and did it not excite curiosity in your mind?

Mr. McCall. Well, I cannot deny or confirm the fact that Mr. Oliphant wanted to see it in connection with Judge Harron's reappointment. I just cannot do it because he did not talk about that.

Senator McGrath. Can you assign any reason why he was doing that?

Mr. McCall. I would not be willing to assign a reason because I did not feel I was in a position to question him.

Senator McGrath. During the course of that interview, did you have any reason to tell Mr. Oliphant the circumstances?

Mr. McCall. I did .

Senator McGrath. What happened?

Mr. McCall. He requested that I write him a memorandum, as I testified, upon my return to Pittsburgh, setting out to the best of my recollection what transpired and that I did.

Senator McGrath. You testified, to that memorandum today?

Mr. McCall. I mentioned the fact in my testimony that I wrote the memorandum.

Senator McGrath. Do you have a copy of the memorandum?

Mr. McCall. I have.

Senator McGrath. Have you put it in the record?

Mr. McCall. I have not. Do you desire that I read it?

Senator McGrath. Whichever way you prefer.

The Chairman. What is the length of that statement?

Mr. McCall. The nature of it is that after 2 years I was attempting to recall what happened.

The Chairman. I see.

Mr. McCall. The nature of it is what has been put in the record already. I have a copy of it in my brief case and I will be glad to put it in the record.

The Chairman. You may put it in the record and call attention to any part of it that you wish at this time.

Mr. McCall. If Senator McGrath wishes I will read it.

Senator McGrath. No; I do not ask that.

The Chairman. Suppose you read that statement, Mr. McCall?

Mr. McCall. All right.

The Chairman. This is the memorandum now that we understand you furnished to the chief counsel?

Mr. McCall. This is a memorandum I wrote to the chief counsel.

The Chairman. At his request?

Mr. McCall. At his request. Of course it was transmitted with a letter of transmittal which I do not have a copy of.

The Chairman. I understand.

Senator McGrath. We understand that you do not know the reason why you were asked to write this memorandum?

Mr. McCall. Well, I know that they were very interested in getting a copy of the deleted portions of the record. I think that is the reason I wrote it, I am certain that is the reason why it was requested.

Senator McGrath. Let me get this right. You were certain that the reason was that they wanted to get a record of the deleted portions of the record?

Mr. McCall. That is right.

Senator McGrath. In connection with the reappointment of Judge Harron?

Mr. McCALL. Senator McGrath, I want to make myself clear on that. I did not at any time ask. I do not want to be evasive either.

Senator McGRATH. I think you are being very frank. I am not trying to trap you by any means. What I am trying to establish here is a point that you perhaps do not appreciate because you were not here for the previous testimony. The inference is in the record that there was something strange that the Bureau should be looking into this record at this particular time. We have been trying to show that the reason for the Bureau's trying to look into it was in connection with the reappointment of Judge Harron. Therefore, it would be pertinent if you would recall whether or not in conversation with Mr. Oliphant he at any time said that Judge Harron is up for reappointment and we have some complaints and we are looking into them; that is the only thing I had in mind in pursuing this line of questioning.

Mr. McCALL. Senator McGrath, I read the testimony of this proceeding heretofore and I am aware of the inference that is in the record but I cannot confirm or deny it, frankly, because I talked with Mr. Oliphant and we did not discuss Judge Harron's reappointment. I did not ask him and he did not volunteer the information.

Senator McGRATH. From your experience you knew that the case had been concluded. Could you conceive of any further interest that the Government might have in this case?

Mr. McCALL. I do not know of any other interest they might have had in this deleted portion. I was in Washington in connection with a motion that had been filed. I beg your pardon, it was an order which had been filed by the court, referring to the briefs in the case. It had nothing to do with this part of the record that is in question before this committee.

Senator McGRATH. Why not read your statement?

The CHAIRMAN. Yes, proceed with the statement.

Mr. McCALL. The memorandum reads as follows:

Charles W. Heppenstall, Sr., Pittsburgh, Pa., Docket No. 5437; Samuel B. Heppenstall, Sr., Pittsburgh, Pa., Docket No. 7028.

On page 528 of the record there appears an off-the-record discussion. According to my recollection, the following transpired:

The Court, being critical of my presentation—

...

Incidentally, the date of this is March 29, 1948.

Senator McGRATH. On that point, I understood your conference was in April of 1948.

Mr. McCALL. I stand corrected because I wrote this the day after I returned from Pittsburgh or rather from Washington.

Senator McGRATH. That is a little different. You said that you wrote this memorandum in response to a request by Mr. Oliphant and after your conference with him he said, "You write me a memorandum." Now we find that this memorandum is dated prior to that conference.

Mr. McCALL. Senator McGrath, I testified a moment ago that I was in Washington at the time these conferences took place in April or in May. I was in error because this written memorandum refreshes my memory to the point that I know that I must have been there before. If the date is material, I think maybe we can get the records from Pittsburgh, if they will allow us to have them.

Senator McGRATH. It may be material to show how you came to write the memorandum. You testified, as I understand it, that you

had a conference with Mr. Oliphant in April of 1948 and that he said to you after the conference, "Write me a memorandum about this matter," and that you did write a memorandum, presumably after April 1948. Now you say that the memorandum is dated March. What caused you to write the memorandum in March? Had you had a conference with Mr. Oliphant previous to that time? Or, did somebody else ask you to write the memorandum, or did you do it on your own initiative?

Mr. McCALL. In answer to the question, Senator, the memorandum that I am now preparing to read, I have read part of it, was written on March 29, 1948, which was subsequent to the time that I talked to Mr. Oliphant wherein he wanted to know what was in the deleted portions of the record of the Heppenstall cases. I testified, I am sure, in April or May, but I was in error and I would like for the record to stand corrected to that extent. I knew it was in the spring but I had not checked the dates.

Senator McGRATH. After you wrote the memorandum were there any further conferences with Mr. Oliphant?

Mr. McCALL. Not a single one.

Senator McGRATH. So that we can entirely disregard in this record any reference to Bureau conferences after March 29?

Mr. McCALL. I do not know what other people might testify to, but I was present at none after that in Washington on this problem.

Senator McGRATH. To the best of your recollection the memorandum is dated a few days after the conference with Mr. Oliphant?

Mr. McCALL. Well, it is dated, I believe, the following day after he requested it. I flew back to Pittsburgh the evening, or late afternoon after he requested that I write the memorandum. That was the first thing I did in the office after my return. I do not believe a week end intervened. If a week end did not intervene, it was the following morning.

The CHAIRMAN. Suppose you read the statement?

Mr. McCALL. I continue with the memorandum as follows:

The court, being critical of by presentation of the cases, commented on the fact that the petitioners had considered the cases involving "upward of half a million dollars" of sufficient importance to employ several eminent counsel, but the Government had selected for its representation one youthful attorney with some experience. The court requested Mr. John Alden Grimes, who was at that time on the witness stand, to tell my immediate superiors that I was unable to properly present the cases. At this point, I offered to convey that information myself. The court told me to sit down and I complied. The court then instructed Mr. Grimes to take over the trial of the cases for the Government. Mr. Grimes informed the court that he was not a member of the bar nor was he admitted to practice before the Tax Court, and would not undertake to try the cases for the Government. Faced with the possibility of not having the Government represented by counsel, the court instructed me to proceed.

It is possible that some of the happenings related above took place during the off-the-record discussion appearing on page 529 of the transcript of the proceedings.

On page 559 of the transcript of the proceedings, there appears a recess. It is thought that it was at that point that the court called me beyond the range of hearing of opposing counsel and beyond the range of hearing of Mr. Grimes, and while standing over the reporter and near Mr. Carter Daly, the clerk, stated that she would make a statement for the record. The reporter proceeded to record the conversation. The court examined me relative to my date of birth, personal history, training, war duties, and experience. At the conclusion of her remarks, I requested her permission to make a statement. Permission having been granted, I stated that I considered myself qualified to represent the Government in the

trial of these cases and further that I had represented myself to my superiors as being so qualified. That concluded the episode.

HOBBY H. MCCALL.

MARCH 20, 1948.

Senator MCGRATH. That is in compliance with the request by Mr. Oliphant that you informed him concerning this case regarding deletions from the record. A few days later you wrote him this in which the only complaint you make is the one complaint which you say was stated by the court out of hearing of the others in the courtroom, including counsel, but over the reporter and not during the course of the trial. You did not think it important at that time to call Mr. Oliphant's attention to all these other variations to the record that you have testified to here this morning?

Mr. MCCALL. At the time it occurred?

Senator MCGRATH. Mr. Oliphant asked you for a report on this record, deletions from this record, and in that report you mentioned only one incident and you say that that did not take place during the course of the trial but it took place in the courtroom and out of the hearing of all the others, except for the reporter?

Mr. MCCALL. Possibly I had better reread the memorandum. It calls Mr. Oliphant's attention to two things.

Senator MCGRATH. What you read was not the complete memorandum?

Mr. MCCALL. I read the complete memorandum and I will read it again if the committee wishes because it refers to a situation in one paragraph during the trial of the case in open court and it refers in another paragraph to a situation that happened, or occurrence that happened, during a recess.

Senator MCGRATH. Will you reiterate for me the part of the memorandum that refers to what happened in open court?

Mr. MCCALL. Yes, sir. I am rereading the memorandum, beginning with the second paragraph:

The court, being critical of my presentation of the cases, commented on the fact that the petitioners had considered the cases involving "upward of half a million dollars" of sufficient importance to employ several eminent counsel, but the Government had selected for its representation one youthful attorney with some experience. The court requested Mr. John Alden Grimes, who was at that time on the witness stand, to tell my immediate superiors that I was unable to properly present the cases. At this point, I offered to convey that information myself. The court told me to sit down and I complied. The court then instructed Mr. Grimes to take over the trial of the cases for the Government. Mr. Grimes informed the court that he was not a member of the bar nor was he admitted to practice before the Tax Court, and would not undertake to try the cases for the Government. Faced with the possibility of not having the Government represented by counsel, the court instructed me to proceed.

Senator MCGRATH. All of that has been deleted from the record?

Mr. MCCALL. At that time, Senator, that was my recollection of what had been deleted from the record of the case.

Senator MCGRATH. This is merely a summary?

Mr. MCCALL. Those were my recollections 2 years after the trial.

Senator MCGRATH. You have read the record since and this is a fair statement of the extent of deletion?

Mr. MCCALL. Senator, I think the record itself should stand. The record speaks for itself. I consider myself as having a remarkable memory coming so close to it 2 years after the trial.

The CHAIRMAN. Senator Martin, did you have a question?

Senator MARTIN. When were you admitted to the bar?

Mr. MCCALL. In 1943, Senator.

Senator MARTIN. Then, when did you go into the service?

Mr. MCCALL. I was in the service when I was admitted to the bar.

Senator MARTIN. Then how long were you in the service?

Mr. MCCALL. Three and a half years, Senator.

Senator MARTIN. What was your branch?

Mr. MCCALL. I was a major of Infantry.

Senator MARTIN. What line of duty? Where were you located?

Mr. MCCALL. I was in the Ninetieth Infantry Division, Three Hundred Fifty-ninth Combat Team. We saw service in this country and we participated in the invasion of Normandy and the division stayed in Europe until the conclusion of the war. I left the division 2 months after the invasion due to a slight disagreement with the Germans.

Senator MARTIN. What do you mean by that?

Mr. MCCALL. I might say that I zigged when I should have zagged. I was the recipient of some machine-gun bullets and some shell fragments.

Senator MARTIN. Then when were you relieved from the service?

Mr. MCCALL. My terminal leave began on September 15, 1945, sir.

Senator MCGRATH. Did you try any other cases before Judge Harron after this?

Mr. MCCALL. I did, Senator, I tried one Saturday, June 8, 1946.

Senator MCGRATH. What was the relationship or, shall I say, what was the temperature of the courtroom?

Mr. MCCALL. The case went on without incident; it was a pleasure.

Senator MCGRATH. You had no other unhappy experience with the judge except this episode?

Mr. MCCALL. Never again.

Senator MCGRATH. Did you witness trials in the judge's court that you did not directly participate in, Mr. McCall?

Mr. MCCALL. I shall have to correct my statement. We had a rehearing in the Koppers case in Washington in May or June 1947. It was heard by Judge Harron's division of the court.

Senator MCGRATH. That was your pleasant experience?

Mr. MCCALL. I had no difficulty.

Senator MCGRATH. Did you have occasion to observe other trials in her courtroom in which you did not directly participate?

Mr. MCCALL. I did not for this reason: When those calendars are in session, why most Government counsel have innumerable cases and of course you can see why we have to be working on our other cases when we are not presenting one. That was the situation I was in in Pittsburgh.

Senator MCGRATH. You do not have to answer this next question. She has expressed her opinion of you when you were a young lawyer. Would you like to express your opinion of her as an old judge?

Mr. MCCALL. I would not say she is an old judge.

Senator MCGRATH. I do not want to embarrass you. You do not have to answer.

Mr. MCCALL. I think that is a fair question. I would like to say this of Judge Harron. I had occasion to meet her socially once. I found her very affable and pleasant company. But my experience

under Judge Harron's supervision on the bench led me to believe that she did not possess judicial temperament.

Senator McGRATH. That is based on this one experience?

Mr. McCALL. Yes; and the remarks I hear from other people continually.

Senator McGRATH. Hearsay?

Mr. McCALL. Hearsay, if you will. It is not hearsay, but remarks from people who have been directly engaged in the trial of cases.

Senator McGRATH. You have not observed that yourself?

Mr. McCALL. Well, I had not observed that particular thing myself, but it is not hearsay.

Senator McGRATH. What would you call it if it is not hearsay?

Mr. McCALL. It is direct evidence of what happened.

Senator McGRATH. Direct evidence because somebody states it to you?

Mr. McCALL. Yes, sir; in that situation where the party participates in an occurrence and testifies to what happens that is direct evidence.

Senator McGRATH. I shall have to revise my opinion of direct evidence, I guess.

Senator MILLIKIN. I think there is confusion between the report of what someone says who has directly participated and what a person himself says. What you say of it is hearsay; what he says of it might be direct evidence.

Mr. McCALL. I beg your pardon. What I am saying now is hearsay evidence.

Senator MARTIN. What other experience in court did you have preceding the Heppenstall case?

Mr. McCALL. I was present and assisted in the trial of some cases before a previous Tax Court calendar held by Judge Leech beginning March 4, 1946. Prior to that time I had assisted and appeared in cases in State courts in Texas.

Senator MARTIN. Was there any criticism of your conduct by the presiding judges in those cases?

Mr. McCALL. Never before or since.

Senator McGRATH. Am I correct in assuming that this was your first trial of a major case?

Mr. McCALL. It was the first case that I appeared in where I might be considered the leading counsel of the case.

Senator McGRATH. You were in charge of it?

Mr. McCALL. Yes.

Senator McGRATH. It was a very important case in the sense that it involved a substantial amount of money?

Mr. McCALL. It was certainly an important case, but I might say the whole time I was with the Government I was always loaded with important cases. Nearly every one that comes before the Tax Court is an important case.

Senator McGRATH. That is true. The Tax Court does not have time to fool around with many cases.

Senator MARTIN. The amount involved does not necessarily indicate the importance of the legal questions and accounting problems involved.

Mr. McCALL. I do not believe so. Of course, a large case sometimes will call for more attention from the outsiders but sometimes they are shut and closed big cases, and small cases can be very complicated.

Senator MILLIKIN. Is there not a strong effort made to settle cases involving unimportant amounts?

Mr. MCCALL. I would not say so any more than large ones. As a lawyer for the Government I always tried to look at the merits of the case and if the facts suggested settlement or trial, and according to the position of opposing counsel, big and small alike, they were so treated.

The CHAIRMAN. Is there anything further you wish to tell us, Mr. McCall?

Mr. MCCALL. No, sir; that is all I have.

The CHAIRMAN. How many cases did you present at Pittsburgh or were you participating in at Pittsburgh during this period?

Mr. MCCALL. I presented four before Judge Harron.

The CHAIRMAN. This occurred in the third presentation, as I get it?

Mr. MCCALL. That is right, Mr. Chairman.

The CHAIRMAN. On the following day you presented an additional case?

Mr. MCCALL. That is right.

The CHAIRMAN. If there are no further questions, then we thank you very much, Mr. McCall.

Mr. MCCALL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Allin H. Pierce?

You may be seated, if you wish, sir. Will you give the reporter your full name and address?

STATEMENT OF ALLIN H. PIERCE, ATTORNEY, CHICAGO, ILL.

Mr. PIERCE. My name is Allin H. Pierce, address 135 South La Salle Street, Chicago, Ill.

The CHAIRMAN. Are you an attorney?

Mr. PIERCE. I am an attorney, sir, practicing in Chicago where I have my own office. I have been a practicing attorney since 1923, and since 1928 I have specialized in Federal tax matters with emphasis on trial work, estate trusts, and corporate problems.

The CHAIRMAN. Have you a legal firm or do you practice alone?

Mr. PIERCE. I practice under my own name. I have been practicing under my own name since 1946. I might say that by way of experience I was admitted to the bar of Illinois in 1923. For 4½ years I engaged in general practice in Chicago with firms there, two different firms. In 1928 I was given an opportunity to go to Washington with the Bureau of Internal Revenue where I became a special attorney and where I first spent most of my time trying cases in the United States circuit court of appeals, the work then being under the Bureau rather than the Department of Justice as it is now, and later in handling cases before the Board of Tax Appeals, now the Tax Court. I was given quite a number, especially toward the end of my service, of cases of extraordinary importance, cases involving problems of special interest to the Government.

I left the Government after 7½ years of service, at the end of the year 1935. I went to New York City where I became associated with the firm of Carter, Ledyard & Milburn at 2 Wall Street, New York. There I handled tax matters for that firm and handled practically all of the trials of tax cases. I continued with them for about 7½ or 8 years and then I returned to Chicago from which I had come.

I have practiced in Chicago after my return, since 1943, and since the beginning of 1946 I have operated my own office under my own name.

I might say, by way of introduction, that I am a graduate of Swarthmore College, also a graduate of the Law School of the University of Chicago. I am admitted to the bars of the State of Illinois, the State of New York, the United States Supreme Court, 9 of 10 of the United States courts of appeals, the Court of Appeals of the District of Columbia, the Court of Claims, several United States district courts, and the Tax Court of the United States. I am a member of the Chicago Bar Association and I am at present chairman of the tax committee of the Chicago Bar Association. I am also a member of the Association of the Bar of the City of New York. I was formerly a member of the tax committee of that association while I was in New York City. I also am a member of the Illinois State Bar Association and the American Bar Association, although I am not an officer or committeeman of either of those associations.

I have handled a great many cases, the trial of cases, and I am the attorney of record in a great many cases. I have here a list of cases which I have handled, and my examination shows that I have personally handled, and am attorney of record, in 57 decided tax cases and have either prepared briefs or been associate counsel in 43 additional decided tax cases, and have also handled a large number of other cases that have been filed but settled prior to the hearing.

I might say a large portion of these cases was handled by me as Government counsel while I was a special attorney for the Bureau of Internal Revenue; but a very considerable portion of them was handled for the New York firm I was with in New York, and since I have been in private practice in Chicago.

I have tried cases before a considerable portion of the members of the Tax Court. I feel very well acquainted with that court and I have a great deal of respect for, and confidence in, its work.

I might say that I have personally tried three cases before Judge Harron whose nomination is now before the committee for its consideration.

The CHAIRMAN. Were those hearings tried here or elsewhere?

Mr. PIERCE. Two of the cases were tried while I was associated with the New York firm in New York City. The third case was tried in Grand Rapids, Mich. I can tell you briefly what the situation was, without going into great detail, what the result was, and then I will comment on my experiences in some of these cases, if you wish me to do so.

The CHAIRMAN. We shall be glad to have your appraisal, as an experienced lawyer, of Judge Harron's qualifications and her attitude in the hearings where you have actually participated or where you have had opportunity to observe at first hand.

Mr. PIERCE. The first case which I handled before Judge Harron is that known as *William P. T. Preston* v. *the Commissioner of Internal Revenue*, which was reported in 44 BTA 973, 1941, reversed by the Circuit Court of Appeals for the Second Court in 132 Fed. 2d 763.

I might say that this was a case which, like a great many income-tax cases, involved a principle that was very much more important than the amount of taxes involved. The asserted deficiency was only

$124.21, which, I assure you, was even less than the attorney's fees, but it involved an important principle of law

Judge Harron decided the case against my client on a point of New York law as distinguished from Federal tax law, although the Federal tax law was applied. The case caused a great deal of concern. The United States Trust Co. of New York was the trustee and the decision had in effect declared that one of the bonds was invalid and that inferentially one of the trusts appeared to be invalid. The trust company asked for a declaratory judgment of the appellate division of the Supreme Court in New York and that court by a unanimous bench of five members decided that Judge Harron's decision was wrong. I might say I answered in that case and put in the entire Tax Court record and transcript which the court examined.

I then went to the Circuit Court of Appeals of the Second Circuit, Judge Learned Hand's court, and by a unanimous decision Judge Harron's decision was reversed.

I might say that after the appellate court's decision the Department of Justice conceded error in her decision but attempted to defend the court on other grounds in which they were unsuccessful. We won that case eventually.

Senator MILLIKIN. Mr. Pierce, are you coming to the judge's judicial attitude and her temperament with respect to these cases?

Mr. PIERCE. I might say in that case, Senator, that I do not recall, not having had the benefit of the record to refresh my recollection, anything adverse to her in that case except the result on a matter of law, which I think is something that opinions might differ on and I do not criticize her particularly on that one. I am merely citing it as an experience of having first contact. The two other cases I have do involve questions of personal conduct and I am going to comment on them in some detail.

The second case that I had before Judge Harron was an extremely large estate-tax case. It is entitled *Estate of Henry T. Sloan (Deceased)* v. *The Commissioner of Internal Revenue*, decided by the Tax Court in a memorandum opinion of June 8, 1944 (3 T. C. M. 555). Before going into the details of what happened I want to say that this case involved an asserted deficiency of $3,007,098.15. That was the amount of additional estate tax claimed by the Government. I was the sole attorney of record. The case was tried in New York City and the hearing continued for approximately 6½ trial days. So I had good opportunity to observe. The case was conducted by one of the most experienced Government attorneys and I had had considerable experience myself.

Miss Harron filed two opinions in the case. In the first opinion, which came out in April of 1944, she decided one group of issues in my favor and another group of issues against me. Shortly thereafter, on May 15, the Tax Court recalled her decision by reason of another decision made by the court in another case known as the Biddle case. There then came down a new and revised opinion by Judge Harron, which was entirely in my favor on all principal points.

The net result of the case, and I am emphasizing this to show that I am not disappointed in the result, was that I not only succeeded in expunging the entire deficiency of $3,007,098.15, but that I obtained an order or a decision of an overpayment in the amount of $220,290.34. In other words, we saved about $3,250,000 in the case. I therefore

have no feeling of having lost the case and I think I can comment on it dispassionately.

My third case which I tried in Grand Rapids, Mich., was known as the *R. W. Camfield* v. *Commissioner of Internal Revenue case*. It was a memorandum opinion of February 9, 1944 (3 T. C. M. 123). This was an income-tax case involving deficiencies of only some $7,700. It was decided against me by Judge Harron. I appealed the case to the Circuit Court of Appeals for the Sixth Circuit and, after two separate hearings, a hearing and a rehearing, the decision was affirmed on authority of an intervening and controlling Supreme Court decision.

What I have said to date is by way of showing my experience, and outlining the number of cases I have had before Judge Harron and the nature of them. I now want to comment on the conduct of those cases.

It is my opinion, based on these experiences and other matters that I will refer to, that the nomination of Judge Harron should not be confirmed for three principal reasons: First, although I believe she is entirely honest and that she is a hard worker, I do not believe that she possesses either the judicial temperament or the judicial approach to cases which should be possessed by a judge handling matters of the size and importance of those going to the Tax Court. I shall enlarge on this conclusion by specific instances, my conclusion being based on my own personal observations and experiences which I shall relate.

My second reason for feeling that the nomination should not be approved, and I might say I am talking impersonally without regard to my personal considerations or those of Miss Harron but just from what I think is the best thing for the court and the public interests, is that I do not believe she holds the confidence of the members of the bar, and more particularly of those members of the bar who have actually handled cases before her.

Now this conclusion, which bears upon, you might say, general reputation, is based upon conversations and investigations which I have made, and I might say I have made them rather extensively since I received a summons to this hearing. I have endeavored to gather the consensus of all the attorneys I could find who had practiced before her both in the Government service and out, that is, in the Chicago area where I am located, and of my conversations with other attorneys practicing before her in New York and Grand Rapids.

Referring to the comment a few minutes ago, I am not using the hearsay of what happened in those cases but I have tried to gather the opinion of trial attorneys who have been before her, which I consider direct evidence because I think that the standing of the court depends a great deal upon the confidence of attorneys in the court and the willingness of such attorneys to try their cases before a particular judge or a judge that happens to come out.

My third view is, and this is the third conclusion, and it is a conclusion, that I believe in viewing the appointment from a broad public standpoint, that the general reputation and standing of the Tax Court would be improved if some other person of ability could be substituted for her.

Now my conclusion on that, which also bears on general reputation, has been based on an effort by me to gain the consensus of people and clients in cases that I have either handled or that people, in whom

I have confidence, have handled. I might say that, knowing I was coming here, I had a meeting of my committee, the tax committee of the Chicago Bar Association, last Tuesday. I reported that I was coming and we had an active discussion over the matter. Present at the meeting were former Government attorneys and people formerly connected with the so-called technical staff and several private attorneys, including one who had participated with me in one of my cases before——

Senator McGrath. Might we have a list of the people who were at that meeting?

Mr. Pierce. I can give you a list of the membership.

Senator McGrath. You are going to testify here about the opinions of certain people against this nomination.

Mr. Pierce. Yes, sir.

Senator McGrath. The judge is entitled to know who these people are.

Mr. Pierce. I can give you the list of the membership of my committee. I do not have that with me but I shall be glad to send it.

Senator McGrath. I want the people who were at that meeting and when you testify I should like to have you testify as to what the individuals had to say. We think the honorable thing to do is to have the witnesses face the person they are accusing. That is the honest way of doing it.

Mr. Pierce. I think you are right.

Senator McGrath. Please identify the people you are talking about, whose opinions you are giving. Otherwise, I shall insist that this is hearsay evidence and unfair to the nominee.

The Chairman. You can give statements that presumably were made by individuals at this meeting you held this week.

Mr. Pierce. Yes, sir; I can recall the names of several of them and I shall be very glad to use the names of those who made comments. I do not know that I can quote the exact comment but I know the consensus of what was said.

One of them is Mr. Frederick Shearer, who was former chief counsel's representative in Chicago, and who is now engaged in private practice with the firm of Mayer, Meyer, Austrian & Platt in Chicago.

One of them is Milton Carter. Mr. Carter was former head of the technical staff for the Bureau of Internal Revenue in Chicago, now a member, I believe, of the firm of Hopkins, Sutter, Hall, De Wolf & Owen, of Chicago.

Another one was Mr. Lewis D. Spencer, who is associated with the firm of Eckert & Peterson of Chicago, formerly associated with O'Connor & Farber of New York City and prior to that associated with Carter, Ledyard & Milburn of New York City.

Another one was Mr. William D. Emery, a member of the firm of McDermott, Will & Emery of Chicago, Ill.

I cannot offhand recall the other members. There was quite a general discussion but I cannot recall the others make specific comments although there was about 30 members of my committee present at the meeting.

Senator Millikin. Mr. Chairman, I would not for a moment suggest that the general reputation of Judge Harron as to her qualifications and judicial temperament is not important, but I can see it is

possible to go off into limitless inquiry here by that type of second-handed testimony. Now the gentlemen to which the witness refers I think could submit written statements or submit affidavits. We should not open this thing up, Mr. Chairman, so that people can come in and tell what they heard at this, that, or the other meeting. I think we have to put some kind of curb on it or we will never get through.

The CHAIRMAN. I agree, Senator Millikin; that is true.

Mr. Pierce, suppose you give us your own personal impressions now and then you may briefly refer to this meeting, if you wish to later.

Mr. PIERCE. All right, sir.

The CHAIRMAN. Based upon your own appearances before Judge Harron, the first of which you say was without incident.

Mr. PIERCE. The first one was without incident that I recall. This was the Preston case.

The CHAIRMAN. All based on your observations of hearings in which you were not necessarily participating, if you were present, if you saw anything or learned anything that is pertinent here.

Mr. PIERCE. I think I shall confine myself to these two cases, Your Honor.

It is true that in Grand Rapids and in New York I have sat in the calendar call, that is, the preliminary call, and I have heard colloquies and discussions, but since I do not know the background of those or most of them, I am going to confine myself to my own cases with your consent.

The CHAIRMAN. Yes.

Mr. PIERCE. I am going to speak first on my experience in the Sloane case. I think that is probably because the case lasted 6½ days and was extremely important because of the amount involved and counsel present were experienced, and I think that it will give you somewhat of a picture of what took place.

I might say that because of the importance of the case the case was very carefully prepared. We had over $3,000,000 involved. We spared no expense in investigation, gathering facts, retaining expert testimony, and taking other steps that we deemed necessary. We had as our first expert witness Mr. Paul Coffman, who is vice president and head of the research department of the Standard & Poor's Corp., in New York, in my opinion probably one of the outstanding expert witnesses on stock analysis and valuation, a very experienced man. Another man we brought from Boston, Mr. Robert Weise, head of the research department of Scudder, Stevens & Clark. They are security analysts and advisers. He was another exceedingly well qualified witness.

I might say that one of the principal issues over which the trial was conducted was the valuation of stocks of a lot of closely held corporations, including the W. & J. Sloan Co. at Fifth Avenue and Forty-seventh Street, New York, the Alexander Smith & Sons Carpet Co., one of the leading carpet companies of the country, and other corporations. Most of the trial was consumed in determining the values of these stocks and the balance of the trial was consumed in putting in facts respecting a legal issue, showing the background of a legal issue which involved the question of whether some inter vivos trusts were includible in the decedent's estate because of the possibility that the property might revert to the grantor through failure of beneficiaries.

Now in preparing our case, our objectives were to set forth the facts clearly in order to carry the burden of proof and, secondly, to protect our record for appeal. We wanted to keep out incompetent evidence and keep errors out of the record.

I found it was very difficult, practically impossible, to control my case where I could not control the kind of evidence that went in and determine whether errors were creeping in. That was due to the fact that Miss Harron practically took over both the direct examination and the cross-examination, particularly the cross-examination of the witness. Before I could get my case in or lay down the theory of my case, she would start cross-examining the witnesses. It was very disconcerting to me. It upset my plan of my case and I frankly did not know whether I was getting my case in or not. But I proceeded. I think it is up to the trial attorney to absorb a great deal of criticism and complaint or suggestions and I always try to do it without any back talk or colloquy. I think that is my job. But it was very disconcerting and when it tends to disrupt the orderly conduct of the case and what I think deprives the parties of a fair trial by their own advocates according to their own methods of proof, then I think it is important.

Then I shall speak of some more serious things as I go on but I want to comment on this. I examined the record yesterday. I went down to Miss Harron's office where it is located and spent the afternoon, and I find I am confirmed in refreshing my recollection that a very large portion of the direct examination and an exceedingly large portion of the cross-examination were entirely out of control of the attorneys. We were so concerned about it that, as a matter of trial tactics, I purposely asked additional questions that would provoke cross-examination by Government counsel because I was fearful that a court of appeals might say that counsel had not really been able to control or to cross-examine the witness properly, so I attempted to draw out cross-examination so as to eliminate a possible error.

Now she very severely criticized—I say very, I think that is degree and I should say she criticized adversely, not only me and my conduct of the case but Government counsel, Mr. Lewis, even more severely than she did me. She also criticized my witnesses, I thought improperly.

For instance, when Mr. Coffman testified, who has had very extensive experience in these matters in testifying, she would not only criticize his methods but lecture him on what was the proper method, what he should do, what he should testify to. It was upsetting to him, upsetting to me with $3,000,000 involved. I frankly did not know where we were going.

Now I think by way of helpfulness to me, as I so construed it, an incident happened that placed me in a very embarrassing position. I frankly did not know what my professional duty was. We were sitting at the counsel table. I might say I have refreshed my recollection on this with another who was present. We were sitting at the counsel table, Government counsel to my left and I on this side, my associate counsel there, and my client. There was a recess declared for some reason, as frequently happens. Miss Harron went down from the bench and into her chambers. She had hardly gone in before she sent word to me to come into the chambers. I do not recall whether the clerk brought word or whether she came out herself.

She did not invite associate counsel, nor did she invite Government counsel. I did not know what she wanted. I went in, of course. She began to discuss the evidence and the conduct of the case. I was a little embarrassed. I did not say anything but I did not know what I should do. She then asked me to have my client come in, who was the executor of the will of the estate, and he came in. We then discussed certain evidence that was going in. I recall we discussed particularly the probable testimony of Mr. John Sloane who was to be called. He was a little concerned about the publicity of the matter and that was discussed.

Then the discussion turned to what was desirable to have in the record. My recollection is that the statement was something to this effect, that it was important that certain basic facts regarding the corporations involved be put in and that it was necessary that they be there for the court's findings of fact, whereupon the court made an outline. When I say "made an outline," it was done orally but I wrote it down. I think my client also made some notes, at least we compared them later. I made a list of certain things that should be covered. They were things that I had planned to put in anyway. I would have put them in because they were essential elements. I would have put them in even if the conversation had not been held. They did not affect my proof of the case except possibly the order of presentation.

I was greatly concerned as to whether I should report the matter to Mr. Lewis, the Government attorney, because this was all out of his presence. I discussed this with my associate counsel. I have refreshed my recollection on this and I decided to do nothing because I knew that Government counsel was a temperamental individual. I was afraid he would make some remarks to the court that might throw out the trial that had been going on for nearly a week then, and it was not prejudicial to me and it did not prejudice him because it was a matter I had already prepared evidence on, but I thought it was highly improper.

I lost confidence in the court by reason of that fact because I had a feeling that if she talked to me and coached me, and I regard that as a form of coaching by the judge, I thought probably the same thing might happen to the other counsel. I lost a great deal of confidence in the court by reason of that fact.

Senator MILLIKIN. Mr. Chairman, may I interrupt?

Prior to that meeting in the chambers, had you and the judge been in disagreement as to the conduct of the case?

Mr. PIERCE. No, except there had been some discussion, as the record will show, as to the order of proof, what evidence should be put in first.

I might say, and I have a statement in the record to this effect that I found yesterday, that I purposely very carefully considered the order of proof and we decided first to put Mr. Coffman on, although he was in the nature of an expert witness because he was something more than an expert. In other words, he did not answer a hypothetical question but he had made investigation covering, I think, about 3 months' time and he testified to his investigation plus his opinions as to the values of the stocks.

Now there was quite a little discussion about the order of proof but there was no personal animosity or feeling between Miss Harron

and me; in fact, she has always been very cordial to me. I am saying this objectively and impersonally when I criticize her because I would much rather not criticize her, except that I have been asked and requested to come here by a telegram that said it was in lieu of a subpena to come either in person or testify by affidavit. As Senator McGrath has said, I felt it was only fair in making the statements which are necessarily damaging, that I should come here in person, and I am coming entirely at my own personal expense so that you can see me and hear me and cross-examine me, and Miss Harron, who is in the hearing room may hear me also.

Senator MILLIKIN. Is your point so far that the judge took excessive control of the case and embarrassed you by conversations in the chambers in the presence of your client which, in your view of it, reflected on your ability as an attorney? Is that your point?

Mr. PIERCE. I do not think it reflected on my ability as an attorney. If I may resummarize, sir, I would say that I think these are instances, and they are only instances but they occurred repeatedly during the case; and I think they show a lack of judicial approach and temperament and a taking over and dominating of the case so that I and my clients when the thing was over felt that the case had been dominated by the court, that we did not know whether we had a case in or not.

Senator MCGRATH. You did not come here because you felt if you did not come voluntarily that you would be subpenaed? Is that the inference you got from the telegram?

Mr. PIERCE. I do not know whether I can say that. I knew I got the telegram saying it was in lieu of a subpena.

Senator MCGRATH. Was that a telegram from our committee?

The CHAIRMAN. Yes, it was a telegram sent by the committee. I requested him and asked if he would come or would he submit an affidavit.

Mr. PIERCE. So I came rather than submit an affidavit. I came, I think I can say, for two reasons: one is because you requested me. The other reason is because I have practiced before the Tax Court since 1928. Maybe it was about 1929 when I had my first case. I am exceedingly interested in that court. There is a bill pending to make it a court of record. I feel that it does not do any good, and it is not proper, to criticize courts or criticize judges unless when questions of appointment come up those attorneys who have had personal knowledge and experience express themselves. In other words, I think there is some sense of public duty and professional obligation, and in talking it over with my committee in Chicago and friends I had there, they said by all means they thought I should go down in person rather than send an affidavit.

Senator MCGRATH. That is a very honorable way to look at it.

Were you requested to come at any time by the American Bar Association or anybody else prior to the receipt of this telegram?

Mr. PIERCE. Yes. I might say that my first knowledge of the hearing I think was in a letter from Mr. Phillips. He indicated that they had examined a great many records of the Tax Court in cases handled by Miss Harron and that he had found my Sloane case in particular, and I think possibly another one, and that he would like to have me present testimony, if I would be willing. He wanted to know if I

would have to have a subpena or not. I replied, and I am sure my correspondence is here, that I was very reluctant to testify because I would have to come in from Chicago and it was an embarrassing thing to do, to testify against anyone, and I preferred to be subpenaed. I then received a telephone call from him which indicated that instead of a subpena, the plan would be to issue a telegram inviting me to come, because I was an attorney and there seemed to be some feeling that maybe I should not be demanded to come, particularly on opinion testimony. Anyway, I did receive a telegram and I did advise your chairman that I would appear in person.

Senator McGRATH. Who solicited your appearance?

Mr. PIERCE. My first contact came from Mr. Phillips of the American Bar Association.

Senator McGRATH. You had never made complaint to the American Bar Association?

Mr. PIERCE. I had never made any complaint. I might say I talked with Miss Harron yesterday when I was down in her chambers examining the record and she reminded me—and I might say this is entirely friendly, no criticism whatever—that there had been a ballot go out from the American Bar Association some time last fall asking attorneys, I think tax attorneys particularly, to comment on whether they favored or disfavored the four judges whose terms expired last year. Now I told her I did not recall whether I voted that ballot or not. I am not sure I received it because we have similar ballots come out from our Chicago Bar Association on local judges. I may have seen that. That was my first contact.

My second contact with the problem was when I attended the meeting of the tax section of the American Bar Association held at the Edgewater Beach Hotel last January, and I heard the problem discussed.

I heard nothing more about it then until I received this letter from Mr. Phillips asking whether I would testify and, if so, whether I would require a subpena.

The third, I think, was a telephone call from him and the fourth I think was the telegram from your committee.

The CHAIRMAN. Proceed with your statement, please, Mr. Pierce.

Mr. PIERCE. If I may just say, I thought she did take the case away from the attorneys selected by the parties and run it to some consternation of me and my clients. I also found this, that she has a hesitancy to rule on evidence, which is very disconcerting to a trial attorney. Early in the case I had presented some evidence, or it may have been in connection with Mr. Coffman's testimony, and she would do this. She did it repeatedly throughout the trial; and I verified it yesterday. She would say to the reporter, "Stop taking the minutes. This is off the record." Then we would have extended colloquy in which I would support my evidence and she would be inclined to rule against me. I thought she went too far. It is always up to a judge to decide if they want to admit evidence or not and make a ruling; but the object of these colloquies and the object of going off the record seemed to be to argue me out of putting the evidence in, rather than giving a ruling upon it.

Now I remember one instance in particular and this was confirmed before I came in here by my associate trial counsel. I was pressing for evidence. She did not want to admit it. I said I was going to

make an offer of proof if she did not admit it because I wanted the record for the circuit court of appeals. The case might well be appealed. She said to me, and this is as well as my recollection and my associate's memory serve: "Mr. Pierce, you have a grave responsibility here, a grave responsibility. There are $3,000,000 in this case and I am going to decide it." Well, I must say, being a trial case on facts where an appellate review is exceedingly difficult, I was in a dilema whether I was going to offend the court by pressing the objection or whether I was going to insist on proof in the record. I decided on the latter course because I had a record to defend and I insisted. I said, "I am sorry, your Honor, but I am going to make an offer of proof and I am going to make it along these lines because I must preserve my record for appeal." Whereupon, I outlined the nature of my offer of proof and she reversed her ruling and we proceeded with the testimony of Mr. Coffman.

Senator MILLIKIN. Did that not serve a constructive purpose?

Mr. PIERCE. I think it was improper to go off the record. I think what she should have done, Senator Millikin, was to rule on the point; and if I made an offer of proof, if she wanted to reverse herself, that was proper. But I think it is improper to stop the reporter; it is the same as striking things out of the record. She prevented the colloquy from going in. She prevented her ruling from going to the appellate court by stopping the reporter and saying, "This is off the record." I think attorneys are entitled to have the appellate court see the nature of the ruling and the nature of the colloquy.

Senator MILLIKIN. The ruling was not adverse to you?

Mr. PIERCE. Yes, it was.

Senator MILLIKIN. I understood you to say you have persuaded her to accept your view of the matter.

Mr. PIERCE. That is right. I might say it was adverse in the first instance; and when I persisted we went off the record and she, instead of making a ruling against me, attempted to argue me into withdrawing the evidence and not presenting it so it would not have to be ruled on. I insisted upon putting in the evidence. I made a statement that I would make an offer of proof and outlined what it would be. She then decided she would let it go in and we went back on the record.

Now it happens that she reversed herself, but if she had gone the other way, I would have had nothing in the record but a gap.

Senator MILLIKIN. She did not say that she would deny you the right to make your offer?

Mr. PIERCE. No, she did not do that.

Senator MILLIKIN. When your off-the-record colloquy ended, when the case resumed, you would have made your offer and I do not know of any way that the court can stop an offer if it is couched respectfully.

Mr. PIERCE. That was my intention. I thought that, too, Senator, but I am just citing this as one of the instances. I think this system of hesitating on rulings and attempting to argue with attorneys to withdraw evidence instead of ruling against them or in their favor on it, and doing it off the record, does not appear to me to be sound trial practice.

Senator MILLIKIN. Is it not quite customary for courts to have chamber conferences on the general scope, especially where you have intricate difficult cases? You have chamber conferences to try to develop an orderly presentation of the evidence.

Mr. PIERCE. Yes, I would say, particularly if it is in the presence of both counsel.

Now I have just tried some district court cases and I have also worked with various members of the Tax Court. Since there is no jury present, they usually do not go into the chambers but if they have a jury, they do go into the chambers. We have pretrial conferences to begin with, laying out how we are going to prove our cases, the witnesses we are going to present, and what is to be done.

Senator MILLIKIN. As the case goes on, the judge calls attorneys up and makes suggestions?

Mr. PIERCE. That is entirely proper. I think it is desirable, but I think, to me, it is very embarrassing and I think judicially improper for a judge to call only one of the attorneys out of the presence of the other and discuss the nature of his case and the nature of the opponent's probable case and make suggestions as to what the judge thinks ought to go in to carry the burden of proof. I do not approve of that. I may be wrong.

Also, for what it is worth as it is only my opinion, sir, I should like to say I do not believe that rulings on evidence should be off the record. I do not believe in stopping the record. I think, if they want to have colloquy about something as we have just mentioned, that is all right; but where there is evidence offered and it is a question of its admissibility or its denial, I think the colloquy ought to be shown for the benefit of the reviewing court in case either party wants to appeal from the action taken.

Senator MILLIKIN. What you are driving at is very interesting me and I want to understand it clearly.

Mr. PIERCE. Yes, sir.

Senator MILLIKIN. You had no occasion to make the offer because as the result of this informal conference the court became convinced that she would accept your evidence. Is that correct?

Mr. PIERCE. Yes.

Senator MILLIKIN. Now the other fellow had the opportunity on resumption of the trial to object to the evidence, did he not?

Mr. PIERCE. He had objected already. It came about as a result of his objection.

Senator MILLIKIN. So, his objection was in the record for appeal purposes. You had no occasion to make an objection because the judge let the evidence come in?

Mr. PIERCE. That is right.

Senator MILLIKIN. How was the record mutilated? That is the point I am driving at, Mr. Pierce.

Mr. PIERCE. As it turned out, it was not mutilated because everything was restored and my witness went right on, but all of the colloquy in which the judge indicated that she was going to rule against me and would not sustain it, and her reasons why she would not sustain it, in other words the basis of her ruling, is all off the record. If she had not in the end reversed herself, I would have had nothing in the record to show except that my witness was testifying, an objection came up, and then I presumably would have made an exception.

Senator MILLIKIN. Had you made your offer, the court would have had to rule on the offer.

Mr. PIERCE. But it is very disconcerting to a trial counsel, at least it is to me, sir, to have matters of this sort not shown in the record.

Senator MILLIKIN. If I may respectfully make the suggestion, I think your point, if you have one, is that the other counsel were not present while this colloquy was going on.

Mr. PIERCE. I must in fairness correct this. There were two different kinds of colloquies. There was one when I was called in the chambers when the other counsel was not present. The later one was when we stopped the record and we discussed the question in the presence of both counsel, but the material was eliminated from the record. That is a different point. Do I make it clear?

Senator MILLIKIN. There was one instance, as I understand it, where the court in your presence alone had a discussion with you on how she might or might not rule as to certain evidence that you were in the process of putting in. Is that correct?

Mr. PIERCE. That is right.

Senator MILLIKIN. Then on another occasion, with the reporter not taking down what went on, there was a discussion where other counsel was present?

Mr. PIERCE. That is right.

Mr. MCGUIRE. My understanding of this testimony is that he went into the judge's chambers and she discussed with him the order of procedure on certain basic facts about these corporations. She did not discuss with him the admissibility of any evidence. That is what I understood him to testify.

Mr. PIERCE. May I make it clear what happened?

The gentleman here is correct. There are two separate instances. In the first instance she invited me into her chambers and out of the presence of opposing counsel discussed my case and the probable nature of the opposing case and made affirmative suggestions as to what type of evidence she wanted in the record. That was out of the presence of the other counsel.

Senator MILLIKIN. She discussed the type of evidence and not the order of evidence?

Mr. PIERCE. The type of evidence. She gave me suggestions. For instance, there were such things as this—I am not sure I can name them all—how the stock was held, the percentage in the family, changes in the structure, the credit situation, things of that sort about the company, the number of transfers. I had prepared that material but she made the suggestion that she wanted it in. That is an incident in itself.

The other incident is a thing that happened on several occasions during the trial where one party or the other was either presenting or opposing evidence and there was objection by opposing party. She stopped the reporter and then in the presence of both parties, counsel for both parties and from the bench, argued with the attorneys about either withdrawing the disputed evidence or withdrawing the disputed objection instead of ruling, and then going back on the record after the colloquy was over.

Senator MILLIKIN. Neither of the two instances resulted in a mutilation of the record?

Mr. PIERCE. No, sir; they did not. I might say I was not injured. In most cases I was helped by the work and the result of the case was certainly decidedly in my favor, more favorable than I had anticipated.

Senator MILLIKIN. Your objection to the chambers incident is that it was not in the presence of other counsel but was in the presence of your client; and in the second your objection is, as I understand it, that those occasions should have transpired of record for the complete illumination of a court of appeals. Is that correct?

Mr. PIERCE. That is right. I am citing these not because they injured me because I got a very fine result in the case, but as instances of what I consider improper judicial conduct that probably should be considered by your committee apart from what happened to me.

There were several other minor incidents in the courtroom. Maybe I should pass them but I will comment on them briefly. She embarrassed my witnesses.

Senator MILLIKIN. I should like to ask one more question. The two instances you have referred to occurred in a single case?

Mr. PIERCE. That is right, in the course of the Sloane case tried in New York over a period of about 6½ days.

Senator MILLIKIN. You are going to speak of another case. Now, are the incidents you are coming to related to the other case or to the Sloane case?

Mr. PIERCE. These incidents still pertain to the Sloane case which I will cover very briefly because they are more minor, but they tend to support the general picture.

She, I thought improperly and without sufficient provocation, rather severely criticized Government counsel and me and my witnesses, and while it is our job to absorb those things, and I do not criticize them generally, I think they tended in this case to go a bit far and to be very upsetting in the orderly presentation of our case.

In the following case the same thing happened with very disastrous results. I am now passing to the case I tried in Grand Rapids, known as the R. W. Camfield case. By way of preliminary, I might say that although I won the Sloane case with a remarkable result, my feeling was that the trial was not satisfactory and I did not want to try any more cases before Miss Harron. But when I went to Grand Rapids I walked into the courtroom and she was in the courtroom in charge. In Tax Court cases they do not let you know in advance who the judges are going to be, and there are 16 judges who take turns going out. I might say she greeted me very cordially. She remembered our week when we were in trial for about 6½ days in New York and she was very cordial to me. I thought, well, I had no ground for postponing my case and I would proceed. I did proceed and I must say that during the first witness, who happened to be the taxpayer, the case went very well. I thought she did very well. I had no criticism.

Then what I sometimes refer to as her unpredictable temperament came into play, and it was while the taxpayer's wife was on the stand, by the name of Mrs. R. W. Camfield, of Grand Rapids. She was a very high-class woman, had been very active in club work, and I thought would make an excellent witness; but she had no experience as a witness and she was nervous. She got on the witness stand and in her nervousness she mistook her wedding date, which to women is a rather severe offense, and she had tied to her wedding day a series of events. She had moved to a certain town, a corporation had been organized, a business had been changed. These details came out during cross-examination. I have the record here; and the Government, as I recall, concluded its cross-examination when the woman's hus-

band leaned over to me and said, "She is mixed up on the dates; she is a year off." So I asked her if she would not recheck the dates. At first, she affirmed them and then she thought and blushed all over and said, "My goodness, I have made a mistake in my wedding date and it is all a year off." So I asked her for the record if she would not just testify that every date she had given was a year late and that each one should be corrected a year forward; otherwise, the testimony would stand. I thought the thing was all cleared up.

Miss Harron, as she did frequently in the Sloane case, decided she would take over the cross-examination and as the woman started to rise, remarked, "Just sit down there. I am going to ask a few questions." I thought she was too severe—I think I will comment on it that way—with the witness who was very nervous and who had made a mistake over the date innocently. The result was more confusion, but finally Miss Harron appeared to have straightened the thing out. She was a little confused herself on what some of the statements were and she closed her cross-examination. Then Government counsel said, "That has me confused. I will re-cross-examine." So he recross-examined. Miss Harron then said, "Well, I want to ask some more questions." All this time this woman was getting more and more nervous. She got mixed up again on another date about when she had moved to a certain house and moved to a certain town, which again was not very material, but it did change the story a little bit. Thereupon, Miss Harron got, I thought, unduly severe. The record shows remarks somewhat like this: "Now, just look here. We have had enough of this. Get yourself straight. You were married on this date, the corporation was organized on this date, changed on this date, and this is the year 1943. Now get that straight and let us go ahead. I do not have time to fool with this." Of course, the woman was terribly upset and she could hardly testify. But in that situation Miss Harron asked her a number of leading questions and argued with her to get certain admissions which I thought was a bit unfair.

For instance, the record shows she would ask a question like this: "Now really, is this not what you did? Most women would have done it this way. Now did you not really do that?" And the woman would timidly answer, "Yes." Then she would go on and pick something else and say, "Don't you want to change your testimony on that? What you said is not correct." She confused payments coming from a company with payments coming from her husband individually and by asking the questions about these two payments, I thought improperly construed her prior testimony so as to make the woman very embarrassed as to whether she had mistestified.

As the embarrassment grew, this incident happened. She then asked the woman, "Where did you get this money and what did you do with it?" They were payments, she was getting distribution from the company. She said, "I have a home, I buy drapes, I have a boy by my previous marriage and there are things a woman ordinarily wants." Whereupon, Miss Harron said, and I thought rather improperly, "You didn't buy yourself any emeralds did you?" The witness said, "I don't wear jewels."

By that time we were in a chaotic state. I tried to redirect. I could not straighten the thing out. It was impossible. We lost the case.

I knew we were going to lose the case. The facts I thought were improperly found. I appealed to the sixth circuit on the ground that the inferences in the findings were not supported and also that there were errors of law.

At the first hearing before the sixth circuit, and I can only give my impression as counsel, I had every confidence that I was going to obtain a reversal from the comments of the court, but Judge Hamilton, sitting on the court, died. They had to have a rehearing. So we had a rehearing; but in the meantime down came the Tower case from the Supreme Court and the court of appeals told me when I went back that there was a reversal of that sixth circuit's own case, in the Tower case and they said, "We said everything in that case we could. We do not think your case can be distinguished and there is not anything more we can do." And they decided against me on the authority of the Tower case.

Now these are just incidents that give impressions, as we all have to have in judging capabilities or qualifications.

I might say one other thing that I thought was improper, and I shall have to back-track to the Sloane case. When the case ended this happened: We had been in trial for 6½ days and I rested the taxpayer's case. The judge then said, "Government counsel, put in your case." It developed that he had no witnesses and he only put in about three or four documents. She apparently got very irritated and said, "I want to make a statement," and this is in the record. To my mind Judge Harron decided the case right there before the briefs were in. She rose and said, in substance, "It is very evident from the record that the Government's values are in every instance too high." I thought, that destroys the Government's prima facie case at least, which was very favorable to me. Then she turned to me and made a very embarrassing statement in the presence of my client, which was to this effect, and this is in the record: "This case never should have come to trial." She inferred by her continuing remarks that I had had a set-up, that I had purposely prevented settlement in order to try the case, and I thought the inference was, to build a fee for myself, which was entirely unfounded. We had exhausted the possibilities of settlement. She continued with a statement about like this: "This case never should have come to trial. If you had presented your matters to the Government, they would have settled and there would not have been any trial. You have taken up the time of the court, you have created a lot of expense, all these expert witnesses never should have been here. Now after all"—and this is shown in the record—"the case has not been properly tried. This is just a good first draft. Now go ahead and write your briefs."

That was the conclusion of the case. You can imagine why, when I went to Grand Rapids, I did not want to try another case.

I think those are about the most important things that developed in my case. I have tried to recite and give you a picture of how Judge Herron's courtroom functions. It is not satisfactory to me.

As I was testifying before, coming back to my comment of, you might say, general reputation, I have found that my experiences and conclusions are similar to the conclusions expressed by other attorneys. I personally feel, and this is purely a matter of opinion, it being really your function, that it would be to the best interest of the Tax Court if we could substitute another judge against whom there was less

criticism and before whom attorneys would be more content to appear and try cases.

I will answer any questions of any kind you may desire to ask me.

The CHAIRMAN. Are there any questions?

Senator MILLIKIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Colonel McGuire, do you wish to propound any questions of this witness?

Mr. MCGUIRE. I did not know I was going to be privileged to ask questions.

The CHAIRMAN. You do not have to ask questions. It is not a matter of prejudice if you do not. I thought there might be something that occurred to you that you would like to develop.

Mr. MCGUIRE. Mr. Pierce, have you had similar experiences before State or Federal judges?

Mr. PIERCE. No. I think I can say, and I am talking for myself, that I get along very well with judges. I have had occasion to ask for a mistrial in one case, which is a lawyer's function, on the ground of presentation of evidence. I, of course, have objected to evidence. Naturally, there is a little scolding that comes along in the course of cases. They might say, "You are not moving fast enough," or, "You are not expeditious enough." But I have never been censored or in any way disciplined or criticized by any court and I have had no trouble. In fact, I appeared in most of the appellate courts while I was Government counsel and quite a number since. I have appeared in the district courts of New York, Brooklyn, Chicago, Pittsburgh, and the western district of Michigan. I think I have appeared before certainly all of the older judges of the Tax Court. There are several of the younger ones or the more recent ones before whom I have not appeared. Most of them seem to want to let the attorneys present their cases. For instance, Judge Learned Hand always says, "I do not want to break the train of thought and I apologize but I want to get this thought in."

Mr. MCGUIRE. You are speaking of appellate-court judges where the argument is made from a printed brief and printed record?

Mr. PIERCE. In the very last instance I was, when I spoke of Judge Learned Hand. But in the other instance I was speaking of trial courts.

Mr. MCGUIRE. Is it not a fact that in most instances trial judges insist on a certain method of procedure in the presentation of your evidence, especially where they are the triers of the facts, not where any jury is involved?

Mr. PIERCE. I would not say that, sir, but they frequently do in pretrial conferences.

Mr. MCGUIRE. They have no pretrial conferences in tax cases; do they?

Mr. PIERCE. Well, not as such. The judge will simply ask for the opening statements and then say, "Proceed with your case," and it is very seldom they will dictate the order of your program. Once in a while they may say that they will not let something in until something else is proved first.

Mr. MCGUIRE. Judge Harron could very well have said to you in this instance that she would not let any more evidence in until you had shown what corporations were involved, stocks and things of that

sort, so that she could follow the testimony. Could she have done that?

Mr. PIERCE. She could have done that and she did that properly. I submitted a typewritten statement to her so that she could see every corporation, the value determined by the Commissioner of Internal Revenue, and the amount of stock involved, the amount for which it was sold at certain auctions. I gave her all of that. There was no criticism as to that at all.

Mr. MCGUIRE. Now, too, Mr. Pierce, is it not a fact that in your appearance before numerous trial courts hardly ever do two of them follow the same method in hearing the case when they are triers of the facts?

Mr. PIERCE. Undoubtedly each judge has his own method, the same as attorneys do, yes.

Mr. MCGUIRE. That is all.

The CHAIRMAN. All right, Mr. Pierce, we thank you.

Mr. PIERCE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Paul Rodewald?

You can be seated, if you wish, sir. You have been called here as a witness on this nomination of Judge Harron. Will you answer, if you please for the record here, a few questions?

Are you an attorney or accountant?

STATEMENT OF PAUL G. RODEWALD, ATTORNEY, PITTSBURGH, PA.

Mr. RODEWALD. I am an attorney at law. I was admitted to practice in January of 1925, having been graduated from the Law School of Harvard University in June of 1924, and served my 6 months' clerkship in accordance with the laws of Pennsylvania. I have since that time been in the employ, and since July 1, 1930, been a partner in the firm of Smith, Buchanan & Ingersoll at Pittsburgh, where I still am engaged in the practice of law.

The CHAIRMAN. Have you ever appeared before Judge Harron?

Mr. RODEWALD. I have, Senator, on one occasion with respect to which I have come prepared to testify.

The CHAIRMAN. You may proceed in your own way and we will ask you such questions as may occur to us.

Mr. RODEWALD. I shall be happy if the Senators would interrupt at any moment to make sure that what I say is plain and understood.

My practice since entering the practice has been predominantly Federal-tax practice. My experience in the trial of cases has been continuous but at the lowest possible level to which I could keep it because I think, as I think everyone should, that tax matters should be disposed of amicably by compromise, if possible, and only in those cases in which a compromise seems to do injustice to my client do I go to trial at all.

I had one of those cases, the case of the Steubenville Bridge Co. and four asserted transferees, which came on for hearing before Judge Harron in June of 1946, at the same term I believe as that concerning which Mr. McCall testified. In preparing for the trial of that case, which was of great importance to the parties concerned, since it involved at that time including interest something in the order of $450,000, I sought to inform myself in order to be sure that the evidence would be presented in such a way as to collide at as few points as

possible with the personality of the judge. As I said, I informed myself by inquiry of practitioners whom I knew, particularly those in the office of the division counsel at Pittsburgh, as to the predilections of Judge Harron and I thought that I had prepared myself and had prepared the case in the competent way that my clients are entitled to expect. Whether the case involves $150 or $150,000 is not important to me. It is important to me, however, that my clients and taxpayers generally shall receive a fair trial and that the decision shall be made on the basis of the evidence presented under oath or by stipulation and not by prejudgment.

I formed the impression in the course of preparing the stipulation of facts which covered the great bulk, and it was bulk, of the documentary evidence in the case that it would be necessary to tread very lightly in dealing with Judge Harron because, as I was advised, never having tried any other proceeding before her, she was disposed to take the trial into her own hands and spoil the order of proof, and further that counsel and witnesses would be impartially abused. My experience in that case corroborated what I had been told. I want to go into detail about that.

The case of the Steubenville Bridge Co. was one of a toll-bridge company, owning a toll bridge between Steubenville, Ohio, and West Virginia across the Ohio River, whose preferred stock and common stock had been purchased by a syndicate whom our firm represented and they had theretofore made a contract with the State of West Virginia to sell the bridge for $1,300,000. The Commissioner had, after some vacillation, determined that under the decision of the Supreme Court in the Court Holding Company case, the sale had been made by the corporation and not by the syndicate and that therefore the corporation had realized a taxable gain upon which he proposed deficiencies which netted $358,000 in round numbers.

The syndicate members whom we represented were individuals, one of them a resident of Ohio, the others residents of West Virginia. One of them was Mr. Samuel Biern, who unfortunately died of a heart attack at the American Bar Association meeting last fall in Seattle.

In the course of the trial, while my first witness was on the stand, Mr. Biern had been seated at the counsel table with my associate, and now partner, Mr. Elmer E. Myers, to be of assistance to us. He was a man near 70 and well experienced and it was his money that was at stake. While I was engaged in examining the first witness there was an interruption. Judge Harron demanded to know who he was and not permitting me to state that he was a member of the bar of West Virginia and a party, ordered him to sit behind the railing where he was not accessible to us. In view of the fact that a mistrial occurred and continuance was granted, that did not ultimately harm us, but that was an incident of disturbance to me.

The case was a difficult one and I made what I suppose was a tactical error of trying to accommodate a witness. Mr. E. Donald Hayes, secretary of the Union Trust Co. of Pittsburgh, now also deceased, and a very estimable man, had an appointment in New York the following day and by arrangement with counsel for the Government I called him out of turn. I believe that I explained that to the Court when he was called although the record does not disclose that I did.

He had been asked to refresh his recollection upon a limited subject matter. His bank, the Union Trust Co. of Pittsburgh, and two individuals were trustees who owned preferred stock, not a controlling interest, of the Steubenville Bridge Co. which had been sold to the syndicate. A part of our proof was to show that the old stockholders had not been parties to any of the arrangements by which the toll bridge had been sold to West Virginia. Mr. Hayes, as a trust officer and vice president of the Union Trust Co. of Pittsburgh, was the responsible official of that bank as one of the three co-trustees and I called him to testify to the knowledge that he had as to whether the trustees had ever authorized anyone to act for them or for the corporation to deal with the ultimate purchaser of the bridge.

The way he was treated on the witness stand was such that, for the only time in my practice, I was impelled to apologize to a witness for his treatment by a judge.

When the case came on for trial before Judge Harlan the following year, Mr. Hayes was in such a state over the treatment that he had previously received, that I arranged with the attorney for the Commissioner, Mr. Stanley L. Drexler, to put his testimony in by my statement to the court, which Mr. Drexler was good enough to say was in accordance with what Mr. Hayes would testify to if called.

I think when counsel asks a witness to testify, he is entitled to be able to assure the witness that he will be treated fairly. What happened to Mr. Hayes was a source of keen embarrassment to me. There was not much I could do about it.

His direct testimony covers 9 pages of the record. His cross-examination covers 6 pages. At that point Mr. Drexler and I were content. We had filed an elaborate stipulation and this testimony was only filling in gaps that depended upon oral evidence rather than documentary evidence. At that point Judge Harron took over and for the ensuing 56 pages of the transcript she occupied the scene. That includes, however, 12 pages of further testimony that the witness gave on questions from me and Mr. Drexler to clear up matters that had been brought up.

Now these trustees were trustees who had been appointed to take over the remnants of the property that had been pledged or mortgaged under a mortgage of 1911 of a now, at the time of the trial, defunct company. They were really to liquidate, dispose of those assets which consisted of a block of some other stock which they had sold and this block of Steubenville stock. He was examined by the court on the 77 (b) reorganization from which their trust had resulted, and on the terms of the mortgage of 1911, both of which had by many years preceded any connection that Mr. Hayes had had with the Steubenville Bridge Co. Beyond that, which might have been relevant, although the other, I am sure, was not, he was examined in close and invidious detail as to the extent to which the trustees were protecting the interests of the bondholders, and on more occasions than the record shows Miss Harron said to him in one way or another, "It seems to me you do not know very much about your business."

It seemed to me that he was not expected to know about those things. He had not been asked to refresh his recollection and when he sought to answer questions from the documents before him, he was reproved:

"You should know what you were doing. Don't read to me out of the documents. Tell me what you know," or words to that effect. The poor man was badly confused. I am afraid that he made some contradictions of what he had previously said. On at least one occasion he was accused of having testified in a particular way when the record showed that he had testified as he said he had and the court was mistaken.

So it went until about 6 o'clock finally when the court reluctantly excused him, saying in effect that she wanted to have the background material in and she was not satisfied with the evidence that this witness had produced, but since I wanted it she would excuse him. We resumed on the following morning and I put on Mr. Robert S. Mikesell of Stranahan, Harris & Co., whose concern had been the chief underwriter of the bonds that the State of West Virginia had issued to finance the purchase. The point of his testimony was intended to be that the underwriters in dealing with West Virginia had in no way acted as agents for the Steubenville Bridge Co. which was being sought to be charged with the tax upon a transaction that we said it had not participated in. Mr. Mikesell was subjected to similar treatment though not, I must say, quite so rigorous. He kept his head better.

Now, in the course of the colloquies that the court had with Mr. Hayes, she confused the evidence, mistaking the mortgage debtor under the old mortgage with the Steubenville Bridge Co., and that did not help Mr. Hayes in keeping his testimony straight. She declared that the Union Trust Co. was the majority stockholder of the Steubenville Bridge Co. in charging him with the responsibility for what had happened when the stipulation which had been submitted in evidence and received showed that it was not. She made out that Mr. Hayes' testimony was not to be believed because it seemed strange that he know so little about the subject matter and because, as she said, "In business affairs transactions do not happen in that simple a way."

Among the grounds that she assigned for her apparent disbelief was the assertion that Mr. Hayes had himself granted an option on the stock without consulting anyone, although the evidence that he had given and the stipulation showed that in accordance with the terms of the trust under which the three trustees were operating authorization to grant the option had been requested of all of the owners of participating interests in the trust and that such written authorization had been received, and the letter requesting that authorization from the owners of the participating shares had been put in evidence as exhibit 2 upon the testimony of Mr. Hayes himself.

When it came to Mr. Mikesell, and I asked him whether his group of underwriters had any part in the transaction, acting for the Steubenville Bridge Co., he answered, "No," which was the truth. Judge Harron had the question and answer read back and then she launched into a lecture that covers seven pages of the transcript in the course of which she said:

This case has a perspective to it and it does not go very well with me. The witness who took the stand yesterday—

that was Mr. Hayes—

simply because of the way he was asked questions had no control over the situation, but the questions and answers just indicated that someone just walked in

to him and said, "I would like to buy your stock for a large amount of money," and he said, "Fine; I would like to sell it to you," and that is all he knew about it.

I interpolate to say that was simply not true, and I will say it upon oath. Judge Harron continued:

Now, of course, that is just silly and it is just as silly for the investment bankers and the promoters in the picture to claim that there was nothing more to this than what happened on December 22 or December 29, just to use those two dates.

The evidence already in and the stipulation amply showed that a great many other things had happened and what I have read to you is not just an over-all simplification; it is simply wrong and contrary to the facts and the testimony that the Court had heard.

When Mr. Mikesell was finally excused, Judge Harron indicated that the trial might have to be continued. She then had the individual transferees, that is, the syndicate members, stand up in court and lectured them on the seriousness of their plight, telling them how much of their money was being claimed of them by the Government and said, "These cases are not easy cases." The implication was plain that my clients were receiving unsatisfactory representation. They thought so, too, because after the trial had closed they said, "We do not agree with the judge, we want you to keep on representing us," and I did.

At the time of this colloquy Judge Harron declared there were two corporations here, one the Steubenville Bridge Co. when all of its stock was held by the purchasers, the syndicate that had bought the stock on December 29, and another corporation when its stock was owned by the old stockholders. She called on me to answer which corporation I represented. It was a novel doctrine to me, and still is, that the identity of a corporation changes when its stock is acquired by someone else. I had resolved not to incur any displeasure and I answered evasively that I had never theretofore made any distinction between the two corporations. She thereupon declared:

However, there was about $1,300,000 used in this transaction and it went from one place to only one place and in between it just traveled through some hands and that is all.

It went from the buyer of the bridge, the State of West Virginia, to the sellers of the bridge, the old stockholders of the Steubenville Co., which is the corporation, not the Steubenville Co. from December 29 at 10 o'clock to December 29 at five in the afternoon.

Now because of her indication of opinion that the old stockholders who were not parties to the proceedings had sold the bridge when they sold their stock which might, as I understood it, have cast a liability for tax upon the Steubenville Bridge Co. which I represented, it put me in the position of possibly representing conflicting interests, and I so stated to the court and said that under those circumstances I did not see how I could possibly continue to represent either of those groups. I did later continue to represent the new group and the Steubenville Bridge Co. I took care to make clear to the court at that time, and that is the only resistance I think I put up, that I did not agree with the legal conclusions that she had announced.

I am glad to be able to say that when the case was retried and decision rendered by Judge Harlan, in which the entire court joined, with dissent from Judge Disney who did not dissent on this point, the court paid no attention to this legal position, either. It led, however, to the necessity of my moving for a continuance, which I did.

The transcript of the proceeding which I have before me is neither a full nor an accurate record of what transpired. There were a good many things that were said from the bench and by counsel that do not appear in that transcript. My recollection on this entire matter, which I have been at pains to check with my partner, Mr. Myers, and also with my opponent, Mr. Stanley Drexler, now practicing law in Denver, Colo., is that I said, and that is my testimony, that on account of the expressions employed by the court from the bench this morning and I meant by that her prejudgment of the issue, I found it necessary to move for a continuance of the case. That is not the form in which my position appeared in the transcript. I offer no explanation as to the variance. I testify that it is there and I can produce corroboration upon oath from the two gentlemen mentioned.

At the very start of the case we had agreed, subject, of course, to the approval of the court, on a consolidation of the transferors' case, that is, the Steubenville Bridge Co. case with that of the four individuals against whom the Commissioner was seeking to assess a transferee liability for corporation taxes, it having no assets left. We had assumed and agreed, subject to approval of the court, of course, that they would be tried together, consolidated for hearing. The first thing that happened in corroboration of what I had been told that the trial of the case would be taken out of my hands, and that I had better be circumspect, was that the motion for a consolidation was denied by the court. When the court said:

> Ordinarily we do not consolidate the transferee proceedings with what we would call the transferor cases—

I must have exhibited surprise on my face because she continued:

> Now, don't look at me as though you never heard that before, because that is true and also that is the only practical thing to do.

I assure you, Senators, it is not true and not the only practical thing to do.

Judge Harlan tried the case in June of the next year on account of the judicial prejudices of Judge Harron, the Commissioner brought in 20 or more additional transferees from the old stockholders' group and Judge Harlan had no difficulty consolidating them all for trial and decision as one.

The contrast between the trial as conducted by Judge Harlan and the trial conducted by Judge Harron ought to be an exhibit in this case.

I can say I have never in any trial of a tax case or any other case had occasion to complain of the conduct of a judge except Judge Harron in the Steubenville case. Always my witnesses and I and my opponents have been treated with courtesy and understanding and we have been permitted to develop the case as we, in our professional judgment, thought right in the interests of justice to our clients, except in that case.

I want to make clear that I have not received any telegram or any subpena to appear in this proceeding to testify. I have come of my own volition because when the committee on taxation of the American Bar Association made inquiry of tax practitioners last year as to their opinion of the qualifications of the four judges whose terms were about to expire or had expired, I answered and I gave with respect to Judge Harron in very brief compass the substance of what I have told you

gentlemen this morning. I consider it my professional duty, at whatever cost to myself, professionally or otherwise, to stand up and be heard, to say what I have to say in the presence of the person concerned and her counsel, publicly and freely. I have no regrets and I will answer every question to the extent of my information. If I do not have the information, I will get it.

The CHAIRMAN. We appreciate your appearance here.

Senator Millikin, do you desire to ask any questions?

Senator MILLIKIN. No.

The CHAIRMAN. We thank you very much for coming.

Mr. MCGUIRE. May I ask one or two questions, Mr. Chairman, following the practice in the other matter?

The CHAIRMAN. Yes, Mr. McGuire. We shall be glad for you to be brief, Colonel, because we have several witnesses yet to be heard.

Mr. MCGUIRE. Who was the Government counsel in the Steubenville case at this time?

Mr. RODEWALD. Stanley I. Drexler.

Mr. MCGUIRE. Have you had occasion to communicate with him recently?

Mr. RODEWALD. I telephoned on two occasions and talked to him again on another occasion when I had not called him for the purpose of obtaining from him what he recalled with regard to the matters to which I have testified.

Mr. MCGUIRE. Did you submit to him a copy of the testimony you were to give today?

Mr. RODEWALD. I sent him a summary of what I proposed to say. I telephoned him yesterday to ask him what his recollection was.

Mr. MCGUIRE. Did you ask him to appear here or make an affidavit in accordance with your view of the matter?

Mr. RODEWALD. I asked him whether he would be willing to and he said he would be willing upon subpena to come down and testify and he would also be willing, if requested by the committee, to give an affidavit. He stated in general his recollection was in accordance with my statements to him, although he did not recall as much of the details, not having the transcript before him.

Mr. MCGUIRE. Did he state to you that he could not agree with your version of the facts, nor would he join in opposing Judge Harron for renomination?

Mr. RODEWALD. He did not so state to me.

Mr. MCGUIRE. Have you the letter that he sent you?

Mr. RODEWALD. I have no letter addressed to me. I have a copy that he sent to me of a letter addressed to Mr. Richard L. Shook, who is in the room.

Mr. MCGUIRE. He did not write you directly as to that?

Mr. RODEWALD. He addressed no letter to me that I received.

Mr. MCGUIRE. Now what was the deficiency assessment of tax in this case?

Mr. RODEWALD. Do you care for the precise figures?

Mr. MCGUIRE. Approximately.

Mr. RODEWALD. $358,000 net.

Mr. MCGUIRE. $358,000 and it was assessed against the corporation, was it not?

Mr. RODEWALD. It had not been assessed, sir.

Mr. MCGUIRE. Deficiency?

Mr. RODEWALD. Deficiencies had been asserted by the Commissioner against Steubenville Bridge Co., and the Commissioner had asserted transferee liability of the same amount against four transferees, Samuel Biern, S. J. Hyman, Colonel Neal, and Mr. Cooper.

Mr. MCGUIRE. These men formed a syndicate that acquired stock from the stockholders, did they not?

Mr. RODEWALD. They and others.

Mr. MCGUIRE. Do you know, Mr. Rodewald, or do you admit that prior to December 29, 1941, the majority of the stock of the Steubenville Bridge Co. was owned by trustees for 54 beneficiaries?

Mr. RODEWALD. That is not true.

Mr. MCGUIRE. That is not true?

Mr. RODEWALD. No, sir.

Mr. MCGUIRE. Of three trusts?

Mr. RODEWALD. Of three trusts?

Mr. MCGUIRE. Yes, beneficiaries of three different trusts.

Mr. RODEWALD. I have no knowledge of that. I could ascertain it from the file.

Mr. MCGUIRE. I am just asking you whether you know that or not.

Mr. RODEWALD. The question that I thought I was answering was whether the trust of which the Union Trust Co. was one of the three trustees.

Mr. MCGUIRE. No; I am talking about the stock of the Steubenville Bridge Co.

Mr. RODEWALD. I should have to check from the record whether any of these were in trust and what the majority ownership was. My belief is that the answer is "No."

Mr. MCGUIRE. Have you the record there?

Mr. RODEWALD. I do.

Mr. MCGUIRE. Can you put that record in evidence? It is my belief that this stock was owned by trustees for 54 beneficiaries of three trusts, that Messrs. Biern, Hyman, and Cooper, who bought the stock from the above stockholders, held the stock for less than 24 hours.

(The following was later received for the record:)

As to the stock ownership of the Steubenville Bridge Co.: This is stated in the findings of fact made by the Tax Court of the United States, the Steubenville Bridge Co. et al., 11 T. C. 780, at pages 701–702 and 705. The court there found as follows, at page 701:

"* * * Prior to December 29, 1941, the outstanding capital stock of Steubenville consisted of 250 shares of common stock and 500 shares of preferred stock, all having equal voting rights. Two hundred and sixty of the shares of preferred stock were held by three trustees, designated herein as Union Trust. Fifty-four beneficiaries of the trust held 699 certificates of equitable interests in the stock. The trustees were required to get the approval of a majority of the certificate holders before they could vote for a sale of the assets of Steubenville or before they could sell the stock in the trust."

At page 705, the court listed the stockholders as follows:

Stockholder	Common stock	Preferred stock	Stockholder	Common stock	Preferred stock
West Penn	132½		H. C. Camp	15	15
Trustees		260	O. C. Camp	15	15
Camp Estate		15	J. G. Camp	15	15
Putnam Estate		3	J. G. Huth	4½	8
Wright		2	McDonald	4	8½
M. M. Yost	35	60	P. E. Huth	4	8½
W. M. Yost	17½	36			
C. A. Camp	7½	45	Total	250	500

Mr. RODEWALD. In the first part of that statement you have fallen into the error of assuming that the holders of certificates of beneficial interest under the trusts I have mentioned, of which the Union Trust Co. of Pittsburgh was one of three trustees, were the only holders of stock. They were not.

Mr. MCGUIRE. I do not assume that they were the only ones.

Mr. RODEWALD. They were not the only ones.

Mr. MCGUIRE. I do not assume that. These men who bought the stock then dissolved the corporation and sold the bridge to the State of West Virginia. Is that right?

Mr. RODEWALD. Not entirely accurate. They made a contract on December 23, 1941, by one of their number, in whose name they acted, Samuel Biern, Jr., with the State of West Virginia, to sell the toll bridge for $1,300,000 cash. They thereupon acquired options on the stock, some of which they exercised and the rest of the stock they bought at less than option price on the 29th of December 1941. Having bought and paid for all of the stock, they put in new directors and new officers. The corporation thereupon adopted resolutions to liquidate and dissolve. It conveyed the bridge property to Samuel Biern, Jr., as the sole stockholder of record and here thereupon carried out his contract with the State of West Virginia by conveying to it on the following day for $1,300,000 the property that he had received in liquidation on the preceding day.

Mr. MCGUIRE. Did Judge Harron ask you at any time whether you had represented any of these stockholders in making tax returns, and so forth, and you stated that you did?

Mr. RODEWALD. She inquired of me, or I made the statement that I had represented two of the old stockholders in connection with their 1941 income-tax matters and that the matter was closed.

Mr. MCGUIRE. If this corporation and these transfer syndicates were not taxable, did not have to pay the tax, then would the Government have gone back on the original stockholders?

Mr. RODEWALD. They did.

Mr. MCGUIRE. Tell us about that.

Mr. RODEWALD. As a consequent of the events occurring at the hearing I have described, the Commissioner issued notices of transferee liability against most I think, but not all, of the old stockholders of Steubenville Bridge Co. and most, but not all, of the holders of certificates of beneficial interest in the trust that I have mentioned.

Mr. MCGUIRE. There were some 20 of those, were there not?

Mr. RODEWALD. I can count them.

Mr. MCGUIRE. Approximately.

Mr. RODEWALD. There were a good many, 20 or more.

Mr. MCGUIRE. Now when the second trial took place before Judge Harlan those stockholders were there represented by their own counsel, were they not, and the counsel was not you?

Mr. RODEWALD. That is right, they had their independent counsel, four sets.

Mr. MCGUIRE. Now did you, after discussion of this matter about your representing some of the old stockholders, state that you yourself might be representing conflicting interests and you would not go forward any further?

Mr. RODEWALD. The statement that I made on that point I would rather read exactly.

Mr. McGUIRE. I would very much like to get it in the record just as it is.

Mr. RODEWALD. It appears at page 138 of the transcript and what I am quoted as saying is this:

It seems very clear to me from what Your Honor has said that I am put in the double position of representing persons who in the light of Your Honor's comments may have conflicting interests, and under those circumstances I cannot possibly continue to represent either of them.

Mr. McGUIRE. Now will you continue?

Mr. RODEWALD (reading):

I want to say that I had no suspicion of such a possible conflict and I have undertaken to defend the interests of the Steubenville Bridge Co. and of the members of the syndicate who are petitioners here with complete equality and without any consciousness that they were not in the same position in the legal question and the tax consequence fix.

That is not what I said; that is what the record says.

Mr. McGUIRE. You do not claim, however, that Judge Harron had anything to do with that?

Mr. RODEWALD. No, indeed.

Mr. McGUIRE. All right.

Mr. RODEWALD. That is the reporter's mix-up.

This, however, put an entirely different consequence picture to it and I think if Your Honor's comments become the decision in the case, they are faced with a very large burden and an equally unexpected one. They should have full opportunity to present the facts in light of their own liabilities.

I should also say that they should be given an opportunity to prepare their defense by their own counsel. I cannot in fairness say anything else.

I think I must also say, if the court please, that the conclusions that have been suggested from the bench are conclusions that I expect, if I must continue in this case, and certainly did expect until this morning, to resist as vigorously as possible in the brief because I must say I do not agree with them. That is my duty and I do not shrink from doing it.

Mr. McGUIRE. Now had not Government counsel, Mr. Drexler, in his statement indicated that if there was not tax liability upon this corporation and upon these members of the syndicate, that there might be liability upon the original stockholders? That is on page 22 it mentions "our alternative position." Will you read that?

Mr. RODEWALD. Mr. Drexler state on page 22:

Our alternative position follows another line of authorities which is that there may have taken place a sale of the bridge even prior to the time when the bridge was transferred to the State of West Virginia, but when the syndicate group exercised its option and purchased all of the outstanding stock of the corporation that it got not merely the stock of the corporation but the assets of the corporation as well. That is in line with the theory of the Prairie Oil & Gas, Ashland Oil & Refining Co., and the Koppers Coal Co. cases, on the theory that the parties were not dealing in securities. They were dealing in the assets of the corporation represented by the securities.

In that event, the transferee liabilities would not be on the transferees in these cases, but upon the former stockholders in the corporation, as I see it.

No liability has been asserted against them at that point.

Mr. McGUIRE. That is all, Mr. Chairman.

The CHAIRMAN. All right; thank you very much.

Mr. RODEWALD. I wonder if I might add something.

I mentioned that the trial was a source of embarrassment to me because of comments made by the court to my clients. I think also it is proper to say that when the court repeatedly—and this does not appear in the transcript except once or twice—indicated that she was

unwilling to believe that the old-stock holders had not devised a plan to avoid taxes and had known all about the transaction beforehand and had only rigged it up this way in order to present a different face upon the case from the reality, I considered that she was saying that I was putting a fraud upon the court. I confess that I felt resentment about it. I think that I was justified. I am happy to be able to say that the testimony of the numerous witnesses to the fact that Judge Harron said no one could make her believe was believed by Judge Harlan and by the entire Tax Court.

The CHAIRMAN. Is there anything else you wish to offer?

Mr. RODEWALD. I have nothing more.

The CHAIRMAN. Thank you very much for your appearance here. We are glad to have had you testify.

Mr. RODEWALD. Thank you, Mr. Chairman.

The CHAIRMAN. The hour is growing late, and the Senate will have matters before it this afternoon which will make it necessary to adjourn the hearing until tomorrow morning at 10 o'clock. We regret that we will have to ask the witnesses to report again tomorrow morning. We could not finish this afternoon, in view of the Senate situation.

(Whereupon, at 1:30 p. m., the committee recessed, to reconvene at 10 a. m., Friday, May 13, 1949.)

NOMINATION OF JUDGE MARION J. HARRON

FRIDAY, MAY 13, 1949

UNITED STATES SENATE, COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 312, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George (chairman), Connally, Hoey, and Millikin.

The CHAIRMAN. The committee will come to order.

We resume this morning with the hearing on confirmation of nomination of Judge Marion J. Harron.

I am calling Mr. Thomas Wilkins, of Washington, D. C.

Mr. KILPATRICK. Mr. Wilkins and Mr. Benson have not arrived yet. I have these affidavits that I should like to put in the record, if I may.

The CHAIRMAN. Suppose you come forward now, Mr. Kilpatrick, and submit your affidavits.

STATEMENT OF H. CECIL KILPATRICK, CHAIRMAN, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.—Resumed

Mr. KILPATRICK. Mr. Chairman, I have some affidavits which have been sent to the section of taxation with the request that they be placed in the record of the proceedings.

The CHAIRMAN. Yes. I suppose you would like to read them?

Mr. KILPATRICK. I would like to read them, if I may, into the record.

The CHAIRMAN. Yes; you may read the affidavits into the record so that we may have them now.

Suppose you go ahead with your affidavits, Mr. Kilpatrick.

Mr. KILPATRICK. Thank you, sir.

The first affidavit which we present is from Katherine C. Bleckley, who is clerk of the Supreme Court of Georgia.

Personally appeared before me the undersigned attesting officer, Katherine C. Bleckley, who being first duly sworn deposes and makes the following statement for use in connection with the hearings with reference to the confirmation of Miss Marion J. Harron as a judge of the Tax Court of the United States.

I am clerk of the Supreme Court of Georgia. I have held that position for 14½ years. Prior to that time I was deputy clerk of the court of appeals (1927) and deputy clerk of both the supreme court and the court of appeals (1929–34). Since I have been clerk of the Supreme Court of Georgia I have on several occasions arranged for a division of the Tax Court of the United States sitting in Atlanta to use the courtroom of the Georgia Supreme Court. One such occasion was when Judge Marion Harron held hearings in the supreme court room in April 1946.

The conditions under which Judge Harron held court in our courtroom were identical with the conditions under which the other judges of the Tax Court had held their hearings. There was nothing to make the courtroom any less satisfactory for her than for the other judges of the Tax Court who had used it. Our treatment of Judge Harron was identical with the treatment which the other members of the Tax Court had received.

We did not have a private room which Judge Harron could use as an office, nor did we have a private office for any of the other members of the Tax Court. The openings into and out of the courtroom and the use that was made of them was exactly the same during the time Judge Harron was sitting as when the other judges of the Tax Court were sitting.

My experience and that of my associates with the other judges was altogether pleasant and satisfactory. Such inconveniences as there may have been, if any, they accepted and indicated their appreciation of our willingness to have them use our facilities. My experience and that of my associates with Judge Harron was altogether different. She criticized the quarters of the supreme court. She requested that we give her the exclusive use of the lawyers' room, which it was impossible to do since the room contained records which lawyers were constantly needing to examine, and some lawyers came hundreds of miles for that purpose. She sought to have the courtroom entrance into the men's retiring room, which was between the courtroom and the lawyers' room, closed. In a very scornful manner she criticized the quarters of the supreme court and stated that she had never seen a court with such a set-up. Her actions were generally disagreeable and, I felt, quite unbecoming a person who was being permitted to use quarters on which she had no claim.

She was so thoroughly disagreeable and inconsiderate that, following the closing of her hearings, I was directed by one of the justices of the supreme court never again to lend our courtroom to the Tax Court of the United States without knowing in advance which member thereof would hear the calendar.

I did not go into the courtroom while she was there, but members of the bar in Georgia are accustomed to going by my office and talking quite frankly about various matters. Several of them came in my office while she was holding court, some astonished, some indignant, and some merely amused. They would refer to her as "romping on Government counsel" and in other ways acting in such manner as was unbecoming to a judge. One prominent Atlanta lawyer, now dead, came to my office outraged and said that the bar association should telegraph to Washington and request that hearings be postponed until another judge could be sent. He felt that her actions clearly indicated that she was so unjudicial in her approach to all matters that she was quite likely to decide the cases before her without any regard to their merits. He was persuaded, however, that this was likely to cause a great deal of trouble to members of the bar here and that it was perhaps better in some way to attempt to appease her.

KATHARINE C. BLECKLEY.

Sworn to and subscribed before me this 7th day of May 1940.

MORGAN THOMAS,
Deputy Clerk, Court of Appeals of Georgia.

The CHAIRMAN. That is from Miss Bleckley?

Mr. KILPATRICK. Yes, Mr. Chairman; that is from Miss Bleckley.

The CHAIRMAN. Miss Bleckley is the granddaughter of Logan Bleckley, who is chief justice of the Supreme Court of Georgia and by and large is the ablest jurist that we have ever had on the bench. Her father, Logan E. Bleckley, was clerk of both the court of appeals and of the supreme court and was succeeded by this daughter, Katharine, a very excellent lady.

Mr. KILPATRICK. The next affidavit is from Mr. Henry H. Cobb, the deputy clerk of the same court. The affidavit reads as follows:

Personally appeared before me the undersigned attesting officer, Henry H. Cobb, who being first duly sworn deposes and makes the following statement for use in connection with the hearings with reference to the confirmation of Miss Marion J. Harron as a judge of the Tax Court of the United States.

I am a member of the bar of the Supreme Court of Georgia and deputy clerk of the supreme court, assisting Miss Katharine Bleckley, the clerk. I held this position at the time about 3 years ago when Miss Harron held hearings of the

Tax Court of the United States in the supreme court room. At that time she was insisting upon having a private room when none was available and insisted on causing a disruption of the usual practices prevailing as to lawyers going in and out of the adjacent washroom, a practice which is accepted by the Supreme Court of Georgia, without difficulty and without complaint. She made herself quite disagreeable to the court attendants, and her manner generally in talking to me and in making complaints about the quarters and the failure to have a private room and the use of the men's restroom adjacent to the courtroom was extremely discourteous and dictatorial. She assumed the manner of doing the supreme court a favor to sit in the courtroom, rather than being favored by the loan of the courtroom to her.

I was not in the courtroom during her hearings, but I did, on one occasion in returning from the library to my office, by mistake and not knowing that court was in session, partially open a door back of the bench, intending to go through the courtroom to my office. I found as I opened the door slightly that the court was in session, and closed the door and withdrew. Judge Harron left the bench and came out into the small hallway where I was and said: "Was that you?" I answered that it was and that I had forgotten that the hearings were in progress and that I was sorry that I had disturbed her. She then proceeded to give me a lecture in the most disagreeable manner, in the course of which she said that her court was a court of dignity and that she insisted that she be treated with dignity becoming her court and that if she could not get that kind of treatment she would get quarters elsewhere, and she endeavored to get a promise from me that none of the supreme court personnel would enter the room while her hearings were in progress. I told her that since some of our books were in that room and since we sometimes had official business in the courtroom, I did not think that any such agreement could be made. However, as a matter of fact, none of the supreme court personnel did enter the courtroom during the hearings.

HENRY H. COBB.

Sworn to and subscribed before me this 7th day of May 1940.

MORGAN THOMAS,
Deputy Clerk, Court of Appeals of Georgia.

The next affidavit is from Charles M. Cork, which reads as follows:

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, Charles M. Cork, who, upon oath says that he is an American citizen having been born in Macon, Ga., April 26, 1908, and has been a resident of Bibb County, Ga., all of his life.

Deponent further says that he graduated from Mercer University, Macon, Ga., with the A. B. degree in 1927 and with the LL. B. degree in 1929. Since that time, he has been continuously engaged in the practice of law in Macon, Ga., and has been a member of the law firm of Jones, Jones & Sparks since May 1, 1938, and still is a member of that firm. In addition to having been admitted to practice before the highest courts of Georgia and the United States Court of Appeals for the Fifth Circuit, deponent is enrolled to practice before the Treasury Department and is admitted to practice before the United States Tax Court.

Deponent was counsel of record, with C. Baxter Jones of Macon, Ga., in the cases in which William Edward Muir was petitioner, bearing Docket Nos. 108,351 (BTA), 2704, 5540, and 8204 and was counsel of record with the said C. Baxter Jones and with Marion Smith, of Atlanta, Ga., in the case bearing Docket No. 4012, estate of Benjamin Paschal O'Neal, all of which cases were assigned for hearing before the Tax Court of the United States beginning April 15, 1940. The Muir cases were the first cases on the calendar, and three other cases were assigned between the Muir cases and the O'Neal case. All of the cases assigned for hearing on that calendar were noticed for hearing in the supreme court room, State of Georgia, Atlanta, Ga. Judge Marion J. Harron presided over the hearing of the cases on this calendar.

After court convened on the morning of April 15, 1940, all of the Muir cases were continued upon motion of counsel for the petitioner, but it was necessary for deponent to remain in and around the courtroom in the event the O'Neal case should be reached that day. Actually, it was not reached until the following morning, but the fact that it would not be reached on the 15th was not known to the deponent until shortly before 6 o'clock on the afternoon of the 15th. Until that time deponent was in and about the courtroom in which Judge Harron was presiding as a division of the United States Tax Court. All of the actions of

Judge Harron on that date which are hereinafter related are based upon deponent's personal observations or upon matters related to him on that date and in the immediate vicinity of the courtroom by counsel representing both various petitioners and the Commissioner of Internal Revenue.

It was perfectly obvious when court convened at 10 a. m. that Judge Harron intended to direct the proceedings before her in her own way without regard to suggestions from anyone else, and if this had been done in a judicious manner deponent would have no criticism of the proceedings. Deponent has no criticism to make of Judge Harron based upon her disposition of any cases before her at this session of the Tax Court in which deponent was counsel.

However, shortly after court convened Judge Harron became obviously irritated, and her irritation increased as the day progressed. She objected to the street noises which entered the courtroom, and she also objected to the fact that there were swinging doors at the rear of the courtroom through which attorneys would leave the courtroom and return from time to time. She allowed these sources of irritation very visibly to affect her demeanor on the bench, and she took out her irritation upon the attorneys and witnesses who participated in the trial of cases before her. It is impossible for deponent to recall all of the incidents which reflected a lack of that self-restraint which is becoming in a judicial officer, but deponent recalls several such specific incidents. Deponent also recalls that interruptions and upbraiding of counsel and witnesses, without apparent reason, occurred frequently throughout the day, and even before recess for lunch many counsel were expressing the view that it would be in the best interests of their clients to seek a continuance of their cases until some later assignment even though it might involve a delay of as much as a year. The entire atmosphere was tense and even the attorneys connected with the technical staff, representing the Commissioner, were so uncertain as to what would please and displease Judge Harron that they stated they were not able to present their cases as fully as they would like and in the manner in which they had intended to present them. It would not be exaggerating to say that everyone before her was "scared to death." Everyone felt that whatever they might say might arouse Judge Harron's ire and react unfavorably on the cases of their clients, whether petitioner or the Commissioner of Internal Revenue.

There can be no doubt in deponent's opinion that the conduct of Judge Harron was calculated to deprive the parties to the cases before her of proper trials. It is impossible for a lawyer to devote his attention to anticipating and avoiding the displeasure of a capricious presiding officer, and at the same time perform his duty of giving his undivided attention to the proper presentation of the evidence in his client's case. Conduct such as that displayed by Judge Harron on April 15, 1946, is well designed to bring the entire Tax Court into disrepute and to that extent it reflects upon the entire system of the administration of justice by the Federal Government. Her conduct was such as to interfere with the administration of justice by depriving the parties of a full and fair hearing, with an opportunity to present all of the evidence and to be fully represented by the attorneys of their choice.

Among the specific things which occurred were the following:

Judge Harron stated that if she had to sit in the Supreme Court of Georgia courtroom after Monday, April 15, 1946, she would go back to Washington instead, notwithstanding the obvious fact that many petitioners, witnesses, and counsel were present to try cases which could not possibly be reached on that date.

In the case of M. M. Monroe, the petitioner was represented by Mr. Q. L. Garrett of Waycross, Ga., an attorney of long experience and outstanding ability, and the Commissioner was represented by Mr. Edward L. Potter of the southern division of the technical staff. The burden of proof was upon the petitioner, and Mr. Garrett, following the usual procedure, began to examine his witnesses to establish the background of the case in order to give the court the setting in which the issues should be viewed. Judge Harron became very impatient and repeatedly interrupted him insisting that he leave out the background and get down to the issues. Her attitude was such that one would think she expected the entire case to be presented by one question and answer or certainly not over three at the most. She suggested to Mr. Potter that he should be more alert to object to the testimony being presented by Mr. Garrett if the interests of the Government were to be properly protected. Deponent has observed Mr. Potter's representation of the Government in several cases and is of the opinion that Mr. Potter is entirely capable of protecting the in-

terests of the Government. Deponent is also of the opinion that Mr. Garrett was not on the day in question presenting evidence which he did not consider material to the case. Had Mr. Potter thought otherwise, deponent is sure he would have objected to the testimony without being prompted by the court.

About 5 o'clock in the afternoon a case was being tried in which Judge Harron thought, whether correctly or incorrectly, that many of the facts which were being proven by witnesses should have been stipulated. At about that time she informed counsel that they were wasting her time, that she was going to recess for 20 minutes during which time they should stipulate certain facts, that after the 20 minute recess she would continue to hear the case until 6 o'clock at which time the case would have to be finished, that she was not going to hear any more evidence in it after 6 o'clock, either on that day or any other day. The burden of proof in this case was upon the petitioner, and Judge Harron's statements were therefore calculated to place the petitioner at the mercy of the respondent, since a refusal to stipulate would deprive the party with the burden of proof of the opportunity to prove the facts by evidence.

During Monday arrangements were made for the court to sit the next day in the Fifth Circuit Court of Appeals room in the Federal Building. This room is freer from outside noises than is the Supreme Court of Georgia courtroom. The O'Neal case in which deponent was counsel was tried on that day, and Judge Harron's conduct throughout the trial of that case was all that could be desired of a judge. However, deponent has subsequently been informed by counsel who tried cases later in the week that Judge Harron reverted to conduct similar to that displayed on Monday. Deponent has no personal knowledge of such conduct, however, because he returned to Macon immediately after the O'Neal case was concluded.

This affidavit is made for the purpose of being used before the United States Senate Finance Committee in connection with its consideration of the reappointment of Judge Marion J. Harron as judge of the United States Tax Court and for any other purpose for which this affidavit may be relevant.

CHARLES M. CORK.

Sworn to and subscribed before me this 30th day of April 1949.

Mrs. D. D. WITCHEE,
Notary Public, Georgia, Residing in Bibb County, Ga.

The CHAIRMAN. That is from Charles M. Cork?

Mr. KILPATRICK. Yes, sir; Charles M. Cork?

The CHAIRMAN. He is a very well known lawyer in Georgia.

Mr. KILPATRICK. The next affidavit is from Mr. R. Bruce Jones, an attorney of law practicing at present in the city of West Palm Beach, Fla. His affidavit reads as follows:

R. Bruce Jones, being on oath duly sworn, deposes and says:

I am an attorney at law, and at the present time am practicing in the city of West Palm Beach, county of Palm Beach, State of Florida. I am a graduate of the University of Georgia, with a bachelor of arts degree in 1924, and a graduate of Mercer University in Macon, Ga., with a degree in law in 1926. I attended the law schools at Michigan University and Cornell University.

I was admitted to practice in Georgia in 1926, and practiced in the city of Macon, with the firm of Jones, Park, & Johnston, which firm was the predecessor of the present firm of Jones, Jones, & Sparks, of that city.

I practiced in the State of Georgia up until the 2d day of November 1940, at which time I was called into the service of the United States Army as a captain, and served in the United States Army in this country, and in the European theater, until 1946, at which time I was retired from active duty as a colonel of field artillery.

In the early part of 1946 I was given employment as an assistant division counsel with the Bureau of Internal Revenue in Pittsburgh, Pa. I served in this capacity in the general counsel's office until the latter part of 1946, at which time I resigned and went to West Palm Beach, Fla.

I stood the Florida bar examination and passed it, and have since that time been with the firm of Earnest, Lewis, & Smith, of which I am now a partner.

I am a member of the Florida State bar and of the American Bar Association

While I was an assistant division counsel for the Bureau of Internal Revenue in Pittsburgh, Pa., I had before me for litigation in the Tax Court of the United

States, the cases of *David L. Wilkoff* v. *Commissioner*, *Federal Laboratories, Inc.* v. *Commissioner*, and *Estate of George P. Rhodes, deceased*, v. *Commissioner*. These cases came up for trial before Judge Harron, of the Tax Court, and constituted my first appearance before that court as an attorney for the Bureau of Internal Revenue.

The Wilkoff case involved a family-partnership issue, with the taxpayer represented by an attorney from Washington, D. C. Pursuant to the rules of court, I entered into a stipulation with the attorney for the taxpayer, which stipulation, in effect, reduced the question involved to one of law. As I recall, this stipulation was submitted to and approved by Mr. Hartford Allen, the division counsel, or by his office, prior to the time the case was called for trial. When the case was called for trial and we announced that it was to be presented upon a stipulation of facts, Judge Harron announced from the bench that the case could not be tried in that manner, that no partnership case could be tried before her on a stipulation of facts. She thereupon wanted to know where the taxpayer and the other members of his family were, and directed the taxpayer's attorney to bring them into court, stating at the time that she would pass the case until the following day. The attorney for the taxpayer stated that in view of the stipulation there was no further testimony to be offered by the taxpayer, that he was ready for trial, and did not intend to bring them into court, and asked the court to proceed with the hearing. As I recall, Judge Harron then turned to me and wanted to know if I had agreed to this stipulation. When I told her that I had, she ordered me to withdraw the stipulation, so that the taxpayers would be forced to come into court.

I felt confident that the stipulation entitled the Government to a finding in its favor, as a matter of law, and having agreed with the taxpayer's counsel I felt obligated to stand by my stipulation and refused to retract it or to withdraw therefrom.

As I now recall, Judge Harron recessed the court and called Mr. Miller and Mr. Allen, two of the division counsel, and while in the courtroom and in the presence of lawyers, witnesses, and spectators, not only criticized them and me for entering into such a stipulation, involving a family partnership, but directed them to have the stipulation withdrawn, which they refused to do.

As I now recall, Judge Harron then stated that she was going to pass the case over, whereupon the attorney for the taxpayer stated that he was ready to go to trial, and did not intend to be there the next day, and would not be there the next day, and demanded that the court either proceed with the trial of the case, or enter an order stating the grounds upon which she refused to continue with it. Judge Harron threatened him with contempt of court and then continued the recess during the lunch period.

Upon reconvening court after lunch, Judge Harron announced that she had called the presiding judge in Washington and asked for his instructions, that he had instructed her to proceed with trial of the case upon the stipulation, which she did.

Her disapproval of the stipulation was based upon her statement to the effect that no family partnership issue should be stipulated, but the parties should be brought before the court so the court could see their manner and demeanor of testifying and demeanor upon the stand.

Subsequent to the trial of the Wilkoff case, the Federal Laboratories, Inc., case was called. During the course of the examination of one of the taxpayers' witnesses I interposed an objection. Judge Harron thereupon turned to me and told me in no uncertain terms, words to this effect: "Mr. Jones, you sit down. Stop all this objecting. If you want to clear that up, you can do it on cross-examination." During the rest of that trial, she was very critical, and during that trial, she suddenly recessed court, called Mr. Miller, who was the head of the Pittsburgh department, and myself out into a corridor, where she proceeded to lay both Mr. Miller and me over a barrel as being incompetent. When we tried to make some statement for ourselves, she cut us off and would not listen and said that the entire matter was going to be reported to Washington.

At the same session of court, the case involving the estate of George P. Rhodes was called. As I now remember, the president of either the Colonial Trust Co. or the Fidelity Trust Co. of that city was placed upon the stand by the taxpayer. During that time Judge Harron went out of her way to tell him that he was running an illegal trust business. In my opinion, this statement from the bench was entirely uncalled for and unwarranted.

During the entire term of that session in Pittsburgh, Judge Harron's remarks to me and to Mr. Miller and to Mr. Allen, were typical also of the condescending

and hostile manner with which she treated all of the attorneys, both for the Government and for the taxpayers, present at that time.

When this session was over, I went to Mr. Miller, who was my immediate chief, and told him that I did not intend to practice law under those conditions, that if the other members of the Tax Court handled themselves that way, I would tender my resignation immediately. Mr. Miller told me that Judge Harron made trouble wherever she went, and that the other members of the Tax Court were not that way at all, with the result that I agreed to stay on with the Department.

R. BRUCE JONES.

Sworn to and subscribed before me this 19th day of April A. D. 1949.

LEILA STEPHENS,
Notary Public, State of Florida, at Large.

My commission expires February 14, 1951.

For the information of the committee, I examined the published decisions in the three cases that Mr. Jones mentions here and which he criticizes as to the conduct of the trials and I find that Mr. Jones won all three of the cases, as far as the decisions go.

The CHAIRMAN. That is R. Bruce Jones?

Mr. KILPATRICK. Mr. R. Bruce Jones. He practiced in Macon before he went in the Army.

We next present the affidavit of Benjamin F. Nelson, a court reporter, 638 Central Building, Seattle 4, Wash., which reads as follows:

Benjamin F. Nelson, being first duly sworn, on oath deposes and says: I am a resident of Suquamish, Wash., which is adjacent to the city of Seattle; beginning in 1925 I became secretary, court reporter, and law clerk for United States District Judge Jeremiah Neterer and served in that capacity continuously until after his retirement in 1935. Since that time I have carried on a general court reporting business in the city of Seattle and for many years had charge of substantially all contract reporting for Washington, Oregon, and Alaska for the various governmental bureaus, such as the Interstate Commerce Commission, Federal Trade Commission, United States Department of Agriculture, Securities and Exchange Commission, National Labor Relations Board, United States Tax Court, and others.

In 1942 I was employed by Alderson Reporting Co., 1623 L Street, NW., Washington, D. C., to have charge of reporting proceedings of Tax Court hearings at Seattle, held by Judge Marion J. Harron in September of that year. I assigned to that task a reporter by the name of E. E. Stoddard, whose whereabouts are now unknown to me. While I reported some of the proceedings myself, other matters concerning them came to my attention through his reports to me in the regular course of his employment.

I have no personal interest whatsoever in this matter and am making this statement solely in response to request and direction received from the chairman of the Senate Finance Committee.

In the latter part of the week Mr. Stoddard insisted on being relieved from reporting any more during that session because the tense atmosphere of the proceedings made it onerous and difficult for him to perform his work. Upon inquiry, he related to me two incidents which had occurred.

One of them was with respect to an altercation which had occurred a day or two before between the Presiding Judge Harron and Mr. Hilen, attorney for petitioner, in which the court had interrupted Mr. Hilen and finally told him that he did not have the point of the case, or, in substance, that he did not know what he was doing; to which Mr. Hilen had replied that he had practiced law before the Supreme Court of the State of Washington, the United States District Court, and the Ninth Circuit Court of Appeals for over 25 years; and that he did not propose to have anyone tell him he did not know what he was doing. The reporter was also concerned about the fact that, after some heated discussion between Mr. Hilen and the court, the colloquy was ordered stricken from the record. The reporter asked me what to do, and I instructed him to leave it stricken from the transcript to avoid possible embarrassment to my client, Alderson Reporting Co., who had the national contract at that time with the Board of Tax Appeals.

The other incident which he reported to me was a sharp disagreement between Mr. Baird and the court which had transpired in the Richard Law case on

the day the reporter asked to be relieved, the details of which I cannot now recall, which was likewise ordered stricken from the record.

I believe you have a deposition from Mr. Baird who is mentioned there which will probably give the details of that.

The CHAIRMAN. Yes; the testimony of Alva C. Baird referred to appears on page 245.

Mr. KILPATRICK. I will proceed then with this:

I therefore decided to take the rest of the session myself, and did so beginning while the Law case was still being heard. Upon going to court the next morning I told Mr. Baird that my reporter refused to proceed any further and that I was taking over, and asked him what the trouble was. To which Mr. Baird replied, "You don't have to be concerned," or words to that effect. I asked Mr. Baird if the court had powers of contempt. Mr. Baird said, "No." I replied, "That is all I want to know." I thereupon proceeded to report the case from that point to its conclusion.

I recall one incident when a police officer from the city of Aberdeen or Hoquiam was on the stand. The witness was reading from a report of the police department with reference to locating some car on the streets of either Aberdeen or Hoquiam. He was reading the report in a rather careless manner and I interrupted, perhaps abruptly, to get the spelling of the name of the street by the simple question, "How do you spell it?" Judge Harron interjected, "What's the matter with you, Mr. Reporter? Are you getting as jumpy as the rest of them around here?", or, substantially, in that manner and effect. I replied just as sharply, "If this record means anything it should be right, and Wishkah (name of the street) is Chinese to me unless I know how to spell it." After that there was no further interruptions from the court so far as I was concerned.

Some little time following the conclusion of the September court session, Mr. Baird called by telephone and asked whether or not my reporter had in his notes the matter which had been stricken from the record in the Law case, as well as in the matter that Mr. Hilen was handling. I replied that the reporter undoubtedly had it in his notes, but that inasmuch as I understood that the court had ordered it stricken with consent of counsel, it would not appear in the transcript. Mr. Baird asked if it could be written up, and I told him that it could be, and he asked me if I would have it done. I told him I would, but I thought that to do so might embarrass my client, the Alderson Reporting Co.; that, however, I was perfectly willing, and would do so if he still insisted, but felt that that angle of the matter should be called to his attention. Mr. Baird, after some little further conversation stated, that it might be well to let the matter drop because he did not want to be the cause of embarrassment to anyone.

To the best of my knowledge, the notes covering these proceedings are no longer available as they are ordinarly destroyed after a few years, nor do I know where to locate Mr. Stoddard.

BEN F. NELSON.

Subscribed and sworn to before me this 9th day of May 1940.

E. E. LESCHER,
Notary Public in and for the State of Washington, residing at Seattle.

In that affidavit Mr. Nelson refers to the case in which Mr. Hilen was involved and I would like next to offer Mr. Hilen's affidavit.

A. R. Hilen, being first duly sworn, on oath deposes and says:

I am and have been a member of the bar, qualified to practice in the State and Federal courts, for a period of 37 years, and for many years last past have been and am now a member of Allen, Hilen, Froude & DeGarmo and its predecessors, engaged in the practice of law in the city of Seattle, Wash. During my membership in the bar I have tried a very large number of lawsuits, both in the State and Federal courts and believe that I am qualified to judge the competence of a person to act as trial judge in any form of lawsuit.

Due to a recent illness, I do not desire to be subpenaed for personal appearance before the Senate Finance Committee and therefore make this affidavit in response to the offer contained in the telegram to me of May 2, 1940, by the Honorable Walter F. George, chairman of the committee, a copy of which is attached hereto, marked exhibit A, and by this reference made a part hereof.

The facts respecting my altercation with Judge Harron are as follows: I was counsel for the petitioner in the case of *Pacific Refrigerating Co.* v. *Commissioner of Internal Revenue*, being Docket No. 108235. The Government attorney representing the Commissioner was one Arthur L. Murray. The facts involved were not in dispute and are contained in the opinion of Judge Harron of the Tax Court, a copy of which is appended marked exhibit B and by this reference made a part hereof.

In September of 1942, Judge Harron was designated as the member to hold hearings on pending petitions for review before the Tax Court in Seattle.

When the above cause was first called on the calendar, Mr. Murray and I both attempted to make statements concerning the controversy, but because of constant interruptions by Judge Harron, we were both prevented from making any such statements, she taking the position that neither of us was prepared (which was not the case) and the first attempted hearing resulted in agreement that the case should be adjourned until some days later for the purpose of agreeing, if possible, upon the facts. No record was made of the first attempted hearing in view of Judge Harron's instructions to the reporter that it was off the record.

During the intermission, Mr. Murray and I met and had with us a Mr. Mills, who was an executive of petitioner corporation. We found that there was no disagreement between us as to the facts and an arrangement was made whereby Mr. Murray would state the facts to the court and I would stipulate to agree to them. Relying upon the oral stipulation I then dismissed Mr. Mills who left town and was not available when the hearing was resumed. Upon the resumption of the hearing, a reporter's transcript was made, excepting that Judge Harron frequently turned to the reporter and told him "off the record." No record was made of the statements of Judge Harron during the "off the record" period, but such statements essentially consisted of a monologue on her part, lecturing or instructing counsel on how to proceed, or engaging in conversation concerning facts in the case which should have properly been in the record. As before stated, Judge Harron was constantly interrupting and doing most of the talking so that an orderly presentation either by Mr. Murray or myself became impossible.

Many of the statements which she made were, in fact, insulting to us. For instance, at one place appearing on page 5 of the official report, she interrupted Mr. Murray to say, "Well, I could have understood that statement last Monday," when, as a matter of fact, he had never been permitted to complete his statement on Monday. In another instance on the same page, she again interrupted Mr. Murray to say, "How did the commissioner make his determination? Now, counsel for the petitioner seems to be unable to make the statement and turned it all over to you." This was not only an unfair but untrue statement for the reason that by definite arrangement between counsel it was agreed that Mr. Murray was to make the statement comprising the stipulation and I was to agree to it. As a veteran of many years at the bar, some of which were spent as something of a specialist in the trial of lawsuits, I naturally did not like this reference to my lack of understanding of the case. Mr. Murray, after this first interruption, was constantly thereafter interrupted by Judge Harron. For instance, page 7 of the official report, he was interrupted no less than four times. At one interruption Judge Harron stated to him, "I don't know, you see what the question is. I am trying to suggest something to you * * * I am trying to pin you down to something." In response, the following occurred:

"Mr. MURRAY. Well, if Your Honor please, I would like to state this: I have been in the Internal Revenue Bureau for 23 years, and it took me a full day to understand this case.

"The MEMBER. It did?

"Mr. MURRAY. Yes, it did.

"The MEMBER. Then, I think that was a very good reason for my asking you to make a clear statement."

In the face of Judge Harron's own ignorance of the facts at that time, it was manifestly impossible for an attorney to make any kind of clear statement, especially when annoyed by remarks which had the effect, if not the intent, to demean him before others present in the courtroom.

Again, on page 8 of the report, Judge Harron interrupted Mr. Murray twice and consumed well over half of the printed report contained in the case with remarks irrelevant to the issues involved. In one place, as shown by the official report, Mr. Murray tried to resolve the difficulties which seemed to be in Judge Harron's mind by stating:

"Mr. MURRAY. Well, I thought that is what I was doing. Now, I am willing to be of help to you in any way I can. I really would have to have you ask me questions, and I will try to clarify it in any way I can."

In response to this statement, Judge Harron made the following insulting remark:

"The MEMBER. All you said was that the only question was that you were right. That is what your statement really boils down to. It certainly isn't a statement of a legal question or a question under the revenue act."

After which Judge Harron continued with matters wholly irrelevant to the case. After this interruption, Mr. Murray apparently found it impossible to continue the arrangement which I had made with him, and stated to the court:

"Mr. MURRAY. Well, then, if Your Honor please, I will have to call on the petitioner to tell you, because it is his case. * * *

"The MEMBER. Well, I think that is a very uncooperative attitude, Mr. Murray.

"Mr. MURRAY. Well, I don't mean to be uncooperative, but I am vexed, of course."

As shown on page 9 of the official report, I then attempted to take over, a position into which I was forced by Judge Harron's conduct in preventing Mr. Murray from making the statement carrying out our stipulation. I tried to point out that the facts were really contained in the two returns of the petitioner and the 90-day letter with schedules attached, but Judge Harron constantly interrupted me as she had Mr. Murray. I had released my witness, Mr. Mills, upon the conclusion of my oral stipulation with Mr. Murray, and it followed that if the effect of her conduct at the hearing was to prevent the use of that stipulation I would be left without a witness to substantiate the facts in the written record then before the Commissioner upon which I was willing to rely. On page 10 of the official report, Judge Harron stated to me the following:

"The MEMBER. Counsel for the Government is just willing to sit down and let you work it out. Now, we will proceed in that way, but you will have to make a record here on everything. You will have to get into the record what your original cost was and what your depreciation was, up to a certain point, and what the loss sustained in the prior year was, and you will have to argue your case here according to the regulations. Apparently, I am going to be free all morning. Now, I am not going to take the returns and the notice of deficiency and use up an hour of my time to reconcile differences in computation. You are here to present a case. This is the time that everything must be clarified. I am not going to do all the work in my office. We will take a recess and I will find out what you can do.

"Mr. HILEN. May I make a statement into the record, if Your Honor please?

"The MEMBER. After I resume the hearing in the case, you may. We will be here for an hour or so, and you are not going to make these other gentlemen sit here and wait.

"Mr. HILEN. Well, so far as I am concerned, I can——

"The MEMBER. Off the record, please. I have taken a recess."

What really then occurred is not shown by the report after the lines in which I said, "Well, so far as I am concerned, I can——," and Judge Harron stated, "Off the record, please. I have taken a recess." The fact of the matter is that by that time I had become so incensed at her conduct and felt so outraged at being left in a position where I was forced to prove by witnesses what counsel and I had already agreed to by stipulation, and I had released my only witness, and further, that I felt personally insulted by the reflection cast on both Mr. Murray and myself so that, although I do not now remember the precise words I used, in effect, I told her that I had practiced law a great many years before she had had anything to do with it; that I felt perfectly competent to represent my client before a competent court, that I knew my obligations as attorney to a client and also knew the responsibility of the court and that I proposed to countenance no further interruptions or lecture of the kind that had been given, that the responsibility for representing my client and advising it as to its rights was mine and not hers and that I willingly accepted that responsibility and proposed that I should be permitted to exercise it. I think this is the general effect of what I said, although having lost my temper at the time, I no doubt stated things to Judge Harron that should not occur in a court of law.

During the recess, which Judge Harron called, she sent a message to me to speak to her in her chambers. I complied with the request without knowing what she wanted, but upon my entering her chambers she said to me that she had never had an attorney speak to her like that in court, that it was an entirely new experience to her and she did not know what to do about it; and, in effect,

she also stated that she was sorry that I had lost my temper as I had. I told her that I was sorry, too, for having lost my temper but considered the provocation extreme. The conference ended on a friendly tone.

She had noticed a newspaper reporter in the courtroom and asked me if I knew him. I replied that I did not but that I knew the publisher of the paper very well. She then asked me if I would try to prevent any publicity concerning the incident that had occurred in the courtroom and I told her that I would be glad to as well for my sake as for her own. I did call the publisher on the telephone and recited what had happened. He stated to me that if I had been cited for contempt there would be a news story naturally, but under the circumstances there was no news value in the occurrence. No mention was ever made of it.

After the intermission, proceedings continued on a more friendly tone and a record by stipulation was finally made which I was willing to accept. When the opinion of Judge Harron was issued it was against my client but on a theory which neither the Commissioner, the Government counsel, the company auditors, nor I had ever advanced. No proceedings were ever taken to further review Judge Harron's opinion as the amount involved was so small—

I might say the record shows a little over $500—

that I advised my client that already too much had been spent on the litigation.

I do not know whether the committee wishes the opinion of the witnesses as to the qualifications of Judge Harron for membership on the Tax Court, or whether it merely wishes a recital of facts such as I have attempted to give herein. On the assumption that the committee desires the opinion of the witness I may say that speaking from my many years of experience in the trial of cases, I do not consider that Judge Harron is qualified to be a member of the Tax Court, especially because by temperament she seemed wholly unable (in the instance I appeared before her) to conduct the hearing as a judicial officer should.

Further affiant sayeth not.

A. R. HILEN.

Subscribed and sworn to before me this 9th day of May 1949.

NORA E. GREENLAND,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT A

MAY 2, 1949.

A. R. HILEN,
Northern Life Tower, Seattle, Wash.:

The American Bar Association advises you have information which may be considered material in our consideration of nomination of Judge Marion Harron to Tax Court. Committee desires to secure full and adequate presentation of issues and sends this telegram in lieu of subpoena for purpose of securing either your personal appearance or if you prefer an affidavit covering any information you possess which is pertinent to consideration of the nomination by this committee. Advise by wire collect whether you will appear in person at hearing scheduled Thursday, May 12, 1949, or whether you desire to submit an affidavit for inclusion in record at that time.

WALTER F. GEORGE,
Chairman, Senate Finance Committee.

EXHIBIT B

THE TAX COURT OF THE UNITED STATES

Pacific Refrigerating Co., Petitioner v. *Commissioner of Internal Revenue, Respondent*

(Docket No. 108235)

A. R. Hilen, Esq., for the petitioner.
Arthur L. Murray, Esq., for the respondent.

MEMORANDUM OPINION

HARRON, Judge: Respondent determined a deficiency in income tax liability for the fiscal year ended April 30, 1940, in the amount of $542.19. Petitioner is a

Washington corporation with its place of business in Tacoma, Wash. It filed its return with the collector for the district of Washington.

The parties are in agreement on the facts. In general the question relates to the determination of the correct amount of a loss which petitioner sustained during the taxable year under a defaulted conditional sales contract and upon the repossession of property which it had sold under the contract in an earlier year at a loss. The property was sold on the installment basis, the vendee defaulted in payments, and petitioner repossessed the property after the default.

The facts are as follows: Petitioner was engaged in the ice and cold-storage business. On July 24, 1937, petitioner sold certain property to Dealers' Ice, Inc., under a conditional sales contract. The property consisted of a small piece of land, a small building which was an ice house and plant, and machinery. The cost to petitioner of this property was as follows:

Land	$2,000
Building	3,350
Machinery	15,000
Total cost	20,350

As of the date of the sale, July 24, 1937, the building and machinery had depreciated to the extent of $515.25 and $4,073.13, total $5,488.38. The basis of the depreciable property, the building and machinery, on the date of sale was $12,861.62. The basis to petitioner of all of the property on the date of sale was $14,861.62; it was sold for $10,000, resulting in a loss of $4,861.62. In its income-tax return for the fiscal year ended April 30, 1938, petitioner took a deduction for a capital loss sustained upon the sale of the above property in the amount of $2,000, and respondent allowed the deduction.

Petitioner retained title to the property. The vendee did not give a mortgage or any other security for payment of the purchase price. The total payments made by the vendee were $1,714.82, and this amount was received during about 2½ years after the sale. In February of 1940 petitioner decided that the vendee had defaulted and petitioner repossessed the property on February 28, 1940. The unpaid balance due on the purchase price was $8,285.18. Petitioner repossessed itself of the land, the building, and the machinery. However, the building and machinery had depreciated at an accelerated rate. The building was in extremely poor condition and the parties are agreed that it had no value upon repossession. The depreciated value of the building at the date of sale was $2,834.75. During the 2½ years that the property was in the possession of the vendee the building deteriorated to the extent that the above depreciated value as of the date of repossession became zero. The depreciated value of the machinery at the date of the sale was $10,026.87. It had depreciated during the 2½ years to the extent that the above depreciated value as of the date of repossession became zero. The depreciated value of the machinery at the date of the sale was $10,026.87. It had depreciated during the 2½ years to the extent that the value of the machinery upon repossession was only $1,105.

Shortly after repossession, petitioner decided to let the building be demolished, giving the lumber to the person who tore down the building. The parties are agreed that there was no salvage value from the demolition of the building.

The parties are agreed that petitioner sustained a loss upon "repossession of the depreciable property" in February 1940, under section 23 (f) of the Internal Revenue Code. Respondent agrees that petitioner is entitled to a loss deduction in the taxable year in the full amount of the loss, whatever shall be determined to be the correct amount.

"In its income-tax return for the taxable year, the fiscal year ended April 30, 1940, petitioned took a deduction in the amount of $8,041.80, as a loss sustained upon the repossession of the property. In its brief, petitioner states that the amount of $8,041.80 was computed in substantially the following way: Petitioner took the depreciated value of the depreciable properties at the date of sale, $12,861.62; from that petitioner deducted the total of the value of the depreciable properties repossessed, $1,105, and the total payments received, $1,714.82, or $2,819.82, leaving $10,041.80. From the last amount petitioner subtracts $2,000, the amount of the allowable capital loss which was taken in the year of the sale, leaving $8,041.80, which petitioner contends is the loss sustained on repossession was $5,180.18. That amount was allowed as a loss deduction. Respondent disallowed $2,861.62 of the loss which petitioner took on its return.

The facts are somewhat unusual but are simple. There is no contention made by respondent that petitioner should include in income of the taxable year the

amount of $2,000 which was deducted in the year of the sale, by virtue of repossessing the property in the taxable year. (See G. C. M., 12012 (1933), C. B. XII-2, p. 60.) The repossession of the property was a transaction separate from the sale. (See W. F. Gillies, 20 B. T. A. 570.) Petitioner's computation leaves out of consideration one important fact, namely, that petitioner recovered the land, as well as the depreciable properties. There can be no question that the practical problem here involves consideration of all that petitioner recovered. The simple situation is that vendee owed petitioner $8,285.18 on a conditional sales contract and the loss to petitioner must be the difference between that amount and the value of the property which was repossessed in the taxable year. The value of the building was zero; the value of the machinery was $1,105; and the value of the land must be assumed to have been $2,000, lacking evidence as to its fair market value at the date of the repossession. The total value of the property recovered, therefore, was $3,105, and that amount must be applied to the unpaid balance on the conditional sales contract, as the amount which petitioner recovered in the taxable year. It follows that the loss which petitioner sustained was $5,180.18. It is held that petitioner sustained a loss of $5,180.18 in the taxable year upon the default of its vendee under the conditional sales contract.

The result reached by respondent is sustained because petitioner's loss was no greater than he allowed. The method he followed in computing the loss appears to have been incorrect, but it is unnecessary to make any further determination. The reasoning applied here does not follow along the line of reasoning which either parties pursued in their respective briefs, and the arguments of each party were far apart. Petitioner and respondent seem to have erred in their respective approaches to the problem. The facts do not present the kind of situation to which section 19.44-4 of regulations 103, at page 200, can be applied profitably. As we see the problem, it is exceedingly important to give consideration to the fact that after the sale in 1937 petitioner retained as an asset a conditional sales contract with the vendee of the property in question. When the vendee became unable to comply with that contract petitioner's loss related to the contract. The expression "loss on repossession of the property" is confusing. It has been used hereinbefore for convenience, only, because the parties have used that expression. Not only is the expression confusing, but it diverts from the real issue, which is the loss sustained by petitioner upon the default of the vendee under the conditional sales contract. The loss, properly, is determinable by computing the value of the property recovered in part payment of the balance due upon the contract. To be accurate, the issue here was not to determine a loss on the property recovered, after it had been recovered (which view the parties have taken, and which has led to great confusion in the briefs) but, rather, to determine a loss on the conditional sales contract. As the parties were agreed on the facts, the answer to the question has been arrived at without difficulty, but it is somewhat accidental that the result reached, i. e., the amount of petitioner's loss in the taxable year, is the same as the result reached by respondent.

Decision will be entered for the respondent.

Enter.

Mr. McGUIRE. Mr. Chairman, may I call attention to Mr. Murray's affidavit which is in the record at pages 337 to 340 of the transcript (p. 169, of the printed record)? Mr. Murray was opposing counsel in that case.

Senator MILLIKIN. Very well.

Mr. KILPATRICK. The next affidavit which we have been asked to present is an affidavit of Mr. H. B. Jones, of Seattle, Wash., who states as follows:

H. B. Jones, being first duly sworn, on oath deposes and says:

I am a citizen of the United States and a resident of the State of Washington; age, 60 years; profession, attorney at law. I was admitted to the Supreme Court of the State of Washington in 1911 and have resided and practiced continuously since 1912 in the city of Seattle, with offices at 610 Colman Building, during all of such period. I am now senior partner of Jones & Bronson, an association of 10 lawyers carrying on its business at that address.

I was admitted to the bar of the United States Supreme Court in 1924 and am a member of the bar of the Circuit Court of Appeals for the Ninth and Sixth

Circuits, and have practiced in all of said courts, as well as the district courts of the United States for the districts of Washington and Oregon, and various other Federal and State courts, bureaus, and agencies. I have practiced before the United States Treasury Department, with particular relation to Federal income, estate, and gift tax matters since 1919, and before the United States Board of Tax Appeals, now the United States Tax Court, since its inception.

This statement is submitted in response to telegraphic request from Hon. Walter S. George, chairman of the Senate Finance Committee, for consideration in connection with the hearing upon nomination of Judge Marion J. Harron to the United States Tax Court. I have no personal interest whatsoever in such matter other than the selection of a qualified judge. I have no cases pending before Judge Harron, and have never tried cases before her, and met her for the first time about 3 months ago under circumstances which will be detailed herein.

In September of 1942 a session of the United States Tax Court, presided over by Judge Harron, was held in the city of Seattle. I attended the proceedings upon various occasions. I have a distinct recollection of being present in that court at a morning session when the trial of a petition of a taxpayer from Grays Harbor, whose name I remembered as being John Law, was being concluded, having been in the course of trial for some days preceding. At that time Mr. Alva Baird, counsel for the Commissioner, was endeavoring to conduct a cross-examination of the petitioner or one of his witnesses. Certain matters collateral to the main issues had arisen during the course of the trial involving the credibility or good faith of the party on the stand, and the Government counsel was endeavoring to proceed along certain definitely thought-out lines, which seemed to be called for by a rather unusual situation. There was nothing irregular or improper in his cross-examination, but Judge Harron had some other or different ideas which she felt he should follow. She constantly interrupted counsel on her own initiative to refuse to allow his question and to insist upon both the manner and substance of the questions that he should ask. She was very insistent upon dictating to Mr. Baird how he should conduct his examination, and he, on his part, endeavored to uphold his right to proceed upon the lines that he was endeavoring to follow, and the result was an acrimonious and violent exchange of observations and argument between the court and counsel, although I recall nothing being said by Mr. Baird which went beyond the bounds of propriety and respect due the court. I do not recall just how the controversy ended, but I would say that it continued in the explosive stage for 15 to 20 minutes.

When the American Bar Association was in session at Seattle in September of 1948, and the matter of Tax Court appointments was under discussion in the committee dealing with that subject, this particular case was referred to, and I stated my recollection of what I had observed, but was not asked to go into the matter further at that time. In January of 1949, however, while attending section meetings of the American Bar Association in Chicago, the matter was again brought up, and as I was going on to Washington I was requested to look up the record of this case and see what it showed as compared with my own recollection of the episode referred to above. In the afternoon of Monday, January 31, 1949, I called at the office of the filing clerk of the United States Tax Court and endeavored to locate the case, based upon my recollection of the petitioner's name, which was not entirely accurate. The clerk found that an appeal of Richard Law, Docket No. 110169, Board of Tax Appeals, had been tried September 21, 1942, before Judge Harron, in which Mr. Alva Baird had appeared as one of the attorneys for the Commissioner. I took this information to the file clerk and obtained the case file, including the reporter's transcript, and found it was the case to which I referred. I sat down at the table in the file clerk's room and proceeded to go through the transcript rather hurriedly to locate the portions pertaining to the matter mentioned above. I shortly became aware that some woman was standing across the table from me, apparently interested in what I was doing, but I did not recognize her, and she soon disappeared. A little later she reappeared at my elbow and said she had observed my going through this file and would like to know what my interest in it was. I replied that it was a public file, and I was interested in seeing what it contained, and indicated rather pointedly that I did not consider it was anyone else's business why I was looking at it. She then said she would like to talk to me about it, and I replied that I saw no occasion to discuss it. Her tone and manner up to this time was very much in the nature of an order, but she then changed her manner, introduced herself as Judge Harron, and said she was interested in the case and would like to discuss it with me. I still insisted that I saw no occasion for discussión, and she then urged me, as a per-

sonal favor, to go across the hall to her office and let her tell me some things about the case, to which I finally acceded, taking the transcript with me.

On the way over she asked my name, which I gave her, and asked if I were a member of the American Bar Association, which I confirmed.

She invited me to a seat in her office and renewed the conversation by wanting to know if I would tell her what I was looking for in connection with the case. I told her I was simply wanting to see what appeared in the record. She said it was a curious coincidence, but that she had just had occasion to want to get that case herself when she found that I had it. She said there were influences working or being worked against her that she would like to have the opportunity to meet and that she would like to discuss the case with me and give me her side of the picture. She wanted to know what I had found in the case that was of interest, and I told her I had not yet gotten through the transcript. She wanted to know what I knew about the case, and I told her I had been present at the proceedings which I have set forth above. She wanted to know if I had found them reported in the transcript, and I told her I had not yet gotten to that stage of it, and she then asked me for the transcript which I was holding and located a reference ahead of the point to which I had read, and said she thought that was probably what I had in mind. She said she did not see anything particularly bad about that, and I replied that regardless of what the transcript showed, I remembered the proceeding very vividly, and thought Mr. Baird was about to have a stroke of apoplexy at the way she had treated him. She immediately reached for the telephone and suggested calling Mr. Baird right then to see if he had been threatened with a stroke, saying that it would cost her $12.50, but she would like to clear that up. I told her that so far as I was concerned, there was no occasion to do that, and it would not make any difference to me what Mr. Baird might say, because I remembered very well how livid he looked at the time.

She asked me particularly several times if I would not, after completing my examination of the transcript, come back and discuss it with her again. I told her that I saw no occasion to do this; that I was only checking up on the facts as shown by the record, and that no discussion could change it, nor did I think it would serve any useful purpose.

Our meeting lasted, I would say, from a half to three-quarters of an hour. The conversation was carried on principally by Judge Harron along the lines mentioned, directed primarily to ascertaining why I was reviewing the record, and what I expected to do with the information. At one point in the conversation I recall that she said that anyway, regardless of what occurred at the trial, she had decided rightly in favor of the Government and asked if I did not think that made the matter all right.

The foregoing is my best recollection of the substance of what occurred, although not recited verbatim, nor completely, nor in order of sequence.

On my return to the Pacific coast I saw Mr. Baird in San Francisco and told him of the above occurrence and of my recollection of the proceedings in the law case, and he said he had been going back over the matter in his mind because Judge Harron had telephoned him after my talk with her, and he recalled that episode at the trial substantially as I have detailed it, but that she had requested at the close of the case, and he had agreed to, the omission of what occurred at that time.

I state further that the reporter's transcript as filed in the case fails to show or to report much of the argument and exchange of words between Judge Harron and Mr. Baird which did occur at the time I attended the trial. The episode to which I referred would, I think, fall into the record somewhere around pages 380 to 400, which show the general context or background and also show omissions of off-the-record discussion.

Following my return to Seattle I wrote a letter to Judge Harron, copy of which is hereto attached, as exhibit 1. This letter has not been returned, nor have I received any reply or acknowledgment.

I do not know whether it is desired that I offer any personal opinion upon qualification of Judge Harron for this position. If I were present and asked such a question, I would say that without reference to her legal ability, as to which I express no opinion, and referring only to her capability for judicial administration, I believe that she does not have judicial temperament or ability to administer her court in an orderly and efficient manner.

H. B. JONES

Subscribed and sworn to before me this 9th day of May 1949.

NETTIE L. RITTER,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT 1

FEBRUARY 11, 1949.

MISS MARION J. HARRON,
Judge, United States Tax Court,
Internal Revenue Building, Washington, D. C.

DEAR MISS HARRON: I am sending this letter to you marked "Personal" since I assume that you would prefer to have your conversation with me treated as such rather than to become an official file.

At the time you approached me in the file clerk's office on Monday afternoon, January 31, and inquired as to my interest in the file that I was going over and asked me to discuss the matter generally with you in your office, I tried to refrain from comment or discussion, for, as I told you, I was interested only in ascertaining the facts as to what might be disclosed by the record.

You will recall, of course, that in connection with requesting me to disclose my interest in the matter and in reviewing your recollection of the situation and occurrences at this trial, you urged me to contact you again after I had finished my examination for a further discussion. I told you that I would give consideration to this request, but that I did not see anything to be accomplished by doing so, since I was only seeking to determine the facts shown by the record, which would speak for itself, and after going through it, I remained of the same opinion, and accordingly I did not contact you. I have felt as a matter of courtesy that I should now write you on my return and tell you that my failure to comply with your request was not intended as a discourtesy but simply a confirmation of what I stated at the time of our meeting.

There is, moreover, one further angle to this matter which I have considered at length and feel that I should take up with you in an informal way in the first instance.

It was perfectly obvious that my unwillingness to enter into a discussion with you of my reasons for looking at this record and of your explanation with respect to the occurrences at the trial, and my failure to comply with your request to return for a further discussion, cannot help but create a reaction, whether consciously or not, which would be embarrassing and prejudicial to my trying any tax cases before you. It is not a matter of my own interest at all, directly, but of whether in fairness to a taxpayer you should hear a case in which I appear as counsel. I have practiced law for over 35 years, and I have never, to the best of my recollection, filed an affidavit of prejudice, and I would dislike very much to do so. I do feel, in recognition of the sense of fairness which you stressed so much, that you will sympathize with this situation and will be willing to voluntarily disqualify yourself from the trial of any such cases. I regret that such a situation has arisen which may cause an inconvenience, but it is one for which I am in no way responsible, and I feel that a frank recognition of the situation and voluntary accommodation to it is better than for me to have to file any formal application, and I hope that you will be in accord with this and will so advise me.

Yours very truly,

H. B. JONES

Mr. Chairman, that is the affidavit of Mr. H. B. Jones, of Seattle, Wash., who was present during the course of the trial of the Richard Law case in which Mr. Alva Baird was counsel. I do not know whether you want to put Mr. Alva Baird's deposition in at this point.

The CHAIRMAN. Yes; I would. I shall be glad to have you read the deposition because it will give counsel the advantage of knowing what was said in it. Just read it into the record.

Mr. KILPATRICK (reading):

TESTIMONY OF ALVA C. BAIRD

(Taken on written interrogatories submitted by the section of taxation of the American Bar Association, before Virginia K. Pickering, notary public in and for the county of Los Angeles, State of California, at room 532, Citizens National Bank Building, 453 South Spring Street, Los Angeles, Calif., at 8:15 a. m. Monday, May 9, 1949)

Thereupon Alva C. Baird, a witness of lawful age, was duly sworn, and gave the following answers to the written interrogatories:

Question 1. Please state your education, your legal qualifications and experience, including expressly your experience with the United States Government and the positions held.

Answer. I graduated from the University of Montana. I had entered the school of law of that university in 1916.

I enlisted in the United States Army in June 1917 and served continuously until September 5, 1919. I was discharged as a second lieutenant in artillery.

In the fall of 1919 I reentered the school of law at the University of Montana and obtained my law degree in 1920, and was admitted to practice in that year.

I engaged in private practice at Missoula, Mont., for a period of about 5 years. During a portion of that time I served as deputy county attorney of Missoula County.

In September 1925 I was appointed to the position of special attorney in the office of the Solicitor of Internal Revenue at Washington, D. C. That office is the predecessor of what is now known as the Office of Chief Counsel of the Bureau of Internal Revenue.

For a period of about a year and a half I was in the Penal Division, working exclusively on tax cases involving fraud and criminal violation.

Sometime in 1927 I was transferred to the Appeals Division of the office. My work in that division consisted of trial work before the Board of Tax Appeals.

I engaged in the trial of cases at Washington, D. C., and at various places throughout the country, such as Cleveland, Ohio; Pittsburgh, Pa.; Grand Rapids, Mich.; and San Francisco, Calif.

In 1929 I had the good fortune to be offered an opportunity by my office to be transferred to Los Angeles, Calif., as the field representative of the general counsel of the Bureau of Internal Revenue. I held that position until 1938. I served as legal adviser to the offices of the Collector's revenue agents in charge, Intelligence Unit, and assisted the United States attorneys for my area in whatever capacity they needed or requested assistance in regard to tax matters.

The geographical area covered by this assignment consisted of the States of California, Nevada, Arizona, New Mexico. A substantial part of my work was at Los Angeles, Calif.

In addition to acting as legal adviser to various departments of the Bureau of Internal Revenue, I handled many of the civil cases in the United States district court at Los Angeles, involving matters pertaining to internal revenue. For the most part these were civil cases, but occasionally I participated in the trial of criminal cases involving violation of the revenue statutes.

During portions of 1934 and 1935 I was on special detail at New Orleans, La., in connection with certain tax-fraud investigations which were being conducted by the Treasury at that place.

In 1938 the Treasury Department decided upon a program of partial decentralization of the internal-revenue work. The Pacific division of the technical staff was established, with headquarters at San Francisco.

The geographical area of this division consisted of the States of Washington, Oregon, California, Idaho, Montana, Utah, Arizona, and Nevada, and the territories of Alaska and Hawaii.

I was then appointed by Mr. J. P. Wenchel, chief counsel of the Bureau of Internal Revenue, as division counsel for this unit of the technical staff. Branch offices were established at Seattle, Portland, and Los Angeles.

The division counsel has supervision of the trial work of the division in all cases brought before the Board of Tax Appeals; now the Tax Court of the United States. I continued as division counsel of the Pacific division of the technical staff until July 1943, at which time I resigned.

I have been since engaged continuously in tax practice in Los Angeles, Calif., under the firm name of Baird & Ulvestad.

Question 2. Have you tried any cases before Judge Harron of the Tax Court or observed the trial cases before her?

Answer. The answer to that question is "Yes," but before going into the answers to such further questions as you may propound, I think it is pertinent at this point for me to set forth my position in this matter.

It had been my strong desire and personal inclination to stay out of this contest which has arisen over Judge Harron's reappointment as a judge of the Tax Court.

As long ago as May 1948 I received a letter from the section of taxation of the American Bar Association, indicating that I may be called upon to given certain testimony opposing Judge Harron's reappointment.

In my reply to the letter from the committee, I advised, "At times she is courteous and affable, and on occasions [while on the bench] she has been arbitrary and inconsiderate. Some of her work on the court, as indicated by her opinions, has been commendable, but her court decorum and judicial temperament has at times been nothing short of atrocious. Searching my own mind I find I have mingled feelings of good will for her personally, but a strong resentment against her judicial conduct on the bench."

Because of my feeling of good will toward Judge Harron and my opinion that she has written decisions in cases which are comparable in quality and judicial reasoning to those of other members of the court, I advised the committee that I would not voluntarily oppose her appointment. In other words, while I did not feel that she is as well qualified as a judge should be so far as conducting trials and dealing with attorneys and litigants are concerned, I wanted to remain on the side lines and let her obtain the prize if she could.

However, I was again solicited by letter on April 5, 1949, by the committee on Tax Court appointments of the American Bar Association, and asked whether I would insist upon a subpena or would be willing to come to Washington and testify at the investigation of the committee for the American Bar Association. I was later contacted in person by a member of the American Bar Association committee.

On April 22 I advised the committee as follows:

PERCY W. PHILLIPS, Esq.,
Chairman, Committee on Tax Court Appointments,
American Bar Association, Washington 5, D. C.

DEAR MR. PHILLIPS: Receipt is acknowledged of your letter of April 5, 1949. Mr. Latham has since contacted me and has, I believe, conveyed to you the information that I feel I cannot in good conscience voluntarily oppose Judge Harron's appointment. Both your committee and Judge Harron has requested support from me in this fight on her reappointment. I have declined both requests and under the circumstances feel impelled to adhere to this position.

However, I want to say that both you and your committee deserve a great deal of credit and commendation from the bar for the interest you have shown and the effort you have put forth to bring about proper consideration of the essential qualifications of appointees to the Tax Court.

Yours sincerely,

ALVA C. BAIRD.

Subsequent to that I was again interviewed by a member of the American Bar Association committee and again declined to either give a statement or voluntarily appear in the matter.

On May 2 I received the following telegram from Hon. Walter F. George, chairman, Senate Finance Committee:

MAY 2, 1949.

ALVA BAIRD,
Citizens National Bank Building, Los Angeles:

The American Bar Association advises you have information which may be considered material in our consideration of nomination of Judge Marion Harron to Tax Court. Committee desires to secure full and adequate presentation of issues and sends this telegram in lieu of subpena for purpose of securing either your personal appearance or if you prefer an affidavit covering any informa-

tion you possess which is pertinent to consideration of the nomination by this committee. Advise by wire collect whether you will appear in person at hearing scheduled Thursday, May 12, 1949, or whether you desire to submit an affidavit for inclusion in record at that time.

WALTER F. GEORGE,
Chairman, Senate Finance Committee.

Because of court commitments and the pressure of work in my office, it was utterly impracticable for me to arrange to be in Washington on May 12, 1949. The following telegram was sent to Senator George:

MAY 2, 1949.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee, Washington, D. C.:

Reference your telegram May 2. In lieu of subpena suggest information be obtained or written interrogatories to be submitted through your committee by American Bar Association and counsel for Judge Harron. Prior commitments and extremely heavy pressure of work make it impracticable for me to be in Washington for hearing on May 12.

ALVA C. BAIRD.

Subsequently, I was advised under date of May 5 by Elizabeth B. Springer, acting clerk of the Senate Finance Committee, that arrangements were being made to take certain testimony by interrogatories.

As stated above, in answer to your interrogatory No. 2, I have tried cases before Judge Harron and have observed the trial of cases before her.

Question 3. If so, please state in as much detail as possible all instances of departure from normal court procedure.

Answer. It is difficult for me to give very much detail in regard to this matter. I have been out of the Government service for nearly 6 years, and since I have been engaged in private practice have had occasion to appear before Judge Harron at only one session of the Tax Court.

Several years ago she conducted a session at San Francisco in which several of the attorneys representing taxpayers, as well as one or two of the attorneys representing the Government, had a rather difficult and uncomfortable time in presenting their cases. It was a matter of common knowledge at the time that she was irritable and quite inconsiderate of the feelings of either counsel, witnesses, or taxpayers.

I have not looked up any records, but my recollection is that one of the cases was the case of the Baldwin estate.

On one occasion she attempted to take over in a case being conducted by Tom Mather, an experienced trial lawyer representing the Government, who is still on the division counsel's staff at San Francisco.

I do not now recall the name of the case, but her conduct at the time was wholly unjustified, and it is my recollection at the time I wrote the head of the Appeals Division of the Washington office of the chief counsel about the matter.

On one other occasion an attorney I do not know, but whose name I believe is Shapiro and who has been practicing at San Francisco for many years, was lectured by Judge Harron about the manner in which a case should be tried.

He finally took occasion to state that he had been trying cases for 35 or 40 years and did not need any help in that regard.

The incident itself was not of particular importance, but it is the accumulative effect of these incidents which I am sure is responsible for the objection which the American Bar Association committee is making to Judge Harron's reappointment.

Judge Harron conducted a session of the court at Portland, in which, as I remember, things ran rather smoothly, but later in the conduct of a session of the court at Seattle her attitude and demeanor were subject to the criticism of a great many of the attorneys who appeared before her.

I have been advised that the case of Richard Law, in which I participated personally, is one of the cases which has been called to the committee's attention. The Law case involved a question of fraud. Government had the burden of proof and the witnesses, for the most part, on which the Government had to rely, were unwilling witnesses or, at least, exceedingly reluctant to testify.

Judge Harron seemed unable to sense the real situation, and as a result the trial of the case was long-drawn-out, and was made exceedingly difficult for the attorneys.

However, I may add that she reached a proper decision in the case on the basis of the testimony finally entered in the record.

Question 4. Please state whether you know of any instances where witnesses or counsel were reprimanded or reprimanded or criticized by Judge Harron, and the circumstances.

Answer. I believe that question is answered in part, at least, by the statement given above. There is one case with which I am familiar, which was tried in Los Angeles at the time I was division counsel, and that is the case of Harbor Holding Co. The case was complicated and involved, and there was some question as to whether the transactions involved were bona fide in every respect.

The information I received about the trial at the time was to the effect that the judge constantly interfered with the counsel in presenting the case, and insisted that certain evidence be procured, which neither counsel had offered. The judge's conduct with reference to the Harbor Holding Co. case was the subject of a great deal of discussion among the attorneys who were familiar with the situation.

On one occasion in San Francisco I recall that Mr. Cerf, a certified public accountant and who was representing the taxpayer, was severely criticized by the judge in a manner which was extremely embarrassing to him.

In the Stuart Co. case, tried in Los Angeles in January 1948, she was extremely critical and outspoken in her condemnation of one of the Government's counsel, Mr. R. E. Malden, Jr. Mr. Malden is an experienced lawyer, highly respected by the members of the tax bar of Los Angeles, who have had occasion to deal with him. It is the general feeling of all who are familiar with the incident that her conduct and treatment of Mr. Malden was wholly unjustified.

Question 5. Please state whether or not you have observed a tendency on the part of Judge Harron to—

(*a*) Lecture or criticize counsel or witness.

(*b*) Conduct the examination of witnesses.

(*c*) Interfere with the order of proof planned by competent counsel for the presentation of his case.

(*d*) Digress at length into immaterial matters.

(*e*) Instruct counsel how to present his case.

(*f*) Complain of the time consumed on a trial, although much of the time has been consumed by her.

(*g*) Quarrel with counsel.

(*h*) Abuse counsel or witnesses.

(*i*) Strike matter from the record. If so, whether in the cases of which you have knowledge, this was done with consent of both counsel; also what pressures upon counsel existed to cause consent.

Answer: The answer to all subdivisions of interrogatory No. 5, except (*f*) and (*i*), would have to be "yes."

I do not recall personally having heard her complain about the time consumed on the trial, although much of the time had been consumed by her.

And with reference to subdivision (*i*) of interrogatory No. 5, as to striking matter from the record, I can't recall that this has been done in any case in which I am involved or at a time when I was personally present, although this is one of the complaints made against Judge Harron.

Question 6: In your observation, how does the tendency of Judge Harron in the respects covered by question 5 compare with that of other judges of the Tax Court?

Answer: Her conduct of cases is not comparable to other judges of the Tax Court. But, as I have stated before, in my opinion, her written opinions on cases compare favorably with other judges.

Question 7: Have you observed, or do you know on reliable authority of, any of the following acts on the part of Judge Harron:

(*a*) Witness called on her own action?

(*b*) Refusal to receive stipulations of facts prepared by counsel for the parties?

(*c*) Insistence that stipulations of face be made, on penalty of not receiving evidence of facts?

(*d*) Limitation of the time of trial?

(*e*) Proceeding with trial, prior to the hour set, and in the absence of counsel for one of the parties?

(*f*) Conference with counsel in the absence of opposing counsel?

(*g*) Failure to pass upon objection to questions or evidence by—

(1) "Off the record" effort to persuade counsel to recall the question;
(2) Proceeding to question the witness herself;
(3) Failure or refusal to rule;
(4) Diverting attention by going into other matters;
(5) Other means?

(*h*) Failure to appear at the time and place set for hearing, without notice to counsel?

(*i*) Refusal to complete the hearing of a case?

(*j*) Granting a rehearing because of complaint of her conduct?

Please state circumstances so far as possible.

Answer: With reference to interrogatory No. 7, it may be stated that I do not recall of any instance in cases which I have had before Judge Harron where she has called witnesses on her own initiative. I have heard she has done this, but it has not occurred in my personal experience.

On one occasion at a session of the Tax Court in Seattle, about 1942 or 1943, she refused to receive stipulations of fact prepared by counsel for the parties. The stipulations were redrafted two or three times.

Counsel for the taxpayer finally refused to make any further changes or additions, and stated, in effect, that he proposed to stand on the stipulation as submitted and take his changes on appeal. I cannot recall the name of the case or the name of the attorney representing the taxpayer.

The Government was represented by Mr. Arthur Murray, now practicing law in Los Angeles.

I have had no personal experience with Judge Harron attempting to unduly limit the time of trial. She has on occasions endeavored to curtail the time of the court session, which is normally scheduled for 2 weeks, in order that she could return to Washington or go elsewhere before the end of the 2 weeks' time allotted to the session. This usually discommoded the taxpayers, witnesses, and counsel for both sides. However, in fairness to her, it must be said other members of the court have on occasion been guilty of this offense.

I do not know of any instance where she proceeded with a trial in the absence of counsel of one of the parties and prior to the hour set. I do not know of any instance where she has conferred with reference to the merits of the case with one counsel in the absence of opposing counsel.

In answer to subdivision (*g*) of interrogatory No. 7, I will state that I do not know personally of any instance where Judge Harron has endeavored "off the record" to persuade counsel to recall a question or to refuse to rule. She has on numerous occasions taken the witness over for examination herself and has done this at times and under circumstances which were unnecessary and disconcerting to counsel trying the case.

In the case of Phillip Bronze Co., a case I had on the calendar before Judge Harron at Los Angeles in 1948, she did order this case continued at a time neither Mr. Earl Crouter, representing the commissioner, nor myself, representing the taxpayer, were present. However, the transcript shows that counsel for both parties were present. This occurred immediately prior to the noon recess on the day on which the case was scheduled to go to trial at 2 o'clock in the afternoon. She did not appear at 2 o'clock at the time the case was scheduled for hearing.

In fairness to Judge Harron, I wish to state that she stated to me later she felt she was accommodating both sides because she understood we were not ready for trial. I believe she would have remained in Los Angeles to try the case had I insisted upon it. But before she contacted me at my office the witnesses had been dismissed and it was not feasible to go ahead with the trial at that time.

Question 8. Is it your opinion or observation that many attorneys attempt to avoid trials before Judge Harron? If so, can you state the reasons?

Answer. I know of certain attorneys who attempt to avoid trial before Judge Harron for the reason that they do not approve of her method of conducting hearings.

Question 9. Do you know whether some of the attorneys who have tried cases before Judge Harron have expressed the opinion that they were not accorded a full, impartial, and orderly hearing, with an opportunity to present their evidence in a proper manner? If so, please discuss in detail.

Answer. There are attorneys who have tried cases before Judge Harron who have felt that the hearings have not been conducted in an orderly and proper manner. Their complaint in the main is against her inclination to take the

trial of a case out of the hands of the attorneys and to interfere with the pre-trial order of proof which they have worked out prior to the trial.

Question 10. Please state, in as much detail as possible, all facts, circumstances, or information which you have, or which have come to your attention, which, in your opinion, would aid the Senate Finance Committee in determining (*a*) whether Judge Harron possesses or lacks judicial temperament; and (*b*) whether the confirmation of Judge Harron would be calculated to increase the confidence and respect of the public and of the bar for the Tax Court.

Answer. The answer to interrogatory No. 10 has been covered in the answers to the preceding questions. Judge Harron, in my opinion, is honest. She is conscientious in the matter of arriving at a correct decision in a case.

She has a good legal mind, but she does lack judicial temperament and the ability to conduct hearings in a manner which inspires the confidence of the public and the bar for the Tax Court.

ALICE C. BAIRD.

Subscribed and sworn to before me this 10th day of May 1949.

VIRGINIA K. PICKERING,
Notary Public in and for the County of Los Angeles, State of California.

That is the conclusion of the deposition with the exception of the formal signatures.

Colonel MCGUIRE. May I call attention to the fact that he mentioned Harbor Holding Co. and to the affidavit of Mr. Brady who is an attorney in the case and his letter to the President, concerning Judge Harron are found on pages 118 to 123 of the transcript for April 14, 1949 (p. 41, of the printed record).

The CHAIRMAN. Have you any others?

Mr. KILPATRICK. I have one letter and a couple of affidavits. The affidavit of William R. Spofford is as follows:

I, William R. Spofford, being duly sworn, depose and say:

That I am a member of the bars of the Supreme Court of the United States, the Supreme Court of Pennsylvania, the Court of Appeals for the Third Circuit and several other circuits, the District Court of the United States for the Eastern District of Pennsylvania, the Tax Court of the United States (having been a member of the bar of said court since shortly after it was created as the United States Board of Tax Appeals), and numerous other courts and administrative agencies; that I am a member of the firm of Ballard, Spahr, Andrews & Ingersoll, located at 1035 Land Title Building, Philadelphia 10, Pa., and have been for almost 20 years, prior to which time I was an associate of said firm; that over the years I have been counsel for numerous petitioners in many cases filed with the Tax Court of the United States, and that many of said cases have proceeded to trial; that I have tried cases before many of the judges of that court; that throughout my experience in trying cases before that court I have never tried a case before Judge Marion Harron, although some of my associates have appeared before her, but I have been present in the courtroom on several occasions when she was presiding at a trial of tax cases, and as an observer say that Judge Harron, in my opinion, lacks the temperament required of a judge, and that her demeanor on a number of occasions has been such as to embarrass and even humiliate counsel appearing for taxpayer and Government alike, that my views with respect to her temperament and demeanor are shared by a number of the lawyers in Philadelphia who try cases before the Tax Court; that I venture no opinion as to her legal capacity, believing that in such matters the record speaks for itself; and that I would consider it extremely unfortunate for the petitioner and Government alike to have her preside in an important and complicated case because her lack of judicial temperament and demeanor would be calculated to interfere with the orderly presentation of the evidence by both sides.

WILLIAM R. SPOFFORD.

Sworn to and subscribed before me this 11th day of May 1949.

[SEAL] AGNES M. HAMILTON,
Notary Public.

My commission expires March 5, 1953.

Senator MILLIKIN. Who made that affidavit?

Mr. KILPATRICK. Mr. William R. Spofford of the firm of Ballard, Spahr, Andrews & Ingersoll of Philadelphia, Pa.

Then I have a couple of letters, Mr. Chairman, which are not sworn to but they are statements of fact which we think are pertinent if you care to receive them.

The CHAIRMAN. You may put them in the record.

The Chairman has a number of letters, some favorable and some critical, that had been requested by the writers to go into the record and I have not offered them into the record as yet. But, I think where the writers have requested that their views be made known to the committee, or where they have agreed to make them known, that we might do so. I would not put anything into the record without the express consent of the writer.

Colonel MCGUIRE. Mr. Chairman, may I inquire at this point if we could have them put in the record before we put in the balance of our case?

The CHAIRMAN. Yes, sir. I will be pleased to offer them because quite a number of them, both favorable and some critical, as I have said, the writers of them have requested that their letters be put in the record. While we do not always do that I thought that in this case probably we would enter them into the record today, so that you would have the advantage and opportunity to read them.

Colonel MCGUIRE. Very good.

Mr. KILPATRICK. We offer a letter from Mr. Chester Willard Johnson of Minneapolis, Minn. This was addressed to Mr. Percy W. Phillips, chairman of our committee, but was sent to my office as chairman of the section. The letter is dated April 14, 1949, and reads as follows:

DEAR MR. PHILLIPS: Mr. Hayner N. Larson has sent me a copy of your letter of April 6, 1949, addressed to him, and also a copy of his reply thereto addressed to you. Apparently Mr. Larson sent me these copies because he knew that I had the misfortune of trying a tax case before Her Honor, Judge Harron, some years ago, the case being that of *Commissioner* v. *Walter I. Bones*. My client is an honest, honorable and serious man, deserving of all the respect given him over a wide area. The case involved two issues, one more or less minor and one of considerable importance. At the beginning of the trial, Her Honor, Judge Harron, announced that she would grant no more than 25 minutes to try the case. I told her that I could not possibly try a case of that importance in that length of time. To her this made no difference; she stated that she would give me 25 minutes to try the case and to proceed immediately.

The case started and very shortly Her Honor, Judge Harron, without cause or provocation, carried on the most disgraceful harangue and derogation of my client that I have seen in any courtroom in 30 years of practice. This took approximately half an hour. I tried to intercede by introducing a second explanatory exhibit. She tolerated no explanation. I sat down and the harangue went on.

After it was all over I introduced the second explanatory exhibit and she went into an act and asked why I had not told her of the second exhibit although she had refused all my previous attempts to do so. I thought that I was thoroughly prepared to try the case. She harangued me for not being prepared; she called for audits and exhibits which would fill half a taxicab. I rushed to the phone to have our auditors come immediately with them, which they did. Upon their arrival she did not look at them or use them. I desired to use several legal citations which I regarded as controlling in the case at bar. She protested; said that she didn't care what the law was; that every case was a law unto itself and that she was not bound by any cases that I might cite. Her whole attitude was dictatorial, arrogant, and dramatic as she waved her beribboned spectacles in a threatening manner. I am not easily disturbed or frightened but I couldn't imagine such court procedure in darkest Russia, say nothing of it being an all powerful court in these United States of America. I

was the first case called for trial. You should have seen the other lawyers scramble for postponements for various causes.

I bear no malice to her. She found for us on the important issue in the case. It is over. A transcript was made in the case which should be available to your committee through the Tax Court records. The case was tried about 5 years ago and I have destroyed my file. I believe that any lawyer reading the transcript would formulate an opinion coinciding with mine.

I write this letter without fear and certainly with no intention of favor other than a sincere desire that it may assist in the selection of a judge who is better qualified by temperament, training, and balance to fill this most important position where a judge has such broad powers. If there is to be any reprisal I certainly will resign from any case to be tried by Her Honor Judge Harron. The only difficulty would be to find a lawyer who would try a case before her. I don't think that clients should be put to this disadvantage in these United States of America.

Sincerely yours,

CHESTER W. JOHNSON.

Among the people, Mr. Chairman, to whom letters have been addressed who had expressed opposition and who asked to reply was Mr. Herbert L. Swett of Portland, Oreg. He dictated a letter to you, Senator, as chairman, and before that letter was signed by him he died very suddenly. A copy of that letter has been sent to us and we assume the original went to you. However, it was not signed by him. I do not know whether you want that in the record or not.

The CHAIRMAN. I should think you had better leave it out in view of the fact that it is unsigned. If it is here in my file it may properly be put into the evidence.

Mr. KILPATRICK. That concludes the documents that I wanted to present to the committee. Thank you, sir.

The CHAIRMAN. At this time we will hear from Mr. Thomas M. Wilkins.

STATEMENT OF THOMAS WILKINS, ATTORNEY, WASHINGTON, D. C.

Mr. WILKINS. My name is Thomas M. Wilkins. I am 53 years old and was admitted to the bar of the District of Columbia in 1923. I started to work in Internal Revenue matters in 1919 in the Bureau of Internal Revenue and in 1922 I went to the Office of the Solicitor of Internal Revenue, now the Chief Counsel's Office.

I was in the Penal Division, the Interpretative Division and in 1925 I went to the Appeals Division and began the trial of cases before the Board of Tax Appeals, now the Tax Court, in the year 1925.

Our dockets were heavy. At one time there my docket was composed of over 1,000 cases. I appeared before the Board daily, Monday, Tuesday, Wednesday, and Thursday. Sometimes I had as many as 10 cases that would come up and probably 2 or 3 of them would be tried in a day. I do not know how many cases I tried but in August 1927 I was transferred to the Special Advisory Committee, now the Technical Staff, and was made one of the first members of that committee on that day when it was first formed and for 6 years I was one of the members of that committee settling cases before the Board of Tax Appeals.

In the trial of cases, I tried cases before practically every one of the members of the then Board of Tax Appeals. For part of the time I handled the calendar for the Bureau of Internal Revenue, handled the miscellaneous motions from day to day and some of those motions involved matters that brought out little skirmishes of very unusual

nature and I might say that never in all of my experience did I ever have an uncivil word spoken to me by one of the members of the Board of Tax Appeals, nor did I hear anything uncivil or any interference with the trial of the case by any of the other judges.

I think there were 16 judges, perhaps only 12 at the first, but later there were 16, and I tried cases before practically all of them. Some of them resigned. Judge Hamel was the first chairman, Judge Ivans was on that court, James, Groupner, and a lot of others that are not there now, such as Logan Morris and Forrest Seifkin.

In 1933 I resigned and commenced the practice of law under my own name. I have had one partner, my only partner was Col. Edward Clifford, who was Assistant Secretary of the Treasury at one time and he retired after about a year and I continued to practice alone. I might say also that the pressure of business before the Board of Tax Appeals was extreme, it was very heavy and there was always an attempt to get in more cases than possibly could be gotten in and there was a tremendous burden on the members of the Board and on trial counsel but never did I ever see any loss of temper or impatience or interference with the preparation and trial of the case.

In 1943 I was employed to handle the case of John Miller Electric Co. of Detroit, Mich. It was a salary case and while it was not a large income tax case as such cases go, it is one of the largest salary cases on the records of the Board of Tax Appeals. Two years were involved and in one of the years the salary that I was attempting to show would be reasonable was $136,501, as I recall. I made a tremendous amount of preparation for that trial in advance and made every effort to settle the case with the Government lawyers before the case came to trial and when I went into the courtroom to try that case in May 1945, I felt that I was very well prepared to try that case.

I had heard statements, direct statements to me, by many counsel who had tried cases before Judge Harron that she was not temperamentally qualified to be a judge. I did not pay very much attention to those statements until the day I got in her court.

My case normally would have taken a day or a little more to try and it did take exactly a day to try. I was cautioned at the outset by the judge. I was lectured as to the amount of time that I should take and I was told to give a schedule in the case of each witness for the amount of time that I was going to consume with that particular witness.

I gave such a schedule, although in the trial of the case, it is an impossibility to tell exactly what is going to happen.

Normally a salary case is a fairly simple case to try, but in this particular instance the Government realized, apparently, that the strength of its case lay in my difficulties of proving my case. Not until about a day or two days before I had to try this case, did I realize what the Government was going to do in attempting to prevent me from proving my case. The Commissioner's position in the matter had been that because of the salary of this particular man, whose name was Charles D. Pierce, had averaged $60,000 for the 7-year period preceding the year 1941, which was the first year involved, therefore, the Commissioner would not approve a larger salary than that average, namely, $60,000. That statement had been included in the 30-day letter which contains a copy of the report of the revenue agent normally and it did in that case, but it did not appear in the

90 day letter which in effect is the first pleading in a case of that sort; that is, the position that the Commisisoner takes, it has to be attached under the Board rules to the petition.

When I realized that the Government was not going to admit the salary that Mr. Pierce had received and was going to make me prove those salaries when at the same time it had set out in the 30-day letter the fact that these salaries had been received averaging $60,000 over the preceding 7 years, I felt that I could get that into the record by way of an admission by the Commissioner because that statement was in the 30-day letter. I sought to amend my petition. I was in Detroit, while my offices are in Washington, the District of Columbia, and because of the technical attitude that was being taken by counsel for the Government, I realized that I could leave no stone unturned to prove my case.

I had my amended petition printed. The reason for that was I wanted to have that 30-day letter in the record and I wanted to have no possibility of objection to the effect that it was not a copy of the 30-day letter. I had the letter lithographed and attached to this printed petition because every line, every figure, and every tabulation on the printed forms, that were attached thereto, could be presented and there could be no objection whatsoever that this was not a copy.

The first thing that happened in the case was a criticism from Judge Harron to the effect that it was unusual that an amended petition should be printed, that they are never printed. Their rules, she said, permitted them to be typewritten. I did not go into any reasons for it. I did not think it was necessary to go into the reasons why I had printed that amended petition.

She asked me about that point if I had an amended petition to put in and I said I did have and she said, "What is the nature of your amended pleadings?" That is on page 13 of the record in the case.

Mr. WILKINS. Well, there are three things that I have done in this amended pleading.

The CHAIRMAN. What is the name of this case?

Mr. WILKINS. John Miller Electric Co. and the docket number is 4,253. It was tried in Detroit, Mich., on May 21, 1945. I will go back and read this whole exchange.

The COURT. That is very unusual. We never have prints of our proceedings. Under all circumstances, we indicate that pleadings may be typewritten. What is the nature of your amended pleadings?

Mr. WILKINS. Well, there are three things that I have done in this amended pleading.

The COURT. I don't want to hear about them.

It was a shock to me.

Colonel McGUIRE. Mr. Chairman, I suggest that he read the rest of the paragraph.

Mr. WILKINS. It continues as follows:

It will take too long. Haven't you a typewritten copy of your amended petition?

Mr. WILKINS. No; I haven't.

The COURT. This is the day you are supposed to present it. All right, what else have you to offer at this time? Have you any other papers?

Mr. WILKINS. I can have a copy of it before the day is over.

The COURT. Of course, I would like to know exactly what is being contended during the trial instead of at the end. That will be satisfactory. Now, can

you tell me by referring to your petition as it has been filed whether you add to or eliminate from your statement of action in this case?

Mr. WILKINS. I am eliminating the portion of the petition dealing with section 722, which was, in effect, stricken on motion to dismiss of the respondent. That eliminates the part of the facts commencing at the bottom of page 11 B.

The COURT. Is that what your amendment to your petition amounts to?

Mr. WILKINS. No; it is not all. Then I have added to exhibit A, a copy of the 30-day letter——

The COURT. Well, that can be just attached to the petition. That has to be offered.

Mr. WILKINS. It is referred to, Your Honor, in the 90-day letter——

The COURT. I am just advising you, and to save time I don't want to discuss it. Under the rules, we only attach the 90-day letter to the petition, and you have to offer during the course of your trial the 30-day letter. So I will ask you to offer that during the course of the trial.

Now, what else have you done in your petition?

Mr. WILKINS. I have corrected an inadvertent error in copying exhibit A of the original petition. Through inadvertence we state the Commissioner's action to have allowed a reasonable salary $60,000. We are changing from 60,000,000 to 60,000. That is the entire amended petition.

The COURT. Then I don't think I need your amended petition during the course of the trial. I am not going to step out during the recess. I will recess now to check on these subpenas.

Would you like me to go on further?

Colonel MCGUIRE. That is enough.

Mr. WILKINS. The first witness was an accountant and that testimony went on, as I recall, without any incident. The man whose salary was in question in the case was Mr. Charles D. Pierce. Mr. Pierce is the type of witness who is a difficult witness to bring out anything with. I had difficulty in his office in my attempt to rehearse what the testimony was going to be. I never used leading questions or anything of the kind. I attempted to approach the matter just as it was going to be in the court. I felt after my attempts with him in his office for several days that I would merely put him on the stand and ask him a few questions and also to testify the fact that the Government had subpenaed him, he would be there, and I was going to prove what he did and the details of what he did by a man by the name of Carl Binkle, who was one of the officers of the corporation. He was the accountant, one of these persons who was a hound for detail and could remember every dollar and every cent and every transaction over a period of years and Binkle was the man who could tell the size of the things that were done.

When Mr. Pierce got on the stand, I commenced to see that I was going to get more out of him than I had thought. I had prepared this case, prepared practically every question and answer. I had a trial brief and in a great many instances I had the questions and answers that I had expected him to get all written out because of the difficulties that I would have. I had some of the questions prepared for Mr. Binkle to answer.

Judge Harron interfered with the trial of the case, took the witness away from me, put matters in that I had expected to get in at different points. The entire order was rearranged so that I could not remember what had gone in and what had not gone in and when I got through with the trial I did not know whether I had proved my case or not. I thought I had, but I was not sure whether I had or not. I was terrifically disturbed. I was uncomfortable and humiliated by being told that I was not proceeding properly with the case.

The order that I had elected to follow in this case was this: Because Mr. Pierce's salary, the reasonableness of his salary, was in issue, I felt that we should show his entire experience and I thought that the best thing to do would be to start with 1908 when he began his career with this company.

I carried it all on through, the details, to show his familiarity with every detail of the business, which was the electrical contracting business, commencing back from the beginning, showing the complete familiarity with everything and then carrying it on up until the time just before he formed the corporation which was the petitioner in this case.

Judge Harron interrupted me and she thought that the best way to handle that would be to ask what Mr. Pierce was doing during the taxable years and then, say, ask him the question, "Was that exactly what you were doing before this corporation was formed?" and I did not think that that was the way to prove that case and I do not think so yet because it would not show completely the familiarity with all details of the business that Mr. Pierce had. I could build up his importance to the company by handling it the way I was going to do. She interrupted when Mr. Pierce would start to talk, she would break in the middle of it and change the subject and want to go on to something else. There are several places in here where this man, of very few words, started to talk and there are interruptions from Judge Harron that changed the order of things.

A number of things also that I never got into the record because of interruptions.

There is one incident that took place. There were continual lectures to me, irrespective of the fact that I had been trying cases before the Board and the court for 20 years, very active, continually. I was being lectured continually like a young school boy.

Judge Harron would take the witness over and at some places very successfully led the witness and then when I resumed questioning I would try to lead the witness then because apparently I was taking the hint that that was the way to get information from the witness, to lead him. Counsel from the Government properly objected and then the objection would be sustained.

Then the judge would take him over again with questions and answers, sometimes page after page, and finally the best evidence we got from him we got through her by leading. Of course, I had no objection to that. The manner in which it was done, her questions were in my prepared questions, and they were put in there in what I thought was the logical order to bring them out.

Here on the record, at page 78, line 15, is some of my questioning, as follows:

Question. Then you formed a corporation in 1940?
Answer. Correct.
Question. What is the name of that corporation?
Answer. John Miller Electric Co., Inc.
Question. Is that the petitioner in this case?
Answer. Yes.
Question. And when did that corporation start its activities?
Answer. In 1940.
Question. And when did it report its first income?
Answer. 1941.
Question. Now, will you explain to the court just exactly what it is that you do in order to be worth a substantial sum of money to the petitioner? Just explain how you get business and how you handle it?

Answer. Well, to begin with, I know the people that have the kind of business that we are trying to attain. I contact them. I help engineer and estimate the job, and then I sell the job, if possible.

The COURT (interrupting). Evidently I missed something there a minute ago about the organization of the corporation. There wasn't any written agreement with Mr. Miller, but Mr. Pierce organized the John Miller Electric Co., Inc., and you organized that under the laws of Michigan?

Now, I consider that a very improper interruption. It was vital and it was fundamental; a difficult witness, not a hostile witness, but a witness that was hard to bring things out from, had started to talk, and as soon as he had started to talk, she jumped in and prevented him. It changed the order of things and it confused me and it irritated me. I am not used to that sort of thing and I do not think that sort of thing ought to happen in the court room.

Now, I will continue on from there, as follows:

The WITNESS. That's right.
The COURT. In 1940?
The WITNESS. 1940.
The COURT. Is there any question about that?
Mr. WILKINS. No.
The COURT. How many shares of stock were issued?
The WITNESS. Can you tell, Mr. Wilkins?
Mr. WILKINS. Well, if you cannot remember, maybe I can refresh your recollection. Was it a thousand shares?
The WITNESS. I think so.

(By Mr. WILKINS:)

Question. How many of those shares did you take?
Answer. I think 20 of them.

May I interpose here to say that I think he said "20 percent." The record here says "20 of them" but I think he said "20 percent."

Question. Who took the other shares?
Answer. Mrs. Pierce took 20.
Question. That is your wife?
Answer. That is right, and four children, I think, got 18 or 19 shares.
Question. Is 15 the correct amount apiece?"
Answer. It could be.
Question. That would make a thousand shares, then?
Answer. Yes.
Question. And how were they paid for? Will you tell how that transaction was financed?
Answer. Well I borrowed the money.
Question. How much did you borrow?
Answer. $100,000.
Question. And then what did you do with that? Did you put the hundred thousand in the business, or did you—what did you do?
Answer. I put it in the business.
Question. Did you put it in directly or lend it to somebody else?
Answer. I divided it in the proportionate stock of the individuals, and they, in turn——
Question. You borrowed it from outside sources?
Answer. Correct.
Question. And then loaned $20,000 to your wife and $15,000 each to each of your four children?
Answer. That is right.

Now then, that ends on page 81. Would you like me to go on from there?

Colonel MCGUIRE. I would.

The CHAIRMAN. Do not go into the whole record.

Mr. WILKINS. I do not want to leave anything out and have an objection that I did not go into the whole matter and was not being frank.

At the bottom of page 99 there was another interruption, as follows:

The COURT. May I make a suggestion to you, Mr. Counselor? It is always better, where the question involves evidence relating to a business, to make part of your questions concerned just with the operation of the business. Now you are beginning to get at it by asking questions you have asked him but it would be much more logical if you got into the record in one place the question of what kind of business is conducted, where was your plant, what kind of plant did you have, how many employees did you have, what departments were there. And tie up this witness with the work of the company. Now from his testimony, so far, why it indicates that Mr. Pierce is the head of this business, and yet you won't bring that out by the kind of questions you are asking, about what would happen to the business if he died or he stepped out of it. That is such an indirect way to bring that out.

Supposing you depart from those planned questions of yours, and, if you have them, make a note that you are going to digress from your own schedule and ask this witness enough questions to tell us in a logical, rather detailed way, what this business was in 1941 and what he did in the business.

I want to say right here that I had exactly that in my prepared questions. If I had been permitted to go with the prepared questions it would have been brought out.

Mr. WILKINS. Well, Mr. Pierce——

The COURT. You can visualize that by putting yourself in the place of a person who has a right to findings of fact. We begin in this way: "The John Miller Electric Co. controlled interests in this corporation were, in 1941, 1,000 shares of outstanding stock. Stockholders in this, officers, were as follows: Its business was as follows:" I think you could cover that perhaps in about 10 minutes. But it is an important part of your case, and that is the way you ought to get it into your record.

Mr. WILKINS. I think we have that part——

The COURT. No; you haven't.

Mr. WILKINS. In the record.

The COURT. You haven't; I beg your pardon. That is why I am making this suggestion to you. You think you have got it, but you haven't got it, and I would have to ask those questions myself, but I think it would be better if you ask them instead of that I ask them.

I do not think there is any excuse for that kind of conduct on the part of a Tax Court judge. I am not going into the rest of the record. All that I know about Judge Harron is my own personal contact with her. I would not be here to testify today if it had not been for the many, many times I have been told by others the kind of conduct that she had. I realize that it is a pattern, that is to be expected, and I feel it is my duty to be here, and I come here voluntarily.

I sought the bar association to find out how I could get here to testify because I do feel that it is my duty to testify and to say, as I do, that I do not think Judge Harron is temperamentally qualified to be a judge of the Tax Court. It is the first time in my life I have ever criticized anybody in that way that would be calculated to hurt them in their means of livelihood, and I hate to do it in the worst kind of way but I feel that it is my duty to prevent that sort of conduct from being a daily occurrence and to have other lawyers, practicing before the Tax Court, to have to submit to the humiliation and interruptions of a case that I had to submit to in the trial of the John Miller Electric Co. case.

I will be glad to answer any questions that you might see fit to ask, Mr. Chairman.

The CHAIRMAN. Did you try other cases before Judge Harron?

Mr. WILKINS. That was the only case I ever had before Judge Harron.

The CHAIRMAN. I thought that perhaps you had appeared in other cases?

Mr. WILKINS. Not before Judge Harron.

The CHAIRMAN. Any questions, Senator Millikin?

Senator MILLIKIN. No.

The CHAIRMAN. Thank you, sir.

Colonel MCGUIRE. Mr. Wilkins, your petition in this case covered some 13 typewritten pages; did it not?

Mr. WILKINS. As I recall, yes. I have the amended petition, and it shows that the verification is on page 12, so I suppose the original would cover about 13 pages.

Colonel MCGUIRE. This is the original petition, I take it?

Mr. WILKINS. Yes; that is right. The verification is on page 13, and then, of course, there is an exhibited attached.

Colonel MCGUIRE. There is an exhibit attached?

Mr. WILKINS. Exhibit A is the deficiency notice that is mailed and forms the beginning of a proceeding in this kind of a petition.

Colonel MCGUIRE. Did you know before Judge Harron told you at the trial, or told the counsel at the trial, that she had a very heavy calendar there to be tried in a week, and that time was limited?

Mr. WILKINS. She certainly did tell me that, and she told me that I had a very difficult job to perform if I was going to call six or seven witnesses to get it in in one day, and I got it in in one day. I might add that that perhaps should have gone in, that Mr. Pierce—I proved by Mr. Pierce some of the things that I had intended to prove by Mr. Binkle. In the record there you will find a place where Judge Harron said: "Mr. Wilkins, it is now 12:25, and if you are not going to get through with this witness in the hour and a half," or whatever it was, and I said I was going to get through with him. She said, "We are going to be here tomorrow, we are not going to get through with this case today."

As a result of that, partly, my questions of Mr. Binkle, that might have been cumulative, were left out because I felt that I had proved everything by Mr. Pierce that I had expected to prove by Mr. Binkle. I called Mr. Binkle and only asked him several questions involving the amounts that were involved in some of the contracts.

I would like to go into another situation, if I might, that came up on that.

One of the important things that bore on Mr. Pierce's value to the corporation was his solicitation and handling of a contract. It was the Willow Run Building, the electrical installation in Willow Run. I tried to get Mr. Pierce to say something about Willow Run to identify it. He did not, but he did say that this satisfied me completely. He said that this contract was the largest contract of its kind ever in the history of the United States, perhaps in the world. I thought that that was very expressive, and I was glad to let the matter drop at that point.

Several pages later, while Judge Harron was questioning him—he had been calling it the Ford bomber, that was his way of describing it, and she did not know what he meant by it, and I do not blame her

for that—but when she asked him where it was he said "Ypsilanti," and she said, "You mean over at Willow Run." He said "Yes."

Then she said, "Mr. Wilkins, that is the kind of thing you ought to be bringing out."

Colonel McGUIRE. Mr. Wilkins, you appeared there for the trial and did not have the amended petition?

Mr. WILKINS. That is right. I have already explained in the record why I had it printed and why it did not come. It was not until 2 days before that I knew that I was going to adopt that procedure for the purpose of getting that agent's report.

Colonel McGUIRE. That had the effect of delaying the case some?

Mr. WILKINS. Delaying it?

Colonel McGUIRE. Had you had your amended petition then, there would not have been any colloquy about the amended petition?

Mr. WILKINS. If she had let me explain it, I could have explained it in 10 or 15 seconds. It did not take me very long to say I had corrected the amended petition and that petition was corrected in three respects. She said "I don't want to hear about them." I said I had made a typographical change, eliminating section 722——

Colonel McGUIRE. She let you explain that in the record. She called on you for an express explanation as to wherein your amended petition changed the original petition?

Mr. WILKINS. She broke in and said "I don't want to hear about them."

Colonel McGUIRE. But she let you explain?

Mr. WILKINS. She finally did. But she certainly wasted a lot of her time and my time, too, in not letting me finish what I was saying.

Colonel McGUIRE. You said in your direct that Judge Harron constantly lectured you. I should like for you to point out a few instances for the benefit of the committee where she did lecture you.

Mr. WILKINS. I have tried to catalog these things and I find in the cataloging that I have here page numbers that go part of the way through the record and some of these things are called "suggestions and lectures."

Colonel McGUIRE. In order to save time, Mr. Chairman, I know the committee is under terriffic pressure, may this witness point out these items in a note to me and furnish you with a copy of it for the record as part of the cross-examination?

The CHAIRMAN. Yes.

Mr. WILKINS. Here is one here, since you have asked the question——

Colonel McGUIRE. You said she was continually doing it.

The CHAIRMAN. You may do that.

Colonel McGUIRE. I think it would be better if you point out to me in a note and furnish the chairman with a copy for this record.

The CHAIRMAN. Yes.

Mr. Wilkins, suppose you run through it at your leisure, and point out in the record the pages.

Mr. WILKINS. All right, Mr. Chairman?

The CHAIRMAN. And furnish one copy to the counsel and one to the committee.

(The following was later received for the record:)

WASHINGTON, D. C., *June 7, 1949.*

In re hearings on matter of confirmation of appointment of Marion J. Harron as Judge on the Tax Court of the United States.

UNITED STATES SENATE COMMITTEE ON FINANCE,
Washington, D. C.

GENTLEMEN: In the course of Colonel McGuire's cross-examination of me following my testimony opposing the confirmation of Judge Harron, it was suggested (transcript, pp. 593–594) that I file a memorandum pointing out a few instances in which the judge had lectured and humiliated me. I had testified on direct, page 583, that "I was being lectured continually, like a young schoolboy," and page 594, that she had humiliated me at every turn in the trial of the case of John Miller Electric Co.

I used the word "continually" in the strict dictionary sense, meaning "* * * very frequent; often repeated; as continual interruptions; also occurring at intervals * * *." See definition 2 of the word "continual," Webster's New International Dictionary.

The judge's interruptions, taking over the examination of the witnesses, contradicting me, making brief suggestions, and lecturing me, all in a belittling manner and tone of contemptuous disapproval, were frequent. The continuity of her remarks, resulting in a continual lecture on how to try a case, and the cumulative effect of her remarks, were both distracting and confusing to me, providing a dangerous hazard to overcome in sustaining my burden of proof. To show the continuity of her interruptions it will be necessary for me to outline briefly each one of the four forms the interruptions assumed.

I will not copy here all the examinations of witnesses by Judge Harron, but will merely give the page and line references to indicate their frequency. One specific result of the general confusion of the proceeding was my failure to be able clearly to explain to Judge Harron my reasons for offering petitioner's exhibit No. 1, the revenue agent's report, in which the Commissioner had admitted what I was trying to prove, namely, that Mr. Pierce's salary for services rendered to the John Miller Electric Co. had averaged $60,000 a year for the 7 years preceding the year 1941. This exhibit was offered in evidence by me at page 17, lines 4 and 5, of the transcript. On page 189 of the transcript, lines 11, 12, and 13, petitioner's exhibit No. 1, it was brought up again. Judge Harron's final "ruling" on this exhibit took the form of her holding the exhibit in her hands and dropping it to her desk without comment.

By that time I had proved all that I wanted to prove in this important regard by direct testimony and documentary evidence. This proof, however, had consumed at least 2 hours or more of trial time. I feel confident that, if it had not been for Judge Harron's interference in this respect, I would have been able to have introduced petitioner's exhibit No. 1, the revenue agent's report, and with this leverage I could then have secured a stipulation from Government counsel that Mr. Pierce's salary for 7 years had, in fact, averaged $60,000 a year. This would have saved at least 2 hours or more of trial time. That Judge Harron understood the time-saving possibilities inherent in this situation is indicated by her comment (also quoted below) from page 13 of the Miller transcript, as follows: "Counsel for respondent has not stipulated as many facts as you would like, and that means that much more has to be covered by testimony and by documents. You have probably a great deal to do in 1 day."

Government's counsel was taking advantage of the complications which made actual proof of these facts very difficult.

In 1935 Mr. Pierce had incorporated his personal affairs. During 1935 and 1936 the John Miller Electric Co. had paid Mr. Pierce's compensation, not to Mr. Pierce, but to the Pierce Corp. The Commissioner, by his previous rulings, had ignored such corporation and had taxed the compensation to Mr. Pierce as his compensation. At the trial the Government suddenly reversed its position and claimed that Mr. Pierce had not received these substantial sums directly. Therefore, I had to prove, the hard way, the fact that he had, in effect, received such sums, and that they constituted his compensation for his services. The court's lecture on this point and the resulting colloquy with me will be found at pages 18 and 19 of the John Miller Electric Co. case transcript. It reads as follows:

"The COURT. Mr. Wilkins, this is all that you have on this issue? Under the statute attached there is allowed a deduction for an amount which represents

a reasonable compensation for salary and services rendered. Now, is your contention that $136,504 was a reasonable compensation for Mr. Pierce during the year 1941? Now, the burden of proof on you is to prove that. Now, this tribunal requires that you present your case de novo. We are not interested in the conferences prior to the issuance of the final determination, and they are not material. You come before this court to prove your case. Now, you are not here to prove that the Commissioner used the wrong reasoning or anything of that kind. He made his determination under the statute. His determination can only mean that he determined that $60,000 was a reasonable salary for the services rendered.

"Mr. WILKINS. And he said that careful consideration was given to this report. He referred to——

"The COURT. Now, I cannot take the time to argue these matters with you, if we are going to get through today. You will have to rely upon my fairness and experience in the matter. I am telling you what the proof is and also that we don't go back to the year 1930 except in very few instances."

Now, let us get finished with this witness. What do you want to ask this witness?

"Mr. WILKINS. All I want him to do is identify this document to put it in the record.

"The COURT. Well, it is not necessary, if Mr. Callahan admits it. You will have no questions of the witness?

"Mr. WILKINS. No.

"The COURT. You are excused. Step down.

"(Witness excused.)

"The COURT. Will you have that marked for identification?

"(The document referred to was marked for identification as 'Petitioner's Exhibit No. 1.')

"The COURT. What do you want to prove by offering that exhibit, and how many pages are there to that exhibit?

"Mr. WILKINS. All together there are 15 pages.

"The COURT. What are you particularly interested in?

"Mr. WILKINS. I am particularly interested in page No. 6—the page No. 1 and the page No. 6.

"The COURT. Those are really the pages you want to offer in evidence?

"Mr. WILKINS. Those are really the pages I want to offer, but I do not want to separate them from the rest.

"The COURT. Is there anything special on page 1?

"Mr. WILKINS. On page 1 there is this statement——

"The COURT. That is the 90-day letter?

"Mr. WILKINS. No; it is all the 30-day letter. It is page 1 of the statement attached, Mr. Ashcraft's report that is attached to the 30-day letter, and page 6 of Mr. Ashcraft's report.

"The COURT. What is your purpose in wanting to call our attention to page 1 and page 6? Again, please, don't read into the record. Just tell me briefly.

"Mr. WILKINS. Briefly, it says that the amount of $136,000 represents an average of $60,000 that was paid to Mr. Pierce in the past 7 years by Mr. Miller.

"The COURT. Is that a fact, or isn't it? I understand that $136,000 is 45 percent of some earnings for the taxable year?

"Mr. WILKINS. That is right.

"The COURT. That is all you have to prove. You don't have to prove a negative. You don't have to prove that the method used by the respondent is wrong.

"Now, what else do you want to call our attention to?

"Mr. WLIKINS. That is besides what I want to prove to show——

"The COURT. You cannot add to the issue as framed. Your burden of proof is to establish that $136,000 is a reasonable and fair compensation for services actually rendered to the petitioner corporation. That is the rule in these cases. It is established by hundreds of decisions and it also is clearly indicated by the statute under which your suit is being brought.

"Now, as I said before, and I don't want to repeat it, we are not interested in your proving that the Commissioner used some—what you think is—an incompetent reason in arriving at a decision.

"Mr. WILKINS. There is a statement also that the money was received by John Miller, an individual——

"The COURT. If that is all you want to offer that for, I will ask you to withhold your offer and go ahead with your case, because you have got to prove your case, and simply by overcoming——

"Mr. WILKINS. I would like you to understand—it will just take a moment—the Tax Court says we don't know where the Commissioner did so and so, but he did, and they go on from there. Apparently they would like to have it elucidated——

"The COURT. Perhaps later on there will be a good reason for your offering it, but I don't want to receive it now, and I will ask you to withhold the offer. It is not an important piece of evidence, anyway.

"Will you call the first witness?"

At page 10 of the Miller transcript, I asked Commissioner's counsel to stipulate that, for the purpose of this case, we might ignore the Pierce Corp. and assume that all moneys paid to the Pierce Corp. were paid directly to Mr. Pierce, as an individual, but the Commissioner's counsel refused. Eventually, the court ruled that the Pierce Co. would be ignored for such purposes, and "that, in fact, Mr. Pierce was receiving the 45 percent of the earnings as compensation for his services." (Miller transcript, p. 75.) Notwithstanding this ruling, my failure to introduce in evidence petitioner's exhibit No. 1, the agent's report, still made it imperative that I trace to Mr. Pierce, and identify the sums paid by the Miller Co. to the Pierce Co. While Commissioner's Counsel had admitted that the above-mentioned letter was a copy, Judge Harron had taken the position that I had to put the 30-day letter in evidence. (Miller transcript p. 15, lines 4–9.) It reads as follows:

"The COURT. I am just advising you, and to save time I don't want to discuss it. Under the rules, we only attach the 90-day letter to the petition, and you have to offer during the course of your trial the 30-day letter. So I will ask you to offer that during the course of the trial."

Of course, I was trying to prove that the method used by the respondent in determining a reasonable compensation for 1941 and 1942 was wrong, but first I had to prove the facts which the Commissioner had accepted as true, and which formed the basis for his ruling. Those facts were included in the 30-day letter which I tried to, but was unable to introduce or explain. Those facts were not outlined in the deficiency notice, namely, that the $60,000 average salary, upon which the Commissioner based his deficiency, and which the Commissioner's counsel was now denying in the proceeding, had, in fact, been received by him from the Miller Co. However, notwithstanding the rule which Judge Harron invoked and in which she said it "is established by hundreds of decisions and it also is clearly indicated by the statute under which your suit is being brought," the Supreme Court of the United States, in *Helvering* v. *Taylor*, (293 U. S. 507, 515) makes it clear that, in Tax Court proceedings, it is material to show the arbitrary method by which the Commissioner reached his conclusion in a Board of Tax Appeals (now the Tax Court) case. Judge Harron's ruling in this regard was to the effect that the basis or reasoning underlying the Commissioner's determination of a deficiency is immaterial. (Miller transcript, p. 21, lines 7–25.) It reads as follows:

"Mr. WILKINS. That is besides what I want to prove to show," et cetera, as previously quoted in this memorandum, pages 3 and 4.

Certainly the facts on which he based his conclusion are material, and if his reasons are arbitrary, that is material also. Her final interruption, in this regard, which cut me off, finally, in my attempted explanation, is quoted previously from page 22 of the Miller transcript. (Top of page 4 hereof.)

On page 6 of the Miller transcript, in the course of my opening statement, having already explained that Mr. Pierce's salary was 45 percent of the profits of the Miller Co. (Miller transcript, p. 2, lines 16 and 17), I stated (p. 6, lines 7–10) that "there were several years where it (the salary) was over $100,000, and then other years, because of the contingent nature of the contract of agreement, an average was created by the experience that amounted to $60,000." Here Judge Harron interrupted my statement to say, "You don't mean the word 'contingent?' You mean because the rate of salary was fixed upon a percentage of the net earnings the salary fluctuated"?

The court interrupted me again on page 11, while I was attempting to satisfy her efforts "to check into the subpenas." I had described my two subpenas, and said, "My purpose in that is to show * * *." Here she interrupted me abruptly, as follows: "I don't want to know your purpose now. I don't want to take too much time on this, if you don't mind." At page 12 of the Miller transcript, the court made the following statement (from line 6, p. 12, to line 14, p. 13):

"The COURT. I just want to cover the procedural things before we call the witnesses. I want to call to the attention of both counsel that I have allowed

today for the trial of this case. I have a very heavy calendar this week and I need to be back in Washington next week. I doubt if my calendar will be finished this week. I am going to ask both counsel to do their best to finish the trial of this case today. Unfortunately, the clock in this room is in the back of the room and I can see it and counsel, who need to see it, do not have a clock to look at. There isn't any back of me, and so I am going to ask counsel to have their watches out and put them on the desk and I will ask you to consider it as part of your job to use your time as efficiently as possible. There is a great shortage of reporters in this city, and the reporter may engage to do work in the evening and sometimes at lunch. I cannot expect the reporter to stay any longer than 5 or 5:30. We will recess at 12:30 for lunch and come back at 2. But if you are going to run short of time, we will go until 1 and then recess until 2 and really try to finish this today by going until 5:30, if necessary, and if the reporter can stay. In view of that, I am going to caution you, Mr. Wilkins, not to make any extended remarks other than is absolutely necessary, because everything that you want to say as counsel in the case you may say and should properly say in your brief. I think I understand what the issue is. Counsel for respondent has not stipulated as many facts as you would like, and that means that much more has to be covered by testimony and by documents. You have probably a great deal to do in 1 day. I think it is exceedingly difficult to hear seven witnesses in 1 day, so you have a difficult job to do. But that is the situation. I have allowed 1 day for the trial of this case, and I am going to ask you to please do your best to finish it in 1 day."

At this point I believe it material to state that I completed the evidence in the case before 5 o'clock that day, and that the hearing was actually concluded a minute or so before 5 o'clock.

Reverting to Judge Harron's interruption copied at the bottom of page 579 of the record in this committee proceeding, I would like to point out the inaccuracy of judge's instruction, or lecture, to the effect that "Under the rules we only attach the 90-day letter to the petition, and you have to offer it during the course of the trial." Rule 6 (1) of the Rules for Practice Before the Tax Court of the United States contains the following specific instruction. "* * * If the notice of deficiency refers to prior notices from the Bureau, which are necessary to elucidate the determination, such parts thereof as are material to the issues set out in the assignments of error shall likewise be appended."

The notice of deficiency in this proceeding referred to in the 30-day letter and the Commissioner's determination that $60,000 a year was a reasonable salary was specifically based upon the statement to the effect that Mr. Pierce had received a salary from the Miller Co. which had averaged $60,000 a year for 7 years prior to 1941. This statement was contained only in the 30-day letter, and not in the deficiency notice. My position was that that statement was material to and necessary to elucidate the Commissioner's determination, but Judge Harron ruled contrary to the rules of the Tax Court, that "we only attach the 90-day letter to petitions." The above-quoted rule was part of the rules of the Tax Court when this case was tried; it had been a part of such rules for several years prior thereto, and still is a part of such rules. During that proceeding I read the above-quoted rule to Judge Harron (at p. 17, Miller transcript), and attempted to explain my purpose regarding my attempted offer. A fair understanding of what was taking place is impossible without a reasonable explanation of the facts and what was transpiring.

One of the quotations from the 30-day letter was as follows:

"EXPLANATION OF ITEMS

"(a) *Compensation of officers.*—$76,504.58.

"It is held that reasonable salary to Charles D. Pierce for 1941 is $60,000. Amount claimed was $136,504.58. Salary of $136,504.58 was determined by taking 45 percent of net profit before taxes. It is held that a percentage of profits is not a true measure of the value of services rendered. The amount of $60,000 is approximately equal to the average annual sum for the previous 7 years received from John Miller, an individual, doing business as the John Miller Electric Co."

The other quotation was identical, but relating to 1942, instead of 1941.

The deficiency notice had substituted the following explanation for the explanation quoted above from the 30-day letter:

"In making this determination of your income, declared value excess-profits and excess-profits tax liability, careful consideration has been given to the re-

port of examination dated August 3, 1943; to your protest dated October 3 1943; and to the statements made at conferences held on October 27 and 28, 1943.

* * * * * * *

"EXPLANATION OF ADJUSTMENTS

"(a) You claimed a deduction of $136,504.58 for salary paid to Charles D. Pierce, president. It is held a reasonable salary allowance for services rendered to your corporation by Mr. Pierce for the year 1941 is $60,000. Accordingly the difference of $76,504.58 has been disallowed as a deduction. Section 23 (a) (1) (A) of the Internal Revenue Code."

An identical "explanation" as to 1942 was also included in the deficiency notice.

The letter of August 3, 1943, was the 30-day letter which contained the explanation quoted above, and which I wanted to introduce in evidence.

If I could have succeeded in introducing the 30-day letter in evidence, it was my intention to argue by brief that; as the Commissioner had specifically referred in his deficiency notice to the 30-day letter; as he had said in the deficiency notice that "careful consideration had been given to" the 30-day letter; as he had adopted the identical salary which had been recommended in the 30-day letter, and, as he had given no different reason in the deficiency notice for approving that identical salary, it had to be presumed that he was adopting those reasons as his, and that he was admitting as true the stated facts upon which that reasoning and recommendation were based.

I was trying to make a factual record that would preserve that point of law on appeal, if necessary. Judge Harron succeeded in keeping out of the record the facts upon which I could argue that point of law. If I had been unable to get the facts in otherwise, I was going to insist on my offer, or make offer of proof.

The Commissioner's counsel objected to my offer on the ground that the Commissioner had not specifically adopted the reasoning contained in the 30-day letter. Judge Harron cut me off and prevented me from completing any clear explanation of my point. (See quotations from Miller transcript, commencing at the middle of p. 2 of this memorandum and ending at the middle of p. 4 hereof.)

If petitioner's exhibit No. 1, which includes the revenue agent's report admitting this average salary, had been accepted in evidence, I am satisfied Commissioner's counsel would have been practically forced to have stipulated these facts: Namely, that Mr. Pierce received as compensation for services rendered by him to the John Miller Electric Co. amounts averaging $60,000 a year for the 7 years preceding the year 1941. Commissioner's counsel had been trying to prevent me from proving that these amounts had been received and also that these amounts, which had been so received, actually represented compensation to Mr. Pierce for services rendered by him to the Miller Co. during these years, and all this, notwithstanding the fact that Mr. Pierce had personally paid the income tax on these amounts in those years, and notwithstanding the fact that the Commissioner and Mr. Pierce previously had agreed that these amounts had been paid to Mr. Pierce by the Miller Co. as compensation for his services, ignoring the existence of the Pierce Co.

Judge Harron interrupted my examination of Mr. Pierce frequently and frequently took over this witness for considerable examination, and on pages 71 and 72 of the Miller transcript, she made the following statement:

"The COURT. Well, I am not interested in hearing all the details now. The shortest way would be for you to offer the individual returns for those years, offer the returns of the Pierce Co. for those years, and let them speak for themselves. You said you were going to be able to finish with this witness in an hour and a half, and it is 5 minutes of 12 and your direct examination has to be finished at 12:25. I want to make whatever suggestions I can to you to save time, but you haven't asked this witness anything yet about what he did which would be a measure of the reasonableness of the compensation paid him, in the taxable years before us. In other words, we haven't got to the heart of the tax payment case——

"Mr. WILKINS. I can see, Your Honor——

"The COURT. I cannot see anything except you are going to have a hard time finishing your direct examination by 12:25. I could read these things. Won't you save time if you just offer them and let them speak for themselves?"

In Judge Harron's ruling in open court on the matter of ignoring the Pierce Co. (p. 76 of the Miller transcript), she said, "It is immaterial whether they were

made to the Pierce Co. or directly to Mr. Pierce, because for tax purposes, even though they were paid to the Pierce Co., they were, in fact, payments to Pierce for his services."

In my opinion, with the exception of the testimony of Mr. Pierce from page 46 to page 50 of the Miller transcript, practically all of the testimony and discussion in the record, commencing at page 16 through page 70 of the Miller transcript, might have been dispensed with, if petitioner's exhibit No. 1, which was offered at page 17 of the Miller transcript, had been accepted in evidence as proof of the facts upon which the Commissioner had based his position in his notice to which the petition was addressed.

Commissioner's counsel was insisting at the trial that Miller and Pierce had been partners and that any money received by Pierce represented a division of profits between partners. This was contrary to the quotation from the 30-day letter which I was trying unsuccessfully to introduce. Also, it was contrary to the Commissioner's final determination for 1935 and 1936 and contrary to the agreement between the Commissioner and Mr. Pierce, under which Mr. Pierce paid the tax as an individual on the compensation paid by Miller to the Pierce Corp., which corporation the Commissioner had ignored in closing 1935 and 1936.

As part of my efforts to prove the compensation which Miller had paid to Pierce, at page 87 of the Miller transcript I had offered petitioner's exhibit No. 2, which was a long exhibit, showing the "sales," "cost of sales," "gross profit on sales," "other income," "gross income," "general overhead," the Miller Co.'s profit before Mr. Pierce's salary and the amount of Mr. Pierce's salary. These latter two items I had been obliged to caption something and in an effort to satisfy the Commissioner's objections, I had captioned them "Basic factor (Miller-Pierce contract)" and "Credited to Pierce per contract." These captions were designed merely to identify the sums in the tabulation without characterizing them either as salary or profits. The tabulation covered 1929 through 1941.

At this point, the following took place:

"The COURT. Objection sustained. You are getting to your year now. How about exhibit 2? Exhibit 3 was received in evidence; that is the short paper. I asked you to hold up the offer of the long sheet until it has been cleared up.

"Mr. WILKINS. I would like to offer it at this time, Your Honor.

"The COURT. All right. Exhibit 2 will be received in evidence, with this qualification, that if there is any issue in this case about how the business was being carried on under the name of John Miller Electric Co. prior to 1940, the caption on that exhibit is not to be considered as proof of that question. With that understanding, that is received as exhibit 2.

"(Document marked 'Petitioner's exhibit 2' for identification was received in evidence.)

"Mr. WILKINS. I tried to make it mutual, your Honor. I didn't want to characterize it.

"Mr. CALLAHAN. Is it also understood that captions which respondent has gone into on cross-examination——

"The COURT. With respect to captions, I want to rule now that the petitioner must prove—the captions on exhibit 2 are not going to be regarded as controlling. The exhibit is admitted for the figures. There is no question about some of the captions?

"Mr. WILKINS. They are only for identification.

"The COURT. Well, that could cover a great deal of sin. There is some question about the accuracy of some of the captions. So far as the accuracy of some of the captions is material to the issue to be proved in the case, then you have to make very clear later what those figures mean where the captions are in question. In other words, I am accepting that exhibit subject to respondent's objection and recognize his objections as good objections, but I want to put the exhibit in for a limited purpose, anyway."

Inasmuch as figures mean little without captions, I could not be certain just what I had proved. If petitioner's exhibit No. 1 had been accepted in evidence, it would have helped to clarify the meaning of these tabulations and might have shortened the proceeding at this point.

At pages 99 to 102 of the Miller transcript, the following appears:

"Q. Now you speak of the organization. Who got that organization together?—A. I did.

"The COURT. May I make a suggestion to you, Mr. Counselor. It is always better, where the question involves evidence relating to a business, to make part of your questions concerned just with the operation of the business. Now you are beginning to get at it by asking questions you have asked him. But it would

be much more logical if you got into the record in one place the question of what kind of business is conducted, where was your plant, what kind of plant did you have, how many employees did you have, what departments were there. And tie up this witness with the work of the company. Now from his testimony, so far, why it indicates that Mr. Pierce is the head of this business, and yet you won't bring that out by the kind of questions you are asking, about what would happen to the business if he died or he stepped out of it. That is such an indirect way to bring that out.

"Supposing you depart from those planned questions of yours, and if you have them, make a note that you are going to digress from your own schedule and ask this witness enough questions to tell us in a logical, rather detailed way what this business was in 1941 and what he did in the business.

"Mr. WILKINS. Well, Mr. Pierce——

"The COURT. You can visualize that by putting yourself in the place of a person who has a right to findings of fact. We begin in this way: The John Miller Electric Co. controlled interests in this corporation were in 1941, 1,000 shares of outstanding stock. Stockholders in this, officers were as follows: Its business was as follows:

"I think you could cover that perhaps in about 10 minutes. But it is an important part of your case, and that is the way you ought to get it into your record.

"Mr. WILKINS. I think we have that part——

"The COURT. No, you haven't.

"Mr. WILKINS. In the record.

"The COURT. You haven't, I beg your pardon. That is why I am making this suggestion to you. You think you have got it, but you haven't got it, and I would have to ask those questions myself, but I think it would be better if you ask them instead of if I ask them.

"(By Mr. WILKINS:)

"Q. Well, then was the——

"The COURT. Oh, you have got those questions. I mean just, now you know what I said a few minutes ago.

"Mr. WILKINS. I am sorry, I don't. I though the last suggestions were in the record, the last few, Your Honor.

"The COURT. Do you understand what I just said to you a few minutes ago?

"Mr. WILKINS. I understand what you said, Your Honor.

"The COURT. What did I ask you to do?

"Mr. WILKINS. You asked me to bring out in the record the details in effect of the business, what was done, where.

"The COURT. That is right. You haven't brought those out yet.

"(By Mr. WILKINS:)

"Q. Now, where was your plant located, Mr. Pierce?—A. We don't have a plant."

The absurdity of this interference with my conduct of the trial becomes all the more pronounced upon a review of the record which reflects my previous efforts to bring out the details of the business, what was done, and where, which had been thwarted by Judge Harron.

I had commenced my direct examination of Mr. Pierce at page 46 of the Miller transcript. I was examining him, as follows, when Judge Harron interrupted the examination at my second question:

"Q. And what was the nature of that business?—A. We do electrical construction work.

"The COURT. When was it incorporated?"

This interruption got me away from the nature of electrical construction work. One page 51 of the Miller transcript I returned to pursue the nature of electrical contracting, as follows:

"Q. What is the character of the business of an electrical contractor? What do they do?—A. Well, do all the electrical work in either underground, overhead, or in buildings.

"Q. They do not install elevators or anything like that, do they?—A. No.

"Q. Dynamos?—A. Install dynamos, feeders to elevators, and we had a great many subcontracts from the elevator companies to do their work.

"Q. Lighting equipment?—A. Lighting equipment.

"Q. Power equipment?—A. Right.

"Q. In automobile plants?—A. No.

"The COURT. You are talking about the work that the taxpayer——

"Mr. WILKINS. I am building up to that in order to show his experience."

At page 97 of the Miller transcript, Mr. Pierce was testifying as to the substantial nature of the taxpayer's business in 1941 and 1942. He mentioned what he called "the Ford bomber—that started out as a six and a half million dollar contract" that he acquired. The transcript on that page reads as follows:

"Q. And why did the—how was it that you were able to get a contract of that kind? A. Well, we had been doing a good many millions of dollars' worth of work for Albert Kahn, Inc. They were the architects and the engineers, and they recommended three large firms that were capable of handling a project of that magnitude.

"The COURT. Will you spell Albert what?

"The WITNESS. Kahn, K-a-h-n. So I immediately went out and tried to sell our company. It was the largest electrical job that has ever been in the history of the United States whatever. That means the world as far as that goes. So I was very eager and anxious to acquire that size contract."

Again, at page 103 of the Miller transcript, I tried to get Mr. Pierce to explain just exactly how he was able to get electrical contracting business of such a substantial nature. Here, for the second time, Judge Harron interrupted my efforts in this regard:

"The COURT. You might tell us what electrical engineering is in this instance."

In this regard I think it material to point out that Judge Harron had frustrated my efforts to get what she was now asking for, once on page 46 and again on page 51.

Under my examination at page 51 of the transcript, Mr. Pierce had already testified of what the electrical contracting business consisted, with respect to the predecessor of the petitioner. At page 86 of the transcript he testified that he had been doing exactly the same work and business with Miller, the individual, as he was with John Miller Electric Co., the petitioner. (See bottom of p. 18 of this memorandum.)

Judge Harron's tone was invariably impatient, and I construed her interruptions at pages 46 and 51 as an indication of her impatience with me in going into the details of the electrical contracting business. However, if she had been paying attention to the witness' testimony on page 51 in this regard, she would not have asked the questions which she did on pages 103, 104, and 105. From page 103 on through page 112 she took over the examination of this witness almost exclusively.

By way of comparison with Judge Harron's refusal to accept in evidence petitioner's exhibit No. 1, the 30-day letter, the following quotation from the Miller transcript, commencing at page 132, is significant:

"Mr. CALLAHAN. I might explain, if Your Honor desires, why I am putting that, further, why I am putting that return in evidence.

"The COURT. Well, I think you should explain it for counsel for the petitioner.

"Mr. CALLAHAN. When the Pierce Corp. made a contract with the John Miller Electric Co., they filed returns showing that the income was received by the Pierce Co. for part of the year 1935 and all of the year 1936, and in connection with the filing of the returns for those years, petitioner caused to be filed a brief with the respondent, in which they claim that the contract between the John Miller Electric Co. and the Pierce Co. was a partnership or a joint venture.

"I want to put into evidence the brief which the petitioner caused to be filed and which within itself was holding out that it was a partnership or joint venture, which is in substantiation of the position taken by the respondent in this case and contradicts in my opinion.

"Mr. WILKINS. Well, did the commissioner adhere to that position that was contended for?

"Mr. CALLAHAN. Yes, it did. It held that Mr. Pierce and Mr. Miller were partners.

"Mr. WILKINS. I would like to see it. I object to its admission at this time. I think that this case should stand on its bottom and its own evidence. A question of whether or not a partnership existed is one between Mr. Pierce and Mr. Miller.

"The COURT. Well, Mr. Callahan is explaining that exhibit B is offered to lay a foundation for another exhibit.

"Mr. CALLAHAN. That's right.

"The COURT. He hasn't offered another exhibit yet.

"Mr. WILKINS. I would like to see and have an opportunity to study the exhibits.

"The COURT. I expect you will have.

"(By Mr. CALLAHAN:)

"Q. Mr. Pierce, did you employ Max F. Finkelson, 428 Buhl Building, Detroit, Mich., to represent you before the Commissioner of Internal Revenue regarding your tax liability for the years 1935 and 1936? A. I believe I did.

"Q. And did you cause him to file a protest with the Commissioner of Internal Revenue and is that a copy of the protest? A. I don't know. I wouldn't tell you because I don't ever recall seeing this. It is possible.

"Mr. WILKINS. Well, I object, Your Honor.

"The WITNESS. If I signed this?

"(By Mr. CALLAHAN:)

"Q. The last page . A. Where is my signature?

"Q. Has your signature. A. I don't recall it if it has my signature on it.

"Mr. WILKINS. I don't see the signature. It is typewritten.

"(By Mr. CALLAHAN:)

"Q. You did cause such a protest to be filed, did you not? A. I can't recall that. I am not positive.

"Q. But you say you didn't? A. No I wouldn't say 'No'.

"Q. And Max F. Finkelson . A. I remember he was a consultant. We had an attorney.

"Mr. CALLAHAN. Yes. I will offer the document, Your Honor, as a part of the files of the Treasury Department, showing that a protest in the manner described was filed with the Commissioner of Internal Revenue.

"Mr. WILKINS. I object, Your Honor, on the ground that matter of this sort should be included in respondent's brief and not by way of evidence.

"The COURT. Objection overruled. It is received as exhibit C.

"(The document referred to was marked and received in evidence as 'Respondent's Exhibit C.')"

The "brief" sought to be introduced by the Government was an unsigned typewritten carbon copy of a paper bearing the typewritten name of Max F. Finkelson. It purported to support Mr. Pierce's former unsuccessful efforts to have the Commissioner recognize the existence of and the validity of the Pierce Co. The Commissioner had finally decided to disregard the Pierce Co. and had finally taxed the income of that corporation to Mr. Pierce as an individual under a final agreement with Mr. Pierce for the years 1935 and 1936. This Pierce Co. is the same corporation which Judge Harron had already ruled, at pages 75 through 77 of the Miller transcript, was to be ignored for the purposes of the proceeding then before her.

Certainly, if an unsigned typewritten copy of a paper covering a rejected and abandoned position in a closed matter is admissible, the revenue agent's report and 30-day letter outlining the factual basis and the accepted recommendation for the determination in the particular issue before the Tax Court should have been accepted as an admission of the facts determined and the reasons for the accepted recommendation, so as to shorten the proceeding and otherwise to do justice in the matter.

During my direct examination of the witness, Henry F. Fischbach (an electrical contractor in competition with the petitioner), as to how other concerns in the industry compensated employees performing services comparable to Mr. Pierce's services, the following took place:

"Q. It was changed before 1941?—A. Yes; it was changed to a higher salary and less percentage.

"Q. M-hm. So what does he get——

"The COURT. Why don't you let him testify directly to it? It is confusing to have you summarize his testimony. He is clearer than you are in his testimony.

"(By Mr. WILKINS)

"Q. What does his compensation amount to from year to year?—A. Well, it runs from $30,000 up. Now this year, 1945, he probably would earn about 70—between 70 and 80 thousand dollars.

"Q. Does he get more under——

"The COURT. You keep hammering away at this. How is Mr. Moore paid, Mr. Fischbach?

The WITNESS. He gets $300 a week, $100 for his unaccountable expenses and then all his expenses. He is furnished a car and a chauffeur, and he gets 10

percent on all of the profits of any contracts he brings in, and if they happen to be fee contracts, then he gets 10 percent of the fee, not the profit on a job, but the original fee.

"The COURT. And Mr. Moore is working on a percentage?

"The WITNESS. And salary.

"The COURT. What?

"The WITNESS. And salary."

(See transcript, pp. 102 (A) to 104.)

AMENDED-PETITION EPISODE

At pages 12 and 13 of the Miller transcript, starting at line 6, on page 12, and ending at line 14, on page 15, the following appears:

"The COURT. I just want to cover the procedural things before we call the witnesses. I want to call to the attention of both counsel that I have allowed today for the trial of this case. I have a very heavy calendar this week and I need to be back in Washington next week. I doubt if my calendar will be finished this week. I am going to ask both counsel to do their best to finish the trial of this case today. Unfortunately, the clock in this room is in the back of the room and I can see it and counsel, who need to see it, do not have a clock to look at. There isn't any back of me, and so I am going to ask counsel to have their watches out and put them on the desk and I will ask you to consider it as part of your job to use your time as efficiently as possible. There is a great shortage of reporters in this city, and the reporter may engage to do work in the evening and sometimes at lunch. I cannot expect the reporter to stay any longer than 5 or 5:30. We will recess at 12:30 for lunch and come back at 2. But if you are going to run short of time, we will go until 1 and then recess until 2 and really try to finish this today by going until 5:30, if necessary, and if the reporter can stay. In view of that, I am going to caution you, Mr. Wilkins, not to make any extended remarks other than is absolutely necessary, because everything that you want to say as counsel in the case you may say and should properly say in your brief. I think I understand what the issue is. Counsel for respondent has not stipulated as many facts as you would like, and that means that much more has to be covered by testimony and by documents. You have probably a great deal to do in 1 day. I think it is exceedingly difficult to hear seven witnesses in 1 day, so you have a difficult job to do. But that is the situation. I have allowed 1 day for the trial of this case, and I am going to ask you to please do your best to finish it in 1 day.

"Now, have you any amended pleadings to offer?

"Mr. WILKINS. I have had an amended petition printed, Your Honor, and it is probably off the press now and in the mail and will be here tomorrow—this afternoon or tomorrow morning.

"The COURT. That is very unusual. We never have prints of our proceedings. Under all circumstances, we indicate that pleadings may be typewritten. What is the nature of your amended pleadings?

"Mr. WILKINS. Well, there are three things that I have done in this amended pleading.

"The COURT. I don't want to hear about them. It will take too long. Haven't you a typewritten copy of your amended petition?

"Mr. WILKINS. No; I haven't.

"The COURT. This is the day you are supposed to present it. All right, what else have you to offer at this time? Have you any other papers?

"Mr. WILKINS. I can have a copy of it before the day is over.

"The COURT. Of course, I would like to know exactly what is being contended during the trial instead of at the end. That will be satisfactory. Now, can you tell me by referring to your petition as it has been filed whether you add to or eliminate from your statement of action in this case?

"Mr. WILKINS. I am eliminating the portion of the petition dealing with section 722, which was, in effect, stricken on motion to dismiss of the respondent. That eliminates the part of the facts commencing at the bottom of page 11B.

"The COURT. Is that what your amendment to your petition amounts to?

"Mr. WILKINS. No; it is not all. Then I have added to exhibit A a copy of the 30-day letter——

"The COURT. Well, that can be just attached to the petition. That has to be offered.

"Mr. WILKINS. It is referred to, Your Honor, in the 90-day letter——

"The COURT. I am just advising you, and to save time I don't want to discuss it. Under the rules, we only attach the 90-day letter to the petition, and you have to offer during the course of your trial the 30-day letter. So I will ask you to offer that during the course of the trial.

"Now, what else have you done in your petition?

"Mr. WILKINS. I have corrected an inadvertent error in copying exhibit A of the original petition. Through inadvertence we state the Commissioner's action to have allowed a reasonable salary $60,000,000. We are changing * * *"

At page 13 I told the court that I was going to file an amended petition and that it would be filed either "this afternoon or tomorrow morning." She interrupted me to say that it was unusual to have prints of Tax Court proceedings, that under all circumstances it is indicated that pleadings may be typewritten. She asked me the nature of the amended pleadings and when I started to explain, she said, "I don't want to hear about them. It will take too long." This exchange was included in my testimony before your committee. I mention it here because it forms part of the continuity of this memorandum.

At this point I regard it as important to state that the printed amended petition was received and filed on the day of the trial, May 21, 1945, immediately after the trial was concluded. This fact may be corroborated by the entries in the docket book of the Tax Court, which show that the amended petition was actually filed "at the hearing," on May 21, 1945. I say this here because of the unwarranted inference of delay in the question of Colonel McGuire when he was cross-examining me during these proceedings. There was no delay.

AUDIT-REPORT EPISODE

At page 40 of the Miller transcript I was trying to prove by audit reports the income of the John Miller Electric Co. for years beginning with 1932 and the amounts of compensation paid by that company to Mr. Pierce in each year. The following discussion took place:

"Mr. WILKINS. These are the audit reports of the John Miller Co., and they are all, beginning with 1932, captioned, 'John Miller doing business as John Miller Electric Co.'

"The COURT. Well, that is not the best way to prove that the John Miller Electric Co. was a certain kind of entity.

"Mr. WILKINS. No, Your Honor. We will prove that by appropriate evidence. But I want to show how this witness used the heading on this report."

On pages 56 and through 71 of the Miller transcript, I had been trying to prove by oral testimony by Mr. Pierce the amounts of salary paid to him by the Miller Co. prior to the year 1941, the first of the two taxable years before the court. This is the compensation which had averaged $60,000 during the 7 years preceding 1941. This was the average which the Commissioner had admitted in the 30-day letter, which he adopted by reference in the deficiency notice.

SUGGESTION EPISODE

At page 85, line 21, through line 21, page 86, the following appears:

"Q. Now, back over the years, 1926 to 1941, were you—tell Her Honor just the kind of business that you were getting for John Miller and the caliber of contracts that were involved. That is, were they small——

"The COURT. May I suggest this, that we get into the taxable year, that you ask the witness what he did in the taxable year, and after he has testified about that, you can ask him if he was doing substantially the same thing in the earlier years. Isn't that another way of doing the same thing?

"Mr. WILKINS. That is another way of doing the same thing.

"The COURT. You are taking the longer way of asking him what he did in the earlier years. I want to know what he did in the taxable years, and if he did substantially the same thing in the earlier years, that meets your purpose, just as well. It is 12:25, and we will recess at 12:30. We might as well recess now, unless you are going to cover it in a few minutes.

"(By Mr. WILKINS:)

"Q. Will you state whether you were doing substantially the same work and business with Miller, the individual, and with John Miller Electric Co., the petitioner?—A. I think I know what you mean. Yes, it was exactly the same."

The following references to the Miller transcript indicate where most of the examinations of witnesses by Judge Harron occurred, during the trial of that case:

Testimony of Mr. Pierce

Page	Lines	Page	Lines	Page	Lines
46	10–17	66	6, 15–25	104	
47	16–19	67	4–22	105	
48	5–8, 16–17	69	21–25	106	
49	3–5	70	1–25	107	
51	21–22	79	8–19	108	
54	14–16, 21–22, 25	81	5–25	109	
57	24–25	82	1–25	110	
58	1–25	83	1–4, 22–25	111	
59	1, 5–13, 17–23	84	1–9	112	1–6
61	21–23	93	4–25	121	21–25
64	17–23	94		122	1–2
65	8, 16	103	11–25	123	2–15

Testimony of Mr. Binkle

145	12–25	146	1–18	149	12–17

Testimony of Mr. Fischbach

163	1–25	167	8–22	176	1–11
164	1–19	169	1–25	187	4–16
165	1–18	170	8–16		
166	16–25	175	•25		

Respectfully submitted.

THOMAS M. WILKINS.

Colonel McGUIRE. How was the case decided, Mr. Wilkins?

Mr. WILKINS. The case was decided favorably to me. We were contending for the salary of $136,504 for 1941 and a smaller amount for 1942, and both amounts were allowed in full. I have no complaint about the results of the case, and that is not why I am here. My complaint is against being humiliated at every turn in the trial of the case.

Colonel McGUIRE. Those are the things you will point out in your memorandum. We want to get it because I cannot find it in the record myself.

That is all, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Wilkins.

Next we will hear from Mr. Theodore Benson.

STATEMENT OF THEODORE BENSON, ATTORNEY, WASHINGTON, D. C.

Mr. BENSON. My name is Theodore Benson, Munsey Building, Washington, D. C.

I was admitted to the bar in 1907. I was admitted to the Tax Board immediately on its creation. I have appeared before practically every judge of the Tax Court, I think, over that period of time. I was attorney for the petitioner in the case mentioned in Mr. Jones' affidavit, I believe the gentleman from Macon, Ga., who referred to the second case tried in the courtroom of the Supreme Court of Georgia.

The CHAIRMAN. Yes, sir.

Mr. BENSON. The case that had to be tried before 6 o'clock.

The CHAIRMAN. Mr. Jones was originally from Macon, but I think he is now in Florida.

Mr. BENSON. I appeared in the case he mentioned and I might state that that is the reason I am here. I shall make my statement brief, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. BENSON. The question involved in the case was one of probably some legal difficulty, it was the nature of a corporate distribution, whether in liquidation, partial liquidation, or as an ordinary dividend.

Unfortunately, in the 90-day letter, the first step in the proceeding, as I recall, it was called an ordinary dividend and the taxpayer had claimed a complete liquidation, and in the Commissioner's answer it was called a partial liquidation. Therefore, we went into court not at issue.

The corporation that was liquidated, which brought about the alleged deficiency of tax of one of its stockholders, was the Greensboro Full Fashion Hosiery Mills of Greensboro, N. C. My client's name was an odd one, Pfingst, P-f-i-n-g-s-t. He was one of the stockholders who had received money from the corporation as we claimed, in total liquidation, and the Government claimed possibly two ways.

When the case was called, I moved to amend the petition to take care of the decision of the court in whichever of the three categories it fell, and at the time I stated that there would be no delay because counsel had agreed to that. When that was made, my feeling at the time was that Judge Harron ruled it out of order, without realizing just what was involved. We, however, got over the obstacle, and then I had arranged with opposing counsel that I would make an opening statement and in that set forth the facts of the case and he in turn would state that the facts were not in dispute and that then I should proceed to put in evidence the resolution of the board of directors which was the whole case, factually, and other documents, and then call the accountant who had closed the books.

The taxpayer was in court, but I did not intend to use him as a witness, because he had not handled anything personally and he did not know anything.

Judge Harron refused to permit me to proceed to put my case in according to the way I had planned it, which, of course, upsets counsel very much whenever a thing like that happens.

I do not have the record with me, but the statements made by me and Judge Harron appear definitely in the transcript of the record in which I pleaded and demanded that I be permitted to present the case in the way I had planned, and she replied emphatically and stated that I had to present it her way. The result was that then I put this witness on the stand who knew nothing about it, and while the record does not show this, the actual fact is that he could not answer the questions, and we had to resort to the certified public accountant, a man named Harris, from Atlanta, to answer the witness's questions, and there we had a three-cornered examination.

Finally, I believe, the exhibits were put in, but the thing that annoyed me most of all, was the changing the order of proof, but I will not go into any further personal troubles, although, of course, it is very annoying to be told you cannot present a case in the way you prepared it.

If it had been a difficult case, I do not believe I ever could have gotten it in. It was a simple case, but it was very damaging to my side to be interrupted all the time, and not be able to put these documents in in the order in which I wanted to put them in.

Now, the thing that I think is the worst thing that Judge Harron did there, and a thing that ought to be very seriously considered is this:

Every few minutes she would say, "Now, this is off the record," and to be perfectly frank with the committee, at the conclusion of the trial I did not know what was in the record and what was off the record. I might say that I went so far at the various recesses as to ask the reporter to put everything down so that I could tell.

When I left Atlanta, after having attempted to put in the proof in a case in which the facts were not at all in dispute, we even used the revenue agent's report; frankly, I did not know whether I had proved my case or not.

One other unfortunate thing which the record shows, is that when I offered certain proof, as I recall, she refused to take it, and told me what she was going to find. She may have made that finding and it might have been favorable to me, but still the record would not have the basic facts to support it, especially on appeal.

Now, as mentioned here in this case, the decision was favorable to me, her final findings were just about what I was going to put in in my opening statement, but I think the committee, in considering this, her qualifications, should consider that she is essentially and primarily a trial judge. By that I mean, the facts are found and prepared in the Tax Court. On law questions, of course, we can go up.

To lose a case on a law question in the Tax Court is not as vital as to lose the case on the inability to put the facts in the record. My criticism of Judge Harron in this one case, which is all I ever had before her, is that I was continually interrupted both in the attempted opening statement, and whenever I offered a document in evidence that the other side agreed to. She refused to receive most of them. It is difficult to present a case to her if they are all tried under such circumstances, and the statements made here this morning seem to uphold my experience in this case. I do not know how you could present a very complicated case where you have your exhibits orderly arranged, and so forth, if she is going to tell you that you have to change your whole plan and put the witness on before the exhibits. My experience there was simply the difficulty of presenting the facts in a very simple case and the absolute uncertainty of whether I had put anything in or not, because so much was off the record.

That is about all I have to say with respect to Judge Harron. My only other experience is that in one instance I unsuccessfully defended one of her decisions on appeal before the second circuit. I did not handle the case before her. I am here to make this statement which the record bears out, as much as anything else, because it has been already covered in Mr. Jones' affidavit.

In my opinion the findings of fact made and the decision rendered by Judge Harron in the Pfingst case were correct and well prepared.

The CHAIRMAN. Any questions?

Senator MILLIKIN. No questions.

Colonel MCGUIRE. Mr. Benson, while you have been testifying, I have looked through this record and I can only find one instance of "off-the-record" discussion.

Mr. BENSON. That is what does not appear in the record, if the committee please. That is the very thing I am talking about. The "off-the-record" and "on-the-record" does not appear in the record; that is the unfortunate thing. That was my personal experience, and that is why I am here.

Colonel MCGUIRE. You got a copy of the transcript of the trial?

Mr. BENSON. The record does not have half of what took place in the trial.

Colonel MCGUIRE. Have you a copy of this record?

Mr. BENSON. I do not have a copy of the record.

Colonel MCGUIRE. Did you make any motion to insert in the record any matters that may have been omitted?

Mr. BENSON. That was unnecessary because the one resolution was the whole case. The record shows that I offered it five or six times before it was admitted.

Colonel MCGUIRE. Why was that?

Mr. BENSON. Because she changed my order of proof.

Colonel MCGUIRE. Have you tried cases in other courts besides the Tax Court, in a district court, for instance?

Mr. BENSON. Yes.

Colonel MCGUIRE. Are you always permitted to follow your preconceived plan of presenting proof?

Mr. BENSON. As an answer in the general, I would say that I have never been interrupted in any order of proof. I try to prepare my cases and I never had that question brought up by a judge. Of course, the other side may object. For example, in this case when I offered that final resolution which was the almost entire proof, if counsel on the other side had objected because I had not identified it, of course that has happened.

But in this case he got up and agreed to the admission when I first put it in.

Colonel MCGUIRE. Was that not because the Government was contending that the liquidation of that corporation took place on a certain date and you were contending that it took place on another date, is that not right? There was a sharp issue there between you and Government counsel with respect to that?

Mr. BENSON. That, as I recall it, goes to that law question again. This year was the tax appeal year, 1941. Had the tax court held that this was an ordinary dividend, then it would have been taxable in 1940 when actually paid. Had the court held it either complete liquidation or part liquidation, then it would go over to the year in which actual liquidation of the corporation took place. In other words, on a liquidating dividend it is taxable in the year when everything is closed out. An ordinary dividend is taxable in the previous year.

The CHAIRMAN. Yes.

Colonel MCGUIRE. In order to close this thing out, was there not some distribution in kind of equipment?

Mr. BENSON. There was.

Colonel MCGUIRE. Explain that to the committee and show how that was done.

Mr. BENSON. I do not recall exactly, but this corporation had made a sale of its assets and as to certain machines of a rather small value, the purchaser defaulted, and there was some question, a small item, there was a question as to when that took place and in what year it

should be included in income. But, when the end of the year 1941 came around all assets had been disposed of under contract at least. It was in later years that this liquidation in kind of the few machines was made.

I do not have a copy of the record, and it is a detail that I may not be correctly clear on.

Colonel McGUIRE. There were 22 of these machines, were there not?

Mr. BENSON. You have the record; I do not have it.

Colonel McGUIRE. If the record says 22?

Mr. BENSON. That is right.

Colonel McGUIRE. What was the amount that they were to receive from the other corporation, Owen Osborne Co., for these machines which they did not pay for and had to repossess?

Mr. BENSON. A pure guess, my best recollection is something like $4,000. The record shows that.

Colonel McGUIRE. Do you remember the following:

Mr. BENSON. Counsel agree that the Owen Osborne Co. paid $50,000 and defaulted the 1st of October.

That is your statement, you can look at it yourself. You might just read that for the committee.

Mr. BENSON. Beginning with my statement, I shall repeat that.

Mr. BENSON. Counsel agree that the Owen Osborne Co. paid $50,000 and defaulted the 1st of October.

(By Mr. BENSON:)

Question. Now, Mr. Pfingst, what was done with that machinery when it was repossessed, or when the contract was terminated?

Answer. You mean our contract with Osborne?

Question. The 22 knitting machines?

Answer. It was appraised by the remaining assets that Osborne had, then, that belonged to us—were appraised by the used-machine dealer and I had to, as president, dispose of the machines piecemeal, one here and two there. The equipment with them.

Question. How many did you sell?

Answer. 22 of them.

Question. How many did you sell in 1941, then? Please refer to the minutes of December 15.

Answer. I think I read most of that where I said that I sold the 22 hosiery machines to Owen Osborne. He further reported—this is the president making the statement—he further reported that 8 of such machines had been sold as follows:

Do you want all that?

Colonel McGUIRE. No, but they were sold over a considerable period?

Mr. BENSON. That was in 1941, the taxable year we are talking about.

Colonel McGUIRE. Some of them were sold much later?

Mr. BENSON. Some of them were sold much later; that was distributed in kind, and their appraised value was something like $4,000.

Colonel McGUIRE. That presented a difficult question as to when the liquidation did take place as contended for by the Government on the one hand and you on the other?

Mr. BENSON. If you want to attach that much importance to a rather minor item, I would say so.

Colonel McGUIRE. Since Judge Harron was trying the facts, she had to get the facts so that she could determine the issues?

Mr. BENSON. As previously stated, we considered the legal issues rather complicated, but the facts were not. If you notice, the Government counsel and I were in agreement.

Colonel MCGUIRE. But there, Mr. Benson, you, as a lawyer, know that we oftentimes think things are quite simple that judges think are complicated?

Mr. BENSON. You are confusing law and fact again.

Colonel MCGUIRE. Either fact or law. We have to have proof to establish the facts.

Mr. BENSON. We were in agreement; counsel and I were in agreement. We were using the revenue agent's report.

Colonel MCGUIRE. You are not in agreement though as to when the liquidation took place, were you?

Mr. BENSON. That is a legal question based on the admitted fact.

Colonel MCGUIRE. Is it not a question of mixed law and fact?

Mr. BENSON. The basic facts were not in dispute.

Colonel MCGUIRE. That is all.

The CHAIRMAN. You may be excused. Thank you for your appearance here.

All right, Mr. Phillips, you may proceed.

STATEMENT OF PERCY W. PHILLIPS, CHAIRMAN OF THE COMMITTEE ON APPOINTMENTS TO TAX COURT, AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.—Resumed

The CHAIRMAN. I believe you have previously testified.

Mr. PHILLIPS. I have previously appeared.

There are a large number of things to which I should like to testify, but your committee has been very patient in this matter, has heard a great amount of testimony, some of it to a considerable length, and I shall omit a number of things I would like to say to this committee in the interests of saving time.

The CHAIRMAN. You may put in the record anything that you wish even if you do not go into it.

Mr. PHILLIPS. I may take advantage of that offer, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. PHILLIPS. I do feel, however, that here we have the question of a reappointment of a judge to serve for a period of 12 years, and it represents an expenditure of $180,000 of the Government's money, and the question is whether the Government and the taxpayers are going to get $180,000 worth of benefits from it.

It is not a small matter. Now, our committee has not attacked the appellate record of Judge Harron. However, a question was asked in the course of the hearings which caused us to make some examination of that record.

In connection with that I would like to say this that Mr. Kline, one of the witnesses for Judge Harron, said he was familiar with the three classes of liars, one of whom were statisticians, so that in order to clarify the situation and not make a liar of myself, I would like to clarify the statistical situation.

The testimony here is that Judge Harron had decided something over 500 cases by written opinion and that there had been a certain

number of reversals of her opinions. Now these opinions frequently cover more than one case. You may have partners in a partnership and there may be five or six cases involved or you may have transferees against whom liability is being asserted for the tax of another and there may be several people involved in a case.

So, if you are going to count each of the cases involved in a single opinion as one case, decided by an opinion, the same thing should be true when you figure how many reversals there have been of those opinions. You either do it by comparing opinions rendered and opinions reversed or cases decided by opinion and cases reversed.

The testimony here has been that something over 500 cases were decided by opinions and this committee has been led to believe that Judge Harron was reversed in some 20 of those cases. I have prepared a list which I would like to submit, although I do not know that it need be copied into the record for use by this committee, showing 29 opinions which were reversed. Several of those opinions include more than one case, and I think that the total—I had made a record which I unfortunately did not bring with me, showing those in which more than one case was decided—but I think the record of reversals, if you count cases decided by opinion, would be some 33 cases, rather than the 20 which you had received testimony on.

My purpose in submitting this list is so that it can be checked so that there may be no question as to the veracity involved.

Colonel McGuire. Mr. Chairman, we would like to have that go into the record, so that we may check it.

The Chairman. That will be done.

(The list is as follows:)

REVERSALS OF OPINIONS BY JUDGE HARRON

Sigurd A. Emerson (35 B. T. A. 901) (2 cases); reversed (98 F. (2d) 650).
Roche's Beach, Inc. (35 B. T. A. 1087); reversed (96 F. (2d) 776).
Adolph Spreckels (37 B. T. A. 709); reversed (101 F. (2d) 721).
Affiliated Enterprises (42 B. T. A. 390); reversed (123 F. (2d) 665).
Inland Investors, Inc. (44 B. T. A. 654); reversed (132 F. (2d) 543).
Walter S. Hallowell (44 B. T. A. 740); reversed (131 F. (2d) 642).
William Preston (44 B. T. A. 973); reversed (132 F. (2d) 703).
United National Corporation (2 T. C. 111); reversed (143 F. (2d) 580).
Geo. H. Thornley (2 T. C. 220); reversed (143 F. (2d) 416).
Dorothy K. Sunderland (4 T. C. 88); reversed (151 F. (2d) 675).
Estate of Nettleton (4 T. C. 987); remanded (C. C. A. 2; July 6, 1947).
Blanche N. Hallowell (5 T. C. 1239) (2 cases); reversed (160 F. (2d) 536).
Estate of Leaders (6 T. C. 587); reversed (164 F. (2d) 128).
Estate of Mannon (6 T. C. 1174); reversed (166 F. (2d) 304).
M. Friedman (7 T. C. 54); remanded (C. C. A. 9; 1947).
Eleanor M. Funk (7 T. C. 890); reversed (163 F. (2d) 796) (2 cases).
N. Y. Stocks, Inc. (8 T. C. 322); reversed (164 F. (2d) 75).
Leonard Farkas (8 T. C. 1351); reversed (170 F. (2d) 201).
Estate of Jandorf (9 T. C. 338); reversed (171 F. (2d) 464).
First National Bank of Fort Worth, memo decision; reversed (140 F. (2d) 938).
General Amiline & Film Corp., memo decision; reversed (139 F. (2d) 759).
Levitt & Sons, Inc., memo decision; reversed (142 F. (2d) 795).
Estate of Richards, memo decision; reversed (150 F. (2d) 837) (2 cases).
Great Lakes Coca-Cola Bottling Co., memo decision; reversed (133 F. (2d) 953).
C. N. Markle, memo decision; remanded (CCA–5).
W. D. Haden Co., memo decision; reversed (165 F. (2d) 588).
William Weizer, memo decision; reversed (165 F. (2d) 772).
John Stuart, memo decision; reversed (124 F. (2d) 772; S. C. affirmed CCA in principle and remanded to T. C. for decision of another contention, not covered by T. C. decision).

Benjamin F. Miller, memo decision; while the circuit court opinion at 147 Federal (2d) 189, states that the decision of the Tax Court is affirmed, a supplemental memorandum opinion by Judge Harron published November 5, 1945, states that the case was remanded by that court for consideration of a question not covered in the first opinion of the Tax Court. Later, the Commissioner of Internal Revenue conceded that the decision in his favor was erroneous and an order and opinion was accordingly entered February 19, 1946, reversing the previous Tax Court decision.

Senator MILLIKIN. How does that record of reversals average out with the rest of the judges?

Mr. PHILLIPS. I do not know, and frankly, I do not think that the records of reversals of a judge is any indication of the ability of the judge.

Senator MILLIKIN. I do not think it is an infallible test.

Mr. PHILLIPS. Let me say this: Judge Arundel, who is one of the most able judges of the court at the time I was sitting as a member of the Tax Court had a situation come up before him in which he wrote an opinion deciding the case one way. The court did not agree with him, or the then Board of Tax Appeals, did not agree with him, and the case was written up by another member of the court to the contrary and Judge Arundel wrote a dissent in that case. However, unfortunately Judge Arundel had 39 other cases involving the same point. So, after the decision of the court came down Judge Arundel wrote up the other 39 cases following the precedent.

The case then went to the circuit court of appeals and was reversed and Judge Arundel's 39 cases were also reversed so that we had a situation where Judge Arundel was right in the first place but he had 39 reversals against him in the statistical record. That is one reason why I say that statistics are not important.

The thing that is important here, however, is the impression which has been given to this committee that there were reversals in 20 cases whereas there are 29 opinions that were reversed and if you are going to count opinions, cases decided by opinions that were reversed, it amounts to at least 33. Let me say that I have not analyzed the reversals. Every case that has come from the circuit court of appeals with directions to the court to do something, other than that done in the original opinion, I have counted as a reversal because I cannot distinguish between a case reversed and a case modified and a case remanded.

Senator MILLIKIN. How many decisions are there with opinions decided by Judge Harron?

Mr. PHILLIPS. I do not know, sir. The testimony here was with respect to cases decided by opinion and I do not know how many opinions there were.

Senator MILLIKIN. Your opinion is that you should relate the reversal record, follow the same criteria in calculating the reversal record, as you do in calculating the number of opinioned decisions?

Mr. PHILLIPS. That is right, sir. If you are going to make the comparison, the numerator of the fraction should be on the same basis as the denominator.

Senator Millikin asked the question as to the number of instances in which Judge Harron had been reversed by her own court; by action of the Tax Court. It is impossible for anyone from outside to know that. The procedure is for the judge ot write up an opinion; that opinion is then referred to the presiding judge; the presiding judge may ask the

judge who wrote the opinion to take it back and write it up in some other way, or make suggestions as to how it should be changed. Nothing of that would appear in the public print.

The case may be released by the presiding judge or the presiding judge may send it to the conference of judges for consideration by the conference of judges. What takes place in the conference of judges the public has no way of knowing. It may be completely reversed and sent back and the judge may decide to write up a case in accordance with the opinion of the conference of judges which might be entirely different from the opinion written by the judge in the first instance, or it may be taken over and written by another judge to reflect the opinion of the court.

We would have no opportunity of examining that. However, going through some of the records and I am not at all sure that this is complete, we do find a situation where opinions have been published by Judge Harron and have later been superseded by other opinions which have also been published so that what I am dealing with now are those which have come to public light and are not buried in the records of the court and as I say, I am not sure that this is at all complete.

I might say that all of these are Judge Harron's. In Paris and Mount Pleasant Railroad, an opinion was published in 47 B. T. A. 141. It was vacated the next month and a new opinion with a different result was published the next month at 47 B. T. A. 439.

In estate of William Carey, on opinion was published at 7 T. C. 859, reversed 10 weeks later and a new decision, reversing the first, appears at 9 T. C. 1017.

In estate of James Frizzell, a decision was published at 9 T. C. 979 The court granted a motion for reconsideration because the findings of fact were insufficiently stated. It then wrote a supplemental opinion reaching the same conclusion as the first opinion, 11 T. C. 576. Two judges dissented from the second opinion and the decision is pending on appeal.

In estate of Ankeny Watson, the same situation occurred. The original memorandum opinion was published on January 4, 1944, and a superseding opinion on February 25, 1944.

Similarly, Northwest Telephone Co., in memorandum opinion of August 17, 1943, and November 8, 1943.

In Sloane Estate the oiginal memorandum opinion was published April 14, 1944. This decision was vacated and a new decision, reaching a contrary conclusion, was published June 8, 1944, 2 months later. Most of these are within 2 or 3 months after the original opinion.

In Rufus Cole a memorandum opinion was published on June 25, 1940. This was set aside and an opinion published on October 30, 1940, at 42 B. T. A. 1110, which modified the original opinion.

In Murray Baldwin a decision was entered on November 9, 1939. This was set aside by the Tax Court and the case set for rehearing before another judge. The second judge reached the same conclusion that Judge Harron had reached in her original opinion. It was reversed by the circuit court of appeals at 125 F. (2d) 812.

Now I emphasize that the second opinion was not that of Judge Harron. The second opinion was that of another judge after the same case had been referred for retrial to that judge, but the second judge had reached the same opinion that Judge Harron had reached in her first opinion, indicating that the evidence, I think, was substantially

the same and indicating that Judge Harron's opinion would have been reversed had it been her opinion which had gone up instead of that of the second judge.

As I say, that deals only with the published material.

Senator MILLIKIN. Is there any way to relate those, let us call them internal reversals, against the internal reversals of other judges?

Mr. PHILLIPS. Well, I served 6 years on the Tax Court and have been pretty familiar with its procedures. It is a very unusual procedure to have an internal reversal of that sort after a decision is released and published. I would say that this situation is an unusual situation, Senator. I have not attempted, it would take a great deal of time to go through all of the decisions of all the judges, to find out how often that happened.

Senator MILLIKIN. I do not think it is a matter of conclusive importance anyhow, but it is one of the facets of the case.

Mr. PHILLIPS. There are, so far as we know, five cases decided by Judge Harron which are pending on appeal which have not yet been decide by the circuit court of appeals.

Since the last hearing a situation has come to my attention that I think brings to light the conception of Judge Harron of her position as a judge of the Tax Court, which might very well be brought to the attention of the committee. Section 1120 of the Internal Revenue Code, one of the sections governing the conduct of the Tax Court, provides:

> All reports of the Board and all evidence received by the Board and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.

On Friday, May 6, at about 3 o'clock in the afternoon I had occasion to go to the Tax Court to examine six files which I wanted to examine in connection with the hearings before this committee. I went to the public files room where those cases are kept under the supervision of a clerk by the name of Miss Trailor. I asked Miss Trailor at first for three of those records and after examining the files she came back to report to me that they were in Judge Harron's chambers and that I might not examine them.

I then walked across the hall to Miss Harron's chambers and conferred with her secretary, a Miss Newberry. I stated my name and said that there were certain records of the Tax Court which I wished to obtain for use in connection with hearings pending before this committee; that I understood they were in Judge Harron's chambers and I indicated which records those were. She said that there were a large number of records in Judge Harron's room; that Judge Harron was absent from her office; that she had instructions that no one was to be permitted to take any papers from Judge Harron's office. I said that I understood that these were public records; that they were all cases which had been closed some years ago and could not possibly be under active consideration by the Judge. That if Judge Harron was not using them at that time, I would appreciate the opportunity of examining them; that it was not necessary for me to take them from the chambers but that I did want to check the records and get the names of certain reporters who had reported the proceedings.

I was told that made no difference; that during Judge Harron's absence no one could examine those records.

On inquiring as to when Judge Harron would return so that I might examine those records, I was advised that she did not know when she would return. I then went across the hall again and asked Miss Trailor for three or four records and those I found, also were in Judge Harron's offices.

At that point, it being a little late in the afternoon, I decided I had better go home and devote my time to other efforts.

On Monday morning, I received from Judge Harron a letter, which I should like to read into the record, addressed to me from the chambers of Judge Harron. Incidentally, the envelope was franked and without a 3-cent stamp. The letter reads as follows:

MAY 6, 1949.

PERCY W. PHILLIPS, ESQ.,
Southern Building, Washington, D. C.

DEAR MR. PHILLIPS: When I returned to my office this afternoon, I was advised by my secretary, Miss Newberry, that you had called at my office and requested her to obtain from my chambers the files and papers in certain Tax Court proceedings which I am now engaged in reexamining.

My secretary is under strict instructions not to permit anyone to examine during my absence any papers which are in my chambers.

At that point I would like to emphasize that these are public records, open to the public, which were not being used at that time by Judge Harron herself, she being absent from her office.

However, I am advised by my secretary that you represented to her that you desired to make an examination of these particular files, which were in my chambers, for and on behalf of the United States Senate Finance Committee.

Of course I am not quite so foolish as to go to the Office of Judge Harron, where I am undoubtedly known, and say that I represent this committee. My statement was that I wanted to examine those for use in connection with matters before this committee. The purpose was to indicate that it was not a matter where I could return a week later.

Upon presentation by you of credentials authorizing you to represent the Senate Finance Committee in making such an examination, I shall suspend promptly any work which I may be doing on any particular files and papers, and see that they are made available immediately through the office of the Clerk of the Tax Court, as is customary.

If I have not been correctly informed in this respect by my secretary, and your purpose is, rather, to examine these particular files for your own information, you are advised that I shall return these files to the Clerk of the Tax Court as soon as I have completed by reexamination of them, where they will be available to you.

Very truly yours,

MARION J. HARRON, *Judge.*

Senator MILLIKIN. Mr. Chairman, may I ask Judge Harron whether she has cleared her work on those files?

Judge HARRON. I have not completed my work on a good many files that I am reexamining for the purposes of making a reply statement to this committee. Senator Millikin, Mr. Phillips received the files that he asked for and I think that Colonel McGuire will make a statement in a few minutes about that letter.

Mr. PHILLIPS. I may say that from time to time I have been receiving telephone calls from the young lady who is in charge of the files that this file or that file has now been returned from Judge Harron's chambers. There is one file which I requested on which I have received

no such information but those come in 2 or 3 or 4 days after the request has been made for the opportunity to examine them.

Nevertheless, the importance of the question is not whether I can examine the files, the importance of the question is whether or not Judge Harron has a proper conception of her functions as a judge of the Tax Court.

Senator MILLIKIN. Mr. Chairman, it seems to me that the question is—of course Judge Harron has a right, just as any other citizen to examine the files—whether she was trying to be accommodating to give you the files. I do not mind saying that if I had an assistant who would allow someone to come in and examine papers in my absence, that I would have a different assistant the next day. That does not strike me as being important. It seems to me that once Judge Harron learned that you were trying to get the files, whether she was accommodating in seeing you had an opportunity.

Colonel MCGUIRE. When this incident occurred and Miss Harron had returned to her office, she had been at my office conferring with me about some of these cases with respect to material which we would submit to the committee. When she got back to her office she telephoned to me about this occurrence. I approved this letter; in fact I dictated it over the telephone. If the committee wanted information from the files whether she was working on them or not, I wanted the committee to have it. However, Mr. Phillips had been examining some of these cases for better than a year or approximately a year, and Judge Harron was trying to get her reply prepared and she had the files in her own office.

If he were not representing this committee, the question was whether she should surrender the files to him for his own purposes and not complete her study of the cases or wait until she got her study completed and then send them back to the files.

Senator MILLIKIN. I was merely making the point that that is an example of a place for humans to exercise their ability to accommodate themselves to others.

Judge Harron obviously had a right to prepare her defense and obviously had the right to access to the files and so did the witness.

Colonel MCGUIRE. That is right.

Senator MILLIKIN. Now, what do sensible people try to do? They try to proceed in such a way as to accommodate others.

Colonel MCGUIRE. That is right. That letter was written on that theory. She had limited time in which to analyze these cases and she had the files in her chambers, working on them. My advice was for her to finish the job and then send them back to the files where Mr. Phillips could get them.

Judge HARRON. Mr. Chairman, I think it is unfortunate that we have to have very petty details of this kind brought before the committee. Senator Milliken asked me a question a few minutes ago and I did not wish to take too much time of the committee in answering it. May I say this for the record which we are making.

Mr. Phillips on that afternoon had asked for five files, is that not correct, Mr. Phillips?

Mr. PHILLIPS. My first request was for three.

Judge HARRON. Altogether.

Mr. PHILLIPS. After I had made the request for three, I went to your chambers. It was later that I asked for three others which I did not know then were in your chambers.

Judge HARRON. Well, Senator George and Senator Millikin, I think that the point that this committee is interested in is whether those files were made available to Mr. Phillips. Those files were returned to the file clerk as soon as I came back to my office and that was shortly after a quarter of four. The file clerk telephoned to Mr. Phillip's office and told him that all of the files were there excepting one and in that one case I had an order of decision to write, the respondent's recomputation having been received, setting forth what the amount of tax liabilities would be under an opinion of the court and that is the Truman Bowan case.

The case had not been closed out by decision. That case was delivered to Miss Trailor, our file clerk, early this week and her custom is to telephone Mr. Phillips when files are made available to him. Unless it is said for the record that Mr. Phillips makes inaccurate statements, the record of course will not be correct. Mr. Phillips was given an opportunity to look at those files promptly.

For the last 2 months Mr. Phillips has been inquiring about files and since our first hearing I have reexamined over 100 files of cases that have been tried before me. I am preparing an answer to present to this committee. There have been seven or eight instances where Mr. Phillips has asked to look at some files that I have been reexamining. They have always been made available to the clerk of the file room promptly.

The CHAIRMAN. All right. Is there anything else, Mr. Phillips?

Mr. PHILLIPS. I would like to straighten out one matter, as a matter of fact. .

The CHAIRMAN. May I respectfully suggest that you need not argue the case. We go by the facts and the whole committee has to look at the facts.

Mr. PHILLIPS. The facts with respect to the records being made available are that on Monday morning I found a memorandum from my secretary of a phone call late Friday afternoon that two cases were available. Three other cases were not available according to the telephone message that I had from the clerk of the court until 2 days later.

I have here a letter from the attorney of a case, an attorney by the name of Adrian Block, of Buffalo, N. Y., in which he encloses a transcript of a record tried before Judge Harron. I do not want to go into it in detail. I do not think that the record should be burdened with all of this but I should like to file it as a part of the proceedings and state that in substance this letter is to the effect that at the trial of this hearing, the attorney was very severely criticized by Judge Harron for various causes which do not appear on the record.

At page 50 of the record, he stated that he wanted the record to show all of the criticism which had been made of him and then the letter goes on to state as follows:

At this juncture Judge Harron, having apparently completely lost her composure and on the verge of, if not actually in, tears, stamped out of the courtroom and upon her return made the remarks appearing at the bottom of page 50 and the beginning of page 51.

Those remarks being to the effect, "In view of your last request," which was the statement that he wanted everything to appear on the record that was critical of him, that she felt that the case should be tried before another judge. The remarks, however, that were made with respect to the counsel are not in the record. The case was then adjourned and the client who had had a rather hard time on the witness stand determined that if that was the type of procedure that the Tax Court pursued, she would much rather abandon the case than try it.

May I file this as a part of the record, Mr. Chairman?

The CHAIRMAN. You may file it.

(The letter and transcript were filed for the information of the committee.)

Colonel MCGUIRE. I should like to have the lawyer identify it.

Mr. PHILLIPS. I identified the lawyer by name, Adrian Block, of Buffalo, N. Y., and the name of the case is Famous Linen Supply Co., Inc.

The CHAIRMAN. What was the name of the case?

Mr. PHILLIPS. Famous Linen Supply Co., Inc.

The CHAIRMAN. Thank you.

Mr. PHILLIPS. At the original hearing in this case we digested for this committee nine cases, the digest covering some 100 pages in which we believe the record would substantiate and give examples of the type of thing that is going on in hearings conducted by Judge Harron.

In order that the committee may not believe that these are isolated instances, I have here a list of something over 20, between 20 and 30 cases, in which we have received complaints of similar instances.

I have not had the opportunity of examining those records but they can all be examined by this committee if it is interested in following up those matters. I would like to submit this list as a list of other cases in which I am reliably informed instances of similar conduct will be found.

The CHAIRMAN. It will be made a part of the record, sir, so that it may be inspected by Judge Harron and her counsel if they desire to do so and also in the event that the committee desires to make an examination.

(The list is as follows:)

John B. Paine, No. 111,499
Truman Bowen, No. 12319
Caro de Bignon Alston
M. M. Monroe, No. 6380
Wilkoff, No. 2478
Siegfried Bechhold, No. 6697
Joseph A. Fields, No. 9974
Providence Wool Combing Co. v. *Secretary of War*, No. 119–R
Rainier Brewing Co., No. 4895
W. A. Sloper, No. 110,145
Ronald T. Evans, No. 5510
F. Osborne Pfingst, No. 8441
Murray Baldwin, No. 86050
Pacific Refrigerating Co., No. 108235
R. W. Camfield
Steubenville Bridge Co., No. 9212
Amelia M. Campbell, No. 96878
J. M. Mannon, Jr., No. 6757
Eckhart, No. 3511
John T. Smith, No. 65717
Dodd, Mead & Co., No. 94757
Second National Building Co., No. 95380
Jack W. Schiffer, No. 83249
Famous Linen Supply Co., No. 3978
Walter J. Bones, No. 1666
Federal Laboratories, No. 6968
Estate of George Rhodes, No. 6362

Mr. PHILLIPS. Some question was raised in the record as to the letters to the committee of which I happen to be chairman, received, favoring Judge Harron's reappointment and there is a possible confusion in the record which I would like to straighten out.

The CHAIRMAN. You may do so.

Mr. PHILLIPS. Our first procedure, and this was before I was appointed as chairman of the committee to represent the association, was to send questionnaires, you will recall, to all members of the Tax Court section and there is testimony as to replies which we received from those questionnaires. In those replies there was only one, as I testified, only one letter which was received which explained the reason for favoring the reappointment of Judge Harron.

Following that and immediately after my appointment as chairman of the section to consider what recommendation should be made to the President with respect to the appointment to the Tax Court, I drafted a letter to be sent out to lawyers who had tried cases before Judge Harron. I did the same with lawyers who had tried cases before Judge Harlan because those were the two lawyers against whom most of the complaints seemed to be made. This letter is already in the record and it asked in an impartial manner for a reaction.

We sent out 120 letters like that in regard to Judge Harron. The names were selected by the following process: I told my secretary to go through the most recent decisions of Judge Harron and Judge Harlan and to take those names of lawyers who had represented taxpayers. I suggested, "You go to Martindale Hubbell's Legal Directory and see if you cannot locate them in the directory." The names and addresses are not stated in the records so she had to get her leads as to the cities in which those lawyers might be located by some reference in the report to the city in which the taxpayers resided and when she had 120 of those I told her to send the letters out.

So that there was no process of selection except to take those who were involved in the later trials before Judge Harron. That was approximately one-fourth of the lawyers that the judge testified had appeared before her representing taxpayers, if I remember her testimony correctly. It was a small percentage of the lawyers. The purpose of that of course was to learn whether those who were not members of the tax section might feel the same way. Incidentally, I instructed my secretary not to send such letter to persons whom she recognized as members of the tax section because having been my secretary while I was chairman of the tax section, she had quite an acquaintance with the lawyers.

We sent out 120 of those letters and received 20 replies. Three were from secretaries explaining that the boss was away on vacation or was otherwise out of town. One explained that the person addressed was dead. One stated that the person addressed did not want to express any opinion. Six of those said in effect, that they had no opposition to Judge Harron or that they felt that Judge Harron had done a good job in their case. Nine of those opposed the reappointment of Judge Harron.

Now there was read into the record one of those letters which was sent to me at that time favoring the reappointment of Judge Harron. So that we have two situations that should not be confused in this record. One was the questionnaire which was sent out first and the second was the letter sent out to the lawyers attempting to determine their feeling.

Following that, and following the recommendation made to the President, our committee was quiescent for several months. We had

no authority to go ahead with anything further than to make recommendations at that time. In January 1949, the committee was authorized to oppose appointment to the Tax Court.

Following that authority it became my duty, as I conceived it as chairman of the committee, to line up the testimony of the witnesses who would be willing to do the very unpleasant job of testifying against a sitting judge.

There is another letter in the record which I wrote to various attorneys seeking their testimony in the case and trying to explain away that natural reluctance. As a matter of fact, the natural fear which all lawyers have, of reprisals if they testify against a sitting judge was involved. Now I have no apologies for any of those letters which I wrote. I am explaining that situation in order that this committee may understand that there were three situations there; that the testimony which has been given in this case with respect to the replies which have been received is entirely truthful and accurate.

From the questionnaire we received one explanation as to why Judge Harron should be confirmed and the tenor of that was stated in the record. From the letter sent to 120 lawyers, we received 20 replies 15 of which expressed an opinion, 6 in favor and 9 adverse. The other letters which were sent out were letters soliciting testimony to be offered before this committee.

The CHAIRMAN. Well now, is the questionnaire in the record?

Mr. PHILLIPS. That was put in the record, sir.

The CHAIRMAN. Was the questionnaire addressed to all members of the tax division?

Mr. PHILLIPS. The tax section of the American bar.

The CHAIRMAN. To the tax section of the American bar. Were all those questionnaires identical?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Now is there a letter in the record here addressed to the 120 lawyers?

Mr. PHILLIPS. That was put in the record by Mr. McGuire.

The CHAIRMAN. That one letter was put in?

Mr. PHILLIPS. That is right, sir.

The CHAIRMAN. Were all those letters identical?

Mr. PHILLIPS. Yes, sir; they were mimeographed letters and so was the questionnaire a mimeograph questionnaire.

The CHAIRMAN. Then the letter to which you referred to, that is, in an effort to find testimony or get testimony that might be presented to the committee, were they identical?

Mr. PHILLIPS. No, they were not identical. The one that was offered in the record here was duplicated in a considerable number of instances but they might vary, depending upon the acquaintance I had with the person to whom I was writing.

The CHAIRMAN. I see.

Mr. PHILLIPS. Just one other matter. I am not sure from the testimony yesterday, whether this point was made clear. There was so much testimony from some of these witnesses yesterday, I wanted to emphasize the fact that Mr. McCall who testified here, testified to one thing that I think was important which was sort of lost in the detail and that was the fact that he did not consent that anything be striken from the record. His testimony was, as the record will show, that

he said to the judge that he had no authority representing the Government to permit anything to be stricken from the record.

Mr. Rodewald's testimony was to the effect that there were repeated discussions off the record as to admission or exclusion of evidence and argument by the judge to attempt to persued him to follow a different line of testimony. I thought from the turn that the questions took later, that there was a feeling in the committee that there had been only two instances that Mr. Rodewald testified to, one of which took place in chambers and the other which took place in open court. But his testimony, as I heard it, was to the effect that there were a number of instances of a similar type in open court to which he was testifying.

I believe that that probably completes what I had wished to say to the committee today. I do wish to say before these hearings are closed that I undertook this job for the association as chairman, not on my personal behalf. I have never tried a case before Judge Harron. I have been honored with responsible positions in the American Bar Association and I was asked to do this job. I have tried to do it, not as an opponent of Judge Harron's but as a public duty which I felt was owed to the lawyers of the country to present this matter before this committee and those things which I have done I have done without compensation, without any feeling of personal malice and from a sense of public duty.

I certainly appreciate the patience that the committee has shown and I would like to express my appreciation and also on behalf of the committee of which I happen to be chairman.

The CHAIRMAN. We thank you, sir, for the cooperation.

Did you wish to make any suggestion, Colonel McGuire?

Colonel McGUIRE. We first would like to know whether the tax section has completed its case. If it has, we would like to have some time arranged which can be tentatively designated in which we can present Judge Harron's position from the records.

The CHAIRMAN. I hardly think it is proper to ask whether the American Bar Association has presented its case. This is a Senate committee and usually investigations are made upon complaints of someone but the committee itself would have the authority to look into any nomination that comes before it.

Colonel McGUIRE. Surely.

The CHAIRMAN. I cannot, but I suppose Mr. Phillips and the other gentlemen from the bar might be able to indicate whether they wish to offer anything further or not.

Mr. PHILLIPS. At the present time the only other matter that I know of, Mr. Chairman, would be certain letters which have been received by the chairman of the committee, which I understood were to be made a part of the record. I do not know of any other witnesses.

The CHAIRMAN. We have quite a number of letters here as I have stated this morning. Some of the letters are favorable and some are critical. It occurs to me that there is a question as to whether all of the letters received by the committee should be offered here. I do not know and I think it is a matter that the committee itself would want to determine whether all of these letters would be spread upon the record or whether they would be simply filed for the information of the committee. They will be made available, however, to both those who are opposing and to counsel and Judge Harron. The reason I make that suggestion is that some of the letters may contain ex-

pressions which ordinarily the committee would not care to put into a public record but they will be here and be available and the committee will later determine whether they actually go in the record or whether they will simply be filed for the use of the committee.

Now I should also say this: I do not recall the name of the case, but either of you gentlemen perhaps may recall it, it is a case that has been referred to by witnesses which was heard at Pittsburgh.

Colonel McGUIRE. The Heppenstall case.

The CHAIRMAN. I believe that is the name, an estate-tax case.

Mr. PHILLIPS. It was the Heppenstall case.

The committee may desire to bring before it the record made by the Treasury Department in an investigation instituted by the Treasury Department, as I understand it. That is to say, we may wish to do that and I would assume that Judge Harron may have seen it or would have access to it?

Colonel McGUIRE. She has not, Your Honor.

The CHAIRMAN. She has not?

Colonel McGUIRE. No.

The CHAIRMAN. I think in fairness it should be stated that the committee may wish that record to be brought down by the Treasury Department.

Colonel McGUIRE. That is perfectly satisfactory with us.

The CHAIRMAN. Of course it would be brought down by some representative of the Treasury Department. I do not know whether the committee will do that or not, but that is one thing that might be done. That is not being urged by anyone but it has some matters which have come to the knowledge of the committee which would make it proper at least to make an inspection perhaps of that investigation and report.

Colonel McGUIRE. Mr. Chairman, is it usually the custom that a sitting official has the right, when complaint has been made against his conduct, to close the case before the committee unless the committee itself wants to make some further investigation of its own motion?

The CHAIRMAN. The committee generally gives complete direction to its own hearings, Colonel.

Colonel McGUIRE. I understand that, but is it not the custom to have the sitting official have the last word? We cannot keep coming in here.

The CHAIRMAN. I thought we were getting down to that point now.

Colonel McGUIRE. Yes.

The CHAIRMAN. I think with the exception of this Heppenstall case, with the exception of that record, I know of nothing else that will be brought before the committee and I understand Mr. Phillips to say that they know of nothing else.

So that these letters will be made available to you at least and some of them the committee will be obliged to have entered in the record because there is a special request to do so and in that case we would not be justified in withholding them from the printed record. Furthermore, the committee may be of the opinion that all of the letters should be included in the record itself. There will certainly be no objection on my part if the committee desires to follow that procedure.

So I think we may consider the case closed with the exceptions to which I have called to your attention about the report of the Treasury Department.

Colonel McGUIRE. In the event, Judge Harron has received instructions from the presiding judge to go to a distant place to commence the taking of testimony on Monday of this coming week.

The CHAIRMAN. Yes.

Colonel McGUIRE. Of course, that is going to take her all week probably.

The CHAIRMAN. We will accommodate ourselves to your convenience.

Colonel McGUIRE. We want to accommodate ourselves to the committee's convenience but we should like for it to go over for another week at least.

The CHAIRMAN. It will have to go over for another week and in fact perhaps for 2 weeks. I think I may say that certainly it will go for 2 weeks.

Colonel McGUIRE. Very well, I will inquire before the 2 weeks are up.

The CHAIRMAN. Yes.

Colonel McGUIRE. You may give a third week?

The CHAIRMAN. The Senate might find itself quite busy on the floor. It may be necessary for this matter to go for 3 weeks, but certainly it would not be taken up before 2 weeks from Thursday which is our regular meeting day, 2 weeks from yesterday.

Colonel McGUIRE. We will be ready to go on at that time.

The CHAIRMAN. It may be that it will have to go 3 weeks from yesterday but in any event the clerk will keep you advised in that regard.

Colonel McGUIRE. Very good, sir.

The CHAIRMAN. Now the one letter here in which the special request has been made that it be put in the record is the letter from Mabel Walker Willebrandt. That letter was written yesterday, or rather May 11. Miss Willebrandt states that she had expected to be present yesterday but that she has found it necessary to return to her home at Los Angeles and, therefore, she is writing this letter which she desires to have made a part of the record. The letter will go into the record.

(The letter referred to is as follows:)

WASHINGTON, D. C., *May 11, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Finance Committee of the Senate,
Washington 25, D. C.

DEAR SENATOR GEORGE: I had expected to be present tomorrow at the further hearings to be then held in connection with the nomination of Judge Marion Harron to the office of judge of the Tax Court of the United States. I have however just been notified of the setting of a case in court in Los Angeles on Friday, May 13, which requires me to leave by airplane today.

I need hardly express my conviction that the Tax Court of the United States is a vital part of our taxation system and that it is equally vital that anyone appointed to that court shall be fully qualified for the office, both as regards intellectual equipment and judicial disposition.

The nature of my experience as a tax lawyer has brought home to me very clearly the harm that can be done in our taxation system by the appointment to the office of judge on the Tax Court of any person who fails either as to intellectual equipment or as to the temperament and personality required for the proper conduct of trials. In my judgment, Judge Harron suffers from temperamental handicaps which make her unfit for this office.

The temperamental difficulties just referred to tend to drive her, at times of excitement or self-interest, to conduct which is entirely out of line with judicial

propriety. On one occasion, in March of 1948, in my own office, in the Shoreham Building in Washington, these characteristics were definitely brought out. Not long before the interview I refer to, she had telephoned me asking for an appointment to seek my backing for her reappointment. I told her I did not want to have an interview with her and mentioned as one reason that I had a case pending before the Tax Court, and although it was not directly in her hands, I preferred, under such circumstances, not to discuss with her the reappointment of any of the judges. Nevertheless she presented herself at my office and insisted on an interview, which I granted. She stated that opposition to her reappointment was solely because she was a woman—a statement with which I cannot at all agree. Certainly I favor the appointment of a woman. I am influenced in my judgment as to Judge Harron's qualifications only by comparing her conduct while holding the high office of a judge with what I conceive to be proper standards of deportment by a judge. At this interview with me, she became insistent that I support her; insistent also in showing me the names of those who were doing so. When I advised her that I believed any professional woman must be like Caesar's wife, and keep her conduct beyond the slightest suspicion, and for that reason, since I had a case pending before the court, I did not want to discuss her appointment, she stated, "I think you are very foolish."

She became more and more emphatic that I must give her my support, and became so vehement that my only thought was, How can I terminate this interview as soon as possible? I tried not to excite her and did not go into any details as to why I would not promise to support her. The mere fact that I would not acquiesce in her demand seemed to be what stirred her up. I had the feeling that only psychiatric treatment could help anyone who reacted in that way.

In the course of this same interview she told me that after she learned from me that I had a case pending in the Tax Court she had looked up the case and ascertained the name of the judge in whose charge it was at that time, and that she would like to help me out by seeing that the case was moved forward. She added that of course she would not do anything wrong, but that she could be of help to me in getting the case moved along.

The clear impropriety of her demanding my support and at the same time offering to see that my case was expedited made me all the more desirous of terminating the interview as soon as I could. In spite of my desire to do so, she remained and related various controversies she had had with lawyers in California. She finally left only after I had promised to verify her statement that the president of the Los Angeles Bar Association was supporting her reappointment. I contacted him, and found he favored her reappointment, but my own judgment as to whether Judge Harron is qualified must depend on what I know from my own experience and the views of other tax lawyers who have had occasion to observe her when she became excited and dictatorial during the trial of cases.

I regret to be obliged to, but feel that in fairness to my profession I must, state that I regard Judge Harron as wholly unqualified by temperament to fill any judicial office.

Very truly yours,

MABEL WALKER WILLEBRANDT.

The CHAIRMAN. There may be some other letters for which requests have been made that they go into the record, and it may be, as I have already stated, that the committee will order all of the letters placed in the record.

Colonel MCGUIRE. I hope it will, Mr. Chairman.

The CHAIRMAN. If it is agreeable to you, Colonel, we would put them in but since some are critical and this committee recognizes the fact that Judge Harron holds a responsible judicial position in Government here, we did not know whether it would be altogether desirable to have some of the letters entered into the record.

Colonel MCGUIRE. May we leave it this way, Mr. Chairman. If these people have a grievance in any way we can answer it. Suppose we let it go over for a later date and have a chance to look at them?

The CHAIRMAN. That was my original suggestion.

There are letters that are in the possession of the committee, submitted to the committee in confidence, with the request that they not be entered into the record and, of course, this committee would not feel disposed to enter anything of record where the writer of the letter had requested that they be held in strictest confidence. This morning there was some statement, it will be recalled, by someone, to an attorney at Portland, Oreg., who dictated a letter and died without having signed the letter. It was stated that the letter had been addressed to this committee. The committee did receive the letter and we now have it. It is unsigned so far as the writer is concerned, but one of the members of the partnership attaches this statement to the letter:

The statements made in the foregoing letter, which was dictated by Herbert L. Swett before his death, are true and I adopt this as my own.

So that it becomes in fact the letter of the signer of this notation and that letter will be in the file because it probably is one of the letters that will be put into the record finally.

I call attention to that fact because some witnesses today referred to this particular letter.

Mrs. Springer, will you now take charge of these letters and make them available to members of the bar association and to Colonel McGuire and also to Judge Harron?

We thank you very much and you will be notified subsequently as to when we will endeavor to complete the hearings.

(Thereupon, at 1:30 p. m., the committee recessed subject to the call of the Chair.)

NOMINATION OF JUDGE MARION J. HARRON

THURSDAY, JUNE 23, 1949

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10 a. m., pursuant to call, in room 312, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George (chairman), Connally, Byrd, Johnson, Lucas, Hoey, McGrath, Millikin, Taft, Butler, Brewster, Martin, and Williams.

The CHAIRMAN. The committee will come to order.

Colonel McGuire, are you ready to proceed?

Colonel MCGUIRE. I am ready.

The CHAIRMAN. Do you have testimony?

Colonel MCGUIRE. Yes, and then I have some documents to present. I should like to call at this time Mr. Julius Henry Cohen.

The CHAIRMAN. You may be seated, if you wish, Mr. Cohen.

STATEMENT OF JULIUS HENRY COHEN, ATTORNEY, NEW YORK, N. Y.

The CHAIRMAN. Mr. Cohen, we are glad to have you visit us again. You used to visit us in the old days, I remember.

Mr. COHEN. I suppose I must first qualify myself to those who do not know me or who have forgotten me, as to just what my position is, although I know that Senator Brewster and Senator Lucas and I have met. I want to tell you at the start, although you may not believe it, that I celebrated my seventy-fifth birthday last September. I was admitted to the bar of New York State in 1897, so I have been practicing law for 52 years. I am not only admitted to practice in the State of New York, but I am admitted to practice in the southern district of New York, the eastern district, and in New Jersey.

I have appeared in all of the courts of my State, tried many cases during the years and perhaps I ought to say that I have appeared before the Supreme Court in several cases, the most recent of which was the Shamburg case, if you recall, Mr. Chairman, the taxation of port authority bonds.

The CHAIRMAN. Yes; I recall it.

Mr. COHEN. You were familiar with that fight that the Government made to tax salaries and State and Federal bonds and you will recall that I was one of the ringleaders in the effort to frustrate it and secured your participation and the participation of other Senators in the fight against the administration, and we won. It was defeated several times on the floor or the Senate with the report from Senator Austin for the committee, and I was the spur behind the so-called

conference of States and municipalities. The Shamburg case afterward was the test case. I tried that case before the United States Tax Court for the port authority and afterward, with Senator Pepper, argued before the circuit court of appeals, and we finally got to the Supreme Court and that was the final licking we gave to them in the effort to tax State and municipal bonds.

Since that time there have been no further efforts made, and the bonds have been sold on the basis of our opinion. We sold $500,000,000 bonds of the port authority.

Of course, you know I had been the counsel for the port authority from its inception until I retired in 1942. The Shamburg case, the case which was won when we went to the Supreme Court, and the other case, in which we took the licking, the Gearhart case, in which the United States licked me and said that the State and municipal bonds were subject to tax: You know about the passage of the Subsalary Act. I was one of the ringleaders there in getting that act passed.

The CHAIRMAN. This particular inquiry now is in relation to the Tax Court. Have you practiced before Judge Harron?

Mr. COHEN. Not before her. I have been before the United States Tax Court; yes, sir.

The CHAIRMAN. Have you had occasion to observe her?

Mr. COHEN. Yes; I have been in personal contact with her.

Perhaps I ought to start by saying that I have known Judge Harron for 23 years. When she came to New York she got her first job as a lawyer in my office, and I had an opportunity to observe her and see her work and keep contact with her and to watch her development.

I want to testify here that outside of Judge Allen, I know of no woman on the bench with greater judicial poise, self-control and judicial temperament than this lady. I have talked with her intimately and while I have not appeared before her personally, she has consulted me on these attacks that have been made upon her.

I will tell you, gentlemen, that I have never seen anybody take such attacks with such poise and with such firmness and without bitterness of any kind. I know of innumerable lawyers, men and women, who know her as well as I do and with whom I have talked, and their opinion is the same as mine.

I should like an opportunity to take up the attacks that have been made upon her and analyze them on the basis of my experience with her, if you will permit me to do so.

The CHAIRMAN. You may proceed. Colonel McGuire, do you have any suggestions to make as to how extensive Mr. Cohen's presentation is to be?

Colonel MCGUIRE. No, Mr. Chairman, because Mr. Cohen has known her for a long time intimately.

The CHAIRMAN. You may proceed.

Mr. COHEN. I would like to refer particularly to a phase of the United States Tax Court law and procedure in which I have been specifically engaged and in which I have come to know the attitude of certain members of the bar and the attitude of the bar as a whole. Two weeks ago I argued in the State court of appeals the so-called Bercu case, and that case involves the right of certified public accountants to give legal advice. I argued the case on behalf of the State bar association as amicus curiae, and we won in the appellate divi-

sion, 4 to 1, the court holding that a man who undertakes to give legal advice on income-tax law is practicing law and can be enjoined. That proceeding was brought by the county lawyers through Mr. Otterberg, the chairman, and I was asked as chairman of the committee on unauthorized practice of the law of the State bar association to appear.

I have had to become familiar with the contentions made by the certified public accountants of this country that because laymen were permitted to appear in the Tax Court they were entitled to give legal advice in the States, and I have bitterly fought that as a member of the advisory committee of the American Bar Association, committee on unauthorized practice of the law, and we have appeared in the court of appeals and the chairman came all the way from Cedar Rapids, Iowa, so as to appear.

The case has not yet been decided but definitely, Mr. Chairman, there is a fight now on between the certified public accountants organization and the bar, and it has taken the form of the legislation that is now pending before the Senate Judiciary Committee.

When I was down here 2 years ago, I found to my amazement, members of the bar supporting accountants, and one man in particular undertook to represent the bar before the Ways and Means Committee. I charged him definitely to his face with betraying the bar, and he said that he was not undertaking to express the views of the American Bar Association because he knew that the views of the American Bar Association were quite the reverse of those that he expressed, but he said that he was only expressing his personal point of view.

I later learned, when the matter came up in the American Bar Association, before Judge Parker's Committee on the Judiciary that it was his representation.

Now, in that connection, I talked with Judge Harron and found that she was one of those who had persisted in opposition to this practice of the law by income-tax accountants before that. I know perfectly well that by reason of her position she has incurred certain antagonisms, so that I am thoroughly familiar with the importance of the Tax Court in the administration of the law and I know of the differences between the Ways and Means Committee's attitude toward the Tax Court and the Senate committee's attitude toward it.

In that fight I know that Judge Harron has played a pioneer part and has expressed her view which is the view of the bar generally, that laymen should not be permitted to practice law there. Because of that courage, I have admired her and I have talked to her about it, and I have learned about what is happening in the Tax Court through her. So that I am thoroughly familiar with the work of the Tax Court and with her participation in it.

Now, if you want me to turn now to the things that have been said about her which I have heard, I will be glad to speak about that.

The CHAIRMAN. The inquiry here relates to her judicial temperament and conduct in the court and her method of conducting the court; that is the pertinent inquiry, I think.

Mr. COHEN. What is it you want from me, my opinion of her based upon my knowledge of her?

The CHAIRMAN. Yes.

Mr. COHEN. I say from my knowledge, unhesitatingly, and advise you, that I know of no person on the bench that has greater poise,

more understanding of her judicial function than this particular lady, and I get that on the basis not merely from my contact with her and what I saw in my office, but I have watched her grow and I know other men who have watched her grow.

She got her first initiation right in my office, and she made a deep impression on Mr. Guttman and Mr. Dayton, who is now in Germany in some official capacity. I have watched her grow and she has grown tremendously in the last 23 years since I have known her.

She has a great understanding of human nature, and she is no politician, Senator; she does not curry favors with people, and she speaks out her mind.

If there is a lawyer before her who shows that he is stupid, she may make some casual reference to it. But that is nothing unusual because the judges today are having a hard time with people who are trying to run their courts. She will not let anybody run her court.

As for disgruntled litigants, there is not anybody on the bench who does not know that there are disgruntled litigants who go to the taverns and cuss the judge out. Now apparently the custom is to come before a Senate committee and cuss them out. If she were guilty of half the things charged, she should have been impeached long ago.

Senator BREWSTER. The old rule was that you were allowed 1 month in which to cuss and then you were to stop.

Mr. COHEN. Yes, sir.

Senator Brewster, she is a lady whose record is unimpeachable, and whose record on appeals is better than almost any record that I know of, all during this time that she has sat on that bench. Examine her record and see whether anybody made any complaint about her conduct to the rest of the court, because she is only one member of the court. You will find disgruntled litigants, you will find fellows that are sore at her, but as for the charge that she is not of a judicial temperament, the very thing that has aroused antagonism against her, proves her temperament because there is no judge who is worth his salt who does not maintain his court and tell the lawyers where they get off and that is bound to produce antagonism.

Good Lord, I have been up against adversaries where we have had the most bitter fight. We do not get to blows as they seem to down here, the fist blows, and when the case is over we reserve the right to criticize the judge and we do criticize the judge, but that is a wholly different thing than to say a person who has served all these years does not have a judicial temperament.

Of course, everyone who knows anything about human nature knows that we do not want to be bossed by a woman. I found that my dear wife, who ran the farm while I practiced law, had great difficulty with our superintendent. They would do what I asked them to do, but they would not do what she asked them to do and finally I agreed I would not give any orders and eventually they learned to respect her and followed her instructions.

Senator BREWSTER. That is not an unusual discovery.

Mr. COHEN. Not a bit. When you stop to reflect that here was woman on the bench who has all the power of a judge and must perform the duties of a judge and put people in their place, whether they are lay, expert accountants who are sore as the devil at her, or lawyers

who have been defeated, nevertheless she is a woman and you must expect to find men who think it is an outrage to be told by a woman on the bench where to get off when they know so much more law than she does. That is the psychological explanation for the opposition, besides a very considerable amount of spite, Senator, definite spite.

Senator BREWSTER. You will agree that even she is human?

Mr. COHEN. Of course she is, and I am not contending she is perfect.

Senator BREWSTER. We have to allow some margin for error even among the men.

Mr. COHEN. I think if she had gone out and applied some of her female charms, because I know she does possess them, if she had done that while she was on the bench, she would not be here. Her feeling is that she must forget such things and attend to her official duties. I know that is her point of view because we have discussed this thing frankly and there is no secret about this thing.

I want to say to you, Mr. Chairman and members of the Senate committee, that it would be a most unwholesome thing if, after service on this court, after the President was appealed to, not to send her name in because of these charges which he himself investigated and turned down as unworthy of consideration, to have this woman turned down. What do you suppose that is going to mean to the women of this country, the women lawyers of this country, to the people who have to stand up in public office and take abuse? What happened to Forrestal? You have to be pretty tough, as you gentlemen know better than anybody else, to do any kind of public service here and take the kind of abuse that you get from people who disagree with you. You have to be tough. This gal is a tough gal when it comes to abusing her or trying to put something over on her.

What will it mean if she is turned down? It means that public servants here with the best kind of records for efficiency are going to be turned down because of alleged lack of judicial temperament which is nothing more nor less than her deciding cases as she thinks they should be decided and with disagreement, of course, with her colleagues on the bench. We have 5 to 4 decisions. I do not know the exact proportions. You can read her opinions and there is one in the American Bar Association Journal. She has the honor of having an opinion reported in the American Bar Association Journal.

I think the idea of the tax section of the America Bar Association coming here and deliberately seeking to prevent this woman's confirmation is one of the worst outrages in the history of the bar and I want to take exception to it on the record. They have no business to do; they are going beyond their power just as they did in working with the accountants to amend the Tax Court Act. We made the fight and licked them.

Senator LUCAS. Did the American Bar Association line up with the Accountants Association?

Mr. COHEN. They did not.

Senator LUCAS. I thought you last statement indicated it?

Mr. COHEN. No, no. Let me make that perfectly clear. There is a committee of the American Bar Association known as the committee on unauthorized practice of the law. I am a member of the advisory committee. They have persistently argued for the elimination of laymen from the practice of law in the Tax Court.

The Judiciary Committee of the House, under Congressman Robsion, undertook to put the Tax Court into the judicial system of our country here and they took the position that since it was a court it should be on the same basis as any other court. We took the position that that being so they should not have laymen practicing there because if they did they would be violating the very principle of the act and we protested and I appeared and argued that.

Now what I am telling you is that this outrageous thing happened; that the tax division of the American Bar Associaion was put on record as being opposed to the views of the American Bar Association and they were called down for it and on my insistence, called down for it by the State Bar Association of New York and the Bar Association of Chicago. The ring leader was the man whom I told was violating the rules of the American Bar Association in the position that he took and what he said was that he was so anxious to get through a right of review of the Tax Court decision, that they felt that they could yield on this proposition.

It was his yielding embarrassed us and made us lose the fight and now we are winning the fight.

The CHAIRMAN. Mr. Cohen, I think that is just remotely relevant here and we had better confine ourselves to the matter before us.

Are there any questions?

Senator HOEY. No questions.

The CHAIRMAN. Are there any questions that any Senator wishes to ask?

Thank you very much, Mr. Cohen.

Is there anything which you have, Colonel McGuire?

Colonel McGUIRE. No.

I would like to call Mr. Rea.

STATEMENT OF HOWARD W. REA, ATTORNEY, WASHINGTON, D. C.

The CHAIRMAN. You may be seated. The inquiry here arises on the nomination of Judge Harron for membership on the United States Tax Court.

Mr. REA. My name is Howard Warren Rea. I am an attorney associated with the firm of Paul, Weiss, Wharton & Garrison, in Washington, D. C., and am a member of the bar of the State of New York, the District of Columbia, the Tax Court of the United States, and the Federal courts in New York City.

At the request of Col. O. R. McGuire, I have examined the files underlying 374 opinions decided by Judge Marion J. Harron prior to June 30, 1948. Some of the hearings were held in consolidated cases and actually covered as many as five or six separate docket numbers. I understand that Judge Harron, in fact, had written 529 opinions as of June 30, 1948. The other cases, which time did not permit me to examine, will be covered by other witnesses.

Colonel McGuire asked me to examine all motions actually filed in the records I reviewed, with particular reference to the presence or nonexistence of certain types of motion. I should like at this time to report briefly the results of my examination.

Since all motions made in the Tax Court of the United States are governed by rule 19 of that court's rules of practice, I should like to

preface my report by reading rule 19 into the record, omitting the cross-references:

RULE 19. MOTIONS

(*a*) Motions must be timely, must fully set forth the alleged reasons for the action sought and must be prepared in the form and style prescribed by rule 4.

(*b*) Motions will be acted upon as justice may require and may, in the discretion of the court, be placed upon the motion calendar for argument. The clerk will serve a copy of each motion upon the opposite party.

(*c*) The filing of a motion shall not constitute cause for postponement of a hearing from the date set.

(*d*) If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial, the maker thereof shall promptly reduce it to writing and file it with the court unless the division sitting directs otherwise.

(*e*) No motion for rehearing, further hearing, or reconsideration may, except by special leave, be filed more than 30 days after the opinion has been served; and no motion to vacate more than 30 days after the decision has been entered. Motions covered by this paragraph shall be separate and not joined to or made a part of any other motion.

Colonel McGuire asked me to look for two kinds of motions in particular: First, any motion to transfer a cause to another judge or division for trial on account of alleged bias or prejudice, alleged improper conduct of the trial, or for any other reason; and, second, any motions to "restore" any matter to the hearing transcript or to "reform" the transcript in any way. I did not find a single instance of any motion of either type in the 374 cases I examined.

There were, of course, a number of motions to correct the transcript for the usual stenographic and inadvertent errors to be found in the transcript of any hearing; for example, the transcripts frequently contain erroneous numerical figures, such as 500 instead of 4,000 ,or 1942 instead of 1941. While such mistakes are usually corrected by a stipulation, some practitioners file motions with the court for that purpose. In all instances, however, these motions to correct the transcript were of a trivial or typographical nature, were uncontested, and were granted.

In the course of my examination of all these motions I made other observations, a few of which may be reported here for whatever they are worth.

Section 1118 (b) of the Internal Revenue Code authorizes the presiding judge of the Tax Court to direct a review of any division report by the entire court. Motions for this purpose were filed in 20 of the 374 cases I examined, after the opinion had been served on the parties.

Senator MILLIKIN. Will you give me the gist of that provision again?

Mr. REA. Section 1118 (b) of the Internal Revenue Code authorizes the presiding judge of the Tax Court to direct a review of any division report; that is, the opinion and findings of fact of any one judge can be referred to the entire court for review by the presiding judge.

It is sometimes done on the motion of the petitioner.

Motions for this purpose were filed in 20 of the 374 cases; filed with the presiding judge asking for review by the entire full court. They were filed with reference to them after the opinion had been served on the parties. These motions were without exception denied by the then presiding judges, including Judges Turner, Murdock, and Arundell. Only 11 of these 20 decisions were appealed, and in only 2 of these appeals was Judge Harron's decision reversed. One of these

two cases was tried by Judge Smith and was only reassigned to Judge Harron for decision because Judge Smith left the court.

In the 374 cases examined I also found 22 motions for a "rehearing, further hearing, or reconsideration," or to vacate or revise the court's opinion of findings of fact. Many of these were made in the same cases as were the above-mentioned motions for review by the full court, and indeed the two motions were sometimes consolidated contrary to the provisions of rule 19 (e), which I read before.

Most of these motions, echoing the phraseology of rule 19 (e), are designated as motions for "rehearing, further hearing, or reconsideration," all together. In my examination, however, such motions almost invariably seemed merely to contemplate a reargument or reconsideration of the issues, citing the alleged errors of fact or law usually asserted in any appeal, or in effect offering a reargument in the motion papers themselves upon matters already decided. In a few instances the moving parties also sought to introduce additional evidence not offered upon the original trial.

The above enumeration, of course, does not include a few uncontested motions to add a word or phrase to the court's opinion or findings of fact, the requested additions being trivial and not inconsistent with the court's opinion, of which I could give examples.

All but 4 of these 22 motions were denied by Judge Harron.

Reconsideration was granted in two cases, two of those four cases, for the following reasons:

In one case to consider the retroactive effect, if any, of legislation enacted by Congress shortly after the promulgation of the original decision, and in the second case, to enlarge the findings of fact upon one issue, in part, as requested by the taxpayer, without revision of the original opinion or its result.

Rehearings were granted in two cases for the following purposes. In one case a rehearing was directed to allow testimony as to the amount of an alleged indebtedness of a wholly owned corporation to the petitioner at the date of the former's dissolution. In the other instance the motion was made and the rehearing ordered pursuant to a direction contained in the court's original opinion that leave would be granted to the petitioner to move for a further hearing, in order to establish the amount of deficiency properly assignable to it on the basis of its share of the adjusted consolidated net income of itself and five affiliated companies for the purpose of determining the amount of interest on the deficiency which the petitioner, a corporation, could deduct.

Appeals were taken in but 10 of these 22 cases, and in no instance was Judge Harron's opinion overruled.

The CHAIRMAN. Does that complete your statement?

Mr. REA. Yes, sir.

The CHAIRMAN. Any questions, gentlemen?

Colonel McGuire?

Colonel MCGUIRE. That is all, sir.

The CHAIRMAN. Thank you.

Colonel MCGUIRE. I would like to call Mr. Sarner.

STATEMENT OF LEONARD SARNER, ATTORNEY, PHILADELPHIA, PA.

The CHAIRMAN. Sir, please identify yourself for the record.

Mr. SARNER. My name is Leonard Sarner. I am a partner in the firm of Silverberg & Sarner, engaged in the general practice of law in Philadelphia, Pa., and am a member of the bar of the Supreme Court of Pennsylvania and of various Federal courts and of the Tax Court.

I have served as an attorney with the OPA, as law clerk to a judge of the Superior Court of Pennsylvania—that is one of the appellate courts—as an attorney in the Appeals Section of the Tax Division of the Department of Justice, and, finally, as an attorney on the legal staff of the Tax Court assigned to division 13, as Judge Harron's legal assistant.

My employment with the Tax Court covered the period of approximately a year and a half preceding September 1947 when I entered private practice. I resigned from the Tax Court in September 1947 after the opportunity presented itself of entering private practice in partnership and also after the presiding judge had indicated that it was not the policy of the court to grant salary increases to members of the legal staff after they had reached a certain salary bracket, as he had been requested to do on my behalf by Judge Harron.

As in the case of Mr. Rea, who has already testified, I was requested by Col. O. R. McGuire to examine files of cases which had been heard by Judge Harron prior to June 30, 1948. Mr. Rea has testified with respect to 374 files. I have examined an additional 134 files in cases in which Judge Harron conducted the trials.

As was true with Mr. Rea, Colonel McGuire asked me to examine all motions filed in the records I reviewed, to determine the existence or nonexistence first of any motion to transfer the cause to another judge or division for trial on account of alleged bias or prejudice, improper conduct of the trial by Judge Harron, or for any other reason; and, second, of any motion to reinstate in the transcript any matter which the reporter may have omitted, deliberately or otherwise.

In my examination I did not find a single instance of a motion to reform the transcript of any case in the 134 cases I examined. I found only one instance of a motion to transfer to another division, the Eleanor M. Funk case which Judge Harron has already mentioned in her statement of April 14. In this case the cause was originally heard by Judge Disney, but Judge Harron wrote the opinion for the court. On appeal to the third circuit the case was reversed and remanded for further proceedings. At this stage no motions had been filed with respect to Judge Harron's conduct.

Prior to hearing on the mandate, the petitioner filed a motion to transfer to another division on the ground that, although Judge Harron had not heard the case, she had a personal interest in the litigation to vindicate her judicial action in the case. The motion was presented to and denied by the presiding judge.

Otherwise, the files I examined contained no other motions to transfer to another division.

I examined the files quite carefully and it may be of some interest to comment on some of the more noteworthy items which came to my attention. In three instances Judge Harron, on her own motion, ordered a further hearing to allow the taxpayer to make up a deficiency in his record since it appeared that he might be able to do so. In all of these three cases, after the further hearing, the decision was favorable to the taxpayer.

Motions were filed with the presiding judge for court review in six of the 134 cases I examined.

In two of these, the motion was denied by the presiding judge. In one the presiding judge did not act on the motion, apparently for the reason that it may have been untimely, but Judge Harron, herself, withdrew the original report and submitted a new opinion which, in accordance with the motion, was reviewed by the court. In the remaining three cases, court review was granted by the presiding judge, and after consideration by the court, the original opinion of Judge Harron was adopted and approved as that of the court.

In two of these six court reviewed cases, appeals were filed with the circuit courts and the decision of the Tax Court was affirmed, in each case.

In only one case of the 134 cases I examined was there any complaint as to Judge Harron's conduct at the trial and this was the Augustus Low case which was affirmed by the second circuit and in which the petitioner in review assigned as error Judge Harron's examination of the witnesses. Reference has already been made at these hearings by Colonel McGuire to this case.

As I said, the second circuit affirmed the opinion of Judge Harron.

Contained in the files I examined were also a few routine motions mentioned by Mr. Rea, including those to correct typographical errors in the transcript, which were granted. There were a few motions for reconsideration by Judge Harron of the evidence as already presented, four of which were denied and two granted and five motions for rehearing in which the moving party desired to open the case to introduce new evidence usually after the original hearing had been closed and briefs filed, four of which were denied and one granted.

My appearance before the committee gives me the chance which I welcome of expressing my views as to the qualifications of Judge Harron for the position of Tax Court judge. During my 2-year tenure as a member of the appellate section of the tax division of Department of Justice, the bulk of which work is related directly to defending or attacking the opinions of the Tax Court, I had occasion to become quite familiar with Judge Harron's work, and I shared the feelings of most of my colleagues that she was one of the better judges on the Tax Court.

My one year and a half of daily contact with her, after my employment as her legal assistant, only served to confirm this view. I found her a remarkably alert, able, and stimulating individual. Extremely conscientious and painstaking, she demanded of those who worked with her the same degree of care and high quality which she herself displayed.

The many transcripts I have read both while with the Department and when working with Judge Harron were always clear and concise.

It is only those who are muddled or confused to whom she may at times appear to be a bit impatient, since she and not they sees the

heart of all the problems quickly and accurately. Our relations were always most cordial and I am pleased to consider her a warm friend and to champion her reappointment.

The CHAIRMAN. Are there any questions by any member of the Committee?

Thank you, sir.

Mr. SARNER. Thank you, gentlemen.

Colonel McGUIRE. I would like to call next Mr. Kassel.

STATEMENT OF MASON G. KASSEL, ATTORNEY, NEW YORK, N. Y.

Mr. KASSEL. My name is Mason G. Kassel. I am an attorney specializing in the practice of tax law in New York City and am presently associated with the New York law firm of Lord, Day & Lord. I am a member of the bar of the State of New York, the Supreme Court of the United States, and the Tax Court of the United States, and the various Federal courts.

I am a lecturer in taxation for the Practicing Law Institute and have delivered lectures on Federal taxation before the graduate division of New York University Law School.

As in the case of the two predecessor witnesses, at the request of Col. O. R. McGuire I have examined the files underlying 24 opinions decided by Judge Harron prior to June 30, 1948, to determine whether either of the following kinds of motions has been filed in any of the 24 cases: (*a*) A motion to transfer a cause to another judge or division for trial on account of alleged bias or prejudice, improper conduct of the trial by the judge or for any other reason; and (*b*) a motion to include or restore any matter to the hearing transcript or to "change" or reform the transcript.

I understand that the examination of these 24 cases completes the examination of all the cases which Judge Harron has decided in her 12-year term. Other than a few motions to correct the transcript for inadvertent and minor stenographic errors, I found only one instance involving a motion under either type I was asked to examine, and I think that I should clearly bring out to this committee the facts of that case as I saw them in the file.

This was the case of Murray Baldwin heard by Judge Harron in San Francisco in 1938 and referred to by her in her report to this committee on April 14, 1949. I am going to give you the facts of that case as I get them from the written record in the Tax Court.

In that case after testimony had been heard, the attorney for the petitioner filed a motion with the Tax Court to correct the transcript as follows:

MOTION TO CORRECT TRANSCRIPT

Comes now Murray Baldwin, petitioner herein, by his attorney, Allen Spivock, and moves the Board for an order changing that portion on page 199 of the transcript of the proceedings herein on October 3, 1938, and which now reads:

I now read and quote from the transcript as follows:

The MEMBER. You may notice that Mr. Murray Baldwin and his friend, Mrs. Powers, have been shaking their heads seriously about a lot of your testimony here in court. Have you ever had any occasion to know that Murray Baldwin seemed to vehemently disagree with you as to this whole arrangement?

The member is talking to a witness, gentlemen. That was the testimony which the record contained. The motion then goes on to say that the correct testimony was as follows:

The MEMBER. You may notice that Mr. Murray Baldwin and his friend, Mrs. Powers, have been shaking their heads vigorously about a lot of your testimony –

Changing the word "seriously" to "vigorously"—

about a lot of your testimony here in court.

I am now going to read a sentence which the attorney for the taxpayer says was deleted.

However, I want to say I believe Mr. Cosgrave.

That was the witness who was testifying at the time.

Have you ever had any occasion to know that Murray Baldwin seemed to vehemently disagree with you as to this whole arrangement?

The motion then goes on to say as follows:

Said motion is based on said transcript and on the affidavits of Allen Spivock and Murray Baldwin and Elizabeth Powers which are filed herewith and is made on the ground that said portion of said transcript does not now correctly set forth all that was actually said by the member at said time.

That was the motion. Although this motion was granted by Judge Harron, I understand that Colonel McGuire has an affidavit from the stenographer who reported the Baldwin case in 1938 and which he will present to this committee to the effect that the transcript as originally reported was correct.

Now this is the rest of the file in the case. Thereafter, a memorandum findings of fact and opinion was rendered by Judge Harron deciding the issue in favor of the Commissioner and the attorney for the taxpayer then filed a motion for reconsideration or review by the entire Board of Tax Appeals alleging irregularities by Miss Harron which prevented petitioner from obtaining a fair hearing.

Miss Harron then entered an order vacating the opinion and restoring the proceeding to the circuit calendar for further hearing. Miss Harron's order recited as follows:

Although the motion is believed to be unfounded, it is important that there should be no room for doubt regarding the regularity or fairness of a hearing before the Board in this proceeding or any other proceeding.

The taxpayer got his hearing, his new hearing. He then moved for an order to the Tax Court to disqualify Miss Harron from further participation, in the proceeding on the ground that she expressed an opinion during the hearing on the veracity of the testimony of one of the witnesses. That was the statement which stated that she believed Mr. Cosgrove, that I have just read.

This motion was denied by Judge Arundell, the chairman of the Board, but the trial of the new hearing was assigned to Board member Opper.

After a new trial, at which Judge Opper admitted the testimony of a Government witness, as Judge Harron had done, to which petitioner objected, Mr. Opper decided the issue in favor of the Commissioner and against the taxpayer. This was the same decision which Miss Harron had reached. The attorney for the taxpayer then filed a motion to require the Board to inform him whether Miss Harron had participated in the review of Mr. Opper's decision by the full Board. This motion was denied by Mr. Arundell, the then

chairman of the Board. Thereafter, the Board's decision was reversed on appeal solely on an issue of law.

That is the record of the Baldwin case. I do not know whether this committee knew the facts of the case before but I thought that I ought to give you the extensive record from the tax court.

I would also like to present certain facts to this committee which I know of my own knowledge to be true. In the Baldwin case, I was not there when it all happened. All I am able to tell you is what the record says, but what I am going to say now I know about because I was there.

I was Judge Harron's legal assistant at the Tax Court from April 15, 1943, to August 31, 1945, a period of approximately 2½ years. During that time I worked for no other judge in the Tax Court. I found Miss Harron to be completely conscientious, able, honest, and extremely hard working. I voluntarily resigned my position as legal assistant to Judge Harron effective September 1, 1945, in order to practice tax law in New York as an associate of the firm of Lord, Day & Lord.

I have heard that there has been testimony before this committee that the rules of fair trial were constantly violated by Judge Harron; that trials were not conducted in a judicial manner so that there was not a proper presentation of evidence; that stenographic records of trials were altered by Judge Harron; and that she was dictatorial, arbitrary, and capricious on the bench. I, of course, cannot speak about trials at which I was not present.

However, I acted as Judge Harron's clerk of the court on two different years. I acted as hearing clerk for Judge Harron at Grand Rapids, Mich., in October 1943 and again as hearing clerk for the calendar at San Francisco, Calif., in July of 1945.

There were six trials in Grand Rapids, Mich., during the week commencing Monday, October 25, 1943, and continuing daily through Saturday, October 30, 1943. There were 16 trials in San Francisco, the first of which began on July 9, 1945, and the remainder continuing daily except Sunday through July 23, 1945.

During all of these 22 trials my duties as hearing clerk required me to remain constantly in the courtroom. I can state unequivocally and of my own knowledge that in those 22 trials, and I cannot speak about any other trials where I was not present, but as to those 22 trials, there was no violation of the rules of fair trial in these trials; they were conducted in an impartial judicial manner. As far as I know, and I was there, there was no alteration of stenographic records, and Judge Harron's demeanor on the bench was not dictatorial, arbitrary, or capricious.

It is true that she asked the witnesses pertinent questions which were not brought out by counsel but it is my understanding that this is a proper judicial function. As a matter of fact, most of the other judges of the Tax Court ask the same type of questions. I know this because of my observations of trials by other judges when I was an attorney with the Tax Court and my experience since I left the Tax Court.

In the Grand Rapids calendar, four of the six trials were family-partnership cases and since they involved questions of fact, there was extensive direct examination and cross-examination. I do not believe, and I have looked at some of the cases since to refresh my recollection

—I say this with full consideration of what I say—I do not believe that any of the petitioners in those cases can complain that they were not permitted to present all the pertinent facts or to state the issues in the cases. One of the family-partnership cases on the calendar, as I remember well, was the case of Francis E. Tower, and Judge Harron's decision in that case was ultimately upheld by the Supreme Court. As a matter of fact, none of her decisions rendered with respect to cases on the Grand Rapids calendar was finally reversed.

I understand that there has been testimony before the committee that questions in the Camfield case (which was on the Grand Rapids calendar) put to Mrs. Camfield by Judge Harron completely unnerved Mrs. Camfield. I remember the trial distinctly, and as a matter of fact, I read the record last night again of the case, and I can say definitely that from the outward demeanor of Mrs. Camfield, she was not distressed, certainly not manifestly distressed, by any of Judge Harron's questions.

I can say that I do not recall any case on either the Grand Rapids calendar or on the San Francisco calendar, and those are the calendars where I was present, where counsel were not allowed to state the issues or were not permitted to properly examine witnesses. The trials were conducted with decorum and there was no unseemly conduct on the part of Judge Harron.

I understand it has also been alleged that Judge Harron's conduct of the trials resulted in great confusion of the record. Now during the period of 2½ years that I worked as her legal assistant, I have had occasion as part of my duties to read many transcripts and I can say that I have not seen any indication in those transcripts of confusion at the trial.

Now with reference to an assertion which I believe has been made to the committee that Judge Harron had written supplemental opinions which varied from original opinions, the inference being that the court had recalled Judge Harron's opinion to correct errors, I ask leave to file with this committee certain memoranda to the presiding judge which state why supplemental opinion in cases before Judge Harron were filed.

In conclusion I wish to thank this committee for the opportunity of presenting the facts as I know them.

The CHAIRMAN. Any questions? Senator Connally?

Senator CONNALLY. No questions.

The CHAIRMAN. Senator Millikin?

Senator MILLIKIN. No questions.

Senator HOEY. No questions.

The CHAIRMAN. If there are no questions, we wish to thank you for your appearance.

STATEMENT OF O. R. McGUIRE, ATTORNEY, APPEARING ON BEHALF OF JUDGE MARION J. HARRON, WASHINGTON, D. C.—Resumed

Colonel McGUIRE. Mr. Chairman, that concludes our witness testimony and what else I have to submit is documentary. I might say that some of it is of great importance.

I know the Senators are quite busy but I would like to present it and I will try to put just the most important parts.

The committee has heard two of Judge Harron's law clerks. You remember the charge was made that she could not keep law clerks. I have a letter from a third one, from Mr. Winfield A. Huppuch II, addressed to you, Mr. Chairman, dated June 20, 1949, and reading as follows:

I am an attorney at law admitted to practice in New York since September 1937 and am a member of the firm of Post, Morris & Lovejoy, attorneys, 52 Wall Street, New York.

I am married, have six children and reside in Peekskill, N. Y. I am a graduate of Harvard College 1933, and of Harvard Law School in 1937. I am an enrolled Republican.

Upon graduation from law school I was employed as an attorney by the firm of Shearman & Sterling (now Shearman, Sterling & Wright), 55 Wall Street, New York, from September 1937 to September 1939.

On September 25, 1939, I was employed as an assistant to Hon. Marion J. Harron, then a member of the United States Board of Tax Appeals. I served as Miss Harron's assistant from that date until February 28, 1942.

On February 28, 1942, I returned to the employ of Shearman & Sterling and remained in the employ of that firm until on or about March 1, 1946, since March 1946 I have been a member of the firm of Post, Morris & Lovejoy.

I was Miss Harron's assistant for a period of about 2 years and 5 months. Through my association with her I acquired a very high regard both for her ability and her integrity as a judge.

It is my own view that it would be definitely in the public interest if her reappointment as a judge of the Tax Court of the United States were confirmed.

The next document I have is a certificate dated June 21, 1949, signed by Dr. Carlisle Storm Boyd, 121 East Sixtieth Street, New York, N. Y. and it reads as follows:

This is to certify that on October 25, 1945, I carefully examined Judge Marion J. Harron, which also included various laboratory tests. She came to me to have a physical check-up, which she told me it was her custom to have from time to time.

I found Judge Harron in excellent physical condition, vigorous, energetic, alert, with a keen mind and a good sense of humor. I regard her as a most capable and exceptional type of woman, with poise and a healthy normal outlook. Her great capacity for and devotion to her work is extraordinary.

The third document is a letter dated June 13, 1949, signed by Mabelle B. Blake, of Manomet, Mass., addressed to you, Mr. Chairman, and reads as follows:

Certain matters have come to my attention regarding the hearings in connection with the reappointment of Judge Marion Harron to the United States Tax Court. The contentions relating to Judge Harron's temperament and personality which have been made are so contrary to facts that I feel I must write to you and as a psychologist give you my opinion of Judge Harron.

But first I would like to tell you briefly something about my professional and educational background and experience so that you may understand that my judgment is based upon a scientific understanding of human beings.

I hold two graduate degrees, a master's and a doctorate from Harvard University School of Education. My professional field is psychology both normal and abnormal. After receiving my doctorate, I was appointed to the faculty of Smith College, Northampton, Mass., as a psychologist to work with individual students.

I remained at Smith College for 8 years and was then called to Chicago to become president of a teacher's college.

At the beginning of World War II, I was called to Washington, first to direct the education section of the Consumer Division of the Office of Price Administration and later became the national director of the women's section of the War Finance Division, United States Treasury Department. At the close of the war, I was appointed to serve on the National Advisory Committee of the United States Savings Bonds Division, United States Treasury Department. I am still a member of this committee.

As head of the women's section of the War Finance Division, I traveled extensively and organized groups of women in practically every State of the Union for the purpose of selling war bonds. Naturally this position brought me in touch with various types of women and gave me an unusual opportunity to observe human nature in action.

While in Washington I lived at the national headquarters of the American Association of University Women. I dined with Judge Harron at the club at least three times a week and also saw her on many social occasions. I believe her to be a clear thinker, well controlled at all times and one in whose judgment I have perfect confidence. She is most objective in her thinking, always weighing a problem carefully before giving an opinion.

At the close of the war I returned to my home in Cambridge where I am doing private work in counseling college students. I have seen Judge Harron several times since leaving Washington. On one occasion she was in Boston attending to professional duties. During her stay in Boston a dinner was given to her by a group of outstanding women lawyers. One of the group told me that they all considered Judge Harron one of the most outstanding women lawyers in this country. I had several conversations with Judge Harron last March in Washington.

I have been in touch with many women in various states since the war and I know many are eager to have Judge Harron reappointed to the United States Tax Court.

I think you will understand that I have had a wide experience in dealing with many different types of women and I can say without reservation that Judge Harron is a woman of high integrity and of sound principles. She has poise, dignity, good judgment, always self-controlled, a keen sense of humor, and an excellent manner of speaking both to individuals and to groups. It is my opinion that Judge Harron is the type of person whom we are grateful to have in a high Government position.

Colonel McGUIRE. During the course of the hearing, Senator Millikin, and perhaps other Senators, had inquired as to what was the record of Judge Harron's cases in the Tax Court conference. I thought that question was so important that I have had assembled these statistics with respect to the question and I will present them at this point.

Before presenting it, I want to call attention to a few things that the committee may not know in connection with these court conferences. Each Tax Court judge is required to and does send to the presiding judge every findings of fact and opinion in every case in which he has prepared an opinion, whether the findings of fact and opinion is in the form of a memorandum opinion or an opinion which is to be printed. No opinion in any case may be issued as that of the Tax Court until this has been done and the presiding judge has acted thereon.

Of course, Senators, you understand the presiding judge is elected by the court itself at the end, I believe, of every 2 years.

A memorandum findings of fact and opinion is usually as long as a report which is to be printed and is a complete report, but is not printed because the question to be decided is a fact question, or a law question controlled by a printed decision of the Tax Court or an opinion of an appellate court, either court of appeals or Supreme Court. A judge of the Tax Court may submit a findings of fact and opinion to the presiding judge recommending that it be printed, and the presiding judge may direct that it should be issued as a memo opinion; or a judge may submit a report recommending that it be issued as a memorandum, and the presiding judge may direct that it be issued as a printed opinion.

With respect to the review of a report by the court in the court conference it should be stated that:

A judge may request the presiding judge to send the report to the court conference for any one of several reasons—the question may be one of first impression; the question may be a very close one upon which the judge recognizes that other judges of the Tax Court may have views differing from his or her own; or the judge may have arrived at a conclusion which he recognizes might be considered to be in conflict with some prior decision of the Tax Court, or of some one circuit court of appeals which the writer of the opinion thinks should not be followed as a precedent.

Or, the presiding judge may direct court review for any one of the above reasons, or for the further reason that he and the judge writing the opinion have different views as to the conclusion to be reached in the case.

When the facts and opinion of a judge has been referred to the court conference, it is mimeographed and distributed among all of the judges. The briefs are not available to all of the judges unless the parties to a proceeding have previously filed 16 duplicate sets of briefs, in which event briefs will be attached to the port in the case, and each judge can study both the briefs and the report. Otherwise, the judges make their independent study of the report.

In the court conference, after discussion, the vote on the opinion may approve the same, but all of the judges have had experience, in many instances, of receiving a tie vote on a report, or of having the report voted down. If the vote is a tie vote, the conference will reconsider the report as originally written at a later conference after further study; or, the author of the opinion may desire to revise or clarify the report and resubmit a revised draft. Or such author of the opinion may ask for reassignment of the case and elect to write a dissenting opinion.

All of the judges, at some time or other, take back a report which has been voted down, and rewrite the report and resubmit the revised report to the conference. All of the judges have at one time or other, in such rereferment of the case back to himself, done either of two things—changed the result, adopting what seems to be the majority view, or resubmitted the report in a revised draft but arriving at the same result as he originally reached. All of the judges have, at some time or other, had their original views eventually approved in the court conference, even though they may have resubmitted their report twice or three times. It is not unusual for a case to be resubmitted by the author of the opinion to the conference two or three times. It must be remembered that many of these tax cases are exceedingly close cases.

The attached schedule shows that 7 out of 11 judges—and by the way we did not have time to compile this except for 11 judges—had 81 or more opinions reviewed by the court conference in 12 years, which were adopted; and that four judges had 72 or less reviewed as compared with 131, 126, and 81 of other unnamed judges. Judge Harron had 72 reports reviewed which were adopted as compared with Disney's 107; and Hill's 89. The titles of these 72 court-reviewed cases are made a part of this schedule.

(The schedule referred to follows:)

Number of cases of division judges reviewed by the court (or board) July 1, 1936, to June 30, 1948

Division judge	June 30, 1937		June 30, 1938		June 30, 1939		June 30, 1940		June 30, 1941		June 30, 1942	
	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all
A	[1] 14	[1] 158	12	125	16	128	13	157	12	131	12	116
B	16	158	3	125	1	128	4	157	2	131	3	116
C	13	158	12	125	8	128	18	157	14	131	8	116
D	9	158	4	125	10	128	10	157	8	131	6	116
E	7	158	2	125	6	128	3	157	7	131	5	116
F	7	158	9	125	4	128	8	157	1	131	5	116
G	2	158	2	125	3	128	5	157	7	131	4	116
H	6	158	4	125	8	128	9	157	4	131	8	116
Disney	10	158	8	125	6	128	12	157	8	131	10	116
Hill	11	158	13	125	11	128	11	157	5	131	4	116
Harron	8	158	9	125	5	128	7	157	9	131	4	116

Division Judge	June 30, 1943		June 30, 1944		June 30, 1945		June 30, 1946		June 30, 1947		June 30, 1948		Totals	
	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all	Total, each	Total, all		
A	5	80	4	79	5	99	15	124	8	119	15	163	[1] 131	[1] 1,479
B	9	80	3	79	8	99	13	124	6	119	13	163	81	1,479
C	8	80	8	79	8	99	7	124	13	119	9	163	126	1,479
D	2	80	6	79	5	99	8	124	6	119	7	163	81	1,479
E	4	80	3	79	3	99	3	124	1	119	5	163	53	1,479
F	4	80	3	79	5	99	5	124	1	119	7	163	59	1,479
G	1	80	5	79	5	99	5	124	4	119	5	163	48	1,479
H	3	80	6	79	7	99	6	124	8	119	12	163	81	1,479
Disney	7	80	2	79	9	99	15	124	9	119	11	163	107	1,479
Hill	4	80	5	79	3	99	8	124	9	119	5	163	89	1,479
Harron	3	80	4	79	5	99	6	124	8	119	4	163	72	1,479

Explanation: During the 12-year period July 1, 1936 to June 30, 1948, 1,479 opinions of all of the 16 judges who served from time to time, and for different periods, were reviewed by the court (or Board). In the above table, the records of 11 judges who served during the entire 12 years are given. Only three judges are identified, the others being given a designation which has no relation to the name of a particular judge.

[1] Opinions only; docket numbers are not shown.

COURT-REVIEWED CASES

1. Lilienfeld.
2. Eagleton.
3. Trosk.
4. Whittemore.
5. Emerson.
6. Peterson.
7. Peterson Supp.
8. Korn.
9. Slack.
10. Lakeland.
11. N. American.
12. Auto. Loans.
13. Pierce.
14. Hart.
15. Rosenau.
16. Spreckels.
17. Sandford.
18. Mack.
19. Montague.
20. Cereal Prod.
21. Goedel.
22. Eubank.
23. Loughran.
24. Rohnert.
25. Bear Gulch.
26. Canelo.
27. Rose.
28. Foster Wheeler.
29. M. Phipps.
30. Affiliated Enter.
31. Newton.
32. Louisville Fire B.
33. L. Phipps.
34. Cain.
35. Maumee.
36. Inland Inv.
37. Reed Drug.
38. Int. Freight.
39. Halliwell.
40. Gillette.
41. Stollberg.
42. Carolina-Fla.
43. Waggoner.
44. Thornley.

COURT-REVIEWED CASES—continued

45. Ill. Water.
46. Lowry.
47. Lorenz.
48. Ransbottom.
49. Sunderland.
50. Minn. Mort.
51. Kenney.
52. Nettleton.
53. Gracey.
54. Hallowell.
55. Lueders.
56. Friedman.
57. Lederman.
58. Backus.
59. Mannon.
60. Funk.
61. Hesse.
62. Brighton Mills.
63. Carey.
64. N. Y. Stocks.
65. Alston.
66. O. Hommel.
67. Zellerbach.
68. Farkas.
69. Frizzell.
70. Jandorf.
71. Harris.
72. Lehigh Valley.

Number of cases voted down in court conference and reassigned from July 1, 1938, to June 30, 1948. (These cases are in addition to those heretofore tabulated.)

Division judge:	*Opinions voted down at the conference and reassigned to another judge*
A	2
B	5
C	0
D	9
E	3
F	6
G	3
Disney	7
Hill	11
Harron	6

Colonel McGUIRE. We do not have available the number of reports of any judge which shows how many cases of other judges were reassigned to him to write the majority view of the court after the report of another judge had been voted down, except in the instance of Judge Harron. Of the total number of her opinions over a period of 12 years which were reviewed by the court (or Board), that being 72 cases, three cases were originally heard and written by some other judge, but were reassigned to her to write the majority view. Thus 69 (out of 529) were cases which she heard and decided, while three were cases heard by other judges and had been reassigned to her.

The schedule also shows the number of cases of each of the judges listed on the schedule which, during the 12-year period, were reassigned to other judges to decide the question presented in accordance with the view of the majority, as expressed in the conference, upon rejection of the opinion of the judge who heard the case. The cases listed in this schedule constiute one in which the trial judge wrote opinions that were court-reviewed and are in addition to the number of court-reviewed cases which are stated in the schedule.

This study has been made in order to answer inquiries of Senator Millikin as to what was the record of Judge Harron in Tax Court conferences as compared with the record of other judges in the number of opinions approved, disapproved, and reassigned. The comparison has been made with 10 other judges because we did not have time to prepare the statistics for all of the 16 judges. These statistics speak for themselves, but I may state that Judge Harron had 72 cases reviewed in conference, three of which had been reassigned from other

judges to her, as compared with 107 for Judge Disney and 89 for Judge Hill. Also Judge Harron had six cases reassigned to other judges to prepare majority opinions, while Judge Disney had seven of his cases reassigned and Judge Hill had 11 cases of his reassigned.

Thus, out of 529 cases decided by Judge Harron, only 72 were Tax Court reviewed. There is, thus, no basis for any suggestion that the great success enjoyed by Judge Harron in having so few of her cases appealed and fewer yet reversed, modified, or remanded is due to the help she had from other judges on the court in the preparation of her opinions.

As a matter of fact, court conference reviews do not always lead to more correct results. This is illustrated by the cases of Ewart (35 B. T. A. 692) and Emerson (35 B. T. A. 901), both decided by Judge Harron and wherein her opponents claimed that she reached opposite results. Circumstances in this matter are as follows:

I will not read this, but I can summarize it. The Ewart case was not sent to court conference. The Emerson case was sent to court conference. In the Ewart case she decided that the salaries of the attorney were taxable and in the Emerson case which went to conference she held that Emerson's salary was taxable in accordance with the Ewart case; but the conference judges disagreed, taking the view that the salary of Emerson was exempt from tax, so she took it back and rewrote it to conform to the majority view.

(A summary of the case referred to follows:)

SUMMARY OF EMERSON CASE

1. The case of Sigurd A. Emerson (35 B. T. A. 901 (1937); reversed, Commissioner v. *Emerson (98 Fed. (2d) 651)*

This proceeding was heard by Judge Harron and presented the question whether fees and a retainer which the taxpayer, a lawyer, had received from the township of Hillside, N. J., were exempt from Federal income tax under the constitutional immunity of the States and their subsidivisions from Federal taxation.

The taxpayer contended that he was an officer of a municipality, a subdivision of State government, and, hence, that the income paid to him by such municipality could not be taxed by the Federal Government.

Judge Harron decided, under a report which was referred to the entire Board (the then Board of Tax Appeals) for review, that the taxpayer was neither an officer nor employee of the municipal government in question, but was an independent contractor, and, therefore, that the income which he received for his legal services to the township was taxable under the Federal income tax.

The Board voted against the report. Judge Harron resubmitted a report in the case according to the majority view of the Board, as expressed in the Board conference, to the effect that that taxpayer was an officer of a municipality, so that the fees he received were not subject to Federal income tax.

The Commissioner noted nonacquiescence and appealed to the Third Circuit.

Judge Harron had heard and decided another case which involved a similar question, the case of Howard Ewart (35 B. T. A. 692 (1937)). The report in that case was approved by the Chairman of the Board, but he did not refer her report in that case to the Board for review. In that case Judge Harron had concluded that a lawyer who rendered legal services for the township of Toms River, N. J., was not an officer of a municipal government within the principles set forth in *Metcalf & Eddy* v. *Mitchell* (269 U. S. 514), but was an independent contractor, and that, therefore, his income was not exempt from the Federal income tax. In her first report in the Sigurd Emerson case, Judge Harron had followed her earlier decision in the Ewart case. Since the Ewart case had not been Board-reviewed, and since the Board did not approve of the rule there expressed when, later, it was reexpressed in the Emerson case, Judge Harron felt that she should bow to the Board's view and rewrote her opinion as a judge writing an opinion for the entire Board. Sometimes a judge of the Tax Court does this and then notes his dissent to the report which goes out for the court under his name. Judge

Black has done this, but Judge Harron has not followed that very unusual practice. The taxpayer appealed from the decision of the Board through Judge Harron in the Ewart case to the Third Circuit.

The Third Circuit, through Judge Biggs, reviewed both the Ewart and the Emerson cases. It affirmed the Board's decision, through Judge Harron, in the Ewart case, which had not been Board-reviewed (*Ewart* v. *Commissioner*, 98 Fed. (2d) 649; and then reversed the Board's decision in the Emerson case, which was the Board's view written for it by Judge Harron, after Board review, upon the authority of Judge Harron's decision in the Ewart case (*Commissioner* v. *Emerson* (98 Feb. (2d) 651)). In reviewing the two cases, the circuit court held that the Supreme Court decision in *Metcalf & Eddy* v. *Mitchell* had been correctly applied (by Judge Harron) in the Ewart case, and that the Board's view in the Emerson case was "precisely contrary" to the holding in the Ewart case, and that the Metcalf & Eddy case controlled the question in the Emerson case, as Judge Harron had held in her report which the Board, on review, had rejected.

Colonel McGUIRE. The Emerson case was appealed to the circuit court of appeals; and the circuit court of appeals, reviewing the case, cited with approval her prior decision in the Ewart case and reversed the Emerson case. So, on the basis of these statistics, Judge Harron has a very fine record in the court conference.

Now, there is some doubt raised by Judge Harron's opponents as to the number of cases which she had actually decided. I have requested, and there has been prepared, a detailed list of 529 cases which she decided, involving 652 petitions or 652 docket numbers, decided by Judge Harron as of June 30, 1948, showing results reached in each case. When several docketed cases are consolidated for trial, they count as one case. Here is the list of those cases with the names and amounts involved, deficiencies and what not, which I will offer for the files.

(The list referred to will be found in the files of the committee.)

Colonel McGUIRE. Now this tabulation was prepared by Judge Harron at my request for the purpose, as I have stated, of answering the uninformed statements of some of her opponents to this committee. No such statistics had been prepared by the Tax Court authorities, and, too, Judge Harron considered it unjudicial to maintain a record of how she had decided the cases which came before her; that is, to maintain a record as to whether she had decided the cases in favor of the Commissioner of Internal Revenue or in favor of the taxpayer, in whole or in part in either event.

It has required some 2 weeks to prepare this tabulation, though it has seemed to her counsel to be necessary to present the same to this committee in complete answer to her opponents on this phase of the matter.

In view of the nature of tax cases and the conclusions necessarily reached therein, it has not been possible to classify all of them as having been won by the Commissioner or having been won by the taxpayer. Therefore the tabulation has been made under the following classifications:

(*a*) cases decided in favor of the taxpayer holding that there was no deficiency in tax as asserted by the Commissioner;

(*b*) cases in which the chief issue was decided in favor of the taxpayer but where the decision or order of tax liability showed some deficiency in tax less than that which the Commissioner had asserted;

(*c*) cases decided for the Commissioner where the decision or order resulted in a money judgment in the exact amount of the deficiency which the Commissioner had asserted;

(*d*) cases in which the chief issues were decided in favor of the Commissioner but where the proposed deficiency assessment approved was less than that proposed by the Commissioner;

(*e*) cases of mixed decisions where a number of issues were involved, some of which were decided in favor of the taxpayers and some in favor of the Commissioner.

Now the tabulation has been arranged under those headings and a break-down of it has been made. There has also been prepared a tabulation of several pages, a recapitulation. This recapitulation shows that in 200 opinions (involving 260 docket numbers) in which the issues were decided entirely for, or in principal part for, the taxpayers, Judge Harron's decisions reduced the deficiency assessments which had been proposed by the Commissioner to the sum of $505,000.56, from the total sum of $9,341,185.00 a reduction in alleged tax liability of $8,835,188; and it was determined also that there had been overpayments by the taxpayers in the sum of $830,611.00, which were refundable to them. Thus taxpayers obtained relief to the extent of the total sum of $9,671,800.

(The recapitulation referred to follows:)

Recapitulation

A. CASES IN WHICH TAX COURT DECISION WAS ENTIRELY OR CHIEFLY FOR THE TAXPAYER

	Proceedings	Docket Nos.	Deficiency	Decision	Overpayment
Before appeals	200	(200)	[1] $9,341,185.00	$505,000.56	$830,611.00
After appeals [2]					

[1] Deficiency reduced to $8,835,188.44.
[2] Net reduction deficiencies, $8,744,932.65; $847,280.44.

B. CASES IN WHICH TAX COURT DECISION WAS ENTIRELY OR CHIEFLY FOR THE COMMISSIONER

Before appeals	237	(304)	$4,903,853.38	$1,385,017.40	$18,358.26
After appeals				3,447,297.17	37,700.18

C. MIXED DECISIONS

Before appeals	63	(88)	$3,644,644.40	$871,010.12	$431,907.39
After appeals				736,003.77	444,225.50
Total	539	632			

Recapitulation (see attached summaries)

CASES DECIDED FOR THE TAXPAYER UNDER TAX COURT DECISION OF NO DEFICIENCY OR OF NO DEFICIENCY AND OF OVERPAYMENT OF TAX

Proceedings	Docket Nos.	Deficiencies determined by Commissioner	Tax Court decision	
			Deficiency	Overpayment
129	154	$7,009,654.03	None	$798,890.13

CHIEF ISSUE DECIDED FOR THE TAXPAYER UNDER TAX COURT DECISION WHICH REDUCED THE TAX

74	98	$2,150,653.36	$491,007.13	$32,600.56

Recapitulation (see attached summaries) —Continued

CASES DECIDED BY TAX COURT FOR TAXPAYER WHICH WERE REVERSED UPON COMMISSIONER'S APPEAL

Proceedings	Docket Nos.	Deficiencies determined by Commissioner	Tax Court decision	
			Deficiency	Overpayment
4	5	$104,701 19	$14,140 22	$47 44

Results of reversals on appeal: Overpayment canceled and deficiencies found to be due the Commissioner increased to $90,090 40

CASES DECIDED FOR TAXPAYER MODIFIED ON APPEAL OR REMANDED

A. 1	2	$5,460 26	$849 21	
B. 1	1	10,716 22		$5,173 51
Total (2)	3	16,176 48	849 21	5,173 51

Result on appeal: A. Deficiency reduced on appeal to $124 61 (saving to taxpayer of $124 62) B. Overpayment increased to $10,710.22.

CASES DECIDED FOR THE COMMISSIONER

Proceedings	Docket Nos.	Deficiency	Decision
1	1	$7,940 39	$7,940 39
20	21	219,704 62	219,704 62
25	31	253,576 22	253,576 22
28	30	144,337 80	144,337 80
20	28	125,822 32	125,822 32
26	32	103,024 04	103,024 04
26	31	88,300 28	88,300 28
20	26	508,747 32	508,747 32
Total (178)	204	1,541,513 08	1,541,513 08

CASES DECIDED BY TAX COURT (JUDGE HARRON) FOR COMMISSIONER WHICH WERE REVERSED ON TAXPAYER'S APPEAL

1	1	$3,886 11	$3,886 11
1	1	1,192 80	1,192 80
1	1	1,634 11	1,634 11
1	1	138,750 00	138,750 00
1	1	11,109 80	11,109 80
1	1	123,053 33	123,053 33
1	1	3,224 86	3,224 86
1	1	14,785 49	14,785 49
1	1	6,165 61	6,165 61
1	2	77,194 42	77,194 42
Total (10)	11	380,396 53	380,396 53

Effect of reversal: (1) Deficiencies of $380,029.22 eliminated. (2) Overpayments refunded to taxpayers—$9,595.17.

TAX COURT DECISION FOR COMMISSIONER MODIFIED ON APPEAL OR REMANDED

Proceeding	Docket Nos.	Deficiency	Tax Court decision
A. 1	1	$33,303.28	$33,303.28
B. 1	1	24,642.60	24,642.60
Total (2)	2	57,945.88	57,945.88

Result on appeal: (A) Modified; further hearing held before Tax Court and new decision of deficiency of $33,303.28 entered from which no appeal was taken, and decision was sustained. (B) Remanded: further hearing held, new decision of Tax Court reducing deficiency to $3,762.40; no appeal taken.

Recapitulation (see attached summaries)—Continued

CHIEF ISSUE DECIDED FOR THE COMMISSIONER

Proceeding	Docket Nos.	Deficiency	Decision	Overpayment
4	4	$247,702.84	$230,553.81	
20	30	1,260,215.38	605,009.65	$16,149.23
25	32	915,079.11	770,956.42	
5	5	335,500.75	201,337.94	2,200.03
1	1	58,515.05	50,407.78	
2	1	2,448.28	2,288.09	
Total (63)	82	2,825,468.01	1,860,506.29	18,358.26

CHIEF ISSUE DECIDED FOR COMMISSIONER—REVERSED ON TAXPAYER'S APPEAL

	Proceeding	Docket Nos.	Deficiency	Decision
A	1	2	$73,123.70	$17,877.11
B	1	1	124.21	108.99
C	1	1	11,845.22	11,150.44
D	1	1	15,436.75	10,359.08
Total	4	5	100,529.88	39,495.62

Effect of reversal: (A) A deficiency in the amount of $16,516.35 was eliminated. (B) No deficiency, overpayment—$432.79. (C) A deficiency in the amount of $10,359.08 was eliminated. (D) Overpayment of $9,319.93.

Deficiencies reduced: $16,516.35+$10,359.08=$26,875.43.

Overpayments: $432.79+$9,319.93=$9,752.72.

MIXED DECISIONS—SOME ISSUE OR ISSUES DECIDED FOR TAXPAYER, AND SOME ISSUE OR ISSUES DECIDED FOR COMMISSIONER IN A SINGLE PROCEEDING

Cases	Docket No.	Deficiency	Decision	Overpayment
1	1	$6,760.73	$1,022.80	
6	7	83,298.33	34,143.81	$498.09
27	34	2,436,284.42	470,261.91	422,701.98
25	42	639,940.91	300,960.29	5,110.33
Total (59)	84	3,166,284.39	706,388.81	428,310.40

MIXED DECISIONS APPEALED—TAX COURT REVERSAL

	Cases	Docket No.	Deficiency	Decision
A	1	1	$25,275.46	$8,360.37
B	1	1	301,517.26	109,659.56
Total	2	2	326,792.72	118,019.93

Effect of reversal: (A) No deficiency—overpayment of $8,721.12. (B) No deficiency—tax eliminated, $109,659.56. Total saving in tax to taxpayers, $118,380.68.

MIXED DECISION APPEALED—MODIFIED ON APPEALS OF BOTH PARTIES

Cases	Docket No.	Deficiency	Decision	Overpayment
2	2	$151,587.29	$47,207.38	$3,596.99

Result of appeal: Overpayment of $3,390.79; deficiencies reduced to $26,631.67.

Colonel McGUIRE. This recapitulation shows that in the 63 mixed decisions—88 docket numbers—also, where some issues were decided in favor of the taxpayers and some in favor of the Commissioner, the deficiencies proposed by the Commissioner in the sum of $3,644,644.40 were reduced to $871,616.12, taxpayers obtaining relief to the extent of $2,773,028.28. She also found and determined that there had been an overpayment of taxes in these cases of $431,907.39, which was refundable.

Lastly, the recapitulation shows that in 257 cases—304 docket numbers—decided by Judge Harron entirely, or in principal part in favor of the Commissioner, he collected additional taxes in the total amount of $3,885,917.40. However, even under these decisions it was determined that there had been overpayments of taxes in some of these 257 cases of $18,358.26, which was refundable to taxpayers.

Percentagewise and taking the above classifications into consideration, Judge Harron's disposition of cases under 529 opinions over a period of 12 years were as follows:

	Number	Percent
SCHEDULE 1		
1. Cases decided for taxpayer—no deficiency	[1] 135	[2] 25.5
2. Cases decided for Commissioner—deficiency as he determined	190	36.0
3. Chief issue decided for taxpayer	74	14.0
4. Chief issue decided for Commissioner	67	12.5
5. Mixed decisions—in part for taxpayer, in part for Commissioner	63	12.0
Total		100.0
SCHEDULE 2		
A. Cases decided for taxpayer:		
1. Taxpayer sustained, no deficiency	135	
2. Chief issue decided for taxpayer	74	
Total	209	39.5
B. Cases decided for Commissioner:		
1. Commissioner sustained	190	
2. Chief issue decided for Commissioner	67	
Total	257	48.5
C. Mixed decisions: In part for taxpayer; in part for Commissioner	63	12.0
Grand total	529	100.0

[1] Docket numbers omitted.
[2] Percentage computed on total of 529 opinions.

Thus the record established beyond cavil that the taxpayers fared well before Judge Harron, considering the fact that the proposed deficiency assessment of taxes in all of these 529 cases, or 652 docket numbers, had been considered and approved by the tax experts of the Bureau of Internal Revenue before they ever reached the Tax Court. There simply is no basis whatever for any charge to the effect that Judge Harron is a Government judge, rather than a judge who does her best—which is indeed extremely good—to decide the cases before her on the basis of the law and the facts.

Also, fewer yet of these cases were determined in the United States Courts of Appeal to have been decided wrongly by Judge Harron writing for the entire Tax Court. This is also shown by this tabulation of cases wherein the titles of all the cases decided by Judge Harron and appealed to the courts have been listed together with the results

of such appeals. Percentagewise to June 30, 1948, that record is as follows. Taking the above classifications into account we find:

A. 1. Taxpayers appealed successfully from decisions for the Commissioner in 10 cases, obtaining reversals.
2. Taxpayers obtained modification or remandment for further proceedings in 2 cases.
3. Taxpayers appealed successfully from decisions in 4 cases where the chief issue was decided for the Commissioner.
Total reversals, modifications, or remandments won by taxpayers on appeal 16

B. 1. The Commissioner appealed successfully in 4 cases which were decided for the taxpayer.
2. The Commissioner appealed in 2 cases where the chief issues were decided for the taxpayer and obtained modification or remandment for further proceedings.
Total reversals, modifications, or remandments won by Commissioner on appeal 6

C. Appeals were taken by either or both parties in 3 of the cases involving mixed decisions, and 2 were reversed, and 1 was modified. Total 3

Grand total 25

The committee should bear in mind that statistics on the number of cases decided for or against the taxpayer must be appraised and viewed in the light of certain fundamental principles. Under our system of taxation a taxpayer has the absolute right to contest a determination of a deficiency in his income or estate taxes regardless of the merit of his position. During Judge Harron's tenure certain broad principles were established by the Supreme Court of the United States, which were extremely favorable to the Government, in such fields as the income taxation of the grantor of short-term trusts and the estate taxation of decedents retaining reversionary interests in inter vivos trusts, namely, the Clifford and Hallock type situations.

The cases are legion where taxpayers have sought, and rightfully so, to remove themselves from the impact of these broad decisions. In a vast majority of instances, however, fine distinctions were advanced to distinguish the controlling authorities which on scrutiny did not bear merit.

The task of the Tax Court trial judge is to apply the law as enunciated by the Supreme Court. We find for the most part in these fields circuit court decisions which were not favorable to the taxpayers' positions. It is evident that a mere quantitative analysis of the Clifford and Hallock type cases brought to the attention of the court would show a substantial majority of these decisions rendered in favor of the Government, not because of the personal predilections of any of the members of the tribunals but because counsel for the taxpayers had sought by subtle refinements to avoid broad principles which the Supreme Court required to be applied in favor of taxation.

There is included in the tabulation of cases, a list which shows that 73 cases, or opinions by Judge Harron, out of the total of 529 decided by her to June 30, 1948, were appealed by taxpayers and affirmed, and that 11 were appealed by the Commissioner and affirmed, making a total of 84 to and including June 30, 1948, or at the end of her 12-year term. Also, set forth in this tabulation is the amount involved in each case, with three exceptions, which was affirmed. It is stated by the compiler of the tabulation that the amounts in each of these three cases could not be computed on the record before him.

There is also set forth in this tabulation the titles of 20 cases reversed on appeal, the titles of the 3 cases which were modified on appeal, and of the 2 cases which were remanded on appeal, together with a brief description why each case was remanded or modified as the case may be.

I offered this recapitulation and summary for the record and I shall offer a photostat copy of the records officially compiled by the clerk of the United States Tax Court showing the number of cases decided by Judges Harron, Disney, and Hill, to July 1, 1947, which were appealed to the circuit courts of appeal, the number of which were affirmed, reversed, modified or remanded all in support of the testimony heretofore given by Judge Harron to this committee and in support of my statements.

(The copy of the records referred to follows:)

MEMORANDUM ON TAX COURT CASES APPEALED TO THE APPELLATE COURTS — CIRCUIT COURTS OF APPEAL AND U. S. SUPREME COURT

Period of fiscal years covered—July 1, 1930, to June 30, 1947, inclusive—11 years

	Appealed during 11-year period (actual)	Closed during 11-year period (actual)								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed no-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below [1]	Total closed	
Judge Harron, division 13:										
Fiscal years										
1937	2								0	
1938	12	1		2		1			4	
1939	3	9	1			2			12	
1940	12	3				1			4	
1941	22	6		2					8	
1942	13	13	1	4	1	3			22	
1943	13	5	1	4	1	2		1	14	
1944	14	4	1	4	1	4			14	
1945	23	10		2		3			15	
1946	6	15		5	1	1			22	
1947	16	4		1	1		1		7	
Total	136	70	4	24	5	17	1	1	122	Pending July 1, 1947, 14.

[1] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions; but not any appeals terminated by agreement of parties.

APPEALS TO U. S. SUPREME COURT

Name of case	Circuit court	Supreme Court	Tax Court stands
1. Cement Investors, Inc	Affirmed Tax Court	Affirmed circuit court	Affirmed.
2. Gerald A. Eubank	Reversed Tax Court	Reversed circuit court	Do
3. James Q. Newton Trust	Affirmed Tax Court	Affirmed circuit court	Do
4. John H. Smith	Modified Tax Court	Reversed circuit court	Do.
5. John Stuart	Reversed Tax Court	do	Remanded.
6. R. Douglas Stuart	Modified Tax Court	do	Affirmed.
7. Francis E. Tower	Reversed Tax Court	do	Do.

SUMMARY

Tax Court decisions stood—	
Affirmed	6
Modified	0
Reversed	0
Remanded	1

RECAPITULATION

A. Appeals decided by U. S. circuit courts:	
Affirmed	74
Modified	5
Reversed	17
Remanded	1
Total	[1] 97
B. Results of appeals after Supreme Court decisions:	
Affirmed	78
Modified	3
Reversed	14
Remanded	2
Total	97

[1] Total appealed, 136, less pending on appeal July 1, 1947, 14, plus 25 nol-pros and settled, leaves 97 decided on appeal.

Fiscal year July 1, 1947, to June 30, 1948 (bringing forward July 1, 1936, to June 30, 1947)

Actual and dockets [1]	Appealed during 12-year period (actual and dockets)	Closed during 12-year period (actual and dockets) [1]								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed nol-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below [2]	Total closed	
Judge Harron, division 13										
Fiscal years:										
Brought forward July 1, 1936, to June 30, 1947.	136	78	4	24	3	14	1	2	122	Pending on appeal June 30, 1947, 14.
July 1, 1947, to June 30, 1948.	8	6	..	..	..	6	2	..	14	
Total	144	84	4	24	3	20	3	2	130	Pending on appeal July 1, 1948, 8.

[1] Docket numbers not included.
[2] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions; but not any appeals terminated by agreement of parties.

Period of fiscal years covered, July 1, 1930, to June 30, 1947, inclusive, 11 years

	Appealed during 11-year period (actual)	Closed during 11-year period (actual)								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed no-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below	Total closed	
Judge Hill, division 2 Fiscal years.										
1937	11								0	
1938	14	7		2		1			10	
1939	19	10		1		3			14	
1940	17	5	2	1	2	5	1		16	
1941	18	8	2		2	7	1		20	
1942	16	3	1	1	2	9	1		17	
1943	25	16	1	3		1		2	23	
1944	10	13	3	4	1	4		1	26	
1945	18	10		2	2	1			15	
1946	10	10	2			3			15	
1947	13	5	1		2	1	1		10	
1948	10	11	0	0	2	2				
Total	177	87	12	14	11	35	4	3	166	Pending July 1, 1947, 11.

[1] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions, but not any appeals terminated by agreement of parties.

APPEALS TO U. S. SUPREME COURT

Name of case	Circuit court	Supreme court	Tax court stands
1. Alabama Asphaltic Limestone Co.	Affirmed Tax Court	Affirmed circuit court	Affirmed.
2. William D. Disston	Reversed Tax Court	Reversed circuit court	Do.
3. Paul R. G. Horst	do	do	Do.
4. Michael F. McDonald	Affirmed Tax Court	Affirmed circuit court	Do.
5. Henry W. Taft and wife	do	Reversed circuit court	Reversed.

SUMMARY TAX COURT DECISIONS STOOD

Affirmed	4
Modified	0
Reversed	1
Remanded	0
Total	5

RECAPITULATION

A. Appeals decided by U. S. circuit courts:	
Affirmed	99
Modified	11
Reversed	35
Remanded	3
Total	[1] 148
B. Results of appeals after Supreme Court decisions:	
Affirmed	100
Modified	11
Reversed	34
Remanded	3
Total	148

[1] Total appealed 177, less pending on appeal July 1, 1947, 11, plus 18 nol. pros. and settled, leaves 148 decided on appeal.

Fiscal year July 1, 1947, to June 30, 1948 (bringing forward July 1, 1936, to June 30, 1947)

Actual and dockets [1]	Appealed during 12-year period (actual and dockets) [2]	Closed during 12-year period (actual and dockets) [1]								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed not-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below [2]	Total closed	
Judge Hill, division 2:										
Fiscal years:										
Brought forward July 1, 1936, to June 30, 1947.	177	100	12	14	11	34	4	3	150	Pending on appeal June 30, 1947, 11.
July 1, 1947, to June 30, 1948.	10	11	.	.	2	2			15	
Total....	187	111	12	14	13	36	4	3	181	Pending on appeal July 1, 1948, 6.

[1] Docket numbers not included.
[2] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions; but not any appeals terminated by agreement of parties.

Period of fiscal years covered—July 1, 1936, to June 30, 1947, inclusive—11 years

	Appealed during 11-year period (actual)	Closed during 11-year period (actual)								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed, not-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below [1]	Total closed	
Judge Disney, division 4:										
Fiscal years—										
1937	[2]	.....	.....	1	.....	.....	.....	.....	1	
1938	15	3	.....	2	.....	2	.....	.....	7	
1939	19	10	.....	.....	.....	1	.....	.....	11	
1940	19	15	.....	.....	1	7	2	.....	35	
1941	33	11	1	3	.....	1	.....	.....	16	
1942	36	18	4	1	4	5	1	.....	33	
1943	24	14	1	4	2	7	2	2	32	
1944	19	11	1	.....	.....	2	1	1	16	
1945	12	11	1	1	3	5	.....	.....	21	
1946	19	8	.....	1	.....	2	1	.....	12	
1947	18	12	1	1	2	5	.....	.....	21	
Total.....	211	113	9	14	12	37	7	3	195	Pending July 1, 1947; 16.

[1] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions; but not any appeals terminated by agreement of parties.

Period of fiscal years covered—July 1, 1936, to June 30, 1947, inclusive—11 years—Continued

APPEALS TO U. S. SUPREME COURT

Name of case	Circuit Court	Supreme Court	Tax Court stands
1. Court Holding Co	Reversed Tax Court	Reversed circuit court	Affirmed.
2. Credit Alliance Corp	Affirmed Tax Court	Affirmed circuit court	Do.
3. Estate of Angier B. Duke	do	do	Do.
4. Electro-Chemical Engraving Co., Inc.	Reversed Tax Court	do	Reversed.
5. General Gas & Electric Corp	Affirmed Tax Court	Reversed circuit court	Do.
6. S. D. Heinlinger	Reversed Tax Court	Affirmed circuit court	Do.
7. Eugene Higgins	Affirmed Tax Court	do	Affirmed.
8. Adolph B. Spreckels	Modified Tax Court	do	Modified.

SUMMARY—TAX COURT DECISIONS STOOD

Affirmed	4
Modified	1
Reversed	3
Remanded	0
Total	8

RECAPITULATION

A. Appeals decided by U. S. Circuit Courts:	
Affirmed	122
Modified	12
Reversed	37
Remanded	3
Total	[1] 174
B. Results of appeals after Supreme Court decisions:	
Affirmed	122
Modified	12
Reversed	37
Remanded	3
Total	174

[1] Total appealed 211, less pending on appeal July 1, 1947, 16, plus 21 noll-pros and settled, leaves 174 decided on appeal.

Fiscal year July 1, 1947, to June 30, 1948 (bringing forward July 1, 1936, to June 30, 1947)

Actual and dockets[1]	Appealed during 12-year period (actual and dockets)[1]	Closed during 12-year period (actual and dockets)[1]								Remarks
		Decided and affirmed	Dismissed and affirmed	Dismissed noll-pros	Modified	Reversed	Terminated by agreement of parties	Remanded for reasons not presented below[2]	Total closed	
Judge Disney, division 4:										
Fiscal years:										
Brought forward July 1, 1936, to June 30, 1947.	211	122	9	14	12	37	7	3	195	Pending on appeal June 30, 1947, 16.
July 1, 1947, to June 30, 1948.	22	12	.....	1	.....	3	.....	.....	16	
Total.....	233	134	9	15	12	40	7	3	211	Pending on appeal July 1, 1948, 22.

[1] Docket numbers not included.
[2] This includes issues not raised or decided below; new retroactive legislation; new Supreme Court decisions; but not any appeals terminated by agreement of parties.

Colonel McGUIRE. Notwithstanding that Judge Harron testified that her statistics were completed only to June 30, 1948, the end of the last fiscal year and for approximately her 12-year term of office, Mr. Phillips challenged such statistics (transcript, pp. 609 611) and claimed that Judge Harron had been reversed in 29 cases and even suggested that she had counted as one case several consolidated cases. All this is incorrect as established by the photostatic copies of the records of the Tax Court which I have placed in evidence showing the records on appeal of cases decided by Judge Harron, Judge Disney, and Judge Hill. I will not burden the committee with a further detailed statement but a memorandum has been prepared, correctly stating the facts in this respect, which I request the reporter to insert in the record immediately following my statements on this phase of the matter and which I now hand to him.

The CHAIRMAN. It will be included in the record.

(The memorandum referred to is as follows:)

MATTER OF REVERSALS OF JUDGE HARRON'S DECISIONS

(See pp. 608, 609, 610, 611, vol. 4, transcript of hearing on May 13, 1949—Mr. Phillips' testimony.)

Mr. Phillips lists 29 cases of Judge Harron's which he says have been reversed on appeal.

The correct facts are as follows:

Judge Harron presented to the committee a report on her work during 12 years to the period ended June 30, 1948. In order that the committee could appraise her record, she presented, also, the records of Judge Disney and Judge Hill, so that her record could be compared with their record for the same 12-year period, ended June 30, 1948.

The records of these three judges gave the cases which were decided on appeal during the 12 years as of June 30, 1948. They are the correct record, as shown by the Statistical Section of the Tax Court. The report of Judge Harron related to the period July 1, 1936, to June 30, 1948. She made that clear in her statement.

We did not present the cases pending on appeal for each judge on June 30, 1948. On that date appeals from decisions of each of these judges were pending on appeal and not decided, as follows:

	Cases
Judge Disney (36 docket numbers)	22
Judge Hill (8 docket numbers)	6
Judge Harron (9 docket numbers)	8

From July 1, 1948, to April 30, 1949, some of the cases which were pending on appeal on June 30, 1948, have been decided by the circuit courts, as follows:

	Affirmed	Reversed	Modified
Judge Disney	10 (11)	2 (3)	1 (1)
Judge Hill	3 (3)	0	1 (1)
Judge Harron	4 (5)	2 (2)	0

Mr. Phillips has referred to the two decisions of Judge Harron which were reversed after June 30, 1948, namely: *Leonard Farkas* (8 T. C. 1351), reversed on December 9, 1948; and *Estate of Jandorf* (9 T. C. 338), which was reversed on January 6, 1949. (See vol. 4 of transcript, p. 610.)

We submit herewith the list of the 20 decisions of Judge Harron which the circuit courts had decided on appeal on and before June 30, 1948, which were reversed, and a list of those which were affirmed, modified and remanded on and before June 30, 1948.

The cases which were reversed on appeal were 20, with 23 docket numbers.

The Tax Court, in its statistics, does not count the consolidated dockets as separate cases, but, rather, counts as one case the consolidated group for which one findings of fact and opinion is written. Mr. Phillips is in error when he

makes his count according to all of the docket numbers in a group of cases which are consolidated as one case for trial and for the opinion and findings of fact. For example, the case of *Sigurd Emerson* with two docket numbers is counted by the Tax Court as one case only.

Mr. Phillips' list of cases on pp. 608 to 611 of vol. 4 of the transcript does not properly list the decisions of Judge Harron which were reversed on appeal, and, therefore, his count of 20 cases reversed is incorrect. His list represents the following:

CASES DECIDED ON APPEAL PRIOR TO JUNE 30, 1948

Eighteen decisions were reversed on appeal.

Three decisions appealed were terminated by agreement of parties on appeal, which means settled in compromise on appeal but were not reversed, namely: *C. N. Markle; Estate of Nettleton;* and *M. Friedman.*

Two decisions appealed were remanded for further proceedings but not reversed on appeal, namely: *Inland Investors;* and *John Stuart.*

Two decisions appealed were "modified" on appeal, but were not reversed, namely: *Estate of Richards;* and *Great Lakes Coca-Cola Bottling Co.*

Two decisions were affirmed on appeal, namely: *Benjamin F. Miller.* The case was remanded to give effect to an agreement made on appeal by the Department of Justice attorney to concede a small item which was not argued before the Tax Court and which, therefore, figured in the amount of the deficiency, but the circuit court's mandate stated that the decision of the Tax Court on the issue there decided was affirmed.

When this case was then heard under the remandment, the Bureau of Internal Revenue refused to agree to carry out the concession of the Department of Justice attorney, and for the first time, a question was then before the Tax Court. Judge Harron wrote a supplemental opinion of this issue deciding it for the taxpayer.

Then when it came time to enter the judgment on the amount of the deficiency, the Commissioner of Internal Revenue came before the Tax Court and conceded to the taxpayer the issue which both the Tax Court and the circuit court had decided in the Commissioner's favor. The reason for the settlement is not known, but is believed to have been because the Commissioner modified a regulation after the circuit court had decided the question on appeal and affirmed the Tax Court.

In the *Haden Company* case, Docket No. 5789, there were four or five issues from the decision of which appeals were taken. The circuit court affirmed the Tax Court on all excepting one with respect to which the circuit court held that more evidence should be adduced, and remanded for further proceedings in that one issue. Further hearing was held but the original holding stood and the remandment did not reduce the amount of the Tax Court judgment originally entered On the Tax Court records the case is carried as affirmed.

Total, 27.

CASES DECIDED ON APPEAL AFTER JULY 1, 1948

Two cases cited by Mr. Phillips on page 610 of volume 4 of the transcript, May 13, 1949, were decided on appeal after June 30, 1948, the end of Judge Harron's term of office.

Grand total, 29.

Judge Harron's report to the committee which she made in her statement to the committee on April 14, 1949, was correct, accurate, and was made from the official records of the Tax Court.

However, since Mr. Phillips, on May 13, 1949, raised some question about Judge Harron's record on appeal, it will be well to supplement her previous statement by adding certain details which she did not consider it necessary to include. In so doing, reference is again made to the records of Judges Disney and Hill for comparison.

	Disney		Harron		Hill	
Cases decided on appeal July 1, 1936 to June 30, 1948	189	(257)[1]	109	(124)	163	(221)
Cases decided on appeal on June 30, 1948, affirmed	134	(170)	84	(60)	111	(130)
Cases decided on appeal on June 30, 1948, reversed	40	(56)	20	(26)	36	(60)
Cases pending on appeal on June 30, 1948	22	(36)	8	(9)	6	(8)
Cases modified on appeal on June 30, 1948	12	(28)	3	(7)	13	(28)
Cases remanded for further proceedings on June 30, 1948	3	(3)	2	(2)	3	(3)

[1] Docket numbers.

In order that the committee may understand how the Tax Court records show the various kinds of outcome of cases on appeal, we have submitted to the committee photostat copies of the records of Judges Disney, Hill, and Harron from July 1, 1936 to June 30, 1947, and from July 1, 1947, to June 30, 1948.

At the hearing before this committee on May 13, 1949, at page 611 of volume 4 of the transcript, Senator Millikin asked how Judge Harron's record on reversals compared with the records of reversals of other judges of the court. We have given the comparison above with Judges Disney and Hill. The records of these three judges are comparable, all having been appointed at the same time, all having served 12 years and none having served any part of the period as a presiding judge.

Colonel McGUIRE. In the face of these records, there cannot be the slighest doubt that the work of Judge Harron as a member of the Tax Court is most excellent in both quality and quantity—not only in itself but when compared with the work of other judges on that court, including two of whom were appointed at the same time Judge Harron was appointed and whose renominations were confirmed by the Senate of the Eightieth Congress. Likewise, these records establish, I repeat, beyond cavil that any suggestions are without basis in fact that Judge Harron is what is known as a Government judge; that her work has not been of a high order; and that she has not maintained the high standards of the Tax Court. The women who have communicated with this committee in support of the nomination of Judge Harron are proud of her record and I suggest that all Americans should be proud of it, regardless of their sex.

For the ready reference of the committee, we have tabulated the names of the lawyers who have made of record with this committee by testimony, affidavits, or letters their high commendation of Judge Harron. We have also cited the cases which these lawyers have tried before Judge Harron. I now offer that tabulation for the record. In doing so, I may be permitted to make a short explanation.

The CHAIRMAN. You wish to incorporate that in the record?

Colonel McGUIRE. Yes, if you please.

The CHAIRMAN. It will be incorporated.

(The tabulation of lawyers referred to is as follows:)

Number of trials before Judge Harron by attorneys who recommend her confirmation

Names of witnesses at Finance Committee hearing on nomination	Names of cases tried by the witnesses
1. Dr. Joseph J. Klein, 60 East 42d St., New York City. 2 trials.	1. Edwin Singer, No. 111720, entered Jan. 25, 1944 (M. O.). Trial.
	2. M. W. Parsons, imports and Plymouth Organic Laboratories, Inc., No. 3068, entered Jan. 3, 1945 (M. O.). Trial.
2. Richard W. Wilson, Esq., 74 Trinity Pl., New York City. 4 cases, 3 trials.	3. Eastern New Jersey Power Co., No. 88566, 37 B. T. A. 1037. Trial.
	4. Hope Williams Read, Nos. 81099, 81765, entered Apr. 20, 1938 (M. O.). Trial.
	5. Ralph G. Blodgett, trustee for James Amm Trust, No. 85430, entered Dec. 19, 1938. Trial.
	6. Pacific Metals Corp., No. 109196, 1 T. C. 1028 (1943). Stipulation of facts.
3. Melvin S. Huffaker, Esq., Penobscot Bldg., Detroit. 7 cases, 6 trials.	7. Glenn S. Allen, No. 2149, entered Jan. 19, 1944 (M. O.). Stipulation of facts.
	8. Nestor J. Decker, No. 3922, entered Dec. 2, 1946 (M. O.). Trial.
	9. O. William Lowry, Nos. 112691, 112692, 3 T. C. 730 (1944). Trial.
	10. Felix Zukaitis, No. 43, 3 T. C. 814 (1944). Trial.
	11. William A. Boyd and Mark Allen, Nos. 4988, 4989, entered Sept. 13, 1946 (M. O.). Trial.
	12. James L. Pritchard et al., Nos. 4049-51, 7 T. C. 1228 (1946). Trial.
	13. Francis E. Tower, No. 1429, 3 T. C. 396 (1944) Trial.

Number of trials before Judge Harron by attorneys who recommend her confirmation—Continued

Names of witnesses at Finance Committee hearing on nomination	Names of cases tried by the witnesses
4. Harry J. Rudick, Esq., Lord, Day and Lord, New York City. 2 trials.	14. Gerald A. Eubank, No. 86200 (1937), 39 B. T. A. 583. Trial. 15. Estate of Jerome Hanauer, No. 112274, entered Dec. 9, 1943 (M. O.). Trial.
5. Albert E. Arent, Esq., Posner, Fox, Arent, Ring Bldg., Washington, D. C. 5 cases, 5 trials.	16. Ralph O. Blodgett, James Amm Trust (M. O.), entered Dec. 19, 1938. Trial. 17. Gerald A. Eubank, 39 B. T. A. 583 (1937). Trial. 18. R. C. Bayless, 35 B. T. A. 1128 (1937). Trial. 19. John P. Elton, 1937, entered Dec. 13, 1938. Trial. 20. Pershing Square Operating Co., No. 84495 (M. O.), entered Jan. 3, 1938. Trial.
6. Clyde E. Algire, DuPont Circle Bldg., Washington, D. C., (formerly chief of New York division of the chief counsel of the Bureau of Internal Revenue; direct knowledge of the experience of the trial counsel in the New York division of the Office of Chief Counsel of the Bureau of Internal Revenue, about 30 lawyers.) 1 trial; 1 stipulation of facts.	21. Lehigh Valley Railroad Co. (1936), entered Aug. 8, 1939 (M. O.) Trial. 22. Wm. R. Barringer (M. O.), 1936. Stipulation of facts.
7. Carol Agger (argument on appeal to Court of Appeals for Second Circuit. Reviewed the record for appeal).	23. John Thomas Smith, 40 B. T. A. 387.
8. Randolph E. Paul, Paul, Weiss, Wharton & Garrison, 1614 I St. NW., Washington, D. C.	24. Brown Shoe Co.
9. J. Phillip Wenchel, Wenchel, Tannebaum & Nunan, 1625 K St., NW., Washington, D. C., (formerly chief counsel, Bureau of Internal Revenue; direct knowledge of experience of 141 trial counsel in the Appeals Division of the Bureau of Internal Revenue during the period in which he was chief counsel of the Bureau of Internal Revenue).	Former chief counsel, Bureau of Internal Revenue.

Affidavits of attorneys who have tried cases before Judge Harron	Names of cases tried by the attorneys
10. Joseph D. Brady, 433 South Spring St., Los Angeles, Calif.	25. Harbor Holding Co. of Nevada et al., No. 106027-31 (M. O.), entered Nov. 10, 1942.
11. Arthur Murray, 555 South Flower St., Los Angeles, Calif.	26. F. W. Graham, No. 108313 (M. O.), entered Mar. 30, 1943. 27. Richard Law, No. 110169, 2 T. C. 623. 28. Pacific Refrigerating Co., No. 108235 (M. O.), entered May 20, 1943. 29. Estate of Harriet Ankeny Watson et al., Nos. 110399, 111288 (M. O.), entered Jan. 4, 1944. 30. Frederick P. Ader et al., No. 89873 (1938); 40 B. T. A. 581. 31. Walter E. Buck, No. 87922 (1938), 40 B. T. A. 536. 32. Consolidated Holding Co., No. 96160 (1939) (M. O.), entered Feb. 9, 1940. 33. Edwin B. DeGolia et al., No. 91130, (1938) 40 B. T. A. 844. 34. Camille R. Gump et al., No. 90656 (1938), 42 B. T. A. 197. 35. Harter Packing Co., No. 89240 (1938), stipulated; entered Nov. 10, 1938. 36. Independent Pressroom, Inc., No. 90877 (1938) (M. O.), entered Dec. 5, 1939. 37. Vesta Peak Maxwell, No. 86186-87 (1938) (M. O.), entered Feb. 7, 1940. 38. San Jose Pacific Co., Ltd., No. 88183 (1938) (M. O.), entered Aug. 31, 1939. 39. Rome Son, No. 89389 (1938) (M. O.), entered June 30, 1939.
12. George M. Naus, 155 Montgomery St., San Francisco, Calif.	40. American Foundation Co., No. 88664 (1938), 40 B. T. A. 541.
13. Eustace Cullinan, Cushing, Cushing, Cullenan, Trowbridge & Gorrill, 1 Montgomery St., San Francisco, Calif.	41. Bloomfield Ranch, No. 5007 (M. O.), (Affirmed.)
14. Louis Janin, 1120 Mills Tower, San Francisco, Calif.	42. Nos. 86186-87, Vesta Maxwell.
15. Samuel Taylor, 1211 Balfour Bldg., San Francisco 4, Calif.	43. Nos. 103773-74, Nathaniel and Anne Shilkret.
16. Granville S. Borden, 225 Bush St., San Francisco, Calif. 2 cases.	44. No. 103696, Oliver M. Hardy (M. O.). 45. No. 85706, Granville S. Borden (M. O.).
17. Clyde C. Sherwood, 333 Montgomery St., San Francisco, Calif. 4 cases.	46. No. 3482, Emily H. Spreckels. 47. No. 5093, M. J. Bevanda. 48. No. 6287, W. H. Easley, 8 T. C. 153. No. 6288, Margaret Easley. 49. No. 4917, Richard F. Lewis.

Number of trials before Judge Harron by attorneys who recommend her confirmation—Continued

Affidavits of attorneys who have tried cases before Judge Harron	Names of cases tried by the attorneys
18. Walter S. Nossaman, 433 South Spring St., Los Angeles 13, Calif.	President, Los Angeles Bar Association, 1948–49. Partner of Joseph D. Brady, 433 South Spring St., Los Angeles.
19. James T. Tynion, 39 Broadway, New York City.	50. No. 8600, Drayton Cochran. No. 9525, Estate of Elizabeth C. Bowen.
20. Andrew B. Trudgian, 350 Park Ave., New York City.	51. No. 102343, David Bruckheimer, 46 B. T. A. 234.
21. Benjamin P. De Witt, 120 Broadway, New York City.	52. No. 96589, Rufus S. Cole, 42 B. T. A. 1110.
22. Maurice Austin, 60 East 42d St., New York 17, N. Y.	53. No. 102136, Mortimer J. Fox.
23. Wilbur H. Friedman, Proskauer, Rose, Goetz & Mendelsohn, 11 Broadway, New York City.	54. No. 85967, Alfred T. and Dorothy B. Rose; No. 86028, Walter Mendelsohn.
24. Q. N. Diamond, 20 Exchange Pl., New York City, N. Y.	55. No. 100404, Illinois Water Service Co., 2 T. C. 1200.
25. Louis E. Burke, Ann Arbor Trust Bldg., Ann Arbor, Mich.	56. No. 4370, Paul G. Greene, 7 T. C. 142.

Letters from attorneys who have tried cases before Judge Harron	Names of cases tried by the attorneys
26. Victor E. Capua, 512 De Young Bldg., San Francisco 4, Calif.	57. No. 6086, Harold G. Trimble; No. 6087, Esther K. Trimble. Trial, 6 T. C. 1231.
27. George S. Atkinson, Dallas National Bank Bldg., Dallas, Tex.	58. No. 104269, Joe B. Fortson et al; No. 104270; No. 104271, 47 B. T. A. 158; No. 104272.
	59. No. 104527, Pacific Gas & Fuel Co., 47 B. T. A. 15.
28. John H. Crooker, Fulbright, Crooker, Freeman & Bates, Second National Bank Bldg., Houston, Tex.	60. No. 4750, Estate Lucy L. Boykes, 4 T. C. 1092.
29. Edward S. Reid, Jr., 3456 Penobscot Bldg., Detroit 26, Mich.	61. No. 5510, Ronald K. Evans.
30. J. Delmore Lederman, 564 Market St., San Francisco 4, Calif.	62. No. 6347, Jules D. Lederman, 6 T. C. 991.
31. Edgar T. Zook, 310 Sansome St., San Francisco 4, Calif.	63. No. 6713, Henry Dillon Winship; No. 6714, Katharine W. Hayes, 8 T. C. 744.
32. Herbert E. Hall, 901 Crocker Bldg., San Francisco, Calif.	64. No. 87021, Bear Gulch Water Co., 40 B. T. A. 1280.
	65. No. 88969, Rheem Manufacturing Co.
33. Jacob Mertens, 1 Wall St., New York City...	66. No. 78259, Roche's Beach, Inc., 35 B. T. A. 1057
	67. No. 84509, Denny and Alma Pierce, 37 B. T. A. 225.
34. Arthur B. Hyman, Paskus, Gordon & Hyman, 2 Rector St., New York City.	68. No. 79557, Arthur B. Hyman et al.; No. 81080, 36 B. T. A. 202; No. 81081.
35. M. W. Dobrzensky, 1516 Central Bank Bldg., Oakland, Calif.	69. No. 88873, Frederick P. Ader et al., 40 B. T. A. 581.
36. Leonard Farkas, the Citizens & Southern Bank Bldg., Albany, Ga.	70. No. 8293, Leonard Farkas, 8 T. C. 1351.
37. Sydney A. Gutkin, 744 Broad St., Newark, N. J.	71. No. 5637, Joseph J. Harris.
38. E. H. Green, Sullivan & Cromwell, 48 Wall St., New York City.	72. No. 75939, North American Utility Securities Corp.; No. 75960, Armin A. Schlesinger; No. 75961, Kathleen M. Schlesinger, 36 B. T. A. 320.
39. Talbot Smith, Ann Arbor Trust Bldg., Ann Arbor, Mich.	Paul G. Greene, 7 T. C. 142. (*see* item No. 56 above.)
40. Charles W. Tillett, 609 Law Bldg., Charlotte 2, N.C.	Chairman, section of international and comparative law of the American Bar Association.
41. Jerome Tannenbaum, 20 Pine St., New York City 5, N. Y.	
42. Leland W. Scott, 1300 First National Soo Line Bldg., Minneapolis, Minn.	73. No. 2355 Minnesota Mortuaries, Inc. 4 T. C. 280.
43. Morrison Shaffroth, Equitable Bldg., Denver, Colo.	Formerly a chief counsel, Bureau of Internal Revenue.
44. Clarence M. Charest, 815 15th St. NW., Washington, D. C.	Do.

Number of trials before Judge Harron by attorneys who recommend her confirmation—Continued

Letters from attorneys recommending reappointment of Judge Harron	Title
45. Mason G. Kassell, Lord, Day & Lord, 25 Broadway, New York City.	Former law clerk of Judge Harron from April 1943 to August 1945.
46. William I. Follett, Central Bank Bldg., Oakland, Calif.	A California lawyer who has known Judge Harron for 25 years.
47. Roger Powell, Huntington Bank Bldg., Columbus, Ohio.	An Ohio tax lawyer who has known Judge Harron for 9 years.
48. Oscar Cox, 1210 18th St., Washington, D. C....	Formerly Deputy Administrator, Foreign Economic Administration. A Washington lawyer who has known Judge Harron for 15 years.
49. Julius Henry Cohen, 20 Pine St., New York City, N. Y.	Former counsel of the New York Port Authority. A New York lawyer who has known Judge Harron for 23 years.
50. Seymour Heibron, Hays, St. John, Abrams & Schulman, 120 Broadway, New York City.	Lawyer of Philadelphia and New York who has known Judge Harron for 10 years; who has endorsed reappointment to the President and some members of the Finance Committee.
51. John H. Tolan, Jr., 444 Washington Bldg., Washington, D. C.	Son of the late California Representative in Congress, John H. Tolan. A California lawyer who has known Judge Harron for 13 years and who endorsed reappointment to the President.
52. L. S. Fletcher, Hardin, Rank, Neltzer & Fletcher, Central Bank Bldg., Oakland, Calif.	Partner of the late Leonard J. Meltzer, associate counsel in item 57, supra.
53. Alan R. Vogeler, Taft, Stettinius & Hollister, 603 Dixie Terminal Bldg., Cincinnati, Ohio.	Ohio lawyer who has known Judge Harron 13 years.
54. Wilbur La Roe, Jr., Investment Bldg., Washington 5, D. C.	Washington counsel for the New York Port Authority; former moderator of the Presbyterian Church has known Judge Harron for 13 years.
55. Women's Bar Associations in the New York City area: Bronx, Manhattan, Queens, Westchester County, Brooklyn. Telegram of joint committee of these associations: (a) Brooklyn Women's Bar Association, 66 Court St., Brooklyn, N. Y.; Anita Strup, president. (b) Bronx Women's Bar Association, 68 William St., New York City; Grace H. Connell, president. (c) New York Women's Bar Association, 41 Park Row, New York City 7; Esther Glantz, president. (d) Counselor's Club, Buffalo, N. Y.	

Colonel McGUIRE. I invite attention to the fact that most, if not all, of these lawyers have stated that they are members of the American Bar Association. The necessary effect of their position here is one of serious conflict with the four or five leaders of the section of taxation of that association in their opposition to Judge Harron.

Also, I invite attention to the fact that among these 54 lawyers, we have three lawyers who were former chief counsel of the Bureau of Internal Revenue and who are now in the private practice of law, namely Messrs. J. Phillip Wenchel, of Maryland; Mr. Morrison Shaffroth, of Colorado; and Mr. C. M. Charest, who I understand is from the District of Columbia. A fourth, Mr. Clyde E. Algire, who appeared here in behalf of Judge Harron, was formerly in charge of the New York division of the General Counsel's Office, which is the largest one in the country. The three chief counsel had the burden of the supervision of the legal force of the Bureau of Internal Revenue throughout the United States while Mr. Algire was in immediate charge of the largest field division of that force which was located in the State of New York. These four men are now free of the restraints of public office and each one of them has spoken in the highest terms of Judge Harron before whom they many times met defeat.

Senator MILLIKIN. I should like to say that Mr. Shaffroth is very well known to me. He is a superb lawyer, a fine man, and has had a lot of tax experience with the Government.

Colonel MCGUIRE. I know him very well, Senator, and I think your appraisal of him is a very good one. I entirely agree with you.

Also, before the committee was the distinguished Mr. Randolph Paul, now in private practice, but for a long and trying period he was general counsel of the Treasury Department. His measured words of commendation of Judge Harron will no doubt be given great weight by the committee, as they should be.

We have 42 practicing lawyers who have tried a total of 73 cases before Judge Harron. Some have won their cases and some have lost their cases before her. None was here by subpena or telegraphic invitation from this committee. All submitted their appraisals voluntarily. All are in entire accord in advising this committee of the high judicial character of Judge Harron's work and conduct on the bench during her long period of 12 years as a judge.

These lawyers come from the several sections of the United States four out of five of them do not practice law in Washington, D. C., as do the proportion of officers and representatives of the Tax Section, who have appeared here against her. None of the 42 lawyers has stated his or her appraisal of Judge Harron on the basis of hearsay and none of them has a partner with a case pending before Judge Harron, from whom he has sought to have the case transferred.

With a record of 529 separate opinions as of June 30, 1948, with only 109 of them appealed, with 84 of the appeals affirmed, and but 20 reversed, 3 modified, and 2 remanded, I affirm that Judge Harron has justly earned the commendation of these 42 lawyers and of all people who consider that the United States Tax Court exists for the benefit of the Federal Government and the taxpayers—and not necessarily for the benefit of a few lawyers.

In addition, we have included in this tabulation the names of some other lawyers who have known Judge Harron for long periods of time—one for 25 years; another for 23 years; another for 10 years; two others for 13 years each, and so on. Do these lawyers who have known Judge Harron for such long periods of time tell this committee that Judge Harron lacks judicial temperament; that she is dictatorial; that she is even dishonest in causing material to be removed from the records, and so forth, as this committee has been told by her opponents on the basis of hearsay? They most certainly do not.

At this point, I remind the committee that the splendid testimony given in person before this committee commending Judge Harron's high qualifications as a Tax Court judge does not stand alone, though it might well do so. I ask permission to supplement that testimony by reading into the record two letters from Victor E. Cappa of the San Francisco, Calif., bar. The first is dated March 30, 1948, and is written to Mr. Percy W. Phillips, and is in reply to his letter of March 15, 1948, sent to numerous members of the Tax Section, to which he has referred in his testimony and a copy of which we placed in this record. In this letter of March 30, 1948, Mr. Cappa states to Mr. Phillips that:

DEAR MR. PHILLIPS: Thank you for your letter of March 15, and for the opportunity of expressing my opinion with respect to the judicial qualifications of Judge Marion Harron.

As you are aware, in 1945 I tried the case of *Trimble* v. *Commissioner* (T. C.) before her. This case involved a very difficult question of tax law as to the deductibility as a bad debt of a claim of contribution or subrogation which arose in favor of my client against an insolvent cotrustee on his payment under court compulsion of the whole amount of a money demand being sued for by the beneficiary.

I had tried to settle this matter in the General Counsel's Office and the technical staff, but they showed little understanding of either the law or the natural justice of the taxpayer's position.

But for Judge Harron's splendid legal abilities and her thorough analysis of the problem, a great injustice would have been done the taxpayer. So effectively did her opinion dispose of the legal aspects of the matter that the General Counsel's Office here never appealed the case though they had insisted right along that they would do so in the event of an adverse decision.

As a trial lawyer with twenty-two years experience in trial court in all courts, Federal and State (perhaps a hundred trials in the United States Board of Tax Appeals and United States Court of Claims) I feel qualified to express the opinion that Judge Harron is as capable, courteous and impartial a judge as any before whom I have ever tried a case.

I may add that several prominent lawyers here and in Los Angeles who have tried cases before her have expressed the same opinion of her capacities to me.

You will appreciate therefore that I have no hesitancy in recommending her for reappointment to the United States Court of Tax Appeals.

Sincerely yours,

VICTOR E. CAPPA.

The second letter from him is dated May 7, 1948, and is addressed to Senator Millikin, then chairman of this committee. I will place the letter in the record.

(The letter referred to is as follows:)

SAN FRANCISCO, CALIF., *May 7, 1948.*

Senator EUGENE D. MILLIKIN,
Senate Office Building, Washington, D. C.

DEAR SENATOR MILLIKIN: I am writing to you on behalf of the candidacy of Hon. Marion J. Harron for reappointment to the United States Tax Court. I understand her Presidential appointment is now awaiting confirmation by the Senate.

I have tried perhaps a hundred cases before this court and its predecessor, the Board of Tax Appeals, since my admission to the Board in 1932. Several of these were tried before Miss Harron.

I am expressing my honest conviction when I state to you that of the many judges of that and other courts before whom I have appeared, I consider Miss Harron one of the most competent of all. She has an unusual grasp of difficult technical legal problems combined with a judicial poise and impartiality which inspires great confidence in the fairness of her decisions to both the taxpayer and the Government.

I can well understand how her record on affirmances by the Circuit Court of Appeals is one of the best of any of the members of that court.

Personally, I would rather appear before her than any one of the other judges of this court. Win or lose, I would feel that my client's case had been given the full and competent consideration which a lawyer has a right to expect from a judge but which unfortunately too frequently he does not get.

You will appreciate that I have no hesitancy in urging you to use your best efforts to have Miss Harron's appointment confirmed by the Senate of the United States.

Thanking you for your courtesy, I am,

Very truly yours,

VICTOR E. CAPPA.

Colonel MCGUIRE. The third instance that I want to bring to the chairman's attention at this time in supplement of the others is from Nashville, Tenn., and arose in the case of Justin Potter, Docket No. 97018 and Valere B. Potter, Docket No. 97019. I will place this document in evidence and ask that it be inserted into the record.

(The document referred to is as follows:)

JUSTIN POTTER, DOCKET NO. 97018; VALERIE B. POTTER, DOCKET NO. 97019

Hearing in Nashville, Tenn., July 26 29, 1940.

Attorney for petitioners: Norman R. Minick, Esquire, Nashville, Tenn.

At the conclusion of the trial, Mr. Minick stated as follows (p. 306 of transcript):

"On behalf of the petitioners, I will state that we appreciate the opportunity that was given us to offer further testimony in the case. We are highly pleased with the record, as we feel that we now have made a much better record for submission to the Board."

Comment: These proceedings were tried on June 3 and 5, 1940, in Nashville. The taxpayers were represented by a certified public accountant, James W. Allen, Esq. The tax deficiencies amounted to about $34,000. The chief question related to income of property which each taxpayer, husand and wife, had given to their two children, the Commissioner having determined that the income was taxable to the donors of the property rather than to the children, donees.

Toward the conclusion of the trial it became evident that there was no testimony or evidence relating to the gifts of Mrs. Potter who did not appear, and that probably would mean that there was failure of proof in one of the proceedings. Judge Harron inquired of the accountant about the matter and granted him leave to submit a deposition of Mrs. Potter.

On June 5, an attorney, Norman Minick, appeared and moved the court to permit him to enter an appearance in the case, and to continue the proceedings to a later date so that the petitioners could introduce additional evidence. Judge Harron granted the motions. Since she had to be in Louisville, Ky., the following Monday, she continued the trial until July 26th, when she returned to Nashville. Mr. Minick, then tried the case and the trial continued over three days. The record then comprised the trial by Mr. Allen, as continued by Mr. Minick. It was at the conclusion of the trial on July 29, 1940, that Mr. Minick made the statement quoted above.

When he asked leave for further hearing, on June 5, 1940, which was granted, he made the following statement:

"Mr. MINNICK. Your Honor please, I did not know a thing about these matters until sometime after 9 o'clock this morning, and Your Honor's statement to me clears up a great many things, and while Your Honor does not need it, it shows your attitude, and the attitude of the gentleman here, shows a spirit that causes the people of this country to have a great deal of confidence in their courts and administrative bodies, which are not standing on strictly technical rights."

The decision in the Justin Potter case is reported in 47 B. T. A. 607. The question involved application of the Clifford case, and an aspect of the family partnership issue. Upon a complete and adequate trial, the proceedings were decided for the taxpayers. The Commissioner did not appeal, and, furthermore, he acquiesced in the decision.

This instance is cited to the committee for several reasons: First, to demonstrate that Judge Harron's conduct of trials meets with the approval of some members of the bar; second, to show that she does not hurry trials, and, even, has returned to a city so that the parties would have a full trial—would have their day in court; third, to show that the trials of certain types of cases by certified public accountants often result in inadequate trials, failure of proof, and necessitates eventually the skill of a lawyer in order that the trial may be full and adequate and that the available evidence is introduced; fourth, to show that a member of the bar, and I understand that Mr. Minnick is an eminent one in Nashville, has expressed into the record, his confidence in Judge Harron and his appreciation for her conduct of the trial of an important case, which should serve to assure this committee that Judge Harron's conduct of trials has brought a splendid reaction, but, unfortunately, the opponents here have not desired to present the favorable aspects of her service.

Colonel MCGUIRE. The committee will note in this case the taxpayers are represented by certified public accountant. The case had gone along for a while and the record was quite confused. There was a lawyer by the name of Mr. Minick who came to see Judge Harron and said he had been retained that day while the case was in progress to handle the case and inquired if she would give him a little

time in which he could prepare himself to continue the case and try to straighten it out. She told him that she was scheduled to appear in Louisville the following Monday and that was the latter part of the week but she would go there and hear the case and come back to Nashville so that they could go ahead with the case, which she did.

During the trial Mr. Minick made the following statement on the record:

Mr. MINICK. Your Honor please, I did not know a thing about these matters until sometime after 9 o'clock this morning, and Your Honor's statement to me clears up a great many things, and while Your Honor does not need it, it shows your attitude, and the attitude of the gentleman here, shows a spirit that causes the people of this county to have a great deal of confidence in their courts and administrative bodies, which are not standing on strictly technical rights.

I can tell the committee that my research in this case has shown me, demonstrated to me, that if Judge Harron has erred at all in this respect, it has been in being too lenient with counsel or with the taxpayers who are not prepared to go ahead with the cases.

By way of contrast with that case, I want to place in evidence here a summary of the case of Adrian Block who submitted a letter to this committee. The case is the Famous Linen Supply Co. case. The committee has the transcript of the record and in his letter Mr. Block has some very harsh things to say concerning Judge Harron. In view of that, I will take the time to read this memorandum. [Reading:]

At the hearing on the nomination of Marion J. Harron on Friday, May 13, 1949, Mr. Phillips referred to a letter from Adrian Block, which he filed with the committee together with a transcript of a hearing on Famous Linen Supply Co., Inc., which was on the calendar of October 23, 1944, of the Tax Court in Buffalo. Mr. Phillips did not read all of Mr. Block's letter into the record.

The following is a brief statement of the facts in this case. Famous Linen Supply Co., Inc., was a laundry company which purchased a competitor, taking over the trucks, linens, list of customers, etc. Apparently it set up on its books a part, or all, of the cost of purchasing the competitor as a business expense and claimed deduction from income by reason thereof. The Commissioner of Internal Revenue proposed deficiency assessments of $587.69 and $806.94 for the years 1940 and 1941 on the ground that the expenditures for the purchase of the competitor, or a substantial part of them, were capital investments. The chief issue related to a deduction of $4,000. The parties appeared at 3:10 p. m. on October 23, 1944, at the time set for trial and Messrs. Adrian Block and Isadore Setel, of Buffalo, appeared for the taxpayer.

Certain facts had been stipulated and the petitioner called Mrs. Mildred Stern as a witness. She was the president of the Famous Linen Supply Co. and had signed the agreement for purchase of the competitor.

Mr. BLOCK, during redirect examination, submitted a question to her as to whether or not in her opinion the list of customers accounts, aside from the negative covenant not to compete, had any value. Government counsel objected to the question on the ground that it called for an opinion and that this witness was not qualified to state an opinion in such a matter. There was argument between Mr. Block and the court as to the need for the question and the court took the position that the matter could be argued as one of law in the brief, having in mind the negative covenant not to compete. The following colloquy then took place:

"The COURT. I am asking you to be practical and to be honest about your argument.

"Mr. BLOCK. Your Honor, I am.

"The COURT. You make a great deal of fuss over a little thing that is simply a matter of logic. If that is all you want to bring out I do not see why you even want to ask this witness the question" (Tr. Tax Court proceedings, p. 48).

Judge Harron then questioned the witness and brought out that she understood the agreement to be that their competitor was not to engage in the laundry

business at all and was not to solicit customers. The court then inquired whether Mr. Block had anything further and the following then took place:

"Mr. BLOCK. I have more testimony, Your Honor, but at this juncture may I note on the record the reflection made on my honesty in presenting this case? I would just like to have that on the record.

"The COURT. Yes.

"Mr. BLOCK. I think that is all, Mrs. Stren."

"(Witness excused.)"

"The COURT. In view of your last request, Mr. Block, I think probably you would be better satisfied to try your case in another division of this court, wouldn't you? I would be very glad to continue this case to the next calendar, and you may retain the record and you may have the record considered incomplete and not to be given any consideration.

"Mr. BLOCK. Yes, Your Honor, I think we would all feel better if that course were adopted.

"The COURT. Case continued to the next calendar."

We have the transcript of that proceeding. There can not be any doubt about what happened in this case. On October 23, 1944, Judge Harron issued an order of continuance of the case to the next circuit calendar in Buffalo for trial de novo. In this order the judge stated:

"No consideration will be given to the incompleted record made on October 23, 1944, and any stipulation of facts shall be resubmitted."

The next Tax Court calendar in Buffalo was June 4, 1945, Judge Opper presiding. The minute sheet of the proceeding shows that the case was called on June 4, 1945; that no one appeared for the petitioner. Mr. Block and Mr. Setel were not back there and no one else was there; that Mr. E. C. Algire appeared for the resopndent, the former division counsel who was a witness here in behalf of Judge Harron. Respondent's counsel made a motion to dismiss the proceeding for nonprosecution. Judge Opper granted the motion.

On June 13, 1945, Judge Opper issued an order of decision and dismissal, dismissing the proceeding for nonprosecution. There thus stood the proposed deficiency assessments of tax for the years 1940 and 1941 in the respective amount of $587.69 and $806.94.

At this point I insert an affidavit dated June 20, 1949, executed by the reporter who reported these proceedings before Judge Harron.

(The affidavit referred to follows:)

STATE OF COLORADO,
City and County of Denver, ss:

I, Joyce M. Marson, being duly sworn, testify as follows: that I am a certified shorthand reporter in and for the State of New York and held such CSR certificate on October 23, 1944, the date of the trial of the *Famous Linen Supply Company, Inc., Petitioner*, v. *Commissioner of Internal Revenue, Respondent*, in the Tax Court of the United States before Marion J. Harron, judge. That I was the court reporter who took the proceedings in the above case, Docket No. 3978, at Buffalo, N. Y. on the afore-mentioned date. That I have since destroyed my stenotype notes of this case.

That I have on this date thoroughly reread and reviewed the typewritten transcript of this case prepared under my supervision and direction in my then Buffalo office, 1126 Liberty Bank Building. That to the best of my knowledge, memory, and belief the same is a true, correct, and complete transcript of the proceedings had in the above-entitled matter.

JOYCE M. MARSON.

Subscribed and sworn to before me this 20th day of June 1949.

[SEAL] FLORA E. MACKER,
Notary Public, State of Colorado.

My commission expires July 8, 1950.

My own conclusion is one of two things, whatever it may be worth to the committee. I may say, first, that Judge Harron at the outset of the case tried to get Mr. Block to state what section of the Internal Revenue Code or what provision of the tax law he was presenting this case under and he would not state it. He stated he preferred to put in his testimony and then rely on whatever section might be available. It seems evident that counsel afterward convinced themselves that they had no case and failed to appear at the second hearing or

that this proceeding and the tactics of Mr. Block were for the sole purpose of securing additional time and delay.

Now the impression has gone abroad, and I believe is held by some members of this committee, that Judge Harron is being opposed for reappointment by the American Bar Association. This impression is not correct, and was very probably induced by a statement made by Mr. Phillips in his appearance, on April 14, 1949, before this committee (p. 27 of the record) where he stated that:

At a meeting of the American Bar Association in January of this year, the officers of the section of taxation were authorized and instructed by the association to oppose the confirmation of the appointment of Judge Harron. I appear before this committee for that purpose as chairman of the committee appointed to present the views of the association.

Now I myself have been a member of the American Bar Association for more than a quarter of a century and nearly all of the witnesses who have testified on behalf of Judge Harron, or who have written letters or made affidavits filed with the committee in support of her nomination, have stated that they are likewise members of the American Bar Association. Mr. Phillips of the tax section certainly does not represent any of us and none of the tax section represents the association in this matter, Mr. Phillips to the contrary notwithstanding. The only people they represent are themselves and possibly a few others of the tax section.

I call the committee's attention to the fact that there are slightly over 40,000 members of the American Bar Association and I remind this committee that even the membership of that association constitutes less than one-third of the total members of the bar throughout the United States. These gentlemen claim a membership of some 3,000 for the tax section and they have here testified at the comparatively few letters or statements or indications they have received in opposition to Judge Harron, even as measured by the membership of the tax section, and it is infinitesimally small when measured by the total membership of the American Bar Association.

Believing that the above quoted statement of Mr. Phillips was incorrect, I telegraphed the secretary of the American Bar Association on May 10, 1949, as follows:

Percy Phillips of Washington testified before Senate Finance Committee that last January officers of section of taxation were "authorized and instructed" by the American Bar Association to oppose confirmation of Marion J. Harron as judge, United States Tax Court. Copy of such authorization and instruction requested air mail in time for hearing next Thursday.

I received a letter dated May 11, 1949, from Mrs. Olive G. Ricker, the executive secretary of the American Bar Association, which I will read:

AMERICAN BAR ASSOCIATION,
Chicago 10, Ill., May 11, 1949.

Col. O. R. McGUIRE,
Washington, D. C.

DEAR COLONEL McGUIRE: In reply to your wire of May 10, with respect to the authorization of the section of taxation to oppose Tax Court appointments, I enclose typewritten copy of a resolution presented to the house of delegates at the 1946 annual meeting by the section of taxation, and adopted by the house.

At the recent midyear meeting, the tax section presented to the house an amended version of the resolution, which also was adopted by the house.

The resolutions do not mention by name candidates the section wishes to propose or oppose, but gives the section authority, with certain specified limitations, "to bring before the appropriate authorities the considerations that require nominating authorities to exercise single-minded diligence in selecting appointees to the Tax Court who will serve the public in that capacity with the highest possible degree of usefulness."

Sincerely yours,

OLIVE G. RICKER,
Executive Secretary.

EXCERPT FROM OUTLINE OF PROCEEDINGS OF THE HOUSE OF DELEGATES, JANUARY 31 FEBRUARY 1, 1940

* * * * * * *

3. *Resolved*, That the resolution adopted by the section of taxation and the house of delegates at the annual meeting held in October 1940 be amended to read as follows:

"*Resolved*, That the section of taxation be authorized to bring before the appropriate authorities the considerations that require nominating authorities to exercise single-minded diligence in seeking appointees to the Tax Court who will serve the public in that capacity with the highest possible degree of usefulness; be it further

"*Resolved*, That the influence of the section as such shall not be used to promote the nomination of any special person, but the representatives of the section may submit a list of not less than four names listed in alphabetical order and without indication of any preference of persons, who, if they assume this office, would be fully competent. Any such submission of names is to be accompanied by a statement to the authorities that the list is not submitted in the interest of any one of the persons named but in the public interest, and that the appointment of any equally qualified person, not on the list, would fully satisfy the concern of the section that no appointment should be made to the Tax Court of any person unless he has already demonstrated exceptional ability and diligence as a lawyer or a judge and unless he is fully qualified physically and mentally to adjust himself to the heavy intellectual burdens incident to the Tax Court office; and be it further

"*Resolved*, That the officers and council of the section of taxation be authorized to oppose the nomination or confirmation of any person as a judge of the Tax Court who, in the opinion of the council of the section, is not fully competent for any reason to serve in that capacity."

The CHAIRMAN. Have you much more you wish to present?

Colonel MCGUIRE. What is your pleasure?

The CHAIRMAN. We wish to finish this hearing today, if possible.

Colonel MCGUIRE. I will try to get through, so I will put this in without reading it. This is important here. A small section or group of few men from a comparatively small section of the American Bar Association tells this committee that the American Bar Association is opposing this judge, who herself is a member of the American Bar Association. Now the amendment they rely upon is this in the resolution:

Be it further resolved, That the officers and council of the section of taxation be authorized to oppose the nomination or confirmation of any person as a judge of the Tax Court who, in the opinion of the council of the section, is not fully competent for any reason to serve in that capacity.

Therefore, it appears here that they were not specifically authorized to oppose Judge Harron. The section had the authority under this resolution, if she should be opposed in the opinion of the counsel for said section, to oppose her, but the responsibility for it is their own and rests upon them; it does not rest upon any other member of the association.

Now there have been statements here concerning the Sloane Estate case. Mr. Pierce appeared here and testified, claiming that Judge Harron unduly delayed the case, and since then I have checked that record, and I have prepared a memorandum wherein I pointed out that according to his own admission he was not thoroughly prepared upon the law. It also appears that he was not prepared to present all the facts. He came in and attempted to get expert testimony in the record from expert witnesses on the basis of the accounting reports which had been prepared by at least three different firms of accountants, and he did not have people there who could identify these accounting reports. There was constant argument, objections on

the part of Government counsel, and if there was delay most of the responsibility therefore is on Mr. Pierce.

(The memorandum referred to is as follows:)

REPLY OF COUNSEL FOR JUDGE HARRON TO COMPLAINTS OF MESSRS. PHILLIPS AND PIERCE IN THE SLOANE ESTATE CASE (3 T. C. M. 358, 555 (1944))

The appeal in this case, filed by Mr. Pierce, as attorney for the taxpayer, from the proposed deficiency assessment by the Commissioner of Internal Revenue, was approximately 100 pages long and assigned 44 errors. It was called for trial before Judge Harron approximately 1½ years later. At this time Mr. Pierce stated:

"I must say that I have been so busy gathering facts that I have not made as thorough research of the law as possible" (Tr. 121).

Mr. Pierce thus admitted on the record that he was not adequately prepared to try the case, though he had 1½ years after the appeal was filed within which to prepare. He did not request that the case be continued until he could better prepare himself. Incidentally, this admission on the record is contrary to his testimony before this committee that "I might say that because of the importance of the case the case was very carefully prepared" (Tr. 439).

The case involved complicated questions as to the value of closely held stock for estate-tax purposes in a corporation and its several subsidiary corporations. In an effort to prove the value of the stock, Mr. Pierce introduced two expert witnesses whose testimony consumed two full days of the trial and 345 pages of the 789 pages of the transcript.

The first expert witness was Paul B. Coffman. Mr. Pierce, as self-proclaimed experienced trial counsel, proceeded to question this witness without having placed in the record, by stipulation or otherwise, the basic documents and facts about which the expert's opinion was asked. Very properly, Government counsel objected to such procedure, stating that an expert witness can "express an expert opinion * * * he can depart from that and testify to any facts he needs * * * but he cannot relate here his investigations which he made which involved the gathering of information from outside sources" (Tr. 39-40).

Judge Harron overruled the objection, at least temporarily, and Mr. Coffman testified uninterruptedly for five pages of the transcript until Government counsel again objected. The matter came to a head finally when Mr. Pierce offered for evidence, through Mr. Coffman, certain accounting reports prepared by certified public accountants for the companies whose stock was being valued.

It clearly appears from these proceedings that Mr. Pierce had not been prepared to identify the reports of the certified public accountants nor had he secured a stipulation from Government counsel to have them admitted in evidence without such proof.

At page 154 of the transcript we find Judge Harron stating:

"May I say for the record that these accounting reports have been made by accountants whose offices are here in New York City, and I think they should be identified. Now they have been received in evidence over objection by counsel for the respondent, but I have spoken to counsel for the petitioner and asked him to have these identified[1] and while that is putting the cart before the horse to proceed in this way, we will go ahead in that way anyway."

Therefore in order to lay the predicate to which Government counsel had objected, the accountant, J. K. Lasser, was later and hurriedly called by Mr. Pierce (Tr. 100–156).

Then it was shown by testimony that audit reports had been made by other certified public accountants than the firm to which Mr. Lasser belonged. Halfway through the second day of the trial, Mr. Pierce explained on the record that:

"I am making tentative arrangements for a representative to come here from Lybrand, Ross Bros. & Montgomery. In fact two representatives from that company because of two different years and also one from Ernst & Ernst, for which it now appears we shall have to bring a man up from Philadelphia and that might be a little delayed" (Tr. 211–212).

Mr. Pierce had commenced this trial and over 200 pages of testimony had been taken when we find by his admissions on the record that he had not made arrangements to have in court the necessary witnesses to identify the accounting reports, without which identification Judge Harron would have been justified in sustaining

[1] Instead of Mr. Pierce being grateful to Judge Harron for speaking to him privately about having his documents properly identified as required by the rules of evidence, Mr. Pierce has come before this committee and criticized Judge Harron for doing so (Tr. 442-443).

the repeated objections of Government counsel and excluding all testimony of the expert witness based thereon.

At this point Judge Harron came to the rescue of Mr. Pierce and said:

"As I see it, Mr. Pierce, the only problem you have is to have these reports identified by the accounting firms that made them up and Mr. Lewis has stated that up to the present time he had no inclination to object on the ground that the original books and records are not being produced. Other than that I do not think we can expect him to anticipate what objections he might want to make as we go along. Of course, it is difficult to ask accountants to take the time to come in, but if I can help you in any way with that, that is by hearing them at some other time during the day or by interrupting the hearing, or anything of that kind, I will be glad to help you so that you can save their time. We will do that anyway.

"Mr. PIERCE. That is very considerate.

"Mr. LEWIS. I am perfectly willing to agree that if these men were called they would testify to the same effect Mr. Lasser testified" (Tr 211–213).

Thus the stipulation for the admission of the accountants reports was finally accomplished in open court through the efforts of Judge Harron during the second day of trial and after much time had been lost by reasons of objections caused by the attempt of Mr. Pierce to proceed improperly—all of which could have been avoided by Mr. Pierce had he been properly prepared by having either his witnesses present to identify the accounting reports or by having obtained a stipulation from Government counsel that such reports be admitted in evidence without such proof.

Further evidence of the lack of preparation of Mr. Pierce came on the second day of the trial when he interrupted testimony for the purpose of filing an amendment to the petition on appeal, which petition I have heretofore described as to length and alleged errors. Judge Harron received the amendment without comment. Government counsel stated that he had no objection to the amendment being filed but inquired: "May I file an oral denial?" Judge Harron answered that: "It is a little clearer in going over the files later if you will file just a written general denial. Make it as brief as you want, but it is there" (Tr. 153–154).

Even on the third day of the trial, the taxpayer's expert witnesses were continuing to meet objections from Government's counsel that their testimony was hearsay (Tr. 450). Government counsel objected to the witness reading into the record that portion of "reports of the certified public accountants which he is now reading" (Tr. 451–452).

It is not too much to state that the delay and difficulty encountered by both the court and Government counsel in this case as well as the difficulties encountered by Mr. Pierce were in a large measure due to his lack of preparation and to his unorthodox manner of introducing his evidence. Judge Harron finally stated to Mr. Pierce:

"May I say in that respect that this has been giving quite a bit of trouble throughout this hearing. You proceeded, Mr. Pierce, to immediately introduce the expert witness opinions.

"Mr. PIERCE. That is right.

"Judge HARRON. You have in your scheme of the presentation of this case entirely eliminated the establishment of primary facts relating to the financial position of each one of the companies whose stocks are here to be valued—there are lots of things that constitute hearsay, even in auditors' reports. Of course, that would have extended the time of the hearing. I am going to ask you before the hearing is over, however, to introduce some of the primary facts relating to the financial position of these companies, and that I will discuss with you later.

"To save the record and also to save time, I am going to ask you to agree that we have an understanding as to what the difficulty is. We won't have to discuss it any more—I will overrule the objections insofar as they request me to exclude these statements as they go along, with the understanding that I am overruling the objections only in an interim way" (Tr. 451–452).

Of course, the introduction of evidence in such a manner resulted in repeated objections from Government counsel, as was his duty. It resulted in undue consumption of time. And it necessarily resulted in an unclear picture of the case being made as the case progressed. This made it necessary for Judge Harron to repeatedly interrogate witnesses to see whether she was properly understanding the case as it was being placed before her.

I do not know Mr. Pierce and never saw him before he appeared on the witness stand in this case. I have read the record and in my judgment Judge Harron

was not only justified in questioning the witnesses so as to make sure she was understanding the case, but she would have been justified in suspending, or continuing the case until such time as counsel for the taxpayer was prepared to first introduce his primary evidence before examining his expert witnesses whose testimony was, in part at least, based on primary facts concerning the financial conditions of the several companies.

I find nothing in this case for which Judge Harron may be justly criticized, considering the circumstances, unless it be her extreme patience in the case.

Colonel McGUIRE. Now one of the witnesses, Mr. Rodewald, was counsel in the Steubenville Bridge case and he made certain statements with respect to that case. You will recall in this particular instance that after Judge Harron had stated he was probably representing conflicting interests, he asked that the case go over but he had some very harsh things to say about the judge and I have prepared a memorandum on that case which I offer for the record.

The CHAIRMAN. Very well.

(The memorandum referred to is as follows:)

MEMORANDUM REGARDING THE HEPPENSTALL CASE

The case was heard in Pittsburgh in June 1946. The trial lasted for 4 days, June 4, 5, 6, and 7. There are four volumes of transcript totaling 633 pages. The trial began on the afternoon of June 4 at 2:15 p. m. and continued until 6 p. m. that evening. The hearing was reconvened at 10 a. m., June 5 and continued until 5:35 p. m. The hearing was resumed at 9:30 a. m. on June 6 and continued until 6:15 p. m. when the hearing was recessed for dinner and was resumed at 7:45 p. m. the same evening. The hearing continued until 11 p. m. and was adjourned until 9:30 a. m. the next day. The hearing was resumed at 9:30 a. m. on June 7. At page 476 of volume 4 of the transcript of testimony taken on June 7, 1946, the petitioner's evidence was concluded.

In this proceeding the burden of proof was upon the taxpayers and they called 11 witnesses and introduced into evidence 75 exhibits.

The Commissioner, the respondent in the proceeding, called 2 witnesses and then recalled for his rebuttal testimony three of the petitioner's witnesses. Respondent offered 17 exhibits.

The respondent's counsel, Mr. McCall, proceeded with his part of the case after a short recess was taken, and the transcript showed that the recess was taken at 15 minutes to 11 a. m. (See transcript, p. 477.) At this point the judge of the court who was hearing the case inquired about how long it would take for the respondent to put in his evidence and he stated that he believed it would be possible to finish the trial that day. The trial was finished that day at 9 p. m.

In view of the fact that Mr. McCall has been called as a witness at the hearing before the Finance Committee, the transcript in the Heppenstall case has been reexamined, particularly volume 4 of the transcript of the hearing on June 7, and the following appears:

After th recess at about 11 a. m., Mr. McCall offered his first exhibit—the bylaws of the taxpayer corporation. He then offered another exhibit, exhibit C. He then called his first expert witness, Mr. Francis Christ. The direct examination of Mr. Christ began at page 480. At page 493 Mr. McCall had completed his direct examination but the witness stated that he had something further he desired to testify to and at that point Mr. McCall offered exhibit D. The purpose of the offer was to support the testimony of the witness. The court examined the exhibit and stated that the exhibit had not been fully explained and for that reason the court was somewhat reluctant to receive it in evidence and so the court stated that the exhibit would be received for the purpose of showing that the witness referred to the exhibit during his testimony.

Comment: It was at this point that Mr. McCall began to have trouble offering his exhibits in connection with the testimony of his expert witnesses. He should have offered the exhibit and had it received in evidence prior to the time when the expert would have to refer to it in his testimony. However, this exhibit was received as respondent's exhibit D. Then other exhibits were offered, exhibit E and exhibit F, and then the witness was cross-examined, beginning page 496, by counsel for petitioner. The cross-examination extended over to page 512 and the witness was excused.

Mr. McCall then called his second and chief expert witness, Mr. Grimes. He was duly qualified as an expert witness and then a recess was taken at 1 p. m. for lunch. The hearing reconvened at 2 p. m. Mr. McCall asked his witness to take into consideration certain facts, certain exhibits of the petitioner, and all of the exhibits which the respondent had offered up to that time, which had been received into evidence, namely exhibits A, B, and C. Then, at page 517, Mr. Grimes stated what his opinion of the value of the stock was per share and went on to explain how he arrived at his value.

Comment: Mr. Grimes had not made any written report which could be submitted for the court to read but relied entirely upon his oral testimony. As he proceeded he began referring to the earnings of stocks of comparable corporations, the stock of which was listed on securities exchanges, and traded on those exchanges. He had taken 15 forging companies as companies which he considered to be comparable to the Heppenstall Co. On page 523 of the transcript he said as follows:

"I have a number of exhibits here which disclose the basis of my opinion and I'm not going to go into any great detail in most of these exhibits.

"This first sheet is a sort of summation of the various comparisons I made. Fifteen companies engaged in forging, cold rolling, etc.; 11 companies engaged in the foundry business and related lines; 4 companies engaged in manufacture of forging and stamping machinery, and 3 companies engaged in manufacturing alloy steels, a total of 33 companies.

"Now the Heppenstall Co. was not in the foundry business, to my knowledge, nor in the forging and stamping machinery business, but it did do heavy forging and it did make alloy steel as important parts of its business * * *.

"I have taken out of this, 15 forging companies which according to the description in Moody's Manual, seem to be engaged principally in the heavy forging industry, and I regard those as the best bases for the valuation of the Heppenstall Co."

From there on, page 524 to 528, Mr. Grimes was testifying from certain exhibits which he held in his hand which had not been offered in evidence. Neither the Court nor opposing counsel had copies of the exhibits and so they could not follow the testimony of the witness as it was related to exhibits which were apparently to be offered later in evidence. And so, at page 528 of the transcript, the court interrupted the witness and said: "Would you stop for just a minute, please?" And the court also said: "Off the record." Then Mr. McCall addressed his witness, Mr. Grimes, and said that he had offered him Exhibit G for identification.

Comment. This is the point at which the court recognized that a problem was developing in the testimony of the expert witness and in the offering of exhibits by the respondent's counsel. The court went off the record to tell Mr. McCall that he was getting into some difficulty and that he ought to interrupt the testimony of his witness and proceed to have the exhibits from which the witness would testify offered in evidence. At that point the court suggested that he should have his exhibits marked for identification, then have Mr. Grimes, who had evidently prepared the exhibits, identify them so that they could be offered and received in evidence.

Mr. Grimes stated that he would like to put "these" in consecutive order and with that suggestion from him as to the order of the exhibits the witness proceeded to describe two exhibits but Mr. McCall was not giving the witness any assistance. That is to say, the witness held in his hand several documents which were to be offered as exhibits and he continued to hold the papers in his hand rather than to give each one to his counsel, Mr. McCall, so that Mr. McCall could hand each document to the clerk to be marked in some way either for identification or to be received in evidence if an order was being made. Here again, on the same page 528 the court observed that Mr. McCall and Mr. Grimes were both having difficulty. Mr. Grimes was going ahead to described documents but was hanging on to them and Mr. McCall was standing there doing nothing and the matter was getting to be more confused and so the court said:

The COURT. Mr. McCall, will you please have that marked.

It was marked for identification as "Respondent's Exhibit H," so that at that point G and H had been marked for identification.

But the situation was not improving at all and Mr. McCall seemed to be unable to understand what he should do. The court said the following:

"The COURT. If you are going to hold any copies in your hand, will you mark them so we will not confuse them with the other exhibits?"

(This question was addressed to Mr. McCall).

Mr. McCall thereupon replied to the court:

"Mr. McCALL. I think I can follow the order given by the court. I think I can remember long enough to mark my own exhibits.

"The COURT. I am not sure that you are doing it. What is the next one?

"The WITNESS. Values of total securities compared with net current assets as at August 29, 1942."

(Discussion off the record.)

"The COURT. I don't know how we are going to go on if Mr. McCall is not going to be able to get these exhibits in evidence, distribute them to the counsel and to me and enable you [Mr. Grimes] to testify so you can refer to the exhibits identified by letter as you testify."

(Discussion off the record.)

"The COURT. Mr. McCall, you may proceed."

There follows questions by Mr. McCall.

"Question. Mr. Grimes, will you state in what order you are going to take up these exhibits?

"The COURT. I think you should have done that before you put Mr. Grimes on the stand, Mr. McCall.

"The WITNESS. The one I was testifying to was the value of securities as compared with net current assets as at August 29, 1942. That is the third. The next one is the value of total securities as compared with net tangible assets as at August 29, 1942. Those three are details in support of the first schedule concerning which I testified at some length."

From there on Mr. Grimes described several documents and that continued over to page 532 at which point Mr. Booth, Counsel for the Petitioner, stated: "If the court please, I ask that these be identified some way before the witness goes ahead with the new group of schedules." Then Mr. Grimes, the witness, said: "These are schedules connected with my prior testimony as to value, and this other set of schedules completes the list." Then the court said: "Well, it is too bad you took all that time to describe those in the record because we have not got this straightened out yet." Then the court said, addressing Mr. McCall: "I said to you sometime ago, before you asked Mr. Grimes to proceed, to read all these descriptions in the record, that I wanted to have the record show clearly from which exhibit Mr. Grimes was testifying as he went along. So far I think he has been testifying from four or five marked exhibits. We have not any idea of the exhibits he is testifying from and we will not have any better idea now."

Then Mr. McCall said: "I believe he has just been testifying as to the titles of the exhibits I am now going to have marked."

Then the court said to Mr. McCall: "Well, that is not the correct way to proceed."

Then Mr. McCall said: "How do you wish me to proceed Your Honor?"

The court said: "I don't know. You are here to try the case for the Government."

Then Mr. McCall said: "I would like now to have them marked for identification."

The court then said to Mr. McCall: "All of them?"

Then Mr. McCall said: "One at a time."

Then the court said to Mr. McCall: "Why, now?" Then the court said: "Well, you have had him describe all these exhibits and now you want him to mark them." And Mr. McCall said: "One at a time, Your Honor."

There was further colloquy and then Mr. McCall said: "May I proceed in my own way?" The court replied to him: "Not if it is incorrect. If it is incorrect we will have to stop you."

The matter which the court directed the reporter to strike from the record consists of three items. The first two items, if they were restored to the record, would be inserted on page 529 of the transcript.

On page 529 of the transcript where there appears the first discussion off the record, evidently in some exasperation, the court stated to the witness, Mr. Grimes, in effect, that the simplest thing to do would be to have Mr. Grimes try the case and the court suggested Mr. McCall might as well sit down. This remark to Mr. Grimes the court later told the reporter to strike from the record.

The second place where there is discussion off the record is on page 529 following a statement by the court which is in the official record to the effect that the court does not know how we are going to get on if Mr. McCall is not going to be able to get his exhibits into evidence. After the court had made that statement Mr. Grimes interposed that he declined to accept the court's invitation to try the case and that he was not a lawyer. When Mr. Grimes made this statement to

the court, the court replied that in a case involving a deficiency of $320,000 the counsel trying the case for the Government ought to be a counsel with more experience, etc. This exchange of remarks between Mr. Grimes and the court was thereafter stricken from the record at the direction of the court.

The hearing went along then during the afternoon and Mr. McCall finally had several exhibits marked for identification and the court had asked that copies of the exhibits be marked for identification and passed to the opposing counsel and to the court so that everyone could follow the witness' testimony. On page 537 the court said as follows: "Now that you have exhibit G before you, are you able to recall Mr. Grimes' testimony about the calculations he has made on exhibit G or do you want him to repeat that testimony?" The above question was directed to the counsel for the petitioner and he replied to the court that he would not care to have the witness repeat the testimony and that he could follow the testimony from the exhibit which he now had.

The witness, Mr. Grimes, then resumed his testimony which was a running statement that he was making from exhibits rather than in reply to any questions from counsel. Since Mr. McCall, the counsel for whom the witness was testifying was not asking his witness any questions, the court proceeded to ask what appeared to be a few necessary questions, the court at that time having a copy of the exhibits from which the witness was in the process of testifying. The witness proceeded to testify in this way and the court continued to ask the witness some questions all of which had to do with schedules which then had been received in evidence as exhibits of the respondent. In this way the witness testified about materials set forth in exhibits G to O from page 537 over to page 550. At the bottom of page 558, the court asked Mr. Grimes, the witness: "Does that finish your reference to 'O'?" To this question the witness replied: "Yes", and the court said: "Then we can take a recess for a few minutes."

According to the point at which this recess was taken this was the usual recess that is taken in the middle of the afternoon in order that the reporter can rest for a few minutes. It was 50 pages later that the hearing was recessed for dinner at 6:30 in the evening.

During the afternoon recess the court asked Mr. McCall to go into the judge's chambers. Judge Harron asked the reporter to come into the judge's chambers also because she felt that she should not have a conference during the trial with counsel for one party to the proceedings. Judge Harron was disturbed about the difficulty which Mr. McCall had encountered during the early part of the afternoon with his exhibits and with his expert witness. Also, the court felt that Mr. McCall had been rather insolent when at page 520 of the transcript the court had asked Mr. McCall a perfectly proper question and a necessary one about whether either he or the witness was going to hold all of the exhibits in his hand instead of having each exhibit marked as each one was described. It was at that point that Mr. McCall spoke up and said: "I think I can follow the order given by the court. I think I can remember long enough to mark my own exhibits." Not only was this statement to the court by Mr. McCall rather insolent but it was indicative of the fact that Mr. McCall really did not understand why the court asked him to have each exhibit marked for identification as it was described. The point was not whether Mr. McCall could remember but whether the court and opposing counsel and the reporter could follow him and his witness, and whether the transcript would be a clear transcript and one in which the meaning of the testimony of his own witness and the meaning of his own exhibits would be clear.

And so during the recess Judge Harron believed that she should have a little talk with Mr. McCall. But she did not wish to talk with him alone and asked the reporter to come in and transcribe the interview. Judge Harron asked Mr. McCall what experience he had had in the trial of cases. Her purpose in asking these questions was to try to make Mr. McCall understand that he could not assume to know how to proceed if he had not had previous experience, and if he were inexperienced it would be better if he admitted his lack of experience graciously and tried to comply with the court's suggestions, which were intended to be helpful and were not intended to irritate him or to embarrass him in any way. Judge Harron stated to Mr. McCall that she thought his superiors were at fault in assigning him to try such a difficult case when it was the first case which he had ever tried. Let it be remembered that this trial extended over 4 days and into 1 night.

After the recess the testimony of Mr. Grimes was resumed and Mr. McCall then proceeded as best he could and the court did not undertake any further to comment upon the matter but the court did continue to assist Mr. McCall and on page 564 of the transcript, after Mr. Grimes had been testifying for over more

than a page the court interrupted and stated "We had better identify that exhibit. We have to for the record, Mr. Grimes."

Then the witness said that he was referring to the petitioner's exhibit 16. At this point Mr. McCall began offering his exhibits which had been marked for identification into evidence and I was then offered his exhibit G for identification and receipt in evidence. There was an objection to the offer. The court overruled the objection and received the exhibit.

It should be pointed out again that the court had observed properly Mr. McCall's lack of knowledge of how to proceed with an expert witness. He asked his witness almost no questions but just put the witness on the stand and let nature take its course, the witness talking at length and referring to exhibits without indicating what exhibits he was describing, etc. This is not the correct procedure. Counsel has a duty to inquire of his witness in such way that the witness will give testimony that can be read later after the record has been made.

At 6:30 the hearing was recessed for dinner and at that time Mr. Grimes' testimony had been completed, both the cross-examination and the redirect examination.

After dinner at 7:45 when the hearing was resumed another witness was called by Mr. McCall, Mr. Marsh. Thereafter Mr. McCall called three of petitioner's witnesses for rebuttal and recalled his own witness Mr. Grimes, and at 9 in the evening the hearing was concluded.

The third item which Mr. Coote, the reporter, was asked to strike from the official report was not anything that was said in the courtroom. The time at which Judge Harron spoke to Mr. McCall was the time when a recess was taken as shown on page 550 of the transcript.

The matters which Judge Harron discussed with Mr. McCall had to do with himself personally and properly were not part of the record.

When the hearing was concluded, or at some time thereafter, Judge Harron is unable to recall whether it was that evening or the next day, Judge Harron asked Mr. Coote, the reporter, to omit from the official record the three items which appeared in his notes all of which had to do with the problem of Mr. McCall's difficulty in getting his exhibits marked for identification.

Colonel McGUIRE. The case of Mr. Wilkoff came up before this committee because of the statement which has been referred to two or three times that if he withdrew from the case and went out of the courtroom the judge would see that the matter was brought before the Tax Court bar for disciplinary action. Now I have quoted for the record here the transaction, how that thing arose, and also in the concluding part to which the committees attention is particularly invited, Mr. Friedman, the taxpayers counsel, stated:

If Your Honor please, if I have appeared impatient I want to apologize to you. I know that I had no intention to be discourteous to the court.

Now I submit this memorandum for the record, and I also submit a copy of the opinion of the court for the files of the committee, wherein it was a family partnership affair and Judge Harron called this attention to the fact that the evidence was not sufficient to sustain his contentions and offered him an opportunity of presenting it, but he did not care to do it, nor did he appeal the case.

(The memorandum referred to is as follows:)

MEMORANDUM IN RE DAVID L. WILKOFF, DOCKET NO. 4278

Docket No. 4278, David L. Wilkoff, heard in Pittsburgh, May 1946. Some facts stipulated. Transcript 67 pages. Mr. Harry Friedman, counsel for petitioner. This case is one which appears to have been criticized to the Finance Committee, Senator Millikin having asked the reporter, Mr. Coote, on April 19, 1949, if the attorney had not started to leave the courtroom, and if Judge Harron had not directed him to return. Accordingly, this proceeding should be described at some length.

In this proceeding, the Commissioner determined that there was a deficiency in income tax for the years 1940-41 in the respective amounts of $26,268.46 and $164,925.28, or a total of $191,193.74. The deficiency in tax resulted from the

determination of the Commissioner that the entire income of a business known as the Wilkoff Co. for the years 1940–41 were taxable to David Wilkoff so that certain amounts which the wife and the two children of the taxpayer had reported in their separate returns aggregating $36,061.66 in 1940, and $231,388.76 in 1941, were held to be taxable to David Wilkoff.

The petition in this proceeding was filed in the Tax Court March 15, 1944, by two attorneys for the taxpayer, S. Leo Ruslander and David M. Janavitz. The proceeding was noticed for hearing in Pittsburgh on a calendar beginning March 26, 1945. On March 17, 1945, Mr. Jacob A. Markel filed a notice of appearance as attorney for the petitioner, and on May 7, 1945, Messrs. Ruslander and Janavitz withdrew from the case. Also, on March 17, 1945, Mr. Markel filed a motion for a continuance because he had been ill and, therefore, unable to prepare for the trial. The motion for a continuance was granted. On May 10, 1945, Mr. Harry Friedman of Washington, filed notice of his appearance in the case as counsel for petitioner.

Next, the case was put on the March 4, 1946, calendar in Pittsburgh. On February 5, 1946, a motion for continuance was filed, pending decision of the Tower and Lusthaus cases by the Supreme Court which involved the family partnership question. This motion was granted.

Again, the case was placed on a Pittsburgh calendar for hearing on May 27, 1946. This calendar was assigned to Judge Harron.

In the meantime, on February 25, 1946, the Supreme Court's decision in the Tower and Lusthaus cases was entered.

The proceeding was called for trial on May 27, 1946, before Judge Harron. Mr. Friedman appeared and stated that a stipulation of facts had been entered into with the Commissioner's counsel, that he desired to submit the case upon the stipulation to which was attached a copy of an agreement of partnership among the taxpayer and his wife and his two children, and that he desired to offer certain documents as exhibits, but that he would not call any witnesses. The hearing proceeded in the customary way, i. e., the taxpayer's attorney made his opening statement which was very brief, i. e., 20 lines, extending over one page of the transcript. Respondent's counsel made his statement, equally brief, 18 lines long, covering less than 1 page in the transcript. The stipulation of facts was not long, covering a little over 10 typewritten pages.

Under the rules of practice before the Tax Court, rule 31 (b), the parties to a proceeding "may" by written stipulation agree upon any facts involved in a proceeding, but "the Court may set aside a stipulation where justice requires * * *."

On page 4 of the transcript, the court stated as follows:

"The COURT. Well, I am very sorry, but in a case involving a family partnership, I cannot take a case solely on the stipulation of facts," and "* * * the petitioner will have to appear and testify."

The court inquired where petitioner was, and was told that he resided in Pittsburgh but that counsel did not know where he was.

Elsewhere the court said:

"* * * when cases are submitted on a stipulation of facts what you have is a pretrial agreement between counsel and you don't have a trial of the case. * * * the family partnership issue is an issue that has to be tried, and to submit the case under a stipulation of facts means that you ask the court to decide the question without a trial.

Counsel, Mr. Friedman, took the view that he preferred, nevertheless, to submit the case upon the agreed stipulation.

The court recessed the hearing, taking the matter under advisement.

When the hearing was resumed, on the same day, the court asked counsel what the ages of the taxpayer's children were in 1940, it having been set forth in the stipulation of facts that the two children were partners. Where the children of a taxpayer have been taken into partnership in many cases which had been before the Tax Court, it was shown that the children's ages ranged from 3 to 16 or 18 years of age. Mr. Friedman refused to answer the court's question stating:

"If Your Honor please, I do not know. I am not here as a witness. I am here as an attorney for the petitioner."

"The COURT. That is a fact that is not stipulated."

"Mr. FRIEDMAN. That is true."

The court then examined the stipulation of facts and pointed out the absence of several facts which are typically material in the family partnership cases, such as the facts relating to the use of distributions of earnings to the wife of a taxpayer, as a partner, which are used for household and living expenses. (The

finance Committee will understand that the Tax Court has found in many cases that the only amounts of the alleged share of an alleged wife-partner in the earnings of a business, distributed to her, have been amounts to defray household and living expenses of the family, and that fact is often a very material fact). On page 7 of the transcript, Mr. Friedman stated that the parties were willing to stipulate only that substantial amounts were used for household and living expenses out of the sums distributed to Sara Wilkoff, the taxpayer's wife, but that he would not stipulate the amount.

The court stated to counsel as follows:

"I don't think I could decide it (the case) fairly nor accurately (on the facts which the parties had stipulated). I have never had a case of this question presented under a stipulation of facts, so that the situation is unusual. * * *."

Counsel then stated that he would like to have the case disposed of at that time. The court point out, in effect, that the stipulation appeared to be inadequate to satisfy the rule that the burden of proof was on the taxpayer, and that since it was the duty of the court to closely scrutinize the facts in cases involving the family partnership issue, it imposed a burden upon the court to be asked to decide a case upon a stipulation which did not contain all of the material facts.

Thereafter, the court proceeded as requested by counsel and received the stipulation of facts, and Mr. Friedman proceeded to offer exhibits. Several exhibits were received in evidence, totaling 12. As the exhibits were offered, and the court examined them, it became further apparent to the court that the parties had not been able to agree to stipulate a great many facts, and that instead petitioner's counsel was offering several exhibits which in themselves would not be proof of very important and material facts. The court asked what each document was offered to prove, and it became evident that many of the documents of themselves would leave the record in the proceeding ambiguous as to material facts. At page 24 of the transcript, the court pointed out to Mr. Friedman, the taxpayer's counsel, that undoubtedly there would be some question in the case about whether the income of the business involved, which gave rise to the Commissioner's determination that all of the income from the business was taxable to David Wilkoff, rather than part to him and parts to his wife and two children—whether the income of the business involved was produced by property and capital, or by the personal services of the taxpayer, David Wilkoff, and that it would be necessary for the court to know the facts. The court said:

"The COURT. Do you intend to ask this court to make any findings of fact?

"Mr. FRIEDMAN. Probably, yes.

"The COURT. I tell you, Mr. Friedman, if you will stipulate what facts you want found from these exhibits, then, of course, the findings of fact will be entered in accordance with your stipulation, but if you offer these exhibits and ask the court to make findings from these exhibits, then I will have to tell you that I can't make findings from these exhibits without more evidence which is not covered in the stipulation of facts. * * * I don't like to decide cases on failure of proof. * * * The purpose of trial is to give the taxpayer an opportunity to present his evidence."

The court pointed out to the taxpayer's counsel, that if he really stipulated all of the facts under the written stipulation, he would not have any purpose remaining for the kind of exhibits which he was offering. The court went over the 12 exhibits with counsel and then stated that the exhibits which had been offered should be taken by the counsel and from them a supplemental stipulation of facts should be made by counsel upon the record. The court said: "I do not think you can fairly ask the court to supplement an agreed stipulation of facts. * * * Now, won't you do this for me: I am required by statute to make findings of fact. Now in a case of this kind I can't make findings of fact where you come in with a stipulation of facts, excepting in one way, * * * to copy your stipulation of facts verbatim."

The court returned the exhibits to counsel for petitioner and requested that he file a supplemental stipulation of facts either while the court was in session in Washington or later, in Washington. Counsel for the taxpayer stated that he had to leave Pittsburgh that evening. At this point, Mr. Friedman stated as follows:

"Mr. FRIEDMAN. I will not be here tomorrow morning. I have presented a stipulation to this court and if Your Honor does not wish to accept it you may mark it and I will have my exception.

"The COURT. Now, Mr. Friedman, if you will be patient——

"Mr. FRIEDMAN. I have tried to be and I can't."

(It is recollected that at this point Mr. Friedman started to leave the courtroom, and as he did so the court said the following:)

"The COURT. Now please do not show a lack of patience, Mr. Friedman.

"Mr. FRIEDMAN. I am trying not to, Your Honor.

"The COURT. I will say (sic—meaning stay) in this as long as possible. I have a duty to perform here just as well as you have. Now it seems to me that this comes with poor grace on your part to be impatient if you are put to some inconvenience by the rulings of the court but the rule of the court has to prevail and you cannot walk out of this courtroom. Not unless you want the matter taken up with the disbarment committee of the Tax Court.

"Mr. FRIEDMAN. I am presenting the case, Your Honor.

"The COURT. I am making my rulings.

"Mr. FRIEDMAN. Your Honor can make rulings and I can ask for exceptions. All I ask the court to do is either to take the stipulation or not take it. If Your Honor receives it I will finish the case and if you do not receive it I will take an exception.

"The COURT. Before we leave we will have a manner of presenting this case that will be thoroughly satisfactory to you and to the court. Mr. Miller can get a typist and I can dictate it and it can be typed this evening and you can still get your train for Washington.

"Mr. Friedman, I think you cannot take the view in this court that everything has to be done in just your way own.

"Mr. FRIEDMAN. I am not taking that view, Your Honor.

"The COURT. Well, please don't, and if you don't we will get finished with this properly.

"This isn't the first case in which I have said that the stipulation of facts ought to be something that presents the agreed facts without asking the court to make findings of facts from exhibits. If I have said that in the past 10 years once, I have said that countless times.

"Now, Mr. Allen, we have here a case in which counsel is in utter agreement with the taxpayer as to his facts. Can you get a stenographer to come over here—we can use Judge O'Connell's office and type a supplement to this stipulation which counsel can prepare by reading from these proffered exhibits.

"In other words, counsel want to stipulate that each one of those individuals drew so much from the business and the withdrawals were charged against their capital accounts. Counsel wants to stipulate that it will be incorporated into the findings of facts in this case.

"Now who has signed this stipulation for you? Did you sign it?

"Mr. MILLER. I signed it, Your Honor.

"The COURT. Will you be here to sign it?

"Mr. MILLER. I will be here but the secretary, all the secretaries have gone home by now.

"The COURT. Well, you could do it by stipulation into the record. In other words, the two of you could stipulate that this stipulation of facts is enlarged to include paragraph 38, for example. The last paragraph of the present stipulation is 38. Paragraph 38 would be then, the determination from beginning to end of the agreement of partnership and could be taken by the court as paragraph 38 of the stipulation.

"Then you could stipulate into the record that there is another paragraph 40 added to this stipulation which consists of the minutes verbatim of the meeting which was held on September 28.

"That would put into the stipulation of facts the terms of these minutes and of the agreement and when the findings of facts are written they can be written including these documents verbatim.

"And that is all I want to have done.

"So far as these returns are concerned, they would be in the record just as most returns are in the record.

"Mr. ALLEN. In other words, you want the stipulation to show a summarization of the exhibits?

"The COURT. It is too late to summarize anything. The stipulation will have to show the exhibit verbatim and, as I say, I can't make any independent findings of fact, in this case. I simply have to copy the stipulated facts as the findings of fact in the case and I would have to copy in the entire terms of agreement and the minutes of the meeting and so forth. Otherwise, I am doing something that is outside of this agreement made by these parties.

"Mr. FRIEDMAN. I agree to that, Your Honor.

"(See transcript, pp. 36, 37, 38, and 39.)"

The Court stated further at p. 40 of the transcript, as follows:

"The Court. If you could do that under the stipulation, that would leave in exhibits 1, 2, 10, and 11, consisting simply of returns, and it would put into this stipulation of facts verbatim having in there everything that is covered in these others, and you can simply stipulate that the court shall consider the paragraphs next in order to be everything set forth on what is now marked as an exhibit, and when I write the findings of fact, I would simply have copied everything that is on these other documents."

* * * * * * *

"Mr. Friedman. I think I understand what you mean, Your Honor. May I suggest this: Outside of these two other exhibits, the balance sheets that are referred to, the petitioner's case is through."

* * * * * * *

"The Court. * * * I am going to take a recess and go out of the room and it is up to you to dictate what you want. What we have in the record will then be considered as paragraphs 39, 40, and 41, and so forth, of these stipulations of facts."

Thereafter, counsel dictated into the record what would constitute supplementation to their stipulation of facts.

At the conclusion the following was stated:

"Mr. Friedman. If your Honor please, if I have appeared impatient I want to apologize to you. I know that I had no intention to be discourteous to the Court."

This case was decided by Judge Harron under a Memorandum Findings of Fact and Opinion. It was held, under the rule of the *Tower case* (327 U. S. 280) that the alleged partnership with the wife and two children of the taxpayer could not be recognized for purposes of the income tax, and the deficiencies of $20,268.46 and $164,925.28 were sustained.

Petitioner was given every possible opportunity by the Court to go to trial and to present all the evidence which he could present in order to sustain his burden of proof and to overcome the *prima facie* correctness of the Commissioner's determination.

At the hearing, the taxpayer's counsel eventually put into the record every bit of evidence which he had intended to offer and did offer.

No motion of any kind was filed after the trial. There were no discussions off the record. Petitioner did not ask for court review of Judge Harron's findings of fact and opinion, and he did not take any appeal to the circuit court.

That which the trial judge advised the taxpayer's counsel of at the hearing of the case, namely, that his proof fell short of fulfilling the taxpayer's burden of proof, was entirely borne out upon the study of the evidence which was submitted, and of the briefs. In the opinion, the trial judge stated wherein there was failure of proof. A copy of the Memorandum Findings of Fact and Opinion is herewith submitted to the Finance Committee.

The Chairman. Permit me to say to the members of the committee who are here that permission was granted yesterday to sit as long as might be necessary this afternoon so that the record will indicate that you are absent on official business on any of these roll calls, but if there is a roll call vote on an amendment we will have to recess.

Colonel McGuire. Very well. If you wish to, we can adjourn now. I think I can finish in about half an hour.

The Chairman. We would rather finish up if it is possible to do so, but we will have to interrupt the proceedings if it becomes necessary to vote on an important amendment.

Colonel McGuire. Certainly, sir.

Senator Byrd. I can only stay about 15 minutes longer, Colonel McGuire.

Colonel McGuire. Senator, we are very grateful for your appearance here.

There is one other thing I want to bring to the attention of the committee, which I think is most serious, and that is the court reporting arrangements. We have here a judge who has been charged, and the charge has not been supported, with not incorporating in the record or having removed from the record, material matters.

Now I want to call the attention of the committee to this situation. There are no official reporters for the Tax Court, as there are now for the Federal district courts. The reporting contracts are advertised and let to the lowest responsible bidder, who is usually a District of Columbia reporter. A copy of the standard form of advertisement bid and contract is at this point offered for the files, and I want to read just one paragraph:

> The reporter shall record, either stenographically or by some other recognized method or system of speedy reporting, everything spoken during a hearing, unless the judge presiding shall direct otherwise. Only the names of those counsel actually present at a hearing and announcing themselves as counsel in the proceeding at bar shall be incorporated in the transcript. Instructions from counsel not to take certain parts of the proceedings for the record shall not be followed without leave granted by the judge presiding. No part of the proceedings in any hearing, notes of which have been taken, shall be omitted from the transcripts unless the judge presiding so directs. A full and complete verbatim record of all hearings shall be made: *Provided, however,* That no exhibits, even though read at the hearing, shall be copied into the transcript except by express direction of the judge presiding.

I think the committee would like to have a copy of that contract.

(The material referred to will be found in the files of the committee.)

Colonel McGUIRE. The individual or reporter to whom the contract is awarded on an annual basis makes his own private arrangements with the reporters in the 28 or more localities throughout the United States where sessions of the Tax Court are held to report the proceedings in such localities. Sometimes they send someone from Washington but that is not customary. It is extremely doubtful if these local reporters are familiar with the terms of the contract between their employer-reporter and the Tax Court. It is certain that in most instances the judge of the Tax Court does not know the reporter until the calendar is called in the particular locality.

There is no requirement by statute or otherwise that the Tax Court reporter or those employed by him preserve the stenographic notes for any length of time or that he file same with the transcript. This committee has heard that the time varies among individual reporters from 2 to 5 years for retaining their notes. Official reporters of the Federal district courts are required to file their stenographic notes along with the transcript with the clerk of the particular court and these notes are required to be preserved for several years.

I submit to this committee that in the case of these charges against a judge, which charges have not been proven, we have been placed in a position where we cannot directly disprove them because in most instances the stenographic notes are gone. Judge Harron's critics say that in some instances the transcript is not a correct statement of what occurred in court. That situation constitutes a grave source of danger to each one of the 16 judges on the Tax Court. Charges are made after an interval of years by attorneys who are not counsel in the particular cases.

The absence of stenographic notes is one of the reasons why I had these records searched by these three young lawyers to see whether any such motions had been made in any of these 529 cases for correction of the records by inserting or changing something in them and Messrs. Kassel, Rea, and Sarner all report, except in one instance, "No." But that takes a lot of time and effort and it places the judge in a bad position.

These charges are painful to a devoted public servant. He or she may be unable to prove that the charges in controversy are contrary to fact except indirectly by showing, as we have shown, the motions that could have been filed but were not. The inability to prove such charges comes about because there is no official reporter such as the Federal district courts now have and because the reporters do not file their stenographic notes with the transcript, and in most instances have destroyed them. Incidentally most of the cases selected by Judge Harron's opponents to criticize her about were decided several years ago.

I may say that after this matter came up and I was retained by Judge Harron as her counsel, I called her attention to the fact that in the district courts the reporters have been required for a long time to execute an affidavit, a certificate, and attach it to the report, and that for her protection she should take one of those affidavits and require the reporter in each case before her to make that affidavit, and in a recent hearing in St. Paul that she held she did so, and I will read the certificate:

I, Vesta Wine, the official reporter of the Tax Court of the United States under its reporting contract, assigned to report the proceedings during the sessions of the Tax Court in St. Paul, Minn., beginning May 16, 1949, do hereby certify that I recorded in stenotypy the complete proceedings had in the case of *Morris N. Glazer, Transferee, Petitioner,* v. *Commissioner of Internal Revenue, Respondent,* Docket No. 10223, beginning May 16, 1949, at St. Paul; that I recorded in stenotypy all of the testimony and evidence offered and received in the above-entitled proceeding and all of the proceedings had in such cause before the Honorable Marion J. Harron, judge of the Tax Court; that thereafter I transcribed into typewriting myself all of the foregoing transcript; and I hereby certify that the typewritten transcript is a complete, true, and correct transcript of my stenotypy record.

Now so far as Judge Harron is concerned, she will probably have this certificate on each one of her transcripts hereafter and this charge cannot ever again be raised but it has not statutory basis. It will be simply a requirement of Judge Harron.

I would suggest that this committee, when the next tax bill comes before it, consider the advisability of making the statute now applicable to the other Federal district courts applicable to this court.

Now I have one other thing on this point and that is in regard to the matter of the court questioning the witnesses. Of course, those of us who are experienced trial lawyers know that that is a common practice, and we do not object to it, but the Congress has gone further. I will put in section 1114 of the Internal Revenue Code in evidence—and here is the phrase:

and any member of the Board may examine witnesses. * * *

Any member of the Board or court may examine witnesses. Of course, it is customary, as I say, in the trial of cases without a jury for a judge to examine witnesses. Here it is in black and white in the statute.

(Section 1114 (a) and (b) referred to is as follows:)

INTERNAL REVENUE CODE

SEC. 1114. ADMINISTRATION OF OATHS AND PROCUREMENT OF TESTIMONY

(a) *In general.*—For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board, or any employee of the Board designated in writing for the purpose by the chairman, may administer

oaths, and any member of the Board may examine witnesses and require, by subpena ordered by the Board or any division thereof and signed by the member, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or (2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) *Commissioners.*—The presiding judge may from time to time by written order designate an attorney from the legal staff of the court to act as a commissioner in a particular case. The commissioner so designated shall proceed under such rules and regulations as may be promulgated by the court. The commissioner shall receive the same travel and subsistence allowances now or hereafter provided by law for commissioners of the Court of Claims.

Colonel McGUIRE. Mr. Cohen mentioned this morning in his testimony an article in the American Bar Association Journal concerning one of Judge Harron's decisions. That article is in the June 1949 issue of the American Bar Association Journal at pages 504 to 505. I have a copy of it here, and I will offer it for placing in the files of the committee.

The CHAIRMAN. Very well.

(The article referred to will be found in the files of the committee.)

Colonel McGUIRE. Now I have a few letters here. I will read a few, and then I will put the others in the record without reading them. They are what might be called political endorsements, but they are nonpartisan. One is dated May 18, 1949, signed by Agnes E. Wells, national chairman, and Mamie Sydney Mizen, national secretary of the National Woman's Party and is addressed to Senator George, and reads as follows:

The National Council of the National Woman's Party at a meeting held May 17 voted unanimously to urge the Senate Finance Committee (of which you are a member) to act favorably on the nomination of Hon. Marion Harron as judge of the Tax Court of the United States.

Judge Harron possesses both marked ability and an unusual capacity for work, and is exceptionally well grounded in the tax laws of the United States.

Statistical records of the judges of the Tax Court show that Judge Harron's production is greater than most of the judges on that court. Likewise she has an excellent standing with respect to the sustaining of her decisions by appellate tribunals.

Judge Harron is an able and upright jurist, conscientious and faithful in the discharge of duty, and she serves with poise, dignity, integrity, and fairness.

We are aware that certain men lawyers have criticized Judge Harron before your committee and are opposing her confirmation. We feel that this criticism is not well founded but is the result of a discriminatory policy or prejudice of such critics against women judges. Attention is called to the fact that in the entire history of this country only three places on the Federal judiciary have been given to women despite repeated party pledges to accord recognition to women in public posts, and that each of the three women judges now on the Federal bench have been obliged to face the prejudicial opposition of men of the bar. We are confident that the opposition to Judge Harron's confirmation would not have been made were she a man instead of a woman.

We warmly commend Judge Harron, and earnestly hope that you will use your best efforts toward her early confirmation.

The next letter is one dated June 20, 1949, by Rosalind G. Bates addressed to Senator George, and reads as follows:

May I, as the past president of the Republican Business and Professional Women's Club, and the past president of the Republican Assembly of the Sixty-fourth District, respectfully urge that Judge Marion J. Harron's appointment be confirmed.

I have worked both from an elective Republican capacity in the county central committee, and as an appointee to the State central committee, and I know that the Republican women of California are very proud of the record that Judge Harron has established. If for any reason confirmation failed, the disappointment in this State in Republican ranks would be very grave. None of us cares to play politics with judges who have made good.

Knowing your own stand in this matter, we have every confidence that you will do your part toward retaining Judge Marion J. Harron, and thank you for your consideration.

The CHAIRMAN. I may say that all letters addressed to the chairman of the committee favorable to the nomination of Judge Harron have been ordered in the record already.

Colonel McGUIRE. They have?

The CHAIRMAN. Yes, sir.

Colonel McGUIRE. Some of them were sent to me instead of being sent to you.

The CHAIRMAN. Those that have been received by the chairman. Of course, it requires checking to see whether we are duplicating; that is all. I call that to your attention.

Colonel McGUIRE. Another letter is one dated June 20, 1949, by Mrs. Emma Guffey Miller, head of the Democratic National Committee, which is addressed to me:

I have already written to Senator George stating how happy I am to endorse Hon. Marion Harron again for appointment to the United States Tax Court, but I am addressing this letter to you in case my letter to Senator George miscarried.

The only objections I have found to Judge Harron's reappointment seem to stem from envy or spite since no fault can be found to her record since she stands so high in ability and experience, having rarely been overruled by the lower courts and never by the Supreme Court.

It would certainly add to the cause of justice to have Judge Harron's appointment speedily confirmed.

Another letter is an original letter signed by Marie Ryan, president of the Federated Democratic Women of Ohio, 7116 Hague Avenue, Cleveland, Ohio, which is addressed to you, Senator George, but the original I have and I presume you did not receive it.

The CHAIRMAN. I would not be able to say without checking. I remember some of the letters offhand. This one we have is Josephine.

Colonel McGUIRE. It must be a different person.

The Federated Democratic Women of Ohio composed of and representing Democratic women active in political work and cognizant of their responsibilities as citizens in developing good Government and interested in promoting competent women for public office hereby unqualifiedly endorse Judge Marion J. Harron for reappointment as judge of the Tax Court of the United States and request that this endorsement be made part of the record of the Senate Finance Committee of the Eighty-first Congress reaffirming our endorsement expressed to the Eightieth Congress last year.

Some of our members are women attorneys who have carefully examined the record and qualifications of Judge Harron, and it is our conviction that she has been an outstanding judge and that her record fully justifies her reappointment.

The CHAIRMAN. We will put that in the record unless we find on checking that it is already in the record.

Colonel McGUIRE. There is another one dated July 17, 1949, signed by Cecile Frankel. It is in longhand, addressed to you, Senator George, as chairman of the committee, giving the endorsement of the Women's Democratic Club of Monmouth County, N. J. I will put that in the record.

(The letter referred to is as follows:)

THE WOMEN'S DEMOCRATIC CLUB OF MONMOUTH COUNTY,
June 17, 1949.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR GEORGE: The Women's Democratic Club of Monmouth County, N. J., considers it a privilege to renew its endorsement of President Harry S. Truman's nomination of Marion J. Harron for reappointment to the United States Tax Court, which is pending before the Eighty-first Congress.

The record of Judge Harron as a jurist is an inspiration to women the country over and we urge you and your colleagues on the Senate Finance Committee to confirm without delay the reappointment of this eminently qualified woman to the position which she so richly deserves.

Sincerely,

CECILE FRANKEL, *Secretary.*

Colonel MCGUIRE. Now at the last session the chairman placed in the record a letter which he had received from Mrs. Mabel Walker Willebrandt which she requested be placed in the record.

The CHAIRMAN. Yes, that was requested of the committee.

Colonel MCGUIRE. I have another letter by her that I think should go in the record, too. It is a letter dated April 4, 1948, addressed in Los Angeles, Calif., signed by Mrs. Willebrandt, addressed to "Dear Judge Harron."

I have thought a lot about our talk, and although I have been almost superhumanly busy, with work, and with changing nurses for papa, I made the quiet check I told you I would.

I know you will be glad that the president of the Los Angeles bar spoke most cordially of you, and told me he had endorsed you. But perhaps you already know he has done so.

Shortly after you talked to me I learned that Elizabeth Baily Davis was under consideration for the appointment to the Tax Court. She was one of my earliest friends when I came to Washington in 1921. For years I have admired her legal ability and her character, and I am sure she would do honor to lawyers, both men and women, should she be appointed.

I have known her so much better, and so much longer than I have you, that I want whatever slight value my endorsement might have to be given to her. But—I want to tell you this honestly, and hope for your tolerance and understanding of my decision. Please give me both.

Fraternally yours,

MABEL WILLEBRANDT.

Both Mrs. Willebrandt and Judge Harron are members of the Phi Delta Fraternity.

Next is the letter of June 15, 1949, from the Counselor's Club of Buffalo, N. Y., which is composed of women lawyers and I ask that it go in the record.

The CHAIRMAN. That will be done.

(The letter referred to is as follows:)

THE COUNSELORS, *June 15, 1949.*

Hon. WALTER F. GEORGE,
The United States Senate,
Chairman, Finance Committee,
Washington, D. C.

MY DEAR SENATOR GEORGE: At a recent meeting, the Counselors Club of Buffalo, N. Y., has discussed the reappointment of Judge Marion J. Harron to the Tax Court of the United States. This group of women lawyers wishes to express its interest in President Turman's reappointment of Judge Harron and to endorse her for this post. We believe that she has established an excellent record since her appointment in June 1936 in the position to which she has been reap-

pointed and the high percentage of cases which were upheld on appeal speaks well of her ability.

Very truly yours,

THE COUNSELORS CLUB,
By MARCELLA J. LEPOWICZ
Corresponding Secretary.

Colonel MCGUIRE. Next is a letter dated June 20, 1949, signed by Rosalind G. Bates, president of the International Federation of Women Lawyers, addressed to you, Senator George. I will ask that that be placed in the record without my reading it, endorsing Judge Harron.

The CHAIRMAN. Yes.

(The letter referred to is as follows:)

INTERNATIONAL FEDERATION OF WOMEN LAWYERS,
June 20, 1949.

Re confirmation of Judge Marion J. Harron.

Senator WALTER F. GEORGE,
Chairman Senate Finance Committee,
United States Senate, Washington 25, D. C.

DEAR SENATOR GEORGE: During the recent convention of the International Federation of Women Lawyers which met in the United States for the first time in Los Angeles from May 14 to 19, the work of Judge Marion J. Harron in the Tax Court was commended on most favorably. Since her name is up for confirmation at this time, we thought that you would like to have this information.

Excerpt from the committee report reads: "seldom has a woman in public office established the record of respect in her own profession with both men and women, and the minimum appeal percentage from her decisions that Judge Marion J. Harron enjoys in the Tax Court."

Women from every State in the Union both at the bench and bar pay tribute to Judge Harron's ability.

Respectfully yours,

ROSALIND G. BATES, *President.*

Colonel MCGUIRE. Another letter is a letter dated May 17, 1949, from Leland W. Scott, addressed to Senator George, approving Judge Harron's endorsement. Mr. Scott is a member of an important law firm in Minneapolis, Minn.

(The letter referred to is as follows:)

DORSEY, COLMAN, BARKER, SCOTT & BARBER,
Minneapolis, May 17, 1949.

Re Marion J. Harron, judge, the Tax Court of the United States

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR: Two or three weeks ago my attention was called to the fact that some members of the bar of this State who practice before the Tax Court of the United States are opposed to the confirmation by the Senate of the appointment of Miss Harron as a judge of the Tax Court of the United States and that in that connection my name has been given as one who would testify in opposition to her appointment.

Please be advised that I have never been consulted on this subject; that if I had been consulted I would have refused to testify in opposition to the confirmation of Miss Harron's appointment; and that I know of no reason why Miss Harron's nomination should not be confirmed.

I have had occasion to appear before Judge Harron and it is my opinion that she conducted the trial of the cause in which I appeared as counsel for the taxpayer in a fair and impartial manner. It is also my belief that her opinion and judgment in the cause was in accord with the law controlling the issue involved. My opinion is based on 28 years experience in the field of Federal tax law during which time I was an assistant United States attorney, district of Minnesota, a special attorney in the office of the general counsel of the Bureau of Internal Revenue and for the last 20 years a partner of this firm.

Very truly yours,

LELAND W. SCOTT.

Colonel McGUIRE. Another letter is dated May 21, 1949, from J. Delmore Lederman, addressed to Senator George, stating as follows:

A year ago, I tried a case in Judge Harron's court in San Francisco. I spent a week in her court. I was strongly impressed, not only with her judicious temperament, but also with her unfailing courtesy to the members of the bar appearing before her.

The proceedings were handled with dignity and dispatch and reflected great credit on the ability and legal qualifications of Judge Harron.

It gives me great pleasure to endorse her reappointment to the position which she has filled with such distinction.

I have another letter of May 11, 1949, by Mr. Leonard Farkas, of the firm Leonard Farkas & Walter H. Burt in Albany, Ga., which concerns his own case which was tried before Judge Harron and which has been mentioned here in these hearings by her opponents. A telegram was sent to Mr. Farkas on May 4, which I will ask to be placed in the record.

The CHAIRMAN. You may put it in the record.

(The telegram referred to follows:)

MAY 4, 1949.

LEONARD FARKAS, Esq.,
Albany, Ga.:

Confirming telephone conversation today regarding proceeding Docket No. 8293, Leonard Farkas, heard April 17, 1946, Atlanta by me would appreciate your reply hereto whether you have any complaint with respect to hearing and particularly record of hearing and whether any statements during proceedings were made which do not appear in transcript that day made. Would point out that hearings are officially reported, no motion ever filed relating to hearing or record. Advise Judge Harron, United States Tax Court.

MARION J. HARRON.

Mr. Farkas replied:

Replying to your telegram of May 5, beg to advise that I have no complaint to make relative to the hearing in the above matter. I have misplaced my copy of the record, but, so far as I can recall, the same contained a correct report of matters that I considered material and relevant to the issues involved. No motion filed by me relative to the manner of conducting the hearing.

The CHAIRMAN. The Chairman knows Mr. Farkas very well.

Colonel McGUIRE. He is an excellent lawyer.

The CHAIRMAN. Yes.

Colonel McGUIRE. I have another letter dated June 21, 1949, from Eugene B. Rothschild at 160 North La Salle Street, Chicago, Ill., addressed to the chairman of the committee, in which he states his experience before Judge Harron. Maybe I had better read this one.

I have been informed that your committee is considering the nomination for reappointment of Hon. Marion J. Harron as judge of the Tax Court of the United States.

I was associated with Judge Harron for approximately 1 year, from about November 10, 1942, until September 11, 1943, as an attorney in the Tax Court. During this time, I experienced one of the most fruitful periods of my life, both from the viewpoint of obtaining knowledge of law and personal association. It was through Judge Harron that I received my first basic training in tax law, and I feel that I did receive a very thorough training. Of course, you can realize that when you are participating in a work that is so precise as the determination of tax matters, one must apply himself with very strict attention to the matters under consideration.

During my association with Judge Harron, while such an attitude was always present, working with her was most pleasant, and she was always fully cooperative in assisting me at all times.

I resigned from the Tax Court to take a position with Coordinators Corp. in the preparation of a tax service. This called for the original writing of a great part

of the tax law. I left this position to go into private practice of law, and finally decided it would be best if I should go into business with two of my brothers. I am now engaged in business with my brothers, conducting a wholesale business, and operating five retail stores.

I have always greatly admired Judge Harron's ability in determining tax matters, and feel that she has given the Tax Court an original and forward view of current tax interpretation. I feel that if the Tax Court should lose her services, it would suffer a great loss.

That is the fourth of her law clerks.

I have a letter dated May 3, 1949, from Mr. Edgar T. Zook, of San Francisco, in which he highly recommends confirmation of her nomination.

(The letter referred to is as follows:)

SLACK & ZOOK,
San Francisco, May 3, 1949.

Hon. WALTER F. GEORGE,
Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SIR: I take great pleasure in recommending for your favorable consideration, the candidacy of Hon. Marion Harron for reappointment as a judge of the United States Tax Court. While my acquaintance with Judge Harron dates only from the hearing of a tax case here in San Francisco some years ago, I was very favorably impressed with the courteous and competent manner in which she conducted the trial. Incidentally, I lost the case, but I still feel that Judge Harron's work on the bench fully justifies her reappointment.

Yours respectfully,

EDGAR T. ZOOK.

Colonel MCGUIRE. I have a letter of May 10, 1949, from Mr. Herbert E. Hall in which he states he has had the privilege of trying several cases before her, some successfully and some otherwise, but irrespective of the results he wants to commend her to the committee and does.

(The letter referred to is as follows:)

CALKINS, HALL, LINFORTH & CONARD,
Crocker Building, San Francisco, May 10, 1949.

Hon. WALTER F. GEORGE,
Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR GEORGE: It has been brought to my attention that there is some opposition to the reappointment of Judge Marion Harron to the United States Tax Court.

It has been my privilege to try several cases before Judge Harron, some successfully and some otherwise. But, irrespective of the result, I have always been very much impressed by the keenness of her intellect and her inherent fairness. I think the court would lose an exceedingly valuable member if she were not reappointed.

Very truly yours,

HERBERT E. HALL.

Colonel MCGUIRE. I have a letter from M. W. Dobrzensky of the firm of Fitzgerald, Abbott & Beardsley, of Oakland, Calif.

Incidentally, Mr. Beardsley is a former president of the American Bar Association.

The letter is addressed to you, Mr. Chairman.

This letter is written to express the hope that Judge Marion Harron may be reappointed as a judge of the United States Tax Court.

I believe that her record clearly demonstrates her capacity as a judge of this important tribunal and her capacity, plus her experience would, in my opinion, justify her reappointment.

Under the circumstances, I trust that your committee may act favorably upon her nomination.

I make it clear that is one of Mr. Beardsley's partners and not Mr. Beardsley himself.

There is a letter by Mrs. Barrow Lyons, of northwest Washington, D. C., addressed to you, Senator George, and being from an individual taxpayer I think I should read it.

I am interested in the confirmation of the appointment of Judge Marion L. Harron to serve for a second term on the United States Tax Court. It seems clear that Judge Harron has demonstrated her ability to handle ably the type of case which comes before this court. As a woman I am interested in seeing more participation in public life by qualified women and in the recognition of outstanding work by giving them the continued opportunity to serve; I am not interested in the appointment of women to public office merely because they are women.

It has come to my attention that those opposing Judge Harron's confirmation are claiming that her conduct on the bench is emotional and not befitting a judge. On the basis of my acquaintance with Judge Harron over the years I find such accusations completely incredible. I have found her a woman of unusual poise and dignity, possessed of understanding and a sense of humor.

I have been in a position to observe Judge Harron in meetings of the American Association of University Women at which extremely controversial questions were under consideration when the atmosphere had become pretty tense. On such occasions Judge Harron made a real contribution to the orderliness of the meetings by the calm and objective manner with which she spoke from the floor. At the time my thought was that a judicial temperament on tap was extremely handy. I cite this only to indicate that my opinion rests on experience more directly relevant than pleasant social intercourse. I am convinced that the character-damaging accusations are made irresponsibly and as a result of prejudice.

Undoubtedly I could have relied on your experience in judging people and testimony to evaluate properly such petty and outrageous testimony. I felt, however, that you would be interested in the opinion of persons with nothing at stake personally who have been in a position to know and to observe Judge Harron.

The CHAIRMAN. You may put that in the record also.

Colonel MCGUIRE. I have a letter from Emilie N. Wanderer of Las Vegas, Nev. It is merely a copy of a letter that is addressed to you, Mr. Chairman. I presume you have received the original but, if not, I ask that the copy go in the record.

The CHAIRMAN. I think it has just been received.

(The letter referred to is as follows:)

LAS VEGAS, NEV., *June 20, 1949.*

Hon. WALTER F. GEORGE,
Senate Finance Committee, United States Senate,
Washington, D. C.

DEAR SENATOR GEORGE: It has come to my attention that President Truman has again sent to the Senate his nomination for the reappointment of Judge Marion J. Harron to the position she now holds in the United States Tax Court. It is again my privilege to urge her reappointment to such office. My interest in Judge Harron is not purely because of my personal friendship and admiration for her, but rather because of my knowlege and appreciation of the fine service she has rendered during the term which she is about to finish as judge of that court.

May I address myself to you first in my capacity as national chairman of the probate and trust committee of the National Association of Women Lawyers. My official activity on this committee requires my furtherance of all which may inure to the beneficiaires in probate proceedings and trust matters, an essential and major portion of which is affected by proceedings in a tax court. I have followed very closely the work of Judge Harron during her incumbency and take particular pride in the fact that her decisions have all been scholarly and shown an unusually fine judicial temperament. It is significant that there is no record that has come to my attention of any reversals thereof.

Another interest that I wish to protect and which I feel may substantially be furthered by the continuance of Judge Harron in this important position is that of a member of the legal profession. Every lawyer should feel particularly concerned that each and every member of the judiciary should be of the highest caliber and that aim may be very well furthered by retaining Judge Harron in this important position.

My third and last claim to a right to urge the retention of Judge Harron in this important position, is a member of a much larger class, that is, the women of America. All women are directly affected by the caliber of judges in the courts, especially in a tax court, because such a large percentage of the world's wealth is held by women. As a member of that class, and for the furtherance of the protection that it is entitled to, I personally, besides my reasons hereinabove stated, am most anxious that this very-qualified judge be retained in her position.

May I add in passing, and as a basis of her reappointment which should not be entirely ignored, since the women of this country pay an appreciable percentage of taxes, they not only should be represented in the legislative and executive branches of our country, but, consistent with our democratic system of government, should have representation in the very important judicial department thereof. It is my humble opinion that the need of this proper apportionment of such representation in this branch of the Government has not received a fair recognition and, with these thoughts in mind, may I respectfully call to your attention and submit that the importance of the retention of Hon. Marion J. Harron as judge of the Tax Court cannot be overemphasized.

Faithfully yours,

EMILIE N. WANDERER.

Colonel McGUIRE. Now as I stated a moment ago, and the committee knows, the hearing had to be suspended for a while while Judge Harron went to St. Paul to conduct hearings and while she was there she was invited by the Hennepin County Bar Association to make a little talk before them at a luncheon meeting. I have a letter dated May 20, 1949, signed by Mr. John Windhorst of the firm of Dorsey, Colman, Barker, Scott & Barber, of Minneapolis, addressed to Judge Harron.

Hon. MARION J. HARRON,
Tax Court of the United States,
Washington, D. C.

DEAR JUDGE HARRON: I wish to express my appreciation and that of the entire tax section of the Hennepin County Bar Association for your talk at the meeting of the section on May 19, 1949. Your remarks were very much enjoyed by all of us and we regarded it as a privilege and a pleasure to meet you. I am particularly appreciative of your attendance at our meeting, in view of my knowledge as to the inconvenience which it caused you. I hope that the slight delay in returning to St. Paul did not unduly inconvenience you. We hope that we will have another opportunity to meet you at a time when you will not be as pressed with the business of the court.

Respectfully yours,

JOHN W. WINDHORST,
Chairman, Tax Section, Hennepin County Bar Association.

I have a copy of a letter of February 21, 1949, by Mr. Morrison Shafroth of Denver, Colo., addressed to Senator Millikin, reaffirming his endorsement of Judge Harron. I suppose the Senator will have no objection to having that go in the record.

Senator MILLIKIN. I will be glad to have it in the record.

(The letter referred to is as follows:)

GRANT, SHAFROTH & TOLL,
Denver, Colo., February 21, 1949.

Senator EUGENE D. MILLIKIN,
United States Senate, Washington, D. C.

DEAR GENE: You recall no doubt that last year I wrote you concerning Judge Harron, who has been reappointed to the Tax Court and awaits confirmation by the Senate. I understand the Senate adjourned without acting on her appointment and that President Truman has sent it in again. At that time I went to considerable details as to her qualifications and I simply want to remind you that I consider her a fine judge and that her confirmation is very desirable in the public interest.

With best regards.

Sincerely yours,

MORRISON SHAFROTH.

Colonel McGUIRE. I have a copy of a letter of May 13, 1948, from Mr. Wilbur La Roe, Jr., whom you probably know as being high in the Presbyterian Church lay organization. The original lettter was addressed to Senator Edward Martin commending Judge Harron for appointment. I ask that that go into the record.

The CHAIRMAN. Yes; you may put it in the record.

(The letter referred to is as follows:)

LA ROE, BROWN & WINN,
Washington 5, D. C., May 13, 1948.

Hon. EDWARD MARTIN,
United States Senate, Washington, D. C.

MY DEAR SENATOR MARTIN: It has come to my attention that Miss Marion L. Harron of the Tax Court of the United States is up for reappointment. I am writing to tell you that I have known Miss Harron for many years and that I regard her as a lawyer of very great ability and as highly qualified to occupy this high office.

I wish to express the hope that one of her high caliber and of her high appreciation of the obligations of public service may be reappointed.

Faithfully yours,

WILBUR LA ROE, Jr.

Colonel McGUIRE. The committee heard Mr. Melvin S. Huffaker from Detroit, Mich., on behalf of Judge Harron, but he wrote to Senator Millikin on May 7, 1948, a rather complete letter.

Senator MILLIKIN. Who is this, Colonel?

Colonel McGUIRE. Melvin S. Huffaker from Detroit, Mich.

I ask that this letter of May 7, 1948, go in the record as supplementing his previous testimony.

The CHAIRMAN. Is there any objection?

Senator MILLIKIN. No objection whatever.

I may say that I have a practice of not putting letters in unless I am asked specifically to do so because I regard the correspondence as personal unless there is evidence to the contrary.

(The letter referred to is as follows:)

SMITH & HUFFAKER,
Detroit 26, Mich., May 7, 1948.

Senator EUGENE D. MILLIKIN,
Chairman Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR MILLIKIN: In a recent issue of our Tax Court service the announcement was made that a number of the present judges of the Tax Court of the United States have been nominated for reappointment to that court. I understand that your committee now has before it for consideration the matter of confirmation of such appointments. In considering these matters, it might be helpful to you to have the views of disinterested third parties concerning each, or any, of the Tax Court judges who have been nominated for reappointment.

Marion J. Harron is one of the judges who has been nominated, and I would like to make a few observations and remarks in behalf of Judge Harron.

With Judge Harron's early background I am not too familiar, other than to say that she graduated from the University of California in the early twenties. My knowledge and information concerning Judge Harron dates from about 1935 or 1936, at which time she was first appointed as a judge of the Tax Court of the United States and at which time I was an attorney in the Interpretative Division of the Chief Counsel's Office, Bureau of Internal Revenue.

Most of my knowledge of Judge Harron dates from 1941, at which time I was assigned to the Trial Division of the Chief Counsel's Office, Bureau of Internal Revenue, at Detroit, Mich. For approximately 5 years I tried many cases in the Tax Court, and I had occasion to observe and get to know Judge Harron quite well. Since leaving the Government service and entering private practice, in late 1945, I have tried no cases in the Tax Court before Judge Harron, but I have been following her decisions rather closely.

First and foremost, I would say that Judge Harron is extremely conscientious and makes a very real attempt to arrive at a proper solution to any tax problem presented for her consideration. Most tax cases involve largely questions of fact, and it becomes highly advisable for a court to have before it a full and complete set of facts. In trying tax cases before Judge Harron, I have always been greatly impressed with the time, trouble and patience Judge Harron would go to to see that the record contained every possible available fact. Judge Harron happens to have the remarkable ability of sensing and understanding the issues of a tax case, coupled with a keen and inquiring capacity to ask questions to develop and to ascertain relevant facts pertinent to a given situation.

For my own information, I have just finished a survey of Tax Court cases decided the last 3 years, and I would say that the statement of facts contained in Judge Harron's cases are in considerably more detail than those of most, if not all, of the other Tax Court judges.

Today matters of taxation are of vital concern to both taxpayers and the Government, and the situation suggests that the greatest care and caution be employed in selecting judges capable and with the proper background to understand and to solve these matters, which touch and concern the daily lives of almost every individual in the country.

Although I am not familiar with Judge Harron's business or judicial experiences prior to the time she became a judge of the Tax Court of the United States (then United States Board of Tax Appeals), I have every reason to believe that she must have had a good business and commercial experience prior to the time she became judge. I have observed Judge Harron in hearing cases involving intricate matters of business management, operation, and production problems, and one would gather the impression that she was equally versed in production and manufacturing problems as she was with matters of taxation. Also I have observed Judge Harron hearing cases involving valuation issues and securities transactions, and she seems to comprehend those spheres of knowledge probably as much as professional men in those fields. All in all, I would gather that Judge Harron's educational and business background and experience would be a real asset to any judge hearing cases involving such practical matters as taxation.

Concerning the number of cases handled in the Tax Court by Judge Harron, as compared with other Tax Court judges, I am not familiar, but I would rather expect that she hears and decides more cases than a majority of the other Tax Court judges.

Concerning decisions of Judge Harron appealed to the circuit court, while I have noticed an occasional reversal, I would gather that 7 or 8 out of 10 have been affirmed by the appellate court. Another point which I consider important in connection with Judge Harron's decisions is that, in cases in which she dissents, she often writes a full and complete dissenting opinion, setting forth her reasons for taking her position, and I have often felt that her reasoning was preferable to that expressed in the majority opinion. Other things of interest to you may be said; however, without going into too lengthy a discussion, I did want to convey to you a few of my observations, hoping that they would be helpful to you in reaching your conclusions. If I could be of any assistance in enlarging my statements or furnishing you with additional information or opinion, I should be very happy to do so without delay.

Thank you for your courtesy in this matter.

Very truly yours,

MELVIN S. HUFFAKER.

Colonel MCGUIRE. Mr. Kassel in his testimony mentioned that an affidavit has been procured from the reporter who reported that Baldwin case wherein the reporter stated that the words Mr. Spivock wanted included in the transcript were not in her notes though Judge Harron out of an abundance of caution allowed him to have them inserted in the record. I have that affidavit here dated April 6, 1949, signed by Mr. E. D. Conklin in which he states these entire circumstances. He also relates in here something that is material and is indicative of the practice of some counsel. Mr. Spivock called up the reporter and wanted him to put something in the record.

Counsel telephoned to the reporter and demanded to know of him why said transcript of record was not complete in that it did not contain remarks ordered

stricken; that the reporter explained the surrounding facts and circumstances as set forth above, but that counsel was not satisfied with explanation; that counsel implied in the mind of the reporter, but did not express, a lack of ethics on the part of the reporter; that the reporter, in tone similar to that used by counsel, said: "Listen, Mr. Spivock, don't tell me how to prepare a record. This is not the first case I ever reported or the first transcript I ever prepared. If the court directs me to physically strike from the record, I strike. And you would do the same thing if you were in my position. Your complaint should not be directed to me over this telephone but to somebody else in some other forum; * * *"

The CHAIRMAN. Is that by the reporter who took the transcript of the evidence in that Murray Baldwin case that was mentioned by Mr. Kassel in his testimony this morning?

Colonel McGUIRE. Yes, sir.

(The affidavit referred to is as follows:)

AFFIDAVIT IN THE MATTER OF NOMINATION OF MARION J. HARRON FOR REAPPOINTMENT TO THE TAX COURT OF THE UNITED STATES

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

E. D. Conklin, being duly sworn, deposes and says that in the matter of Murray Baldwin, petitioner, docket No. 86050, tried by Judge Harron in San Francisco at sometime in 1938, he was the court reporter and that Allen Spivock, Esq., of San Francisco, was counsel for petitioner; that during the formal proceedings heated exchange occurred between court and counsel; that at the next recess, as the court withdrew from the bench, the court indicated by motion of the hand that the court wished to speak with the reporter; that outside the hearing of the parties litigant and counsel, the court there and then instructed the reporter to expunge from the record that part of proceedings containing the heated exchange above referred to; that pursuant to instruction of the court, the reporter did expunge and, according to his best recollection, so indicated in transcript of record by parenthetical note; that copy of transcript of record was delivered to counsel; that within a matter of hours after delivery, counsel telephoned to the reporter and demanded to know of him why said transcript of record was not complete in that it did not contain remarks ordered stricken; that the reporter explained the surrounding facts and circumstances as set forth above, but that counsel was not satisfied with explanation; that counsel implied in the mind of the reporter, but did not express, a lack of ethics on the part of the reporter; that the reporter, in tone similar to that used by counsel, said: "Listen, Mr. Spivock! Don't tell me how to prepare a record. This is not the first case I ever reported or the first transcript I ever prepared. If the court directs me to physically strike from the record, I strike. And you would do the same thing if you were in my position. Your complaint should not be directed to me over this telephone but to somebody else in some other forum"; that further the reporter knoweth and sayeth not.

E. D. CONKLIN, *Reporter.*

Subscribed and sworn to before me, a notary public in and for the city and county of San Francisco, State of California, this 6th day of April 1949.

[SEAL] ALICE C. MORSE,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires August 24, 1951.

Colonel McGUIRE. I am a little bit in error. Mr. Conklin took part of the transcript and part of it was taken by Arlene Newitt, and it was the part Mr. Spivock asked her about whether these few words that he wanted inserted had been taken or left out, and in her affidavit of April 5, 1949, she says:

"After checking I telephoned Mr. Spivock stating my notes did not contain the statement referred to, and that my transcript was a correct transcription of my notes. He stated counsel for the respondent had heard the statement. I told him if they wished to stipulate to add to the record in that particular it was their privilege. No other

conversation was had, and I have not seen or spoken to Mr. Spivock since that date."

(The complete affidavit is as follows:)

AFFIDAVIT IN THE MATTER OF MARION J. HARRON FOR REAPPOINTMENT TO TAX COURT OF THE UNITED STATES

STATE OF CALIFORNIA,
City and County of San Francisco, ss.:

Arlene Newitt (Arlene Christensen), being duly sworn, deposes and says:

I was one of the court reporters who reported the case of *Murray Baldwin, Petitioner*, v. *Commissioner of Internal Revenue*, Docket No. 86050, before the Tax Court of the United States held in San Francisco some time during 1938, tried by Judge Harron, and in which Allen Spivock, Esq., of San Francisco was counsel for petitioner.

Some time after the preparation and delivery of transcript Mr. Spivock telephoned me, stating it was his recollection Judge Harron had made a statement of some four or five words, which I do not recall exactly at this time, that did not appear in the transcript. I informed Mr. Spivock that I had no recollection of the statement, that I would check my notes against the transcript and call him back.

After checking I telephoned Mr. Spivock stating my notes did not contain the statement referred to, and that my transcript was a correct transcription of my notes. He stated counsel for the respondent had heard the statement. I told him if they wished to stipulate to add to the record in that particular it was their privilege. No other conversation was had, and I have not seen or spoken to Mr. Spivock since that date.

ARLENE NEWITT.

Subscribed and sworn to before me a notary public in and for the city and county of San Francisco, this 5th day of April 1949.

[SEAL] E. D. CONKLIN.

My commission expires February 22, 1953.

Colonel MCGUIRE. Now it has also been mentioned in correspondence that Mr. Spivock has apparently a way of trying the judges, and also an affidavit of bias and prejudice had been filed by him against Judge St. Sure. I have a photostatic copy of that affidavit and for whatever it may be worth in the consideration of this matter I offer that for the files of the committee.

The CHAIRMAN. Very well.

(The affidavit referred to will be found in the files of the committee.)

Colonel MCGUIRE. Mr. Chairman, Judge Harron wanted me to ask permission of the committee to submit today or tomorrow a list of percentages relating to the long study that it took us 2 weeks to prepare regarding these cases. She thinks that the prcentages might be more helpful than just the figures. So, if the committee will not object, I will send them up to you.

The CHAIRMAN. I have no objection. Send them to the clerk of the committee for the reporter. It is based upon the same reports that have been made?

Colonel MCGUIRE. That is right.

The CHAIRMAN. But in terms of percentages.

(The information referred to will be found on pp. 317 and 318.)

Colonel MCGUIRE. Now, if I may, not as counsel for Judge Harron but as a member of the bar who is interested in the justice of the case, I should like to make just a few statements in my own personal capacity in this matter, if I have permission.

The CHAIRMAN. Yes, you may do so.

Colonel MCGUIRE. My fellow members of the American bar, some of them, have made some very serious charges against Judge Harron.

I do not think as a lawyer that they have succeeded in sustaining a single one of them, not one.

They have charged that her output of work was low in quantity. A direct charge was made here. Now we have proven from the record that she had decided 529 cases, which put her near the upper middle of the 16 judges; and that she had fewer reversed on appeal than each of the other two judges who were confirmed by the Senate of the Eightieth Congress.

They have charged that her record in the appellate courts has been poor. They have submitted no proof of that. On the contrary, we have assumed the burden of showing that her record in the appellate court is very high and right near the top of the 16 judges.

They have charged that this result was reached upon the record as made by her, implying that she may have done something to the record. At least I got that impression. They have not proved that she has made a single change in any record or directed a single change in any record which went to the merits of any case. There were deletions in two records and I submit that we have gone into that thoroughly here in the Heppenstall case that Mr. McCall was called here on and in the Baldwin case. I submit that the matter deleted in the Heppenstall case was deleted because of the desire of Judge Harron not to injure Mr. McCall. It had nothing whatsoever to do with the merits of the case and part of it really had no business in the record in the first instance. In the Baldwin case we have the affidavit of the reporter that the material charged to have been deleted was never reported by her.

After we had showed in our direct testimony that her record was so high, her opponents suggested that perhaps that record was due to assistance she got in court conferences from other judges, seeking to convince the committee she was not qualified and able to stand on her own feet.

The CHAIRMAN. She would be entitled to get assistance from the other judges.

Colonel MCGUIRE. Yes, she would be entitled to do it, but the facts of the matter are, Mr. Chairman, she did not get it any more than any other judge got assistance by submitting his case to the conference.

The number of Judge Harron's cases reviewed was only 72 out of 529 which was a far less number than most of the other judges, not at the bottom but in the upper half of the court. Only 6 of here 529 cases were reassigned a smaller number than those reassigned of two other judges recently confirmed.

The CHAIRMAN. I would not think it would be criticism of any judge who sought the judgment of his conferees.

Colonel MCGUIRE. Certainly not. You know in the matter of practicing law that lawyers consult with other lawyers. Judges in appellate courts confer with each other in writing their opinions and get suugestions. But the insinuation, as I got it, was that she could not do it herself, that the record was due to the help she got. We have completely disproved that.

As I have said, they have charged that she had changed or caused the records to be changed on the merits of cases. They have not proved it and I have not seen any serious attempt to do so. We

think as far as we possibly can under the circumstances we have completedly disproved it.

There is no reason why Judge Harron should change the record. She has taken an oath as a judge to decide these cases in accordance with the laws and the facts.

I may say that when she first came to retain me in this matter I inquired into all these things very carefully, about the conduct of her court and all of that. I had heard some few things. I am confident myself that so far as a judge can, she has made herself devoted to obtaining justice in the case as the law requires her to give it. She had no predilections to write in facts. The appellate courts have not even suggested in 109 of her cases that she had done so. They would have detected it if she had done so.

Moreover, there have been 500 counsel who have appeared before her in cases and tried cases before her. If she had done anything like that, do you not think that these able and astute lawyers would have had motions galore in those cases down there in the Tax Court? Why, if a judge was to do something like that to me, I would move heaven and earth to have it corrected, and I believe that other lawyers would do the same thing.

These 500 lawyers have not come forward and said that she did it, either. Some matters of personalities between judge and counsel have been stricken in the presence of counsel. That is customary. All of us who have tried cases know that we can not go into court with thin skins. There is no place for a thin-skinned individual in court these days. The judge is there not to act as an arbitrator between two opposing parties; the judge is there to see that justice is done and particularly when it is the responsibility of the judge to make the decision.

We have an example right here in the District of Columbia where a judge has not only fined the lawyer twice but he has warned him that the next time he would impose punishment by imprisonment in jail. No lawyer of experience complains about that and no lawyer with high ethical standards attempts to run the courts.

It has been charged that Judge Harron had caused records to be destroyed. No single instance of such destruction of the record has been proven and we emphatically deny the allegation as being false.

There have been charges that she has taken over the examination of witnesses and taken cases out of the hands of counsel. I have read record after record that she has decided. I find no such thing as that. She has asked witnesses questions, it is true, but so do all the other judges in the Tax Court and so do all other trial judges, whom I know, when they are triers of the facts. They even ask questions sometimes when the cases are being heard before juries.

One of the reasons why her record is so high as a judge in deciding her cases is because she sees that she thoroughly understands the case as it goes along. Counsel are there. Witnesses are there. That is the time to clear up any doubts in her mind as to the facts. That is the time and place where it should be done, not after she has left the bench.

Now some of the counsel have objected that they were not permitted to present their cases as they thought they had planned to present them. There again even Mr. Pierce, who said he was very

experienced in the trial of cases, admitted under cross-examination that all judges have their own methods of trying cases, and we have proven here that he admitted he did not fully prepare himself on the law of the case and that he did not have in court the necessary witnesses to prove the accounting reports. Another of Judge Harron's critics admitted that no two judges are exactly alike in their trial of cases and I do not think that a lawyer is doing the cause of justice any particular good when he wants to pick a fight with the court because he cannot present the case in a particular way, whether he shall put this witness on first or second or whether he shall put the documents in first or not at all. I certainly submit that no lawyer should try to examine a witness as an expert witness and have him refer to documents which have not been identified and placed in the record. Such procedure is certainly in violation of the rules of evidence.

Her opponents have charged that she cannot get along with people and cannot keep a law clerk. We have completely disproved that charge by producing as witnesses two of her former law clerks and letters from two other former law clerks. All four speak in glowing terms of Judge Harron and all four state they left their positions with her because they could secure greater opportunities in the private practice of the law. Not a single witness has been produced by her opponents to the effect that she can not, or does not get along with other people. The large number of endorsements before this committee for her is proof to the contrary.

Now who are her opponents? They are Messrs. Kilpatrick, Miller, Phillips, Sutherland, and George Maurice Morris of the tax section, who claim that they represent the American Bar Association and who, we insist, represent only themselves and a part of the tax section. Not one of them has ever tried a case before Judge Harron. Each of them claims to speak from hearsay, only, and with one exception they do not name their informants.

Judge Harron has asked, through her counsel, that the committee require these gentlemen to present to the committee for our inspection, at least, these comparatively few letters they claim to have received condemning Judge Harron in the phrases which these gentlemen have quoted in their statements to the committee. Not one of those letters has been produced for the inspection even of her counsel We do not question the good faith of Messrs. Kilpatrick, Miller, Phillips, Morris, and Sutherland but we are certain that in America a person, much less a judge, is not to be condemned on the basis of anonymous statements. It is quite possible that the writers of the letters, which are to us anonymous, have mislead these gentlemen of the tax section.

Now, among the 500 lawyers who have appeared before Judge Harron in one or more cases, some 45 of them have either testified on her behalf or sent letters and telegrams to this committee of commendation of Judge Harron. Where are the other 450 of these lawyers? Messrs. Pierce, Wilkins, Rodewald, and McCall appeared before the committee and testified but not until after the committee had sent telegrams to Messrs. Pierce, Wilkins, and Rodewald and a subpena had been sent to Mr. McCall. A fifth lawyer consented to answer written interrogatories submitted to him by the gentlemen of the Tax Section. A few others have filed letters and affidavits

opposing her confirmation. Of the approximately 12 letters only one of whom appears to have tried even one case before Judge Harron.

Thus we have 5 lawyers out of 500 who have appeared against Judge Harron and the substance of their testimony is that they did not agree with the procedure which Judge Harron required them to follow in presenting their evidence, that Judge Harron interrogated the witnesses at too great a length; that in an instance or two she was sharp, or harsh with counsel and/or witnesses.

If it be conceded that at times Judge Harron's patience was strained to the breaking point—and all lawyers have seen just that happen numerous times in numerous courts—there must be considered the provocation, if any. In one of the cases, the taxpayer's counsel admitted he came into court not thoroughly prepared on the law and the record demonstrates that he did not have the necessary witnesses available to identify some of the primary evidence, with the result that Government counsel frequently objected to the hearsay evidence being offered by this taxpayer's counsel. The further result was that much time and transcript was consumed by the failure of the taxpayer's lawyer to properly present his evidence—time and transcript space which he would now charge to Judge Harron.

Now one of two things is certain: Either this attorney is not the experienced and able trial counsel he is represented to be or else he concluded that he could in some way prevail upon Judge Harron to overrule Government counsel, disregard the rules of evidence, and permit him to try his case on hearsay testimony.

In another case, it developed at the trial that all of the interested parties had not been made parties to the appeal and that taxpayers' counsel was very probably in the position of representing conflicting interests.

When that was brought to his attention he admitted that possibly he was representing conflicting interests and that he did not want to be placed in that position. At that juncture he made a motion, which Judge Harron granted, to continue the case to the next term, at which time all of the possibly interested persons were made parties to the proceeding, they were represented by separate counsel, and the case was tried and disposed of according to law.

What would this attorney, who so severely criticized Judge Harron, have had her do? There was nothing else she could have done under the circumstances. This attorney knew before the trial commenced what persons he had represented and whether they might not have an interest in the tax liability to be determined. Government counsel in his opening statement warned both the court and taxpayers' counsel that the Government expected to contend that there might be liability on the other persons, not parties to the suit. It seems to me that Judge Harron was the only innocent person in this entire matter.

Perhaps she did speak sharply to counsel and to one of his witnesses. Taxpayer's counsel claims she did; but what of the provocation? They tell us nothing of that. Is a Federal judge to permit counsel to run his or her court? Is a Federal judge who is the trier of the facts to permit counsel to ramble around and present his evidence in a confused manner so that the judge cannot understand the facts?

Judge Harron has not done that and the value of her exacting methods of procedure in getting the facts into the record is demon-

strated by the large number of cases she has decided and the correctness of her decisions, as measured by the small number which were Tax Court reviewed; the large number of cases decided by her; the few that were appealed to the United States courts of appeal; and the fewer yet which were reversed, remanded, or modified.

There is another aspect of this matter which motivated me in becoming counsel for Judge Harron. That aspect is this: Shall an appointive official of the United States, whether on the Tax Courrt or in the administrative service, hold office only at the pleasure of some interested minority group—I care not whether that group is one of lawyers, or any other class? Must every Tax Court judge or every administrative official feel and even know that if he or she antagonizes such a pressure group, he or she may expect a great committee of the Senate to listen with patience to charges against that official—regardless of the fact that few if any of the charges are sustained? If that be true, then I can assure this committee, after more than 20 years in the public service, that the independence of the quasi judicial and administrative service is gone. There is no inducement for qualified persons to accept public office under such circumstance regardless of the compensation which may be paid in dollars for the service.

I speak sincerely, but I hope as firmly as I can, that it is my personal view that Judge Harron has done a splendid job, that she has been a faithful public servant, and that no doubt she will make a better one during the next 12 years, now that she has learned of some things she may expect in the way of criticism. For instance, with respect to these transcripts, with the certificate that she has required the reporter to place on each of them, she will be reasonably sure that the door is not again left often so that she may be criticized in the future on a charge made but not proven that she has left out of the record testimony or statements material to the issues. There are some other precautions which she can take and doubtless will take, as illustrated by this affidavit of her hearing clerk George F. Baird and Vesta Wine, the reporter on her last hearing held at St. Paul, Minn., commencing the week of May 16, 1949, which I request be made a part of the record at this point.

(The affidavits referred to follows:)

George J. Baird, of 1900 F Street NW., Apartment No. 125, city of Washington, D. C., being duly sworn, deposes and says:

I have been employed by the Tax Court of the United States since November 19, 1947, in the position of deputy clerk. My duties require that I travel with the several division judges of the court to various cities throughout the United States on tax hearings. Usually, I arrive in a city at least 1 day in advance of the commencement of hearings to claim the trunk of official files from a building superintendent (or custodian) in whose care the files have been shipped. The building superintendent then directs me to the courtroom or hearing room which has previously been assigned to the court for hearings. Usually, a room in a Federal building is assigned for the use of the Tax Court, but occasionally, whenever a room in a Federal building is not available, a room in a city or county building is authorized for the use of the court. I always inquire whether there are chambers available for the judge to retire to during recesses of the court. Ordinarily these are available, but in some cities they are not. However, when chambers are not available, I endeavor to find a small room of some kind adjoining, or near to, the courtroom for use as chambers, and such a room is usually made available to the judge by either a United States district judge or a building superintendent.

In the performance of my duties, I sit in the courtroom throughout the calendar call and also during the trials, acting as clerk. I call the calendar, swear in witnesses, receive and mark all exhibits and other documents which are received during the trials, write certain court orders and decisions for the signature of the judge, and perform any special assignments directed by the judge presiding. I am also responsible for the shipment of official files and records to and from the city in which hearings are scheduled.

My most recent trip was to St. Paul, Minn., with Judge Marion J. Harron, on hearings for 1 week, commencing Monday, May 16, 1949. The calendar call and the trials proceeded in an orderly and dignified manner. Judge Harron maintained a pleasing yet dignified manner throughout the sessions, and I do not recall that she went "off the record" at any time. Judge Harron was considerate of the clerk, reporter, and the attorneys. I recall that she suggested rearranging counsel tables so that counsel might be closer to the reporter and the witness. She also suggested that the court reporter's machine, table, and chair be moved so that the reporter would better hear counsel, witness, and the judge. I further recall that on Friday morning, May 20, 1949, at 10 a. m., a case was called for hearing and counsel stated to the court that they had not completed a stipulation which they were working on and would appreciate a little more time for this before proceeding with the trial. Judge Harron then granted them the time, as requested, and retired to her chambers. After approximately an hour had passed, and counsel still were not quite ready to proceed, Judge Harron announced that, for the convenience of counsel, the court would take a very early luncheon recess and reconvene at 12:30 p. m. This allowed counsel for the parties sufficient time to complete their stipulation, and at 12:40 p. m. the trial proceeded.

GEORGE J. BAIRD.

Sworn to before me this 21st day of June 1949.

[SEAL] GEORGE V. MARQUES,
Notary Public.

Commission expires March 30, 1951.

I, Vesta Wine, being duly sworn, depose and state as follows:

I was the reporter under the reporting contract of the Tax Court of the United States, assigned to report all of the proceedings had during the session of the Tax Court in St. Paul, Minn., beginning on May 16, 1949, and I made the official records of the entire session, including the call of the calendar and the trials in five cases.

I desire to make this affidavit voluntarily with respect to the trials insofar as I participated in them as the official reporter:

First, I want to express my very genuine pleasure in working with Judge Harron, whom I found sympathetic and helpful at all times toward the reporter's problems, evidenced by her personal assistance in rearranging the seating of counsel, witness, and reporter to better hearing advantage; maintaining at all times an orderly procedure, with clearly spoken colloquy between the court and counsel, giving clear and concise rulings, with particular care as to the disposition of all exhibits.

In this entire week of reporting the St. Paul tax calendar, there was not a single off-the-record discussion; no statements were made by the court which I, as reporter, was asked later to omit from the record; my notes reflect a complete verbatim record of everything transpiring while the court was in session.

I look forward to reporting another Tax Court calendar with Judge Harron presiding.

Further, deponent saith not.

VESTA WINE.

Subscribed and sworn to before me this 21st day of May 1949.

[SEAL] EVERETT D. NELSON,
Notary Public, Hennepin County, Minn.

My commission expires January 9, 1955.

The CHAIRMAN. Thank you very much, Colonel.

Mr. Kilpatrick desires to offer something further.

STATEMENT OF H. CECIL KILPATRICK, CHAIRMAN, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, D. C.—Resumed.

Mr. KILPATRICK. I should like, if the chairman please, to answer the rather serious charge that has been made by one witness and by counsel for the nominee that we of the American Bar Association do not have authority to speak for the American Bar Association in this matter.

The committee has on file a copy of the resolution adopted by the house of delegates at its meeting this year in Chicago.

The CHAIRMAN. I think it is in the record.

Mr. KILPATRICK. It is in the record. I just could not let it go unanswered, however, that we were meddling in something beyond our jurisdiction.

We have come into this as a matter of public interest. It has not been a pleasant job.

I do not want to hold the committee members any longer. I thought perhaps because of our detached approach to it, it might be of benefit to the committee if we could summarize the record as we see it and if we would be allowed that privilege we would like to file with the committee a summary of the evidence and the issues that we believe are involved in this case that is before this committee.

The CHAIRMAN. Did you want it in the record or did you wish to furnish it just for aid and assistance to the members of the committee?

Mr. KILPATRICK. Yes, sir; for the aid and assistance of the members of the committee.

The CHAIRMAN. Will you please prepare copies for the whole committee then?

Mr. KILPATRICK. I shall, sir.

The CHAIRMAN. It will be quite all right if you will provide us with your summary which you wish to present.

Mr. KILPATRICK. We shall do that immediately.

Thank you very much.

The CHAIRMAN. Is there anything further to be offered in this record?

Colonel MCGUIRE. Except this, Mr. Chairman.

If they are to be given the privilege of making what we call a summary of this record, I want the privilege of answering that summary.

The CHAIRMAN. Will you please do so and prepare a sufficient number of your replies for the use of the full committee?

Colonel MCGUIRE. I will prepare it immediately after.

The CHAIRMAN. We have no way of guaranteeing the presence of the full committee but nevertheless we wish to be prepared for them, should they come in.

This will conclude this hearing.

(Whereupon, at 12:55 p. m. the hearing in the above-entitled matter was closed.)

APPENDIX

(The following letters and telegrams were received for insertion in the record:)

DALLAS, TEX., *April 12, 1949.*

Hon. PAT MCCARRAN,
Senate Office Building, Washington, D. C.

DEAR SIR: It is my understanding that the Judiciary Committee of the Senate, of which you are chairman, will conduct hearings soon on the matter of confirming the appointment of Marion J. Harron as judge of the Tax Court of the United States.

The writer has specialized in the practice of law on Federal taxation for about 29 years. I have practiced before the Tax Court of the United States, formerly the United States Board of Tax Appeals, since it was created, and I have had occasion to study the opinions of the different members of the United States Board of Tax Appeals and the judges of the Tax Court of the United States, as well as to appear before the court in numerous cases.

I consider that Judge Harron is a splendid judge. She is a brilliant lawyer. She is patient and painstaking on the bench. She writes well-reasoned and logical opinions. I heartily recommend her for your favorable consideration. I consider that it would be a serious loss to the court should her appointment fail of confirmation, as the court would lose the benefit of her valuable training and experience before she became a judge and the valuable experience she has had as a judge of the court.

With best wishes, I beg to remain,

Sincerely yours,

GEO. S. ATKINSON,
Attorney and Counselor.

LOS ANGELES 13, CALIF., *June 20, 1949.*

Re confirmation of Judge Marion J. Harron.

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate, Washington 25, D. C.

DEAR SENATOR GEORGE: May I, as the past president of the Republican Business and Professional Women's Club, and the past president of the Republican Assembly of the Sixty-fourth District, respectfully urge that Judge Marion J. Harron's appointment be confirmed.

I have worked both from an elective Republican capacity in the county central committee, and as an appointee to the State central committee, and I know that the Republican women of California are very proud of the record that Judge Harron has established. If for any reason confirmation failed, the disappointment in this State in Republican ranks would be very grave. None of us cares to play politics with judges who have made good.

Knowing your own stand in this matter, we have every confidence that you will do your part toward retaining Judge Marion J. Harron, and thank you for your consideration.

Respectfully yours,

ROSALIND G. BATES.

NATIONAL ORDER OF WOMEN LEGISLATORS,
June 20, 1949.

Senator WALTER GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR GEORGE: We would like to strongly recommend to you and your committee that you give serious consideration to the reappointment of Judge Marion Harron to the United States Tax Court.

Judge Harron has done a splendid job, and we are keenly interested in seeing that she be retained in this post, not only as a representative of her sex but as a qualified, capable, individual who has done a splendid job.

We shall appreciate it if you will give her your approval.

Very truly yours,

ELIZABETH BELEN, *President.*

CLEVELAND, OHIO, *June 17, 1949.*

HON. WALTER F. GEORGE,
United States Senate, Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: It is my understanding that a hearing on the reappointment of Judge Marion J. Harron to the United States Tax Court is being held before the Senate Finance Committee next week.

I believe that Judge Harron amply merits reappointment on the basis of her record, and the many fine decisions she has handed down during her long period of incumbency in this tribunal.

Judge Harron is extremely well thought of by the attorneys in this locality who have had the opportunity of practicing in her court, and I have heard much favorable comment on her handling of the matters brought before her.

I therefore respectfully ask that you do what you can at the forthcoming hearing to insure her reappointment.

Very truly yours,

E. M. BOYER, *Attorney at Law.*

BRACY & BRACY,
Norwalk, Ohio, June 18, 1949.

In re reappointment of Judge Marion L. Harron to United States Tax Court.

HON. WALTER F. GEORGE,
United States Senator, Washington, D. C.

DEAR SIR: It has been brought to my attention that in the near future Judge Marion L. Harron will be considered for reappointment to the United States Tax Court.

Judge Harron is 1 of 15 judges on this court and the only woman member. She has the special qualifications of fairness and impartiality needed in the decisions required of a judge, and has made a fine record.

She is a member of Phi Delta Delta League Fraternity and an active member of the National Women Lawyers Association.

She is especially interested in international relations, which is a valuable asset at this time of international complications.

We women members of the legal profession are proud to be represented by Judge Harron in this court, and would like to see her continued in this splendid service.

We feel that woman's ability and her feminine point of view is of value in making the difficult decisions a judge must make.

Very truly yours,

HAZEL I. BRACY,
(MRS. REX. F. BRACY)
Member of firm of Bracy & Bracy, Norwalk, Ohio; Huron County Bar Association; Ohio State Bar Association; National Association Women Lawyers; Phi Delta Delta Legal Fraternity.

SOUTHERN CALIFORNIA WOMEN LAWYERS,
Los Angeles 12, Calif., June 20, 1949.

Re reappointment of Hon. Marion J. Harron.

HON. WALTER F. GEORGE,
Chairman of the Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: Please add to the list of organizations who have endorsed Judge Marion J. Harron the following: Southern California Women Lawyers; Iota Tau Tau International Legal Sorority (of which Betty Burdette of your staff is a member); California Business Women's Council; and the Los Angeles Busi-

ness Women's Council. Also myself as a member of the International Federation of Women Lawyers.

Her splendid record is one of which we are all proud.

Greetings to you personally, Senator, from a Georgia lawyer now located in California.

Respectfully submitted.

DOLLY LEE BUTLER,
Corresponding Secretary.

ZANESVILLE, OHIO, *June 22, 1949.*

Senator GEORGE,
Chairman, United States Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: As an attorney, I urgently recommend confirmation by the United States Senate Finance Committee of the appointment of Judge Marion Harron to the United States Court of Tax Appeals, for the reason that she is an able jurist with an excellent record.

Very truly yours,

ELEANOR SMITH CARRICK.
(Mrs. James Carrick).

NEW YORK 5, N. Y., *February 14, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: You will doubtless recall the conference I had with you, as counsel for the chamber of commerce of the State of New York, in dealing with the war contract settlement bill. I am now writing on behalf of a lady who has been in public service and who has done a good job.

I have known Judge Marion Harron for more than 18 years and have long been impressed with her ability, especially her analytical mind and her understanding of complicated sets of facts. I was glad when the President appointed her to the United States Board of Tax Appeals in 1936. Others, of course, have told you of her record which I merely summarize.

Judge Harron was born in San Francisco in 1903 and was educated at the University of California, Berkeley, Calif. She received her A. B. degree in 1924 and her J. D. degree in 1926. She has had long experience in corporation organizations and reorganization, in banking matters involving trust mortgages, securing bond issues, taxation, antitrust laws, wills, estates, contracts. Her record during her 12 years of service is unusually high in a court of 16 judges. Over the 11-year period ending July 1, 1946 (statistics being complete for that period), she stood sixth in production work in the court. Judge Harron's record of appeals from decisions—that is to say, appeals that went to the United States Court of Appeals and the Supreme Court—shows the soundness of her decisions. Of 516 cases that went to decision, but 14 were reversed—this is less than 3 percent. Only 18.7 percent of her decisions were appealed from. The total number was 97—a very low percentage of appeals. The outcome is in the following significant table:

	Number	Percent
Affirmed	77	79.4
Reversed	14	14.4
Modified	5	5.0
Remanded	1	1.2

Quite apart from my personal knowledge of Judge Harron, these figures are eloquent testimony which show that she has served with distinction that justifies beyond question of doubt her reappointment. She conducts herself on the bench with great dignity, with no familiarity with counsel who appear before her and with no cultivation of political friends. But those who have participated before her in the trial of cases tell me that she is eminently fair and patient.

I get word that there is some opposition from groups in the American Bar Association. This I cannot understand, and I have been active for 25 years in the American Bar Association and am associate member of the committee on unau-

thorized practice of the law and also chairman of the conference on bar association delegates, succeeding Senator Root. I have heard no evidence which would lead me to change my opinion of Miss Harron.

I trust this letter which undoubtedly expresses the view of many members of the bar who know Miss Harron's abilities will meet with your favorable consideration.

Very sincerely yours,

JULIUS HENRY COHEN.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
CALIFORNIA STATE DIVISION,
Concord, Calif., February 21, 1949.

Senator WALTER F. GEORGE,
Senate Post Office, Washington, D. C.

MY DEAR SENATOR: The California State division of the American Association of University Women is very much concerned with the reappointment of Judge Marian Harron to the United States Tax Court. We hope this appointment will be ratified. We have discussed Judge Harron in each of our State workshops this year. She is highly qualified and has an excellent record. But beyond that is the startling fact that there have been only 3 out of 300 judges that were women. We strongly recommend there be a greater number of qualified women in these posts, and to that end particularly endorse Judge Harron for reappointment.

Yours sincerely,

MARGARET CORMACK
(Mrs. M. L. Cormack),
State Chairman, Status of Women.

COX, LANGFORD, STODDARD & CUTLER,
Washington 6, D. C., March 8, 1949.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: I have known Judge Marion J. Harron for a long time and have seen her work first-hand.

I wholeheartedly support her nomination as a member of the Tax Court, and I do hope that it will be possible for you to support her confirmation.

Sincerely yours,

OSCAR COX.

PALO ALTO, CALIF., *February 20, 1949.*

Senator WALTER GEORGE,
Senate Finance Committee, Washington, D. C.

DEAR SENATOR GEORGE: The Democratic women of this area respectfully ask your support for the reappointment of Judge Marian Harron to the Federal Court of Tax Appeals.

Her record during the past 12 years has been truly outstanding, and we feel that, on merit alone, she deserves the wholehearted endorsement of every Democratic member of the Senate Finance Committee.

Sincerely,

FRANCES FISHER,
Vice Chairman, Eighth Congressional District of California.

SENATE FINANCE COMMITTEE, TUCSON, ARIZ., *April 30, 1949.*
United States Senate, Washington, D. C.

GENTLEMEN: It has come to my knowledge that a certain group is opposing the reappointment of Judge Marion Harron to the Tax Court of the United States.

I have known Judge Harron for more than 20 years, and I am convinced that she is eminently qualified to continue her incumbency.

I respectfully urge that Judge Harron's reappointment be confirmed.

Very truly yours,

W. H. FOLLETT,
Member of the State Bar of California.

WASHINGTON, D. C.

MY DEAR SENATOR GEORGE: As Judge Harron (Judge Marion Harron) has done a very fine job while serving on the United States Tax Court, I am particularly interested in her reappointment as recognition of her splendid record.

A woman's viewpoint and counsel, I feel, is as necessary in the different fields of Government service as it is necessary in the smooth running of any home.

Judge Harron's reappointment would be one to which women of our country could point as indicative of the recognition of the leadership women are prepared and can give our Government. May I urge your favorable consideration when the name come before your committee for approval?

Most cordially,

BERTHA R. FRIANT
(Mrs. Julien N. Friant).

GAMBRELL, HARLAN & BARWICK,
Atlanta 3, Ga., February 14, 1949.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: The enclosed exchange of correspondence is self-explanatory.

Colonel McGuire is almost a fanatic on the question of high character in Government. He was general counsel for the Comptroller General of the United States and was always fighting for honesty in Government accounts, etc. I am not in position to recommend Judge Harron, but I do want you to know that Colonel McGuire, whom I regard highly, thinks well of Judge Harron.

With kinds regards, I am

Yours sincerely,

E. SMYTHE GAMBRELL.

WASHINGTON 5, D. C., *February 11, 1949.*

E. SMYTHE GAMBRELL, Esq.,
Citizens and Southern National Bank Building,
Atlanta, Ga.

DEAR SMYTHE: I should like for you to write a personal letter to Senator Walter F. George, of Georgia, requesting him to vote in the Finance Committee to favorably report the nomination of Judge Marion H. Harron for reappointment to the United States Tax Court and to vote for her confirmation when the nomination reaches the floor of the Senate.

In substance the facts are these: Judge Harron was appointed some 13 years ago to what was then the Board of Tax Appeals, since changed to the United States Tax Court. She has completed her term of office and has been holding over under recess appointments. The Eightieth Congress refused to act upon her nomination since there were two vacancies on that court which apparently the Republicans wanted.

Judge Harron is a western woman and quite forthright in stating her views. She decides the cases coming before her on what she considers to be the law and the facts. Her success has been excellent, less than 50 of the cases she has decided during some 13 years on the bench have been modified or reversed by the courts, which is something of a record. Her output of cases has been very high. Judge Harron insists upon securing all of the facts of any of the hearings which she conducts, and some times her questions uncover facts to the discomfiture of counsel.

However, I know that as general counsel for the Eastern Air Lines you want to get your facts before a deciding tribunal and have your cases decided on the law and the facts.

My interest in this appointment is a continued one of doing whatever I can to improve the Federal service. I think Judge Harron has earned the reappointment, and I hope that you will join us in endeavoring to secure her confirmation.

Kindly advise me.

Cordially yours,

O. R. MCGUIRE.

P. S.—The nomination has gone to the Senate.

GAMBRELL, HARLAN & BARWICK,
Atlanta 3, Ga., February 14, 1949.

Hon. O. R. McGUIRE,
Southern Building, Washington 5, D. C.

DEAR COLONEL: Thank you for your letter of February 11 regarding Judge Marion H. Harron.

I do not know this lady but I do have the very highest regard for your opinions and particularly in matters relating to improvement of service in the Government.

You have dedicated your life in large measure to maintaining standards in official life and I want to thank you for your interest in the bench of the United States Tax Court.

Unfortunately I do not know Judge Harron and, as much as I should like to do so, I do not feel justified in asking Senator George on my motion to support Judge Harron. I like, when writing an endorsement, to feel that I am able to contribute something in the way of personal knowledge. In this case I am not able to do so.

But I will speak to Senator George when I see him and will tell him how highly you regard Judge Harron.

With kind regards and best wishes, I am

Yours sincerely,

E. SMYTHE GAMBRELL.

NEWARK 2, N. J., *February 21, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I understand that President Truman has recently nominated Marion Harron for reappointment to the Tax Court of the United States and that her nomination is now before your committee.

As an active practitioner for 20 years, exclusively in the field of Federal taxation, I have had many occasions to come into contact with Judge Harron, either in the courtroom or through the reading of opinions prepared by her.

In the courtroom I have found her to be devoted to her duties, able and considerate. I have followed and read her opinions with great interest. I have no recollection that any was ever reversed by the Supreme Court, although the contrary is true as to affirmances. And of the hundreds of cases decided by her, I would venture to say that a very small percentage has been reversed, modified, or remanded. In addition, it is my impression that she is one of the most active members of the Tax Court in point of production.

Judge Harron has also gone beyond the requirements of her duties to help the bar to acquaint itself with the work of the court and to improve the relationship between bench and bar. I recall most favorably her attending a convention of the New Jersey State Bar Association, where I, as chairman of the tax committee, conducted a moot tax court trial at which she presided as judge. She has been most cooperative in any extra-judicial activity related to the work of the court with respect to which she has been called upon to act.

May I respectfully urge you to give favorable consideration to the confirmation of her nomination.

Very truly yours,

SYDNEY A. GUTKIN,
Counselor at Law.

DEMOCRATIC NATIONAL PARTY ORGANIZATION,
LITTLE ROCK WOMEN'S DIVISION,
Little Rock, Ark., June 18, 1949.

Senator WALTER GEORGE,
Chairman, Senate Finance Committee,
Senate Building, Washington, D. C.

MY DEAR SENATOR GEORGE: As chairman of the Little Rock Women's Division Democratic Party Organization, and as a citizen interested in the contribution that women can make to our Government, I urge you to reappoint Judge Marion Harron to the United States Tax Court.

I understand that Judge Harron has served efficiently in her position and that there is no reason why she should not continue to serve.

You are aware that the majority of voters in our country has proved to be women. If women can elect our high officials, they certainly should be permitted to make their contribution to the functioning of our Government, especially when they do so in an efficient and capable manner.

Again may I state that the Little Rock Women's Division urges the reappointment of Judge Harron on June 23.

Yours very truly,

(Miss) PAULINE HOELTZEL,
Chairman.

KAYE, SCHOLER, FIERMAN & HAYS,
New York 6, N. Y., April 29, 1949.

Senator WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: I am taking the liberty of writing to you in behalf of Tax Judge Marion J. Harron, who I understand is now being considered for reappointment to the Tax Court.

I first met Judge Harron some 18 or 19 years ago when we both represented clients in an intricate and large reorganization matter in New York City. At that time I was considerably impressed both with her ability and her integrity. She showed a familiarity with figures and financing matters that I found quite remarkable in a woman.

During her service on the Board of Tax Appeals and later, in the Tax Court, although I did not have the opportunity of appearing before her, I have had many occasions to read her tax opinions. I have invariably found them clear, convincing, and evidencing a sound judicial interpretation of the tax law and its application to the facts before her.

With the experience that she has had over these many years in presiding at the trials of tax cases, and with the ability that she has so ably demonstrated during her career on the bench, it seems to me that she well merits a reappointment, and I am quite sure that such an appointment would meet with the approval of the many lawyers who have occasion to litigate matters in the Tax Court.

Respectfully yours,

BENJ. M. KAYE.

GRAND RAPIDS, MICH., *March 3, 1949.*

MY DEAR SENATOR GEORGE: I am writing to urge the confirmation of Judge Marion Harron, nominated by the President for a second term on the Tax Court of the United States. On the basis of her record as a judge, I urge her confirmation.

Women in all parts of the country who have followed her career are looking for her reappointment.

Since there are only three women serving on Federal courts, and since, according to the legal authorities with whom I have talked, Judge Harron possesses the qualifications necessary, and it is customary to reappoint incumbent judges of proven ability, I urge a favorable vote by the Senate Finance Committee.

Yours sincerely,

DOROTHY S. (MRS. THOS. D.) MCALLISTER,
Former Director, Women's Division, Democratic National Committee.

NAPOLEON, OHIO, *June 16, 1949.*

Hon. WALTER F. GEORGE,
Chairman of Finance Committee, United States Senate,
Washington, D. C.

DEAR SENATOR GEORGE: I am very much interested in the reappointment of Marion J. Harron as judge of the Tax Court. As you know this is a difficult position, and she has made an excellent record.

I know a great many women all over the United States have been interested in her reappointment and have hardly considered it possible that the nomination would not be confirmed. There were hundreds of letters written last year and

I know there were many telegrams and telephone calls from women and women's organizations in her behalf. The only reason these letter have not been duplicated since the first of the year is because we were all under the impression that the file would be reviewed and that other letters would be duplications. I have been told recently that these files were not to be considered and there is no time now for the women to put on a campaign, which I can assure you they would be very glad to do. This seems very unjust to me. The committee is practically the same and I am asking you if it is possible to take the letters which were written to the Finance Committee in 1948 into consideration at this time.

I campaigned for women suffrage so women could have a chance. I wanted them classified as people—not incompetents. I have never belonged to the militant branch of the women's movement. I have always remembered the picture of the Pilgrim Fathers. It did not say anything about the "Mothers" but they were in the picture. That is the way I have always wanted it, in the pictures together. But I do mean "in the picture."

I can assure you, Senator George, that women all over the country are interested in this appointment and will be terribly disappointed if she is not confirmed. They know her record and they will feel that it was discrimination. I will greatly appreciate anything that you can do to help bring about this desired result.

I am enclosing copy of letter to Florence E. Allen and her answer. I sent the original to the committee some time ago; however, it may have been the old committee.

Thanking you in advance for anything you may do, I am,

Yours very truly,

VADAE G. MEEKISON,
(Mrs. George A. Meekison).
Attorney at Law.

NAPOLEON, OHIO, *February 4, 1949.*

Judge FLORENCE E. ALLEN,
United States Circuit Court of Appeals,
United States Court House, Cincinnati, Ohio.

DEAR JUDGE ALLEN: As a member of the National Association of Women Lawyers I am writing concerning Judge Marion Harron of the United States Tax Court, Washington, D. C.

As you probably know, Judge Harron's name has been sent to the Senate by the President for confirmation as a member of said court. As a judge of the Federal appellate court you are, no doubt, familiar with the character of her work in this position and on this bench. You have also probably had occasion to carefully examine many of the opinions written by her.

As a member of the bar I would appreciate having your comments on the character and quality of the service rendered by Marion Harron as judge of the Tax Court.

With kindest personal regards, I am,

Yours truly,

VADAE G. MEEKISON,
(Mrs. George A. Meekison).
Attorney at Law.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT,
MICHIGAN-OHIO-KENTUCKY-TENNESSEE,
Cincinnati 2, Ohio, February 7, 1949.

Mrs. GEORGE A. MEEKISON,

DEAR MRS. MEEKISON: I have your letter of February 4 asking me concerning the record of Judge Marion Harron, of the United States Tax Court, Washington, D. C.

Inasmuch as many of Judge Harron's decisions have come to this court for review, I am well acquainted with her work. She is able, intelligent, and highly industrious. I am informed on very good authority that she has an excellent work record in what, after all, is a very hard-working court. I consider that Judge Harron has done an excellent piece of work, and that her integrity and standing are a credit to us all.

Very sincerely yours,

FLORENCE E. ALLEN,
United States Circuit Judge.

DEMOCRATIC NATIONAL COMMITTEE,
Washington, D. C., June 18, 1949.

Hon. WALTER GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I want to again send you my most hearty endorsement of Hon. Marion J. Harron for reappointment on the United States Tax Court.

As you know Judge Harron stands among the foremost members of this court as her record is splendid. She has had very few reversals by the lower courts and none by the Supreme Court.

Certainly her great integrity and high ability warrant a speedy recommendation by your committee and a quick confirmation by the Senate.

Thanking you for your aid in this matter, I remain with kindest regards.

Sincerely yours,

EMMA GUFFEY MILLER.

WORLD WOMAN'S PARTY,
Washington 2, D. C., May 30, 1949.

Hon. WALTER F. GEORGE,
Chairman, Finance Committee, United States Senate.

DEAR SENATOR GEORGE: On behalf of the council of the World Woman's Party, I am writing to urge, most respectfully, that the Senate Finance Committee act favorably on the nomination of Judge Marion Harron as judge of the Tax Court of the United States.

The confirmation of Judge Harron by the Senate would give encouragement to the women of our country, who are proud and grateful that a woman has been accorded the high honor that has been given to Judge Harron by her nomination for such an important position. We earnestly hope that your committee will make a favorable recommendation.

Sincerely yours,

ALICE PAUL,
Founder and Honorary Chairman.

DEMOCRATIC STATE CENTRAL COMMITTEE OF CALIFORNIA,
San Francisco 5, Calif., February 21, 1949.

Hon. WALTER GEORGE,
Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: President Truman has sent to the Senate for confirmation the reappointment of Judge Marion Harron, of California, to the Tax Court of the United States.

Judge Harron's brilliant record on this court is a matter of pride, not only to the women of California, but to all of the women of the Nation. I am writing to ask your support in assuring Judge Harron's prompt confirmation.

Thanking you in advance for your cooperation, I am,

Sincerely,

JULIA G. PORTER,
(Mrs. Charles B. Porter),
Vice Chairman, Fourth Congressional District.

COLUMBUS 15, Ohio, *February 28, 1949.*

Hon. WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I see that President Truman has again submitted to the Senate the name of Marion Harron for confirmation as judge of the Tax Court of the United States.

In view of my particular interest in the administration of tax laws, as a practitioner specializing therein, and in the apparent opposition which has met Mr. Truman's prior nomination of Judge Harron for reappointment, I felt that it would not be too presumptuous to write you briefly on her behalf.

I know that Judge Harron has had a most excellent technical record in her 12 years on the court. The volume of work produced by her has been well above

the median line for the court. Out of over 500 cases decided, she has never had a Supreme Court reversal and only 14 circuit court reversals.

On the affirmative side, Judge Harron has rendered outstanding decisions in many cases. Notable among these is the Thornley decision (2 T. C. 220), which after some 5 years of continuous questioning by the Commissioner, has been accepted as correct by an amendment of the regulations, promulgated January 12, 1949.

Much of the opposition to Judge Harron has apparently stemmed from the fact that she is continually desirous of getting all of the facts into the record so that her decision may be based upon the rights of the parties rather than the skill of their representatives. There has always been a division of opinion at the bar relative to the judicial adoption of this philosophy—a divis on which may be regarded as unfortunate insofar as it indicates a tendency to place skill above justice. In the right of such a divided opinion, however, the adoption of the broader view is always subject to criticism and bitter opposition. It is submitted, however, that such criticism should be fairly confined to those rare cases where the use of the court's prerogative has been in some way lacking in tact or in finesse.

During a great many years as an Internal Revenue employee and as an attorney specializing in tax work, I have read the opinions of the Tax Court judges with great care and have followed the history of their cases as charting the development of the law of Federal taxation. I can truthfully say that I have always regarded Judge Harron's decisions as an honest and forceful expression of her interpretation of the tax law. Not infrequently, I have disagreed with her conclusions, as every lawyer disagrees with a certain percentage of the decided cases. I have always respected, however, the integrity of her thinking and the honesty with which it was set forth and elaborated for the information of counsel and of tax practitioners generally.

I might close by saying I consider Judge Harron's record more remarkable in that her opinions have been so outspoken. Plain talk about the evidence and about the issues, in tax cases as in others, opens the door for appeal far wider than does an evasive opinion, and the losing party is usually still unconvinced of the correctness of the decision against it. Considering this, the small number of reversals of her decisions by the upper courts is indeed remarkable.

I hope that your committee will see fit to report the President's nomination of Miss Harron favorably and that the Senate confirms his selection.

Yours very truly,

ROGER K. POWELL, *Tax Attorney.*

DEMOCRATIC NATIONAL PARTY ORGANIZATION,
LITTLE ROCK WOMEN'S DIVISION,
Little Rock, Ark., June 20, 1949.

HON. WALTER GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I will appreciate very much if you will consider the reappointment of Marion Harron to the Tax Court of the United States. I feel this appointment will not only be appreciated by my organization but by all women interested in seeing efficient women given appointments of importance.

Thanking you for your consideration of Miss Harron for this appointment, I am, with kind regards,

Sincerely yours,

BESS PROCTOR.

MCRAE, GA., *June 20, 1949.*

HON. WALTER F. GEORGE,
United States Senator, Washington, D. C.

DEAR SENATOR GEORGE: I am writing to you in the interest of Judge Marion Harron of the United States Tax Court, Washington, D. C., whose term expires in the near future. As you will recall, Judge Harron has been a member of the Tax Court for 14 years, and has made a very good record while there. Therefore, I wish to urge you to recommend her for reappointment if you can possibly see your way clear to do so.

I am happy to learn that you are steadily improving from your recent illness, and are able to be back in your seat in the Senate. We all feel more at ease

when we know that you are well and on the job, for we know that you are always doing all in your power to look out for those interests which are best for our State and country. You are doing a wonderful job, and wish to congratulate you on it.

Sincerely yours,

MRS. CHESTER RYALS, SR.

ATLANTA, GA., *June 21, 1949.*

Senator WALTER GEORGE,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I understand that the hearing on Judge Harron's nomination to another term in the United States Tax Court is now in progress. You may recall that I wrote you in Judge Harron's behalf last year, but the nomination was held in committee for hearings, and no action was taken at the last session. I would feel remiss if I did not again urge your support of Judge Harron's nomination. It is my pleasure to know her personally, as well as to take pride in her years of service in the Tax Court. Her training and background as well as her record, indicate that she is the logical choice of the committee.

I am sure that there are many men, as well as women, who recognize her ability and who will welcome her reappointment.

Sincerely, and with best wishes to you personally,

(MRS.) FRANCES G. SATTERFIELD.

CLEVELAND 15, OHIO, *June 20, 1949.*

Senator WALTER P. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SIR: It is my understanding that the Senate Finance Committee, of which you are a member, is considering the question of the reappointment of Judge Marion L. Harron to the United States Tax Court.

I wish to endorse the reappointment of Judge Harron and to strongly urge you to endorse her. Judge Harron is an outstanding jurist with many years of experience on the Tax Court and her decisions have been judicially sound and well founded in the law. I have practiced before Judge Harron and have found her considerate and fair.

I should like to be informed as to the decision of your committee in this matter.

Very truly yours,

J. H. SLOUGH.

BURKE, BURKE & SMITH,
Ann Arbor, Mich., February 21, 1949.

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: It is my understanding that Judge Marion Harron, of the Tax Court, has been reappointed by the President on the expiration of her first term, and that she will soon be the subject of a report by the committee of which you are chairman.

As practicing lawyer I have a deep interest in the qualifications of the occupants of the Federal bench. The practice of our firm is largely commercial, and to us, and lawyers in our position, the importance of the Tax Court can hardly be overestimated. The decisions of this court vitally affect the day-to-day lives of all of us in the business community.

A couple of years ago my firm appeared in a tax case in Detroit which was heard by the Honorable Marion Harran, the jurist of whom I write. It was the first appearance of any member of my firm before any member of this court. We lost our case and our client was forced to pay the taxes claimed by the Government. But I want to say to you that we, although the losing attorneys, were very much impressed by Judge Harron's fairness. She conducted her court with dignity and was scrupulously fair in her rulings. Her attitude to both counsel and witnesses was one of the utmost courtesy and consideration. She would occasionally interject a question, sometimes a line of questions, to a particular witness, and in each case the question, or series, was designed to

and did elicit information which was vital to a proper understanding of the case. We felt that the judge was alive to the issues and receptive to our arguments, and while she might not always agree with us she weighed carefully what we had to say.

I know that my interest in good judges is shared by you and all of your committee, particularly in this important Tax Court. When we get a good judge like Judge Harron I say to hang onto her. Let's give her some support. Incidentally, I think your committee might well look into her record of cases decided and reversals. Some judges appeal to some members of the bar and others don't, but the record speaks for itself. I understand that only a handful of her cases, 15 or so, have been reversed by higher courts of the hundreds she has decided in the many years she has been on the bench. I don't have to tell you, as a former member of both the superior court and court of appeals in Georgia, what this kind of record says about the ability of a judge. No judicial officer can pile up such an impressive performance without having both the heart and mind in the right place and with the right equipment.

I urge your committee to report favorably upon this fine judge, and I am taking the liberty of sending a copy of this letter to each of the members of such committee.

Very truly yours,

TALBOT SMITH.

NEW YORK, N. Y., *June 22, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR GEORGE: It has just come to my attention that a hearing will be held before your committee on June 23 on the nomination of Judge Marion J. Harron for reappointment to the Tax Court of the United States.

In view of the fact that I am traveling presently on the west coast, this communication on behalf of the nominee may be received belatedly at your office. I therefore beg leave to have it added to the record, should it arrive after the close of the hearing.

I submitted to the Eightieth Congress a copy of the resolution passed unanimously by the members of the National Association of Women Lawyers in convention assembled endorsing Judge Harron for reappointment to the Tax Court. I was president of the association at the time of the resolution's adoption and am familiar with the proceedings taken. I personally had made an investigation of Judge Harron's record and had thoroughly studied not only her record of service on the bench and generally but also her personal qualities. The facts and findings established that she is eminently qualified in every respect and the convention assembly so found. Accordingly the members strongly endorsed and recommended highly her reappointment.

I have since traveled considerably throughout the United States and have had the opportunity of discussing with women throughout the country the matter of Judge Harron's appointment. The women of this Nation are highly desirous of having a woman continued on the Tax Court and the women who know Judge Harron's record and qualities have expressed to me their unequivocal support of her nomination.

I earnestly trust that Judge Harron will receive unanimous confirmation by the Senate Finance Committee which she well merits.

Respectfully submitted.

ADELE I. SPRINGER,
Retiring President, National Association of Women Lawyers.

SCRANTON, PA., *April 27, 1949.*

Senator WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

SIR: I am taking the liberty of writing you in behalf of Judge Marion J. Harron. I have known Judge Harron for the past 20 years, having first met her when, as a young lawyer, she represented the Manufacturer's Trust Co., New York City, in reorganization matters. I have closely followed her career since that time, and am personally familiar with her reputation as a judge of the Tax Court during the past 12 years.

I have no hesitancy in recommending her to your favorable consideration with respect to confirming her appointment now under consideration.

Although I have not appeared before her, I know many tax lawyers who have, and it is my impression that she has at all times conducted the trials before her in a manner becoming a judge of the highest standards and values; in fact, I am shocked to hear that any contrary opinion has been expressed. I am certain that upon thorough examination of any such charges against her your committee will find that they are not sufficient to warrant the drastic action that is requested by her detractors.

I close with the plea that you reward Judge Harron for her brilliant and honest 12 years of service with the recommendation for a second term. In so doing your committee will merit the approval and the praise of bewildered taxpayers and confused tax practitioners who have the highest admiration for a judge like Judge Harron, who has so expertly mastered this most technical and difficult subject in the whole field of law.

Respectfully yours,

MAURICE SURVIS, *Attorney at Law.*

NEW YORK 5, N. Y., *February 14, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR GEORGE: I respectfully recommend and urge unequivocally that the President's nomination for the reappointment of Judge Marion J. Harron as a judge of the Tax Court of the United States be confirmed. She has impartially, conscientiously, and calmly performed her duties as a judge of the court (formerly known as the Board of Tax Appeals). Her opinions reflect clarity and soundness. The objects of the court have been promoted and its usefulness has been strengthened and enhanced by her demeanor, integrity, and judicious knowledge. She is one of the ablest judges the Tax Court ever had or has.

My recommendation is based on my personal observations and my experiences as an attorney specializing exclusively in the practice of tax law and as a former special attorney in the office of the chief counsel of the Bureau of Internal Revenue.

Sincerely repeating my recommendation for the confirmation of Judge Harron's nomination, I am,

Respectfully yours,

JEROME TANNENBAUM, *Tax Counsel.*

ATLANTA, GA., *June 18, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: It has come to our attention that Judge Marion Harron of the United States Tax Court is, in the next few days, coming up for reappointment before the Finance Committee of the Senate of which you are the chairman.

All that we have heard of Judge Harron convinces us that she has filled the office which she now holds, with great credit to herself and has proven an able public servant. Therefore we are asking that you use your influence for her appointment to another term in the Tax Court where she can continue to render distinguished service to our country.

With best wishes we are,

Yours cordially,

MAUD P. TURMAN.
FLORENCE B. BOYKIN.

NATIONAL WOMAN'S PARTY,
Washington 2, D. C., May 18, 1949.

Hon. WALTER F. GEORGE,
Senate Finance Committee,
Senate Office Building, Washington 2, D. C.

DEAR SENATOR GEORGE: The National Council of the National Woman's Party at a meeting held May 17 voted unanimously to urge the Senate Finance Committee, of which you are a member, to act favorably on the nomination of Hon. Marion Harron as judge of the Tax Court of the United States.

Judge Harron possesses both marked ability and an unusual capacity for work, and is exceptionally well grounded in the tax laws of the United States.

Statistical records of the judges of the Tax Court show that Judge Harron's production is greater than most of the judges on that court. Likewise she has an excellent standing with respect to the sustaining of her decisions by appellate tribunals.

Judge Harron is an able and upright jurist, conscientious and faithful in the discharge of duty, and she serves with poise, dignity, integrity, and fairness.

We are aware that certain men lawyers have criticized Judge Harron before your committee and are opposing her confirmation. We feel that this criticism is not well founded but is the result of a discriminatory policy or prejudice of such critics against women judges. Attention is called to the fact that in the entire history of this country only three places on the Federal judiciary have been given to women despite repeated party pledges to accord recognition to women in public posts, and that each of the three women judges now on the Federal bench have been obliged to face the prejudicial opposition of men of the bar. We are confident that the opposition to Judge Harron's confirmation would not have been made were she a man instead of a woman.

We warmly commend Judge Harron, and earnestly hope that you will use your best efforts toward her early confirmation.

Sincerely yours,

AGNES E. WELLS,
National Chairman.
MAMIE SYDNEY MIZEN,
National Secretary.

BALTIMORE, MD., *June 19, 1949.*

DEAR SENATOR: The women of this country are most anxious to have Judge Marion Harron reappointed to the United States Tax Court.

I shall appreciate anything you can do in this respect.

Kind personal regards,

Sincerely,

SARA A. WHITEHURST,
Past President, General Federation of Women's Clubs.

TAFT, STETTINIUS & HOLLISTER,
Cincinnati 2, Ohio, April 2, 1949.

HON. WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: It has come to my attention that the Committee on Finance will shortly consider the confirmation of the reappointment of Judge Marion Harron to her present position as judge of the United States Tax Court. Although not of the same political faith as Judge Harron, I wish to wholeheartedly endorse her and recommend confirmation of her reappointment. I have been specializing in the practice of tax law since the spring of 1941 and naturally have been vitally interested in the activities and decisions of all the Tax Court judges. In my opinion, none of them has been more competent, more fair, or more able to expose the meat of the problem.

It is with genuine pleasure that I am able unqualifiedly to urge the confirmation of Judge Harron's reappointment.

Yours very truly,

ALAN R. VOGELER.

RED WING, MINN., *June 21, 1949.*

HON. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

Respectfully urge you to do everything within your power to bring about confirmation of reappointment of Judge Marion Harron to United States Tax Court. Women voters have a real interest in seeing her continued in office.

MRS. EUGENIE ANDERSON,
Democratic National Committeewoman for Minnesota.

BRISTOL, VA., *June 22, 1949.*

Senator GEORGE,
Chairman, Senate Finance Committee, Washington, D. C.:

Consider the reappointment of Judge Marion Harron important to women.

MRS. SHIRLEY BARKER,
Corresponding Secretary, Ninth District, Democratic Women.

NEW YORK, N. Y., *June 16, 1949.*

WALTER F. GEORGE,
Chairman, Senate Finance Committee, Washington, D. C.:

May we respectfully renew support expressed to Eightieth Congress in behalf of Hon. Marion J. Harron of Tax Court of the United States. She has already demonstrated her outstanding ability and we urge her reappointment.

DOROTHY BARKO,
Chairman, Multi-Party Committee of Women, Inc.

CHARLESTON, S. C., *June 22, 1949.*

Hon. WALTER GEORGE,
Senate Office Building, Washington, D. C.:

As southern women we respectfully ask your influence to have Senate Finance Committee act favorably on nomination of Judge Marion Harron as judge of the Tax Court of the United States. The dignity of women is helped by qualified women in high positions. There are so few of these.

MARGARET BAYLY,
President, Business and Professional Women's Club of Charleston.

PHOENIX, ARIZ., *June 22, 1949.*

Senator WALTER F. GEORGE,
Senate Finance Committee,
United States Senate,
Washington, D. C.:

Understand final hearing on nomination Judge Marion Harron for reappointment United States Tax Court set for June 23. We are familiar with reputation and record Judge Harron, who ranks sixth in number of opinions for court, and second in number of affirmances. Believe her excellent record and outstanding ability merit reappointment to position of such importance to taxpayers and Government. As lawyers who are interested in appointment and continuation in office of qualified women who are capable of outstanding public service we urge confirmation of Judge Harron:

Alice M. Birdsal, Gertrude M. Converse, Besy Carson Frederickson, Virginia Hash, Anita Lewis, Lorna E. Lockwood, Barbara Schopper, Loretta Savage Whitney.

HOMERVILLE, GA., *June 18, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.:

Do not know Judge Marion Harron of United States Tax Court but am deeply interested in seeing able women get and retain important positions of service. Will greatly appreciate your earnest consideration of Judge Harron's reappointment. Kindest regards.

Mrs. IBRIS F. BLITCH.

COEBURN, VA., *June 20, 1949.*

Senator GEORGE,
Chairman, Senate Finance Committee, Senate Office Building:

Respectfully urge the reappointment of Judge Marion Harron to United States Tax Court.

Mrs. CYNTHIA A. BOATWRIGHT,
Member State Executive Committee.

HEARNE, TEX., *June 21, 1949.*

Senator GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Women everywhere are intensely interested in reappointment of Judge Marion Harron to United States Tax Court. Urge your support.

Mrs. JUD COLLIER,
State Democratic Executive Committee.

BUFFALO, N. Y., *June 15, 1949.*

Senator WALTER F. GEORGE,
Finance Committee:

Kindly press confirmation of Harron reappointment to Tax Court.

COUNSELOR'S CLUB OF BUFFALO, N. Y.

LEXINGTON, VA., *June 22, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Finance Committee, United States Senate,
Washington, D. C.:

Hope you can see fit to reappoint Judge Marion Harron to United States Tax Court.

Mrs. F. CLEVELAND DAVIS.

SACRAMENTO, CALIF., *June 22, 1949.*

Senator WALTER GEORGE,
Senate Office Building, Washington, D. C.:

May I urge your favorable action on reappointment of Judge Marion Harron.

RUTH DODDS.

MINNEAPOLIS, MINN., *June 20, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Respectfully ask consideration and confirmation by your committee of Judge Marion Harron to United States Tax Court. Can recommend most highly.

Mrs. NELSON DRAKE.

SEATTLE, WASH., *June 23, 1949.*

Senator GEORGE,
Senate Office Building, Washington, D. C.:

Urge appointment of Judge Marion Harron to United States Tax Court. She is well qualified in every respect and will bring seasoned experience and intelligence to office.

Mesdames MAYBERR, DAMMAN, WEBB,
Officers of Ellensburg, Wash.,
American Association of University Women Branch.

WASHINGTON, D. C., *June 21, 1949.*

Senator WALTER F. GEORGE,
United States Senate:

Urge you to reappoint Judge Marion Harron to United States Tax Court.

ERNESTINE FRIEDMANN.

SPRINGFIELD, ILL., *June 20, 1949.*

Senator GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

One hundred and one county vice chairmen urge the reappointment of Marion Harron to United States Tax Court.

BLANCHE FRITZ,
State Chairman, Women's Democratic Organization.

NEW YORK, N. Y., *April 13, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Referring to renomination of Marion J. Harron as judge of Tax Court, may I take the liberty of saying that I, as a lawyer with considerable experience in the tax field, am of the opinion that Judge Harron has been conscientious, intelligent, and hard-working, with a good record of affirmance and, in accordance with the standards and principles for reappointment to judicial office, she ought to receive another term, and the public should have the benefits of her experience in office.

EDWARD H. GREEN,
48 Wall Street, New York, N. Y.

ATLANTA, GA., *June 22, 1949.*

Hon. WALTER F. GEORGE,
Senate Office Building:

As a member of the bar and knowing Judge Marion Harron personally, I commend her for your serious consideration for reappointment to the United States Tax Court. She has a splendid record, a judicial temperament, and a keen understanding of tax problems.

GERTRUDE HARRIS,
Past President, National Association of Women Lawyers.

MINNEAPOLIS, MINN., *June 20, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Urge immediate confirmation of reappointment of Judge Marion Harron to United States Tax Court.

DOROTHY H. JACOBSON,
Vice Chairwoman,
Minnesota Democratic Farmer Labor Party.

NEW YORK, N. Y., *April 12, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building:

Understand that the matter of the confirmation of the reappointment of Judge Marion J. Harron to the Tax Court of the United States is presently before your committee. I am now engaged in tax practice in New York City and have formerly been legal secretary to Judge Harron. I strongly urge your confirmation of her reappointment.

MASON G. KASSEL, *New York, N. Y.*

GLENS FALLS, N. Y., *June 20, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate:

We strongly urge reappointment of Judge Marion Harron to United States Tax Court.

CATHARINE KENNEALLY,
Chairman, Women's Division,
Warren County Democratic Committee.

NEW YORK, N. Y., *April 14, 1949.*

CHAIRMAN SENATE FINANCE COMMITTEE:

The Joint Committee of Women's Bar Associations consisting of New York Women's Bar Association, Bronx Women's Bar Association, Brooklyn Women's Bar Association, Queens Women's Bar Association, Nassau County Women's Bar Association, Westchester Women's Bar Association, unanimously endorses Hon. Marion J. Harron for reappointment to the Tax Court of the United States and urges that her nomination be confirmed in view of her fine record on the bench.

JOINT COMMITTEE OF WOMEN'S BAR ASSOCIATIONS,
LILLIAN M. KOOPERSTEIN, *Secretary.*

SEATTLE, WASH., *June 21, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Financial Committee,
United States Senate Building, Washington, D. C.:

Thousands of California women interested in and support reappointment of Judge Marion Harron to Tax Court; basis her outstanding record and fine qualifications. Letters from branches of California division of American Association of University Women written in behalf of this well-qualified woman. Upon reappointment urge consideration of this file and favorable action.

VIRGINIA H. LAMPHIER,
Regional Vice President,
American Association of University Women.

PHOENIX, ARIZ., *June 21, 1949.*

Senator WALTER F. GEORGE,
Senate Finance Committee, Washington, D. C.:

Because of her outstanding work and splendid record strongly urge reappointment of Judge Marion Harron to United States Tax Court.

LEAGUE OF BUSINESS AND PROFESSIONAL WOMEN.

ATLANTA, GA., *June 21, 1949.*

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee:

Earnestly urge favorable consideration reappointment Judge Marion Harron to Tax Court on basis her excellent record as well as her qualifications to represent women of America.

Kindest regards.

DORIS LOCKERMAN,
Associate Editor, Atlanta Constitution.

NEW YORK, N. Y., *June 17, 1949.*

WALTER F. GEORGE,
Chairman, Senate Finance Committee:

The New York Women's Bar Association wishes at this time to reiterate its endorsement of Hon. Marion J. Harron for reappointment to the Tax Court.

FRIEDA L. LORBER, *President.*

SCHENECTADY, N. Y., *June 22, 1949.*

SENATOR GEORGE,
Chairman, Senate Finance Committee, Washington, D. C.:

The Schenectady Democratic women urge reappointment of Judge Marion Harron to United States Tax Court.

MARION C. MCGANN.

CHICAGO, ILL., *June 23, 1949.*

Senator GEORGE,
Senate Financial Committee, Washington, D. C.:

The National Association of Women Lawyers pursuant to action of its council of delegates in February 1948 endorsed Marion Harron for reappointment to the Tax Court of the United States.

CHARLOTTE E. GAUER, *President.*

SEATTLE, WASH., *June 22, 1949.*

Senator WALTER F. GEORGE,
Senate Finance Committee, United States Senate, Washington, D. C.:

Strongly urged reappointment of Judge Marion Harron to Federal Tax Court. Judge Harron has worked on the national bylaws revision committee of the American Association of University Women of which I am chairman. We are deeply impressed by her clear thinking and her integrity. She is the kind of woman we need in public office.

BARBARA D. EVANS,
President, New York State Division,
American Association of University Women.

PHOENIX, ARIZ., *June 22, 1949.*

Senator WALTER F. GEORGE,
Senate Finance Committee, United States Senate, Washington D. C.:

Informed that Judge Marion Harron's nomination for reappointment to position judge of United States Tax Court is up for final hearing. As business and professional women we are vitally interested in supporting qualified women for public policy-making posts. We are familiar with Judge Harron's excellent record and proven ability and urge that recognition be given by her reappointment.

JOSEPHINE H. RYAN,
Chairman, Women in Policy Making Posts,
Arizona State Federation Business and Professional Womens Clubs.

NEW YORK, N. Y., *June 20, 1949.*

Senator WALTER F. GEORGE,
Chairman of Senate Finance Committee:

Wish to renew unanimous support heretofore expressed in behalf of Judge Marion Harron and request this telegram be made a part of the record.

We hereby vigorously urge her immediate confirmation not merely because she is a woman, but rather because her record as a jurist, with the least number of reversals in her court, constitutes conclusive proof of her unassailable ability.

Respectfully,

JULIA SHERMAN,
Treasurer, Brooklyn Women's Bar Association, Inc.

NEW YORK, N. Y., *June 16, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.:

We commend Judge Marion H. Harron to the favorable consideration of the Senate Finance Committee.

THE DEMOCRATIC JUNIOR LEAGUE OF NEW YORK CITY, INC.
VESTA J. C. SKEHAN.

WASHINGTON, D. C., *June 21, 1949.*

Senator WALTER F. GEORGE,
Senate Finance Committee, Senate Office Building:

Hope your committee will give favorable consideration to reappointment of Judge Marion Harron to United States Tax Court. Her valuable services should be continued.

HILDA W. SMITH.

AUSTIN, TEX., *June 21, 1949.*

Senator WALTER GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Women throughout Nation, interested in and urge reappointment of Judge Marion Harron to United States Tax Court.

MARION STORM,
State Democratic Committeewomen.

ATLANTA, GA., *June 22, 1949.*

Senator WALTER F. GEORGE,
342 Senate Office Building:

Will appreciate your support in the reappointment of Marion Harron to the United States Tax Court. She is a capable person.

MRS. MAMIE KENNEDY TAYLOR.

CHARLOTTE, N. C., *June 19, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building,
Washington, D. C.:

I have known Judge Marion Harron for a long time and hold her in high regard. I hope very much that you will give her your endorsement when her reappointment comes before the committee.

MRS. CHARLES W. TILLETT.

FREDERICKS HALL, VA., *June 22, 1949.*

Senator GEORGE,
Chairman, Finance Committee,
United States Senate:

I strongly urge the reappointment of Judge Marion Harron to the United States Tax Court.

MRS. H. H. WALTON.

PHOENIX, ARIZ., *June 23, 1949.*

Senator WALTER F. GEORGE,
Chairman of Senate Finance Committee, United States Senate:

The Democratic Women of Arizona urged the reappointment of Judge Marion Harron of the United States Tax Court.

MRS. H. H. WASSER,
President, Arizona State Federation,
Democratic Women's Club.

NEW YORK, N. Y., *June 21, 1949.*

SENATE FINANCE COMMITTEE,
Washington, D. C.:

The Democratic women in New York State strongly urge the reappointment of Marion Harron as Judge of the United States Tax Court.

WOMEN'S DIVISION DEMOCRATIC STATE COMMITTEE.

WEEKS, BIRD, CANNON & APPLEMAN,
Fort Worth, Tex., April 12, 1949.

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I note that the Senate Finance Committee has set Thursday, April 14, 1949, as the date for hearing witnesses opposed to the nomination of Judge Harron for another term on the Tax Court. I have never presented a case to Judge Harron, except as attorney for the Bureau of Internal Revenue, but have on several occasions witnessed cases presented to her and have on several occasions had an opportunity to observe her administration of judicial duties as a member of the Tax Court. From this experience it is my opinion that Judge Harron has not given evidence of possessing the judicial temperament which, to my mind, is a primary requirement for members of any court. Specifically, my observation has indicated that Judge Harron is prone to take sides during the continuance of a case and thus handicap both parties. I believe that it is possible to secure better material, and for that reason I believe the appointment of Judge Harron should not be confirmed.

Sincerely yours,

B. L. BIRD.

UNIVERSITY OF PITTSBURGH,
Pittsburgh 13, Pa., April 12, 1949.

Hon. WALTER F. GEORGE,
United States Senate,
Senate Office Building, Washington, D. C.

DEAR SIR: I am writing you with reference to the President's nomination of Miss Marion J. Harron to the Tax Court of the United States. Miss Harron has been a member of the court for a number of years and has been nominated for a further term.

I think it is the almost unanimous consensus of opinion that Miss Harron's service on the Tax Court has not been satisfactory. I am informed that the representatives of the Bureau of Internal Revenue feel as badly as do representatives of taxpayers who have appeared before her. I think, therefore, that the nomination should not be confirmed and hope that you will oppose it.

Yours very truly,

ROBERT C. BROWN,
Professor of Law.

OKLAHOMA CITY 2, OKLA., *April 15, 1949.*

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SIR: I am writing you to oppose the confirmation of the appointment of Judge Harron to the Tax Court. My opposition to her is based solely on her record in the Tax Court. In my opinion, her decisions have not been sound or fair in many instances. I cite, as an example, her position in family partnership cases.

It is my further opinion that her presence on the Tax Court reduces its value to the public and the tax bar to a very great extent. When cases are filed in the Tax Court they may be assigned, as I understand it, to any of the judges in the court. That judge has sole jurisdiction over the controversy and decides it without the opinion or concurrence of any other judge in the court. In rare cases it is my understanding the entire Tax Curt reviews a case decided by one of the judges, but the taxpayer has no assurance that this will be done. As a result, taxpayers and their attorneys are often forced to go into the district court of the United States or the Court of Claims with cases which they would prefer to have in the Tax Court for fear of an unjust and biased opinion if the case is assigned to Judge Harron.

I, therefore, oppose her confirmation and would also suggest legislation which would correct the situation in the Tax Court which I have suggested.

I am a member of the tax section of the American Bar Association, and I am joining other members of the section in opposition to Judge Harron's confirmation.

Sincerely yours,

EDWIN WHITNEY BURCH,
Attorney at Law.

ATLANTA, GA., *April 11, 1949.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE. The current attempt to secure the reappointment of Judge Marion Harron to the Tax Court over the opposition of the organized tax bar is a matter of grave concern to me. From my own observation of Judge Harron's conduct of hearings in her court, and from many informal conversations with attorneys and accountants who have appeared before her, I am convinced that she lacks judicial temperament and poise.

In my opinion an attitude of impartiality and fairness is of greatest importance in any judicial proceeding and is particularly important in the Tax Court where the judge not only finds the facts but also determines the applicable law. I feel that it would be a great disservice to the future of the Tax Court if Judge Harron should be reappointed.

Very truly yours,

HERBERT R. ELSAS.

GARRETT & MCDONALD,
Waycross, Ga., March 16, 1949.

Hon. WALTER F. GEORGE,
United States Senator,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: Some time ago I wrote you my views about Judge Marion Harron as I anticipated then that the President might nominate her for a new term on the Tax Court of the United States. I understand now that her nomination has been made and that it is pending before the Senate Finance Committee.

I have had occasion to observe her conduct of the court. My reaction is most unfavorable toward her as a judge. Based upon my observation of her in court and my personal experience in her court, I am convinced that she lacks that judicial temperament that should be possessed by a judge, especially one who passes on both the facts and the law of the case. She is very impatient and excessively domineering toward witnesses, counsel, and court attendants. Her constant and unwarranted interference with the conduct of proceedings in her court creates such tension among all the parties that it is most difficult for the taxpayer or the Government properly to present their contentions so that the facts can be ascertained and the law of the case applied.

It is my information that the tax section of the American Bar Association has recommended that the Senate should not confirm the appointment of Judge Marion Harron.

I wish to join in this recommendation against the confirmation of her appointment.

With highest regards, I am

Sincerely,

Q. L. GARRETT.

THOMPSON, HINE & FLORY,
Cleveland, Ohio, April 12, 1949.

Senator ROBERT A. TAFT,
Senate Office Building, Washington, D. C.

DEAR SENATOR TAFT: It is my understanding that the Senate Committee on Finance in the near future will give consideration to the fitness of Judge Harron who has been reappointed to the Tax Court by the President. This letter concerns her qualifications for the position.

I have been active in the section of taxation of the American Bar Association and there has been considerable discussion in this circle as to the fitness of Judge Harron to continue her service with the Tax Court of the United States.

As I understand it, questionnaires were sent to attorneys authorized to practice before the Tax Court and substantial opposition was voiced to her reappointment.

It happens that I have never tried a case before Judge Harron, although I have made her acquaintance. She has held court in Cleveland only once, and I did not have any cases on that docket for trial. My observations as to her qualifications are, therefore, based on comments made by other lawyers. There seems to be unanimity of opinion among the lawyers with whom I have discussed the matter that while Judge Harron is a high-minded person and means well, she nevertheless is lacking in judicial temperament. I do not recall over the years specific instances or the names of cases or even the names of attorneys who have related such matters, but I have heard critical comments which would indicate that the lady judge is quite likely to take the case in hand, severely criticize either the taxpayer's or the Government counsel, and engage in trial practices which are out of the ordinary.

This feeling among the bar appears to have been reflected in the comments received by the committee on Tax Court appointments of the American Bar Association.

It is my understanding that the Bar Association committee will present to the Senate Committee on Finance their opposition to Miss Harron's appointment, and I hope that their presentation will carry weight with the committee.

I am sending a copy of this letter to Senator George for his information.

Very truly yours,

DAVID A. GASKILL.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 11, 1949.

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I am a member of the tax section of the American Bar Association, and as such voted that the officers of the section should oppose the confirmation of Judge Marion J. Harron for reappointment to the Tax Court of the United States. I am writing this letter to support the officers of the section in that rather unpleasant action.

My objections to Miss Harron do not relate particularly to her legal qualifications. They relate rather to her temperament which does not seem to me such as to fit her for judicial office.

Of course, I have no objections to the fact that she is a woman. On the other hand, it does not seem to me that she should be confirmed simply because she is a woman.

The Tax Court is one of the important tribunals in this country. It seems to me of great importance that its seats should be filled by persons of outstanding caliber for judicial office. It is because Judge Harron does not seem to me to have all of the qualifications needed for this place that I have felt it incumbent on me to write this letter.

Very truly yours,

ERWIN N. GRISWOLD, *Dean.*

MORRISON, NUGENT, BERGER, HECKER & BUCK,
Kansas City, Mo., April 11, 1949.

Senator WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SIR: Having noted that the Senate Finance Committee will again consider confirmation of the appointments by the President of Judges Harlan and Harron to the Tax Court of the United States, I would like to again voice my opposition to these appointments and to their confirmation by the Senate. The American Bar, and especially the lawyers engaged in the tax practice and practicing before the Tax Court of the United States, are sincerely interested in improvement in the caliber of appointments to the Tax Court. I do not believe either of the above-named judges to be of the caliber to warrant reappointment.

As you are probably aware, the reappointment of these two to the Tax Court has been the subject of much discussion among the members of the bar practicing

before the Tax Court for the period of more than a year, and after having considered the matter for that length of time and having talked to numerous other tax counsel who have given a great deal of consideration to this subject, I am still vigorously opposed to these reappointments and hereby request that the Senate again refrain from confirming them.

Respectfully,

ROY C. HORNBERG.

RENO, NEV., *April 12, 1949.*

Senator PAT MCCARRAN,
Washington, D. C.

DEAR SIR: I have been advised that the President has again nominated Judge Harron for reappointment to the Tax Court of the United States, in spite of the protests of the American Bar Association in general and of the members of the tax section of the bar association in particular.

The attorneys practicing before the Tax Court of the United States have had ample opportunity over a period of many years to judge the qualifications of Miss Harron. During that time she has thoroughly demonstrated that she is temperamentally unqualified to sit as a jduge of any court, let alone a court with the great responsibilities of the Tax Court.

So far as I have been able to ascertain, the opposition to the reappointment of Judge Harron is almost unanimous among those who have practiced before her. It appears that the principal support for Miss Harron's reappointment comes from the organized women's groups who demand a woman judge on the court without consideration to the effect that this particular appointment may have upon the court.

The bar association has submitted the names of several tax lawyers whom it considers to be qualified for that high post. Included in that list were two women.

I hope that you will send the appointment back to the President unconfirmed, and if he feels that political necessity demands the appointment of a woman, let him submit the name of a woman who has the confidence of the bar association.

Very truly yours,

WILLIAM L. HUGHEY,
Attorney at Law.

MCCUTCHEN, THOMAS, MATTHEW, GRIFFITHS & GREENE,
San Francisco 4, Calif., April 14, 1949.

Hon. WALTER F. GEORGE,
Chairman of the Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: I am taking the liberty of writing to you concerning one of the appointments to the United States Tax Court which I now understand is being considered by the Senate Finance Committee. I have reference to the appointment of Judge Marion J. Harron. I wish to express the view that in my judgment Judge Harron lacks the proper judicial temperament for membership on the Tax Court. I strongly urge that her confirmation be opposed. I am sure that there are other women who are better qualified for appointment to the position.

Respectfully,

ROBERT L. LIPMAN.

MONROE PECAN PRODUCTS, INC.,
Waycross, Ga., May 18, 1949.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR: I am writing you regarding a confirmation of the appointment of Judge Harron of California. She was the judge who presided in a Tax Court hearing in Atlanta several years ago in a family partnership case of mine and my sons. For your information at that time she did neither let my attorney present his case nor did she permit the Government attorney to properly present their side of the case. She acted as judge, prosecutor, and jury and it was quite

evident that her mind was made up before the trial started. We did not get a fair hearing and realized that as soon as the case started.

I do not believe she is fit to be a judge in any court, much less an important job like that. I, therefore, sincerely hope you will vote against the confirmation of appointment of this unreasonable and overbearing person.

Respectfully yours,

M. M. MONROE.

STANFORD UNIVERSITY,
Stanford, Calif., April 31, 1949.

Hon. WALTER F. GEORGE,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR GEORGE: I understand that on April 14 the Finance Committee is holding a hearing upon the question of the confirmation of the reappointment of Judge Harron to the Tax Court of the United States.

As a member of the bar and a specialist in the field of taxation, I wish to express my opposition to the reappointment of Judge Harron and to express the hope that the Finance Committee will vote against confirmation.

The reasons for this view are as follows:

1. Judge Harron has served for a number of years upon the Tax Court and during that period has not gained the confidence and support of the members of the bar. In the conduct of trials she has proved to be arbitrary and erratic and has not shown the qualifications essential to a good trial judge. This unfavorable view of her qualifications appears to be common to lawyers representing the taxpayers and to lawyers representing the Government alike.

2. The reappointment is opposed by the section on taxation of the American Bar Association. This section consists of an informed body of lawyers and their judgment should be given weight.

3. It is essential to the effective functioning of our Government, especially during this critical period, that the quality of the Federal bench be maintained. This applies to the Tax Court as it does to the other Federal courts. The opinion is widespread among the legal profession that of recent years the importance of good judges has not been adequately appreciated in Washington. No appointment should be confirmed which falls short of these standards of adequacy and which does not have the support and confidence of the bar.

4. So far as I have heard, the only organized support for the confirmation of the reappointment of Judge Harron comes from the women's organizations. Certainly Judge Harron's position should not be prejudiced because of her sex, but on the other hand this factor does not justify confirmation if the appointee is otherwise lacking in the essential qualifications for the office in question.

Respectfully yours,

STANLEY MORRISON,
Professor of Law.

LATHAM & WATKINS,
Los Angeles, Calif., April 12, 1949.

The Honorable WALTER F. GEORGE,
Senate Finance Committee, Senate Building,
Washington, D. C.

DEAR SENATOR GEORGE: I have practiced law in Los Angeles, Calif., for the past 10 years and during that time have engaged extensively in Federal tax practice. I have had occasion to come in contact with Miss Harron, whose nomination for a further term as judge of the Tax Court is pending before the Senate Finance Committee. I have also talked at some length with other tax practitioners in this area concerning the matter.

I am opposed to the confirmation of Miss Harron for a further term as judge of the Tax Court. My opposition is not based upon her sex. It is based upon my observation of her courtroom conduct. I do not believe that she is temperamentally or emotionally qualified to discharge the important functions of judge of the Tax Court.

There are many tax practitioners in this area who share that opinion.

Respectfully,

AUSTIN H. PECK, JR.

MORGAN, LEWIS & BOCKIUS,
Philadelphia, Pa. May 24, 1949.

The Honorable WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR GEORGE: We understand that your committee is now considering whether or not to recommend confirmation of the reappointment of Judge Marion J. Harron for a further term of 12 years as a judge of the Tax Court.

Based on the personal knowledge of one of our partners and on information which has come to us from other sources, we believe that his reappointment should not be confirmed. Her conduct at numerous trials has been arbitrary, capricious, and abusive of attorneys and witnesses. She has not hesitated to berate and disparage the professional ability of both attorneys and accountants in the presence of their clients and has a tendency to try to take over the conduct of the case to the point of practically excluding the lawyer from the presentation thereof.

In our opinion, Judge Harron's conduct as a member of the Tax Court, exhibiting as it does a total lack of proper judicial temperament, leads inescapably to the conclusion that her reappointment is not in the public interest.

We request that this letter be made a part of the record of the hearings which your committee is now conducting.

Respectfully yours,

MORGAN, LEWIS & BOCKIUS,
By LEONARD A. SPALDING, JR.,
A Partner.

TAFT, STETTINIUS & HOLLISTER,
Cincinnati 2, Ohio, April 30, 1949.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: On the basis of detailed information furnished to me by my father-in-law, William A. Sutherland, former chairman of the tax section of the American Bar Association, I wish to be counted among those opposed to the confirmation of Judge Marion J. Harron for another term as judge of the Tax Court. I do not know Judge Harron personally, nor do I question her legal ability, but the evidence is clear that she is unfit for judicial office.

Yours sincerely,

ROBERT L. STRONG.

KERRNER, YOUNG, SWEET & MCCOLLOCH,
Portland 4, Oreg., April 14, 1949.

Senator WALTER F. GEORGE,
Chairman of the Senate Finance Committee,
Washington, D. C.

DEAR SIR: I wish to go on record as supporting the position of the American Bar Association with respect to its views that the reappointment of Judge Harron to the Tax Court not be confirmed.

Judge Harron tried cases in this area on one occasion a few years ago. It is my opinion that she is not judicially qualified. This opinion arises from personal experience and from observations of others in this area who had business before the court.

In the course of my preliminary statement in the case which I had before Judge Harron she reprimanded me very severely because I was, according to her, not following the pattern of presentation of the facts and issues which she appeared to desire. Had I known what she wished, it would have been simple enough for me to change the method of presentation. It was a matter of great surprise to me, as well as embarassment, that on my statement of entirely noncontroversial matters she "exploded" as she did. Her statements were entirely uncalled for and pointless. As a matter of fact, we had a stipulation of facts in the case and I only made a preliminary presentation at her request to acquaint her with the issues which she was later to examine and make decision upon.

I have discussed Judge Harron's qualifications with other tax attorneys here, who share my view. I am also informed there was a sort of mass protest of the Seattle lawyers against her appearing as judge there. This resulted from conduct similar to that above described.

According to my examination of the Tax Court decisions its appears that her decisions are almost invariably in favor of the Government, except in a few cases where she appears to hold for the taxpayer and where in the long run the effect will be to set down rules of law which ultimately will be to the Government's benefit. I do not feel that she is impartial as between the Government and the taxpayer. In my experience of many years with the Tax Court this is the only time I have ever so felt about a judge.

So far as judicial temperament is concerned, I feel that her qulifications are nil, as illustrated by the fact that she is not courteous to counsel.

Very truly yours,

The statements made in the foregoing letter which was dictated by Herbert L. Smith before his death are true and I adopt them as my own.

JAMES C. DEZENDORF.

STRADLEY, RONON, STEVENS & YOUNG,
Philadelphia, Pa., May 24, 1949.

Re confirmation of Reappointment of Judge Marion J. Harron

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I understand that your committee has been taking testimony upon the possible reappointment of Judge Marion J. Harron for a further 12-year term as a judge of the Tax Court of the United States.

I have been a member of the bar of the Tax Court of the United States for more than 10 years, and it has been my privilege to have tried cases in that tribunal and before the Board of Tax Appeals, which was its predecessor, on many occasions, the cases in which I have been counsel having been heard by more than 10 judges of the court and its predecessor Board.

It was my unfortunate experience on one occasion to try a case in Philadelphia in which Judge Harron was assigned to the case. I must confess that never in my experience have I had such a weird experience in the trial of a case. Very shortly after I began to present my testimony, I soon found that Judge Harron apparently considered that her responsibilities were somewhat similar to that of a referee in bankruptcy, as the conduct of the case was immediately taken out of the hands of counsel. It took at least 1½ hours before Judge Harron fully understood what the case was about, which meant that in the meanwhile the witnesses were being confused and to a certain extent badgered. I might also add that this was a source of annoyance and confusion to counsel for the Commissioner as well as for myself. The Government counsel, Mr. Smith, who has been dead for some years, afterwards expressed to me that he has never in his long experience, and he was an elderly man, witnessed such a grotesque exhibition, and I must confess that the witnesses left the hearing of the case with a rather low opinion of a manner in which justice was being dispensed. Not only was the record unnecessarily burdened with extraneous evidence and with long and irrelevant comments of the judge to the record, which I could assume were only for the purpose of saving her the effort of making her own trial notes, but a case which merited approximately 1 to 1¼ hours of hearing and consumed over 3 hours of testimony, with counsel and witnesses for the next case being unnecessarily detained in court.

I am sure that Judge Harron did not conduct this case in this manner because of any lack of intellectual capacity, as her opinions indicate that she is not necessarily the least capable of the judges of the court. I am also quite confident that her impatience and lack of understanding in dealing with counsel and witnesses was not due to any personal animosity, as I have observed that in my case and in the case that had preceded it, this attitude was evidenced impartially towards all counsel and witnesses, whether on the petitioner's or the respondent's side; nor should you assume that my objection to Judge Harron's reappointment

is based upon the fact that I was unsuccessful in that case, since as I have indicated above, Government counsel was more distressed about the proceeding than I was.

The purpose of this letter has been to register my convictions that the reappointment of Judge Harron will only detract from the enviable prestige of the Tax Court, that the manner in which she conducts her cases is prejudicial to the best interests of both the Government and the taxpayers and shows lack of consideration for witnesses who have been asked to testify.

I am quite confident that there are innumerable more worthy appointments that could be made to this important office, and I sincerely hope that your committee will thoughtfully consider the observations that I have made herein. So that there may be no suggestion of holding back from lack of candor in this communication, the name of the proceeding in which I had such an unfortunate experience with Judge Harron is *William A. Clark* v. *Commissioner* (B. T. A. memo. decision), 1942.

Very truly yours,

ANDREW B. YOUNG.

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