HENRY LEWIS STIMSON: LAWYER

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FOREWORD

The public career of Henry Lewis Stimson spanned half a century. The published accounts of his life focus on Stimson's years as statesman and diplomat but offer only cursory treatment of his important work as a lawyer. That aspect of his life deserves study for it provides insights into the man who twice served as Secretary of War and once as Secretary of State. Further, statesman though he was, Stimson thought of himself first and foremost as a lawyer. Legal training molded Stimson's mind to think in an ordered, deliberate, and thorough fashion. So disciplined, he attacked every challenge he faced, legal or otherwise, with the same methodical, commanding approach. In this essay I shall consider three cases of Stimson's career - - an estate case, a labor case, and a corporate case - - which reveal the man, some of his ideas, and his extraordinary manner.

I

Henry Lewis Stimson decided to become a lawyer in solitude. His choice did not stem from a sense of calling or lifelong ambition. Rather, upon graduation from Yale College in 1888, he traveled to Colorado for a secluded vacation to reflect upon his future career. There, in the quiet of a mountain campsite he narrowed his options down to three. He felt drawn to the ministry but doubted his talent for the field. He considered medicine and its lofty purpose, a vocation that would draw him closer to his father for they could practice together. But the profession Stimson's father had recommended for him "is the one in which I stand in most deadly horror, viz., that of a successful New York lawyer."[1]

Nevertheless Stimson entered Harvard Law School in the fall of 1888 hoping to find a channel "for the right use of strength and influence" and to do "good in some way."[2] The monotony of case study and reading absorbed all of his time: "They give you the best facilities and you have to study in self-defense for there isn't another blessed thing to do."[3] Stimson noticed a difference in the kind of thinking law school required. Previously, at Andover and Yale, he had often engaged in contemplative thought. Harvard, in contrast, trained men for quick on the spot thinking which Stimson considered

"my weakest point" for he "never had much of a critical faculty" and was "altogether too lax in points."[4] He had no idea what lay in store after his hard years of law school, but he took with him a disciplined mind and the understanding that "without a bar trained in the traditions of courage and loyalty our constitutional theories would cease to be a living reality."[5]

Stimson had grown up in New York in an atmosphere pervaded by stern Presbyterianism and belief in the value of honest hard work. His grandfather, Henry C. Stimson, was a self-made railroad man. His father, Lewis, practiced medicine. He hoped that his son would always be successful "and especially that you will always try to deserve success for success without deserving may easily prove a calamity."[6]

Lewis Stimson helped his son to those ends by offering him the best education possible. In 1880 young Henry enrolled in Phillips Academy at Andover, a school which aimed to "learn boys the great end and real business of living."[7] Stimson, an assiduous student, graduated as the salutatorian of his class. At his books four hours a day "by the watch", he did not work well at night but rose early and went early to bed - a habit that persisted for his lifetime.[8] Even as a middle-aged lawyer, Stimson left the office every day at six-thirty regardless of the unfinished business he left behind. It could wait until morning. The hours he did work consisted invariably of dedi-

cated effort.

While at Yale, Stimson had not been a gregarious young man. Nor was he physically demonstrative. He disliked to be touched in any way other than a friendly handshake. He became known through his accomplishments. He won the Junior Exhibition speaking prize. In his senior year he won the DeForest Prize for his anlysis of Sir Henry Vane.[9] Respected by his peers, he was tapped for Skull and Bones. That special election carried with it a large responsibility - a responsibility to himself and to his clubmates to develop deep trust and friendship.
In later years Stimson recalled his membership in Skull and Bones as the most important educational experience of his life. Within the walls of the tomblike building he confidently became part of a family with whom he could share his private thoughts. Within the Bones, personal success came second to group loyalty.[10] There a man won recognition for himself as an individual, not for his achievements. The members became a phalanx so solid that it withstood time. Often in later life Stimson turned for advice and assistance to other Bones men, to the counsel of those he felt he could trust rather than to others who had not had the club's experience. As Stimson put it, "the chief lesson I have learned in a long life is that the only way you can make a man trustworthy is to trust him."[11] At Skull and Bones the young independent scholar had begun to learn to work with his peers. He came to share ideas

and to evaluate his own thinking - a talent helpful to his future legal profession.

At Yale Stimson had acquired a special spirit of service. This, he felt, "furnishes a more substantial foundation of honor than all the scholarship and all the science of this country."[12] When at last he graduated from the Harvard Law School in 1890 he had acquired not only "excellence in studies" but also "a long vista of an intelligent past upon which our present institutions are founded."[13]

Stimson served his year's clerkship prerequisite to admission to the bar in the law offices of Sherman Evarts. Stimson worked on common office tasks and argued motions in court. But he grew impatient. He felt as if he were "standing still", that New York was a stationary place for the practice of law.[14] By October 1891 he had arranged to join the law offices of the prominent New York lawyer Elihu Root, a wise and witty conservative statesman. Stimson hoped that he would not be a "fizzle at his work."[15] This hope materialized. He practiced law in Roots arresting tradition for the rest of his life.

When Stimson passed the bar examination in 1891, he entered a profession that was closely aligned with business interests. Little of the everyday practice reached the courts. Work included writing letters for the collection of debts, the drawing of wills, and other mundane matters. But more and more in those years lawyers became concerned with the affairs of men in commerce and industry. Their

problems took on increasing importance because of the tremendous economic growth in the country around the turn of the century.

The prestigious corporate law firms were located where they are today, around Nassau and Wall Streets. Firms such as Sullivan and Cromwell had five partners, Shearman and Sterling had three as did Elihu Root's firm.[16] Young lawyers and law clerks like Stimson received more education than money under the direction of their seniors.

Stimson disliked much of the practice: the dry, detailed labor on small cases, the continual representation of the company against the injured member of society, the hours of waiting in court. But he learned. He argued some of the accident cases he researched. He requested cases of his own. Though he refused to work on Saturday afternoon on anything for anyone, his dedication and intelligence impressed his colleagues who made him a junior partner in Root's firm in 1893.

Stimson became close to Root, a commanding figure in the legal profession. Influential on the New York legal scene since 1880, Root was not the conventional great advocate spewing legal rhetoric but rather a reflective counsellor with incomparable powers of analysis. In presenting his case he was usually precise, logical, and self-contained. Root concerned himself more with policy than with particular incidents. In the law he discovered a channel for all the energy and activity that surrounded

him. He turned to the organization of railroads, banks, and other developing fields. He enjoyed the intellectual games of the law and the men it engaged. Root taught Stimson the techniques of a trial lawyer: the need for infinite pains in preparation and styles of presentation. He taught Stimson the importance of executive ability rather than inherited station or wealth. Both men had instincts for order and the proper uses of power. As Root put it, "what anyone ought to bring to this task was honesty, brains, and a detachment from the immediate claims of self-interest."[17] When Root became Secretary of War in 1899, Stimson and Bronson Winthrop were left with the successful New York practice. In 1901 they changed the name of the firm to Winthrop and Stimson and acquired their own reputation for solid, reliable counsel.[18]

The general practice of the growing corporate firm made Stimson's orderly life comfortable. After an early breakfast he walked downtown to work from his home on East Thirty Second Street. At the end of the day he walked home. He worked on acts of incorporation, assignments of patents, and sales of bonds, yet he never brought his work home. Never relaxed in company, he rarely took part in casual conversations. He preferred to seek out one man for earnest discourse. Stimson guarded himself against the relaxed and careless moment. He attempted to impose his inner control on the world around him and expressed his preference for terse legal briefs and short conferences.[19]

One of the things that made him uneasy about the law was that he could not control the order of business coming to him. Clients got into trouble at inconvenient times. He dealt with that difficulty by creating his own environment, by locking himself in his office and going to work on one problem at a time. The closed doors, scribbled notes, piles of books, and long periods of isolation told his partners he was hard at work. Methodical rather than intuitive, he never let his mind wander.

Sometimes Stimson asked a partner or law clerk into his chambers. They would be confronted there with his pacing, his grmbling and his questions. Often he requested no comments and they felt awkward and confused. While concentrating, Stimson baffled the uninitiated observer.[20]

Logic lay at the bottom of Stimson's ritualized research. He sought to cover every conceivable aspect of a case and then figure out how to use the essential points most effectively when the case came to trial. His care in preparation he had learned from Root. He recalled later in life the advice received from one of Root's partners to "go and find a green elevator case" - a case identical in all respects to the case concerned, down to the color of the machinery.[21]

Stimson proved effective as a trial lawyer. He sought, as Root had, to "make the court decide for you. You set up your data - financial, human interest, or economic - in such a way that you prepare the mind of the judge emotionally to

decide for you. And only after that preparation do you come in with legal precedents upon which you can hang the case."[22] Stimson spoke in a direct, clear manner that communicated his self-assurance, the conviction that he knew everything about the case. The longer a case went on, the greater the impact of Stimson's knowledge and authority on the jury. As a colleague recalled, when Stimson said "the evidence shows", the jury believed that the evidence did show because they believed in Stimson.[23]

Stimson left his law office from 1906 to 1909 to serve as United States Attorney for the Southern District of New York, and from 1911 to 1913 to serve as Secretary of War in the Taft cabinet. He returned to private practice in 1913 to an office that had grown but had maintained its original character. The firm acted as though law was but one of the many aspects of life. Stimson was earnest but not greedy in seeking new clients. He did not hesitate to decline a case that did not appeal to him or one that would overtax him.

The young lawyers hired by Winthrop and Stimson shared that serious yet low-keyed spirit. Albert Putnam, employed in 1903, had served with Stimson in the National Guard. George Roberts came from Yale and the Harvard Law School; Felix Frankfurter was another Harvard product. Allen Klots, the son of one of Stimson's classmates, had been at Yale, in Skull and Bones, and at Harvard Law School. Stimson described the rapport among the lawyers

in the firm as a "fellowship of club members."[24]

II

Within that fellowship, Stimson set the tone for the others. The case of the will of Miss Emily Southmayd, illustrated his thoroughness and effectiveness as a lawyer. In 1911 Emily Southmayd drew up her last will and testament and divided her fortune between her nieces and nephews, to whom she left $150,000 each, and various charitable organizations.[1] Four years later, her brother, Charles F. Southmayd died, and left $900,000 to be divided among the nieces and nephews. Now Emily felt, as she wrote, that "inasmuch as all of my nephews and nieces are amply provided for by the bequests to them in the will of my brother Charles and by gifts from me in my lifetime I do not make any further provision for them,"[2] Miss Southmayd, in a new will executed in 1915, withdrew the former bequests to her relatives. She added two codicils redistributing minor belongings and also left $30,000 to the executor of her estste, her attorney and friend, Allen W. Evarts.[3]

When Miss Southmayd died in 1921 at the age of ninety-three, her nieces and a nephew contested her new will. They charged that she had changed her will under "undue influence of some person" and that she was not of "testamentary capacity."[4] Stimson assumed defense of the will in

the spring of 1922.

Stimson hesitated in accepting this case for it violated his sense of order and decorum. The case would draw him further into family altercations and the domain of personality than he felt proper. Stimson zealously guarded his own private life against the intrusions of invaders. Miss Southmayd was, as Stimson stated at the trial, eccentric in some respects, but she was not incompetent nor did she act under undue influence in changing her will.[5]

Edmund L. Mooney, counsel for the contestants, told the jurors that Miss Southmayd "lived in a cave and refused to have the windows washed in her home."[6] She disapproved of automobiles, telephones and central heating. She warmed her home by using fireplaces and conducted her affairs through correspondence. Witnesses for the contestants testified to her other eccentricities. Katherine Struble, employed by Miss Southmayd as a laundress from 1898 to 1911, said that the aged woman kept her nightgowns and underwear in a collection and only sent them out to be laundered once a year.[7] The chief witness for the contestants, Mrs. Helen Montuth, who had been employed as a waitress, testified that her mistress washed the money that she left lying around her locked bedroom. Further, she burned bedclothing in the fireplace of her room, on one occasion causing her house at Thirteen West Forty Seventh Street to take fire.[8] From servants, guests at the summer hotels she visited, and doctors she refused to allow examine her, it was possible to draw a con-

vincing picture of her eccentricities. Mooney also sought to assert Evarts' undue influence by attempting to prove he was more than her attorney and man of affairs. Miss Southmayd had looked forward to his visits, but she accepted his counsel, as Stimson knew, only as a friend and adviser in business affairs.

Stimson's first move to defend the will was to request a special jury. After conversations with doctors and psychiatrists about the symptoms of senile dementia, arteriosclerosis, and simple old age, he determined it was difficult to distinguish between the mainfestations of the aged, the eccentric and the senile. On that account, he found need for a special jury. He was also concerned about the public interest surrounding the case, one involving both charity and the ties of family. In such situations, Stimson had found, "the jurors in probate contests are easily influenced by sympathy and prejudice. They are apt to substitute their own reasons for the testators."[9] By making those points he obtained the special jury he wanted.

Meanwhile Stimson had faced the task of deciding how to conduct the case. He prepared extensive memoranda on points of law. He studied the nature of "undue influence." He enlisted experts to establish the difference between the symptoms of old age and those of senile dementia, a form of insanity. He weighed the importance of nonexpert testimony concerning Miss Southmayd's eccentricities. Dedicated to proving the testamentary capacity of Miss Southmayd, Stim-

son sifted through piles of her correspondence and discovered her excellent power of recall and command of affairs. He found she acted as a free agent in changing her will and that "the testator was not ill but appeared well. She lived after the execution (of the new will)... and every day was an affirmance of its provisions."[10]

His memoranda provided the skeleton for the case. After consultations with Allen Klots and law clerks, Stimson began to outline his argument. He decuded first to prove the naturalness and facts of the will by the testimony of witnesses. Miss Southmayd, who lived with her brother until his death, had no need for financial assistance or advice until 1915. Her brother handled those matters. Stimson sought to demonstrate Miss Southmayd's keen business sense by reference to her correspondence and conferences with her lawyer.[11] Further he would discuss "Miss Southmayd's life with her brother and their lack of intimacy with the contestants."[12] Miss Southmayd felt her nieces and nephews were amply taken care of by the provision of her brother's will. The bulk of her estate went to charitable organizations to which she had contributed throughout her life. That pattern, as Stimson held, established consistency in Miss Southmayd's behavior. It suggested that she had acted naturally and with soundness of mind in dividing her fortune.

"Our main effort must be to meet such evidence of Miss Southmayd's peculiarities", Stimson believed, "so as to show they are merely symptoms of neurosis. We must also show that

there was no real deterioration in her until January 1, 1920. We must show that she was really very strong-minded, able to take care of herself, and not at all subject to suggestion on the part of anyone."[13] He knew the opposing counsel would dwell on Miss Southmayd's eccentricities. In response, he intended to put her behavior in harmless perspective. For example, she gave $100,000 to Yale, although she disapproved of college education, in order to perpetuate the memory of her brother.[14] Miss Southmayd always initiated her donations to charity and accepted advice only on the technical aspects of the gift. Further, Stimson planned to prove that her eccentricities were of long standing, dating back before her first will.[15] One of the defendant's witnesses recalled an incident around 1908 when Miss Southmayd "refused to take a towel which a clerk pasted a label on by licking it first."[16] Tales of her obsession with cleanliness and her possessiveness dated from the 1880's. These eccentricities had never prevented her from writing coherent letters concerning her business affairs.

Stimson decided to open his argument not by discussing the facts of the will but by creating a feeling for "the complications of the case."[17] He confronted an impressive set of witnesses who would testify to Miss Southmayd's unbalanced behavior. She outlived her contemporaries, friends who could have testified for her, so Stimson had to rely on correspondence and those acquaintances who survived her. He

prepared a list of witnesses which he divided into three parts. He planned to ask witnesses to describe the life of Miss Southmayd at her vacation retreats first in Rockland, Maine, and second in Stockbridge, Massachusetts. He would turn next to accounts of her life in New York and the letters she wrote there. "This plan is adopted because the New York witnesses impress me as the strongest witnesses. We should use only lay witnesses for these three purposes. Then, should follow testimony of the physicians who attended Miss Southmayd, showing her medical history, and our expert witnesses."[18] He rated each of the fifty witnesses of the trial from "strong" to "weak". For each witness he prepared a line of questioning.

Stimson composed a comprehensive opening statement of 134 pages. The statement of facts was undecorated. He went on to discuss the life and personality of Miss Southmayd. He included her beneficenses to relatives, organizations, and friends. With this recital of evidence he created a dramatic momentum. She was old-fashioned. She feared cats and dogs. She feared contamination and disease. Stimson admitted those quirks of behavior. He denied that she did not conform to the requirements of the law.

The witnesses then began to confirm his argument. A worker at a newsstand testified that Miss Southmayd "talked about books, and who wrote them," showing remarkable memory in recalling authors' names.[19] A butcher recalled that she was a "keen purchaser of meat."[20] Servants testified that

she was exacting and demanding but not insane.

One witness, the hotel manager in Maine, disrupted the smooth process of Stimson's argument. Because of the length of the trial, three months in all, the Surrogate made an office available to Stimson in the Court of Records. There Stimson engaged in discussions with the witnesses to gain complete information about Miss Southmayd. He wanted no surprises in the court room. The manager, Mr. Arnold, spent two days conferring with Stimson. When he was called to the stand, Mr. Arnold was asked the standard question "Have you discussed the testimony you are about to give?" Mr. Arnold said no! The next question of the opposing counsel put Stimson in an awkward position. "Then what have you been doing for the past two days in the Court of Records office of Mr. Stimson?" The court responded with laughter. That slip did not damage Stimson's case but since the incident Winthrop & Stimson lawyers have told their clients as a matter of policy not to be defensive about standard court questions.[21]

Using the testimony of the many witnesses, Stimson created a profile of a strong-willed, old woman who had managed her own affairs since 1911 at the age of eighty-three. He presented the case of a woman who learned to keep an account of her estate, who consulted her lawyer to assist her in learning, who conducted extensive and intelligent correspondence. He felt "content to meet this fabricated picture of Emily Southmayd (as painted by the contestants) by simply laying before the jury side by side the charge

and let her answer it herself in her own letters."[22]

Stimson gave those letters meaning that withstood the assaults of opposing counsel. In trying to show that Miss Southmayd lived in a dusty, dark cave, they fell into the trap Stimson had prepared. At the summing up he dismissed the contentions of his opposition. "Contestants' experts, knowing well that mysophobia is not insanity, have been obliged to diagnose it as senile dementia - a perfectly absurd assumption in view of her steady mentality."[23]

Stimson won the case. He had thought it through completely before he argued it. He went before the jury concentrating unwaveringly on his strategy. He had explored every legal nicety, consulted every witness, taken expert advice. He exposed the jury to letter after letter. As he had expected to, he impressed the twelve good men and true. Indeed, after only three hours of deliberation the jury upheld the will.

III

In pleading a later case Stimson engaged a broader national audience. In 1922 J.C.Brydon, Chairman of the Bituminous Operators' Special Committee, asked Stimson to act as counsel for the committee. His energies would be dedicated to helping to prepare a report on the coal industry to be presented to the United States Coal Com-

mission. President Coolidge appointed the Commission as a fact finding board to advise Congress on the state of the coal industry. Conditions and events since 1916 had abnormally influenced the demand and supply of coal and the prices at which it had been sold. The general strike of the United Mine Workers in November 1919 depleted the industry's financial reserves earlier accumulated during the war. The general walkout of the United Mine Workers on April 1, 1922 checked production in all fields contracting with the union and caused critical shortages of bituminous coal. The UMW was the largest and most powerful union in America in 1920. More than half a million miners were members and they were covered by contracts in almost all fields. In 1920 bituminous output reached an all-time peak of 568,000,000 tons and the price per ton reached the astronomical sum of $4.20.[1] Coolidge hoped that the Commission could recommend action to stabilize labor relations within the coal industry.

In agreeing to assist the Special Committee, Stimson sought to "preserve our democracy."[2] He set out by endeavoring to gain extensive knowledge about the coal industry. Stimson "had the benefit of a personally selected staff of highly competent men in addition to three or four of the younger men of my office. We have personally been into some eight or nine states where bituminous coal is mined, not once but many times; we have had men in the coal fields of Great Britain, and we have been in contact with both miners and operators and I think I know something now at first hand