WINTHROP, STIMSON, PUTNAM & ROBERTS

A History of a Law Firm

New York, 1980

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Elihu Root and the Formative Years

Recalling late in life that he had "refused the War Department until it was put up to me that McKinley wanted a lawyer . . .", Elihu Root left his private practice, but not his profession, in 1899. Although he had previously held only two public offices, United States Attorney for the Southern District of New York (1883-1885) and delegate to the New York Constitutional Convention (1894), public fame soon overtook the fifty-four year old Cabinet appointee. After completing service as Secretary of War in 1904, Root gained international distinction as Secretary of State from 1905 to 1909 in Theodore Roosevelt's Cabinet. He thereafter served as United States Senator from New York (1909-1915), during which time he was awarded the Nobel Peace Prize (1912) for his earlier global diplomacy as Secretary of State. Subsequently, Root served on the Hague Tribunal, lobbied for U.S. entry into the League of Nations and worked to establish the World Court. Until his death in 1937 at the age of ninety-three, Root remained active as an elder statesman of the Republican Party and a legal advisor whose opinions were widely sought.

While Elihu Root is usually thought of as a statesman and diplomat, he confided near the end of his life, that "the office of being a leading lawyer in New York was the only one I ever cared about." His performance in that "office" helps explain his later renown and set an example for the legal profession. More particularly, Root's practice established standards within his law firm which continue to influence

the work of Winthrop, Stimson, Putnam & Roberts, as the firm is known today.

Born in 1845 in Clinton, New York, Root grew up in a cultured and secure environment. He attended local schools and was also tutored by his father, a professor of mathematics at Hamilton College (called "Cube" Root by students and family), while his mother impressed upon him the ethical values of her deep religious belief. In 1864 he graduated with honors from Hamilton College and in the fall of 1865 entered New York University Law School. Supporting himself at the time by teaching at a private women's school, he received his degree and was admitted to practice by the middle of 1867.

Early Practice

Root then took the customary first step of going to work as an unpaid apprentice for a leading firm, Mann and Parsons. Had he stayed a second year, his salary would have been ten dollars a week. But Root was eager to be on his own, and in 1868 he formed a partnership with John H. Strahan. They began their practice in a top floor office of a run-down four story building at 43 Pine St. Such amenities as an elevator, a telephone, a stenographer and a typewriter were as yet unavailable, and the one toilet was on the ground floor.

Root's talent as a public speaker, his retentive memory and a keenly analytic mind suited him for trial practice, which was for him the pinnacle of the profession. Post-Civil War industrial expansion had brought a demand for good trial lawyers, and Root was carried along by the corporate boom.

At about this time, Root was admitted into the Union League Club. The affiliation brought him into professional contact and close acquaintance with leaders of government and business, but perhaps his most crucial encounter there was with the philanthropist Salem H. Wales, whose daughter Clara he was to marry in 1877.

In 1869 Root formed a new law partnership with a friend from law school, Alexander T. Compton. From the start the firm of Compton and Root was kept quite busy, particularly by one of Root's clients, the Bank of North America. Root's dedication to hard work, his pow-

ers of concentration and endurance and his courtroom performances (unusual skill at mastering voluminous detail made him superb at cross-examination) brought the firm increasing business. Compton established himself as the office man while Root's obvious talents marked him for the front lines at court and in the conference room. He also took responsibility for a larger share of the firm's correspondence—which, despite the assistance of a clerk, Root often personally authored in longhand. Handling not just corporate business but civil and criminal cases involving such issues as slander, usury, mechanics' liens, wills and promissory notes, Root's practice in the early 1870s was varied and successful. He was known and respected for working just as diligently on small matters as on larger and more remunerative cases.

The equanimity and relative anonymity of his flourishing practice was interrupted between 1871 and 1873 by a case which thrust Root into the political arena, though he was by no means at the center of it. The trial of the notorious Tweed Ring—alleged to have bribed and defrauded the New York City government in connection with contracts worth over a hundred million dollars—was finally on the docket. Samuel J. Tilden, representing a citizens' committee, pressed the case against Tweed and, through a fairly remote set of connections by way of a cousin of his partner's wife, Root wound up as an assistant counsel on the team defending Tweed. Marginal as his participation was, this association with the nefarious figure became a lifelong political stigma and later discouraged him from seeking elective office. Political foes were always to be well armed with abusive support from William Randolph Hearst's yellow journals. Facts would be bloated into fable with Root smeared as the champion of Tweed and "jackal" to the "hyenas" of Wall Street. So strong was the general revulsion at Tweed's corruption that at the end of the trial the judge felt compelled to lecture the twenty-eight year old Root that "good faith to a client never can justify or require bad faith to your own conscience." But in some circles Root was lauded for his disinterested professionalism and his courage in taking on the unpopular, almost certainly losing case.

Criticism for his involvement in the Tweed affair and the socially devastating collapse of an over extended post-war economy—the

Panic of 1873—seemed to have little adverse effect on Root's active practice. Much sought after in the ensuing years, he took on estate contests, railroad litigation, bank difficulties and the municipal problems of a fast-growing New York City. Cases arose that required frequent travel and his reputation as a brilliant trial lawyer spread. As a consequence of his work as counsel for the Bank of North America, he was retained to represent the Hannibal and St. Joseph Railroad and for the first of many times locked horns with unscrupulous tycoons such as Jay Gould. Root's cool-headed negotiating which settled the case was motivated by the moral indignation he expressed in a letter to his mother about "our war on the infernal scoundrels who are trying to steal a great railroad. It is the worst outrage I ever knew of."

The 1870s and 1880s were years of protectionist tariffs, collusive government-business dealings and a concentration of great wealth in the hands of a few ruthless speculators. During this period Root handled many complicated transactions in the corporate sector. Litigating on behalf of the Erie Railroad (again opposing Gould), Root noted that "the magnitude and complexity" of the case made the "mastery of its details and ramifications almost like learning a business from the beginning." The success of his practice had very much to do with his prodigious preparations and his acute analysis of essential issues, leading to effective, often simple solutions. Though he welcomed court battle, Root believed that the "lawyer's chief business is to keep his clients out of litigation." "About half the practice of a decent lawyer," Root declared, "consists in telling would be clients that they are damned fools and should stop."

From Private Practice to Public Service

The widely held notion of Root as a lawyer representing corporate interests more accurately reflected his later practicing years than his entire legal career. Root told Philip Jessup, his biographer, that he scorned an exclusively corporate practice. But that image clung to him and, with the Tweed shadow, further inhibited his aspirations to elective office and a bid for the Presidency. It also obscures his record

of legal public service, notably as United States Attorney for the Southern District of New York. Urged upon him in 1883 by a friend and fellow Union League Club member, Chester A. Arthur, who had two years earlier become President (upon Garfield's assassination), the responsibility engaged Root's best effort, though he was allowed to maintain a limited private practice. Mornings were spent on customs cases and other matters at the U.S. Attorney's office, while afternoons were reserved for his private clients. Ironically, his previous experience as corporate counsel for such clients as the Havemeyer sugar refining companies, for whom he had conducted suits to recover payments of excessive duties, prepared him well for the troublesome tariff contests facing the U.S. Attorney's office. In the two years of his service Root also brought about procedural reforms in the functioning of his office, shed light on irregularities in government appointments and won important cases involving improper private postal activities and fraudulent bank dealings.

Retiring as U.S. Attorney in 1885, Root devoted more time to a growing corporate clientele. Although his practice remained highly diversified and included a substantial number of matters for individual clients in the wills and estates and other areas, it was his battles on behalf of major corporations that most often caught the public eye. Root's later practicing years were marked by major cases resulting from the new and growing regulatory legislation, such as the Sherman Anti-Trust Act. An era of uncontrolled business expansion and a *laissez-faire* public philosophy was coming to an end. Sometimes Root found himself on the reformer's side, but more often he was retained by commercial powers with whom he had long affiliations and who were suddenly on the defensive. Caught in the center of many celebrated frays, Root commanded more attention than most in the legal profession. One observer in the 1890s remarked that he seemed to have been connected with all the important cases tried in New York since 1880. In 1906, at the height of muckraker activity and during his service as Secretary of State in the reform-oriented administration of his friend Theodore Roosevelt, Root, reflecting on his legal career, wrote: "The trouble is that lawyers necessarily acquire the habit of assuming the law to be right..... As a rule, the pure lawyer seldom concerns himself about the broad aspects of public pol-

icy.... Then, too, lawyers are almost always conservative. Through insisting upon the maintenance of legal rules, they become instinctively opposed to change."

Root, Howard, Winthrop & Stimson

Thriving as it was, Root's law firm underwent a number of major changes in relatively rapid succession. In 1877, after eight years, Compton and Root terminated their partnership, and Root formed a new firm with Willard Bartlett, another former, though younger, N.Y.U. Law School classmate. Root and Bartlett lasted until 1884 when his old friend went on the bench. Similarly, his succeeding partner, Theron Strong, left the firm for a judicial career in 1889 after only five years with Root. A junior member of the office, Samuel B. Clarke, then joined him in practice and ably handled a good deal of the increased volume of business through the 1890s, while Root was devoting more time to a few large cases, political interests and public service.

Another partner was almost added at about the same time as Clarke. Root was then advising Thomas B. Reed, the noted Speaker of the House of Representatives, on his redoubtable fight to revise the procedural rules of the House. It was decided that if Reed's case failed in the House he would resign from office and join Root in the practice of law. The new partnership never materialized because Reed won his battle. Root and Clarke, however, dissolved their firm in 1897 due to a disagreement. Root then formed the partnership of Root, Howard, Winthrop & Stimson. The latter two partners had, in 1891, joined the Root & Clarke office at 32 Liberty Street as apprentices, and both had become junior partners in 1893. When, after two years with his new firm, Root left for Washington as McKinley's choice for Secretary of War, the name of the law office was changed to Winthrop & Stimson. After 1899, Root's career took on increasingly public proportions, and he neither formed nor became a member of any other law firm. But he retained a life-long association with Henry L. Stimson who was in many respects his disciple in political as well as legal affairs.

"A Lawyer First . . ."

Throughout Elihu Root's second career, as a statesman and political advisor, no peak of public achievement could completely overshadow his reputation and self-identification as a lawyer. Henry Morgenthau once recalled a conversation in 1896 when Root told him "that it was unwise for any lawyer to devote himself entirely to politics, that he should, when called upon, render a public service, complete it, and then return to his profession, but be ready for further calls that might be made upon him." More likely because of age than inclination, Root did not return to practice after holding two Cabinet positions, serving as U.S. Senator, and carrying out several diplomatic appointments. But his feelings about the primacy of his commitment to the legal profession seem to have grown stronger later in life. Looking back in 1930, Root commented on the fate of Robert Strahan, a cousin of his first partner John Strahan. The young man, Root believed, had been ruined as a lawyer—"He became a politician instead of a lawyer. He got into the habit politicians have of sitting around and talking instead of working. . . ." Root confessed that "I had a good deal of searching of soul over Bob Strahan's career. I came to the conclusion that I would be a lawyer first and all the time. . . ."

Winthrop and Stimson as Successors

In the late 1870s Elihu Root had a discouraging report for an acquaintance who was assisting a young lawyer in finding work in New York. "There has never been a worse time within my experience...", he wrote, "The law business and the proceeds of law business have been contracting steadily...." But soon a sustained surge of national prosperity obliterated all but the memory of the post-Civil War depression. Subsequent 19th-century economic disorders were more often than not symptoms of an embarrassment of riches and the concommitant social imbalances. "Law business" was expanding in such lock step with the economy that by 1896 one commentator asserted that "the distinction between the lawyer and the businessman had vanished."

The Setting

But if the standards of the legal profession were to be impugned, it was not merely a matter of pointing the finger at a tainted corporate connection. With a growing demand for legal services, many young people sought to enter the profession without adequate training. Over 600 of the 1,051 applicants who took the Bar examination in 1895 and 1896 had never attended college, and of that number only about half had based their preparation on some experience of working for a law

Bronson Winthrop

firm; the others were solely dependent upon their own reading. Attending law school beyond college was an educational luxury.

Even neophyte lawyers so luxuriously prepared as Bronson Winthrop and Henry L. Stimson soon found that their first clerkships were primarily learning opportunities. Paying clerks with any coin other than experience did not become customary until the mid-1890s. Henry L. Stimson remembered how Joseph Kunzman, the managing partner of Root & Clarke, acknowledged this new practice by thundering from behind his door, "Where is that *paid* law clerk?" Yet few apprentices, paid or not, could have been more fortunate at the outset than Winthrop and Stimson. From their common professional beginnings, fate linked them in a lifelong convergence of careers in what was to become a leading American law firm.

The Liberty Mutual Building stood at 32 Nassau Street (later readdressed as 32 Liberty Street), near the main arteries of New York's financial and commercial district. Here the firm of Root & Clarke occupied a suite of spacious offices on the fourteenth floor—offices with a sweeping view of rooftops receding to the East River, crowned by the majestic lacings of the Brooklyn Bridge. High-ceilinged rooms were freshened in warm weather by ocean breezes and heated in winter months by coal-burning cathedral fireplaces. The clerical staff was pooled in a large central room, which opened into a library where Winthrop, Stimson and other law clerks researched cases within earshot of the partners' private offices. Clients who visited the firm found an air of order, comfort and confidence. Maintaining the atmosphere of 18th-century London chambers, the firm and its successors remained in the Liberty Mutual Building until the move to 40 Wall Street in 1950.

Preparations and Personalities

When Bronson Winthrop and Henry Stimson met in November of 1891 on their first day of work for Root & Clarke, neither could have suspected they would be practicing law there together over a period of fifty years. Both had been recommended to the firm by William C.

Whitney, one of Elihu Root's most prominent and long-standing clients, but in the face of all the coincidences, the two young men soon recognized their markedly different backgrounds and interests.

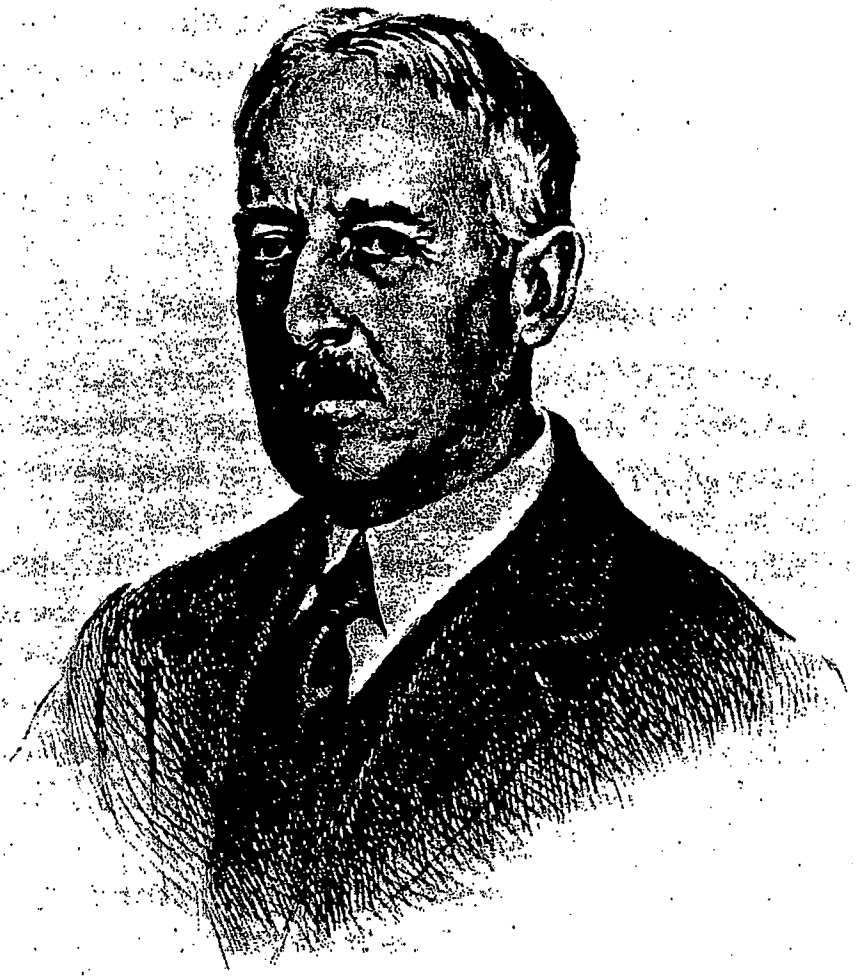
Bronson Winthrop descended from a long line of New Englanders, many of whom were celebrated for their roles in America's early colonial history (John Winthrop had been Governor of the Massachusetts Bay Colony in 1629, and another ancestor, Peter Stuyvesant, had been Governor of New Netherlands). Born in Paris on December 22, 1863, he was schooled at Eton, took his A.B. and M.A. degrees at Trinity College, Cambridge in 1886 and 1889, and shortly before entering the Root firm in 1891 was awarded an LL.B. from Columbia University. In the best of ways, young Winthrop was the genteel, cosmopolitan aristocrat. His courtly home was attended by servants in livery and furnished in the tradition of refined, history-conscious families—with "the silver of four generations on the sideboard." First impressions at the firm prompted Stimson to dub Winthrop the "Exquisite." Customarily dressed in well tailored clothes, Winthrop was soon appreciated by his colleagues more for being impeccably courteous and generously kind. He bore his heritage and education with utmost modesty. Only his extreme shyness made him seem less than perfectly blessed. A bachelor throughout his life, his firm increasingly provided many of the satisfactions of a loyal and close-knit family. Later in his life, Elihu Root stated his conclusion that Winthrop was the best lawyer in New York City.

Henry L. Stimson never became comparably wedded to the law firm or the practice of law. Devoted as he was to legal practice, it remained for him, unlike for Root and Winthrop, a means to other ends. Historians have amply recorded Stimson's distinguished achievements in public service, including appointments by six different Presidents, with memberships in the cabinets of four (Secretary of War under Taft, Secretary of State under Hoover, and Secretary of War under Franklin Roosevelt and Truman). Barely a year out of Harvard Law School, Stimson had announced his restlessness with "such a poky profession as the law in such a stationary place as New York." If Bronson Winthrop came to the bar as a priesthood, Stimson was the profession's apostate, allowing the law to occupy him fully for only two periods of more than ten years in his life.

Born in 1867, younger by four years than Winthrop, Stimson was also of New England lineage on the side of his father, a dedicated New York surgeon, with his mother being of French Huguenot stock. He attended Phillips Academy, Andover and graduated from Yale in 1888 with honors. Going on to Harvard Law School, he continued to build an impressive academic record and in 1890 left with an M.A. degree and an offer to work unpaid in the law office of Sherman Evarts at 52 Wall Street. It was in this rather slow-paced office that Stimson impatiently served the year of clerkship prerequisite for taking the bar examination. In the meantime, Yale alumni friends of his father were seeing to it that young Stimson "should have a better chance of getting . . . the right sort of connection with a large office. . . ." Upon passing the bar examination and with the hope that he would not be "a fizzle at his work," Stimson accepted an offer from Mr. Root, as Winthrop had, at an annual salary of $750, in a year in which three partners of the Root firm had distributed among themselves profits of $98,000.

Little time passed before Bronson Winthrop and Henry Stimson, for all their differences, grew close as colleagues and friends, discussing cases with each other and supporting each other's best efforts under Root's steadying guidance. Winthrop was especially compelled by the intellectual challenges of analyzing a problem and preparing a rigorously logical and exhaustively documented argument. Though Stimson never came to share his delight in the purest exercises of reason, Winthrop imparted to him valuable techniques for ordering thought in mapping a long line of argument. During their exchanges, Winthrop occasionally startled Stimson with erudition on such subjects as American history and world literature. Whether by the model of Winthrop's British education or of his superior intellectualism, Stimson was inspired to broaden his own intellectual scope, particularly his understanding of history and the development of American social institutions.

But Stimson was never at peace with himself about the legal profession's demands of disinterested mental exertion. Moral issues and his own sense of social justice would disturb his work on behalf of a client whose cause seemed to him trivial, self-serving or unfair. For Winthrop, precision of thought and the tireless perfecting of every



Henry L. Stimson

detail of his work always remained the goal. Nevertheless, both young lawyers excelled in their first years in the Root firm. Clarke once praised a Stimson memorandum on a subtle legal point as reading like "an essay in equitable jurisprudence." But although Stimson took extra work upon himself, convincing Root to allow him to handle cases of his own as well as assignments for the partners, he steadfastly refused to work on weekends "for anybody."

Learning the Business of General Practice

On New Year's Day of 1893 Bronson Winthrop and Henry L. Stimson were rewarded for the quantity and quality of their efforts by being made junior partners in Root & Clarke, each to receive a guaranteed minimum income of $2,000 a year. From first labors of drawing wills, drafting corporate agreements, collecting small debts and reading proofs of briefs, they had soon taken on some of the plentiful accident cases handled by the firm (several of Root's clients were street railway companies) and proceeded to work directly in litigation with Root on some of the most celebrated cases of that period. Years followed in which Winthrop and Stimson became seasoned in what the latter described as "the business of general practice." Personally guided by Root for only the next six years, they had frequent opportunities to assist him in court and help him confront the major legal problems which faced the corporate and municipal organizations retaining the firm.

Large and small cases competed equally for the attention of the junior partners. On behalf of the Bank of North America, Winthrop and Stimson initiated in one year fifteen claims on unpaid promissory notes for sums ranging from $10,000 to $53.32. And, according to the firm's registers, they sustained their efforts to collect the $53.32 note over a period of three years. Another case required that they negotiate a settlement between an employer and an office boy who had stolen watches. They even had occasion to serve their mutual benefactor, William C. Whitney, by drafting a standard contract for the hiring of stable boys and preparing an agreement between him and the famous jockey Hildebrand.

A case which Bronson Winthrop particularly enjoyed had to do with an alleged breach of contract between the prima donna of an opera company and her manager. With much of the evidence in German and of a conflicting nature, Winthrop faced unusual obstacles in getting to the core of the matter—the liability of the prima donna who had varyingly promised thirty-five, forty-five, and fifty-one public performances. Finally, after two years of agitated personalities and an exotic record, Winthrop disposed of the case by striking a modest settlement.

But there were more complex matters calling for their services. This was the era of "trust-busting", and the recently enacted Sherman Act caused an array of legal and organizational problems for utilities, railroads and industrial companies. In the years after 1893, Winthrop and Stimson were involved in many such corporate affairs, representing large organizations like the Continental Rubber Company, Consolidated Lithograph Company, the United States Printing Company, the National Sugar Refining Company, the Astoria Power and Light Company, and the Mutual Life Insurance Co., among others. Volatile industrial growth also drew to the firm many smaller companies as they were frequently in need of help in coming into or going out of existence. The junior partners took charge of preparing certificates of incorporation, overseeing the sale of plants and the assignment of patents and working out agreements for corporate financing through the sale of bonds. Messrs. Root and Clarke continued personally to look after the interests of long-standing clients while much of the new business came into the hands of Winthrop and Stimson.

Under the commanding influence of Root, Winthrop and Stimson were becoming well-known Wall Street lawyers. Neither, however, limited his practice to corporate business. Bronson Winthrop, as he grew older, became "especially learned in the law of wills, estates and estate management." And Henry L. Stimson, a champion orator at Yale, gained renown as a trial lawyer, though he never happily tolerated the waiting in court or the niggling preparations for minor cases. So capably did the junior partners establish themselves that when, in 1897, Samuel B. Clarke terminated his association with the firm, Elihu Root formed a new partnership in the same offices, naming it Root,

Howard, Winthrop & Stimson. For the thirty-four year old and thirty-year old newly appointed full partners, this inclusion in the firm's name was a signal honor.

However, their apprenticeship was not in any meaningful sense completed. Elihu Root remained very much their legal mentor until 1899 when he left the firm to take his place in President McKinley's Cabinet. Thereafter, G.E.P. Howard, an exacting and respected lawyer, lent the wealth of his own long experience. One of his early pieces of advice continues to echo in the corridors of the present firm. Root's exhortations for careful and thorough preparation were carried over in Howard's directive to look for "a green elevator case." Winthrop, Stimson and many young lawyers after them came to know this to mean that when searching for a legal precedent, every effort should be made to cite a precisely identical case—matching even the color of the machinery. But finding the green elevator case was never sufficient in itself. Tutored by Root in "making the court want to decide for you," Winthrop and Stimson learned that whatever the nature of a case, "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...." For all of his intellectual brilliance, Root knew and Winthrop and Stimson learned that those who present a whole case "on a purely intellectual basis... do not do well in court."

"Pie-Eyed with the Best Practice in New York"

There can be no doubt that by the time of Root's withdrawal from the firm in 1899 Bronson Winthrop and Henry L. Stimson were successful, respected lawyers. But with the founder's departure, they faced a new problem. Having only six years of partner-level experience behind them, they were suddenly left "pie-eyed with the best practice in New York and everybody trying to get it away from us."

The next few years summoned their sternest determination in conserving their inheritance. Stimson admitted that he "never knew what the rough end of life in New York can be until I saw these people trying to grab business away from us." Competition aside, some clients defected simply because they primarily valued the advantages of an association with the renowned Elihu Root. Never previously needing to expend much effort in acquiring new business for the firm, the partners were unpracticed and possibly unsuited for it. Their decision, however, was to assert their own full responsibility for the future of the firm, and on May 1, 1901, they renamed it Winthrop & Stimson.

Building a Firm and a Fellowship

Deprived of Root's name but in the best of ways sustaining his reputation, the new firm of Winthrop & Stimson consolidated and grew. Gaining recognition for dependable and effective counsel, the two partners slowly added staff to their small firm and increased their own incomes. Henry Stimson, however, found private practice "never thoroughly satisfactory," and was always seeking a wider reconciliation of private interests with social issues and the public good. Like Root before him, Stimson was bound for a career in politics and public service.

Stimson Enters Public Life

At the end of 1905 and very likely at the suggestion of Elihu Root, President Theodore Roosevelt invited Stimson to lunch in Washington and offered him the appointment as United States Attorney for the Southern District of New York. Stimson immediately accepted, was confirmed by the Senate in January, 1906, and thus followed in the footsteps of Root; coincidentally, each was thirty-five years of age when he assumed the office. At the limited annual salary, there was some financial sacrifice for Stimson, but the chance to satisfy his conscience outweighed all else. Social reform and business regulation were the issues of the day under Roosevelt, and Stimson, in office until 1909, vigorously implemented justice on what he later termed "the new front of great corporate transgression."

One of his younger assistants, who subsequently worked for a brief period in his firm, was Felix Frankfurter. Later a United States Supreme Court Justice, Frankfurter began his career on Stimson's U.S. Attorney's team. Stimson also recruited others of comparable distinction; many of the brightest of recent law school graduates eagerly deferred their clerkships to join his campaign against white collar crime and for social reform. Typically, throughout Stimson's career in public service and private practice, he drew to his side talented individuals of the finest moral character—attracted as they inevitably were by his own standards of performance and his charisma.

Though returning to private practice in the spring of 1909, Stimson had irreversibly entered the inner circles of Republican reform politics. Popular recognition of his meritorious performance in the U.S. Attorney's Office and the unsubtle nudgings of Root and Roosevelt led to his nomination as the Republican candidate for Governor of New York in the election of 1910. Campaigning was not his forte, and although the press praised his "truculent integrity," he was, to no one's surprise, soundly defeated. Only six months passed, however, before Root "came to town" to alert Stimson of President Taft's inclination to have him be Secretary of War. In May of 1911, he consulted with four people—his wife, his father, Theodore Roosevelt, and Bronson Winthrop—before deciding to accept Taft's offer. The Cabinet term lasted two years and his achievements as Secretary have been widely documented. In 1913, Stimson once again resumed his practice with Bronson Winthrop at 32 Liberty Street, but there were to be other interruptions—his election as a Republican delegate to the 1915 New York State Constitutional Convention, and subsequent military service as a colonel of artillery regiments in World War I. Only in 1918 did the lawyer who was to be known for the rest of his life as "Colonel Stimson" (he had, in fact, risen to the rank of Brigadier General) retrench for an extended tour of duty in his own firm.

The Firm Grows

The firm of Winthrop & Stimson had undergone perceptible changes since its new beginning in 1901. Early on, it had hired a young lawyer who was to become a mainstay of the firm's reputation over the ensu-

ing decades. Albert W. Putnam was a Columbia alumnus (A.B. 1897, LL.B. 1900) much honored for his scholastic achievements and football quarterbacking, and who had served with Stimson in the National Guard since 1898. He began work at 32 Liberty Street in 1904, became a member of the firm in 1908, and was, at the time of his death in 1955, its senior partner.

A few years later, George Roberts began what was to be another lifelong tenure with the firm. After observing his legal skills and personal strengths in practice, Stimson came to depend on Roberts for advice which helped ease the burdens of his legal and governmental responsibilities. Roberts succeeded Putnam as senior partner, and had been with the firm for 54 years at the time of his death in 1968. Roberts also marks the beginning of a small tradition in the firm, as he was the first of several subsequent partners whose academic background closely paralleled the Colonel's (Yale, 1905, and Harvard Law School, 1908).

Another was "Class Boy" Allen T. Klots, the first son to be born to a member of Stimson's Yale Class of 1888. Not only did Klots graduate with honors from Yale and Harvard, but he had enlisted in Stimson's (and Putnam's) National Guard unit and later served with the Colonel's artillery regiment in the first World War. From birth, Klots had been under Stimson's guiding eye and it was natural for him to join the firm, which he did in 1913, becoming a partner in 1921. Almost like a son to Stimson, Klots became his "indispensable eyes and ears" as Special Assistant to the Secretary of State. Later, as chief of staff for Stimson the trial lawyer, he took over from the Colonel some of the firm's most important cases.

Mr. Winthrop's Guidance

Other gifted young lawyers also helped the firm grow, though they stayed for shorter periods: Bronson Winthrop's brother Egerton, Austin W. Scott, and Stimson's cousin, Alfred Lee Loomis, to name but a few. For all of the incoming lawyers and clerks, Bronson Winthrop was an especially devoted and nurturing mentor. Unsparing of his time, he would cross-examine their thinking on cases and illuminate legal subtleties which motivated them to perfect their reasoning. Winthrop taught the firm's young lawyers that the amount of money involved in a case was unimportant as a guide to the amount of work it deserved. When Bronson Winthrop became interested in a legal discussion with a younger associate, he would rise, as would the other, and by slowly pointing his finger to underscore points he was making, would drive the other lawyer physically as well as mentally into a corner. In beautifully phrased English, his precise analysis, his searching questions and his restatements from memory of what the other lawyer had said were, finally, devastating. And yet, in the eyes of all, the exacting Winthrop remained the essence of courtliness and a source of the spirit of camaraderie that has always characterized the firm.

Preserving this spirit was no accident but an early and determined effort of both senior partners, though with the Colonel's long absences from the firm most of this stewardship fell to Winthrop. Never forgetting that one's life had to be a fuller experience than solely the practice of law, Winthrop established a policy that, with the exception of days when a case was in court, the firm's hours were 9:30 to 5:30 and work on Saturday was to be avoided (as Stimson had insisted when working for Root). Winthrop himself frequently invited the firm's young lawyers to weekend social gatherings at his house on Long Island. And on more than one occasion, he had to remind new law clerks that after business hours things other than the firm's cases were worthy of conversation.

Selectiveness and Success

Upon his return to 32 Liberty Street in 1913, Stimson was relieved to find that the old spirit persisted in the enlarged firm, that it was still a "fellowship of club members." Maintaining such a spirit involved certain sacrifices that Stimson and his partners willingly made. Talking with Justice Frankfurter later in his career, Stimson observed that the firm had established and stood by a standard of its own, and, consequently, "we don't get lots of business we could." He and Winthrop avoided cases which did not attract or intrigue them. Blunter means of refusing certain clients could also be used: Some gentlemen from the West Coast had presented a scheme to evade the anti-trust laws. After listening without response or reaction, Stimson was finally asked, "Well, Mr. Stimson, what do you think?" Stimson replied, "I think I can hear the sound of the jailhouse gates clanking behind you."

Early Litigation Work

For all the amenity marking the work ethic of the firm in its early years, there was no mean share of intensity and toil in the building of an extensive legal practice. One case, beginning in late 1913, all but consumed Henry Stimson for two of the three years it continued. It was estimated that he and George Roberts worked a total of "365 separate days" in a suit on behalf of the American Blower Company seeking to enjoin the monopolistic moves of a large competitor. The "unusual difficulty" of the case engaged the firm in "difficult questions of corporate law, a complete study of the blower industry, and an interpretation of the Sherman Act." Although the success of Stimson and Roberts in the lower court was overturned on appeal, the matter was ultimately resolved by the financial decline of the head of the larger company.

Stimson's return to full-time practice, from about 1918 to 1927, helped further establish the firm's reputation for exhaustive legal preparation and single-minded pursuit of a client's objectives. In the early twenties, there were three famous cases in point.

Assisted by George Roberts, Stimson served as counsel for the Cement Manufacturers Protective Association in a series of Sherman Act suits brought by the government. Establishing that restraint of trade was not the objective of the Association, Stimson made a credible case for the desirability of cooperative corporate activity and the integrity of his client's aim to achieve the most efficient industrial development, which is ultimately in the public interest. In one of his closing arguments, he asserted that the Sherman Act was not conceived "to condemn American business to ignorance." Stimson's team was eventually successful in overcoming the government's efforts to dissolve the Association.

But in 1922, before the cement case was finally won on appeal, a new Stimson-led group from the firm became engaged in the celebrated Southmayd Will case. A somewhat eccentric Miss Emily Southmayd had died in 1921 at the age of ninety-three, leaving behind a lately revised will which cut off funds to relatives who had been provided for in the original version. These nieces and nephews contested the new will on the grounds that she was "not of testamentary capacity" and had altered her initial bequest under "the undue influence of some person." Stimson, Allen Klots and several law clerks proceeded to substantiate the facts of the case, including Miss Southmayd's reason for changing the will—that, upon the earlier death of her brother, her nieces and nephews had been left quite sufficient sums of money and she thus preferred to bequeath the bulk of her fortune to her favorite charities. Stimson painted a dramatic but meticulously supported portrait of a quirky, yet competent elderly woman. With a compelling opening statement which ran 134 transcript pages, the strategically ordered presentation which followed was a success. Deliberating for only three hours, the jury upheld Miss Southmayd's mental capacity and will.

Toward the end of that same year, Stimson was asked to prepare a brief, supporting the interests of a committee of bituminous coal operators, to be submitted to the Presidentially-appointed United States Coal Commission. Severe, widespread strikes had caused coal shortages and exacerbated relations between the coal industry and labor. Deciding to take on the assignment with the understanding that his clients "wanted a conservative solution for all," Stimson assembled a

team which included Goldthwaite Dorr, who had worked for him in the U.S. Attorney's office, and Edgar Crossman and William C. Chanler, both young lawyers in the firm.

Working together through the spring of 1923, Stimson's task force developed the core for a set of briefs which were shortly thereafter presented to the Coal Commission. Decrying what he had perceived as the monopolistic and intimidating practices of the United Mine Workers Union, Stimson also called for new, cooperative policies "of a more progressive and constructive character" on the part of his client, the coal industry, which he had come to see as being composed of "small combative units." Although the Coal Commission subsequently rejected several of Stimson's more controversial proposals, a number of his suggestions were incorporated in the Commission's report to the President.

Early Corporate Work

Throughout the 1920s, the firm of Winthrop & Stimson also became active in areas other than Henry Stimson's specialty of litigation. George Roberts became the unofficial leader of the firm's burgeoning corporate department, spearheading a prosperous business involving security issues and utility financing. Bonbright and Company, a leader in utility financing at the time, was a primary client of the firm. Highly active in the underwriting of giant organizations, they assisted the formation of American Superpower, Italian Superpower, United Corporation (created in 1929 by Bonbright and J. P. Morgan), and the Commonwealth & Southern and Niagara Hudson utility systems. At that time, separate legal representation of the various parties to a securities underwriting was not the practice, and the corporate lawyers for the underwriter frequently handled the entire transaction for the interests of all involved. Much of the actual work for the firm on behalf of Bonbright and other underwriters consisted of preparing prospectuses. Contrasted with the fifty to one-hundred page prospectuses of today, these early documents were circulars of a mere four pages or so. But because of their conciseness, they required intensive work.

Newer members of the firm actively engaged with George Roberts in corporate work included Hayden Smith who joined the office in September of 1926 and Allison Choate who came in September of 1930. The close association of the firm's lawyers with Bonbright and Company led to Mr. Roberts becoming a partner in that company while remaining in the law firm. And Alfred L. Loomis, Stimson's cousin and manager of his personal finances, eventually left the firm to help manage Bonbright.

. . . Putnam & Roberts

By 1927 Winthrop & Stimson had become one of the leading law firms in New York. It was also about this time that Henry L. Stimson again departed from 32 Liberty Street for new public service assignments—first as President Coolidge's special peace envoy to Nicaragua (where he negotiated the Treaty of Tipitapa which ended that country's civil war) and in 1928 as Governor General of the Philippine Islands. Several incomplete projects made him regret leaving the Islands when, in 1929, President Hoover recalled him to Washington to appoint him Secretary of State, a position he held until the end of Hoover's administration in 1933.

With the imminence of the Colonel's leave of absence, the firm was entering a new phase of activity and growth. Changes were made visible in 1927 with the name of the firm becoming Winthrop, Stimson, Putnam & Roberts, in recognition of the major contributions of the latter two early partners. Albert W. Putnam was in many ways the firm's model generalist—an all-around lawyer who drafted corporate indentures, handled trusts and estates, and occasionally, when walking down the corridor with briefcase in hand, was heard to remark, "Well, I've got an argument in the Court of Appeals tomorrow." Becoming the firm's first managing partner, Putnam was, as a later partner, Merrell E. Clark, put it, "plainly a fellow who could play all the strings." George Roberts was a gifted generalist, too, but came to be considered one of the great corporate lawyers of his era. Deeply enmeshed in the reorganization of the railroads, the reputation he built for his imaginative and efficient handling of complex corporate

Albert W. Putnam

matters tended to overshadow his substantial activity as a litigator—both as Stimson's assistant and in his own cases. Roberts once said that his only true professional disappointment was that he never argued a case before the United States Supreme Court.

Changes and New Growth

Winthrop, Stimson, Putnam & Roberts had, by the end of the 1920s, assembled a law team which was highly versatile, seasoned and nationally recognized for its accomplishments. But with continuing expansion there came an inevitable partitioning of responsibilities. The era of the generalist—the lawyer who could competently handle almost any problem presented—was coming to an end. Changes in society, in government and in the management of business would mean that lawyers would have to invest more time in mastering more limited areas of the law. Specialization in the work of individual lawyers would also be reflected by division of the law firm into such departments as corporate, litigation, tax and trusts and estates. These divisions were essential in order to preserve efficiency and quality in a different legal environment, but their appearance marked the end of an age in the practice of law. Thereafter, a spirit of collaboration and common enterprise would have to result from lawyers with different skills learning to coordinate them for a common goal. The way a law firm would manage itself and achieve the requisite coordination without a loss of the individuals within it would determine the personality of the firm and its attractiveness as a place to work.

Although the growth of the firm during its first two decades under Winthrop and Stimson presented increasing challenges in terms of both internal management and organization of the practice, that growth had its personal as well as economic attractions. Increasing size meant an increasing need to enlist and train able young lawyers, and the firm found the process of recruitment and development to be invigorating. Several of those young law clerks were to practice law in lifelong association with the partnership of Bronson Winthrop, Henry Stimson, Albert Putnam and George Roberts, each of whom had also started his career as a clerk in the same office. Other associ-

ates would leave the firm to achieve distinction in the academic world (Austin Scott and Felix Frankfurter at Harvard and Willis Reese at Columbia), or to become general counsel to or executives of major corporations. But even those lawyers leaving the firm maintained professional and personal relationships with their former colleagues. Such continuity and mutual respect generates a working rapport which is both personally satisfying and professionally beneficial. Despite the yearly addition of new names and faces, the firm at 32 Liberty Street remained, as in the beginning, a fellowship of lawyers.

Practice In A Regulatory Era

President Coolidge's belief that "the business of America is business" established the economic mood of the 1920s. Removal of many of the controls of earlier reformist policies prompted a surge of corporate activity. Business mergers and acquisitions were rampant and public utilities were pyramided into colossal holding companies. Additional boosts from new protectionist tariffs helped to produce unprecedented prosperity. Labor, too, shared in the economic growth, with better pay and improved conditions for workers.

Into the Thirties

By the end of the 1920s, Winthrop, Stimson, Putnam & Roberts had, in one way or another, participated in every major aspect of the decade's sanguine socio-economic experience. And after 1929, when the fortunes of America were suddenly reversed, the services of the firm were no less in demand. Of course, the nature of the practice changed. The Depression of the early 1930s generated a large amount of bankruptcy work, and lawyers in the office working in this area increasingly dealt with problems of corporate clients.

One prominent client was the Irving Trust Company, which had become the statutory receiver for all New York bankruptcies. The firm also represented the trustee in bankruptcy of Associated Tele-

phone Utilities, which became the present General Telephone and Electronics Corporation. Disastrous bank failures created additional demand for the firm's services and many lawyers from the office assisted in bank reorganizations. An often-told story involved Hamilton Hadley (who worked closely with George Roberts) in a case where directors of a bank would not agree to a desirable plan of reorganization. Hadley and the Comptroller of the Currency managed to get the entire Board of Directors into one of those old-fashioned elevator cars, closed the grilled door, and said, "Look, boys, that's what the jail will look like if you don't give your approval." It was quickly forthcoming.

With the economy worsening due to the severest drought in the nation's history, Herbert Hoover attempted to bring some economic improvement by bolstering business activity. In January of 1932, the Congress approved Hoover's request to create a Reconstruction Finance Corporation with a two billion dollar fund for making emergency loans to banks, life insurance companies, savings institutions, railroads and, later, industrial enterprises. George Roberts was called upon to help organize the RFC, and he and Hamilton Hadley subsequently represented it in a number of railroad financings.

In the meantime, other members of the firm were working closely with the Hoover administration on other than domestic fronts. Secretary Stimson, with Allen Klots as Special Assistant, was shouldering the heavy responsibilities of the Department of State. Events in 1931 in North China had been of particular concern to him. The Japanese invasion of Manchuria provoked his strong condemnations and led to an early warning of World War II—Japan's withdrawal from the League of Nations.

Although such programs as the Reconstruction Finance Corporation had exerted a steadying influence on the economy, banks and businesses continued to tumble, over twelve million wage earners found themselves out of jobs, and the number of homeless was increasing. There was a growing, popular mandate for social reform. Riding the crest of this discontent into a presidential election, Franklin Delano Roosevelt defeated Herbert Hoover and, in 1933, initiated the programs of the New Deal.

Consequences of Government Regulation

Once again there were changes in the types of business occupying the members of Winthrop, Stimson, Putnam & Roberts. Passage of the Securities Act of 1933 and the Securities Exchange Act of 1934 introduced financial regulations intended to renew investor confidence by correcting the corporate abuses and investment manipulations that earlier had undermined the entire financial system. Lawyers from the firm became involved in developing new techniques to satisfy the new Federal requirements, and the office filed one of the first utility registration statements. Other acts of the new administration provoked wide-ranging litigation. The TVA public works program caused such consternation in the private sector that its every controversial implication had to be worked out in court, requiring years of legal effort by Winthrop, Stimson, among other firms.

Hydroelectric power generation in the Tennessee River Basin was seen by the New Dealers as a testing ground for regional centralization of energy resources and a way to undercut the rates for electricity being charged by private utilities. Established in May of 1933, the Federally-sponsored Tennessee Valley Authority undertook a massive program of construction, engineering and education to prevent floods, improve navigation and supply electricity to localities and private power companies at low cost. But the government had not merely gone into a local business; it was using its power rates as a "yardstick" against which to measure the rates of utility companies all over the country. Not surprisingly, the utilities industry resented this direct government competition, claiming that the TVA enjoyed special advantages and that they were being unfairly forced to reduce their rates.

The firm was called on to participate in a 19-company suit on behalf of Tennessee Electric Power Company and other subsidiaries of the Commonwealth & Southern Corporation, a holding company with operating concerns in Tennessee and ten other states. Challenging the constitutionality of the TVA, which the business world saw as "the entering wedge" for the "government ownership of all essential industries," the firm's case was lost on the ground that the plaintiffs lacked the right to sue.

Prior to the lawsuit the firm was asked to render an opinion on the constitutionality of the TVA legislation. The firm wrote that in its opinion, based upon existing precedent, the TVA was unconstitutional. Later, the Supreme Court held otherwise, but it has continued to be a jocular article of faith at Winthrop, Stimson that the Supreme Court was wrong. Forty years later, the TVA asked the firm to represent it, together with other electrical utilities, in monitoring some pending antitrust litigation. Allison Choate, who had played a major role in writing the prior opinion, commented, "That's all right, so long as we don't have to concede that they are constitutional."

The firm was again called upon by the Commonwealth & Southern Corporation to file suit to upset the Public Utility Holding Company Act of 1935. Henry L. Stimson, who had recently returned to law practice, served as lead counsel. The Act, however, was sustained. Eventually, Stimson was retained as counsel for Wendell Willkie, president of Commonwealth & Southern, in the negotiations for the sale of his Tennessee Electric Power Company to the TVA. The matter was not closed until 1939 when the TVA and associated municipalities and rural cooperatives agreed to purchase the Tennessee properties for a price of $78,600,000. The sale involved Stimson and other members of the firm in complex regulatory proceedings and related litigation.

In light of the Public Utility Holding Act and the firm's expertise in handling the Commonwealth & Southern interests, much of the office's work for the next ten years involved the dissolution of the major utility holding company systems. In addition, the Trust Indenture Act of 1939 required the development of new types of financial documents to satisfy its standards. George Roberts and, later, Allison Choate brought added recognition of the firm's leadership in this area by serving as chairmen of the public utilities section of the American Bar Association.

Trying Cases

The economic consequences of the Depression had necessitated a concentration on corporate law, although the firm remained committed to its founding principles of general practice as espoused by Elihu Root, Bronson Winthrop and Henry Stimson. Litigation in a variety of areas did balance the picture, especially with the return from the State Department of the firm's chief trial lawyer.

One of Stimson's first cases after his service in the Hoover administration involved a dispute between various factions in Spain as to who was entitled to a shipment of silver. Although the case is significant for the points of international law and domestic procedure which it established, it was exciting to the lawyers involved for the unique opportunity for adventure which it presented. While one vessel carrying the silver was en route to New York, Stimson and Hayden Smith who was assisting him, acting on behalf of their client the Federal Reserve Bank of New York, and representatives of the United States Assay Office, the named consignee of the silver, learned that counsel for the opposing side had prepared an order of attachment against the silver which it intended to serve when the ship reached port. Resorting to Yankee cunning, Smith and the government representatives persuaded the U. S. Coast Guard to assist them in taking delivery of the silver at sea. Armed with deck shoes and a copy of the bill of lading, they accompanied the Coast Guard as it stopped the incoming ship and personally supervised the transfer of cargo to the cutter.

When opposing counsel arrived at the dock with their writ, they found nothing to attach.

After the Spanish silver case, Stimson became engaged in a challenging will contest, and few courtroom events ever upset him as much as an incident which occurred during that case. The Surrogate before whom the case was being tried had extended Stimson the courtesy of offering him a small office in which he could interview witnesses. The main witness for Stimson's clients was the manager of a hotel who had been privy to certain highly relevant conversations. After Stimson had examined the man on direct testimony, the cross-examination produced the question, "Did you ever discuss the testimony you are giving in this courtroom with any other person?" Answering "No," the witness was then asked, "What were you doing in that small room with Mr. Stimson?"

But the embarrassment to Stimson from this mishap became anecdotal in comparison with a subsequent case which he remembered as the most arduous labor of his legal career.

The Blaustein Case

Blaustein versus Pan American Petroleum & Transport Company began for Stimson in 1936, when he was 69 years old, but did not come to trial for almost four years. During the intervening period, Stimson's strength was utterly sapped by the demands of preparing the case, even with the assistance of Allen Klots and support from all the other members of the firm's litigation department. When the case finally did come to trial, its legal complexities and factual disputes consumed seventy days in the courtroom and filled 10,631 pages of stenographers' notes; over 1,000 exhibits were introduced; 2,686 printed pages of pre-trial examinations were received by the court; and 2,900 pages of printed briefs were submitted.

The case was brought as a shareholders' suit by the father and son, Louis and Jacob Blaustein, founders of the American Oil Company which was then a marketing organization (famous for its trademark, AMOCO) dependent on the big oil companies for many of its operations. It had been the plan of the Blausteins to become part owners of

what could be described as an integrated oil company, which would produce, transport and market petroleum products. With that in view, they sold their stock in the American Oil Company to the Pan American Petroleum & Transport Company, of which they became minority shareholders while Standard Oil of Indiana became the majority shareholder. An elaborate contract was entered into setting forth the prospects and future plans for the company. No sooner was the ink dry and the sale consummated than Standard Oil of Indiana found reasons not to carry out any part of the contract. Oil production and transportation would not be engaged in by Pan American Petroleum, but rather by subsidiaries of Standard Oil of Indiana, and refining would be done by subsidiaries of Standard Oil of New Jersey. The Blausteins retained Stimson, and he assembled the team of Allen Klots, Kenneth Spence (who had been one of his assistants as United States Attorney and had become head of the firm called Spence, Hotchkiss, Walser and Angell) and several young men in the Winthrop, Stimson and Spence offices, including Charles P. Noyes (later Minister to the United Nations), Willis L. M. Reese (later Professor at Columbia Law School) and Peter H. Kaminer. On the other side of the case was the towering figure of John W. Davis, counsel for Standard Oil of New Jersey, who had been the Democratic candidate for President in 1924. The trial judge for the case was Justice Rosenman, one of Franklin D. Roosevelt's closest advisors and speechwriters. The case took six months to try.

Finally, in 1940, the plaintiffs prevailed, realizing what was undoubtedly the largest common law verdict up to that time. Standard Oil of Indiana was held to be a constructive trustee for the oil properties it had acquired after the signing of the contract with the Blaustein's and had to account for profits made from the dealings with Pan American—a sum then estimated to exceed $250 million. The decree, however, was reversed in 1944 by a sharply divided appellate court. But prior to that, while Stimson was serving as Secretary of War and the case was winding its way through the courts, the defendants, being nervous about the outcome of the case and the interest accruing on the judgment, did quite a few of the things which Justice Rosenman held should have been done after the original contract was signed. When the matter was finally completed, the value of the Blau-

stein's stock in Pan American, which had initially been $17 million, had increased enormously, and Jacob Blaustein was installed as the Chairman of Standard Oil of Indiana.

In the course of the grinding, protracted trial, Stimson found that his own energies were waning. Writing at one point to Felix Frankfurter, he reflected that he had become "a slow old man and that trial work is out for me." Insomnia, ill health and anxieties about international developments burdened him to the point that early in 1940 he asked Allen Klots to take full charge of the case. For the last four weeks in court he sat silently beside his old friend and protegé, advising only upon Klots' request.

In his diary, Stimson wrote of the Blaustein case: "It is by far the longest and most complex and difficult case I have ever participated in, and, coming to me at the age of seventy-two, it has really been far too heavy for my strength. Someday, I hope soon, it will be over and then I shall feel like a free man again." His relief and resilience after the initial Blaustein decision were, in fact, evident enough to be noted by friends. Within a few weeks of the trial's end, Stimson was hearing reports that Justice Frankfurter and others had interested President Roosevelt in appointing him Secretary of War. At first Stimson dismissed the "ridiculous idea" but as he discussed it with his wife, George Roberts, Bronson Winthrop and other close colleagues, he determined that he would accept the post if it were offered. Shortly thereafter, Stimson received a call from the President in his office at 32 Liberty Street. It was a call which put him in charge of the United States Army for the next five years and, for all practical purposes, ended his career in the practice of law. "No man," Stimson later wrote, "... could have asked more of fortune in a time of national peril."

A Lineage of Litigators

Over the years, the firm of Winthrop, Stimson, Putnam & Roberts had become accustomed to the recurrent departures of its founding litigation partner. Conveniently, the laborious Blaustein case well prepared Allen Klots for new responsibilities in succeeding Stimson as senior

member of the litigation department. Among Klots' subsequent distinctions was his service as President of the Association of the Bar of the City of New York. (Earlier, this position had been achieved by Elihu Root—though not with the firm at the time—and Henry L. Stimson, while recently another litigation partner, Merrell E. Clark, was elected.) While President, Klots advanced the public interest by bringing to bear the influence of the Association of the Bar in the cause of modernizing the New York City court system. Recognizing Klots' contribution, New York City's Mayor Wagner appointed him chairman of a Committee on the Administration of Justice.

With the onset of World War II many of the firm's lawyers found themselves in government service of one sort or another. While the Blaustein appeals preoccupied most of the litigation lawyers remaining in the office during the ensuing years, Klots was occasionally called to arms, so to speak, by Secretary Stimson who recruited him to Washington for assistance in such matters as his 1942 Pearl Harbor investigation.

It was after the war that the office became involved in a case that Allen Klots very much enjoyed. Bristol-Myers Company retained the firm to defend it in what became known as the "particulate matter" case. Pharmaceutical solutions which Bristol-Myers produced for injection had been deemed by the Food and Drug Administration to contain an unreasonable quantity of undissolved solid particles. In 1948 the government brought proceedings to seize shipments of these solutions.

The case came to trial in Syracuse, New York, in early 1949 with the principal witness for the government being a Dr. Wylie, who was responsible at the Food and Drug Administration for testing for "particulate matter" in such solutions. His testimony affirmed that he performed his tests by observing vials and ampules of solutions under certain conditions of light to see if they contained more granules than they should. Assisted by Peter Kaminer and Merrell Clark, Klots employed a strategy which required Dr. Wylie to repeat his tests on some of the same vials and ampules under laboratory conditions in the courtroom. The vials and ampules had been identified the night before in a code known only to counsel. Dr. Wylie passed some of those vials he had previously rejected while rejecting some lots he had

accepted in his original test. At the close of Government's case, the Judge dismissed the action.

Klots also provided counsel in quite a number of shareholders' suits, banking and general corporate cases. He was again the chief lawyer for Bristol-Myers in a celebrated series of contests which surpassed even the Blaustein affair in complexity, longevity and the number of legal questions raised. Known familiarly as the "tetracycline case," the initial litigation involved three drug companies claiming rights in connection with the development of a broad spectrum antibiotic. Subsequent to the settlement among the drug companies, however, the government brought suit against them for alleged price fixing. Beginning in 1957, Messrs. Klots, Kaminer and Clark, representing Bristol-Myers, faced government and civil plaintiffs in related suits which remained in court through the 1960s and into the early 1970s.

In 1961 the government brought a criminal case against the drug companies based on the same facts on which it had not prevailed in civil proceedings before the Federal Trade Commission. When the case eventually came to trial, Merrell Clark had become the chief counsel for Bristol-Myers in the action. The government obtained a jury verdict but it was overturned on appeal; eventually, when the case was retried, the defendants prevailed. In the meantime, not only the government but representatives of consumers, hospitals, various states and other interests had commenced civil actions against the drug companies—there being, ultimately, more than 150 separate cases. A major settlement was eventually brought about and approved by the court. Yet even this agreement did not end the litigation. Only recently, one civil case brought by the government in which a mistrial had been declared after two years of trial in Minneapolis was commenced again in Philadelphia. In 1980, there are also seven cases brought by foreign governments yet to be disposed of.

From Electric Power to Salad Oil

Another partner, William C. Chanler, had been the acting senior in the litigation department while Stimson was Secretary of State and Klots

was with him in Washington as Special Assistant, but Chanler left the firm after 1933 to become the Corporation Counsel of New York City under Mayor Fiorello LaGuardia. Returning to the firm after the war, Chanler handled a number of the office's most important cases. One of them was the Arthur C. James litigation in which Chanler's arguments established the case as a leading decision with respect to the duties and disclosures required of fiduciaries and their attorneys in circumstances involving potential conflicts of interest.

At about the same time, in the "Sierra Case," Chanler contested an interpretation of the Federal Power Act which seemed to permit a supplier of power to abrogate a contract and raise its rates to a new level by simply obtaining Federal Power Commission approval of higher rate schedules. As a result of the firm's victory in the U.S. Supreme Court, there is now inserted into almost all contracts for electric power what is called a "Sierra Clause," allowing a supplier of power to file for rates higher than those contracted and, if federally approved, to put them into effect.

Subsequently, Chanler again defended the provisions of a contract in representing the Tampa Electric Company, plaintiff in a suit against the Nashville Coal Company. He obtained another notable victory in the U.S. Supreme Court, which sustained his position in what has often been cited as a landmark decision involving so-called "requirements contracts" and the antitrust laws.

A substantial part of Chanler's professional time in the early 1950s was also devoted to the firm's pro bono defense of William Walter Remington, one of the victims of the McCarthy era. Indicted for perjury for denying before a grand jury that he had ever been a member of the Communist Party, Remington was prosecuted by U.S. Attorney Saypol (later a New York State Supreme Court Justice) and his assistant Roy Cohn. Initially, Remington was convicted, but Chanler's appeal on his behalf was successful. In reversing the conviction, the judges of the Court of Appeals delivered a scathing opinion of the means used by Saypol and Cohn in their prosecution and of the improprieties of the trial. While the firm was criticized by some for undertaking the defense of an accused Communist, it never hesitated to see the case through. (The subsequent history of Remington was a mod-

ern tragedy; he was re-tried on a different charge, convicted and murdered while in jail.)

With the retirement from active practice of William C. Chanler and the death of Allen Klots, in the 1960s chief litigation responsibilities fell on the shoulders of other senior partners. Peter Kaminer, who had worked closely with Stimson and Klots since before the war, assumed charge of what was to become the firm's most important case during the 1960s, involving one of the most celebrated commercial scandals of that period. Known as the "Salad Oil Case", the fraud of a Mr. De Angelis set off a chain reaction of law suits which embroiled the American Express Company and a battalion of lawyers in court battles for over four years.

In a recent interview Peter Kaminer recounted his experience with the case:

"Winthrop, Stimson was called in on the day President Kennedy was assassinated. I had just risen before the Federal Trade Commission to commence argument in the "Tetracycline Case," second go-around, when the dreadful news was brought in by a messenger, and we immediately submitted and returned to New York. Meeting me in my office was the then head of the law firm which was general counsel for American Express. He had heard that we were returning and came to tell us that there was a problem with a subsidiary of American Express which was supposed to be guarding a large amount of so-called salad oil. The depositor of the oil was a man called De Angelis and that day it had come to the attention of American Express that he had filed for bankruptcy. I discussed the matter with George Roberts and Jim Husted, then our managing partner. It was decided that a team of two assistant litigators and perhaps a young corporate partner would be made available to work with me—little could we have then guessed that eventually a small army of forty lawyers would have to participate in the effort.

"At the outset I had never seen a warehouse receipt and spent an entire evening trying to find out what that was. The next morning I was asked to meet with the Board of Directors of American Express where I was confronted with the question of whether the parent company could guarantee the debts of its subsidiary. When asked how much money was involved, it appeared that this was as yet unknown.

The amount turned out to be about $150 million in warehouse receipts which either the American Express subsidiary had issued without there being any underlying oil or which De Angelis had forged. De Angelis had devised various schemes to deceive the employees of the subsidiary into believing that the enormous storage tanks which were many stories high were filled with salad oil. In fact, some of the tanks were filled with gasoline and were not even rented to De Angelis. In any case, he wound up going to jail for a long period of time.

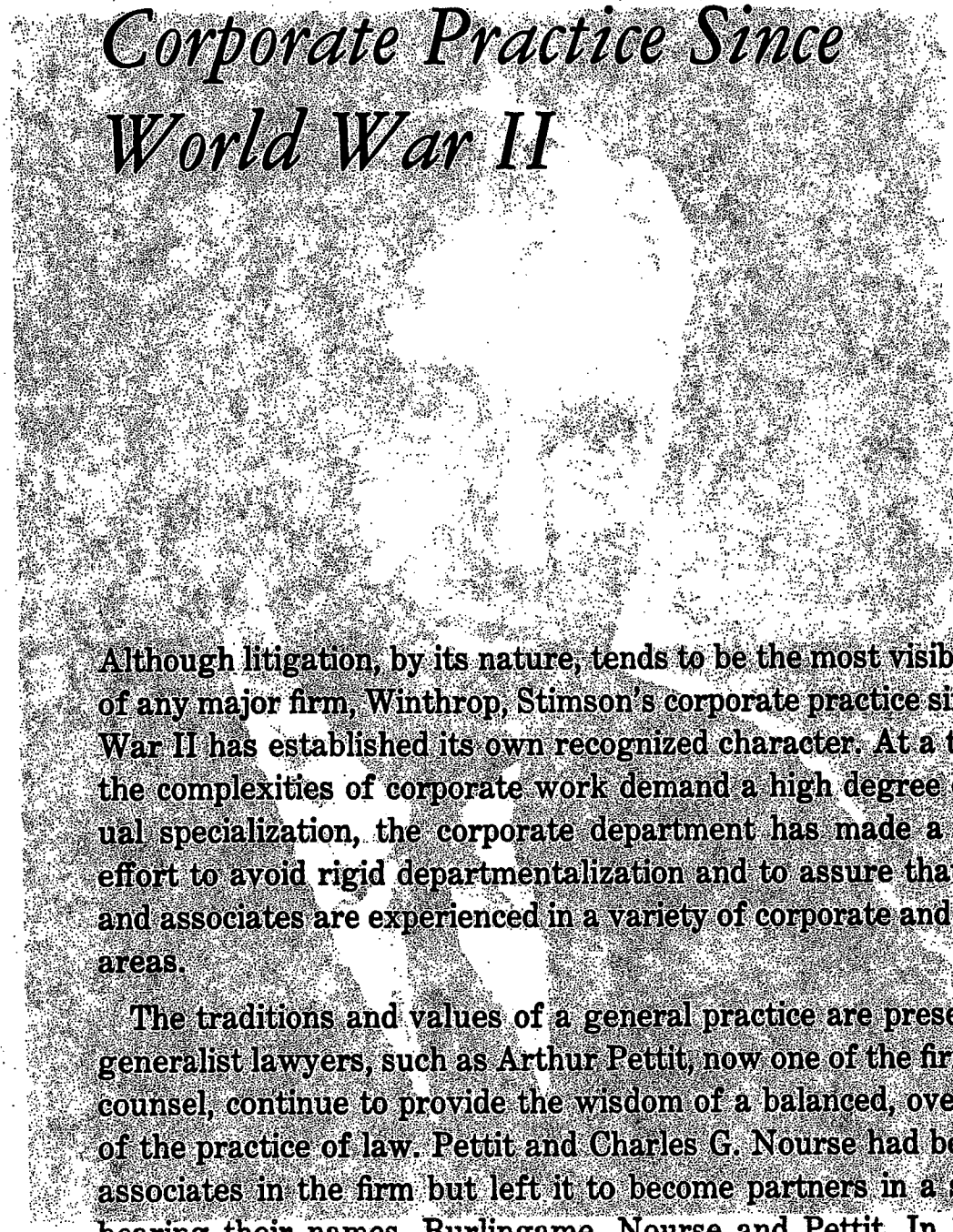
"The difficulty for American Express was that its entire business depended on its credit. If people lost faith in its travelers checks or in its subsidiary's banking operations and cashed in the checks and withdrew their deposits, the company would have foundered. The assignment we had was on the one hand to win any lawsuits that there might be, but much more important, to prevent major lawsuits from being brought. Lawsuits might have been commenced all over the world because of the nature of the transactions in which warehouse receipts were used. Several financial houses went under as a result of the De Angelis swindle. It was estimated that claims in the neighborhood of half a billion dollars might have been asserted against American Express Company, a sum vastly exceeding its then net worth. The mere bringing of such suits would undoubtedly have caused a run on the company.

"We were finally successful in bringing about a global settlement but it took from 1963 to 1967 because of the conflicting interests of the claimants and because shareholders of American Express sought to prevent it from settling. The shareholders' actions were based on the premise that American Express was not liable for the debts of its subsidiaries so that a settlement would in effect constitute a gift to its creditors. The shareholder cases were ultimately won by the company, literally only a few days before the deadline set by the claimants for payment, and the settlement was consummated. There remained, however, a large number of cases brought by insurance companies, all of which were later won on the basis of the settlement with the warehouse receipt holders."

Although few legal matters are as extensive and as publicized as the "Salad Oil Case", public attention has been drawn to the firm in other cases. Prominent examples have occurred when it served as

counsel for the trustee in reorganization after the McKesson and Robbins fraud and as counsel for the trustee in bankruptcy of the "Swedish Match King" Kreuger. Another matter of public interest involved the successful defense of GAF Corporation in a landmark case which broadened the meaning of the word "acquisition" in the context of the tender offer provisions of the Securities Exchange Act of 1934. As a result of its experience in complex and sensitive litigation, the firm has also been retained to represent other law firms which have required outside counsel.

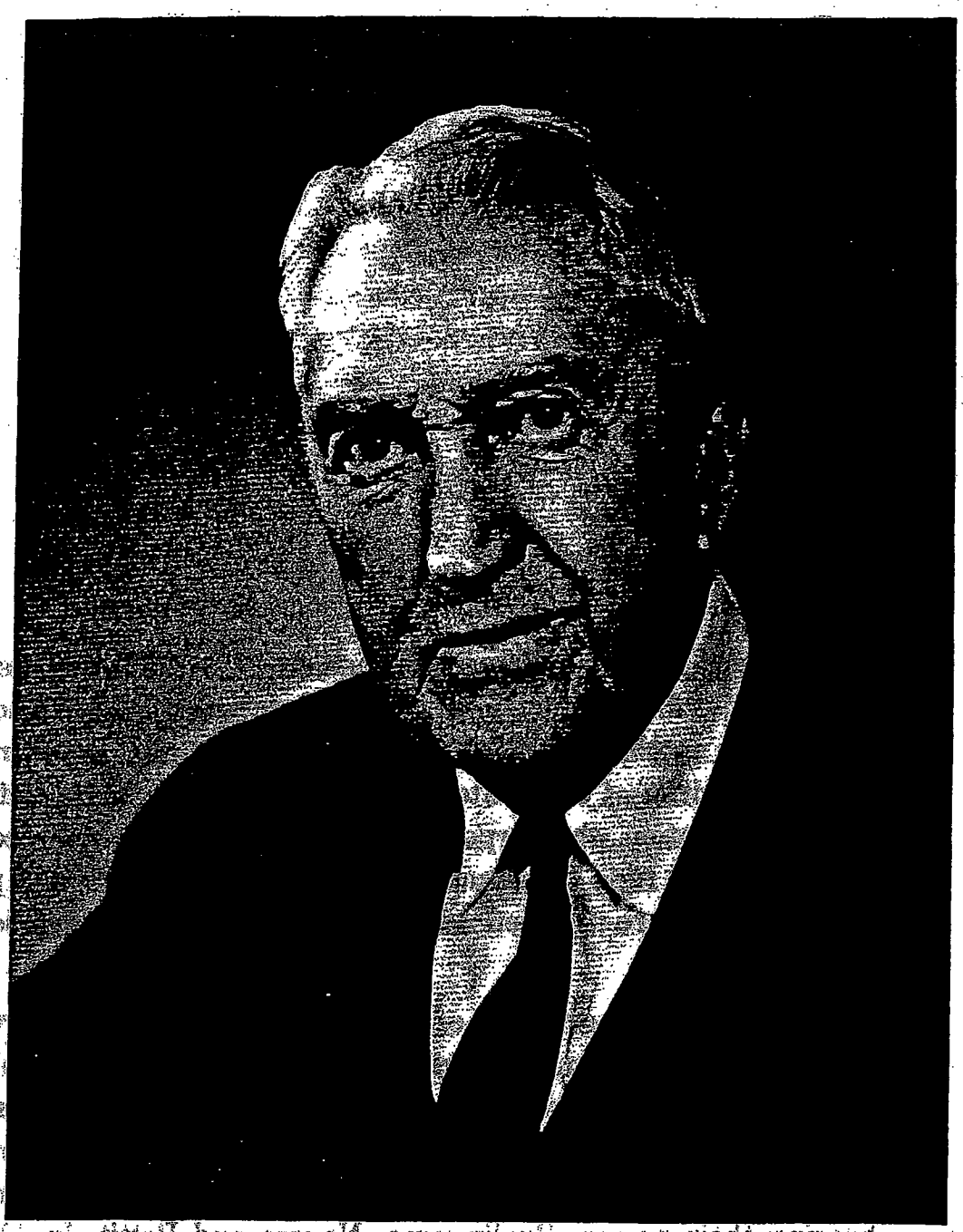
Corporate Practice Since World War II



Although litigation, by its nature, tends to be the most visible activity of any major firm, Winthrop, Stimson's corporate practice since World War II has established its own recognized character. At a time when the complexities of corporate work demand a high degree of individual specialization, the corporate department has made a concerted effort to avoid rigid departmentalization and to assure that partners and associates are experienced in a variety of corporate and securities areas.

The traditions and values of a general practice are preserved, and generalist lawyers, such as Arthur Pettit, now one of the firm's senior counsel, continue to provide the wisdom of a balanced, overall grasp of the practice of law. Pettit and Charles G. Nourse had been young associates in the firm but left it to become partners in a small firm bearing their names, Burlingame, Nourse and Pettit. In 1942 their partnership was merged with Winthrop, Stimson, Putnam & Roberts, and a number of companies which they had served as counsel, including Bristol-Myers Company and The Singer Company, became general clients of the firm. A versatile lawyer, Pettit worked in the corporate area but was also a respected will draftsman and trial counsel.

For many decades the corporate practice of the firm was led by George Roberts. Roberts was a man of exceptional physical and mental vigor which he retained until his death at age 84. He was a fine



George Roberts

tennis player, and played regularly until his 82nd year. He died of a heart attack while swimming in the Atlantic Ocean at East Hampton.

Roberts was a superb conversationalist. He enjoyed talk and debate, and had that rare ability to sum up a position in a powerful pronouncement that seemed to permit no rejoinder. When Merrell Clark was applying for admission to the bar, he asked if Roberts could make an affidavit as to his character, which the rules required be made by someone who knew personally a member of the Character Committee. Roberts said that years ago he had known one member of the Committee but he could not be sure that the member would recall who he was. Clark, to be on the safe side, called the committee member and asked if he remembered George Roberts. The committee member replied with a bellow, "George Roberts! How could you forget him!"

Utility Financing

In the late 1940s, a resurgent peacetime economy brought a tremendous flood of financing activity to the corporate department, particularly in the utility area, where historically it had always been strong. A rapidly expanding need for electric, gas and telephone facilities after the war required funds on an unprecedented scale, and the firm represented either the issuing company or the underwriters in many billions of dollars of financings. Structural changes in the industry were also taking place, and the expertise of the firm's utility lawyers, led by Hayden N. Smith, Allison Choate and Edwin P. Stevens as Roberts' successors in Public Utility Holding Company Act matters, involved the firm in a good many of these reorganizations.

In the more recent past, representation of the firm's public utility and investment banking clients has caused the firm to become active in the area of tax-exempt bonds. Under applicable federal tax law, the interest on bonds issued by public bodies is generally tax-exempt if the proceeds are to be used to pay the cost of pollution control equipment. Environmental laws have forced utilities to expend huge sums for pollution control equipment, and the interest rate savings in using such bonds has made them a very attractive source of financing. Ac-

tivity in the tax-exempt area has expanded from pollution control financings to include industrial development bonds, housing bonds and tax-exempt financings for commercial banks, and the firm has become formally recognized as bond counsel.

The requirements of public utilities and other capital intensive industries, such as airlines and oil companies, have spawned other innovative financing techniques in which the firm has participated. Leveraged leasing techniques have been used to finance the development of coal mines, airplanes, oil tankers, refineries and drilling platforms and other heavy equipment. Nuclear fuel for utility plants has been financed through trust arrangements under which the trust borrows the necessary funds to pay the cost of the nuclear material, and the utility leases or purchases the nuclear material from the trust in the future at a price designed to provide sufficient funds to pay the principal of and interest on the borrowed funds. The trust financing technique has also been used to finance construction of large scale electric generating plants. With the increased size of such plants, many are now joint projects of several utilities, and the firm has been involved in structuring project financings for such facilities so that the sales of power to the project's sponsors are used to pay for the facility over its useful life. Recently, the firm has also been engaged by its investment banking clients in the recapitalization of several utilities through exchange offers of new securities for outstanding securities.

Banking

The post-war period has also seen a substantial expansion of the firm's work in the area of banking, to the extent that it has now become virtually a separate area within the corporate department. The firm's banking clients include the Irving Trust Company, American Express International Banking Corporation and a variety of other major domestic and foreign institutions.

Banking practice has two principal components, both of which have grown in volume and complexity during the last two decades: the structuring, negotiation and documentation of specific transactions, and advising with respect to applicable laws, government regulations

and related policy questions. For many years, banking practice from the lawyer's point of view consisted principally of relatively straightforward transactions such as line of credit commitments, medium term loans and revolving credit agreements. But starting in the 1960's, bankers became much more innovative in the types of financing which they would provide and began to compete vigorously with a wider range of financial institutions and intermediaries. In addition, in the United States, amendments to the Bank Holding Company Act permitted affiliates of commercial banks to engage in an even wider range of transactions. Consequently, the tasks of the bank lawyer became more complex and diverse. New types of transactions involved such devices as: equipment leasing and leveraged lease financing; providing bid bonds, performance bonds and down payment guaranties in connection with construction projects of corporate customers, particularly in the Middle East; note forfeiting; financing takeovers and leveraged buy-outs; and the factoring and other financing of accounts receivable and inventory.

At the same time, there was a parallel expansion in the regulatory aspects of banking practice. Such legislation as the Bank Holding Company Act, the Credit Control Act of 1969 and the International Banking Act of 1978 and the regulations adopted under those statutes created entirely new legal areas in which bank lawyers would advise. In addition, during the late 1960's and early 1970's a rivalry among the Federal Reserve, the Comptroller of the Currency and certain state authorities produced dramatic changes in the regulatory environment which required constant client monitoring. The effect of these changes was to increase levels of activity and time pressures in an area of practice which traditionally had been far more leisurely.

With a rapid and substantial growth in the size of commercial banks and in the range of transactions in which they engaged, there came an inevitable increase in the number of unsuccessful transactions. The consequence for the banking department has been a corresponding increase in activity involving bankruptcies, corporate reorganizations and loan restructurings or "workouts." Charles Vejvoda and the other banking partners have found that expertise in the old Bankruptcy Act and the new Bankruptcy Code has affected the structuring of new transactions as well as the workout of old. Although

most problem loans involve smaller companies, the firm has also been called on to advise its banking clients with respect to financial difficulties faced by various well-known public and private entities. For example, it has been actively engaged by the recent fiscal crisis of New York City and has participated in the efforts to seek solutions to the financial difficulties of such major private borrowers as Franklin National Bank, the Penn Central Railroad and Chrysler Corporation. The international arena has also witnessed the firm's involvement in major debt restructurings and insolvencies, ranging from the highly successful refinancing of indebtedness of Pertamina, Indonesia's state-owned oil company, by the Indonesian Ministry of Finance and Central Bank, to Bankhaus I.M. Herstatt, a German bank which held significant assets in the United States at the time of its insolvency.

The process of creation is as satisfying in the law as in other endeavors, and the firm has enjoyed its opportunity to assist in the formation of Irving Bank Corporation, a major bank holding company. Established in 1966 by Irving Trust Company and the Merchants National Bank & Trust Company of Syracuse, the company had by 1980 acquired over 20 banks located throughout New York State. The firm was involved with each of those acquisitions, as well as a series of securities issues sold to the public to raise capital funds for the holding company system. The firm has also been heavily involved in the acquisition of foreign banks by U.S. institutions and the establishment of joint ventures outside the United States, having advised with respect to transactions in such diverse markets as England, France, Germany, Italy, Egypt, Lebanon, Australia, the Philippines, Hong Kong, Brazil and Mexico.

Recently, the firm has become increasingly active in representing foreign banking institutions. Traditionally, the firm had represented foreign banks primarily with respect to specific transactions having some U.S. involvement—for example, project financings where either the project or the sponsors were located in the United States, or loan restructurings where the borrower or guarantor was a U.S. corporation. However, with the increased activity of New York City as an international financial center, the firm has represented a number of foreign banks seeking entry into this market. Interestingly, an increasing number of these banks have been not from Europe, the tradi-

tional source of the firm's foreign banking clientele, but from Asia and Latin America.

The firm's representation of major domestic and foreign banks has involved it in a range of political as well as financial developments. Most conspicuously, the U.S. Government has on a number of occasions frozen the assets of nations who have been hostile to the United States—from the Peoples Republic of China, Cuba, Cambodia and Viet Nam to the Islamic Republic of Iran. On these occasions the firm has been called upon to advise banking clients with respect to the complex matrix of statutes, Executive Orders and regulations implementing these embargoes. Equally difficult questions are raised when an embargo is lifted, as was the case when diplomatic relations were normalized between the United States and the Peoples Republic of China. Chinese assets had been frozen since 1950 and during the intervening 30 years the ownership of many of the accounts held by banking clients had become either obscured or the subject of conflicting claims. The Peoples Republic of China asserted that it alone had the power to direct the disposition of these assets and pressed certain other claims with respect to the frozen accounts. Robert Webster accompanied a banking client to Peking to initiate the negotiation of a settlement with respect to assets which the client held—a process which involved an intricate balancing of the interests of the client, its customers and at least two governments.

The firm also has a substantial practice in the representation of major banks in their capacity as corporate trustee for securities issues. This work—which places a premium on fine drafting and statutory interpretation—is often highly technical, but it can become more dramatic when catastrophe strikes, as in the Penn Central bankruptcy, which lasted from June of 1970 to the end of 1978.

The success of a banking practice is a particular mix of legal expertise and familiarity with the business and financial aspects of the banking business. The latter is gleaned from a close working relationship with clients and from the firm's physical presence in the world's two most dynamic financial markets: New York and London. Legal expertise is also developed from regular contact with bank regulatory officials and with the legal representatives of other major banks. Hardly a day goes by when a member of the department is not in

contact, over the telephone or in person, with a bank regulator in New York or Washington, or—on occasion—in more exotic venues. In addition, Robert Webster serves on the Committee of Counsel of the New York Clearing House Association and a number of banking partners have served on the Banking Law Committee of the Association of the Bar in New York.

Investment Banking

At the end of the 1950s, investment banking could fairly be described as one of the most traditional of American businesses. Essentially the same number and types of firms had been conducting business in essentially the same way for three decades or more. The industry was very professional and highly skilled, but had not been subject to change. The decades of the 1960s and 1970s saw the equivalent of a revolution. The number of firms, their size, their sources of funds, their clientele and their ways of doing business were altered in ways so dramatic that no one could predict them. As is inevitably the case, when an industry changes, the practices of its lawyers must change as well, and securities lawyers were compelled to react and adjust as often as their clients.

The first signs of change in investment banking came in the nature of their customer base. For years, investment bankers had centered their work on a core of established industrial clients whose financial requirements were satisfied in a fairly orderly and regular fashion. Over time the bankers and their counsel would learn well the businesses of the client companies and be in a position to reflect that learning in prospectuses, placement memoranda, underwriting agreements and other legal documentation.

The development of the so-called "new issues" market in the 1960s ended that style of investment banking. A broader and more affluent investing public had a dramatically increased demand for new investment outlets, and new and growing industries had vast capital requirements. Those complementary needs could be satisfied by public offerings of securities of the new companies. The "new issues" took place in a market where securities of established companies continued to hold a major position, but placed new and challenging demands on underwriters and their counsel. Traditionally, the relationship be-

tween a corporation and its investment banker evolved over time, and securities offerings took place with the benefit of an accumulated knowledge of the issuer. In the case of a new issue, there was usually a new issuer-underwriter relationship as well, and it was necessary for the investment banker and its counsel to learn quickly—and under considerable time pressure—about a new company and even a new industry. Operations, markets, sources of supply and financial statements had to be examined and understood, as securities lawyers and their clients worked to determine how a public offering should be organized—and at times whether an offering should take place. In the heady atmosphere of the day, the corporate department was involved in transactions ranging from new industries like computers, electronics and aerospace, to new companies in old industries like fishing, toys and funeral homes, and to established industries which were taking new forms like fast foods and medical care. The challenge of the work was in becoming fully immersed in the business of the issuer and the legal problems presented.

The markets were so large and energetic that not merely companies but entire industries could rise and fall. A provision of the Federal income tax laws provided a clear fiscal incentive for investment in real estate through the device of a real estate investment trust, and the great success of the first of such vehicles inspired the organization of hundreds. Eventually the market was saturated; there were insufficient investment opportunities for the number of investors seeking them; and when interest rates moved against them, a number of REITs went into bankruptcy and the growth of the industry ended. Winthrop, Stimson and other major law firms were drawn into this cycle at every stage: from participating in the organization and public offering of the REITs, to advising the trusts and their underwriters when market conditions became difficult, to representing creditors of trusts which could not meet their obligations. The stresses of such rapid changes placed heavy demands on those who had to cope with them at the time, but, when over, provided a lesson and perspective not available in more pleasant form.

Ironically, one of the "new" industries to capture public interest during this era was the securities industry itself. An enormous increase in the volume of market activity and the demands on capital,

staff and equipment which it produced meant that new forms of financing were essential for securities firms. This need led to one of the most interesting transactions in which the firm participated at that time, its representation of Donaldson, Lufkin & Jenrette, Inc., in the initial public offering of its common stock—the first public offering of an ownership interest in a New York Stock Exchange member firm. The registration statement in respect of the offering was filed at a time when New York Stock Exchange firms were effectively prohibited from selling common stock to the public, and the filing compelled a review and eventual revision of the Exchange's rules. No one at the time doubted the significance of such a change, and subsequent years have seen a dramatic evolution in the size, ownership and sources of capital for American securities firms.

Although the new issues era came to an eventual end, to be followed—for investment bankers—by a time of increased emphasis on mergers and acquisitions, it is misleading to think of the practice of securities law and the representation of investment bankers and brokerage houses solely in terms of such isolated periods. Although Philip Bahn and the other securities partners enjoy the challenges and excitement of such intervals, securities practice is—and must be—premised on a fundamental understanding of the principles of the work which in turn results from day-to-day experience with more customary financings. Formal securities law consists principally of a few relevant statutes and the rather more voluminous rules and procedures of such entities as the Securities and Exchange Commission, the National Association of Securities Dealers and the national stock and commodities exchanges. Such regulations form the core of securities practice; a grounding in their application in conventional offerings and a knowledge of the policies of the regulatory agencies which apply them are prerequisites to participation in more esoteric transactions.

Mergers and Acquisitions

Although expansion by merger and acquisition is a long-established business device with a substantial legal history, the years following World War II have seen recurring cycles of particularly intense inter-

est in corporate acquisitions and dramatic changes in the ways in which they are structured and the legal requirements to which they are subject. Arthur Fredston and the other corporate partners have become intensely involved in these changes, as the firm's clients have sought to make, arrange or fend off attractive acquisitions.

From a legal perspective, there has been a remarkable evolution in the forms which transactions have taken and the changes in law in response to each new form. Major acquisitions usually raise issues of corporate, securities, tax, antitrust and employment law and almost certainly will present questions deriving from the industry in question and the government agencies which regulate it. Such a range of legal problems requires that specialists from throughout the firm be brought together to contribute and coordinate their skills in what is inevitably the limited time available. While involving tremendous pace and pressure, such transactions nonetheless have always been an exciting experience for the lawyers concerned. The need to work together in such intense circumstances breeds respect for one's colleagues and the satisfaction inherent in any team activity. In an age of specialization in the major law firms, such opportunities to produce a common work product are to be enjoyed as well as endured.

As the competition for attractive targets has increased and the regulation of acquisitions has made them formally more difficult, new legal forms have been developed to meet special needs and interests. Initially, the transaction was likely to take the form of a fairly straightforward acquisition of stock, acquisition of assets or merger of two companies into a single entity. Then, in response to tax, accounting, securities or corporate law problems, devices with esoteric titles like "reverse subsidiary triangular mergers" were developed, and offshore trusts and holding companies were used for foreign acquirers. When a period of excessive acquisitions led to dispositions, one of the firm's clients was a leader in creating the "leveraged buyout" in which they and employees of the company, as principals, would purchase a division of a major corporation or a privately held company with financing from banks and insurance companies. Most recently, as corporations have sought to diversify into new, capital intensive industries where there are both high risks and high potential returns, the firm has assisted in organizing joint ventures where

the participants are not in competition with each other, but rather seeking to make full use of their respective assets and corporate opportunities.

Although by far the largest number of acquisitions are "friendly" and seen by both participants as being in their mutual interests, greater publicity accrues to those which are "hostile" and are inevitably described as "take-overs". Such transactions once took the form of proxy contests where each side vied for the votes of the shareholders. Revisions in the SEC proxy rules made such battles more difficult, and acquiring companies which had available cash or could arrange financing attempted to gain control by making a tender offer to purchase all, or a majority or a substantial block of the stock of the target company. Passage of the Williams Act and its amendments and the SEC rules thereunder imposed additional disclosures and formalities; the Hart-Scott-Rodino Antitrust Improvements Act added more. The effect of these legal changes has not been to prevent hostile take-overs, but to reduce their number, to make them more litigated and expensive and to require greater expertise on the part of all involved.

Although merger and acquisition practice requires the coordination of a fair range of specialties, the number, size and complexity of potential transactions precludes specialization in any aspect of it. The firm has represented both aggressive suitors and resistant target companies, and has participated in both friendly and hostile acquisitions; it has advised dealer-managers for tender offers as well as investment bankers assisting both buyers and sellers; and it has participated with clients in massive dispositions as well as acquisitions. Most recently, it has assisted overseas investors in acquiring interests in American companies.

These experiences have also provided a close exposure to client feelings at a time when the practice of law has allegedly become more impersonal. Corporate officers, directors and stockholders who are fighting to achieve a long-planned objective, or who are selling or defending a business they have spent a career in building, cannot suppress their emotions in the intensity of the events. As Colonel Stimson and his colleagues had observed in the Blaustein-Pan American litigation, corporate law does not merely involve contracts, stock

certificates and abstract investments. It focuses on the careers, ambitions and well-being of the clients, and consequently is as personal as any other area of the firm's practice.

Estates and Tax Practice

Trusts and Estates

Historically the firm has been prominent in trust and estate work, originally under the leadership of Bronson Winthrop and subsequently under Charles J. Nourse after he rejoined the firm in 1942. Trust and estate matters today require the attention of six partners, who are assisted by a staff of senior counsel, associates, lawyers' assistants and fiduciary and tax accountants. Their work includes a broad range of matters of a fiduciary or family nature: the planning of estates and other dispositions to provide for personal and family needs with a maximum of efficiency and tax economy, the preparation of wills and trust instruments to achieve those ends, the administration of estates and trusts (including income tax planning and the preparation of estate tax and fiduciary income tax returns), the preparation and settlement of fiduciary accountings, guardianships, and antenuptial and matrimonial matters. This department also sees to real estate work for individual clients and conducts litigation arising within its area of responsibility.

Estates practice involves close individual relationships with a diverse clientele, from old and wealthy to young and aspiring, and requires finding solutions to a virtually limitless range of personal problems. Modern estate and trust work transcends state and even national boundaries; like other fields of law, it has become worldwide. In addition, the department acts as counsel to the personal trust divi-

sion of Irving Trust Company and represents other major banks in their fiduciary capacities as executors and trustees. Members of the trusts and estates department also act as counsel to the firm's charitable clients, such as hospitals, museums, cemeteries and private foundations.

Tax Department

It is surely a sign of the times that the tax department is involved—in addition to its own specialized work—more than any other department in all areas of the firm's practice. Although the greater portion of its time is addressed to the firm's corporate clients, the department also considers the tax problems of individuals and those presented in estate planning and the administration of trusts and estates.

Within its own area, the department has seen a substantial expansion of the scope of its work over the last decade. While all of the traditional areas of advising persons and companies have remained, international issues, pension planning and tax exempt financings have become increasingly active. In the international area, the expansion of multi-national corporations and a steadily increasing volume of American investment overseas and foreign investment in the United States has brought increased emphasis on international tax planning—involving such matters as the simultaneous evaluation of the tax laws of several jurisdictions and the establishment of entities in low tax jurisdictions. Domestically, the Employee Retirement Income Security Act of 1974 and the increased availability of devices for tax exempt financing have presented new challenges for tax lawyers. The enactment of ERISA necessitated the review of then existing pension and retirement plans and the creation of new employee benefit devices for the future. Similarly, the new statutory authority for industrial revenue bonds and pollution control revenue bonds has changed the entire approach to capital equipment financing for certain companies and even entire industries, and Hugh Dougan and the lawyers in the tax department have had to respond to these changes and adapt them to client requirements.

Because of the pervasiveness and level of taxes today, virtually every transaction in the corporate department—whether involving securities, a merger, a takeover or other financing—has tax implications. In fact, some corporate transactions require such substantial tax advice and coordination, that they become joint projects of the corporate and tax departments. In addition to revenue bond financings, such work in recent years has included such devices as real estate and oil and gas investment partnerships, real estate investment trusts, and the "leveraged lease" financing of buildings, aircraft and industrial equipment.

Even the litigation department cannot provide a comprehensive legal service without some resort to tax counsel. While the subject of a lawsuit may not be a tax question, the approach taken in the lawsuit may have material tax consequences, and the members of the tax department are consulted as to the tax effects of alternate litigation and negotiation strategies. The tax department itself is also engaged in litigated matters relating both to claims for refunds of taxes paid and to the defense of threatened assessments.

John Boland, the senior tax partner for many years and now counsel, has lectured extensively in the tax area, has written numerous articles on tax law and is the author of *Federal Income Taxation of Securities* published by the American Law Institute and the American Bar Association. Robert Anthoine, now the senior tax partner, is an adjunct professor of taxation at Columbia University and is also the author and editor of numerous publications in the tax field.

London, Stamford, Palm Beach and Alumni Overseas

The growth of companies by merger and acquisition and the dramatic expansion of multi-national corporations, combined with the increased volume of federal regulations, has made the practice of law—once a rather localized activity—much more national and international. In addition, more efficient air travel and document and telephone communications have meant that a lawyer today is able to assume responsibility for a wider range of clients and legal problems. In response to these trends, Winthrop, Stimson has opened three offices outside of New York City and—with other major law firms—faces the prospect of the need for even greater expansion in the future.

London

In 1972, the firm established a European office in London, at the edge of the churchyard of St. Paul's Cathedral on a street that was the main thoroughfare in Chaucer's time. In this traditional setting, the firm soon became involved in the wide range of commercial and financial transactions which are generated in the City of London. The clients of the London office have included multi-national corporations and financial institutions, American companies with activities in Europe, Africa and the Middle East, European companies with divisions in the United States or which intended to invest in the U.S. market, American citizens residing abroad and a few companies which have no direct contact with the United States or American law but which seek advice as to multi-national businesses and financial transactions. The

practice of the London office has included Eurodollar loan syndications, Eurobond public offerings and private placements, the negotiation of distribution agreements and other sales contracts, mergers and acquisitions, the tax problems of Americans overseas, export trade to the Soviet Union and Eastern Europe, ship and aircraft financings, financings in connection with the search for oil in the North Sea and assistance in litigation in the High Court of England as experts on American law.

Lawyers in the London office have found a stimulating exposure to widely different cultures, legal systems and business practices and have learned that the successful practice of international law requires a facility not only to master the formal legal requirements of different countries, but also to understand and be able to work with the different values and experiences of their residents. A classic illustration of such practice was a transaction involving promissory notes denominated in German marks which were issued by the Republic of the Ivory Coast to finance the building of a local housing project by a construction consortium consisting of a joint venture of Lebanese companies and a joint venture of Greek companies. The notes were sold in Paris through an English merchant bank to a syndicate of American and French commercial banks.

Work in London has also entailed widespread travel and adjustment to a variety of physical conditions. Settings have ranged from the sleek sophistication of Paris and Frankfurt to the emerging energy of Senegal and Gabon. One London office lawyer may hold the firm record for climatic extremes resulting from his travel within a 48-hour period from a swirling sub-zero blizzard north of Stockholm to 100°+ temperatures in Djkarta. Of course, the change in social customs and business outlooks between those two ancient cultures was just as great.

Today, the firm's London office is located at 1-4 College Hill in a Georgian building dating to approximately 1700. With high ceilings, brass chandeliers and fireplaces in every room, the office provides a symbolically traditional setting from which to practice contemporary international law.

Stamford

The firm has also established other offices in the United States. The decade of the 1970s saw the rapid growth of a trend for corporate headquarters to be relocated from New York City to suburban locations in Fairfield County, Connecticut. In response to this trend and in order to continue to serve its clients which were moving to the area, in 1977 the firm opened an office in Stamford, Connecticut. There the firm represents not only national companies headquartered in Connecticut, but also Connecticut-based corporations and financial institutions whose expansion has caused them to become subject to a new range of government regulations and legal concerns. The Stamford office has also developed a growing local practice to handle trusts and estates, real property and other personal legal matters for Connecticut residents. In 1980 the majority of the partners of the Connecticut law firm of Durey & Pierson merged with the firm, and thereby broadened the scope of the Stamford practice.

Palm Beach

Changes in transportation and communications have not only affected the course of corporations but have altered personal life styles as well. As Florida has become less distant in time, increasing numbers of individuals have elected to make it not merely a winter home but a permanent residence. To serve the needs of such clients, and at the suggestion of the personal trust departments of institutional clients, in 1976 the firm opened an office in Palm Beach. The Florida office is principally concerned with such matters as wills, trusts, estate planning and real property, but must also address the wider range of legal issues which questions in those areas inevitably present.

Alumni Overseas

Many years ago, the firm started a program to have as associates young non-American lawyers; it has proved to be very successful. Foreign colleagues have been exposed to the [illegible]

a Wall Street office while American lawyers have had an opportunity to learn something about the practice of law abroad. The result has been that the firm now has a network of former associates in various parts of the world who are close to the firm and who can assist the firm's clients in solving legal problems overseas with dispatch and a good understanding of the American client's needs. Among the countries from which overseas lawyers have come are Australia, China, France, Germany, Switzerland and the United Kingdom. Many of these associates have had distinguished careers in their own countries. Some have become well-known barristers; others have become partners in local law firms; and still another has become a respected law professor at a European university.

Preserving the Tradition

Despite the ever growing number of lawyers and the opening of new offices, the firm has never made a deliberate effort to expand for the sake of expansion—rather increases in the size and activity of regular clients, the acceptance of new clients with whom the firm feels comfortable and the proliferation of laws and regulations, particularly those of the federal government and its agencies, have generated necessary growth. Immediately after World War II there were about 35 lawyers in the firm, while today there are more than 100, of whom 40 are partners. Yet the firm seeks to preserve the traditions which evolved out of a collegial practice among a few close-knit partners.

A Democracy of Partners

Winthrop, Stimson, Putnam & Roberts is a democracy of partners unusual among major firms today. Partners have equal voting rights on matters of firm policy, and all clients are regarded as clients of the firm, not of a particular partner. The managing partners, currently Peter Kaminer and William Evarts, while discharging administrative responsibilities, bring matters of policy to the entire firm for decision.

Every Week . . .

Among the traditions which sustain the professional pride of Winthrop, Stimson, Putnam & Roberts is the regular weekly luncheon

meeting of the partners. Functioning as the firm's "board of directors," the partners govern policy and practice according to the principle of "one person, one vote." The archaic phrase "one man, one vote" fell from use on January 1, 1979, when Eloise Morgan became the firm's first woman partner.

The weekly lunch as such is primarily a social affair. If anyone has a good story it is told; if a signal victory has been won or a humorous incident occurred in court or an associate has done something outstanding, that is reported. Anyone can speak up and call for attention.

Dessert and coffee are the prelude to formal business discussion with pressing issues usually brought up by the managing partners. All matters are fully discussed and, when a decision is necessary, a vote is taken. Alternatively, a thorny problem may be referred to a small committee with power to decide. If the matter is one of those nuisances which nobody present wants to tackle, the committee is apt to be an absent member.

Pro Bono Service

The tradition of public service begun by Root and Stimson continues to flourish, although the emphasis has tended to shift from the political arena to private organizations. Partners and associates in the firm devote substantial effort to acting as officers and committee members of Bar Associations, serving on committees appointed by the Courts, and working on behalf of the Legal Aid Society and similar professional organizations. In addition, partners are active on boards and governing bodies of universities, hospitals and civic organizations such as the Citizens' Union, CARE and the International Rescue Committee, and several members of the firm teach courses in law schools.

The Future

Longevity of tradition in a law firm results, ironically, less from preserving the ways of the past than from responsiveness to a changing present and the flexibility to adapt to the future. At Winthrop, Stim-

son, continuity is assured by another characteristic—most of the members of the firm have spent their professional careers there. But the firm must continue to build bridges to the future through effective yearly recruitment drives. New lawyers are the life blood of an old firm and any firm's most important investment. Consequently, each year there is a substantial effort to attract to the firm outstanding second and third year law students to participate in the firm's summer program and to join the firm on a long-term basis. These able young men and women bring with them vitality, diverse interests and new ideas, and provide the base for the continued growth of the firm.

As Winthrop, Stimson, Putnam & Roberts advances through its twelfth decade of practice since the founding of Mr. Root's first firm in 1868, and its ninth decade since the names of Winthrop and Stimson became part of its name, the firm recalls and draws upon its past in establishing the character of its present practice and in looking to the future.

WINTHROP, STIMSON, PUTNAM & ROBERTS

PETER H. KAMINER
DAVID M. PAYNE
MERRELL E. CLARK, JR. ✓
DONALD L. MEDLOCK
JOHN B. JESSUP
ENDICOTT P. DAVISON
ROBERT E. BROSNAN
ROBERT ANTHOINE
J. PHILIP BAHN
WILLIAM M. EVARTS, JR.
ARTHUR H. FREDSTON ✓
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From: James, Robert A.
Sent: Tuesday, August 15, 2017 1:59 PM
To: Whitney, Jonathan B. (jonathan.whitney@pillsburylaw.com)
Cc: Atkins, William P.; Ericson, Bruce A.
Subject: Winthrop history notes
Attachments: Winthrop Stimson Putnam & Roberts A History of a Law Firm.pdf

Beautifully written history. Who wrote it?

1. 1868 is when Elihu Root started practicing by himself, one year after bar admission.
2. In 1871-1873, he was "assistant counsel" on Boss Tweed's team, with Samuel J. Tilden as prosecutor. Root was permanently tarred by that association and abandoned electoral office aspirations.
3. Bronson Winthrop was an American aristocrat—ancestors John Winthrop and Peter Stuyvesant, born in Paris, educated at Eton and Cambridge, lived on Long Island with liveried servants, "the silver of four generations on the sideboard." A "shy" bachelor, relished legal theory.
4. Henry Stimson was more worldly, refused to work Saturdays.
5. G.E.P. Howard's advice: get the judge emotionally invested in your position—through evidence of economics or human interest—and THEN show him your precedents, hopefully a "green elevator" (a case on all fours with your own, down to the exact color of the vestibule).
6. When Root left to be Secretary of War, the junior partners had to scrap to keep the business. Felix Frankfurter was associated with the firm only briefly (as were professors Austin Scott and Willis Reese).
7. Utility underwriting began in earnest with George Roberts representing Bonbright in the 1920s.
8. Winthrop opined that the TVA act was unconstitutional. The US Supreme Court ruled otherwise. Years later TVA asked Winthrop to represent it. Allison Choate said "that's all right, so long as we don't have to concede that they are constitutional."
9. Blaustein organized Amoco as a joint marketing organization for several oil companies. Eventually Standard of Indiana became majority shareholder but reneged on its obligations. Winthrop represented Blaustein and eventually there was a settlement resulting in Blaustein becoming chair of Standard of Indiana. Eventually it was renamed Amoco, from whence it became BP Amoco and (after the ARCO acquisition) just BP.
10. Bristol-Myers and Singer became clients after 1942 with merger with ex-associates Arthur Pettit and Charles Nourse.
11. Firm defended a client pro bono against Joe McCarthy and Roy Cohn, and got a new trial for him.
12. Stimson was Taft's secretary of war, and he was Coolidge's governor general of the Philippines in 1928-1929. When Taft himself was governor general of the Philippines back in 1900, "Pillsbury & Sutro" was a prominent local Manila firm, and we have in SF a letter from Sutro to Taft indicating that the firm and the governor relied on each other.

Rob James