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THE SENATORIAL YEARS OF HUGO BLACK

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THE SENATORIAL YEARS OF HUGO BLACK

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I THE EARLY YEARS

Hugo Lafayette Black was born in east central Alabama's Clay County.¹ This section of the state was poor country and poor man's country. The white man did the farming for himself with little help from anyone. While Black's family was in the upper financial group, most of his friends and neighbors were poor working people.²

Hugo Black's ancestors were mostly Scotch-Irish.³ William Black was born in Alabama in 1848. Martha Toland Black's ancestors did not arrive in the United States until the early 1800's when her family came to the United States during the Irish rebellion.⁴ William Black supported his family by storekeeping and sharecropping.⁵

Hugo was the last and eighth child born to Martha and

¹Birmingham News, July 23, 1967, p. 3.

²Charlotte Williams, Hugo L. Black: A Study in the Judicial Process (Baltimore: The John Hopkins Press, 1950), pp. 37-38.

³Max Lerner, "Hugo Black: A Personal History," Nation, CXLV (October 9, 1937), pp. 367-368.

⁴John P. Frank, Mr. Justice Black: The Man and His Opinions (New York: Alfred A. Knopf, 1949), pp. 3-4.

⁵Newsweek, X (August 21, 1937), p. 7.

William Black.⁶ The Blacks at this time lived in Harlan, Alabama, where Martha was the postmistress. She had a great influence on all the Black children because she was greatly interested in education and because she encouraged the children to read and improve themselves.⁷

The Black family moved to Ashland when Hugo was three years old. This move was made because the Blacks felt that the children needed to be near a school. Here again, William Black set himself up as the local storekeeper.⁸

Hugo had an easy childhood. Like most children, he had to work for his spending money; he received no regular allowance.⁹ Hugo did most of his work for a local newspaper, working as a typesetter or folding the newspapers.¹⁰ During Black's years in Ashland, he followed the County lawyers around, bombarding them with questions. Hence he became known as the "courthouse pest."¹¹ Hugo attended school in

⁶Daniel M. Berman, "Hugo L. Black: The Early Years," Catholic University Law Review, VIII (February, 1959), p. 107.

⁷Frank, op. cit., pp. 4-5.

⁸Birmingham News, January 31, 1937, p. 2. ⁹Ibid.

¹⁰Irving Dillard, One Man's Stand for Freedom: Mr. Justice Black and the Bill of Rights (New York: Alfred A. Knopf, 1963), p. 6.

¹¹Birmingham News, September 5, 1935, p. 1.

Ashland and graduated from a local school called Ashland College.¹²

In Clay County, Black had many friends who were the very poor. His association with these people led him in an understanding of their problems and a sympathy toward them that affected his entire political life.¹³

When Black was seventeen years old, he entered the Medical College of Birmingham. He did not desire a degree as a doctor;¹⁴ however, his older brother was in medicine and his mother had ambitious hopes for her youngest.¹⁵ By the end of one year Black, with the aid of his brother, decided a medical career was not in the stars.¹⁶

The following fall, the future Senator entered school at the University of Alabama at Tuscaloosa. Deciding to forego the long formal education, he enrolled in the University's

¹²Newsweek, X (August 21, 1937), p. 8.

¹³Williams, op. cit., pp. 37-38.

¹⁴Birmingham News, August 12, 1937, p. 1.

¹⁵Mobile Press Register, August 13, 1937, p. 1.

¹⁶"Court: Roosevelt Takes Out Judicial Insurance, Enrages Foes, and Upsets an 'Immemorial Usage'," Newsweek, X (August 21, 1937), p. 8.

two year law school.¹⁷

When Black entered the law school in 1904, it was a small school, with forty students and three faculty members. Since he had no pre-law preparation, he had a great deal to learn. He was able to buckle down to his various duties, and during his two years at the University, he was on the honor list of students.¹⁸

In 1906, at the early age of twenty, Black graduated and entered the bar.¹⁹ He then returned to Ashland and tried to build up a clientele, but without much success. About a year after his arrival in Ashland, the store over which he practiced law burned, destroying everything he owned including a library which cost him \$1,500.²⁰ So with no assets except his education, the budding lawyer decided to return to Birmingham and practice law in the big city. His total assets at the time were less than ten dollars.²¹

¹⁷Speech taken from the files of Hugo L. Black. The speech was given on March 20, 1926, at his home town of Ashland, Alabama.

¹⁸Birmingham Post-Herald, August 15, 1937, p. 5.

¹⁹"Investigation by Headlines," Time, XXVI (August 26, 1935), p. 15.

²⁰Raymond Clapper, "Hugo Black: Nemesis of Subsidy Spoilsmen," Review of Reviews, XC (August, 1934), pp. 18-20.

²¹The New York Times, August 26, 1935, p. 2.

In Birmingham Black prospered. On his arrival, he secured a room which he shared with three other men. Next, he located an office which he occupied for two months. After these two months of little progress, he moved into an office across from the Birmingham Courthouse.²²

Black was given his first real case by the lawyer from whom he was renting a desk. A Negro convict who had been leased to a steel company was forced to work fifteen days over time.²³ The young lawyer sued the steel company and won \$137.50 for the Negro.²⁴ Among his clients were the Carpenters' Union, and in 1909 he represented the Coal Miners' Union. He represented the latter in their first Alabama strike.²⁵ His practice was far from outstanding but a growing reputation indicated a promising future.

Four years out of law school and at the early age of twenty-five, Black won an appointment to the bench of the Birmingham police court.²⁶ Birmingham's rapid industrial

²²"The Making of a Liberal," The Nation, CLX (January 29, 1949), p. 131.

²³Birmingham News-Age-Herald, January 31, 1937, p. 3.

²⁴Dillard, op. cit., pp. 7-8.

²⁵Max Lerner, "Hugo Black: A Personal History," The Nation, CXLV (October 9, 1937), p. 367.

²⁶The Atlanta Journal and Constitution Magazine, August 13, 1937, pp. 6-7.

growth was based on coal and iron mining. Homicide rates were among the highest in the nation.²⁷ Black did not consider his appointment to the police court to be of major significance, but at least he received some public recognition.²⁸

Since court convened only when it was necessary, Black used the remaining time for the practice of law. The defendants that appeared were mostly vagrants, petty criminals such as opium addicts, wife-beaters, crap-shooters, and a faith healer who had victimized hundreds of Negroes. Many of those appearing before the court were Negroes.²⁹ The position called for little imagination or brilliance, yet young Judge Black surprised many Alabama residents with his understanding and his tolerance. He also showed impartiality; he was always fair to the Negroes, treating them with the regard that all citizens deserve.³⁰

Black's administration was not without criticism. Many of his critics charged that he completed his docket too

²⁷Williams, op. cit., p. 38.

²⁸Speech taken from the files of Hugo Black. The speech was given March 28, 1926, in Birmingham, Alabama.

²⁹Clapper, op. cit., pp. 19-20.

³⁰The New York Times, August 15, 1937, p. 2.

quickly.³¹ The Birmingham Age-Herald reported that Black had disposed of 118 cases in about 150 minutes. He does not seem to have been a very lenient judge generally. Prohibition violators were shocked by \$500 fines and ninety-day jail sentences; vagrants often received two-month prison terms.³² These sentences were criticized as being too harsh.

The future Supreme Court Justice also showed that he was not a bigoted racist. In one case before his court, eleven Negroes were acquitted of disorderly conduct charges, although a white officer had testified against them.³³ In another, a Negro furnace worker was accused of having assaulted a white installment collector. Black demanded to hear all the facts. Questioning disclosed that the collector had wanted to repossess the man's furniture. The Negro had informed the collector that his wife was sick in bed and had begged the white man not to disturb her.³⁴ It was only when the collector insisted on taking the furniture that the Negro struck him. Black could not bring himself to condemn

³¹Birmingham Post-Herald, August 15, 1937, p. 5.

³²Birmingham News-Age-Herald, January 25, 1912, p. 2.

³³Stephen Strickland (ed.), Hugo Black: And the Supreme Court a Symposium, (Indianapolis: The Bobbs-Merrill Company, Incorporated, 1967), p. 76.

³⁴Scholastic, XXXI (September 18, 1937), p. 14.

the worker. He dismissed the case.³⁵

Also in the years from 1910 to 1914, the young jurist carried on the practice of law outside of the police court. He handled a large number of labor and contract cases.³⁶ During this time, he developed a skill that was of great value to him in his Senatorial years. He became a skilled inquisitor. He developed the habit of the soft question which provoked a wrathful answer. By 1914, Black was earning about \$7,500 a year.³⁷

In 1914, Black ran for the office of County Solicitor, or County Prosecutor, in Jefferson County. After winning the election, he took office in December of 1914.³⁸

For the previous sixteen years, the position of Solicitor of Jefferson County had been held by Harrington Heflin.³⁹ The penal system at this time made it more profitable for the jailor to keep the prisoners in jail as long as possible be-

³⁵The New York Times, August 15, 1937, p. 2.

³⁶Literary Digest, CXXIV (August 28, 1937), p. 11.

³⁷"Investigation by Headlines," Time, XXVI (August 26, 1935), p. 14.

³⁸From the files of Hugo Black. A speech given in the Democratic campaign at Montgomery, Alabama. The exact date is unknown but it was in 1930.

³⁹Birmingham Post-Herald, August 13, 1937. (page unknown)

fore their trial. During Heflin's administration, the court docket was packed with untried cases.⁴⁰

Black's principal campaign slogan had been to clean up the court docket and he and his two assistants set out to do just that. He was out to do his job well and to make a name for himself.⁴¹ In Birmingham, the practice of keeping prisoners in jail as long as possible was profitable because the prisoners had to pay costs and the state paid fees which led to a tidy profit for the jailors. Black cancelled about five hundred of these cases. This caused talk of removing him from office.⁴²

The Jefferson County docket had 3,238 cases pending. After Black and his assistants showed the people what could be done by energetic work, he was able to persuade the Governor and the Legislature of Alabama to provide additional help. With this help, he cleared the docket.⁴³

After nearly six months as Prosecutor, Black began to notice a large number of confession cases coming from a suburban town of Bessemer. The number of confessions, mainly

⁴⁰Berman, op. cit., p. 109.

⁴¹Birmingham News, January 31, 1937, p. 3.

⁴²Strickland, op. cit., p. 77.

⁴³Dillard, op. cit., p. 57

Negro, from this steel and coal community ran higher than from any other area in Jefferson County. On his own, the County Prosecutor started to investigate.⁴⁴ Investigation revealed that the Bessemer police department contained a "torture chamber" in which prisoners were beaten until they decided to confess, even if they were innocent.⁴⁵

Black was faced with the problem of not knowing what to do. He was but a small time county official. Bessemer was an incorporated municipality, therefore, outside his jurisdiction. After much thought and deliberation he presented his evidence to a grand jury.⁴⁶ A report was then prepared for the County's criminal court. In September, 1915, the report was made public. It was startling:

We find that, according to their own statements, Officers_____and_____have repeatedly been guilty of the practice of the "third degree" in a manner so cruel that it would bring discredit and shame upon the most uncivilized and barbarous community. We find that a uniform practice has been made of taking helpless prisoners, in the late hours of the night, into a secluded room in the presence of these two officers, and others whose names we have not been able to obtain, and there beat them until they were red with their own blood, in an effort to obtain con-

⁴⁴Strickland, op. cit., pp. 78-79.

⁴⁵Birmingham Age Herald, September 18, 1915, p. 1.

⁴⁶Berman, op. cit., p. 110.

fessions. We find that this cowardly practice, in which four big officers with pistols safely strapped on their bodies, would thus take advantage of ignorance and helplessness, has been continuously in operation for a number of years.⁴⁷

Black pointed out that inhuman punishment and treatment was outlawed when the Constitution was written. In a public message, he declared that the role of the police should be one of protector for all people. Furthermore, a person has the right to be treated as a human being even though he is charged with a crime or is guilty of a crime.⁴⁸

For two months, an inquiry into the Bessemer situation was conducted in public hearing. The hearing committee was made up of three disinterested citizens. The citizen's committee published its finding in October of 1915. The Mayor of Bessemer was criticized, two altermen were asked to resign, and four policemen were fired.⁴⁹

During his years as County Prosecutor, Black tried a very large number of murder cases. The most controversial trial of this period was the Louis Walton case. Walton, a well known and respected businessman in Birmingham, was the

⁴⁷Birmingham News-Age Herald, September 18, 1915, p. 1.

⁴⁸Birmingham News-Age Herald, September 19, 1915, p. 1.

⁴⁹Birmingham News-Age Herald, October 28, 1915, p. 1.

principal shareholder in the Walton Trading Company. The two other partners in his company were his wife and a long-time friend, M. O. Barton. Each of the partners had a thirty-thousand dollar life insurance policy, payable to the firm in case of death.⁵⁰ On April 15, 1915, M. O. Barton was shot to death.⁵¹

Mr. Black, as Prosecutor, could find little evidence, but somehow he suspected Walton. Testimony revealed that Walton had been with Barton right before his death. Walton claimed that he and a friend had driven Barton out to see a girl friend. When Barton did not return at the appointed time, Walton and the friend returned to town. Walton's alibi was fairly convincing. Black's theory that Walton had committed the murder for money was very unpopular because most of the people in Birmingham felt that a man of his standing would not murder a friend for money.⁵²

Black won an indictment on purely circumstantial evidence. During the succeeding trial, the following information was disclosed. The insurance policy on Barton was drawn up so that in the event of his death, ninety-nine per

⁵⁰Frank, op. cit., p. 24.

⁵¹Birmingham News-Age Herald, April 16, 1915, p. 1.

⁵²Frank, op. cit., p. 25.

cent of the insurance money would be controlled by Walton and his wife, while on the other hand, if Walton or his wife died, only one percent of the total insurance would be received by Barton. It was further revealed that Walton had not made an initial investment into the business, therefore he had not used any of his money to start the business.⁵³

Black theorized that Louis Walton had arranged the whole corporation simply for the accident insurance to be taken out on his friend, Barton. The jury divided, ten for conviction and two for acquittal. Before the trial could be scheduled for another time, Walton went to Atlanta where he took out life insurance. On the return trip, he blew himself to death with dynamite.⁵⁴

Alabama was a legally dry state during Black's administration and he was against alcoholic excesses. When the question came up in his court as to whether the excise commission of Birmingham could revoke the licenses of the wholesale dealers selling to illegal liquor salesmen, Black held that they could not. Nevertheless, he was always strong on the enforcement of the law prohibiting advertisement of

⁵³Birmingham News-Age Herald, August 10, 1915, p. 2.

⁵⁴Birmingham News-Age Herald, September 28, 1915, p. 1.

liquor on Sundays.⁵⁵

Black's vigorous and honest conduct of his office as Prosecutor won him many enemies. These enemies dedicated themselves to doing everything possible to embarrass him and his staff.⁵⁶

In the meantime, World War I had begun. Black was very much opposed to the war and American entry. Nevertheless, he felt that if the United States entered the war, he must do his part to guarantee victory. He was above draft age but since he was single he enlisted.⁵⁷

Black entered the officers training corps at Fort Oglethorpe, Georgia. He served in the eighty-first Field Artillery and as adjutant of the nineteenth Artillery Brigade.⁵⁸ He spent one year tour of duty entirely in the United States. During this time he became an artillery captain,⁵⁹ and when he was discharged, his promotion to major was coming up.⁶⁰ This

⁵⁵The New York Times, August 15, 1937, p. 2.

⁵⁶Mobile Press Register, August 13, 1937, p. 1.

⁵⁷Williams, op. cit., pp.40-41.

⁵⁸Montgomery Advertiser, August 16, 1944, p. 4.

⁵⁹The Atlanta Journal and Constitution Magazine, August 13, 1937, pp. 6-7.

⁶⁰"Investigation by Headlines," Time, XXVI (August 26, 1935), p. 16.

year was spent at three different posts. His tour was rather routine. After the Armistice was signed, Black received his discharge and returned to private practice in Birmingham.⁶¹

After his return to Birmingham, his practice boomed and he became one of the most successful lawyers in the state.⁶² After his first three months of practice, he was able to buy an automobile on the profits.⁶³ During this period he had very little to do with politics.

Black was foot-loose and fancy free and well on his way to becoming an established bachelor when he met Josephine Foster at a dance in Birmingham. Miss Foster had attended Sweet Briar College.⁶⁴ She joined the Yeomanettes, the World War I women's naval auxiliary and she, like Black, spent the entire war in the United States.⁶⁵ She had not received her discharge when she met Black. There were a few problems in the courtship. The Foster family was a little reluctant when

⁶¹Birmingham Post Herald, August 13, 1937, p. 3.

⁶²Irving M. Engel, "Justice Black After Seven Years," The Nation, CLIX (October 7, 1944), pp. 404-406.

⁶³Frank, op. cit., p. 32.

⁶⁴Dillar, op. cit., p. 9.

⁶⁵Birmingham News, January 31, 1937, p. 3.

marriage was mentioned,⁶⁶ for they regarded the young man with mixed emotions. They did not always agree with his political views. But in February, 1921, shortly before his thirty-fifth birthday, he and Josephine Foster were married.⁶⁷

Josephine and his marriage proved a great asset in the coming years. Mrs. Black was interested in the law and in her husband's political life, yet she never pushed him or tried to make him into something he was not. Her greatest ability, however, was in making her husband see the funny and happy side of every picture. Mrs. Black's great sense of humor contributed to their marriage by helping maintain a balance in his life.⁶⁸

Both the Black's joined the American Legion Post. Mr. Black was, in fact, "a natural joiner."⁶⁹ He became Chancellor of Alabama's Knights of Pythias, an officer of his chapter of the Masonic Lodge, and a member of Civitan, Odd Fellows, Loyal Order of Moose, and the Pretorians. But the

⁶⁶Berman, op. cit., p. 111.

⁶⁷"Court: Roosevelt Takes Out Judicial Insurance, Enrages Foes, and Upsets an 'Immemorial Usage'," Newsweek, X (August 21, 1937,) p. 8.

⁶⁸Frank, op. cit., p. 33.

⁶⁹Montgomery Advertiser, August 16, 1944, p. 4.

club that was spreading in Alabama in the 1920's was the Ku-Klux Klan.⁷⁰

Black's practice mushroomed from 1920 to 1925.⁷¹ His practice seemed to be the usual of a liberal lawyer. He had some labor clientele.⁷² By championing the cases of the working men of Birmingham, he prevented himself from gaining the business of the large corporations.⁷³ He represented the United Mine Workers and other unions in a few cases. He was a very successful trial lawyer, winning ninety per cent of his cases.⁷⁴

Hugo Black, like most lawyers, usually asked for large awards for his clients and surprisingly he was usually able to gain them. The jury found themselves so impressed with his voice and manner of speech that they gave his clients exactly what he demanded. As a lawyer, he became so well known for winning that he usually had to defend the lower

⁷⁰Christian Science Monitor, XXX (August 20, 1937), p. 4.

⁷¹Williams, op. cit., pp. 41-42.

⁷²Christian Science Monitor, XXX (August 20, 1937), p. 4.

⁷³Birmingham Post-Herald, August 13, 1937. (page unknown)

⁷⁴Birmingham News, August 13, 1937, p. 4.

court's verdicts in a higher court.⁷⁵

As his practice grew, he became more respectable and his opinion carried more weight. The local papers considered him important enough to quote his statements on all important matters.⁷⁶ The Birmingham Bar Association made him director and chairman of a committee to control ambulance chasing. In addition to teaching Sunday School, he kept active in lodge activities. Although not in politics, he was watching for a chance.⁷⁷

One organization that many Alabamians joined in the 1920's was the Klan.⁷⁸ This was the second Klan the South had originated. The original one, formed after the Civil War, was formed to retaliate against the scalawags and carpetbaggers.⁷⁹ World War I gave momentum to a new surge of the Klan in the South. "By 1926 it had about 85,000 members in Alabama alone."⁸⁰

⁷⁵Vincent M. Barnett, Jr., "Mr. Justice Black and the Supreme Court," The University of Chicago Law Review, VIII (December, 1940), pp. 21-22.

⁷⁶Birmingham News, January 31, 1937, p. 3.

⁷⁷Birmingham News, September 5, 1935, p. 18.

⁷⁸Lerner, op. cit., p. 367.

⁷⁹William P. Randel, The Ku-Klux Klan (New York: Chilton Company, 1965), pp. 1-10.

⁸⁰Berman, op. cit., p. 111.

In Birmingham, the Robert E. Lee Klan Number One had a roster of ten thousand.⁸¹ Many of Black's friends pressed him to join. At first he refused because he had so many obligations to other organizations. Ideological disagreement had no significance. The Klan doctrine seemed to be for the "common people" against the corporation and it also expressed some radical views toward Catholics, Jews, and Negroes.⁸² In economically depressed areas, it asked for the curtailing of cheap immigrant labor and for higher wages. Most of the ideas appealed to the young progressive lawyer.⁸³

On September 11, 1923, after deliberating for nearly a year, Black joined the Robert E. Lee Klan in Birmingham.⁸⁴ The reasons for joining were simple. He was a poor man's lawyer and many of them belonged to the Klan. Furthermore, he was anxious for political advancement.⁸⁵ He remained a member until July 9, 1925.⁸⁶ During these two years, he attended three or four meetings and delivered a few speeches

⁸¹New York Times, September 13, 1937, p. 1.

⁸²Berman, op. cit., p. 112.

⁸³Lerner, op. cit., p. 367.

⁸⁴New York Times, September 13, 1937, p. 1.

⁸⁵The New Republic, XCII (September 29, 1937), p. 201.

⁸⁶strickland, op. cit., pp. 78-79.

which were carefully worded. While speaking of his friendship for the Klan, he made no firm ideological commitment.⁸⁷

Black's resignation from the Klan in 1925 was a friendly one.⁸⁸ The day after he ended his ties with the Klan, he announced his plans for running for the Senate seat of Oscar Underwood.⁸⁹

The campaign was a long and vigorous one, even though Senator Underwood withdrew soon after Black's announcement. There were five different men running for the Senate seat. Black was the youngest and he was not well known outside of Birmingham. Calling himself a candidate for the ordinary people, he crisscrossed Alabama in a Model T Ford,⁹¹ paid his own expenses, and met the voters in every county.⁹² The following is a portion of one of his handbills used in his campaign:

Born on a Farm in Clay County

Graduated Law University of Alabama

⁸⁷Lerner, op. cit., p. 367.

⁸⁸New York Times, September 13, 1937, p. 3.

⁸⁹The Commonweal, XXIV (September 24, 1937), pp. 483-484.

⁹⁰Birmingham Post-Herald, August 13, 1937. (page unknown)

⁹¹Literary Digest, CXXIV (August 28, 1937), p. 11.

⁹²"Black Scandal," Time, XCII (September 27, 1937), pp. 10-11.

General Practice of Law Twenty Years

Had been Judge City Court, Birmingham, and
Solicitor, Jefferson County

Resigned as Solicitor and Served as Volunteer
In Field Artillery World War

Represented State Prosecution Girard Liquor
Cases 1916

Served Assistant Attorney General United States
Prosecution Mobile Liquor Conspiracy Cases

If Elected Will Take Office At Age 41 Years

Can Give to State Best Years of His Life If
Elected⁹³

In his opening speech given in his home town of Ashland, Alabama, he made many campaign pledges. He promised to help the farmer obtain cheap fertilizer as well as promising to work for higher wages and a restriction of immigration. He also called for lower tariffs and better roads.⁹⁴

Black won forty per cent of the first place votes and enough second place votes to give him the nomination in the primary. In Alabama this meant he would win the election. On December 5, 1927, he took the oath of office as United States Senator.⁹⁵

⁹³Frank, op. cit., p. 40.

⁹⁴From the files of Hugo Black. A speech given in his home town of Ashland, Alabama, on March 20, 1926.

⁹⁵Birmingham News, December 5, 1927, p. 2.

II INVESTIGATIONS

Senator Black became the Senate's most famous investigator during his terms in office. His work earned him the nickname "The Ferret."¹ He would bring out his testimony by persuading those who took the stand that he already had the facts but merely wished to have them confirmed for the record. According to Raymond Clapper, Black "sits back easily in his chair, puffs slowly on his cigar, rolls his large, open eyes quite innocently, and with a wise smile undertakes to refresh the memory of a squirming witness."²

The Senator's first investigative duties were in handling the Muscle Shoals section of the Caraway inquiry into lobbying. This work developed his investigator's interest into the field of lobbying. He found that large companies were going to great lengths to influence the progress of the government for their own gain.³

¹Birmingham Post-Herald, August 13, 1937, p. 3.

²Raymond Clapper, "Hugo Black: Nemesis of Subsidy Spoilsmen," Review of Reviews, XXCIX (August, 1934) p. 18.

³Irving Dillard, One Man's Stand for Freedom: Mr. Justice Black and the Bill of Rights (New York: Alfred A. Knopf, 1963), p. 6.

In 1929, Black sought to investigate the economic affairs of the United States Shipping Board, but his plans were blocked by the Republican majority.⁴ Early in the year he held up an appropriation bill in a futile attempt to limit the salaries of the Shipping Board officials.⁵ In September of 1929, the young Senator for the first time spoke against the practice of lobbying. He stated that all lobbyists should register and give the source of their employment and the amount of their funds. At this time, he called for an investigation of the entire field of lobbying and the methods used by lobbyists.⁶

After his re-election to the Senate in 1932, he sponsored a resolution to study ocean mail contracts. Black's measure was passed by the Senate and he was made chairman of a special committee of inquiry.⁷ In February of 1933, he again appeared before the Senate with a request. He asked that the Senate committee be authorized to investi-

⁴U.S., Congressional Record, 70th Cong., 2nd Sess., 1929, LXX, 3620.

⁵Ibid., 2540.

⁶U.S., Congressional Record, 71st Cong., 1st Sess., 1929, LXXI, 3948.

⁷Charlotte Williams, Hugo L. Black: A Study in the Judicial Process (Baltimore: The John Hopkins Press, 1950), pp. 37-38.

gate air mail contracts, also. In his oration, he emphasized the need for competitive bidding in the letting of mail contracts.⁸

On February 28, 1933, Senator Black succeeded in stalling the signing of new mail contracts. These contracts, valued at more than ten million dollars, were up for renewal and were to be signed for a ten-year period. The Mercantile Marine's fleet was to receive them.⁹ Senator Black introduced a resolution forbidding the Postmaster General to award the contracts until there was further investigation. The Senator's resolution passed.¹⁰

The Seventy-Second Congress created a special committee to carry out a thorough investigation of the mail situation. Senator Black became head of this committee.¹¹ As a first step to reform the mail system and prevent irregularities, he introduced a bill to regulate mail contracts and salaries of individual companies and corporations receiving government

⁸U.S., Congressional Record, 72nd Cong., 2nd Sess., 1933, LXXVI, 3660.

⁹Ibid., p. 4000.

¹⁰Ibid., p. 4601.

¹¹U.S., Congressional Record, 73rd Cong., 1st Sess., 1933, LXXVII, 177.

subsidies and government loans.¹²

From March, 1933 through the middle of January, 1934, the Black committee held public hearings.¹³ The committee subpoenaed lawyer, William P. MacCracken, to appear before them and demanded that he bring all files relating to ocean mail and air mail contracts. MacCracken appeared but he did not bring his files. He claimed the privilege of private communication between lawyer and client. Senator Black then asked the Senate for a warrant for MacCracken, and the warrant was promptly issued, along with a command to bring all pertinent information.¹⁴

On February 5, 1934, evidence was presented to the Senate to prove that the awarding of contracts had not been through competitive bidding and that certain illegal actions had occurred.¹⁵

The investigating committee, with the use of evidence presented by witnesses, were able to piece together the un-

¹²U.S., Congressional Record, 73rd Cong., 1st Sess., 1933, LXXVII, 504.

¹³U.S., Congress, Senate, Committee on Investigation of Air Mail and Ocean Mail Contracts, Hearings, 73rd Cong., 1st and 2nd Sess., 1933-1934.

¹⁴U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1899.

¹⁵Ibid., p. 1904.

lawful actions of the air mail companies.¹⁶ Certain companies met together in the office adjacent to the office of Postmaster General Walter Brown. These companies all carried mail for the United States Government. The meeting, conducted by attorney MacCracken, had as its first speaker Mr. Brown. After the address by the Postmaster General, the men were left alone to work out what routes a particular company would be awarded.¹⁷

In speaking to the Senate, Black pointed out that this particular meeting was illegal because statutes of the United States prohibit combinations of prospective bidders for federal contracts.¹⁸ Moreover, under law, any contract obtained by this method is invalidated.

Under oath, MacCracken admitted that he was a representative of a number of airline contractors and that he attended the meeting in question. He still refused, however, to present his files to the investigating committee. The committee suggested that MacCracken send telegrams to his clients asking them to give the material to the Senate com-

¹⁶Birmingham Post-Herald, August 23, 1937, p. 2.

¹⁷U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1904-1950.

¹⁸Ibid., p. 1904.

mittee. When MacCracken appeared before the committee again, he informed them that some of his files had been removed.¹⁹ In his testimony, he mentioned two of his clients, a Gilbert Givven and a L. H. Britten. He accused them of removing personal files from his office. The Black committee demanded to see these files; MacCracken again refused, and the Senate issued an instant subpoena for the two to appear before the committee and to bring the files.²⁰

Britten appeared but stated that he had destroyed the files because they were of a personal nature and he did not want them to come to the public attention. It was impossible to obtain these papers he mentioned. Nevertheless, he denied that they related to the ocean and air mail contracts.²¹

Givven, an employee of Western Airways Company, had also removed material from the files of MacCracken but he returned some papers the next morning. Givven testified that he had been directed to remove the documents by a Harris A. Hanshue, president of the Transcontinental and Western Air Express. These papers, Givven said, were sent to the hotel

¹⁹Birmingham News, August 12, 1937, p. 4., and U.S., Congressional Record, op. cit., p. 1904.

²⁰U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1928.

²¹U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1935.

of Hanshue. When the papers were returned and submitted to the committee, it was found that they related to air mail and other mail transportation. In stating that he had been directed to take the papers from MacCracken's files, Givven denied knowing of the Senate committee's desire to see them.²²

When Hanshue, Britten, and Givven refused to cooperate with the committee, Black asked for and obtained a subpoena for the three men. The gentlemen were ordered to appear and to show cause as to why they should not be cited for contempt and fined. On February 9, 1934, the three appeared and they claimed innocence.²³ Black's thorough interrogation, however, revealed that the letters supposedly destroyed by Britten all pertained to air mail contracts. The Senator produced copies of these letters and cross-examined Britten about them. One missive, written to Ben Myers, an employee of the Post Office Department, asked about extension of lines and the awarding of contracts.²⁴ Black also presented copies of telegrams dealing with the conference instigated by Postmaster General Brown. Mr. Britten was an employee of North-

²²U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1950-1955.

²³Ibid., 2098.

²⁴Ibid., 2205.

west Airway and the papers he removed were in the Northwest Air Express files.²⁵

Senator Black, on February 10, 1934, called the Post Office inspector to the stand. He testified that he and two other inspectors went to the basement of 1090 National Press Building, which housed Britten's office. The inspectors went through three hundred gunny sacks of waste paper and were able to secure, for the Senator, letters that Britten had torn apart and thrown in the trash.²⁶

A post office clerk testified before the investigating committee that he had burned government papers under the orders of Postmaster General Brown.²⁷ The ex-Postmaster then rushed to Washington and delivered to his successor, James A. Farley, two packets of correspondence dealing with contracts. Brown said he had found them among his personal files.²⁸

After considering the evidence presented by the Black committee, the Senate found MacCracken in contempt and

²⁵U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1912.

²⁶Ibid., 230-235.

²⁷The New York Times, January 20, 1934, p. 1, and U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 4087.

²⁸Birmingham Post-Herald, August 23, 1937, p. 2.

sentenced him to ten days in jail.²⁹ Britten was also found in contempt and given the same penalty. Both men appealed their sentences and were turned down. Thus, both served ten days in jail.³⁰

On February 15, 1934, Postmaster General Farley annulled all air mail contracts;³¹ nevertheless, the controversy continued, charges and counter-charges filling the air.³²

Investigator Black, with expert skill, continued to uncover corruption in the Post Office Department. Paul Henderson, Vice President of United Aircraft, testified that the plan to prevent competitive bidding was entirely Postmaster General Brown's.³³

John Coburn, President of the Aviation Corporation, testified that Brown said, "I will not grant you any extension, I will not readjust your pay, until you agree among

²⁹"Investigations", Time, XXIII (February 12, 1934), p.54.

³⁰U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 2947.

³¹Ibid., 2570.

³²The New York Times, February 17, 1934, p. 1.

³³U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7413.

yourselves how the mail will be carved up."³⁴ Black maintained that not a single contract was given to any company that did not come to an agreement.³⁵ Further testimony proved that Brown arranged for an air mail contract to be awarded to Central Transcontinental only if Trans-Atlantic Transport, Western Air Express, and Pittsburgh Aviation Corporation merged to form one large company.³⁶

In April, 1934, Senator Black had sufficient information to submit to the Senate the complete story about the "spoils conference" called by the former Postmaster General. Brown had tried to get the Watres Bill passed to do away with competitive bidding. When this failed, he, at the urging of the large aviation companies, attempted to accomplish this another way by calling a meeting for the purpose of fixing contracts.³⁷

The conference was held in May and June of 1930. Air mail companies met in the office next to Postmaster General Brown. The meeting was called at his direction and

³⁴U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7410.

³⁵Ibid., 7412.

³⁶Ibid., 4090.

³⁷Ibid., 7305.

MacCracken became chairman of the meeting. At the conclusion of the conference, a report of the agreements was filed by MacCracken with the Postmaster under the date of June 4, 1930. In the meeting, the conferees studied twelve routes and agreed to how seven of these should be awarded. The Postmaster "was to act as arbitrator in dividing up the air mail map."³⁸

Senator Black, in a public address, attacked the aviation industry for its practices. The government, he maintained, had subsidized the aviation industry by paying private industry to carry mail. During the years 1928 to 1938 the taxpayers paid over eighty-six million dollars to the industries and probably fifty-eight million dollars was paid as a subsidy. This did not include the cost of foreign air mail. Black charged that this money found its way into the hands of "profiteers" financial groups "who never flew a plane" or improved aviation. These groups control air transportation and they can fix prices. At this time, the government had awarded thirty-four domestic air mail contracts. Senator Black said that four parent holding companies controlled twenty-five contracts; the Aviation Corporation of

³⁸U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 4613-4614.

Delaware controlled thirteen; the United Aircraft controlled six; the North American Aviation Company controlled five; and the Northwestern Airways controlled one. Ninety-seven per cent of all the money paid out by the government in 1932 went to these four companies. Black proved that these four companies forced small firms out of business. The Senator urged Postmaster General Farley to cancel these contracts because his committee had proved holding charges against them. Hence, their contracts with the government were, under law, void. Senator Black lauded the courage of the present administration in acting against the fraudulent companies. The cancellation of the unlawful contracts would actually help the aviation industry, he concluded.³⁹

The Brunner Bill was passed to authorize use of Army Air Corps to carry the mail for one year.⁴⁰ Unfortunately, the foul weather and poorly equipped planes brought much criticism to the new method of carrying the mail.⁴¹ All newspapers carried news of the large number of crashes by the Army pilots carrying mail. Time Magazine managed to

³⁹The New York Times, February 17, 1934, pp. 1-3., and U.S., Congressional Record, op. cit., pp. 3178-3179.

⁴⁰The New York Times, February 25, 1934, p. 1.

⁴¹"Army Takes Over the Mail," Time, XXIII (March 5, 1934), p. 46.

convey the idea that Senator Black was responsible for the loss of lives because he led the investigation into the air mail irregularities. After the loss of ten lives, the domestic air mail "stood stock-still while the Army knocked breathless. . . caught its second breath."⁴² In ordering the Army to stop carrying the mail,⁴³ President Roosevelt suggested to Senator Black that an aviation commission be set up to make an immediate study and recommend to Congress a broad policy covering all phases of aviation and the relationship of the government to the industry.⁴⁴ Franklin D. Roosevelt then announced that for one year contracts would be let on a competitive bidding system. During this period, a broad policy relating to aviation as a whole should be adopted.⁴⁵

Senator Black, in answer to President Roosevelt's suggestion, introduced a bill calling for a new aviation policy. Under his bill, contracts would be open to bids and the lowest bid must be accepted. All grievances concerning

⁴²"Airmail," Time, XXIII (March 26, 1934) p.53.

⁴³Franklin D. Roosevelt, Public Papers and Addresses of Franklin D. Roosevelt (New York: Random House, 1938), III, 138.

⁴⁴Ibid., pp. 183-184.

⁴⁵Ibid., p. 184.

contracts would be made to the Interstate Commerce Commission and the decision of the Commission would be considered binding.⁴⁶ The bill also forbade free passes to Congressmen on an air transportation system. The Alabamian argued that if a Senator accepts free passes for pleasure trips, he would then feel obligated to the company. This feeling would prevent him from being objective about legislation affecting the company. This bill called for an entire cleansing of the industry. To do this, according to Black, the air mail should be taken away from the Post Office Department and placed under the Interstate Commerce Commission.⁴⁷ The bill proposed that a study be started, and upon expiration of the existing one-year contracts, the rates would be fixed by the Interstate Commerce Commission. These rates would be mandatory. The purpose of the Commission was to study the general subject of military and naval aviation and manufacturers so that a broad policy could be developed.⁴⁸

In calling for the passage of this bill, Black made the following analogy:

⁴⁶U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 6731.

⁴⁷Ibid., 5694.

⁴⁸Ibid., 7523.

"There is no difference between the man who breaks open a store and takes twenty-five dollars worth of goods and the man who, by chicanery and trickery, deprives the Government of the United States the rights to get its services at the lowest price by agreements with other men to prevent honest, open, and fair competitive bidding."⁴⁹

The Senator's bill to regulate aviation and to allow the Interstate Commerce Commission to determine rates for the carriage of the mail was passed.⁵⁰

The investigation into the aviation industry and the resulting bill saved the United States Government a substantial amount. At the time of cancellation of the contracts, the average rate paid per airplane mile was thirty-seven cents. Under the bid system started April 20, 1934, the average rate per airplane mile was twenty-three cents. The annual cost of the service under the bids with one hundred per cent performance was \$6,105,221. Even with additional mileage, the cost for the carriage of mail over all the lines did not go over ten million dollars; previously, the government was spending twenty million dollars annually. This was a three hundred per cent profit for the airlines per year.⁵¹

⁴⁹U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7411.

⁵⁰Ibid., 7629.

⁵¹Ibid., 7221-7228.

Another phase of the investigation that got much attention from Senator Black was the International Merchant Marines.⁵² Black gave the following information over the National Broadcasting companies:

Since the beginning of the World War, the United States Government has spent approximately four billion dollars to build up an American Merchant Marine. . .our ships subsidized with the money of the American taxpayer, have formed combinations with foreign ships fixing rates so high by such agreements as to place additional burdens upon American farm, mine, and factory.⁵³

Senator Black's investigating committee issued a report that showed that huge subsidies paid by the government to build up a Merchant Marine had been diverted from that channel and were largely spent in high salaries, extravagant expense accounts, highly paid lobbyists, and huge dividends.⁵⁴ Since 1928, the United States Government had contributed practically one billion dollars in mail subsidies and government loans to shipping interests. He proved that one company started in the shipping business with five hundred dollars

⁵²"Hugo Black: Alabama Senator is Keen-Witted Investigator," Newsweek, II (November 11, 1933) p.17.

⁵³Speech from the files of Hugo Black. The speech was given over NBC at the National Press Building in Washington, D.C. on January 24, 1934.

⁵⁴U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7290.

paid in capital. In a period of eight years, more than seven million dollars in profits had been made.⁵⁵

In May, 1935, Senator Black proposed that a minimum wage be paid to personnel on Merchant Marine ships. At the same time, he called for a limitation of profits for ship builders.⁵⁶ Favoritism and waste over a period of years had resulted in absolute failure to build up a strong Merchant Marine, he alleged.⁵⁷

From January until May of 1935, Senator Black worked for legislation in the Merchant Marine field.⁵⁸ His work resulted in a reform movement in the Merchant Marine and ocean mail contracts.⁵⁹

In his investigations of the air mail and ocean mail situation, Black discovered other disturbing information. He found that the aeronautic companies were paying lobbyists as much as sixty thousand dollars a year to put pressure

⁵⁵U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7300.

⁵⁶U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 7446.

⁵⁷Ibid., 7034.

⁵⁸Birmingham Post-Herald, December 26, 1935, p. 10.

⁵⁹Birmingham News, August 23, 1937, p. 2.

on Congressmen to get their contracts renewed.⁶⁰ In April, 1934, he spoke out against lobbying. "It ought to be eliminated and cut out like a cancer," he maintained.⁶¹

From April until well into the fall, Black worked for passage of a bill calling for an investigation into all lobbying activities.⁶² A person had the right to inform Congressmen of his desires, but to lobby for any "greedy or predatory interest" is wrong, he believed. The lobbyist had spent over five million dollars in fighting the holding company bill. The public would pay for these activities by increased rates for gas and electricity. The Senate agreed and passed the Black Bill calling for a complete investigation into lobbying activities.⁶³

Early in his administration Franklin D. Roosevelt committed himself to a program that would bring death to holding companies. Under pressure, however, he was persuaded to adopt a more moderate course. The Wheeler-Rayburn Bill was introduced to Congress with the so-called "death sentence"

⁶⁰U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 7298.

⁶¹Ibid.

⁶²The New York Times, July 11, 1935, pp. 1/4.

⁶³Washington Evening Star, August 9, 1935, p. 1.

provision, which empowered the Security Exchange Commission after January 1, 1940, to dissolve any holding company which could not justify its existence.⁶⁴ The utility companies mounted heavy fire against the bill. "Lobbyists subjected Congressmen to greater pressure than on any measure that had been before the House in years."⁶⁵

In the midst of this situation, Senator Black and a committee of Senators started to work. According to the *Alabamian*, there was "enough dirt to keep twenty committees busy."⁶⁶ A flood of telegrams and letters against the Wheeler-Rayburn Bill poured into Washington beginning in February, 1935. These messages, Black asserted, "did not appear on their face to have been written, prepared, or paid for by anyone but the person whose name was signed."⁶⁷ However, evidence before the lobby committee showed that one holding company system expended more than \$134,000 for telegrams and telephone messages. At an expense of sixty cents per message, this meant more than 235,000 messages were sent

⁶⁴Fortune, XXII (June, 1940), p. 156.

⁶⁵Willial Leuchtenburg, Franklin D. Roosevelt and the New Deal (New York: Harper and Row, Publishers, 1963), p. 155.

⁶⁶"The Congress," Time, XXX (August 5, 1937), p. 7.

⁶⁷U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 12771.

by this one company. Black proved that over 250,000 telegrams were sent by holding companies and five million letters were sent under the same plan.⁶⁸ Witnesses, under oath, disclosed the various methods used to send these telegrams. Some people were hired to obtain signatures and were paid for each one. Company managers of stores and places of business received general authority from their clerks, janitors, and other employees to send messages. Holding companies hired publicity men to prepare drafts such as the following to be sent: "Defeat the Rayburn-Wheeler Bill and you will get my support in the next election" or "I shall expect you to use your prerogative against the Wheeler-Rayburn Bill. As you vote now, so shall I vote for you at the next election." Furthermore, companies hired anyone with a friend in Washington to put pressure on that friend to persuade him to vote against the bill.⁶⁹ Congress buckled under all the pressure and refused to pass the bill.

In reflecting on the defeat, Black charged that the lobby had "reached such a position of power that it threatens government itself. Its size, its power, its capacity for evil; its greed, trickery, deception, and fraud condemn it to the

⁶⁸U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX,, 12771-12773.

⁶⁹Ibid., 12773-12775.

death it deserves."⁷⁰

Philip H. Gadsden, chief of the power lobby and chairman of the Committee of Public Utility Executives, came under fire from the Black committee.⁷¹ Black was able to wring from Gadsden in his first questioning period the information that the power lobby had spent over one million dollars in the fight against the Public Utility bill. Gadsden claimed his constitutional rights to try to prevent passage of a bill that would destroy valuable property. No evidence was turned up to prove any illegalities. Nevertheless, Black still felt that fraud had been involved.⁷²

The Warren, Pennsylvania Representative of Associated Gas and Electric Company admitted to some questionable acts in his fight to block the passage of the Public Utility bill. He had taken names from the telephone directory and signed them to hundreds of unauthorized telegrams and sent them to the Congressmen. Black also summoned telegram men from Pennsylvania who testified that some two thousand anti-
"death sentence" telegrams in batches of one hundred had been

⁷⁰U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 12772.

⁷¹Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Politics of Upheaval (Boston: Houghton Mifflin Company, 1960), p. 318.

⁷²"National Affairs," Time, XXVI (July 22, 1935), p.26.

sent by Associated Gas and Electric Company subsidiaries. Seven hundred had been signed by York Street Railway Company employees and their next of kin. If any employee objected, he was told to see the boss.⁷³

Associated Gas and Electric Company had more than one hundred and fifty subsidiaries, associates, and affiliates. The two top men in the company at this time were Howard C. Hopson and James Mann. Senator Black, in an attempt to find out more about this company and to show benefits the company received from their lobbying, made plans to subpoena Hopson. Hopson, according to Senator Black, controlled and mapped out the entire program of propaganda for lobbying activities on the part of his men all over the country.⁷⁴

On August 14, Black reported to Congress that little progress had been made in the investigation of Associated Gas and Electric Company. Howard Colewell Hopson was subpoenaed on August 13. He declined to accept the summons, and his attorney, William A. Hill, physically prevented serving of the document. On August 14, another summons was issued and this one was served. Nevertheless, Hopson again refused

⁷³"The Congress," Time, XXX (August 5, 1935), p. 7.

⁷⁴U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 13040.

to appear.⁷⁵ Finally, Black secured a warrant for Hopson's arrest. Faced with this challenge, Hopson appeared before a special session of Senator Black's committee. Black promptly extracted testimony worthy of headlines.

Mr. Hopson's reason for not appearing when first subpoenaed was given. He had deliberately arranged to be questioned by the House committee which was also conducting an investigation. He reasoned that the House investigators would be less grueling than their counterparts in the Senate. Next, Hopson admitted that in attempting to influence the press on the Public Utility bill, he had threatened to withdraw advertising. Moreover, he conceded Associated Gas and Electric had paid more than five million dollars to four subsidiary companies in the form of service fees in 1930 and 1931, to be used for lobbying.⁷⁶ He went on to say that his company had spent around \$900,000 directly against the Wheeler-Rayburn Bill and anticipated spending more.⁷⁷

After the disclosure of the forged telegrams from Pennsylvania, Black found that telegrams were burned in a

⁷⁵U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 13040-13041.

⁷⁶"National Affairs," Time, XXVI (August 26, 1935), p. 16.

⁷⁷The New York Times, August 15, 1935, pp. 1/10.

Warren office.⁷⁸ A Hopson man had told the Western Union office manager in Warren that it would be a good idea if "somebody threw a barrel of kerosene in the cellar"⁷⁹ of the telegraph office. The charred remains were found, however. Senator Black then issued a blanket subpoena for telegrams in the office of all companies in Washington. According to federal law, all telegrams are to be kept on file for one year. Immediately there arose a general outcry in the newspapers protesting the activities of the investigating committee. The Senator was accused of Nazi methods and abuse of freedom of speech and violation of the fourth amendment to the Constitution.⁸⁰ On March 5, 1936, Black appeared before the Senate and spoke about his methods. He quoted evidence already given that showed that before telegrams could be seized, Associated Gas and Electric Company had their messages burned. He continued by pointing out that his committee had proved that a subsidiary of the Cities Service also destroyed their records on the Wheeler-Rayburn Bill. The only way he could secure copies of these telegrams, he

⁷⁸The New York Times, March 11, 1936, p. 1.

⁷⁹Leuchtenburg, op. cit., p. 156.

⁸⁰"portrait 'The Congress'", Time, XXVII (March 16, 1936), pp. 17-18.

asserted, would be to use a blanket subpoena.⁸¹

Hardy Strawn, a Chicago lawyer, sought to get an injunction restraining the telegram companies from furnishing data to the committee. He charged that the committee work was just a general search.⁸² Black retorted that his committee had "subpoenaed all telegrams of those gentlemen who conceal themselves behind organizations and groups in order to determine the policies of the nation behind a mask."⁸³ Black pleaded with the court not to issue an injunction. In his oration, the Alabamian made the following remark:

I will state very frankly that in my judgment, if any judge ever issued an injunction to prevent the delivery of papers that were sought by this body through subpoenas, the Congress should immediately enact legislation taking away that jurisdiction from the Courts. Congress creates the jurisdiction of those courts. . . If I had ever had any idea that any judge would issue an injunction against this body's getting certain evidence, I would long ago have introduced a bill to take away the jurisdiction which enable the Court to do that.⁸⁴

⁸¹U. S., Congressional Record, 74th Cong., 2nd Sess., 1936, LXXX, 3328-3329.

⁸²The New York Times, March 12, 1936, p. 1.

⁸³U.S., Congressional Record, 74th Cong., 2nd Sess., 1936, LXXX, 3330.

⁸⁴"Portrait 'The Congress'," Time, XXVII (March 16, 1936), p.17.

The Court was unintimidated, however, and Mr. Strawn was granted a temporary injunction.⁸⁵ Later, the United States Court of Appeals said that any evidence needed would be left to the discretion of Congress.

In defense of his committee, Black wrote an article that was published in Harpers magazine. The following excerpt indicates his views:

There is no power on earth that can tear away the veil behind which powerful and audacious and unscrupulous groups operate save the sovereign legislative power armed with the right of subpoena and search.

An investigation is a study by the government of circumstances which seem to call for study in public interest. And the public hearing is usually, certainly in important investigations, preceded by a long period of extensive research. . . Unwillingness to answer questions, often under the unwise advice of lawyers, makes it necessary for committee investigators to exam personal files and papers. . . Frequently the persons asked to reveal their papers protest earnestly that the documents in question are purely personal. It is amazing how much purely 'personal correspondence' there is in business files. . .

I think it a fair estimate that Congressional investigations are among the most useful and fruitful functions of the National legislature.⁸⁶

⁸⁵The New York Times, March 12, 1936, p. 1.

⁸⁶"Inside a Senate Investigation," Harpers, CLXXVII (February, 1936), 275.

Despite Senator Black's findings, on August 1 the House voted down the "death sentence" by a decisive margin. Through a compromise Black and Roosevelt won, however, for the final version of the Wheeler-Rayburn Bill wiped out all utility holding companies more than twice removed from the operating companies. It also empowered the Security Exchange Commission, with whom all combines were compelled to register, to eliminate companies beyond the first degree that were not in the public interest. The Commission, however, would have to defend an order of dissolution. Another section of the law authorized the Security Exchange Commission to supervise financial transactions of the companies.⁸⁷

Besides creating a permanent air mail service, Black's investigations also brought lobbyists under strict scrutiny. Moreover, his evidence helped in destroying the large holding companies because, under the new law, most of them would be destroyed in three years.

⁸⁷Leuchtenburg, op. cit., p. 156.

III MUSCLE SHOALS

The development of Muscle Shoals and the production of cheap fertilizer for the farmer were Senator Black's main interests in the Senate until the New Deal created the Tennessee Valley Authority. During his first years in the upper house, he was usually quiet and did not orate on many issues; however, on the Muscle Shoals issue, he was always active.¹ A main portion of his campaign for the Senate had been devoted to pledges for development of Muscle Shoals. The following is a portion of a campaign speech given by Mr. Black in Ashland, Alabama, on March 20, 1926:

Everybody knows that cheap fertilizer means profit and prosperity to the farmer and that high-priced fertilizer means debt at the end of the harvest. We want cheap fertilizer and I am heartily opposed to making any private-owned power company a gift of Muscle Shoals. The people's money built it and it belongs to them. If you want your great property at Muscle Shoals given away to the Alabama Power Company, or any other privately owned power company, do not vote for me. God put it there for the benefit of all the people and all the people shall have it.²

¹Raymond Clapper, "Hugo Black: Nemesis of Subsidy Spoilsmen," Review of Reviews, XXCIX (August, 1934), 18.

²From the files of Hugo Black. A speech given on March 20, 1926, in Ashland, Alabama.

During World War I, a nitrate plant was built at Muscle Shoals.³ After the war it stood idle. The Alabama Power Company, and later Henry Ford, wanted to buy this property.⁴ Hugo Black and Senator Norris from Nebraska both worked continuously to keep this property for the people. Senators Black and Norris at first clashed in their desires, for Senator Black wanted cheap fertilizer and he felt the property might be leased to private industry for this purpose.⁵ Senator Norris wanted the construction of a dam at Muscle Shoals to be part of a government project to distribute cheap electric power.⁶ It took the Senators about a year to come to a compromise solution.

In one of Senator Black's first speeches before the Senate, he proclaimed that power was not what the farmer needed as much as he needed fertilizer. He said the farmer was deprived of a cheap fertilizer because Congress could not come to an agreement on a method of operating Muscle Shoals.

³John H. Kyle, The Building of TVA (Baton Rouge: Louisiana State University Press, 1958), p. 8.

⁴Judson King, The Conservation Fight (Washington, D.C.: Public Affairs Press, 1959), pp. 98-122.

⁵Birmingham News, May 5, 1930, p. 4.

⁶Richard L. Neuberger and Stephen Kahn, Integrity: The Life of George W. Norris (New York: The Vanguard Press, 1937), pp. 204-206.

If Muscle Shoals would produce nitrates for fertilizer, the farmer could get fertilizer seven cents per pound cheaper than that imported from Chile. The Senator pledged his full support to any bill that would help get fertilizer for the farm lands. Furthermore, he did not believe that the selling of the plant to a private company would reduce the cost of power.⁷

Early in January, 1929, the new Senator went to work on the project.⁸ In urging the Senate to support a new plant at Muscle Shoals, he asserted that "the government should control its navigable streams even to the extent of constructing power plants. . ."⁹ Shortly afterwards Senator Black proposed two amendments to the present Muscle Shoals bill. One provided for the building of an additional dam looking toward navigational improvements and increasing the available powers at the present dam; the other amendment was to give the President the authority to lease nitrate plants. This would separate the power plants from the nitrate plants. It further provided that if no private industry leased the

⁷U.S., Congressional Record, 70th Cong., 1st Sess., 1928, LXIX, 4101-4105.

⁸U.S., Congressional Record, 70th Cong. 2nd Sess., 1929, LXX, 2312.

⁹Birmingham News, August 10, 1937, p. 5.

nitrate plants within three months, the government would then operate them and manufacture fertilizer as well as power.¹⁰

The Muscle Shoals bill was passed by the Senate and the House, but President Coolidge, through the use of the pocket veto, killed the bill.¹¹ In May, 1929, Senator Black introduced two new bills. One bill empowered the Secretary of War to execute a lease with Air Nitrates Corporation and American Cyanamid Company for production of fertilizer. The second bill provided for the preservation, completion, maintenance, and the operation of the United States Muscle Shoals project for war, navigation, fertilizer manufacturing, electric power production, flood control, and farm relief.¹²

From May until October, Senator Black spoke out for aid to the farmer and proper use of the resources of Muscle Shoals.¹³ On October 4, 1929, the Alabamian cautioned the Senate against renewing the contract with Alabama Power for exclusive use of electrical power from Muscle Shoals. Their contract would expire as of January 1, 1930. Alabama Power

¹⁰U.S., Congressional Record, 70th Cong., 2nd Sess., 1929, LXX, 5591.

¹¹Ibid., 1963.

¹²Ibid., 1963-1966.

¹³"Real Federal Farm Aid Imperative," Southern Cultivation, II (October 15, 1929), p. 15.

controlled an exclusive contract with the government. Under terms of this contract, only one-eighth of the power that Muscle Shoals could generate was being put to use. Black was appalled at the obvious waste of power. Another argument for the use of Muscle Shoals by the government was based on the need for nitrogen in time of peace as well as in time of war. The United States, Black asserted, spends millions on battleships but does not produce necessary nitrogen. Nitrogen is imported from Chile, and the United States in 1929 lagged behind all countries of the world in production of this item. According to information given by the freshman Senator, Germany, Great Britain, and Chile had a cartel agreement to control production and distribution of nitrogen. If Muscle Shoals, however, produced part of the nitrogen needed in the United States, the price of nitrogen could be kept down and the farmer would be able to purchase more needed fertilizer. Also, in time of war, importation of nitrogen could drastically raise the cost of war. This expense could be prevented by the use of a plant at Muscle Shoals which had been idle for nearly ten years.¹⁴

Into the spring of 1930, Black continually kept the question of Muscle Shoals before the Congress. He always

¹⁴U.S., Congressional Record, 71st Cong., 1st Sess., 1929, LXXI, 4198-4209.

urged the operation of the nitrate plants for the benefit of American agriculture.¹⁵ He was irrevocably opposed to turning this power over to Alabama Power Company or any other private company for exploitation and their own profit.¹⁶

On April 3, 1930, Senator Black offered an amendment to the bill pending concerning government operation of the plant in Alabama. His amendment provided for the construction of a third dam at Muscle Shoals to promote flood control and navigation on the Tennessee River. Senator Black fought for the construction of a nine foot channel all the way to Knoxville. Dam Number Three would be between Chattanooga and Florence. The Senator also supported the construction of a dam at Guntersville, Alabama. He reasoned that no private company would be willing to build a dam in this area because the company would not be able to produce electricity at a cheap enough rate to compete with other power companies in the South. Dam Number Three, according to Black, would open up navigation between Florence, Alabama, and Chattanooga, Tennessee, would increase trade and prove very beneficial to

¹⁵Birmingham News, May 5, 1930, p. 4.

¹⁶U.S., Congressional Record, 71st Cong., 1st Sess., 1929, LXXI, 4394.

these areas.¹⁷ Black eventually decided to change the amendment because many Senators felt that the expense of the operation would give President Hoover an excuse to veto the bill.¹⁸ A new resolution, offered jointly by Senators Black and Norris, provided for continued operation of Muscle Shoals and the building of a new dam at Cove Creek. This would bring navigation along the Tennessee River from Knoxville to the mouth of the river and provide storage dams and cheaper power. Their efforts finally achieved fruition when the Senate passed the bill.¹⁹

On June 28, 1930, Senator Black reported to the Senate that the Secretary of War sold about one-eighth of the power generated at Wilson Dam to the Alabama Power Company. He refused to put the rest to use and therefore it was a complete loss. When the plant was authorized, prohibitions had been made against making contracts to sell power exclusively to one company. Black argued that the power should be sold to municipalities. He accused the administration and the Republican party of being at fault. If power could be sold directly to municipalities, it would cause competition for

¹⁷U.S., Congressional Record, 71st Cong., 2nd Sess., 1930, LXXII, 6430.

¹⁸Ibid., 6438.

¹⁹Ibid., 6511.

the Alabama Power Company. The company at the present time sold to municipalities at about twenty times the rate they paid the government.²⁰

Senator Black reasoned that if this wasted power could be sold, it would mean increased revenue for the government. He proposed that the matter be submitted to the Judiciary Committee and an investigation be ordered to find out if Muscle Shoals power was being sold in accordance with law.²¹ The Senator's resolution passed and the investigation began. The inquiry proved that the power could be sold to more than one company and that large companies were using great sums of money to keep any legislation concerning Muscle Shoals from passing. Black then introduced a resolution demanding that the Secretary of War sell power to anyone until the government decided what to do with Muscle Shoals. The Secretary of War was in charge of Wilson Dam because it was built for military purposes. The resolution was passed and the Secretary so instructed.²²

The Muscle Shoals bill was finally passed by the House only to be rejected by the President. Black maintained that

²⁰U.S., Congressional Record, 71st Cong., 2nd Sess., 1930, LXXII, 11965.

²¹Ibid., 12384.

²²Ibid., 11764.

President Hoover vetoed the bill because of false information. The President said the cost of production of power at Muscle Shoals would be about nine and one-tenth mills per kilowatt hour. The Army Engineers, according to Black, fixed the cost of production at one and four-tenths mills per kilowatt hour. The engineers reported that electricity could be produced and transmitted three hundred and fifty miles at a cost of four and one-tenth mills per kilowatt hour. Power companies produced electricity and sold it wholesale for seven mills. The people paid about ten mills. These figures proved to Black that Muscle Shoals could compete with private companies. Hence, the President was mistaken in his reasoning.²³

Black stressed how vital nitrates would be in time of war and warned that we depended on Chile and Brazil for our nitrates. On the other hand, Hoover, in his veto message, stated that the Secretary of War had informed him that there was no need for nitrates. Black went on to prove that in time of war we needed more nitrogen to make explosives. To substantiate his statement, he called experts to the stand to show that the United States was not self-supporting in time of war. In conclusion, the Alabamian charged that the Muscle Shoals measure was dying at this session of Congress

²³U.S., Congressional Record, 72nd Cong., 1st Sess., 1931, LXXIV, p. 1951.

because the power companies, the fertilizer companies, and those who control the wealth of the nation wanted it to die.²⁴

Under the bill that President Hoover vetoed, the property in Alabama could be leased but the company that leased it would have been permitted to make only eight per cent profit. The President would have had only one year to find someone to lease the property.²⁵

Black went on to say that the Alabama Power Company was buying power at Muscle Shoals for two mills. Yet Hoover, in his veto message, said that it cost nine mills to produce electricity. Black maintained that if President Hoover's figures were correct, it meant that the Alabama Power Company was robbing the government. If this was true, their contracts should be cancelled immediately.²⁶

The Senator reaffirmed his belief in private enterprise and stated that nothing should do away with private enterprise. Nevertheless, he felt that something had to be done to curb big businesses such as Alabama Power Company which were virtual monopolies. He felt that the Muscle Shoals bill would create more competition, and he asked that Congress

²⁴Birmingham News, March 4, 1931, p. 4.

²⁵Ibid.

²⁶Birmingham Post-Herald, March 5, 1931, p. 7.

pass the bill the next session over the President's veto.²⁷

Through the next several years, Senator Black continued to work for the establishment of government control of Muscle Shoals and for the cheap fertilizer for the farmer. It seemed as if legislation of this kind could not be passed until a new administration came to power; therefore, until the office of the presidency changed hands, Senator Black devoted much of his time to other things.

When President Franklin D. Roosevelt came into office he immediately went to work to keep his campaign promise to do something for the people of the Tennessee Valley area. He consulted with Senators Norris and Black. The President revealed to Black and Norris that he envisioned a broader program than theirs. Roosevelt's ideas were contained in one broad plan called the Tennessee Valley Authority. This measure passed and went into effect in 1933.²⁸

The new agency, as a broad program of resource development, was charged with constructing and operating a multiple-use system of dams and reservoirs which would, besides improving navigation, provide for flood control, generate a

²⁷U.S., Congressional Record, 72nd Cong., 1st Sess., 1931, LXXIV, 1952.

²⁸U.S., Congressional Record, 73rd Cong., 1st Sess., 1933, LXXVII, 2633.

large amount of electric power, and give the farmers a chance to improve crops.²⁹

²⁹U.S. Congress, The Tennessee Valley Authority Act (Washington: Government Printing Office, 1933), p. 1.

IV WAGE AND HOUR

In 1929, after the crash and with the beginning Depression, Black began a study of wage and hour regulation as a method of ending economic decline and distress among workers. He was afraid of pump-priming as a method of getting money down to the unemployed.¹ He favored some direct relief, but he helped defeat a bill providing direct relief, the La-Follette-Costigan Bill, because it did not have provisions for state control.²

In December, 1932, Senator Black of Alabama introduced a new bill that would limit the hours of work in factories to thirty a week.³ On January 23, 1932, President Green of the American Federation of Labor threatened a general strike if legislation of this type was not adopted.⁴ At the same

¹Irving Dillard, One Man's Stand For Freedom: Mr. Justice Black and the Bill of Rights (New York: Alfred A. Knopf, 1963), p. 12.

²Dillard, op. cit., p. 13.

³Basil Rauch, History of the New Deal (New York: Creative Age Press, Inc., 1944), p. 75.

⁴Dexter Perkins, The New Age of Franklin Roosevelt: 1932-1945 (Chicago: The University of Chicago Press, 1957), p. 16.

time, a committee of the Chamber of Commerce issued a "Report on Working Hours" recommending that a forty-hour week be adopted by industry, but only on a temporary and voluntary basis. The committee vigorously opposed any legislation on the subject.⁵

The Black Bill barred from interstate commerce articles produced in plants in which employees worked more than five days a week or six hours a day.⁶ In January of 1933, Black began to work vigorously for this measure. He repeatedly insisted that the bill would help destroy widespread poverty. He cited the many attempts to bolster the economy such as the Reconstruction Finance Corporation and the attempts to balance the budget. He felt, however, that higher wages and shorter weeks were the most important, and he promised to keep calling for the measure until it passed. Senator Black made an appeal to all interested people to appear before his committee and make suggestions.⁷

On February 17, 1933, Senator Black reported to the Senate on the findings made by his sub-committee. He gave

⁵The New York Times, August 2, 1933, p. 1.

⁶William Leuchtenburg, Franklin D. Roosevelt and the New Deal (New York: Harper and Row, Publishers, 1933), p. 820.

⁷U.S., Congressional Record, 72nd Cong., 2nd Sess., 1933, LXXVI, 2740.

the following reasons for passage of his bill: (1) it would bring employment to six and one-half million people (2) it would aid the farmers and (3) by absorbing all these people into industry, confidence in the United States economy would be restored. Expert witnesses testified to the Senate that since the beginning of the depression, the number of hours worked increased greatly while wages decreased steadily.⁸

Business representatives constantly hoped to find reasons to defeat the Black Bill. One argument against passage of the bill dealt with constitutionality. These men claimed that regulating the hours of commerce should not come under interstate commerce; therefore, Congress would have no jurisdiction over the matter. Senator Black responded as follows:

Who can say with twelve million men unemployed in America, with commerce between the states practically stopped, that the lack of purchasing power on the part of these people is wholly disconnected with interstate commerce? Who keeps up interstate commerce: The people of the United States when they cannot buy commerce perishes from the face of this nation. It would certainly be strange and unusual to say that the Congress of the United States can protect the people from a conspiracy to fix the price of goods, but at the same time cannot protect them

⁸U.S., Congressional Record, 72nd Cong., 2nd Sess. 1933, LXXVI, 4304.

from conditions which are bringing death, starvation, misery, and destruction all over the land.⁹

Senator Black told Congress that he would like a minimum wage, but the Court had ruled the minimum wage unconstitutional. He claimed that labor was underpaid while capital was greatly overpaid. He continued by pointing out that goods cannot be sold unless people can afford to buy them. The Senator proclaimed that the Federal Government with reference to interstate commerce had "vested in it full and complete power. . ." He said that unless the hours of labor were reduced, it would be far more injurious to interstate commerce than anything so far guarded against. "It will destroy it and make it collapse."¹⁰ The states could regulate hours of labor in intrastate commerce, therefore, Congress should have power to protect interstate commerce.¹¹ When twelve million people are out of work and others work sixteen hours a day, it takes away the purchasing power of one-fourth of the people. Commerce, therefore, must be protected from this evil.¹²

⁹U.S., Congressional Record, 73rd Cong., 1st Sess., 1933, LXXVII, 1120.

¹⁰Ibid., 1123.

¹¹Ibid., 1120.

¹²Ibid., 1125.

On April 6, 1933, Senator Black proposed that an amendment exempting all agricultural products and farm products, when processed for the first sale by the original producers, be attached to the bill. On the same day the Senate passed the amendment and the bill over great opposition.¹³

The House amended the bill. Chairman William P. Connery of the House Committee on Labor added a provision for a boycott of imports produced by foreign industries whose laborers worked more than thirty hours a week.¹⁴ It seemed as if the House would pass the Black-Connery Bill. Under pressure from the business community, President Roosevelt appointed Secretary Frances Perkins to work out a substitute for the Black Bill. She suggested that a minimum wage provision be attached to the bill. Organized labor immediately approved the Black-Connery-Perkins Bill. The business community was not mollified, however, and Roosevelt withdrew his approval.¹⁵

The President then appointed another drafting committee to come up with a solution to the labor problem. The new bill that Franklin Roosevelt presented to Congress had some-

¹³U.S., Congressional Record, 73rd Cong., 1st Sess., 1933, LXXVII, 1346.

¹⁴Ibid., 1424.

¹⁵Rauch, op. cit., p. 75.

thing for everyone. The business community had government authorization to draw up code agreements that would be exempt from the antitrust laws; and labor received section 7(a) which guaranteed the right of collective bargaining and stipulated that the codes should set minimum wages and maximum hours. The bill also provided for \$3.3 billion in public works.¹⁶ This was the National Industrial Recovery Act. Senator Black opposed this bill and his group viewed it as a sell-out.¹⁷

When Congress met again in January, 1934, Black again introduced a bill dealing with hours of work. This bill limited the hours of service on Common Carriers engaged in interstate and foreign commerce to a six-hour day. His bill was referred to the commission of Interstate Commerce.¹⁸ All through 1934, Black worked for passage of his bill.¹⁹

In 1935, the Black thirty-hour bill came up for consideration for the third time.²⁰ The bill had been expanded

¹⁶Leuchtenburg, op. cit., p. 58.

¹⁷The Nation, CXLV (August 21, 1937), pp.183-184.

¹⁸U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, 1441.

¹⁹From the files of Hugo Black. An address delivered by Mr. Black in New York on December 15, 1934.

²⁰U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 1935.

until it covered at that time virtually all industries and all classes of wage earners. The Senate passed it again after much debate.²¹ Senator Huey Long came to Senator Black's aid, along with many other liberals. Senator Long, claiming that the whole Senate was for the bill, argued that the National Recovery Act was no good and passage of the thirty-hour bill was needed.²²

Senator Black stated that in order for a reduction of hours in industry to have the effect needed to bring about increased employment, two factors must concur. First, there must be a sufficient reduction in hours actually worked to make it necessary to employ additional people. Secondly, the bill must apply to as many working people throughout the nation as it is possible to reach by law. "Do away with the dole and put people to work in private enterprise."²³

Black denounced the National Recovery Act with the following oration:

I never have believed, and I do not believe that a matter virtually affecting the lives and habits of the individual citizens of this nation;

²¹Rauch, op. cit., p. 184.

²²U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 12800.

²³Ibid., 12801.

and which so vitally affects business enterprises in every section of the United States, should be left to the determination of any board vested with the power of life and death over a particular section.²⁴

The bill was again defeated in the House on April 8, 1935. Some of the opposition came from those who wanted to wait until the National Recovery Act was settled before moving on the Black Bill.²⁵ Black argued that the thirty-hour week bill should be passed even if the National Recovery Act was renewed.²⁶

Again in 1936, Black worked for his shorter work week.²⁷ He made use of a poll taken by the American Institute of Public Opinion to show that seventy-six per cent of the people who voted were for shortening the hours of labor at that particular time. He again stressed the need to choose between the work and the dole.²⁸

In March, 1936, Senator Black appealed to the public by

²⁴U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, 12802.

²⁵Rauch, op. cit., p. 185.

²⁶Ibid., 5234.

²⁷"Hugo Black: Alabama Senator is Keen-Witted Investigator," Newsweek, II (November 11, 1933), p. 17.

²⁸U.S., Congressional Record, 74th Cong., 2nd Sess., 1936, LXXX, 5694.

writing a speech that appeared in The Annals of the American Academy of Political and Social Science. In this publication, the Senator gave the following plea for the shorter work week:

Long hours and low wages ultimately lower the level of production, retard the improvement and expansion of the tools and machinery of output, close factories, cause the abandonment of mines, paralyze business, and bring about destitution and human suffering among helpless millions of people.²⁹

The Senator continued by noting that long work hours and low wages do not prove nor mean that production will increase. Long hours and low wages, he insisted, actually lowers production in the long run. "The only way in which America's capacity to produce can be determined under our economic system," he continued, "is to supply sufficient purchasers with enough money to buy the maximum output."³⁰ Black concluded by stressing that unemployment was not inevitable and that the dole was character destroying.³¹

The article was well received by the people but the Black Bill was again defeated. Black, in June of 1936, neverthe-

²⁹Hugo L. Black, "The Shorter Work Week and Work Day," The Annals of the American Academy of Political and Social Science, CLXXXIV (March, 1936), 62.

³⁰Ibid.

³¹Ibid., p. 63.

less, predicted that a wage and hour bill would soon be passed because many people in the Democratic party had started calling for its passage.³²

In May, 1937, for the seventh time Senator Black introduced a wage and hour bill.³³ It soon encountered bitter opposition from southerners who wanted to maintain the "differential" which enabled them to pay lower wages than other sections.³⁴ From Alabama came the proclamation that the people of all walks of life and every social degree were opposed to Senator Black's wage and hour bill. According to the Alabama, the "bill is directly aimed against the South. The bill discloses the Senator's essential hostility toward industry as a whole. . .and indifference to the industrial welfare of Alabama and its people." The Alabama charged that Black had ceased to serve the interest of the majority of Alabamians. In next year's primaries he should be "divorced from office in the interest of peace and common good."³⁵ South Carolina's Ed Smith, who was reported as saying that a

³²Birmingham Post-Herald, June 14, 1936, p. 5.

³³Rauch, op. cit., p. 287.

³⁴Leuchtenburg, op. cit., p. 261.

³⁵Alabama: The News Magazine of the Deep South, III, No. 31, (August 2, 1937) p. 3.

worker could live comfortably in his state for fifty cents a day, fumed, "any man on this floor who has sense enough to read the English language knows that the main object of this bill is, by human legislation, to overcome the splendid gifts of God to the South."³⁶

The bill, as introduced in May of 1937, by Senator Hugo Black and Congressman William P. Connery of Maryland, provided for minimum wages, maximum hours, and abolition of child labor.³⁷ On May 24, 1937, the President spoke to Congress in a special message and recommended acceptance of these principles in a Fair Labor Standards Bill.³⁸ Businessmen in the South put much pressure on the Congressmen to prevent passage of the bill.³⁹

In June, 1937, Senator Black went again to the people in a speech made over the National Broadcasting Company. He called for an end to sweatshop conditions in industry and ex-

³⁶U.S., Congressional Record, 75th Cong., 1st Sess., 1937, CLXXXI, 7882.

³⁷Stephen Strickland (ed.), Hugo Black: And the Supreme Court (Indianapolis: Bobbs-Merrill Company, 1967), p. 44.

³⁸Franklin D. Roosevelt, Public Papers and Addresses of Franklin D. Roosevelt (New York: Random House, 1938), III, pp. 210-211.

³⁹Mobile Press Register, July 23, 1937, p. 4.

plained that his bill would do away with child labor and "privately paid strike breakers, labor spies, long hours, and unfair wages." The Black-Connery Bill would apply to the working conditions in non-agricultural industries whose products were transported across state lines or competed locally with products from other states. The bill would not apply to the farmers.⁴⁰

Opposition to the bill continued through the months of June and July. In July, Senator Black again explained his position on the wage bill. He said that the proposed legislation is but a modest beginning of a much needed effort to increase America's capacity to consume. "Such increase means increased production." The Senator goes on to say that the proposed legislation did the following:

recognizes the practical necessities which make it possible to prescribe for all goods which enter into interstate commerce any single minimum fair-wage standard or any single maximum work week standard. . .Secondly, it deals with labor conditions only -- it has nothing to do with fixing prices, with trade practices, with production control and with monopolies. Third, all the wage and hour regulation is done by the government labor board itself -- not by private code authorities in the industry. Under the bill, one

⁴⁰Hugo L. Black, "The Wage and Hour Bill," Vital Speeches, III (June 7, 1937), p. 687.

group in an industry cannot gang up on the others or run up expenses on the others.⁴¹

Senator Black also explained that the jurisdiction of the bill stopped short when workers' hours are reduced to a forty-hour week. Furthermore, the labor board would be instructed to put the new labor regulations into effect slowly enough so that industry would not be dislocated and men thrown out of work in the process. Not only that, the new laws would be put into effect in such a way as to support collective bargaining.⁴²

The Senate approved the bill by the end of July and the pressure on the House members increased.⁴³ Finally, on May 28, 1938, the House passed the measure. It became law in June, 1938.⁴⁴

It provided for an establishment of a minimum wage of twenty-five cents an hour to be increased over seven years until forty cents minimum was reached. It provided for a forty-four hour week to be reduced in three years to forty.

⁴¹Mobile Press Register, July 23, 1937, p. 4.

⁴²Mobile Press Register, July 28, 1937, p. 1.

⁴³Mobile Press Register, August 13, 1937, p. 2.

⁴⁴Joseph G. Rayback, A History of American Labor (New York: The MacMillan Company, 1959), p. 359.

Additionally, it provided for time and one-half for overtime. The employment of children under sixteen and under eighteen in hazardous occupations was prohibited.⁴⁵

⁴⁵Rayback, op. cit., p. 359.

V CONCLUSION

As a Senator, Hugo Black was a liberal on economic issues. He concerned himself with problems like the depression, the concentration of economic power, and the need to limit the work week. He was an enthusiastic and thorough investigator who served as chairman of several important investigating committees. During his last years in the Senate, he voted for nearly every issue proposed by Franklin Roosevelt. This did not mean he was a "yes" man. His record shows that he was a pioneer in starting the more liberal trend in government and philosophically supported the New Deal.

In 1933 and 1934, he started calling for Social Security and his work for government ownership of the property at Muscle Shoals was an indication of his progressive ideas.

President Roosevelt nominated Hugo L. Black to the Supreme Court in 1937. This nomination touched off a violent reaction in the Senate and in the nation. One factor behind the denunciation was a delayed reaction to Roosevelt's "court packing" attempt. Another factor behind the opposition was Black's constant support of the New Deal legislation during his ten years in the Senate. But beyond any

question, the major cause for opposition was the disclosure that, in his early life, he had been a member of the Ku-Klux Klan.

Black's life does indeed pose something of a paradox. There have not been many Southern politicians who end up championing Negroes and aliens, especially Southerners who belonged to the Klan and opposed immigration in their early life.

But the paradox is not as strange as it may appear on the surface. The fact is that disregarding superficial appearances, there has been a continuity in Black's political thought. He has always been a critic of corporate wealth and power. He has always been occupied with helping to improve the life of the American worker.

A desire to raise the wage level of the American laborer was one of Black's major objectives. As a freshman Senator he thought this meant preventing foreigners from entering the country and competing with native labor. However, it was only a matter of time until he abandoned this view and worked for a more basic method to insure American workers a better life.

His membership in the Klan was used by Black as a vehicle for political reform and political advancement. His interest was in reform, not racist violence, and when he got what he

wanted from the Klan, he withdrew.

It would be impossible for the writer to evaluate Black's career in a thorough way. It would be impossible to stamp his career as either "bad" or "good". His early life and his work in the Senate both were parts of the development of a man. Neither justification nor condemnation would seem in order in dealing with any one stage of his career. It is the whole that should be judged.

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