

ARGUMENTS OF COUNSEL.

FRIDAY, MAY 27, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., May 27, 1910.

Mr. BRANDEIS. Are we now ready to proceed?
The CHAIRMAN. Yes.

OPENING ARGUMENT OF LOUIS D. BRANDEIS.

Mr. BRANDEIS. Mr. Chairman and gentlemen of the committee, a great mass of evidence has been submitted to you at these hearings and a large number of subjects have been touched upon; some of them bearing on the fundamental conception of democracy, bearing on the demands of truth, of loyalty, and of justice. But whatever subject was touched upon, practically the center to which all testimony was directed has been the conduct of Mr. Ballinger, his acts, and his omissions. And in connection with that testimony much has been said and much evidence has been introduced, which, in our opinion, subjects him to severe criticism. Some of you undoubtedly will not agree with us as to the extent to which that criticism is justified; but I take it that the main issue which you have to consider is one on which men who have heard this testimony ought not to differ—because the main issue is this:

Is the Department of the Interior, as Glavis phrased it, in safe hands?

Or, to put it in other words, Has the conduct of Mr. Ballinger been such, is his character such, are his associations such that he may safely be continued as trustee for the people of their vast public domain, that he may be continued as manager of the reclamation and other kindred services, that he may be safely relied upon to represent the people in that great and sacred trust?

Or, to put it in still other words, Is Mr. Ballinger a man, single minded, able, enlightened, so zealous in the protection of the interests of the common people, so vigilant, so resolute, that he may be relied upon to protect the public domain, their great assets, upon which the welfare of the present and future generations of American people so largely depend; may he be relied upon to protect all that against the insidious aggressions of special interests who are ever looking for opportunity to seize upon that which is the property and the hope of the American people? Is Mr. Ballinger, in other words, the man to be the trustee of all this for the common people?

We submit, Mr. Chairman and gentlemen, that whatever differences there may be in the committee as to the degree of culpability of Mr. Ballinger for particular acts or omissions, there ought not

to be any difference of opinion on that one question; that he is clearly not the man to be trustee; that he is not the man upon whom the American people can safely rely to protect them against the insidious aggressions of the special interests. Whether it be because of his motives, whether it be because of his associations, whether it be because of peculiarities of his character, whatever may be the reason, he is not the man.

Now, let us consider, in the first place, what his conduct has been. And in respect to his conduct we have been able to lay before you with some detail the facts in two important connections: The facts relating to Alaska coal lands and those relating to reclamation. So far as his conduct concerns reclamation, you will hear from Mr. Pepper. So far as it concerns the Alaska coal lands, the situation is this:

For some years prior to November 12, 1906, the surveys and explorations of Alaska had made it clear that there were there vast areas of coal of great value. The laws were ill adapted to protect that property of the people for the people. Speculators in large numbers were lured to that territory as a field of exploitation. Recognizing these facts, President Roosevelt, on the 12th of November, 1907, withdrew those coal lands from entry, in order, no doubt, that there might be developed soon some system of legislation which would adequately protect that which was the people's. Of course, laws subsequently enacted could not affect any claims legally entered, any claims upon the land legally located.

A very large number of claims to coal lands had been made before that date, claims numbering nearly a thousand. About 150,000 acres of coal lands, believed to be the most valuable, and certainly the most accessible, of any known had been located on, but no patents had been granted; indeed, with the exception of 30 claims, none of these thousands of claims had, up to the spring of 1907, proceeded even as far as entry. The situation, therefore, was this: If those claims were not legal, the power rested in the Department of the Interior to have them canceled, and a clear title to the land would remain in the people. In the spring of 1907 it was the belief of Secretary Garfield, it was the belief of the land officials—a belief carried over from the administration of Secretary of the Interior Hitchcock—that all, or substantially all, of those claims were fraudulent. If so, then they could all be canceled, and all the coal claims of Alaska could thereafter be dealt with in a way which was fair, wise, and enlightened, and for the best interests of the people of America.

Such was the situation when Mr. Ballinger became the Commissioner of the Land Office, March 5, 1907; and he agreed with Secretary Garfield, and with his associates in the Land Office that those claims should be thoroughly investigated, to the end that all claims not legal, all claims fraudulently located, might be canceled.

Shortly after that Mr. Ballinger left for the West, and a little later instructions were given to Horace Tillard Jones, an agent known to have no embarrassing affiliations, believed to be competent, and known to be honest, to investigate these claims thoroughly. Jones received his instructions under date of June 21, 1907.

Promptly he proceeded to Juneau, Alaska, to get such information as was available there; and upon his return to Seattle on the evening

of Saturday, July 20, he learned that Commissioner Ballinger, who had come to Seattle, his old home, desired to see him. On the following Monday morning he called upon the commissioner at his office in Seattle, and from that time—from Monday, the 22d of July—throughout the period of Jones's investigations, he and Mr. Love, who was directed to assist him, were in constant, in almost daily, communication with Secretary Ballinger.

Mr. JAMES. You mean the commissioner?

Mr. BRANDEIS. Yes; Commissioner Ballinger.

What happened then? This investigation which Jones entered upon with the idea that it should be thorough, with instructions that each and every claim should be investigated, was suspended at the expiration of nineteen days from the time that Jones called upon the commissioner at his request; suspended, when there had been investigated only 25 of the 461 claims, as to which Jones had brought back the addresses of the claimants from the Juneau office. Twenty-five out of 461 claims. Jones made a preliminary report; submitted this preliminary report to Commissioner Ballinger in person. That report closed, as a result of this preliminary investigation, with a recommendation from Jones that each and every claim should be thoroughly investigated. He followed that report of August 10 with a supplemental report of August 13; and he took occasion, at the end of that second report, to repeat that these claims should be investigated, each and every one of them, by a fearless and experienced investigator.

Jones was turned off to other work. But again, on the 1st of November, he had occasion to send in a communication to the department, and again in that, his third report, he called attention to the danger incident to a failure to investigate, and recommended that the investigation be resumed.

Meanwhile, Glavis had become the chief of division at Portland, and by becoming chief of the division at Portland he had become the superior of Jones. So when this Jones report of November 1 was sent to the commissioner, Glavis accompanied it with the recommendation that from what he knew of the general situation he desired to urge that the investigation into the Alaska coal claims be taken up.

Now, why was this investigation, started in the best of faith and with the greatest vigor, suspended? There are certain facts which we can not ignore, and they are these: The list of claimants which Jones brought back from Juneau, with 461 addresses, disclosed that of that number about 361 were residents of the Pacific coast States and Alaska; most of them, 250 residents of the State of Washington, and of those 250 residents of the State of Washington 164 residents of the city of Seattle—Mr. Ballinger's home. Included in those 164 were men of great financial, political, and social influence in the city, some of them friends and associates of Mr. Ballinger. Now, we have not only the fact that in spite of these repeated recommendations of Jones, and finally of Glavis, the investigation of all these Pacific coast claims remained suspended, had been stopped and remained suspended, but we have the further fact that the only other claims of any number that there were, the claims of residents of Illinois and of Michigan, aggregating in number about 80, were ordered investigated thoroughly by instructions addressed to Colter on the 24th of September, 1907.

There is another fact which is clearly brought to our attention, and it is this: That on the very day that Jones heard that Mr. Ballinger wished to see him, a contract was entered into between the Morgan-Guggenheim Alaska Syndicate, and a committee representing the Cunningham claimants, by which the Alaska syndicate acquired an option on a one-half interest in the Cunningham claims.

Now, it was known then, and it had been known when the Jones investigation was directed, that this Alaska syndicate, composed of J. P. Morgan Company and the Guggenheims, probably the most ambitious, energetic, resourceful combination of capitalists in the world, that that body of men were, through their control of transportation, aiming for and rapidly acquiring a control of Alaska, through the transportation systems, through the large copper mines, through their fisheries, if they could supplement their existing power by the practical control of the coal situation, by owning some of the mines in connection with the transportation system, they would be confirmed in what, to a very great degree, they now have, the control of Alaska. All this was then known; and that knowledge was one of the facts which has always been deemed important in the consideration of this question from time to time in the Land Office since the spring of 1907.

Was the stopping of this investigation of Jones, so far as it related to the Pacific coast claimants, and the pursuit of that investigation, so far as it related to the claimants in Michigan and Illinois, a mere coincidence? Was the stopping of this investigation at the very time when the Morgan-Guggenheim Syndicate acquired its option on a one-half interest in the Cunningham claims; was that also a coincidence? And was it a coincidence that on the 17th of August, 1907, the very day that the Morgan-Guggenheim expert sailed for Alaska to examine the Cunningham coal field, and the adjoining properties, was it a coincidence that on that very day Clarence Cunningham wrote Mr. Daniel Guggenheim:

We understand that the Commissioner of the General Land Office has said that these patents will issue in three months, and there is no reason why they should not, and as there are no contests—that is, no protests from others—there is no reason why the patents should not issue in due course.

Such was the situation in the summer and in the fall of 1907. After a while it came to be common talk in Seattle that as long as Mr. Ballinger was Commissioner of the General Land Office the coal claimants need fear nothing. That talk came to the ears of Mr. Glavis. That talk came to the attention of Henry M. Hoyt, Assistant to the Attorney-General, who was engaged at that time with Glavis in prosecuting certain coal-conspiracy cases in the States. Glavis and Mr. Hoyt were much distressed at that rumor and persistent talk. To Glavis there was another matter which created some concern. In an entirely different connection he had come in contact, about that time, the end of October, with one Charles D. Davis, the son of Clark Davis, who himself was the manager of the Alaska Coal and Petroleum Company, one of the concerns which had taken over, or was preparing to take over claims to Alaska coal lands. In talking with that man things were said which led Glavis to believe that this concern, which acquired the Hunt group of claims, had taken the claims in violation, in fraud of the law; and as a zealous agent, ready to serve the Government in any way, he undertook to get from

Davis an affidavit bearing upon that matter. Davis told him that Commissioner Ballinger, when in Seattle in the summer, had advised him not to make any affidavit or statement until charges had been filed—a situation which indicated to Glavis, as it must to others, that the commissioner was looking out more for the interests of private individuals than for those of the people.

These facts, coming together, disturbed Glavis very much; so much that he concluded to lay the matter before his immediate superior, Chief of Field Divisions Schwartz. Glavis wrote him a personal letter, which seems to me shows most clearly the way in which Glavis approached this whole subject [reading]:

NOVEMBER 22, 1907.

DEAR SCHWARTZ: There are a number of matters which I think ought to be talked over with you, one of which are the Alaska coal cases. I am worried about this matter and would like to confide in you, because you should know all about it, even though it will no doubt pain you as much as it has me when you hear it.

It will do me a great deal of good to talk over the Oregon situation also, meeting the clerks, etc. Wire me at Cheyenne to come in, if you possibly can do so, because I am sure you will want to learn the true situation.

Schwartz showed this letter to Assistant Commissioner Dennett. Dennett telegraphed, then wrote Glavis. Ultimately, on December 6, Glavis received directions to come to Washington. Meanwhile, he had provided himself with letters from Henry M. Hoyt to members of the Department of Justice, to the Solicitor-General, and to the Assistant Attorney-General, in order that if the Interior Department did not take such action as might be necessary to avoid what he believed to be a great injustice and might prove to be a great scandal, the facts could be laid before the Department of Justice.

On December 13, 1907, Glavis arrived in Washington. He talked the whole matter over with Schwartz; then Schwartz talked the matter over with Mr. Ballinger alone. Shortly afterwards Glavis was told to go to the commissioner; and Commissioner Ballinger directed Glavis to make a full, complete, and thorough investigation of all these cases. Glavis left with the conviction that this was what the commissioner wanted, and he proceeded at once to equip himself for such an investigation. He made copies of all the voluminous papers in the files. He remained in Washington five or six days while this was being done. He had constant conferences with Mr. Schwartz while he was here, and on December 19 he left Washington for the West. While he was in Washington he found among the papers in the files a report of Love's order, dated August 2, 1907, which figures largely in this case—a report which was regarded, it is said, as recommending the clearlisting of the Cunningham claims; but which to Glavis, and apparently to Schwartz indicated at that time directly the contrary. I have said that Jones began his investigation on June 21, 1907. Before that there had been a so-called investigation made by Love, a special agent resident in Alaska. This agent, in investigating the Cunningham claims, had talked only with Cunningham, and possibly one other of the 33 claimants. Then he satisfied himself by sending to the others for signature a form of affidavit in which the claimant asserted that he had no connection with any other, that each owned his own claim free from any interest of anyone else. Love accepted such affidavits and had thereon recommended that patents issue to the claimants. All this had happened before the Land Office determined in June, 1907, that a

thorough and searching examination must be made of all Alaska coal claims. Most of the affidavits of Love, and the recommendations based thereon, dated back to December, 1906, and January and February, 1907. It was partly because of the inadequacy of Love's investigations that Jones had been directed to take over the whole field. Clearly Glavis was directed to take over the investigation of the Cunningham cases; because in the very letter of instructions to him to investigate the Alaska coal claims, this Love report was referred to as one of the documents, which he had already taken with him.

Now, the record at that time showed this: It showed that this Jones report of August 10, with the Jones report of August 13, in both of which he had recommended a thorough investigation of each and every claim, had arrived in the Land Office in August, as had also that August 2 report of Love. With those three reports on the land office files, an order was issued by Acting Commissioner Dennett, with the approval of Chief of Field Division Schwartz, that no claims to Alaska coal should be allowed to go to patent, without being first referred for investigation to Division P. That order was issued under date of September 1, with this Love report and these Jones reports upon the files. And as reports were from time to time made in the fall of 1907, by Division N—the mineral division—this order was recognized as in force. In the month of December, certainly as late as December 6, and perhaps several days later than that, we have the entry of Schwartz, acting on this provisional approval of the claims in Division N, and saying: "Hold this for further investigation."

Well, this was the situation with that Love report on the files of the General Land Office. And what did that Love report say? It was not a report written to recommend anything, but a report to say: "I have in the past recommended each and every one of these claims, but I now find certain facts which have just come to my attention, and which I deem it proper to report to the General Land Office." What were those facts? The fact that it had always been the hope of each and every one of these Cunningham claimants that when patent issued they should combine together, and that entry certificates having issued that the claimants had come together, had now held a meeting with a view of forming a combination which they had always hoped would come about. The certificate of entry having issued, the claimants had now come together to form that corporation or that organization which was to take the claims over. Even Love, who still believed that the claimants were entitled to patents, believed that the facts he had ascertained should be called to the attention of the Land Office, and wished to put upon the office the burden of investigating this matter anew as to law or fact. Indeed, in regard to seven of the claims which he had not previously recommended to patent, he showed so full a recognition of the facts ascertained that he wrote the register and receiver calling attention to the same and indicating what, of course, was true, and believed to be true at that time, that the office might wish to have all the claims—not only the seven—but all the claims, examined into by another special agent.

Such was the situation when Glavis returned to the West in December, 1907, with that Love report and with all the other papers,

prepared to investigate this matter; and what happened then? Glavis had hardly turned his back on Washington when ex-Governor Miles C. Moore appeared on the scene. On December 23 Governor Moore appeared in Commissioner Ballinger's office. There was brief conversation between them, followed by another brief conversation by the commissioner with Schwartz, a conversation which, according to Schwartz, lasted two or three minutes. In that conversation, according to the commissioner, he did nothing but read—no, not read, but glance at—that Love report of August 2, a report which occupied as printed in the list about two-thirds of the page. And in that brief conversation in the presence of Governor Miles C. Moore, and subject to his potent influence, Commissioner Ballinger orders these claims, claims involving to the American people untold millions in value, to be clear listed; orders them clear listed wholly regardless of all that had happened only a few days before in his conference with Glavis; orders them clear listed in spite of the letter of instructions to Glavis which specifically referred to this Love report. Commissioner Ballinger was evidently determined not only to clear list these claims, but to hasten the issue of the patents in every conceivable way. The hastening to patent seemed to be of some significance at that time, for, no doubt, the visit of ex-Governor Miles C. Moore was the result of the fact that a fortnight before the Morgan-Guggenheim Alaska syndicate had notified the Cunninghams of the acceptance of the option acquired under the agreement of July 20, 1909.

Now, the chairman pointed out in the course of our hearings that patents ordinarily do not issue until from three months to three years after the time when the order for clear listing is given; but here the most extraordinary haste was exercised. Commissioner Ballinger himself begins a series of telegrams to Juneau. He telegraphed for plats on the 7th, and such is the eagerness to know whether these plats are forthcoming that another telegram is sent on the 11th to know whether they had been mailed. There were seven of these claims which had not been reported on at all by Love. As to them he never had made a recommendation to the General Land Office. He had not made it, because, in view of the facts that he had learned in August, he thought, no doubt, that the whole matter would be thoroughly investigated by another special agent.

In regard to those seven claims Mr. Ballinger telegraphed to find out what the status was, and to learn whether they could be included with the claims which he has clear listed. As a matter of fact, among those seven claims was the claim of ex-Governor Miles C. Moore himself. Not only that, but extraordinary speed, extraordinary haste, is shown in the way these claims are sent down for patent. It was then a wholly new thing to draft a patent to Alaska coal lands. Not a single patent had ever been issued for Alaska—of coal lands. In spite of the known procrastination in the much burdened offices of the Government, this work of drafting such a patent, this careful work, which was to form a precedent for all the patents that might thereafter be issued, was performed so soon, that within a fortnight not only had the drafts been prepared and passed through the legal department, but six patents had been written out ready for execution, covering all the claims that were sent down to patent on the 6th day of January as having been approved by in Division N.

Now, the haste is further shown by the fact that of all these 33 Cunningham claims there had, at the time this clear listing order was passed, only 7 of them, possibly 8, been examined in Division N and passed in the Mineral Division as complying with other requirements of law. It was not a matter of importance, therefore, that action should be quickly taken in Division P, because, with the exception of seven or eight, the claims had not been passed upon in Division N.

Compare with that haste to put through these patents, and doubtless to consummate the business of carrying out fully this Morgan-Guggenheim agreement with the Cunninghams—compare with that what was done with respect to notifying Mr. Glavis. It has been claimed by Mr. Ballinger and his counsel that Glavis was notified of this clear listing, so that if he saw any reason why the claims should not be patented he might notify the office. What was done? Glavis was notified, but he was notified in the first place after some of the claims had been sent down to the patent division for patenting.

If the commissioner had wanted to know from Glavis whether any reason existed why he should not clear list these claims, he would not have first entered the order clear listing them; he would first have communicated with Mr. Glavis. On the contrary, he entered the order clear listing them, and then a fortnight later, on the 7th of January, he writes Glavis, taking the slow course of mail. He does not write, "Have you any reasons to suggest why these should not be clear listed?" but, "You are hereby notified that the claims in the annexed list have been clear listed in Division P, and have been sent to the Division N, the Mineral Division, for action." Just think of that! In the first place, sending the information by letter; in the second place, not asking him anything, but simply notifying him of the fact. Glavis being absent on other business, appears not to have gotten this letter until about the 20th of January. Soon after he received the letter he sent a telegram saying that these claims should not be clear listed. So there you have in this brief period two occasions already where Glavis intervened to protect the people's coal lands from improper action. The first, when he came to Washington in December, 1907, because of the failure to investigate, with a view to the cancellation of the claims; the second, five weeks later, when but for him Commissioner Ballinger would have patented these lands to the Cunninghams and the Morgan-Guggenheim syndicate.

When Glavis's telegram of January 22, 1908, arrived, Mr. Ballinger no doubt appreciated the indomitable zeal of Glavis, appreciated that the man who had the courage in his subordinate position to come on here to Washington to insist upon the protection of the public domain in the interests of the people, who was determined, as shown by the letters which he brought with him, to go to the Department of Justice if the Department of the Interior did not grant that protection—Commissioner Ballinger undoubtedly appreciated that such a man was not to be trifled with; and promptly this clear-listing order was suspended. Note you, suspended, not revoked. But Mr. Ballinger did not have the courage to communicate that fact to ex-Governor Miles C. Moore. Moore was left in the belief he held when he left Washington on the 11th of January, that these patents would be issued just as quickly as they could be put through. Not hearing from them, Moore finally on the 27th of February telegraphed to

Mr. Ballinger to inquire the cause of the delay in the issuance of the patents. Did Mr. Ballinger frankly tell him that a question had been raised as to whether these patents should issue at all? No. He telegraphed him—it is practically the one communication of all the great number that bears his signature which he fully admits that he was responsible for; admits, because his own handwriting is there on the telegram, not merely as to signature, but in the carefully worded draft as to how it should read:

Issuance of patents temporarily delayed.

Well, it was no doubt Commissioner Ballinger's intention that the delay should be only temporary; that somehow or other those patents should issue; and at that very time another way out was being considered by him. That was by the Cale bill. If that Cale bill had passed, those patents might have issued regardless of Glavis's objections, and that troublesome obstacle would be overcome. But this Cale bill, which Mr. Ballinger drew, he says, as a private citizen, not as commissioner, in support of which he appeared before the congressional committee on March 3, the day before he retired from office, or two days before he retired from office—there he urged the bill which was to overcome this temporary delay—this Cale bill did not pass, partly because of the opposition of Secretary Garfield. And then a new situation arose. About that very time, three days afterwards, an event occurred which was of great significance. Glavis secured from Clarence Cunningham the so-called Cunningham journal, together with his affidavit of March 6. The journal bore on its face the clear testimony of two things: First, and this is the important one, that there was just that kind of an illegal agreement between the claimants, which Glavis had believed existed, and which, if it did exist, should result in the cancellation of those claims, and, secondly, the journal also contained some reference, not of very great importance, to the Guggenheims. After March 6, 1908, the Cunningham affidavit, and particularly the original Cunningham journal, stood as a terrible obstacle to the granting of patents.

And what happened then? Mr. Ballinger was out of office. He had no official control of the situation; but he still was not without influence, partly because of the knowledge and skill obtained while in office, and partly because of that close relation, political and friendly, with Mr. Garfield, the Secretary of the Interior, and with Mr. Dennett, Mr. Ballinger's own successor as Commissioner of the Land Office. Dennett was not only a friend; he was a protégé of Ballinger's.

Now, what happened? Lawyer Ballinger undertook to aid these Cunningham claimants to get their patents, to act in a matter which he had acted upon as Commissioner of the General Land Office, a matter on which he had as commissioner been called upon to pass, in the interests primarily of the people. To him as commissioner had been committed the extreme obligation of adequately investigating these claims and to determine whether they were fraudulent or not. As Commissioner of the Land Office he undertook to do this; to direct what should be done with them, and after he retired from the commissionership, he, Lawyer Ballinger, undertook to do what? His first important act was to draw for the Cunningham claimants an

affidavit for Cunningham's signature and in the interests of Cunningham and his associates, an affidavit designed to enable Cunningham to get around the earlier affidavit; to get around the admissions contained in his own journal—an affidavit which I submit, according to the admitted documents in this case, contains allegations directly contrary to truth; an affidavit which asserts with great positiveness that the affiant and none of the Cunningham claimants had had any contract with the Guggenheims or with any other person except with one another. While facts subsequently discovered and made public during the period of this investigation show that Clarence Cunningham and Miles C. Moore and A. B. Campbell had, on July 20, 1907, entered into an option agreement by which the Morgan-Guggenheim syndicate of Alaska could get a one-half interest in the Cunningham claims and that option had been accepted on December 7, shortly before Miles C. Moore came to Washington.

Such is the affidavit which Lawyer Ballinger drew with a view to enabling these Cunningham claimants to get patents for that property. But Lawyer Ballinger not only lent to the Cunningham claimants in the drafting of that affidavit his skill and what knowledge he then had of the facts, he did more. He undertook personally to see Secretary Garfield, to see Commissioner Dennett, and to use all the influence that he would naturally have with those two men to secure the issuance of the patents. He undoubtedly would have had enough influence with Commissioner Dennett to get anything he wanted. His voluminous correspondence with Dennett proves that; but Secretary Garfield had already formed his opinion in regard to these Cunningham cases which had been called to his attention earlier in the year, that is, in May, 1908. So he told Lawyer Ballinger when he came to West Mentor in September, 1908, that he believed the claims to be fraudulent, and he sent the September 4 affidavit to the Land Office with an order that nothing whatever should be done in that matter without conferring with him. The criticism, the review of that affidavit, which Lawyer Ballinger had prepared, shows clearly that all the elements of fraud which had been obvious in the original affidavit of Cunningham and from his journal could not be explained away.

Such was the action of Lawyer Ballinger; and when, on the 25th of September, Dennett wrote him "there is plenty of ginger these days," I do not believe at all that this was a reference to political conditions. I think it was a reference to the decisive action of Secretary Garfield referred to in that letter that he would do nothing whatever in the way of granting the Cunningham patents.

Well, six months from that time Lawyer Ballinger had become Secretary of the Interior, and as he became Secretary these same problems in regard to the Alaska coal cases which had occupied his attention as Commissioner were still active in the department, and among them the Cunningham coal cases.

Secretary Ballinger says that under a standing order issued by him as to the division of the work of his department, all matters relating to the Alaska cases would have gone under any circumstances to First Assistant Secretary Pierce and others for action; but that in view of the fact that he had acted for these Cunningham claimants in the interval before he became Secretary of the Interior, he gave directions specifically to Assistant Secretary Pierce, to Schwartz, to Dennett,

to his own private secretary, Carr, that he would have nothing to do with the cases. He says, however, that he never acted really as legal representative for the Cunningham claimants. Did he? What other interpretation could be given to his acts? Who else but a lawyer could have written that affidavit which Schwartz testified to as being such an ingenious document and as indicating weeks of work on the part of the affiant and his attorneys? But if he did not act as legal representative, so much the worse. He says that any dentist or doctor might have gone to Secretary Garfield and to Commissioner Dennett on behalf of these Cunningham claimants just as well as he. Is not that the most damaging admission which Mr. Ballinger could have made in connection with that transaction? Can it mean anything more than this, that he went to them, capitalizing his friendship with Secretary Garfield, capitalizing the influence which he had with Commissioner Dennett, capitalizing, no doubt, also, the knowledge and the skill which he had acquired with respect to this very matter when he was Commissioner of the General Land Office? Mr. Ballinger says he did not expect to be paid for this service. If he did not expect to be paid for this service, so much the worse. Why did he go? He says he did not want any Land Office practice; he did not want to be connected with these things, and it appears earlier in his correspondence in connection with another land office matter, that he refused to accept any retainer. Why, then, did he come to Washington on this errand? It was because of that irresistible influence of the Cunningham claimants, or some among the Cunningham claimants; in this instance, C. J. Smith, his personal friend; C. J. Smith, the capitalist and Senator maker, a man who seems to have here had extraordinary power over Mr. Ballinger, and over all things in the State of Washington. Among the Cunningham claimants, and his friends, was also Horace C. Henry, and doubtless other persons who appear in this connection, Charles Sweeny and ex-Governor Miles C. Moore. Here you have a great body of truly influential men in the State of Washington, who ruled things in their party and in the State, ruled them by their financial power, as well as by their general abilities, and their social and other connections.

Well, when Lawyer Ballinger became Secretary he determined to be free of all this, and he says that he told each one of those who surrounded him, as an additional precaution—although no such precaution should have been necessary, as the general order issued to Secretary Pierce covered the matter, but as a special precaution he told them—that he would have nothing to do with matters relative to the Alaska coal lands.

Now, I ask you, Mr. Chairman and gentlemen, viewing the evidence as it is, Was that a determination to avoid evil, or was it a determination to avoid the appearance of evil? See what happened? Within about a month ex-Governor Miles C. Moore, the tempter, the evil genius, appears again on the scene, this time by letter, by letter clamoring for his patent—the letter of April 9, 1909. If this general order was to stand, if these specific directions which Secretary Ballinger says he gave to these different people were really understood by them to mean what he said, why did Carr give that letter to Schwartz to draft the answer, and why did Schwartz draft the answer for Secretary Ballinger's signature, and Carr hand Secretary Ballinger this answer for signature? These intelligent and careful men would

is also a remarkable coincidence that, when it goes into the law department of the Interior, there should be rendered a decision which is just in accordance with what Commissioner Ballinger wanted when he drew the Cale bill, a decision which would give to the Cunningham claimants the opportunity of getting their patents and which would have settled in a very disastrous way, so far as the people of the United States are concerned, the Alaskan coal-land situation. Was it a coincidence, too, that again this tempter, Miles C. Moore, appeared on the scene? In some strange way he appears always when his presence is necessary to counteract the influence of Glavis, and apparently only then. Glavis is here on the 17th. On the 19th Pierce rendered this decision. On the 21st Miles C. Moore appears on the scene. He sees Secretary Ballinger and Mr. Pierce, and remains here only on the 21st and 22d.

No sooner has that decision of Pierce been rendered than Glavis is ordered to make his report on all these coal cases. He drafts a report; but not until he gets a peremptory order in writing that he must file that report. That he gets on the 24th; and the same day he draws up his report, the report in which he says the Cunningham cases may be accepted as characteristic of all the cases, 782 in number, and that in view of Pierce's opinion of May 19, it would be futile to make further investigation.

Such is the report that he made; but he hesitates to file it. He is distressed over the situation. Happily he finds that his old friend and adviser, Henry M. Hoyt, who had since become attorney-general for Porto Rico is in the city of Washington. He sees Hoyt, explains to him the situation, the early history of which Hoyt knew much of before. He discusses with Hoyt the act of 1908. Hoyt believes that Pierce's decision is wrong, believes with Glavis that a great scandal will come to this administration if these coal lands are patented under a decision rendered in the Department of the Interior, because the Secretary had, in the interval between holding office as commissioner and as Secretary, himself been counsel for these powerful Cunningham claimants. Hoyt believes it to be one of the important events of his life. He considers first going to the President's brother, who was a classmate, and whom he knows well. But Glavis points out to Hoyt that there is no time for that; that he is being urged to file his report which is now overdue; and finally Hoyt concludes to go to the Attorney-General.

Hoyt goes to the Attorney-General; he takes with him the Pierce opinion, and he takes with him the report of March 23 in regard to the Cunningham cases, showing the fraud. He takes with him also this report which Glavis had drafted on May 24, and lays these two Cunningham reports before the Attorney-General, and lays before the Attorney-General also his apprehension of the great scandal, as well as injustice, which will result if this matter is allowed to go forward.

The Attorney-General upon a cursory examination of the papers agrees with Hoyt in the opinion which Glavis had formed that the Pierce decision is wrong; and the Attorney-General says that the only question is, "How shall we get Secretary Ballinger to refer this matter to me?" He asks that Glavis should come to see him, and Glavis does so. Glavis goes the next morning, the morning of the 25th, to the Attorney-General. The result is that in some way the Attorney-

General talks with Secretary Ballinger; and on the 26th the Attorney-General is formally requested to render an opinion which, when rendered on June 12 reverses the Pierce opinion.

For the third time Glavis has intervened to save the coal lands of the United States for the people to whom they belong.

The fourth act is quickly told. Glavis had even before this opinion was rendered by the Attorney-General, that is, soon after the matter had been referred to him, started off in further investigation of these Alaska claims. He gets back to the Pacific coast. All the time it has been intended and expected that there should be a field investigation of the Cunningham claims and that a coal expert should go in the summer to Alaska to examine particularly a tunnel which was known to have been built, and which it was understood was so built that it would touch only about half of the claims. The tunnel had been paid for confessedly by all the claimants. If it was built, as supposed, namely, so that it could be used only in connection with about half of the claims. The evidence would seem to be conclusive that there was some combination at the time they agreed to pay in equal shares for the building of that tunnel; otherwise half the claimants would be getting nothing for the money they paid. It was also understood, I say, that such field investigations should be made. As late as the 20th of June when Schwartz was in Seattle, Kennedy's trip set for July 16, had been discussed between Schwartz and Glavis.

On the 29th of June Glavis received a telegram announcing that the Cunningham claimants had elected to proceed under the old law, the law of 1904, and that he should prepare for a hearing forthwith—that is, prepare for a hearing in these cases before he had the evidence which Kennedy was to bring back from Seattle. He believed such a course to be disastrous. He believed that there was a settled purpose of sacrificing the interests of the people to the interests of the Cunningham claimants and their associates.

The Forest Service was legally interested in these lands, part of them being within the forest reserve, and therefore he applied to the forester, or one of the forest officials, to aid him in securing a delay of this hearing until Kennedy should return from Alaska. Secretary Ballinger was in Seattle at that time. He went also to Secretary Ballinger to lay this matter before him and said: "Here we are in danger of sacrificing the interests of the people by proceeding to a hearing in this case before we have this evidence." What did the Secretary do? It was an extraordinary ethical distinction which seems to have determined his course. Why, when he became Lawyer Ballinger he had seen no reason whatsoever why he should not act for the Cunningham claimants, in spite of having, as commissioner, acted for the Government in regard to those cases. When he became Secretary he had seen no reason why he should not issue an order, believed to be of great value to the Cunningham and other claimants, that those matters should be pressed forward to decision, should be expedited as much as possible. But when Glavis came to him and set forth this situation, that the hastening of the hearing might result disastrously to the people, his ethical conceptions prevented him from interfering to protect the interests of the people. His previous connection as lawyer for the Cunninghams did not prevent his interfering and hastening proceedings in the interests

of the claimants, but it did prevent him from interfering and delaying proceedings in the interest of the people.

You know what happened. The Forestry intervened. The Interior Department, doubtless for political reasons, and with great reluctance; with more than reluctance, with indignation, and doubtless with anger, consented to a postponement of the hearing until October 15.

Note this thing that Glavis asked. The fact that he was demanding this postponement excited them to the point that they superseded this competent, experienced, and zealous agent, and put in control of these cases in his place one James M. Sheridan, a man who had graduated from the law school just one year before; a man who up to the time when he was put in full charge of these important cases had never tried a case in court; a man who had never even taken part in a hearing, in the mere taking of depositions, until within six months of that time; a man whose whole experience, even in such hearings, is comprised in his having spent a part or the whole of forty-one days in hearings between the 5th of January and the 17th of July, 1909. Such a man was put in to supersede Glavis because Glavis had done what? He had urged, in the interest of a fair trial, and the protection of the people, that the hearing should be delayed until Kennedy should get back from Alaska, three months later.

Well, Sheridan himself, when he came to Seattle and looked over the papers agreed with the Forestry and agreed with Glavis that there ought to be this delay. But see how this result was regarded within the ranks. Dennett writes Schwartz in substance—Sheridan agrees that Kennedy will bring from Alaska important evidence; evidence material, and that we should delay. "The Forestry is to blame for this." Instead of rejoicing that they should have found a way of strengthening their case through the cooperation of the Forestry, instigated by Glavis's intervention, the Forestry is to be blamed. That was the fourth act of intervention by Glavis, and as in each of the three preceding instances his intervention resisting the action of his superiors was so obviously justified that ultimately the department had to do what he desired to have done in the interest of the people.

Now, what is Mr. Ballinger's excuse for all his conduct? What is his excuse for having clear listed those valuable lands in the face of the fact that Glavis had been directed to make that investigation into their validity; clear listing them in the face of the doubts arising, and that should have arisen, in everybody's mind on looking at the Love report. Mr. Ballinger says that he relied on others; that it was Schwartz's business; that he, Ballinger, therefore did not look into it, and never looked into the matter; that he did not even examine Love's report, that brief document; that he did not even read it. Then he states a thing that I believe will be incredible to every one of you. That when he looked at the report he did not notice that his personal friends Smith and Henry, and his other acquaintances Sweeney and ex-Governor Miles C. Moore, and the like, were in the list of claimants set forth in the letter. Taking the man as he is, is it possible that in looking at a short sheet of paper, at the very top of which are the names of these men—his friends—his eye would not be struck by the names of the people he well knew? Yet Mr. Ballinger says he did not see them. But he insists, at all events, the

responsibility for the clear listing rested upon Schwartz. And as to what has happened in the period of his secretaryship, with that he had nothing to do.

Now, is it true that he had nothing to do with the Cunningham cases during that period? It is perfectly true that he carefully refrained from the appearances of evil; that he did not issue any orders. But it is equally true that he knew about the cases. He told every one of these men that he did not want to have anything to do with the matter. I have been told that it is the common thing in clubs where they expect to do a lot of gambling, to have as the first rule of the club that "card playing for money is not permitted in this club."

Certainly that is the sort of order the Secretary issued, because these faithful trained men by whom he was surrounded would have never put up to him at every occasion and at every emergency something for him to do in these Alaska coal matters if it had not been intended that he should do it. I spoke of that answer to ex-Governor Miles C. Moore of April 9 as one instance. Schwartz and Carr, those faithful ones, were going to impose upon the Secretary the answering of that letter; but he, ever careful to avoid the appearance of evil, refused to sign it, and the letter was rewritten. When it came to this interview about the Alaska coal claims on the question whether the matter should be submitted to the Attorney-General, it was the Secretary who determined that the Attorney-General should pass upon it. Glavis and Schwartz drew and Commissioner Dennett initialed the letter, but the Secretary was to sign it. That was May 17 and 18. Again, Miles C. Moore wrote another letter, the letter of the 22d of May, 1909, which arrived on the 24th. The faithful Finney drafted a reply and the faithful Finney drafted a letter, no doubt, with the full knowledge that the rest of them had that the Secretary would have nothing to do with Alaska coal matters. But he drafted the letter for the Secretary's signature, and the Secretary in that instance—as people will forget things at times—forgot to refuse to sign it.

Now we come to the 26th, when the formal letter to the Attorney-General was to be rewritten. Finney did the same thing. He drafted it again for the Secretary's signature; but under other advice the letter was rewritten, to be signed by Assistant Secretary Pierce. Yet Secretary Ballinger, not thinking that there was any danger in the disclosure of this particular letter, wrote a personal letter to the Attorney-General, inclosing this other letter, which, for form and appearances sake, he had had Assistant Secretary Pierce sign. It may be that it was also with a like view to avoiding the appearance of evil that this letter of May 26 was suppressed when these matters were sent to the President in September, 1909, for the letter first appeared as the result of calls from me during this investigation. But however that may be, there you have the fact that, whenever it came really to doing anything concerning these Alaska coal claims, the Secretary was always there.

Now just think of this. A real crisis came in this matter when Glavis sought to protect the people by getting delay in the hearing and others attempted to thwart him. It happened that Dennett and the Secretary were both in Seattle. Dennett ran to the Secretary and had the discussion concerning "the important cases" on July 20. Then it began to appear that, doubtless for political rea-

sons, it would be unwise, in view of the forestry intervention, to insist upon that hearing taking place immediately.

Dennett does not dare grant a postponement of hearing. What does he do? He telegraphs Secretary Ballinger this advice: "Advise you to authorize Schwartz," who is in Washington, "to consent to delay." None of them dare do a thing about these Alaska coal cases without coming to the Secretary for approval. Dennett was the Commissioner of the Land Office, whose place it is to attend to these land matters; Schwartz, who was the acting commissioner in Washington, was also the chief of the field divisions under whose jurisdiction all of these arose. Yet those two men together do not dare act. They telegraph to Secretary Ballinger, "advise you to authorize Schwartz to consent to a delay." Gentlemen, just think how unimportant ordinarily consenting to a delay in the hearing of a case is. Why should there have been this terrible difficulty about consenting to a delay of two or three months, most of which is the vacation period? No; it was because the Secretary had his hands, his grip, on these cases. This control is not evidenced by documents. He did not need writings. He was surrounded by men of the category of those who, "at the winking of authority * * * understand a law." It is only when they are separated, when they have to communicate by wire or by letter—we are fortunate enough to get the documents—that we are able to bring the definite proof of the fact.

Now, I say, gentlemen, there you have the conduct of Mr. Ballinger as commissioner, as lawyer, and as Secretary in regard to this great heritage of the American people. Is he the man whom you would put in as sole trustee of great properties belonging to you and committed to your care, if those properties were surrounded by the insidious special interests who like harpies were awaiting an opportunity to pounce upon your possessions?

Such was his conduct. Now consider his character as reflected in that conduct, and as reflected also in the correspondence and in the testimony which he has given on the stand. What is the one quality which you would demand above all others in a man who is to be trustee of the people's property, with all the special interests seeking to prey upon it? It is resoluteness—vigilance, of course—but resoluteness is needed; a man who would stand firm. What is Mr. Ballinger's record? Just take these facts that we have been going over.

Commissioner Ballinger in Washington with Secretary Garfield and with the other land officials agrees with them that these Alaska coal-land claims, presumably fraudulent, should be investigated thoroughly. That is early in June, or the middle of June, 1907. He has perhaps no knowledge of his friends and influential people in the State of Washington being interested in them.

Commissioner Ballinger goes to the State of Washington. Then begins, undoubtedly, the pressure of these men; for the investigation had begun; and all those influential men there—Smith and Henry and Moore and Sweeney and Nelson and Chilberg, and all the rest of them—perhaps begin to press. Garfield is thousands of miles away; the Land Office is 3,000 miles away. The immediate thing is all of those claimants in Seattle, influential citizens of Seattle, pressing against investigations. So the Jones investigation of the Pacific Coast claimants is stopped; but as there are no influential citizens of

Illinois or Michigan pressing him, the investigations of the Michigan and Illinois claims go on.

Well, Glavis hears the rumors, as I have told you, and goes to the city of Washington in December hotfoot, armed with the letters to the Department of Justice. There is Glavis right by the side of the commissioner. The Alaska claimants, these influential citizens of the State of Washington, are 3,000 miles away. After a few moments' consideration the commissioner changes absolutely his course and authorizes a complete investigation of the cases.

Glavis turns his back, on the 19th of December, and starts out for the coast; but before he gets there the tempter, Miles C. Moore, with all his potent influence, arrives on the scene. Now he is with Commissioner Ballinger, and he is the embodiment of all of the influence of the State of Washington. The commissioner's apprehensions of Glavis seem to vanish. Glavis is now 3,000 miles away; Moore is on the field and Moore holds it. The claims are ordered clear listed.

Then we come to the 22d of January, 1908. Glavis and Moore are both far away from the commissioner; but there is in the commissioner's mind, obviously, the recollection of those letters to the Department of Justice which Glavis had and the memory of Glavis's indomitable zeal. Freed from the personal presence of Miles C. Moore and the influence that goes with it, the Secretary again changes his course. He says, "We will stop this." The clear-listing order is suspended.

Now, that vacillation goes right through all of Mr. Ballinger's acts. Wherever there is pressure, there you will find yielding. The only cases where there can be any doubt as to what Mr. Ballinger will do is where there is pressure from both sides at the same time.

Now, is this the kind of a man that you gentlemen would put in charge of that great property, if it were absolutely yours, to be preserved for your children and your children's children? A man who is absolutely unable to resist pressure? Why, his action while he was Lawyer Ballinger shows it also in an extraordinary way—I mean during the interval between his resignation as commissioner and his appointment as Secretary. He did not want to take this Cunningham case. He knew it was not right; he knew it was not according to the ordinary dictates of the lawyer's ethics; he knew it was contrary to the regulations of his department. He did not want to do it. His first thought, and naturally a proper one, was, "I do not want to do it, furthermore, I do not want any pay." But when Charles J. Smith came to him—not only his friend, but this important, influential man, this Senator-maker—when Smith came to him he could not resist. Contrary to his own wishes, contrary to his judgment, he acted as counsel, and he came on here and used, or attempted to use, what influence he had with Garfield and Dennett to accomplish the ends of the Cunningham claimants. He saw that even if he did this, it was not a nice thing to take money for it. He did not want to take pay; but when C. J. Smith and Cunningham pressed money on him, of course he took it.

Now, just this same quality which manifests itself in his actual conduct in the case has manifested itself in an equal degree in regard to his statements on and off the witness stand.

Gentlemen, the time is too short and, indeed, the occasion of his appearing on the stand is so recent that I should not be justified in

considering his testimony minutely; but I can not refrain from asking you just to formulate in your own minds what this man was on the stand—the extent of his evasions, the assumed lack of memory, and his misstatements. He did in his testimony precisely what he did in dealing with the Cunningham cases. Always ready to meet the immediate occasion, the pressure of the moment, by doing or saying what seemed easiest; but doing the thing regardless of whether it was the right thing, regardless of whether it was true, and not bearing in mind either the law, the great law of truth which should have governed him, or even intelligently considering the future with the difficulties his action must develop.

There he is. There is his character reflected on the witness stand just as it is reflected in all of his acts.

Certainly, as I have said, the one quality that you need for the position of Secretary of the Interior is resoluteness. You need a man of the character of Stonewall Jackson; but I do not believe anybody would ever think of calling this man Stonewall Ballinger. That would never come. It is the constant yielding, whether it be of statement or of action, that absolutely unfits him for this position, regardless of any question of his motives.

I have said little about his immediate subordinates or associates, upon whom he desires to cast the burden of the errors that have been made; and to a very considerable extent they have shown a ready loyalty in bearing that burden, if that be loyalty. They have a certain kind of loyalty, but not the true loyalty. There could be no greater difference in the whole aspect and the whole conduct of the Department of the Interior than is manifested in its policies and in acts in the two administrations—that of Secretary Garfield and that of Secretary Ballinger. Those two men differ from one another as Hyperion from a satyr, yet those subordinates seem to have worked equally loyally with each. They worked, in the main, in absolute harmony with Secretary Garfield's views as to policies, and they stand without a protest when Secretary Ballinger reverses it all.

Now, that is not loyalty. It is not loyalty of the kind that you want in a public servant; it is not loyalty of the kind that you want in the persons who are to aid that trustee in handling the great heritage of the people. The loyalty that you want is loyalty to the real employer, to the people of the United States. This idea that loyalty to an immediate superior is something commendable when it goes to a forgetfulness of one's country involves a strange misconception of our Government and a strange misconception of what democracy is. It is a revival—a relic of the slave status; a relic of the time when "the king could do no wrong," and when everybody owed allegiance to the king. The people to whom our officials owe allegiance are the people of the United States, and every man in it who is paid by the people of the United States and who takes the oath of office owes that allegiance to the people of the United States and to none other. These men who stand by the Secretary with a sort of personal fidelity and friendliness are actually disloyal. They may claim that they are not insubordinate to him; but they are insubordinate to the people of the United States.

Take this very matter that has caused a great deal of comment and called for a great many questions from the committee—the

question with regard to Mr. Kerby; the question as to whether he ought to have communicated or ought to have given to the world the truth. Here was an investigation devoted by law to the ascertainment of the truth. Secretary Ballinger's answers to the various calls that I had made and his answers on the stand and the answers of several of those by whom he is surrounded were directly inconsistent with the truth. This committee by its vote had apparently barred the opportunity of forcing the introduction of the facts which would have been developed by the production of the documents. Should Mr. Kerby, like the bookkeeper of the defaulting treasurer, have stood by in his selfish blind loyalty to that man, or should he recognize that, as an American citizen, as a part of the American Government, he owed it to the people of the United States to come forward and tell what he knew, so that there should be nobody, high or low, who stood between him and the people, knowing the truth?

Just think of this situation. Suppose you gentlemen were the board of directors of a great corporation and had reason to believe that the president of that corporation was not acting properly, and suppose you, as directors, instituted an investigation into the condition of that corporation, and the president and those around him who did his bidding gave testimony and withheld from you, the investigating committee, facts which ought to be known and documents which existed, and suppose that one private secretary, paid by the corporation of which you were the directors, came out courageously and told the facts; ought he to be the subject of criticism? Ought he not to be a subject of the greatest admiration that he should have had the courage to stand up against all the slaves who surrounded him, and come out like a man, and showed that, high or low, in America a man is a man who makes himself so, regardless of his position, and that the Secretary of the Treasury or the President of the United States himself is no better than the humblest citizen, if that humblest citizen has the courage and other qualities of manhood.

This idea of insubordination, gentlemen, and the horror with which some men view insubordination, involves an absolute misconception of what we ought to do and what we ought to strive for in American government. The danger in America is not of insubordination, but it is of too complacent obedience to the will of superiors. With this great Government building up, ever creating new functions, getting an ever increasing number of employees who are attending to the people's business, the one thing we need is men in subordinate places who will think for themselves and who will think and act in full recognition of their obligations as a part of the governing body. Even military service is improved by such action on the part of the individual. So it manifested itself in Cuba in our own army and in South Africa in the fighting of the Boers. We want men to think. We want every man in the service, of the three or four hundred thousand who are there, to recognize that he is a part of the governing body, and that on him rests responsibility within the limits of his employment just as much as upon the man on top. They can not escape such responsibility, they can not be men if they are not proper officials. They can not be worthy of the respect and admiration of the people unless they add to the virtue of obedience some other virtues—the virtues of manliness, of truth, of courage, of willingness to risk posi-

tions, of the willingness to risk criticisms, of the willingness to risk the misunderstandings that so often come when people do the heroic thing.

That is what we need, and that is what we must have, if our Government is to meet our ideals. The means of attaining it is one of the great questions presented here. We are not dealing here with a question of the conservation of natural resources merely; it is the conservation and development of the individual; it is the conservation of democracy; it is the conservation of manhood. That is what this fight into which Glavis entered most unwillingly means. That is what the disclosure which Kerby made most unwillingly means. It proves that America has among its young men, happily, men of courage and men in whom even the heavy burden of official life has not been able to suppress manliness.

Mr. Chairman and gentlemen, I have already taken up too much of the time of the committee and I will suspend at this point.