CLOSING ARGUMENT OF MR. LOUIS D. BRANDEIS.

Mr. BRANDEIS. Mr. Chairman and gentlemen, aside from the argument of Mr. Vertrees, which Mr. Pepper has so artistically disposed of, there are some statements of the evidence to which I want to call your attention and which lead me to think that Mr. Vertrees may be in some respects as unfamiliar with the record as he has been proven to be with the principles of conservation.

He based a long argument this afternoon upon the alleged statement of Miss Shartell in regard to the absurd "missing letters" that she had brought back after initialing and placed upon the table, and that on the table were the copies but not the letters themselves. I want you to look as an example of the accuracy of Mr. Vertrees in quoting this record, at page 2575, a thing that he should have remembered particularly well, as he was the examining counsel:

Mr. VERTREES. You know that you did make some carbon copies of those letters, do you not?
Miss SHARTELL. Yes.
Mr. VERTREES. Can you state that you are sure that you made as many as 2 of each?
Miss SHARTELL. Yes.
Mr. VERTREES. You laid them on his table. What passed then?
Miss SHARTELL. Well, nothing right then; the next day they were brought back to me to be initialed.
Mr. VERTREES. Who brought them back?
Miss SHARTELL. Mr. Glavis.
Mr. VERTREES. Let me understand that. When you laid them on his table, nothing was said?
Miss SHARTELL. No, sir.
Mr. VERTREES. And what time of the day was that?
Miss SHARTELL. It was in the evening.
The CHAIRMAN. Let me see if I understand it—were they the original letters the witness refers to, or the copies?
Mr. VERTREES. Both; the originals, with the carbon copies you had made, were they not?
Miss SHARTELL. Yes, sir.

So that both the originals and the carbon copies were there.

Mr. VERTREES. You are correcting me—you want to be correct.

Mr. BRANDEIS. Certainly.

Mr. VERTREES. Read on there and you will see that she says——

Mr. BRANDEIS (reading):

Mr. VERTREES. And I also understood you to say that you feel quite sure there were as many as two carbon copies, and there may have been more?
Miss SHARTELL. Yes; there may have been more.
Mr. VERTREES. That is correct, is it?
Miss SHARTELL. Yes.
Mr. VERTREES. Nothing was said when you laid them on his table, but the next morning he brought them back to you?

Mr. VERTREES. "He brought them back to you?" Yes.

Mr. BRANDEIS. "That is, brought what—the letters or the copies?" "The copies I had made." Of course, he did not give her the letters, but they were on the table, and that is where she replaced them.

Mr. VERTREES. She says "brought back what—the letters or copies?" "The copies I had made."

Mr. BRANDEIS. She did not take the letters again but brought the copies and the letters and put them on the table.

Now, another thing on which considerable stress was laid by Mr. Vertrees, a very recent matter, and one which Mr. Vertrees has considered very important, is Mr. Kerby's statement. We heard a

great deal of discussion from Mr. Vertrees about the difference between that statement as written by Mr. Kerby and the statement as it was issued to the papers, after it received the "censorship" of those who were "supervising" it. Of course, the original document itself was produced. Now, the facts as they appear from the record are just the opposite of Mr. Vertrees's assumption. The statement was written up by the newspaper men from the statements originally made, and Mr. Kerby took that statement and corrected it, so that what we have here represents, not the censorship of the newspaper men, with all their iniquities, but the censorship of Mr. Kerby himself, as you will find, Mr. Vertrees, if you look at page 4451, about two-thirds the way down the page:

Mr. VERTREES. Did you dictate it?

Mr. KERBY. I will tell you how it was prepared if you wish to know. I dictated on Friday afternoon the substance of the statement I was to make, which was taken down by three men, and was written up by them, and that night I went down to the office and carefully corrected their copies, and cut out about a third of the stuff which they had. Wherever there was a case where there was the slightest doubt in my mind as to the points embodied in it, I cut it out, to be safe. And when it was finished it was corrected and put on the wire immediately.

Now, on page 4452:

Mr. VERTREES. Look at the page here, marked page 2. There is a considerable amendment in pencil. In whose handwriting is that?

Mr. KERBY. That is not in my handwriting, but all the corrections were dictated by me.

Mr. VERTREES. Whose handwriting is that?

Mr. KERBY. I think it is Mr. Arnold's handwriting. I can not be certain, because I never saw either of the gentlemen's handwriting before.

Mr. VERTREES. Now, I find on looking at these pages that the first signed pages are marked "Kerby," and so on down to that number, but then after that there are nine pages of additional, which have at the head of it "Add Kerby, Arnold." What does that mean?

Mr. KERBY. Simply this: Add to the Kerby statement, as prepared by Arnold from the dictation. The job was a rush job, and Mr. Wilson wrote half of it and Mr. Arnold wrote the other half. They both took notes and each wrote half and Mr. Wilson did not put my name on the draft, evidently, or he did put it, and did not put his own.

Mr. VERTREES. They made some corrections and you made some corrections?

Mr. KERBY. They made them at my dictation.

Mr. VERTREES. At your dictation?

Mr. KERBY. At my dictation.

Mr. VERTREES. I would like this paper to go in, Mr. Chairman, in such form as to show the original draft and the corrections.

The CHAIRMAN. The corrections will be printed in italics and the lines erased will have a line drawn through them.

Now, on page 4552 of the record the following occurred:

Mr. VERTREES. Look at the page here, marked page 2. There is a considerable amendment in pencil. In whose handwriting is that?

Mr. KERBY. That is not in my handwriting, but all the corrections were dictated by me.

Then came a reference to this very matter that Mr. Vertrees mentioned, particularly as showing the inconsistency and the untruthfulness of this witness. Mr. Vertrees quoted: "I had confidently expected and hoped with all my soul to be called on to make this statement on the witness stand before the investigating committee," as if Mr. Kerby had made that statement, and then it had been revised by others; but when you look at the record you will see that just the opposite is the fact. Mr. Kerby carefully struck out the words, "con-

fidently hoped with all my soul" and "on the witness stand," so that the statement as he made it reads: "I had expected to be called on to make this statement before the investigating committee."

Those are some samples of Mr. Vertrees's inaccuracies. Then Mr. Vertrees referred to the fact that I had on several occasions mentioned that, in relation to the question of the time when patents would issue after clear listing, I had quoted the opinion of the chairman to the effect that it took from three months to three years. Now, if Mr. Vertrees had been only a little more diligent in his reading, when he referred to page 609 he would have found the following after Mr. Glavis's statement, which he quoted:

The CHAIRMAN. Three months is generally about the shortest time, isn't it?
Mr. GLAVIS. Yes, sir.
The CHAIRMAN. After claims have been clear listed before a patent issues?
Mr. GLAVIS. Yes, sir; that is my understanding.
The CHAIRMAN. So that there was ample time for you to make a reply?
Mr. GLAVIS. Yes, sir.

There was another matter with which Mr. Vertrees dealt at some length, and which is deserving of somewhat further notice, that is, the matter of the affidavit of Clarence Cunningham of September 4, 1908, which Lawyer Ballinger drew, and which Mr. Vertrees says you have no right to consider, even if you should find that it was a perjured affidavit and Mr. Ballinger knew of the perjury. Of course, Mr. Vertrees adds that that affidavit was absolutely truthful; and he tells you it was truthful for two reasons: First, because there was no contract entered into, no option agreement ever entered into with the Guggenheims, since that contract had not been ratified by the other Cunningham claimants; and, second, because that contract was conditional upon a railroad being built to Katalla, and the condition was not performed. As it some time since the evidence on that matter was given, I want you to consider for a moment just that situation and see how absolutely unfounded Mr. Vertrees's proposition is. That option agreement, which appears on pages 2132 and 2133 of the record, is signed by A. B. Campbell, M. C. Moore, and Clarence Cunningham as a committee representing their associates. Nobody has ever questioned that that contract was binding, at least upon the three Cunningham claimants who signed it. Indeed, Mr. Vertrees admitted that no doubt Miles C. Moore came to Washington because of the acceptance of that option, came shortly after December 7, 1907, he being in any event bound by that contract, since he had signed it himself.

Now, look at that paper. Is there any man living who could say when he reads the last paragraph of that contract that anyone except the Guggenheim-Morgan syndicate itself had a right to object to the failure of any one or more of those claimants, to come in under the agreement?

That paragraph reads:

Should the number of entrymen declining to convey their respective tracts to said trust company and participate in this proposal be so great as in the judgment of said vendee—

That is, Guggenheim, as representing the syndicate—

will prevent the successful inauguration and conduct of said enterprise; then and in that event this negotiation shall be at an end and all parties shall be relieved from all obligations arising hereunder (2133).

But what is the event? The event, expressed as clearly as language can express any idea, is that Guggenheim is to determine whether the failure of this man or that man or twenty men to come in and convey to the trust company, presents a condition which in his judgment will prevent the successful inauguration and conduct of the enterprise.

Such is the situation with regard to that one question of ratification. But you will remember, the committee which signed that agreement on behalf of the Cunningham claimants was appointed at a meeting at which all those present and represented bound themselves to ratify any agreement the committee might make. That, of course, was an antecedent authority so far as those represented at the meeting were concerned. But it did not bind all. Only twenty-five of the claimants, not the full thirty-three, were represented at the meeting, but that number had authorized the agreement and agreed to ratify it. Still, even if there had been no such authorization, those three who signed the agreement would have been bound by it as much as any men were ever bound by any agreement they entered into; unless, as Mr. Vertrees suggested, the agreement was conditional upon the railroad being built to Katalla. Now, whether or not there was such a condition of building to Katalla, every lawyer knows that must be ascertained by reading the contract itself; and a reading of that contract demonstrates that there is not a word in it on which to base any such contention.

The fact that there is no such term in the contract would be conclusive, of course, as a legal proposition, and should dispose of the matter with men who are, like Mr. Ballinger, so desperately determined scrupulously to obey the law. But we have more than that. Not merely as a legal proposition is claim of the existence of such a condition precluded. We know that these men understood Clarence Cunningham, the "hardy pioneer," who goes to Alaska for his "patent-leather-shoe" associates of Seattle—Cunningham knew at all times that there was a question whether the railroad could be built to Catalla. It is extraordinary that that suggestion should have been made here that any such condition existed in view of the letter which was put in evidence showing the doubt that Cunningham felt and that everybody felt as to whether it would be possible to build to Catalla, the doubt whether the railroad would build to Catalla or to Cordova or to some other place. I refer to the letter of Clarence Cunningham which appears on page 601 of the Cunningham record as Exhibit 1, wherein he writes to H. K. Love as follows:

> As regards the railroad terminus, it looks as though Catalla is to be the place. They have shipped quite a large amount of machinery and general supplies, together with horses and men (*be*)for(*e*) active work; and I am advised authoritatively that five steam-shovels, a sawmill outfit complete, and a great number of horses will go on the 24th, but while all this may take place, there is still a chance of the terminal being changed on further report as to the harbour question. You know they have already expended a large sum at Cordova, also at Valdez, both of which places are, temporarily at least, abandoned, and there is no reason why they could not also abandon Catalla if their experts should pronounce the harbor facilities too costly, in which event Cordova would be the natural selection. I am sorry I could not give you more definite information on this subject, but there is such a feeling of uncertainty that no one can prophesy at this time just what might happen.

Now, there you have the railroad situation. Everybody knew the situation perfectly, and knowing it, they did not put into that agreement anything regarding the construction of the railroad to Catalla.

As a matter of fact, it was not an essential thing in the enterprise whether the coal was to be carried 25 miles or 90 miles to a harbor. The location of the harbor was an entirely immaterial consideration. In matter of expense a haul of 25 miles may be less desirable than a haul of 90 miles. The great question is one of grade, of expense of construction and maintenance. If it was cheaper to build the railroad to Cordova, then it was for the interests of everybody that it should be built to Cordova, because the freight rates would presumably be lower if the cost of construction were less. If it was too expensive to build to the harbor of Catalla on account of danger of storms and danger of harbor facilities being broken up at this railroad terminal, everybody was equally interested in having the railroad built to another harbor where the least possible interference with traffic and the least possible cost of construction would be entailed. Not only did all concerned know that there was this doubt, and knowing it wisely omitted to insert anything in the agreement in regard to the place, but it was for the interest of everybody that when this railroad was actually built it should be built to the best possible harbor and over the most feasible route.

Therefore you have this situation, a situation of great significance: Lawyer Ballinger did present that affidavit of September 4, 1908; and he presented that affidavit under circumstances which, I submit, on this record can leave no doubt in the minds of most of you that he knew all the facts. He may have gone through just that reasoning as Mr. Vertrees wanted you to adopt (and doubtless he suggested that very line of reasoning to Mr. Vertrees), that the contract was not binding because it was not ratified, and also because a condition was broken. Doubtless Mr. Ballinger relied upon that sort of technical reasoning. But could he have been ignorant of the facts that I have called attention to? If he was ignorant his must have been a desert island of ignorance amidst a great sea of knowledge. All those Cunningham claimants referred to by Mr. Vertrees, all those friends of Mr. Ballinger, whose evidence has been specially referred to as bearing upon this question—everybody in Seattle interested—knew the facts, for copies of this agreement were sent to all of the claimants as soon as the agreement was entered into. And furthermore, if you will look at the letter which Mr. Vertrees has also called attention to—in a very different connection—the letter of Mr. Ballinger to Secretary Garfield of April 8, 1908, you will see that he refers to the railroad projected by people who are unmistakably these people. Mr. Vertrees has also referred to the fact that when Miles C. Moore came to Washington in December, 1907, he was undoubtedly induced to come by the acceptance of this option by Daniel Guggenheim on behalf of the Alaska syndicate a fortnight before.

Mr. Ballinger's action in regard to the affidavit of September 4, 1908, his dealing with the legal questions involved in that situation, illustrates an attitude which has a very much broader application in this case. We have heard a good deal said in the opening argument of Mr. Vertrees, and in his closing argument and elsewhere about this Ballinger administration being "an administration of law, and not of men." I think it would have been more accurate to have described it as "an administration of lawyers, and not of men," because the lawyers who have had to deal with this matter have not shown themselves to be true men. They are lawyers who have been

ever ready in advancing private interests to resort to a loose construction of laws, but as against the public interest proved to be very strict constructionists.

Take this very question in regard to these Alaska claimants, and the Cunningham claims among others. When it became obvious upon Jones's preliminary investigation in August, 1907, that probably all, or nearly all, as Jones expressed it, of these claims were fraudulent and the investigation, if pursued, would result in restoring the land to the people, so that it might be dealt with in the people's interest—when that became obvious, Commissioner Ballinger stopped the investigation to give the chance to the private interests to get some legislation by which they might secure patents on those claims. Mr. Ballinger realized that situation very well when he came back to Seattle in 1908 as Lawyer Ballinger, came back to Cunningham, and Charles J. Smith, and H. C. Henry, and his other friends and associates there and told them, "You can not get your patent under the act of 1904, and if you do not make an application under the act of 1908 the probability is the Government will proceed to cancel your claims." For, if once canceled, all the opportunity of amnesty, all the opportunity of ratification of the claims, would be gone. His thought then and at all times was a thought for the special interest as against the public interest.

Now, to my mind it is only a small part of the meaning of conservation to plan to avoid the present wasteful use of natural resources. In some ways it would be of little importance whether the resources were preserved or not preserved, if when they are preserved they are preserved for the special interests, are preserved to make the rich richer, leaving the great mass of the people of the United States dependent upon certain large capitalists, dependent upon the very limited number of the rich. I see little good in conservation if that is to be the result. Conservation, in its very essence, is preserving things public for the people, preserving them so that the people may have them. To accomplish this is the aim of our Republic. It is the aim of our great democracy that men shall, so far as humanly possible, have equal opportunities, and that the differences in opportunities to which men have been subject elsewhere shall not prevail here.

This is what conservation means, and it is because conservation means this that Gifford Pinchot and James R. Garfield and others said: "No; do not patent those lands; depart from an early method of dealing with things public by throwing them into the lap of those able, experienced, and resourceful men who will develop them." We insist upon new methods, because the old methods of distributing and developing of the great resources of the country is creating a huge privileged class that is endangering liberty. There can not be liberty without financial independence, and the greatest danger to the people of the United States to-day is in becoming, as they are gradually more and more, a class of employees. Shall the only question be: "Who is to be the master?" Resistance to such conditions is, I take it, what underlies this conservation movement. It is that which gives it its significance. And on that issue where does Mr. Ballinger—where do his associates—stand?

I ask you gentlemen, experienced lawyers, with knowledge of the affairs of the world, knowledge of what the great interests do, knowledge of what the corporations—great and small and the business men

great and small—do in regard to their property; I ask you, gentlemen, would anyone of your clients have behaved in respect to his property, if there were someone seeking to get it, as Mr. Ballinger has behaved in respect to the property of the people of the United States? Would he say, "Let others get it?" Would he give the question whether others were entitled to millions of property, merely two or three minutes' consideration? And would he, abandon a policy which had been adopted after due consideration and has proven beneficial to him or to this company, would he abandon such a policy because a subordinate official, possibly even the Attorney-General of the United States, gave an opinion that it was not in accordance with law?

Take, for instance, the case of the cooperative agreement between the Forestry and the Indian Bureau. Everybody apparently admitted—even Mr. Vertrees—that there was an agreement which worked well; which was in accordance with wise policy, namely, that all forest work should be under one head, and that the experienced Forest Service should handle work which no other department was able to handle so well and so economically.

Now, with that fact established, what happened? The Comptroller made a decision—I need hardly recall to you the details of that decision or the discussion which took place here; a discussion among the members of the committee which was significant. The Comptroller rendered an opinion which at the time Mr. Ballinger acted was ten months old. That agreement had been carried on regardless of that decision. Why? No doubt, because an examination of the Comptroller's decision shows that it really had no bearing on the case; that it could only be applied to that agreement if one disregarded the actual facts. When that matter was discussed here in the committee, Senator Root said that probably from the beginning of the Government similar things had been done a thousand times, done from day to day. The discussion finally ended, with a suggestion of a member of the committee that the matter was so clear that we were not justified in taking up time with further argument upon it.

On such a legal investigation a great and important policy, affecting not only the finances but the general welfare of the Indian nation, was abandoned; a nation to whom we have been at times guilty of much wrong, which we are undertaking now to right by giving them the greatest possible protection. Mr. Pinchot showed you that this cooperative agreement had in its operation worked very beneficially to the Indians, not merely in dollars and cents, but through the development of their character, since it tended to give them regular, congenial occupation. Yet that agreement was swept away after a trifling and wholly inadequate investigation of the case. I ask you gentlemen, you who have acted, every one of you, probably, for some large corporation or small corporation, or for private individuals, I ask you what would you—what would your corporation—have done in such a case? Would it not be this? If a new man coming into the management of the corporation, a new president, a new comptroller, or a new treasurer, had said, "Is that agreement valid?" would not the answer be: "We thought it was; we investigated it at the time we entered into it, and we concluded it was valid; it is working mighty well; that at best there is a doubt whether it is not valid.

We will have that question tested. We will continue what we are now doing, as the agreement is in the interest of all concerned, until somebody objects, but certainly until we get an authoritative decision of the highest court as to what our rights are." Would you, under such circumstances, be governed by Lawler's opinion, or the opinion of anybody like him, or even the opinion of most eminent counsel, declaring the agreement invalid? No; you would not think of it. What you would do would be to go on and do the things which this corporation had thought it right to do, and which were in the interest of all concerned, and you would never make a change until it had been finally determined by the highest legal authority that you must do so.

Take again this question of the supervisory power exercised from the beginning of government and under which the withdrawals of land from entry were made. Here comes this lawyer from Seattle who says they are illegal. Well, suppose he does? He is entitled to his view of it; but what is to be done because he holds this notion? Is he going to overrule the construction, which has resulted in the past in such beneficent exercise of the powers of government? Would this conscientious, scrupulous, law-abiding citizen do that if his private interests were prejudiced thereby? Suppose his interests as an officer or a stockholder in the Hanford Irrigation Company had been concerned, would he have given up any important rights previously exercised merely because on a legal question which it appears he never investigated his impressions were unfavorable to the existence of the right? (The department appears not to have investigated the question until Lawler, in the year 1910, a year after action was taken thereon, presented a brief.) Would Mr. Ballinger in his capacity of stockholder (even to the extent of only $2,000) in that Hanford Irrigation Company, have given up very important property on his guess as to the legal rights?

The same thing is true about the cooperative certificates—the irrigation certificates. You know, gentlemen, everyone of you experienced lawyers, that arrogant as we may be in some things, we know perfectly well that our decision on any question of law, particularly if it is a question of statutory construction or of constitutional interpretation, is worth mighty little. Our clients know it. If they get an opinion from us in an important matter and they do not like that opinion, they will get one from another lawyer and another, not from any disrespect of us, but because they recognize that that whole field of governmental powers and the field of statutory construction is one of uncertainty; one in which no view can be declared with positiveness right or wrong. It is a question. Who has the last guess? Usually in federal matters it is the Supreme Court of the United States; but a case may go through three courts, the circuit court, the court of appeals, or several courts of appeals, and then to the Supreme Court of the United States, and one of us who reads the opinions of all the courts may perhaps say, "With all due deference to the Supreme Court of the United States, the most convincing, and to my mind the best opinion, has been written by that humble district or circuit judge who heard the case in the first instance."

I say that is a matter of common experience which everybody knows—which Mr. Vertrees and Mr. Ballinger and every lawyer would act upon who had more than the experience of James M. Sheridan.

The law, for which every one of us must have the greatest possible respect, is brought into disrepute by such action as this; a disrepute which is very dangerous in this country at the present time. So to utilize the law as an excuse to attain a desired end is a prostitution of the law. Mr. Vertrees suggested himself that among the 25 lawyers of the Interior Department you can probably get a decision on either side of any question, just as you can find them in the lower courts of New York. To use legal opinions in that way is as serious a blow to the maintenance of respect for the law as is canting hypocrisy to the cause of religion.

In view of the unrest in this country, in view of the widespread feeling that the law is something different for the rich than for the poor, it is of the utmost importance that men should not trifle with the law; that they should not use it as a tool, or as an excuse, but that they should look upon it as a great standard to be lived up to; and that they should recognize that the law is supreme over man, and in this republic exists for all men alike. President Roosevelt was doing a great work when he promulgated the idea, which alone can save this country from lawlessness—the idea that the law, from now on, should be used for the protection of the people and not against them. That is the Roosevelt idea. That is the Garfield idea, and the Pinchot idea. If there is a doubt as to what the law is, that doubt is to be solved until the court has decided otherwise, in the interest of the people. The Supreme Court of the United States has solved similarly in case of a grant by the United States, whereas in an ordinary case as between private individuals all doubts in a deed are resolved against the grantor because it is his deed; the Supreme Court of the United States has decided early that in the case of a grant by the Government the rule was the other way—the presumption was in favor of the Government, or in other words, in favor of the people. That is the presumption which President Roosevelt stood for. That is the presumption which James R. Garfield stood for, and Gifford Pinchot followed him. That is true law; that is law for a a true purpose, law used not as a device or as an excuse to increase the power of the special interests.

Mr. Chairman and gentlemen, imagine yourselves counsel for, or the directors of, a corporation which owns the Alaska coal lands. Can you conceive of yourselves acting in respect to them as Commissioner Ballinger and as Secretary Ballinger acted here? Property worth millions, in the aggregate hundreds of millions; and how has it been treated? The best, the very best, that can be said in excuse, all that Mr. Vertrees can say in excuse, of Mr. Ballinger is that he left the settlement of matters affecting it to someone else. If he left the decisions to someone else (which I believe is not true), he was guilty of such neglect as to show that he ought not under any circumstances be trustee of that property; that he has been unfaithful to a great public trust, an unfaithfulness which, had he been a private individual, would have made him liable for the results of his infidelity. Watch his course and you will see that is true of every step. He did in respect to the people's property what no private individual would have thought of doing in respect to his own property or interests.

Mr. Vertrees wanted to know why I did not cross-examine Mr. Schwartz and why I did not cross-examine others. I thought I had

indicated why I did not cross-examine them. When I clamored for the opportunity of examining Secretary Ballinger, and said that I wanted to postpone the cross-examination of others until I had done so, I told you it might be unnecessary for me to examine others. I wanted to get at the man who was really responsible; I wanted to have him here. And you have had him as an exhibit so that you could see what kind of a Secretary of the Interior we now have. The men who surround him, Dennett, Schwartz, Pierce, and Finney, as I said before, are not men of the Glavis type; but they are men having doubtless the virtues of the ordinary subordinate, the virtues of a very large part of the people of the United States. They will do the thing that the man on top wants them to do. When Garfield was Secretary of the Interior, if he made his wishes known they would carry the wishes out. When they knew his wishes and his views, they would follow in his course. They are not ideal public servants, far from it, far from it. But the real responsibility is not with them, and the removal of them would not give us any remedy. I confined the cross-examination to Mr. Ballinger largely because I wanted to show you as well as I possibly could what Mr. Ballinger was, to have you follow him in his evasions, in his misstatements, in his lapses of memory, in his excuses. I wanted to have this picture graven on your minds at every moment when you came to consider this. When you come to making your report to the people of the United States, can you say to them, "American citizens, we recommend this man as the trustee of your property and your children's property and your childrens's children's property. We have spent nearly five months in considering his character, his actions, and his relations to this very matter. We know every part of him—all that can be said in his favor and all that can be said against him. You have not had that opportunity. We recognize the obligation upon us; we recognized that your welfare and that of generations of Americans will largely depend upon the faithfulness and the efficiency of this trustee, and we tell you now, this is the man; this is the man that we should ourselves make the trustee of all this property, of all we have to leave to our own children, because we know that J. P. Morgan & Co. and the Guggenheims, and all the other special interests there may be hanging about like harpies trying to get this property, that all those men would fail with him as trustee; that they could make no impression upon him; that his extraordinary vigilance, his extraordinary intelligence, his steadfastness would prove a safe protection to your property."

Whether Mr. Ballinger is such a man is the question which you have to decide; and I wanted to have that man before you long and in every possible relation in which I could present him, in order that you might determine whether, in the fullness of knowledge, you would recommend this man to the American people as possessing those qualifications.

Mr. Vertrees said the Lawler memorandum was of no significance. Was it not of significance? Was it not of great significance? And why? Wholly aside from the bearing it has upon the judgment which was rendered by the President—wholly aside from that—it seems to me that it has the greatest possible significance. The man who is on trial here as to whether he shall be accepted as the trustee of the great property of the people of the United States was put to a slight test in connection with the Lawler memorandum, the test of

honesty and of frankness to a tribunal appointed at his instance and at his urgent request in order that all about him might be heard and known. Mr. Ballinger came and urged upon you to investigate his conduct; he offered you all information that he might have, all papers not only on official but on his private files. He offered to come before you at any time and as often as you desired. And then what happened? I called for papers which, to the mind of every reader who knew that there had been a Lawler memorandum submitted to the President, called directly for that document. I had reason to believe that a copy of that document existed; and good reason to believe that it existed in the Department of the Interior. With difficulty I obtained answers in writing from all of the numerous persons in the Interior Department who might in any way have been, and many of whom actually were connected with the preparation of that document. Mr. Vertrees says there is no copy there. I think he is mistaken, but never mind. When the answer came back saying there was no such paper there I was not so innocent as to leave the question at that point. I asked further that each one of those persons state if there had been any document submitted to the President or to the Attorney-General "not now available for production," to state what it was. Did I get any information? Absolutely none. Some of those answers contained absolute falsehoods, others palpable evasions. I continued that questioning from the 5th of March last to the 31st. It was the middle of April before some of the answers were received from the Interior Department. I continued my calls until I had gotten on the record what I knew to be such clear evidence of the falsehood or of the evasion on the part of every one of those men connected with that Lawler memorandum as necessary to convict him of untruthfulness. You will find that when you examine the correspondence, if you have not already done so.

Later I had Mr. Ballinger on the stand. And what happened then? He told the story of his going to Beverly—told it necessarily with some detail, but he did not mention the fact that Lawler went with him. When he had gotten through and landed safely at the Hotel Touraine—personally conducted—I asked him, "Did not Mr. Lawler go with you?" He answered, "Yes, sir." I asked, "Why did you not mention the fact that Mr. Lawler went with you?" He answered, "I did not think it material." Again I asked, "Did you not think it was material, in view of the important part Mr. Lawler subsequently played?" Mr. Ballinger answered, "No, sir. What part do you mean that he played?" I replied, "The part which you know he played." Again he answered, "No, sir."

Was that frank? Was that the kind of a statement under oath that you would like to have from the man whom you would make trustee for the people of the United States, trustee of their great interests? Then later I came back to the subject, in connection with Mr. Lawler's second visit. I asked Mr. Ballinger, "When he went, what did he take with him?" His answer was, "A dress-suit case, with his clothes, the ordinary articles of toilet." I asked, further, "Is that all?" To which came his reply, "Some records, some memoranda," and then, after persistent pressing, we learned ultimately that Lawler took with him—what? That he took a "résumé of the facts in the Glavis charges."

Do any of you think that what Lawler wrote—that letter which he wrote "as if he were President"—would be truthfully and frankly described by a man to whom you would intrust the welfare of this and future generations as a "résumé?" Do you think that the following passage would be called a "résumé of facts:"

> The great responsibility of Cabinet positions demands the selection therefor of men of the highest character and integrity. Possession of these qualities, as well as an ability and experience which especially fitted you to direct the affairs of the Department of the Interior, warranted your appointment as Secretary. Duty to the country, to you, and to myself requires that any aspersion upon the propriety of your acts or those of your subordinates be promptly met and carefully considered, to the end that, if justified, proper remedy may be applied, and if not that it may be publicly refuted.

That paragraph, which appears in the President's letter to have been copied from the Lawler draft, prepared by Mr. Lawler or by Mr. Ballinger or by some of the other associates, would hardly be termed by a lawyer of experience accustomed to the use of language and familiar with ordinary ideas, as "a résumé of facts relating to the Glavis charges."

Now, that is an indication of the man. That is the man whom we have to consider here. Mr. Vertrees has said that witnesses introduced by him have testified to this and have testified to that. They have testified to a great many things which are not so—some of them by reason of a lack of memory and some of them for other reasons. There is the greatest difference between testimony and facts, and even as between testimony and evidence; and when you come to consider this record and read some statements of Mr. Vertrees's witnesses in connection with other statements in the case you will have brought clearly to your minds what the difference is between testimony and facts. That difference can not be more clearly presented, the contrast could not possibly be presented with greater clearness and force, than if you compared critically—which you as lawyers and experienced lawyers are particularly qualified to do—the testimony given by Glavis and the testimony given by Mr. Ballinger. If you turn to Mr. Glavis's testimony and study that testimony, you will find, I believe, as I have no doubt you have already concluded, that he was an extraordinary witness, possibly the best witness that any of you have ever had before you, or certainly one of the best. Why? There are two great things that are essential to being a good witness—one is the desire to tell the truth; and the other is the ability to tell the truth: I mean the desire to tell the full absolute truth under all circumstances, regardless of temptation and regardless of pressure. There are fortunately very many people who have that desire; but there are far less who have the ability. The ability to tell the exact truth involves four qualities which are rarely found in combination with the desire to tell the truth, namely: In the first place, there must be perfection of observation; the man must be able to see and to hear what actually happened.

You gentlemen know perfectly well that a large number of all the witnesses that you examine are very defective in powers of observation. Take any two or three or ten people, and those two or three or ten people will differ, if they have not conferred with one another, in their account of any particular occurrence which they witnessed, although intending all to tell the truth. They will differ because of defective observation. It may be that they do not hear

well; it may be that they do not see well; but more commonly it is an intellectual defect which prevents their taking in what actually occurred. Some of these people may be among the ablest people in the world. They may have imagination; they may have genius. The actual occurrence may start their thoughts off into a particular direction, so that they do not see or hear what actually happens. The power to observe accurately is a power very rare in man. That power Glavis possesses to an extraordinary degree. What happens to him at any particular time he knows.

In the second place, the ability to tell the truth requires in the witness a perfect memory. In this respect also Glavis is remarkable. The accuracy of his memory is striking. It is like a self-registering machine. A fact that occurs registers itself in his mind in a manner which I have never seen equaled. The most insignificant occurrence, something that he could not possibly have had as of importance in his mind, he can locate as having taken place at a particular time.

Take, for instance, a rather interesting incident, the question when the idea first arose of having a field examination in Alaska made. That was not an important fact, but Glavis testified he remembered having written, in the latter part of February, 1908, a letter to Schwartz in which it was suggested. Later it appeared that there was such a letter, a letter semiofficial in character and personal in form, dated February 27, 1908. He had fixed not only the fact, but the date. He did this kind of thing time and time again throughout his testimony. In one instance I asked him in regard to a certain interview concerning the Wilson coal cases. It was in 1907. He could not remember whether the interview, which had no significance in itself, was held in March or April; he was not sure which. It proved to have been held on the 30th of March. Glavis had that sort of wonderful memory as to nearly every fact. In the brief we shall submit to you some other examples of it. When you go through his testimony, you will find every time, I think, without exception, where testimony can be confirmed by documents subsequently produced, it is so confirmed. You remember that Glavis testified before we had the daily reports or any of the other documents produced in pursuance of our calls for them. When the daily reports and the other papers were produced, there came one confirmation after another of his perfectly marvelous memory.

But something more is necessary than observation and memory to enable one to be a reliable witness. In the third place, the power of expression is essential. A large percentage of all the people who know facts are unable to tell them, particularly in such a way as to convey to the mind of the hearer the thing that is in their own. Not so with Glavis. Glavis's testimony is just like his correspondence—marvelous—in the ability disclosed to express the idea. In all the letters that he wrote which have been introduced here, scarcely one can be found in which the language used is capable of two constructions. Compare Glavis's letters with the letters of the others. How many occasions have there been where the meaning of other writers was the subject of discussion? But there is never a moment's doubt as to what Glavis means. So when Glavis tells you in advance what he said in a particular letter, and the letter is produced two years or six months after it was written, it proves to be in substance what he told you.

The instances of that are very numerous. One that has just come to my mind was the letter to Andrew Kennedy, containing instructions concerning the field examination in Alaska. Mr. Vertrees thought from the reply which he had that Glavis said something that he ought not to have said; that is, said something which was not consistent with the straightforward course which actuated Glavis throughout. Kennedy, although a very intelligent man, had expressed himself so that a doubt might well arise in the reader's mind; but when you got Glavis's letter that doubt was at once removed. So it was with letter after letter, and it is just the same with his testimony. When you read it you find that he has expressed his idea with absolute clearness.

And then there is a fourth and final essential to the perfect witness. It is the ability to envisage the whole situation. Many a man will give a false impression by stating one thing because he does not see at the same time its relation to others. He states one thing without regard to the facts that other things if not considered will leave the situation presented in the wrong light. Glavis has a mind so clear that he sees the bearing of what he is saying. He can not state a thing which will convey an erroneous impression, because his mind, in its clearness, rebels against that. A number of times he has been criticised when answering for making lengthy explanations. His doing that was merely an incident to that perfect mind and conception of the facts asked for. He found it necessary to tell all that actually occurred in order that his answer to the question might not convey to the mind of the hearer an idea contrary to the truth.

Such is Glavis the witness. His position as a witness is in complete harmony with his conduct generally and particularly with his action in this case.

Think of it, gentlemen! This man was only 24 years old when he first undertook to call to the attention of the department what he believed to be the neglect of an important duty of his chief. And I ask you whether any man here could, in the light of all that had occurred, suggest a method of doing what Glavis conceived it to be his duty to do, and to do it more intelligently and more considerately than he? What was his position? Glavis was in Seattle and found, not without good cause, as we know, rumors afloat in regard to Commissioner Ballinger's neglect in pursuing the investigation of the Alaska coal claims. Before that he had come in contact with young Davis, who had made a statement to him as to what Mr. Ballinger had said to him, which, if true, was contrary to what was obviously Commissioner Ballinger's duty to the people of the United States.

What did Glavis do? In a letter, which was in its courtesy and kindliness almost the letter of a diplomat, in that letter of November 12th, he called this fact to Mr. Ballinger's attention, but received no reply. The fact that he received no reply to this letter, together with the fact that Jones's reports had been ignored despite their repeated insistance that all these claims ought to be investigated, that all or nearly all of them were fraudulent—all of this made Glavis feel that he must take this matter up with the department. What did he do? Did he rush into print? Did he make himself obnoxious? No. He wrote to his friend and his immediate superior,

Chief of Field Divisions Schwartz, wrote on the train, as he was going down to Arkansas, and said this: "It is necessary for me to talk matters over with you in regard to the Alaska situation. When you hear, I believe it will pain you as it pains me." He was not writing this letter for publication. He was writing a most private and confidential letter to the man who had been his friend and was expressing the innermost feelings of his heart and his soul. He was distressed at the situation; distressed from the country's point of view; and distressed from the point of view of the department; he was pained at the thought of his superior's conduct. Then he went to Washington and talked the matter over with Schwartz, and Schwartz arranged for him to see the commissioner. The commissioner told him to go ahead, to investigate everybody, and let his friends know that everything was going to be investigated. Glavis went off happy. He felt reassured that Mr. Ballinger was not what he had feared Mr. Ballinger was. He believed Mr. Ballinger and he was glad. What did he do later? When he intervened the second time to secure the investigation of the claims, was anything heard of that outside of the office? No. He simply telegraphed, after some hesitation, to the commissioner that "Those claims ought not to be clear listed."

When he intervened again in May, 1909; when Schwartz tells you Glavis believed all was not right, what did he do? He did the most considerate thing that any man possibly could do. Nobody could have advised him better than he advised himself, when he determined to go with Schwartz and Dennett direct to Mr. Ballinger. And when that marvelous thing happened, when the request for an opinion was handed to Pierce for reply, although Mr. Ballinger had agreed that the Attorney-General should give the opinion, then Glavis went to his trusted friend, whom the President had honored with the appointment as attorney-general of Porto Rico, whom Mr. Vertrees sneers at, but for whom, I think, all others must have great respect—Glavis went to him, and Henry M. Hoyt went to the Attorney-General.

Again, in July, what did Glavis do? He went to Secretary Ballinger; he went from Secretary Ballinger to the Forestry officials, when no other relief was possible, and ultimately he went to Gifford Pinchot, who had a reputation which raised him above the suspicion of self-seeking, and who had a special official duty in respect to this matter. And when he wrote that letter to the President of August 11, 1909, he did something which is remarkable in itself. Strangely enough this document, historically the most important, and in other repects perhaps one of the most important in the case, has never been read before the committee. I have no doubt you will examine it carefully, and when you do you will find this—that the statement which he presented to the President occupies, exclusive of exhibits, less than 20 pages; eliminate from those 20 pages the letters which are quoted in it, and it is less than 5 pages long. In those 5 pages everything that he says is true, and what is there includes all that it was necessary to include in order to present properly the situation which he desired to present to the President. That was not a statement of charges, as such, against Secretary Ballinger or against Schwartz or Dennett or anybody else. There is no charge in it. Its object was not to attack either Mr. Ballinger, or Mr. Schwartz, Mr. Dennett, or Mr. Pierce. The object of that letter was to protect for the people of the

United States that which was theirs, and which he believed to be in danger. To that end he presented the facts; and presented them to whom? To the President of the United States, the only man who could properly pass upon them when the Secretary himself was believed to be in a position where he would not protect those interests. Glavis's act in going to the President was considered by Secretary Ballinger an act of insubordination, justifying his dismissal. So his going to the Attorney-General earlier was considered an act of insubordination in Secretary Ballinger's opinion, equally justifying dismissal.

Does not that exhibit terrible confusion of ideas? Still, that is what Glavis did. He went to the President with the briefest possible statement of absolute facts that he knew and left them with the President. He ended his statement as follows: "Some of these facts in relation to the delays are within the knowledge of the forestry department, which also may have knowledge of other facts bearing upon this matter." When he left the President, it was with the suggestion that the President might wish to see him again, so he remained four or five days in Boston. Then came the announcement from Secretary Carpenter to Glavis that he was not needed and might return to his duties in the West, and to the West he returned.

On the 16th day of September there appeared throughout the United States in probably every paper published a letter of the President disgracing this man, holding him up to contempt as no other utterance possibly could except that of the Chief Magistrate of the United States.

Thus have these men, Ballinger and Lawler and their associates, misled the President; so that he disgraced a good and faithful servant of the people, a humble servant to be sure, one in a very subordinate capacity, but one who with faithfulness and zeal and with rare competency had performed, or had endeavored to perform, the tasks which fell to him. Glavis awoke on the 18th of September unprepared for his doom, and found that all the powers of the Government, the influence of the great office of President was being used to disgrace, to crush, him. Think of it, gentlemen. Glavis went to the President and in the interest of the people presented the facts as he knew them, and as I believe they have been proven to be. When you go through Glavis's statement in connection with the evidence here you will find that he misstated nothing, and that he suppressed nothing that was relevant to the matter which he submitted to the President. Having done that, and only that, he is condemned and disgraced without a hearing, without having seen the hundreds of pages of evidence which had been presented by Mr. Ballinger against him, and which Lawler misinterpreted for the President, without knowledge even that there was a charge preferred against him. And why? Why was Glavis sacrificed? Why this determined effort to sacrifice this man? The reason rests deep, deep in the conceptions which actuate Mr. Ballinger and the men who stand with him. It is the conception of class, the conception of privilege as against the people—the belief that men in exalted station must be protected at all odds; and that a man who is merely a humble servant of the Government has no rights which need be respected. Believing Glavis's downfall to be essential to the exoneration of Ballinger, there is no hesitation in condemning an innocent man—holding him up to disgrace; for he is nothing but an inferior official.

These claims of privilege are the same whether they be political or financial. Flowing from that same idea is the desire to give the public domain to the Guggenheims and Morgans, to men of consummate ability, to the great resourceful men of the country, in order that they may develop our resources, perhaps in a paternal and benevolent way, and out of their millions create Rockefeller, Carnegie, and Russell Sage foundations.

Now, gentlemen, the question here is not only a question of conservation, it is a question of democracy, and it is a question of justice and of truth. In order to carry out the purposes of these men, Perkins and Guggenheim and Smith, and their like, even the truth is to be trampled under foot. An investigation devoted by law to truth is invaded by untruth. It is perverted by suppression, and in this country, where there is graven in the hearts of men the rule of fairness, that no one shall be condemned without a hearing, one of the most faithful, humble servants of the American people would have been sacrificed but for the courage, the public spirit, and the persistence of certain organs of public opinion, and certain men whom Mr. Vertrees has called leprous, malignant, and malicious—Collier's Weekly and its eminent and worthy editors, the independent press of the country, James R. Garfield, and Gifford Pinchot. But for these publications and these men there would have been done in this country an act of injustice as great as that done Alfred Dreyfus in the Republic of France, and for very similar reasons. The reason here is that the men in exalted station must be protected at all hazards, and if they can not be protected by truth then suppression and lies must be resorted to. That, Mr. Chairman and gentlemen, is the situation as we view it.

I thank you most heartily, not only for your attention to-day but for the very great patience which you have had to have with me as representing Mr. Glavis throughout these many hearings. [Prolonged applause.]