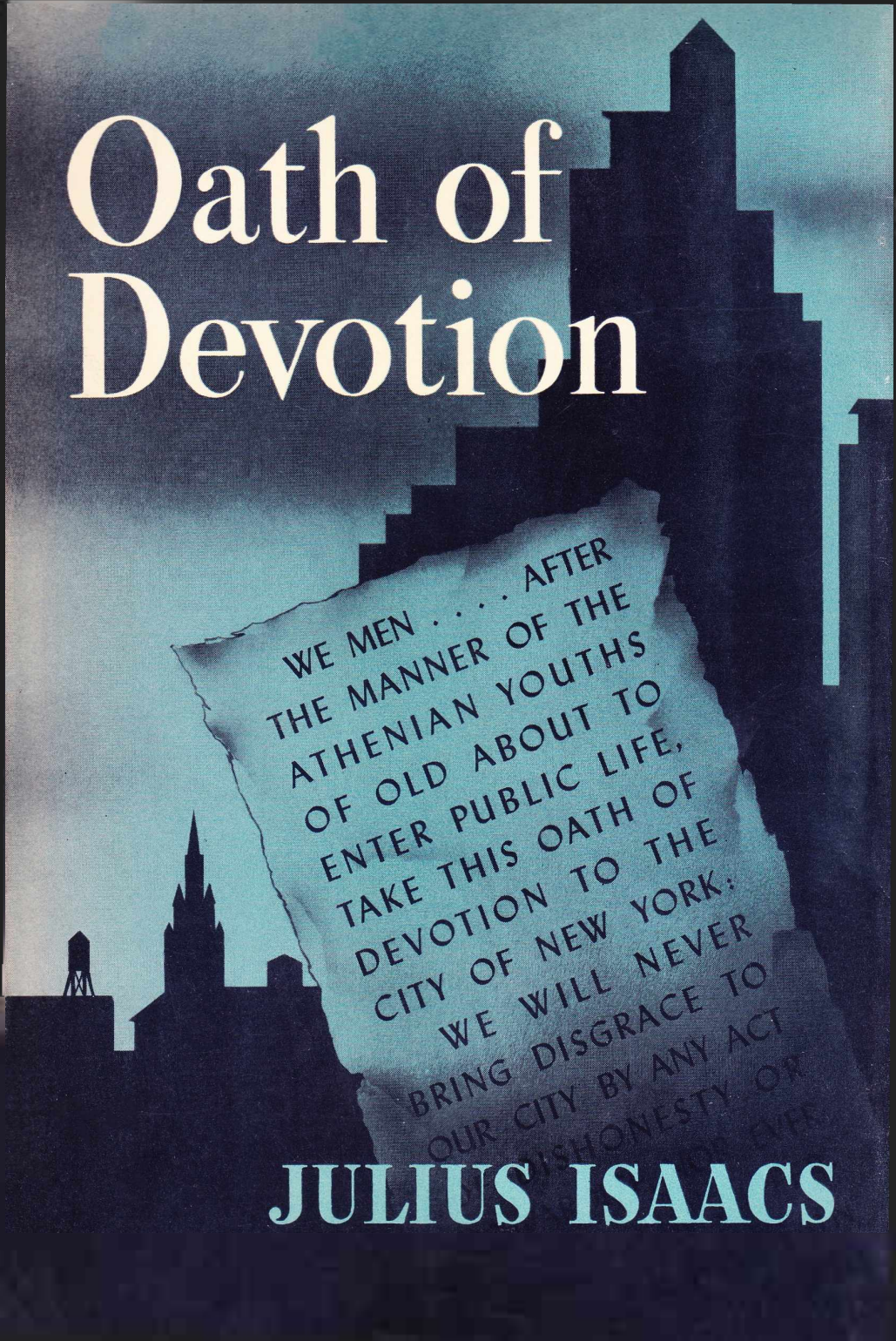
Oath of Devotion



JULIUS ISAACS

OATH OF DEVOTION

By Julius Isaacs



This book, by a former New York city magistrate, is in part the inspiring story of his own life; in part a vivid record of the city he has loved; in part an account of the Fusion Administration, embodying perhaps the most revealing portrait of Fiorello H. LaGuardia ever written. It tells of a career unusual for its variety and constant interest, unique for its inception and meaning. For Judge Isaacs, on graduating from the College of the City of New York, had taken the Ephebic Oath, pledging himself to good citizenship and service—and meaning what he swore.

The first part of Judge Isaacs' story, "The City and I," embraces a boyhood on the Lower East Side as tenth child of a Russian-Jewish immigrant family. After graduation from City College, he went into various business jobs for six years, studying at New York University Law School in the evenings. During that period he married Betty, the New Zealand girl whom he adored, and they went abroad as soon as he had taken his bar examinations, coming back that fall for him to start private practice.

"The City as a Client" tells of his close relationship with Mayor LaGuardia, and gives fascinating descriptions of legal cases on which he worked as Assistant Corporation Counsel. Not the least interesting and rewarding of his

(Continued on Flap II)

$4.50

OATH OF DEVOTION

By

JULIUS ISAACS



E. P. DUTTON & COMPANY, INC.

New York, 1949

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OATH OF DEVOTION

"We men, graduates of the College of the City of New York do this day, after the manner of the Athenian youths of old about to enter public life, take this oath of devotion to the City of New York: We will never bring disgrace to our city by any act of dishonesty or cowardice, nor ever desert our suffering comrades in the ranks; we will fight for the ideals and sacred things of the city, both alone and with many; we will revere and obey the city's laws and do our best to incite a like respect and reverence in those about us who are prone to annul them and set them at naught; we will strive unceasingly to quicken the public's sense of civic duty; and thus in all these ways, we will strive to transmit this city not only not less but greater, better, and more beautiful than it was transmitted to us."

To BETTY

★

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FOREWORD

THE FOREGOING EPHEBIC OATH is substantially in the form used by the Greeks when they swore their youths into public life two thousand years ago. Out of it comes the double theme of this book, the story of the individual and the concept of social responsibility. In the development of these two separate motifs into a sociological autobiography, I have told the story of one personality against the background of the orchestral storm of the city, trying to keep the simple melody clear against the pounding heartbeat of the metropolis.

If it appears that the larger volume has not swallowed up the smaller voice, then I shall have achieved a small measure of success. That the larger story has had its molding influence on one life is inherent in the relationship between the two. That one small life has had any material influence on the larger story is not what I mean to convey. I have made no attempt to force the true relationships out of perspective and thereby to blur the lines of each story. I have tried to have them stand side by side, hoping that out of the give and take of that relationship there has emerged a civic and social philosophy that gives meaning to the solemn promises in the Oath, not the least of which is never to "desert our suffering comrades in the ranks."

J. I.

I

THE CITY AND I

CHAPTER I

THIS IS THE STORY of the relationship between the City of New York and one of its citizens, both of whom completed fifty years of their lives almost simultaneously. It is the story of the preparation it gave me for a career of service and how I repaid it in fulfillment of an oath of devotion to that city, a rather amazing and too little known oath by which all graduates of the College of the City of New York do so pledge themselves. In my case the magistracy was the medium; and how I happened to become a magistrate after twelve years of prior public service, the circumstances surrounding that further oath, and its meaning to me, is the story.

I came out of the stream of the new Americans, thousands of whom daily crowd the Magistrates' Courts. I knew them and have always recognized their hopes and dreams as well as their problems of adjustment. There was no need to make any effort to understand these people. As one of the links between the old and the new, I saw them untangle themselves with remarkable rapidity from the world they had left and build a new set of attitudes, a new web of customs, the while leaning heavily for physical and spiritual support on relatives, friends and ancient religious and social institutions.

My life has been a small part of, and inextricably tied up with, the history of the city. For the first part of that life, New York nurtured and formed me, giving me mental and spiritual sustenance, and during the later years I started paying back in coin of service that gift of training and free education. Beginning with the swearing of that Ephebic Oath upon graduation, later as corporation counsel, and finally as judge I have tried, in what measure I could, to repay the creative impulses that were given me by my mother metropolis.

Oath of Devotion

To me this city is far from impersonal; it is a living thing. Like all living things it grows and in its growth it has made serious and lasting impacts on the character of its children. Some it has destroyed, some it has swallowed up into anonymity, some it has pushed against immovable walls, some it has nurtured too fast into braggarts and slick crooks; to others, by its overpowering strength, it has given a sense of inferiority that has left them hopeless and useless. To me New York City, its people, its schools, its museums, its toughness, its noise, its music, its poetry, have all been a stimulation and a challenge that go to make up that elusive dream of purposeful living.

There was ample opportunity, during these years, for a growing and observing personality to take in all the experiences the city had to offer, to reflect upon them and react to them in a way peculiarly its own. Sharply defined experiences of love, of kindness and friendship were never lacking, as were also those of hate, illness, filth and political stench. All these made their indelible marks on my impressionable, youthful mind. I heard about the the iniquities of our modern metropolitan government, about the Tweed Ring, about police graft, and I heard the prevalent apologies that nice people just did not seek positions in government. The only public servants who were treated with some respect, and those with some condescension, were the schoolteachers. And even as to them, feelings fluctuated; they were considered fortunate in times of depression, when their salaries were deemed to be munificent, and therefore held in high esteem; but when the tide turned, those who did not leave to go into business to make a "financial killing" received meager respect.

That civil service could ever become an honorable profession, that public service was a trust, that it was burdened with the duty of public improvement, were ideas far removed from popular acceptance. Quite the contrary, it was currently accepted that if one went into politics, he would soon be covered with the stain of graft. In spite of that, it was the cynical moral code prevalently

condoned that the essential caveat was for politicians not to be caught. It was not as if politics were far removed from the experience of the citizen: political activity impinged all too closely on the lives of practically everyone. The clubhouse was a flourishing institution, where in return for Christmas packages delivered to the neighborhood poor, for medical service, jobs, food, fuel, as well as for immunity from the hand of the law, the control of local government was surrendered without too much question.

With the passage of time people discovered that they paid too high a price for the things to which they were entitled as a minimum from the local government, and from time to time they wrested the control of City Hall back into their possession. But the control never stayed put for very long, a state of affairs that gave to the cynically minded the feeling that keeping an eye on government was too much of a chore, and one which they were all too willing to have others monopolize.

To have a summons quashed or get a job, the same political leader was notified, and in the usual course of club protocol the ticket was disposed of and a place was found in factory or store. It was no mere coincidence that the new employer was also the recipient of the summons for some code violation. How simple when one hand was so conveniently able to wash the other, and the fact that the water in which both hands were washed was very dirty made little difference except to an insignificant minority.

The act creating Greater New York became law on May 4, 1897, less than five months after I came upon the contemporary scene. The new composite city came into existence by the consolidation act in 1898. A granite seat in Central Park is a memorial to Andrew H. Green, "Father of the Greater New York," and five elms near the bench symbolize the five boroughs. Although the half-century of its life is a small part of our history, what stupendous changes have taken place in those fateful years since Green, an early law partner of Samuel J. Tilden and a member of the Board of Commissioners of Central Park, succeeded in his

crusade to bring the various outlying areas of New York "within a certain radial distance from the center, under one common municipal government under a single executive head."

William L. Strong was Mayor in 1897. On January 1, 1898, Robert A. Van Wyck took office as the first mayor of the consolidated city. Croker was the boss of Tammany Hall and dictated the key appointments. The Citizens Union helped initiate the reform candidacy of Seth Low who took office in 1902, and for fifty years this organization has continued to use its protective vigilance against bad public servants and bad legislation. At its birth gambling was rife, red-light districts were flamboyantly open, and "honest" graft in taking advantage of inside tips on the city's plans for public improvements and buying up the land in advance was in the accepted political code.

In 1897 New York City set up its first three public high schools, one of which, De Witt Clinton, had an enrollment of 300. In 1898 City College boasted 1,704 students and 59 faculty members. The college's student body has now risen to well over 30,000 and the faculty to over 1,500. The city's population swelled from 3,389,753, the consolidated population in January, 1898, to eight million and its real property valuations from 2½ billion to 17½ billion in that half-century.

New York of fifty years ago was comparatively simple, quiet, and serene. The maddening urges of our crazily accelerated age had not yet come to overwhelm us with their more complicated and conflicting personality tugs. There were no motorcars and no taxis. The chasm that is modern Wall Street was yet to be created in its present darknesses, the mountains of downtown Manhattan were yet to rise into a comparatively untroubled sky. No abrupt readjustments had given birth, at least in any appreciable numbers, to our modern problem children and problem parents.

That peaceful age begat the desire for more peace. On December 10, 1896, Alfred Nobel died, and with the money derived from dynamite and other explosives he set up the cherished prize for

peace. This fretful war-torn age takes a kind of sadistic pleasure in planting the seeds of more wars, more terrible through the unleashing of nature's hidden forces, so that the prospects for ultimate tranquillity are no greater than when the prize for peace was created. With the terrible tragedy of World War I failing to make impossible the more cataclysmic devastation of World War II, the people of the earth have, with dark cynicism, come to despair of war's forestalling war's inevitability. There seems to be a horrible fascination in walking straight into destruction, the more terrible the area of destruction becomes.

So the country was at peace and prosperous. After McKinley came T. R. and we were all proud of our strong President. There were no "isms" to disturb our equilibrium, and only occasionally, as we sat on the stoop of an evening, did I hear a passer-by described as a Socialist, a word which meant to our child mind that that special individual was very different, and in a vague way, outcast. I doubt that many people understood what the word "radical" meant. The word "socialist" was a blanket term of opprobrium. It saved a lot of explanation just as on many occasions today we use other words to describe those with whom we disagree economically. The use of the term "socialist" became so specific that even a particular mode of dress was described by it.

Home life too was very simple and tranquil. All you had to worry about was making enough money to support a family. In spite of the difficulty of making such a living, things seemed much more friendly. There were no misunderstandings or quarrels about the education of the young. Parents were not perplexed with decisions about greater or less freedom in education. These new Americans were so eager to acquire learning themselves and so determined that their children should have more of it than they, that they accepted without question the fact that children must regularly attend school and that they just had to learn their lessons. Our people took unquestioningly what America had to give. They were never critical of their new-found home, for they had all come

from countries which suffered by comparison with our own worst imperfections.

My own parents had fled Russia to escape persecution. Father was a peace-loving student who had no stomach for the Czarist army and did not relish remaining in a country where his father had been murdered. The call of the clear voice of freedom from across the ocean fell upon very sad but receptive ears.

The courage of these Jewish immigrants, and those of other faiths as well, is a source of perpetual amazement to me. Beyond measurement is the hardihood, the physical and moral intrepidity of those who came to a new country without money, without language, without any resources except those of the spirit, to start, with simple and magnificent nobility, the heartbreaking lives of pioneers. We are wont to sing paeans of praise to the explorer, the settler, the *avant-coureur* in all lands. These are all crowned with a halo of romance, and quite rightly so. We are apt, however, to take for granted those close to us, just as the explorer, the settler and the pioneer were taken for granted by those who in their time were close to them. These valorous and gallant people were just as skillful, as versatile, and as audacious as any other frontiersmen.

I was born in New York City on December 31, 1896, the tenth child of immigrant parents, and was educated in the public schools, in a public high school and a public college. A veteran of World War I, I taught night school, had several years' business experience, studied law at night and had ten years' active private experience in the practice of the law; served the city for twelve years as assistant corporation counsel, rising to be acting corporation counsel in charge of real estate and condemnation; was appointed a city magistrate and also sat for a time as a justice of the Court of Special Sessions.

My parents came to this country in the late 1860's or early 1870's and immediately settled in this city. It was not long after the Civil War, so Abraham Lincoln was and always remained my

father's hero. Abraham Lincoln was a Republican, so when my father took out his citizenship papers he became a Republican and he voted the Republican ticket all his life.

Father brought with him his young bride of fifteen, the daughter of Reb Sundel, a well-known rabbi in his country. Mother was a child of fourteen playing jacks in her father's house one day, when her father approached her, touched the jacks gently with his foot and said, "Rebecca, you are engaged to be married." She saw her future husband only once before marriage. He was a seminary student and, as was the custom, took his bride to his father's home for one year. War broke out after three months and with a few rubles in their possession they escaped to this land of promise. On the voyage across the ocean mother became pregnant. In spite of her condition and in order to supplement the thin stream of family income, she immediately took a job as seamstress, while father looked around for any employment he could find. They lived in one room and there were times when there was little to eat.

Mother was very sensitive and very proud. "I am the daughter of a rabbi," she constantly reminded herself. So, food or no food, mother kept a pot of water boiling on the coal stove all the time to simulate for the neighbors' benefit the cooking of food. How she ever managed with the small supply of money coming in is an ever-recurring mystery to me. Mother and father never told anybody how heartbreakingly hard their earliest years in New York were, as the first of the ten children were born, but my eldest brothers and sisters told me in later years the denials they underwent. Father came from a family of respected and moderately successful merchants. His father traveled through near-by towns in Russia, carrying with him fairly large sums of money with which to make cash purchases. Because of that and also because he was a Jew, my grandfather was murdered.

Father's first employment was to travel about the country among the Jewish farmers, selling them general merchandise, but he was

unsuccessful. At one time he opened a store in Port Henry, New York, near the Canadian border. That venture proved no more profitable. After these attempts at independent business, he took a job as cutter in the needle trades, working in store cellars, putting in seventy-two hours a week for the munificent wage of seventeen dollars a week. It was the age of the robber barons in large industry and the Tweed Ring in the city, with A. Oakey Hall as the crooked puppet mayor. Nobody cared very much about immigrants, but there were many of them and somehow they all managed to get along.

The family first resided in East Side tenements together with the poor of other nationalities, the Irish, the Russians and the Poles. These poor people had very little, but they had enough with which to help each other. Even in those days mother had the reputation of being a conciliator. She would straighten out family difficulties between husbands and wives, parents and wayward children. Often did she harbor overnight the frightened wife of an irate neighbor, or prepare with consoling words for the return of a pregnant daughter, hoping that irritated tempers would cool off and happy reconciliation take place. I was told that wherever she lived neighbors looked to her for sage advice on such domestic difficulties.

Kind neighbors reciprocated by helping her. When she was in childbirth, and before the youngsters were of any help, Mrs. Murphy would wash the children and send them off to school. When mother or the children took sick, they could not afford the luxury of a physician; midwives took care of childbirth, and the "Indian" doctors, in corner apothecaries, supplied the ordinary medical needs. There also one could sit at the counter and drink a large glass of root beer for three cents. There mother with many other women in the neighborhood would repair with their sick children and these druggists would make up, without prescription, a medicine for them. Mother always said they were wonderful. In later years she went to the lodge doctor, who was paid

a dollar or so a month, in a kind of loose health insurance scheme.

The youngsters kept coming and the income was very small indeed. As my eldest brother Lou, twenty-two years my senior, became more prosperous, the affairs of the family became more comfortable, and as each of the other children grew up, they contributed their share to the common treasury, which was miraculously budgeted by a loving, practical and humorous mother. All through those barren years nobody heard her complain, never saw any fits of self pity or any signs of weeping.

She never expressed her way of life as a philosophy, because she never knew she had any. But she did have a philosophy, pragmatic, ethical and strong. Her opinions were sometimes expressed very sharply and without any hesitation. She never wanted very much, but she always knew what she wanted. She took great pride in education, in honesty of purpose and in family solidarity and loyalty. Sometimes her remarks were trite and ordinary, but every once in a while her conversation would be illumined by a flash of great wisdom. And she also had great depth of feeling, emotional as well as intellectual. Possessed of great forbearance and a world of patience, she lived to be seventy-three, and age seemed to change her character very little, the years only giving sharper accent to her practical and tolerant humanity. While she was religious, she was liberally so, and not as intense as father in devotion to ritual. She believed more in this world than in the next, being too down to earth to think much of the hereafter.

When my eldest sister Annie grew to be eleven she took a great deal of responsibility off mother's shoulders, assisting in the house and sharing in the care of her younger brothers and sisters. At about that time she was to be graduated from Hebrew School, and she yearned for a white graduation dress like all her other classmates. One day mother took her on a visit to a local dry-goods store, and at the sight of the white materials, her unhappiness welled up inside her and she blurted out her desire for the graduation dress. The friendly shopkeeper, noting her unhappiness,

turned to mother, "Why don't you buy the material and make the dress for her?"

Mother, beset with job and hundreds of household chores, said simply, "I have no time to do it." Annie spoke up, "I'll make it, Mama, just buy me the material." Mother looked kindly at the child, surprise in her face, because Annie had never sewed before. She quietly thought the matter over, and in her simple wisdom said little but purchased a piece of white eyelet embroidery which Annie placed and cut without pattern on the floor, happily struggling through her first garment, receiving such little assistance as mother could spare, and of all the graduates it is safe to say Annie was the proudest in her longed-for white dress. When she grew up she made many more dresses for herself and for her younger sisters. Incidentally, she later made all my clothes – coats, suits, everything in fact except my underclothes.

While the most important room in the home was the parlor (it was the one room that indicated by its decoration the social stamp of its occupants), it was occupied only on special occasions, for visits of friends or relatives. Our parlor was no exception: it was stiff, unused, and immaculately clean. A large square ebony piano, the most important piece of furniture in the home, took up a goodly portion of the floor space. A sofa and a few stiff upholstered chairs hugged the walls. There was a ceiling-high mirror between the two windows and a large nondescript picture on the wall opposite the piano with one or two French prints dotting the other wall. A multi-colored Axminster rug covered the floor and set off the green of the sofa and chairs.

But the focal point for the family was the dining room. There the table seemed always set. Father would be seated alone, nearest the kitchen door, looking very small at the end of a board made to hold twelve people. Mother would hover over him and as he prepared to eat his morning meal his lips moved in silent prayer. He had already made his morning devotions with *tefillin,* a ritual without which life could not possibly go on for him. His small,

untrimmed, graying beard set off a sallow, thin and deeply lined face with well-set, penetrating eyes, which bore a marked resemblance to the pictures of Christ. Quietly fanatical in spiritual matters, in these as firm and unyielding as a stone wall, he spoke rarely except in Biblical or religious discussion and then his enthusiasm made him almost breathlessly voluble.

At ordinary times father seemed the apotheosis of mildness, but on occasions when his religion was attacked he could be aroused to a towering temper. In later years mother warned my wife that in a great many respects, I was very much like my father; she was to be careful of my temper and was to say nothing during such explosions, waiting till the wrath had evaporated before coming up with a counterattack. In this Betty found mother a master tactician. Father was very thin, mother was plump; he was dark and she was very fair. The contrast was further accentuated by the fact that mother was happy in conversation; he an introvert, she an extrovert.

One of the strangest phenomena about my reticent and retiring father was that upon the marriage of each of his daughters, it was he and not mother who gave them their premarriage advice. This can only be explained by the fact that such advice about marriage and the bearing of children had, for him as well as for mother, deep religious significance, and naturally the task was pre-empted by him rather than by my very practical mother. There is no other way of explaining her relinquishment to him of these ordinarily motherly duties.

He was preoccupied, in many of his waking moments, with the consciousness of death. He thought of it not only in times of illness or of accident. It was always with him. Father had prepared his own shroud many years before his death. When it came to problems of burial plots, monuments and inscriptions on them, this recluse could become very businesslike indeed. Mother's pragmatic, unselfish life was the most fitting counterpart to this scholarly, talmudic, but unworldly father. He had his own scale of values and he

clung to them with the tenacity of purpose and strength of character of the Spartans. No pressure or threat of physical punishment could induce him to deviate one iota from his own code of religion or morals. Like Spinoza, he knew what to do without.

As he sits at table, mother takes up a piece of bread and butters it for him, a ritual at every meal – that and the stirring of the sugar in the coffee, all of which takes place on the table before him, while he says nothing, accepting this quiet love as the homage due a saint. For a saintly person he was, never interested in mundane things, equally aloof from money and business as from the more practical pleasures of city life. Discussion of ordinary business matters would elicit a mild interest and a faint shy smile would light up his features. Not that he was not proud of his sons' later business successes. He accepted these as a matter of course, but tell him that some friend's boy was going to become a rabbi and his face would be radiant with joy. That was something to become excited about.

My mother did not read. Father would religiously read to her the Yiddish papers and there would ensue an interesting and innocent commentary on the news of the day, to be supplemented at night by my brothers reading to her an item or two from the English papers. Then there would be a lively discussion over the table, mother taking an active and interested part in the conversation, all of which apparently went over father's head. He kept on reading the *Morning Journal*, but as you watched him, one realized that he too was taking in the conversation, rising occasionally to the heights of shushing any criticism that might be leveled at anybody at all. While all this was going on I was busy at the other end of the table reading my schoolwork or a book or magazine, or doodling and sketching. It is of some minor interest that in his earlier years father was also addicted to doodling and occasionally drawing a face.

Mother rarely sat down at mealtime. She served everyone, hovering over each diner, anxiously watching them as they tasted her

food. During all this time father's eyes followed her. She pressed more and more food on each. Irving liked white chicken meat, Saeley wasn't particular. Some were more partial to vegetables than others. Vegetables were good but she had no knowledge of vitamins and a balanced diet.

When the evening meal was over father would sit for long periods of time near his brood, bombarded by long, loud and emphatic conversation. Finally he would rise from the table and begin to pace, with arms behind his back, up and down the long hall that separated the kitchen from the parlor in between which were several bedrooms and the one bathroom. There he would pray and ruminate about things in a separate world of his own.

Father always worked; for years he went downtown every day to the manufacturing business of my two brothers, where he was very punctual and meticulous about his duties. He understood very little of the financial end but he knew the manufacturing phases. He was a kind of quiet supervisor and he always closed the factory. One day the place was locked for the night by my brother, and father was alone in the place, for it had been bolted from the outside. He became desperate. He had never used the telephone in his life; now he had to. He racked his brain and out of his memory he drew the telephone number of our home. He called the number and the operator connected him.

Mother answered. Over the phone came his voice, frightened and timid. "This is Mr. Isaacs," he said to mother. "Yes, yes, where are you?" "I am downtown and can't get out of the factory." Fortunately my brother was home. He quickly recognized the excitement in mother's voice, came to the phone and told father to hang up, do nothing until he and the Holmes Electric Company could come down and release him. A telephone call to the Holmes Company quickly did the trick and father came home late and sheepish after a trying experience.

Father was very reticent about his antecedents. He spoke very little about any of his family except his father. But mother was

not so reticent. She was very proud of her people. She came from a long line of rabbis. They were well-known, respected and good people. She told us, too, that father's family was also nice and important.

As a typical New York City boy, I naturally went to the public school which was right in our neighborhood. There was no thought and certainly no talk of going to a private school. I liked school very much. When I was first dragged there at the age of six by my shy gray-eyed sister Fannie, I was afraid, but after the first shock at starting something new (I was always very shy) I fell right into the swing of the new activities and felt very much at home. The schoolwork was easy. It was not the labyrinth of the modern school. There was ample time for sports and later on for games and social activities in the Educational Alliance on East Broadway. There I read books and played crokinole, a variation of small table-pool, which I played very well, winning some of the tournaments. I enjoyed the game so much that I purchased a board for my home and kept it there until my sister Marian stepped on it one day while she was cleaning the house and broke it.

Marian and I would have many heated arguments. She liked everything in order. She was always cleaning the house, putting things away and throwing things out. I resented that terribly. And yet between us two there was always a kind of affinity. We were both painfully shy but when we were together we both seemed to open up. Not only in quarrels but also in fun did we express ourselves. Marian played the piano. She wanted no one to listen to her, but she always liked me around, and in fact induced me to sing popular ballads with her. This I did in a small tenor voice. Whenever we have met through the years this has been a kind of ritual, she at the piano and I singing and turning the pages. Our quarrels have completely ceased and I now know that they came from nervousness on both our parts.

That special shyness remained with me through college. In some of my classes I would be content for the entire term to sit back

and say nothing. Some of the instructors in the larger classes would only discover me upon reading my term examinations and from that moment on take an interest in drawing me out.

I did not respond favorably to Hebrew School or *heder* which I attended five afternoons a week and I had many an argument with my learned father on the utter uselessness of the entire procedure. I did not realize then but I know now that it was the bad pedagogy which put me off. Instinctively I knew that religion was a matter of the spirit. I expected the equivalent of romance, poetry and music, things I could not put into words, and I resented even then the tawdriness of the approach to this holy subject.

One of my most vivid memories of the Hebrew School was our old teacher, who would send one of the pupils out to buy a package of Svoboda cigarettes as well as a pear or a peach. He sometimes ordered a penny glass of seltzer water which he sipped while he smoked. I never was more cruelly hungry than when I saw him devour the luscious fruit in our presence. I soon learned to supply myself with adequate nourishment, physical and mental, and I kept a supply of licorice drops and a book by Henty inside the cover of my desk. I was then content to be left alone and would respond only upon the infrequent occasions when I was called upon to recite, parrot fashion, the Hebrew text.

Public School 147 was a large red-brick building near my home. The principal was Dr. William Ettinger, later to become City Superintendent of Schools. Even then he was a white-haired, courtly gentleman and we all treated him reverently. I remember the large windows, the ink-stained and cut desks. I remember little of my early instructors except an unusual teacher who had the reputation of being a terror. She was a strict disciplinarian, a martinet who thought nothing of using the ruler. Even through this haze of punishment I have blurred memories of enjoying her invigorating mind. The respect she imparted to me for the structure of language has remained with me to this day. I remember that for arts and crafts we made mats out of straw drawn through

holes in a cardboard, and later I remember the carpentry shop with pleasure.

Every morning we would have assembly. The sliding doors were drawn so as to expose a large auditorium. There in the morning gathering we would pledge allegiance to the flag. I felt this was important for it gave a larger community meaning to school. More important ceremonies like graduations and Washington's and Lincoln's Birthdays took place in the assembly hall and then we would listen with rapt attention to some wonderful speaker whom the principal introduced. I don't remember any of these speakers or the contents of their speeches. In fact, the few detached images that I have of my earliest school years have no apparent significance.

I gave my teachers very little trouble. Only once do I remember being asked to bring my father to school. Timid and cautious though I was, I told no one, did not bring him, and stubbornly waited the teacher out. I had to stand in the corner for a time but she did nothing more drastic about it. In general I obeyed all the rules. But I was accustomed to thinking and acting independently. I didn't seek advice and although my report cards were always excellent I never showed them to father. I just signed his name to them. I never asked any of my family what courses to take. I tried to think things out for myself.

During one of the fire drills, I ran down the stairs very fast. We were told to get out of the building very quickly, so I tried to be the quickest. I always took these duties literally, and that day I ran down the stairs two at a time. I slipped and fell on the metal binding of the stairs and cut a gash over my left eye. The scar is still there. Thereafter, I did not take orders to speed so literally. I remember spelling bees, arithmetic and reading. I have little recollection of having need for the manly art of self-defense.

I would come home from school at noon. I would walk the several familiar blocks along Henry Street to our home. There on the first floor, leaning out of the window, with her elbows resting on a cushion, was mother. She would peer down the street

looking for me, and as I came nearer I could see her smile and nod her head as she knew I was home safe. I would run upstairs as she withdrew her head from the window. I would fling down my cap and be ready for lunch. I was thin (I was known by my friends as Skinny) and I was not a hearty eater. Mother would give me a nickel if I would eat a bowl of soup as well as some eggs or a sandwich. This was a routine that went on for years. As soon as I accumulated a rather modest sum, I would give it back to her and we would start all over again.

At three o'clock she would again be leaning out of the window looking for me. If she was not there a pang of emptiness would engulf me. Then I'd run upstairs, get rid of my books and run down to the stores to find her. I always did find her and carried all the bundles home for her, for we did not have the luxury of deliveries from the local stores.

After we moved uptown, when I came back from school at lunchtime and again at three o'clock, I would look up to the third-floor window to see if mother was there. Often she would be. Occasionally and especially on Friday afternoons she would not be home. I would go to the park bench where I knew she always sat or to the stores and carry her packages home. She said little, but she always expected me.

My boy friends and I used the street as our playground. We had few toys. We were forced to shift for ourselves and became resourceful. We made our own games and created our own fun, made much of marbles and pitching celluloid buttons. We pitched marbles in the gutter up against the sidewalk. We threw a piece of wood up into the sky and caught it on a taut string. One day I threw it very high and it came down on my nose. My nose still has the mark of that game.

Every year I would be completely dressed in a new outfit for the Holy Days. I would be taken by my mother to a clothing factory owned by my uncle on Fifth Avenue and Fourteenth Street and there get a new suit a little too large, so that I might grow

into it. The same ceremony attended the acquisition of a new hat and a new pair of shoes. The morning before the evening service I would wait my turn in the barbershop, busy with elders and children preparing for the evening appearance in the synagogue. Thus, dressed in my new blue serge suit with knickers tightly fastened below the knees over long black stockings covering long skinny legs, encased in stiff new shoes, I would set off alone or with my brother to the local synagogue on Madison Street. My father always preceded me. In fact, except for the sexton or *shammes*, he was nearly always the first one in the house of worship.

My father would engage a whole bench of seats for the male members of the family. I was the youngest and so I had to sit next to him. The services that night (we could not eat before they were over) were interminably long, or so they seemed. It was always terribly hot and I suffered greatly in my new clothes. My shoes would always hurt. I opened my laces and sometimes put little wads of papers inside the shoe to separate the tight leather from my foot. Father would notice my distraction and from time to time would jab me with his elbow saying, "*Zug, Zug*" (Pray, Pray).

My mind was elsewhere when not occupied with my physical discomfort. First of all I would look all around the *shul* to see who was there and whether everybody had new clothes on. All were there, sitting next to their parents, all dressed up in brand-new outfits. The entire synagogue smelt of new clothes because many of our elders also had donned new clothing for the occasion. The smell of soap was the sauce of the stew of new clothing.

I always was interested in my father's absorption in his prayers. Only at prayer did you really see him come to life: a new personality was born. He was completely oblivious to all worldly things. Shy and modest as he was, in his prayers he lost all restraint. In his absorption he became completely unself-conscious, forgetful of everyone about him, except of course occasionally to take an interest in having my soul saved by a modest jab in the ribs.

The evening prayers as well as those of the next morning and evening ended with singing. That was a signal for double rejoicing. I liked to hear the singing and to take part in it, but more important, it also meant that the end was near, that I could get out of the stifling heat, run home, take off my nice new shoes, and have some food.

I ran precipitately out of the synagogue. I was not alone; all the other youngsters made a similar beeline for the exit. Home was only around the corner and I was there in a few minutes. As I ran up the stairs I could smell the fine warm odors of holiday foods coming out of all the doors. Smells of newly baked bread and cakes, odors of fish and fowl all mingled in a delicious symphony of holiday smells. It was nice to be inside, close to those smells, poking your nose into the large soup pot, examining the *hallah* (newly baked bread with a twisted braid on top) and perhaps sticking a finger into the cake for a preliminary taste.

For these days the food was extra special. The whole day had been devoted to its preparation. During the day I had gone to the store several times on errands for mother and I felt I had had some part in that preparation. The whole occasion was a festive one. The meal had a more leisurely tempo. We ate more and we were more appreciative of the cooking, as mother, hot and tired, beamed approval over our delight.

We lived at 216 Henry Street in a three-story dwelling. There was a basement in which the janitor lived, a parlor floor occupied by a physician, the floor above in which we lived, and a top floor occupied by another family. For this entire second floor our family paid forty dollars a month, then considered a very high rent, especially after the tenements from which my family had moved.

Along East Broadway ran the horsecar, and it was great fun to hitch a ride on the rear. The driver knew we were there and every now and then he would crack his long whip and swish it blindly around the rear to hit the non-paying rider. Sometimes the whip would strike its mark, and it would sting sharply. Some of the

boys would run alongside the streetcar. It was sport to stick your hand through the window and pull the Chinaman's pigtail. One day my brother Nat saw such an enticing pigtail and thought he would pull it. He stuck his hand through the supposedly open window to grab the pigtail only to discover that the window was closed. So hard was the blow that the glass was shattered to the substantial injury of the prankster.

My brother Dave would tell of the banana trucks, how he would wait for them to come back to the stable. He'd climb on them and pick from the floors pennies that the banana hucksters would throw into the truck and fail later to pick up. Horses drawing trucks and carts of all descriptions patiently stood in the gutter as we played baseball and batted balls between their tired legs and ran underneath their skinny bellies.

I was a laughing boy, and a laughing young man. I have always admired clowns and other people who make me laugh, and yet even as a child I was serious, so serious that my sister says I used to stand by, quizzically watching the older boys play, dreaming my own heroic thoughts. The life on my street gave me pleasure; I enjoyed watching the antics of the monkey when the hand-organ man came around; I loved watching the parrot pick the fortunes; I would follow the umpah-umpah of the German band for blocks as kind people threw coins wrapped in pieces of paper from the windows. I enjoyed watching the kids skip rope to the rhythm of the hurdy-gurdy. These simple pleasures kept us amused, for we who had to make our own fun needed precious little to make us laugh, and laughter gave equilibrium to my serious child world.

The boys with whom I played walked everywhere: to ride in a streetcar was a luxury, and until I went to high school I never rode in one alone. Upon rare occasions a goodly portion of our family would ride excitedly far uptown to visit some relative. After the electric car had displaced the horses we would board the open trolley, the motorman clanging his footgong and the conductor passing along the running board to ring up the fares. It was summer

and our destination was Coney Island, to which gay carnival some of the hardiest of the boys would occasionally walk the fourteen miles.

Fifth Avenue and Times Square were far horizons. The only time I got as far uptown as Fourteenth Street was the annual pilgrimage to be outfitted in my uncle's factory. It was years later that I saw Forty-second Street when I attended an uptown matinee. I never saw the "White Way" really gay until I attended high school, and upon election night joined the "profane crowd" in milling about at a snail's pace, being pushed, poked and tormented by thousands of others in the same holiday mood. But unlike Horace I did not hate this crowd, nor did I drive it from me. For I loved New York in all its many moods.

We were not interrupted in our street play by motorcars; these "smoke wagons" did not come into our neighborhood, and taxis did not make their appearance until 1907 when they started to compete with and gradually displace the more romantic but much more expensive hansom cab. And when taxicabs finally did add color and noise to the streets of New York they struck within no distance of our world. The hansom cab did not appear often in our street, for that was also a very great rarity, and it came into my life for the first time on an excursion to Central Park. The sounds and sights and smells of the streets are still sharply bitten into my memory and I can always recapture the smell of the sweet potatoes and chestnuts roasting in the peripatetic kitchen. I can taste the refreshing coolness of the colored shaved ice that gave us surcease from the boiling pavements. I can still hear the clap-clap of the horses' hooves, the cries of the children at play, the singing of the balladeer in the street and sometimes more faintly behind the scenes in the back yards.

Religion was something difficult to understand. I just accepted going to synagogue and not working on Saturdays and holidays. This posed no problem for me because there was no school on those days. It was not possible to do even so much as light the gas

stove for boiling water. We had what was known as a *Shabbath goy,* a non-Jew who was paid to come up every Saturday morning to turn on the light. I used to wonder why he should be permitted to work on Saturdays if we could not. These smoky doubts did not trouble me for long; I just accepted the rules. In these things I followed father mechanically and without emotion. He said so and that was enough. His was a spiritual ecstasy, mine blind obedience even in my perfunctory attendance at synagogue.

I thought of these rules mostly in terms of punishment for the breach. Once during Passover week, I forgetfully bought a penny's worth of licorice. That was sacrilege because every bit of permissible food had to be especially made for Passover and out of special ingredients. These candies were *treif* and I had put one in my mouth. No sooner did I begin to enjoy the taste of the delicious confection than a cold sweat came over me. I realized almost immediately that I had committed a terrible sin. I spat out the offending candy, threw the bag into the nearest ash can and then waited for the punishment to descend upon me. Nothing happened. I don't know just what form I expected the punishment to take, but I didn't expect this. While I did not deliberately eat candy during succeeding Passover weeks, I feel that that experience was the beginning of my emancipation from the fear of physical punishment following an infraction of a religious rite. Doubt did not come to me from close study. Cigarette smoking I felt was immoral, so I didn't taste this forbidden fruit until many years later.

I think I lived an imaginative adolescence, but my invention never took the form of religious images. It went out more to the heroes of history, yes, of the Bible, but to me these were great good men, not saints. I never created for myself a world of accepted religion although I feel I am a religious person. In all my daydreaming or dreaming awake I always fancied myself a physical leader, leading multitudes on a large horse.

In the early years the rent was paid by my eldest brother Lou. He was a dandy, everybody said. He had his suits made to order.

He went out evenings and my young mind pictured him on mysterious missions, sometimes dressed in a black cape and a black silk hat, spotless white linen showing at the neck, and carrying a silver-headed cane. When he left our home to be married he left behind him several silk hats, evening clothes, cutaways and many canes. One of my greatest disappointments was that my head size was larger than his. In later years, in a period when I especially wanted to be immaculate in my dress, I could not wear his exceptional headgear. I cherished for many years a leather hatbox encasing a collapsible high silk hat.

But I wore all of his other clothes. His suits were of beautiful materials and he never wore them out. As I grew older, in high school and college, I took his clothes to a little tailoring shop on Lexington Avenue and had myself refitted with his expensive suits. He had a fine variety of materials and what was especially nice, different weights of goods for the different seasons. I have always been careful about clothes and I must have borrowed that emphasis from him.

I slept with my brother Sam in the room next to the parlor. This was not a bedroom but a kind of second sitting room. There was a bookcase on one side, on the other a large chifforobe where we kept our clothes, and near the window a low piece of inlaid furniture, the top opening like a desk, with shelves underneath that housed a complete set of Shakespeare bound in green cloth. We slept on a davenport that opened out into a double bed in which we had our pillow fights that never resulted in damage because we were quite tender to each other. Anyone going into the parlor or front bedroom had to pass through our room.

As Lou occupied that front bedroom, I had ample occasion to see him come and depart. He seemed superior and wonderful in my childish eyes, living in that world of his own. He went out to do romantic things and he aroused in me the happy excitement of the theater. I was always very proud and fond of him. He also was the financial paterfamilias. The family came to him with their

troubles and their business problems and father was content to surrender that authority to him. Not only was he generous with his advice but he was always generous with his money. Lou was kind but very critical, generous but very gruff and impatient, and he always softened his annoyance with a lovely blond smile. He was more like mother in looks and coloring than any of the other boys. Father was dark and I took after him.

My family wanted me to be a professional man. Even in early youth I was admonished to take up medicine or the law. Mother said we had fine examples in the family. She would relate from time to time what a fine man Lawyer Leibner was, and her special hero was Dr. Samuel Friedman, who had married her niece and was the outstanding adornment of our family. Father also approved of Dr. Friedman because in addition to being a fine physician he was also a very religious Jew. He had two offices, one on Attorney Street and one on 93rd Street, where he lived. The Attorney Street office was like a clinic and there he treated many a poor patient without charge. His orthodox patients were bound to him by ties of loyalty and religion. They had complete confidence in his medical capacity, which was considerable. They also felt that his orthodoxy could not help but add to the therapeutic quality of his ministrations. His bright sparkling eyes shone forth an inner burning illumination. His quick mind could make adventurous flights in many intellectual fields – engineering, history, geography and metaphysics. In addition to medicine, he found time for invention, perfecting the first block-signal system to prevent accidents on railroads, and the first mechanical snow-loader put in use by New York City, the demonstration of which I witnessed on the city streets.

My mother's sister Mumeh used to live with the Friedmans at 67 East 93rd Street, in a brownstone house over his office. Thus it was, when my brother Lou convinced my parents that it was time to move, our worldly affairs having prospered, that we transplanted ourselves uptown, opposite the Friedmans at number 64,

on the third floor of a nice walk-up between Madison and Park Avenues. This was in 1909. The street was illumined for me when Margaret Anglin moved into a small house directly opposite us.

The neighborhood was attractive, the synagogue that Dr. Friedman attended was near, on Lexington Avenue and 95th Street, the rabbi frequently visited the Friedman home and father was very happy. The rabbis at the synagogue, Dr. Joseph H. Hertz, who later became Chief Rabbi of England, and succeeding him Dr. Moses Hyamson, who had come over from England, were both cultivated scholars and my mind responded to their sermons and to their personalities and for the first time synagogue began to take on some meaning.

I was then about twelve years old. The new school was P. S. 86 at Ninety-sixth Street and Lexington Avenue in a building that was older and dingier than the one downtown. The principal was John J. O'Reilly, a wise, humorous, middle-aged man who probably had no great scholarship but was reputed to have great wisdom. In the last two years of school I was fortunate to have two exceptional teachers, Dr. William A. Hannig, who later became a member of the Board of Examiners of the Board of Education, and Samuel McC. Crosby, who taught the graduating class. Already advanced in years, this fine teacher, warm in humanity, had the gift of making every student worship him. But that did not detract from class discipline, for he had no need to scold or to punish. His humor was rich but he also could be biting in sarcasm. He was not deep or erudite. He was just, humane, efficient, giving quietly a lot of himself. He was an honest, logical thinker and I got much out of his class. He was infectiously humorous and he had the gift of being serious without being solemn.

One day around *Sukkoth,* a Jewish feast day, he came to class and told us of a wonderful sight he had seen in looking out of his window next door to the Friedmans'. In the Friedman back yard he saw a small structure covered with much foliage and into this small house people repaired at mealtime. The small *sukkah*

(the booth for the Feast of Tabernacles) was beautiful and still more beautiful as a symbol of creation and fertility. He was intrigued with the ceremony and he had taken the trouble to find out about the festival. His face glowed as he described the first one he had ever seen. And I was very proud, for I knew I was achieving added importance in the class because of the description of my cousin's *sukkah.*

Toward the end of our last term we all took the Maxwell examinations, citywide tests in English and grammar that were mandatory for all last-term students. When the results were announced I had come out second in the city. Crosby first started to congratulate me and the class on our fine showing but then he changed his tone and in a serious voice he announced that he was very hurt that I had fallen down on an elementary error which I should not have made, and except for which I would have come out first in the entire city. He was discouraged that his best pupil should have showed him up to such disadvantage. I forget now what the grievous error was.

When we moved uptown I had to quit the downtown Hebrew School and I was not unhappy about leaving the dark, old-fashioned *heder* on East Broadway, which I had come to resent because of its failure to give me something of the beauty of the Old Testament. I was left to discover that poetry for myself after years of trampling through the thick underbrush of orthodox memory-teaching. Although my father was not very articulate, he helped me to come out into the clearing where I could discover the music and beauty for myself. I always loved the stories of the heroes and the prophets, and so did my father. We had long discussions about school and I had little difficulty in persuading him not to enroll me in another Hebrew School uptown. He suggested what seemed to me a wise compromise, he was to teach me himself. This I eagerly agreed to and every evening just before dinner, we would spend an hour in the corner bedroom reading the Bible together.

These joint sessions were very fruitful for both teacher and pupil. It gave him rare opportunities to express himself to me about his religion, and it gave him great pleasure. Dr. Friedman called him the meekest man he had ever known, for when my father entered the *sukkah* with eminent rabbis he always disappeared into the background and said nothing but his prayers. When company appeared at the house, he would shyly smile, express a greeting or ask after the members of the visitor's family and lapse into silence. He rarely displayed outward tenderness but he had deep affection.

My father was meek but he was tenacious in doing what he thought was important. Except for one or two occasions he never ate outside his own home, and for that reason he would never eat a piece of candy or ice cream, for these were made outside his home and therefore not in accordance with ritual. These things were not entirely matters of religion to him, they also had a deep philosophic significance, for he was a kind of untutored Stoic. He had never read Plato but he came upon that philosophy all by himself, considering as nonessential, entertainment, theaters, movies and restaurants. While he had no use for these things he had no bluenose objection to others enjoying them except on the Sabbath. These things we talked about as he taught me during the last two years in public school and the first two years of high school. He enjoyed these lessons beyond words and to a slightly lesser degree I did too.

My father's unworldliness and economic thinking was circumscribed by his ideas on credit; you must always pay for what you buy. Credit was a wicked concept. Once Lou sent him to his tailor to have a suit made for the Holy Days. When father donned the suit, not without some shy pride, Lou looked at it admiringly and with innocent intent, said, "You know, Pop, that suit isn't paid for yet." It had been charged and the account was not yet settled. Father was horrified that he had fallen so low as to wear something that had not been paid for, that had been purchased on credit.

Oath of Devotion

Of all his children, Lou probably talked most to father. In discussing marriage Lou said, "Pop, I don't think I'll ever get married." Father was taken aback and said, "Marriage is not the important thing, but I want you to get married because I want you to be respectable." This was his way of saying he disapproved of running around with girls. Mother cast a stern look at Lou and said with kind criticism, "Fine gentleman." She was a most tolerant person, and that was her quasi-humorous way of gently criticizing people. "Fine gentleman," she would say, if we used sharp language or did something wrong. In matters of ritual she was much more flexible than father. If one of the family inadvertently took out a package of cigarettes on the beach on Saturday, she would say quietly, "Don't, people are looking."

My earliest summers were spent in New York, for camps were unknown to us. In later years I went to Ellenville, New York, for two weeks to stay on the the farm of my sister Annie who had married a candy manufacturer with a passion for horses. In the city he drove a four-wheel carriage through Prospect Park and it was a thrill to be a passenger.

In Yorkville I made new friends, for my classmates and downtown neighbors were far away and soon faded from my memory. We lived very near Central Park and Sam and I discovered the game of tennis. We pooled our resources, bought one "Geneva" racket for $1.50, and each took his turn batting the ball into the open green field next to the grass tennis courts at 96th Street. The other took his turn at the bat as he caught the ball. We took time out to watch the real game being played, and it was not long before we secured permission to play over a net. We saved money to buy a net and another racket and from then on I was a keen devotee of the sport. I played every day for many hours and learned to play a better and more skillful game, becoming proficient enough in later years to play on the college varsity.

Upon graduation from public school I elected to enter Townsend Harris Hall, the ivy-covered building on 23rd Street and Lexington

Avenue, in the old City College building. This was the honor high school to which only the students with highest grades were admitted from the public schools. As I entered the first class in Latin, the teacher was seated at a desk on a raised platform. We all filed into the classroom as he recited, *"Stella, Stellæ, Stellæ, Stellam, Stella; Stellæ, Stellarum, Stellis, Stellas, Stellis."* He kept repeating this mumbo jumbo over and over again until all the boys were seated. Then he asked us all to repeat this after him. This was my introduction to Latin, by a teacher who relished the language and taught us by excitement. Never before or since have I met anyone who taught with more obvious pleasure. This excitement and enjoyment in the use of language kept up from day to day for Dr. George Edwards' enthusiasm never abated, and his enthusiasm was infectious.

We also studied French, English, history, mathematics and drawing and some little science in this three-year high school. I have fond memories of old Professor Adolph Werner taking me by the shoulder and drawing me over to a bench in the dimly lit corridor to discuss my classwork or just to talk over problems that might be troubling me. If we were shy, and I was very shy indeed, he would draw us out by telling us anecdotes of his own undergraduate history. He never took advantage by having the boys meet him in the unaccustomed glitter of an imposing office. Such self-conscious conduct would never have entered his kind old head.

In my third year the entire class was transferred to the new building on the City College campus near Jasper Oval. Every day I would take in a brown paper bag two sandwiches that my mother had prepared for me and with fifteen cents in my pocket proceed to school. The fifteen cents took care of transportation and a daily glass of milk. Out of this sum I managed each week, by walking home from school, to save enough money to enable me to attend the vaudeville show at the Alhambra Theatre in Harlem. The theater had always fascinated me and even when we lived on Henry Street, I trudged every Saturday across the Williamsburg Bridge

to Brooklyn to attend the Corse Payton Theatre at Lee Avenue, to see the matinee idol, Corse Payton, and his leading lady, Minna Phillips, in many a mortgage-foreclosure thriller. I also attended the old Grand Street Theatre before I was graduated to Broadway when my intense interest in the theater broke out into a flame.

CHAPTER II

UPON GRADUATION from Townsend Harris Hall, it had become my intention to teach Latin. So I enrolled at the College of the City of New York, determined to devote myself to the Classics and to modern languages. I stuck to my plan throughout the three and a half years it took me to complete the course, reading in and out of course Horace, Propertius, Juvenal, Catullus, Plautus, Sallust, Ovid, Lucretius, Livy and Terence. I also timidly dabbled in translating some shorter Horace poems into English verse. I also studied Greek, French and German as secondary languages, and rounded out my studies with mathematics, physics, chemistry, philosophy and logic. The history and psychology of education and the methods of teaching were taken as preparation for teaching. During my college career I was awarded five medals in general all-round excellence and the Classics in particular.

It was compulsory for every student to take public speaking. These classes were torture for me and I dreaded them more than anything else. Recitations in other courses were quite different. They took only a minute or less, and I knew I did not have to stand up and face the entire class. Like my father, I was almost taciturn, and in public speaking I had to make an extended discourse. At first we had to memorize set speeches of our own selection. Declaiming these was bad enough, but when I was called upon to speak on current topics for ten minutes at a time, I became actually terrified.

There was no reason for this phenomenon, and I knew it. I just had a horror of being heard publicly. It may seem incongruous that I should turn to a profession where public address and courtroom appearance is so necessary. This discipline was just what I needed and I suppose was what, in part, urged me into that profession.

I still do not feel completely at home before a large audience, nor am I able to intoxicate one. I am told that I do very well on my feet, but I am so anxious to be right, to be overly prepared, that I always prefer to let the bombastic ones take the floor, and then perhaps I am too critical of what I myself refuse to do.

I still shiver to recall the times in college when I was called upon to speak; I would stand before the class, almost trembling, my hands tightly clasped behind my back, digging my nails into my hands. There was a moment of self-inflicted torture, though after a few perspiring seconds, I would overcome my fright. But the anticipation of being called upon was the worst torture of all; I would be in a cold sweat for the entire period, and if I was saved by the bell I would dance out of the room with a great load off my chest. It was natural, therefore, that I should admire the extroverts, those who could glibly articulate at the drop of a hat, and these included the teachers also; but these were not the ones that I respected or loved. I have always maintained the keenest respect for those who have haltingly searched for the proper word, feeling that their speech followed deep ratiocination and articulate thinking, not glib repetition of pat ideas. The art of thinking, of creative self-examining thought, especially in front of the students, evoked in me the greatest admiration.

Among such distinguished professors were Paul Saurel in Mathematics, Charles Alfred Downer in French, Carleton Brownson in Greek and Allan P. Ball in Latin. In this group I must also include J. Salwyn Schapiro in History, a teacher under whom I never studied but later came to know intimately, admire and love. I remember also with affection Mott, Krowl and Stair in English; Sim, Schuyler and Thompson in History; Schulman and Weinberg in Drawing.

I can see Saurel, quietly standing before the class, modestly and breath-takingly proving mathematical equations with artistic simplicity: an inspired teacher with great powers of simplification. I was always reminded in listening to him of Emerson's statement,

"Indeed, to be simple is to be great." I remember sometimes before class started, Morris R. Cohen would come into his classroom to discuss some abstruse mathematical problem, both of them entirely oblivious of the fact that the eyes of all the students were glued upon them as they stood absorbed before the blackboard, in their philosophers' dream-world, only to be awakened from their reveries by the sound of the classroom bell.

In later years, I recreated this picture in my mind when I considered the similarity of the aesthetic emotion of art and compared it with the pure rapture of the mathematician. Both of these men were small, Saurel dark, handsome and retiringly modest, Cohen of fairer complexion, sharper, more vivacious and not so dapper. In contrast with his caustic attitude toward other people, Cohen, himself originally a teacher of mathematics, was always extremely respectful to Saurel.

Charles Alfred Downer was our beloved professor of French, an American who embodied for me all the attributes of Gallic culture. He was a mild, self-effacing man, a serious scholar of French life, literature and culture, warmly close to the students, with an abiding interest in developing new and unusual talents. It was his habit to select one or two of his students and, after class, kindle in them the flame of understanding and love of France, its literature, its music and its art. I was one of those most fortunate individuals, and I can trace directly to this profound scholar my unceasing interest in the civilized art and thinking of the French. From time to time I would be the joyful recipient of tickets to French plays and to lectures in French given by the Alliance Française. These *conférences* opened for me new worlds in French diction, history, philosophy and music. The doors were opened into the French mind and into the incomparable civilization that it has created.

It was small wonder that I was always eager to visit France, and that once having tasted its fruits I should return again and again. To visit Europe without spending some time in France would be

like being in love without making love. In Downer's class we read Racine and Molière, authors who gave Downer an opportunity to impress upon us the sources of the French language. Downer had written his doctor's thesis on Frédéric Mistral, the poet of Provence. The language of the South, he loved to explain, was more like the Latin and Spanish. His comprehension of all these tongues gave me a first glimpse of teaching in its broadest scope, of making the immediate subject matter part of the fabric of life. In a modest way he envisaged teaching through great books. Years later, I discussed this thought with Dr. Alexander Meiklejohn, when he was doing research for St. John's College, and he was very much interested. Mistral and the culture and language of Provence have never ceased to fascinate me. They presented to me new vistas into the mansions of French culture and when I saw the south of France, new sources of understanding of the French people.

I have always considered Allan P. Ball, my teacher of Latin, one of the most important influences in my academic life. I first met him in my last year of Townsend Harris Hall, and I remember him then as a tall, slim, sparsely built professor, simply but immaculately groomed, sandy hair parted in the middle, a sandy moustache over a quietly amused mouth. He came to class with his books in a little green cloth bag, which I later learned was a custom at Amherst, of which he was a distinguished graduate. Precise in his demands on students, he succeeded in instilling in them not only a love of the language he was teaching, but of all language, its structure, its etymology, its history, and, *mirabile dictu,* its beauty.

It did not take me long to appreciate that to Dr. Ball not even these most important subjects were paramount, that these were merely the techniques of a great teacher in snatching from the atmosphere the beauty of literature and of words. He never told us that it was his business, or that he had a mind, to affect our characters, but consciously or unconsciously he did it by example. He was not only exact in his respect for language and the images

words created, he was also scrupulously honest in his approach to the student. From the broadest point of view he would discuss phases of Roman life that at first seemed tangential to the subject in hand, but we soon found out that Roman painting, numismatics, monuments, as well as the effect of Roman influence on the civilization of France and England, were just as important as the conjugation of irregular verbs, all of which he assumed we knew by the time we got to him.

I read Ball's *Satire of Seneca on the Apotheosis of Claudius.* We discussed Epictetus and Marcus Aurelius; he was aware of the Roman authors' claim to be the supreme triumph of ethical thinking, and he compared the polished thinking of Rome with the reason, observation and dreams of the Greeks. We did not always agree on these matters or on the more pedestrian questions of grammar or a particular classical allusion. I remember once he and I disagreed about an ablative absolute, and because he disagreed with me I did not speak with him in class for a long period, and he, in turn, respected my silence and did not call upon me. He was reserved almost to a fault and his reticence knew no limit. On the last day of the first year, he said good-by to the class. Quite by accident, I attended the college commencement exercises, which I had never done before, and glancing at the printed program, I saw in the list of awards that I had won the Claflin medal for excellence in Latin. I was as much bowled over as I was elated, surprised because Ball had seen me the day before and had said nothing, and happy because it was my first college medal.

In 1924, on our first trip to Europe, Betty and I were in the Sculpture Court in the Louvre Museum. The Greek and Roman sculpture reminded me of my Latin teacher, so I said, "This is where Professor Ball would come if he were in Paris." It seemed very strange to me then that at that very moment the door should open and into that hall, followed by about twelve young women, should walk Dr. Ball. He greeted me quite warmly, and said, "I can't talk to you now, but I would love to see you at the hotel.

Come and have tea with me." We spent several hours that afternoon talking over old times, that meeting in Paris being the beginning of a fine friendship for Betty as well as for me with the Ball family.

J. Salwyn Schapiro was the popular professor of History. By reason of time conflicts, I was never able to fit in his courses, though I read later most of what he wrote on the intellectual aspects of European history and in later years he sent me before publication all his treatises on English and French liberalism. He has always borne his wisdom as well as his honors with great modesty. I have enjoyed many long Saturday lunches with him and with Benjamin Harrow, another professor at City College, discussing with them school, law, politics, and the bench. In a morning visit to my court they obtained a fair glimpse into the many dull, hopeless, humorous, and trying ramifications of our quixotic city life.

There were also Weill and Laffargue in French, Overstreet in Philosophy, Baskerville in Chemistry, Klapper in Education, and Rupp, Burke and Cosenza in Latin. I never studied with Duggan or Mead, but I came later to know them both well. I studied under Herbermann, Brownson and Cohen for a very short time, attending but few of their lectures.

John H. Finley was president of the college while I was attending Townsend Harris Hall and during my first year in college. What excitement and joy to attend the Thursday noon assembly meetings, if only to hear his beautifully cadenced speech that could tie together the world of ancient Greece with our Twentieth-Century cosmos. I received from Finley as well as from Ball an everlasting insight into the beauty and vitality of Greek and Roman antiquity. I can never remember hearing as beautifully spoken language as that of Finley except out of the mouths of Charles P. Fagnani in Saint Mark's in-the-Bouwerie and other places, and Dr. Frederick Carlos Ferry, the president of Hamilton College, who delivered what was to me an unforgettable extemporaneous address at the 150th anniversary of the birth of Phi Beta Kappa.

Even in my time the college was beginning to burst at the seams.

Most of the teachers I have mentioned were part of the school when intimacy was its peculiar charm, and so we were able to get to know these men in a way that is impossible today.

City College has always been an institution peculiarly dedicated to learning. It was never possible to jazz it up with the football teams and exciting proms that seem so necessary to other institutions. Except for some athletics (we always excelled in basketball), the college paper, some clubs, there was no special extracurricular excitement. New York City, by establishing free higher education, created a niche for itself that was unique in the annals of American secondary education. City College does not want to lose that special place by trying to be like other institutions, or change its peculiar identity just for the sake of conformity. The City College must ever maintain its own position, standing unashamedly for the opportunity for scholarship that it gives to those who could not otherwise afford it. In return therefor its grateful sons give to the city, the state, and the nation a reservoir of public-spirited citizens who bear proud comparison with the graduates of privately endowed colleges. The City College graduate has a different kind of intellectual loyalty, a constancy that springs out of common participation in the mental life of his own throbbing city. Institutions like the College of the City of New York in this country and the University of London in England are holding the line for that special kind of civic education without which their *raison d'être* would be largely lost. We should never try to relinquish that individuality, but rather strive to accentuate the special landscape in which it so peculiarly rests. In no other way will we continue to furnish men and women who are so specially consecrated to the public welfare.

There is no reason why public education as extended into city colleges and state universities should not be the best. There need be no apology for public college education any more than for public school education. No private institutions may be said to possess alone the requirements of fine pedagogy, inspiration, equip-

ment and experimentation. I never was impressed by the fetish of private school education in this overwhelmingly democratic city. In later years I discussed this with LaGuardia and President Harry N. Wright.

New York City can boast of another special institution of learning. I refer to The Cooper Union, a quasi-public place of study with a unique standing in the field of engineering, art and social philosophy. It, too, like the City College is indigenous to the city, and as such is individual. I speak of Cooper Union as of City College from many years' personal experience. I attended the lectures at Cooper Square thirty years ago, absorbing the philosophic wisdom of Everett Dean Martin; later listening to the easy learning of Clifton Fadiman, still later enjoying the lucid, exuberant and encyclopedic mind of Houston Peterson, and of late the wise, warm and deep culture of Garrett Mattingly. In this historic place I tasted much of the flavor of New York, hearing great political and scholarly personalities address eager audiences in the hall that Lincoln first made famous. I heard presidential candidates like John W. Davis and Alfred E. Smith, and great scholars like Bertrand Russell and Arnold Toynbee.

An excerpt from Peter Cooper's letter accompanying the Deed of Trust (1859) shows intimately the spirit that moved him to start that great experiment in the advancement of democratic citizenship. It also is the test against which its success must be measured. It reads as follows:

"My earnest desire is to make this building and institution contribute in every way possible to unite all in one common effort to improve each and every human being, seeing that we are bound up in one common destiny and by the laws of our being are made dependent for our happiness on the continued acts of kindness we receive from each other."

Garrett Mattingly, who succeeded Houston Peterson as director of the forum, asked me to help him in the preparation of his 1946 program on city affairs, taking the title from Simeon Strunsky's

No Mean City, and I was scheduled to speak on "Crime and Punishment."

While in college, and even more in later years, I haunted the public lecture halls and the public libraries. I craved to know the life of the spirit, on my own and away from academic leadership. I read *The Dial* religiously. I read ten years after its publication, Van Wyck Brooks' *America's Coming of Age.* As I myself was beginning to flower, that book satisfyingly fed me. I devoured Walt Whitman, I discovered Crabbe for myself by picking up a volume for ten cents on Fourth Avenue. I read with renewed interest Keats, Byron, Shelley, Shakespeare and Poe, as well as many of the budding American poets whose startling acquaintance I made in the current periodicals.

Was it only accident that led me to turn to the poets for inner refreshment? As the artist-poet was the great thought leader throughout Greece and Rome, and in later civilizations as well, in movements that joined for a common purpose men of the widest differences, so I was convinced that American life might take on greater meaning if a great poetic leader should point the way, just as Whitman shiningly spread the love of man in his great formless verse. The artist-poet challenges the world, as he has challenged himself, to live free of out-moded though accepted tenets. This vain quest for a poet-leader anywhere who would some day write that American epic which will carry us out of the slough into the bright sunshine of our newly found culture, has so far been fruitless.

Endowed with a more sensitive perception, the poet-philosopher, as the seer of the inner life, is unafraid to acknowledge man's human dignity and indestructible personality. He sees greatness in each human being. When that greatness moves from mere possibility toward reality he can with justice proclaim, *"Ecce homo."* To the poet, who speaks as selfless leader to men, man is the most precious thing in the universe, man and his relationship to God and to his fellow men. And in these troubled times our prodigious

town, now more than ever, needs that same poetic concept of leadership for the preservation of all its precious heritage, no matter at what cost. In implementing that leadership he will not only rely on his own limited past, but will use all his art, which Aristotle said was a higher type of knowledge than experience. The testimony of the poet-philosopher himself may not be dismissed as a self-serving declaration. When the public weal cries for wisdom and virtue, it is not enough to give it the facts and "brains" of second-rate professional politicians. How much better to let the soul of the poet-leader be the motive power of our conduct.

In my last year at college, Billy Sunday lectured in the Great Hall where his impulsiveness, jumping up and down, shouting and gesticulating amused and excited us all. I liked to attend these meetings at noon on Thursdays, for then we saw new faces and heard new voices speaking an appropriate message to eager manhood.

The graduation ceremonies in June, 1917, were memorable to me. I was, to my great pride, graduated at the head of my class and elected to Phi Beta Kappa, and was chosen valedictorian, but because of our entrance into the war (some of my classmates were in uniform) the usual valedictory speeches were dispensed with. Like all graduates of the college we took the following Ephebic Oath, which at that time was reserved for men, but now also includes women:

> *"We men, graduates of the College of the City of New York do this day, after the manner of the Athenian youths of old about to enter public life, take this oath of devotion to the City of New York: We will never bring disgrace to our city by any act of dishonesty or cowardice, nor ever desert our suffering comrades in the ranks; we will fight for the ideals and sacred things of the city, both alone and with many; we will revere and obey the city's laws and*

do our best to incite a like respect and reverence in those about us who are prone to annul them and set them at naught; we will strive unceasingly to quicken the public's sense of civic duty; and thus in all these ways, we will strive to transmit this city not only not less but greater, better, and more beautiful than it was transmitted to us."

The symbolic character of that oath was sharply etched on my mind, because service, at that war moment, had a real meaning for a young man of twenty who had been trying to enlist in the armed forces, up to that moment unsuccessfully. I had heard that an officers' training camp was being established at Camp Zachary Taylor in Kentucky and they were examining candidates for development into artillery officers. I applied and was given an examination by a board of officers as to my qualifications, especially in mathematics and capacity for leadership. The board was satisfied with my scholastic record, as they were with my standing in sports and leadership possibilities, and I left the hearing in high elation. A few days later, my heart beat with excitement when I saw in our letter box a long envelope from the War Department. I tore it open with trembling fingers, and what was my dismay when I read a letter from the commanding officer at Camp Zachary Taylor, informing me that I had been rejected. The hope-dashing rejection was on a mimeographed standard sheet, but someone had taken the trouble to write in longhand in red crayon the word "weight."

I then weighed about 121 pounds and was about an inch under six feet tall. Try as I might, I was unable to put on any additional pounds. I tried to enlist in the Navy and Army, but met with no greater success. Then, although I had already been graduated from the college, I applied for enlistment in the Student Army Training Corps and since I was known to many of the people at the college, was accepted. After some months of training, I again applied to the Officers' Training Camp at Camp Zachary Taylor

and was informed that my application was accepted and that I would shortly be transferred there. However, in November, 1918, the Armistice was signed and I never was transferred. This was a further keen disappointment to me.

After graduation from college, in June, 1917, I was given an assignment on the College Library staff, where I spent several months. The work was not difficult and I had ample time for thinking and reflection. It was not long before I determined to leave academic life and try business as a preliminary step to studying law. I discussed this matter with my brother Lou and he offered me the choice of going to Harvard Law School. I did not relish using other people's money for my own schooling, but more than that, I thought that I had discovered my own method of professional training. I refused my brother's generous offer and instead, decided to go into business for a few years and either study law at night or take it up later.

The only business experience I had had up to that time was obtained while working during a few summers for Untermeyer & Robbins, a firm of jewelers on Maiden Lane. Louis Untermeyer often came to help me with my work and to talk. Even then he was interested in writing and the hours we spent together have remained clearly and pleasurably in my consciousness.

I put an advertisement in *The New York Times* and received several responses, one of which was from M. Gottesman & Co., importers of wood pulp. I obtained my first job there in the Traffic Department where I found myself immersed in freight rates, shipping, insurance, lighterage, and, as time went on, I learned more and more about the manufacture of wood pulp and paper.

My task was to figure the freight rates for the shipment of bales of wood pulp from the pulp manufacturer to the paper mills; also to figure the steamship rates from Norway and Sweden to this country, to arrange for unloading and for warehousing and for transshipment by rail. I also had to trace lost freight cars, an operation that required persistence and some ingenuity. I thought this

business very romantic, the office being busy with cables to and from foreign ports. I remember the great surprise with which I heard for the first time that D. S. Gottesman was putting in a telephone call to California.

Mr. Gottesman said that he thought I should be sent to a pulp and paper-mill for a couple of weeks to learn the manufacturing process, so I went to Hinckley, New York, where I remained for two weeks, learning the process of pulp and paper manufacturing from the moment the trees were cut down in the forest and the logs shipped downstream by water to the pulp manufacturer, there to be placed in tremendous vats and chemically translated into bales of paper pulp. Another process transferred the pulp into newsprint, kraft or other paper products. How fascinated I was to have a small part in the making of paper, newsprint and books.

When I finally was accepted by the Army, I was given the usual wrist watch and assured that I could always get my job back, so when I was honorably discharged after a very uneventful local service, I came back to my old position. After working three pleasant years for this company I felt I had learned all I needed for my purposes and sought another position. This I found with Land & Cox, a firm of importers from China and Japan, which had an office in Kobe, Japan. My job was to put cables into code, handle the books and do some selling.

In 1922 I obtained a position with the Manhattan Shirt Company as assistant credit manager, handling collections of $10,000,000 a year. At this time I felt that I was really ready to start the study of law, that my four years of business experience had given me the necessary foundation upon which to build a more solid understanding of legal problems. Accordingly, I enrolled at the evening law school of New York University. Very little about my law-school work left any significant mark upon me, except that it gave me an insight into legal thinking. There I learned the structure and mechanism of the law; its spirit and philosophy came much later, and these I had to think out alone.

CHAPTER III

THE FIRST ELEVEN YEARS of my life spent on Henry Street was a period of family intimacy, rarely interrupted by ardent friendships, certainly not with girls. There were so many in our family, spaced about two years apart, that the crying need for playmates was never a pressing factor. Sam was only two years my senior and we played all the games and fought all the fights that usually delight and annoy youngsters. We also singly and together joined forces with other boys on the block in such games of chance as pitching celluloid buttons or playing marbles.

Makeshift street baseball, throwing a ball against stoop steps, and street games like prisoner's base and jumping across the street in a minimum of running leaps completed our outdoor sports. Rarely did we go so far away from our block as to play in Seward Park. Basketball, indoor baseball and handball were our winter sports. These we played in the Educational Alliance and Henry Street Settlement.

Yorkville later provided a greater variety of games but in a more quiet and less excited tempo. Downtown the games were noisier, there was more excitement, play was tougher, fighting was easier. We even had our gangs, tame though they now seem to me in retrospect and in comparison with those I came across in the courts. The gang collected spare barrels, wood and junk for bonfires to celebrate the Fourth of July and Election Day. The fires were built right in the roadway, and there were so many street conflagrations that the Police and Fire Departments were unable to cope with them.

We took no notice of girls in those early days. They only played sissy games and were busy with dolls and clothes. School classes were mixed and so, thrown together by superior authority, we had to be resigned to their pigtailed femininity. It was even customary to have our favorites but I remember no close associations between

boys and girls, no carrying home of books, no ice-cream sodas (there was no money for that). Occasionally I went to the movies, but not as a gallant escort. First, the flickers were shown in the ice-cream parlors, free of charge. These pictures seemed as exciting as anything that we were ever likely to see. The boys went together and the girls went together, there to meet and perhaps to giggle at each other.

In Yorkville I reached my adolescence. I made new friends at school and on the park tennis courts, where I played with girls as well as boys. We sat around on the grass or on the benches and talked, ate picnic lunches together and even had some dates afterwards. I also became very friendly with boys of my own age at the Young Men's Hebrew Association at 92nd Street and Lexington Avenue and throughout the winter months went there to play winter games, to read and prepare my lessons.

Some of these new neighborhood friends organized a club and while it was restricted to boys, some of the members had girl friends and these girl friends were accepted as part of our crowd. There in front of the paint store at Madison Avenue and 100th Street we would have our almost daily meetings. Upon occasion there would be a gathering at one of the homes where piano playing, singing and innocent games culminated in an orgy of consuming cakes and soft drinks, and rarely, tea or coffee. This was interspersed with intensely serious conversation about school, teachers, marks, girls, sports and especially ideals and prospective careers.

In my junior year at college, I invited one of the girls to the theater to see the musical play *Maytime*. It was the first time I had ever taken a girl to the theater. We both enjoyed the play very much and although neither felt closer to the other than before, it was nice being alone with a girl. It made me feel very grown-up, taking out my first girl. After the theater we had a soft drink and I saw her home. There was nothing romantic about the evening, and while I saw her frequently thereafter with the crowd I never again invited her out.

Very often, after the library's closing hours, I enjoyed long walks with Adolph Schimel, George Friedman, Ernest Merkelson and others. In those walks we would discuss education, the classics and the social and physical sciences. We read and commented on Henry James, William James, William Dean Howells, John Galsworthy, Edith Wharton, Havelock Ellis, Lord Dunsany and D. H. Lawrence. We argued the merits of all the professions and tied each of them to our own individual social and political philosophy and ethics. We had long discussions on capital and labor, praising or dissecting Shaw, Debs, Hillquit and the Webbs. We argued about girls, about marriage and about children. We walked the streets for hours at a time, needing no refreshment, talking against the wind. In the cold night air we became hoarse.

My interest in the Young Men's Hebrew Association, incidentally, has continued through the years. The institution has a very special significance for me, since not only did it give me, as a high school and college student, facilities for study and for games, not only did it prepare for me a new set of friends, but it was here that I met Betty. For these very personal reasons, and for the additional reason that I have always felt that it was doing an extraordinary community job in all the fields of social and cultural service, under its able director, Jack Nadel, I have continued my association and am now a vice-president of its alumni known as the Old Timers.

In October, 1916, I met Betty in the Young Men's Hebrew Association Library. I say I met but saw her is more nearly correct. I had been attending this library from 1911 and the regular librarian during all these years was pretty Leonora Hauser. When her assistant left to marry Harry Glucksman, Betty was engaged to replace her. I was sitting at my usual table and suddenly she appeared before me, different from anyone I had ever known, with her dark hair and sparkling dark eyes. She walked to her desk and I kept looking at her all evening. There was nothing

strange in that because all the other boys were also looking at the new librarian, Miss Lewis.

It was no time before all the boys were her slaves, I among them. She had such a nice English accent and was so nice to talk to. I asked her for permission to take out the Latin dictionary for I wanted to do some extra work at home. She asked me for my name. When I mentioned it she smiled. I learned that Leonora had told her that the Latin dictionary was not to leave the library unless called for by me. She looked at me sharply yet kindly. I was embarrassed and blushed.

Every afternoon and every evening I would come early to the library, sit back in my chair and stare. I soon offered to help her put the books away. At ten o'clock the other boys and myself cleaned up the library and removed the newspapers from the racks, preparatory to fresh ones being inserted the next morning. My attentions were not the only ones she received. I just stared at her, sometimes talked to her and my face grew crimson. It was not before the late winter that I screwed up enough courage to ask her to accompany me to a college basketball game. After the game we walked to her home on West 113th Street. It had been snowing and the wind had in spots blown the roadway clear of the dry snow. Betty asked me if I knew how to dance. I said I did not. "Would you like to learn?" "Yes," I said and she promptly gave me my first lesson on St. Nicholas Avenue. We danced in the dark bald spots of the street, stopping only long enough for the buses to pass us by.

Betty invited some of the boys up to her home. There we met her brother Gabriel, whom we had seen occasionally at the library. Gabriel had come over to this country from New Zealand with the rest of the family when he was a youngster. He remained here when his mother, father and the four sisters returned home to New Zealand. He finished his schooling here, attended Phillips Exeter Academy, enrolled in Harvard College and obtained his law degree from Harvard Law School. He had been on the Harvard

Debating Team and was now a practicing lawyer. Gabe and I liked each other immediately.

Having broken the ice with the basketball invitation, I next invited Betty to play tennis with me. She was a newcomer to the park courts when I was already a familiar figure there. I played singles with her and stayed aloof from my old cronies. The next day I came to the park alone and one of my very youthful female admirers approached me and said, "Why do you play with that little fat girl?" I looked at her in amazement. "Why do you ask that question, Hannah?" I said. She answered almost tearfully, "Because if you continue playing with her, you'll spoil your game."

I saw Betty every day. I closed the library for her. One Friday I did not tell her about my plans for Saturday. I had a date with my Madison Avenue friends in the home of one of the girls. I didn't want to go but I was pressed, and said I should have to leave early. At about 9:30 P.M. I started to make my farewells and my hostess was disappointed and a little hurt. I dashed down to the library in the rain only to find it in darkness.

When I saw Betty again on Monday, she seemed a little cool. When we closed the library that evening I told her I had come to the library on Saturday a minute or two after closing and had found the door shut. Her face lit up, "Then you did come Saturday. I thought you were not coming and I closed the library a few minutes early."

I asked to walk her home that evening. We talked for hours. I told her many intimate details about myself, my mother, my father, my family. She told me about her life in New Zealand, her travels and her family. Her travels had carried her around the world. She had rounded the Horn, she had been to Australia, had visited India and been through the Suez Canal and to many other places. She talked fascinatingly of books and plays and many things that opened up new worlds for me. That was the first of a series of wonderful conversations that helped to overcome my shyness. She was a friend with whom intimate discussion came

easy. I told her of my studies, my love of the Classics and of my desire to teach Latin and Greek. She treated my ambition with sympathy and approval. I was reaching maturity, but I was afraid to think too much of the future. I had not yet realized how much Betty was to fit into that future. I saw her every day at the library and I soon began to escort her home.

I told Betty of my work in the City College library, and the world of books created a still stronger bond between us. We saw more and more of each other. We would take long walks together all over the city, exploring New York's peculiar neighborhoods, taking trains to Westchester towns for walks in the woods, taking ferries and streetcars to places in New Jersey, Staten Island and other places. We discovered little spots of our own for teas and dinners.

After I was discharged from the Army, I went back to Gottesman and started teaching in night school, preparing to save money in order to get married. Working nights made it impossible for me to see Betty as often as I wanted to, and by that time we had long had an understanding and we knew that we were destined for each other. It was only a question of time when we could afford to set up a home.

On January 12, 1921, Betty and I attended, with many other proud New Yorkers, the opening of Town Hall, a thrilling, and we felt then, an historic occasion. The institution was born out of the city's needs, was peculiarily its product and became its meeting place. For me, at any rate, it became the place where much of its spirit was poured forth and on its gracious platform the soul of the city was disclosed. Many hundreds of times thereafter have we entered these halls for lectures, sermons and concerts. Here we were moved by the vibrant and exciting leadership of John Haynes Holmes who brought there many of the great thinkers of America, Europe and Asia. Here too we attended the the city's most intimate concerts; here we heard all the famous quartets play matchless chamber music; here we heard Lotte Lehmann in her famous song cycles; here it was that De Luca

returned from Italy at seventy to recapture America's heart with his *bel canto* singing. Here we have heard the concerts of the New Friends of Music, the *Julius Caesar* of Handel and sonatas for harpsichord and violin by Landowska and Menuhin, the incomparable Maggie Teyte and many others.

The summer of 1921 Betty spent in the White Mountains. It was the first time in five years that we had been separated for such a long time. We then and there made up our minds that when she returned to the city we would be married. I delayed telling my folks about our plans until Betty was about to return in September. I felt that they thought I was too young and that I should wait till I was a lawyer or a successful businessman.

Every summer, for many years, my family took a house at Edgemere in the Rockaways, where mother loved to sit on the beach, content that the family need not be separated. Father, who rarely went in bathing, also enjoyed the surcease from the hot city. Mother also loved the evenings on the porch, when everybody was home. The entire family clan gathered daily, for our married sisters and brothers were also near. Every evening before going to bed a half-dozen of us, always including mother, would go for a walk along the boardwalk. Father would remain in the house reading or lost in contemplation. He left the house but little, except to go to the synagogue every day. He never went to the movies and I doubt if he ever went to a theater during his entire life. Mother loved the movies but went rarely; she went to the theater once or twice, and on those occasions enjoyed herself immensely.

In the summer of 1921, I informed the family that Betty and I were going to be married, and had set the date for Sunday, September 11th, at the house in Edgemere. Father was happy when I asked if he would provide a rabbi for a traditional Hebrew ceremony, and he bustled around and arranged for the rabbi of the local synagogue to marry us.

My brother Nat drove us out to the beach for the wedding.

Gabriel and Betty's sisters, Rae, Marie and Doris, accompanied us. Betty prepared some macaroons to take, knowing that there was always sweet wine at mother's. At the last moment she had also prepared a veil and had dispatched one of her sisters to borrow Doris Harman's orange blossoms. She had a feeling that my parents would like her to wear the veil of a bride. When we arrived at the beach we were amazed to find that a complete wedding breakfast was laid out for us and a wedding prepared, *huppah* and all. Mother and father were delighted that Betty had worn a veil. I graced the occasion by donning Lou's afternoon suit which covered my 126 pounds with plenty of room to spare. The ceremony was short and dignified, the family were warm and very sweet and the breakfast was good. Mother and father were very happy because we were being married in the traditional Jewish ceremony with canopy over our heads and the breaking of the glass underfoot to denote the indissolubility of the union.

We went on our honeymoon to the Thousand Islands where we stayed at an old sea captain's boardinghouse. After a few days we set out with knapsacks on our backs for a walking trip to Quebec. We walked about ten to fifteen miles each day and did not look unkindly on anyone who wanted to give us a lift, especially toward evening. At night we stayed at transient homes or modest hotels.

Two old sisters at Malone, New York, greeted us with a kind "Come in, come in." When they saw our hiking costumes, they said, "You must be very tired." We were ushered into a sitting room whose warmth was welcome in the September chill. We told them that we were on our honeymoon and were walking to Quebec. They had never heard of such an enterprise and were excited at the adventure. Did I have a mother, and a father? My affirmative answers to both questions were a relief to them. Then they addressed themselves to Betty, "And where do you come from?" "I come from New Zealand," came the startling answer in her halting and amusing French with which the old ladies were

delighted. "And do you have a father?" "No, my father died when I was two years old." "But your mother, she is living?" "No, she too is dead a good many years." "*Ah, c'est dommage,*" said one of the old ladies. "No father and no mother, an *orpheline,* and walking too. Sit down and rest."

When we retired for the night, they saw us to our room and left us with a soft "*Bonne nuit.*" We had no sooner got into bed than a gentle voice outside our door said, "Does monsieur have enough blankets? It is going to be very cold tonight." Monsieur assured her that he and his lady were both very comfortable, and we soon fell fast asleep in this very innocent home.

At the Canadian border, the kindly immigration officer turned to us. "And where are you kids going to?" "Oh, we are hiking to Quebec. Do we have to declare anything? We are married. We are on our honeymoon." Ignoring these remarks, he said, "Sit down and rest awhile." We sat down again, and Mr. Lowe, the immigration officer, came back in a few minutes and said, "How about a ride into Montreal with me? We have a nice Packard outside."

In Montreal I developed a very severe cold. Dr. Vipond examined me in his musty book-covered office and rummaged for change among the books. The powders he gave me made me float in a sea of perspiration, while Betty, fully dressed, slept on the outside of the covers.

At about noon, two days later, we set out for Quebec, but had not walked far when I had to rest by the roadside. A rickety old Ford car with a farmer in it stopped and picked us up. Upon hearing Betty's voice he said, "Why, you are English and I'm doubly glad to have you." In half an hour he drove us through his farm gate and introduced us to his wife, "Mamma, I have brought you some visitors."

The farmer's wife set out immediately to prepare a delicious and ample tea. Mr. Turnbull, an early settler in these parts, an Englishman surrounded by the French, loved to have English-speaking visitors. When we rose to go at about five o'clock, Mrs. Turnbull

looked up at the sky and said, "You know, Dadda, I think the sky looks very threatening." "I think you're right," quickly responded the farmer, falling in with her plan. "It wouldn't do you any good to get caught in a downpour." We saw no signs of rain, but we did not need much persuasion, for I was by no means fully recovered from the grippe.

It was cozy and friendly in the soft warm heat of the farm kitchen. When the kerosene lamps were lit, the farmer gave me some tobacco leaves that he had grown himself. He told us many stories of his pioneer days, of trapping wild animals in the Canadian woods, of French-Canadian guides, of politics, of the Church and of his own history. Before retiring we were provided with beer, bread and cheese. At breakfast they told us how pleased they were to have us as this was Dadda's birthday. On reaching Quebec we sent him a large brass English lion door-knocker as a birthday gift.

We stayed at a funny little house on Mountain Avenue, flush up against the sidewalk, the windows adorned with starched lace curtains, and up against the glass front door a sign, *"Chambre à Louer."* All night long the taps in the bathroom dripped. Betty laughed and said, "There go *Froid* and *Chaud* again." The front door was never locked, the door to our room would not close, the house seemed to be falling apart, but it was very clean. Whenever we came or went we saw a huge masculine back with black trousers, white undershirt and bright red suspenders bending over *"Froid* and *Chaud,"* whether to wash himself or to stop the dripping, we never found out.

Chicoutimi on the Saguenay trip brought back memories of Hémon's *Maria Chapdelaine* and for me more immediate connotations of wood pulp days.

Three years later we went out of our way to look up Mr. Lowe who surprised us by saying, "You're the couple came up here walking on your honeymoon." We also saw the Turnbulls who were waiting at the gate for us.

When we returned from our honeymoon, we found an apartment

at 15 West 96th Street and furnished it simply and slowly. Betty had been collecting some lovely china and other accessories, some of which she had brought from her home in New Zealand. To help the family budget she organized a little play school in the neighborhood and soon had a few children in her class.

We did not live there long, for Betty's plans to open her own kindergarten were progressing and she decided to set up school in a new neighborhood where there were plenty of children. We found such a district on West 181st Street on Washington Heights. There, in a school that had many windows overlooking the Hudson, she soon established a flourishing kindergarten.

Winter week ends we devoted to exploring the highways and byways of the city. We ate exotic foods; we made many friends. We attended theaters, meetings and churches in an effort to satisfy our intellectual curiosity. We would try to catch up with John Houston Finley (he had left City College and was then editor of *The New York Times*) striding gallantly up the Avenue after church on his monumental walks, and keeping abreast of him with difficulty. We spent as much of our early summers as we could in walking outside of the city. We would extend our walks into more and more distant areas, always being rewarded with some intimate sidelights on our neighbors. We traveled by a variety of vehicles, slept in the strangest of beds and ran the gamut in food.

In the fall of that year, we had the exalting good fortune of attending the performance of Eleonora Duse in Ibsen's *The Lady from the Sea* at the Metropolitan Opera House. We had read so much about this great actress, the papers had quoted what Shaw had written about her in the *Saturday Review*, and what Arthur Symons had said in her praise in his dramatic criticism. We would have been unhappy not to see that greatness for ourselves. We were not disappointed and another experience of greatness was added to our store of ecstatic moments. Her gestures were of such high eloquence that by themselves they created the world she was trying successfully to evoke.

CHAPTER IV

MY LAW SCHOOL STUDIES were completed at the end of May, 1924, and I immediately took the bar examinations. By that time I was very, very tired and Betty was just as worn out as I. Betty had many things to do at night after working all day while I rushed downtown to law school after office hours. So after my examinations, Betty had little difficulty in persuading me to take our small savings and invest in a summer European trip. My family were taken right off their feet. What about my job? Shouldn't I start right away in a law office? But Betty was very convincing, for she said, "Now is the time to travel, while we're young, and before you get so successful that you can't spare the time."

The *Mauretania* sailed on July 2nd for Southampton, carrying for the first time what the Cunard Line called "tourist" passengers at a cheap rate. We sailed on that maiden "tourist" voyage. As we waved to our friends on the dock, I had a strange sensation as the gap between ship and shore of my native soil widened, a feeling akin to going out into the unknown. Not until we had moved away from the rail and walked along the deck did I shake off the feeling of resting on air.

Our cabin was on "K" deck in the bowels of the ship; it was small, it was inside and it was hot. The cabins were so close that many of us took our mattresses out on deck and slept there, to be awakened by the sailors swabbing the decks in the early morning. We made a virtue out of our inconveniences on this first "tourist" voyage. Our shipmates were wonderful, adventurous people from all over the country. The festive mood compensated for the undistinguished food and accommodations, conversation was lively and we made our own entertainment. Word soon got around the ship

that something unusual was happening, that the passengers below were having a wonderful time, and the visitors from first and second class came to see and remained all day to join in the fun.

Soon after our arrival in London, we visited Betty's Aunt Lena, about whom I had heard so much, what a martinet she was and how beautiful. She was the widow of Betty's favorite Uncle David, who used periodically to visit New Zealand where he was interested in the mines. His sweetness and kindness had endeared him to all, especially to the children to whom he would always bring gifts.

As Aunt Lena greeted her new American nephew, I examined her as closely as she scrutinized me, and I found her beautiful, her small dark thin face framed with lovely white hair. After dinner we relaxed in the garden at the back of this house in the heart of London, where at ten o'clock I had my first experience of the beautiful English twilight. The garden was spacious, the green lawn was bordered by lovely flowers, and chairs were set out under stately trees for reading after dinner.

One day we had just come from a dressmaker that Aunt Lena had recommended, and we stopped at a pushcart to admire the wonderful English strawberries that looked so luscious we could not resist buying some. The merchant filled a small paper cornucopia with the red ripe fruit, and we walked along the streets, our faces dripping with strawberry juice, looking up at every passing bus to see if Aunt Lena were looking down disapprovingly at us. Those strawberries were so good we shall never forget them, and we never thereafter wondered at the little old ladies bringing bags of them to Kensington Gardens to eat with their tea.

We visited the Inns of Court, those historical monuments to the Anglo-American system of law. Tracing their origin to the thirteenth century, they in part account for the tradition and respect accorded to the law by the British. That phenomenon I never took for granted, nor did it ever cease to impress me.

In a third-class railroad compartment, which we shared with a

large Yorkshireman and his wife on a trip to Devonshire, our companion took down a paper package from overhead, and removing a large sandwich, offered some of it to us, and when we politely refused, "You'll excuse me if I eat it, but I am passionately fond of eating when I'm hungry," he said. With that priceless remark of the retired policeman all reserve was broken. They had a married daughter in South Africa. "You know," she said, "we can send birthday gifts to her without duty if we mark the package 'Birthday Gift.'" When I innocently asked if one couldn't mark packages accordingly to save the duty, she looked at me with wide eyes and said, "Oh, but that would not be right."

Making the train in the nick of time on a trip from Birmingham to Bridgnorth, I breathlessly asked the nearest passenger, "Is this the train for Wolverhampton?" The large, fat Yorkshire woman replied, "I hope so, by gum, my daughter is waiting for me there," and with that she drew out of her bag a package of peppermints and insisted on us sharing it with her. Then from across the aisle someone produced cigarettes, someone else had gumdrops. We, too, had something to share in our bags, little blackberry pastilles and other traveling comforts. We passed them around and all these friendly and hospitable people took us in and became close to us.

This was true of all the working people, shopkeepers, laborers and salespeople alike. In the excitement of the English holidays, when all England goes on vacation, the calmest, the most considerate and the most human are the English railroad porters. The unhurried and jolly attention they bestow on their clients is enough to melt the hardest heart. This was in 1924, when England had just gone through a devastating war and was tired. The Hyde Park criticism of the monarchy left that ancient and unique institution no less respected and loved.

Irritation at her standpat attitude on many issues, and anger at her apparent indifference to the moving social scene, never blinded me to the fact that the ordinary run-of-the-mill Briton

possesses that sturdy stability, a love of freedom and of law, for which deep down in our hearts we all have such sincere admiration.

Some of the things that delighted us were the London Underground, the buses that took you quickly into the country, the quality and reticence of their newspapers, their freedom of speech and their fine theater. I was even then interested in the blue boxes on the street corners for citizens to summon a policman. I could then envisage an Englishman going to the street corner in New York and pulling the firebox when he wanted a police officer. That is just what happened in later years to a young British defendant before me in the Magistrates' Court.

Peter was born in Dublin but moved to London, and sailed on the *Queen Elizabeth* to this country. When the ship docked in New York, a shipmate invited twenty-year-old Peter into a pub on Eighth Avenue. He related, "There was an Irish bartender in the place. The mate was belittling American fighters, and saying that English fighters won the war and saved the world." Peter O'Reilly did not participate in the argument. When the discussion became heated, the Irish bartender jumped over the bar to throw the mate out. The mate ran but not Peter who got a punch in the nose for his pains.

Looking for a policeman, Peter went to the corner and pulled the firebox at 48th Street and Eighth Avenue. It was one-thirty in the morning. "Did help come?" I asked. "It came aplenty," O'Reilly answered. "Bobbies and the Fire Department." One of the very same bobbies arrested Peter for turning in a false alarm. I then remembered and said that I understood that in London one called the police by using a box on the corner. However, I wanted O'Reilly to know that pulling a firebox was a very serious affair and that people who were that careless generally went to jail. But since this was O'Reilly's second trip to the United States and he did not know about fire-alarm boxes and he had sent in the alarm out of habit, I suspended sentence on a five-day jail term. Peter was profusely grateful to the court. On his way out he asked an Irish

attendant where he could get a spot of tea and the attendant directed the young seaman to a cafeteria.

We arrived in Paris in the very early morning after my first exciting Channel crossing. We taxied immediately to the pension of Mme. Goux. We watched the patient fishermen along the Seine with handkerchiefs under their hats for shade, saw a wedding at Notre Dame, had quarrels with taxi drivers, regularly attended the Opéra Comique. From the moment we set foot in Paris we loved it, and decided after this grand European tour to come back again and again.

We sat in the cafés, resting after long and exhausting walks. What a thrill it was to come suddenly upon the flowers near the Madeleine in an ecstasy of discovering what one has read of and almost forgotten to look for. The vitality of the moving scene, the honk-honk of the Paris taxi horns, a kind of cacophonous accompaniment to modern and ageless Paris, these things I had to discover for myself. I recalled this sensation when Léon Blum, speaking in the Council Chamber in New York's City Hall, said that he had seen many pictures and movies of New York, and thought he was quite prepared for our city, but that when he actually came up the Bay he was as stunned by the excitement of our landscape as if he had never seen a photograph of it.

I had the usual transportation difficulties at the railroad station. "Monsieur would like a reservation for Geneva?" "And does monsieur wish to face the engine?" When assured that you would like to face the engine and had decided on the exact seats, the one nearest the window and the one next to it, or two seats next the window, one facing the engine and one not facing the engine, the *fonctionnaire* would enter these reservations in his dog-eared ledger that he had fingered much in the conversation.

The train to Florence left at six-thirty in the morning and wrenched us from the breath-taking sunrise and the sky that belonged to Venice alone. Florence was dignified, mellow and aristocratic; there we dreamed through the Uffizi and the Pitti

Galleries, dreamed over the city, drinking in the art of the centuries. I was never quite able to awake from the spell that was Florence.

Rome kept us for a week; in its Forum we met Marie Talbot who had come from Germany to Rome many years before, who lived near the Forum, and knew its every stone. She became our guide and friend, and with her acquaintance, Rome took on a more living quality. We took her to dinner in the shadow of the Cenci Palace, where gypsies in days gone by used to cook in large mysterious cauldrons; she introduced us to the garden of the Princes of Malta; we were entranced by the Sistine Chapel in the Vatican and Saint Peter's, and their surroundings; we walked with her over the bridges on the Tiber at midnight; we saw beggars sleeping in the streets; we saw farmers, too, sleeping through the early morning hours along the Tiber, on steps of statues and in the shadows of walls, before taking their produce to market.

Rome's Colosseum and catacombs, Michelangelo's Moses, heroic and monumental, his Christ of simple loveliness, the tree under which Torquato Tasso sat and composed his poetry, all these are Rome to us. We heard a second-rate opera company. In the audience were entire families, and we saw babes in arms beating time to the well-known music.

Europe had begun to open my eyes to many new horizons, and Italy was opening them wider. Here a great civilization stood side by side with disintegration and abysmal poverty. In the shadow of exquisite works of art men and women lay on the stone steps of the museums that housed them. Awful revulsion followed the realization that such cruelty as well as such nobility could stamp the same human mind.

I have seen human degradation in other countries since my trip to Italy. I have seen misery, hopelessness and animal resignation in Mexico, Guatemala and Venezuela, but never has it left me with the same troubled spirit. I saw poverty in Africa but there was nobility in its people.

Without any training in the arts I was overwhelmed by what instinctively I knew was great. Italian painting, sculpture and architecture struck me between the eyes. At first there was a muffled recognition like hearing music behind a heavy door; when the door was opened the music overwhelmed me. So, too, my eyes finally pierced the veil to the arts. From then on the museums, as repositories of all these treasures, began to take on meaning.

Betty had a more trained perception and as great examples appeared before us she poured out of her reading and her experienced knowledge the meaning of the design, the color and the mood of the canvases. A faint flicker of understanding was followed by confusion which broke up my neat preconceptions of good and bad art, and out of that confusion I had to rearrange my thinking as all art forms, music, dance, poetry and painting became important to me. I finally began to see a relationship between them all and I have been watching this relationship ever since.

Rome, Florence and Venice have now moved completely into the background of my mind, although their art was the crowbar that opened up my vision. Their individual treasures are no longer important to me and I remember the subject matter of comparatively few of those works that planted the seed in me.

In Milan we marveled at the lacy cathedral and were unhappy to learn that La Scala was closed for the summer. Da Vinci's "Last Supper" and the purchase of a Borsellino hat are also happy memories. The Italian lakes, Villa Carlotta with its gorgeous and luxuriant garden filled with lovely flowers from all over the world, banks of azaleas, rhododendrons, and a New Zealand bush scent which Betty smelled a long way off much to the surprise of the gardener, are part of those memories.

Back we went to England on the last lap of our journey, to Totnes, in Devonshire, to taste the exquisite Devonshire cream, to ride to Dartmoor that was studded with lovely gorse and other wild flowers, a fitting bon voyage for our return trip. Our last recollection in London before embarking on the *Berengaria* for home was a

wonderful lunch given to us at the Trocadero by Betty's cousin, Sir Arthur Myers, who had been Mayor of Auckland, New Zealand, and had held several cabinet posts during World War I. Cousin Arthur's visits in New Zealand had always been exciting for he was very generous and kind, and now, as he smilingly purchased for her a five-pound box of candy, it gave Betty a nostalgic feeling of the recaptured past.

We were on the last lap of our journey and we had very little money left, so Betty said, "This gives me an idea. I'm going back into the restaurant to get several one-pound boxes in exchange." We presented the candy as gifts to several people who had been hospitable to us and had them delivered by our landlady's little boy.

On board the *Berengaria* there was a letter from Theodore whom I had met in law school, informing me that I had passed the bar examinations. I had almost forgotten that I had taken them.

CHAPTER V

As I LOOK BACK on the next ten years of my life, I find them to be years of orientation and discovery, beginning with my admission to the bar, and encompassing the span of private practice. These years were a bridge from academic and professional training to a rather long period of public service, beginning with my appointment as assistant corporation counsel of the City of New York in January, 1934. The ten years of private legal work were not sufficiently satisfying, in that the law alone in those earlier years could not adequately fill my inner needs. Fortunately, there was more than the representation of private interests. They were also years of groping, of travel in Europe, of new experiences, and building together the early foundations of complete unity and purpose. In the months of European exploration we built for ourselves our own world that was completely divorced from the immediate irritations of living.

When we came back that fall to the hard facts of New York City life, I began to seek for a cause to which I might dedicate myself beyond the efforts of making a living. I felt the need for some kind of social communication, some spiritual outgiving — a need that was probably a throwback to the self-effacement my father experienced in his devotion to his religion. That desire was not just a passing phase but has always remained with me. I sought to satisfy the urge by teaching in the city's night schools, for I realized that the new Americanism was a flower that, unless properly nurtured in the soil of its new environment, could be easily bruised by indifference or lack of sympathy.

In January, 1925, I took the oath as a lawyer in the Appellate Division Court House on 25th Street and Madison Avenue. Like

the Ephebic Oath which I swore on my graduation from the College of the City of New York in 1917, like the oath I took on entering the Army (changes in my life were punctuated by such oaths), like the oath I took on becoming an assistant corporation counsel, and finally a judge, all of these contracts with the city, except for the Army service, reaffirmed at each crossroad the duties of a citizen in a modern and enlightened city-state.

My entrance into the law had been a little unorthodox, because of the business detour I had taken to arrive at that destination. I wanted to remain in the city during my years of study, for that would make it possible for me to know more of my city, while keeping a job. These considerations, and my desire to be completely independent, induced me to attend the New York University Law School.

To get started in the practice of the law, after I was admitted to the bar I went to see my friend, Professor I. Maurice Wormser, of Fordham Law School and editor of the *New York Law Journal.* As an impressionable young lawyer, I was strongly influenced by his clarity, his incisiveness, as well as his straight approach to legal phenomena. His and that of Betty's brother, Gabriel, were the first legal minds I had met outside of law school. One of the lawyers I went to see was Simon Rasch who asked me to hang up my hat. I stayed with him for eight years.

In the evenings during those early years at the bar, I taught in the city schools. I was first assigned to P. S. 95 on West Houston Street where I taught English to the recently arrived foreigners. There was also instruction in civics and the requirements of citizenship. It was strenuous work after a full day at the office, but it gave me great comfort. I did not want to make teaching my career, but I felt that this work satisfied some inner urge in me. I was starting to repay the city in service for what it had given me.

Our new people had come here with high hopes, and the American dream was for them a living reality. From Europe, and from the approaching ship, these pilgrims had a poetic perspective

of the new land, clearer perhaps than at any other time in their lives. After they had finally surmounted the immigration details, and when they began to meet obstacles of money, of customs and of language, it took guidance and delicate encouragement to keep their hopeful spirits uplifted.

I asked a group of my students to my house where Betty made them feel at home immediately. I had told her about Françoise, about the tenor, Mike De Pippa, and some of the others. Mike came to the party polished up and dressed in a tuxedo over a white vest and sporting a white carnation in his lapel. He sang lustily and others joined in singing the Neapolitan songs, while Françoise sang some quaint French ballads. Betty's refreshments were good and she participated in the fun.

Friday nights Betty and I spent with my family, and we looked forward to seeing their faces light up when they saw us. As we entered the door the nostalgic aroma of freshly made *gefilte* fish and the smell of new-made bread bade us welcome, and recalled for me the days I used to help mother in some of her daily chores. As the large family assembled about the table, set with candles and shining fresh linen, mother took her place by father and blessed the lights. In the summer evening the wind blew the curtains into the dining room and the *Shabbath* candles flickered on the table. After prayers a banquet was set before us, chicken soup with noodles, *matzoth* balls or rice, chicken, meat balls or pot roast, a few vegetables and then later in the evening tea and homemade cakes. We almost invariably knew what we were going to have, but that made no difference; it was a kind of ritual, and the very sameness of the menu created a simple peace as if everything was the same as it always was and would remain so.

Conversation, too, was in the same order. Since everything was special on Friday nights, the entire family made it a point to be at home, and the conversation which went on apace, loud and vigorous, usually followed a regular pattern, first discussion of the family – had we seen them – then special news of some, then

questions put to me about my work, then lusty discussion about politics and the news from the evening papers. Upon our departure mother always saw us to the door, while father remained in the hall in the discreet background. Until I met Betty it was never my habit, for all my remembered years, to kiss mother. One Friday night Betty said, "Why don't you kiss mother, I'm sure she'd love it." With that I gave her a peck on the cheek. We both blushed, but I could see that it gave her a great satisfaction, and from that day on I repeated the performance, Betty even starting to embrace father. To this day, that has remained the talk of the family, how Betty started me in kissing my mother. None of my brothers or, more remarkable still, sisters ever followed that custom. It simply was not done in my family.

As we made our departure, mother would always say to Betty from the top of the stairs, "Watch out for your pocketbook," and Betty would invariably make the same rejoinder, "I shouldn't throw it into the gutter, Mother?" That would put mother in fine humor, as did Betty's corruption of the Yiddish phrase *"Sei gesunt"* into *"Gesei gesunt."* This was a source of great merriment to both the old folks.

No sooner had I started practice in 1925 than Betty became ill and my friend, Theodore Richie, and I tried to nurse her, under the advice of a local physician who diagnosed the case as intestinal flu, but as she became steadily worse I consulted Dr. Robert Tuttle Morris who ordered her to the hospital.

When Betty was carried into the street she was still smiling; she kept telling me not to worry; she joked with the ambulance men; and laughed at the lugubrious face of my sister Annie, who had come from Brooklyn to help. I rode down in the ambulance to the Broad Street Hospital. It took me a long time to realize that Betty was critically ill. I had always thought of her as very strong and I was unprepared for any serious illness. Dr. Morris came down immediately after the operation to assure me that Betty was all right. After this illness Betty gave up the kindergarten.

That summer we made a week-end visit with a Danish client to the Art Colony in Milton-on-the-Hudson called Elverhoj (Danish for Elf Hill). The colony had a summer theater and art classes. We wandered into the studio of James Scott, the landscape painter, and when Betty expressed herself about his work, Scott became interested and wanted to know what she did in the arts. Betty replied that she could not draw a line, but Scott ventured the opinion that she had been mentally composing pictures for many years. Betty was happily taken aback by this surprising observation, for she loved the arts ecstatically. Impressed by her instinctive feeling for color and design Scott said, "You have something I can't teach you. What you haven't got anybody can be taught."

Scott proved a most sympathetic teacher. He realized that because of her unusual modesty he might destroy Betty's natural talent if he taught her by conventional methods. Instead he decided to lean heavily on her natural instinct for design and color, requiring her to fill small rectangles with painted compositions taken from nature and from her imagination. She achieved results that were interesting and lovely. Betty worked so hard in her excited eagerness to make up for all the years she had lost that Scott had to tell her to stop and rest.

That fall we decided to move downtown to be near the art schools and galleries and we found a small apartment at 38 West 56th Street, which admirably suited our purpose. We had one large square room with fireplace, kitchenette, a large bathroom that doubled as an auxiliary studio with a large drawing board placed across the huge tub. Betty was now studying at the Art Students League.

The summer of 1927 we lived in Paris with a French family to whom we were introduced by my former pupil, Françoise. On our way over, when Betty was sketching on the deck of the *Minnesota* one day, I borrowed her sketchbook and began to draw the people about me. I discovered that I had a certain facility for portraiture and in the ecstasy of my new discovery I could not rest. I filled

a whole notebook with sketches of the McDermotts, of Betty, the officers and many of the other passengers.

We approached the shores of France with fast-beating hearts, coming back to the country we loved as our own. In the early morning we hurried to the Rue Lacroix, where the Dufayes lived. As we stood at the entrance to the apartment on the second floor, we were met by a thin, not unfriendly Frenchwoman in her sixties, dressed in the usual black of the lower middle class. That evening we met Lucienne, a thin spinster in her thirties. Maman spoke no English, Lucienne spoke it fairly well. Our arrangements were soon made, we could have the daughter's room. A price was agreed upon for two months that paid their year's rent. We could occasionally eat by arrangement at home. We were all very happy.

The apartment consisted of a living-dining room in which there was a Pleyel piano, at which we all sang the Paris songs which we would buy from the touching bands of street singers. This room contained a dining table at which we ate breakfast and an occasional dinner. In the morning, after she had bought kindling wood to start the fire and purchased her provisions for the day, Madame would serve us delicious coffee or chocolate in huge cups, *petit pain* and sweet, pure butter. We were always amazed to see what she could do with an egg and to witness the variety of omelettes that came out of her frying pan. There was a wood stove and sink, and the Dufayes bathed in a small tin tub that was brought out from a corner of the kitchen. Two bedrooms, one of which was ours, completed the apartment, except for a toilet in the hall that was the pride of the establishment.

There was no place to wash except in the kitchen where I shaved in a tin bowl set in the iron sink. The local baths were a few blocks away and were open every day but Monday, and for a few sous we had our baths in high Cleopatra-like tin barges in adjoining rooms, through the open doors of which we talked and giggled.

On those occasions when we had lunch or dinner with the

Dufayes, we really felt like part of the family, bringing in fruits and *gateaux* to supplement the meal, and later taking Lucienne out for the evening. We attended a concert by Artur Rubinstein and Paul Kochanski that was very special; Casals, Cortot and Thibaud played heavenly Beethoven trios in the Opera House. When we came home late at night alone or with Lucienne, the house would be in darkness as we laughed and stumbled up the stairs. We lit up the living room and were met by a spotless white cloth on the dining table upon which some refreshments were set for us. We were one happy family and Lucienne said, "I do not like you, Betty, I love you."

Every morning after breakfast, Madame Dufaye would stand at the door as we left for the day's excursion, shake each of us by the hand and say, *"Bonne promenade, bonne promenade, à ce soir."* And each day as we sat down to the breakfast table, we would each take hold of an end of the long, thin *petit pain,* and breaking it between us, we would mimic, *"Bonne promenade."* After breakfast, confirmed pedestrians that we were, we walked all over the city, as we did in New York and London and everywhere else. We would stop to enjoy the street life and be entranced by the cheese man selling goat cheese from a wooden box strapped to his back as he walked along Avenue Clichy with six live goats driven on the sidewalk before him.

One day we went to Julian's Academy, but I decided that for the time we had in Paris such instruction would be too slow. Instead I painted on my own. At night we showed our sketches to the Dufayes, discussing them and our plans for the morrow. Evenings at home, the three of us covered a box with lead and decorated it with our three monograms, and it serves as a nice souvenir of evenings *en famille.*

I went to the law courts often and read some civil law, making friends with a few of the lawyers and discussing their cases with them. I was a familiar sight about the Palais de Justice, where sometimes Betty joined me when she had completed her work

at the Louvre Museum and the Bibliothèque Nationale, where she was doing research in art and design.

The Dufayes celebrated with a fête the happy occasion when Lucienne's friend, Aurore, passed the bar examinations, an unusual event in France for a woman. The preparation for the ceremony took many days. One time Madame Dufaye took down some of her best china, another, her best silver and so on. When the day arrived the apartment had been transformed.

Aurore's friend, François, added a bottle of champagne to the one supplied by Lucienne on a college-made promise. Another friend, Jacques, supplied the table wine. We contributed flowers, cakes and cognac. Madame, like all her neighbors, had no ice-box and had to market separately for every meal. She produced, as always, a truly excellent dinner.

The guests stayed very late, enjoying all the ceremonies of the fête. A glass of champagne was drunk without pause, to the accompaniment of a kissing ritual. We took a sip of wine, kissing the cheek of a neighbor, who sipped and repeated the kiss to his partner until the entire table had followed suit. During the dessert of fruit, cakes, coffee, cheese and cognac, we all sang songs, and the dinner came to an end with speechmaking. It turned out to be a memorable night.

We took the McDermotts, father and daughter, to the Luxembourg Gardens. Father was not interested in the museum, but preferred to sit in the park, watching the old men at games and the young play tennis over nets strung between the trees. When we came out of the museum he was seated next to an elderly Frenchman. Father excitedly ran over to Genevieve and said, "Give this man some money, he paid money for me." I addressed his kind companion. *"Ce n'est rien, j'ai payé quelques sous pour la chaise."* When translated, father insisted, "Pay him, pay him." The smiling Frenchman refused to take the proffered coin. As we left, the two old friends politely exchanged greetings each in his own tongue.

On Bastille Day we walked to the top of Montmartre with Ethlyn Middleton. All motor traffic was stopped and the *place* was a sea of tables and chairs. The city was alive with dancing and entertainment. We strolled back to Clichy. There, too, there was dancing in the streets all night long. We went to bed at five o'clock.

In July we visited the Riviera and had completed the tour at Nice ready to return north. At our usual post-dinner conversation with a friendly hotel clerk to whom we expressed a preference for returning to Paris by a more rural route, he suggested the small one-track railroad known as *Chemin de Fer de la Provence.* This simple and quaint railway stopped at forty-one stations in nine hours. The stations became more and more primitive as we proceeded north, until a barn appeared for a station, then a shack, then a shed and finally a name. From station masters, high and low, we were soon reduced to station mistresses; and chickens and dogs, and finally cows strolled unconcernedly over the platforms.

There were no tourists, for this was a railroad of the farmers and small-town folk. We alone paid first-class fares to be able to occupy the half carriage that was *"première classe."* The one and a half carriages that were *"troisième classe"* were full of babies and many cats (the French always had cats third class), smelly cheese, fascinating enough to be with for limited periods but a little too strong even for us on a nine-hour trip. We remained in third class a good deal of the time but occasionally we escaped into the relatively sweet air of our private coach.

The train had no diner, so all the voyagers brought much lunch and ate all day long. We had tiny sweet red tomatoes, bread, cheese and wine which we bought in large quantities in the market at Nice. The train stopped long enough at each station for many to get off, replenish stocks of provisions and bombard the comfort stations.

The train, equipped with the oldest, smallest engine extant, had two small baggage cars which unloaded a mattress here, a barrel

of wine there, furniture, small animals and a nondescript variety of small goods. The first few hours of the trip were terribly hot but every moment was exciting. I drew many sketches of the peasants, their children and their animals.

I had never forgotten Professor Downer and his great interest in Mistral. And here we were in the *vrai Provençal* country where its true speech was kept alive. Downer had told us that the dialect was soft and sweet, and that with some knowledge of Latin and some French it would not be difficult to make out its meaning. Mistral devoted his Nobel Prize for Literature to the museum at Arles, in which he gathered up all the story of Provençal life. Living to be eighty-four, this Emperor of the South was always one of the people, never lost touch with them, was never long away from Provence and never behaved like an intellectual.

We passed through fields covered with lavender that also grew wild along the roads. As the small train climbed the Basses-Alpes it grew cooler. From five o'clock in the afternoon the weather became fresh. By the time we reached Digne, three and one-half hours later, it was ideally cool. The peasants' love of the land, their humor, their family solidarity, all showed themselves on this long trip. This was France at its most intimate, its most human and its most lovable. After a night in the lovely mountain town of Digne with its tall pines we left for Grenoble, Aix-les-Bains, Annecy, Geneva and Montreux. From Montreux we came back to Paris to rest and digest what we had experienced.

We remained in Paris for only a few days when we left again to take a leisurely walking and train trip through Brittany and Normandy. We supplied ourselves with what we called third-class luggage, of light canvas that was easily manageable and could also serve as a pillow. We traveled through Nantes and Tours and finally arrived at Douarnenez on the coast. Inquiring of the "salts" about means of going north along the Brittany coast, we were informed that there was a boat leaving in the morning for Morgat. We saw a flimsy boat fastened to the pier and asked if the sea

would be rough. The old sailors were seated on an iron rail looking out to sea, dressed in their faded pink and blue suits. One ancient mariner, in response to my question, said, "It is a pretty rough trip." But I sought and received comforting reassurance from another who said, *"Ce n'est pas mal."*

When we awoke it was raining and cold. Betty accepted a seat from a "French" priest who spoke English with an Irish brogue, but before departure decided instead to lie on life preservers that were piled on the cabin table. He stood on one side of Betty and while she held on to me with one hand, with the other she clutched the priest's vest. The sky and the water met, the ocean was "greenery yallery." Everyone on board was miserable and most were terribly sick, including a small dog. The sailors were in bad shape. Father Joe and I were yellow, but not quite sick. One sailor said to the helmsman, "This small craft is not fit to be out in such a storm." The boat creaked and the impact of the waves on the tiny ship hurt our bones.

Betty's ability to get along with people has always been phenomenal, and her easy manner with Joe was no exception. Notwithstanding my own shyness I have been able to absorb some of this capacity from her. She has always been a bridge between the self-contained clannishness of my own family tradition and that wonderful outgoing social quality that she possesses so remarkably. Her ability to strike up instantaneous friendships with children is a part of that quality. In all parts of the world a moment's contact results in undying love. Eyes brighten, chubby little hands immediately go out to her smiling round face that has so long been framed by a white page-boy bob. In Ireland I heard a mother, carrying an infant in her arms, a babe in red shoes with cheeks to match, state without a moment's hesitation, "She is charmed with you." Children want to be near her, to listen to her lovely voice and to be amused by her stories; old ladies at funerals are comforted by her and never forget her.

With it all, there is a kind of British reserve about her. Long asso-

ciation with the Scotch people in New Zealand has given her great feeling for simplicity, for generosity and for humor. I came home one day, and Betty said she had had a wonderful day. "The chimney sweeps were here." "Well, what's so wonderful about that?" "Two chimney sweeps came to clean the fireplace. One was six feet three and the other was just about five feet tall." They were buddies in World War I and had gone into the business of repairing and cleaning chimneys and fireplaces. While they were working on our job it began to drizzle and just as they had finished, the rain descended in a downpour. They then announced that this would be the last job for the day. Betty said that in view of the weather perhaps they would like a drink. Would they, indeed! The smaller man, Jock, was Scotch and the taller, Hank, was Pennsylvania Dutch. As they sipped the hot toddy that Betty had prepared against the possible chill, they began to talk and tell tales of their native lands. Hank soon suggested that Jock should sing. As they all sat around the table, Jock sang Scotch ballads in a lovely tenor, until the rain stopped, Betty and Hank joining in the songs they knew. They all had a perfectly glorious time.

Upon another occasion an Armenian upholsterer came to repair the sofa, and as he was about to finish his work, Betty said to him, "Do you like madzoon?" "Of course I do, I'm an Armenian." Betty went to the icebox and brought out some of the cultured milk. After he had eaten it the Armenian said, "That was very good, where do you buy it around here?" Betty astounded him by saying that she made her own. There followed a long conversation about Armenian cooking, to the further astonishment of the upholsterer.

Often while in private practice downtown, after some trying experience I would call up Betty and invite her down to lunch or to meet me in the late afternoon to wander over to the market, to buy olive oil, cheese and quantities of nuts which she would make into wonderful delicacies. Such simple places as markets, strange neighborhoods, with children at play, have always given us an infectious lift, twisting things back into their true perspective, making dis-

turbing situations fade into insignificance. I have always found her serenely comforting when I have been in troubled spirits. Coming home from the office and not finding her in always prompted me to search in the neighborhood and almost always intuitively to find her.

The hustle and bustle of business had been an invaluable experience and its advantages were reflected not only in the private practice of the law, enabling me to make decisions from the same level and with the same perspective as my clients, but also in public service, in the city's Law Department and on the bench.

Upon my admission to the bar I became counsel to Norton Retail Stores, Inc., a Fourteenth Street department store, and its owner, Zion DeFrece Bernstein, who had been vice-president of the National Cloak and Suit Company. He was a fine businessman, a gentleman of parts and a good friend. He had great faith in the future of New York City business and never lost his enthusiasm for "the Street" as having great business potentials, even when many department stores were moving uptown. As the big stores moved successively to Thirty-fourth Street, to Forty-second Street and finally to Fifty-seventh Street, the greater was the need for "the Street" to remain serviced by his own and similar stores.

His judgment proved to be right and his business continued to prosper. Upon his untimely death in 1937 I was appointed one of the executors and trustees of his estate together with his wife Helen and his brother Ben. Under the able stewardship of N. A. Abramson the store has continued to flourish, serving not only the transient Fourteenth Street trade, but also the whole of Greenwich Village, and deriving much of its clientele from New Jersey, by way of the Hudson Tubes and ferries.

Zion well knew his city and its growth. Over the years we had many a talk on New York's history. Knowing little of art and music he loved to roam with me over areas where art and music were born. He had sincere philanthropic instincts and a warm human

understanding which made his relations with his employees exemplary. His practical as well as idealistic give-and-take handling of employer-employee relations set an enviable standard for other stores to follow. His store associates felt this unusual relationship and deeply mourned his early death.

One would expect the stores in Greenwich Village to be a little different. The pushcarts in its interior give it more of the aspect of the *rive gauche* than of the ghetto. John Masefield, years ago, tended bar in a local *bistro,* and the entire Village population takes pride in that bit of local history. But even more than its commerce, the people are different, so many of its residents coming from out of town, some from other villages, adding their pride of discovery to the pride of the native village dweller.

Here in Greenwich Village, back-yard fences between houses have been taken down as an open invitation to make unafraid friends with next-door neighbors. Not only in the back yards and on the porches but also on the streets and in the park, in the art shops, bookstores and on election lines is friendliness encouraged and welcomed. The Villagers are always taking greater pride in better gardens, and livening the streets with window boxes; they are also quick to act jointly in resisting any encroachment upon the traditional character and charm of the Square by apartment house and university alike. In true communal spirit, they rush to the defense of the artist against eviction, sign petitions and attend meetings to defend the quiet of their residential streets. The builders of concrete barracks to the north and the educational planners to the south of Washington Square find equal concerted Village strength and imagination to prevent any attack upon the integrity of their neighborhood.

One could not find anywhere a more active and vibrant citizenry, for it is their habit to meet in village conclave and do something about their troubles. In problems of traffic, they are able to obtain the respectful cooperation of the police. They are devoted to their own Greenwich House (where Betty donated five years to teaching

art to the neighborhood children). For residential charm Greenwich Village has very special characteristics. Less glamorous than Gramercy Park, less brilliant than Sutton Place, the Village has an awareness, a cohesiveness, and an old-world humanity all its own.

Other neighborhoods are so impersonal, so friendless, that when we moved down to the Village in 1932, it was like a breath of fresh air to become members of a community where each resident counts for something, where each can find spiritual anchorage in the modest community south of Fourteenth Street, through the heart of which (Washington Square) runs the great artery of Fifth Avenue, and where the wealth of its civic activities is reflected in its proud and brave little newspaper, appropriately called *The Villager*.

The intellectual integrity of the Village is now protected on the north, in a small replica of Hyde Park, by Union Square debaters whose language is loud and preponderantly of one political complexion, while the pigeons unconcernedly and trustingly perch on the head, the shoulders and arms of Abraham Lincoln's statue. In the days when the Village was more bohemian, no less ardent discussions of world and local politics were heard at Webster Hall under the aegis of gay costume balls where philosophy and politics were submerged for the moment by the business of pleasure.

I have referred to the Village artist only in passing. I have said nothing of skylight studios, or experimental theater, not because they are not importantly vital, but because art in all its manifestations is only a part of the special flavor of the neighborhood. It is a matter of history that Eugene O'Neill's *Emperor Jones* with Charles Gilpin was presented to a startled audience on Macdougal Street, and every once in a while a new set of theatrical adventurers does something unusual here. Washington Square itself gives us a sense of hope because it was once a marsh, and a potter's field was transformed into a beautiful symbol of New York life.

The thought of *Emperor Jones* brings back to my mind an interesting memory of the Village. Our second apartment there was on

West Twelfth Street. The outgoing tenants were Mary Blair and her husband who suggested that we might like to buy some of their furnishings. We bought some of the brass for the two fireplaces and looking at some other brass in the apartment we came upon a large round tray, the rim of which was so broken that it actually peeled off. As we examined it Miss Blair said the tray had been broken from use in some of the rehearsals for *Emperor Jones* which took place in that very apartment.

In 1928 I represented the Bosporus Restaurant on East Thirtieth Street. It was owned by four Armenians, the leading spirit of whom was Torkom Keussyian, a white-haired, ambassadorial gentleman whose jet-black eyes and quite princely manner betokened ability and authority. We had met him first when he was the manager of the old Pavillon d'Orient, a fine Armenian restaurant on Lexington Avenue and Twenty-fourth Street. Betty is a fine cook, and it was no accident that she and Torkom should strike up a friendship. A comment about the excellence of the rice caused Torkom to smile and say, "Soon everybody will know how to make such rice. I am writing an Oriental cookbook." He very soon asked her to collaborate with him in its writing. When half of the book was written, Torkom died, after a very short illness. No one was able to find any of the recipes which Betty had written out by hand.

In the spring of 1929 at the Art Alliance where Betty was exhibiting a picture, she met Marianne Willisch who talked about art and art schools in her native Vienna. Betty came home and thought to surprise me by announcing, "You know, I'd like to go to Vienna to study." She was more surprised than I when I retorted that that could be arranged, for that very day I had completed arrangements that would take me to Africa, on a case involving a fraud perpetrated upon the cocoa growers of the Gold Coast.

In April I saw Betty off on the *Statendam*. We busied ourselves examining the cabin and the ship's appointments, putting on a brave front and trying to be sophisticated and gay. But as midnight approached our hearts sank, for we had never been separated

from each other for more than a few hours and now we would not see each other for six months. This was to be the greatest wrench of our married life. How I longed to join her on this trip and to forego my African trip, adventurous in its promise of excitement though it was. Each tried to deceive the other as to our real thoughts. We kept repeating that it was a wonderful opportunity to live in Vienna and to study at the Kunstgewerbe Schule and in private studios.

The last hours flew as we went hand in hand to quiet corners of the ship, in order to be nearer each other. We knew then that no matter how great future temptations might be, we would not willingly separate for such a long period again. The hour of parting finally came. As the ship left the pier and the narrow ribbon of water between shore and ship widened, a sense of panic was added to the awful emptiness created by her departure, as time took her further and further away from me.

We had planned that as soon as Betty left I should join the etching class at the Art Students League. The first night I worked in such feverish haste that I completed a proof before closing time. The instructor, Eugene Fitsch, got around to my work toward the end of the evening, and examined my proof. "What kind of art work do you do?" was his first question. I explained that I was a lawyer, doing art for relaxation, and that I had studied portrait painting for one month during one of my vacations. He looked at me sharply, and said, "I don't know whether you are very good or very nervous," going on to explain that in art as in life, water reaches its own level, and that none of us can create what is not in us. That was the first of many such illuminating talks on art and aesthetics that I had with him.

The evenings at art school completely occupied my leisure hours. As I completed a print, I would send it off to Vienna, feeling that these prints would add to the little comfort contained in my letters. Soon Betty's letters arrived in a steady stream, and I began to have that comfortable feeling of being in communication with

her again and I received additional comfort from the fact that she was enjoying her work in Vienna and later in the Carpathian Mountains in Poland. It was then for the first time that I was happy that I had not subjected her to the dangerous climate of West Africa.

After making some investigations in London, I boarded the *Adda* at Liverpool on the 3,845-mile trip to the Gold Coast. An hour after sailing time a stocky Englishman appeared on the dock, wearing a sun helmet and shorts (I never saw him wear a sun helmet in West Africa), and we steamed out of the harbor.

When the dinner bell rang, I descended to my cabin and for the first time noticed the name of G. Greaves over my own on the cabin door. My cabin mate was the passenger who had held up our sailing for an hour. He asked me to join him in a drink, and from that moment on we were inseparable. He introduced me to the "Coasters" on board and I was included in all of the festivities. That night in the cabin Greaves and I talked for many hours. As an old "Coaster" he was understandably curious about the purpose of my visit.

I had already formed a good estimate of the man and liked him. I had come to the conclusion that since we were both landing at Accra, I had to tell him nothing or else confide in him. I decided upon the latter course and my decision repaid me manyfold, for as an employee of the West African Lighterage Company he knew all about shipments out of the Gold Coast and by his cooperation I was saved many hours of digging for the records that I needed. Greaves had the reputation of being a devil-may-care who was always getting into a jam, but to me he was a curious mixture of a rough-and-ready character and a sensitive friend; and in this strange country I needed one.

The *Adda* touched at Madeira, the Canary Islands, Dakar, Freetown in Sierra Leone, Monrovia in Liberia, and finally Accra. Transportation from ship to shore was negotiated by means of a derrick and "mammy" chair which was dumped into a rocking

surfboat manned by the paddles of ten scantily clothed native Fantees on their singing one-mile trip to the drumbeat rhythm of the man in the stern.

The derrick swept the chair loose from the ship. It swung from side to side, and without mishap I was lowered into a heaving surfboat manned by the shouting Negroes. Although my body was covered with a tarpaulin, the waves beat high and my head was drenched. In the trough of the sea I first realized how deceptively calm the water had appeared from the deck. During the thirty-five minutes it took to paddle to shore, the native boys, standing in the boat, propelled it to the accompaniment of their chant, "Master tip me one shilling, master tip me two shillings," and so on ad infinitum.

A committee of the native farmers met me aboard the *Adda,* accompanied me on the trip to the shore, and informed me that I would stay at the Adorso House. I said I had had some correspondence with Mr. Francis Foy, Trade Commissioner in Accra, who might put me up. Greaves had said that if I found no other place, I could stay with him. The natives quietly insisted that for the present I follow their own plans. There was nothing for me to do but to respect their wishes.

A boy was assigned as my personal attendant. Appa was twenty-six but looked like eighteen. His duties were to prepare my bath, arrange my room and look after my personal wants. One look at the bed gave me my clue for Appa's first instructions. I sent him to buy new bedclothes and a new mosquito net, the old one being purely ornamental, having holes as large as a baseball. The Adorso House "Hotel" accommodated a few guests when ships arrived from Europe or America. When I returned home the first evening after visiting Foy, I found the door in the brick wall enclosing the house, closed. While Foy's boy, who had been told to see me home, waited, I knocked with the tremendous iron door-knocker and the heavy wooden door was slowly opened by a tall Moroccan Hausaman in a white cloak carrying a long spear. He saluted me with great

ceremony and showed me into the court and then into the house.

As I entered my room my only thought was to get away from the mosquitoes. I jumped under the new netting into bed, mosquito boots and all, there to undress at my leisure. Under the strange circumstances, I slept fairly well, but I was up at six, Appa pouncing into the room without knocking, and immediately setting about to clean the room. Thereafter, his broad innocent grin became a very welcome morning sight. He boiled water for me daily and after my bath in a small tin tub, into which I poured plenty of disinfectant, he watched me clean my teeth, and was entranced by the effervescence of Eno's Salts. My offer to let him drink some of the miracle water was eagerly accepted and I told him to get some water for himself. In the twinkling of an eye he was back and from that day on we performed this morning rite together.

As one of 2,500 Europeans among 2,300,000 natives I felt completely at home on the Gold Coast and, except for the mosquitoes, as comfortable as the food and the atrociously humid and hot climate permitted. It was not an unusual sight for me to be seen walking along the silent roads along the ocean, passing by the native huts of mud, stucco and wood, sustained in the roof by horizontal bamboos. My new mosquito boots creaked and the noise gave warning of my approach. As the elders and children looked up, a smile of recognition covered their faces and I felt that they liked me.

At Mangoase, on a plantation in a clearing under a tall palm tree, a meeting had been arranged for some 300 members of the Gold Coast Farmers' Association. They had come from a radius of sixty miles to meet their lawyer from America. As they had come on foot it had taken some of them days to reach the spot. Some were dressed in their colored woven robes of state, many with headdress and umbrellas, all indicia of high office. Others wore incongruous castoff European clothing.

A wicker chair was set for me under a towering palm tree and on this chair was placed a simple cushion covered with a clean

white pillowcase. When the secretary formally introduced me to the gathering, I arose, walked among the chiefs and shook their hands, and as I took my seat, the chiefs called upon me, returning the courtesy and shaking my hand in turn. I passed around my credentials and they were impressed with American documents that were heavy with gold and red seals. At a signal, the meeting became very still and then the eldest chief arose and addressed the gathering in deep, solemn tones. He was opening the meeting with prayer. Then I was called upon to address the meeting.

My feelings were indescribable. I had traveled over seven thousand miles to address a group of people whom at home I had imagined to be near savages. Instead, I found myself at a meeting opened by reverent prayer. I saw before me simple farmers, listening wide-eyed to a person who had come from a foreign land to help them redress a great wrong. I explained very simply the purpose of my visit. Each sentence had to be translated to the throng. I watched the intent faces as I continued my talk which was translated and retranslated to them. I wondered all the time what impression my words were really conveying. André Gide in his *Travels in the Congo* comments upon these double translations and their sometimes weird results.

My talk was greeted with satisfying applause. The old chief again rose and blessed the meeting, our cause and myself. Then several of the more important personages rose and pledged their support. After the meeting, I was driven away to Chief Quao's house where I was given refreshment of native palm-oil stew with warm beer and lemonade. Several bottles of soda water, two boxes of English biscuits for my homeward journey, and a pair of chief's leather sandals were presented to me.

At Chief Quao's house I was able to look over a native village which was almost hidden by the immense trees. Moisture, softness, and a magical stillness were in the air. The landscape had a green monotony, without even the color of an occasional flower to relieve it.

I was driven back to Nsawam where the secretary, Chief Akrofi, lived, and from there to Accra was driven by a naked driver who sped at breakneck speed along a road which though fairly level was covered with red ant hills, some six feet tall. In passing an acquaintance on the road, the driver, without diminishing his speed, would lean far out of the car to greet him.

I remained in the Gold Coast the month it took me to complete my investigations and obtain all the shipping and banking records for the period I was investigating. On my departure for Europe, Mr. Vanderpuye, my host at the "hotel," presented me with a bottle of champagne and many of my new friends were on the beach to say good-by. A special surfboat had been prepared and clean cushions had been installed. I was placed in a wicker chair and deposited in the boat by two natives, then lifted in a "mammy" chair onto the steamer *Wadai*, a German vessel bound for Boulogne. Paradoxically enough, I was leaving with regret what was then known as the white man's grave.

Although measured by our standards these people were very poor, they yet had a great instinct for happy living. They loved to laugh, to play games; they loved to sing – the church services were long and lusty – and they loved the colored trappings of the military band, epaulettes and all, even though their legginged legs were shoeless. They loved nature. They were at home on the sea and on the plantation and they knew how to make a guest feel at home. Their quiet, simple nobility in setting the meeting under a towering palm, the simple placement of a pillow for my comfort, the gifts of soda and crackers were all very affecting.

Although Betty and I had originally planned to meet in Vienna, we later thought it better for her to join me in Paris. Upon my arrival there, I went to the station to meet the train from Munich. It was late, and I sipped a benedictine as I nervously awaited the train that was carrying Betty, whom I had not seen in over five months. When the station guard informed me that it was about to pull in, I ran far out on the platform and caught sight of the familiar

face leaning out of the window looking for me. Excitedly I ran over to the moving train, and running in the direction of the engine, held her hand as she leaned far out to touch mine.

Paris, which was to entertain us on our second honeymoon, was now as familiar as our own city; the buses, the *métro,* the *nord-sud* were second nature to us. We visited our old haunts, sought out new ones and refreshed ourselves again with the charm of the city which once more cast its spell upon us.

We were coming of age artistically; we had a maturer aesthetic judgment that came from multiple artistic experiences; we had come to appreciate the monumental quality of Cézanne and the intellectual dissection of Picasso. Matisse at first seemed bizarre, careless, and childlike, but his elegant lyric design, his own fanciful stenography had begun to take possession of our imaginations just as did the iridescence of Debussy and the dynamic unconventionality of Stravinsky. I say "we" because Betty and I grew up artistically together.

We began to understand Clive Bell's "laws of mysterious necessity" which combined the forms of line, design and color in the visual arts as sounds are combined in music. Charlie Chaplin's old pictures had the same timeless universality, the same abstract quality of fine art made out of its own indigenous cinematic material. I remember clearly the impression a tattered old portion of a Chaplin film made upon the natives of West Africa; it captivated them. They laughed and shouted just as any New York audience did. His wonderful pantomime needs no sound or language, any more than a master's painting needs a phonograph disk to record the voice and thoughts of the poser, or a piece of sculpture needs anything but the inherent quality of clay or stone to produce its effect.

Upon my return from Africa, I was introduced to a French client by Theodore. He represented two old French clients, Louis and Emilie Bonet, for whom he drew a trust agreement and individual

wills. The Bonets had a younger friend, Mathilde Jeltrup, who was the widow of a French artist. The trust agreement that Theodore had prepared for them was intended to provide an income for the lives of Louis and Emilie Bonet, upon the death of either the entire income to go to the survivor, the principal of the fund to be disposed of by the will of the survivor.

Louis Bonet died on October 13, 1929. Five days later Emilie died. By her will Emilie set up a trust estate of $60,000 for Mathilde to receive a life income of $2,000 a year. Upon Mathilde's death, the trust fund was to go to *Les Maisons Claires pour Abriter les Enfants Pauvres de Nos Soldats,* to provide for the care of the children of French soldiers killed in World War I.

Upon the sudden and dramatic demise of both Louis and Emilie, trouble started brewing for Mathilde. The bank trustee and the executors of Emilie's estate raised the objection that the life trust created for Mathilde was invalid because the trust was suspended for more than two lives, the life of Emilie, the life of Louis and thereafter the life of Mathilde, a period of three lives, a situation prohibited by statute.

When Mathilde was told of the position taken by the banks and executors she became distracted. Since the interests of the executors and Mathilde might conflict, Theodore, who represented the executors, felt it his duty to inform her that she had better have her own lawyer protect her interests, and recommended me.

I was convinced, contrary to the doubts of the banks, their attorneys and even Theodore, that the trust was sound. My contention on the trial was that there was no suspension of any kind since both Louis and Emilie had the power of revocation of the original trust with which they could purchase an annuity if they so decided. In fact, since the settlors reserved to themselves the power of disposition of the entire fund, it was not a trust at all, but a custodianship. In a few days Justice Peter Schmuck wrote an opinion in favor of my client.

Soon Mathilde asked me to draw her will, the forerunner of

several such documents. She would not countenance a simple will; each chair, each bureau, each piece of china and each jewel had to be allocated to a specific legatee. We soon discovered how French she was. A diamond must be left to the Church; provision must be made for her dogs. The most important worldly thing in her life was her estate. She nurtured it, thought about it and talked it over with me incessantly. Whenever one of the legatees displeased her she would impetuously ask me to redraw the will. After some firm persuasion from me it came to rest in its final form. She sentimentally left us the portraits of her husband and son.

Upon our return from abroad in October, 1929, we moved to a larger apartment and studio at 315 East Fifty-first Street and were soon again caught in the vibrant stream of New York life. In Vienna and Poland the professors had told Betty not to go back to school but to set up her own designing studio in New York. Betty was soon offered a position on the Cooper Union staff to take classes in design and art appreciation to the Metropolitan Museum. This she did for a year. She also began selling her designs for cretonnes, wallpapers, rugs and many other things.

But Betty could not remain long satisfied with commercial design. She felt the need to work much more imaginatively, unhampered by the restrictions of the market. After a few years she branched out into ceramics. And ceramics was a natural stepping-stone to the more satisfying art of sculpture, in which Betty first denoted humor and beauty in birds and animals, later serenity and love in simple, unadorned human forms. She drew upon her limitless fund of human sympathy which became increasingly reflected in her work. Full of love as she is, it is impossible to keep it out of her work. Her sculpture, becoming simpler and simpler, plumbs more and more deeply into the unfrightened emotions.

The same calm spirit that permeates her work is nothing more than a reflection of her own philosophy. Her love of simple and beautiful design, devoid of adornment, also typifies her straightforward approach to living. Extremely modest, but forceful in

speech and action, she delights in the quiet pleasures of mountains and streams, in the home, in friends and in generous hospitality. Her capacity for friendship is limitless, and twenty-seven years of married life of unclouded joy is proof enough of her capacity for self-effacing love.

Drawing inspiration from her as I always did, I began to draw and paint more. I also tried to become more introspective in my approach, getting further away from the mere attempt to recapture what I saw before me. I tried to recreate from what I saw something more personally my own, taking inspiration rather than example from nature. I also tried to express in paint ideas that came from music and other abstract phenomena.

In the summer of 1930 mother was taken ill at the beach. We had seen her ailing and visited her as frequently as possible. I was still her young son, and she always showed her wordless happiness when I came. With the years she became increasingly fond of Betty and learned to love her very dearly. Feeling that her end was near, this last summer, mother overcame her natural reticence and told Betty, in so many words, that she loved her. This was a revolutionary and monumental statement for her to make, for although she loved very deeply, she was not accustomed to speak about it. But now she wanted Betty to know, without any possibility of misunderstanding, her feelings toward her daughter-in-law. Betty in her turn was moved because she wanted nothing more than that my mother, who was so attached to me, should love her also. Betty had always known that mother was an unusual person (she certainly was an unusual mother-in-law). Knowing how loath mother was to use terms of affection, there now could be no doubt in Betty's mind about the depth of her feeling, for in the stillness of the night, mother, sharing the same room, unburdened herself a few weeks before she died.

I received a telephone call from the beach that mother was very

low. Betty and I rushed for the first train, and Lou was on it as well. Betty remarked how much like mother Lou looked. We all knew that the end was close and Lou reminisced about the past. I was very silent as Lou and Betty conversed. We arrived at the house twenty minutes after mother had breathed her last. Her final words were queenly directions to her sons to "take care of each other." No pity for herself, or complaint of the terrible pain she was suffering, just instructions to forget quarrels, to stick close together and to keep the family ranks firm. When mother died, father withdrew even further into himself, feeling that his own time would not be long in coming, and he wanted further to prepare himself for that eventuality. He drew a sketch for mother's tombstone that he knew was going to be his own as well.

II

THE CITY AS A CLIENT

CHAPTER VI

AT MILTON-ON-THE-HUDSON, we met friends of Fiorello H. LaGuardia, Tony and Gene Candeloro, who introduced us to the diminutive congressman from Harlem. I had always been captivated by the forthrightness and dominating character of the peppery little legislator, and although I lived outside his congressional district, I journeyed up to Harlem to help him in his campaigns. I soon learned that he was not an easy man to know intimately. For an extended period he appeared distracted, and seemed not to be listening to what I was saying. Then all of a sudden, he turned to me and said, "Why are you doing this? You are much too sensitive a person." His face lit up in a bright, warm smile. I was taken aback, but I answered as soon as I caught my breath that I did not like the rough-and-tumble of district politics but was fascinated by the larger issues of good government, and that he was the first politician whom I knew and admired. He seemed genuinely pleased with that response, and from that moment on, we were together in all his campaigns.

In 1929 LaGuardia ran for mayor and was defeated; I was with him then and witnessed his tears on the evening of his defeat. In 1930 he ran for Congress and was elected, and I helped in that campaign. In 1932 he ran for re-election to Congress and I saw him go down to defeat. Finally in 1933 he ran for the office of mayor and was elected; I was active in that campaign, and after the election he told me that Paul Windels was going to be his corporation counsel. "He will be in touch with you," was his way of telling me that he wanted me to join the Law Department and be part of his administration.

Oath of Devotion

The possibility of getting into public office had never been part of my consciousness, because I knew that political preferment was out of the question for one who was not a member of a dominant political club. That is not to say that I did not dream of public service. My appointment, therefore, as an assistant corporation counsel was purely personal and an accident.

I was to be sworn in to that office in January, 1934, and I was looking forward to the pleasure that it would give my father, to whom life had given so few worldly pleasures. However, in December, 1933, father was run down by a bus and was confined to his bed. Although he had no broken bones, he had suffered a great shock. He seemed to be getting along well when he succumbed to pneumonia. The last time I saw him alive, my brother was in the room with him. Thinking to cheer him up, he said, "Pop, Julie is going to work for LaGuardia. He is going to be a lawyer for the city." Father said nothing, although his eyes smiled a tired smile, showing me that he had heard, that he was happy and proud. But his thoughts were already very far away; he was prepared for death, and was not afraid.

Although Greater New York City is comparatively young, its component parts are ancient; New Amsterdam, Flatlands, the Bronx, Brooklyn, Gravesend, and others, all have traveled their individual historic paths. LaGuardia saw this new composite birth as a poet would see it. He saw the city grow as he stepped into position after position inside its bubbling turmoil and, in perspective, from the nation's capital. He was the poet of the new city. In his dream of the city-to-be he lost sight of no small detail, as the poet or composer loses sight of none of the innumerable details that go to make up his epic or symphony, and like them he saw it as one living, throbbing and growing unit. He envisaged the new city as a good place to live in, knowing its vulgarities, its coldness, its unformed grotesqueness, its cruelty, its callousness and its crime.

He never stopped hating that part of it, but he sensed its greater power, its resourcefulness, its healing qualities and its limitless opportunities. He made many mistakes, some of them prodigious, but in the large he was imaginative, heroic and ecstatic in his vision, and to a smaller degree in his accomplishments.

He detested slums, but he did more than decry them; he detested idleness, and strove for economic health; he was outraged at crime, and stretched out his strong arms to crush it in the most dangerous and powerful places. Fanatic though he may have been, he had the fanaticism of the great, recognizing no obstacles in his path. He was a prima donna and enraged many, but he gave dignity to municipal public office, making it not only clean but effective. He was a tyrant to his associates, but he also gave himself impossible tasks to overcome. He was all the more unsparing of himself because he knew, as no one else, the public paralysis that had to be surmounted. Disappointments did not bring him black despair; they only drove him to greater efforts. In mentally creating a city without illness, he planned for greater and more effective hospitals. We already accept the Health Insurance Plan and take it for granted. His broad plans for cancer research, unfortunately interrupted by the war, will bear fruit in the future. His constant preoccupation with cancer was perhaps in his last years more than a prophetic premonition of his own defeat at the hands of that enemy.

Like so many firsts, New York's position in aviation began with him, as the airport that bears his name so amply bears testimony. The criticism and invective that were showered upon him in the construction of that airport, the heartaches attendant upon its acquisition and building are all now forgotten. When he was attacked for taking land so extravagantly, he remarked bitterly, "Yes, ten years from now I will be attacked for not building six more." It is too easy to forget that, without him, neither LaGuardia Airport nor the one at Idlewild would today be realities. Aviation to him was pure romance and with it he wove an imaginative web

reaching from New York as its center with innumerable strands going out to all parts of the known world. It was no surprise that all the world's great beat a path to his door and, not through duty, remained with him in admiring conversation. His election as president of the Conference of United States Mayors was a tribute to his faith in the common destiny of all American cities.

And through it all LaGuardia, the demagogue, the bully, loved the people, understood their problems and genuinely wanted to help them. He was a complicated man: he was ambitious, he was arrogant and brooked no interference with his plans. These are very serious faults, but measured by his greatness, they are minor blemishes in a wholesome character. Resentment is apt to cause some people to forget the essential greatness of the man, for the memory of unkind words or unaccepted advice can easily blur it. Like a sensitive weather vane, he could be joyous one moment and terribly despondent the next. When he wanted to, he could be devastatingly magnetic.

He could reach the common man as few people in public life could do. He could inform them of the city's business (who could expound the city budget and the structure of their government better than he?). He could upbraid them like an angry father, and he knew how to amuse them at will. No phase of our busy life seemed too unimportant for him to talk about, where to buy the cheapest food, where to buy the children's clothes, the cost of illness, the vileness of politics and the viciousness of Nazi tyranny. What man, in forty years of public service, gave more of himself to his job, mercilessly driving himself seven days in every week? What man had greater physical courage, ridiculed about his restlessness in going to fires but leading the men in hazardous acts of heroism?

Although a reforming zealot, he was yet a practical one, and down to earth. Like all real people, he loved markets, seeing the market place as the center of the community. One of the first things that he did when he took office was to revive the Bronx Terminal

Market. He re-established the free port of Staten Island for world markets, and planned a tremendous new composite market for lower New York, which only time and the war prevented him from carrying to fruition.

LaGuardia was at one moment vulgar, at another he was off on a poetic flight. He despised gangsters and racketeers (he had met many in his earlier years). He would have loved being at once mayor and district attorney, as an earlier fine mayor, Edward Livingston, was in 1803. Fanatically honest himself, he refused to condone the slightest graft. For weeks he made my life miserable until I had recovered from a Bronx Terminal Market merchant $2.39 which he had illegally received in electric current from the city. The very smallness of the amount was just as dramatic as a very great one would have been: he was psychologist and showman enough for that. "City Hall is no longer an employment office for unemployed politicians," the Mayor said.

LaGuardia was a combination of ruthless executive who combined great vision with extraordinary courage and a warm heart. Others may have been as fine or better executives, certainly many were outwardly kinder, but no man in our city government ever possessed such a fusion of strange qualities that were dedicated to a better city.

Over twenty years' association with F. H. have left their indelible mark on me and it did upon many others who worked closely with him.

Late in November, 1945, about two months before he relinquished his office as mayor, I had a long conversation with him in his office. He wanted to talk over his business and his personal plans. I discussed the purchase of his home at Riverdale, his office lease at Rockefeller Plaza, and then I said, "Major, I suppose you're going to write your autobiography?" He looked at me quickly and said, "Have you got a publisher?" I said yes and mentioned the name. He seemed to reflect. "Well, four or five other publishers want it," and proceeded to name them. "I don't think

I'll ever finish it. If I don't do it next year, I'll never do it." He never did complete it.

LaGuardia being in a reminiscent and reflectively sad mood, I told him of something Dr. Herbert V. Evatt of Australia had said at the previous Anzac Day celebration. After the church ceremony Dr. Evatt held a reception at the Roosevelt Hotel. Betty and I were in the receiving line when LaGuardia came in, saw us, chatted about New Zealand and took his place before us. When he had had a few words with Dr. Evatt and departed, Dr. Evatt asked me if I had brought La Guardia to the reception. I said I had not, but that nothing about the Mayor ever surprised me, that he was the most vital person I knew and that he was always alive to everything happening in the city. Then Dr. Evatt said, "You know, Mr. Isaacs, we in Australia know only two men in America, Roosevelt and LaGuardia, both great men." When I repeated this conversation to Fiorello in that November, 1945, conversation, he said hastily and very sadly, "Yes, and both of us dead."

The former Mayor died on September 20, 1947. Betty and I visited Marie and the children at their home in Riverdale. On greeting me Marie said, "Fiorello never did get time to enjoy the house, except that he did love being in the garden the first few days." She told us that only one week before he died he had said, "I wish the doctors would hurry up and get me well, I have so many things to do." Those things will now have to be done by other hands.

It was typical of the man that his final public service was giving food to the world's needy as Director General of UNRRA. He passionately saw food as the most powerful weapon for peace. He conceived a world granary plan under control of the United Nations whereby there would be established a world reserve of food surpluses. And the poor did not forget him. At his death there was such an outpouring of the simple people, thousands of whom waited hours for the cathedral's opening to bid him good-by, and in the rain lined the streets to catch one last glimpse of the depart-

ing funeral procession, that it was again revealed how everlastingly and uniquely he had won the affection of the millions he was pledged to serve. I watched at his coffin the endless line pass by. Parents lifted their children to see the "Little Flower." Some had scribbled notes to him and dropped them into his coffin. Others, poor in purse but rich in emotion, brought weeds for floral tributes and the police, with fine understanding, permitted these offerings also to be placed beside him. He fought for the plain people and they loved him. In the line waiting to view the body was Justice Philip J. McCook who had three times sworn in LaGuardia as Mayor and once before as President of the Board of Aldermen. The judge refused to slip into the cathedral through the side entrance, but preferred to wait the hour and a half in line with the other people.

LaGuardia in his scorn of form and convention infuriated many whose knowledge was more precise. He did everything unconventionally and to the traditional politician that was sacrilege. He was always described as volatile and ultra-emotional and it was said that he thought with his glands. Those who knew him intimately were keenly aware that his excitement was often a technique for getting things done after anxious periods of self-searching debate. He was full of emotion but he also sought reverie and quiet. Though not a ponderous scholar he was a penetrating student and critic of public affairs and always made careful distinctions between the feasible and the visionary. It was surprising how many different peoples he understood. He knew them through their history, their languages (some of which he spoke), and their national ideals. His horizon was very broad.

The Mayor's philosophy was based on a firm belief that people are essentially good but that they are made bad by society. He really felt that if we remade society by better laws, better housing, better health, we could remake people. I do not know if he ever read Jean Jacques Rousseau's *Social Contract,* but if he had, I am sure he would have agreed with much of it. He read very little; he

would be the last to lay claim to pedantic scholarship, and I would be the last to attribute it to him. I do know how much he admired academic training as a fundamental to a professional career, but he was pragmatic in his belief that scholarship had to be put to society's use. It was not enough if it improved the broad kingdom of the spirit. In the arts he was more at home. His love for music and painting was instinctive but very conventional. He was utterly sincere in his efforts to develop music, painting and sculpture in the young. He thought that these interests made people more contented and better citizens.

F. H. always had the urgent desire to conserve and expand New York City's business. He envisioned, in addition to larger airports, monster markets with rail and dock connections. He tried to bring some of the moving picture industry here from Hollywood. He tried time and time again to encourage the use of Warner's old Vitagraph Studio in Brooklyn and one in the Bronx and the Movietone Studio in Astoria. He hoped even a small and very inadequate start would draw more production here to the center of our life and in proximity to Broadway with its reservoir of talent. In addition to the obvious economic advantages to his city, he was artist enough to feel that the New York theater was bound to have a salutary effect on the movies.

That the Major should give his attention to the cinema, to the theater and to the arts generally would surprise no one who came into contact with his dramatic person. His sense of the spectacular was unusually keen and the drama of life took hold of his own fertile imagination and held it enchained. I know all about this strong man's passionate outpourings. I think that the expression "passionate thought" most nearly conveys the quality of his mental process. I have seen it at white heat. I have seen it in reflection as he talked in mellow relaxation at the Airport or the Advertising Club.

I have been with him as he sipped his black coffee and smoked his cheap cigars or corncob pipes at his desk (he never went out

to lunch). I have seen him flare up at his commissioners with quick impetuosity and loud language or say to his secretary, "You're fired, and don't use that as an excuse to go to the ball game." But it was easy to recognize behind those Latin ragings a mask which hid a calm and calculating mind. There was a vast stream that fed his soul, and he was completely aware of what he had to do and what he wanted to achieve in every one of the forty years of his public service. Years before 1933 a friend trustingly said, "Fiorello is going to become Mayor of New York." "What makes you say that?" "Well, F. H. said so." And with his many friends, what LaGuardia said always went.

Politician to his fingertips, he yet loved the people and was consecrated to their well-being. At the opening of each new housing project he was genuinely happy and his happiness was contagious. The "little people" felt it and they laughed. At Vladeck Houses he put on a great show. He acted for the women and children; he pantomimed, he grimaced. He took the children in his arms and the people were comforted. Even in his fun-making there ran a streak of deadly seriousness. He developed the habit of thinking about public housing in terms of realities and not mere plans or even beautiful blueprints which to so many politicians had served as substitutes for accomplishment. Many people had talked about housing before LaGuardia, but he was the first to do something concrete about it.

In no small sense the "Little Flower" pointed the way to political maturity. He believed in no clichés, he was completely independent of established rules, and he owed responsibility to no one but his conscience and the people. And to him the people literally meant the small person. He certainly was not the darling of Wall Street, yet city bondholders knew that city finances were healthy as long as he remained in office. He carried no political banner and yet the politicians feared and respected him.

This New York boy loved New York City more than any other place on earth. At his last broadcast from his desk at City Hall he

said, "I love my city" – and yet he told me that he would love to have settled in Arizona after retiring from office. This was the paradox LaGuardia. This tough realist who could teach Tammany Hall tricks in the rough-and-tumble of ward electioneering, and could melt to tears at the sight of children in want, was the paradox LaGuardia. This tireless slave driver could push everyone before him toward objectives he considered right in a dictatorial manner reminiscent of Napoleon, and yet hated Hitler and fascism, long before it was popular to do so, with all the venom at his command.

The Sunday noon broadcasts over the municipal radio station, delivered from the Mayor's desk at City Hall, could on occasion be a three-ring circus. For these he never prepared a set speech. He had slips of paper in front of him to remind him of subject matters to discuss. He would be jumpy for some little time before the broadcast was to begin at the stroke of noon. This was his own special kind of stage fright. He continued to collect information up to the last moment, even asking someone in the room to supply him with a fact after he was on the air. It was part of his showmanship to do this not furtively, but openly, right into the microphone, for all his listeners to hear, as if they too were in the same room. Then, after the musical signature that was so familiar to all his audience, and the announcer's introduction, he shook himself, set himself nervously on the edge of his chair and attacked the microphone. He spoke very close to it, threateningly. He grimaced at it, he cajoled it, he shrieked into it, he spoke tenderly into it.

On the last Sunday in December, 1945, he delivered his Christmas talk to the accompaniment of appropriate music. Assisting him in the half-hour on the air were a tenor, a small orchestra, and the Collegiate Chorale under the direction of Robert Shaw. The Mayor was the impresario. There was no doubt who was the boss of the show. He signaled instructions to the tenor, nodded in approbation of his rendition, ordered the radio technicians about and gave cues to the orchestra and to Shaw as the latter directed his chorus in

Christmas music. After the performance he relaxed far back in his chair, horn-rimmed spectacles removed from their familiar resting place on his forehead and thrown on the desk, smoking a cigar and nodding charmingly to the plaudits of the audience. "Do you think it went all right?" he would ask several people. On ordinary Sundays there would be calm for about an hour, then the room would be cleared and the chief would start a series of conferences with commissioners and others. On this Christmas Sunday the mood was entirely different. He wanted the people to stay and talk. A note of sadness and nostalgia gripped everyone there. The "Little Flower" was saying good-by to City Hall. It was the end of an era unique in New York's history.

It is entirely appropriate that the United States Conference of Mayors, whose president he was, should endow a chair in municipal government in the Woodrow Wilson School of Public and International Affairs at Princeton University as a memorial to him. No other mayor in our time gave greater essential dignity to that office, or proved more conclusively that a great city could be honestly managed without a political machine. In his conduct of the office of mayor during twelve years, he ran a kind of university of his own, training scores of young men for a public career through his own brand of municipal government philosophy. The graduates of that hard school will show up in the future when the city is again ready for them.

If LaGuardia was a sincere liberal, why did he not safeguard the appointment of Bertrand Russell to the faculty of the City College? The question is not an easy one to answer, because LaGuardia's was far from a simple mind. Essentially a religious man and a churchgoer, he was fearful that Russell might do violence to the reputation of the college, an institution supported by public funds. La Guardia was well aware of Russell's magnificent intellectual achievements in mathematics and philosophy, and all things being

equal, he would have been proud to have had Russell on the faculty and proud to have proclaimed that he put him there. But while LaGuardia admired fine scholarship his whole life was built upon the sanctity of the family and established morals. The accusation that he was a prude or a bluenose may be partially justified. He was the man who banned burlesque houses as "glorifying filth and lewdness," and he was set against salacious magazines.

City College had just gone through the wringer, having attained the unsavory reputation (entirely unjustified) of harboring Communists and being a hotbed of other forms of radicalism (also entirely undeserved), and he was disinclined to add any fuel to this fire. He knew also that if anything untoward occurred in the student body in the way of radical outburst, the charge would be immediately leveled at Russell that he had incited it. A year or so after the court battle that made it impossible for the philosopher to become a member of the faculty, Russell visited our home after his lecture at Cooper Union, and we talked about the situation over a pipe and a Scotch and soda. While he had no caustic criticism of LaGuardia or the courts, he was very pessimistic over the prevalent conception of accepted morals.

While on the bench I made occasional Sunday visits to LaGuardia at his Riverdale home, where he always liked to have friends about him as he delivered his radio talk to the people. A dozen intimates would be in the high-ceilinged studio as the Major sat at his desk, dressed in smoking jacket, fidgeting in his chair until the time to broadcast arrived. After the broadcast a few would stay on to join him in a smoke, a cocktail that he enjoyed preparing himself, and further conversation about public figures and matters appearing in the local press and some details of foreign as well as local politics. These intimate and revealing discussions showed that the former Mayor had not lost touch with affairs and that he was as well-informed as when he was in City Hall. Except on those Sunday mornings, when he was completely relaxed, he was usually a heady draft to take, for his mind was always in an intellectual

ferment, resting on one matter for a very short time, and promptly jumping from that to engage in a dozen other crusades. Upon a rare visit to his office in Rockefeller Plaza, I saw how he kept in constant communication with all manner of people in all walks of our local and national communal life.

When Fiorello came back from his trip to Europe and Russia as Director General of UNRRA, I noticed, as did all his other friends, how much weight he had lost. It was apparent that he was sorely troubled about world conditions in general and the food situation in particular. It was then that he wanted to quit the job, for the thought of starvation anywhere always made him very despondent. "There just isn't food to go around over there," he would keep repeating. He would talk very little about the personal contacts he had made abroad. Joe Lilly repeated the story of LaGuardia's visit with Stalin. Lilly accompanied him on that entire trip and wanted very much to be present at the conference. But LaGuardia said to him, "You go with the correspondents to see Lenin's tomb. We'll meet after my talk with Stalin." That night, when they came together again, Joe said to LaGuardia, "What did you get out of Stalin?" LaGuardia quickly responded, "What did you get out of Lenin?"

A few days after LaGuardia's death I met George Britt, managing editor of *Survey Graphic*. George said, "You know on that Saturday of LaGuardia's death, I was at the office and I started several times to write a piece about him, but each time I tore it up. He's a very difficult man to write about." That is so true because of the impossibility of catching the ever-changing lights of his personality.

The Mayor was always amused by the human incidents in the Magistrates' Courts, a forum he could best understand, for he of all men appreciated the irritations and motivations to evil that the poor are heir to. And he was interested in the decisions of that court because those decisions involved deep human conduct. The homey items in this commonplace criminal court amused him,

angered him and gave him constant material for his Sunday broadcasts.

Although the Major made no pretense of being adept as a practicing lawyer, he yet saw broad legal issues quite imaginatively. His actual legal experience was limited because forty years of his life had been almost completely occupied with public affairs, in the consular service, in the Congress and in the city government. He had spent a short time as a deputy attorney general of the State of New York. He proudly told me that he had once handled a condemnation case for the city as special assistant corporation counsel. By and large, he had neither the patience nor the training to be a fine lawyer. He was too savage a critic and too full of prejudices to have the required objectivity. In spite of these limitations he was deeply concerned with the litigation in which the city was a party, the hundreds of suits involving grave policy questions, budget, transportation, civil service, real estate, zoning, taxpayers' suits and others. He had many ideas on the conduct of this litigation and much of it was very practical, ingenious and sound.

In 1945 LaGuardia chose Newbold Morris to run to succeed him as Mayor. I first met Newbold as an associate in the Law Department. He was then very young, modest and very eager to make good as a member of the new city government. He had his eyeteeth cut as a member of the Legislative Division, a wonderful training ground for a young lawyer starting out to make a career in public service. During the legislative session, as soon as bills are returned from the state printer they are preliminarily examined by this division and routed to city departments and officers for information and advice. Thus both the city government and the division keep informed of the effect of proposed laws and their effect on the government. Since a great number of bills introduced in the Legislature affect the City of New York, this division collates all the material to enable the city to urge or oppose their passage. In addition, the division prepares the measures of the city's legis-

lative program for introduction in the Legislature at the behest of the mayor and with the supervision of his legislative assistant.

This was a wonderful background for a young man who was quick to learn, perceptive and judicious. Newbold showed an immediate aptitude for this important work. The step to become, from an assistant in this division, one of the city's lawmakers and later President of the City Council, the local legislative body, was a natural one. His enthusiasm was always a breath of fresh air to those who worked with him in those days as it was in his later and more important public career. He made friends very easily on the Fusion side as well as among the opposition. Completely honest and loyal to his friends and to the City of New York, he soon rose to be a tower of strength to LaGuardia in advancing his policies. He grew naturally into the positions that he held, and he seemed to take them all in his stride. As President of the City Council he conducted the meetings with dispatch, good humor, and dignity.

His interest in the city's business, combined with a score of directorships in public and social causes, including the City Center of Music and Drama, in the creation of which he was a prime mover, was more than the public could expect of one man. I worked with him closely on the City Center and I know the time and effort he expended on this one work alone.

I also worked with him when he was a member of the Committee of Acquisition and Disposition of the Board of Estimate, composed of Deputy Mayor Rufus McGahen, Comptroller McGoldrick, who, together with the city director of real estate, Lee Thompson Smith, had the responsibility for the management of the city's real property. As the chief real estate lawyer for the municipality it was my responsibility to advise this committee and I met with them frequently. Lee Smith later resigned his office to become president of the Lawyers Title Corporation. Outside of city office, he continued his interest in public affairs that had started when he had been foreman of the runaway Grand Jury that resulted in the

appointment of Dewey as special rackets prosecutor in New York County.

Newbold has always had an abiding love for the city and has given everything to its physical and spiritual advancement. After his defeat for mayor in November, 1945, LaGuardia appointed him a member of the Planning Commission, a position he held until early 1948. In all his public and private work he has shown the same faith in the future of the city, in its possibilities for good and in the improvement of the people in it, with the same imaginative insight as LaGuardia, whose political heir he is. He has unselfishly continued with his youthful crusading spirit to give much of his time and energies to matters of public concern, often in a politically unpopular manner.

One of the outstanding members of the Fusion team was Joseph D. McGoldrick, the congenial and self-effacing professor of government at Columbia University, who became a deputy comptroller when the first Fusion government was elected. With the premature death of his chief, Comptroller Arthur Cunningham, he went out of office, later to be elected comptroller. He was a valued member of the Charter Commission that drew up the advanced constitution of the city that went into effect in 1938. He brought to the office of comptroller scholarly industry, a keen understanding of finance and an equable temperament. His quiet, unassuming modesty has always belied his fine insight into city business and his sharp and deep knowledge of its affairs, for he is an acknowledged expert on municipal fiscal matters.

Always friendly and easily accessible to his associates and to the public, his reluctance to engage in public battle on the Board of Estimate set limits to his capacity as a great public executive. I was in an excellent position to see his fine abilities and I learned to admire them unstintingly. I saw him do fine jobs of conciliation; I witnessed him in important negotiations as I collaborated with him for eighteen months in the plans for the new airport at Idlewild, and in the negotiations and drafting of the leases with the

air lines. During the war I worked out with him the complicated negotiations with the Army and the Navy for the sale and use of city property of all kinds. In all these matters he graciously referred to me as his personal counsel.

During the period of hostilities, the Mayor appointed a title vesting committee, composed of the Comptroller, the chief engineer of the Board of Estimate, John C. Riedel and myself. The Board of Estimate continued to pass resolutions to take title to property for public purposes even while the war was in progress. It was our function to decide when to advance these proceedings. The determination depended upon whether it would be advantageous to own the property and to pay its carrying charges while we waited for materials with which to build. We met regularly, keeping in mind the city's postwar program and being careful to take the property needed for that large program off the tax rolls gradually so as not unduly to affect the city's tax position.

Later, as we neared the end of the war, an accelerated program was agreed upon that planned for the gradual and steady acquisition of land needed for the postwar program to have the land available when the war was over and in order to cushion the shock of acquisition. As I had discussed this plan at length with McGoldrick and Moses, the Mayor asked me to work very closely with the latter on all phases of its implementation. One of the earliest elements in the program was the coordination of the proposed State Arterial Highway system with the expressways and parkways in the city limits as part of the State system.

No story of the Fusion government would be complete without mentioning Stanley M. Isaacs, a man who has devoted a lifetime to the public welfare. I met him first in World War I when he was chairman of the local draft board in Yorkville and our paths crossed again more intimately when he ran for and was elected to the office of president of the Borough of Manhattan and became a member of the Board of Estimate.

His great talents as a public planner showed themselves in the

design and construction of the East River Drive as a streamlined highway along the water front, abandoning the plans of his predecessors, who thought a water-front drive impossible of construction. This unusual and advanced highway will always remain as a monument to his imagination and his executive ability.

The acquisition of the land and the building of the highway presented most unusual practical and legal difficulties. As his counsel in these matters, I collaborated constantly with him and his commissioner of public works, Walter D. Binger, both of whom were meticulous to protect private property rights and to make adequate payment therefor. But they worked out a scheme that proved to be most economical to the city, saving millions of dollars, and leaving the water front more beautiful than before and more economically beneficial as dock property. It was arranged with the property owners, part of whose land was taken by condemnation for this great public purpose, to provide them with even better access to the water front and to give them greater and more improved facilities for wharf usage, as a result of which the claims in condemnation were reduced in many cases to the sum of one dollar.

Since the city was undertaking this tremendous construction job in any event, it was found advantageous and economical in some cases to build tunnels under the new East River Drive leading from the river to the slaughterhouses or manufacturing plants. In this manner coal and other materials theretofore transported by barge could continue to be delivered in the same manner, thus eliminating tremendous claims for what is technically known as consequential damages and actually enhancing adjoining property values. This was quite an innovation in such proceedings, especially when carried out on such a large scale.

Responsible property owners also caught the spirit of this unusual enterprise and did not hold out to make enormous kills out of the intricate takings involved in the proceeding. Before we could consummate the deals we had to admeasure with the help of real-estate appraisers, engineers and water-front property experts, the

value of the land taken in order to offer an equivalent amount in work. One of my staff, who did fine work in preparing the agreements, was Joseph G. Vickers.

Stanley Isaacs was the spearhead for all this work. Sincerely devoid of the machinations of crass politicians, he eliminated needless political jobs. He was refused the renomination for Borough President, a great blow to himself and to the city. He was courageous enough to disagree with LaGuardia and LaGuardia was not pleased. There is little doubt that the Mayor let him down in his fight for renomination as Borough President. He was succeeded by Edgar J. Nathan, Jr., later elected a justice of the Supreme Court, who continued the fine work of his able predecessor.

Each year on the Wednesday before Christmas, the most glamorous of all city parties took place when Commissioner Robert Moses invited a group of city officials to celebrate the festive season. The Park Department offices at Fifth Avenue and Sixty-fourth Street were decorated for the occasion and as we plowed through the snow toward the Arsenal we looked for the enormous Christmas wreath that pressed against its walls. Park Department employees met the guests at the threshold and escorted them in. Public officials and their wives made merry under the gracious auspices of Mary and Bob Moses. Alfred E. Smith and his wife were there, so were LaGuardia and his wife.

At one of these parties Governor Smith sat in the swivel chair behind a large desk with his expressive hands relaxed and folded upon the desk top while an artist sketched them. He threw a kindly smile in her direction, giving her confidence that he would hold the pose, all the while acknowledging the greetings of his many friends and apologizing for not being able to shake hands with them. He smiled quietly behind the big unlit cigar that rested in his mouth. The famous brown derby was on the rack near him.

Mrs. Smith, Mrs. LaGuardia and Betty were discussing cooking recipes while a waiter passed and repassed with delicious hors d'œuvres. LaGuardia looked longingly at the tempting array of food, "I'd love to have some," he said, "but Marie is going to have corned beef and cabbage for me, and she'll be very angry if I don't eat it all." With a wink at me he stole one or two delectable tidbits, which he ate as he sipped his Scotch and soda.

Smith and LaGuardia were good friends, for they understood each other very well. Never of the same political party, they both had the same high standards of public service. Both had availed themselves of the extraordinary talents of Bob Moses, who was Secretary of State under Smith and Commissioner of Parks under LaGuardia. This triumvirate was a classic one, each dynamic in his own right, each an "original." They spoke to each other in a kind of stenography of their own, without long explanations, few words employed to express a wealth of ideas in national, state and city planning. Smith and LaGuardia were both past masters of budget exposition.

It was often a mistake to try to take these men literally. I know that LaGuardia often did not intend to have his remarks taken so. He would dismiss one of his commissioners at the end of an interview with a "Good-by. Keep in touch," or to someone who had been trying to make an appointment with him for months and finally was received for a few brief moments, "Thanks for coming. See you tomorrow." The dazed person was on his way out. "See you tomorrow." What did that mean? He probably never saw that person again.

Robert Moses moves among his guests, peering closely into each person's eyes, asking a pertinent question or stating a terribly frank opinion about a person or idea. He is one of the most self-sufficient public servants I have ever met; he is almost a government unto himself. Of fine scholastic attainments at Yale and Oxford, a Republican, starting as Secretary of State under a Democratic Governor whom he loved, he has long been criticizing

theorists whom he calls "the long-haired boys." Ever ready with an opinion on public questions, and not always a popular one, the politicians say that he has not endeared himself to the public. That is the reward for being cruelly frank and devoid of political sweetness.

He gets along well with people socially, is informal and has no pomposity. He is a pungent writer and is in the habit of dipping his pen in vitriol. Moses is ruthless in his analytical attacks on vital civic problems and this cold reason always lends an intellectual excitement to working and talking with him. He has the capacity for selecting excellent workers from all walks of life, possessing the unique knack of making them intensely loyal to himself and to the causes which he espouses.

A great builder and planner himself, he has always vehemently attacked sharp changes, denouncing proposed air parks as "sheer buncombe," opposing a new opera house in Central Park, and abhorring parking lots under Bryant Park and other park areas. He has always scored people who would encroach on public parks and destroy their natural beauty, always refusing to permit Coney Island gadgets and chute-the-chutes to filter into the parks.

We had many long discussions around the luncheon table in his office on city business, politics, land valuations, on city planning, on state arterial highways, expressways and throughways, but always in terms of a specific plan and specific legislation on which we worked. He has seen large-scale housing in terms of sound investments by banks and insurance companies, and he was the moving force in inducing the Metropolitan Life Insurance Company to embark on the tremendous and successful undertaking of Stuyvesant Town.

CHAPTER VII

I MET PAUL WINDELS first during the 1933 mayoralty campaign. When my future chief was selected by LaGuardia for the titanic task of cleaning up the city, he was a comparatively unknown public figure although he had already been counsel to the Port of New York Authority. When I called upon him in his unassuming office, this man who had been selected to head the largest law office in the city, won me immediately by his refreshing modesty and forthrightness. In a few weeks, with the aid of Judge Samuel Seabury, Charles C. Burlingham and George Z. Medalie, among others, he established a municipal law office that was at least the equal of any outstanding law firm.

Windels was determined in cases involving fraud and corruption that the city's case be won, and he had little interest in explanations or excuses. He wanted things done and in a professionally superior manner. In the Bergen Beach land steal he said to me, "There is no substitute for accomplishment," and where he knew we were right, no substitute would be accepted. In this connection he almost had a fatalistic belief that right must triumph.

My first assignment was in the Tort Division, where I tried many cases, defending the city against accident claims. My chief was Matthew J. Troy with whom I sat, years later, as a justice of the Court of Special Sessions. People who fall on the street sue the city for failure to keep the sidewalks in repair; after every snowstorm a deluge of cases hits the city for injuries claimed to have been suffered through negligence in failing to remove snow and ice; parents start suits against the city when plumbing supplies outside a store fall upon children who run into them and upset them; suits are started for injuries in schools, hospitals and other

public buildings and when children are injured in climbing into boarded-up buildings, on the ground that these nuisances are attractive to young energies seeking new experiences in play. People injured while riding in the subways sue the city, as do those who are struck by city vehicles or whose property is so damaged. When water mains burst, the owner sues the city for flooding his cellar and damaging his property and things stored there.

The trials of these cases gave me a comprehensive picture of the maze of the city's sub-street structures, arteries that are as fascinating in their complexity as the human nervous system. As if by X ray, the vast underground world beneath our streets was laid bare, showing the huge subway tunnels, the special tubes for mail, the huge main water lines with smaller ones going off into the side streets and still smaller ones connecting our homes, the sewers and the smaller steam pipes and the electric and gas cables.

The witnesses the city's trial attorneys have to examine and place upon the stand include, among many others, doctors, nurses, engineers, architects, drivers, ferryboat captains, dock workers and those who clean the sewers. One diminutive city employee whose duty it was to repair and clean the sewers entered a manhole at Amsterdam Avenue, lost his foothold and was swept into the East River, none the worse for wear. Street hazards may be fantastic — a police officer commandeers a taxicab in pursuit of a criminal — in firing a shot he wounds an innocent pedestrian, and the Board of Estimate may award him compensation as an equitable claim. A building collapses and suit is started against city departments. Some of these claims are just, some are exaggerated, others are entirely false. Some think that the city is the insurer of the people's safety, a premise that, if accepted, would quickly result in municipal bankruptcy. It was my duty to defend the city against unjust claims, but I always considered my relationship to the city and the claimants to be a dual one. Although counsel to the city, I yet felt a duty to the citizens who made up the community and whose positions were only temporarily adverse to the government.

Oath of Devotion

A Health Department employee was accused of taking graft and permitting the delivery of bad milk into city stores. Becoming convinced that his activities had been discovered, he filed his application for retirement and sought a city pension to which his years of service would otherwise have entitled him. As a result of the record I made in trying tort cases, I was assigned to defend the action brought by this employee in his effort to receive a city pension. This was an important test case, and both Windels and the Mayor were interested not only in its outcome, but also in its general effect on the city's personnel.

The Commissioner of Health had prepared charges against the inspector who "tried to jump the gun" by filing his application for retirement before the charges could be served upon him. He moved with his family to an upstate city and the charges were never served. The successful trial of that case in the Supreme Court prevented this employee from securing a life pension at the expense of the city. Justice McGoldrick ruled that there was no "rosy path" to a pension annuity, and that before he could secure one, the applicant must seek reinstatement into the department and stand trial, one thing the inspector did not want to do. I was assisted in this case by Leonard M. Wallstein, Jr., and Philip E. Birman, two very able lawyers.

The employee never sought reinstatement, for the proof of his misconduct was overwhelming; instead he took appeals, but he was unsuccessful in compelling the grant of a pension. He was permitted, however, to withdraw the contributions he had made to the pension system for that was his own property.

When this case was closed, I was called upon to investigate the outrageous condemnation award of $2,569,000 (with interest, it amounted to over four million dollars) for partially submerged land which the owners had purchased, a few months before the city acquired title, for only $325,000. This was the famous Bergen Beach (Jamaica Bay) case which, on application of our office, the courts later opened up. LaGuardia characteristically called this

land a "prize package of marshland where the wild waterfowl live undisturbed."

On January 1, 1934, this judgment, which on its face appeared valid and binding, was hanging over our heads. The time to appeal had expired. I was called in to see what could be done about reducing this ruinous award. In spite of my lack of experience in the field of land acquisition, I agreed to undertake this onerous task. We had very little time because the claimants were clamoring for their money and were threatening to mandamus the comptroller to pay. I set about making a back-breaking examination of the facts, and after six weeks' analysis of the history of this nefarious transaction, we made the first unsuccessful application to upset the award.

I had not gone very far in my investigation when I wrote a preliminary recommendation to Windels that read as follows: "The city can better afford to lose than to do nothing." Windels, a Brooklyn citizen, held this case so important that I saw him almost hourly for the six weeks of the investigation. I knew that he would suffer no rebuff and that he would not rest until this great public wrong was undone. Finally, another of our assistants, Phillip W. Haberman, Jr., with the aid of the Department of Investigation, dug up the actual fraud which enabled Judge Conway, now on the Court of Appeals, to open up the case on the second application and to order a new trial.

This case was a shocking revelation of the fraud, political manipulation and collusion between city officials and land speculators, as well as the utter lack of care with which the city had formerly tried its cases. A ring headed by a politically favored speculator bought the land in 1925, immediately prior to condemnation. Most of the land was completely submerged by water. They said they bought the land cheap because it had a defective title and they perfected it. They did this with the connivance of high-placed public officials by obtaining from the city, without consideration, a gift of a quitclaim deed to some land under water,

just as the condemnation proceeding was being authorized. The city then proceeded to buy back the land with the gift attached.

To cover up this dubious transaction with an air of some respectability, the owners' attorney agreed not to use the city's quitclaim deed to increase the claim for damages. The stipulation, however, disappeared from the files of our department and was violated at the trial. In this case the city used one of its appraisers, an "expert" who himself had an interest in some of the property condemned. There were three such "experts" used by the city, all of whom, by some miraculous method of valuation, came in with appraisals that were alike, word for word and penny for penny. This was a telltale giveaway of the system then employed to give fees to several "experts," one of whom made an appraisal which was then copied by one or two other politically chosen hangers-on, all of whom received equal fees from the city.

Upon the new trial before Justice Lockwood, the claimants were awarded $585,000 with interest. In money the city saved $3,240,000, but the opening of the case did more than that. It gave notice that the condemnation racket was over, and a three-year battle was won. The saving in this case was applied to the new Brooklyn Bridge Plaza and Civic Center, as a front entrance to the Borough of Brooklyn, and as a monument to the perseverance and ability of the Corporation Counsel. LaGuardia cited this case as an outstanding concrete example of what the city's new deal meant.

Another case amply deserves the name it was given, "Larceny Park." There another well-connected real-estate speculator bought some more land completely submerged under Jamaica Bay for $10,000, with a $50,000 mortgage. This purchase was prophetically made just before the city decided to condemn it. One of the city's "experts" used upon the trial could not even describe how to get to the property. The court awarded more than eight times the purchase price. We attacked this judgment and succeeded in reducing the award to $80,000, resulting in a saving of about $650,000 including interest.

A similar attempt to get $9,000,000 from the city during our administration for marshland in Gerritsen Basin resulted in the claimant getting nothing, in the last of the land-grab cases. The claimant bought up claims of title under a Dutch patent of 1636 covering 1,800 acres of islands and marshes in the western part of Jamaica Bay. They paid about $30,000 for quitclaim deeds from the descendants and assignees of the persons named in the patent three centuries ago. One of my assistants, Arthur H. Indell, proved from ancient documents that title to these lands lay in the city and had not been divested by private colonial patents. We were thus able to inscribe the words *"hic jacet"* over the last of the efforts to obtain easy money from the city's treasury.

We discovered interesting side lights on the manner in which sites had in the past been selected for acquisition. In Bay Ridge, the Board of Education was prevailed upon by a former Democratic leader of Brooklyn to select a site for a school, previously rejected as unsuitable because it was in an industrial neighborhood and in close proximity to factories, garages, an incinerator plant and gas tanks. He also selected the city's "expert," whose appraisal was $100,000 in excess of the value of the property as fixed by the city's Department of Finance. The Democratic leader received at least one-third of an award of $240,000 for a small part of the property which had been purchased for $57,000 and, appropriately enough, the city expert never rendered the city a bill for his "services."

When Justice Lockwood was about to retire from the bench on reaching the constitutional age limit of seventy, *The New York Times*, commenting editorially on his fine work in this field, wrote as follows:

"One of Mr. LaGuardia's early and most noteworthy reforms was to end the condemnation racket, under which the city was milked each year of many millions of dollars by a ring of unscrupulous lawyers, aided by official corruption and judicial inertia, in the process of acquiring land for public improvements."

It is only fair to say that a great contribution had been made by a former Commissioner of Accounts, Leonard M. Wallstein, Sr., in his report on condemnation in 1932 which laid the foundation for some of our investigations.

Our office was imbued with a driving pioneering spirit to undo the neglect of many previous years. We dug deep, we read much law, we examined hundreds and hundreds of witnesses, and fanatically dug up all the old records. Many must certainly have been struck with the transformation of city offices from "morgues" into which twice a month the officeholders crept to receive their pay checks, into a beehive of activity that went on all hours of the night, and over many a week end.

The young, ambitious assistants who made up the staff in the early years had been selected from the office of the United States Attorney, from the staff of Judge Samuel Seabury, whose relentless investigation had resulted in the defeat of Tammany Hall and the election of the Fusion Administration, and a third group of young lawyers who, like myself, had never before been in public life. The time was ripe for such eager crusaders. Momentous changes were then taking place in Washington, and it was no mere political coincidence that similar changes should occur in the city.

LaGuardia, I have said, restored dignity to public office in New York. More than that he brought revolution to City Hall, and the politicians could not believe what they actually saw. All political faiths were represented in our office, and there were many whose politics were unknown and unquestioned. In the twelve years I was there no one ever approached me with an illicit proposition. In the courts and among the fellowship of lawyers, our men were professionally as well as personally respected. No longer was there need to engage special, high-priced counsel to try an important city case; we met all members of the bar on an equal footing. I myself remember arguing a case against the great Samuel Untermeyer in the Supreme Court, and other assistants were given similar opportunities.

The City as a Client

The city's work, legal and non-legal alike, cannot be done without the unheralded assistance of the regular civil service staff. The mainstay of governmental systems are the men and women who remain at their tasks without fanfare and without the high prestige that they deserve. The claim that the civil service job makes the servant, and the business employee makes the job, is something less than a half-truth. It is as invalid as the broad assumption that all business is efficient and that all government is inefficient. All such claims ignore the many variations of human conduct and the forces that move people. There are many public servants who devote themselves to their trusts in a manner rarely found in commercial enterprises.

How widespread that attitude can be will depend in the future upon the public appreciation, upon the training and direction of better material toward government employment. Public service will be better when the public promotes a higher class of public servants, and finer officials and more dynamic leaders will emerge only when they are properly nurtured. If these men and women are inferior to their important duties, then our public system of education is largely at fault in permitting the haphazard selection of bad material and the improper training of talent better qualified for the tasks of government.

LaGuardia's relationship with his corporation counsel was unique. Never an active practitioner in the courts, he lacked the technique of briefing and the law vocabulary. But in the larger issues of public law he was usually instinctively right, just as Al Smith who was no lawyer was also usually sound in the same field. But it was like LaGuardia to ask the impossible of his corporation counsel, as he did of all those who worked for him. He was impatient too with the courts, and never hesitated to offer sharp criticism that did not make him very popular with them. He always preferred to place reliance on engineers and men of science, rather

than upon the legal mind which to him did not seem creative enough.

He was impatient with the negative attitude of lawyers who were always ready to tell him what he could not do. He, on the contrary, wanted to know what he was permitted to do or better still how he could legally do what was needed to be done. LaGuardia's contempt for lawyers was in the old American tradition, and he capitalized on this favorite and popular hate, to the irritation and amusement of the bar. This was a safe theme because even the early Chinese had a proverb that "Going to law is losing a cow for the sake of a cat." Notwithstanding his alleged aversion for the legal profession, which he was never loath to express in public and before bar associations, he always liked to play at the law, demanding from time to time to argue cases in the Court of Appeals. This he was permitted to do but rarely, and when he did appear in court his arguments were salty, homely, unlegalistic and effective.

The Mayor liked to play at being a magistrate. He would sit occasionally in traffic cases (as mayor he was a city magistrate). He once addressed a meeting of the Board of Magistrates and exhorted the members to be tougher on peddlers and not to be content with issuing one- or two-dollar fines as well as suspended sentences. When the meeting was over one of the magistrates said to him, "What would you fine a peddler?" He responded very quickly, "One dollar." Perverse as this may seem, and humorous too, LaGuardia again showed that he did not mean to be taken too literally. Like the artist that he was, he employed exaggeration to accomplish his effects. He meant and wanted to impress upon the magistrates that they should take peddling seriously and try to do something about it. He did not want them to feel that the appearance before them was perfunctory and that the quick disposition by a nominal fine was any final solution to the problem.

Windels was a lawyer for whom LaGuardia had great respect. Judge Seabury told me upon one occasion that Windels had added

the greatest ballast to the Fusion Administration. He handled matters very pragmatically and could talk the Mayor's practical language, and his political judgment was excellent. He possessed great courage, and had the knack of ferreting out hidden corruption. As an accomplished lawyer, he also knew how to translate the Mayor's requests into understandable legal instructions for the lawyers to use as a policy guide.

Windels selected the original staff of young lawyers, all highly talented and equipped with a high sense of public service. That tradition was maintained by his successors, despite the fact that many inroads were made upon the staff by private law firms who were anxious to tap this reservoir of talented young men. As a result of these friendly raids, as well as calls upon the office from other government agencies with more lucrative offers, there was quite a considerable turnover, and as replacements were made new men were selected on the basis of no other consideration but fitness and capacity for public work. Our Fusion office was a composition of Democrats, Republicans, American-Laborites, and Liberals, not to mention those who had no politics at all. Of the four corporation counsels under whom I served, Windels and Thacher were Republicans, Chanler and Wilkinson were Democrats.

After four years in office, Windels resigned to return to private practice and was succeeded by William C. Chanler, who had been Windels' first assistant for those four years and was entitled to a great deal of the credit for the accomplishments of the office. Chanler was more experienced in court, where he performed brilliantly, but he was not the executive that Windels was. This in no way detracts from his accomplishments, because his predecessor was an office executive that few could hope to emulate. Chanler carried forward the exceptionally high professional standards of the office and endowed it with a sense of comradeship and personal loyalty that was very rare.

When Chanler left to go into the Army, LaGuardia chose Thomas D. Thacher, previously a Federal District judge and Solicitor

General of the United States. A distinguished lawyer, a former president of the Bar Association of the City of New York, he was sincerely respected by LaGuardia, and unfortunately for the city remained as its chief law officer for only a year, when Governor Dewey appointed him a judge of the Court of Appeals. His pleasant informality endeared him to all.

When the Army requisitioned as military equipment fourteen of the city's snowplows for shipment to Russian airfields, the Army major called upon me with the official Government requisition. While there was ample authority for the Army to requisition the snowplows as military equipment, there was missing proof of a previous requirement that the chairman of the War Production Board clear this requisition, as required by the executive order relating to requisitions under the Act of October 16, 1941, as amended.

I took Major Stratton to see Judge Thacher about this matter. When I explained the difficulty in the omission of proof of the approval by the War Production Board, he agreed that for us to surrender the snowplows under the defective requisition might in the future prejudice the city's right to collect their value in court. He saw the problem immediately, picked up the telephone, asked for Under-Secretary of War Robert Patterson, and arranged for the latter to send him a telegram advising that the determination of the War Production Board had been made in accordance with the executive order. Within an hour such a telegram was received and the Mayor gave orders to Sanitation Commissioner William Carey to release the snowplows to the United States Army. Within a few months I settled our claim for compensation and received the Government check for $147,000. Thacher's previous association with Patterson on the Federal Bench enabled him to cut through all government red tape in no time at all.

Ignatius M. Wilkinson, the dean of Fordham Law School, succeeded Thacher as the next corporation counsel. The dean, a tall, affable, strong-minded public official, although resilient and buoy-

ant in the administration of the office, knew how to be very serious in attacking the city's law business. He was meticulous in maintaining the high standards of the Law Department, and would never suffer any exceptions in that regard. He so enjoyed his work that it was never too late to enter his office and talk over the day's business, or politics, or cases won or lost. He had great experience in the practice of the law, fine scholarship and sound, balanced judgment. I enjoyed his quick mind, his fine sense of humor (he knows how to tell a story, and one on himself). We established a warm personal attachment, and after he left the office it has been my pleasure to visit him at regular intervals at Fordham University to renew our rewarding conversations. He is a leader of the New York bar, having been president of the New York County Lawyers' Association.

For ten years Arthur L. Marvin was executive assistant or business manager of the department. Underneath his austere appearance he was kind and generous. When civil service found out that he was paying doctors' bills out of his own pocket and treating their individual problems with respect, their hearts went out to him. Arthur and his charming wife, Josie, loved to drive us into the country on free Saturdays. Arthur died in 1944. He knew he was dying. In the weeks before his death he liked to see me, to discuss his affairs and tell me of his uncompleted plans for the office. In many cases his recommendations for personnel promotions and civil service improvements were carried out. This and his fine work were the legacies he left to the city.

Because garbage was gold, the Brooklyn Ash Removal Company long prized city contracts for hauling off Brooklyn garbage, ashes and rubbish, and when its services were terminated after twenty years, on March 21, 1933, the company sued the city on the claim that the company's trucks had been overloaded during the last five-year contract period. They claimed 58 cents a cubic yard for all the alleged overload, for that was the language of the contract. During these five years, while the company was measuring all the

loads, the city's officials, knowing the purpose of the measuring took no measurements of their own. In fact when it came to trying the case we found that the city had no documentary proof to offer in contravention of the claim.

This was the largest contract case ever brought against the city, the company claiming $3,660,588 damages for its breach. The detail involved in the preparation of this case was staggering. Hundreds of thousands of transactions had to be examined and analyzed. Not only questions of fact and of law, but also intricate problems of geometry and optics had to be studied. In view of the tremendous sum involved, I was given carte blanche and authorized to engage the services of accountants, engineers and such other scientists as I might require. The work was difficult and knotty, and I had great fun digging my teeth into it.

The Ash Company committed one fatal error; they presented to the city, with their notice of claim, 3,000 photographs of loaded trucks. These photographs were placed in evidence, together with the testimony of many men who said they had measured the loads. We called in a professor of graphics, as well as our own engineers, to compare the photographs with the measurements. They analyzed the photographs and the alleged measurements so thoroughly that the company's entire case collapsed. We were prepared to prove that if the measurements and the photographs were both correct, the camera must have been, in many instances, ten feet underground. It did not hurt us either to show that some of the measurers were in saloons, when they should have been out measuring in the field.

The courtroom was lined solidly with steel cabinets that contained the records of these hundreds of thousands of transactions. The case was tried in the Supreme Court before Justice Ferdinand Pecora. A jury had originally been demanded, but my adversary, John F. Collins, and I soon agreed to dispense with it, stipulating to have the entire case decided by the judge.

The company's attempts to prove the overloading were farcical,

as witness after witness was demolished on cross-examination. The trial was halted after eight weeks and a settlement of $400,000, an amount less than the company claimed as unpaid under its last contract was effected. The case was concluded and the three-million-dollar claim for overloading was withdrawn.

When this case was in the calendar part awaiting assignment to a trial part, Justice Wasservogel called Mr. Collins and myself up to the bench and asked us if we had agreed upon a judge to try the case. This was an unusual question, but it was also an unusual case, and not every judge wanted to be burdened with a litigation as long and as difficult as this one. When we could not agree Justice Wasservogel said he would choose one himself and he chose Justice Pecora.

For years Betty's brother, Gabriel I. Lewis, had devoted a good deal of his professional time at the bar to the work of the Ethics Committee of the New York County Lawyers' Association. After the death of Charles A. Boston, the former chairman of that committee, Gabriel was appointed by George Z. Medalie, the president of the association, and later a judge of the Court of Appeals, as the new chairman.

Gabriel asked me to become a member of this committee and I was appointed and have served on it since 1938. I have also served on the Committee on the Courts of Superior Jurisdiction, and on the Committee on Medical Jurisprudence, which devotes itself to examining the law concerning the mentally ill, alcoholics and other phases of medico-legal subjects to which my work on the bench has naturally drawn my interest.

Every time the city embarks on a construction job, a hospital for example, there is sure to be a lawsuit, and the city is almost always the defendant. Contractors have been known to bid very low in order to win a contract, expecting to make their real profit out of

the inevitable litigated claims against the city for delay, misrepresentation and extra work.

An important contractor obtained the contract to construct the Queens General Hospital in Jamaica, and on that project many unusual things happened. The architect chosen by the city to make the plans and supervise the construction (this was in the days before the LaGuardia regime) had had no previous architectural experience, and the Deputy Commissioner of the Hospital Department in charge of construction boasted the unique experience of having built a beer garden in Coney Island. Under the circumstances there was bound to be trouble in the erection of the eight buildings that were to make up the hospital. And there was.

The representative of the architect and the commissioner ordered brick walls torn down because the color did not comply with the specifications. The contractor insinuated that he had fallen out of favor with the architect, who then resorted to capricious acts to make him fall into line; that the architects had made no adequate provision for drainage so that when the rains came, huge buried oil tanks rose to the surface and broke through concrete street surfaces that were placed over them. The contractor was required to install a lead door into the X-ray room, when the specifications called for ordinary doors. These and many similar conflicts punctuated the work. For years the hospital stood like a skeleton, the windows broken and no provision made to heat the buildings.

The contractor sued for $277,665 in damages, claiming that the Hospital Department had breached its contract by furnishing inadequate and unworkable plans, by delays, by giving orders for extra work for which the city refused to pay, and by generally acting in a capricious and arbitrary manner.

When I was assigned to try this case, what was my dismay to discover that the architect who had drawn the plans for the city was unavailable (he had alimony trouble). He had lost his office, and his records were gone. Through the valued assistance of Sullivan W. Jones, an associated architect, information was obtained which

enabled Louis Rabinowitz of the Department of Investigation, in a masterful job of sleuthing, to trace his files to a public warehouse. These records enabled a staff of engineers and accountants to reconstruct the plans, and much of the day-to-day work on the job. On trial we were thus able to salvage, from what might otherwise have been a disastrous case, much benefit to the city and to defeat many of the claims in the suit. This case was further evidence of the low estate to which our government had fallen.

In the widest range of contract litigation, encompassing the construction of the central fire-alarm system in Central Park, the paving of streets, the building of schools, courthouses, hospitals, bridges, water systems and piers, claims were advanced against the city. The preparation of these cases involved the study of architecture, engineering, excavation, geology, foundation and construction work, in order to be able to examine expert specialists in those fields.

These contract cases and other types of city litigation surprised us constantly with ever-new facets of our city. Strange creeks that flow underneath the city were unearthed as from the dead — strange springs, such as the Collect Pond which bubbles on its innocent way underneath the Supreme Court Building, the old Tombs, and the new Criminal Courts Building, where some of the Magistrates' Courts are located, innocent enough except to contractors who must dig in the quicksand it creates to prepare solid foundations for the towering structure above it. Another stream, Minetta Brook, flows into a fountain in the lobby of the Holley Hotel in the heart of Greenwich Village.

The construction of a half-mile section of Pelham Parkway South in the Bronx confounded a contractor who was awarded the contract to fill and grade the roadway. He dumped truckload after truckload of fill into the roadbed only to return day after day to discover to his astonishment that the fill had sunk into the earth and disappeared. The earth swallowed up so many truckloads that they caused a lateral mud wave that raised the railroad tracks of the

New Haven Railroad some 250 to 300 feet away, put them out of alignment and made it difficult for them to maintain service and caused a disturbance of the pillars of a railroad bridge.

One of the items in the contract on which the contractors were required to bid was "Sinkage, shrinkage and settlement," and the plaintiff-contractor in this case bid one dollar for this item. He sued the city for fraud and misrepresentation, on the ground that we withheld from him information about the condition of the ground. I maintained, and the court sustained our contention, that the contractor had as much information of the soil conditions as the city, and that he should have made soundings or borings before he bid on an item of "Sinkage, shrinkage and settlement," the wording of which should have put him on his guard.

As I delved deeper and deeper into the city's day-by-day business, its geological and iconographic history unfolded more and more fascinating and bewildering revelations of our ever-surprising metropolis.

The entire land acquisition of the city became my responsibility as a result of my work in the Bergen Beach case. In taking over the work, I tried to remove the subject from the realm of the mysterious and to translate it in terms of everyday law processes. In January, 1938, when the new charter made vital changes in condemnation practice, I was appointed to become chief of the Condemnation Division of the Law Department, with the title of acting corporation counsel.

We settled many cases, saving claimants much expense, and in many instances we helped to move the claimants' houses to other locations. The quicker we paid the awards the better the people liked it, for they needed the money with which to buy new homes and to move. It was also good for the city's treasury because by paying promptly we avoided heavy interest charges. We reduced the time schedule from years to months, in some unusual cases we made payment in sixty days. And what did the claimants in the old days do while they waited for their money? They went to loan

sharks and hocked their awards at exorbitant rates of interest in order to put themselves in immediate funds.

Prior administrations carried condemnation proceedings to final decree or judgment without bothering to examine the titles of the owners, an easy, careless way to lose the city's money – just list the owners who did not appear in the proceeding as "unknown." We stopped that awful waste by making all our title examinations before trial, and listing the actual owners in the judgment. Decrees to unknown owners were invitations to unscrupulous lawyers through perfunctory title searches to locate these "unknown" owners and to offer them information about their awards for a percentage of the award, in some cases as high as one-half. This practice, resulting from the city's failure to perform a routine administrative act, was also damaging to the city, because while these awards remained uncollected, interest was accumulating on them at the rate of six percent, unless the money was deposited with the city chamberlain.

When the work had been organized simply and understandably, I was appointed to head the combined Division of Real Estate and Condemnation, with a staff of about 250 out of a total Law Department personnel of 560. In addition to land acquisition, it became our duty to advise the Mayor, the Board of Estimate, the Director of Real Estate and the other commissioners on all real estate problems, to prepare real estate documents, and to handle all real estate litigation, including the foreclosure of property for delinquent taxes.

The history of the city in terms of real estate began to unfold itself to me. Land grants from the Crown, titles descending from the Governors turned up in the long chains of titles. Streets newly acquired and opened, old streets closed, land under water, all created new and surprising situations in title history. Hidden creeks that are remnants of once navigable streams have been discovered to make fascinating but troublesome crazy quilts out of New York real estate. Great landlord names cast their shadows

over the entire city, appearing and reappearing in title searches, acting like the dead hand of the past upon the land wealth of the present.

Docks, wharves, piers and marginal ways took on living attributes – land becomes burdened with liens and easements – new life springs out of a new vocabulary, a life whose blood stream is ageless and symbolic of the patrician stability of our land order. To some this is as dry as the volumes in which, by *liber* and page, they are recorded, but to the initiate it is vital, the very dust of living.

I helped Commissioner Moses in some of the reclamation of that part of the water front which had to be recaptured by condemnation at great public expense. As we walked along the Coney Island or Rockaway beaches, the Commissioner would be explosively critical, and justly so, of the unimaginative and puny manner in which the Coney Island boardwalk had been originally built, creating in back of it seaside slums, as bad as any to be seen in the city. Later we had to widen the beach, move back the boardwalks and wipe out the unsightly areas, all of which could have been more efficiently and economically done years before in the original taking.

In Rockaway Beach, I instituted foreclosure proceedings for delinquent taxes back of that boardwalk, so that the land might be added to supply recreation and parking areas. In the reclamation of this water front, more particularly along the rivers of the city, garbage dumps have been turned into garden spots, the marginal ways have been cleared of dilapidated coal pockets, slum buildings and old docks, sewer-disposal plants have been covered with recreation fields, and housing developments and parks have sprung up along the East River. So important is the rehabilitation of the facilities for navigation and berthing the ships that plans for the new piers have engaged the activities of the State World Trade Corporation, the Port of New York Authority and the city itself.

The City as a Client

The 200-mile perimeter of the city's land is collared by a lacy fringe of beach seventeen miles long, and there are many times that mileage in the Upper and Lower Bays, Jamaica Bay, the Hudson, East and Harlem Rivers, Long Island Sound, Arthur Kill and Kill van Kull (separating Staten Island from New Jersey), and some inland creeks, all land under water that may not be sold by the city, just as parks, streets and other public places must remain forever in trust for the people and in city ownership.

During the eight years that I was in charge of land acquisition, the city bought over two hundred million dollars' worth of property. We initiated and completed in record time the proceedings to acquire all the land for the Red Hook Housing project, the Queensbridge Housing project, the Clason Point Small Homes project, Vladeck Houses, Edwin Markham Houses, Fort Greene Houses, Vladeck City Housing project, Marcy Houses, Abraham Lincoln Houses, Jacob Riis Houses, East River Houses, Brownsville Houses, South Jamaica Houses, Kingsborough Houses. Also all the land for the Queens-Midtown Tunnel, all the land for the Belt Parkway, for widening Park Avenue in Brooklyn as a defense highway for the Brooklyn Navy Yard area, and later the entire Brooklyn Civic Center.

The city acquired under my direction the Sixth Avenue, the Second Avenue, and the Ninth Avenue elevated structures in Manhattan, and the Fulton Street, Fifth Avenue and Broadway Spur elevated lines in Brooklyn. We also acquired land for schools, for sewage-disposal plants, for the East River Drive, the Harlem River Drive, health substations, parks, streets, parkways and highways, airports, sewage-treatment works, fire houses and repair shops, sewer easements and outlets, some land for the Brooklyn-Battery Tunnel, asphalt plants, water-front and harbor development, rapid transit, public beaches, bridge approaches, welfare centers, hospitals, library and court sites, incinerator sites and garage sites. I arranged for the surrender of the Broad Channel lease to the city.

During this time the city took title to the lonely little island in

the East River known as Sunken Meadows, the small island which passengers on East River steamers see just beyond Hell Gate and Ward's Island. Title to the property was taken so it could be used in connection with the extension of the Ward's Island Sewage Treatment Works. The owners, in submitting their proof of ownership, claimed title by virtue of Letters Patent granted by Queen Anne in colonial days. The fourteen acres were claimed by them to be worth $768,000, but the Supreme Court awarded $38,297 as their true value.

One of the most amusing cases in the division involved a suit over an eel in a water pipe. The suit went back to the time when the bottle washers in the plant of Sunshine Farms, Inc. in the Bronx Terminal Market could not get water for their work, so that the pasteurization of 8,160 quarts of milk was halted. When an emergency crew from the Department of Water Supply failed to locate the trouble, the company called the Fire Department which made several unsuccessful attempts to free the pipes. Finally a twelve-inch eel shot out of the fire hydrant. The company sought $698.50 in damages from the city, claiming the city was obligated under its contract to supply an adequate water supply. It was our contention that since the eel was found in the two-inch service line and not in the twenty-inch main supply line (other buildings in the neighborhood were not affected) the city could not be held responsible, since the company had assumed responsibility for maintenance of the service line from which the Fire Department had extracted the eel with its high-pressure pumps. Upon the trial the city's position was upheld and the claim was disallowed.

My work was by no means limited to real estate because LaGuardia kept calling on me for all kinds of other activities. In March, 1940, he appointed me to a committee with Frederick v. P. Bryan to serve in the preliminary negotiations that resulted in a settlement of the first threatened subway strike after the city took over the subways. The other members of the committee were Lee Pressman and Harry Sacher, lawyers for the Transport Workers'

Union. Our combined legal committee made a joint study of the rights of labor in civil service in connection with the right to strike as a means of enforcing their demands. Although we were not able to see eye to eye on the fundamental strike question, we were able to narrow the area of controversy very considerably by our own negotiations. The final settlement in the threatened strike was made between LaGuardia and John L. Lewis. Up to that time the negotiations were in the threatening stage and had reached an impasse. In that settlement, the Mayor announced that he would recognize the existing contracts between the union and the IRT and BMT, "subject to judicial decision."

By the use of a whiplash tongue LaGuardia was successful in straddling the straits of Scylla and Charybdis in capital-labor relations. He was for labor and he was for business. The businessman understood and appreciated that in five months in 1934 he raised the value of city bonds from 81 to 97 and reduced the interest rate from a ruinous 5¾ per cent to 1 per cent on short-term indebtedness. And labor always knew him as their friend in Congress and City Hall — the Norris-LaGuardia Act is proof enough of that.

The Mayor took personal control of many a labor dispute, handling many a mediation himself, using in negotiation language that Wall Street understood, as well as the language of the people. In these negotiations he could be in turn tough and disarmingly sweet. Some went away filled with wrath, some with gratitude, but all went away with respect.

CHAPTER VIII

EVERY NEW YEAR'S DAY at noon, Betty and I would ride down to City Hall to pay our respects to the LaGuardias, the official family and friends. We would then walk home to prepare our annual eggnog party to which guests came in a steady stream throughout the late afternoon and evening. The easy and warm hospitality, the graciousness which Betty spread over the gathering was a source of constant wonder to all. With apparently no effort she busied herself with the food and drink, greeted our friends and superintended dark-skinned and beautiful Lillian. All the guests knew Lillian, and looked forward to being greeted by her incomparable smile.

Houston Peterson and Mitzi were always among the guests. Houston would talk in a mixture of vernacular and rounded Ciceronian periods about ethics, sports, women, food, art and politics. We often visited the Petersons' summer place at Dennis on Cape Cod, where we played and read with him in the garden, as he discussed the greatest variety of subjects in his colorful manner. With great seriousness we would plan a picket fence, or a worktable, or the project that Betty and I had set for ourselves one summer, to build a brick terrace. This ambitious enterprise had been the topic of conversation all the preceding winter, and after we arrived in Dennis, two truckloads of second-hand bricks were delivered. We spent ten days preparing the ground, uprooting small trees, shrubs and many roots and finally laying the bricks.

Each year the Petersons arranged a party for us, and Conrad Aiken and Mary would drive over from Brewster in their dilapidated car, "Libido." A few days later, the Aikens would have us over to their place and it was always interesting to see what Conrad

had added to the charming landscape and to read some of his new poems. I have a lively memory of walking the five miles home to the Petersons' one night arm in arm with Betty and Pete. In the steady, light rain, when Pete was not regaling us with the story of his life, we sang lustily into the night. Our most intimate conversations were reserved for the nightly walk with the dog down the lonely Cape Cod road or to the cranberry bogs.

Taking note of my interest in all the arts, and my participation in some of them, he jocularly referred to me as his Renaissance friend, publicly announcing it to my great embarrassment to the guests who were assembled at the dinner given me on my appointment as a magistrate. I reciprocated, with less success, in placing a wreath on his brow at a dinner given him upon his retirement from the directorship of the Cooper Union Forum.

Mrs. Harry Lawrence, whom Betty calls Fairy Godmother, is another friend whom we always visit on Cape Cod, without formality or invitation. She had married Harry Lawrence over fifty years ago, and as she entered the house on Main Street in Falmouth that he had bought for her, she exclaimed, "Why, Harry, this is mostly hall." From that moment the place had a name. At seventy-five Mrs. Lawrence's trim white-haired figure could be seen bicycling along the roads. No important occasion in the small town takes place without some special recognition from her. She has books and toys for the children, special furniture for the sick and all of these, including her strength, she graciously lends to the people in the community. Mr. Lawrence, past eighty, is still active in business and as a director of the local bank.

Our winter Saturday afternoons were and still are usually devoted to making the rounds of the art galleries where we always run into many friends, artists like Walter Pach, Milton Avery and Edward Hopper and others bent on similar objectives. At An American Place we would see the fine John Marin paintings, and engage in interesting and pithy conversation with Marin or with Stieglitz.

Oath of Devotion

Interesting summer vacations punctuated the trying years of work. One of these vacations was the trip on the simple Caribbean cruiser-freight boat which took us to Puerto Rico, Venezuela and Curaçao. We looked at the lazy, sloping hills of La Guaira that were covered with pastel-colored houses and red roof tops. At the suggestion of the consul we visited a Venezuelan artist whom I remember well but whose name I forget; a child of nature who had built a bamboo cottage in the woods as home and studio, and who wore nothing on his brown, thin, lithe body except a pair of faded trousers.

I addressed him in French and his eyes shone as he saw the door of communication open up between us. He had built not only the house but also the furniture, the picture frames, his canvases, his paints, and his paintbrushes. We followed him out of his dark living quarters as he ran like a deer into the hot outdoors. An untouched canvas stood on an easel in the garden, a large black monkey beside it, and as the monkey saw us leave the house, with a knowing smirk on his face he took up a paintbrush and with a ludicrous and elaborate flourish splattered the canvas with paint. "*Très moderne,*" said our host. "Primitive and non-objective all at once," was Betty's laughing reply.

The painter's work was bold, sensitive and as exotic as himself and his surroundings, with an idiom strangely his own. There was a sensuousness, a trace of wild tenderness about him and his work. With reluctance we left this artist in whom were endless indications of gentleness and courtliness.

As the noisy, crowded car departed, he stood in the road, waving us farewell, and as it rattled along we went over in our minds the image of this extraordinary nature artist, and the dream world in which he lived. We were awakened from our reverie by the raucous noise of a loud-speaker bellowing forth lottery results to the entire countryside. It came from a small open-air shop that sold candy, drinks and newspapers in addition to the peripatetic lottery ticket. With sudden abruptness the car stopped, the driver jumped off,

and all the passengers quickly followed suit, leaving their assorted packages trustingly on the tramcar seats. Lottery tickets clutched in their hands, young and old expectantly huddled about the oracle loud-speaker in the windowless shop.

As the singsong droning of numbers continued, Betty and I became anxious, for we had made no allowance for this interesting interruption. After a reasonable interval, I entered the store and addressed myself to the driver, "I am very sorry to interrupt you, but my wife and I are passengers on the *Caracas* which leaves La Guaira in twenty minutes." He smiled broadly (it was hardly in the scope of his duties to entertain his charges with lottery results) and in a twinkle he was on the platform of the car, impatiently clanging his bell. The passengers clambered back aboard resigned to this unfortunate interruption of their national sport.

In Curaçao we were invited to the court by one of the notaries who are there a kind of minor surrogate. The notary announced that the judges would like us to sit on the bench with them. As we entered, the three black-robed jurists rose and bowed us to seats on the bench alongside them. The Dutch testimony in a smuggling case made some sense to me even without the running comment in English by one of the judges.

At the hotel we were served by a tall, friendly and smiling native whom Betty dubbed "avocado" because that is what his pear-shaped head suggested. The waiter was very happy with the appellation and served her lobster at ever meal. On this Dutch island Betty was the first and perhaps the only white woman to play tennis on the courts of the local Negro club and the wire fence was soon crowded with little grinning dark faces watching her. The tennis was delightful and we were overwhelmed with ball boys, with comforts and with offers of refreshments and transportation.

Mexico, in 1936, gave us many warm and colorful memories. An attorney in Mexico City, Señor Rodolfo Charles, entertained

us at his home on the Avenida Insurgentes, a dinner that was marked by fine food and wine and sparkling conversation, music and dancing. Our host asked us to accept the use of his car, his chauffeur and his summer place at Cuernavaca for the week end. We found ourselves in a lovely villa whose garden, containing a bubbling fountain, spacious swimming pool, and a lime tree, had a view of lovely mountains through an archway. The butler shook the lime tree and added the fruit to the daiquiris after our swim. The rest of the dream week end is a blur of fine food, luxurious sleeping comfort in high-ceilinged bedrooms with beautifully tiled baths. We were later invited to visit his place on the outskirts of Mexico City, but the party was put off indefinitely because his partner had been murdered on the morning of the day set.

Chávez conducted the Mexican Philharmonic Orchestra in a piano concerto by Aaron Copland with the composer at the piano. The audience divided itself into two camps, those who detested the modern work and showed their displeasure by hissing it, and its admirers who cheered. I have a vivid memory of the sloping upper berth from which I was in constant fear of falling, on the train that took us to tropical Oaxaca, riding in the same car with General Cedillo and his bodyguard, all armed to the teeth with huge revolvers. If I had known who he was, I would not have been so surprised at our train being serenaded at one station with firecrackers, and at Oaxaca by a band of music. On our way to visit the unfolding ruins of Mitla and Monte Albán, we saw Indians scrubbing a simple wooden table in the river and learned that Cedillo and his party were due for lunch and would honor this table by eating at it.

Lake Chapala holds memories of a delectable transparent fish, of itinerant bands of musicians who vied with each other, like variety acts waiting in the wings, to give their performances in the *zócalo,* fine subjects for sketchbook and paint pad. Our bus trip from Guadalajara to Lake Chapala was over unpaved roads, through fields of pink and blankets of yellow flowers and in the

swamps, a lovely lavender flower. The funny bus was jammed to the doors with friendly Mexicans and the scenery was superb. The kindly bus driver at Tehuacán who drove us from the Garci-Crespo Hotel watched as we tarried in the arcade in the *zócalo* examining the bright-colored goods, and left his bus to inform us that his was the last one back to the hotel. He also insisted on driving the bus away from the mud to a dry spot so we could board the vehicle with dry feet. To complete this most unusual portrait, when I gave him fifteen centavos, thinking that was the fare, he returned five centavos, saying that I had overpaid him.

In 1937 we went on an eight-day packing trip with some friends from Schenectady over the Range Trail in the Adirondacks. We made our own sleeping bags before starting. We felt the wonderful muscular power of climbing mountains, moving up impossible-looking slopes, and jumping down precipitous ones. At night we prepared our own meager meals and went to sleep on the pine-needle couch provided in the shelters.

In Scotland a year later we made a memorable trip on the Caledonian Canal in company with the Reverend and Mrs. Charles G. Galley of London whom we met at table in the hotel at Oban. Low-lying hills framed the canal and lonely islands dotted the path of our small craft. The Scotch gray skies hung soberly over our heads, with only an occasional blue patch showing through as the hills and water melted into a lovely quiet harmony. We remained together all through the day, each pouring out our most personal feelings in a peculiar sympathetic awareness that we should probably never see each other again. At the Inverness Hotel we bade them a fond farewell, they to return to London and we to proceed farther into the Scotch Highlands. As we bade each other good night, Mrs. Galley told Betty that on departing in the morning they would knock on our door to say good-by. Through the closed door the next morning we heard her say, "Good-by, my dears, and God bless you."

We were struck by the unusual contrast with our usual vacation

spots in July when our Highland-bound bus emptied its rug-bundled passengers into the hotel at Gairloch, a Scotch vacation resort of simple elegance. Cashmere sweaters covered everyone against the cold and howling winds, and bright fires blazed on the hearths everywhere.

At about three-thirty our bus broke down in the tiny hamlet of Poolewe, among the somber, dreamy hills. We all crowded the quaint two-hundred-year-old hotel with its miniature rooms and whitewashed stairs. While the bus was being repaired, we all had a surprisingly elegant tea at this simple place, and then went on to enjoy the loveliest part of the Highland trip in all its changing moods of sun and rain. The day was full and peaceful, the thatch-roofed cottages, the peat bogs, the heather on the moors, the dramatic earth and sky, all adding to the quiet and satisfying mood of the misty poetry of Scotland.

Its trees along the boulevards so green and blooming, Paris was dressed in excellent taste for the visit of King George and Queen Elizabeth. The parade put the city in a turmoil of excitement, and in the evening there was dancing in the streets. The Arc de Triomphe was illuminated and the street bands played "Tipperary." Montmartre was ablaze with fireworks. It was July 14th all over again.

At Hendaye, on the border of Spain, we saw the peaceful, beautiful Pyrenees dotted with tranquil homes and wondered if that could really be part of battle-ridden Spain. We drove from Hendaye to Biarritz through the dry and sunny air, walked on the beach and, sitting in a little cove, took off our shoes and stockings and "paddled" deliciously in the warm ocean and rested. We saw little Dax in welcome sunshine after rainy Bayonne. The air at Dax was soft and smelt of new-mown hay and there we tried the greenish, steaming thermal springs dating back to Roman antiquity of 2,000 years ago and housed by its original Roman walls and gateway.

In Bordeaux the newly baked *petit pain* in a *boulangerie* cap-

tured our fancy. *Pâté de foie gras* thickly spread over wonderful sweet butter made sandwiches fit for the gods. We ate them as we walked along the street. Stopping to look at each other, we simultaneously decided that we would never again eat such food. The shopkeeper and her *amie* were not surprised when we returned for more. Then we stopped at the first *bistro,* which contained a tiny leaden bar and two tables, and were served *vin du pays* in brimming glasses, and as we walked toward the station topped off this memorable meal with luscious pears and peaches en route.

Like all West African "Coasters" Greaves wanted to get away but the strange fascination of the tropics held him and made him come back year after year. His ambition was to open a small inn in England where we promised each other to meet. After a lively correspondence, quite bawdy on one side, he finally wrote me that he had opened Ye Half Way House in Bridgnorth, not far from Birmingham. He reminded me of my promise to visit him.

So when we came back from the south of France, we set off to visit Greaves. We traveled to Wolverhampton with all the Shropshire people, thence by bus to Bridgnorth. Since his place was full of paint and ladders, we put up at the Crown Hotel, much to his disappointment, for he thought that the painting would be completed by the time that we arrived. The Inn was an old English low-lying structure on the Bridgnorth Road, built in 1620, sitting adorably at the side of the road with ten acres of orchard, meadow and green. Margot, his wife, met us and made us welcome.

At seven o'clock the bar opened and guests began to come in. Betty assisted as hostess, passing around tankards of beer, ale and shandygaff, her curtsies bringing laughter from the thirsty guests who were intrigued by the American visitors. I sat in the "snuggery" that was filled with African trophies, and sketched the people. Some played the piano and sang; some played darts and cards. The "Club" was alive.

As the train entered the pitch-black station of Killarney on a

wet trip from Dublin at midnight, the lights went on momentarily and were extinguished immediately the train pulled out. The railroad hotel was full (we had, as usual, no reservations) so we followed our porter and luggage down a sleeping street in the soft rain to Scott's Hotel. They arranged for a small attic room at a smaller place down the street where the bed was decorated with a red satin quilt embroidered with large pink roses, and there were red satin drapes with decorations to match at the windows. Eight holy pictures and one huge cross were in the tiny room. The bed slanted down from head to foot. It rained and thundered outside as we soundly slept out the night.

On the Kerry Ring drive a soft gray haze at times hung over the mountains, then the sun broke out, then the gauzy mist came up again. I remember with pleasure conversation in Caherciveen with a red-cheeked, blue-eyed Irishwoman selling fish on a street corner. I drew a sketch of her and listened to the vaunted Irish wit of James P. Walsh who chased us to give me his bill as a souvenir. It read: "AUCTIONEER AND VALUER — TEA, WINE AND SPIRIT MERCHANT."

Killarney Lakes were gun-metal gray, with deep gray clouds overhead as in Scotland. We remember Michael McCarthy in his jaunting car trying to sell us an assortment of other drives.

For years we had planned to see more of the West, beyond places that occasional matters of business would take me, and in 1939 we accomplished it. Through the Canadian Rockies we arrived at our frontier's end, California. Though openhearted and friendly, expansive and disdainful of restrictions, these descendants of the conquerors of the wilderness were still irritated with the East. I was unimpressed by the drab newness of Los Angeles, its cardboard architecture and pseudo-Spanish houses. The newness of the Hollywood homes, the extravagance and unreality of their living which tries desperately but without arduous preparation to enter the kingdom of the mind, are inexorably reflected by the fantastic motion-picture industry. Their only reality is bigness and

expense, for artistic simplicity is foreign to them. Hollywood does not believe with the artist that there is no need to build a road when it can be suggested simply by line, color and movement. Hollywood's compulsion to create its own expensive "reality" leads it down a sterile road. Its imitation of literature and the theater separates it from its own cinematic art world. If it is true that the movies have been the reflector of American life, then it is a poor reflection indeed, for things are going on in the American mind and in the American soul that they do not begin to glimpse.

The marvels of American scenery held their own by comparison with European magnificence. Yosemite Valley was as awe-inspiring, Grand Canyon as breath-taking, and the Painted Desert matched anything one could see anywhere. The inverted trip on muleback down the Canyon had its counterpart in the horseback trip up Mount Vesuvius, only the Canyon with its enveloping kaleidoscopic color presented greater and more inspiring mystery. The infinite variety of our scenery matches the variety of European change in peoples and cultures. The roots of our separate streams of culture are just as varied and as fascinating as the European cultural differences. Our own New England Utopian schemes, our Boston and Concord heritage, the Spanish and Indian influences in the Southwest provide a variety to our background that is as fascinating as the differences between the various racial sources that make up our people. With all these variations, as distinct as those separating some European countries, we have the capacity to feel part of one small world, which may give us some hope that a total One World will some day be a reality.

While it is in a sense deplorable that our restlessness should destroy our physical monuments before they can be said to achieve a history, it is also cause for hope that in ideas as well as in physical phenomena, we do not let our reverence for the old prevent us from assaying the new. Not that there is virtue in newness alone, but the sacrifice of the merely old for the better new is a happy exchange.

Oath of Devotion

In 1940 we visited Guatemala, the land of wondrous lakes, Mayan ruins and gorgeous blankets and textiles, high mountains and colorful Indians. Señor Ramirez Fernandez, an attorney, and formerly a member of the Guatemalan diplomatic service in Washington, was our most solicitous host. He took us in tow, driving us to Antigua, the ancient capital of the country, where an eerie flavor lay over the city like a veiled curtain in a religious drama, the gauze separating us from its past, as if time had stopped for hundreds of years. We surrendered ourselves to that mysterious hush that lay like an invisible carpet over it all, and decided to return soon to enjoy again the strange aura of consecrated silence.

Lake Atitlán was beautiful in rest, but angry and moody in suddenly aroused moments. We journeyed by native buses into the highlands, herded together with peasants loaded with bundles and livestock, some of them with chickens strung around their necks. The buses made the voyage careening over dangerous mountain passes, for we were in the midst of the rainy season. The laughing travelers and the congenial driver who picked each passenger up at his home or hotel, talked unconcernedly as the small, rattling bus made violent turns on the mountain roads.

The color of the ceremonies in the church at Chichicastenango dazzled us, the stone floor covered with a blaze of candles in a mixture of Christian and pagan worship. Kneeling worshipers placed offerings of maize and other grains in woven cotton wrappings over the stone floor. We also visited the blanket market at Momostenango, and went further north to Huehuetenango, a journey by native bus through gorgeous scenery. In June we heard over the local radio in Quezaltenango the catastrophic news that France had fallen.

The rains caused many landslides and some of the roads were almost impassable except for these buses that moved dangerously through swollen streams. Back in Guatemala City, Señor Fernandez inquired each day at the local bus office about our safety. He knew

these ancient buses carried adventure in every trip, which we preferred to the elegant limousines that were so insulated against inconveniences as well as against the life of the people. Indians and *ladinos* alike were happy and loquacious as the overloaded bus shook and the chickens cackled with the sharp sound of the horn. Once, stopped by the police, the entire busload were turned back to the police station so that a passenger who was carrying the ashes of a departed son, could straighten out the details of death certificates.

On another occasion we were riding through a tropical downpour and the bus was stopped outside a lonely police shed and forbidden to go farther because of the impassable roads. A hasty conference was called in the bus. What to do? They would send a delegation in to the officer and petition him for permission to go on; would the *Americano* become a member of the committee? The committee went in to see the chief, and he gave us permission to go only as far as the next village, where we were scheduled to eat a long-delayed lunch. At three o'clock (we had been traveling since six-thirty o'clock) we were all in need of a stopover. For the ladies the situation was complicated and of very great interest to the children in the establishment, two of whom attached themselves to Betty to show her an appropriate outdoor spot amidst the corn, but remained by her side so that they could bring her safely back in the heavy rain.

We ate in an adobe hut in almost complete darkness. They served some very gray-looking meat and I shuddered to think of its identity, but the rich brown stew that we ate was beef, Betty assured me, and was more than welcome. The passengers patiently waited out the heavy rain while nibbling at the mounds of *tortillas*, cheese and other mysterious morsels. When we finally returned to Guatemala City we were met by the Fernandez family who confessed to their concern. They had never taken such a trip themselves.

On our way down to Puerto Barrios we visited Dr. Neil P. Mac-

phail at Quiriguá. We visited the excavated Mayan site, two miles away, promising the good doctor to join him in a drink before lunch. We alighted from the electrically driven handcar that took us over the railroad tracks and we walked into the banana jungle to see the huge carved stelae. The mosquitoes were so thick that with one blow Betty killed two dozen or so on her arm. She was in agony and we got out of the jungle as quickly as we could.

The genial doctor was waiting for us at the hospital. Betty thrust out her arm for his scrutiny expecting him immediately to rush her into the laboratory and inject her with one of his miracle medicines for yellow fever. Dr. Macphail was strangely unimpressed, "Sit down and take it easy while I get you a drink," he said as casually as you please. "Aren't you going to do something about my mosquito bites?" "Sure, I'm going to give you a drink, and by the way, mosquitoes don't do any harm till after dark."

He had come from Scotland as a young physician in 1908 to study tropical diseases in Central America, expecting to stay there about a year or two. The tropics had taken hold of him and the people of Guatemala and many other places needed him. His battle against yellow fever, malaria, cholera and other tropical diseases earned him the nickname *"El Amado Médico."* I was happy to read in the New York press that he was awarded, in January, 1948, the Richard P. Strong palladium medal for distinguished service to tropical medicine from the American Foundation for Tropical Medicine.

CHAPTER IX

THE CITY at war meant revolutionary changes in its law business. The acquisition of land for most public purposes had to stop, all our efforts being directed toward aiding the Government in the war effort. These war activities constituted the major work of the third LaGuardia administration, the first four years being highlighted by charter reform, and the second four years being marked especially by unification (the city purchased the IRT and BMT subways for $326,000,000, in 1940). LaGuardia became busier than ever. In addition to his other duties he became chairman of the United States section of the United States-Canadian joint defense board. He tried hard to become a general in the Army, but fate and the Army interfered.

On October 16, 1940, I was designated by Colonel Arthur V. McDermott to head a group of forty New York City lawyers to supervise the draft registration of 1,000,000 men in New York City. Persons on that day, communicating with headquarters of the Selective Service Administration in New York were referred to our group of lawyers for answers to legal questions. The local newspapers reported this tremendous task accomplished without a hitch. On that eventful day I acted as personal adviser to Colonel McDermott. The questions kept coming in an ever-steady stream, involving vexing local problems as well as many new situations applying to foreign embassies, consulates and their staffs.

After the draft boards had been set up in the city, Colonel McDermott asked me to serve on his Legal Advisory Committee, and I was assigned as coordinator of three draft boards in Greenwich Village. With all other city employees, I also served as a member of the City Control Center staff, set up by the Mayor to

map the course of possible enemy bomb attacks on the city, for the purpose of dispatching fire and repair equipment to the areas of attack.

Immediately the war started, the city changed its position from that of condemnor to that of condemnee, because then the Government began to requisition our property together with all other property that it needed for the war. On December 23, 1941, the city was informed that the United States had taken over the *Normandie.* The French Line had a long lease at Pier 88, North River, at which the giant luxury liner docked. The Navy informed Commissioner McKenzie that it would like to use Pier 88 immediately and he was asked to consent to an assignment of all or part of the pier to the Navy. When the city gave this consent, the Navy took a sublease of a portion of the pier from the French Line so that it might make repairs to the liner that it was to use as a troopship.

When the *Normandie* burst into flames at the pier and capsized, this precipitated, on February 25, 1942, a conference between the city, the Navy and the French Line whose lease with the city had six more years to go at a rental of $197,000 a year. The Navy now needed the entire pier for one or two years for the salvage job, and was willing to pay the city the rent it was receiving from the French Line. The city agreed to let the Navy have the pier provided that at the termination of the Navy's possession, the steamship company would again assume the remainder of the lease until its original expiration. The steamship company took the position that ever since the Navy had taken possession of the pier a few months earlier, their lease had been canceled through frustration. If the *Normandie* did not survive the war, the French Line would have no need for that tremendous pier. At this impasse, I advised the Navy to condemn the leasehold interest of the French Line for one year, possession to be extended for an additional year if needed, upon proper appropriations by Congress.

The Government did not take my advice, but on March 16, 1942,

it took absolute title to the entire pier and to the land under water. It deposited into court $2,610,000, based on hasty and ridiculous estimates of value made by its appraisers. I informed the Mayor that we could establish a value of more than twice that sum. It was not long before the Navy realized it had bitten off more than it could chew and that it had made a blunder. Feelers soon came through Norman Littell of the Department of Justice seeking our reaction to the restoration of title in the city. The Mayor and the Comptroller were both of the opinion that title to no city pier should remain in the Government.

The Government restored our title by a court stipulation by which the Navy took a lease of the pier until the end of the war and six months thereafter, subject to cancellation by the Secretary of the Navy upon sixty days' notice. The city was protected in all its demands, payment of rent in full, release of all French Line claims, repair of the pier by the Navy, and payment by the Government of all our expenses. The Board of Estimate approved the stipulation on May 11, 1944, and an order was signed by Federal Judge John Bright on May 27, 1944. The Government had to learn the business of taking land the hard way.

Also in furtherance of the war effort, the Government condemned the city's land, streets and bridges in Wallabout Market in Brooklyn upon its expansion of the Brooklyn Navy Yard. It acquired a leasehold interest in the free port of Staten Island as well as some city piers in Manhattan and Brooklyn. The Maritime Commission requisitioned several city ferryboats, ninety old elevated cars, and the Navy took from us a leasehold interest in Hart's Island for a naval prison.

Up to the end of 1945 the city collected $14,023,544.90 in proceedings instituted by the United States, including the taking of Floyd Bennett Field. As soon as the war broke out, the Navy determined to take over this airport. With George E. Spargo, I conducted negotiations for its sale with Admiral Woodson, Admiral Moreell and Norman Littell. I agreed with Admiral Woodson upon

the price of $9,450,000 plus another small contingent amount which we later received. I could not agree with Littell on the mechanics of the transfer. He wanted the city to furnish the Government with a title insurance policy which I knew it was impossible to obtain, and which in any event I thought ridiculous, since the city's credit was much sounder than that of any title insurance company. Under the circumstances it was arranged for the Government to obtain a perfect title by instituting a condemnation proceeding in which the city was to receive the stipulated price. This was the largest single award in Federal condemnation, as well as the largest voucher ever drawn in the Eastern District Federal Court up to that time.

Early in 1945 I prepared a lengthy memorandum which LaGuardia gave to President Roosevelt, in which I pointed out the many concessions the city had made in dealing with the Government. In several instances, with Board of Estimate approval, ferryboats were sold to the Government for $1 each. This memorandum of concessions was to offset the Government's claim for interest charges which the Government had against the city on the old City Hall Post Office litigation. LaGuardia told me that he and the President had had an understanding that the interest claim might be offset by these concessions. However, when the President died there was no one to complete this informal understanding and the city had to pay the full amount of the judgment. But the Mayor did not do so badly for the city. By dint of personal pressure he obtained, with the aid of his friend, the President, large Federal funds under the Works Progress Administration for construction of the Independent Subway, the Triborough Bridge, Whitestone Bridge, hospitals, LaGuardia Field and parkways.

During these years I had the privilege of meeting most of the distinguished visitors to the City Hall. Many senators, representatives and mayors came from all over the country to pay their respects to LaGuardia. All our national heroes and the great of other lands made brief stays at the Mayor's office. General Eisen-

hower, smiling, modest, trim and quick-of-step; Admiral Halsey, thick-set and competent; General Stilwell and General Wainwright, who added glamour to the city's welcoming celebrations; porcelain-faced Mme. Chiang Kai-shek, somber General de Gaulle, genial Eduard Benes, Joseph Beck, the Archbishop of York, General Sikorski, Paraguay's since deposed president, General Morinigo, Liberia's President Barclay, with whom I spoke of my trip to West Africa in 1929 when I visited Monrovia, the capital of his country, were some of the dignitaries of foreign lands whom I met there. When the war was over I met Churchill, Blum and Jan Masaryk.

One of the most interesting and rewarding tasks was the writing of the contract for the acquisition of land for and the construction of Stuyvesant Town, the first housing project built under the Redevelopment Companies Law, in which eighteen square blocks between Fourteenth Street and Twentieth Street, from First Avenue to Avenue C, containing about 500 buildings, mostly old private dwellings and "old law" tenements, were destroyed in the city's gashouse district.

At meetings with Frederick H. Ecker, Chairman of the Board of Directors of the Metropolitan Life Insurance Company, Churchill Rodgers, now general counsel to the company, Jeremiah M. Evarts, Robert Moses and many other city officials, many difficulties were resolved in the terms of this novel contract. There were problems in land acquisition, in the widening and rearrangement of streets, in the removal of subsurface utilities. One of the most fundamental questions was the very human one of what to do with the former residents of the old buildings. The rehousing by the insurance company was accomplished with a minimum of inconvenience, excitement or incident, a magnificent achievement in these trying times of housing shortage.

The contract and the construction on which it was based was so important that it had high priority on city business, and when the contract was finally drafted, Board of Estimate action approved it and demolition of the unsightly slums began. All this was not done

without some criticism and litigation that unsuccessfully attempted to stop the project. These impressive structures, built on twenty-five percent of the land, in the midst of open playgrounds and flooded with sunshine on the site of one of the worst slum areas of New York, stand as a monument to the resourcefulness, ingenuity, as well as the compromising ability of all concerned. If perfectionists had had their way, certain principles would have been established, but the slums would have remained. LaGuardia and Moses pragmatically worked through these difficulties, and the houses that hundreds of thousands of inadequately housed people were eager to enter became a reality.

After the contract was approved, the same principals launched into the Riverton contract for Harlem. The situation repeated itself, in conferences and long hours of work to build new homes.

LaGuardia had anticipated that as soon as war broke out, the Navy would immediately requisition Floyd Bennett Field and had already made surveys for the development of a new and greater municipal airport at Idlewild. On December 17, 1941, at a special meeting of the Board of Estimate called by the Mayor, it was voted to acquire 1,200 acres on the north shore of Jamaica Bay. Thus began the acquisition of land for this purpose, destined to become the largest commercial airport in the world. We started immediately in 1942 and continued expanding the takings in 1943, 1944 and 1945. These takings were later rounded out to about 5,000 acres, or about ten times the size of LaGuardia Field.

Early steps were taken to grade and fill this land, and in spite of wartime difficulties, the dredging, filling and grading were carried on. Toward the end of 1943 the various oil companies and airlines became interested in leases on this imaginatively conceived airport. Negotiations were begun by LaGuardia appointing a committee of which McGoldrick was the chairman, I acting for the corporation counsel. The meetings went on for eighteen months. The negotiators for the airlines were John Charles Leslie, Vice-President of Pan American Airways System, Amos Culbert, Vice-President of

American Airlines, and Arthur M. Jens, Jr., then Secretary of Transcontinental and Western Air, Inc. The airline committee had as its counsel, Jackson Hutto, George Spater and Carl S. Rowe.

Our first meetings were taken up with discussion of general principles, the first one accepted by the airlines being that the city should receive from the airport a revenue adequate to meet the annual debt service on its investment and its operating costs. Another general principle discussed, one that gave everyone great trouble, was the exact pattern of the runways and the character of the terminal building. The opinion of the Civil Aeronautics Authority in Washington was sought on the design of the runway pattern. The Authority recommended "that the airport be planned for tangential runway pattern," the runways moving tangentially from the central administration or terminal area. This principle was accepted by the airlines and the city, and based upon that scheme, the location of the twelve runways, constituting the ultimate stage of the airport's development, was fixed.

Working with our committee were architects and engineers who had to meet the troublesome problem of designing a satisfactory pattern of the terminal area, and after months of discussion the design was finally worked out to the satisfaction of the main committee. The administration building in the center of the terminal area was to contain ticket offices, restaurants, cafeterias, coffee shops, space for mail, baggage and express freight, customs, airline offices, offices of the Civil Aeronautics Authority, the United States Weather Bureau, and the Department of Marine and Aviation. The control tower from which plane movements could be directed was to be on the top floor. Surrounding the Administration Building an arcade structure was to provide stations for the inbound and outbound planes and over the Arcade was to be a promenade observation deck.

After the design was fixed the individual airlines bid for their arcade space as well as for hangar space on the field itself. The actual writing of the leases took many months, and toward the end

we worked late into the night. By these leases the city pledged its credit to the extent of $175,000,000, in the creation of the world's greatest airport. This was a tremendous amount even for New York City, but provision was made during the life of the leases for the city's investment to be self-liquidating. These leases had to be re-negotiated by the New York Port Authority which later took over the field from the city.

Whenever we reached an impasse in the negotiations, it was our habit to trot over to City Hall and let LaGuardia iron out our differences. His strong and at the same time complete understanding of the problem at hand usually cut through a mass of discussion. It was not always that the city's position was sustained. He was quick, decisive and his dynamic attack always settled the problem quickly and back we would go to the Comptroller's office to continue negotiations.

On December 15, 1945, two weeks before LaGuardia left City Hall, there was executed in his office a memorandum of understanding signed for the city by the Mayor, the Comptroller, the President of the Council, the President of the Borough of Manhattan, the Chairman of the Planning Commission and the Deputy Commissioner of Markets. It was in furtherance of a plan to improve the conditions of the wholesale fruit and produce business in the city and to provide a wholesale market to replace the present Washington Market in Manhattan. The new market was to be located in the area between Greenwich Street and West Street, from Laight Street to Warren and Murray Streets on a site selected by the Board of Estimate on July 27, 1945.

I had prepared this memorandum of understanding on a matter that was very close to LaGuardia's heart. The memorandum was made with the Terminal Market of New York, Inc., a membership corporation that was organized for this purpose by the merchants in the market. The city was to acquire all the land and improvements for the erection of the projected terminal market. The city would then lease the entire area for ten years to the membership

corporation with options to renew for two additional terms of ten years each. The corporation would operate the market and sublease space to its constituent members in the wholesale fruit and produce business. Provisions were made for railroad and steamship companies' leases and permits. The understanding was that the project would be self-liquidating and neither the city nor the corporation was to obtain any profit from its operation.

When the memorandum was signed that Saturday morning LaGuardia was very happy. I had rarely seen him so elated. That was the last job that I did for LaGuardia.

A few days later, I was called before the Finance Committee of the City Council to testify at a hearing on the Idlewild airline leases and on the terminal market memorandum. In the midst of the hearing, the Mayor's secretary came into the council chamber and whispered into my ear, "Can you get out of this?" I said, "Yes, but why?" He answered, "The Mayor is going to appoint you a magistrate in twenty minutes."

I made my apologies to the committee, answered a few informal questions on the terms of the leases and then went to the nearest telephone to tell Betty to come down to City Hall to see me sworn in. Fortunately she was home. On receiving the news, she quickly took off her smock, put on a coat and was down in City Hall in a a few minutes. I also telephoned my chief, Ignatius M. Wilkinson, and the first assistant, Robert H. Schaffer, asking them both to join me at the Mayor's office for the ceremony.

"Do you solemnly swear that you will support the Constitution of the United States and the Constitution of the State of New York, and you will faithfully discharge the duties of the office of City Magistrate of the City of New York to the best of your ability?"

Fiorello H. LaGuardia, Mayor of the City of New York (with his arm upraised), was swearing me in as a judge.

"I do," I responded and I then signed the oath of office from which the Mayor had been reading. LaGuardia thereupon subscribed his name prior to the oath being filed in the office of the

City Clerk. The ceremony took place thus simply in the presence of Marie LaGuardia, their daughter Jean, Newbold Morris, Ignatius M. Wilkinson, Robert H. Schaffer and Morris Novik. Betty stood by Newbold Morris, who with brotherly affection had his arm around her.

It was late afternoon on December 18, 1945. A welcome fire was burning on the hearth in the historic Mayor's room. The ceremony had taken but a few moments. The Mayor had little to say to his new appointee; we had been together too many years for Fiorello to give me any words of advice. We shook hands, he opened the middle drawer of his desk, removed from it a photograph of himself and inscribed it with the following words, "To Julius, in appreciation of many years of loyalty. F. H. LaGuardia."

As the party began to disperse, all congratulatory handshakes having been completed, the Mayor said, "Wait with me till I light the Christmas tree, Julius. We'll go out together." We walked through the halls of old City Hall and came out onto the broad portico above the wide steps leading down to City Hall Park. There, in the park, on the dry winter earth, stood the tree that was soon to be lighted to inaugurate the Yuletide season.

A few weeks later I was given a surprise dinner that was engineered by a dear college friend, Harold Wisan. When I was innocently brought to the hotel by Betty to keep a dinner engagement, I was overwhelmed to find a large crowd and among the guests schoolmates of thirty-five years' standing. There was William Messer whose father had had a saloon in Yorkville on Second Avenue and Ninety-second Street. I remember his father saying to me one day (I was then in high school), "How would you like to earn some pocket money?" I said that I would be delighted. He then asked me if I could paint signs. I never had, but I was sure that I could. I thereupon became his sign painter, making all the window signs that advertised his free lunches.

There was Sam Rudin, now a builder, with whom I used to play

soccer football; Harry Wiener, the printer with whom I played handball against the wall of the Ninety-fourth Street Armory; Maurice Rabin, the manufacturer, who with myself was among the earliest baby sitters, watching his child while his wife went to the movies. I saw Adolph Schimel, a lawyer, who had been one of my debating partners on the streets when I attended the Young Men's Hebrew Association. There was Harold Starkman, an accountant with whom I had played tennis thirty years before, and Dr. Seymour Wimpfheimer, another member of the City College group.

My elementary schoolteacher, William A. Hannig, joined some of my more recent friends, Paul Windels, Houston Peterson, Myron Weiss, Benjamin Harrow, many members of the staff of the Corporation Counsel and the New York City Housing Authority. There was also Jack Eiseman, my old friend and law associate to whose office I returned when my term on the bench expired.

It was a heart-warming evening and many warming things were said, many of them undeserved, about associations that covered almost the entire span of my life.

III

THE MAN IN THE BLACK ROBE

CHAPTER X

Is YOUR PICTURE of a magistrate that of one who hands out small fines for uncovered ash cans, unlicensed peddling, permitting an unleashed dog to make a mess in the street, or for speeding in this jungle of traffic that is New York? Such a portrait would be sketchy indeed, for the magistrate is also the judge who is concerned with the innermost core of human conduct, around which he makes decisions that may affect the careers and lives of the people. He is also the man who refuses to hold the defendant for the Grand Jury when the evidence is insufficient to make out a case in homicide, who may place a girl on probation rather than send her to jail in a prostitution case, and who may send a sex pervert to a doctor instead of a jail warden.

Calomel and bloodletting were once the standard medical remedies for almost every ailment. The bloodletting stage in crime treatment has been relegated to the limbo of history, for this people's judge, the magistrate, socially aware, knows that jail is not the cure for those who are mentally ill; that good health is not sufficient to cure crime but that it helps; that good housing is not enough, but that that helps. He knows that employment is health-giving but not completely sufficient, for if prosperity were a cure, a penthouse would be an insurance against criminal conduct. He knows that since no two men are alike, no two crimes can be alike; that criminals cannot be divided into neat categories but must be dealt with as human beings; not as isolated concepts but as a part of society. He knows that the cause of crime is not specific but multiple, that "punishment" must be made to fit the criminal more than the crime, that in treating the delinquent you cannot do something *for* youth, but *with* him, by his own participation and the participation of the entire community.

The magistrate must be seasoned socially and cannot under any circumstances afford to become hysterical. The July, 1946, *Reader's*

Oath of Devotion

Digest contained an article in which the author, commenting on the arrest of three perpetrators of crime, aged eleven, twelve, and thirteen years, said, "Somebody ought to be putting what we call the fear of God into the children of America." The cry of the pointers-with-alarm is very old. Thomas More in his *Utopia* reports of a character who has seen twenty criminals hanged: "And, seeing so few escaped punishment, he said he could not choose, but greatly wonder and marvel, how and by what evil luck it should so come to pass, that thieves nevertheless were in every place so rife and so rank."

The minor irritations in the day's work of a hard-working magistrate are so many (he handles more cases and more people than any other judge) that he is apt to become short-tempered and careless of that so frail and precious matter, human personality. He knows but is apt to forget for the moment that the particular case is the only one in which the defendant is concerned. He may not permit himself the luxury of adding his panacea to the already overabundant list of correctional experts, legislators, anthropologists, teachers, social workers and clergy, many of whom already have enunciated their individual and sometimes startling pet cures.

In addition to the accepted reasons for the outcropping of criminal acts, some thinkers have attributed crime to defective glands, to biological inferiority, to police corruption, to exploitation of workers, and even to cubistic art as a cause of social friction. Solutions have been just as varied: more drastic punishment, bigger jails, military training, restriction of immigration, prohibition, abolition of gangster pictures, radio and press censorship, sex instruction, and sterilization are among them. One of the more recent ideas was to have child juries help the judge, as if he did not have troubles enough without the added duty of overseeing his "learned associates."

Without any pet sociological thesis to propound, and without any pet medicine to prescribe, he can do his most effective social good by treating each case as objectively as possible, taking his

advice from penologists, probation officers and psychiatrists. But he must place all these in the framework of the law, for we are dealing first and foremost with human liberties which the courts are equipped and sworn to preserve.

A heavy-set man of forty-nine, old beyond his years, stood before me in one of my first cases as a newly appointed magistrate. His wife tightly held his hand as his daughter, clutching his other sleeve, gazed into the tear-stained face of the forlorn defendant. He was a bus driver on the Fifty-seventh Street crosstown line. For twenty-two years he had worked for the same company and his record had been exemplary with never a black mark. Now for the first time he was in dire trouble, for the first time he was a defendant in the Magistrates' Court, charged with the crime of grand larceny. Events had passed so quickly. He was stunned. He was dazed. He was lost.

A family man, with wife, daughter and invalid sister to support, he abjectly and helplessly stood before the bar as the police and prosecutor unfolded his story. He had nothing to add, nothing to deny. The whole truth was being told. Hopelessness, shame and fear covered his face as he stood protected on both sides by his women.

I listened to this strange tale as the courtroom was hushed. The District Attorney sensed the unusual flavor of a story that inevitably recalled De Maupassant. The youthful prosecutor, without so much as a word in the man's defense was pleading for him by just the bald recital of the facts. A tragedy of human weakness was being re-enacted, the outcome of which could lead only to poignant suffering.

It was late November and Christmas thoughts had possession of the driver's mind. A woman passenger turned over to him a string of pearls that she had found on the floor as she took her seat. The driver put the pearls in his pocket, as he always did with articles

surrendered by passengers to be turned into the bus company's lost and found department, at the end of the run. The pearls looked pretty: "What a nice present for the wife." They might be worth about $10, a sum too large for him to spend for a Christmas present. As he drove along it struck him that he really could give this string to his wife if he purchased a cheaper one and turned that in to the company, which is just what he did. Stopping at a cheap store, he purchased a string of imitation pearls for one dollar. These he surrendered to the bus company, took the more expensive article home, intending to keep them until Christmas when he would proudly present them to his wife. Any fleeting doubts of right or wrong he might have had were overcome by the anticipation of the pleasure he was going to give his wife. "The owner might not even take the trouble to reclaim them," he thought.

The steps of tragedy are fleet and the owner of the pearls immediately reported her loss to the company and received the imitation string. It took the owner and her husband but a moment to discover the substitution, for the latter was a dealer in precious stones. The driver of the bus was arrested in his home, where the pearls were found. When he learned from the police that they were real pearls and that their value was $5,000, he was for the first time overwhelmed by the seriousness of the situation. He just had not realized their worth. His mind could not reach beyond the $10 valuation he had placed on the trinket.

The prisoner waived examination for the Grand Jury and I fixed very low bail in the Felony Court where I was sitting as a committing magistrate. Would the Grand Jury indict for grand larceny? They didn't have to. If indicted, would any jury convict? Would the charge be reduced, would he get a suspended sentence? The pearls were returned, nothing had been lost. And yet, regardless of the outcome, a tragedy had inexorably happened. What would happen to the job he had nurtured these twenty-two years? How about his wife, his child and invalid sister, and the blow to his self-esteem? How measure the grief, the loss of face, the sense of shame and

family degradation which were sure to leave their scars on this first offender? How to repair the damage to personal prestige from fingerprinting? And perhaps failure to secure immediate bail might result in association with confirmed anti-social defendants found in every jail.

I pondered this case for many days. Would this poor unfortunate be surrendered by a callous public or a cruel punitive system to the sadistic attitude, "He should have thought about these things before he surrendered to temptation"? Except for this one act, split-second in its timing, was there anything anti-social in this man's background that would give rise to this act? Did he even get the break of knowing he was appropriating a thing that had substantial value? Speculation as to what he would have done if he had known the pearls' real value was interesting but fruitless. What was this man's resistance point? What is any man's?

There he stood in dull despair, no alibi, no explanation, no hate for the law, no antagonism for the judge who he sensed was his friend. Would justice in this case be measured in terms of retribution or reformation? Was there any other alternative? Certainly no revenge, no vindication. But what was there to reform? If he had been a youthful offender society would be happy to forget permanently this one mistake; but a youth has no background to be affected, no twenty-two-year-old job to be snatched away, no family to support. There are adults, too, for whom the pace of modern life has become too confusing. They, too, may deviate into understandably illegal behavior. Are they not entitled to the same chance as the youthful offender? Can the slate be wiped clean for them? Is there ever payment in full which entitles them to a general release?

I felt very humble. Human souls and loving relationships are beautiful social assets not lightly to be thrown away.

> *And earthly power doth then show likest God's*
> *When mercy seasons justice.*

Oath of Devotion

A quite different story next. Drunk and unemployed, he trudged soddenly from bar to bar. Between buying a drink or begging one from acquaintance or stranger, he plied all with his troubles. What he wanted was a job, he said. He could do anything. "Can you drive a truck?" said one of his new-found friends. "Sure can," he said. "Then go to the Acme Garage on the next block. There you will find a truck owned by the Sunflower Oil Company. It is always stored there. Take the truck out and drive to Florida. You've got a job." *Dictum, factum* – no sooner said than done.

Our hero goes to the garage, inquires of a stupid garage helper for the truck, climbs into the seat, and tries to get the van in motion, but without success. The dull-witted assistant helps him start the motor and drives the truck out into the street. Now the defendant moves back into the seat behind the wheel, and in a moment is off and on his way to Florida. He travels a few blocks when he decides he had better see about gas for such a long trip. Stopping at the nearest gasoline station he finds the telephone book, looks up the number of his "employer" whose name is emblazoned on the side of the truck, dials with difficulty and announces to the startled telephone operator, "This is your new driver. I am on my way to Florida. What are your instructions?" The instructions came via police.

When he was charged in the Magistrates' Court with grand larceny of the truck, I discharged him saying, "He had no *animus furandi.* The intent to steal is part of the people's case and the people have failed to show that this defendant intended to steal the truck. In fact every act on his part tends to prove the contrary."

Amusing? Certainly, and everyone in the courtroom had a hearty laugh. Even the defendant, when he found out he was not going to be held for grand larceny, and the oil company's complaining witness, thought the situation amusing. But does not this case, do not all cases involving human frailties, give us pause? This man was drunk and did not know what he was doing. He might have had other more serious charges preferred against him.

Driving while intoxicated (involving the loss of his license, a terrible thing for a driver), he might easily have run someone down. Fortunately for him that catastrophe had not happened. The cause of this man's drunkenness was clearly economic, for he had no record as a chronic drinker or as an alcoholic. Frightened by the loss of his job, he sought escape in drink. What can the courts and other agencies do to help this man? Can we dig beneath the surface, get down to bedrock and use our ingenuity in setting him straight? After this experience he still was jobless, probably left the court and took a few drinks to steady himself after the terrifying ordeal he had just experienced. He also had spent a few worrisome days in jail.

I do not see the judicial job as merely to punish or to exonerate. The determination of guilt or innocence, from a purely legal point of view, is comparatively easy but in the long run that may be essentially unimportant. We know that guilt or innocence are sometimes matters of accident, that people are guilty because they are human.

Until society has caught hold of this frail and fallible man, nudged him into line in the pattern of social thinking and social living, and removed the fear of unemployment, we cannot say that we have performed our task very well.

Tragedy follows tragedy in quick succession and many tragic sequences have their beginnings in the Magistrates' Court. An Italian barber died in the Coney Island Hospital in his fifty-seventh year and a few hours later his twenty-six-year-old son was arrested and arraigned before me in the Brooklyn Felony Court for homicide. The slim, dark-haired youth stood impassively before the bench as I summoned the wife of the dead man and the mother of the defendant to come up and stand by her boy. The real sufferer in this drama was the mother, and I knew that her mind was tortured. The story was poured out in pain. Since the birth of this son, her husband had treated her very roughly. She had previously been compelled to hale him into court in order to halt his abuse,

his threats and his blows. "He hit me. He hit me," she cried. "But he never did stop treating me badly. Yesterday he was going to cut my throat with a razor down in the basement. I was on the point of death at any minute. My son attempted to defend me."

The boy had explained to the police that he had ordered his father from the home when the quarrel was resumed the day before the killing. His father had drawn a knife, and in lunging at his son had cut him. Thereupon the son drew a pistol and emptied its six bullets into his father. When the police arrived, he told them that the quarrel began when a younger brother was killed in action in Germany in 1945, almost two years before. Since then the murdered man had been constantly bickering and fighting with his wife.

And now the forty-five-year-old mother was in court to defend her husband's killer.

"Our boy tried to defend me," she argued softly.

"I understand how you feel, but your son is being held for a very serious crime." I then went on to explain to her that her son had a record of three prior arrests; in 1939 he was sentenced to from one to fifteen years for robbery in Newark, and he had served two and a half years of this prison term. In fact he was still on parole, outside of prison walls, pending good behavior. As the loving, confused mother stood by the boy who was jailed for patricide, the son was remanded without bail to await Grand Jury action.

She had faint instinctive recognition, but did not quite understand that the boy had a long delinquent record pattern from early youth, that he had played hookey from school, that he had started by stealing pennies from newsstands, had crawled into homes for petty thefts, stolen bicycles and finally automobiles. Then carrying the inevitable firearm, in a tug of emotions that placed the power of decision beyond him, he caused a death and heartbreaking misfortune to the only one he loved, his mother, who thus became an innocent pawn in the cruel game.

What was the relationship between this mother and son when

he started on his career of juvenile delinquency? Was she made part of a social group that was aware that today's delinquent is tomorrow's felon? The present popular outcry against parents of such youthful delinquents is based upon society's desire to solve a problem which is annoyingly insoluble. We therefore try to shift responsibility and make parents the scapegoats and deny our own special responsibility and inadequacy. Let us not oversimplify this riddle of parental responsibility. Parents also have problems, they also are people, they also were children and perhaps with delinquent backgrounds. Shall we go back and blame their parents as well? Shall the community hold parents responsible because it provides the hopeless slums in which generations of these families are reared? There is no hope unless all parents are permitted to be part of community living where the standards of behavior the community desires in its children are set by the group. Under such circumstances the responsibility is that of the group and not an individual problem.

And what was this youthful defendant, already a veteran in rebel conduct, thinking about as he stood before the bar? He was angry at the world, and above all, he hated his father; he was glad he had killed him. In his sullen way he loved his mother, but he was armed, he was armed for any emergency that might arise in the course of his anti-social behavior. This was not the first time he had contemplated murder; he had thought of killing his father many times. In this crime timetable the killing was inevitable, as inevitable as the conclusion of every Greek tragedy is inevitable. But this triangle of human personalities need not have been placed in the framework of that classic theater. The first act was wrong and the characters were miscast, but his society never trained him to play another part and his parents never learned to stop him from his character-part playing. They just didn't know he had become that bad.

Young lives can never be reoriented in our twentieth century by the medieval method of arrest, conviction and confinement. When

he first strayed from the beaten path, and even before, this human jetsam received no more care than the hardened criminal. That immediately transformed him into the kind of citizen we profess to be trying to keep him from becoming. We talk too much and do too little. There is just no other way that will prevent the inexorable conclusion of a modern Greek tragedy except to stop delinquency before it starts.

Two of these cases, both elemental in their tragic implications and both designated "criminal," are as far apart as the Poles both in background and in the type of variant conduct. If we learn nothing else we soon realize that no two people are alike. The cases are not identical even when the outlawed act seems to be the same. When we talk of "prostitute" in an attempt to pigeonhole a case, we are apt to lose sight of the fact that there is no one type of "bad girl," that there are as many cases as there are girls.

One pretty brunette dressed in furs stood before the bench accused of placing knockout drops in her gentleman friend's beer, stealing $134 from his pants pocket, a diamond ring from his finger and a diamond-studded watch from his wrist. They met in the usual way, casually, this time at a bar, went to a Manhattan hotel, had a few beers and soon he fell heavily asleep. When he awoke his money, his watch and his ring were gone. So was the temptress. There were found in her possession a solid-gold pillbox containing eleven capsules of sleeping potion, in addition to the stolen articles. Her police record showed six previous arrests for prostitution. I held her in $10,000 bail on charges of grand larceny and possession of drugs. This well-dressed "bad girl" looks like any other pretty girl who rides in the subway. Do you ever wonder whether the girl on the opposite seat is a delinquent who, unchecked, will repeat the history of this defendant? She too is pretty and attractively costumed and, only because you don't know her history, you cannot tell.

The second case is that of a woman in her late thirties who was

picked up near Times Square. She and her "friend" went to a midtown hotel where they were arrested. She was a trained nurse just off a trying case that had kept her imprisoned for ten dreary days. Her work was done at seven o'clock in the evening and she went for relaxation to Times Square. "I was lonely, Judge. I didn't ask for any money. I didn't need any. All I wanted was companionship." Examination by the judge disclosed that she had a comfortable nest egg in the bank. She had been steadily and gainfully employed for long periods of time. I found her not guilty and discharged her at the end of the case, but she was no less miserable and no less humiliated and shamed.

Each individual personality has a special history. Each so-called delinquent moves in her special direction because of that personal history and those forces which lead her inevitably to socially good or socially bad behavior.

Delinquents are like other girls and yet they are different not only from healthier girls but from each other. One may be extremely clever, the other dull and stupid, one free from care, the other worried, and their manifestations of delinquency are equally as varied. One shoplifts on Fourteenth Street, another drifts into sexually variant conduct, one tries to lose an illegitimate baby, while still another shows her rebelliousness in joining a gang of crooks. All are tagged "bad girls" but with few exceptions, such as the pillbox case, these girls are not hardened criminals.

Many of these rebels against convention would really like to conform, although others obtain great satisfaction from resisting normal attitudes. One is willing to work, but cannot find a congenial and decent job, another expects the world to support her without working. All these girls are problems; they have strayed from accepted standards and they are sick. What earthly good will jail ever do for such girls? They are sick with a deficiency disease and therefore new correctional vitamins must be supplied. Their crying need as well as desire is for the warm human relations of relatives and friends, recreation, and a sense of belonging.

And until they arrive at the pillbox stage, there is the justifiable hope that they may be brought back into their proper place in the social landscape by a psychiatric exploration of their minds to see what makes them misfits and by implementation of these findings with competently equipped social work. In these explorations lies hope that the reasons for emotional explosions in the maladjusted mind may be discovered. In the pathless forest of the subconscious, the initiated will grope for understanding of the dark, tangled underbrush of troubled minds. Knowledge and sympathy will illuminate the suppressions, the old forgotten hurts and the psychiatric casualties of the dimly remembered past.

The healing qualities of science will find meaning in the craving for financial and personal security, for respect and love, in the family maladjustments and in irritations and frictions of life in a complicated world. It will make allowance for the robust exhilaration of youthful energies, for the despair of bad health, for the pride of beauty and the leaden drag of unattractive appearance.

Understanding these, the psychiatrist will try to unravel the tensions that tear at the mind and cause slow or sharp eruptions in human conduct. The task is long and difficult, beset by complications inherent in the combinations and permutations of forces that tug and pull people to apparently unexplained and yet inevitably compulsive behavior.

The same craving for affection and respect often affords the hairline distinction between the motivation that leads to good conduct and that which leads to bad. If the forces are healthy they are likely to have that result. No, there is no "bad girl" type. Indeed, there are very few "bad girls," but there are very many unfortunate ones.

Another girl arrived in New York from the West, enticed by the glamorous life depicted by the movies. Within a very short time she had no job, no place to stay and not enough to eat. She approached a man for money. When she cried to go home, I permitted the social agency to send her there, after checking that her

home environment was wholesome. She was hysterically happy to get back. One such experience was enough for her, and the scars could be repaired by loving and judicious handling.

Each month hundreds of women are arrested on charges of prostitution, many of them young first offenders. Bewildered, they are picked up in the early hours of the morning and brought to the detention pen to await arraignment in the Women's Court. To the sensitive and uncynical this pathetic array is enough to sicken the soul. There, the neophyte is given a few lessons by the seasoned streetwalker. Let these disillusioned glamour girls meet trained, youthful, clean social case workers and not, through neglect, the veteran whore whose cynical advice can only lead to more deep-seated trouble. In the court proceedings we must give the trained and skillful case worker more leeway. She knows just what to do, to send home the starry-eyed kid just come in from the country, to recover the pitiful clothes which she left in her shabby furnished room. To help in finding the errant youth as early as possible, teachers and mothers must learn to see the first indications of this as well as other types of unhealthy conduct. Training alone will give them an awareness of these symptoms which are the roots of delinquency.

And when these cases come before the magistrate what does he bring to their solution? The law says he may put them in jail, and that would be the easiest way out for him, to be hard, to be tough. That requires no thinking, for thinking might teach him the disturbing fact that except in rare instances punitive measures do no good. Reflection and patience will convince the judge that there are other weapons in the legal armory that have to be used with care but that can save rather than destroy the precious human personality.

It is no sign of weakness if the magistrate listens to the trained probation officer. It is only the truly weak who say, "I am running

this court." Who says you're not? But with what equipment are you running it?

I remember my first assignment to a district court. When I entered my chambers I met a uniformed court attendant who introduced himself as the bridgeman for that week. These men, and sometimes women, call the cases, read the complaint to the defendant, ask him whether he wants time to get a lawyer and advise the defendant of his legal rights. He is the bridge between the defendant, the complainants and the magistrate, handing up to the Court the complaint, all papers offered in evidence, and summonses or subpoenas to be signed.

This veteran bridgeman was a man whom I came to know and admire very much. Discussing the routine of this particular district court, he looked me squarely in the eye and said, "Do you want me to talk or not to talk? I get paid either way."

"I want you to talk freely," I said. "I don't see how I can pass up the wealth of your experience. That will make up for my own inexperience on the bench."

His cooperation I always found invaluable. He and other bridgemen have prevented new and even more seasoned magistrates from falling into grievous errors. It is a little hard to believe that when a man puts on a gown he becomes omniscient. Some judicial officers even know the whole story before the defendant or his lawyer has explained the facts. One such situation brought forth from the counsel the following, addressed to Mr. Justice Willes:

"Your Lordship is even a greater man than your father, the Chief Baron. The Chief Baron used to understand me when I had done, but your Lordship understands me before I begin."

CHAPTER XI

WHAT IS THIS OCTOPUS COURT where such a variety of things seem to happen to such a variety of people? The rich, the poor, the beggars, the felons, all come to this court in droves. They are just folks, but what happens to them here is very important.

Notwithstanding the universality of this forum (it has over forty separate courts, handles a million cases a year and collects over four million dollars in fines each year), it is surprising that so little is known of the workings of this octopus tribunal. It is like a tree with branches spreading on roof tops, its leafy fingers intruding themselves into tenement-house windows, and onto Park Avenue terraces. Its wide trunk sits heavily on our streets, its roots find their way into the cellars of houses, the subways and the sewers. Its branches extend to our beaches, there in the summer to place a warning hand upon our shoulders even in pleasure making.

In its city-wide jurisdiction no aspect of urban life, amusing, sad, heroic, paltry or poetic is free of its all-embracing influence. Its jurisdiction is first hand. It is intimate. The jurisdiction of the Federal courts and even the State courts is far-flung, but it is remote; a magistrate, on the other hand, knows immediately the reactions of the people to a kindly act or to a cruel or stupid one. His conduct impinges closely on the lives of his neighbors. What happens in this court can be terrifyingly important.

In any brush with the criminal law no man, rich or poor, is immune from its tentacles. The rich property owner is held accountable for the requirements of building safety, the peddler is hauled off the street to pay his rent in small fines, the drunk is pushed, braced and propped until he can stand erect, the prostitute ingloriously driven with clothes disarranged in early morning state, the hardened criminal handcuffed and jolted into the police line-up. And then all are deposited in this dark, bottomless reservoir of

the Magistrates' Courts. This huge muddy pool has a teeming, shifting, living population and it is never empty. Many ducts flow from the limitless cavern. A waste line carries off, comparatively untainted, those who are discharged. The felon is drained off from this criminal labyrinth to the Grand Jury, there to await more serious action. The misdemeanant is channeled to the Court of Special Sessions. The remaining vast throng are canalized into huge, busy pipe lines to the local district and special courts, there to be tried and the cases disposed of with more or less expeditious and summary justice.

A citizen stumbling in as a defendant in an apparently innocuous violation like overtime parking or throwing a chewing-gum wrapper on the subway platform, little realizes that he is an actor in a large panoramic spectacle of human life that encompasses every phase of metropolitan activity. It is a system that may engulf each and every one of us, if not as a defendant, then as a complainant or witness.

This court never rests and never sleeps. Its gears are meshed to the police wheels and for three hundred and sixty-five days in every year and for three hundred and sixty-five nights it feeds its hungry mouth with more and more defendant folks.

For most lawyers the law is pronounced only in the appellate tribunals. To them the judicial process is restricted to the words of legal wisdom uttered by judges in those austere halls. However, to most of the eight million people in this city that process known as "the law" is identified with this court that they know and have seen in operation. To the mass of the people, there is no higher or lower court. The magistrate is the only judge they know. How he looks, how he acts, how he talks are the details that go to make up for them the picture of the judicial process. What these people experience in these courts is their picture of American justice. In fact, it may be their only contact, that and the police, with government.

In contradistinction to the typical British respect for the law

and all the courts, it is sad to reflect that a Gallup poll conducted in June, 1939, in the Middle Atlantic and Eastern Central States, produced the shocking result that thirty-three percent of those addressing the questionnaire did not believe their local judge to be honest. Although much is said by bar associations and public-spirited citizens about the importance of these courts (President Taft called it the most important American court), yet the public generally blinks at the caliber of our local judges and supinely accepts appointments that the local district leaders permit. The Magistrates' Courts are too important and their improvement too essential to permit the appointment of any but the best men and women. It is frightening to think of unsympathetic and unskillful handling of the tragic, tender and horrible incidents that daily occur in this noisy, dirty and fascinating town.

There are fifty magistrates in the City of New York (this includes the chief city magistrate). At each point in this tremendous legal system there is a magistrate who guards a valve. The judge may possess little more than the minimum legal requirement (that he be a member of the bar for three years). If, in addition, he is a man of some learning and possesses a modicum of cultivation and human understanding, the community can consider itself blessed. If, after that, he has some social consciousness and is independent of political and other pressures, then it is doubly blessed.

The appointive power (with or without the help of political leaders) is the Mayor. These appointments, more than any other, directly affect the lives and safety of the citizens. None of us know when we may be called to play a voluntary or unwitting part upon that stage. Here we see the persistence with which we pursue each other in an attempt to hurt even with small pin-pricks. Here we have social sickness, depressing sadness, all of it lit up occasionally by the lightning of nervous humor. The mere accumulation of these sad histories is enough to make any magistrate sour and cynical, but that is just what he must not become,

for warm humanity is the ever-pressing need and the defendant must always feel that the judge is hearing his story with fresh sympathy and undivided interest.

This court is a caldron that seethes with life. It is life in the raw; it throbs with human heartbeats, with good as well as evil. Persistent cruelty tirelessly bares its sardonic claws, humble conscience stumbles on its way to remorse. Sweetness and lawlessness, wounding and healing endlessly vie with each other in this teeming, living inferno, a sickening but enthralling pageant of living.

What happens to that unfortunate person who finds himself in the depressing clutches of the law? Arrested by the officer, he is taken to the police station, where his spine is chilled as he is booked on a specific charge and held for appearance in the Magistrates' Court. The arrested is entitled to a prompt hearing during the day, and after the day courts are closed he is arraigned in the Night Court. In certain cases, when courts are not in session, the police desk lieutenant can fix bail up to $500 for later appearance in the morning court. But in the case of the more serious crimes he is taken for arraignment to the Felony Court, and to special courts as indicated. The problem of detention before arraignment and trial is a very special one, since many of those arrested are innocent of any wrongdoing, and are entitled to honorable treatment. Although secure against escape, they should be made reasonably comfortable, given decent treatment and kept away from corrupt influences.

Upon arraignment before the magistrate, the complaint, which has been previously drawn by the complaint clerk from the facts submitted by the complaining witness, whether he be police officer or private citizen, is read. This is the act of officially informing the defendant of the charge on which he is being held, and explaining his rights under the law.

"You are charged with the crime of grand larceny. You are entitled to communicate with your relatives or friends, by letter or

telephone, free of charge, from the office of the warden. You have the right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had."

Usually an adjourned day for hearing is agreed upon, unless in such cases as grand larceny the defendant waives examination and elects to have his case go directly to the Grand Jury. In cases which the magistrate has the power to try himself, a date is set for trial, and the magistrate fixes the amount of bail in order to insure the appearance of the defendant in court on the return date. If the judge is convinced that family and business connections give reasonable assurance of his later appearance, especially in the case of first offenders, he may parole him in his own custody (permit him to go free until trial on his own word), or place him in the custody of relative, counsel or friend. In certain cases, the magistrate has no power to fix bail and application therefore must be made in the Court of General Sessions or the County Court, depending on the geography of the crime.

Crimes are either felonies or misdemeanors. In indictable offenses (felonies) the magistrate holds a preliminary hearing in which he may dismiss the complaint or hold the defendant for the Grand Jury. In the case of lesser crimes (misdemeanors) he may also dismiss the charge or hold the defendant for the Court of Special Sessions, where such cases are ordinarily tried. It will appear that the magistrate may also sit as a Court of Special Sessions and in that capacity himself dispose of certain misdemeanors. All other cases are less than crimes and are known as infractions or violations, and over these the magistrate has the power of final disposition. Numerically, these infractions or violations represent the bulk of the work of these courts. In every case, felony, misdemeanor or infraction, the defendant is informed of the charge against him, is advised of his rights and that he may request an adjournment to obtain counsel.

The boiling city life illumines the battle of confused motives, the mysteriously hidden conflicts, the underworld grime, the mis-

directed energies of errant youth, in an authentic picture of the propellingly ruthless pull of the seamy streets, the underground, the slum and penthouse, all abounding in humanly frail, amusing or repulsive acts. To cope with all these people in the disorganization of New York's hectic existence, the court was organized under what is now known as the New York City Criminal Courts Act.

The Magistrates' Courts have more cases on their dockets than any other like court system in the world. People bring into this court their character, their liberty, their very lives, perhaps to be unalterably affected by the decision of one man. This is the court which has grown up with the noisy, busy and complicated metropolis and reflects as much as any other city agency its throbbing pulse. In a variety of separate courts, the judge handles all the cases in three possible but distinct categories: (A) as a magistrate having the power of final decision; (B) as a Court of Special Sessions with like summary jurisdiction and (C) as a committing magistrate.

As a Magistrate with Summary Jurisdiction: The great majority of cases come before a magistrate who, if he is right in his determination, has the final word. In such a capacity he has the right to accept "guilty" pleas and, upon such pleas, impose sentence; if the defendant pleads "not guilty," he may try the case himself, without a jury. After such trial he may acquit or convict the defendant, and if convicted, impose sentence upon him. This power to try and dispose of a case summarily is not completely final; it is final only as to trial, for the right is circumscribed by the protection of an appeal to the appellate part of the Court of Special Sessions. In most cases, however, there is no lawyer and there is no appeal.

The cases that a magistrate tries summarily are known as offenses or infractions. These offenses or infractions are generally the following:

(1) Violations of city ordinances not expressly declared to be misdemeanors, such as peddling without a license or violations of traffic and park regulations. The New York City Charter gives

certain heads of departments, like the Police and Park Commissioners, authority to adopt regulations which possess the force of law. These violations are not declared to be misdemeanors and therefore the magistrate has complete and summary jurisdiction over them. On the other hand, violations of the Sanitary Code, a statute enacted by the city's Board of Health, are misdemeanors, no matter how trivial or insignificant the violation may be. Likewise the City Council may pass a local law and provide punishment for its violation; if it does not declare such violation to be a misdemeanor it falls into the summary jurisdiction classification. The most recent examples of these local laws are the price-fixing local laws under OPA and the more recent rent restrictions under the Housing and Rent Acts.

(2) Disorderly Conduct is the catchall violation under which many thousands of cases come into the Magistrates' Court. Under this provision, the magistrate may sentence to the limit of six months in a county jail or workhouse or impose a fine not to exceed $50 or both. The only exception is the power to give an indeterminate workhouse sentence not exceeding two years where a defendant has been convicted of disorderly conduct or vagrancy two or more times during the previous two years, or three or more times prior to the current conviction.

(3) Disorderly Persons (distinguished from cases of Disorderly Conduct) are people who abandon and neglect to provide for wives and children, fortune-tellers, bawdy-house keepers, gamesters and habitual criminals. In the city this section is used only in rare cases where a fortune-teller or a common gambler is brought in as a disorderly person.

(4) Vagrants, those who are without visible means of employment, such as prostitutes, beggars or habitual pickpockets. The law considers vagrancy, among other situations, a condition or status as distinguished from an offense like disorderly conduct.

(5) Wayward Minors also involve condition or status. The court has complete jurisdiction over incorrigible minors in the sixteen

to twenty-one-year-old age group. In all cases that involve a condition or a status, a guilty plea may not be taken, but the court may only adjudge the wayward minor's legal status.

(6) Public Intoxication. In New York City intoxication is not declared to be an offense. Here drunkards are not brought in for intoxication but for disorderly conduct, vagrancy and similar offenses.

The distinction between a specific penal offense and conduct calling for the determination of status or condition is more historical than logical, its rationalization being based on the premise that the imposition of fines in the "status" cases cannot be a solution to the problem. An incorrigible youth is "adjudged a wayward minor," not "found guilty." In addition to the question of criminal responsibility the treatment technique differs in that something has to be done about rectifying the condition or changing the status whereas the commission of a penal offense involves some punishment, if only the assessment of guilt itself.

Prostitutes and those who aid them are vagrants and the magistrate adjudicates their status as he does that of homeless persons. The assessment of fines will be to place a license fee on conditions that have more social than criminal aspects. In most of these cases the exaction of a fine can only aggravate a condition which needs healing rather than punishment. Theoretically the same should be true with beggars (we must not expect too strict logic in such evolutionary matters), but more often than not they are prosecuted for disorderly conduct in soliciting alms.

As a Court of Special Sessions: The Court of Special Sessions was established in the Colony of New York by acts passed by the Colonial Legislature in 1744. This court then had and still retains a three-judge bench. The designation of a single magistrate with power to sit alone as a Court of Special Sessions is a fairly recent innovation and came about as a result of the city's growing pains. The New York City Criminal Courts Act, enacted in 1910, considered that all misdemeanors should be tried in the Court of

Special Sessions. Because of the tremendous volume of misdemeanors, it proved impracticable to try all such cases in this comparatively small court, the composition of which is a chief justice and sixteen associate justices, the entire seventeen of whom have to sit in trial parts in all counties, with three justices assigned to each part. In addition, an appellate part of three justices, occupied in hearing appeals from the Magistrates' Courts, reduces the number of judges available for actual misdemeanor trials.

It was for that reason that the act was amended to provide that a Court of Special Sessions might be held by any one city magistrate to try certain enumerated types of misdemeanors.

There are generally twenty-three such classes of misdemeanors, roughly arranged into these major categories: (1) Violations of code, rule or order of any department of the State or City; (2) Violations of the Labor Law, Vehicle and Traffic Law, Tenement House Law, Workmen's Compensation Law, Article 25-A of the General Business Law (Bedding, Upholstered Furniture and Filling Materials), and the Alcoholic Beverage Control Law; (3) Violations of specified provisions of the Penal Law, notably gambling cases, charges of cruelty to animals, hotel frauds and sales of contraceptives; (4) Any misdemeanor punishable by a fine not exceeding one hundred dollars or imprisonment not exceeding sixty days. Sabbath Law violations are an example of the last category.

However, the transformation of the Magistrates' Court into a Court of Special Sessions is not automatic or self-executing. If a magistrate does not wish to take jurisdiction over one of the enumerated cases, or if the defendant does not consent to such jurisdiction (which he may lawfully do), or if the District Attorney or the prosecuting department objects, the magistrate does not sit as a Court of Special Sessions, but retains his function as committing magistrate in so far as these misdemeanors, as well as all other misdemeanors over which he may never have any summary jurisdiction, are concerned.

As a Committing Magistrate: Every person charged with a crime for which he has not been indicted is entitled to a hearing before a committing magistrate, and the magistrate must hold such a hearing and weigh the evidence to determine whether there is sufficient cause to hold him. If the crime is a felony and if cause is established, the defendant is held for the Grand Jury; if the crime is any misdemeanor other than criminal libel, the defendant is held for the Court of Special Sessions.

Upon being arraigned, the defendant must be advised of the charge against him and of his right to counsel, for which purpose he is entitled to receive an adjournment. The defendant may waive his right to a hearing, in which event he will be held over to the Court of Special Sessions or to the Grand Jury, depending upon the nature of the charge. The magistrate may fix bail or he may parole the defendant. If he does not waive, the witnesses are placed under oath, the defendant or his counsel may cross-examine them, and if the people, through these witnesses, fail to prove a *prima-facie* case, he must be discharged. If a *prima-facie* case has been made out, the magistrate advises the defendant of his right to make a statement or to waive such statement and of his right to have his witnesses examined. If the magistrate is of the opinion that the crime has been committed and that there is sufficient cause to believe the defendant guilty, the defendant is held for the Grand Jury or the Court of Special Sessions, otherwise he is discharged.

When a defendant is arrested in New York City and charged with the commission of a crime in a State other than New York, the magistrate must determine whether the person before him is the one accused. If he is, he must commit the person until the governor of this State decides to grant extradition upon the request of the State where the crime was committed, or until the accused person waives extradition.

In all misdemeanors which the magistrate has no jurisdiction finally to hear and determine, and even in those misdemeanors

which he has a right by law to determine but where the defendant does not waive his right to have a trial before a full three-judge bench of the Court of Special Sessions, the magistrate sits only as a committing magistrate, as he does in the case of felonies.

Two drunks who had left their ship with $300 in their pockets sought surcease from the turbulent highways in a bar and grill on the last day of their shore leave. Running short of funds, they had enough for one last fling. A few rounds had been disposed of when an unknown woman entered the pub and invited herself to sit at their table. Gallant gentlemen that they were, they rose to the occasion literally and figuratively and said, "Why certainly, please sit down." And they proceeded like old friends to drink together.

The lady suddenly announced that she would like to have a new dress. Mellowed by drink and the warmth of her companionship they were still more willing to accommodate her, and with a "Why, of course," they rose immediately, left her in the saloon and repaired to a dress shop that was most conveniently situated next door. One of the seamen engaged the saleslady in conversation while his companion folded a dress from the rack and put it under his coat. But the two gallants did not reckon on the manager, who was watching this performance from the vantage point of a balcony overhead. As one of the shoplifters opened the door to make a stealthy exit, he was stopped and arrested. He said indignantly, "What for?" "You have a dress under your coat." He replied with great dignity, "Why, I'll pay for that dress," and turning to his companion, peremptorily stated, "Give me some money." They both emptied their pockets and between the two they had less than six dollars. The dress tag said $19.75.

Arraigned later in the Mid-Manhattan District Court, they explained they did not realize their money was almost gone. I asked the more articulate of the two, "What size dress were you looking for?" He replied, "Size 12." Asked why he had left the

girl in the saloon, he said that he did not need her presence in the dress shop because he and his friend knew her size.

These men were held on the charge of petit larceny, a misdemeanor, but such a misdemeanor as a magistrate has no power to try. I therefore sat as a committing magistrate, and since a *prima-facie* case was made out, there was nothing to do but hold them under low bail for the Court of Special Sessions, there doubtlessly to be treated fairly leniently in view of their condition and their Robin Hood conduct.

In addition to the three separate capacities in which the magistrate sits there are different kinds of courts in the magisterial system which depend on the nature and the place of the offense. These courts fall into two separate categories: (a) the special courts and (b) the district courts. The district courts are neighborhood tribunals and handle all cases in their localities which are not reserved for the special courts.

Among the special courts, the one where the most serious crimes are heard is the Felony Court which has jurisdiction over all felonies, except those where the Grand Jury has already returned an indictment, and all misdemeanors and offenses specified in Section 552 of the Code of Criminal Procedure. These misdemeanors and offenses are (1) illegally using, carrying or possessing a pistol or other dangerous weapon; (2) making or possessing burglar's instruments; (3) buying or receiving stolen property; (4) unlawful entry of a building; (5) aiding escape from prison; (6) misdemeanors under Article 22 of the Public Health Law relating to narcotics; (7) that type of disorderly conduct known as "jostling," an offense.

Youth Term operates in conjunction with the Felony Court in Manhattan and the Bronx and was established as a preliminary for the application of the Youthful Offenders' Law, should the Courts of General Sessions, Special Sessions and the District Attorneys deem it advisable. In the process, the focus is shifted from crime to rehabilitation.

The Youth Part of the Felony Court arraigns defendants of sixteen through eighteen years of age. Under sixteen the defendants are referred to the Children's Court for juvenile delinquency. Should those of sixteen through eighteen be held by the magistrate for the Grand Jury, then on sealed indictments, pursuant to the recommendations of the Grand Jury and the District Attorney, they may be considered for possible treatment under the Youthful Offenders' Law as eligible for adjudication or trial as youth offenders. An information is then substituted for the indictment and the case is heard by a judge without a jury in the Youth Part of the Court of General Sessions. Those who are thought to be ineligible for adjudication or trial as youthful first offenders are disapproved and required to plead to the indictments and be tried.

The Adolescents' Court is the Brooklyn and Queens counterpart of the Youth Term. Set up by special statutory authority, the magistrate here has the power summarily to reduce a felony charge to that of wayward minor upon consent of the District Attorney. This permits the youngster to be treated within the confines of the Magistrates' Court, a procedure that is different from the Youthful Offender treatment which starts in the Youth Term of the Magistrates' Court and proceeds to the Grand Jury and to the other criminal courts.

The Gamblers' Court is the special court which handles all gambling cases as well as all violations of the Alcoholic Beverage Control Law. The consolidation permits the District Attorneys and the police to conserve the time of their staffs who were previously required to move from district court to district court in the prosecution of these cases. The police squad handling these cases is a specialized expert group and the time of these law enforcement agencies, as well as of the defendants and witnesses, is thereby conserved. Gambling cases involve bookmaking, gambling houses, lottery tickets, policy-law and slot-machine violations, among others.

The Night Court is a special court, one part operating in Man-

hattan for that Borough and the Bronx, and one part in Brooklyn for the other Boroughs.

The Week-End Courts function in Manhattan, Brooklyn and the Bronx on Saturday, Sunday and holiday mornings to dispose of all immediate arrests.

Municipal Term is the court for prosecutions by city and state departments of violations of laws, rules and regulations within the purview of the police power of the State.

War Emergency Court is a war-born special court, originally having jurisdiction over OPA violations. It is now restricted to rent and eviction offenses arising out of the subsequent rent-control laws.

Women's Court has jurisdiction over prostitutional offenses and the misdemeanor of keeping a disorderly house. Since women are arraigned in all other courts on all charges except prostitution, the court is misnamed.

Girls' Term, formerly the Wayward Minor Court, treats the behavior problems of girls of sixteen through twenty-one who are runaways and who so misbehave that their parents have lost control over them.

Vehicle Accident and Traffic Courts have been set up in all boroughs except Richmond where all cases are handled by a single court. There is not sufficient work in Staten Island to permit of any specialization.

Home Term was recently created, in Manhattan only, to dispose of all controversies between husband and wife. All private and municipal agencies, jointly with the presiding magistrate, try to solve the distressing family problems of drunken brawls and other physical manifestations of organic disorder. The volume of cases in this borough-wide court can easily overwhelm the overworked police, an understaffed probation department and the harassed social agencies. This adventurous experiment, nobly conceived, needs adequate budgetary help before it can be judged or tried out in all five boroughs. Pragmatism and experience rather than

intellectualized desiderata should be the guiding factors in making that decision.

Probation Court sentences those defendants referred to it after guilty pleas, or upon conviction after trial, by trial judges who feel that a prior investigation by the Probation Department is warranted, before sentence can be properly imposed. During the investigation and the writing of the report of the probation officer, the defendant may be remanded to jail, placed on bail, or paroled. In addition to the usual sentences of fine or workhouse term, this court may place the defendant on probation upon such terms and conditions as the special situation may warrant.

No introduction to this court would begin to be adequate without stressing the peculiarly warm informality of the tribunal, an informality that makes it distinctly different from all others. As it is near to the people, so it takes on a reflection of the warm, human characteristics of its people. In no other courts are spontaneous and unexpected collections taken to pay the fine of the indigent; in no other court are lollipops handed out to keep children happy and quiet while mothers wait to complain of landlords. In no other court are children given toys to play with and food to eat while the Home Term tries to settle differences between mothers and fathers. The records of the court are full of glowing stories of human compassion, where punishments are tempered with mercy, where ordinary human frailties are understood and laughingly dismissed. Toughness is by no means the only weapon of this court, for judges, clerks, stenographers, attendants and newsmen are quick to catch a note of sadness, to feel the grip on the heartstrings, the robust humor, the bite of sarcasm, the cry of despair and the illumination of hope, all of which combine to make up the symphony that is this people's court in action.

Late one night, the police arrested a man for stealing a car, just another one of those routine arrests of an automobile thief. The sleepy police station was not prepared for another scene in the sad drama of life, and yet it and the Magistrates' Court always respond.

Oath of Devotion

The confessed car snatcher told his captors that he was a labor-gang foreman earning $46 a week on which he had to support a wife and seven children ranging from one to sixteen years of age, in a three-room cold-water apartment. He was about to be evicted when the distracted parents decided that the mother and children be sent to live with relatives on an upstate farm. "I figured if I could get the wife and kids up there on the farm they would at least have a roof over their heads and they wouldn't have to worry about food."

But the unhappy father, obsessed with the problem of providing food, clothing and shelter for nine on an inadequate salary, did not have enough money for train fare and he was too proud to ask the Department of Welfare for charity. Instead he went around trying to borrow a car. He met with no success and, desperately fearing eviction, he found a parked car, drove it to his home, and loaded into it his wife and seven youngsters, intending to return it after he had delivered them all to the farm. The theft was soon reported and he had not proceeded very far when he was picked up.

At the station house, the police who heard the story were so moved that they made up a collection of $10, after they had booked him for grand larceny. The money was given to the wife for food, and the hardened minions of the law drove the entire family home in a squad car. Unfortunately the father was detained, but when he was arraigned in the Felony Court, the car owner, on hearing the defendant's story told to the magistrate, wanted to withdraw the charge. The magistrate refused to permit the defendant to admit his guilt and ordered him released in his own custody pending action by the Grand Jury, where the cooperation of complainant and government followed him.

The hard-crusted police and court had sensed an unusual situation and had instinctively responded to it, not prepared to put the screws on a distracted defendant who had come to the end of his resources.

CHAPTER XII

IN THIS BUSY COURT there is an ever-flowing stream, a swiftly passing parade of defendants of all ages and all racial backgrounds, parents, children, romantic and mercenary lovers, gun-toting youths, simpering first offenders (immediately sucked into the police dragnet), killers, sex maniacs, homosexuals, neurotics, drug addicts, malicious mischief-makers, prostitutes, vagrants, street arabs, panhandlers, shoplifters, traffic violators, OPA and later rent-ceiling offenders, pickpockets, gamblers, petty thieves, receivers of stolen goods, forgers, subway smokers, Sabbath breakers, all woven into a varied tapestry of New York life. The caldron is large and always bubbling. From this constantly moving escalator no one is immune. Many innocent people are caught in the treacherous whirlpool of the Magistrates' Courts.

Having first been arrested, brought by the police officer to the station house to be booked, after the day courts are closed, some of these defendants find themselves in the Night Court. As these are processed from police station to court, day or night, many are soiled, many are shaken, some are amused and many are heartbroken in what is to them a pattern of horror. On this lifeline every conceivable emotion, the basest and the noblest, shows itself in a most revealing record of human nature. Very few, avid for new experiences, meet the test with excited eagerness. Many bow resignedly to the dull inevitability of defeat. Here we see pride, arrogance, inferiority, innocence and sordidness. Bowed down with the necessity for ethical judgment, the humble man who, quite by accident, is called to pass upon human conduct, does not

burn with moral self-righteousness, but realizes that the guilt does not rest upon these unfortunates alone, but everywhere.

The passing parade is seen at its busiest, noisiest, drunkest and smelliest in the Night Court. From the Bowery to Harlem, from all over the city, there come to the two Night Courts in Manhattan and in Brooklyn all of the outpourings of these teeming populations of human flotsam and jetsam.

When the Night Court opens at about nine o'clock, the room is as quiet and dull as a deserted theater set. Some of the benches are taken by a quiet, sleepy, apparently unexpectant group of listless onlookers. The drowsy audience first comes to life as the court attendant rouses them out of their lethargy by announcing the arrival of the magistrate. "All rise," he shouts into the sleepy semi-darkness. As the black-robed judge follows the bailiff down the side wall of the courtroom, the visitors rise and glance respectfully and inquiringly in the direction of the presiding magistrate. As the judge approaches the bench, he nods to the court stenographer, to the attendants and a few policemen, and ascends the bench. The bridgeman announces "His Honor, the presiding magistrate of this Court," and as the magistrate adjusts his robe and takes his seat, the attendant cries a final "Be seated."

Every night, three hundred and sixty-five nights in the year, this tribunal is open. It is successor to its more colorful predecessor on West Fifty-fourth Street where expectant evening-cloaked ladies came after the theater in their quest for mawkish night-club entertainment. These same slummers will now be doomed to disappointment because the ladies of the evening are no longer spread before them for their amusement. They are now arraigned the next morning in the Women's Court.

The bridgeman turns to the judge: "Shall I call the first case?" Police officers begin to trickle into the courtroom holding complaints freshly typed in the complaint room. As the first case is called, an officer steps up and his prisoner is released from the pen upon a sign from the arresting officer. The bridgeman turns

to the officer: "Do you swear to the truth of the complaint?" "I do," is the answer and the magistrate records the oath on the complaint. The bridgeman reads the charge. "The officer says that at 7:50 P.M. tonight you created a disturbance at the Fourteenth Street Interborough Subway Station, causing a crowd to collect."

The defendant, it appears, put a nickel into the IRT turnstile at Fourteenth Street, thinking it was the BMT. Discovering his mistake he came out through the IRT turnstile, went over to the Negro girl in the change booth and demanded his nickel so that he might redeposit it in the BMT turnstile. The young lady said she was sorry he had made the error but she could not return his nickel. He could address his complaint to the Board of Transportation. He persisted, became loud in his criticism and a crowd collected. Unable to get rid of him, the girl telephoned for help and a police officer appeared. He also tried to tell the man to go away but to no avail. As the defendant became more abusive he was arrested.

"You are entitled to communicate with your relatives or friends, by letter or telephone, free of charge. You have the right to the aid of counsel in every stage of the proceedings, and before any proceedings are had." He is thus advised of his rights to an adjournment to secure counsel or witnesses. This defendant pleads "not guilty" and demands an immediate trial. The testimony of the girl and the police officer is taken. The defendant is asked if he wishes to question either witness. Instead of putting questions he makes a speech in his own defense. The court cross-examines the witnesses for him. After the prosecution's story is completed, I move to dismiss the complaint on the ground that the people have failed to prove a *prima-facie* case. This motion I deny and record a proper exception to the defendant who is then asked whether he wants to testify. He is told that his failure to testify can not be used against him. Yes, he certainly wants to testify. He hurries to the stand and is sworn. His story is not much different from that of the people's witnesses, except that he claims the officer pushed

him. At the end of his testimony I renew the motion to dismiss the complaint, on the ground that the defendant has not been found guilty beyond a reasonable doubt. That motion is denied and the defendant is found guilty.

Generally when night calendars are long, there is no time to try any cases, and in addition, it is better to adjourn the case to the district court where the offense took place. The defendant may then consult counsel, friends and witnesses and present his case more adequately than in the nervous excitement following the arrest. If the defendant has identifying credentials, is an employed family man, has for a long time resided at his present address, there is generally no difficulty in convincing the magistrate that he should be paroled in his own custody or that of wife or relatives. The purpose of bail is to insure the appearance of the defendant in court and not to enrich bondsmen or to punish defendants in advance of a determination of guilt.

In passing sentence, I made it clear that the purpose of the proceeding was as educative as it was punitive, and since this was his first offense, since he had lost time and a nickel, I was going to suspend sentence. In dealing with nervously arrogant immigrants who pontifically demand their "rights," the magistrate is afforded an opportunity to become a teacher of civics which brings home to them an object lesson: in this case, that the young Negro girl was on his own level, was entitled to equality of treatment, and that her testimony was good enough, if true, to match his own. On the other hand, it was also important not to bear down too hard on him for a mistake which he did not quite comprehend. Paying two nickels for one subway ride to him loomed as an injustice that was immediately remediable.

This case antedated the ten-cent fare and the connection of the two systems.

The foreign born must be treated gently and taught in reasonably small doses, for they cannot be expected to assimilate too much at any one time. The story is told of an illiterate farmer who

took pencil to paper and began making markings on the sheet. Suddenly he shouted to his wife, "Maria, come here quickly, I can write." She ran excitedly to his side, and looking at his doodling, said, "Wonderful, I am proud of you. What does it say?" "One thing at a time," was the rejoinder. "I haven't learned how to read yet."

The stream of cases continues. A cheeky boy of seventeen breaks into the Rialto Theatre to see a movie; a defendant is accused of selling tickets to a basketball game or a fight at Madison Square Garden without a license; furtive-mannered gamblers are arrested and transferred to the Gamblers' Court; assault follows petit larceny; shoplifting follows a lewd and indecent act. From nine o'clock to midnight and beyond the cases unfold until the stream of defendants is exhausted. As the evening wears on the audience grows, and sometime during the night, drama in its most elemental form will appear, sparks of tragedy may fly, shafts of colorful wit may fill the court with suddenly illumined glimpses into the human heart.

As the evening unfolds twenty Armenians are brought into court, charged with using loud and boisterous language at night to the annoyance of their neighbors, a charge that is declared to be disorderly conduct under the Penal Law. These catchall arrests pour out vanloads of Puerto Ricans, Armenians, Greeks, Italians, as well as many native born who spend their evenings and early morning hours in noisy gambling in coffee houses, political clubs, restaurants and private homes. Usually, on anonymous telephone calls from informants who say they are disturbed, the police dragnet ensnares wagonload after wagonload, pours them out into the Night Court, and to a lesser degree into the district courts, to be tried for the innocuous offense of acting naturally in the only club these poor men have. In other premises, where parties are more dignified, where walls and carpets are thicker and the pleasure-making not so audible, the identical conduct carries no penalty from an unfair society.

A "not guilty" plea causes the police officer resignedly to take the stand, to testify that in response to an anonymous complaint, he heard, coming from meeting room or apartment, loud and boisterous language, usually in a foreign tongue; that on opening the door, he found men (and women) playing cards, identified himself as a police officer and put them all under arrest. On cross-examination by the judge, for these defendants rarely appear by attorney, the officer is unable to identify any individual who used the loud and boisterous language, and unable to produce any neighbor who was annoyed thereby. The judge, continuing as counsel for the defendants, moves to dismiss the complaint for failure of proof, grants his own motion and discharges the defendants. The officer shrugs his shoulders, moves on to the next case, and repeats the same performance with similar results.

These roundups are practical attempts by the police to keep their hands on organized crime, and to keep close tabs on people who are likely to get into trouble. Some cynical people maintain that these arrests are made to swell the statistics of the Police Department, but judging by the number of dismissals, it would seem that the police could get greater statistical pleasure doing something else. I believe that calls are made to the police and that their activity stems from the belief that gamblers are the breeders of much more serious crimes, that they have notorious involvements with gunmen, with slot-machine operators and with crooked confidence men.

Night after night droves of peddlers, loaded with a variety of boxes and bundles, shuffle up to the bench. The experienced, self-assured customers well know that fines, even if regularly assessed, are cheaper overhead than rent, taxes and advertisement. Fantastic stories of the earnings and wealth of some of these peddlers, of apprentices and the big bosses who send them out, are bruited about the courts. There may be a small grain of truth in the statement that many of these peddlers are centrally controlled and

obtain their merchandise from a common source and even to some extent peddle the merchandise for this account. I should be greatly surprised if they did not buy their "seconds" merchandise, much of which is junk, from the same source.

The purchasing public usually comes off second best, for obviously there can be no warranty of quality and no way of demanding one's money back from the unlicensed and itinerant peddler with a counter that folds into his suitcase. Many people are very sympathetic to these hucksters who hawk their merchandise on the sidewalks in front of rent-paying stores, but this sympathy is largely misplaced, for many of these sidewalk merchants do very well.

But by and large, the sad faces of these repeating misfits refute any strange hypothesis of wealth. For selling nylons, flowers, suspenders, candy, clothing, pretzels, chewing gum or oranges, they amble up to be fined a few dollars, or in deserving cases to be given suspended sentences. From the pen attached to the court, they enter the brightly lit courtroom like frightened, hunted animals who are routed into the glaring light. The face of the man on the bench, kind or sullen, amused or severe, affects their approach and demeanor. Some abashedly or dejectedly cast their eyes on the floor, some stare blankly at the judge, some smile quite happily. Levity and fear are both present. Some, through curtains of tears before their eyes, plead for mercy; a few stare challengingly at the magistrate, daring him to do his worst.

One ebullient citizen, a perambulating fruit merchant, was selling his oranges in a forbidden area. When arrested, he not only submitted his person but also his entire pushcart to the police officer, with the admonition to the minion of the law to "take care of it, officer, because I'm not going to touch it." That done, the intransigent peddler strolled along, smoking a cigar, while the police pushed the heavy load of oranges to the station house. Two other peddlers who, arrested at the same time for selling flowers, pushed their own carts, on pleading guilty before me were fined

$1 each. The orange peddler also pleaded guilty, and he was fined $2.

The police officer did not, of course, relish the nuances of the situation, but he handled himself in a civilized manner. Although he had to call for help to push the heavy load of oranges, he did not lose his head and beat up the poor peddler who had blown himself up into a king for an hour. In this high moment of his peddling career, he just could not resist the temptation to let himself go. He had his fling and the pungent satire was not lost on the spectators. Joe Doak, the underdog, by an abrupt spring out of anonymity, was at last expressing his resentment against authority. What member of the audience had not himself had the urge sometime in his life to do the very same. This man actually had his revolutionary fling in thumbing his nose at the police, getting his anti-social behavior out of his system dramatically and quite innocuously.

Night after night the police dragnet rounds up the Bowery barflies out of the river of booze. These wrecks of human personality, ragged and tattered, sprawled on the sidewalks or huddled as inanimate as the buildings they lie against, poor unfortunates, add tears and mirth to the Night Court scene. They represent a conglomeration of misfits, some disgruntled, some gloriously happy, others sad, sodden, bleary-eyed, and foul-smelling, most of them alone in the human abyss except for these companions in drink. Among this motley throng one rheumy-eyed defendant begs to be put in jail for a week or two during the freezing weather, there to receive warmth and a bath, to await the coming of spring, when he will renew his sidewalk abode. Others, all pride and manliness not yet gone, fearful and ashamed of jail, not so resigned, straighten out their ill-fitting clothes, as they pleadingly deny that they live in bars and flophouses, and vehemently protest possession of homes, relatives and jobs, and friends who will help them back onto their feet.

There is often a friend in court to give them comfort. One of

these friends, or a sympathetic cop, or experienced and wise court attendants, and perhaps, of a Saturday night, Mazie of the Bowery may hand out to some a welcome dollar bill. A first meeting with Mazie may bring amusement at her emblazoned appearance, proud feathers flying from her jaunty hat, her cheeks a bright crimson and her eyes sparkling as she sits in the back row of the Night Court. As the regulars pass her on their way out, one can hear the gentle alcoholic murmur, "Hello, Mazie," from a grateful friend. The Bowery may have many Mazies, but this one-time proprietor of a Bowery movie house, this gallant friend of these unfortunates, is famous there for her charity and her jollity.

This moving social landscape contains many actors. Mumbling defendants with vacuous grins present a pattern of repetitious misery tempered with the sad humor of those who can laugh at themselves. Only an occasional flare-up of revolutionary and explosive distress gives intermittent warning of an undercurrent of protest in the despairing poor. But there is no evil in the shirtless stevedore, all inhibitions thrown to the winds, relaxed by whiskey into natural animal conduct; in the unemployed seeking a meager handout; in the homeless and confused vagrant. These peaceful, non-boisterous inhabitants of the Bowery are a silent indictment of the life of our city, but there is little violence in these broken men, living at the bottom of the human heap.

In the Bowery no shrieking fights rend the night air. Its worthy burghers, repair to their dream mansions, oblivious of the rumble of the elevated train. Never do they utter the whining complaints of ordinary tenants beset by the mundane irritations of city life. It takes little to satisfy these quiet men, many of whom have gravitated here from all parts of the country. They live unobtrusively as the world of commerce passes them by. Critics of this darkened thoroughfare think to lift its face and give it a kind of moral uplift by changing its name. But there is nothing wrong with that name; it has an old and honorable history, older than the richer streets of Fifth Avenue or Park Avenue. How ridiculous

to think that changing the name of the place where these tired men live will make them any less tired, or will add any dignity to lives from which all dignity has fled.

The mellow Bowery citizen is cousin to the chronic alcoholic who shuts himself up in his room with a case of whiskey and does not come out until it is all gone. The poor downtown cousin does not get a chance to visit an uptown bar, nor can he buy cases of whiskey. And what happens to his better-dressed but no less alcoholic cousin who, after a whirlwind binge, is arrested, is booked at the police station for disorderly conduct and is arraigned before the magistrate? "Thirty days," says the judge. The alcoholic has thus engaged the time of the police, the court, the Correction Department, and very likely the Hospital Department, for he may be sent there by the court for a psychiatric examination. What a waste of money and energy. And for what end? When everything has been said, he goes to jail. Did a jail sentence ever cure an alcoholic?

It is time to face the truth that we cannot be proud of the handling of human wrecks that succumb to this disease. For disease it is, just as is drug addiction, toward which we adopt a more humane, realistic and less vindictive attitude. If jail is no place for drug addicts, it is equally not the place for drunks; if a hospital or a farm is good for one, it is no less beneficial for the other.

The Research Council on Problems of Alcohol, an affiliate of the American Association for the Advancement of Science, has started a nationwide campaign to establish a series of research diagnostic treatment centers in leading medical schools and their affiliated hospitals. One has already been set up at Cornell University Medical College-New York Hospital. Chronic alcoholism, say the doctors, is a disease like diabetes. The diabetic can't handle sugar and the former are not able to handle alcohol. While neither can be completely cured, most of them are recoverable and can be made functional citizens.

The Man in the Black Robe

In 1943 New York City officially set up the Bureau of Alcoholic Therapy as part of the Department of Welfare. The Bureau operates the Bridge House in the Bronx, where it does its mite at a low cost to dry up the reservoir of alcoholics. It believes that the excessive drinker needs "information and not reformation." It does not consider the alcoholic a sick person (many doctors will disagree), but that he "is suffering from an ill-at-ease, a mental-emotional disharmony, disquietude or discomfort, the result of improper, destructive or ignorant thinking." Its treatment is based on self-cure, using no doctors, no medicines and no psychiatrists. The alcoholic is aided by therapists who are themselves former alcoholics.

The fundamental thought is that the alcoholic must believe in recovery, and so inspired, he will recover under any kind of treatment. Call it "faith healing" if you will, but when, by plumbing the human mind, it is able to relieve tensions and alter behavior, it should not be derided. The objectives certainly are sound and the results, though limited, are good.

A respected group of medical thought is of the opinion that the excessive drinker is generally in a jam either with job trouble or wife trouble, that his drinking is a symptom of some underlying disturbance which must be ferreted out and treated. Such physicians feel that alcoholism is rarely a primary problem, that therefore the treatment should not be direct but should operate through psychiatric social workers, at home and place of work, if those are the roots of the real underlying disturbances.

Alcoholics Anonymous, which started in Akron, Ohio, is now international in scope and is admittedly doing a very important social job, many hospitals throughout the country depending largely on the services of its local groups. In spite of the good work done by Alcoholics Anonymous, by Bridge House, by the Salvation Army and the Bowery Mission, among others, there are as yet no adequate facilities for the treatment of alcohol addicts. What are needed, among other things, are real farm colonies where many

cases can be handled scientifically through proper occupational therapy.

In addition to the establishment of these farm colonies where those requiring occupational and psychiatric therapy in such an environment can receive it, doctors and hospitals, rather than wardens and prisons, should be given the responsibility of treatment, treatment that will make the medical distinction between the chronic alcoholic or compulsive drinker who is considered diseased, and the occasionally intoxicated or non-compulsive drinker who is not considered sick at all and who must be held to a different level of social accountability.

There is a challenge in the suggestion that when these cases do come before the law, as many of them must, there be considered the establishment of special alcoholic terms of the court, to make possible the informed handling of the large number of defendants appearing there prior to being routed through reception centers on their way to receive treatment.

CHAPTER XIII

THE FELONY COURT, the court of tears and frustrations, where the the judge sits as a committing magistrate, is the scene of the first act in the drama of broken lives. The son who killed his father because the latter mistreated his mother; the bus driver who withheld the lost pearls as a Christmas present for his wife; the father who had branded his sixteen-year-old son a thief so that the police might prosecute an ex-convict as a receiver of stolen goods, all made their first appearance on this stage. The boy in the last-named case stole some of the family valuables, fur coats and a car, to finance an elopement that never materialized. Since some of this loot had been sold by him to an ex-convict, the tortured father came before me to sign a complaint against the ex-convict for criminally receiving stolen goods. In order to obtain a warrant for his arrest the father had to swear that his own son had stolen a coat and had sold it for $20 and that the convict knew it had been stolen. Upon such a complaint I signed a warrant for the arrest of the felon who was being held by the Washington authorities, to await extradition here.

The Youth Term, attached to the Felony Court, is a place of even more trying moments, because in this court are arraigned the youth charged with the most serious felonies. Four youths, ranging from fifteen through seventeen, admitted engineering ten burglaries which netted them over $25,000 in cash and gems. These boys went on a wild junket of lavish spending in Florida. Each registered at a Miami hotel at $36 per day, bought an automobile, radios, phonograph, expensive luggage and an extensive and colorful wardrobe. Miami police suspicions were aroused when these boys began to hand out $25 tips and when apprehended they had $8,500

in cash on their persons. An additional $6,000 in cash was found in a trunk in one of the New York homes, and $6,000 in gems, burglarized from a jeweler, were found in a wall on a vacant New York City lot. It was no surprise to me that each of them had records in various reformatories. I was more surprised that seemingly intelligent people should sell these children cars, radios, and expensive clothes and should permit them to register at expensive hotels on their juvenile merry-go-round.

After the magistrate has conducted a preliminary hearing in indictable offenses, to determine whether a crime has been committed and whether there is sufficient proof to think that the defendant has committed it, there must be a second hearing at some future time before the Grand Jury. There have been critics of the Grand Jury system who believe that the work of that body is a duplication of the work in the Felony Court, that it is nothing but a rubber stamp for the District Attorney who, by the kind of testimony he presents, can dictate whether or not there should be an indictment. As early as 1825 Bentham maintained that a Grand Jury indictment was no longer necessary. It has been pointed out that for a century Connecticut has used the information or complaint of the complaining witness, instead of an indictment, with excellent results.

The Grand Jury is, historically and traditionally, a very important institution for the public's protection against the tyranny of government, designed to prevent the agents of the King from sentencing a person unless his neighbors approved. In federal offenses it was considered so important that the Fifth Amendment to the Federal Constitution provides that in a federal, capital or otherwise infamous crime, there should be Grand Jury action before trial. Even critics of the Grand Jury will agree that it does a very useful job in general presentments, often acting as the enraged conscience of the community and goading law enforcement officers out of their lethargy into increased activity. Since it is also an additional safeguard in the prevention of error in bringing defendants to trial, it

is my opinion that under our present system the requirement of indictment by Grand Jury should be retained. The fact that it throws out or refuses to indict in thousands of cases which the magistrate has held is sufficient reason for its retention.

In the Brooklyn Felony Court I held a sixteen-year-old boy for killing a shoe-store owner. He was a page boy at the New York Cotton Exchange, the son of deaf-mutes. Craving clothes, he admitted to twenty other holdups. His arrest followed the discovery of a shirt he was carrying, which was traced through laundry marks, to the laundry where ironically enough his father was employed. He was mild-mannered, affected to write poetry of a prophetic nature and claimed to be remorseful.

How pregnant with meaning are the psychological implications of this history of the son of deaf-mutes, who overcompensated for an unromantic boyhood by overdressing, who affected the aesthete in verse and admitted with bravado to twenty other holdups. Moved by a macabre sense of justice to grandiloquent remorse, he said he was sorry and thought of sending a card to the dead man's family. What a twisted background of mysterious forces, of emotional complications must have produced such a personality as this youthful Jekyll and Hyde. Precisely where in his background could the criminal urges of this restless, ruthless adolescent have been stopped?

The District Attorney wanted to hold this sixteen-year-old boy for murder in the first degree; he was indicted on that charge, but later the prosecutor agreed to permit him to plead guilty to second-degree murder for which he was sentenced by the County Court to serve from twenty years to life in a State prison. His deaf-mute parents were in court when he was sentenced and again the boy showed no more emotion when sentence was imposed than when he appeared before me on his first step up the ladder of the criminal courts.

Almost all of the notorious cases pass through the Felony Court on their way to final disposition by court and jury. Sad people,

bowed down by trouble, march with heavy tread through these doors, inside of which the most disturbing crime histories are unfolded. But a committing magistrate never hears the entire case; through the lamentation and despair there is time only to listen to the first installment of the crime drama, the accuser's story. The accused himself is rarely heard, for it is not the duty of the magistrate to try out the issue of guilt or innocence, but merely to decide if there is enough evidence to prove that a crime has been committed and that there is reasonable ground to believe that the defendant has committed it. Only if the prosecution has failed to make out a *prima-facie* case against the accused, may the magistrate by dismissal finally dispose of a case.

An old man on the Lower East Side was accused of criminally receiving stolen goods. A truck pulled up to the store, loaded with merchandise that later turned out to be stolen. The storekeeper knew the driver and therefore offered no objection to his request to "leave two cases in your store for a short time." The driver then proceeded to unload the entire lot of stolen goods. The loot was traced within a few hours, and the shopkeeper was arrested. As the story unfolded out of the mouths of the police officers doubts began to beset me. The defendant's young attorney stated that when the load was being crowded into the old man's store, he remonstrated, became nervous and terribly confused. He had no telephone, but he remembered that he blurted out a request to a customer to inform someone that he was the unwilling recipient of this merchandise.

At that stage I suspended the hearing and adjourned the case over the week end with instructions to the police to search their records for such a telephone call, and if received, to follow up the message at its point of origin. When the case was resumed on Monday, the police reported the receipt of a telephone call from a near-by candy store. The proprietor of the shop was interviewed and he remembered a man who was accompanied by a small boy relating this story over his telephone. He could not recollect who

it was made the call. On the prosecution's own testimony I was now convinced that my hunch had been correct and I discharged the bewildered old gentleman who had been the beneficiary of an unwelcome windfall.

In the sifting process, throwing out the inconsequential cases, and sending the serious crimes on to the higher courts, the magistrate does not act as a rubber stamp. Any assumption that a worthless case will be thrown out by the Grand Jury may be a very cruel one, for in failing to dismiss, an innocent defendant may remain needlessly under a cloud of suspicion and fear. Avoidance of responsibility by playing safe instead of acting affirmatively in clear cases is an evasion of the burden clearly placed upon him by law. The law provides for those charged with serious crime the additional safeguard of the Magistrates' Court hearing, as well as the Grand Jury indictment, and the hearing must not be whittled away in the rapid movement of large calendars.

Except for adultery, so-called sex crimes stop here with disturbing frequency on their way to the higher criminal courts. Incest between brothers and sisters, parents and children, forcible rape and statutory rape (with willing females under eighteen), indecent exposure and sodomy are among them. Sodomy, designated by the New York Penal Law as a crime against nature, is a very serious felony, but arrests and convictions are generally limited to sexual assaults, particularly on children. Our society justifiably takes a serious view of such assaults, no matter how haphazard the enforcement of other sex laws may be.

A sixteen-year-old girl accused a veteran of rape. The latter did not deny taking her to a dance, but he stoutly maintained that she had remained fully clothed in his room where he took her after drinking. This seemingly implausible story was given support by the girl's parents who complained before me that they had long ago lost control over their daughter and that she had a previous history of telling fantastic stories. They revealed that she had cut her legs with a razor and had refused to go to the Children's

Aid Society for medical examination in order to substantiate the sex charge.

It is because of the play of the vivid imagination of these adolescent girls and other "females defiled" who are not so adolescent that the law has wisely laid down the requirement for corroboration of the charge of rape. If it were not for this precaution, supported in this case by intelligent parents who mistrusted their daughter's story, the issue would resolve itself into one of credibility between an unbalanced girl and a man against whom the cards might easily be stacked.

Other returning veterans have gotten themselves into the strangest scrapes. One of them, in resentment against a storekeeper, gave him a dose of treatment that he had learned in war operations. A naval lieutenant who had spent four and a half years in the Pacific, he was accused of flooding a watch-repair shop with tear gas. He had had his watch repaired at this shop, had returned sometime later to complain that the watch did not run right and that the shop "was a phony and a gyp." When he was refused satisfaction, he crushed two vials of tear gas underfoot, causing the wife of the proprietor and a policeman to go to the hospital for treatment of their eyes. The woman did not want to prosecute, and the veteran's attorney in whose custody I paroled him said it was a mistake.

In another case, a drunken gun-toter complained to the police that a bar owner had relieved him of his loaded gun and had placed it appropriately enough in the refrigerator. When the police arrived they surprised the complainant by arresting him rather than the accused bartender. By the time he realized the jam he had gotten himself into by informing on himself he became cold sober.

Whether Eugene O'Neill's unpublished manuscript was worth $100 or less became the issue in the Felony Court. The unpublished play had been stolen and a value under $100 would stamp the charge as petit larceny and send the case to the Court of Special Sessions; otherwise the charge would become grand larceny and

the case would go to the Court of General Sessions by way of the Grand Jury. The script reposed in a leather attaché case which together with an overcoat, some Dunhill toilet water and two Countess Mara ties was stolen from the car of the production assistant of the Theatre Guild, parked near the theater where another O'Neill play, *The Iceman Cometh,* was playing.

The attorney assigned to the defendant moved to reduce the charge to petit larceny, claiming that the valuation of the unpublished manuscript was less than $100, if indeed it had any value at all. First I took testimony on the worth of the other stolen articles, which themselves had a value of over $200. On the score of the play, I could not resist the opportunity to state, "An O'Neill manuscript is vastly more important and expensive than $100. He is America's greatest dramatist."

Some may argue that this is an unfortunate and ironical infirmity in our law, when an illiterate may be charged with a more serious crime simply because he steals a valuable document which he cannot read; that is just the *definition* of the crime and no harm is done by impressing the seriousness of the offense on the offender. The treatment for the crime is another matter. As I have said before, it is more important to have the punishment fit the criminal than the crime. There is no need to refine the filament to such an extent that the thread of justice will break. In this case the defendant was later permitted to plead guilty to a misdemeanor.

Police and court may have other artistic headaches as when a Bronx man was arrested for stealing twenty-six etchings from art galleries and warehouses. In that case the police found themselves burdened with the problem of appraising work by Rembrandt, Millet, Zorn and Dürer. That police headache resulted from the need of reciting the value of the prints in the complaint. Their estimates ran from $10,000 to $40,000 for the collection, even the lower valuation stunning the defendant who had declined to pay as much as $10 each for the etchings. And even as to that low $10 valuation he had had misgivings, for when he was caught he was

on his way to have an artistic bookmaker friend of his appraise the prints for him.

A case that may be strange to many but not to a psychiatrist was that of a former employee of the Book-of-the-Month Club who had been discharged for intoxication and obtained a job as an elevator operator in a near-by building. At Christmas time, he returned after hours to the offices of his former employers, where he broke down the door, and gaining admittance, removed all his clothes and went on a rampage in the office, breaking glass, desk tops and books. In his drunkenness, there surged up from his subconscious the grudge he nursed against the Book-of-the-Month Club for having discharged him. Now before me in the Felony Court on the charge of causing malicious mischief, he was sober. His body bore the glass cuts that he had inflicted upon himself in his demented orgy. His condition was so pitiful that the complainant as well as the court took a sympathetically merciful attitude toward this most unusual and unhappy situation, both fervently hoping for proper diagnosis and successful treatment.

An entirely different but equally abnormal condition manifested itself in the case of a South American accused of stealing an automobile. He was without counsel, and wanting to make certain that his rights were protected, I assigned legal aid to his defense. After a very short interview with his lawyer, he returned before the bench to announce that he did not want a Jewish lawyer, and extending his right arm in a fascist salute shouted the usual "Heil Hitler." The appeal to that dead and doubtful hero two years after the war was a little surprising, but not more than his further legal pronouncement that whenever he saw an automobile on the street with a key in it, the car belonged to him. "That's the law." The law committed him to Bellevue Hospital for observation.

Cases in this court may take surprising turns even along international lines. One such involved an Air France pilot, a wearer of the Legion of Honor ribbon, who flew as a ferry pilot during the war

between Canada and Great Britain, while attached to the Royal Air Force Ferry Command. On his arrival after a flight from Europe, he was arrested and charged with forgery. Fifteen bogus $100 American Express travelers' checks were traced to him. The District Attorney went on to say that the counterfeits could be detected only under magnification and had been passed in banks as genuine. It was established that at least $10,000 of such checks had recently been passed in Paris, Nice and Lucerne and that near those cities seven persons had been arrested as members of a counterfeiting ring. The pilot and the check-cashing bureau were held in high bail.

Another international situation arose when a twenty-two-year-old Australian war bride was arrested just before Christmas after she forged some fifty-five New York department store charge slips, totaling $1,150. The sad war bride had married an American marine in Melbourne, Australia, in 1943, and had then come to America, taking up residence with her husband's family in Jersey City. When in a few months her husband's enthusiastic promise of a happy life in America evaporated, they separated and she moved to New York, where she took a job as typist, disillusioned and friendless in a foreign land.

The next day, another Australian war bride came unexpectedly to her rescue. She too was the wife of an ex-marine, had come over on the same bride ship in June, 1946, and during the voyage had become the defendant's friend. When she heard of her trouble, she came forward in court, offering to take the accused into her four-room home, where she lived with her husband and baby girl. The friend volunteered the information that the unfortunate girl would not have been permitted to leave Australia to join her husband here, if her record there were bad. Thus assured, I paroled her in the custody of her faithful friend, who offered her a haven pending Grand Jury action. In the Court of General Sessions she was later given a suspended sentence on condition that she return to her home in Australia.

As case follows case, some give cruel testimony of the low depths to which human conduct can sink, while others, in refreshing human acts, give hope that human conduct can upon occasion rise to high dignity. The opposite extreme was reached by a twenty-nine-year-old prisoner, nicknamed "Helpful Harry," who confessed that he robbed aged women in railroad terminals upon the pretense of offering them aid, his latest "helpful act" being to beat up and rob an eighty-seven-year-old lady who had just arrived from Los Angeles for a visit and landed in a hospital, where she died.

This man (he claimed to be a stevedore) was one of the meanest, most vicious thieves that ever appeared in these courts, and the recital of his exploits filled the entire courtroom with composite shame. When conduct can sink to such depths, all moral fiber and sportmanship gone, isolation unfortunately is the only answer left to the community, for murder stalks along with him in his dastardly dedication to cruelty. If any defendant can be said to be cussedly criminal, this is the one. It does not minimize our insistence upon rehabilitation to admit that there are some for whom isolation from the community is the only unhappy answer. It is too much to ask for the miracle of rebirth to take place in this barren soil and we must here be resigned to accept almost total defeat.

Stranger and stranger come the cases. On the day before Christmas a woman returned home from a late shopping tour, her arms laden with presents. She had forgotten her key and found herself locked out. It would be nice, she thought, on the night before Christmas, to climb the fire escape to her kitchen window, and that is what she proceeded to do. In passing a neighbor's fourth-floor apartment, a young Navy veteran at home with his wife heard the female Santa Claus on her external peregrinations and because of several recent robberies in the neighborhood he was nervous. He took a revolver from a drawer and fired two shots through the window. The bullets found their mark and the unfortunate woman was rushed to Bellevue Hospital.

This unfortunate situation, with its strange combination of circumstances, points up dramatically the dangers that lurk in the possession of firearms. Many returned veterans brought back these souvenir weapons. When declared and rendered useless, there is no harm in permitting the relic to remain in the house. But when the veteran becomes too clever and smuggles it into his home, accidents happen. At his homecoming the veteran thinks nothing of this peccadillo. But bitter tragedy may hound the overwrought veteran himself or, more horrible still, cause a child to become the author of a catastrophe. In a very recent case, such a souvenir pistol was kept in an apartment which was burglarized during the owner's absence. The intruder found the pistol and used it to kill a policeman who attempted to arrest him.

No defense or excuse is too preposterous to be aired in this forum. One defendant who came here from the West to become a band vocalist admitted a robbery and presented the novel excuse that he needed $110 for his girl friend who needed the money to get a divorce so she could marry him. The divorce and marriage were delayed as I held young Lochinvar for the Grand Jury.

One fifty-nine-year-old woman claimed the strange impulse of amusing children on the Fourth of July as the motivation for breaking the law. Feeling sorry for the children who were celebrating the holiday in the steaming street, she said, she fired a gun to amuse them. Her seventy-five-year-old pistol, she said, had been a gift from her father many years ago. When she was young in Louisiana, most women when unescorted carried pistols for protection. She was sent to Kings County Hospital for observation.

A veteran from Kansas borrowed a revolver from an aunt in Wichita to protect a wedding ring that he had purchased for his French war bride. While awaiting her arrival from Paris he became short of funds and attempted to pawn the revolver. He had no license and was arrested.

Two men admitted to the police that they mugged and robbed a man and tossed him into the street, where he was run over and

killed by an automobile. In spite of that confession, they walked out of the Felony Court as free men. It was the District Attorney and not the defendants' lawyer who moved for the dismissal. He said it was mandatory because of lack of corroboration of the charges and the absence of a complainant. The only possible complainant was dead. The court reluctantly was compelled to dismiss the charge because a defendant may not be convicted of a crime on his own confession without additional proof. Such cases, where the perpetrator of a crime is known, are rare, but for salutary technical reasons he cannot be held to answer for his misdeeds; people have been known to confess to crimes that they never have committed.

CHAPTER XIV

THE DISTRICT COURT is the neighborhood shock absorber. In a midtown hotel late one Saturday night a movie actor known for his tough roles and a collegiate boxer were interlocked in a peripatetic fist fight that started on one floor of the hotel, continued in the elevator and ended on another. The actor gallantly sought to protect an unknown girl from imagined indignities when he saw her in the company of the boxer. A struggle ensued while the tired object of the duel disappeared into a room where the battling gladiators found her some time later, lying fully dressed in the bathtub with her feet dangling over the side of the tub.

It was three-thirty when they both were arrested, and several hours later the Sunday quiet of routine cases was broken by their arrival in my court, followed by newspaper and camera men. Each one brought charges of assault against the other, and as the gallants, both the worse for wear, told their excited and widely conflicting versions, I realized they were both so bent on vengeance that I would be unable to unravel the story at that time. I accordingly adjourned the case to the Mid-Manhattan District Court in which area the incident occurred and in which court I was scheduled to be sitting the following week.

After a few hearings, what at first appeared to be the usual midnight brawl went off on an entirely different tangent. An unexpected witness showed up in the case, one who had read an account of the fracas in the newspapers, and because of the well-known figures involved, tried to cash in on the proceedings by offering his services as a witness to both litigants. When he appeared in the court at the request of one of the parties, who kept

him in a hotel room to make sure of his appearance in court, both sides were amazed to learn of his duplicity. He swore that he was a jewelry salesman and had been a bartender in Pittsburgh, but he was very hazy about the names of any of his employers. An obvious adventurer, his fantastic testimony led him on cross-examination into a veritable quagmire of falsehoods. After I had him arraigned for perjury, it was discovered that he was wanted by the authorities on much more serious charges.

From that moment on the tournament of the bathtub assumed minor importance, especially as time had assuaged the ruffled feelings of both parties and the heretofore serious injuries had developed into unnoticeable bruises. They realized by now that they had gotten into a bad bargain, and through the efforts of lawyers and court both meekly offered to withdraw their charges. As no instruments had been used and as each had sufficiently punished the other, I permitted the slate to be washed clean and the mutual charges to be withdrawn.

The shock-absorbent capacity of these comfortable district courts is practically limitless. What first appears to be a heinous offense turns out to be a neighborly quarrel and the big cannon turns out to be a modest popgun. Much of the electricity generated by modern complicated living is here transferred into the ground. The sputtering fulminations of overcharged minds fill these tribunals with sufficient noise and heat to tax the wisdom of any presiding Solomon, but if he can maintain calm patience and sympathetic good humor, fortified by the power of his office, these matters can usually be put into their true perspective.

Neighborhoods take a possessive interest in these geographic courts of local ill will, and much as the unhappy actors hate to be dragged into them, any attempt to do away with one of these courts raises an immediate howl of loud protest in the area. So strong was the outcry against the threatened shutdown of the Coney Island District Court that the authorities had to reconsider their decision and keep it open during the busy court season.

The Man in the Black Robe

The law, pettily, it seems to those affected, sneaks up on the harassed citizen who flees to the seashore for rest and play and finds his relaxation circumscribed by some fifty beach and boardwalk regulations of the Park Department. Among the forbidden acts for which batches of Sunday summonses are later heard in the Coney Island District Court, are playing ball or doing acrobatics on the beach, sitting on or leaping off the boardwalk railing, spreading newspapers on the sand and obstructing the beach by playing cards. The bathhouse fee-saving device of changing into bathing clothes in a comfort station, and peddling within three hundred and fifty feet of the boardwalk, are among other interdictions.

These beach regulations are intended to protect the fastidious, caution the obstreperous, and cajole the timid into keeping the picnickers within the bounds of decency. When I was a boy, throwing a ball on the sands was natural and accepted as the normal behavior, but different times, different customs. Easy transportation has crowded the seashore with uncounted hordes and people are thrown closer together. Ballplaying and acrobatics on crowded sands make life miserable for those close by. What good taste would ordinarily dictate we should do, the law finally steps in to dictate that we must do. Thus the law becomes the *arbiter elegantiarum* until the required conduct becomes a gracious and accommodating habit.

Man's ingenuity in devising new techniques of violating the law knows no limitation. Beach pranksters give free rein to their fertile imagination, and beach peddlers with baskets and bundles disappear with unexpected celerity into the sea upon the approach of the minions of the law, disclaiming any association with ice cream, pretzels, candies or other delicacies that they are forced to leave unattended on rock or sand.

To the sick with mental quirks the seaside affords additional opportunity for mischief: they prowl the sands at night; they stand beneath the boardwalk to obtain a vicarious thrill from gazing into the dresses of passing women, as similarly minded Peeping

Toms ascend roof tops to look through binoculars into apartments.

Each district court has its own special neighborhood characteristics. The Mid-Manhattan Court is busy with matters occurring in the large hotels and midtown business houses and with its own peculiar residential problems: Fifty-seventh Street and Park Avenue are in the area, a neighborhood quite different in personality and business from that of the Upper Manhattan Court which takes in the Upper West Side and Harlem.

Characteristic of the hotel cases are those reluctantly brought in by the hotel credit managers and night clubs against non-paying guests. Despite the adverse publicity involved, these cases come into the court in a fairly regular stream. One twenty-three-year-old was arrested for failure to pay a substantial bill that included such items as drinks at the bar, meals in the restaurant and the inevitable telephone calls to California. This young man was proud of his education and breeding and informed the police and court that he was a student of philosophy and psychology. I could not refrain from making the observation that a philosopher should have better ethics and that a student of psychology should know better than to believe that he could long fool intelligent people and get away with it. To make sure that he had no trail of similar escapades, I remanded him pending an investigation of his record, and the budding philosopher had time for solitary reflection and contemplation.

I refuse to accept the thesis that all these boys are beyond redemption. I am firmly convinced that sick in mind and spirit as they may be, they are educable and susceptible to adjustment. That is not to say that we will achieve even modest success in every instance, or that even though ill, they should not be restrained from wrong by the moderate powers of the law.

However small the case may seem, litigants in our courts are entitled to equal, respectful and patient treatment, not only in lip service but in day-to-day, unexciting case handling. Unless the law lends as sympathetic an ear to the seemingly trivial ailments

of the poor as to the apparently more important problems of the rich, resentment will be engendered in this people's court.

To the Mid-Manhattan Court sixty-nine-year-old Mr. Willis came to summon his landlady for unlawfully withholding some of his personal property. He was missing $4.70 worth of his *lares* and *penates*, including fourteen cents' worth of tea balls, a rubber squeegee for cleaning windows, three fifteen-cent ash trays and a breakfast bowl "painted with red roses." He paid seventy-five cents a day in Mrs. Watson's rooming house and moved out soon after Christmas, following an argument about water left running in the bathroom. He had bought the fourteen cents' worth of tea balls as a Christmas present for his wife who had been staying with a daughter on Long Island since he had fallen on hard times and was living on relief money. The day before Christmas he visited the Welfare Department and returned home on Christmas Eve, to be waylaid and accused by his landlady of leaving the water running in the bathroom and spoiling some linen in the closet. On this most inappropriate night an argument ensued. He decided to leave the house for good, and in packing up his few belongings, missed the tea balls and a number of his personal effects. Gone was his squeegee, which he had loaned to Mrs. Watson, having taught her to clean the windows with it; gone were the fifteen-cent ash trays, one ten-cent drinking glass, a home-made table lamp (it cost him $3.11), the breakfast bowl worth sixty-five cents, and the tea balls. Also, she owed him a fifty-cent deposit on his keys. He did not disclose the value of the squeegee.

I set the next day for the account to be settled. At the appropriate time Mrs. Watson appeared in court, clutching a brown paper bag from which she withdrew the squeegee, one ash tray and a drinking glass. The other items were missing. She admitted using up the tea balls.

"He owes me seventy-five cents for a day's rent – the day he moved out," Mrs. Watson said.

"Oh, no I don't," said Mr. Willis. "I went to the OPA about that."

"What happened?" I asked.

"Nothing," said Willis.

I then started my accounting, deducted seventy-five cents from a total of $4.70 and asked Mrs. Watson if she was willing to pay the remaining $3.95. I assured her that she would be rid of him if she paid, and Willis on his side agreed to withdraw the charge if he received the money. She took four $1 bills from her pocketbook and handed them to her former tenant.

As Willis was about to pocket the four bills, I said to him, "There's a nickel in change coming." No one had a nickel, but the court clerk was able to change a dollar bill, and Mrs. Watson was paid her nickel. Willis left with his $3.95, his squeegee, his ash tray and his drinking glass.

These people had had their day in court, and both had gone away satisfied. Their respect for the kind of justice dispensed in our courts was unimpaired. A sweet aftermath of this thoroughly human story was the gift of a small check by a sympathetic reader of the newspapers for Mr. Willis, which I hope enabled him to send a delayed but adequate Christmas gift to his wife.

The local district court disposes of all violations except those that must go to the special courts. These district courts try defendants summoned for minor offenses and those arrested for more immediate and serious infractions; the charges range from disorderly conduct, passing bad checks, and claims for wages, to complaints that overhead neighbors move furniture all night.

Upon the return date of a summons a torrent of heated charges usually results in the accused turning accuser. Sometimes matters are disposed of immediately in the telling, more often adjourned to a future date with admonition to both sides to keep the peace. When the residue of more reluctant cases remains, hearings are held, and if the magistrate is convinced that a wrong has been committed, a complaint is ordered, most frequently on a disorderly conduct charge. A broken head will bring an immediate arrest, as will a shoplifter caught red-handed, or where the police have

picked up a jostler (pickpocket) or a homosexual in the subway or theater washroom making advances to innocent youths, to willing accomplices or to the police. Very often the accused and accuser stand alone before the bench, but sometimes, as in cases against landlords for failure to supply heat, a cloud of witnesses will appear.

A young husband romantically requested that he alone be held to answer a series of bad-check charges in the Court of Special Sessions, and that his wife be discharged. Since she had drawn one of the bad checks, I denied the request. The husband's ruse was too apparent, for once released, it would have been easy for her to draw an additional bad check, pay off the most pressing old obligations with the proceeds, and continue the merry-go-round with her charming husband.

The same trick was tried on the Stork Club by a dishonorably discharged sailor, who made so much commotion that he was arrested on a charge of disorderly conduct. He came in with a party, and after they had drunk four bottles of champagne in the early morning hours, he was presented with a bill for $76.30. He offered a $175 check on a Virginia bank which was refused. The argument became loud and heated and some of the near-by guests left. He was fined $25 and he promised to settle his bill. This defendant was not so easily disposed of, for he showed up again in the same court, this time charged with petit larceny and failure to pay a hotel bill, issuing a check on the Virginia bank where he had no account.

There is another troublesome restaurant bill evader who is far more socially important. He is hungry; he has no job and no money — and he is angry. One such, a veteran, ran up a food and drink bill of $3.88 in a very modest Times Square cocktail lounge. There he and his wife ate fried chicken, lamb chops, tomato juice, coffee and beer. When the time came to settle, he told the waiter he could not pay because he had lost his wallet. Becoming abusive, he was arrested on a charge of disorderly conduct. His belligerence turned to nonchalance as during the height of the argument he

affected doing a crossword puzzle. Then his mood changed again as he told the arresting officer to remove his gun or he would beat him up. This same change of pace manifested itself at the arraignment, when he first pleaded not guilty; but he soon changed it to a plea of guilty. He said he was willing to pay, after his wife came up and slipped him an envelope containing a relief check for $14.25 from the Veterans' Assistance Division of the Department of Welfare. He was given a ten-day suspended sentence.

This man had assumed the responsibilities of marriage and wanted to work. It was resentment that led him thus dramatically to become a rebel. The city paid with a relief check; but in the larger overtones, society always pays the bill, especially when a ten-day jail term keeps the family on relief.

Veterans must have homes just as the sick must have care, and there is no substitute for either. The chief victim of the housing deficiency has been the worried veteran. Half of New York City's married veterans, in July, 1947, were living doubled up and tripled up with in-laws; caring for infants in rooming houses lacking cooking facilities, and in many cases compelled to live apart from wives and children. We are given to thinking of this shortage as a recent phenomenon; that is not so — it is the culmination of many years of inadequate housing construction. We were deceived during the depression of the 1930's by a vacancy cushion that was caused by thousands of families who were forced to vacate their own apartments and double up (reminiscent of today's condition), because of the economic catastrophe. Young couples faced with the difficulties of earning a livelihood, delayed marriage, and postponed setting up new homes. Accordingly, the failure of building construction did not show bad results during those depression years. But as conditions improved marriages increased and more and more families reclaimed their right to individual homes. We came to realize belatedly that we had not been sufficiently warned.

World War II again gave us a breathing spell from the impact of the housing shortage when husbands went off to war and wives

moved in with their parents and other relatives. As the war continued, vacancies disappeared rapidly and the general housing pressure constantly increased. The wholesale return of discharged veterans in the second half of 1945 made us realize that the housing day of reckoning was upon us. Adequate housing is more than just physical shelter, it is insurance against individual and social ill-health. In large-scale housing developments, private or public, provision will be made for community facilities on a well-planned and imaginative neighborhood-unit basis, where housing projects are treated as integrated parts of their neighborhoods and not as isolated islands.

The concrete facilities which these new projects furnish are essential, but they are not the most important public aspect of the problem. Coordination in public projects with health stations, nursery-school agencies, public libraries, recreation centers, parks and playgrounds are even more vitally important, as is the fact that the buildings occupy only twenty-five percent of the project area. And most important of all is the experiment in community living, for in addition to rehabilitation of substandard areas, these projects give rise to community centers, to imitative improvement impulses in the neighborhood. For the first time in their lives these people have a sense of belonging to a unit that is larger than the family group. This new enlarged environment of social awareness and a city-inspired civic pride creates a soil in which gangs are out of place and in which hoodlums cannot flourish. The area is changed from an underparticipating to a participating one and delinquency elimination will be a natural concomitant.

Because of the housing defeat, and other resentments that have wounded him, can we with dignity permit the veteran to become disillusioned, to lose his ideals and to forget the vows he made overseas to set things right when he came back home? These earnest hopes and promises have already melted away so soon after the war, when the country and the local communities have more need than ever before of those ideals, those enthusiasms

that will tend to make things right. Who, if not these youngsters, will rout political corruption out of the halls of government. Are they so tired and worn, looking for homes, making adjustments to families and jobs, that they will never be able to rekindle those enthusiasms and ideals?

In their crusading for something so precious, these men had actually expected to transfer their enthusiasm to the peaceful life of the community. The withdrawal of these enthusiasms from the field of public concern will leave a vacuum in which the weeds of ignorance and political greed must inevitably take root and flourish. If disillusionment permits that fighting spirit to be broken, then all of us must shoulder the blame. If cynical pessimism is allowed to weigh down our buoyant youth, how can we expect their blasé elders to renounce the philosophy of despair? To youth must be left the burden of carrying the banner of confident hope in the future.

Not only do the young, veteran and non-veteran alike, present us with almost insoluble problems. The aged also present the court with difficulties. Some kindly souls will agree to anything, pleading guilty when there is no guilt, secure in the thought that their age is insurance against unjust treatment. The results are not always happy. An old bearded gentleman was rounded up with other park sitters on a hot night after midnight. Pleading guilty to loitering, and not having any money with which to pay the small fine, he was remanded to several days in jail. Upon his family's discovery of his predicament, there was a public outcry and the bewildered gentleman was released.

I remember with kindliness a fine Italian gentleman, the owner of a small house, who was brought into court on a minor building violation. He decked himself out in his best Sunday suit, marcelled his lovely white hair, and trustingly came alone to court. A request for his address elicited the response, "152 Mulberry Street." (He pronounced it "one-fiffety-two.") "What is your name?" brought forth, "152 Mulberry Street." Finally, "How do you plead?" and the

answer came back, "152 Mulberry Street." He knew little English, but he was confident that no wrong would be done him.

Not so naïve, not so innocent, but equally insouciant, was an old lady of eighty who was summoned into the court because the ash can in front of her stoop was left uncovered. She came before Judge Rothenberg, and at her request was furnished with an interpreter. Informed of the nature of the charge against her, she said, "I haven't the money to buy a new cover." The judge said, "That is beside the point. It is a matter of public health." Then she responded, "I don't know where to get it," and finally, "I am too old." Back came this admonition from the judge: "It doesn't matter whether you know where to buy it; it doesn't matter whether you have the money, or how old you are. Ash cans must not be left uncovered on the street. *The judge says so.*" Only an eighty-year-older would dare reply, "Who cares what the judge says."

Old people can be very stubborn in other ways; time means nothing to them and they can outlast a dozen court clerks and any number of judges. They hang around hour after hour and day after day, and generally they get what they want. If patience will not work, then cajolery, pleading, tears and sweet words will be resorted to. An old lady, hearing others address me as "Your Honor" or "Judge," came up to the bench when her case was called and addressed me in the sweetest tones as "Honey Judge."

One of the most serious situations that confronts the magistrate is when an elderly woman defendant refuses to pay a small fine and threatens in default of payment to go to jail. Court officers invoke all of their persuasive powers to induce the defendant to pay the small fine, telephoning relatives, children and friends. When these efforts fail, in desperation the Correction Department moves to take the old lady away. Then, finding that all her bag of tricks has been trotted out to no purpose, the old lady miraculously discovers that she actually has the $2 or $5 on her person. Her bluff has been called and she has lost the war of nerves. What

court would dare to place an elderly woman in jail in default of a small fine? A solution may be to permit the magistrates (they are not now so permitted) to accept payment on the installment plan, for compulsory jail terms in some cases may be barbaric.

In the district parts of this behemoth court system, free from the technicalities of court procedure, the plain people are free to express themselves about government, the police, their children, their neighbors, their landlords, their employers, about the cost of living. Here it is that they expect the law to protect their churches from desecration, and their civil liberties from infringement. How often is heard the despairing cry, "This is a free country, and I am a free citizen of that free country. Why am I brought in here?" And this is the forum where they must be told.

Psychoanalysis is a very expensive luxury and is generally reserved for the rich. The poor cannot afford it, and land in the Magistrates' Court. The only time they get treatment that approaches this solace is when they appear there. Many are sick, sick from an illness that is very real, and countless many receive, through the avenues of this court, mental first-aid. The experienced magistrate, who becomes something of an amateur psychoanalyst, with the aid of probation workers who are trained in social healing, is able to set straight many of those afflicted with simple quirks, and in cases of more aggravated neuroses, he has the aid of trained psychiatrists. The pity is that they are not regularly attached to these courts.

A woman was arrested in the Bronx, for disorderly conduct. At around midnight, dressed in a nightgown and about to retire, she looked out of her window upon the snow-covered street. A man was moving a stanchion from its position in front of her house, she said, rolling it on its heavy base down the street. Hastily throwing on a coat, she left the house, followed the thief and saw him deposit the stolen stanchion in front of a church around the corner. That stanchion was hers. It had been in front of her home for years. It was not only a mark of distinction; it also kept cars away

from her house. So she took the stanchion and rolled it on its heavy base about half a block, and was about to turn the corner into her own street when a policeman stopped her and said, "Where do you think you're going with that thing?" The officer reported that she answered in an unladylike fashion. The argument that ensued resulted in her arrest. She refused to unwind herself from the stanchion and became loud and vehement. A crowd collected. Reluctantly, the officer made the arrest.

In addition to the testimony of the officer and the defendant, her brother testified that years before he had made application to the police for the stanchion. The request had been granted and the stanchion placed in front of his home. I adjourned the case to obtain some light on this subject and to afford her a chance to cool off, my efforts to adjust the matter having convinced me that the irate defendant would sue the officer for unlawful arrest if the charge were dismissed. She proudly informed me that she had sued other officers.

After the week end I renewed my conversations with the defendant, her brother and her attorney. She was still aggressive and vindictive. She had been pushed around and she had no intention of dropping the matter: the officer was going to suffer for the indignities he had heaped upon her. When the case proceeded, the records of the precinct showed no request and no allocation of a police stanchion to their home. The records did disclose that the offending object had its lawful place in front of an express company next door.

Punishment for this woman was furthest from my mind, but I had to protect the officer from her wrath. It was important that police officials should not be under the constant necessity of worrying about crank suits. So I found her guilty of disorderly conduct and quickly suspended sentence. It was the best I could make of a bad bargain, but at least I had prevented her from adding another victim to her list of personal defendants.

Some of the cases have their genesis in the experience of those

who do not know where else to go with their troubles. A young singer brought his wife into court because she wanted to kill their child and commit suicide. He was motivated by the most tender affection and distracted by the fearful possibility of commitment to an institution. Before the court she seemed rational and humble and I permitted her to tell what had happened on New Year's Eve to make her so emotionally upset. She had been overworked and worried about the irregularity of their income and because there were no presents, no parties and no excitement over the holidays. All the glamour was evaporating from a marriage that had started auspiciously and with so much hope only a few years before.

They had come from the West and now at this season they were here, alone and without friends. A few drinks in tawdry surroundings, recriminations, and the whole well of her unhappiness poured itself out. In the depths of her despair she conceived the fiendish desire to kill herself and her child. Here was crying need for friendly medical advice of a very special kind, and just where were these two youngsters to get it? They landed in court because, friendless and penniless, they had no other place to go. The social agencies promised to help.

The public does not appreciate the toughness of the police job and does not fully cooperate. Most of the stolen cars, for instance, are left unlocked by trusting owners who provide the crook not only with the property but also with transportation for a getaway. They would not dream of leaving other valuable property on the street and expect to find it several hours later.

New York's police force is a far cry from the colonial guardians of peace and security known as Watch and Ward, who, because they carried rattles, received the name of *Ratelwacht*. The New York Legislature created a day and night police force of 800 in

1844. People objected to putting the New York police in uniform on the ground that to do so was un-American, undemocratic and militaristic.

Soldierly courage must match the good judgment, tact and other attributes essential to a policeman. In some respects he must be a judge, for he can either warn or arrest. He settles many disputes between landlord and tenant, between husband and wife. Broken windows and broken heads are alike his concern. He is at once traffic manager, the guardian of children and the infirm, and nursemaid to lost week-enders. The police are a part, with other agencies, of the social DDT for eradicating crime by eliminating the conditions that hatch it, such as gangs, unregulated dance halls, and other crime swamps which send out swarms of crime recruits. The Police Athletic League program is as important as anything designed to combat juvenile delinquency. The police detective work in the broiling turmoil of New York is fascinating, difficult and newsworthy. But the less dramatic elements of street protection, store supervision and traffic regulation give solid comfort to the ordinary citizen not engaged in unsocial activity.

The policeman is depicted as a tough and ruthless individual. I think he is much less so than the ordinary bus driver. Seeing him in the courts and in the police station has convinced me that he is no different from the rest of us, for, angry at injustice, he melts easily when confronted with a story of authentic hardship. To the average person there is no distinction between the law and the police. That is so, but it is also true that there is very little difference between the police and other people.

The public is always interested and amused by cases involving household pets, and nothing is so revealing as the attitude toward those defenseless creatures. Since this is a human court, the things that affect the heart are likely to be aired here more than in any other tribunal. Many dog lovers will accept onerous restrictions on themselves but will resent as great indignities like prohibitions against their voiceless friends, paying dollar fines to the accom-

paniment of long tirades about poor defenseless animals, as if the animal were the defendant.

Not only in the Magistrates' Court do animals occupy the limelight and arrest the attention of the public. The *Herald Tribune,* on June 17, 1947, reported that the New York City Municipal Court held that a gander, even though a pet and possessed of a pedigree, traveled the city streets at his own peril. The owner testified that early in the morning of March 12th she heard two of her geese honking in distress. She knew these geese were inseparable companions of her pet pedigreed gander, James IV, and running to the street she found James in the gutter. He could not speak, for he was dead. She attributed his death to a milk truck driver. The judgment of the court was pronounced as follows: "While the court's sympathy is with the plaintiff in the death of her pet, the law favors the defendant. The case is dismissed."

This court has an amazing and justifiable reputation for bizarre happenings. Burglars who return to the scene of their crimes with the keys that they have stolen; bandits who deprive victims of their teeth; safe crackers who impatiently celebrate their success on the job with wine, all find their way here.

A retired policeman lost his wrist watch, cigarette case and eyeglass case as he slept standing on his feet against a wall on a subway platform. The thief first frisked the sleeping man, removed some of his possessions, then retired to a platform bench, staring in disbelief at the perpendicular sleeper. Thinking that he had not done a complete job the first time, he returned to try his hand again, and encouraged by his surprising success, returned a third time when he was arrested by transit policemen who witnessed the incredible performance. Another sleeping subway passenger was relieved of his shoes, ring and wrist watch as a transit officer watched from the subway platform.

One woman got rid of a too-romantic follower and masher by leading him to a house on West Fifty-fourth Street and asking him to wait for her, saying that she lived there. She came out of the

building a few minutes later with a policeman. The building was a police station.

Three unapprehended thugs held up a shoe store and took several pairs of shoes after they had cleaned out the cash register of sixty dollars. Insistence on a perfect fit was the cause of one of them having to flee with his two comrades, but without the loot, when he put down his gun to try on his new shoes, thus permitting the manager to escape.

More successful were the Bronx burglar gourmets who broke into an office, got away with cash, prepared a meal for themselves in the kitchen on the premises, and washed down the ham and eggs with a bottle of Scotch conveniently left there for them. At least on that occasion, these careless gluttons were not caught.

Three male defendants were picked up in the early morning by an alert policeman. A radio, two wrist watches and some cash were found in the car they were driving. Even more suspicious was the telltale circumstance that the man at the wheel was driving in his stockinged feet, his shoes on the floor beside him. He explained to the arresting officer that his feet hurt. Having burglarized in his noiseless feet, he had had no time to put on his shoes after his last getaway. The stolen goods were traced to houses in the Flatbush section of Brooklyn.

The city can boast of its own fish stories. A fisherman insisted that his New York State license entitled him to fish in a Prospect Park lake that was stocked with calico bass for children. The enthusiastic angler was seen by a policeman and was given a summons. When the officer left him, the undaunted fisherman threw his line back into the water saying that since he already had a summons, he might as well get the full benefit out of it. The policeman had his suspicions about him and kept him under surveillance, arrested him and brought him before the magistrate, who disagreed with the defendant in thinking that the summons entitled him to fish for the day. But the judge was a fisherman himself and so suspended sentence.

Oath of Devotion

Pulling fire-alarm boxes has a strange fascination for many people. The excuses are varied. The wife is about to have a baby and the distracted husband wants to call an ambulance; the defendant is being beset by thugs and wants a policeman. Few admit that they ring in a false fire alarm for excitement after a drinking bout, or for the sheer pleasure of seeing the engines respond.

CHAPTER XV

"NOT GUILTY." This in a loud, clear voice. "The Building Department is persecuting me, Your Honor. I can't get the materials." "But," says the magistrate, "the inspector says you have not shown any cooperation in correcting a dangerous condition. Human life is at stake." The Municipal Term of the Magistrates' Court is in session, and the Municipal Term is the Businessmen's Court.

Small fines are first levied with warnings to comply with the departmental orders. Owners are given adequate time to make repairs. "I can't afford it. I don't get enough out of the building to pay the city taxes." This droning goes on and on. The harassed, self-pitying building owner, nursing his grievances, leaves the court with the feeling that he has been held up for some additional city revenue.

Then one day the owner reads in the morning paper a headline that puts him in a panic: "TENEMENT CRASHES. Children see crack widening in Second Avenue structure and report a 4-story tenement house collapsing as they play." He is dizzy. He owns property on Second Avenue. Can this be his? He reads on. The story continues that only a few minutes after the police had safely evacuated the occupants of that building and three others that adjoined it, the building collapsed. The police carried out a woman who a few hours before had returned to her fourth-floor apartment after an operation.

Then the righteous landlord, now assured that this is not his building, is all action, calls his agent, his contractor. "Get busy. I want the work done immediately. Human lives are at stake." He

has just had a terrible fright and that fear has caused him to loosen his purse strings. He might have been the landlord of this very house. Questions of income measured against disbursements are no longer uppermost in his mind. Instead, "There was something in what the inspectors and the judge said. What a chance I took."

Willful violations constitute dangerously defiant behavior. If these owners are not held in line by conscience and socially approved attitudes, then that duty falls upon the magistrate. The procrastinating building proprietor must be made to toe the line. It is much too late to wait for a building catastrophe to make us realize that these white-collar violations and crimes can be more deliberate and therefore more detestable than emotional crimes of violence.

A succession of calamitous tenement-house fires gave the impetus for the creation in 1865 of the paid professional Fire Department that replaced the antiquated volunteer system. Taller buildings necessitated increased water pressure and the skyscraper created additional problems. The introduction of gas for lighting and cooking, and later of electricity, brought on the need for still-greater statutory controls.

The first Tenement House Law was enacted in 1867 as the result of a reform movement led by Felix Adler. In 1901, due to the activities of Jacob A. Riis and his associates, a new Tenement House Law was passed and a Tenement House Department (now the Department of Housing and Buildings) was created. This department took over the former functions of the Health, Building, Fire and Police Departments in this field.

In 1929 the Legislature enacted the Multiple Dwelling Law, a modernization of the Tenement House Law of 1901. It set up new standards for new construction and imposed additional requirements for alteration in "old law" tenements, calling for fire-retarding devices and a toilet for each family. These "old law" tenements are far from our sociological ideal and they still remain the danger spots which may develop into the cancer of the slums.

To compel compliance with these regulations there has long been established a special part of the Magistrates' Courts known as Municipal Term. This court, like the Felony, Women's and Night Courts, is a statutory court. This is the court in which the magistrate most often sits as a Court of Special Sessions.

With the growth of the city this phase of the court's activities has increased and become correspondingly more important. Soon after the Second Avenue disaster a similar alarming situation occurred on West Eleventh Street. The superintendent was moving garbage cans into the street in the early morning when he noticed rubble on the sidewalk. Stooping to clean up the debris, more fell. "The bricks jumped off and came very near hitting me." The police were called and soon cleared the building. That very day masonry fell from a house farther uptown where the police emergency squad pried off loose slabs of brownstone facing six feet long.

It is in this forum that the citizen is protected in his home, factory and amusement places against collapse, fire, panic and disease. The court punishes violations of the State Labor Law as enforced both by the State Industrial Commissioner and by the City Bureau of Fire Prevention. The "factory laws," sections of the Compensation Law, the Multiple Dwelling Law, the Sanitary Code and city charter provisions relating to Building and Fire Department orders are here enforced.

The most acrimonious arguments in Municipal Term are those between outraged tenants and landlords who fail to supply heat. The landlord tries to stall the case through the winter, hoping that spring's warmth will make tenants and judges forget the rigors of winter. Constant repetition by the court that there is no substitute for heat, buttressed with high fines, brings quick and surprising results.

But landlords use every subterfuge to avoid compliance. A foreigner, accused of a Health Department violation, said he could not speak English, naïvely thinking that he would thereby delay the proceeding and make judgment upon him impossible. However,

when an interpreter, soon supplied, started to ask him questions in his native tongue, the answers poured forth in forceful, angry and readily understandable English.

The crusade against dirty restaurants, filthy delicatessens and hot-dog stands, as well as unsanitary bakeries, pickle factories and ice-cream parlors brought many cases into this court and steady and firm handling brought salutary results. In cases of flagrant violations I exacted very high fines and matched with deed my promise to put second and unregenerate offenders in jail. The campaign brought forcibly home to the public the extent to which unsterilized glasses and utensils, dirty and peeling walls, rat and mice excreta made such places dangerous.

Cases of employers who send out homework without proper licenses are the joint concern of the State Labor Department and this court. Employers who fail to cover their workers with compensation insurance are brought into this same Municipal Term by the Labor Department which is charged with the duty of seeing that these coverages are made. I added to the fine the amount of the saved premium, so that there should be no inducement by delay to save substantial premiums for future uncovered periods.

The Fire Department brings into this court paint-store proprietors who are careless with inflammable materials and those charged with factory, dwelling and hotel fire violations, breaches of anti-smoking ordinances in factories and department stores and drivers who station their vehicles opposite fire houses between protective stanchions. People who rig scaffolds without a license, junk dealers who fail to keep item-by-item records of the second-hand materials and the sources of the purchases, are brought here.

The disastrous Triangle Fire in New York City, in which many lives were lost, gave impetus to the creation of this court where violators of the building code could be dealt with criminally instead of by civil suit for injunction or for damages. It was this terrible calamity that caused attention to be focused on the deep social implications involved in the safety of the people living and

working in our crowded industrial community. The more recent hotel fires and night-club catastrophes that received nationwide publicity have served to put additional teeth into these penal laws.

In addition to violations of building codes, Health and Fire Department regulations, this court treats employers brought in for violations of the State Labor Law in failing to pay wages. An officer of a large chain store who went into the separate business of manufacturing clothing for UNRRA met with disaster in his venture. The new business failed to meet some $8,000 in workers' salaries. At first the air was charged with sparks of acrimonious feeling as the workers demanded their money and the defendant said he could not respond. Jogged by the possibility of criminal sanction he started to toe the line, but after he had paid $4,000 into court, he became recalcitrant once more, did not appear on the adjourned date, and instead submitted through an attorney a naïve doctor's certificate that his client was tired and needed a rest.

Because the promise to the court had been flagrantly violated, I issued a warrant for the merchant's arrest, a procedure calculated to produce quick results. The warrant officer, with the wisdom begotten of much experience with such defendants, did not execute the warrant immediately, but instead communicated with him and invited him to come down to court, an invitation which only the most obdurate non-payers fail to accept. The next day this defendant shamefacedly came into court, produced a further substantial sum and paid the remaining balance a week later. After full payment he pleaded guilty to the charge, and since he had finally complied, a small fine was imposed and paid.

Because the law protects laborers against non-paying employers by criminal sanction it does not mean that complainant-creditors in ordinary business transactions may use revenge as the power of collection in the Magistrates' Courts. Very often, if the usual collection methods fail, the creditor or his resourceful lawyers will attempt to use this court as an easy collection method, working on the fears of the inexperienced in the criminal courts, for whom

the stigma of criminal prosecution will hasten payment of an ordinary business debt.

Many of these cases never come to the attention of the magistrate. The complainant obtains a summons from the clerk on a charge that is criminal on its face, and serves it upon the susceptible debtor. More easily intimidated than in a civil action he pays up and the case never appears on the court calendar. Inability to pay ordinary business debts ceased being a crime many years ago and we no longer employ the barbaric remedy of imprisonment for debt or collection through the fear of criminal prosecution.

CHAPTER XVI

THE DISORDERLY CONDUCT section of the Penal Law is the grab-all under which very many defendants are brought into this court. There is no common-law offense of disorderly conduct although a breach of the peace is an offense well known to the common law. The present specific offense of disorderly conduct was added to the Penal Law in 1923. The term "disorderly conduct" had its origin in the Laws of 1833 under which driving in excess of five miles an hour constituted disorderly conduct. This was broadened in scope by the Laws of 1859 and 1860. Under the Consolidation Act, continued in force in the Greater New York Charter, magistrates were given summary jurisdiction to hear and determine disorderly conduct as any act which in the opinion of the magistrate tended to a breach of the peace. The offenses were merely characterized as disorderly conduct by the police and the district attorneys.

A conflict arose between the courts in the First Department (New York and the Bronx) and the Second Department (Kings, Queens and Nassau) in the course of which conflict Judge Gaynor, later Mayor Gaynor, wrote, "If magistrates were under no definition or limitation, but free to call anything they choose 'disorderly conduct,' and hold persons therefor, no one's liberty would be safe." This conflict was resolved by the enactment of Section 722 of the Penal Law in 1923.

DISORDER IN THE STREETS

The acts complained of must be public in character and must be such as tend to disturb the public peace and quiet. An actual breach is not required, the test being whether the conduct led to or was likely to lead to public disorder. It is not disorderly conduct for a

person to call a complaining witness on the telephone and call him foul epithets, even if the conversation is overheard by a listening telephone operator. A restaurant owner and his employee who at four in the morning struck an acquaintance of the employee with their fists were absolved from this charge because no customers were present in the dimly lighted restaurant which was not open for business. It was brought out in the case that no inappropriate language was heard by three witnesses who saw the fight from the street. The Court of Appeals reversed a conviction for disorderly conduct against a husband, based on the wife's testimony that the husband, in an intoxicated condition, assaulted her in their apartment and addressed her in vile language in the absence of other people. The wife may have other remedies — she may and does try to hold him for varying degrees of assault. Likewise a defendant accused by his wife that in the privacy of his home "he did call me a liar and a Hell Hore did grab me by the arm and try to pull me Back & down stairs and Mrs. Beardslee came to my assistance" was likewise acquitted because no breach of the peace or acts that might occasion a breach of the peace could take place.

The preamble of the disorderly conduct section of the Penal Law provides that the offenses enumerated must be committed "with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned." In a case in Albany the complainant and a brother police officer went to a rooming house to investigate a crime. When the officers rang the bell at the top of the stoop and stated their business, the owner of the house shouted at them, "Son of a bitch," and used other abusive and vile names in a voice loud enough to be heard across the busy street, and slammed the door in their faces.

The court held that the defendant was entitled to the right of privacy and freedom from interference in his home from the police or from other persons, and might in the protection of that right, under proper circumstances, present resistance to interference. The constitutional guarantee, however, did not authorize the disorderly

and offensive language in that case. Use of loud language, in a public place, constitutes circumstances "whereby a breach of the peace may be occasioned," and the owner of the rooming house was found guilty.

Put another way, the conduct must be more than to constitute just bad manners. Private annoyances, however exasperating or reprehensible, are insufficient where no breach of the peace has resulted. A breach of the peace is a disturbance of public order by an act of violence, or by any act likely to produce violence, or which by causing consternation, disturbs the peace of the community.

A struggle between the owners of two dogs in the complainant's back yard, originating when the defendant tried to separate the dogs with an iron pipe and the complainant tried to prevent the defendant from striking her dog (a neighbor intervened and took the pipe away from both), was not considered to be disorderly conduct. There was no boisterous or profane language, no threat to offer to do personal violence to the complainant, no crowd was attracted to the back yard, and accordingly there was no act which tended to disturb the peace and tranquillity of the State.

It is the same section under which striking pickets are brought into court. Four such pickets awaited trial for disorderly conduct, four workers who during the course of a strike had come to the employer's office in a group and demanded their unpaid wages. The employer insisted that they could have their pay but only if they came singly to his office, a condition which they rejected, insisting upon demanding their money in concert. There was a commotion, a crowd collected and the four employees were arrested on the charge of disorderly conduct.

On the one hand the employer claimed to be afraid of the combined pickets, and on the other hand the pickets claimed to be equally afraid of the employer. The latter admitted that the wages were due. "But I will not pay them if they insist on coming in a group. They are on strike." Further factual exploration developed

that the employer had a guard. "Armed?" I asked. "Yes." "Then these men will not go to your office at all. You must pay them here in court." The employment of the professional "guard" called by the most polite name is always an irritating factor in labor controversies. Even if we call him by the euphemistic title of "industrial agent" he is still nothing more than an industrial mercenary.

When the atmosphere was cleared of the question of money, I asked a question that had no relevancy to the case before me, "What are you striking for?" The owner spoke up. "I refuse to treat with this group of men." After further discussion, I succeeded in inducing both groups and their lawyers to sit down and adjust their real differences. The disorderly conduct charge was long forgotten, it was but the symptom of a deeper situation that cried for attention. The employer (he was a very intelligent businessman) soon realized that he was many years behind the economic times. He was quite delighted to achieve a settlement of the essential differences between himself and his workingmen for, actually, he had had no stomach for this entire quarrel.

Peaceful picketing by union members is permitted to promote the lawful interest of a labor union in a "labor dispute," and pickets cannot be convicted of "disorderly conduct tending to a breach of the peace," unless it is accompanied by violence, trespass, threats, or intimidation. Crowds must not be collected and free entrance to property must not be impeded. While police cannot take away the legal right to picket in a labor dispute, they have the right reasonably to limit the number of pickets at a given location in order to prevent congestion and the collection of crowds which might lead to a disturbance of the peace. Peaceful appeal to prospective customers not to patronize a particular establishment during a strike is a proper exercise of the right, in the absence of conspiracy boycott or other unlawful conduct, unless such activities are accompanied by circumstances tending to a breach of the peace.

Another subdivision of the same disorderly conduct provision,

reading "By his actions causes a crowd to collect, except when lawfully addressing such a crowd," poses immediately the question of what constitutes a crowd. Although a crowd is defined as a throng, a great number of persons, its meaning, because of its indefiniteness, is said to be shaped by time and place differences. A noisy dispute on the street, even with a policeman, is insufficient to convict for causing a crowd to collect or for using disorderly language.

Causing a crowd to collect at Broadway and Twelfth Street in the morning is not disorderly conduct where the "crowd consisted of 'two or three or four or five' or so on." The higher court differed with the magistrate who held that there was a crowd. A crowd at midnight might not be a crowd at noon, and a crowd in a country schoolhouse might not be a crowd in Washington Square.

The right of free speech is safeguarded by the Fourteenth Amendment of the Federal Constitution from impairment by the States. This same protection has been extended to the right of peaceable assembly. So has the right to distribute literature; but those rights are relative and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. In a case where members of a religious sect proceeded in single file along the sidewalk, bearing placards advertising a meeting and handing out circulars to passers-by, and one of the placards used the words "Religion is a Snare and a Racket," and there was no assemblage until after they were halted by the police, whereupon they peaceably submitted to arrest, it was held that there was no disorderly conduct.

However, in another case, during World War II, a defendant in a bar and grill who addressed a sailor in the presence of others as follows: "What are you doing, fighting? And what are you fighting for? This is a capitalistic war. Why do you want to go out there and fight for a bunch of capitalists? Hitler wants his 'new order,' and Roosevelt has a 'New Deal.' What have you to choose from?" was convicted by a magistrate. This was not only incitation to

violence, but also disloyalty and insubordination during wartime. The statement was made in a place where such brawls break out frequently over less obnoxious language. Such language was not within the "freedom of speech" guaranteed by the Constitution.

Joseph E. McWilliams ran for Congress under the sponsorship of the American Destiny Party. On July 12, 1940, he addressed 350 to 400 people on Eighty-eighth Street and First Avenue, New York City. Calling the Jews "Eskimos," he imputed to them lack of patriotism, cowardice and other vile and degrading qualities. He incited some of the crowd to approach the complaining witness and threaten him. During his speech persons ran through the crowd yelling, "Kill the Jews." One of the gems he told the crowd was, "But America today is in a great depression and is remaining there because its economic destiny does not lie in Aryan hands." McWilliams was found guilty, after being returned from Bellevue Hospital as "not insane or feeble minded" and legally responsible for his acts.

In another case a speaker representing The United Christian Minute Men made such calumnious remarks about the same people that a listener who was arrested for disorderly conduct shouted: "It's a lie; it's a dirty lie." The court held that the defendant's outburst under such provocative circumstances was not disorderly conduct. The magistrate said, "This meeting itself, with the type of language used by the speaker, had a tendency to disturb the public peace and order, and the defendant by his statement and act conducted himself only as he might reasonably be expected to under such provocation." In any event, civilized society must pay a price in suffering the demagogue so that we do not limit honest comment on public affairs.

Of interest might be the borderline case of the lawyer who congregated with five or six friends on Fourteenth Street. After a meeting they had their snack on a summer evening, and before separating at midnight, stood momentarily on the sidewalk at the entrance to the restaurant engaged in conversation with other

groups standing near by, when a police officer directed these groups to move on. The lawyer defendant refused to obey and was arrested.

Charged with violating Subdivision 3 of the disorderly conduct section, which reads: "Congregates with others on a public street and refuses to move on when ordered by the police," the lawyer was convicted and took appeals to the highest court in the State. Judge Irving Lehman, speaking for the Court of Appeals, said:

> *"The assertion of the rights of the individual upon trivial occasions and in doubtful cases may be ill-advised and inopportune. Failure, even though conscientious, to obey directions of a police officer, not exceeding his authority, may interfere with the public order and lead to a breach of the peace."*

The jurist went on to say that the law authorized the officer to use his judgment, that an orderly group might remain on the sidewalk for a short conversation, but they must "move on" when a police officer so directs for the purpose of avoiding possible disorder which might otherwise ensue.

DISORDER IN THE SUBWAYS

Most of us know the subway as a means of transportation and a financial headache. We little realize the extent to which the underground is used for illegal purposes. It would shock many to know that crime's roots dig themselves deep in these cavernous tubes beneath the city streets. Some of us may learn at one time or another, and at some slight cost to ourselves, that smoking is prohibited on the trains, on the platforms, and even on the subway stairs. Some may also think that the extent of subway malfeasance is limited to the interdiction against throwing chewing gum and candy wrappers on the platforms, a violation of which sanitary rule may bring the innocently unsuspecting citizen before the magistrate for a two-dollar fine.

Do we wonder in the early morning hours, when we see men sprawling on the seats, on the floors, and on the platforms of trains, using the cars as unsanitary living quarters, where they come from and where they are going? Some of these derelicts are coming from nowhere and are going nowhere; they have no homes, not even the small price of a flophouse bed. Some beg, some steal, and all just move back and forth in their sodden stupor, rarely coming out of the hole in the ground except in quest of liquor and food, later to return to their noisy, moving "winter palace" abode until they are picked up by the transit police and brought before the magistrate.

The subways are also infested with jostlers, the court term for pickpockets. Acting usually in pairs, they prey on men who have fallen asleep on subway platforms or car seats. One acting as a lookout, the other nestles close to his unsuspecting victim, removes watch, wallet or fountain pen, using razor blade or scissors for easy results. During rush hours, jostlers use a different technique, pushing up against unsuspecting passengers to distract their attention by applying pressure to the persons of their victims, as they pick men's pockets and clip ladies' handbags.

The jostlers who also ply their trade on crowded buses and surface cars are not only skillful in their trade, but they also have easy protection in the ability to have bail furnished for them. They will plead, alone or through lawyers, for permission to go free on bail, particularly during the holiday season, requesting adjournments that will not let them miss the holiday "trade," when people loaded with money and with packages are careless with both. These transportation merchants after spending their time in jail are able to enjoy the ill-gotten gains that they have put aside against the time of their release. These irritant germs soon again become a riding hazard of persistency and danger and are very difficult to eradicate.

The subway is also the home of the illicit club of the underground homosexuals, men who frequent the subway toilets to take up

with others of their own kind, or more dangerously still, with youthful innocents, willing experimentally to accede to their blandishments. They also frequent movie theaters where they alternate between the auditorium and the washroom soliciting willing partners. There are certain special movie houses as there are certain subway stations whose lavatories are rendezvous for these regular habitués. Every Night Court session, every session of the Week-End Court, every district court has its quota of these unfortunate inverts.

These subway and theater offenders violate that part of the "Disorderly Conduct" section of the Penal Law which contains the following prohibition: "Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or other lewdness." These thankless cases present a magistrate with human frailties, strange biology, mental and physical illness and intransigent public morals. When such a defendant comes before the magistrate, he may not lose sight of the public-disorderly-conduct phase of the case and attempt to pass moral judgment on the abnormal sex act, for that is not the gravamen of the offense. It is the public exhibitionism that tends to a breach in the peace, for there are many acts which, beyond the pale of the criminal law in private homes, become obnoxious when done in public places. Homosexuals who are adjusted, those who live unobtrusively with their friends, are not the ones arrested and brought to trial.

I am not overlooking the fact that Section 690 of the New York Penal Law makes sodomy a felony punishable with imprisonment up to twenty years, but here our law is unrealistic and unpredictable. Prosecutions for sodomy between adults are rare indeed. Prosecutions for this crime are reserved for its practice on juveniles, adolescents and unwilling victims. Our taboos against sexual deviations are so strong that it is unlikely that our criminal laws will be modified to conform with our actual practice.

Public degeneracy was high-lighted in 1947 by the engagement

of the first women police on the New York City transit system, specifically appointed to protect women from overromantic men, to watch for women pickpockets and for wayward children. They will pick up the kind of degenerates who attach themselves to women rather than to men, reminiscent of males who frequent zoos and crowd up against females, who though annoyed, are ashamed to report the offender to the police.

Every magistrate is troubled by homosexual cases. The shock therapy of conviction to a true first offender may possibly startle him into seeking psychiatric treatment in the hope of constructive adjustment. A mature offender, approaching a fourteen-year-old youngster, will be treated differently.

The shocking part of the situation is the fact that the offender has committed a *publicly* indecent act, and yet the punishment, when inflicted, carries with it not the ordinary opprobrium connected with usual disorderly conduct, but practically brands the defendant for life. I have rarely permitted defendants to plead guilty to this charge until they were apprised not only of their legal rights but also of the consequences of a conviction. So many defendants plead guilty to a charge just to be finished with a case, or because of great nervous tension, little realizing the mental anguish and physical suffering that may attend a conviction, or even a suspended sentence, in years to come. Civil service commissions, bar associations, teachers' examiners, medical boards and license bureaus comb these records with surprising diligence and the applicant goes again through a thousand hells at some future date.

In youthful cases and for true first offenders, probation and psychotherapy should be tried. In New York City there is a psychiatric service supported by contributions and sponsored by the Society of Friends where a staff of physicians are giving attention to cases involving the homosexual pattern.

The conditions of probation usually require that these deviant individuals stay away from crowded places, stay out of theater and

subway washrooms, insofar as is possible. The conditions are easy to fix, but no matter how logical, they are often too stringent and impossible of supervision. The fact that there is no immediate success does not warrant our giving up the fight. Psychiatrists are not all of the same opinion as to the efficacy of psychotherapy. Some make no attempt to redirect behavior but concentrate on assisting the individual to accept himself and to avoid conflict with society in his conduct.

A young physician, just returned as an officer from honorable service abroad, was arrested in a subway washroom in the Times Square area, where he stopped on his way to the hospital where he was interned. As a physician, he became interested when the police officer exposed himself and he approached to speak to him. The police officer's story was of course quite different. I found a reasonable doubt and acquitted the doctor of the charge. I was unwilling to destroy, by a telltale conviction, a professional career that was just starting.

Clothed as a woman and with every appearance of being one was a youth whose case presented no such doubt. Long-haired, lipsticked, with painted face and plucked eyebrows, this person accosted men on the streets and was arrested as a prostitute. Sent to the Women's House of Detention, his sex was discovered and the charge was redrawn to cover the facts. On arraignment the defendant, nervously biting his nails and speaking in a high-pitched voice, said he had been employed as a housemaid. He denied that he had approached men, but the testimony was overwhelming against him. About a month later he was picked up again for the same offense. Still dressed as a woman, wearing false breasts and high-heeled red shoes, he refused to plead and sought an adjournment to obtain counsel. He raised bail and upon the return date it became clear why he had refused to stand immediate trial. He had had his hair cut and had donned man's attire in order to fare better on the trial under masculine auspices. He was nevertheless convicted.

Oath of Devotion

One defendant came to my court on a busy Saturday morning when there were one hundred and thirty-five cases awaiting disposition. The complaint against him alleged that he had accosted the plain-clothes officer on Times Square and, as the officer gave him a match, had placed his hand on the officer's private parts. In court he was advised of his rights to have an adjournment for the purpose of procuring counsel. He sought no delay and insisted on pleading guilty to the charge. Peering behind very thick glasses, he looked startled and queer, so I remanded him for an investigation.

On Monday, a lawyer appeared before me and applied to have the defendant set free on bail pending the completion of the probation investigation. He stated that the defendant was a member of a tailors' union and was in charge of a crew of men whose work he had to supervise. The probation officer confirmed the fact that he was a responsible workingman who was entitled to bail. When I had set nominal bail, the lawyer went on to say that his unprepossessing and inarticulate client was so bewildered the Saturday morning of his arraignment that he did not know the nature of his plea. I thereupon granted his motion to substitute a plea of "not guilty" for his previous "guilty" plea and set down the case for trial before another judge.

Extreme reticence accounts for the lack of public knowledge of the prevalence of this social disorder which is part of a phenomenon that is more widespread than has been realized. Even the tabloids refrain from carrying news items relating to the public aspects of degeneracy. These cases are numerous and take in men from all social levels, of all professions and of all ages. Often these cases are tied up to other personal maladjustments and in such instances much concrete good can be achieved by a combination of probation and psychotherapy.

It remains to repeat that at least under the disorderly conduct section of the Penal Law, the act prohibited is the public manifestation of a sex act which would be just as offensive even if not taboo

when privately practiced. Even the Kinsey Report, in the exhaustive section on homosexuality, makes no distinction between the public and private aspects of this socially unaccepted behavior, in the courts' attitude toward these phenomena.

DISORDER AT HOME

The avenues of this court lead not only to other criminal courts, they may also lead to the Family Court (a part of the Domestic Relations Court). A recalcitrant husband fails to support his wife and children under an order of the Family Court. Impervious to his wife's dunning, he makes a mental note to pay up the arrears as soon as he makes one good killing on the horses. But the law is too swift for him and does not wait for his gambling luck to change. A warrant is issued for his arrest out of the Family Court, and the police pick him up in the evening when the Family Court is closed. Being entitled to bail, he is taken to the Night Court where the magistrate sets bail at $250, for that is the sum recommended by the justice of the Family Court. If the bail is not raised the delinquent provider is held over to the next morning to answer the charge in the Family Court.

The Domestic Relations Court in the City of New York was established in 1933 by the enactment of the Domestic Relations Court Act of the City of New York and was divided into the two divisions of Children's Court and the Family Court. The New York State Constitution empowered the Legislature to set up these courts "for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment and correction of adults responsible for or contributing to such delinquency, neglect or dependency, and to compel the support of a wife, child, or poor relative by persons legally chargeable therewith who abandon or neglect to support any of them."

While the magistrate has no specific jurisdiction over the admeasurement and enforcement of support obligations, he is no less

enmeshed in the family economic situation in the matters coming into his court. Until recently all family squabbles were handled in the local district courts which still treat husband-wife complaints in all boroughs except Manhattan, where in 1946 Chief Magistrate Edgar Bromberger established the special Home Term. To try to do something about the underlying family irritations is the purpose of this court. We should not expect this criminal forum, with its woefully limited resources, to accomplish what all the social agencies have in many instances already failed to do. When these cases come into the court it is very late, and many have been through the social agency wringers. The court's success in substituting self-help for threats of criminal sanction, in seeking out causes, in getting jobs and practicing psychological therapy, largely depends on adequate budgetary considerations.

Husband-wife relationships are a fruitful source of business for the court. A husband beats or stabs a wife, or calls her vile names, or refuses to give her any money, or pawns her best coat or jewelry to buy liquor. Until the situation has reached the irremediable stage of divorce, the wife will give as well as take a lot of abuse, haul the man into the Magistrates' Court for a good lecture and then assume the role of his protector. She will surrender him to the institution of the law for only so long, as long as she can see him, and only for limited chastisement or confinement.

Divorce situations can stand deeper insight and diagnosis rather than the assessment of blame or guilt. Punishment by divorce may sometimes be replaced by a form of therapy, particularly in the case of young married couples with children. An attempt to save such homes, consistent with understanding and dignity, is the least that is due to children and to society. Here also marriage counselors, social workers and psychiatrists should be available to the divorce court in attempt to avoid the great damage of a broken home.

Children who come from psychologically and emotionally unbalanced homes are hardly to be expected to live secure and normal

lives. The telltale neuroses found in such homes may take very dangerous turns, the children's resentment resulting in nervousness, truancy, inhibition or cruelty.

Let no one think that the Magistrates' Courts are snobbish, or that the rich husbands (or wives) are immune from their tentacles. One mink-coated lady charged her husband with locking her out of their Park Avenue apartment under circumstances that she maintained were humiliating. She obtained a summons, accusing her husband of employing four men to keep her out of the apartment on her return from a Florida trip. Two private detectives had been posted in the lobby, and two more had been assigned to the apartment. The husband explained that he "didn't want her to return so she could continue to loot the apartment."

When she tried to get into the elevator, the two burly detectives barred her way; she was forced to use the lobby telephone to communicate with the apartment in order to obtain some clothing, being dressed only for the Florida climate. Thus improperly clothed, she was denied admittance to her home. She claimed that the private detectives laid hands on her in barring her way into the elevator, that a crowd of tenants and others collected and heard her telephone conversation. She was mortified, had to go to a hotel, and because of the room shortage she was compelled to move three times.

The wife claimed in court that the action of the detectives, based on the unlawful directive of her husband, caused a crowd to collect and constituted disorderly conduct on his part. The husband on the other hand did not deny engaging the detectives to prevent his wife from getting in. He charged that his wife had not been so innocent, because on leaving for Florida she had changed the locks on the doors to keep him out, and had removed some of the silverware, china and linen. The wife had to concede that her husband was not present in the lobby when the fracas took place.

After several adjournments the case came before me for decision. I was constrained to dismiss the complaint against the husband,

even though I felt that the conduct in the lobby had been reprehensible. The trouble with the case was that in infractions like disorderly conduct the offender may not be held accountable for the acts of an agent unless he is present and participates in the disorderly act. It would have been different if the act complained of had been a crime. If anybody had committed the disorderly conduct, it was the detectives, but the lady was not interested in moving against them even if they could be located.

The technical decision in her husband's favor did not leave the wife without other remedies. Simultaneously with the case in our court, she was playing for much higher stakes in the civil courts where her humiliation could be more adequately assuaged. She was not averse to using every avenue of compulsion against her husband, even to the extent of using the forum commonly reserved for nagging tenement dwellers in their marital difficulties.

When it comes to cases that have their genesis in nonsupport, even hasty wives may soon realize that jail is the wrong place for the defaulting husband. In a New Jersey case, a husband was sentenced to jail for nonsupport and neglect of his children. The wife then objected to the life of idleness and ease which she felt he was leading in jail. The judge agreed with her later logic that "it would be more of a punishment for him to come out and actually work to support me and the children," and proceeded to sentence the defendant to liberty from jail.

Another New Jersey judge, borrowing a page from the Russian book of crime prescriptions, sentenced a defendant, in an ingenious attempt to solve this dilemma, to nights in jail for six months. In order to avoid a hardship on the prisoner's wife and children, he ordered the defendant to report to jail every night at six o'clock for the half year, to be locked up until six the next morning when he was to go to a neighboring farm where he was employed as a laborer. We are told that in some foreign countries prisoners are sent to farm colonies to be permitted home on week ends to visit their families, or are allowed to attend near-by schools and librar-

ies, some to attend universities and technical schools, returning after school to the farm colony. Russia calls these prison colonies places of "withdrawn freedom" or "closed colonies" and grants fourteen- to thirty-day-a-year leaves of absence or furloughs in order to permit normal family and sex life. In some of these prison colonies it has established the doubtful plan of providing for the residence of whole families in the colonies. Mexico has gone even further in permitting conjugal visits to the jail, also permitting children to enter. I remember visiting a jail in Mexico a few years ago where I was surprised to see prisoners leading an apparently simple and relaxed existence. There were many visitors, wives, children and friends who moved freely among the inmates. It was clear that an attempt was being made to simulate a normal social environment with every advantage except freedom. It was also evident that the inmates were not very dangerous criminals, because the supervision was very lax indeed.

Certainly the use of work camps where prisoners reclaim waste land and engage in the useful occupation of attacking soil erosion problems, in force in some of our own States, in Sweden, Australia and New Zealand, is in the tradition of advanced penological thinkers who would thus solve the jail, work and rehabilitation problem.

CHAPTER XVII

ONE OF THE MOST hopeless of all the courts in this great system is the special Women's Court. Into this court come all the commercialized prostitution cases in the city, the great majority of them from Mid-Manhattan and Harlem. To witness the glamorless array of streetwalkers is a heartbreaking experience. Not that the sadness is not tempered with quiet amusement as some defendants flash angry eyes at the listless police, while others look on in feigned and injured surprise, as he swears to the truth of the complaint against them. Some dissolve in frightened tears, some are haughty, some flare up into loud denunciation, while others utter an assured but unconvincing "Not Guilty," resigned to their fate and patiently hoping for a break somewhere along the line.

Perhaps the police will have insufficient proof to convict her, perhaps the "customer" will not show up in court to testify and she may go free again, surely to return on a not too distant date. Comparatively few plead guilty, preferring to take their chances on coming before one of the more sympathetic judges. The jail grapevine keeps them reliably informed of the name and disposition of the magistrate and other useful facts.

The stories, the excuses and the denials that flood the court are preposterous and fantastic. One girl caught alone in a doorway at four o'clock in the morning, from which vantage point she accosted passing men, claimed to be window-shopping for shoes. Another, at three o'clock in the morning, was hungry and going out to breakfast a mile away from her home. One good-looking woman, young and attractive, said she was engaged to be married, but that whenever her prospective groom annoyed her she would go out and cheat him for revenge. She did this upon three separate occasions

and, strange to relate, she finally brought her trusting swain into court, and with suspended jail terms hanging over her pretty head, she actually led him to the altar.

Upon arraignment, all defendants arrested for prostitution are examined for venereal ailments under the State Public Health Law, and none of these cases are finally disposed of until the medical report is received. To insure a fair handling of the trial, this medical report is not available to the magistrate until after he has made a decision on guilt or innocence. If the diagnosis is positive, irrespective of the results of the trial, the girl receives medical treatment until cured.

The defendants may not be released even on bail until the health authorities have given them clean bills of health. Trials are conducted in secret and not even other defendants or other lawyers may be present. Upon conviction (the result of a determination that the defendant has offered to engage or has engaged in an act of intercourse for money), the magistrate may suspend sentence, or commit to the workhouse up to six months, or to a reformatory for an indefinite period not to exceed three years, or place on probation for a specific term or for an indeterminate period not to exceed three years. The probation department as well as the social agencies are put into action to supply the girl with a job, to make possible self-respect.

Punishment in the accepted sense is no good. There may be those who drift into prostitution because of evil desire, even eagerness to associate with underworld big shots, racketeers, pimps and madams. But there are many more who are swept into the stream because of economic necessity, who would scurry for the nearest exit if the outside world would but give them a comfortable chance to do so. When these are caught in the early corrective stages, confinement for them is our most degraded admission of failure. In these cases hope is much more effective food than anything that society can offer in institutional care. Even the most skeptical must admit that respect for human worthiness demands

an all-out effort to set these people straight, leaving philosophers to argue about the causes of their variant behavior. Let the cynics look ironically at these misguided girls, but let the irony be compassionate, and in that compassion they will find their own participation in the corrective process. That is not to say that the law must not reach the pill-box whore who dopes and rolls, the pimps, the madams, and other racketeers in sex.

Usually, "bad" girls become "bad" women. To stave off this hopeless conclusion, a special effort is being made to treat wayward female minors between sixteen and twenty-one years of age as a special group of offenders and to isolate them from their elder sisters. A special part of this court was formed to do something about these youngsters, habitually addicted to liquor or drugs, who associate with dissolute persons, are found in houses of prostitution, associate with thieves, prostitutes or pimps, or disobey the lawful demands of their parents.

In this Girls' Term the charge is already that of being a wayward minor (the court used to be known as the Wayward Minor Court) so, unlike the procedure in the Adolescents' Court, there is no need to reduce the complaint. Upon her first appearance, complete intake information about the girl is available to the magistrate, from which data the real problem involved, economic or family incompatiblity, is pointed up. From this information he determines whether or not the girl should be detained pending investigation. Between this arraignment and the next hearing, the probation department, with the consent of the defendant, will have made a complete investigation.

The girl defendant is never brought to formal trial in this court unless it is absolutely necessary. The case is kept on the calendar and adjourned for long periods while plans for her treatment are worked out between court, probation officers, and the social agencies. If there is a good result, the case is kept open or dismissed. Under such circumstances the girl is never adjudicated a wayward minor; it is only in those rare cases where the treatment requires

institutional commitment or formal probation, that there is a trial and adjudication of that status.

This is a key court; its work is preventive, important and consecrated. The cases that come here are not like those which show up in the Adolescents' Court, where the offenses charged are felonies and misdemeanors. These are cases of sexual or other incompatibilities, the solving of which should be a challenge to the almost nonexistent psychiatry of the court, to be applied to child and parent alike. These psychiatric needs must not be left to the uncertain and over-worked staff of the Department of Hospitals but should be supplied by a staff assigned to the court.

Most important of all, we must stop being timid about the discussion of the problems of sex, for the best prophylaxis against the dangers of prostitution is honest sex instruction. Here not only the parents but the teacher and the religious leader have equal responsibility, the school educating through facts, the church through morals and the home through sympathetic intimate discussion. Sex emotions, undirected or misdirected, make delinquents out of young boys as they make prostitutes out of girls. Uncontrolled sex urge led thirteen boys and girls to stage a wild party over a three-day Fourth of July week end in the apartment of an absent neighbor. The four girls and nine boys, from sixteen to nineteen, were held for illegal entry and malicious mischief. In their orgy they destroyed clothing and furniture, threw eggs over the apartment and smeared lipstick on the walls.

It is urgent to soft-pedal the criminal rather than the regenerative forces at work in this court. Any measure that proposes such change in the law, even if it involves constitutional amendment, deserves the most careful attention from legislator and social worker alike. Under the Wayward Minor Act, a magistrate may either suspend sentence, place a girl on probation or sentence her to an institution for an indefinite period up to three years. These are almost exclusively criminal tools in the closet of crime punishment. But it needs no complicated exposition to prove that these

adolescent girls, at a most crucial time in their lives, are distinctly in a class by themselves. When we take civilized cognizance of the fact that parents and other adults are in many cases responsible for the plight of these girls, we begin to realize that the use of old labels, "guilty" or "not guilty" or their equivalents, may be outmoded, for in these trying situations such legalism really decides nothing. The social challenge of rehabilitation should not be endangered by a court atmosphere in which parents are forced to become complainants against their own daughters, when one of the primary purposes we want to establish is healthier parent-child relationships.

The case can be disposed of without the need of criminal techniques. As real "status" cases, anything that militates against the normal correction of that status is dangerous. It is wrong to treat the girl as a criminal defendant, and unwise to create in her an antagonism toward a complaining parent. When the need for such procedural changes becomes necessary, it is best to re-examine the entire structure of our criminal thinking rather than try to fit our advanced social philosophy into the strait-jacket of outmoded forms.

Violations of the law committed by youths of either sex up to the age of sixteen are referred by law to the Children's Court, a branch of the Domestic Relations Court. When youths reach the age of nineteen they are taken to the regular adult criminal courts to be processed like any other defendants. The in-between group of sixteen through eighteen has been treated differently in a worthy effort to segregate them from hardened criminals and also to afford them a special kind of treatment. So the Youth Term of the Felony Court has been set up to care for this group in Manhattan and the Bronx, routing them through the Grand Jury and the Court of Special Sessions in appropriate Youthful Offender cases.

In Brooklyn and Queens the Adolescents' Court was established for experiments with special treatment techniques quite different from the Youth Term, in the same effort to isolate adolescent

offenders. In this court the magistrate in appropriate cases has the power to dismiss the criminal complaint or information against the adolescent and to treat him as a wayward minor.

Two seventeen-year-old boys were arrested by a transit policeman for stealing $112 in pennies from subway gum- and candy-vending machines. They were arraigned in the Adolescents' Court, Brooklyn. The boys made a round of subway stations, filling their pockets and a tin pail with pennies taken from the machines. The magistrate reduced the charges of larceny to that of being wayward minors and placed them on probation.

The procedure starts with a felony or misdemeanor complaint being drawn and sworn to by the complaining witness as if the youth was to be tried on the original serious charge. It recites the larceny and the belief that the defendant committed the crime. "Wherefor, deponent prays that this defendant may be held to answer and dealt with according to law."

The defendant is then advised of the charge made against him, of his right to an adjournment to obtain counsel or witnesses and of his right to communicate with relatives or friends. He is further advised that he is entitled to an examination in this court or that he may waive that examination and proceed directly to the Grand Jury. The purpose of the examination is to determine whether a crime has been committed, and if so, whether the defendant may be reasonably presumed to have committed it. After the people's witnesses have testified, the magistrate makes a motion on behalf of the defendant, if he has no counsel, to dismiss the complaint on the grounds that the people have failed to establish a *prima-facie* case. It is the technique of the Adolescents' Court not to decide the motion immediately but to reserve decision.

The magistrate explains the situation to the complaining witness and inquires whether there is any objection to giving the youth the benefit of Adolescents' Court treatment. This procedure is followed preliminarily to the probation department's report which will check if the boy is a hardened or chronic offender, in which

case the boy is held to answer before the Grand Jury or the Court of Special Sessions, depending on the nature of the crime. The parent is then asked to sign a wayward minor complaint, upon which the defendant is arraigned. On this charge he is again advised of his rights. The trial proceeds before the magistrate who now has summary jurisdiction over the adjudication of this wayward minor.

The parent testifies that because of the facts stated in the new complaint, he believes that the boy is in danger of getting into further predicaments unless properly supervised, and that he wishes to have the boy placed under the supervision of the Adolescents' Court. Here again, on the lesser charge, the judge moves to dismiss on the ground of failure of proof. On that motion decision is also reserved.

We now have two proceedings pending; on the original felony complaint decision has been reserved, and on the wayward minor charge the decision has likewise been reserved. This flexible procedure is followed to await the full report on the boy's record, his history, his education, employment and his mental attitude, his habits and his associates. The defendant is usually paroled in the custody of the parent in both cases, and a few weeks later both cases come up before the same judge. The probation officer then makes his report with appropriate recommendations, usually that the youth be placed under probationary supervision. The court then takes up both reserved motions. The motion to dismiss the felony charge is granted, the motion to dismiss the wayward minor charge is denied, the defendant boy or girl is adjudged a wayward minor. The magistrate may either suspend sentence, commit for an indeterminate period not to exceed three years, or place the defendant under probationary supervision.

This process is simple, speedy, and efficient. The same purposes are generally achieved in the other boroughs where the adolescent is processed through the Youth Term of the Felony Court, through the Grand Jury and the Courts of General and Special Sessions.

Under the Adolescents' Court system the boy comes into contact with fewer criminals, is removed from the courts that deal exclusively with crimes, and has a greater chance of anonymous rehabilitation.

It may be interesting here to note that most Latin-American countries are keenly alive to the protection of the youthful offender in Children's Courts. There is being prepared in many of these countries a model code which will set up a kind of public defender of children. As a paid officer of the State he will have the duty of appearing in behalf of all delinquent children. This forward step will be watched with great interest by all friends of youth everywhere who believe that the child's interests, social as well as legal, should not be left to any chance or haphazard determination.

Until the New York Legislature sets up a new Youth Court to work with all young offenders, a very desirable innovation, we must strengthen the system as it exists and provide the various branches of this court with adequate facilities and personnel, so that the probation officers will carry a case load that they can adequately handle.

The restoration of normal home life is war's aftermath and as a result down goes the juvenile delinquency rate, but that does not mean that the scars created by war are ever healed. Assurance that this fever chart of youthful misconduct always subsides does not warrant a laissez-faire policy, nor should a rising graph cause such hysteria that we feel impelled to pursue every immediate harsh suggestion to eliminate the delinquency.

One of the latest proposals is to provide for three juvenile jurors to act as court advisors. Similar thoughts have moved others to use the pent-up energies of youth to help in this almost insoluble struggle. In a highly delinquent juvenile area in the Bronx noted for its gang killings, a school principal called together all the neighborhood gangs. At first the boys were suspicious that this was a police maneuver to round them all up in one reservoir of evil

children, and they rebelled. Gangs with such euphonious names as All Americans, Comets, Counts, Dukes, Gents, Happy Knights, Junior Gents, Latin Dukes, Panthers, Penguins, Puerto Rican Tigers, Sabers, Slicksters, Stars, Toppers and Townsmen finally attended the peace conference.

How much stock can we put in the sudden transformation of hoodlums into law-abiding citizens, even if their constitution proclaims the laudable purpose "to establish better understanding between ourselves and our neighbors and improve living conditions in our community"? The grouping of these energetic youths into a larger gang cannot remove the fundamental causes that create these youth disturbances. The social, educational and economic factors that go to make up the causes are too deep-seated to permit of any such easy cure. For these gang situations have very dangerous roots not only in their own psychological backgrounds but in the community itself. These boys make money out of their gangs, and they will not overnight transform themselves into decent working citizens because of some easy approach.

Corner gangs must receive adequate police attention. We do not need gangs of any size and certainly not larger ones. On the contrary, they must be decentralized and the members brought back to decent home and school environments.

Outward manifestations of gang delinquency must not be ignored, but it is much more fundamental to work on the long-range program that starts much earlier in the battle. We must attack the feeling of insecurity and other impulses that hound the child into becoming gang material. Just as boys do not become angels overnight, so they do not sprout immediately into the category of "bad" boys.

Let us not be misled into thinking of these street gangs in terms of the fairly innocuous street clubs we used to belong to in early youth where the lighting of street fires on Election Day and similar activities used up our excess energies. That is a far cry from the street gangs that convert zip guns, designed to fly airplanes, into

lethal instruments by adding a pipe barrel and a hammer. Their armory also contains tear-gas pistols bought from mail-order houses and changed to fire a bullet. The transition from fists to guns marks the graduation of the boy into gangdom.

Normal children in urgent need of companionship may in such an environment be easily sucked into these unwholesome associations. One withdrawn child, circumscribed by acute limitations in making friends, was asked why he did not go out of the house and play with his friends. His reply was indicative of his own bad conditioning and the dangers of his environment. "Friends," he said, "I have only one friend and I hate him."

Comparatively few families have adequate facilities for the proper training of children. The center of fun is shifting away from the home for child and parent alike, and in addition, the parent has neither the time nor the capacity to train the child. But the parents cannot "forget" delinquency by surrendering all their responsibilities to the school. The elementary schoolteacher steps into the breach when busy parents, even if they know enough to see disaster's symptoms, do not have the time to give to the unhappy youth in his groping for guidance. To the teacher is left the awesome duty of correcting the errors of home ignorance or home neglect. It is too great a burden.

Because of greater responsibilities forced upon her by the increasing pressures of our giant metropolis, because of pay inadequacies, because of lack of respect, we are running the danger of losing many of our good teachers, and we will not be successful in attracting men and women who will possess the training, scholarship and character needed for this great task. If these teachers let us down we can then expect a substantial increase in the troubled, undirected minds of youth. No less than in other spheres of human direction do we need a selfless attitude in our youth leaders, who will approach their dedicated task with imagination and human insight, and be challenged rather than embittered by the problems of children as growing human beings.

Oath of Devotion

The twentieth-century teacher must also be able to prepare the child for later leisure as well as for jobs, leisure that will be filled with satisfying hobbies and group interests and not merely by the radio, movies and tabloids. Schools and churches must remain open for sports and club activities in the winter afternoons and all through the summer in the crusade to create a total setting, when underprivileged children will not be left to flounder about without adequate community supervision. If we dig to the subsoil of the child mind till a solid foundation is reached, then we will have won the child and the battle.

CHAPTER XVIII

WHENEVER change occurs in our rapidly changing society, its effects are felt almost immediately in these courts, and the magistrate must be ready to meet its challenge. Improvements in traffic enforcement, attempts to halt war's inflationary spiral, the protection of the reading public's morals in books, the advances in employer-employee relations, our new psychological discoveries, all are likely to be sharply reflected in the first instance in these forums.

What the man in the black robe brings by way of background and philosophic attainments to such social changes is most important to the community, for his predilections in books, his social and political philosophy, as distinguished from his politics, are all factors in the judicial armory. Called upon to punish piano playing at certain hours of the night on the complaint of those who consider all music a form of noise, he may or may not take the same point of view, depending on how he feels about music in general and the instrument or composer in particular. How he will react to social conditions in Harlem, to the charges of disorderly conduct leveled at overenthusiastic pickets is tied up, out of profound necessity, with his past conditioning. The magistrate, guarding the first door to the criminal courts, may be the one who may save an apparently insignificant episode from becoming an important turning point in the history of a human life.

So varied are the situations upon which a magistrate is called upon to act that no prior experience can be said to be unrelated to the ultimate outcome. That equipment comes into play in determining whether an involuntary Sunday morning visitor to the

court is a beggar or a colorful balladeer, and whether a book is lewd or an *avant-garde* work of art. Kindness, humility and a feeling for people are indispensable, but they are not enough. Part of the equipment, in addition, must be some knowledge of the functions of psychiatry, a measure of philosophy and the gift of patient listening. There is no time for speeches, Bacon said in his essay *Of Judicature.* "Patience and gravity of hearing is an essential part of justice; and an overspeaking judge is no well-tuned cymbal." LaGuardia used to say, "A judge should not lecture as well as punish. Either is punishment enough." Decisions must flow from what is heard, and not from what is said by the presiding jurist, no matter how loaded with wit and wisdom his remarks may be. Like all good critics, he should be seen and not heard except in the pronouncement of judgment after the final curtain. Perhaps the analogy of the theater can be carried a little further to give the trial judge some directorial duties such as leading the police, the defendants and other witnesses by careful questioning into making articulate sense out of the emotional conflicts ever present in the court. Bacon also said, "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident."

We take for granted a certain amount of legal ability in a magistrate; the more law the judge knows the better. Especially is it true in this court, because here he is on his own; here no juries share the responsibility with him. Often it is stupidly said that "All a magistrate needs is some common sense." What a banal cliché. What the magistrate needs and often possesses is uncommon sense, uncommon because it is a sense that is particularly indigenous to the special job.

Moral integrity, too, is a prime necessity. That he should be incorruptible and free from political and other extraneous influences should go without saying. Such moral independence is more than a virtue. Having essential honesty and legal acumen, the magistrate, particularly among the judges, must care a lot about

people. My first chief in the Corporation Counsel's office, Paul Windels, spoke to me about the record I had in the trial of cases. He wanted to know what was the secret of preparation. The question surprised me but I replied, "I worry about them."

Steady, courageous judgment goes far in achieving success on that bench; after patient listening, the decisions must be quick. Above all else the magistrate must be modest and humble. This will give him an inward dignity and not a hollow distinction that is buttressed with the trappings of robe and position.

And finally, in this court, the magistrate must be a firm administrator. The cases are numerous, people are emotional and unrestrained. While firm in his handling he must give an assurance, to losing as well as successful litigant, of calm and measured judgment. With the police he must leave the impression that their work is important and appreciated. When a case has to be thrown out, there is rarely if ever any need for castigating the police officer. The police job is to make an arrest or issue a summons when there is probable cause for believing that a crime or an infraction has been committed. If an acquittal results the police must not by unrestrained criticism be induced to become sloppy and listless in their protective efforts.

The awareness that criminal prophylaxis must be many-sided, that it must include good health, satisfying work, sound education for trade and leisure, attractive homes and congenial neighborhoods, is a keystone of the judge's equipment. For this is the people's court. In more ancient and simpler civilizations worries were deposited at the doorstep of the doctor and the minister. But now this is where the people take their troubles. Until a better place is found, the magistrate must be equipped with sufficient social foresight to handle the thousands of situations that trouble us all in our complicated modern life.

I heard Viscount Jowitt in an address to the Association of the Bar of the City of New York, on October 1, 1947, explain the English method of selecting judges. They are there appointed by

the Crown on recommendation of the Lord Chancellor, who selects high jurists from among barristers who have attained the distinction of King's Counsel (K.C.). Magistrates must also be barristers (trial lawyers). Barristers appear constantly in the courts before the Lord Chancellor, where their aptitudes, their educational and psychological attainments are apparent to the appointive power. And since the Lord Chancellor, in addition to being a judge and the Keeper of the King's Conscience, is also a member of the legislative branch of government, he is subject to an immediate examination for any possible bad judicial appointment.

Such direct responsibility for judicial appointments is a far cry from our election of one or two candidates selected by political bosses or the brazen deals between the major parties which give the voter the Hitlerian privilege of voting *"Ja."* The disenfranchisement of the voters in these judiciary deals is especially sinister because the courts are the bulwark of our liberties and it is generally here that these deals take place. These endorsements are different from the worthy habit of bi-partisan renomination of those who have served well on the bench.

THE BATTLE OF PRICE CONTROL

As soon as I was appointed a magistrate I became a member of the law committee of the Board of Magistrates, the chairman of which was Magistrate Raphael P. Koenig, a close friend and a judge of great ability. All legislation introduced in Albany and in the local City Council that might affect the work of our court is examined by this committee. This involves constant vigilance, because some critics are always sniping at the court, trying to whittle away its jurisdiction, while other public-spirited groups are trying to add to its powers.

I was given frequent assignments to the War Emergency Court where, on the local scene, the battle of price control was in large part fought. Soon after my designation to the part, critics of the law

under which we had assumed jurisdiction thought of testing out the power of our court to try these cases. I was made the guinea pig in that first test case in which the State Supreme Court was asked to issue a writ of prohibition against me. Our court lost the first skirmish when the Brooklyn Supreme Court held that our War Emergency Courts had no jurisdiction over cases brought under the Sharkey Act, the local law passed in August, 1945, to implement the Federal Price Control Act. A writ of prohibition was issued restraining me from proceeding in a case against a fish dealer involved in a "cash-on-the-side" transaction.

The decisions in this and a companion case brought against Magistrate Charles E. Ramsgate were appealed to the higher courts of the State and the jurisdiction of the Magistrates' Courts to try these cases was finally sustained. Thousands of over-ceiling complaints were speedily disposed of in our court instead of waiting for the more slowly moving trials in the Federal District Courts. In the main the cases brought before our court involved over-ceiling food violations. They were brought into the court in droves and they were disposed of speedily, although more complicated cases resulted in more extended trials, and often clogged the calendars.

Offending defendants were prepared to pay very substantial fines as long as they could avoid serving a jail term. Two meat dealers overcharged seventeen retail butchers two or three cents a pound. Both defendants pleaded guilty to all the counts, they were remorseful, and for over a year had cooperated with the Government. Under the law the maximum fine I could levy was $25 for each count against the company and against the two individual defendants. I felt that the imposition of the maximum fine of $1,275 was not a sufficient deterrent in this case. Society must have some other way of showing that conduct that had deep social implications was disapproved and detested.

When I stated that I was going to mete out a small jail term, one of the defendants burst into tears, and his partner asked that he

alone be permitted to serve the time. Gallant as that suggestion was, I could not see the justice of treating one differently from the other. I sentenced each of the defendants to a day in jail in addition to exacting the large fine. Then they both burst into tears. I explained that what I had done was to give each of them a token jail term since the day expired at four o'clock that very afternoon. They were booked and the record remains that they served their day in jail.

These men were not criminals, but their anti-social business habits hurt society in a manner that is even more detrimental than a crime that manifests itself in some quick spontaneous outbreak of variant behavior. Both defendants thanked me for my consideration and apologized for their loss of self-control. I hope that in this case I achieved the Aristotelian happy mean.

Grasping landlords used complicated subterfuges in order to free their rooms of tenants. One applied to the Office of Price Administration and received a certificate evicting a tenant from a five-room apartment of a two-family house, on the top floor of which the landlord lived. The landlord swore that he needed the apartment for his daughter and her fiancé, an army lieutenant. After the tenant moved the landlord made extensive repairs and rented it to a stranger. The defense was that the intended marriage had not taken place, the soldier having been sent out of the country. The proof showed that there had been no engagement until some months after the certificate was issued. I found the landlord guilty. Another such landlord who tried six times unsuccessfully to get rid of his tenant used the same type of subterfuge and received a jail term for his pains.

The efforts of landlords to shake themselves loose from low-rent-paying tenants often taxed the ingenuity of the authorities and the courts. One landlord had a fire, and he had to vacate the premises of tenants in order to make the place habitable. When the repairs were completed he refused to grant one of the old tenants repossession of his apartment. The tenant kept his eye

on the building, and when he was refused repossession, he complained to the OPA. I found that landlord guilty and arranged for the tenant to be restored to possession.

For failure to post prices storekeepers were fined small amounts. These requirements were sometimes hard on illiterate shopkeepers. An Italian was charged with having no tickets on his food. He said, "How do you expect me to have tickets, I can't read or write." "Have you got a sign now?" "Yes, the inspector who gave me the summons made out the signs."

One persistent violator whom I sent to jail for five days on a Wednesday sent word to me from jail that unless he got out by Friday night, the meat in his shop would spoil. I sent back word to have his wife take care of the meat, adding that if he had been as concerned with his poor customers as he was with his meat he would not now be in jail for overcharging.

Chiseling coal dealers delivering baskets of coal and wood to the poor at excessively high prices were severely dealt with. One Negro cleaning woman bought a pressing iron for $6.95. She saw the identical iron in Bloomingdale's window for $2.60. The seller's lame explanation was that he also sold her a cord and an ironing board. Other cases involved over-ceiling sales of titanium dioxide for paints, sewing machines, a drink of Tom Collins, photographic projectors, films, cameras, as well as forced tie-ins compelling grocers to buy unwanted vegetables with those more difficult to purchase.

One wholesale butcher who pleaded guilty to seventy-three violations achieved the unique distinction of paying $8,000, the highest fine collected to that date in the Magistrates' Courts. If he had not suffered from diabetes and arteriosclerosis (attested to by voluminous doctors' affidavits) he would have served in jail as well. He did not hold the record for long, for shortly thereafter I fined paper manufacturers $8,500 on 271 counts. In this case, in order to falsify the records, the defendants had billheads printed to use for old duplicate records. The trouble with the defendants' ruse was that the supposedly old copies bore post-office zone

numbers at a time when there was no zone system in existence.

As a lesson in civics, I put one secondhand car dealer in jail but arranged for him to be out by Election Day so he might vote and carry out other obligations of citizenship, in addition to being compelled to obey the laws.

THE BATTLE OF THE BOOK

The New York Society for the Suppression of Vice, founded in 1873 by Anthony Comstock, in 1947 changed its name to "Society to Maintain Public Decency," its new name emphasizing the first object and purpose of the Society "to promote and encourage the publication and distribution of decent and clean literature." The Society maintains that they are as zealous for a free press and a right of free expression as is any supporter of the American Civil Liberties Union, but its conception of freedom of the press does not include the right to publish and distribute smutty books, crime books, indecent pictures and articles of immoral use, "any more than does freedom of action include the right to throw a bomb into a neighbor's back yard."

The charge in all these so-called "lewd book" cases is that there is a violation of Subdivision 1 of Section 1141 of the New York Penal Law which makes guilty of a misdemeanor "A person who sells . . . or has in his possession with intent to sell, lend, distribute or give away or to show . . . any obscene, lewd, lascivious, filthy, indecent or disgusting book . . . or who . . . prints, utters, publishes, or in any manner manufactures, or prepares any such book . . . ."

The section is intended to suppress not bona fide literary effort but the exploitation of smut. The statute is aimed at pornography, and a pornographic book is one in which all other incidents and qualities are mere accessories to the primary purpose of stimulating immoral thoughts. All courts agree that the character of the book as obscene and lewd must be judged by a consideration of the book as a whole, and not by isolated passages taken from it. Nor will the mere nature of the subject matter make it certain of

conviction if the method of presentation is decent and restrained. The Appellate Division of the Supreme Court of New York refused to hold that *Madeleine,* the autobiography of a prostitute, was indecent, although one dissenting judge said it was "simply an effort to exploit prurient curiosity." However, the majority of the court said that the book contained no word or picture "which tends to excite lustful or lecherous desire." The dissenting judge's statement "This book is suggestive throughout. It offends decency and good morals," points up the sharp conflict. Similar difference of opinion was expressed as to *The Well of Loneliness.* The committing magistrate held that the book about Lesbianism tended to debauch public morals and was opposed to public decency. The Court of Special Sessions, where these cases are tried, refused to find this book obscene.

The magistrate who conducted the preliminary hearing in *Call House Madam* held that book sufficiently "obscene, lewd, lascivious, and indecent" to warrant holding the defendant bookseller for the Court of Special Sessions. The subject matter is not the deciding factor but the treatment, method of presentation as well as multiplicity of indecent passages which set the tone of the book, are decisive. If these passages are dragged in to stimulate the reader's prurient instincts and have no great relevancy to the general scope of the book, if they do not meet the test of artistic sincerity, the courts will probably hold such a book obscene. While standards have changed with the years (it is said they are a question of the times) so that courts today would not declare obscene books that would have had no such immunity in the past, nevertheless the test, though a shifting one, still has some validity. Judge Learned Hand stated that words like 'obscenity' "do not embalm the precise morals of an age or place; while they presuppose that some things will always be shocking to the public taste, the vague subject-matter is left to the gradual development of general notions about what is decent."

From the moment the battle was drawn the war of words has

been brought into bold relief by the meaning of that elusive word "obscenity." Legal scholars point out that the earliest reported case on obscenity is Sir Charles Sydlyes Case, 1 Keble 620 K.B. 1663. The defendant Sedley was jailed for standing upon a London tavern balcony hurling bottles filled with an "offensive liquor" upon people while he uttered eloquent blasphemy. Sedley was nude and drunk at the time when he was charged with behavior "contra pacem and to the scandal of the Government." Strange as it may seem the controversy over the meaning of obscenity was in the beginning based on the personal conduct of an obscene poet and not on any obscene writing. That started the battle of the books and for 300 years it has been raging.

The Watch and Ward Society in Massachusetts is the counterpart of, and has performed the same functions as, the Society for the Suppression of Vice (now Society to Maintain Public Decency). In Boston they banned Elinor Glyn's *Three Weeks,* Theodore Dreiser's *An American Tragedy,* D. H. Lawrence's *Lady Chatterley's Lover* and Lillian Smith's *Strange Fruit,* under a criminal statute that was more stringent than the New York law. In general the New York courts have heretofore been more liberal than those of Massachusetts. While here Arthur Schnitzler's *Reigen,* privately printed and translated as *Hands Around,* was held obscene, yet Erskine Caldwell's *God's Little Acre,* Gustave Flaubert's *November* and André Gide's *If It Die* have been held not to offend our statute. However, Edmund Wilson's *The Memoirs of Hecate County* was declared to offend the New York statute. An appeal to the United States Supreme Court was lost in a 4 to 4 decision without opinion.

The Federal courts, operating under a still different statute, have since the *Ulysses* case applied the test that the book must be considered as a whole. "The standard must be the likelihood that the work will so much arouse the salacity of the reader to whom it is sent as to outweigh any literary, scientific or other merits it may have in that reader's hands; of this the jury is the arbiter."

In 1947 Kathleen Winsor's *Forever Amber,* the first book tried in

Boston under a new obscene book statute (1945) was cleared. The defense submitted proof of the good faith of the publication, of the contemporary background of Boston, and also offered proof that the book presented a fairly correct picture of the Restoration period. It also was permitted under the new statute to introduce psychiatrists who testified that in their opinion the story was not likely to induce the average mature reader to commit anti-social acts. This was giving obscenity a new and more objective test, and incidentally broke new ground for Boston.

The reading predilections of the trier of the book are by no means the test of obscenity. The real test is: would a reasonable and prudent individual in today's environment be justified in calling the book obscene and lewd, if it was published for a useful purpose other than for mercenary gain? Put another way, it is the normal reader's boiling point, not that of the psychopath, that sets the standard. To enable the reasonably prudent man to decide, objective tests like expert testimony on the danger to society, on the literary worth of the book and the relevancy of the obscene passages to the general scope of the book, will aid him in reaching a conclusion that is divorced from the infection of each trier's little bundle of prejudices. The United States Supreme Court has laid down the constitutional limitation of "clear and present danger" of the harm which such a statute wants to prevent. In these cases the danger would be to the morals of the community.

Mere pious lamentation over degrading realism is passé, for the book and the author are entitled to these more scientific tests. The New York Court of Appeals has pointed out that indecency and obscenity are not the technical terms of the law and "hence we are without any full or rigorous definition of the uses made thereof in the administration of justice." Chief Judge Loughran of that court went on to say that "In the nature of things there can be no more precise test of written indecency or obscenity than the continuing and changeable experience of the community as to what types of books are likely to bring about the corruption

of public morals or other analogous injury to the public order."

This language is no less apposite even if it is taken from the decision of the New York Court of Appeals in the Winters case which was overruled by the United States Supreme Court in a 6 to 3 decision. Our highest court ruled that Subdivision 2 of Section 1141 of the Penal Law, which prohibits the sale of book or magazine, etc., "principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime" was unconstitutional in that it violated the Constitution's guarantee of freedom of the press and was too vague and indefinite a statute upon which to predicate criminal liability.

Since the law reflects life, it may not remain static, for that which is reflected is far from static. There must be living growth in one as there certainly is in the other. Even though the line may shift it is still there, however difficult the application. Few there are who have been brash enough to suggest that there should be no restraint whatsoever, and the court does not consider itself to be a censor. Surely there must be some passable compromise that will encourage literary effort without aiding prurient salacity for commercial gain. The suggestion of a literary board of review is too burdensome and too complicated, and may lead to other difficulties. There is nothing wrong with the present system, provided those objective tests are employed which will take decision out of the realm of personal taste as the sole basis, and afford a review to the higher court based on a printed record which contains testimony of these desirable objective tests.

Having said all this, the determination as to whether a particular book oversteps the line of decency will still be very difficult of application, but that difficulty need not prevent us from trying to delineate the area more clearly. I will venture to say that if in an honest and sincere literary effort the language of the street rather than the words of the scholar is found necessary to depict the realism needed significantly to create a true art form of expression,

and provided that these elements of realism are not dragged in for mercenarily salacious purposes, the book is more and more likely to be met by a more liberal construction of the penal statute.

Such a guide, it seems to me, will be consonant with the general philosophic concept expounded by Mr. Justice Cardozo in *Paradoxes of Legal Science,* where he said, "Law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate."

This judicial language imports that the contemporary attitude toward the literary treatment of sex behavior, more than semantics, must affect the courts' judgment of what is lewd. That attitude is certainly affected by time and knowledge. The greater the knowledge the less the shockability. And literary treatment once outlawed is now calmly accepted. In 1865 Walt Whitman lost a position with the Interior Department because he was the author of an indecent book. That "indecent" book was *Leaves of Grass.*

How far we have moved in the direction of unshockability may be measured by the fact that no one has attempted to ban the Kinsey Report. More than proof of our more tolerant attitude is the conclusion that the reading habits of people have little-known effect on their sexual behavior. The Kinsey facts give eloquent testimony that the reading of "lewd or obscene" books can have little relation to the astounding facts therein disclosed. The interpretation of the legal requirement of "clear and present danger" as laid down by the United States Supreme Court must also clearly be affected by this conclusion.

Also inescapable is the proof that the severity of our sex laws seems to have little effect on sex activity. With the exception of certain clear-cut cases it is better to leave sex morals in books to the good taste and ethics of the reading public and to the persuasive powers of the literary and ethical leaders of the community. Thus will the charge of judicial censorship be reduced to the minimum and to the area where the evil effects are clear and unmistakable.

THE BATTLE OF STREET TRAFFIC

Special law-enforcement problems have been created by the ubiquitous automobile. The scientist has fully appreciated the gravity of the problem and the engineering phases of city transportation give the city planner ever more despairing concern. It is not so clear that the legal profession, and the judge who has the duty of traffic enforcement, look upon the problem with the same degree of seriousness, both being prone to consider themselves intellectually superior to cases involving traffic infractions. A justice of the Supreme Court told me that when he was first elected, he was interested only in contract cases because they presented fine legal questions. After years on the bench he suddenly came to realize that a broken bone was just as important as a broken contract, especially to one who complains of the former.

The problem is there and there is need of judges with special training in the field, judges who will not be bored by traffic specialization. While the question of enforcement is the court's primary concern, it has also some responsibility for education in the traffic laws which should be simple, clear and reasonable, and comparatively uniform with practices in other parts of the country.

Fines for infractions are uniform in the Magistrates' Court, which has a special part exclusively devoted to such cases. Wider variations appear more often in the Vehicle Accident Court, where violations resulting in accidents, reckless driving, driving while intoxicated are tried. The law requires that in some of these more serious violations, the driver's license be suspended. As this leaves no discretion to the judge hearing the case, the seriousness of the penalty inclines the magistrates to find a greater number of the defendants innocent than if the penalty were not so inflexible. There are therefore those who logically advocate that the judge should be invested with discretion to suspend licenses for a few days in those cases where he thinks that suspension would be more effective than a fine.

The Man in the Black Robe

In Los Angeles, Louisville, and San Francisco there are Violators' or Traffic Schools in which the traffic judge may compel attendance. The offender must listen to lectures on traffic laws and witness demonstrations of driving safety. A variation of this idea was the imposition of a sentence by a Lakewood, New Jersey, justice of the peace who ordered a driver passing a school bus discharging pupils, to go to the school and write on the blackboard ten times, "I must not pass a school bus in Lakewood."

There is need of some revision of our entire system of regulation as well as enforcement. There is responsible leadership for the idea of a traffic authority or some municipal traffic-control board that will tackle scientifically, parking and traffic-congestion problems, with enforcement to remain in the Police Department.

No discussion of city traffic can be complete without reference to the taxi driver, whose miraculous driving is both the marvel and the despair of our city streets. A clan by themselves, in Paris, London or New York, I wonder why they are not more articulate about solving our traffic snarls. Perhaps they really enjoy living in the inextricable labyrinth of traffic, or maybe they are so busy with their philosophic escape that they just cannot find time for such easy problems. One Sunday, Betty and I went to a wedding and were swept from our house by one of these knights of the road. No sooner were we seated when he started, "In my country." "You mean Italy?" "No, Greece," came the proud response. If I thought we were in for the latest news of the international situation, I could not be further from the truth. He gave me a short course in Greek philosophy, quoting in classic Greek the wisdom of Aristotle, Plato, and especially Socrates, in whom he was a specialist. For to him the story of Socrates and Xanthippe was an open book. He treated my recitation of the few lines of Xenophon's *Anabasis* with the contempt it deserved. As we approached our destination he was giving me a minute description of Socrates' death. He was no grand duke, but he was a scholar. The tradition of the road was amply upheld by this captain of the cabs.

Out of the traffic nightmare there came one day before me in the Vehicle Accident Court, a recalcitrant female driver charged with driving while intoxicated. She had been to the Jamaica Race Track, admitted to one drink at lunch, had been a 40 to 1 winner, collected her winnings and drove her expensive car into Manhattan. She stopped at a hotel for dinner (she said she had one more cocktail) and proceeded north on Fifth Avenue. A taxi stopped for a light, she ran into it, got out of her car and exploded into vile billingsgate. When a police officer tried to quiet her, she scratched him and lay screaming in the street. In her defense her counsel produced a physician who had never seen her until twenty-four hours after the fracas. He testified that her condition might have been caused by a mental disturbance. I asked whether the odor of liquor on her breath, to which the taxi driver and the police officer testified, might also have been caused by the same mental illness. I found the lady guilty, fined her $50 or five days in the workhouse and revoked her license. She appealed without success to the Appellate Division of the Supreme Court.

A family of colorful gypsies came one day to upset the usual tranquillity of this prosaic Vehicle and Accident Court, when the head of a family of nomads was brought in for the offense of assault (with auto), passing a red light, and leaving the scene of the accident. His appearance before the bench on arraignment, swarthy, silent and alone, gave no premonition of the drama that was to follow. Early that afternoon, the peaceful court was stormed by his wife in multicolored attire. Her dark, angry face brought lightning flashes into my chambers as she swept attendants aside to enter with the gypsy "King," peremptorily demanding to know why her husband was being unlawfully detained. Neither her rage nor her tears were effective.

Upon the hearing, the colorful wife, now accompanied by all the members of her family, sat in the front row, keeping up such a discordant barrage of abuse and rambling advice, directed at her dull husband, that the worn-out court attendants threatened

to remove her from the premises. She remained quiet for a short time, but soon her matriarchal instincts caused her to burst forth into louder exhortations.

The bewildered, henpecked vagabond was attempting to explain how he had driven his dilapidated car, filled with his entire nomad brood, into the complaining witness' automobile, to the inconsequential damage of the second vehicle. He was at a loss to explain why he had to be pursued after the accident, and why he passed a red light in the course of the chase. He said he was sideswiped, fled, and passed the red light because he was afraid of a possible altercation with the second driver who was lighter than the gypsy by twenty pounds. He was clearly guilty of leaving the scene of the accident without reporting to the police, and for this he was fined $25. For passing the red light he was assessed an additional $10, but I dismissed the charge of assault. The law made it mandatory for me to revoke his license for leaving the scene of the accident. The clan paid the $35 fine and swept out of the courtroom, happy to be finally freed from the clutches of this alien law.

THE BATTLE FOR THE UNDERPRIVILEGED

Does it cause any surprise when it is estimated that eighty-five percent of defendants arrested for prostitution are Negroes? Making all necessary allowance for the fact that Harlem prostitutes are too poor to operate as clandestinely as the girls further downtown do, in better apartments and by telephone, and are compelled to work on the streets under the very noses of the police who soon come to know each and every one of them, still the great preponderance of Harlem girls in this court must give us pause.

An entire Saturday or Sunday morning's arraignments may be a parade of these girls. During one such procession I asked one of Harlem's most respected attorneys, "When is this going to end?" Sadly and without malice he replied, "When the white man stops making a cesspool out of Harlem." It brought back to my mind

Alfred Kreymborg's lines, "Harlem has a black belt where darkies dwell in a heaven where white men seek a little hell."

In prostitution cases the male customer is often arrested but never prosecuted, the charge against him being dismissed in court where he is served with a subpoena to appear against the girl defendant in order to buttress the police officer's case against her. As these white men pass before the court, shamefacedly giving their tawdry testimony, we realize what the attorney meant. Men of all stations in life, of all ages, of all financial and social strata find their way to Harlem to be entertained by these girls. And some of these explorers after the exotic, bitterly complain if at four o'clock in the morning they are set upon, beaten and robbed. One such gentleman, when asked in court what he was doing in the neighborhood at such an hour, replied that he was making a sociological exploration.

When the magistrate threw out the warning that if fewer people made such digressions there would be less mugging at these early hours, a very critical letter was received at the Mayor's office from a newspaper reader who complained that the sociologist had a perfect right to be abroad in the streets of New York at any hour and that it was the business of the police to protect him. This letter-writing crank, as is usual with such gratuitous advice-givers, missed the point. The right to roam about Harlem at all hours of the night does not lessen the danger of molestation. It just adds immeasurably to the possibilities of such dangers. The police have a job in Harlem, and it is a very difficult one. It just does not make the protective job any easier when people make explorations in those areas at times when the worst elements in the neighborhood ply their nefarious trades, especially upon people whom they resent. For do not for one moment think that even honorable residents of Harlem relish the idea of having their neighborhood explored by those who have themselves segregated the Negro into his own particular ghetto.

At a Cooper Union Forum Channing H. Tobias, director of the

Phelps-Stokes Fund and a member of the President's Committee on Civil Rights, and I discussed the subject of "Crime and Its Prevention." Mr. Tobias, himself a resident of Harlem, held that real-estate owners and managers operating in Harlem "make income their sole interest," that the stores that operate in Harlem exploited the neighborhood with "shopworn stocks from downtown stores," and that the crime situation in Harlem is "alarmingly bad." He admitted an amount of neighborhood guilt and called upon the people of Harlem themselves "to accept their share of responsibility for the improvement of the community." However, he blamed the authorities for permitting "dens of iniquity" in the area, for segregation, for lack of playgrounds, stores, schools and housing developments.

Loren Miller, a Los Angeles lawyer and a member of the national legal committee of the National Association for the Advancement of Colored People, told the association that housing was the most explosive social question in America today. The tension is highest, he said, where an all-Negro area adjoins an all-white district because "there white Americans stand eternal guard to keep their Negro fellow-Americans out." He added that "residential segregation, and all other types of segregation that follow in its wake, have made us strangers to each other, and because we are strangers we distrust each other, and distrust ripens into dislike, and dislike into hatred." Mr. Miller described owners of slum property as "hucksters of prejudice."

In trying to understand what the problem of race relations is, we have been accused of being victims of a neurosis or psychosis that makes us flout our own Constitution, our democratic ideals and our own sense of moral values. The question is then challengingly put to us, whether we can expect the Negro or any other minority group to accept inferior caste status in this age.

Mere hypocritical protestations will not serve to solve the issue of interracial justice. The changed attitude must come about by lawful evolutionary process. Some there are who say that legisla-

tion is the answer. Whether or not legislation can be effective is a moot question because such legislation can do no more than keep step with public opinion. If public opinion is ready to accept the new laws, then the legislation may be effective. You cannot legislate on such a moral issue. However, legislative campaigns themselves are valuable in creating an informed expression of that same public opinion, and to that extent may be very wholesome. We have to grow up and mature the hard way and that takes time. When this real equality is achieved, and in maturity we match the wisdom of children that recognizes no distinction of color or creed, then Harlem will cease to be New York's cesspool.

There is little doubt that racial prejudices are made and not born. The successful experiments in boys' and girls' camps conducted by the New York Catholic Charities in Putnam Valley near Peekskill show that Negro and white children (fourteen years or under) can live together without any friction.

A plan started with two ministers, one of a Harlem Congregational Church and the other of a Quincy, Massachusetts, Congregational Church. The Harlem boys and girls first visited Quincy at homes of children who had met almost no Negro people in their New England community. The happiness of the children resulted in the Negro children inviting the white youngsters to Harlem.

We are also making more scientific progress. Sydenham Hospital, an interracially operated hospital in Harlem, has established a new Institute of Community Relations to study the relationship between disease and the social ills of Harlem. The study into the physical and social diseases of the area will use the methods of the sociologist as well as of the physician. The Institute will delve into all those fields where social and medical problems overlap.

On the legal front the United States Supreme Court has recently added its strong voice against discrimination in forbidding the use of the Federal and State courts to enforce racially restrictive real-estate covenants to exclude "undesirables" as violative of the Fourteenth Amendment to the Constitution. The prohibition against

any State denying to any person within its jurisdiction the equal protection of the laws is proof that further legislation is not needed.

All these directions give us hope that Harlem will some day be as healthy, physically and socially, as any other part of our community.

THE BATTLE FOR THE UNDEFENDED

Every once in a while, like a lightning flash, there is dramatically and shamefully presented the spectacle of one who, though innocent of any wrong, has through society's ignorance that amounts to treachery, been unjustly imprisoned. Anyone who has any respect for the uniqueness of human personality should be horrified at the possibility of any such miscarriage of justice. The public is distressed and officials rush to make such amends as are then possible. But the agony of trial, the humiliation of guilt-branding, the despair of incarceration are not erased by financial restitution, no matter how generous that may be. The discovery of one such case immediately raises the chilling fear that other equally unfortunate cases exist. For exist they do, even if undiscovered. The public only knows of those rare cases where through the efforts of counsel the *cause célèbre* has been dragged through the courts until right has belatedly triumphed. The herculean efforts needed to right such miscarriages of justice show the overwhelming difficulties in undoing such a wrong after conviction and sentence.

In the Magistrates' Courts the vast majority of defendants appear without counsel. Who is going to develop all the facts where the defendant has no legal representation? Who is there to make calm and logical presentation of those facts? Certainly not the distraught defendant. In the Felony Court the District Attorney appears for the State. To those without lawyers the court may assign an attorney from the Legal Aid Society. But the Society functions only in the Borough of Manhattan — and it does valiant service there. In the other boroughs the court is relegated to the

haphazard selection and assignment of a lawyer who fortuitously happens to be in the courtroom. Even with its limited staff and lack of examiners and investigators, the Legal Aid Society is able, in spite of those terrible handicaps, to obtain dismissals of many complaints. Skillful questioning in even a casual interview with clients will often elicit sufficient data to warrant a defendant's discharge. But these defendants are entitled to more than the casual representation of even so efficient an organization. Our American sense of fair play should dictate a more even contest than that between a District Attorney's office buttressed with trained prosecutors, investigators and police and a defendant who is too poor to engage counsel.

The answer must be a Public Defender System that will provide these unfortunates with an even chance. The notorious felon generally comes into court with able counsel. Those who are concerned with the duty of administering the criminal law must shudder, as I have, at the possibility of the reticent, withdrawn, and tongue-tied poor suffering in jail because of overpoweringly suspicious circumstances which the defendant is unable to overcome for lack of representation, for lack of witnesses, and especially because of the lack of articulate speech. The poor defendant who appears alone in the Felony Court deserves the same proper representation here as he does upon the trial in the Court of General Sessions or the County Courts. The thought that some defendants should not even have been held for the Grand Jury is a distressing one and we can never rest with easy consciences until we have done everything in our power to protect that very insignificant minority of innocent defendants from the clutches of the law.

Explorations in the direction of foolproof mechanism to protect the wrongfully accused against psychologically or viciously false identification and the safeguarding of the rights of all defendants are onerously difficult tasks. It is too easy to be discouraged and to do nothing until the next Bertram Campbell case shocks us again out of our complacent lethargy.

IV

TO TRANSMIT A BETTER CITY

CHAPTER XIX

IN PLANNING for a physically better city we cannot ignore the need for a healthier cultural atmosphere. There is immediate necessity for new spiritual leadership, a new attitude toward our penal law which must be removed from the haphazard approach embodied in the lash of vengeance and punishment. It is now about time to catch up with our new social and psychological discoveries. With the child growing up in our increasingly competitive and aggressive social order, are we being just in meeting him with old methods, where we know of new methods and do not use them through inertia or for lack of funds? Are we to be complacently satisfied with either excuse for our failure to offset the vicious urges of our complicated world? Scapegoat techniques or explanations are no substitutes for affirmative programs of complete community participation.

How can we quicken the public's sense of civic duty so that it will permit us to cut delinquency to half of what we now have in our midst, which all enlightened experts say we can conservatively count upon? To do this we must have a partnership of the law, medicine, the social agencies, the schools and a fully participating community. The law with its great dialectical skills has a very old and tried discipline in weighing imponderable evidence. It is a conservative profession, but it is also a conserving one.

The doctors have taken us far in giving us a completer and more hopeful comprehension of the physical and mental factors in the problem. Our social workers, clinicians in the courts, in correctional institutions, in the home and in the community, have established new and effective methods of attacking the problems of reconstruction and rehabilitation. And last in this partnership is the government, which must not be permitted to lag in appropriations to support the new findings and to implement the new techniques.

The partnership attack must be on an all-out and broad front, on a reconstructive and a preventive basis; both battles to be waged simultaneously. In the crusade against crime all agencies must be orchestrated in one great symphony of prevention and rehabilitation.

This cultural planning that aims to supply every child with supervision by trained people, to guarantee early detection of bad choice of activities and substitute better choices, must work together with the physical planning of an environment in which delinquency and crime will be less likely to flourish. For this we must demand, and we will get, more slum clearance, better housing, better schools, more parks and playgrounds, and more economic health through better jobs. We also need better-educated and more sympathetic parents who will give more time to the problems and spare-time activities of their children. Our hope is to reduce the area of non-responsiveness to a minimum and to achieve a change of heart in those who have strayed from the accepted norm.

My preoccupation with the acquisition of land and buildings to make way for public improvements, and my many talks on these subjects with the Mayor, with Moses, McGoldrick, Morris and other recent and past members of the City Planning Commission, including Tugwell, Rodgers, Orton, Salmon and Riedel and others, deepened my feeling for the need for foresight in anticipating future city needs through imaginative city planning. The necessity for the condemnation of hundreds of millions of dollars' worth of property was proof enough of the urgent need for such planning.

In 1939, as a delegate for the City of New York to the conference of the Municipal Law Officers in Washington, I addressed the national group of city lawyers on city planning and stated as my thesis that we must have vision and imagination to make slums impossible before they are created. As a city magistrate, years later, I repeated the same admonition time and time again. Plans for housing our people in such a way as to make their day by day

living clean and sound means slum elimination and housing on a large and purposeful scale.

To the extent that a community has no planning vision, it must accept a direct share of culpability for each delinquent, and let us not for a moment take refuge in the thought that the individual with whom society catches up is the only delinquent. While we do not know any individual cause that hatches the all too personal crime germ in any particular instance, yet the eradication of slums, while not an insurance against crime, will do its certain share in cutting down delinquency. We must be careful not to overstate our case and blame everything on the slums, for we cannot ignore the fact that even they have a very substantial law-abiding population. But, crime-wise, the mortality rate is greater in slums because in those dark areas criminals find convenient corners in which to hide, and there strong public outcry against delinquency is not apt to be heard. There gangs grow and their presence is accepted. There children are compelled to play in the streets and to operate from poolroom headquarters where they become apprentices to dangerous and more experienced loafers.

What choice has any person in the slums? And it is not enough to extricate him. The slums must be totally abolished, for there is no sense in helping one unfortunate out of such an environment merely to make a place for another prospective wrongdoer. And by slum clearance, I do not mean the removal of tiny specks of rot on the city map. I mean a real face-lifting job, a dramatic, provocative plan. These areas can be condemned and then sold for private building by banks, insurance companies and others, thereby recreating whole areas of the city in new integrated neighborhood units. Though the ideal is to have slum conditions remedied through private enterprise, the government must step in when private capital fails or has reached its limit. In so far as is possible these new areas should be on a neighborhood-unit plan, providing for a synthesis of school, local shops and parks including improved traffic facilities.

For all this we must be ready with plans, for how we plan is urgently important. There is good planning and there is bad planning, and bad planning is costlier not only in social deficiencies but also in the taxpayer's dollars. It is now almost unnecessary to point out the glaring evils of past practices: overbuilding, poor highway systems, unsightly developments, destruction of our natural beauty and resources, inadequate park and play spaces, bad building construction resulting in fire hazards and public health menaces.

The necessity for adequate community facilities has been too often unrecognized until it was too late to provide them economically. While past city planners did plan, their planning was circumscribed by the limited orbit of their experience. No one can blame them for not anticipating the automobile in building our city streets.

The use of land for public improvements can be assured either by eminent domain or by the exercise of police power. Eminent domain (the power of government to take property for public use, with compensation to the owner) is the cure for past evils. Police power (assurance of public use without purchase), properly and constitutionally exercised, is the attempt of the community to prevent the evil of excessive future costs resulting from indifferent and ignorant planning. The acquisition of slum areas by condemnation for public housing has been costly where a proper exercise of police power in the past would have prevented a widespread slum decay.

Vision and imagination are desperately needed to make slums of the future impossible, permanently to guarantee parks and open spaces, so that overcrowding and under-housing in modern twentieth-century living may not overwhelm us all. The constant need to widen streets resulting from modern traffic conditions calls for the great expense of acquiring parts of buildings in the paths of widened streets. A reasonable exercise of police power would prevent owners of property from erecting structures beyond a

building line fixed in a master plan that will allow for future street widening without the necessity of tearing down parts of already existing structures.

Expansion of the police power in aid of better city planning is exemplified by the ever-increasing acceptance of municipal zoning laws and ordinances. With these socially desirable purposes as our objectives, how is this broad civic planning to be accomplished under our municipal setup? We have the legal machinery for master planning. The only thing for us to do is to use that machinery. Orderly city expansion cannot be controlled without a master plan as a guide for the development of public housing, traffic, transportation, school sites and other services.

A master plan or guide plan, administered by the planning commission, is distinguished from the official map which represents the final stage of the plan and includes existing public properties and open spaces and such projects as may be selected from the master plan for official adoption. The official or final map is adopted by the legislative body after public hearings. The most effective time to start the formulation of a master plan is when the land is still in the plastic stage of perimeter acreage ownership, for at this stage the best opportunity is offered to work out a proper framework upon which land subdivision of the future may reasonably be predicated.

The New York City Charter, adopted by referendum and in effect on January 1, 1938, provides for a City Planning Commission to prepare a master plan which shall show desirable streets, public places, bridges, tunnels, parks, sites for public buildings, building zone districts, pierhead and bulkhead lines, docks and wharves, routes of railroads, omnibuses and ferries, locations of sewers, sewage-treatment plants, incinerators, and utilities, privately or publicly owned.

The purpose of the master plan is to provide for a full study of every physical feature of the city with reference to its growth. It is the guide to future development and therefore has to be

dynamic, suggesting rather than fixing the location of future developments. The official city map, on the other hand, is less flexible and more detailed. It is a guide for actual development purposes. The master plan will become the basis for progressive amendments to the city map.

The most important step is to maintain the integrity of the official or final map which must be binding both upon municipal officials and property owners. In New York City, changes in the final map have to be approved by the City Planning Commission and then by a majority vote of the Board of Estimate. If the Planning Commission does not approve, then the Board of Estimate may enact such change only by a three-quarters vote.

New York City has so far done very little to create a master plan. The recent expenditure of $165,000 by the Board of Estimate for a study of present and future land use in relation to the city's zoning regulations is only a beginning of the real planning contemplated by our charter. The zoning regulations must be revised and tightened up and places for new industry in outlying sections decided upon and reserved. Traffic and transit must be studied in relation to these new earmarked industrial areas, so that new concentrations like midtown and the financial sections should not take place.

The fact that I have treated physical planning at some length does not mean that I think that other elements of community coordination are not as important for healthy social living. Industrial planning that aims to afford all people opportunities for adequate employment, planning that involves public health, recreation, better child and adult education, training for leisure as well as social agency participation, all are equally as important in creating a new environment in which delinquency is much less likely to flourish. The future schemes that men of imagination have drawn for the future city present the challenge that the public welfare places before us.

CHAPTER XX

AND STILL MORE IMPORTANT is planning for people. Husband and wife stand before the probation judge who has the final task of making disposition of a case referred to the Probation Court by a magistrate who has found the defendant guilty but who felt unprepared, because of inadequate information, to pass sentence upon him immediately. The wife had complained that the husband, while drinking, struck her severely, knocked out some of her teeth and pulled out her hair. They had two children, the younger of whom was born with one eye and that one blind, and an older girl in her early teens. Because of these unusual circumstances the magistrate remanded the husband for investigation and report to the Probation Court; he had been examined at Bellevue Hospital and had been declared sane, although in his alcoholic state he was said to be dangerous.

Though he beat his wife periodically, she loved him nonetheless, and when the going got too rough she would have him arrested. She did this reluctantly because in his sober moments he was most attentive, doing all the menial work for her, cleaning the house and washing the dishes. A handsome man in his early thirties, he stood before the bench stricken with remorse as the judge read the probation report. The wife read the psychiatrist's diagnosis with tear-stained eyes as her husband looked pitifully at her. "Do you still want him back?" "Yes, I do, Judge. I need him." The young husband looked at her pleadingly, even with love. "Let me go back, let me work for her and the children."

The magistrate said to the erring husband, "Do you promise to cooperate?" "Yes, I will." "Will you go to the Bridge House to see Mr. Edward J. McGoldrick?" "Yes, I'll do anything to straighten myself out." He was given sixty days in the workhouse and execu-

tion of the jail sentence was suspended, in order to prick him into helping himself.

Who are the gallant champions of all the unfortunates like these, who break under the strain of almost impossible burdens? Who follow these frightened and luckless individuals in the difficult path of rehabilitation? Here we have unappreciated soldiers in probation who have accepted a great stewardship in their heroic efforts to expand the horizons of the human soul, through the great power of friendship and wisdom. There is no other way of attempting a cure except to bring our mental ills out into the open. We are told that eight million Americans are living in emotional tension, and anyone who has worked in the Magistrates' Courts can give testimony to that fact.

The country is sadly lacking in the number of qualified psychiatrists needed to treat these millions of tortured minds. Every probation department needs a completely integrated psychiatric service, a service that will look behind the veil of mental anguish and flood the mind with health. Without such help we are merely playing at the game of probation, a game that society cannot afford to lose. Why do we rush to repair broken-down mechanical engines and refuse to do as much for the health of our people? Is it because we believe that human personalities are really more expendable? Not words but conduct that makes available all the discoveries of modern mental science to this and similar courts will remove the sting of insincerity.

For this is human planning. Just as we need all the arts of the engineer, builder and architect to remove the physical rot, so in this we need all the techniques known to medicine, social science and the law to eradicate the mental slums. But first we must discredit the time-honored crime treatments that are as outmoded as congested city blocks are out of date, and supply the rehabilitative forces of air and sunlight in the one as in the other.

Law represents the social control desired by politically organized

society, and criminal law is the branch that prohibits by punishment acts which are disapproved by society. Crimes are not necessarily immoral in themselves. Without laws to violate there are no crimes, and at different times crimes change. It was once a crime to profess the doctrine of the circulation of the blood. Primitive forms of crime treatment, torture and mutilation, were as crude as the state of their society.

Distance was another method of crime treatment. When Dante displeased the mighty of Florence, they banished him. A distasteful remnant of that ancient custom still remains when a New York judge orders a defendant to stay away from the city, leaving him free to carry on his illegal practices elsewhere.

The person as distinguished from the personality of the criminal was first examined by Lombroso in the nineteenth century. He insisted that all criminals had physical marks of criminal predisposition, identifiable by skull and jawbone measurements. That theory of the "born criminal" was exploded by Charles Goring in *The English Convict* with proof that there is no such thing as a physical criminal type. He found that the cranial measurements of Oxford and Cambridge graduates presented the same differences as those of criminals and non-criminals. Recent American Army draft tests have supported his findings.

But Lombroso made a great contribution in starting individual case study which is the foundation of our modern social approach to crime. We have since moved away, in our attempt to explain the origins of variant behavior, from the anatomical to the sociological landscape. That advanced exploration was very fruitful but it did not completely satisfy the doctors, social workers and penologists because the approach left many facts of the question of behavior unanswered. Finally these crime doctors shifted their sights to the psychological level of the human personality.

Delinquency, the forerunner of crime, is a deficiency illness caused by the lack of certain essentials in the biological, the sociological and the psychological make-up of the individual and

society. To achieve a cure, the missing elements must be added to the physical, the environmental or the mental mechanism. The anti-authority rebel must be treated by supplying him with better health, better surroundings and a sense of being wanted, just as in the case of rickets, another deficiency disease, doctors add vitamins and calcium. In such criminal deficiency disorders, penal efforts and punishment are likely to be as ineffective as an attempt to destroy the nonexistent germs of malnutrition would be useless in trying to cure that ailment.

Goethe once said that there was no crime of which he could not trace the inclination in himself. In analyzing the criminal impulse scientists examine the natural tendencies and the present situation which interact with one's mental resistance. Dr. David Abrahamsen, of Columbia University, in *Crime and the Human Mind*, produces a formula: Crime equals Tendencies plus Situation divided by Resistance. When these factors are unbalanced, crime takes place.

Accepted authorities have come to the conclusion that crime is always the joint product of an individual and a social factor. The individual factors or traits do not produce crimes but motivate them. Such social or environmental factors as the home, the job, the neighborhood and education form the physical soil of crime. Neither heredity nor environment can act separately or without the aid of specific causes.

Court and probation officer alike are aware of these crime causations, and the deeper the insight, the more effective will be the planning upon the individual and social scale. In attempting to cure as many as possible the judge will examine the methods of crime treatment available to society after the offender has been convicted of a crime. Then the judge may send him to jail or put him on probation. After serving a term in jail, the correctional authorities may parole him.

Imprisonment is a comparatively recent form of punishment. It was only in modern times that there developed such an apprecia-

tion of freedom as to make its deprivation a punishment. Also comparatively recently labor power became so valuable that imprisonment took the place of death and torture, and prisoners were spared to be put at hard labor. All modern observers, objective and subjective, are aware of the terrible shortcomings of the prison system. Benjamin Franklin said there are no handsome jails, and Oscar Wilde in his *De Profundis* cried, "it is always twilight in one's heart. And in the sphere of thought, no less than in the sphere of time, motion is no more."

Probation is the most scientific rehabilitative method of crime treatment and is its newest frontier. By investigating the offender's physical, and if possible mental, history it controls and treats those who are conditionally released on probation without confinement. Its purpose is to give the offender a chance to *prove* (Latin *probare*) that he can live peacefully in society. This extra-penal method of treatment originated in Massachusetts in 1848 when a Boston shoemaker, John Augustus, asked the court to put young offenders in his charge after suspension of sentence.

In this process the court retains control over the offender. It may or may not suspend sentence during good behavior. The probation officer is the social expert of the court before sentence and his function is to protect society by anchoring the defendant to community activities in cooperation with the social agencies. He is the personal guide outside prison walls.

The conditions of probation should be flexible, not arbitrary and rigid, in order to fit the many variations of the human mind and its motivations. The gradations of delinquent thinking are a tax on human wisdom. Not only can there be no standard forms of probation, but the individual's response to probation and not the seriousness of the delinquent act should be the measure of the conditions to be imposed, conditions of enlightened treatment that will result in personality change and not mere conformity that hides the same resentments that brought on the original antisocial conduct. In thus trying to rebuild character, we must be

realistic enough not to give the treatment, except in the rarest of cases, to defendants with repetitious criminal records. Only most carefully selected probationers respond successfully.

The third and final act in the treatment of crime is parole, the release of the offender from prison under the control of the correctional authorities rather than the court. Society faces the dilemma of education in the prison or reformatory that is directed toward living in a free community. If we had prisons without walls and farm colonies, such education might take on more real meaning. The parole system is a transition from prison to home life, and that transition should be made as gradual and as effortless as possible. The system (first called "ticket of leave" in England) releases the prisoner when the correctional institution no longer corrects. The factor most difficult to overcome in the parole scheme is the public attitude, "once a crook always a crook," which makes employment difficult if not impossible. This common attitude is the unfortunate exaction of double payment from those who have once paid in punishment. I am not losing sight of those cases where the community's sense of justice is outraged by the release of vicious criminals.

Having as yet discovered no correctional specific, there must be a many-sided, health-building approach to permanent criminal prophylaxis. All our resources, relief, housing, employment, school, settlement houses, health clinics and churches, must be coordinated in our master planning against crime. In spite of all this, there will unfortunately be some who will just be cussedly criminal, with no explanation that even a psychiatrist can point to for motivation. But we can try to reduce that area to a minimum, hoping that those who slip through the preventive sieve will work out their criminal impulse in what Sheldon and Eleanor T. Glueck of Harvard Law School call maturation. The various planning partners must not compete with each other, with mutually exclusive claims, for none can do this over-all job alone. There has to be a coordinating executive in this partnership, and when an emergency occurs, the

public will always look to the courts for responsibility. Education, sociology and medicine must work within the legal process. Together, this constellation of social factors can accomplish healing results.

I believe inner forces for good are in almost every character and when tapped, they will give forth an antitoxin that will destroy many of the elements of social illness. These hidden streams of goodness, more than the cruelty of punishment, will by self-help attack the bacilli in the social body. Of course there is always the risk of being accused by the machine-gun penologists, those he-men realists who would let all criminals rot in jail, that this is sloppy sentimentality, the powder-puff method of treating criminals. But one does not have to choose between these two extremes. There is a third approach, that of the objective case worker whose first concern is for society's protection, who believes in reforming those who are capable of rehabilitation, but who is also prepared to isolate and confine the confirmed criminal, without the necessity of a man-hunt or a child-hunt or hysteria that breaks out in bad laws.

As I look back on the cases that came before me, what thoughts and emotions move me? What about the pearl thief in the cross-town bus, the poor man who did not have the resistance to withstand a $10 string of pearls? What about the drunk who stole the truck, thinking he was employed to take it to Florida; what about the great varieties of so-called "bad girls," and especially what about the boy who killed his father in order to protect his mother?

I know that these cases and many others like them are symptoms of our complicated and cruel society, cruel to those who have succumbed to guilt because of human weaknesses. But the great shining hope is that somewhere along the line of misfortune (often erroneously labeled criminality) there is likely to be a friend, a welfare worker, a physician, or a judge, who, incurable optimist that he is, will stop humbly by the roadside to reflect that human souls are important, that human possibilities are limitless and that

personalities are not always broken beyond repair by a struggle with the criminal law.

The major problem is with the young, and not only must we save youth, but I, for one, am not ready to write off as expendable all those who come into the courts as the failures of our groping society.

The treasure of good in the hearts of most people is a real reservoir of strength that will remove the guilty impulse of the weak. The magistrate, as well as other judges sharing the same responsibility, watches the cases go by, sometimes helpless and worried because of his impotency, sometimes ecstatic in his humble ability to set a matter straight, knowing that a balance must be struck between the difficult concept of justice to the accused and also to society.

There are no cities without people. Better homes, better roads and better planning are only important if they make people better and happier. The Ephebic Oath administered to the city's graduates never to "desert our suffering comrades in the ranks," to "quicken the public's sense of civic duty," and to transmit a more beautiful city can have meaning only in terms of people.

We cannot be said to translate that oath of devotion to our city by avoiding all responsibility for some of the conditions that create crime, even though we hold most wrongdoers accountable for their acts. If that oath means anything, it means that we are not our brother's jailer, but his keeper. Let us not be ashamed to translate that admission into action. It will not be a sign of weakness if we close the gap between what we know and what we do.

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For Bud Fisher
in friendship and
great admiration
Julius

(Continued from Flap 1)

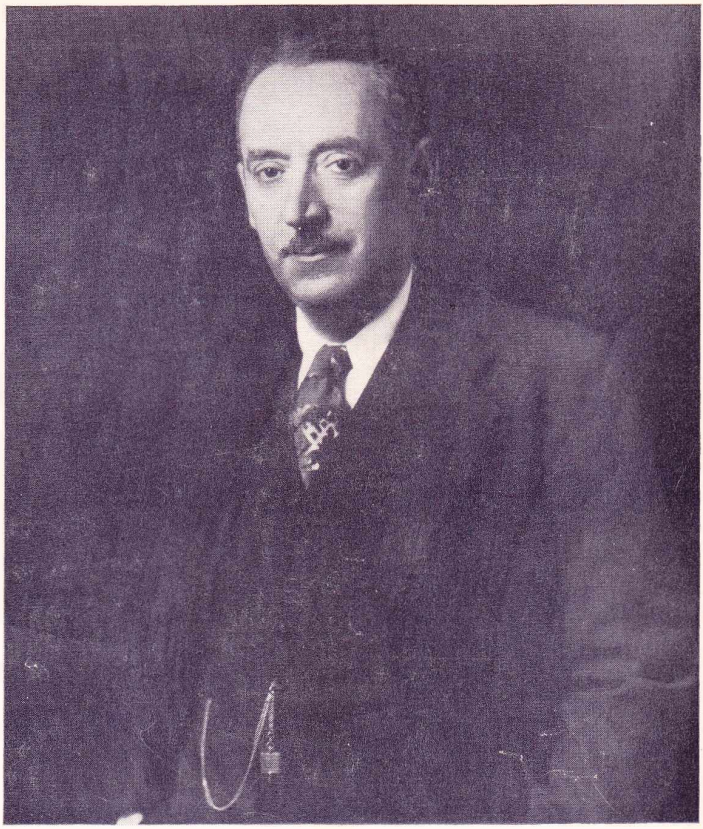
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