3-1-1971

The acquisition of the Tennessee Coal, Iron and Railroad Company by the United States Steel Corporation: A legend re-examined

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THE ACQUISITION OF THE TENNESSEE COAL, IRON AND RAILROAD COMPANY BY THE UNITED STATES STEEL CORPORATION: A LEGEND RE-EXAMINED

A Thesis
Presented to the
Department of History
and the
Faculty of the Graduate College
University of Nebraska at Omaha

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
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March, 1971
Accepted for the faculty of The Graduate College of the University of Nebraska at Omaha, in partial fulfillment of the requirements for the degree Master of Arts.

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PREFACE

The purchase of the Tennessee Coal, Iron and Railroad Company (T.C.I. and R. Co.) by the U.S. Steel Corporation at the height of Panic of 1907 evoked criticism by politicians which historians have subsequently reiterated. Some of this criticism was, and has been, levelled at President Theodore Roosevelt for not objecting to this merger as a violation of the Sherman Anti-Trust Act. Elbert Gary, head of the U.S. Steel Corporation, had asked the President, prior to the purchase, if the government would take legal action against his company because of this merger and was assured that it would not. A large part of the criticism has focused on the idea that the Morgan interests used the slump in security prices that accompanied the Panic to take over a valuable piece of property. Thus the U.S. Steel Corporation either created or intensified its monopolistic control of the American steel industry.

Most of the contemporary criticism of the President's action and the purchase was politically motivated. Later authors and historians have accepted most of this criticism without evaluation of the sources or investigation of the facts. Further, this purchase did not create a monopoly, indeed it probably prevented a regional
monopoly from coming into being in the South. Finally, the prior approval or disapproval of the executive branch of the government which was requested for this merger set a precedent which is present day government policy.
CHAPTER I

INTRODUCTION

The years from 1900 to 1907 were ones of almost uninterrupted economic expansion and prosperity, except for a sharp but brief setback in 1903.¹ Even the farmer had shared in this upsurge.² Despite the good times, there was considerable public and political condemnation of the growth of large corporations or trusts, as they were more frequently called, that had accompanied the prosperity. One of the leading critics of the trusts was President Roosevelt. Unlike many of the other critics, however, he did not believe that the trusts were inherently bad. In fact, he believed that large scale business activities were an inevitable economic development, but that they must be controlled in order to insure their good conduct.³ His action against the Northern


²Ibid., p. 321.

Securities Company, the Beef Trust, and the Standard Oil Company earned him the title of "Trust Buster." Indeed these activities against the trusts led William Jennings Bryan to go as far as accusing the President of plagiarizing and implementing the "Chicago platform" of the Democratic Party in 1896 which had called for stricter regulation of the railroads by the Interstate Commerce Commission and control of the trusts by the federal government.4 On the other hand, early in 1907 when prosperity began to fade, many business leaders and journalists blamed Roosevelt's anti-trust activities for the business recession.

Late in October, 1907, the recession reached the "panic" stage: many banks failed, panicked depositors of apparently solvent banks aggravated conditions by demanding their money, and in many parts of the country script money issued by local banks was replacing the rapidly disappearing currency.5 The New York bankers, led by J. P. Morgan, attempted to prevent further bank failures by making assets available to financial institutions that

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were pressed by their creditors. 6

When it appeared that the banking and brokerage firm of Moore and Schley with debts of over $38,000,000 was about to fail, Morgan proposed to Gary that the U.S. Steel Corporation buy the stock of T.C.I. and R. Co. that Moore and Schley had used as collateral for a large share of its loans. The avowed purpose of this proposal was to prevent Moore and Schley's failure by providing it with credible and liquid assets. 7 Gary reluctantly agreed to the plan on 3 November, subject to the condition that Roosevelt and the government would give assurance that the U.S. Steel Corporation would not be prosecuted for violation of the Sherman Anti-Trust Act.

Since Morgan wished to announce the sale prior to the opening of the New York Stock Exchange on the following morning, Gary went to Washington in the early morning hours of 4 November to confer with the President. 8 Interrupting the President's breakfast, Gary briefly outlined the problem without mentioning the name of the firm


7 U.S. Congress, House, Special Committee to Investigate Whether U.S. Steel Corporation or Other Corporations Have Violated Anti-Trust Act of 1890, 62nd Cong., 2d sess., p. 107 (hereafter cited as Stanley Hearings).

8 Ibid., pp. 1605, 1606.
that was in danger of failing. He said that the threatened company possessed a majority of the T.C.I. and R. Co. stock, and that under ordinary conditions, his corporation would be reluctant to buy the T.C.I. and R. Co. since it would raise their control of the steel industry by 4 or 5 per cent.9 Nevertheless, it would not raise the corporation's total control of the industry to above the 60 per cent limit that the U.S. Steel Corporation had established for itself.10

Because the Attorney-General was not in the capital, Roosevelt called Secretary of State Elihu Root, an experienced corporation lawyer whom the President considered highly competent on trust problems, to advise him on the subject.11 Since Root could find no legal barriers to the acquisition, Roosevelt said that although he could not approve it, he would interpose no objections.12 The sale was immediately announced to the press.13

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9Ibid., pp. 1122, 1379.  10Ibid., p. 1122.


12Stanley Hearings, p. 1122.

The firm of Moore and Schley did not fail. Within a few days after this event, it was apparent that the depth of the Panic had passed; within days, magazine stories were referring to the Panic in the past tense. Many of these stories hailed Morgan as the savior of the situation. Roosevelt's anti-business attitude was featured in many others as the cause of the Panic. Significantly, in view of later developments, no adverse comments can be found regarding the U.S. Steel Corporation's acquisition of the T.C.I. and R. Co. except in William Jennings Bryan's weekly newspaper Commoner, which was published in Lincoln, Nebraska. Speaking editorially on 22 November 1907, the paper said that the merger of these two corporations was another link in the chain of monopoly and that only time would tell what effect it would have on the public interests of the South.

The issue lay dormant until the Presidential campaign of 1908. The Democratic nominee, William Jennings Bryan, limited his remarks about the U.S. Steel Corporation to a typical campaign charge that the Steel Trust had purchased immunity from prosecution under the Sherman Anti-Trust Act by contributing to the Republican campaign fund.

14 "Mr. Morgan, The Man of the Hour," Literary Digest, November 9, 1907, Vol. 37, p. 676.

15 Ibid., p. 669.

16 Commoner, November 22, 1907, p. 6.
Then William Randolph Hearst, the Independent Party candidate for President, made the sensational charge that Charles N. Haskell, the Governor of Oklahoma and Treasurer of the Democratic Party, was and had been an agent of the Standard Oil Company for some time. When Bryan rose to Haskell's defense and pointed to the lack of evidence, Roosevelt quickly corroborated Hearst's charges by producing evidence from the government's case against Standard Oil that was in adjudication at that time.\(^{17}\)

Hearst next produced court records to show that Haskell had acted as an agent in the organization of the U.S. Steel Corporation, receiving a fee of $50,000 for handling the transfer of ore lands and stock between companies. The record stipulated that the fee represented 1 per cent of the transaction.\(^{18}\) On the day after Hearst made this disclosure, Bryan charged that Roosevelt had allowed the Steel Trust to buy one of its largest rivals and obtain 50 per cent of the market.\(^{19}\) It is noteworthy that neither in these, nor in later remarks about the merger, did Bryan refer to the T.C.I. and R. Co. by name.

Yet no doubt was to be left in the reading public's mind about the identity of the companies involved. Within

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\(^{17}\text{Omaha Bee, September 24, 1907, p. 2.}\)

\(^{18}\text{Ibid., September 25, 1907, p. 2.}\)

\(^{19}\text{Ibid., September 27, 1907, p. 2.}\)
48 hours after Bryan made his charge, Roosevelt revealed his role in the affair, specifying the time, the people involved, and the necessity for this transaction as it was presented to him by Gary. 20

The issue was then dropped only to reappear when Congress reconvened after the election of 1908. At that time the Chairman of the Democratic caucus, Senator Charles Culberson, introduced a resolution that requested the Attorney-General to inform the Senate if the government was suing the U.S. Steel Corporation under the Sherman Anti-Trust Act because of its absorption of the T.C.I. and R. Co. 21 When the Attorney-General replied that no action was being taken by the Justice Department, Culberson countered with a resolution to investigate the absorption of T.C.I. and R. Co. by the U.S. Steel Corporation. Culberson's resolution was passed unanimously by the Republican controlled Senate which, like Roosevelt, showed no reticence about having this affair exposed to public


scrutiny. The investigation was completed in less than 60 days. Roosevelt refused to give the committee any information that the government had about the Steel Corporation, except for the correspondence dealing with the government's part in the acquisition of the T.C.I. and R. Co. Very few witnesses were called by this investigating committee and the conclusions drawn by the Committee were divided along party lines. The report of the Democratic members of the committee contained the principal charges that have been made in connection with this merger. Briefly these allegations were that the purchase constituted a violation of the Sherman Anti-Trust Act; that the President was not authorized to permit the absorption; that the property was worth several hundred million dollars; and "... that among the larger benefits which the Steel Corporation derives from the merger are the control of the open-hearth production of steel rails, the ultimate control of the iron ore of the country, a practical monopoly of the iron and steel trade of the South and the elimination of a

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strong and growing competition." The committee made no legislative recommendations and, aside from the publicity it received due to Roosevelt's refusal to provide it with information, it attracted little attention.

Again the issue disappeared from public view until the Democrats gained control of the House of Representatives in the elections of 1910. On 16 May 1911 the House passed a resolution which authorized a sub-committee of the Judiciary Committee to investigate the Steel Trust. This group, generally called the Stanley Committee after its Chairman, Democratic Congressman Augustus O. Stanley of Kentucky, commenced in June, 1911, work that was only completed in August, 1912. Unlike the Senate Committee which had investigated the absorption of the T.C.I. and R. Co., the Stanley Committee attracted much publicity. With the exception of J. P. Morgan, every important figure in the steel industry testified. A large part of the evidence collected dealt with details of the purchase of the T.C.I. and R. Co. Theodore Roosevelt's appearance as a volunteer witness in August, 1911, was the high point of the hearing.

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24 U.S. Congress, Senate, Committee on Judiciary, Absorption of the Tennessee Coal and Iron Co. by the United States Steel Corporation, Hearing before a sub-committee of the Judiciary Committee, Senate Doc. 44, 62nd Cong., 1st sess. (hereafter cited as Absorption by The United States Steel Corporation).

When the committee published its findings a year later, the Democratic majority condemned Roosevelt for failure to interfere with the merger, stating that the Sherman Anti-Trust Act did not give the President the authority to refuse to take action in such cases. Further, the majority report stated that although the position of the U.S. Steel Corporation was once due to business acumen, "... the [present] dominance of the Steel Corporation ... is due to the sudden, ill-considered and arbitrary fiat of the executive."26 The minority report, predictably, supported former President Roosevelt's action.27

While the Stanley Committee was sitting, two other events took place. On 1 July 1911 the Commissioner of Corporations issued an exhaustive report on the steel industry that had been in preparation for over five years. The most important conclusion of this report stated "... it is apparent that the United States Steel Corporation does not have a monopoly in the production of iron and

26U.S. Congress, Special Committee to Investigate Whether United States Steel Corporation or Other Corporations or Persons Violated the Anti-Trust Act of 1890, H. Rept 1127, 62nd Cong., 2d sess., Part 1, p. 207 (hereafter cited as Stanley Report--Majority).

27Stanley Report--Minority, p. 93.
steel."

This statement was qualified by the remark that "... the Steel Corporation does occupy a position in the iron-ore industry, which while by no means constituting a monopoly, is clearly indicative of monopolistic influence."

Further, the report said, "The acquisition of the Tennessee Coal, Iron and Railroad Company likewise was apparently desirable more on account of the enormous ore resources of the company than because of its manufacturing plants. ..."

The publication of this report caused no tremors, one paper pointing out its uncontroversial nature by noting that its issuance was immediately followed by a rise in the price of U.S. Steel Corporation common stock. However, the report was the only comprehensive statistical picture of the U.S. Steel Corporation in the first decade of its existence.

Less than four months after the Bureau of Corporations Report was issued, the Department of Justice brought suit against U.S. Steel Corporation for violation of the Sherman Anti-Trust Act. Among the several causes for the

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29 Ibid.

action listed in the government's brief, was the acquisition of the T.C.I. and R. Co. Charging that Roosevelt had been misled by Gary, the brief stated that "... nothing less than control of the Tennessee Company was considered by the Steel Corporation," and that "... there was a desire to assume control of a company and purpose to acquire control of a company that had recently assumed a position of potential competition of great significance."

Adding specifications to these intentions, the brief said that the U.S. Steel Corporation had by this merger acquired 400,000,000 tons of iron ore which greatly strengthened its control of the iron ore supply of the country and that it had assumed a predominant position in the iron and steel trade of the South. 31

The suit against the U.S. Steel Corporation had immediate political repercussions. Roosevelt not only vehemently denied that he had been misled by Gary, but used this denial as a springboard for an attack on the antitrust policies of his chosen successor, President William Howard Taft. Roosevelt described Taft's indiscriminate attacks on the trusts as being as outmoded as the flintlocks of Washington's army, saying that, "The effort to prohibit all combinations, bad or good, is bound to fail, and ought to fail." At the same time he reiterated the

demands that he had made as President for the regulation of the trusts. 32 Many leaders of the Republican Party, dissatisfied with Taft, turned to Roosevelt for leadership, and his bolt to Bull-Moose Progressivism helped a divided party to go down in defeat in the Presidential election of 1912.

Although the Democratic candidate, Woodrow Wilson, attacked the Steel Trust during the campaign, he made no allusion to the purchase of the T.C.I. and R. Co. However, Bryan, in a book published during the campaign, alluded to the purchase, stating that "Roosevelt allowed the Steel Corporation to swallow its largest rival." 33 No record can be found of any answer to this charge, and the purchase of the T.C.I. and R. Co. by the U.S. Steel Corporation died as a political issue in the campaign of 1912.

After nine years in the federal courts, the Supreme Court in 1920 dismissed the government's complaint against the U.S. Steel Corporation on all counts. Although this legally buried the charge that the corporation had violated the Sherman Anti-Trust Act and that Roosevelt had


been a party to the violation, it has not prevented the periodic revival of criticism by authors such as Matthew Josephson, Gabriel Kolko, and Ferdinand Lundberg.

Most of the critics have attacked the principals in this affair for using what today might be called sharp business practices, using much of the same evidence that the Senate investigation of the absorption of the T.C.I and R. Co. and the Stanley Committee gathered and that the government set forth in its unsuccessful suit. Most of these critics, by presenting only fragments of the evidence, have failed to present a coherent picture of this merger and the events that led up to it. Likewise, most of them have failed to analyze the motives of the Congressional groups that conducted these investigations and the motives of the Taft Administration in not bringing this suit until the fall of 1911. Unfortunately, the Supreme Court decision of 1920, because it dealt mostly with the legal aspects of monopoly, shed no light on these aspects of this case.

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JOHN W. GATES AND THE SYNDICATE

The chain of events that led to the acquisition of the T.C.I. and R. Co. by the U.S. Steel Corporation actually began in the 1890's when capitalists put together the various medium sized combinations that, following a subsequent consolidation, became the U.S. Steel Corporation. In many ways it is the story of two tycoons: one, John W. Gates, whose name has been rarely connected with the acquisition of the southern iron and steel company,¹ and the other, J. P. Morgan, who has been accused directly and indirectly of using or causing the Panic of 1907 to promote this acquisition.²

Gates, like the better known Charles Schwab and Andrew Carnegie, was one of the principal figures in the building of a large scale American steel industry. His company, the American Steel and Wire Company, legally


monopolized the barbed wire production of the United States simply by owning all the patents for its manufacture. By his own admission, Gates made full use of this monopoly to advance the price of barbed wire. The output of his company was by no means limited to barbed wire; it, like most steel companies, turned out a variety of finished and unfinished iron and steel products. Accordingly the American Steel and Wire Company both shared in the general prosperity of the steel business immediately prior to the turn of the century and was constantly threatened by the cutthroat competition characteristic of this industry.

For Gates, or for any large steel manufacturer, the two most important competitors were J. P. Morgan and Andrew Carnegie, each of whom controlled large steel corporations. Morgan, because of his financial resources, was well equipped to weather a long siege of stiff, price cutting competition, yet Morgan had already established a reputation for not initiating such competition and for trying to prevent it. Carnegie, unlike Morgan, was a combative competitor, who easily made up what he lacked in financial resources by being an increasingly efficient

3Faulkner, Decline of Laissez Faire, p. 159.
4Ibid.
steel maker. He threatened to move into other steel manufacturers' fields, threatened to build a fleet of ore boats to assure his source of raw materials, and even threatened to build a railroad parallel to the Pennsylvania Railroad, which itself controlled a steel company.

Despite these tactics, Carnegie wished to retire and much of his aggressiveness was directed toward forcing his harassed competitors to buy him out. When the Rockefellers attempted to form a combination of the larger steel companies to purchase Carnegie's interests, they were forced to abandon the project because they could not mobilize the capital needed for such a large operation. Shortly after this independent steel manufacturers, harassed by Carnegie's competition and also wishing to enjoy the benefits of large scale specialized steel manufacturing, appealed to Morgan to form a combination that would buy Carnegie out. Morgan, sensing that stock market conditions were ripe for the flotation of the huge amount of securities necessary for such an undertaking, agreed to form the combination, and in 1901 the U.S. Steel Corporation, the first corporation to be capitalized at over one billion dollars, was founded.

The foundation was not without birth pains. Gates who had been the one of the architects of the new
corporation\textsuperscript{6} found that his services were no longer de­sired by Morgan once the huge corporation had been organ­ized. His buccaneer methods, which were well known to Wall Street insiders, such as selling stock in his own companies short and then reaping a stock profit when he un­expectedly shut down his plants, were repugnant to Morgan's rigid sense of business propriety.\textsuperscript{7}

Consequently Gates had no part in the management of the new corporation. His lingering bitterness came out during the Stanley Committee Hearings when he testi­fied that he would be ashamed to admit to the small financial remuneration he had received as one of its organizers.\textsuperscript{8}

Although Morgan and Gates had no personal contacts after 1901, their business relationship was far from over. Gates not only continued to expand his holdings in the iron and steel industry, but moved into the railroad busi­ness in a series of predatory stock market operations that gained control of small but key railroads which could be used to harass the major operating systems. His most sensational attack was on the Louisville and Nashville Railroad, a line that was thought to be safely in the

\textsuperscript{6}Stanley Report--Minority, p. 7.


\textsuperscript{8}Stanley Hearings, p. 59.
control of August Belmont. Gates created a corner in the stock of this railroad in April, 1902, causing a minor panic when he threatened to make the speculators who had sold its stock short deliver their shares. The Belmont interests appealed to Morgan, who by now had become the arbiter of the American financial community, to restore the railroad to their management.

Morgan sent George Perkins, his senior partner, to deal with Gates. After around the clock negotiations Gates surrendered his interests in the Louisville and Nashville for 43,860,000 dollars. Perkins observed that Gates had a taste of blood and that he would be heard from again.

Morgan expressed his view of the Louisville and Nashville affair and Gates' character when he testified before the Interstate Commerce Commission in 1903 that Gates was only interested in the transaction and not in the transportation needs of the South when he acquired the railroad. As Perkins predicted, Gates was heard from again.

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again. When Gates acquired the Cincinnati, Hamilton and Dayton Railroad, a key connecting line in southern Ohio, Morgan again bought Gates out.  

Nevertheless, the extent of Gates' excursions into the railroad business was limited since nearly all of the roads had been incorporated into large rail systems that were safely in the hands of financiers who were more than capable of defending themselves against stock market operators. However, Gates' acquisition of railroads merely to earn a quick profit intensified the distrust that Morgan already held for him.  

By 1905 newspaper stories made it apparent that Gates planned to expand his interests in the steel and iron business. Already in possession of the Republic Steel Company which owned properties in both the Lake district of upper Michigan and Minnesota and in the Birmingham district of Alabama, the reports said that Gates planned to form a combination, using the T.C.I. and R. Co. as a nucleus, that would control the southern output of pig iron and practically all the finished iron and steel made in that section. Although Gates' reasons for making the T.C.I. and

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R. Co., the key company in the proposed combination remained unknown even after investigations by the Bureau of Corporations and both houses of Congress, the most likely reasons were that the company's control of a large share of Birmingham district's iron ore reserves would assure a source of raw materials and at the same time make a good advertising point for the marketing of the company's securities.

In the beginning Gates' part in the attempted combination was not generally known, but by April, 1905, his role was correctly described in the press. Actually the maneuvering to effect the consolidation began in February, 1904, with a flurry of published rumors. Substance was added to the rumors when the syndicate bought the T.C.I. and R. Co. in February, 1905, and then used this corporation to buy the Birmingham and Southern Railroad, an ore road that serviced the entire Birmingham mining district and as a terminal railroad connected the trunk lines that served Birmingham. At the same time the new management of the T.C.I. and R. Co., which was largely

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17 The New York Times, April 1, 1905, p. 15.
comprised of the officers of Gates' Republic Steel Company began by increments to increase the corporation's capitalization by the issuance of common stock. Although these issues were publicly advertised they were sold for the most part only to the syndicate that had purchased the T.C.I. and R. Co.

What the true intentions of Gates and the syndicate were may never be learned but the conditions that prompted them to attempt to combine the iron and steel companies of the Birmingham district were a result of technical developments and business conditions that appeared to favor the amalgamation of a large steel company in the South.

Prior to the general conversion from the production of Bessemer steel to the manufacture of open-hearth steel which began in the 1890's, the Birmingham district was not thought of as a steel manufacturing area since the district's ores contained too much phosphorous for the Bessemer process. However the non-Bessemer ores of the district were suitable for producing open-hearth steel by the duplex process. Nevertheless a disadvantage still

21Commercial and Financial Chronicle, September 22, p. 704; February 2, 1907, p. 275; October 12, 1907, p. 923.

existed since the duplex process, as the name suggests, required a double manufacturing cycle by which the ore was converted in scrap metal and then re-manufactured into open-hearth steel. Also a comparative economic disadvantage existed with the more industrialized sections of the country in the manufacture of steel since in these areas large quantities of obsolescent and discarded finished iron and steel products were returned to the mills as relatively cheap raw material for the open-hearth process. At the same time the suitability of scrap material to the open-hearth process in place of the pig iron which was a necessity of the Bessemer process and which was also the principal product of the Birmingham district, relatively decreased the dependence of the northern steel makers on this district as a source of raw materials. The greatest disadvantage for the Birmingham district was that no local markets existed and transportation costs prevented Birmingham from being a true competitor in the northern markets. In fact the Birmingham

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23 Ibid., p. 305.  
24 Ibid., p. 306.  
26 Ibid.
district was not destined to rival Gary or Pittsburgh as a steel producing center because of the market factors. 27

The questionable technical advantage and inherent economic disadvantages were offset by extraordinarily prosperous business conditions and a seemingly insatiable demand for steel. In 1905 steel production had increased by 100 per cent over the figure for 1900 28 encouraging expansion of steel production facilities. At the same time there was a general rise in the price of securities. This condition particularly suited Gates' method of operation. Always a bull in the stock market, Gates had used rising stock prices to manipulate a financial maneuver that might be called a stock flotation-option device to finance his previous successful combinations.

As described in testimony in an equity suit in 1902, 29 and by his secretary twenty years later, 30 the operation was uncomplicated as long as the prices of securities were rising or could be made to rise. The

27Ibid., p. 150.


syndicate or pool bought control of a corporation which functioned as a seed capital source to finance the proposed combination. New issues of common and preferred stocks were issued by the corporation and bought by the syndicate at inflated prices which caused the stock to be quoted at above its actual value on the stock market. At the same time both the new stock and the old stock were used as collateral for margin loans with which to pay for new issues of stock and to take options to buy the stock of the companies that were to be included in the new combination when the price of the stock of these companies had risen to the value that had been agreed upon in the option. The natural upswing in bull market prices coupled with the rumors of the impending consolidation should then have caused a rise in the stock value of these companies and enabled the syndicate to effect the combination by executing its options. The inflated stock of the corporation that had financed the operation was then exchanged for the stock of the companies to be acquired. Although this plan was followed in attempting to combine the southern iron and steel companies, it failed of execution.

The Gates syndicate had purchased a larger part, if not all, of the new issues of the T.C.I. and R. Co. common stock.31 Grant B. Schley, the senior partner in

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31Stanley Report--Majority, p. 190.
the New York brokerage firm of Moore and Schley was the financial manager of the syndicate. In the syndicate agreement the powers given to Schley provide an insight into the intentions of the syndicate and also into its problems. Schley was empowered to sell the syndicate's stock, but only at a profit, indicating a speculative intent. He could pledge the stock as collateral for loans. His testimony showed that he secured 35,000,000 dollars in loans with the T.C.I. and R. Co. common stock. However the par valuation of the total common stock issued was only 32,900,000 dollars. When a general decline in stock prices in 1907 caused Schley's creditors to demand that he substitute a more reliable collateral than the T.C.I. and R. Co. common stock, and when he failed to meet these demands, the device by which Gates put together his previous combinations collapsed.

Two reasons account for the syndicate's failure to combine the southern iron and steel companies. The first was Gates' unsavory reputation with the financial community and the investing public. In the syndicate's two and a half years of operation prior to the Panic of

33Ibid.
34Wall Street Journal, August 3, 1911, p. 3.
35The New York Times, June 2, 1911, p. 3.
1907, Gates' well known but never publicly acknowledged role, undoubtedly caused investors to shy away from the companies which the syndicate intended to combine. Writing many years later, his secretary noted that Gates' name had acquired a taint that made him reprehensible to the responsible members of the financial community.36

Nor was Gates' disrepute limited to the business world. His published testimony in 1902 regarding the organization of the American and Steel Wire Company revealed that he could not remember what happened to 26,000,000 dollars worth of the corporation's stock that disappeared.37 Newspaper articles about his activities bore derogatory headlines such as "Gates Seizes TCI Fast"38 or "Kansas Southern Taken From Harriman."39 Likewise his well publicized, profligate gambling habits, involving in one instance in 1905 the loss of 50,000 dollars in a single bet, brought his name from the financial pages to the front page40 under less than desirable conditions for a man whose

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39 Ibid., May 11, 1905, p. 11.

40 Ibid., October 1, 1905, p. 1; November 3, 1905, p. 11.
success as an industrial organizer would ultimately depend on the confidence of the investing public.

The taint which Gates' secretary spoke of had apparently spread well beyond the financial community by the spring of 1907. On 23 May Gates publicly announced that he was withdrawing from active participation in the syndicate, but that he was not selling out his interest. \(^{41}\) Gates left New York complaining bitterly about the "green bugs of Wall St." who were responsible for the depressed security prices. \(^{42}\)

Actually, the withdrawal did not alter Gates' legal relationship with the syndicate, nor did Gates relinquish his managerial positions in the T.C.I. and R. Co. or the Republic Steel Company. Prior to Gates' statement, the syndicate had announced that it would continue to operate despite Gates' withdrawal. \(^{43}\) Neither contemporary accounts in the press nor subsequent investigations by Congressional committees of the events leading to the acquisition of the T.C.I. and R. Co. attempted to account for Gates' abrupt but well advertised withdrawal. Since he did not sever his business relations with the syndicate

\(^{41}\) Wall Street Journal, May 23, 1907, p. 2.

\(^{42}\) Ibid.

\(^{43}\) Commercial and Financial Chronicle, May 4, 1907, p. 1057.
or the steel companies, his withdrawal was more an announcement than an actuality, and in the absence of other evidence, it seems reasonable to assume that it was a public relations ploy. If it was a ploy, it came too late, for by the spring of 1907 a second and more overriding reason for the failure of the syndicate to combine southern companies had developed.

The worldwide economic prosperity showed signs in early 1907 of faltering. Financial panics in other countries preceded the panic which the United States experienced in late October and early November. A basic cause of the financial problem in the United States was that the price of stocks relative to interest rate for money was too high. Consequently knowledgeable investors transferred their holdings from stocks to real estate or other less liquid forms of capital. Concurrently the interest rates on bonds steadily rose in 1907, further diverting money from the stock market. The situation of the T.C.I. and R. Co. common stock was particularly disadvantageous. As the average yield on corporate and municipal bonds rose to 4.21% in 1907, an article in the Wall Street Journal

44 Faulkner, Decline of Laissez Faire, p. 29.

45 Sidney Homer, A History of Interest Rates (New Brunswick, New Jersey: Rutgers University Press, 1963), Table 51, p. 364.

46 Ibid., Table 45, p. 341.
showed that the yield on T.C.I. and R. common stock was only 2.6%. An article in the same paper only ten days previous noted that the T.C.I. and R. Co. had the lowest balance of earnings (4.2%) available for dividends of any iron and steel company in the United States. In contrast, the U.S. Steel Corporation had a high of 27.2%.

The Bureau of Corporations Report on the steel industry noted that one of the most important factors in bringing a combination together was a favorable stock market situation. By the spring of 1907 this condition did not exist. A sharp break in security prices in March, the so-called "Silent Panic of 1907," signalled accurately that the business cycle had reached its peak and was headed downward to the trough. At this point the syndicate was unable to completely absorb the newest issue of T.C.I. and R. Co. stock which was payable in monthly

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48 Ibid., May 20, 1907, p. 1.
49 Ibid.
Nevertheless the syndicate attempted to convince the investing public that the T.C.I. and R. Co. had great potential. At approximately the time Gates withdrew from the syndicate, newspaper articles appeared commenting for the first time on the colossal iron ore reserves of the T.C.I. and R. Co. In one article, a member of the syndicate estimated the ore reserves at one billion tons. While these stories apparently had little effect in promoting the combination, they were significant since the T.C.I. and R. Co. annual financial statement made no mention of these resources, while on the other hand these figures bear a striking similarity to the exaggerated estimates that were introduced as evidence of T.C.I. and R. Co.'s mineral resources by the Majority Report of the Stanley Committee.

All hope that the syndicate could combine the southern iron and steel companies evaporated when the security prices collapsed in March and continued to

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53 Commercial and Financial Chronicle, November 30, 1907, p. 1407.
55 Ibid., May 10, 1907, p. 7.
56 Commercial and Financial Chronicle, April 27, 1907, p. 993.
57 Stanley Report--Majority, pp. 196-98.
decline. Gates' bull market strategem was no longer workable. The firm corner which the syndicate had in the T.C.I. and R. Co. stock became a trap when the hard pressed banks required that Schley substitute a more credible collateral for his loans.

As the general economic conditions worsened, Schley and the syndicate's situation worsened. One of Schley's creditors sensed a way out of the dilemma in the spring when he let Morgan know that the T.C.I. and R. Co. stock was available for sale, but Morgan was unable to find a buyer. In the latter part of October when the Panic of 1907 threatened the entire financial community, Schley and his brokerage firm faced bankruptcy when the banks began to call his loans. At this point Schley, at the urging of another of his creditors, approached Morgan through an intermediary and within a week the financier arranged its sale to the reluctant management of the U.S. Steel Corporation. Amid the welter of financial news concerning the Panic, the sale caused little fanfare and did not become a political matter until the election of 1908.

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59 Commercial and Financial Chronicle, June 10, 1911, p. 1529.
60 Stanley Hearings, p. 15. 61 Ibid., p. 1054.
62 Corey, House of Morgan, p. 346; Wall Street Journal, August 3, 1911, p. 3.
CHAPTER III

THE T.C.I. AND R. CO. ACQUISITION

FROM A LEGAL STANDPOINT

Two principal allegations were the basis for the attacks on the merger of the two companies. The first was that the Sherman Anti-Trust Act had been violated by the intent or conspiracy on the part of the Morgan interests and the U.S. Steel Corporation to gain control of the T.C.I. and R. Co. The second allegation was that the merger had the effect of creating a condition that the Sherman Act was designed to prevent.

The Majority Report of the Stanley Committee claimed that the Morgan interests and the U.S. Steel Corporation had aggravated and exploited the Panic of 1907 to gain control of the T.C.I. and R. Co. To support this claim, the Majority made the politically sensational allegation that Gary had duped Roosevelt when he told the President that a large New York concern which faced bankruptcy had among its assets a majority of the T.C.I. and R. Co. stock and that this concern had asked the U.S. Steel Corporation to buy this stock.¹

¹Stanley Report--Majority, pp. 193, 209.
The evidence which supported these charges was principally gathered by the Senate Committee which made a perfunctory investigation of the absorption of the T.C.I. and R. Co. and the Stanley Committee. Although later writers commenting on this case have relied on the Stanley Report and the Stanley Hearings for source material, the evidence in both of these sources is incomplete. Neither Morgan, nor George Kessler who was a link between Morgan and the syndicate, were called as witnesses, although the minority members of the Committee requested their presence. Another defect in these sources is that the members of the Stanley Committee, both majority and minority, either through lack of professional legal competence or because of unaccountable ulterior motives, failed to thoroughly question witnesses or confront witnesses with obvious inconsistencies and gaps in their testimony.

To examine the basis of the charge that Morgan and the U.S. Steel Corporation intended or conspired to take over the T.C.I. and R. Co., and by an adroit deception used the Panic of 1907 to accomplish this end, the evidence presented to the Stanley Committee and the events as they occurred in 1907 must be recounted in more detail. Some time in the spring of 1907 (the date was not specified in the evidence), George Kessler, an

\(^2\)Stanley Committee--Minority, p. 65.
erstwhile member of the Gates syndicate and creditor of Schley, told Morgan that the syndicate was willing to sell out.³ Both Gary's and Gates' testimony agreed on this point.⁴ Morgan relayed the offer to Gary who rejected it.⁵

Gary also testified that representatives of the syndicate had approached him several times in 1907 prior to the Panic with offers to sell, but that he had refused them.⁶ Nevertheless, there had been some interest within the U.S. Steel Corporation in buying the T.C.I. and R. Co., at least at a lower echelon. James Gayley, vice-president of the U.S. Steel Corporation, advised buying the T.C.I. and R. Co. when it was selling at 50 dollars a share, but this proposition was turned down due to the opposition of Henry Frick, director of the U.S. Steel Corporation.⁷ No evidence, other than Gayley's advice and Morgan's relaying Kessler's offer to Gary, showed that there was any interest or intention on the part of Morgan or the U.S. Steel Corporation to buy the T.C.I. and R. Co.

To prove their contention that the Panic had been aggravated by the Morgan interests, the Majority Report

³The New York Times, June 3, 1911, p. 3. The Stanley Hearings were well covered by the New York papers, particularly The New York Times.

⁴Ibid., p. 1. ⁵Ibid. ⁶Ibid.

⁷Stanley Hearing, p. 402.
quoted the testimony of Oakleigh Thorne, president of the Trust Company of America and member of the Gates syndicate. Thorne stated that a newspaper story which he attributed to George Perkins had started a run on his bank. Although Thorne's statement was unequivocal, the evidence which he offered to prove that Perkins made the statement was the hearsay of another party who himself was only making circumstantial assumptions. Despite extensive questioning of Perkins before the Stanley Committee, particularly by its Chairman, neither Stanley nor other members of the Committee asked Perkins about this charge.

The newspaper story to which Thorne referred outlined the problems of the New York banks and mentioned Thorne's bank in particular; however, the substance of the article was that arrangements had been made to provide Thorne's bank with sufficient cash reserves to weather the Panic. Morgan was identified as the moving force in providing this assistance. Within a few hours after this story was published on the morning of 23 October, a run started on the Trust Company of America. If Perkins made the statement to the press about the assistance to the Trust Company of America, the reaction certainly made it

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8Ibid., pp. 1660-64. 9Ibid., p. 1700.
seem maladroit. On the other hand, nothing aside from this purported statement was introduced to show that there was any intent on the part of Morgan or his partners to start a run on Thorne's bank.

Balanced against this statement about Perkins was Thorne's testimony to the Stanley Committee concerning Morgan. Testifying to his great esteem for Morgan, Thorne related that the financier personally loaned him 10,000,000 dollars to cover the run on his bank on 23 October and arranged for the loan of an additional 15,000,000 dollars. ¹¹

The main effort by the majority members of the Stanley Committee to establish that an intent existed to acquire the T.C.I. and R. Co. centered on the affairs of Grant Schley and the banking and brokerage house which he headed. Schley, as the financial manager of the Gates syndicate, undoubtedly could have provided the Stanley Committee with the true aims of the Gates syndicate and the reason for the apparent desire of the syndicate to sell out even before the Panic of 1907. The questioning of Schley by the majority members of the Stanley Committee was designed only to establish that the machinations of the Morgan interests had brought about Schley's problems in order to force him to sell the T.C.I. and R. Co.

¹¹Stanley Hearings, pp. 1664, 1666.
stock. No allusions were made to the attempts of the Gates syndicate to combine the southern iron and steel companies, but the ownership of the T.C.I. and R. Co. by the syndicate was treated as a major threat to the U.S. Steel Corporation and ascribed as the motive for the acquisition of the company. Neither the majority nor the minority members of the Committee made a serious attempt to probe the motives of the syndicate members. For example, when Gates appeared as the first witness before the Committee, he was questioned about the intentions of the syndicate. He reminded the Chairman Stanley that he had been called as a witness to answer questions about the U.S. Steel Corporation, but not his own companies. No further questions were asked along this line.

While the motives and intentions of the syndicate remained undisclosed, its difficulties were brought to light by the testimony of many witnesses, particularly Schley. In questioning Schley, majority members of the Committee attempted to establish two incompatible facts: that the Morgan interests or the U.S. Steel Corporation had coerced him into selling a controlling interest in the T.C.I. and R. Co. to the U.S. Steel Corporation, and that

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12 Stanley Report--Majority, pp. 176-77 and Stanley Hearings, pp. 1090, 1091, 1113, 1114.
13 Stanley Report--Majority, pp. 176-77.
14 Stanley Hearings, p. 13.
neither Schley nor the firm of Moore and Schley had control of the T.C.I. and R. Co.'s common stock. Exhaustive questioning of Schley by the majority members of the Committee failed to support either of these contentions, while cross-examination by the minority members revealed the desperate financial problems of the syndicate by the fall of 1907.

As a witness, Schley was often contradictory and unresponsive. Nevertheless his testimony is valuable since in the main other witnesses amplified and corroborated it. This testimony showed the syndicate members, not as men of almost unlimited financial means, as the Majority Report said, but as financially embarrassed stock market manipulators, with Schley as their harassed agent.  

Leonard Hanna, one of the principal members of the Gates syndicate, described how the T.C.I. and R. Co. stock had been manipulated. The syndicate had moved into the market when the stock was selling for 50 dollars a share, bid it up to 130 dollars a share, and pegged it at approximately this value. The stock did not follow the general decline of security prices in 1907. Hanna explained this by calling it an uncurrent stock. Elaborating on the term, he testified that it was closely held and

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15Stanley Hearings, pp. 1110, 1126; Absorption by the United States Steel Corporation, p. 103.
that there were few stock market transactions in it.\textsuperscript{16} He also noted that it was overvalued since it only paid a four per cent dividend and that there was absolutely no market for it.\textsuperscript{17}

Exactly how closely the T.C.I. and R. Co. stock was held cannot be determined from the testimony. However, one thing is certain. Schley as manager of the syndicate held enough common stock to constitute a controlling interest.\textsuperscript{18} The stock did not lay idle; syndicate members used it as collateral to borrow money from Schley who, in turn, used the same collateral to borrow money from banks and other sources.\textsuperscript{19} Since the demands of Schley's creditors that he substitute a more current collateral than the T.C.I. and R. Co. stock was the crux of his problem,\textsuperscript{20} both the Senate Committee and the Stanley Committee tried to determine at what value Schley's creditors had accepted the T.C.I. and R. Co. stock as collateral. Schley evaded a direct answer, but said that he calculated that about 50 per cent was all that he could

\textsuperscript{16}Stanley Hearings, pp. 862, 863, 867.
\textsuperscript{17}Stanley Report--Minority, p. 54.
\textsuperscript{18}Stanley Hearings, pp. 1095, 1096.
\textsuperscript{19}Absorption by the United States Steel Corporation, pp. 81-91.
\textsuperscript{20}Stanley Hearings, p. 1126.
Using Hanna's figure for the sale price of the stock, this means that it was worth no more than 65 dollars as security to the banks. Other evidence bears this figure out. Both Gary and Thorne testified they had loaned money on the T.C.I. and R. Co. stock at 60 dollars per share and in the absence of market transactions this is the best evidence of the probable market value of the stock. But even this value was threatened because Schley could neither substitute a more creditable asset for the T.C.I. and R. Co. stock nor extend his maturing loans backed by this stock. His predicament was further complicated since many of his debts were call loans, subject to call if the collateral that backed them decreased in value. Thus if he defaulted on any of his loans the stock would have fallen into the hands of his creditors who undoubtedly would have offered it for sale causing an immediate drop in the price. In turn this

\[\text{average.}^{21}\]

\[\text{Ibid., p. 1054.}\]

\[\text{Stanley Hearings, pp. 1090-91; Absorption by the United States Steel Corporation, p. 50; The New York Times, June 2, 1911, p. 2.}\]

\[\text{The Commercial and Financial Chronicle, August 12, 1911, p. 378.}\]

\[\text{Ibid.}\]
would have resulted in more pressure from his remaining creditors to substitute a better collateral for his loans. 25

Gary's loan on the T.C.I. and R. Co. stock was to Schley and the circumstances leading to this loan were a continuation of the story which began when Kessler told Morgan that the T.C.I. and R. Co. was available for sale. When testifying before the Stanley Committee Schley emphasized more than any other point the constant demands of his creditors that he substitute a more credible asset than the T.C.I. and R. Co. stock as collateral for his loans. 26 He recalled that "... 7,000,000 dollars worth of loans were called on us in three days" at the height of the Panic by his insistent creditors. 27 Likewise he told how he had relayed these demands and prior demands to the members of the syndicate and of their inability to assist because of the worsening business conditions. 28

Earlier in the fall, Oliver Payne, a former member of the Gates syndicate, loaned Schley 8,000,000 dollars of current securities, taking uncurrent T.C.I. and R. Co. stocks as collateral for the loan. 29 Schley continued, recounting that it was Payne who suggested to him that he sell the

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25 Ibid.
26 Stanley Hearings, pp. 1054, 1126.
27 Ibid., p. 1054.
28 Ibid., p. 1110.
29 Ibid., pp. 1078, 1079, 1081.
T.C.I. and R. Co. stock to the U.S. Steel Corporation and who offered the services of his lawyer, Lewis Cass Ledyard, to act as the intermediary with Morgan. After Ledyard had told Morgan of Schley's problems, the financier asked Gary to buy the southern iron and steel company, Gary refused to consider the sale, but on 23 October loaned Schley 1,200,000 dollars, taking 2,000,000 dollars in T.C.I. and R. Co. stock as collateral.

Despite Gary's and Payne's loans, Schley could not satisfy the increasing demands of his creditors. Ledyard again went to Morgan on 1 November to warn him of Schley's imminent bankruptcy. The financier pressed Gary and other company officials to buy the T.C.I. and R. Co. stock. Still reluctant, Gary offered Schley a 5 or 6 million dollar loan. Schley said that it was insufficient. Gary then offered to buy the stock at 90 dollars per share. Schley declined, saying that it was insufficient to satisfy his creditors. He countered with an offer to sell at a figure slightly above the 100 dollar par value of the stock. Gary accepted this figure and the terms of the

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30 Ibid., pp. 1079, 1081. 31 Ibid., p. 36.
32 Ibid., pp. 65, 1090, 1091.
34 Stanley Hearings, p. 1123; The New York Times, June 2, 1911, p. 3.
35 Stanley Hearings, p. 1124.
sale were as follows: each share of T.C.I. and R. Co.
stock was to be exchanged for $119.04 of 5 per cent U.S.
Steel Corporation bonds that currently sold at 84 dol­
lars, and the U.S. Steel Corporation publicly offered to
buy all of the outstanding T.C.I. and R. Co. common stock
at this figure. Yet Schley testified that throughout
these negotiations Gary and Frick, who represented the
U.S. Steel Corporation, were reluctant about buying the
stock.

With the exception of 20,000 shares, the entire
issue of the stock was bought within a two week period by
the U.S. Steel Corporation. Schley testified that he
immediately used 12,000,000 dollars in bonds to repay some
of his loans, particularly stressing his loan from
Kessler. When asked what effect this transaction had on
the financial community and his firm, he answered that it
immediately helped to restore confidence in the community
and make his firm solvent and that "... within 35 days
Moore and Schley was impregnable."

Neither Schley's testimony nor the testimony of

37 Stanley Hearings, p. 67.
38 Ibid., p. 1104.
40 Stanley Hearings, p. 1089. 41 Ibid., p. 1095.
other witnesses provided any substantive evidence that the Morgan interest had aggravated the Panic to gain control of the T.C.I. and R. Co. Likewise nothing was introduced to prove that U.S. Steel Corporation conspired or for that matter intended to acquire the southern iron and steel company. If anything, the evidence showed Gary and Frick opposed to the acquisition of the T.C.I. and R. Co. from the beginning and only reluctantly agreeing to it at Morgan's urgings to prevent Schley's bankruptcy. While Morgan's motive in saving Schley at the height of the Panic was understandable, questions remain about his motives and intentions before this time. Did he relay Kessler's offer to Gary in the spring of 1907 because he wanted to expand the U.S. Steel Corporation or because he wanted Gates eliminated from the steel industry as he wanted him eliminated from the railroad industry? The failure to call Morgan or Kessler as witnesses will leave these questions unanswered, perhaps forever. Whatever Morgan's intentions were, the purchase of nearly the total issue of the common stock indicates that more was sought than the elimination of Gates and the control of the T.C.I. and R. Co. since this end could have been accomplished merely by purchasing a majority of the stock. The Commercial and Financial Chronicle noted that the immediate sale of 250,000 shares of stock to the U.S. Steel Corporation indicated that this was the amount which actually had been
used as security for loans and gives credence to Gary's testimony that the only reason for the acquisition was to prevent Schley's bankruptcy and the consequent failure of his firm.

On the other hand, evidence existed of the Gates syndicate's intent to sell because the syndicate agreement specifically authorized Schley to sell if it could be done at a profit. The testimony also showed that the only known overtures to sell were made to Gary and Morgan. To Gary these overtures were made by persons who he identified as representatives of the syndicate, and he was not asked to further identify them. In Morgan's case the overtures came from Kessler and Payne, both former members of the syndicate, and creditors of Schley. With its usual lack of thoroughness in questioning witnesses, the Stanley Committee failed to probe why Morgan and Gary were the only people contacted as prospective buyers.

The failure to produce evidence or attempt to produce evidence that other potential buyers were considered, aside from Morgan or the U.S. Steel Corporation, does little to discredit a hypothetical supposition that Gates

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42Commercial and Financial Chronicle, November 9, 1907, p. 1179.

43The New York Times, June 2, 1911, p. 3.

attempted to accomplish with the combination of the southern steel and iron companies the same predatory but profitable financial operation that had worked so well with the railroads.

The details of the sale, the evidence of the events leading up to it, and particularly Schley's evidence did not support the attempt of the majority members of the Committee to buttress their charge of an illegal intent by claiming that Gary deceived Roosevelt when he told him that a majority of the T.C.I. and R. Co. was held by an important financial firm threatened with bankruptcy.

In the first instance the Majority Report claimed that no one had a majority of the stock in his possession because it was locked up in the individual strong boxes of the syndicate members, none of whom had a majority. Under direct questioning Schley was asked how many shares of the stock he had in his possession. He said he could not remember. When asked if it was a controlling interest, he said that it approximated a controlling interest and when pressed for a more definite answer, he admitted that Moore and Schley had pledged at least 150,000 shares as collateral for loans. Yet this figure did not account for the 35,000,000 he had borrowed on the T.C.I. and R.

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46 *Stanley Hearings*, pp. 1095, 1096.
Another indication of Schley's control is the speed at which the transaction was completed. After Ledyard visited Morgan on 1 November, the terms of the sale were agreed upon within three days except for Roosevelt's acquiescence. No evidence or testimony showed that any other member of the syndicate or stockholder, aside from Schley, was contacted to approve the sale or its terms.

In the second instance, the claim of the Majority Report that Gary deceived Roosevelt about the collapse of an important New York firm was actually two contentions. The first was that it was not the brokerage house of Moore and Schley that was in danger of failing but only Grant Schley, its senior partner. Since Moore and Schley was a partnership, however, disassociating Schley's liability from the firm in which he was the senior partner would have been difficult. His testimony indicated that there was no such disassociation. Although he stated that Moore and Schley owned not a single share of T.C.I. and R. Co. stock, he was just as definite in telling the Committee how the sale of this stock caused money to flow into his "boxes" and that "within 35 days Moore and Schley was

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47Ibid., p. 1049.


impregnable." The second contention, that Gary was inaccurate when he described it as an important firm, depended upon the perspective of the people who were trying to stem the Panic in 1907 and those who were investigating it in 1911 and 1912. To Morgan and his associates who were trying to contain the Panic, perhaps the failure of any concern would have been important. To the majority members of the Stanley Committee Moore and Schley was only a brokerage firm. And the narrative of the majority report refers to "his [Schley's] loans aggregating 38,000,000," which disagrees with Schley's direct and uncontested testimony in which he identifies the loans as Moore and Schley's. One method of evaluating the relative judgment of Morgan and the majority members of the Stanley Committee is to note that Schley's or Moore and Schley's indebtedness came within a half million dollars of being equal to the total value of the physical assets of the T.C.I. and R. Co. as listed in the iron and steel company's current annual financial statement.

50 Stanley Hearings, p. 1089.


52 Ibid., p. 192. 53 Stanley Hearings, p. 1088.

54 Commercial and Financial Chronicle, May 18, 1907, p. 1179.
The majority members of the Stanley Committee also attempted to elicit testimony from individual members of the syndicate that they had been coerced into selling their stock. Only Gates, while admitting that he sold his stock, said that it was a forced sale. He added that if it had been put on the market it would have gotten a higher price. In direct contradiction both Hanna and Schley testified that no market existed for the stock. Immediately after the U.S. Steel Corporation offered to buy the stock, it became unpegged and dropped to 101 dollars per share. The discrepancy in Gates' statement about the forced sale is that he did not have to sell the stock unless it was under control of the syndicate manager, Schley, and only then according to the syndicate agreement, if it could be sold at a profit. What stood out in Gates' testimony was that although he said it was a forced sale, under direct questioning by both majority and minority members of the Committee he did not or could


56Stanley Report--Minority, p. 54; Wall Street Journal, August 3, 1911, p. 3.

57Commercial and Financial Chronicle, November 9, 1907, p. 1192.

not name the person or agency who forced the sale. 59

Failing in this line of questioning to produce any evidence of coercion, the majority members of the Stanley Committee insisted that the U.S. Steel Corporation had used the Panic to acquire an asset of great value. Claiming that "The value of the Tennessee Coal and Iron Co.'s stock is the crux of the whole controversy," the Majority Report said that if the stock was only worth 35 or 40 millions to the U.S. Steel Corporation then it had no motive in refusing to relieve the necessity of Schley without his surrender of the stock in this company. On the other hand, if the existence of this firm threatened the supremacy of the U.S. Steel Corporation in the south and if its vast holdings were worth more than the price paid, the U.S. Steel Corporation was the beneficiary of Schley's predicament. 60

From this premise the Committee introduced evidence to demonstrate that the true value of the T.C.I. and R. Co. was greatly in excess of its capitalization. For the present it will only be necessary to say that this evidence was that the T.C.I. and R. possessed 700,000,000 to 1,000,000,000 tons of iron ore. However, the Committee did not fix the value of this ore and therefore did not

attempt to solve the "crux" of the problem. The purpose of introducing the premise was not stated, but it is evident that the Committee majority wished to demonstrate that the illicit intentions of the U.S. Steel Corporation had been consummated by acquiring a corporation possessing huge mineral resources.

What is significant about the Committee's unanswered speculation about the true value of the stock is that later writers have concentrated on the advantageous price paid for the stock by the U.S. Steel Corporation. But the Majority Report made no allegation that the price paid for the stock itself was low, since it had gone to great lengths to explain that it was pegged artificially high to keep it out of the hands of speculators.\textsuperscript{61}

The conclusion of the section in the Majority Report dealing with the purchase of the T.C.I. and R. Co. bore down heavily on one contention: that the U.S. Steel Corporation could have avoided the absorption of the T.C.I. and R. Co. by loaning Schley 6 million dollars.\textsuperscript{62} But the Report failed to note that both Schley's and Gary's evidence showed that Schley refused a loan for this exact amount from Gary. This statement, like the allegation that there had been an intent to violate the Sherman Anti-trust Act, is contradicted or not supported by the

\textsuperscript{61}Ibid., p. 190. \hspace{1cm} \textsuperscript{62}Ibid., p. 194.
available evidence. The singular gap in the testimony, the failure to call Morgan as a witness, must be borne by the majority members of the Stanley Committee. Likewise the charge that Roosevelt had been duped by Gary rests more on what is meant by the semantics of phrases like "control of a majority of the stock" or "important New York firm" than on the evidence produced. The rationalization that produced these charges is typified by the claim in the Majority Report that "If the Steel Corporation could have absorbed the Tennessee Coal and Iron . . . without violation of the existing law it would not have been necessary for Judge Gary, on a special car, rigged up at midnight, to make that hurried run to Washington or to confer with the President before breakfast."63

63Ibid., p. 208.
CHAPTER IV

THE T.C.I. AND R. CO. ACQUISITION FROM
AN ECONOMIC STANDPOINT

Although the intent and conspiracy charges appear to be without foundation, there remained the contention that the U.S. Steel Corporation's purchase of the T.C.I. and R. Co. had created a combination that was in violation of the Sherman Anti-Trust Act by economic standards alone. This was a difficult undertaking since the Act contained no such standards. The most practical approach to this problem was taken by the Stanley Committee which recommended that the Act be rewritten to specify that control of a given percentage of the market would be evidence that restraint of trade existed. But even this definition would have been *ex post facto* to the events surrounding the merger of 1907.

The nature of the complaints against the merger were that the U.S. Steel Corporation had by the acquisition of the T.C.I. and R. Co. enhanced its already predominant control of the nation's iron ore resources, and that the absorption of this company eliminated a competitor whose natural advantages in the production of pig iron and open-hearth steel threatened the markets and capital
investments of the U.S. Steel Corporation.

The Majority Report of the Stanley Committee and the Justice Department's suit claimed that the U.S. Steel Corporation exercised a monopoly control over the iron ore supply of the United States. To support this claim, the Stanley Committee Majority Report relied on the Bureau of Corporations Report on the Steel Industry which, it said, had condemned the corporation for this monopoly.¹ This, of course, was not quite true because the Bureau of Corporations in its report had said that the corporation was not a monopoly, although it had hedged this statement by saying that it showed monopolistic tendencies in regard to iron ore. Specifically, the Bureau of Corporations Report said that the U.S. Steel Corporation acquired ore lands in advance of needs² and that its rate of profit on its ore railroads, which also hauled other companies' ore, was excessively high.³ The Department of Justice's suit contended that the U.S. Steel Corporation had greatly strengthened its control of the iron ore of the country by the acquisition of the T.C.I. and R. Co.⁴ Further, it stated that it had "... by the locking up of raw

¹Stanley Report--Majority, p. 203.
³Ibid., p. 374.
materials . . ." prevented their use by competitors.  
Actually the Bureau of Corporations Report, which antedated the suit of the Department of Justice and the Stanley Report, produced the headline catching statistic that the U.S. Steel Corporation controlled 75 per cent of the iron ore resources in the Great Lakes area.  

The impact of this figure on the reading public of the time is hard to judge. What is certain is that people like Bryan and the majority members of the Stanley Committee, who were attempting to lead public opinion were saying that the federal government should prevent any single industrial combination from owning or controlling more than a specified percentage of an industry. Bryan proposed a figure of 50 per cent in 1906. The Majority Report of the Stanley Committee set the figure at 30 per cent in 1912. While Bryan's proposal was a simple statement, uncluttered with details that might impede quick acceptance, the legislative recommendation of the Stanley Committee was necessarily more precise and therefore perhaps less easily understood. It recommended that if a corporation or association was charged with restraint of trade,

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5 Ibid.
8 Stanley Report--Majority, p. 214.
presumption of unreasonable restraint should exist if the organization controlled more than 30 per cent of the total quantity of an article sold in the United States or in any part of the country.\(^9\) Clearly, as with the Sherman Act, the Stanley Committee would leave the determination of what was a monopoly to the courts. It is also clear that what the Bureau of Corporations Report was talking about was total resources when it used a figure of 75 per cent, whereas the Stanley Committee was talking about controlling the amount sold. Since the U.S. Steel Corporation was not a seller of iron ore and was dependent on independent sources for pig iron,\(^10\) very little judicial interpretation would have been needed to place the U.S. Steel Corporation's purported monopoly or monopolistic tendencies beyond the pale of the Stanley Committee's 30 per cent limitation. However, the courts were not confronted with this particular problem since Congress never acted on the report's recommendation.

For unaccountable reasons the Bureau of Corporations did not evaluate the effect of the T.C.I. and R. acquisition on the ore position of the U.S. Steel Corporation. This may be accounted for by the statement in the Report that the iron and steel industry of the United

\(^9\)Ibid., p. 214.

\(^{10}\)Stanley Report--Minority, p. 92; Bureau of Corporations Steel Investigation, File Number 2612-1-4-2, RG 122.
States is based on the Lake District ore deposits. This rationale is somewhat supported by the cursory treatment that the T.C.I. and R. Co. and the Birmingham district received.

A questionable aspect of the Majority Report of the Stanley Committee, the Bureau of Corporations Report and the Justice Department's brief in the Steel suit is the unexplained failure to use the U.S. Geological Survey's figures where available to determine total ore deposits and ownership of these deposits. Instead, the figures of an array of state tax commissions, company mining engineers, and mining engineers whose credentials were not identified were applied to both the Lake District and Birmingham District without a standard criteria of assay value being mentioned. Working with evidence presented to the Stanley Committee, and perhaps in an attempt to find what might have been a non-controversial answer, the minority members of the Stanley Committee took the high figures for the total ore possessed or leased by the U.S. Steel Corporation in the Lake District and the low figures for the total resources of the same district. The Majority Report's use of figures from the financial pages of New York papers to estimate the total ore reserves of the T.C.I. and R. Co.

\footnote{Bureau of Corporations Report, Part I, p. 378.}
\footnote{Stanley Report--Minority, p. 90.}
predictably produced greater resources than any other source. This probably resulted from the rash of articles dealing with the T.C.I. and R. Co. that were published when Gates was attempting to put together his southern combination.

If the figures of the Geological Survey and the engineers of the Geological Survey are used to portray the U.S. Steel Corporation's control of the ore resources in the Lake District and the Birmingham District, there is a significant difference in the percentage under the corporation's control. However, there is a gap in the Geological Survey's figures. They do not show the ore resources owned or leased in the Lake District by the various corporations. Therefore the Bureau of Corporations used the figures provided by the companies themselves and these figures were not challenged by the Stanley Committee or by the Department of Justice. Since these represent the highest estimate given of the Corporation's resources in the Lake District, their use to recompute the percentage of control will eliminate any suggestion that the reevaluation is biased in favor of the U.S. Steel Corporation. The use of any other figures for the U.S. Steel Corporation's holdings in the Lake District will decrease its percentage of

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### TABLE I


<table>
<thead>
<tr>
<th></th>
<th>Total Reserves of District</th>
<th>OreOwned or Leased by U.S. Steel Corporation</th>
<th>Per cent Control by U.S. Steel Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake District</td>
<td>3,500,000,000</td>
<td>1,500,000,000</td>
<td>43%</td>
</tr>
<tr>
<td>Birmingham District</td>
<td>358,000,000</td>
<td>131,000,000</td>
<td>37%</td>
</tr>
<tr>
<td>Total</td>
<td>3,858,000,000</td>
<td>1,631,000,000</td>
<td>43%</td>
</tr>
</tbody>
</table>

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control.

Using the Geological Survey figures, the Corporation's percentage of control is considerably lower than the spectacular 75 per cent figure given in the Bureau of Corporations Report (See Table I). If the extent of monopoly was to be determined by a percentage figure as recommended by the Stanley Committee Report, the acquisition of the Birmingham District ores by the U.S. Steel Corporation did nothing to enhance the Corporation's monopoly position. The allegation in the Department of Justice's suit that the Corporation had locked up the nation's ore resources can be questioned on other grounds.

Although the statistics used by the Bureau of Corporations to determine ore resources were not derived from consistent sources and were also fragmentary in places, the statistics regarding production were systematically gathered and present a coherent picture of the U.S. Steel Corporation's relative position in the iron and steel industry. In the years from 1901 through 1909 the annual average iron ore production of the Corporation was 45 per cent of the national figure.\(^{16}\) The high figure in this average was 46.3 per cent in 1908 and the low, 43 per cent, occurred in 1903.\(^{17}\) The coincidence between the production percentage and ore control percentage of the U.S. Steel


\(^{17}\) Ibid.
Corporation when using the Geological Survey's figures for total resources did not indicate that Corporation was locking up its resources.

On the other hand, the U.S. Steel Corporation claimed that its resources were being used faster than any other steel corporation. Edwin Eckels, the Corporation's Chief Mining Engineer, writing in 1912, claimed that at the previously experienced annual rate of usage, the Corporation's ore deposits would be exhausted in 55 years. In the same tabulation he indicated that the ore resources of the Bethlehem Steel Company would last for 783 years.\(^\text{18}\) The Minority Report of the Stanley Committee made the same claim, noting that the Corporation's acquisition of raw materials had not kept pace with its expanding steel production. It also said that the Corporation's ore supply, at the present rate of production, would not last for forty years.\(^\text{19}\) Without going into the subject further, the Bureau of Corporations Report said that it was apparently the policy of the Corporation to secure ore resources well advance of requirements.\(^\text{20}\) A factor which undoubtedly promoted an aggressive policy in acquiring ore lands was


\(^{19}\) Stanley Report--Minority, p. 92.

the contemporary concern that the rapid expansion of the steel industry would exhaust domestic iron ore resources by the 1950's. 21

What stands out in regard to the controversy over the acquisition of the T.C.I. and R. Co. and its ore resources is that when percentage figures were quoted in regard to monopolistic control by the U.S. Steel Corporation, only the Lake District and the Birmingham District were considered. No attempt was made to compare the ore holdings of the U.S. Steel Corporation against the total resources of the country. Let us assume that Roosevelt, prior to "not interposing any objections" to the acquisition of the T.C.I. and R. Co., had asked the U.S. Geological Survey engineers to give an opinion as to what degree this acquisition would increase the U.S. Steel Corporation's percentage of the total national resources. The U.S. Geological Survey would have given the President the information that was subsequently included in government reports 22 and the testimony that was given to the Stanley Committee. 23 Then the following would have been given to


23 Stanley Report—Minority, p. 76.
TABLE II

PERCENTAGE COMPARISON OF THE U.S. STEEL CORPORATION'S
CONTROL OF TOTAL U.S. IRON ORE RESOURCES BEFORE
AND AFTER THE ACQUISITION OF THE
T.C.I. AND R. CO.

<table>
<thead>
<tr>
<th>Total U.S. Iron Ore Resources</th>
<th>4,788,000,000 tons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Owned or Leased by U.S. Steel Corporation Prior to Acquisition of T.C.I. and R. Co.</td>
<td>1,500,000,000 tons</td>
</tr>
<tr>
<td>Ore Resources gained by U.S. Steel Corporation by Acquisition of T.C.I. and R. Co.</td>
<td>131,000,000 tons</td>
</tr>
<tr>
<td>Total</td>
<td>1,631,000,000 tons</td>
</tr>
</tbody>
</table>
A basic contention of the Stanley Committee Majority Report was that Roosevelt never considered the extent of the raw material holdings of the T.C.I. and R. and the effects of these holdings upon the steel industry. It is quite probable that he did not consider the ore holdings of the T.C.I. and R. Co. His testimony does not indicate that he did, nor was he questioned by the Committee on the matter. But it is apparent that if he had consulted the Geological Survey, he would have found the acquisition of T.C.I. and R. Co. would have only added 2 per cent to the U.S. Steel Corporation's control of the total national resources and, as noted in Table II, there was no increase in percentage if only the country's two main ore producing areas, the Lake District and the Birmingham District were taken together. In any case the percentage of increase did not exceed the 4 or 5 per cent that Roosevelt testified that Gary had said would be the amount by which the U.S. Steel Corporation's control of the steel industry would be enhanced by the purchase of the T.C.I. and R. Co. 24

The concern about the relative and absolute size of the U.S. Steel Corporation by the Bureau of Corporations, the Stanley Committee, and the Justice Department was perhaps representative of a large segment of public

24 Stanley Hearings, p. 1379.
opinion that believed that trust problems could be solved by simply redefining monopoly in terms of the percentage of the market or resources that a corporation held. The mere size of the U.S. Steel Corporation seemed to hypnotize the people who were investigating it. The Bureau of Corporations Report, which was published in July, 1911, said that one of the monopolistic aspects of the Corporation was the previously mentioned high rate of return on capital invested in the ore railroads, which, through high freight rates for hauling ore could prevent new competition or drive established competition out. When Gates was testifying before the Stanley Committee in May of the same year, the Chairman reminded Gates of the coercive power that the U.S. Steel Corporation could exercise over his iron and steel interests because of its possession of the ore railroads. But Gates explained to Congressman Stanley that the Corporation could exercise no such coercive power as long as the Interstate Commerce Commission did its job.  

The main weakness in the charge that the U.S. Steel Corporation held a monopoly or tended to monopolistic control of the iron ore resources is that it failed to demonstrate the effects of monopoly. That is that a monopolistic price structure existed or that competition was stifled. On the contrary, the Bureau of Corporations Report said that competition had thrived despite the predominant

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25 *Stanley Hearings*, p. 54.
Moving up the ladder of production, the next charge against the U.S. Steel Corporation was that its motive for absorbing the T.C.I. and R. Co. was to gain a cheap source of pig iron and prevent this source from competing with its more expensive product. Although neither the Department of Justice's suit or the Bureau of Corporations Report made this point, the Majority Report of the Stanley Committee pressed it in great detail. The substance of the argument was that the closeness of the supposedly cheaper non-Bessemer ores to the coal fields in the Birmingham District gave this area a distinct cost advantage over other parts of the country in the production of pig iron and therefore in the production of open-hearth steel which could be made from non-Bessemer ores. The Majority Report of the Stanley Committee offered no data or evidence to support its statement that the non-Bessemer ores of the Birmingham District were cheaper than the ores of the Lake District. An analysis of ore costs in the Bureau of Corporations Report shows a different picture. Averaging the at-the-mine costs of ore for the years 1902-1906, it lists the cost of Birmingham District ore at 73

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27 Stanley Report--Majority, pp. 159-166.
28 Ibid., p. 160.  
29 Ibid., pp. 163, 167.
cents per ton and Lake District ore at 78 cents per ton.\footnote{Bureau of Corporations Report, Part III, pp. 50, 51.} Since the iron content of the Lake District ore was approximately 15 per cent greater than the Birmingham District ore,\footnote{Vance, Human Geography, p. 302.} the cost differential was actually in favor of the northern ores.

On the surface it would have seemed that the close­ness of the iron and coal deposits in the Birmingham Dis­trict would have given this area a distinct advantage over other pig iron manufacturing sections of the country. De­spite the numerous witnesses that the Majority Report cited to prove the relative advantage of the Birmingham District in producing pig iron, only Gates expressed the comparative advantage in dollars and cents.\footnote{Stanley Report--Majority, pp. 163-68.} He told the Committee that the cost of manufacturing pig iron in the Birmingham District was 9 dollars a ton, but that anywhere else in the country it would cost at least 11 dollars a ton.\footnote{Ibid., p. 167; Stanley Hearings, pp. 7, 8.} Gates' estimate of the cost of making pig iron outside of the Birmingham District was approximately confirmed by the Bureau of Corporations Report's average of $11.82 per ton for pig iron made from Lake ores.\footnote{Bureau of Corporations Report, Part III, p. 52.} However, the cost data
for pig iron manufacture in the books of the T.C.I. and R. Co. showed the average cost to this company as $11.02 per ton.35 James Bacon, President of the T.C.I. and R. Co. until its takeover by the Gates syndicate, estimated the company's pig iron production cost at between 10 and 11 dollars a ton.36

From the evidence so far introduced, it appears that the T.C.I. and R. Co. had a definite advantage in the manufacture of pig iron, and that the only question that could be asked is how great the advantage was. As recently as 1969, Melvin Urofsky, in discussing the motives behind the U.S. Steel Corporation's acquisition of the T.C.I. and R. Co., noted the approximately 2 dollar differential between the Birmingham District and other iron manufacturing Districts cited in the Stanley Report as a reason for the purchase of the T.C.I. and R. Co.37 However, this advantage quickly disappears when all the evidence given to the Stanley Committee is considered.

Leonard Hanna told the Committee that there was scarcely any market in the south for the company's pig


36Ibid., p. 48.

iron. John Topping, President of the T.C.I. and R. Co. at the time it was purchased by the U.S. Steel Corporation, said that 75 per cent of the company's pig iron had to be sold in northern markets. Schley stated that Gates and Hanna did not consider T.C.I. and R. Co. a true competitor of northern companies since freight rates as high as $4.60 would keep it out of these markets. Unfortunately none of the agencies that investigated the steel industry analyzed the effect of freight rates on the extent of the market. Nor, aside from one year, 1907, are there any figures on the prices that the T.C.I. and R. Co. received for its pig iron. In that year the average price was $16.49 per ton. Nevertheless, some idea of the problems of marketing southern pig iron in the northern markets are apparent from the monthly price quotations published in The Iron Age, the principal trade journal of the iron and steel industry. If the freight rate of $4.60 per ton specified by Schley for moving Birmingham District pig iron to the north is added to the T.C.I. and R. Co.'s cost for producing one ton of pig iron, $11.02, the combined cost was $15.62. Logically, then, Birmingham District pig iron

38 Stanley Report--Minority, p. 49. 39 Ibid.
40 Senate Investigation, p. 48.
41 Stanley Report--Minority, p. 49.
could have only moved profitably into the northern market when the price of pig iron exceeded $15.62 in northern markets. Using the monthly average figures for the 60 months comprising the years 1905-1909, there were 31 months in which the northern market price exceeded $15.62, or stated another way, the T.C.I. and R. Co. could have only sold pig iron in the northern market 51 per cent of the time during this 60 month period at a price above production and transportation costs. But these were prosperous times for the iron and steel industry. The pig iron prices were higher than they had been since the 1880's or would be again until the late months of 1916. In each of the years from the beginning of 1905 until the end of 1908, there were months in which the prices were high enough to promote a northward flow of pig iron. There were less favorable years.

In 1904 there was only one month in which the price was above $15.64 per ton and in 1911 the price never rose above $13.75. These figures indicate that the T.C.I. and R.


Co.'s pig iron could only compete outside the southern region when prices were above average and from this standpoint, the possession of this company would confer none of the advantages of monopoly, at least not on national scale. If a monopoly in pig iron existed in the South merely by the possession of this company, then it must have existed prior to the purchase of the T.C.I. and R. Co. by the U.S. Steel Corporation. But this was not suggested by either the Bureau of Corporations Report or the Majority or Minority sections of the Stanley Report. Likewise, no evidence was produced to show that the U.S. Steel Corporation was engaged in monopolistic practices in the South. Perhaps Gates, a witness who was certainly not friendly to the U.S. Steel Corporation, provided the best evidence to refute the allegation that the Corporation had used its power to enforce monopolistic conditions. When asked how the U.S. Steel Corporation's monopolistic control in the South affected his company, he denied that it existed, pointing out that his company, the Republic Steel Company, sold 50 per cent of the ore it mined to other companies.\footnote{Stanley Hearings, p. 53.} To a similar question regarding pig iron, he replied that he had no problem competing with the T.C.I. and R. Co.\footnote{Ibid., p. 19.} When Stanley attempted to draw Gates out on the threats that the U.S. Steel Corporation had used, Gates replied
that nobody in the U.S. Steel Corporation would make such threats and that if they did, nobody would believe them.\footnote{Ibid., p. 54.}

Moving up from pig iron to the highest stage of manufacture, open-hearth steel, the final allegation was that U.S. Steel Corporation had absorbed a competitor that threatened its position as the nation's largest steel producer. The substance of this claim was that the T.C.I. and R. Co.'s manufacture of open-hearth steel with non-Bessemer ores would break, as the Majority Report of the Stanley Committee phrased it, "the perfect and hitherto seemingly invincible control of steel products" by the U.S. Steel Corporation.\footnote{Stanley Report--Majority, pp. 160-161.} The Department of Justice in its brief said that the Corporation had shown a desire to acquire a company that had recently assumed a position of great significance.\footnote{New York Times, October 27, 1911, p. 1.} On the other hand, the Bureau of Corporations Report, while discussing the technical and economic reasons for the rise of open-hearth steel production in all the steel producing areas of the country, did not attach any particular advantage to this development in the South, nor comment on a relationship between this development and the acquisition of the T.C.I. and R.
The sweeping language of the Stanley Committee Majority Report was based on that assumption that the T.C.I. and R. Co. had made a technical breakthrough that enabled it to produce a steel that was cheaper or of a better quality than the product of the U.S. Steel Corporation. Therefore, since the U.S. Steel Corporation only possessed Bessemer ore and production facilities to convert this type of ore into Bessemer steel, its huge capital investments were threatened by the T.C.I. and R. Co. This picture was pieced together in the Majority Report by the omission of facts and a contrived patching of snatches of evidence that was obviously intended to leave the reader with the impression that the T.C.I. and R. Co. was already a major producer of open-hearth steel while the U.S. Steel Corporation was irrevocably committed to maintaining its Bessemer supremacy.

The statistics of the Bureau of Corporations Report show a completely contradictory picture. The U.S. Steel Corporation in the year of its founding, 1901, produced 2,747,000 tons of open-hearth steel or 59 per cent of the

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52 Ibid., pp. 167, 169, 174, 176. 53 Ibid.
national output. By 1906, the year before the acquisition of the T.C.I. and R. Co., the Corporation's production had increased to 5,543,000 tons, but its share of the total output had declined to 49 per cent. In contrast to this, the total steel output of the T.C.I. and R. Co. in 1907 was only 243,440 tons which was only 2.1 per cent of the national open-hearth production. It is also noteworthy that the T.C.I. and R. Co. was booked to capacity in 1907 and that the total expansion planned and advertised by the Gates syndicate would have only raised the total steel production capacity to 600,000 tons a year by 1910. Moreover, unskilled labor and inefficient management methods caused the cost of steel manufacturing to be higher in the Birmingham District than the northern districts. In fact the T.C.I. and R. Co. sold 146,000 tons of steel rails

54 Bureau of Corporations Report, Part III, Table 50, p. 360.
55 Ibid., p. 362. 56 Ibid.; also Table 28, p. 238.
58 Wall Street Journal, April 2, 1907, p. 2.
59 See Bureau of Corporations Report, Part III, p. 550 for comparative cost analysis; Vance, Human Geography, p. 305, cites the problem of unskilled labor in Southern steel mills; Tarbell, Gary, p. 310, cites Gary's demand that the T.C.I. and R. Co. terminate its contract for prison labor, quoting his repugnance to the customary use of the whipping post as a means of supervision.
in 1907 at a loss of 72 cents per ton.\textsuperscript{60}

When the small steel production of the T.C.I. and R. Co. and the limited plans for its expansion are contrasted to the open-hearth production of the U.S. Steel Corporation, it is difficult to see how the small company could be a threatening competitor. It is more difficult when it is considered that when the T.C.I. and R. Co. was purchased in 1907, the U.S. Steel Corporation was building a steel plant at Gary, Indiana that would have an annual open-hearth capacity of 3,750,000 tons or six times the projected annual capacity of the T.C.I. and R. Co.\textsuperscript{61} The failure of the Majority Report of the Stanley Committee to comment on internal expansion as extensive as this while concentrating its attention on the acquisition of such a small producer as the T.C.I. and R. Co. can only lead to the conclusion that it was either misguided or that the object of its investigation was something other than the specter of monopoly. The same can also be said for the significance that the Department of Justice saw in the absorption of the T.C.I. and R. Co.

As with the previous charges, what is striking about the open-hearth monopoly allegation is the failure

\textsuperscript{60}\textit{Bureau of Corporations Report, Part III, Table 28, p. 239; Stanley Report—Minority, p. 49.}

to show the effects of monopoly; to show that competitors had been forced to leave the field or that a monopoly price had been exacted. The iron and steel price data in the Minority Report of the Stanley Committee is computed on a national basis, merely reflecting the cyclic decline of iron and steel prices that began in the middle of 1907 and continued through 1912 when the Stanley Report was published. No explanation is given in the Minority Report for the drop in prices after 1907. The Bureau of Corporations Report, touching on the matter of prices very lightly, says that while the costs of production remained remarkably stable, prices always fluctuated with market conditions. At the bottom of the cyclic trough in prices in 1911 when a ton of steel was ten dollars cheaper than it was in 1907, the financial writers attributed the low prices to the competition brought about by numerous producers and expanded capacity. In spite of this glut of production, the U.S. Steel Corporation was forced to defend itself against the operations of pools by securing options and buying pig iron from independent producers.

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62 Stanley Report--Minority, pp. 84-90.
64 Bureau of Corporations Steel Investigation, File 2612-4-2, RG 122.
Nor is there any evidence that the Corporation was the price leader. On the contrary, the available accounts of the price movements show that it followed the trend set by the independents. An exception to the statement that prices followed market conditions is the fixed price of steel rails which remained at 28 dollars per ton through the years 1902-1912 according to the historical statistics of the United States. It may be that this was a purely coincidental average since it was not offered as evidence of price fixing by either the Department of Justice's brief or the agencies that investigated the steel industry and the U.S. Steel Corporation. However, the previously cited sales price of rails for the T.C.I. and R. Co. in 1907 and a contract for future delivery of rails by the same company at 30 dollars per ton indicate that there were variations in price. An interesting sidelight to the price issue is that the leaders of the steel industry, Gary, Carnegie, and Perkins, recommended in their

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66Bureau of Corporations, Steel Investigation, File Number 2612-1-4-2, RG 122.


testimony to the Stanley Committee that the federal government control steel prices. Carnegie even recommended that the government determine the price of all goods sold in interstate commerce.\(^6\) Branding these suggestions as socialistic, the Majority Report firmly rejected them as unconstitutional.\(^7\)

No evidence was presented that the absorption of the T.C.I. and R. Co. drove other competitors from the field. The only complaint in the Bureau of Corporations' files against the Corporation is a single stockholder's protest that cash reserves had been invested in securities.\(^8\) Likewise the Department of Justice's suit was seriously embarrassed when competitors who were called as government witnesses, in fact, became witnesses for the defense.\(^9\)

Actually the issuance of the Stanley Report in August, 1912, was an obituary notice for the acquisition of the T.C.I. and R. Co. as a public issue. Although Bryan attempted to revive it during the presidential campaign that year, he was quite alone.

The question remains about how much the acquisition of the T.C.I. and R. Co. increased the control of

\(^{6}\)Stanley Hearings, pp. 234, 627, 1128.

\(^{7}\)Stanley Report--Majority, p. 211.

\(^{8}\)Bureau of Corporations, Steel Investigation, File Number 1908-1-1-3, RG 122.

the U.S. Steel Corporation over the iron and steel industry of the United States. Aside from the multitude of estimates on the iron ore resources of the U.S. Steel Corporation and the T.C.I. and R. Co., none of the agencies which investigated the steel industry and the Corporation produced any evidence or statistics on the increase in capacity that the U.S. Steel Corporation gained as a result of its purchase of the southern company. The Bureau of Corporations Report came the nearest to an estimate of this type when it showed growth percentage comparison, using 1901 as a base year and contrasting it with the Corporation's capacity in January, 1911.\(^\text{73}\) Although not showing capacity changes in 1907, it notes that in the ten year period the Corporation's plant capacity grew 88 per cent by internal expansion, but only 30 per cent by acquisition of other companies.\(^\text{74}\) Since the capacity figures are not available, the comparative production and percentage figures for 1907 are the only alternative for determining to what degree the acquisition increased the U.S. Steel Corporation's control of the total production. Actually in 1907, there was probably very little difference between total production and capacity since, as previously

\(^{73}\text{Bureau of Corporations Report, Part III, Table 29, p. 269.}\)

\(^{74}\text{Ibid.}\)
mentioned, the iron and steel plants were booked to capacity during the entire year.

Table III, which was taken from the Bureau of Corporations Report, portrays and summarizes the relationship between the total production of the iron and steel industry in 1907 and both the T.C.I. and R. Co. and the U.S. Steel Corporation. The figures for ingots and castings, being steel in the unfinished condition, are the best index of a steel producer's output. In sum, the figures show that Gary's statement to Roosevelt regarding the increase in percentage of control that would result from the T.C.I. and R. Co. acquisition were well within the 4 or 5 per cent figure that he stipulated. Likewise the figures show the relatively unimportant position the T.C.I. and R. Co. held in the American steel industry and the unlikelihood that the merging of this company with the U.S. Steel Corporation would in itself create a monopoly.

75Bureau of Corporations Report, Part III, Table 28, p. 238.

76Ibid., p. 369.
<table>
<thead>
<tr>
<th></th>
<th>By U.S. Steel Corporation</th>
<th>By Tenn. Coal, Iron &amp; R.R. Co.</th>
<th>Total United States Production</th>
<th>U.S. Steel Corporation's percentage of total of the United States</th>
<th>Tenn. Coal, Iron &amp; R.R. Co.'s percentage of total of the United States</th>
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<tr>
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<td>Gross Tons</td>
<td>Gross Tons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iron Ore</td>
<td>22,403,801</td>
<td>1,576,757</td>
<td>51,720,619</td>
<td>43.3</td>
<td>3.0</td>
</tr>
<tr>
<td>Coke</td>
<td>12,373,938</td>
<td>1,170,826</td>
<td>40,779,564</td>
<td>30.3</td>
<td>2.9</td>
</tr>
<tr>
<td>Pig Iron</td>
<td>10,633,496</td>
<td>602,827</td>
<td>25,442,013</td>
<td>41.8</td>
<td>2.4</td>
</tr>
<tr>
<td>Ingots and Castings</td>
<td>13,099,548</td>
<td>243,444</td>
<td>23,217,285</td>
<td>56.4</td>
<td>1.1</td>
</tr>
<tr>
<td>Rails</td>
<td>1,744,578</td>
<td>146,171</td>
<td>3,380,025</td>
<td>51.6</td>
<td>4.3</td>
</tr>
</tbody>
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CHAPTER V

THE SOURCE OF THE LEGEND

When attention is directed to the relatively small size of the T.C.I. and R. Co. compared to the predominant position of the U.S. Steel Corporation and the minor effect the acquisition had on the larger concern's share of the total national steel output and iron ore reserves, the continued interest in the matter seems out of proportion to what the facts warrant. This is because the controversy was rooted in politics.

Even though the actual acquisition caused almost no unfavorable comment, the political reactions that could result from the understanding between Roosevelt and Gary were a concern to the Administration. When Gary drafted a memorandum outlining the terms under which Roosevelt had acquiesced in the merger, at Root's request Gary deleted the favorable offhand remarks the President made regarding the U.S. Steel Corporation.¹

Likewise, there were political overtones in Gary's omitting to tell Roosevelt the name of the important New York concern that faced bankruptcy. Although Schley's

name or his firm's name were not mentioned in the press either in connection with Gates' efforts to combine the Southern steel companies or the sale of the T.C.I. and R. Co., during the 1894 debate on the sugar tariff in the Senate his firm had come under fire when it refused to divulge the names of Senators who had accounts with it and who were suspected of speculating in sugar company stocks.  

Apparently, the issue had not been forgotten since it was the only significant item of public interest mentioned in Schley's obituary in 1917.  

A natural assumption is that Gary withheld the name because it would have been impolitic to have to testify at a later date that the President had for any purpose knowingly been a party to saving a firm which once had been involved in a political scandal. The probability that evidence or testimony might sometime be required must have been anticipated or otherwise the memorandum of the conversation would not have been necessary.  

The assumption regarding the name of the threatened concern is reinforced by the failure of either of the Congressional investigating committees to ask Gary why he failed to give the concern's name to the President. Significantly, neither the majority nor minority members of  

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3 Ibid.
the Stanley Committee queried Roosevelt on this point either.

Perhaps what most clearly indicates the political nature of the controversy is the lapse of time between the acquisition of the T.C.I. and R. Co. in 1907 and the manner in which the controversy became a national political issue in the presidential campaign of 1908, resulting in a demand for an investigation only in 1909.

Unhappily, the Democrats had been forced to watch Roosevelt steal their fire and become the people's popular champion against the trusts. Without doubt Roosevelt's popularity was an ingredient of the continued Republican success at the polls and it was not unnatural for the Democrats to look for a chink in the Trust Buster's armor.

The Senate Committee which investigated the absorption of the T.C.I. and R. Co. completed its work in the lame duck session of Congress which began in January and ended in March, 1909. Although it called few witnesses, the tactics of the Committee's principal Democrat, Senator Culberson, in demanding that Roosevelt release information not related to the absorption of the T.C.I. and R. Co. from the partially completed Bureau of Corporations' investigation of the steel industry and the President's refusal provided the Committee with its only publicity and centered
the attention of the investigation on Roosevelt. 4

Although the charges that the Democratic members made regarding the acquisition of the T.C.I. and R. Co. were substantially the same as the much better publicized Stanley Committee, the publication of these charges coincided with the inauguration of a new Administration and received little attention. 5 The Stanley Committee, on the other hand, from the beginning received a fair share of publicity. Credit for this notoriety seems to belong to Stanley who had a certain flair for showmanship. Gates, whose manner of life and reputation assured newspaper coverage, was called as the first witness and when he became irritated at being queried by Stanley about the intentions of the U.S. Steel Corporation, the Chairman told him that he was only asked these questions because he was the "primus" witness. 6 Nor did Stanley leave the propagation of the Committee's activities to the transient interest of the newspapers who had Washington correspondents. Each day the Committee heard witnesses, and 10,000 copies of the evidence were printed for distribution. 7

As with many other Congressional investigations,

5Absorption by the United States Corporation, p. 16.
6Stanley Hearings, p. 54.
the purpose of the Stanley Committee was not simply to study a change related to a legislative problem. When asked on the floor of the House if the Committee hearings were some kind of a goad, Stanley described them as an ancillary operation for the Department of Justice.  

The bulk of the testimony concerned the acquisition of the T.C.I. and R. Co. While the purpose of the Committee was to determine if the U.S. Steel Corporation or other corporations had violated the Sherman Anti-Trust Act, the attention given to such matters as the founding of the corporation in 1901 or the celebrated Gary dinners was small in comparison to the detailed probing of the merger of the two steel companies.

Stanley took upon himself the main questioning of witnesses and set the tone of the investigation. His methods stamped him more as a demagogue than as a legislator attempting to use the evidence of witnesses to frame more equitable laws. This was evident in the many extravagant and unsubstantiated allegations which were introduced as testimony during the hearings and later included in the Majority Report as facts, although neither the whole testimony or cross-examination supported the allegations.

Perhaps the most glaring example of this was the

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inclusion of only part of Thorne's evidence to support the charge that the Morgan interests had aggravated the Panic. Other examples were the charge that the U.S. Steel Corporation had forced its competitors to shut down several of their plants, a charge that was in no way substantiated by any evidence. Stanley's characterization of Gates as a true competitor struggling against the monopolistic power of the U.S. Steel Corporation is at odds with evidence that Gates was attempting to monopolize the entire iron and steel production of the Birmingham district.

Many of Stanley's statements could only have been intended for the uninformed. He falsely stated that the Bureau of Corporations Report on the steel industry had said that the U.S. Steel Corporation was a monopoly. Likewise, he said that the Bureau of Corporations had been investigating the same corporation since 1896, although the U.S. Steel Corporation did not come into existence until 1901 and the Bureau of Corporations only in 1903.

Nevertheless, political considerations forced Stanley and others who were criticizing the acquisition to
exercise a certain circumspection in their attacks. Birmingham had, greeted the coming of U.S. Steel Corporation in 1907 with great enthusiasm and, while this event did not make the city another Pittsburgh or Gary, not only were the prospects pleasing but the years between the acquisition and the time of the Stanley Committee investigation had brought advantages and benefits. Workers were paid twice a month instead of once a month and the use of prison labor was discontinued.

The most significant advantage was a change in the marketing price structure which substituted the so-called Birmingham differential for Pittsburgh Plus prices. Prior to the merger the T.C.I. and R. Co. had charged all customers the going price at Pittsburgh plus the freight charge from Pittsburgh to the point of delivery. Shortly after the merger, the U.S. Steel Corporation enhanced the competitive position of the T.C.I. and R. Co. by abandoning Pittsburgh plus in favor of charging a flat 3 dollars over the Pittsburgh price to the point of delivery. Without doubt, this extended the market that Schley said was restricted.

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15 Armes, Coal and Iron, pp. 519-20.

16 Bureau of Corporations Steel Investigation, File 2612-1-4-2, RG 122.
by freight rates as high as $4.60 per ton.\textsuperscript{17}

Consequently, Stanley's attack on the merger did not pass without challenge. Richard Austin, a Tennessee Congressman, pointed to the large sales that T.C.I. and R. Co. had made in foreign countries as a result of the U.S. Steel Corporation's world-wide marketing organization. Then he noted that Oscar Underwood, the Chairman of the House Ways and Means Committee, in whose district the T.C.I. and R. Co. was located, had made no adverse comments on the merger.\textsuperscript{18}

Underwood's silence was more than passive as Stanley later learned. When the Committee's work was done in the summer of 1912 and its report published, Stanley wished to discuss it on the floor of the House. Underwood used his position as the Ways and Means Committee Chairman to block any discussion.\textsuperscript{19} An attack in the press on Underwood's obstructive tactics allowed Stanley to defend his fellow congressman from what he termed a misguided interpretation of Underwood's actions.\textsuperscript{20} On the following day,

\begin{itemize}
\item \textsuperscript{18}U.S. Congress, House, 62nd Cong., 1st sess., May 16, 1911, \textit{Congressional Record}, p. 1231.
\item \textsuperscript{19}\textit{Ibid.}, August 3, 1912, pp. 10146, 10160.
\item \textsuperscript{20}\textit{Ibid.}, August 7, 1912, p. 10306.
\end{itemize}
the Stanley Report was debated on the floor of the House and the discussion was closed without mention or allusion to the T.C.I. and R. Co. or the merger that occurred in 1907.21

The lack of verbal pyrotechnics merely underscored the fact that important Congressional interests could not afford to be exposed to public interests, and it is well worth noting that there were no derogatory remarks about this merger on the floor of Congress except for Senator Culberson's remarks in 1909. Likewise, it accounts for the reproduction of 10,000 copies daily of the evidence given at the Stanley Hearings, since these copies could be kept out of the automatic distribution channels that the Congressional Record followed. Above all, it explains Bryan's failure to name the company when he opened the issue in the presidential campaign of 1908, when he repeated it in 1912, and Wilson's failure to make the material in the Stanley Report an issue in 1912 as the press predicted he would.22 Moreover, Roosevelt's willingness in 1908 to factually amplify on Bryan's obscure allegation probably stemmed from the same motive.

Contemporary press opinion of the Stanley Committee was unfavorable. Even before the Committee finished

21Ibid., August 8, 1912, pp. 10518-38.

22Bureau of Corporations Steel Investigation, File 2612-1-4-2, RG 122.
its work, the line that it had taken on the Panic of 1907 received skeptical treatment. 23  A few weeks before the publication of the Report, the Democratic New York Times commented editorially "... Chairman Stanley wants something to influence the election, since he would not proceed otherwise if he were not thinking of the election." 24

The Report itself was even less favorably viewed. Although the Minority Report of the Committee was free of the clumsy political bias of the Majority Report, it did not fail to make a partisan defense of Roosevelt's actions in its closing paragraphs. On the other hand, it was at best a weak rebuttal of the charges in the Majority Report. The press comment was caustic and spared neither side. Editorially the New York Evening Mail called the Report "... largely electioneering guesswork," 25 while the New York Times said, "... the Stanley Committee provided a political jest book which either side will hurl at the other through the campaign." 26 Summing up the reaction of the nation's press, the Literary Digest noted that the Report's publication was viewed as a political rather than a legislative event. 27

23 Independent, August 17, 1911, Vol. 70, pp. 378-79.
26 Ibid.
27 Ibid., p. 176.
The prediction of The New York Tribune, immediately prior to the publication of the Report, that it would set forth the political lines of the Democratic and Republican Parties in the forthcoming election, did not hold true.28 No evidence can be found that any of the three major candidates ever referred to it. More important, the Democratic Party for which the Report would have served as a source of ammunition had already moved away from the position which the Stanley Report made in its legislative recommendations.

In 1912 the Democratic Party Platform made no mention of an arbitrary percentage of control that a corporation could exercise in an industry. The 1908 platform, however, had specified the 50 per cent limitation which Bryan used in his allegation against Roosevelt in the Presidential election of that year concerning the T.C.I. and R. Co. merger.29 The 30 per cent limitation recommended by the Democratic majority in the Stanley Report was not in consonance with the party position.30

Still the Stanley Committee cannot be dismissed as having no effect on the events of its time or for that

28 Bureau of Corporations Steel Investigations, File 2612-1-4-2, RG 122.
30 Ibid., p. 169.
matter on the course of history. While the Committee was in session, the Department of Justice filed its suit against the U.S. Steel Corporation for violation of the Sherman Anti-Trust Act and the connection between the two appears more than coincidental.

Like the Congressional investigations of the T.C.I. and R. Co. acquisition, the equity suit against the U.S. Steel Corporation was instituted some years after the acts with which it was charged were committed, with the exception of the Gary dinners. Even the dinners, which began in November, 1907, ended in January, 1911,\textsuperscript{31} five months prior to opening of the Stanley Hearings and ten months prior to the government's institution of its suit.

Somewhat paradoxically, the filing of the suit came only four months after the issuance of the Bureau of Corporations Report on the Steel Industry which said that the U.S. Steel Corporation was not a monopoly.

Viewed through the eyes of many contemporaries, the government's decision to prosecute the U.S. Steel Corporation and its timing appeared only as an act of political expediency.

The New York Press said, "It is impossible for the Administration to escape the suspicion of political motives since the effect of the suit is taking the wind out of the

\textsuperscript{31}Stocking, Basing Point Pricing, p. 46.
sails of the Democratic House by anticipating the report of its Stanley Committee." The Independent noted ". . . that much of the petition was suggested by the Stanley Committee." J. G. Butler, an independent iron manufacturer and president of the Western Pig Iron Association, called the suit an outgrowth of the politically inspired Stanley investigation.34

More substantive evidence of the dubious motives of the suit revealed itself in the instructions from the Department of Justice to its attorneys who were to examine the U.S. Steel Corporation officials to avoid questions that would produce evidence regarding the total national iron ore resources and the corporation's relative position to the total resources.35 Previously this was pointed out as a questionable aspect of both the Bureau of Corporations Report and the Stanley Report; it is apparent the government pressed its case knowing that a major point on which it charged the U.S. Steel Corporation with being a monopoly in an economic sense contained a flaw which would be best concealed from judicial examination.

32Quoted in the Literary Digest, November 4, 1911, Vol. 43, p. 777.

33Independent, November 2, Vol. 71, p. 123.


35Bureau of Corporations Steel Investigation, File 6518-8-10, RG 122.
Regardless of whether the administration's motives in bringing the suit were political, the results were. The charge that Gary duped Roosevelt and the ex-president's quick defense of his actions and attack on Taft's anti-trust policies not only brought the long smoldering, semi-private conflict of the two into the open, but split the Republican Party into pro-Taft and pro-Roosevelt factions. Although Taft denied knowing that Roosevelt's name was to be included in the government's petition, efforts at reconciliation between them foundered on Roosevelt's unabated rage at being named as the gullible victim of Gary's deceit.

Without doubt, Roosevelt's implacability served his own political ambitions well and Taft realized how well they served him. On January 15, 1912, when the President's military aide, Major Butt, who was on friendly terms with Roosevelt, told Taft that the breach with the ex-president was irreparable, the President grimly replied that he might be defeated for re-election but that he would defeat

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37 Butt, Taft and Roosevelt, p. 811.
Roosevelt in the Convention. 38

What little evidence there is points to George Wickersham, the Attorney-General, as the person responsible for the political ineptitude of bringing Roosevelt's name into the suit. Butt said that the ex-president was named "... thanks to that marplot Wickersham." 39 Other evidence of Wickersham's lack of political sophistication exists. Two days after the suit against the U.S. Steel Corporation was filed, the Omaha World-Herald quoted its Washington correspondent as saying that Mr. Wickersham gave much of the credit for the suit to the Stanley Committee. 40

If Wickersham did give credit to the Stanley Committee for inspiring the suit against the U.S. Steel Corporation or if the suit with its implied aspersion on Roosevelt's gullibility was a reaction to the Stanley Hearings, then Stanley must be given credit not only in conducting successful ancillary operation for the Justice Department but also indirectly bringing about the open breach between Roosevelt and Taft and the consequent Republican defeat in 1912.

In the controversy over the acquisition of the T.C.I. and R. Co., a point generally overlooked was that

38 Ibid., p. 813. 39 Ibid., p. 811.

40 Omaha World-Herald, October 29, 1911, p. 1.
Roosevelt's acquiescence to this merger set a precedent. Prior to this time, neither business nor the government discussed proposed mergers or the legality of mergers already in existence in relation to the Sherman Anti-Trust Act. Consequently, considerable uncertainty always existed about the legal status of a combination or a proposed merger.

Despite the published acquiescence of Roosevelt to the merger of the two steel producers, there is no evidence of other companies attempting to preclude legal action under the Sherman Anti-Trust Act by reconciling their problems with the executive branch during the remaining sixteen months of the Roosevelt Administration. Under Taft such reconciliations were impossible, since he believed that anyone could understand the anti-trust statute and was impatient with those who said they could not.41 An almost immediate change took place under the next Administration. Although Wilson, like Roosevelt, had been loud in his attacks on the trusts, his Attorney-General, James McReynolds, began negotiations with the New Haven Railroad and the American Telephone and Telegraph Company which resulted in these companies agreeing to surrender part of their recently acquired control of the

41Pringle, Taft, p. 655, quoting letter from Taft to H. L. Higginson, September 8, 1911.
control of the New England transportation system and the national telephone network respectively in exchange for the government's dropping all charges against them under the Sherman Anti-Trust Act.\textsuperscript{42}

At the same time, an attempt to legislate authorization for such agreements was voted down in Congress.\textsuperscript{43} However, the decision of the Supreme Court in the U.S. Steel Corporation suit sanctioned Roosevelt's action in the T.C.I. and R. Co. merger.\textsuperscript{44} When in 1925 the Department of Justice inaugurated the policy which is still in effect of approving or disapproving of mergers before they are consummated,\textsuperscript{45} it caused no controversy indicating that the question of the President's propriety in doing this had passed as a political issue.\textsuperscript{46}

In retrospect, the controversy over the T.C.I. and

\textsuperscript{42}New York Times, December 20, 1913, p. 1; August 12, 1914, p. 9; October 18, 1914, Part III, p. 1.


\textsuperscript{44}United States v. United States Steel Corporation, 251 U.S. 446, 447 (1919).


\textsuperscript{46}Clark, Trust Policy, p. 236.
R. Co. was in reality a partisan political issue of the times rather than an event of significant and continuing economic importance. The preservation of the legend merely illustrates the propensity of some writers and historians to make the past serve the political causes and passions of their own era.
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