THE INDICTMENT OF JOSEPH F. GUFFEY

BY WALTER S. SANDERLIN

AMERICANS in the mid-twentieth century have become accustomed to wholesale congressional investigations of previous administrations. In the years following the First World War a Republican-dominated Congress conducted numerous inquiries into the affairs of the Woodrow Wilson regime. Although minimized and frequently ignored by later historians conscious of the spectacular scandals of the Harding administration, these investigations were a prominent and inevitable phase of the post-war reaction. With appropriations in excess of twenty billion dollars for war purposes between 1917 and 1919, and with 18,000 new millionaires in the country according to income tax records, the American public in general and the Republican congressmen in particular were certain there must have been some graft.\(^1\)

Numerous committees and agencies began the search for evidence of wrongdoing, the most prominent one being a Bureau of War Transactions newly organized in the Department of Justice with an appropriation of $3,200,000 to finance its interrogations “for the purpose of indicting and prosecuting such persons as are guilty of criminal conduct and to institute civil suits for the recovery of any government funds which have been fraudulently or illegally paid.”\(^2\)

In the course of these investigations Joseph F. Guffey, an active leader of the Democratic party in Pennsylvania and a vigorous supporter of the former President, was indicted in connection...
with alleged misconduct as Director of Sales for the Alien Property Custodian. Several other former officials of that wartime agency, including A. Mitchell Palmer and Francis P. Garvan, were later indicted on various charges during the twenties. These indictments caused a momentary flurry in the newspapers and at least one congressional investigation before passing largely from public notice.

Attorney General Harry Daugherty was slow to press the charges brought to his attention. When reproached by Congress he put some twenty-five lawyers to work on 800 cases and reported: "I found no reason to bring indictments against a single one whom I was urged to prosecute." Gaston B. Means, head of the Bureau of Investigation in the Department of Justice, and George W. Storck, an accountant in that bureau who worked on some of the cases, expressed to a special committee of the Senate investigating Daugherty in 1924 the belief that the attorney general's reluctance to prosecute was itself the result of corruption and malfeasance. In any event, the scandals of the Harding regime soon overshadowed the virtually fruitless efforts to discover graft in the war effort. When the government moved to nolle pros the few indictments that were secured, public interest, as reflected by the daily newspapers, had vanished in the midst of booming prosperity and grinding depression.

In the 1934 senatorial campaign the charges against Guffey were revived by Governor Gifford Pinchot in bitter and slashing speeches at Wilkes-Barre, October 4, at Charleroi, October 18, and at McKeesport, October 31. Pinchot, repeating frequently in each speech his personal battle cry, "I can't stand Guffey," added a few extra charges of his own. Guffey, he said in his Wilkes-Barre address, had employed Clarence H. Fay, Republican leader of the 16th New York Assembly District, to secure dismissal of the indictment. At Charleroi the governor claimed that Guffey had accepted money from the Mellon interests to pay his obligations to the Office of the Alien Property Custodian in 1921. And at McKeesport Pinchot asserted that Guffey had obtained $150,000

Sullivan, Our Times, VI, 206.
Attorney General Daugherty, authorized by Senate Resolution 157, 68th Congress, 1st Session, as reported in the New York Times, April 10 and 17, 1924.
from the Alien Property Custodian’s Office to pay his debts in 1921. Allegations such as these kept Joseph Guffey, Joseph Tumulty, and Andrew Mellon, among others, busy issuing denials, rebuttals, and refutations.5

Yet when Senator Guffey published his autobiography in 1952, looking back on an active life of almost eighty-two years, he felt the unpleasant incident deserved only passing notice. Specifically, he devoted only one paragraph to the indictments, and three to the charges made during the 1934 campaign.6 The personal papers of Senator Guffey, recently deposited in the Washington and Jefferson College Library, reveal a much greater concern on the part of the Senator over the defense of his reputation and the disposition of the cases, and provide many more details of the episode, admittedly from the defendant’s viewpoint.

At the time of the American entry into the war Joseph Guffey had been a general manager of the Philadelphia Company for almost eighteen years. In addition he was president or vice-president of several personal enterprises, and in 1918 while still in government service he formed the Guffey-Gillespie Oil Company. His personal assets were estimated to be worth between three and four million dollars.7 He was also very active in the Democratic party in Pennsylvania, although he was to be defeated in his effort to gain the party’s nomination for governor in 1918. In 1917, Guffey became Director of Petroleum for the War Industries Board, as well as a member of the Gas and Electric Committee of the same agency. In the spring of 1918 he became a member of the Petroleum War Service Committee, which was set up as part of the Fuel Administration, and served until its dissolution in 1919. In the summer of 1918 he became Director of Sales for the Office of the Alien Property Custodian. By this time his governmental duties and the affairs of his new oil

5 See the Associated Press and United Press dispatches in leading Pennsylvania papers for October 5, October 19 and 20, November 1, 1934.
6 Joseph F. Guffey, Seventy Years on the Red-fire Wagon (Privately printed, Lebanon, Pa., 1952), 59-60.
7 Guffey, Seventy Years, 47-49; A. O. Stanley, “United States v. Joseph F. Guffey, Brief,” 1, carbon copy in the Guffey Papers; Tumulty to H. S. Ridgley, Special Assistant to the Attorney General, June 1, 1925, carbon copy in the Guffey Papers. The brief incorrectly lists the Guffey-Gillespie Oil Company as being in existence at the outbreak of the war. Tumulty suggests that Guffey’s assets may have been in excess of $3,000,000.
company demanded so much of his time that he resigned his position as a general manager of the Philadelphia Company. As Director of Sales he handled enormous sums of money, certainly in excess of $50,000,000. He remained in the federal government until the end of the Wilson administration in March 1921, serving as a dollar-a-year man throughout.

Almost two years later, on December 28, 1922, Guffey was indicted on twelve counts of embezzlement involving misappropriation of funds in his custody during his service in the Office of the Alien Property Custodian. In brief, it was alleged that he diverted some of the huge sums under his control temporarily to his own use. Four of these counts had to do with an item of $7,671.06; four with an item of $275,000; and four with an item of $406,000. George Storck, the Justice Department accountant, elaborated considerably upon the bare indictment charges in the 1924 Senate inquiry. He asserted that Guffey never mentioned interest received on the deposits of government funds until forced to do so upon his retirement from office in March, 1921. He noted that sometimes months elapsed between sales and the payment of the proceeds to the Alien Property Custodian, during which time the thirty-two banks favored by Director of Sales Guffey paid interest of two to three per cent per year upon the...

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8 Testimony of George W. Storck, quoted in the New York Times, April 10, 1924. Storck gives July, 1918-March 8, 1921 as the period in which Guffey served as Director of Sales. Storck also provides the figure $55,592,772.22 as the amount of sales, which apparently Attorney General Daugherty used in his letter to Judge James Reed, 1924, and which Robert E. Manly used in his motion to nolle pros the indictment November 17, 1930, copies of which are in the Guffey Papers. The Pittsburgh Post, December 29, 1922, quoted Judge Reed’s law office, giving the figure as $150,000,000. Tumulty says $200,000,000 in his letter to Ridgley, June 1, 1925. Stanley’s brief says “over $200,000,000.”

9 New York Times, December 29, 1922; Pittsburgh Post, December 29, 1922. It should be noted that there was an error in the four counts in the indictment concerning the $7,671.06 sum. This was the balance due in one of the government accounts under Guffey’s control in the American Trust Company, New York. On March 5, 1921, owing to the great depreciation in the value of the collateral on several personal notes of Guffey held by the bank, the Trust Company appropriated this sum from deposits of alien property funds and applied that amount on his notes. Later in May, 1921, when Guffey settled his affairs with the American Trust Company he discovered this error, and the amount was reinstated, but when a transcript of this special account was furnished the Department of Justice the reinstatement of this sum was not shown. Tumulty to Ridgley, June 1, 1925, Guffey Papers.

10 This statement is flatly contradicted by both Tumulty and Manly. See below, pp. 13-14.
average daily balances and charged twelve per cent on call loans made with the government funds. Finally, Storck reported the curious and unfortunate coincidence that "in each of the banks in question, Mr. Guffey secured personal loans [totaling $2,147,774], putting up as collateral Guffey-Gillespie Oil stocks or Atlantic, Gulf and West Indies oil stock, with both of which he was associated." 11

Although the Justice Department announced in Washington, December 28, 1922, that the New York indictments would be "pushed vigorously" and that "United States Attorney Hayward had been instructed to make every effort to bring the indicted men to trial as soon as possible," 12 nothing of the sort was done. Instead the men were arraigned and released on bail, and nothing further occurred. Indeed, according to accountant Storck, on January 4, 1924, Attorney General Daugherty wrote to H. S. Ridgley, a Justice Department attorney, enclosing an unsigned memorandum asking the department to nolle pros the case. 13 Following the revelations brought forth by the Senate inquiry of 1924, 14 the Justice Department moved to indict others in the Alien Property Custodian's Office. In 1926, Guffey was named in another indictment in Boston, involving some twenty-one individuals, including several formerly associated with the Office of the Alien Property Custodian, in connection with charges of undervaluation of property and collusion in bidding concerning the sale of the Bosch Magneto Company, December 7, 1918. 15

11 Testimony of George W. Storck, quoted in the New York Times, April 10, 1924. The Atlantic, Gulf and West Indies company was a subsidiary of Guffey-Gillespie.
12 Pittsburgh Post, December 29, 1922. Martin Kern, the successful bidder in the Bosch Magneto Company sale, was also indicted at the same time.
14 The Senate inquiry brought out among other things testimony that Martin Kern, the successful bidder for the Bosch Magneto Company assets, was a convicted felon and had been a client of Alien Property Custodian A. Mitchell Palmer; and that Daugherty had ordered the indictment proceedings held up until Palmer could use his influence on Democrats in Congress to control votes on any impeachment proceedings against Daugherty. Testimony of Storck and Means, quoted in the New York Times, April 10 and 17, 1924.
Senator Guffey always saw the indictments as a purely partisan political gesture by the incoming Harding administration. As such he was resigned to the effort to impugn his conduct. In a later summary of the New York case, he noted that

. . . All the evidence they had was first presented to a Grand Jury in Washington, which refused to indict. The same evidence was again presented to a Grand Jury in Boston, which also refused to indict, and finally it was presented to a hand-picked political Grand Jury in New York, which, by a vote of 12 to 11, found a true bill against me. . . .

Guffey also insisted and indeed took great pride in the assertion that he repeatedly sought a trial on the indictment, notwithstanding Governor Pinchot's claim during the campaign of 1934 that he had information to the opposite effect. In reply to Pinchot's speech at Wilkes-Barre, October 4, 1934, Guffey said in a press release:

Never during that time did I ask for a delay or a postponement, but my attorney, Joseph P. Tumulty, frequently told the New York District Attorney's office that he was prepared for trial. The charges were without foundation or substance and were purely political. Knowing this, the Republican administration did not dare go to trial but sought to make political capital of this baseless charge that they imagined could be attempted by an unpressed indictment.

My connection with the Alien Property Custodian's office is an open book. I have nothing to conceal. I have performed my duty honestly and fearlessly and I have no fear of political attempts, past or present, to besmirch.17

officials of the company claimed the value to be $12,000,000); New York Times, January 26, 1930, 17 (uses the figure $9,685,564 as the true worth of the company, apparently quoting the terms of the indictment). The sale price was $4,150,000.

16 Undated press release [October 5, 1934], in the Guffey Papers. Also carried by the Associated Press in Pennsylvania newspapers of October 6, 1934. See also the Associated Press dispatch in the Pittsburgh Post, December 29, 1922, 2, for at least partial corroboration.

17 Undated press release [October 5, 1934], in the Guffey Papers, also carried by the Associated Press in Pennsylvania newspapers of October 6, 1934.
The opinion that the charges were largely political in their inception was vigorously supported by Joseph P. Tumulty, President Wilson's private secretary and Guffey's personal attorney during the long years the indictment hung over Guffey's reputation. Writing in support of his client's campaign for senator in 1934, Tumulty pulled out all stops in a frankly partisan review of the episode:

... Upon the conclusion of the War, when the whole world reverberated with praises of Woodrow Wilson and American achievement under his great leadership, Republican conspirators came out of hiding and filled the very air we breathed with their direful lamentations. Wilson must be stricken down! His administration must be discredited! they cried, Lest the Republican Party die. Twenty-seven Billions of Dollars had been expended to win the war. With this vast expenditure there must be something rotten in Denmark, declared these Republicans. And so they set up eighty agencies of investigation; Smelling Committees, they called them. Every garbage can was searched and looted by them to find something discreditable to the Wilson Administration. A Democratic victim must be found, was the cry that came hot from Republican throats. General Pershing and General Dawes, two honest men, denounced the whole miserable business, characterising the conduct of the War under Woodrow Wilson as the cleanest, finest piece of business that had ever been carried on in the United States. And yet the greed for office and the search for a Democratic victim could not be appeased. Millions were spent to find Democratic derelictions on the part of Democratic officials. What was the result?

In their endeavor to find a victim, the loyalty of Joe Guffey to Woodrow Wilson was made the plaything for partisan envy. They needed someone upon whom to pour the vitriol of their hatred. Pennsylvania must be kept safe for the Republicans. And how best to conserve this great political asset than to attempt to distredit [sic] Joe Guffey, the uncompromising leader of the Democratic party in this State. In a desperate situation, engaged in by desperate men, the last refuge of the political scoundrel and dastard was invoked. A political indictment was resorted to to destroy him. That indictment was the product and the work of as unwholesome a gang of political free-booters as ever dominated the affairs of a Nation. Had this indictment come from clean hands;
had it been inspired by motives of Justice, I would not be here tonight defending the honor and good name of my friend. Did it arise out of a wholesome atmosphere? No, it was born in iniquity. It was the handiwork of Harry Doherty [sic], and that Caliban of the Harding Administration, Gaston B. Means, the Black-mailer who now rests in a Felon's cell at Lewisburg Prison, in your own State. . . .

Having framed his indictment, Republican intrigue rested contentedly on its dirty oars. . . .

Would these Republicans ever grant him his day in Court? No. For nine long, weary years they held over his head the sword of indictment, refusing to give him a trial. . . .\(^{18}\)

Partisan politics aside, if that is possible in the career of so prominent a political figure, two contentions formed the basis of Senator Guffey's answer to the criticism of his conduct as Director of Sales for the Alien Property Custodian. One concerns the allegedly incomplete legal provisions regulating his activities, which are described in one of the campaign documents preserved from the bitter struggle of 1934:

. . . The Act of Congress, creating the office of Alien Property Custodian, made no provisions for the collection of interest on these deposits, and therefore no method for the disposition of such interest.

Mr. Guffey, being a business man, as Director of Sales, insisted that interest must be paid on such deposits. These deposits, which often ran into many millions, could not be turned into the United States Treasury until all costs connected with these sales, such as appraisals, advertising, and attorney's fees, had been paid. Otherwise, to make such payments out of the Treasury, would have taken an Act of Congress in each instance, which was impossible.

Mr. Guffey insisted, however, that interest must be paid by the banks, and as it accrued offered it in turn to the Alien Property Custodian and then to the United States Treasury. When they refused to receive it, he appealed to the Ways and Means Committee of Congress for advice, but could get none.

The interest on these funds therefore remained in the banks not in Mr. Guffey's own account, but in the name

of Joseph F. Guffey, trustee, until he was retiring from office.

The Alien Property Custodian then, of necessity, accepted from Mr. Guffey all moneys together with interest then in his hands, giving Mr. Guffey a receipt in full.19

This explanation is substantially the same as that offered to the Justice Department by Joseph Tumulty in 1925.20 And apparently this viewpoint was also held by others familiar with the case. Judge James Reed, Guffey's longtime personal friend, attorney, and political opponent, wrote in 1924 to Attorney General Daugherty:

I venture to impose upon our acquaintance to say a word to you about Joseph F. Guffey of this City whose case is before you for consideration. I have known Mr. Guffey for over twenty-five years. He was first Secretary and afterwards General Manager of the Philadelphia Company, of which I was for many years President, and he had charge of the development of the Natural Gas Department of that Company. He has been a public spirited, generous citizen interested in the good work of this community and I believe has many years of usefulness ahead of him. I know something about the offence with which he is charged and I doubt whether he has been guilty of even a technical offence, certainly any criminal intent was absent. As the Government has been fully reimbursed and his accounts involving as they do enormous sums of money have been approved after expert examination, I respectfully suggest that no good can be accomplished by putting him to an expensive defence. The people who know him in this company [community] will, I feel sure, approve of a dismissal of the indictment against him.21

The Attorney General apparently concurred with this view, for he wrote in reply:

On the Joseph F. Guffy matter, it appears that three separate items were mentioned in the controversy as follows: $275,000.00, $406,000.00 and $7,000.00, and while

19 Anonymous manuscript, with "A. O. Stanley" written at the top of the page, in the Guffey Papers. Senator Stanley was the attorney who, Tumulty said, prepared the brief in Guffey's defense.

20 Tumulty to Ridglea, 1 June 1925, in the Guffey Papers.

21 J. H. Reed to Hon. Harry M. Daugherty, January 12, 1924, photostatic copy in the Guffey Papers.
no formal charges have been made it is the claim that the said sums were held by Guffy in violation of United States Statutes.

This claim however, is not well founded for the reason that all of the monies involved have been paid over to the Alien Property Custodian by Guffy and principally for the reason that some question arose concerning the proper disposition of the funds and particularly the $406,000.00 item, which was for interest received from various banks on sums deposited by Guffy from sales from time to time, and even after this amount was turned over it had not been determined where it should be credited, or what accounting should be made of this special fund. While he was responsible he could not be charged with handling this money illegally especially when the question arose among officials of the government concerning its disposition. . . .

It is my view from the available information that any action instituted would not be sustained and that Guffy was not guilty of criminal intent or conversion in connection therewith; and further the controversy seems to have been engendered by the $406,000.00 item, representing interest received and about which a conflict of opinion arose among the lawyers in the Bureau concerning its disposition and Guffy entirely responsible in the matter was justified in withholding this money until satisfied as to where it properly belonged. He certainly was within his rights in exercising necessary care when it was known and understood that contrary views were held by persons immediately concerned in the matter.22

The second contention put forth by Senator Guffey in reply to the indictment concerned the disastrous turn in his personal finances at the end of the war. At this time banks and others improperly applied government deposits to cover personal loans to him. The senator's own summary, made in reply to Governor Pinchot's campaign allegations in 1934, provides an appropriate starting point for this part of the story.

In the years of 1919, 1920 and 1921, I was engaged in extensive oil operations and oil developments, not only

22 Harry K. Daugherty to Hon. James H. Reed, 1921 [1924], typewritten copy in the Guffey Papers. It is apparent from the contents of the letter that the 1921 date is a typographical error.
in the United States but in Mexico and South America as well.

In my activities in Mexico, because I upheld the policies of President Wilson in all Mexican matters, I incurred the ill will of a number of the large American oil companies. In early March, 1921, I was indebted to the banks and personal friends for $3,100,000.

At this time certain interests whose ill will I had incurred made a bear raid on the stock of the Guffey-Gillespie Oil Company and broke the market from the thirties to $10.00 per share. So on March 5th, the day after Harding's inauguration, fourteen banks called my loans and proceeded to stop payments on all my outstanding checks and appropriations or credited my loan accounts with whatever balances were in their respective banks, including certain government funds, whether it was Joseph F. Guffey or Joseph F. Guffey, Trustee, Agent or Special.

At this time, I was waiting to settle my accounts as Director, Bureau of Sales, Alien Property Custodian, so I was compelled to use other checks than my own in making settlement with Alien Property Custodian. Among those used was one of George H. Flinn's, a long time personal friend, about which Governor Pinchot will tell you as the campaign progresses.

On March 8, 1921, after my accounts, covering many millions of dollars, were audited, I paid the government in full and have the receipt... 

Waiving for the moment the mood of persecution present in Guffey's press release, there seems to be no question of the relation of his acute financial troubles to the alleged misconduct mentioned in the indictment. In 1925, writing in a more sober and specific mood as Guffey's attorney, Joseph Tumulty had provided

Cf. Ray Sprigle, "Lord Guffey of Pennsylvania," American Mercury, XXXIX, No. 155 (November 1936), 273-284. Sprigle relates that as a result of an interview with President Venustiano Carranza in 1920, Guffey got concessions on five vast properties of major U. S. oil companies whose leases had been recently cancelled by the Mexican government under the terms of the constitution of 1917. These concessions were the basis for the Atlantic, Gulf and West Indies Oil Corporation formed by Guffey. In 1920 the five oil companies refused tank cars and drilling equipment haulage for the Atlantic Gulf Company, its stock fell from $40 to $10 a share, and control eventually passed to the Tidewater Oil interests. Sprigle, 280-281.

more details concerning his client's personal troubles in a letter to the Justice Department:

In the fall of 1920 a critical situation confronted him with reference to his own business affairs. By reason of the war and the revolutionary changes in business conditions the companies with which he was affiliated demanded his special care and the personal guidance of an experienced executive head. Due to his services with the Government he was necessarily removed from active participation in the conduct of the affairs of these companies with the result that the situations that could be promptly dealt with by him were neglected. Opportunities for the development of these properties were allowed to pass which gravely interfered with the prosperity of these companies, with the result that in the fall of 1920 it was necessary for him to go to Mexico on an extended business trip. At the time of his departure his net assets were reasonably calculated to be of the value of from $3,500,000 to $4,000,000. The business in Mexico kept him in that country until about the first of the year of 1921. Upon returning he was shocked and surprised to find that his absence instead of helping had aggravated a situation in his companies which was already serious due to the speculation and mismanagement of certain of his associates as well as the deflation and depreciation in the value of the securities he held at that period. Confronted with a situation like this, desperate and critical, endeavoring by every means to salvage what he could from the wreck, he immediately threw himself in the breach and tried to save the situation, mobilizing every possible resource of his own, resorting in desperation to personal and family resources in order to save from disaster the companies with which he was affiliated.

And the first of February, 1921, with many of his friends showing a lack of friendly consideration to one who in similar situation had helped and aided them, he arranged to secure the loan of a million dollars from a Pittsburgh banking firm to lift about 75,000 shares of Guffey Gillespie Oil Company's common stock from brokers. In addition thereto he arranged for an additional loan of $300,000 from Senator Flynn [sic] of Pittsburgh. Calling upon an old associate who was familiar with his affairs and who was informed of the above promised loans, Mr. Guffey requested this friend and former associate to go through his "free assets" and see what collateral was available with the result that he
immediately negotiated such loans as he could in the emergency. At this critical period there were three sets of Liberty Bonds in Mr. Guffey’s box, one set amounting to $319,200; the second $9,300, being the property of the Alien Property Custodian; and the third, $170,000, belonging to Mr. Guffey himself. In addition to this there were some Guffey Gillespie Oil Company common stock, American Window Glass Machine common stock and Freeport, Pa., Water Works bonds. This associate in his endeavor to render all assistance possible, made the mistake of taking the $320,000 bonds on which Mr. Guffey had secured a loan of $275,000 with Guaranty Trust Company instead of using the $170,000 in bonds belonging to himself. As soon as this was discovered, which was about ten days later, Mr. Guffey immediately sold all the bonds he held. This together with the amount of money still held on this loan in the bank was sufficient to pay the $270,000 and the bonds were immediately forwarded to Washington.

It must be stated that in addition to the use of these bonds made by Mr. Guffey in the grave financial emergency which confronted him, approximately $100,000 was used to relieve this pressing situation. In explanation of his attitude in this matter it can be stated that the pivot around which the dereliction of Mr. Guffey revolved, was the interest account amounting to approximately $400,000. That this amount and all other amounts diverted were fully accounted for is evidenced by a photostatic copy of the audits taken March 8, 1921, marked Exhibit “P” I. That the bonds were returned is shown by Exhibit “P” II, dated February 25, 1921.

Everyone concerned, Attorney General Daugherty, Accountant Storck, United States Attorney Manly, even Governor Pinchot, agreed that on demand Guffey paid all sums due, upon his retirement from the Office of the Alien Property Custodian in 1921. Yet, despite repeated audits further complications kept appearing. Thus in 1926 we find Guffey writing to Tumulty enclosing numerous photostats of pertinent documents relating to various aspects of his wartime service, for use in preparing the

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25 Tumulty to Ridgley, 1 June 1925, in the Guffey Papers.
26 Haskell and Sells audit, March 8, 1921; Mitchell & Simson audit, July 5, 1922, copies of which are in the Guffey Papers.
brief, with the undoubtedly weary observation: “Please advise me if there is any other information you want at this time.”

Part of the prolonged delay was the result of a legal complication, arising from the fact already mentioned that Guffey was named in two separate legal actions, the one in Boston involving twenty-two defendants, commonly called the Bosch case, or simply “the Boston Case,” and the one in the Southern District of New York, which named Joseph Guffey and Martin Kern. Efforts by friends were concentrated for the most part on the latter, but in the end the dismissal of the Bosch case, January 31, 1930, cleared the way for the final disposition of the second. Mr. Guffey provided much frank and valuable testimony in the Bosch case, and this apparently influenced the Justice Department in the final disposition of the other charges. On April 23, 1930, Lowell Mayberry, special assistant to the Attorney General in the Bosch case, wrote to the Attorney General, William D. Mitchell, in recognition of Guffey’s services:

I have been requested by Mr. William E. Leahy to write you setting forth the connection of Joseph F. Guffey with the Bosch Magneto case. I understand that this request is occasioned by some matter pending before you with respect to an indictment against Mr. Guffey in the Southern District of New York.

A detailed statement of the evidence affecting Mr. Guffey was contained in my report to you on the basis of which the Bosch case was dismissed. You will no doubt recall that in the case of Mr. Guffey we reached the conclusion that his conduct in the matter of the sale of the Bosch Magneto Company was wholly blameless. He was called as a witness by the Government, cross-examined at length by us and examined fully by counsel for other defendants.

I desire now to add that Mr. Guffey came to Boston:

25 Guffey to Tumulty, February 18, 1926, carbon copy with enclosures in the Guffey Papers.
29 Upon advice of counsel, Guffey, the Chase Securities Corporation, and two other defendants asked the court to quash the writ and process on them in the Bosch case. The motion was upheld, but Guffey appeared as a witness and testified fully and frankly. U. S. v. Palmer et al., April 7, 1927, No. 2889, in Federal Reporter, 2d series, XVIII, 997-1000.
before testifying and disclosed his knowledge of the case fully and frankly. I believe that he was equally frank in discussing the case with counsel for such of the defendants as asked him for information.

While I have practically no information concerning the case against Mr Guffey in New York, my contact with him led me to believe that he was an honest man. Personally, I would be glad if some disposition of the New York case satisfactory to the Government and to Mr Guffey could be effected.\textsuperscript{50}

Hiram G. Todd, another attorney in the Bosch case, also wrote to Mr. Mitchell in commendation of Mr. Guffey's cooperation with the federal government, with perhaps a little reservation about the personal use of the government deposits by Mr. Guffey:

In the course of my investigation of the seizure and sale of the stock of the Bosch Magneto Company, I had occasion to make a careful study of Guffey's connection with that transaction and while I believe he temporarily deposited in personal bank accounts some money which came into his hands as a representative of the Alien Property Custodian, I have been informed that after an accounting, he paid the Government the amount improperly withheld by him.

It has also come to my attention that Mr Guffey gave important testimony on behalf of the Government at the preliminary hearings in the suit of U S v Palmer, et al. As counsel for Messrs. Bosch, Haims and Klein, the owners of the stock of the Bosch Magneto Company, I was interested in the prosecution of the "Boston Suit" and from time to time offered suggestions to your special assistants, who were conducting that litigation; and it is my recollection that I had something to do with the preliminaries leading up to Mr Guffey's appearance as a witness in the Boston suit. At that time, I told Mr Guffey's counsel that if Mr Guffey would go on the witness stand and tell the whole story frankly and without reserve that I would recommend that consideration be given to him in connection with the above-mentioned indictment. I am mentioning this incident so you may understand why I am taking the liberty of addressing you at this time.\textsuperscript{51}

\textsuperscript{50} Lowell A. Mayberry to Hon. William D. Mitchell, 23rd April 1930, carbon copy in the Guffey Papers. William E. Leahy was a member of Tumulty's law office and therefore one of Guffey's attorneys.

\textsuperscript{51} Hiram C. Todd to the Attorney General, April 24, 1930, carbon copy in the Guffey Papers.
Encouraged by the apparent turn in the tide of fortune, Joseph Tumulty now moved promptly for a dismissal of the second indictment in a letter to Attorney General Mitchell, April 23, 1930. He reiterated that Judge Reed himself was ready to take an active part in the case if needed:

Judge Reed showed so deep a personal interest in this case that he asked me to confer with him at his office in Pittsburgh where, sitting in his library, he discussed its legal aspects and said that, by reason of his deep, personal friendship for Joe Guffey, he would personally come to Washington to present arguments for dismissal but was averse to doing so because, being a Republican himself, it might be said that he was attempting to use influence and not argument. The very points which Judge Reed set forth in his letter I think you will find adequately set forth in the brief, which I hope you will have a chance to peruse. Every reason advanced by Judge Reed is abundantly sustained by the facts in this record. This brief, which was prepared by my associate, Senator Stanley, copy of which I am enclosing, makes it manifest that there was no criminal intent and not even a technical violation of the law. You will note from the brief that Mr. Guffey returned to the Treasury Department every cent of the public funds coming into his hands as Director of Sales; that the whole contention was as to the disposition of interest accruing upon these funds while under his control; that this interest could not have been paid at an earlier date for the reason that the Government refused to accept it, there being no fund to which it could be allocated, and that it was not until the morning of March 8, 1921, that the Alien Property Custodian was able to ascertain the exact amount claimed by the Government. Upon being advised that this sum collected by him together with interest thereon was payable to the Government, he settled with the Government, receiving a receipt in full from the Alien Property Custodian. During the whole of this transaction, Mr. Guffey made no concealment of the exact amount of money in his hands, and the disposal thereof, and was at all times ready to make a complete, full, and final settlement.

The outcome of these efforts and events was the decision by

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the government to nolle pros the indictments, and on November 17, 1930, acting United States Attorney Robert E. Manly, for the attorney general, entered the necessary motion. Senator Guffey considered the statement accompanying this action to be his vindication, and he had numerous copies of it among his papers.\textsuperscript{33}

In describing the background of the case, Manly explained that no legal provision had been made for interest on the deposits of the proceeds of the sales, "as it would be an admission that this German money was entitled to interest, and because it was against the policy of the treasury to allow interest on the moneys received from the Alien Property Custodian." The government attorney was critical of the methods used by Guffey in handling the deposits:

In most instances Guffey did not create a separate trust for each property sold by him, but mingled the proceeds of separate sales in the bank deposits, and from time to time transferred funds from one bank to another, using in all thirty-two banks. The amounts credited as interest by the banks to the sums on deposit were not allocated by Guffey to the various trusts, but were carried by him as an aggregate whole.

But he admitted that Guffey had properly reported the interest which no government official would take:

\[\text{[Alien Property Custodian] Garvan testified the treasury would not accept the interest moneys from the Alien Property Custodian, that he and his predecessor went before the Appropriations Committee of the House, and asked them what to do with the accumulating interest, and were told by Mr. Goode, the Chairman, that some day some use would be found for it. Garvan also testified that Guffey made reports to the Alien Property Custodian from time to time of the amount of the accumulating interest, and that the Alien Property Custodian reported it to Congress and set it forth in his annual report each year.}\]
Finally, the attorney noted that as Director of Sales, Guffey had paid all sums due on demand. "After this audit Garvan made a demand on Guffey for the payment of the $406,001.36. Guffey then paid this full amount to Garvan as Alien Property Custodian." It would therefore, Manly concluded, be difficult to establish improper conversion of government funds or the criminal intent required by the indictment.

Failure to return on demand is evidence of a conversion, but here there was a return on demand. The conversion of property to one's own use must be shown to be with the intent to deprive the owner thereof. It must be shown that the conversion was wrongful and to establish that fact criminal intent becomes essential.

I think a jury might well find on the facts here that there is a doubt as to Guffey's criminal intent. No one would take this interest money. The treasury would not take it, Garvan would not take it....

And with that the acting United States District Attorney decided to nolle pros the case:

Since, therefore, the case is weak on the necessary element of criminal intent, and since, apparently, he is a man of established character, and since he accounted in full to the government for all moneys received by him, and considering the nature of the interest fund held by him, I do not believe a jury would convict, and I do not think the case should be submitted to a jury.

Had this case been tried soon after the indictment was returned, I doubt a jury would have found that all the elements of the offense charged had been proved beyond a reasonable doubt. Certainly after eight years a conviction is not at all probable.

Thus ended the legal phase of the controversy over Guffey's conduct as Director of Sales for the Alien Property Custodian. The political reverberations continued to be heard for many years. For the moment, however, Joseph Guffey's ordeal was over.