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ATTORNEY GENERAL HARRY M. DAUGHERTY AND THE UNITED GAS IMPROVEMENT COMPANY CASE, 1914-1924

The ITT affair of 1972 provided a poignant recent example of how political considerations can subvert federal antitrust activity. Who can forget the confidential memorandum of ITT lobbyist Dita Beard, implying that the ITT antitrust case had been fixed as a result of an ITT pledge of $400,000 for the upcoming Republican national convention? While Nixon administration officials denied such charges, neither President Nixon, Attorney General John Mitchell, nor their subordinates escaped severe criticism. Because the administration was politically vulnerable elsewhere, the ITT affair became a major liability, leading eventually to the perjury conviction of Mitchell’s successor, Attorney General Richard Kleindienst.

The United Gas Improvement Company (UGI) case of the 1920s was perhaps the Harding era’s ITT. The administration official most involved was Harry M. Daugherty. Daugherty had become Warren G. Harding’s Attorney General in 1921 after playing a major role in Harding’s election victory of 1920. Like John Mitchell, who managed Nixon's 1968 race, Daugherty had dealt extensively with corporate contributors in the 1920 campaign, thereby exposing himself to possible conflicts of interest as Attorney General. Unlike Mitchell, who had no direct previous political involvement as a New York municipal bond attorney, Daugherty had a stormy past in Ohio politics and a reputation for being a lobbyist who served clients tenaciously with little regard for the public interest. Although both were associated with controversial and corrupt administrations, Attorney General Mitchell managed to escape the forced resignation...
demanded of Daugherty in March 1924 and was spared the sort of criticism Daugherty had to face in his first two years of office. By early 1922, critics were in fact accusing Daugherty of failing to investigate war fraud cases, of being influenced by lobbyists, of refusing to enforce antitrust laws, and, in September 1922, of imposing against railroad strikers an injunction sweeping enough to deny them their civil rights. The latter charge, historians have contended, led to Minnesota Congressman Oscar Keller’s impeachment resolution against Daugherty that September.

While the injunction played a key role, Keller had questioned Daugherty’s actions months earlier. It was the Justice Department’s antitrust policy, particularly Daugherty’s quelling of the UGI indictment and suit, that first aroused Keller’s suspicions. Even though others reacted similarly, historians have ignored the UGI matter. Nonetheless, the UGI episode also furnishes a much needed case study of antitrust activity in the Harding Era, providing insights into Daugherty’s and the Department of Justice’s conduct in that area. It helps to explain why, despite the department’s relatively vigorous antitrust record, critics charged that favoritism too often spared certain corporations.

In 1882, the United Gas Improvement Company was incorporated in Pennsylvania as a manufacturer of gas-producing equipment and quickly extended its interests to gas, electric, and street lighting operations, and street car companies. By 1890, it acquired control of competitors in such key areas as the incandescent gas street lighting business. The UGI trust permitted the controlled companies to retain the same management, but only the semblance of autonomy remained. By 1907, the UGI consolidated with its main competitors to create two holding companies (United Lighting and Heating

1. In January 1975, almost three years after his voluntary resignation, Mitchell was convicted and sentenced to prison for Watergate-related charges that included conspiracy, obstruction of justice and lying under oath. For accounts of Daugherty’s past, see the author’s “The Political Career of Harry M. Daugherty, 1889-1919,” Ohio History, 79 (Summer-Autumn 1970):152-177 and “Lawyer as Lobbyist: Harry M. Daugherty and the Charles W. Morse Case, 1911-1922,” Ohio History, 82 (Summer-Autumn 1973):192-204.


3. In thirty-six months as Attorney General, Daugherty commenced fifty-two antitrust actions to forty-four for his successors, Harlan F. Stone and John G. Sargent, over a comparable period. See The Federal Antitrust Laws: With Summary of Cases Instituted by the United States (New York, 1949), pp. 121-145. The Taft administration had set the pace with eighty-one in four years.
Oscar E. Keller (Courtesy Minnesota Historical Society).
Company and the Consolidated Lighting Company) which gave the UGI-led consolidation a virtual monopoly in the street lighting business.⁴

According to a Justice Department memorandum of the Wilson administration, the UGI organization had secretly absorbed its remaining competition and had engaged in collusive bidding which enabled it to secure exorbitant prices.⁵ It continually and successfully sought to restrain and monopolize trade in violation of the Sherman Antitrust Act of 1890. Presidents Roosevelt and Taft had already effectively invoked that law against the comparable activities of the American Tobacco Company, Standard Oil, Du Pont, and other corporations. Inevitably, in 1914, the government probed into the activities of the UGI after complaints were brought against the company. The complainants included M. L. Cook, in charge of street lighting for Philadelphia, and Ragland Momand, an inventor and organizer of small street lighting operations, including the Pressure Lighting Company of New York. The bald-headed and sardonic Momand was by far the most persistent opponent of the UGI. As late as the mid-1920s, he lamented about the monopolistic practices of the UGI which, he claimed, prevented him from contracting his pressure street lamp, a self-lighting device which threatened to replace the manually-operated lamps of UGI subsidiaries. Momand, of course, played down the mechanical deficiencies of his lamps which worked effectively only when gas main pressure was constant.

More than anyone else, Momand triggered the initial investigation of the UGI in 1914. Assistant to the Attorney General G. Carroll Todd of the Wilson administration assigned Special Agent R. Colton Lewis and Special Assistant Attorney General J. W. Cox to the probe. The investigation lasted for a year and a half, but legal action against the UGI was then postponed. The probable reason was the European war which contributed to the curtailment of all antitrust activity.⁶

⁴ For background on the UGI, see Petition, United States of America v. United Gas Improvement Company, etc., Department of Justice File 60-156-6 (UGI case), National Archives and Records Service, Washington D.C. Hereafter cited as DJF 60-156-6.
⁵ R. Colton Lewis Memorandum, 3 February 1921, DJF 60-156-6. All subsequent correspondence and reports, unless otherwise indicated, come from DJF 60-156-6.
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In March 1916, UGI appeared to have divested itself of the street lighting enterprise by "selling" its interests to E. S. Newbold, a former UGI employee, who organized the Cities Illuminating Company. This firm eventually dominated more than ninety percent of the street lighting business. Under this new arrangement, UGI could control that company's stock as collateral security. Additionally, former UGI managers were put in charge of some of Cities Illuminating Company's operating companies. UGI required no immediate cash payment for the divestiture and continued to manufacture gas lamps and mantles. The agreement also denied to independent interests the right to purchase any of the property. Small wonder that these actions led many, like Special Agent Lewis, to conclude that the UGI sought to avert antitrust activity while retaining control of the gas lighting operation.7

In early 1920, Lewis was reassigned to the UGI case amid complaints from Momand that the Justice Department had failed to perform its duty and that Attorney General A. Mitchell Palmer was sympathetic to the gas interests.8 With the concurrence of Judge Frank Nebeker, the new assistant to the attorney general, Lewis prepared to sue UGI for violations of the Sherman Antitrust Act. The contention was that the street lighting business itself was not interstate commerce, but the manufacture, transportation, and installation of gas lamps and mantles were. In those as well as other areas, UGI restrained and monopolized trade.

Before the department initiated the suit, it agreed to a conference with the officers of UGI. Samuel T. Bodine, president of UGI, put off attending such a meeting, undoubtedly hoping that the Wilson administration would not begin a suit in its final days. Bodine's tactics evidently worked, for on 17 February Palmer wrote Nebeker that "it would be unfair to my successor for me to initiate the suit," preferring that the incoming Attorney General decide "whether the suit should be brought."9

7. Lewis to Harry F. West, 8 May 1922, Memorandum; J. A. Fowler to Harry M. Daugherty, 12 April 1922. The UGI position was that there was an immediate cash payment of $71,009 from Newbold. See Exhibit A-5 in Report of Harry F. West to Harry M. Daugherty, 20 October 1922. But see also Daugherty Investigation, pp. 2722–2733
8. Ragland Momand to A. Mitchell Palmer, 18 August 1920; Momand to Woodrow Wilson, 30 November 1920.
Such was the situation as Daugherty began his tenure. The UGI case was one of several that awaited action. War-fraud matters demanded investigation, the overtaxed federal court system was in need of reform, and the Justice Department required reorganization. Such problems would have challenged the best equipped Attorney General.

Momand was less than sympathetic. In May he visited the new assistant to the attorney general, Guy D. Goff, and wrote Daugherty on 11 June, urging prompt action against an "illegal combination [which] has been protected in their [sic] criminal practices by the Department." It was not until 13 July that Goff replied that "many other important matters" have prevented a departmental decision. But Goff did not say that Bodine and P. H. Gadsden, vice president of UGI, had already discussed the lighting matter with him. Bodine was armed with an introductory letter from his friend, Republican Senator Boies Penrose of Pennsylvania, who for years had been a significant force in the party.

Not hearing from the Justice Department, Momand came to Washington in October. He saw Representative Oscar Keller of Minnesota whom he had met in St. Paul where the latter had been director of public utilities. Keller, a single taxer and an independent Republican, made an appointment for them to see Daugherty the next morning. Primarily because of Keller's concerns, both Daugherty and Goff agreed to give the case top priority, and to rehire Lewis, who had been discharged because of his Democratic party affiliations, as special agent to take charge of the reinvestigation.

In the next couple of months Lewis apparently had full authority to prepare the case for the grand jury. By December he was ready. Bodine, sensing the renewed activity, arranged for a meeting with Goff, probably to seek a favorable settlement. But Goff and Daugherty also received several letters from Momand and Keller, urging prosecution. Momand reminded Daugherty that Attorney General Thomas W. Gregory had allegedly succumbed to UGI officials after deciding to initiate legal proceedings against that company in 1915. In early January, Momand even persuaded

10. Daugherty Investigation, pp. 2689–2690; Momand to Daugherty, 11 June 1921.
12. Guy D. Goff to Bodine, 16 December 1921; Momand to Daugherty, 19 December 1921.
Daugherty and Goff to begin the grand jury investigation in the Southern District of New York rather than in Baltimore, the department's original choice. Momand contended that "most of the crimes of the United Gas Improvement Company were committed" there and that court records and witnesses were also more accessible in New York. This change of venue would later become a contentious issue within the Justice Department.

On 7 February, Lewis began the presentation of evidence against UGI and two of its associates, the Cities Illuminating Company and the United Lighting and Heating Company, in the Southern District of New York courtroom. The charge was conspiracy to restrain trade and to monopolize in interstate trade the manufacture, sale, and transportation of incandescent gas mantles, lamps, burners and appliances. Momand was among the many witnesses Lewis presented and he dominated the proceedings. The grand jury was impressed enough to issue a criminal indictment prior to Lewis producing all of the evidence. Besides the three corporations, the 6 March indictment included eight individuals, among them Bodine and Newbold, president of the Cities Illuminating Company. Daugherty was reluctant to indict such high officials, but he customarily permitted subordinates to employ their best judgment in such matters. On 20 April, Lewis filed a bill in equity in the Southern District Court to dissolve the UGI empire. Whatever criticism existed about Justice's dilatory antitrust activity now dissipated.

But not for long. In fact the very day that Lewis initiated the dissolution suit, he received a call from Daugherty's secretary to hold off further action. Shortly afterward, Goff asked Lewis to turn over the files to Harry F. West, a Columbus attorney and friend of Daugherty, whom Daugherty appointed special assistant to reinvestigate the case.

What precipitated this move is not clear. In late February, in the course of the grand jury investigation, Bodine of UGI had visited Daugherty in an attempt to squash the indictment effort. Bodine's promise to reduce UGI's hold on the Cities Illuminating Company

13. Momand to Daugherty, 3 January 1922.
14. Lewis to West, 26 June 1922, Memorandum.
15. Daugherty Investigation, p. 2751.
16. Ibid., p. 2753. West never served the government again after 1922. He remained a rather obscure Columbus attorney, conducting a general practice until his death in 1964.
as a result of the March 1916 agreement seemed not to have affected Daugherty, for he permitted the indictment to occur. Then, on 18 March, Momand complained to Daugherty that because the recent indictment was too broad, a trial jury might render a negative verdict. Specifically, the indictment was directed against the incandescent lamp business, including the lighting of stores and houses as well as the incandescent gas street lighting operation of which Momand complained. Momand contended that while the latter was monopolistic, there was no evidence of monopoly in house lighting. At Momand’s suggestion, Congressman Keller wrote Daugherty, expressing similar concerns. To both letters, in behalf of Daugherty, Goff replied that Lewis had assured the Department that the indictment was “good in every particular.” Although Momand could have raised doubts in Daugherty’s mind, there is no evidence that Daugherty contemplated halting judicial proceedings as a consequence of Momand’s concerns.

Another consideration explains Daugherty’s eventual action. As West apparently told Lewis, “Put yourself in the Attorney General’s position. He has indicted these people, and he finds now that they were friends, and contributed to the [1920] campaign which he had charge of, and so on.” As a life-long politician, Daugherty could not help but be influenced by such things. To insure that he was, the defendants hired attorneys who were close or friendly to Daugherty, including New Yorker Francis S. Hutchins. A former Ohioan and long-time Daugherty friend, Hutchins later represented the family when Daugherty’s son was committed in 1923 for alcoholism.

Hutchins discussed the case with Daugherty in mid-April for on the 24th, in a letter beginning “My Dear Harry,” he suggested that the Attorney General issue a statement that Daugherty had allegedly proposed at their meeting:

In the matter of the so-called ‘Gas Mantle Indictment,’ new facts have been brought to my attention which would seem

17. Bodine to Daugherty, 17 February 1922; Warren F. Martin to Bodine, 27 February 1922.
18. Momand to Daugherty, 18 March 1922.
19. Oscar Keller to Daugherty, 29 March 1922; Goff to Keller, 4 April 1922.
21. New York Times, 27 April 1923; Daugherty to Fowler, 1 April 1922; Daugherty Investigation, p. 2755. Henry A. Wise was another attorney friendly to Daugherty whom the defendants hired.
to indicate the possibility that certain defendants have been improperly included. I have, therefore, directed that a further searching investigation of all the facts be made by the Department, and, pending such investigation, I have ordered that all proceedings, both in the criminal and civil actions, be suspended.

Such a statement, Hutchins wrote, would be "extremely desirable" because it would "further the ends of justice." On that same day, Hutchins wrote Daugherty another letter asking whom the Attorney General selected to reinvestigate the case. "I can furnish your investigator with a lot of contemporaneous written evidence, . . . and we will give him the fullest opportunity to examine us, our officers, our books and records," Hutchins assured.

On 4 May, Daugherty announced the postponement of the civil and criminal actions pending further investigation. He also introduced West as the new investigator who would "go into both civil and criminal phases of the case thoroughly and investigate everybody connected with it," probably even "the investigators." He gave no reason for his reassessment except to say that he had not given "specific instructions to file the bill [of dissolution]. I do not know whether or not the Government is on the right track." The very next day Hutchins wrote Daugherty: "I want my first letter this morning to be one of very real sincere appreciation for your prompt and energetic action. You have placed me under a very real debt." Indeed! More than anyone Hutchins had influenced Daugherty to curtail further legal action.

For this Momand was considerably less appreciative. Even though he had expressed apprehension about the indictment, he did not want it suspended. He and Keller both tried to see Daugherty. Instead, only Goff was available, and he could give no information. Finally Daugherty's secretary said that the Attorney General wished them to meet with West which they did for three hours.

West told them that a key issue in the case was whether the UGI's 1916 transfer to Newbold of the street lighting operation was indeed a *bona fide* sale. If so, his feeling was that the UGI and its officials

22. Francis S. Hutchins to Daugherty, 24 April 1922, (two separate letters).
24. Hutchins to Daugherty, 5 May 1922.
should be barred from criminal prosecution by the three-year statute of limitations. Believing that the Justice Department long had ample evidence to move against the defendants, Momand told West he was not interested in cooperating with another investigation. Afterwards, Momand could restrain himself no longer. He accused Daugherty of perpetrating "a pre-arranged plan to delay and discourage the criminal prosecution of the United Gas Improvement Company and its officials, and to finally effect their rescue." Momand rightly contended that Daugherty originally had approved of the department's criminal and civil actions against the UGI.26

West promptly ordered a Bureau of Investigation inquiry of Momand. Agents interviewed people who knew Momand as a young man in Dallas and Chicago as well as those who later had lighting business dealings with him. Agents also monitored his mail and his activities. In perhaps one of the sloppiest and most disorganized summary reports ever, agents disclosed that Momand allegedly was a "crook," "ill-balanced," a "paranoiac," "syphilitic," a "dope fiend," "crazy," and a "vituperative scoundrel." Apparently, every negative comment against Momand was reported, if not believed. The investigation also revealed that Momand had a reputation for not paying his bills and of making unfounded charges against opposing interests. Momand also had been a frequent organizer of lighting companies that failed or were sold. Part of the problem seemed to be the domination of UGI. But Momand had also undercapitalized, had antagonized associates with his headstrong manner, and had failed to perfect his pressure light. One thing was certain: Momand placed full blame for his misfortune upon UGI. It was almost an obsession with him.27 Intended or not, West uncovered enough negative information to challenge Momand's credibility in the event the Department decided to drop proceedings against UGI.

West also interviewed each member of the Justice Department who had worked on the case since 1914. Transcripts of his conversations with G. Carroll Todd, Frank Nebeker, J. W. Cox, and James A. Fowler indicated that there had been little difference of opinion over what action, if any, should be taken against UGI. The Wilson administration men, Todd, Cox, and Nebeker, all had

26. Momand to Daugherty, 8 May 1922; see also Daugherty to Fowler, 1 April 1922 and Lewis to West, 26 June 1922, Memorandum.
apparently favored undertaking antitrust action, but according to West's memoranda, they did not contemplate criminal proceedings. All three expressed the opinion that contracting for street lighting was not in itself interstate commerce even though several states were involved. As Lewis himself had believed, it would be necessary to show also that UGI monopolized the manufacturing, assembling, and transportation of mantles and lamps to bring the action within interstate commerce. Such a narrow interpretation of interstate commerce was probably a reaction to the conservative posture of the Supreme Court since 1918. Finally, Special Assistant Attorney General Fowler, who had served in the Department since the Taft administration, stated to West that he had relied on Lewis for the facts and evidence when he approved of the recent indictment and bill of dissolution. Nevertheless, neither he, Goff, Daugherty, nor anyone else in Daugherty's administration expressed any opposition or doubts to such action until early 1922.

After interviewing the defendants and their attorneys, West also extensively questioned Lewis, the architect of the government's case against UGI. In effect, West directed Lewis to try the case before him. He continually pressed Lewis for evidence on every charge that the government had made against the defendants. In conferences and in three long memoranda, Lewis responded in detail, outlining the instances of monopoly and restraint of trade perpetuated by the co-conspirators through 1921. Whenever differences existed between Lewis' testimony and that of former departmental officials or officers of the indicted companies, West pressed Lewis even harder, causing the latter to believe that West sought to belittle the case. Under such cross-examination, Lewis strongly defended his position that the case involved interstate commerce, that the Southern District of New York was a viable jurisdiction since most of the defendants conducted business there, and that UGI's domination of the street lighting business continued after the Newbold transaction of 19 March 1916.

30. See Lewis to West, 8 May, 3 and 26 June 1922.
But Lewis did make significant admissions. He conceded that the government's case against George M. Landers, an indicted alleged collaborator of UGI, probably could not be sustained. More significantly, he admitted that Momand was sometimes "biased, erratic, and unreliable" in his testimony, even though Lewis quickly added that most of Momand's statements were corroborated by documents and other witnesses. He made it clear that the government's action did not rest on Momand alone. And finally, Lewis, who had favored Baltimore as the jurisdictional area, reluctantly acknowledged "that it may be well to consider the advisability of dismissing the indictment at New York and, if desired, presenting the case in a different jurisdiction." Lewis' reasons included "the known attitude of judges there toward the anti-trust act," the "tolerant sentiment of the people towards large combinations," and "the outcome of the recent cement case at New York."33

Lewis' last memorandum to West was dated 26 June. By then West had questioned the major participants. West subsequently wrote the final report which was submitted to Daugherty on 20 October. It contained seventy-three pages of review, analysis, and conclusions plus lengthy abstracts of conversations with various participants as well as the Bureau of Investigation report on Momand. Much of West's report was critical of the government's case. The main points included: (1) that UGI had divested itself of the street lighting business in 1916, putting the government's main charges beyond the three-year statute of limitations; (2) the unreliability of Momand; (3) the weakness of the New York jurisdiction where no crime was committed; (4) doubts that monopoly existed in the manufacturing and selling of gas lamps, mantles, burners, and appliances; and (5) the belief that interstate commerce was not involved. West considered the government's case to be not only weak, but also unnecessary, since gas street lighting was a dying business being superseded by electricity. Besides, West contended, UGI was willing to make accommodations to the government regarding the conditions of the 1916 agreement to insure that the Cities Illuminating Company would never surrender control to UGI.

West's recommendation was inevitable: "The Government has no chance to convict any of the defendants in any jurisdiction on

32. Lewis to West, 8 May and 26 June 1922.
33. Lewis to West, 26 June 1922.
account of the staleness of the wrongful acts charged.” He was almost as negative on the civil suit. He concluded that “while we might ask for something which would injure defendants, there is nothing we could ask that would benefit others or the public at large.” Allegedly based on West’s recommendations, Daugherty had the indictment nol-prossed on 1 December 1922, and the civil suit dismissed on 24 March 1923.

West himself drafted the letter which Daugherty sent to Colonel William Hayward, U.S. District Attorney of the Southern District of New York, requesting the dismissal of the indictment. The intent was to make the letter public to justify the department’s action. In its original form, the letter stressed the unreliability and bad character of the complainant, Momand, who deceived the department into thinking it had grounds for action. It frankly admitted that the department had to be careful about listening to statements of complainants. The Attorney General “can only express . . . regret that [his] knowledge was not more complete before the indictments were returned,” it continued. When Daugherty read the draft, he scrawled, “apologize for nothing.” He had West rewrite the letter without any admission of bad judgment and with only a brief explanation that the West investigation revealed that there was insufficient evidence of criminal acts to justify a trial.

Was West’s report a whitewash? Such questions are not easily answered. West did conduct a comprehensive and competent investigation. His recommendations were not necessarily preposterous because the case had some weaknesses, as Lewis himself admitted. And West did indirectly reveal the ineptitude of the department in the handling of the case. Nevertheless, West’s conservative interpretation of interstate commerce was much more excessive than that of even the cautious G. Carroll Todd or Cox. His position seems unjustified even when compared to recent conservative Supreme Court decisions such as United Mine Workers of America et al. v. Coronado Coal Company et al. (1922). Indeed, as in Stafford v. Wallace (1922), the court did occasionally take a broader view of the commerce power. Moreover, West unfairly slanted his report against the government’s actions which he too exclusively associated with Lewis. Perhaps this was because West appeared to have entered the

34. West to Daugherty, 20 October 1922.
35. West to Daugherty, 20 November 1922; Daugherty to William Hayward, November 1922 (draft); Daugherty to Hayward, 24 November 1922.
investigation with some preconceived views of the UGI, raising questions regarding his impartiality.

Also it can not be forgotten that the government had secured an indictment. Even if that indictment was weak, a trial court should have been permitted to determine that point. The same principle should have applied to the civil action. But the administration’s position was that the “Government could not afford to go to trial with a case so full of weaknesses . . . on account of the effect a defeat would have on other cases now before the Department.” The government’s decision to postpone action and then to withdraw nevertheless produced an eventual negative effect.

Momand and Keller initiated the reaction as they barraged Daugherty with critical letters. They already had made personal appeals to President Harding to prevent the rescuing of “big criminals” by the Attorney General. Harding did not bother to reply. By early June, Keller believed that the only solution was to instigate impeachment proceedings against Daugherty. Without the UGI case, Keller would not have introduced such a resolution. And even though that effort would fail miserably, it still raised more questions about Daugherty’s competence, eventually leading to his downfall.

By early June, Daugherty was already under fire in the Congress for failure to prosecute war-fraud and whiskey-fraud cases, for permitting the Bureau of Investigation to spy on members of Congress, and for his earlier involvement in the notorious Morse case which resurfaced in late May 1922. Daugherty understandably expected criticism of the UGI decision as well, particularly since Momand was writing congressmen and contacting anti-administration newspapers. So, on 29 June, Daugherty sent out letters to leading Republican congressmen, justifying his reinvestigation of the case on the basis that he had only recently learned of Momand’s

36. Fowler expressed that conclusion to West. Exhibit A-14 in West Report, 20 October 1922.
37. Momand to Warren G. Harding, 22 May, 9 June 1922.
38. Daugherty Investigation, p. 2703.
39. In 1912 President Taft had commuted the sentence of Charles W. Morse largely because of the lobbying activities of Daugherty. The latter had argued to Taft that Morse had scarcely two weeks to live because of Bright’s disease. However, Morse suddenly recovered upon his release and again engaged in illicit activities that led to a Justice Department investigation in 1922. See Giglio, “Lawyer as Lobbyist,” pp. 192-204. See also U.S. Congressional Record, 67th Cong., 2nd Sess., pp. 6364-6365.
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reputation and of the 1916 divestiture of the UGI's street lighting business. Relying heavily on West, who probably drafted the letter, Daugherty criticized other aspects of the case which were later contained in West's October report.\textsuperscript{40} Congress adjourned for six weeks without further action.

That summer, however, Daugherty found himself in the midst of a major strike controversy which brought him even further rebuke. A national railroad strike had begun on 1 July when 400,000 members of the AFL shopmen's union walked out because of a substantial wage cut. The strike continued into August accompanied by significant violence. On 1 September, Daugherty secured from a federal court an injunction so comprehensive that it enjoined even peaceful picketing, newspaper interviews, meetings, addresses, and other forms of communications on the part of the strikers. To many labor union leaders and liberals especially, Daugherty was a strong-armed reactionary who violated civil liberties and sought the destruction of effective unionism.

Consequently, AFL President Samuel Gompers and several prominent pro-labor lawyers, including Samuel Untermyer, supported Keller when he introduced his impeachment resolution in Congress on 10 September. Untermyer, whom Keller and Momand invited as counsel, also opposed Daugherty for his refusal to act on war-fraud cases and antitrust violations in the building trades which the Lockwood Committee of the New York legislature exposed.\textsuperscript{41}

Keller's resolution was general, accusing Daugherty of abridging freedom of speech and of the press, of failing to prosecute individuals and organizations, and of failing to prosecute defendants legally indicted for crimes against the people. The latter charge was obviously connected to the UGI. Daugherty himself referred to that company when he said Keller had "a grievance based on the fact that he could not control the Department of Justice in a case he was personally interested in."\textsuperscript{42}

Representative Franklin Mondell of Wyoming, the Republican floor leader, quickly directed Keller's resolution to the twenty-one-member House Committee on the Judiciary which was dominated by Republicans, many friendly to Daugherty, including its chairman, A. J. Volstead of Minnesota; Richard Yates of Illinois, a

\textsuperscript{40} See, for example, Daugherty to Albert Cummins, 22, 29 June 1922.

\textsuperscript{41} New York Times, 18 September 1922; Daugherty Investigation, 2704–2705.

\textsuperscript{42} New York Times, 12, 13 September 1922.
former classmate of Daugherty's at the University of Michigan Law School; Israel M. Foster of Ohio; and George S. Graham of Pennsylvania, for many years an attorney for several directors of UGI. That spring Graham had told West that he “still was interested in them in a professional way” and believed an injustice had been done to some of them. No House committee could have been more satisfactory to Daugherty. The ineptness of the inexperienced Keller only made it easier.

In the first days of the Judiciary Committee investigation, Keller indicated that he would not present evidence to sustain his charges until formal hearings began. He claimed it difficult to bring in witnesses like Momand on such short notice. The Judiciary Committee's pressure for speedy action subsided when Daugherty asked for a postponement of the hearing because of his own unavailability.

Hearings did not resume until December 1, one month and a half after the injunction had squelched the railroad strike. At that time Keller submitted specifications to substantiate his September resolution. Among his fourteen charges, he stated that Daugherty had appointed the unscrupulous William J. Burns as Director of the Bureau of Investigation, neglected to enforce the railway appliance law, imposed an unlawful injunction, accorded special favors to individuals and corporations affiliated with J. P. Morgan, refused to prosecute war fraud cases, and failed to enforce the antitrust and Federal Trade Commission acts. In referring to the latter charge, Keller mentioned UGI by name.

Keller asked for an additional month to perfect his charges and for access to the Justice Department files to obtain supporting documentation. He needed time, for his only familiarity with Department wrongdoing was in its mishandling of the UGI case. By accepting specifications from labor and other critics of the Daugherty administration, he put himself in a vulnerable position, especially since Untermyer was unable to assist because of legal commitments in New York.

No wonder pro-administration Republicans on the Judiciary Committee had little trouble exposing Keller. As it turned out, Keller offered testimony on only two charges. The evidence he

43. Exhibit A-8 in West Report, 20 October 1922.
44. New York Times, 19 September 1922.
45. Ibid., 2 December 1922.
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offered on the alleged failure of the Attorney General to enforce the railway safety appliance law was so flimsy that his own attorney admitted that it did not sustain the charges. His material on Burns was not incriminating enough and certainly not grounds for impeachment. He was so unsuccessful in presenting these two specifications that he refused to proceed. After the committee declined to permit him to read a statement condemning the committee's procedure, Keller on 14 December stalked from the hearings in "a violent rage," as Volstead screamed: "That is exactly what we expected from you at the start." Afterward, Keller labelled the hearing "a comic opera proceeding" and "a barefaced attempt to whitewash Harry M. Daugherty."

But the Judiciary Committee was not through with Keller. It issued a subpoena requiring him to testify on the other charges. Daugherty's counsel strongly supported the legal order. The Department of Justice staff had already helped Daugherty publish a detailed reply in pamphlet form which was distributed among congressmen and government leaders. The likelihood was that the increasingly nervous Keller would either fail to sustain his other charges or fail to respond to the subpoena. In either case, Daugherty would be vindicated.

Keller elected to disobey the order. He was already under a doctor's care, on the verge of a nervous breakdown. The Committee on the Judiciary then ended the hearing by disapproving all fourteen specifications. The committee had made very little effort to secure testimony from other sources. It completely neglected Momand, who had telegraphed Volstead that he wished to testify on the UGI matter. Instead, the committee elected to hear A. T. Seymour, the new Assistant to the Attorney General. Seymour, formerly a Columbus attorney and an acquaintance of Harry West, stated that the West report and Momand's personal character influenced his recommendations in the UGI case. On 10 January,

49. A copy of A. T. Seymour's testimony can be found in DJF 60-156-6. See also Daugherty Investigation, pp. 2705-2708.
by a 12 to 2 vote, the Judiciary Committee recommended dismissal of the impeachment charges. The House of Representatives approved the report by a 204 to 77 vote. The division was mostly along party lines, but twelve Republicans, many of them progressives, voted against Daugherty.

Both the press and the Congress were generally sympathetic to Daugherty. They looked upon Keller as a pawn of organized labor, the progressives, and other disgruntled elements who wished to weaken the Harding administration. The *New York Times*, no friend of Daugherty's, called it "political impeachment" and rightly suggested that "a man may be unfit to be Attorney General and still be far from having committed any impeachable offense." 50

Nevertheless, whatever respite Daugherty had was relatively brief, for he still had considerable opposition in both parties. Not all of it was politically inspired. There were genuine reasons for doubting Daugherty's competence as Attorney General. His opponents argued that the House Committee on the Judiciary should have investigated the other twelve specifications because too many questions remained about Daugherty's weak performance in the antitrust and war-graft areas. Democratic Congressman Robert Thomas of Kentucky, a Judiciary Committee member who submitted a minority report, wondered aloud why Daugherty dismissed the indictment in the UGI case. The Judiciary Committee, he argued, accepted Daugherty's "lame excuse" without going into the merits of the case. 51 There was also dissatisfaction in the manner in which some cases failed in court because of poorly-prepared briefs.

Daugherty chose to ignore the criticism. In part because of deteriorating health, he also became more inaccessible to reporters and to members of Congress. As a result, denouncements against him intensified especially after the convening of the Senate investigation of Teapot Dome in October 1923, two months after Harding's death. That inquiry would implicate former Secretary of the Interior Albert Fall who leased government oil reserves to private enterprise for a $400,000 personal consideration. 52

52. Burl Noggle's *Teapot Dome: Oil and Politics in the 1920's* (New York, 1965) is the best work on the Teapot Dome scandal.
As the Teapot Dome investigation progressed into 1924, attention shifted to Daugherty. After all, Fall must have sought the Attorney General's judgment prior to leasing the reserves. Even though no written opinion existed to implicate Daugherty, he was hardly in a favorable position to prosecute the alleged offenders. President Calvin Coolidge, in fact, employed special counsel to handle the oil lease litigation. The President's actions generated more criticism of Daugherty, as would the approaching national election campaign of 1924, because Daugherty politically was now the most vulnerable administration member.

On 19 February, Democratic Senator Burton K. Wheeler of Montana introduced a resolution asking for an investigation of Daugherty. Repulsed by Daugherty's politics and Attorney Generalship, Wheeler demanded the inquiry on the grounds that Daugherty had failed to prosecute Fall and the oil company conspirators. He also revived charges that Keller had made in December 1922. Wheeler's somewhat injudicious accusations led to a select Senate committee's investigation of the Attorney General which convened on 13 March. The committee included Wheeler, who dominated the proceedings, Democrat Henry Ashurst of Arizona, and three Republicans: Chairman Smith W. Brookhart of Iowa, a progressive critical of Daugherty; Wesley L. Jones of Washington; and George H. Moses of New Hampshire.

The lengthy and free-wheeling investigation lasted until June 1924. Despite its occasional intemperance, it managed to disclose enough about Daugherty to allow Coolidge to ask for his resignation in March. The more than 3,000 pages of testimony not only revealed that a criminal organization existed in the household of the Attorney General but that the Department of Justice had been ineffective under Daugherty. In war fraud, antitrust, and other cases, unexplained delays, favoritism, and ineptness too often characterized the department's performance. Among the antitrust cases scrutinized was the UGI which occupied nearly 100 pages of testimony. Wheeler's witnesses included Lewis who had resigned from the department in early 1922. Lewis was now in the committee's employ to search the departmental files for additional material on UGI. Momand also had ample opportunity to testify fully against the department's UGI decisions. Wheeler himself concluded: "Here is a case where there were at least powerful defend-

53. Daugherty Investigation, p. 2764.
ants who were prima facie violating the law, and in a case of this importance to the country, in my judgment, it should not have been dismissed without submitting it to the trial courts."

But there was no evidence to indicate that Daugherty had been guilty of any criminal act in the UGI matter. So, despite what weaknesses that case revealed about Daugherty and the department, another departmental wrongdoing became much more significant as a result of the Wheeler investigation. In fact, on 7 May 1926, a New York grand jury indicted Daugherty and two other conspirators for their actions in the American Metal Company case. Daugherty narrowly escaped conviction for conspiracy to defraud the government because of the favorable vote of one juror. From that psychological blow he never recovered.

Meanwhile, Momand continually besieged the new Attorney General, Harlan F. Stone, with requests to revive the prosecution of the United Gas Improvement Company. On one occasion Stone even granted an interview, but he decided not to undertake legal action. That Fowler remained in the department to argue against it no doubt influenced him. On 21 October, in a final report to Stone, Fowler reiterated West's 1922 conclusions in recommending that the case be closed. Nevertheless, Fowler's reasoning was hardly convincing. On the one hand he argued that Daugherty had been "warranted in instituting those suits," but on the other hand he justified their dismissal by pointing out that Momand had "expressly declared that the indictment did not allege the facts."

Momand's increasingly intemperate remarks also affected Stone, especially after Momand accused him of a conflict of interest, causing Stone to write that he would no longer grant Momand an interview. So ended the United Gas Improvement Company case.

Today UGI representatives profess surprise that there ever was such an investigation. Names like Lewis, Momand, and Bodine have been long forgotten. But not Harry Daugherty's. Historians still write critically about him as Attorney General. The now obscure

54. Ibid., p. 2738.
55. For a more extended coverage of the American Metal Company Case, see Russell, Blooming Grove, pp. 511-512, 630.
56. Harlan F. Stone to Fowler, 16 July 1924, Memorandum; Momand to Stone, 28 July 1924.
57. Fowler to Stone, 21 October 1924, Memorandum.
UGI case reveals further his weakness in that capacity. It showed both his poor judgment and his apparent surrender to cronyism and to special interests. No matter how unreliable Momand might have been, the fact is the government had a substantial case against the UGI as witness the indictment. Without Francis Hutchins' special pleading, it would have been decided in the courts instead of by Daugherty and his friend, Harry West. Justice then would have been done.

But Daugherty was not the first nor the last Attorney General to terminate an antitrust indictment. Since the heyday of President Wilson's New Freedom activity to Nixon's recent debacle, almost every administration has come under attack for yielding to corporate interests. Only in Franklin Roosevelt's 1938–1941 presidency was there a sustained effort to revive the antitrust campaign. Nevertheless, because Daugherty was vulnerable in other areas, the UGI matter, like the ITT episode, had a greater impact than it might have had. It contributed to Oscar Keller's impeachment action and to the senate investigation that led to Daugherty's resignation. For that reason alone the UGI case deserves the attention of historians.

STAY EAST, YOUNG MAN!

Didn't Go!—We have just heard how a young man "didn't go to California." He had his baggage in boxes ready for transportation, when he found that a lady friend of his was in a very bad way about him. He enquired the causes and she very candidly explained. The result was that the boxes were opened, the gold digging implements disposed of; and upon the whole, the gentleman concluded to remain. The next night there was a little party under the lady's paternal roof, and in the midst was a priest!

[Daily Morning Post (Pittsburgh), 1 March 1849.]

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