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THE ATTORNEY-GENERAL AND THE CABINET

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BY

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REPRINTED FROM POLITICAL SCIENCE QUARTERLY
VOL. XXIV., NO. 3

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PUBLISHED BY GINN & COMPANY
1909

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THE ATTORNEY-GENERAL AND THE CABINET[1]

OF all the great offices established by Congress in 1789, that of the attorney-general was in some respects the least satisfactory in its organization. The portion of the Judiciary Act devoted to the attorney-general's place is curiously brief. Its very brevity suggests the immaturity of the administrative-judicial system of the central government. Aside from his function as federal prosecutor, the attorney-general was to be legal adviser to the President and to the heads of departments. This arrangement brought him into the range of executive control, making him, like the secretaries, a ministerial officer of the chief magistrate.[2]

When, in 1790, Edmund Randolph, first of the attorneys-general, wrote of himself as "a sort of mongrel between the State and U. S.; called an officer of some rank under the latter, and yet thrust out to get a livelihood in the former. . . ."[3] he cast no doubtful reflection on the status and relation of his position. He knew that he was head of no department, and his salary of fifteen hundred dollars[4] was so small that probably he could not have been expected to support himself by it. He was obliged to trust to legal practice to eke out a living. There is no evidence to show that he was even expected to remain at the seat of government, though he was inevitably obliged to keep in touch with the President, at least by occasional correspondence. And, should the federal business warrant it, the President might summon him to a conference with the secretaries. That he was reckoned an adviser in legal matters by Washington from the start there is no doubt.[5]

[1] For two other articles by the present writer on certain historical features of the President's cabinet, the reader is referred to the *Yale Review* for August, 1906, and to *The American Political Science Review* for August, 1909.

[2] 1 Statutes at Large, 92. September 24, 1789.

[3] Conway, Omitted Chapters, in the Life and Papers of Edmund Randolph (1888), page 135.

[4] Provided by statute of September 23, 1789. 1 Statutes at Large, 72, sec. 1.

[5] Pickering quotes from memory, declaring that Washington said of Randolph: "I

The place and functions of the attorney-general remained for many years after 1789 subjects of reflection on the part of thoughtful men. Several Presidents, beginning with James Madison, urged reform in the office, though apparently with no clear notions at first as to what measures of reform were needed. The attorneys-general themselves were helpful in the solution of the problem, none more so than William Wirt and Caleb Cushing. The problem became clearer under the stress of numerous circumstances in the growth and requirements of federal administration. By the close of the Civil War it was forced into the foreground; and Congress, in 1870, acting after long deliberation, established the office on a new footing, giving the attorney-general a place as head of the department of justice. The act of 1870, it may be added, made no change in law as to the duty of the attorney-general in giving official opinions.[1]

I

Before the outbreak of the war in 1812, Madison called attention to the accumulation of business in the various departments of the government, in particular in the war department, which was disproportionately burdened. This accumulation was due largely to the peculiar state of our foreign relations that for years had involved all the secretaries in exhausting labors. These relations had affected the entire administrative machinery of the federal government.[2] As a farewell word in his last annual message of December, 1816, Madison urged upon Congress the propriety of establishing an additional executive department, "to be charged with duties now overburdening other departments and with such as have not been annexed to any department. . ."[3] To another kindred matter he drew attention in these words:

made him . . . a member of my cabinet from the first." C. W. Upham, Life of Timothy Pickering, vol. iii, page 226.

[1] American and English Encyclopedia of Law, Compiled by Garland, McGehee and Cockcroft (2d ed. 1897), vol. iii, page 474, footnote 1.

[2] Messages and Papers of the Presidents, vol. i, page 499. Special message of April 20, 1812.

[3] *Ibid.*, vol. i, page 577, December 3.

The course of experience recommends . . . . that the provision for the station of Attorney-General, whose residence at the seat of Government, official connections with it, and the management of the public business before the judiciary preclude an extensive participation in professional emoluments, be made more adequate to his services and his relinquishments, and that, with a view to his reasonable accommodation and to a proper depository of his official opinions and proceedings, there be included in the provision the usual appurtenances to a public office. . .[1]

Such reflections coming from one of the leaders in the Philadelphia Convention, who had since had much experience in administrative work, were not easily overlooked by several of his successors in the presidency. John Quincy Adams, Jackson and Polk all harked back to Madison's suggestion as to the position of the attorney-general.

The salary of the attorney-general, starting at fifteen hundred dollars in 1789, was doubled ten years later. But Congress thereafter was slow in increasing it. And it was not until 1853 that the salary was placed on a par with that of the secretaries and of the postmaster-general. By the appropriation act of that year—so far, at any rate, as salaries could mark unity and equality of office—the five secretaries, along with the postmaster-general and the attorney-general, stood together and in equal rank.[2]

In 1814 an attempt was made to enact a residence requirement. In January of that year a resolution was introduced into the House for the express purpose of inquiring into the expediency of "making it the duty of the Attorney-General of the United States to keep his office at the seat of Government during the session of Congress. . ."[3] Apparently the House regarded the attorney-general as the proper officer to aid it at times in respect to doubtful points of law. Following this resolution, a bill was prepared, presented and, after sundry altera-

[1] Messages and Papers of the President, i, pp. 577–78.

[2] Act of March 3, 1853.

[3] Annals of Congress, 1813–1814, 13th Cong., pp. 852–3. Date of resolution, January 5, 1814.

tions, was passed by the House in April, but got no farther than a second reading in the Senate.[1]

That this bill met Madison's wishes, so far at least as its general principle was concerned, is probable.[2] But Madison was disturbed when he learned that his able attorney-general, William Pinkney of Maryland, was ready to resign because of the residence requirement likely to be enacted. Pinkney, in fact, did resign some months before the fate of the resolution was known,[3] for he was probably chiefly dependent on private practice in Baltimore, the city in which he resided. In accepting his resignation Madison wrote: "There may be instances where talents and services of peculiar value outweigh the consideration of constant residence; and I have felt all the force of this truth since I have had the pleasure of numbering you among the partners of my public trust. . ."[4]

When Pinkney's successor, Richard Rush, was appointed, Madison is said to have stipulated that during the sessions of Congress Rush should remain in Washington.[5]

II

William Wirt of Virginia accepted the post of attorney-general offered him by President Monroe late in October, 1817, with a clear understanding that there was nothing in the duties of his office to prevent him from carrying on general practice in Washington, where he took up his residence, or from attending occasional calls to Baltimore, Philadelphia or elsewhere, if time allowed.[6] He knew, however, that his first obligation was to Monroe and to the regular duties of his new position.

[1] Annals of Congress, *op. cit.*, pp. 766, 1114–5, 2023–2024. *Cf.* H. Adams, History of the United States, vol. vii, page 398.

[2] On January 29, 1814, Madison wrote to Pinkney: "On the first knowledge of the Bill, I was not unaware that the dilemma it imposes might deprive us of your associated services . . . I readily acknowledge that, in a general view, the object of the bill is not ineligible [sic] to the Executive. . ." Writings, (ed. Rives), vol. ii, page 581.

[3] January 25, 1814, according to Mosher, Executive Register, page 85.

[4] Madison's Writings, (ed. Rives), vol. ii, page 581.

[5] S. L. Southard, A Discourse on the Professional Character and Virtues of the late William Wirt (1834), page 33.

[6] J. P. Kennedy, Memoirs . . . of William Wirt, vol. ii, page 32.

On the very day of his commission, November 13, he sketched on the fly-leaf of a record-book a simple plan which revealed his purpose of keeping careful records and of obtaining from the heads of departments who might consult him copies of all documents concerning which he might be asked for opinions.[1] Some months later, under date of March 27, 1818, Wirt addressed a letter to Hugh Nelson, chairman of the judiciary committee of the House of Representatives. In this letter he set forth what he conceived to be some defects of the law of 1789, the law establishing his office, and drew attention to such improvements as he hoped that congress might be induced to make. It was an illuminating, if not a constructive statement. It probably accomplished little, if any, change, for it never reached the House directly, but was filed away with other committee material, and gained publicity only in 1849, fifteen years after Wirt's death, when it was printed at length in the *Memoirs of the Life of William Wirt*, written by Wirt's friend, John Pendleton Kennedy. Then it attracted attention, especially among the members of the legal profession. Its substance merits consideration.[2]

Wirt began with an examination of the Judiciary Act of September 24, 1789. There the duties of the attorney-general were briefly set forth. They had not been more clearly elaborated in any later enactment. Wirt next sought for the records of opinions as given by his predecessors in the office—for letter-books, official correspondence and documentary evidence, but could not find a trace of these. Accordingly he concluded that there could have been neither consistency in the opinions nor uniformity in the practices of the attorneys-general. He indicated that in various ways he had discovered that his forerunners had been called on for opinions from many sources—committees of Congress, district attorneys, collectors of customs

[1] The original record is quoted by James S. Easby-Smith, The Department of Justice: Its History and Functions (1904), page 10.

[2] Kennedy, Memoirs of . . . Wirt (1st ed., 1849), vol. ii, pp. 61-65. *The Monthly Law Reporter*, December, 1850, pp. 373-379. This article reprints from Kennedy the Wirt letter of March 27, 1818, and comments thoughtfully on Kennedy's book, but makes several erroneous statements.

and of public taxes, marshals and even courts-martial. Clearly these practices went far beyond the provisions of law. Resting on courtesy merely, they impressed Wirt as dangerous. His criticism took this form of statement:

> from the connection of the Attorney-General with the executive branch of the government . . . his advice and opinions, *given as Attorney-General*, will have an *official influence*, beyond, and independent of, whatever intrinsic merit they may possess: and whether it be sound policy to permit this officer or any other under the government, even on the application of others, to extend the influence of his office beyond the pale of law, and to cause it to be felt, where the laws have not contemplated that it should be felt is the point which I beg leave to submit. . .[1]

The conclusions which Wirt drew may be summarized. First, and above all things, provision should be made in law for keeping the records and preserving the documents of the office. This would make for consistency of opinions and uniformity of practices. Second, there should be a depository in the office of the attorney-general for the statutes of the various states, statutes which might be needed at short notice for aid in solving legal problems. In this matter Wirt was asking simply for a special library to facilitate his work. Finally, he suggested that legal restrictions be placed on the duties of the officer for the obvious reason that one man could not find time to perform the work if he were obliged to attend to such miscellaneous calls as had been made upon the time and energy of his predecessors. The experience of several months had already shown to him that "very little time is left to the Attorney-General to aid the salary of his office by individual engagements," a fact, he thought, which might account in part for the number of resignations which had occurred among his predecessors.[2]

This letter marks a new epoch in the history of the attorney-general's office. So far as the position of attorney-general

[1] Kennedy, *op. cit.*, vol. ii, page 64.

[2] *Ibid.*, page 64.

could be vitalized and molded by Wirt, it was to be done. After his long occupancy (1817–1829) the attorney-generalship had certainly risen in importance and was considered as more closely allied to the whole executive administration than ever before. It cannot be said that Wirt's suggestions influenced directly congressional action, for there is no proof of such influence. But there was at last a man in the attorney-generalship with a few clear ideas on the subject of organization which he was ready to make effective. This, at any rate, Congress must have understood.

The details of administrative organization it is not the province of this paper to consider. It is enough to say that Wirt was provided by congress with a clerk in 1818 and a small sum of money ($500) for office-room and stationery. In response to criticism over inequalities in the salaries of the secretaries, these salaries were raised and equalized the next year (1819); and the salary of the attorney-general was increased to thirty-five hundred dollars. Other improvements of a minor character were made during his long term of service.[1]

Early in his term Wirt had intimated to the House that by the law creating his position he could not be reckoned legal counselor to that body.[2] When, in January, 1820, the House sent an order for his official opinion on a certain subject before them, he deliberately declined to give the opinion. This was his mode of reasoning:

> It is true that, in this case, I should have the sanction of the House . . . and it is not less true that my respect for the House impels me strongly to obey the order. The precedent, however, would not be less dangerous on account of the purity of the motives in which it

[1] Act of April 20, 1818, sec. 6. Annals of Congress, 15th Cong., 1st sess., vol. ii, p. 2566. Lowndes complained in the House April 20, 1818, of allowing "any longer the discrimination which had heretofore existed in the salaries of the Heads of Departments." *Ibid.*, vol. ii, 1779. In the following November, the subject of salaries came up in both Senate and House. The discussion led to the Act of February 20, 1819. Annals, 15th Cong., 2d sess. (1818–1819), vol. i, pp. 21 *et seq.*, vol. ii, page 2486. Easby-Smith, The Department of Justice, page 10, gives sundry details.

[2] House Documents, No. 68, 16th Cong., 1st sess., vol. v. "Letter from the Attorney-General . . . in reply to an Order of the House of Representatives," page 2. Dated February 3, 1820.

originated. . . . I may be wrong in my view of the subject: the order may be sanctioned by former precedents; but my predecessors in office have left nothing for my guidance. . .[1]

He was no less explicit about his duty when, sought by the secretary of the navy a few months later for aid, he declared: "As my official duty is confined to the giving my opinion on questions of *law*, I consider myself as having nothing to do with the settlement of controverted questions of *fact*. . .[2]

A month after Wirt's death, on March 18, 1834, his friend, Samuel L. Southard—for some years his colleague in the cabinet—gave a public address in the hall of the House of Representatives at Washington on William Wirt's career. Speaking of Wirt's opinions as attorney-general, Southard said:

They all relate to matters of importance in the construction of the laws. . . . They will prevent much uncertainty in that office hereafter: afford one of the best collections of materials for writing the legal and constitutional history of our country; and remain a proud monument to his industry, learning and talents. . .[3]

It was seven years after Wirt's death (1841) that the first volume of the *Official Opinions of the Attorneys-General*, authorized by Congress, was issued. Similar collections have been compiled and printed at intervals ever since, and they constitute today a well-known and useful series. They amount to official justifications of the conduct of our Presidents.[4] In the first volume Wirt's opinions occupied over five-hundred pages in a total of 1471. Not one of his predecessors was represented by

[1] House Documents, *op. cit.*

[2] Opinions of the Attorneys-General, page 254. (House Ex. Doc., 26th Cong., 2d sess., Doc't No. 123.) Date of opinion, April 3, 1820.

[3] S. L. Southard, Discourse *etc.* (1834), page 36.

[4] House Ex. Doc., 26th Cong., 2d sess., Doc't No. 123. See in this connection an article, "Contrast between the Duties of the Attorney-General of the United States and those of the Law Officers of the British Crown," 38 *American Law Review*, November-December, 1904, pp. 924–925. In England the opinions of the law officers of the Crown are always held as confidential. It is believed by some lawyers that the withholding of these opinions amounts to a serious loss to the body of English jurisprudence. The subject was discussed in the House of Commons on April 26, 1901.

much over thirty pages. The five men who came after him, occupying almost exactly eleven years (1829–1841)—equivalent in time to his single term of service—left on record 704 pages. Perhaps Wirt's admirable example of industry may have had something to do with the activity of his successors.[1]

In refusing to be led beyond the limits prescribed by law, Wirt doubtless contracted the action of his office. The restrictions thus placed upon it, however, made its relations clearer to Congress on the one hand and to the executive on the other. They tended inevitably to increase the usefulness of the attorney-general as a member of the cabinet.

III

As a result of the growth of the United States in population, of its development in commerce and wealth and of its ever-widening territory, the administrative work of the government had by 1830 increased enormously. The executive departments and the judiciary—confined, as they were for the most part, to their primitive organizations—were inadequately performing their functions. John Quincy Adams appreciated this fact, remarking on it in his first annual message.[2] Apparently, however, he could accomplish nothing toward remedying it.

[1] A comparison of the mere paging in the original volume of *Opinions, etc.*, edited by Henry D. Gilpin (Washington, 1841, Doc't No. 123), yields the following results:

1.	1789–1794: Edmund Randolph	14 pages.
2.	1794–1795: William Bradford	13 "
3.	1795–1801: Charles Lee	22 "
4.	1801–1804: Levi Lincoln	37 "
5.	1805–1807: J. Breckenridge	5 "
6.	1807–1811: C. A. Rodney	8 "
7.	1811–1814: W. Pinkney	5 "
8.	1814–1817: R. Rush	30 "
9.	1817–1829: W. Wirt	518 "
10.	1829–1831: J. M. Berrien	159 "
11.	1831–1833: R. B. Taney	86 "
12.	1833–1838: B. F. Butler	292 "
13.	1838–1839: Felix Grundy	82 "
14.	1840–1841: H. D. Gilpin	85 "

Appendix: pp. 1383–1471. Odd opinions not included in the above record.

[2] Richardson, Messages and Papers, vol. ii, pp. 314–15.

When Jackson became President and referred to the need of attending to the business of reorganizing the attorney-general's office and of placing that officer "on the same footing in all respects as the heads of the other departments," he found a Congress ready to heed his suggestions. Originally, as has been shown, the office had left its incumbent ample time for private practice. By Jackson's day it was reckoned "one of daily duty." It was important to Jackson that the attorney-general should not be called away from the seat of government. With a fair increase in salary and a residence requirement, the officer could be charged with the general superintendence of the government's legal concerns.[1]

In the spring of 1830 a bill bearing on the subject was introduced into the Senate. Its objects were to reorganize the office of the attorney-general in such a way as to erect it into an executive department; to transfer to it from the state department the work of the patent office; to give to the attorney-general the superintendence of the collection of debts due the government; and to raise the salary of the attorney-general to six thousand dollars—exactly the salary then provided for each of the four secretaries. Such arrangements, it was argued, would do away with the need, at any rate for some time to come, of organizing a home department. The plan, it was assumed, would shut out the attorney-general from practice other than what he would be called on to conduct on behalf of the government in the supreme court. But the anomalous position of an attorney-general so burdened was at once apparent. In particular the plan seemed to ignore the essential fact that the attorney-general was primarily a law officer. And so it was easily defeated.[2]

Daniel Webster opposed this bill. He had no faith in the attempt thus to forestall a home department. Moreover, he wished the attorney-general still to continue in private practice without too much restriction. The old salary ($3,500) was relatively low for the position, but not too low, it was urged,

[1] Richardson, *op. cit.*, vol. ii, pp. 453 *et seq.*, pp. 527 *et seq.*

[2] Register of Debates (1829–1830), vol. vi, pt. i, pp. 276, 322 *et seq.*, 404.

because the attorney-general "more than made up to himself the amount of compensation received by the others [*i. e.*, the heads of departments] who were confined to their offices. . ."[1] According to the views of one senator, to permit the attorney-general to engage in private practice was a legitimate and even a desirable way of aiding him in his equipment for performing well his official duties.[2]

Although the bill failed, through Webster's efforts a plan was finally matured, formulated and enacted into law whereby a new official, known as solicitor of the treasury, was created for the special purpose of aiding the attorney-general in suits pertaining to treasury claims. And for the additional responsibility involved in the new relationship, the salary of the attorney-general was raised to four thousand dollars—an amount at which it remained until 1853.[3]

That President Jackson was dissatisfied with such a compromise measure is clear enough from certain remarks in his second message of December 6, 1830. However useful in itself the provision for a solicitor of the treasury might be, it was not, according to the President,

> calculated to supersede the necessity of extending the duties and powers of the Attorney-General's Office. On the contrary, I am convinced that the public interest would be greatly promoted by giving to that officer the general superintendence of the various law agents of the Government, and of all law proceedings, whether civil or criminal, in which the United States may be interested, allowing him at the same time such a compensation as would enable him to devote his undivided attention to the public business. . .[4]

It is probable that Jackson never again expressed himself in print after 1830 regarding reform in the office of attorney-

[1] Register of Debates, *op. cit.*, p. 324.

[2] *Ibid.*, p. 323.

[3] 4 Statutes at Large, ch. cliii, sec. 10. "*And be it further enacted*, That it shall be the duty of the attorney general . . at the request of said solicitor, to advise with and direct the said solicitor as to the manner of conducting the suits, proceedings, and prosecutions aforesaid; and the attorney general shall receive in addition to his present salary, the sum of five hundred dollars per annum." May 29, 1830.

[4] Richardson, Messages and Papers, vol. ii, page 527.

general. After Jackson, no president before Polk undertook to do so.

Polk argued in a vein similar to that which Jackson had made familiar. He, too, wished to increase the duties and responsibilities of the officer, and recommended that he be placed on the same footing as the heads of departments, for "his residence and constant attention at the seat of Government are required. . ."[1] Even then Congress took no action in the matter for several years. Whatever projects of reform there may have been, they were doubtless seriously interfered with by the war with Mexico.

There is a curiously interesting paragraph in this connection occurring in a circular letter addressed by Polk, under date of February 17, 1845, to all the men to whom he extended invitations to become his cabinet associates. He wrote:

> I disapprove the practice which has sometimes prevailed, of Cabinet officers absenting themselves for long intervals of time from the seat of government, and leaving the management of their Departments to chief clerks, or other less responsible persons than themselves. I expect myself to remain constantly at Washington, unless it may be that no public duty requires my presence, when I may be occasionally absent, but then only for a short time. It is by conforming to this rule that the President and his Cabinet can have any assurance that abuses will be prevented, and that the subordinate executive officers connected with them respectively will faithfully perform their duty. . .[2]

It may be assumed that Polk exacted this significant condition from his first attorney-general, John Y. Mason of Virginia. But the attorney-generalship under Polk had two other occupants, Nathan Clifford of Maine and Isaac Toucey of Connecticut.[3] I am aware of no evidence that would make it possible to say, in respect to this office alone, how far the condition was really fulfilled. So far as Polk could establish the custom of holding his cabinet associates in Washington he doubtless did so.

[1] Richardson, *ibid.*, vol. iv, page 415.

[2] The Works of James Buchanan, ed. John Bassett Moore (1909), vol. vi, pp. 110–111.

[3] Mosher, page 138.

IV

There is ground for believing that Caleb Cushing was the first attorney-general of the United States who held himself strictly to the residence obligation and refrained from the general practice of law.

Coming into office in March, 1853, just after the salary of the attorney-general had been raised to eight thousand dollars, Cushing at the start was placed, in respect to salary, on an equality with his cabinet associates, and accordingly had no very valid reason for entering into private practice in or outside of Washington. Like the other cabinet associates of Pierce, Cushing kept his place throughout the four years' term. He left behind him a collection of official opinions that for extent alone has never, before or since his day, been equalled. They fill three in the series of volumes known as *Official Opinions*, twenty-six of which have thus far (1909) been issued.[1] It may be doubted whether Pierce had an abler associate among his advisers than Cushing, though Jefferson Davis was secretary of war and William L. Marcy was at the head of the state department. Certainly there was no more trusted man in the cabinet. Pierce held him in the highest regard. That he was of real assistance in keeping the cabinet together is a matter of authentic history.[2]

Cushing left to posterity quite the most careful considerations on the historic development of the attorney-generalship up to his time. These have been occasionally quoted since they were written. They probably did something to help establish the attorney-general as head of the department of justice in 1870. That Cushing perceived the need of some such organization is clear. Like Wirt, Cushing determined to understand the structure and functions of his office, so far as the laws and the practices of his predecessors could reveal them. Instead of presenting his conclusions—as Wirt had done—to

[1] Cushing's opinions fill vols. v, vi, vii, covering over 2000 pages.

[2] Memorial of Caleb Cushing (Newburyport, 1879), pp. 169 *et seq.* Vol. 7 Opinions of Attorneys-General, pp. 453–482. The Memorial gives various useful clues to Cushing's career. There is no biography of Cushing yet written.

the chairman of a committee of Congress, he offered them to the President. They were written under date of March 8, 1854, at the end of his first year's experience. With the technical portions of the "opinion" relating to the attorney-general and the courts, this investigation is not concerned. There are, however, some reflections which throw light on the relation of the office to the executive.[1]

According to the original theory of the office, the attorney-general was prompted if not actually authorized to engage in private practice of the law. This custom in the case of the English attorney-general—from whose office it is probable that we drew some of the features of the American office—was well established in 1789. But the English attorney-general was not then a member of the cabinet, nor is he so today.[2]

Cushing doubted the expediency of allowing the head of a department "under any circumstances" to continue in the practice of the law. That such a custom might once have been justifiable, he was willing to admit. As he expressed his thought—

> Formerly, in an age of simple manners, when the public expenditures were less, the number of places less, the population of the country less, the frequentation of the capital less, the ingenuity of self-interest less . . . . a secretary, eminent in the legal profession might, without the possibility of reproach or suspicion of evil, take charge of private suits or interests at the seat of government. He may do so now, perhaps; but that is not so clear as it formerly was; and it is not easy to perceive any distinction in this between what befits one and another head of department. . . . However all these things may be, the actual in-

[1] The considerations of Cushing were published in vol. 6 Opinions of the Attorneys-General, pp. 326–355. They appeared also in *The American Law Register* (December, 1856), vol. v, pp. 65–94. I have found the latter volume most convenient to use.

[2] *American Law Register*, vol. v. Anson, Law and Custom, pt. ii, page 92. The Crown (2d ed., 1896), pp. 201–202. In 1818 the absence of the English attorney-general from the cabinet impressed Richard Rush as strange and worthy of remark. He said that "in the complicated and daily workings of the machine of free government throughout a vast empire, I could still see room for the constant presence of the attorney-general in the cabinet." Memoranda of a Residence at the Court of London (2d ed., Phila., 1833), page 63.

cumbent of this office. . . experiences that its necessary duties are quite sufficient to task to the utmost all the faculties of one man; and he willingly regards those recent acts, which have at length placed the salary of his office on equal footing with other public offices of the same class, as intimation at least that the Government has the same precise claim on his services, in time and degree, as on those of the Secretary of State or the Secretary of the Treasury. . .[1]

From this passage it is clear that Cushing considered himself not only as the peer of his cabinet associates, but as in some sense head of a department, though he occupied what was technically known as an "office." It was to this conception of his position to which General Benjamin F. Butler of Massachusetts referred when, in 1879, Butler paid a tribute to Cushing, remarking that Caleb Cushing "raised the office of Attorney-General, and organized it to be in truth and in fact a department of the Government. . ."[2] At any rate, many of Cushing's suggestions toward a better organization of the work of the attorney-general were enacted into the laws between March, 1854—the date of his "opinion"—and June, 1870, when the attorney-general was named in the law as head of the department of justice.[3]

Cushing was clear regarding the real reason for the existence of the cabinet. It was a means of attaining unity in executive decision and action. As he remarked, this unity "cannot be obtained by means of a plurality of persons wholly independent of one another, without corporate conjunction, and released from subjection to one determining will. . ."[4] With reference to the principal officers, he wrote that—

the established sense of the subordination of all of them to the President has . . . . come to exist, partly by construction of the constitutional duty of the President to take care that the laws be faithfully

[1] *American Law Register*, vol. v, page 93.

[2] Memorial of Caleb Cushing (1879), page 149.

[3] Easby-Smith, The Department of Justice (1904), pp. 15–16.

[4] *American Law Register*, vol. v, page 81. Cushing devoted one opinion to the subject of the "Relation of the President to the Executive Departments," Aug. 31, 1855. Vol. 7 Opinions of the Attorneys-General, pp. 453–482.

executed, and his consequent necessary relation to the heads of departments, and partly by deduction from the analogies of statutes. . .[1]

Cushing's usefulness to Pierce, his talents, his learning and his persistent industry—all these matters need not make the student overlook certain weaknesses of which his contemporaries were aware. Mr. J. F. Rhodes has called attention to the fact that Lowell satirized Cushing as early as 1847 for his lack of consistency and principle in politics.[2] Rhodes likewise cites Thomas H. Benton's criticism of him in a speech of July 21, 1856. In his speech, Benton acknowledged that he was the "master-spirit" of Pierce's cabinet, but he regarded him as "unscrupulous, double-sexed, double-gendered, and hermaphroditic in politics, with a hinge in his knee, which he often crooks, that thrift may follow fawning. He governs by subserviency. . ."[3] In brief, Cushing never could win completely the trust of his fellows. Yet he proved a very useful statesman. Both Buchanan and Grant at different times sought his aid. He was among the legal experts chosen as counsel to aid in the Geneva Tribunal. Grant named him as chief justice of the supreme court, but was induced to withdraw his name from the Senate.

It seems fair to conclude that during a long life, extending from 1800 to January, 1879, in no task did Caleb Cushing prove more useful than in that of the attorney-generalship. He was the ablest organizer that the office had had since its establishment in 1789.[4]

[1] *American Law Register*, vol. v, page 71.

[2] Rhodes, History of the United States since the Compromise of 1850 (1892 *et seq.*), vol. i, page 392. Lowell's satire is quoted by Rhodes from the *Biglow Papers* as follows:

> Gineral C. is a dreffle smart man:
> He's ben on all sides thet give places or pelf;
> But consistency still wuz a part of his plan,—
> He's ben true to *one* party—an' thet is himself. . .

The Writings of James Russell Lowell (Boston, 1890), vol. viii, page 66.

[3] Quoted from Von Holst, History of the United States, vol. iv, 263, note.

[4] For the general facts of Cushing's career, I have relied somewhat on Rhodes (History, *etc.*, especially vols. i, pp. 388 *et seq.*; iii, pp. 192, 201, 521; vi, pp. 364–365; vii, pp. 27–28) and on the material in the Memorial (1879). The generalization is based upon this, taken into connection with the evidence revealed in his three volumes of Opinions heretofore cited.

V

The Civil War brought great pressure of work on the office of the attorney-general. By that period an administrative-judicial organization had grown up that proved under the new circumstances distinctly out of joint. Various legal officers in the separate departments gave opinions to the secretaries or heads that were at times inconsistent with, if not actually opposed to, those of the attorney-general. Many tasks were duplicated. In brief, there was no definite provision in law which unified and brought to one master mind the direction of the legal work of the government. As a consequence that work lacked symmetry and consistency.

The four chief law-officers in 1861—with the dates of their separate establishments—were the attorney-general (1789), the assistant attorney-general (1859), the solicitor of the court of claims (1855) and the solicitor of the treasury (1830)—the latter a rather anomalous official in the treasury department who, for certain purposes, was under the direction of the attorney-general. Subordinate to these and controlled by the attorney-general from 1861 was a corps of scattered district attorneys.[1] The whole organization was loosely knit and disjointed. As was truly said, the law business of the government during the war period "greatly outgrew the capacity of the persons authorized to transact it and the number of outside counsel . . . appointed subsequently to 1861 was greater than all the commissioned law officers of the Government in every part of the country. . ."[2]

The cost of this extra counsel was large, how large it would probably be impossible with even a fair degree of accuracy to say. Figures were brought forward in Congress to show that nearly half a million dollars ($475,190.42) could be thus accounted for during a portion of the years from 1861 to 1867. More than half that amount ($258,018.44), it was said, went

[1] These facts can be gathered from Easby-Smith, The Department of Justice, pp. 16, 28–30. They are commented upon in the debates on the plan of a new organization, 1867–1870, in Congress. See especially *Congressional Globe*, 41st Cong., 2d sess., pt. iv, p. 3035 (April 27, 1870).

[2] *Congressional Globe*, 41st Cong., 2d sess., pt. iv, page 3035.

for extra legal counsel in the two years 1868–1869. To William M. Evarts alone, fees for occasional legal aid to the government amounted, by 1867, to approximately fifty thousand dollars ($47,545.86). That the government was called on to pay a hundred thousand dollars annually during the decade 1860–1870 is a statement probably well within the range of truth. This was a significant fact, and it helped to direct attention to numerous administrative weaknesses in the federal organization.[1]

The heritage of war expenditures assumed such ominous proportions that, in 1867, with a view to economy, Congress appointed a so-called Joint Committee on Retrenchments. This committee, aided perhaps by certain recommendations concerning the reorganization of the office by Attorney-General Henry Stanbery set forth by him in December of that year, was attracted to an investigation of the legal work of the government.[2]

For more than two years following, the subject of reorganizing the law administration remained in the background of public discussion. It was lost to sight largely because of subjects of a more pressing and sensational nature. It matured slowly, however, and came up for occasional discussion or report during the sessions of the thirty-ninth, fortieth and forty-first congresses. Finally, after a vigorous effort in the spring of 1870—an effort admirably directed in the House of Representatives by Thomas A. Jenckes of Rhode Island—a measure was enacted on June 22, 1870, which President Grant approved, and which erected the office of the attorney-general into the department of justice.[3]

[1] *Congressional Globe*, 41st Cong., 2d sess., pt. iv, pp. 3035 *et seq.* Jenckes of Rhode Island, speaking of the final bill for a Department of Justice, said in the House (April 27, 1870): "The special reason why they [*i. e.*, the committee] have reported it earlier than any other relating to the organization of the Departments is the great expense the Government have been put to in the conduct of the numerous litigations involving titles to property worth millions of dollars, rights to personal liberty, and all the numerous litigations which can arise under the law of war."

[2] *Ibid.*, page 3039. Easby-Smith, *op. cit.*, page 17.

[3] The best outline of the course of Congress at various stages of the attempt to reorganize the legal work of the government is to be found in the *Congressional Globe*,

Inasmuch as the chief purpose of this article is to reveal the historic features of the attorney-generalship which throw light on the relations of the attorney-general as a more or less efficient adviser and assistant to the President and his cabinet associates, the act of 1870, apart from its more technical details, has a peculiar interest, for it was a mature and honest effort to realize an ideal with respect to the attorney-general that had been occasionally formulated since Andrew Jackson's day. It placed the attorney-general at last upon "precisely . . . the same footing as the other heads of Departments."[1] He became in fact the chief law officer of the government. The act created no new department. Much legal business in the other departments, hitherto scattered and at loose ends, was transferred, and so transformed the old office of the attorney-general into a symmetrical organization.

A chief object of the act of 1870 was to make it possible to create a staff sufficiently large to transact the law business of the government in all parts of the country. If assistant counsel were employed, these extra men were to be designated either as assistant district attorneys or as assistants to the attorney-general; and so, holding commissions as such, they could be made strictly responsible to the attorney-general for the performance of duties.[2]

During the development of administrative and legal work, law officers had been provided in the various executive departments from time to time as they were needed. As was re-

41st Cong., 2d sess., pt. iv, page 3039. The list of dates there given makes it easy for the investigator to trace back special points and proceedings to December 12, 1867, at which time Lawrence of Ohio offered a resolution looking toward a consolidation of all the law officers of the government at Washington into one department. That resolution marked the beginning of legislative effort. For the statute of June 22, 1870, see 16 Statutes at Large, pp. 162-165.

[1] *Congressional Globe*, p. 3067 (April 28, 1870). In connection with this quotation from Lawrence, his general remarks on the cabinet are worth noting. He said: "The Cabinet is the creature of usage only. But since the establishment of the office of Attorney-General the Attorney-General has been a member of the Cabinet by usage just as much as any head of a Department. He ought to be in the Cabinet. There ought not to be a Cabinet without a law officer . . . "

[2] *Ibid.*, page 3035.

marked by one of the speakers in the House of Representatives:

> Following the precedent set in the creation of the Solicitor of the Treasury by the act of 1830, we have authorized the appointment of an assistant Solicitor of the Treasury, and also a Solicitor of the Internal Revenue; and during the war we had a Solicitor of the War Department and an assistant Solicitor of the War Department . . . We also created a law officer for the Navy Department, and in the course of time a law officer has been created for the Post-Office Department . . . .[1]

Such facts revealed at once the possibilities of contradictory opinions arising from the various legal officers and the consequent confusion.

In what way this confusion might affect the attorney-general under the old régime, and so the President, may be seen from another passage in the debates of 1870. The President, it was declared, takes the opinions of the heads of departments,

> yet, as the law now stands, it is perfectly apparent that the law officers of the several Departments may advise the heads of Departments in one way upon subjects of public importance affecting their Departments and the Attorney-General may advise the President and the Cabinet, when they are assembled, in a totally different way upon the same subject. Now . . . it is utterly impossible that the President can intelligently advise Congress or act without embarrassment on affairs relating to our international rights, obligations and duties when there is a law officer in the State Department, as now, advising the head of that Department in one way while the Attorney-General may be advising the President in a different way . . . We have an officer called an examiner of claims, the law officer of the State Department, advising the Secretary of State in matters affecting our foreign relations, our duties and obligations, while the President and Cabinet are receiving advice from the Attorney-General . . . .[2]

In 1870 the various solicitors were transferred from the departments where they had been located and placed under the ultimate control of the attorney-general. Whatever official

[1] *Congressional Globe*, page 3036.

[2] *Ibid.*, page 3065.

opinions they were called upon to give must henceforth be recorded in the office of the attorney-general. There, before they could become the executive law for inferior officials, these opinions were stamped with the attorney-general's final approval. As Representative Jenckes remarked: "It is for the purpose of having a unity of decision, a unity of jurisprudence, if I may use that expression, in the executive law of the United States, that this bill proposes that all the law officers therein provided for shall be subordinate to one head. . ."[1]

The act of 1870 was, according to the characterization of James A. Garfield, "substantive legislation."[2] There was comparatively little opposition to it in congress, for it was easily seen that it placed the government's law work on an admirable working basis.

VI

After 1870 there is but one matter to be touched upon, a matter of consequence as throwing light on the recognized status of the attorney-general. By an act approved on January 19, 1886,[3] the attorney-general was definitely reckoned as fourth in the line of possible succession to the Presidency, in case of the removal, death, resignation or inability of President and Vice-President. The act was due largely to the persistent efforts of Senator George F. Hoar of Massachusetts. The occasion of these efforts was the conviction in the public mind, which had been aroused by the attempt in July, 1881, to kill President Garfield, of the grave and serious necessity of placing new safeguards about the life of the chief magistrate.[4]

The original law of March, 1792, which provided for the succession to the Presidency, had declared that, in case of

[1] *Congressional Globe*, page 3036. It may be noted that there was one new officer of large importance created by the act of 1870—the solicitor-general of the United States. It was proposed to have in this new position "a man of sufficient learning, ability and experience that he can be sent to New Orleans or to New York, or into any court wherever the Government has any interest in litigation, and there present the case of the United States as it should be presented. . ." Page 3035.

[2] *Ibid.*, page 3037.

[3] 24 Statutes at Large, 1.

[4] *Congressional Record*, 49th Cong., 1st sess., December 15, 1885, page 181.

vacancy, "the President of the Senate *pro tempore*, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States, until the disability be removed, or a President shall be elected."[1] Even at the epoch of its formulation, the principle underlying this language was not deemed satisfactory by such men as Madison, Gouverneur Morris, Livermore and Fitzsimons. There were suggestions at the time that it might be wiser to call on the Chief Justice or the secretary of state. But the Senate, having originated the form of statement, were unwilling to yield; and so it was at length adopted and went into the statute-book.[2]

The subject of the succession was next brought to public notice in June, 1856, by Senator John J. Crittenden of Kentucky. Crittenden had become impressed by the fact that from the fourth of March to the first of December in every second year there was no Speaker of the House. He presented a resolution to the Senate which called on the judiciary committee of that body to examine the subject and make a report. On August 5 following, a report—familiarly known as the "Butler Report," from Senator Butler of South Carolina, chairman—was read to the Senate. The Report concluded with a carefully formulated bill. The bill was never acted upon. The report, buried in a volume of Senate documents, was lost sight of and forgotten for many years.[3]

The Butler Report attempted to supplement the old law of 1792. On the assumption that there was no President of the Senate *pro tempore* or Speaker of the House, it recommended:

[1] 1 Statutes at Large, 240. The entire act is quoted by E. Stanwood, A History of the Presidency (1898), pp. 36 *et seq.*

[2] Madison and Morris objected late in the Convention of 1787 (August 27). See W. M. Meigs, The Growth of the Constitution (2d ed,. 1900), pp. 211 *et seq.* The course of the debate can be followed in the *Annals of Congress*, especially under dates of December 20, 1790, Jauuary 10, 13, October 24, November 15, 23, 30, December 1, 21, 1791, *etc.*

[3] *Congressional Globe*, 1855–1856, 1st sess., 34th Cong., pt. ii, pp. 1476, 1930–1, 2020. For Butler Report, see Senate Documents, 1855–1856, ii, no. 260, page 7. There is no reference to this matter in Mrs. Chapman Coleman, Life of John J. Crittenden *etc.* (2 vols., 1871).

"that the duties prescribed by act of Congress shall devolve on the following officers: first, on the chief justice, when he has not participated in the trial of the President; and next, on the justices of the Supreme Court, according to the date of their commissions. . . ."[1]

This was the single constructive recommendation. It is, however, noteworthy that the authors first of all stated their belief that the members of the cabinet "in some prescribed order" were

> the proper functionaries to fill the vacancy. In cases of death they would be the persons most fit for the occasion. There are other circumstances, however, which would make the cabinet officers unfit to occupy the place of the President. In case of his impeachment for high political offences, the cabinet might be implicated, as *participes criminis*, and ought not to be in position of allies . . .

Moreover, the question as to whether the cabinet could be considered official after the official functions of the President—their principal—had terminated or were suspended, was puzzling to the committee and was left unanswered.[2]

Within a week of the shooting of Garfield, the Butler Report was referred to in public discussions over the possible consequences of the tragedy. In particular Senator Beck of Kentucky wrote of it in a letter to the Louisville *Courier-Journal*.[3] In the following autumn—Garfield having died on September 19—it happened that the country was without either a President of the Senate or a Speaker of the House. Should President Arthur die, there would be no legal provision for a successor. Statesmen were alarmed. Efforts to remedy the law were begun as soon as Congress assembled in December, and they continued at intervals during three successive congresses, the forty-seventh, the forty-eighth and the forty-ninth. Senator Hoar's persistency was finally rewarded in 1886.[4]

[1] Butler Report, page 5.

[2] *Ibid.*, pp. 4–5.

[3] Beck-Murphy correspondence (July, 1881), given in *Congressional Record*, December 16, 1885.

[4] *Ibid.*, Dec. 16. See especially Senator Maxey's remarks.

Introducing the subject of succession in the last stage of his effort, Senator Hoar remarked that one of the important alterations in the existing law, that of 1792, was the substitution of—

> members of the Cabinet in the order of their official seniority—the order in which the various Departments were created, except that the head of the Department of Justice, which is the last Department created by law, is continued in his old place as Attorney-General, ranking the heads of the Departments created since the original establishment of the Cabinet . . . .[1]

Thus the attorney-general, considered as a cabinet-associate of the President from 1789, was once more acknowledged as a peer among his colleagues—a position that he had in reality held since 1853.

HENRY BARRETT LEARNED.

NEW HAVEN, CONN.

[1] The discussion of the bill may be followed in the *Congressional Record*, December 15, 1885–January 19, 1886. Senator Hoar prints the bill as enacted in his Autobiography of Seventy Years (1903), vol. ii, pp. 170–1. He there says: "I drew and introduced the existing law" (page 170). It is interesting to note that Senator Hoar got the substance of the bill from a speech made in the House of Representatives sometime between 1873–1875 by his brother, Ebenezer R. Hoar, first attorney-general under Grant (1869–1870). I have not been able to discover this speech. *Congressional Record*, December 16, 1885, p. 215.

Commissioners to be present when their business commenced, and likewise required the attendance of the whole when any final adjustment took place. As the business has already commenced agreeably to the ordinance, Genl. Irwin[57] informs me that it is progressing under his inspection, and that the presence of the whole Board will not be absolutely necessary 'till some final settlement of Accounts is about to take place. I shall therefore delay making any new appointment until circumstances may render it necessary in hopes that you will yet so far recover your health as to be able to attend the duties of your office in time; for I should be very unwilling that a temporary illness should deprive a man of his office unless the public good rendered a new appointment absolutely necessary.[58]

Mr. Kean[59] has not yet arrived, but by a letter which I received from him yesterday he may be daily expected. With my best wishes for the restoration of your health I am etc.[60]

To EDMUND RANDOLPH

New York, September 28,[61] 1789.

Dear Sir: Impressed with a conviction that the due administration of justice is the firmest pillar of good Government, I have considered the first arrangement of the Judicial department as essential to the happiness of our Country, and to the

[57] William Irvine (Irwin).

[58] On December 14 Lear wrote to Gilman that the two other Commissioners had informed the President "that the business of their commission is now retarded, and will very shortly be at a stand without the presence of the other Commissioner; I am therefore directed by the President of the United States to give you notice thereof, and to inform you that your attendance cannot be well delayed beyond the first, and certainly not beyond the middle of January, without injury to the public. Should the state of your health be such . . . the President wishes you to give him immediate information thereof, that another person may be appointed, and the public business not be unnecessarily retarded." Lear's letter is recorded in the "Letter Book" in the *Washington Papers.*

[59] John Kean.

[60] From the "Letter Book" copy in the *Washington Papers.*

[61] Both Sparks and Ford date this letter September 27.

stability of its political system; hence the selection of the fittest characters to expound the laws, and dispense justice, has been an invariable object of my anxious concern.

I mean not to flatter when I say, that considerations like these have ruled in the nomination of the Attorney-General of the United States, and, that my private wishes would be highly gratified by your acceptance of the Office. I regarded the office as requiring those talents to conduct its important duties, and that disposition to sacrifice to the public good, which I believe you to possess and entertain; in both instances, I doubt not, the event will justify the conclusion; The appointment I hope, will be accepted, and its functions, I am assured, will be well performed.[62]

Notwithstanding the prevailing disposition to frugality, the Salary of this office appears to have been fixed, at what it is, from a belief that the Station would confer pre-eminence on its possessor, and procure for him a decided preference of Professional employment. As soon as the Acts, which are necessary accompaniments of the appointment can be got ready you will receive official notice of the latter; this letter is only to be considered as an early communication of my sentiments on this occasion and as a testimony of the sincere regard and esteem, with which I am &c.[63]

To EDMUND PENDLETON

New York, September 28, 1789.

I write to you, my dear Sir, on a subject which has engaged much of my reflection, and to which I am persuaded I shall obtain your ready and candid attention.

[62] Randolph had been confirmed by the Senate, Saturday, September 26, as Attorney General. (See Washington's letter to the Associate Justices of the Supreme Court. Sept. 30, 1789, *post.*)

[63] From the "Letter Book" copy in the *Washington Papers.*

DRAFT

All of America's history is traced from austere beginnings: from the spare and difficult lives of the first colonists, to the limited materials and hardship of the revolutionary army, to a small and meagerly funded federal government. From nearly every point of embarkation of American endeavor and enterprise we have started on the path of history with very little in the way of the concrete resources that such journey's demand: too few funds, too little manpower, too many dangers, and too little assurance for success.

But still we have succeeded because, despite the austerity and shortcomings of so many of America's beginnings, the one element that has never been lacking in our travels is what the world has come to know as the American spirit.

A spirit that embodies initiative, commitment, hard work, and an unflagging hope, faith and confidence that we will succeed in the attainment of our goals -- and ultimately in the achievement of our ideals -- no matter the size of the challenge, the number of difficulties, or the length of the struggle.

But most importantly is our desire for justice - equal justice - for all Americans.

DRAFT

And that, really, is what we celebrate today -- as it is reflected in the 200 years of success of the Office of the United States Attorney General.

From beginnings so austere that our first Attorney General paid all office expenses out of his own pocket, this nation's commitment to justice started with an idea and an ideal which has carried it forward through our history and which, as much as any other factor, continues to shape its efforts today.

A commitment to the idea that for a society to prosper, justice is key. And a commitment to the ideal that for this society, and for our hopes of achieving the grand constitutional principles upon which our independence rests, justice must and will prevail now and forever, for every man, woman and child who call themselves Americans.

Lofty goals for such a meager start. But look where it has brought us.

The Justice Department of this nation stands at the forefront of protecting American's rights and of ensuring fairness throughout society. In matters of business and

DRAFT

antitrust, in matters of civil rights, in matters of the environment -- in matters which strike at the very core of our sense of right and equity in a nation of free men and women -- the Justice Department, and the two hundred year history of the Office of the Attorney General, stands as testament to American's spirit, and pursuit of a dream.

But as past achievements have not come without long-waged fights, neither is the present free from great and long-term struggles as crime and the actions of those who do not share in the ideals of this nation continue to threaten our peace and security...and continue to test our commitment and spirit.

Two of the biggest challenges are, of course, the difficult and deadly battles we are waging against the pandemic scourge of drugs and the national wave of violent crime it has precipitated.

But as we have risen to meet and surmount the challenges of the past, so too will rise to them now -- with the commitment of the American people, the Department of Justice, the Attorney General and this entire Administration.

Commitment that is seen in the anti-crime bill, a bill I have submitted to the Congress, which sends a clear, unmistakable and tough message and says to those who spread

murder and mayhem that violent crime and the illegal use of weapons will be punished and punished severely -- not just as a temporary legal policy, but as a permanent national principle of justice.

And commitment that is seen in our efforts against drugs nationally, and internationally, as we attack every facet of the drug trade from the drug lords of South America, to foreign money launderers, to the dealers on the streets who deliver addiction, despair and death to young people across this land -- attacks on this criminal enterprise which are not designed simply to ease the scourge of drug abuse but which are determined to eliminate it completely.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. Often with little more than the simple force of our national will, we have built step after step of a staircase that has taken us ever-higher in our journey towards an our ideal of justice.

But as we commemorate our past, so too do we re-commit ourselves to the future and to the work that remains to be done in meeting the challenges to justice.

 DRAFT

From austere beginnings we stand today as a force for justice in America and the world -- a great and rich force which derives its wealth from those great and committed Americans of the past who dared to pursue a dream of justice; and from the those same Americans of today who continue to build on that dream.

That is the American spirit -- as it has been in the past, as it is today, and as it will continue on into the future.

Thank you and God bless you.

ut if he would do the translating for
; without the compliment.

—*A Tramp Abroad,* 1880, vol. 1, ch. 16

LATE

r an hour late for a lecture in Duluth,
ay was not his fault, the crowd was
:ible by the time he showed up. But
)y strolling into the lecture hall in a
'I am glad that my strenuous efforts
'e just in time."
heir hostility melted away.

GHTER

nquestionably one really effective
ıey, persuasion, supplication, per-
lossal humbug—push it a little—
ntury; but only laughter can blow
. Against the assault of laughter

—"The Mysterious Stranger," story, 1916, ch. 10

an's pocket, because it cut down
ıing.

—*Tom Sawyer,* 1876, ch. 30

W

apacity must be shown; in the

llowing the Equator, 1897, vol. 2, ch. 1

ır liberties. I do not know what
a palladium, but it is a good

—*Roughing It,* 1872, ch. 49

We have an insanity plea that would have saved Cain.

—Fourth of July speech, 1873

There is no end to the laws, and no beginning to the execution of them.

—"Temperance and Women's Rights," essay, 1923

The departmental interpreters of the laws in Washington . . . can always be depended on to take any reasonably good law and interpret the common sense all out of it.

—Letter to H. C. Christiancy, December 18, 1887

It would not be possible for Noah to do in our day what he was permitted to do in his own. . . . The inspector would come and examine the Ark, and make all sorts of objections.

—"About All Kinds of Ships," essay, 1892

LAWSUIT

Mark Twain was one of the most litigious writers in literary history. He filed a number of lawsuits against publishers and others who he believed were trying to cheat him. But he had little luck in the courts, and eventually these lawsuits drained his financial and spiritual resources. It was with an element of self-mockery that he wrote to a friend:

"I can't do no literary work the rest of this year because I'm meditating another lawsuit and looking around for a defendant."

LAWYER

Mark Twain had just finished addressing a New England society banquet when the attorney William M. Evarts stood up with his hands in his pockets, as was his custom, and remarked: "Does it not seem unusual to this gathering that a professional humorist should really appear funny?"

Twain arose and responded in his habitual drawl: "Does it not

also appear strange to this assembly that a lawyer should have his hands in his own pockets?"

They all laid their heads together like as many lawyers when they are gettin' ready to prove that a man's heirs ain't got any right to his property.

—Lorch, *Iowa Journal of History and Politics,* July 1929

LAZINESS

I am no lazier now than I was forty years ago, but that is because I reached the limit forty years ago. You can't go beyond possibility.

—Neider, *Autobiography,* 1959, ch. 23

LEADERSHIP

A statesman gains little by the arbitrary exercise of ironclad authority upon all occasions that offer, for this wounds the just pride of his subordinates, and thus tends to undermine his strength. A little concession, now and then, where it can do no harm, is the wiser policy.

—*A Connecticut Yankee,* 1889, ch. 16

LEARNING

Never learn to do anything: if you don't learn, you'll always find someone else to do it for you.

—Wagenknecht, *Mark Twain, the Man and His Work,* 1935, p. 10

Now let that teach you a lesson—I don't know just what it is.

—"Memories," speech, 1906

LECTURE

Mark Twain often recalled his first lecture, in 1866 in San Francisco. "I had sold two hundred tickets among my personal friends,

THE WHITE HOUSE
WASHINGTON

September 20, 1989

INFORMATION

MEMORANDUM FOR THE PRESIDENT

THROUGH: CHRISS WINSTON CW

FROM: EDWARD McNALLY EMcN

SUBJECT: REMARKS FOR THE 200th ANNIVERSARY OF THE OFFICE OF THE ATTORNEY GENERAL

I. SUMMARY

Attached for your consideration and review are draft remarks for Friday's address commemorating the 200th anniversary of the office of the Attorney General.

II. DISCUSSION

At 9:00 a.m. on Friday, September 22, 1989, you are scheduled to arrive at the Departmental Auditorium in Washington, to address a gathering commemorating the bicentennial of the office of the Attorney General. Most of the approximately 650 in attendance will be Justice Department employees or officials.

Attorney General Richard Thornburgh will introduce you. In addition, almost every living Attorney General will be joining you on the auditorium stage, including Edwin Meese III, William French Smith, Benjamin Civiletti, Griffin Bell, Edward Levi, Elliot Richardson, Richard Kleindienst, Ramsey Clark, Nicholas Katzenbach, William Rogers, and Herbert Brownell, as well as Mrs. Ethel Kennedy.

(McNally/Simon)
Sept. 20, 1989, 10:00 a.m.
Draft Four (B:AG)

PRESIDENTIAL REMARKS: 200TH ANNIV. OF THE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
FRIDAY, SEPTEMBER 22, 1989 -- 9:00 A.M.

Good morning. And thank you all. And thanks especially to my friend Dick Thornburgh, for those kind words and for the outstanding job he is doing for this Department, and for America.

[[ACKNOWLEDGEMENTS]]

All of America's history is traced from austere beginnings, from the spare and difficult lives of the first colonists, to the hardships of the revolutionary army, to a small and meagerly funded federal government.

The American adventure started down the path of history with little in the way of any concrete resources: Too few funds. Too little manpower. Too many dangers. And too little assurance of success. It's been quite a journey.

Today, Dick Thornburgh may think his efforts are plagued by budget complications. George Washington's Attorney General didn't have any budget complications. He simply wasn't given any budget. [[PAUSE]]

And for years Congress never criticized our A.G.'s about conflicts of interest. Until 1853, Congress paid the A.G. a lower salary because he was expected to make most of his money from private practice. Extend that plan to all 4,000 lawyers here and the problem today would be the budget surplus. [PAUSE]

In fact, the early A.G.'s often did not even live in the capital, but did business at home by mail, only coming in to appear before the Supreme Court. President Madison's Attorney General resigned because he was forced to move from Baltimore to Washington. If he thought that was bad, it's a good thing he never saw the new financial disclosure forms. [[PAUSE]]

Things didn't really begin booming until 1818, when Congress voted to double the size of the A.G.'s office -- by giving him money to hire his first clerk. [[PAUSE]]

Four years later, Congress relented and also gave the two of them an actual office in which to work. [[PAUSE]] In another milestone about ten years after that, Congress set aside some money so that the office could get its first law books. [PAUSE]

Austere beginnings, yes. But part of the genius of America is that, well, we've never really minded having the odds that way. Again and again, we've succeeded against the odds because the one element that's never been lacking is what the world has come to know as the American spirit.

And that ~~The American spirit~~ means initiative. Commitment. Hard work. Fairness. And it means faith -- faith in God, faith in our ideals, and faith that, no matter the challenge or the difficulties, justice will prevail in the end.

And it is justice that we celebrate today -- equal justice for all Americans.

Every President since Washington has depended on his A.G.'s counsel when the big decisions had to be made. Andrew Johnson's

A.G., James Speed, lived up to his name by writing the shortest A.G.'s Opinion on record, authorizing Lincoln's assassins to be tried by a military court. It contained just 28 words -- and might serve as a model for brevity of writing.

A generation later, President Taft, a former S.G., went to the other extreme. During the pure food laws debate on the legal definition of "whiskey," the Justice Department submitted a brief numbering 1,242 pages. Taft read it in its entirety -- a presidential record I hope never to break. [[PAUSE]]

Taft didn't resolve the debate until after the A.G. and the Secretary of Agriculture spent two days at the White House consumed in oral argument. And this was 50 years before "Tastes great" -- "Less Filling." [[PAUSE]]

Presidents have particularly turned to their Attorney Generals in times of crisis. Robert Jackson's legal justification of the "bases for destroyers" deal allowed FDR to rush 50 surplus warships to Churchill at a critical time in the Battle for the Atlantic. In 1957, William Rogers advised Ike on his constitutional authority to send federal troops to enforce court-ordered desegregation in Little Rock, Arkansas. And it was Bobby Kennedy's astute advice to respond to the first Khrushchev letter -- ignoring the hard-line letter that followed -- that enabled the President to defuse the Cuban Missile Crisis.

These were bold and effective steps, and a tradition of which you can all be proud. The British destroyers, and the withdrawal of the Cuban missiles, helped preserve America's

freedom. And the desegregation effort helped this nation to honor its promise of equality for all men and women of all races.

The A.G. today continues the honorable tradition of serving as "America's lawyer." Today, the Justice Department stands at the forefront of protecting American's rights and of ensuring fairness throughout society. In matters of business and antitrust, environment and civil rights -- matters which strike at the very core of our sense of right in a nation of free men and women -- your 200 year history stands as a testament to America's spirit, and to the continuing pursuit of a dream.

The great jurist Benjamin Cardozo said: "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best."

You are indeed the bravest and the best. Today there are four thousand lawyers in the Justice Department, and Dick tells me that some of you are so clever, you've had loopholes named after you. [[PAUSE]]

And these days more than ever, we're relying on the bravest and the best throughout this Department -- the Marshals, FBI, DEA, and the Bureau of Prisons, in addition to our A.U.S.A.'s and others in the Criminal Division -- to lead the war against the scourge of cocaine and the violent crime it spawns.

In fighting this battle, you know you have my interest and support, and the support of the American people.

You've seen our support in the anti-crime bill we sent to Congress in June. It sends a clear, unmistakable and tough message -- that those who bring blood and thunder to our streets will be brought to justice. I said it on television earlier this month, and I want to emphasize it here today:

We're changing the rules. Criminals have got to learn that if they sell drugs, they will be caught. And once caught, they will be prosecuted. And once convicted, they will do time.

We're counting on you to get this message out, to make it work in practice. And we're prepared to match rhetoric with resources, backing you up with a plan that calls for more agents and more prosecutors -- the largest increase in A.U.S.A.'s in history -- and that will boost the capacity of federal prisons by almost 80 percent.

We are in this battle for the long haul; we have joined this war for the duration. I have great respect for the leadership of the Attorney General and the Department of Justice in waging this battle, and for the professionalism and commitment that you on the front lines have brought to this effort.

As we stand here today, commemorating 200 years of the Office of the Attorney General, we should look back with pride on the justice we have achieved as a nation. From modest beginnings you stand today as a powerful force for justice in America, and as a powerful example for justice in the world.

I salute this great office, its rich heritage, and all the fine men and women who serve justice under its leadership today. You are indeed the "bravest and the best."

Congratulations on this anniversary. Godspeed you in your service. And God bless the United States.

# # #

THE FIFTIETH ANNIVERSARY OF THE



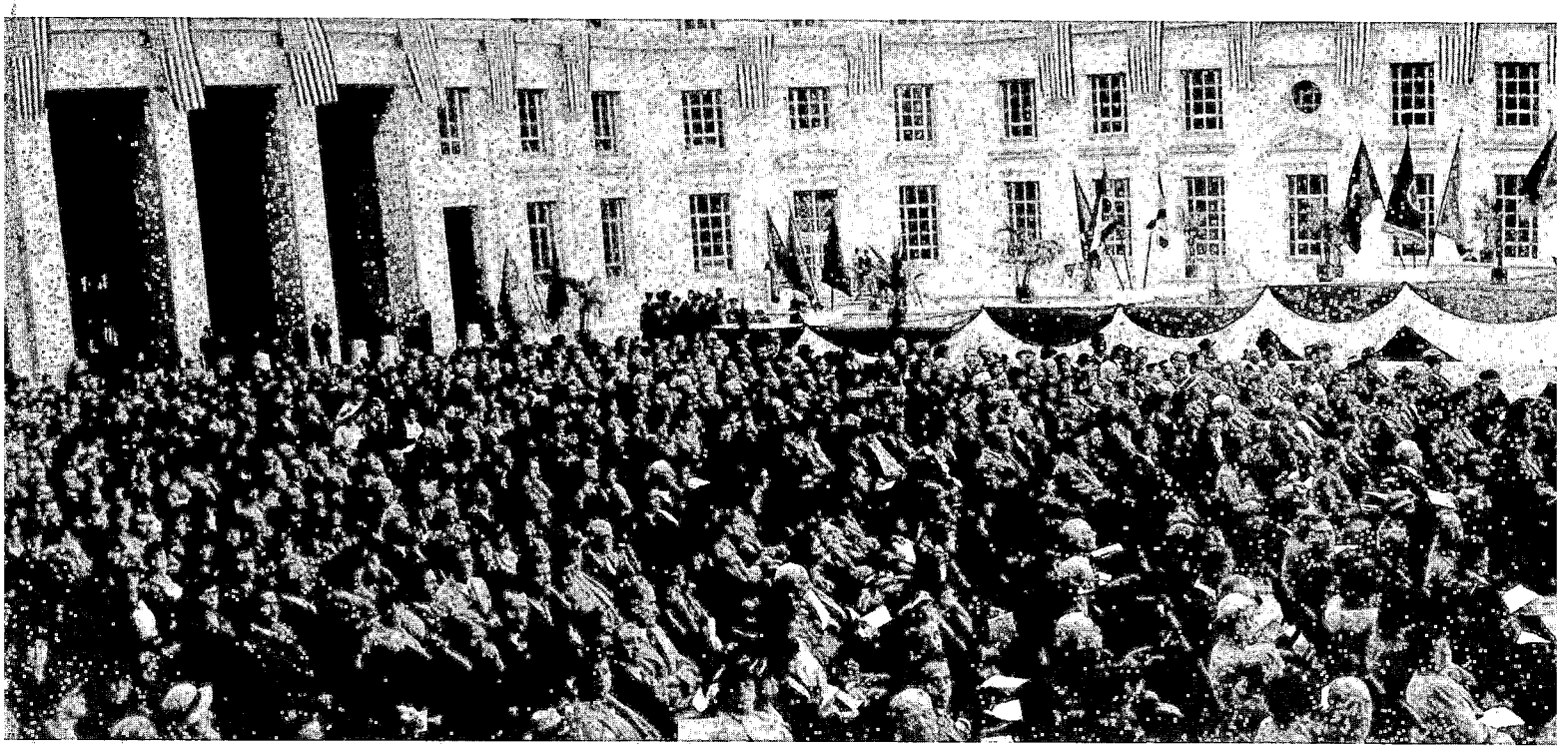
U.S. DEPARTMENT OF JUSTICE BUILDING

1934–1984

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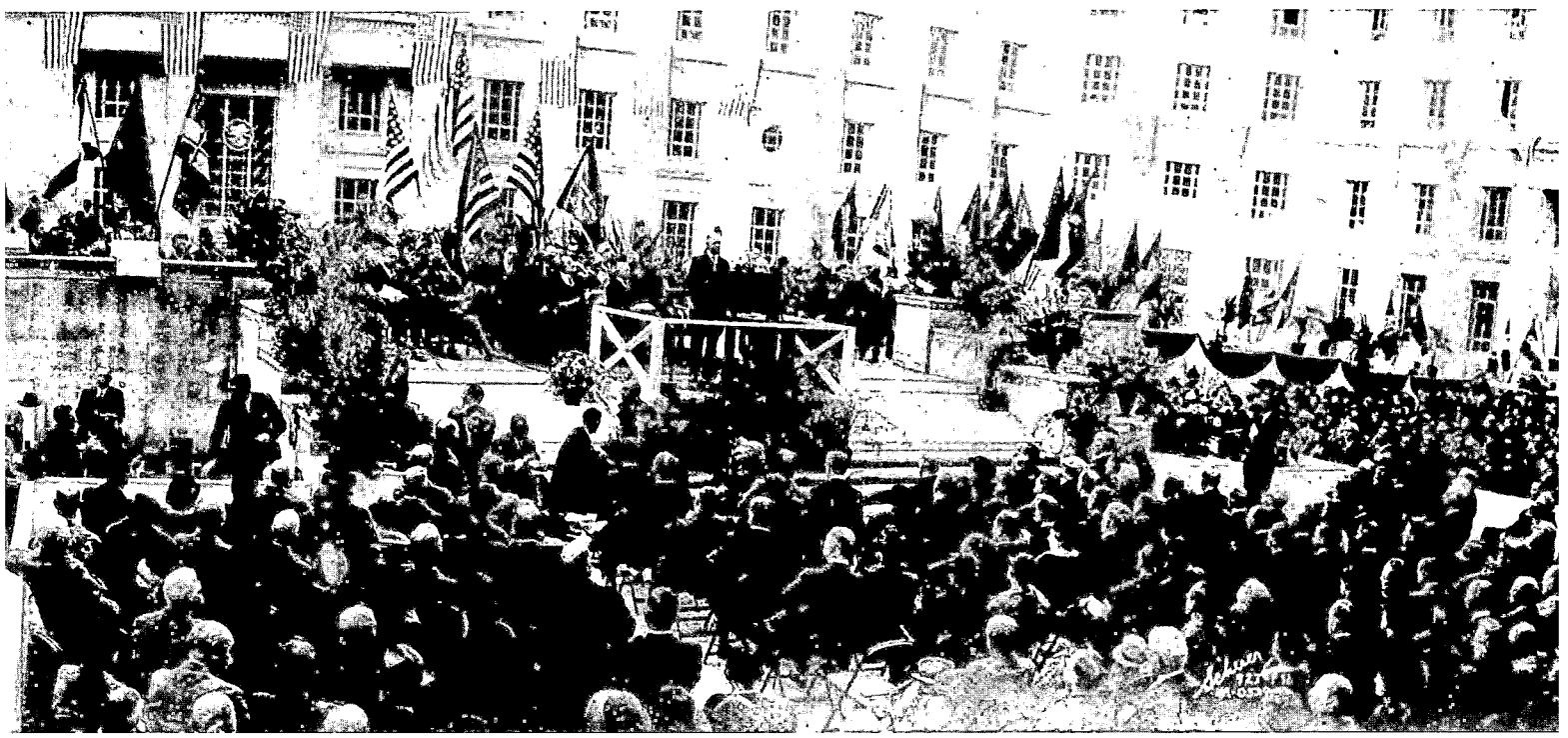


U.S. DEPARTMENT OF JUSTICE BUILDING



Dedication of the Justice Building, October 25, 1934. Photographer unknown.

THE FIFTIETH ANNIVERSARY OF THE



U.S. DEPARTMENT OF JUSTICE BUILDING 1934—1984

Compiled by the Justice Management Division
Text by Antonio Vasaio

ACKNOWLEDGEMENTS

Many organizations and individuals, private citizens and Federal employees (who must remain anonymous), contributed to this publication. The following, therefore, is a partial list:

The Smithsonian Institution; Library, Department of Justice; George Gurney, author; Isabel B. Lowry and Norma Jackson, the Dunlap Society; Richard Striner, President, the Art Deco Society of Washington; Elizabeth J. Miller and Perry G. Fisher, Columbia Historical Society; National Archives; John Barianos, Barianos Art Studio; Roger Morigi, Master Stone Carver; the General Services Administration; U.S. Geological Survey; Betty Borschell, the American Concrete Institute; William Gallagher, Harry Weese and Associates; and Rebecca Wilson, Tampa Museum. Unless otherwise noted, photography in this publication is by Day Walters.

For sale by the Superintendent of Documents,
U.S. Government Printing Office,
Washington, D.C. 20402

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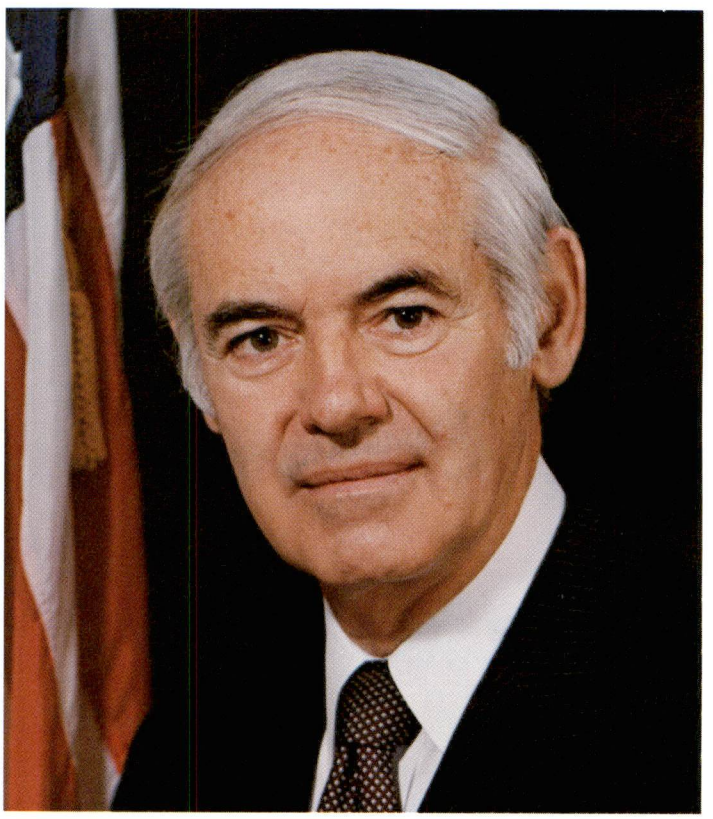
THE PRESIDENT

For nearly a quarter of our Nation's history, the Justice Department Building in Washington, D.C., has been a symbol of Federal law, order, and justice.

Over the years this structure has witnessed great changes in our social, business, and governmental environment. Though aged by time, the exterior of this beautiful limestone building still appears much the same as it did on that October day fifty years ago when President Roosevelt observed its unveiling. Within its walls many dedicated men and women have responded to the changes and challenges which faced them in a manner worthy of commendation.

Today, we are observing the fiftieth anniversary of much more than just a stone edifice. It is, in fact, a living institution, a composite of people, ideals, and principles. It stands like a sentinel of freedom and justice for all Americans. This structure and those who have served here constitute a proud and enviable legacy. At this commemorative event let us pledge to preserve and perpetuate this great tradition.

Ronald Reagan

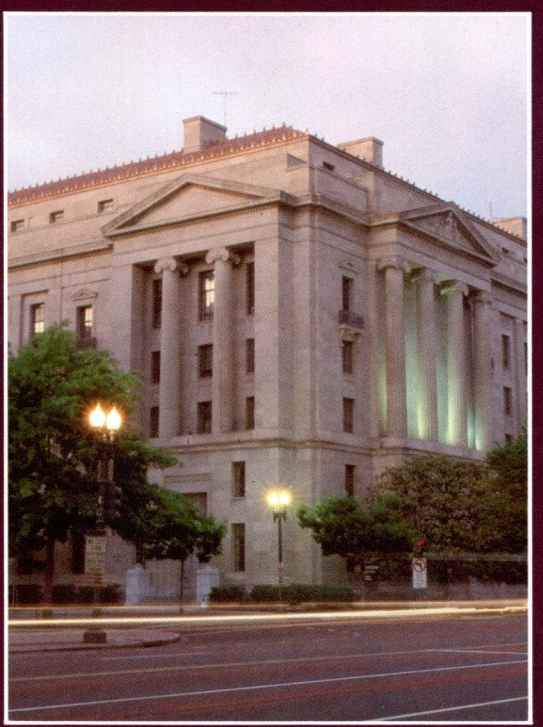


THE ATTORNEY GENERAL

It is a privilege to serve the Department of Justice during the fiftieth anniversary of the Main Justice Building. The past half century, more than any other period in our history, has witnessed a qualitative as well as quantitative increase in demands placed upon the Department. As our society becomes more complex, so must its laws and their just administration. It is a tribute to the dedicated men and women of the Department that the level of excellence which has come to be expected has not wavered despite the increasing complexities. I commend one and all, past and present, for this legacy and entrust it to the future with the hope that "what is past is prologue." With gratitude and pride, we commemorate the fiftieth anniversary of the historic Main Justice Building.



THE EARLY YEARS



The salary of the Attorney General was fixed at $1,500.

The Department of Justice traces its birth to the First Congress of 1789 which convened in New York. In that year, Congress passed the Judiciary Act which created the Office of Attorney General and outlined the duties as follows:

And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.[1]

The Act contained jurisdictional and practical shortcomings which would remain uncorrected for many years. It failed to give the Attorney General control or supervision of district attorneys (now known as United States Attorneys), of suits affecting the United States in lower courts,[2] and made no provisions for quarters or staff. The first two defects would not be remedied until 1870, with the establishment of the Department of Justice;[3] the third would be permanently redressed with the dedication of the Main Justice Building in 1934. A first step toward the solution of the last defect was taken in 1818, the year the Office of Attorney General was provided a clerk.

The fledgling Office of Attorney General was provided a subsistence appropriation. Congress had fixed the annual salaries of the heads of the Departments as follows: for the Secretaries of State and Treasury, $3,500; for the Secretary of War, $3,000; but, by the Act of September 23, 1789, the salary of the Attorney General was fixed at $1,500.[4] All routine expenses incurred in the daily operation of the Office of Attorney General were paid by the Attorney General out-of-pocket. No funds beyond the Attorney General's salary were available for office rent, clerk hire, stationery, postage, candles, oil for his lamps, or coal for his stove.[5]

The Senate had provided $2,000 for the Office of Attorney General but the House of Representatives reduced the sum. Congress reasoned that the Attorney General could augment his salary through private practice, in the words of Easby-Smith, "the prestige of the office would be so great that it would be well worth the while of any lawyer to accept the office with only a nominal compensation."[6] Prestige of the Office

Randolph was the first of 22 Attorneys General who would subsidize their income through private practice.

of Attorney General, however, did not correspond with that of other Executive Offices. The Judiciary Act of 1789 did not accord Cabinet rank to the Office of Attorney General. As a practical matter, however, the Cabinet considered issues requiring legal expertise. President Washington favored his Attorney General's counsel. On March 31, 1792, the first Attorney General, Edmund Randolph, who had been Washington's personal attorney and an aide in the Revolutionary War, attended his first session of Washington's Cabinet, henceforth, the position of Attorney General was recognized as a Cabinet post.[7]

Randolph was to begin a chapter in the history of the Department which could be entitled, "In Search of a Home." He arrived in New York, then the seat of government, in February 1790, to austere circumstances. In addition to his duties, he performed all physical labor of the office; Congress had failed to provide any type of assistance.[8] He had been persuaded to accept the Office of Attorney General by Washington who enticed him with the prospect that the Office would " 'confer pre-eminence' upon the incumbent and accord him a 'decided preference of professional employment.' " Randolph was the first of 22 Attorneys General who would subsidize his income through private practice. This practice ended with Caleb Cushing in 1853.[9]

In December 1790, the seat of government was moved from New York to Philadelphia where it remained until 1800.[10] During this time, Congress had increased the Attorney General's salary in four increments from $1,500 to $3,000 but had provided the Attorney General no assistance. Minor relief arrived in 1818 when $1,000 was appropriated for one clerk and $500 for office rooms and incidental expenses.[11] The Office of Attorney General would remain a "second-class" Cabinet office until 1853, when Congress set a salary of $8,000, equal to that of the other Cabinet offices.[12]

In December 1800, the seat of government made the final move from Philadelphia to Washington. In Washington, the Office of Attorney General wandered from one temporary location to another until a permanent home was built in 1934. From the beginning, the Attorney General had not been expected to reside in the Capital; it had been sufficient simply to appear before the Supreme Court when necessary.[13] This changed in 1814 when President Madison appointed Richard Rush Attorney General. One of the conditions of his appointment was that he

The Office of Attorney General consisted of a clerk, a messenger, and a library.

reside in Washington.[14] Official quarters were not provided, however, until 1822 when the Attorney General was given a room on the second floor of the old War Department building; he would remain there until 1839. (*Plate 1*)

In August 1839, Felix Grundy, the thirteenth Attorney General, moved the Office of Attorney General to its second home in Washington, located on the second floor of the Treasury Building.[15] (*Plate 1*). By this time, the Office of Attorney General consisted of a clerk, a messenger, and a library which had grown since 1831, the year Congress first appropriated $500 for books.[16] The Office of Attorney General remained at the Treasury Building for 16 years.[17]

In 1855, the Office of Attorney General moved to its third location, a yellow brick building on the southeast corner of 15th and F Streets, N.W., where it remained for a brief 6 years.[18] (*Plate 2*). Just prior to the move, 1853-54, Caleb Cushing had prepared two historical documents. One report traced the history of the judiciary from the Constitution and made recommendations for the enlargement of the entire judicial system. It made the first suggestion for the establishment of an intermediate appelate court, a program which was instituted in 1891 with the creation of the circuit courts of appeals.[19] The second report reviewed the history of the Office of Attorney General and made numerous recommendations. The Office of the Assistant Attorney General was also created during this 6 year period. In 1861, Congress adopted Randolph's proposals made 70 years before by giving the Attorney General control of the district attorneys.[20]

In 1861, the Office of Attorney General moved to its fourth home, a suite of rooms on the first floor of the south wing of the Treasury Building where it remained for 10 years (*Plate 3*). In this period, the staff was scattered in various locations, a trend which would eventually find the Department of Justice in every State. The Solicitor General and one of the Assistant Attorneys General with their clerical staffs were located in the Hooe Iron Building on F Street near 14th Street, N.W. (*Plate 4*). Another Assistant Attorney General, along with the Court of Claims, were housed in rooms in the basement of the Capitol.[21]

A bill to establish the Department of Justice passed Congress and was signed by President Ulysses S. Grant on June 22, 1870. The Department was formally created on July 1, 1870, with an appropria-

The Department formally came into existence on July 1, 1870.

tion of $67,320.[22] The "Act To Establish the Department of Justice" also created the Office of Solicitor General. Before this position was created, the Office of the Solicitor had been part of Treasury. In 1830, Congress had given this forerunner control of civil suits of interest to the government and had made the Attorney General his legal adviser.[23] The act authorized the Attorney General to appoint the Solicitor General, or any other officer of the Department, to represent the government before the Supreme Court. From 1870 to 1952, the year the Office of Deputy Attorney General was created, the Solicitor General was the second ranking official of the Department.[24]

In 1871, the Department moved to its fifth location, the Freedman's Savings Bank Building on Pennsylvania Avenue, N.W. (*Plate 5*). For 10 years, the entire Department (except the Assistant Attorney General in charge of the Court of Claims and his staff, who remained at the Capitol) occupied the second, third, and fourth floors of this rented building. In 1872, the fifth floor of the building was leased. In 1882, when the lease expired, Congress provided $250,000 to purchase the building.[25] With newfound space, the Court of Claims and the Assistant Attorney General and his staff relocated from the Capitol. For the first time in nearly 100 years, the Department of Justice had its own home, but like all the others, it would be short-lived.[26]

The Department of Justice remained at the Freedman's Bank Building until 1899. That year Congress passed an act stating:

The building now occupied by the Department of Justice is too small for its purpose, is unsafe, over-crowded, . . . and has been pronounced unsafe after examination by the proper officials of the Treasury Department.[27]

This same year, the Attorney General and his personal staff moved to its sixth location, the Palmer House, later known as the Baltic Hotel, on K Street between Vermont Avenue and 15th Street, N.W. (*Plate 6*). The library was half a mile away in the old Corcoran Art Gallery (*Plate 7*), now called the Renwick Gallery of the Smithsonian Institution at 17th Street and Pennsylvania Avenue, N.W., and other offices were dispersed in five separate buildings, none of which were designed for office use.[28] The Department of Justice was in desperate need of suitable quarters. In this period, there were approximately 260 employees in Washington, and 1,300 employees in various districts throughout the country.[29]

Plate 1

An 1820 watercolor of the State Department Building (front left); the Treasury Building (rear left), the second home of the Office of Attorney General from 1839 to 1855 was located on this site in the new Treasury Building after the old building burned in 1833; the War Department Building (rear right) became the Navy Department Building and the first official quarters for the Office of Attorney General were provided on the second floor of this building in 1822; the new War Department Building (front right).[30] This is the earliest known depiction of the new complex of four office buildings. It was drawn by the French minister's wife, Baroness Hyde de Neuville, and is owned by the New York Public Library.[31] Jonathan Elliot's 1830 guidebook to the city offers the following description:

At the distance of about 200 yards, on the east of the President's house, are situated two buildings for the departments of State and of the Treasury; and at the same distance on the west, are two others for the War and Navy departments. These buildings are all of the same dimensions and construction; they are 160 feet long and 55 feet wide, of brick, two stories in height; they are divided in their length by a broad passage, with rooms on each side and a spacious staircase in the centre. The two most northerly buildings are ornamented with an Ionic portico of six columns and pediment; and every observer must be convinced that the two other buildings require some such finish on their south fronts, to make them complete. The grounds about these offices have been graduated and planted, of late years; and the shrubbery begins to present a pleasing appearance.[32]

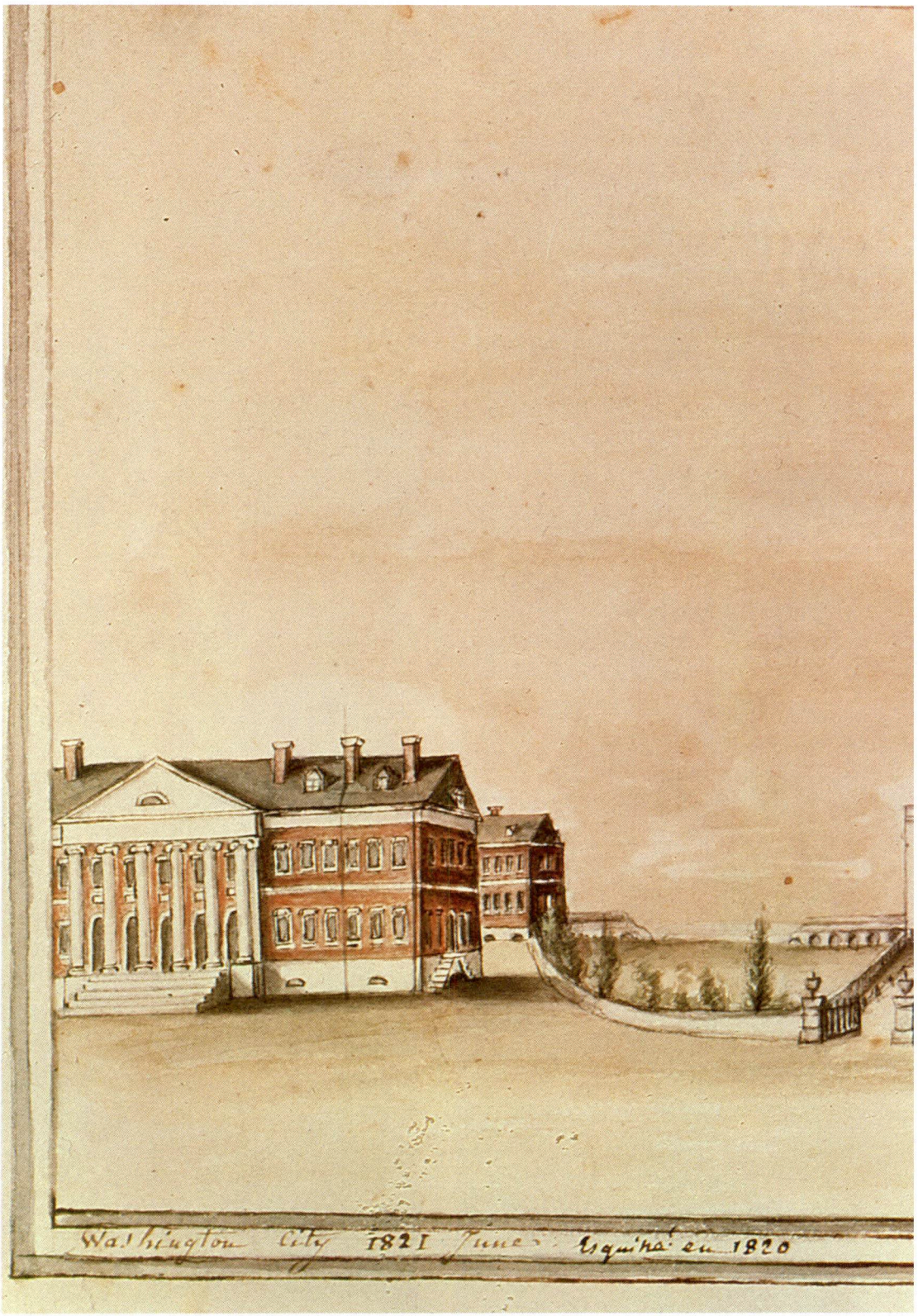


Plate 2

This Civil War photograph by Mathew Brady shows the Corcoran Office Building on the far right, the home of the Office of Attorney General between 1855-1861. It was a five-story building erected in 1848 and the city's most prominent example of Greek Revival commercial architecture. The building had been financed by William Wilson Corcoran who had made his fortune by selling government bonds to finance the Mexican War. The building was razed c. 1875 for a larger Corcoran Office Building, more than double the size.[33]

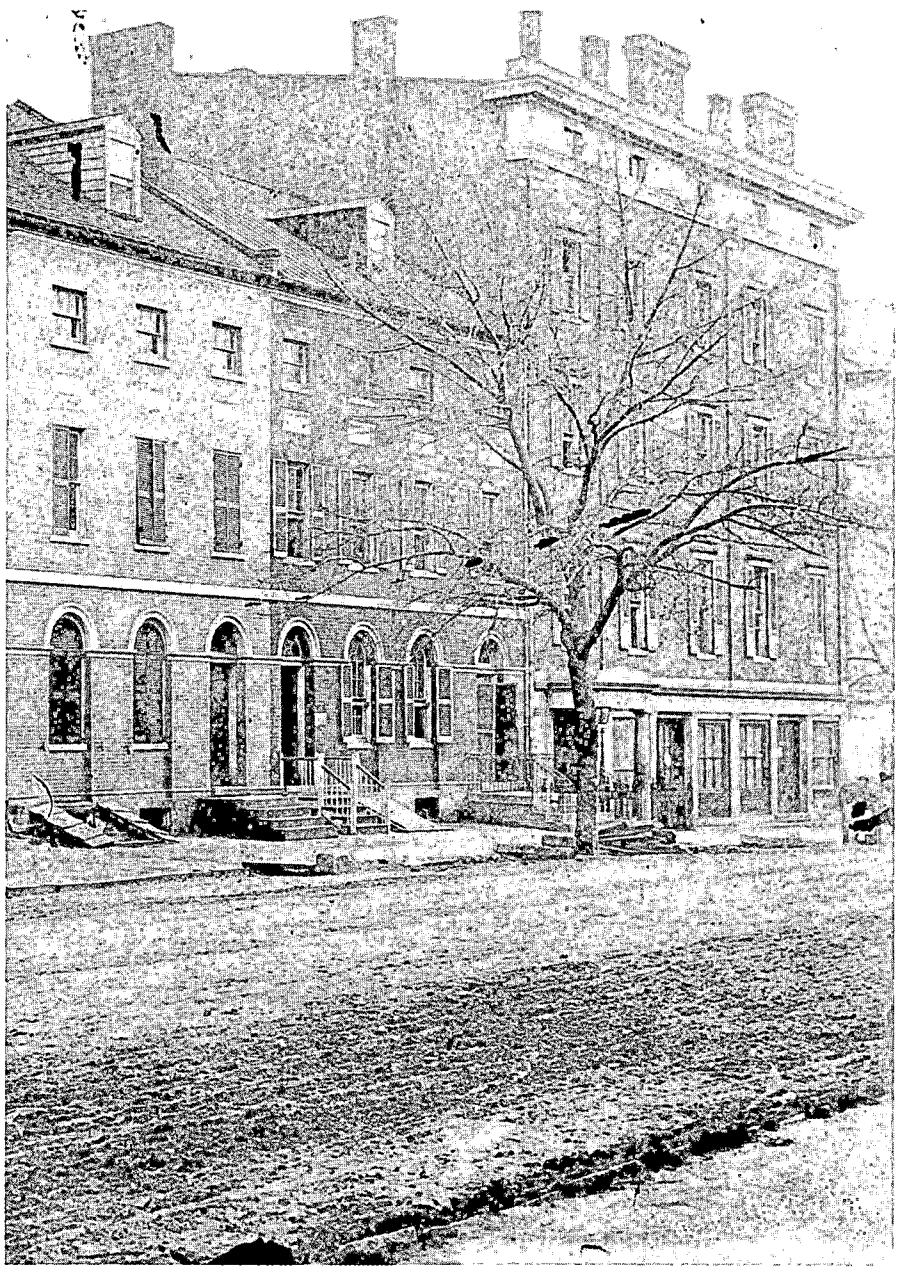
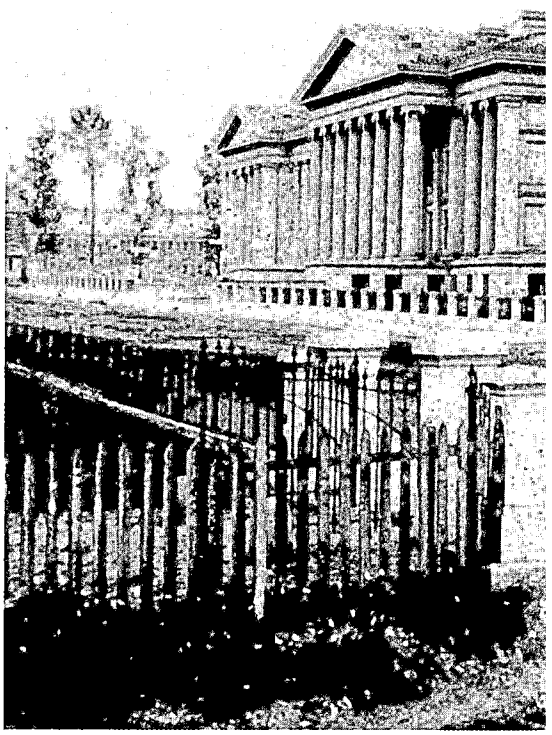


Plate 3

View of the Treasury Building from the southwest c. 1858. The fence to the left enclosed the grounds of the White House. The Department was housed on the first floor of this building between 1861-1871.[34]



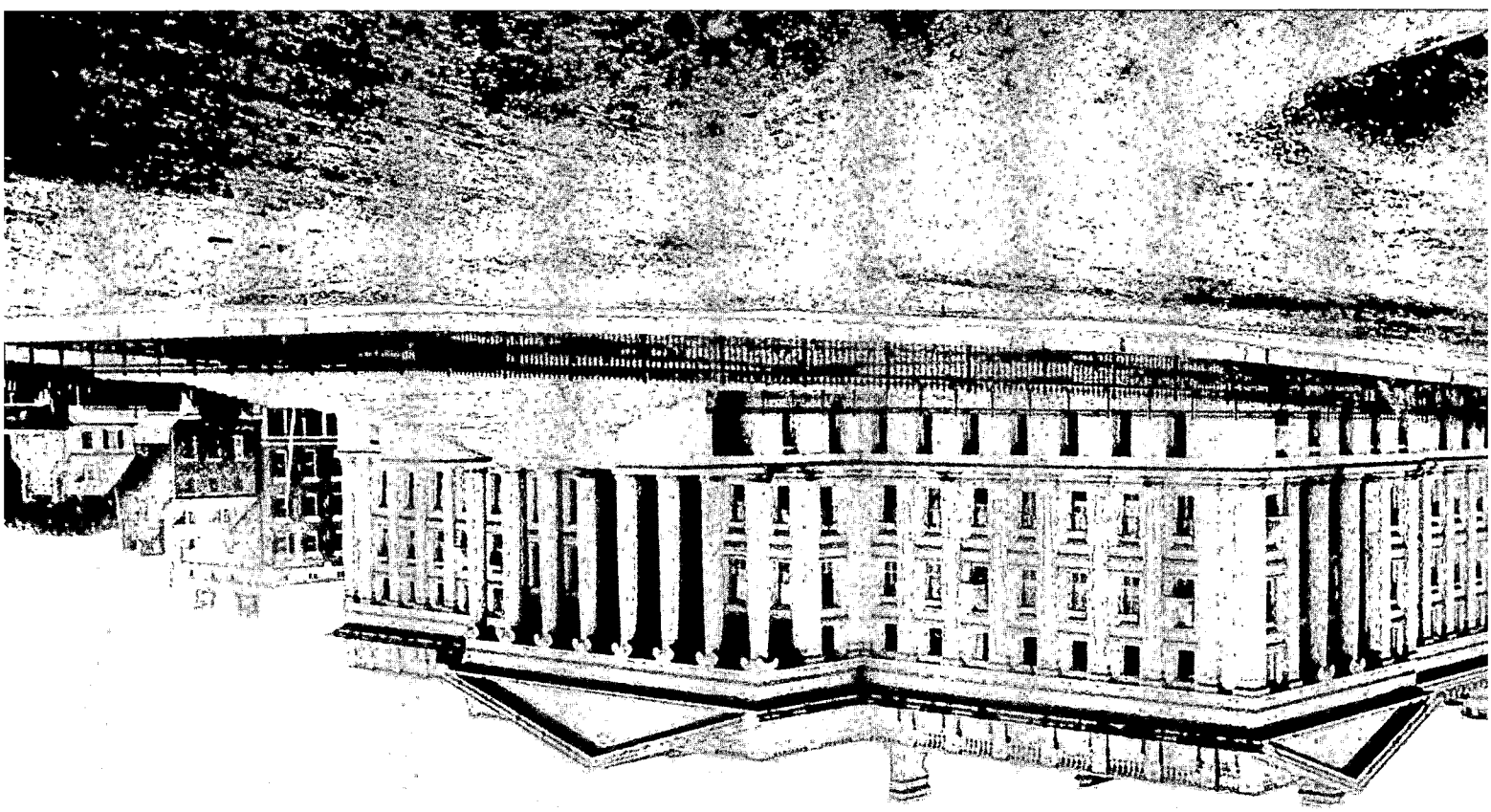


Plate 4

The Hooe Iron Building, 1324-1334 F Street, N.W., as it appeared in 1917; it housed the Solicitor General and one of the Assistant Attorneys General and their clerical staffs.[35] Built in 1873, it was Washington's largest castiron-front structure. Originally built as a department store but was used primarily as an office building for most of its 53 years. It was razed in 1926.[36]



Plate 5

The Freedman's Savings Bank Building built in 1869, on Pennsylvania Avenue and Madison Place, N.W. (northeast corner) housed the entire Department of Justice, except the Assistant Attorney General in charge of Court of Claims cases and his staff, who were located in the basement of the Capitol.[37] The bank had been established to guard the savings of blacks once the Civil War ended.[38] In 1871, the Department of Justice leased the second, third, and fourth floors (in 1872 the fifth floor was leased) of the building for 10 years. In 1882, Congress provided $250,000 to purchase the building. The Department of Justice remained here until 1899 when the building was razed.[39]



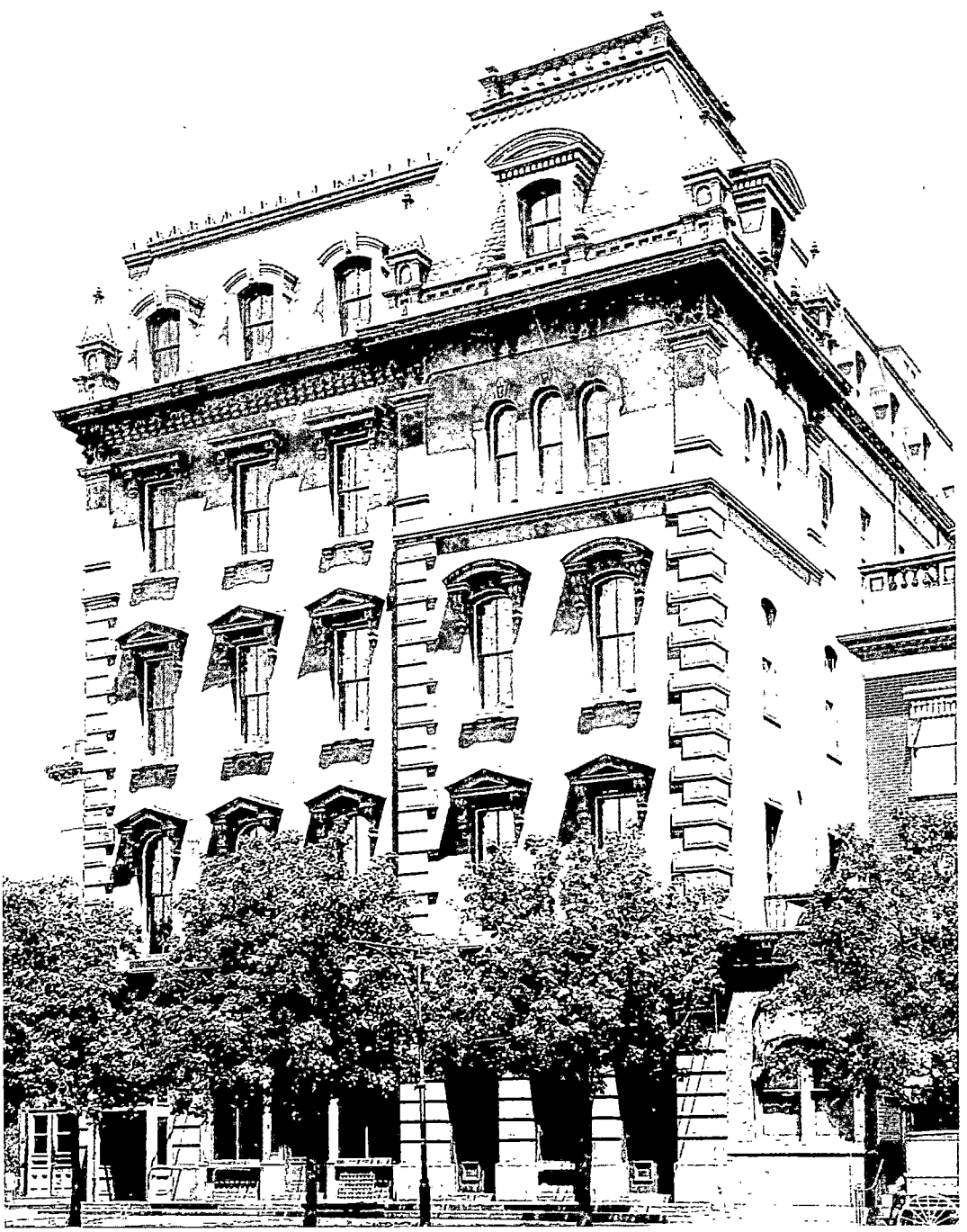




Plate 6

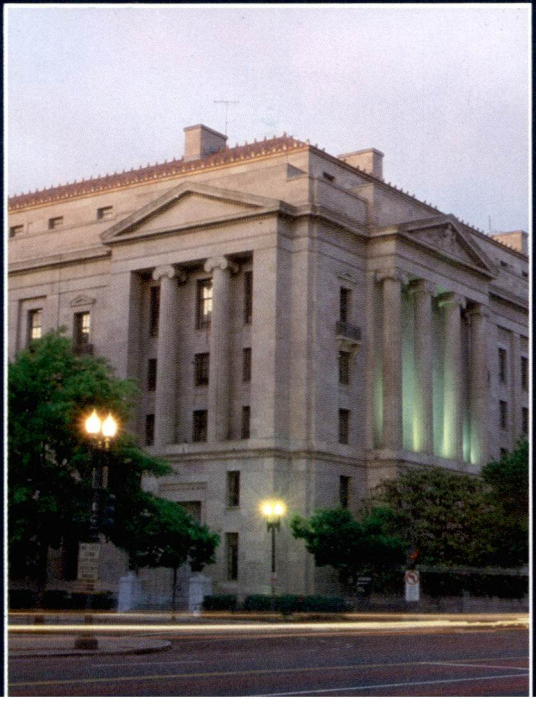
The Palmer House (also briefly known as the Baltic Hotel) was built in 1884. Located at 1435 K Street, N.W., it housed offices of the Department of Justice from c. 1899 to 1917.[40] This Romanesque Revival house was built for Senator Thomas W. Palmer and was one of the first residences in the city with a private elevator. A somewhat unusual feature was the kitchen on the top floor, adjacent to the customary servant's rooms. This was done to eliminate the spread of cooking odors throughout the house. The structure was razed in 1926.[41]

Plate 7

The old Corcoran Art Gallery, currently known as the Renwick Gallery of the Smithsonian Institution, located at 17th Street and Pennsylvania Avenue, N.W., was purchased by the federal government in 1898 and housed the Department of Justice Library c. 1899.[42] The building, designed by architect James Renwick, Jr., in 1858, was scheduled to be demolished for a new Executive Office building. S. Dillon Ripley, Secretary of the Smithsonian Institution, made an appeal to President Lyndon B. Johnson which saved the building. It was given to the Smithsonian for restoration, renamed, and opened as a public art museum in 1973.[43]



HOMECOMING



Barnum's Circus and the Bijou Theatre originally occupied this site.

A permanent solution to the critical housing problem was finally addressed by Congress on July 3, 1930 when Congress appropriated $10 million, later increased to $12 million, for a new building, exclusive of the cost of the site.[44] The new building would span the area between Constitution and Pennsylvania Avenues and Ninth and Tenth Streets. The eastern branch of the Potomac, called Tiber Creek, originally occupied this site c. 1800 until partly filled and made into the Washington City Canal (Plates 8-9). Later, the Old Hay Market, where Barnum's Circus began (Plate 10), and the Bijou Theatre at Louisiana Avenue and Ninth Street, N.W. (Plate 11)[45] had occupied this area.

Andrew Mellon, Secretary of the Treasury (among the Treasury Department's responsibilities were the current functions performed by the General Services Administration), had appointed Milton Medary of the Philadelphia architectural firm of Zantzinger, Borie and Medary to begin designs for the new building.[46] Upon Medary's death in 1929, the work was continued by his associates; Clarence Zantzinger and Charles L. Borie, Jr., would "become totally responsible for the eventual design of the Justice Department edifice."[47]

The proposed site had changed several times. The original proposal placed the building between Pennsylvania Avenue and D Street, and 14th and 15th Streets.[48] When it was determined that this location would interfere with revised plans for the Commerce Building, a site between Seventh and Ninth Streets and Pennsylvania and Constitution Avenues was chosen, the present location of the National Archives.[49] Attorney General John Sargent reviewed these plans in December 1928 and informed Mellon that the Department would need more space.[50] The current site was approved when John Russel Pope, who Mellon had enlisted for advice after considerable pressure from the Commission of Fine Arts, suggested that the sites for the Archives and Justice Buildings be reversed.[51]

While new designs were being finalized, construction began in March 1931 (Plates 12-17). The building was occupied September 1, 1934, and dedicated on October 25, of the same year. With the exception of some sculptures and murals, the building was completed in 1935, only four years after the first contract was signed.

Courtyards of varying sizes provide natural light and ventilation to the offices.

The building is monumental. The base is 576 feet long on the Tenth Street side, 476 feet long on the Ninth Street side, and 420 feet wide.[52] There are four small courts (B, C, D, and E) surrounding the Great Court, which is the size of most city blocks (Plate 18). Courts D and E are currently used for parking. Underground parking was provided for approximately 150 automobiles, one of the first designs within the Federal Triangle to deal with vehicular congestion.[53]

Any inclination to view the courtyards as unutilized space must be resisted. Courtyards of varying sizes provide natural light and ventilation to the offices. "This form represents the standard office building type before air conditioning and fluorescent lighting permitted the filled-in rectangles of modern office buildings."[54]

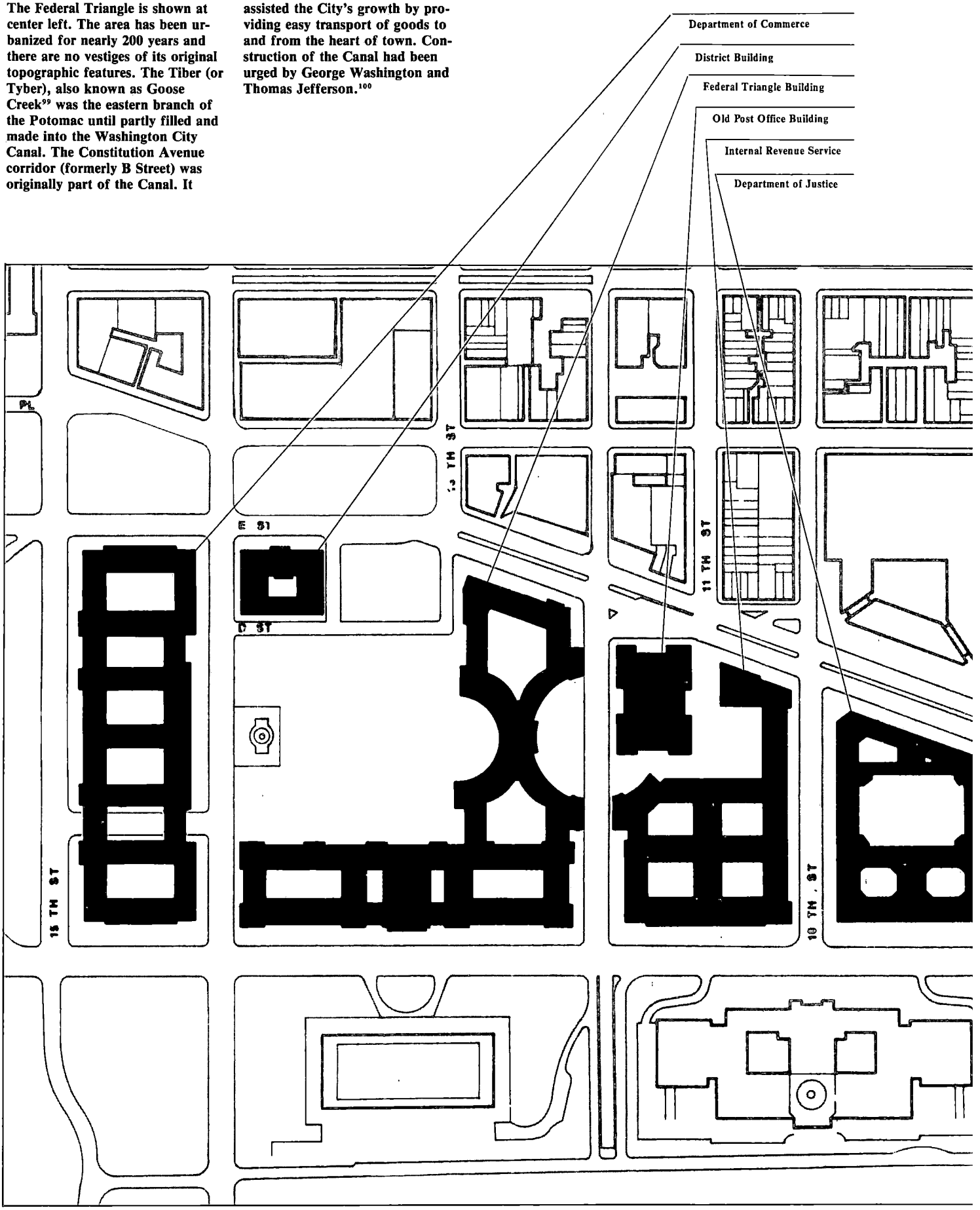
The design of the building is Classic Revival (Plates 19-24). It reproduces the grandeur and architectural features which are true to the ancient protoypes but is also eclectic and individualistic[55] (Plate 25). Built during the height of the Art Deco period, many of the building's decorative features bear this style's unmistakable influence (Plates 26-29). The art historian, Bevis Hillier, offers the following definition of Art Deco:

...an assertively modern style, developing in the 1920's and reaching its high point in the thirties; it drew inspiration from various sources, including the more austere side of Art Nouveau, cubism, the Russian Ballet, American Indian art and the Bauhaus; it was a classical style in that, like neo-classicism but unlike Rococo or Art Nouveau, it ran to symmetry rather than asymmetry, and to the rectilinear rather than the curvilinear; it responded to the demands of the machine and of new materials such as plastics, ferro-concrete and vita-glass; and its ultimate aim was to end the old conflict between art and industry, the old snobbish distinction between artist and artisan, partly by making artists adept at crafts, but still more by adapting design to the requirements of mass production.[56]

Though the use of aluminum as a decorative metal was uncommon in the early 1930s,[57] it was used extensively throughout the building (Plates 30-31). Aluminum was used unsparingly; the 20 foot high doors at all entrances; the geometrically detailed elevator doors of the 23 passenger and 2 private elevators; all of the interior stair railings; the framing for 1,908 windows; the 10,696 light fixtures; the fountain in the Great Court; the chair railings, picture molding and door trim for each office; elaborate ornamentation for many entrances;[58] even the C. Paul

Plate 8

The Federal Triangle is shown at center left. The area has been urbanized for nearly 200 years and there are no vestiges of its original topographic features. The Tiber (or Tyber), also known as Goose Creek[99] was the eastern branch of the Potomac until partly filled and made into the Washington City Canal. The Constitution Avenue corridor (formerly B Street) was originally part of the Canal. It assisted the City's growth by providing easy transport of goods to and from the heart of town. Construction of the Canal had been urged by George Washington and Thomas Jefferson.[100]



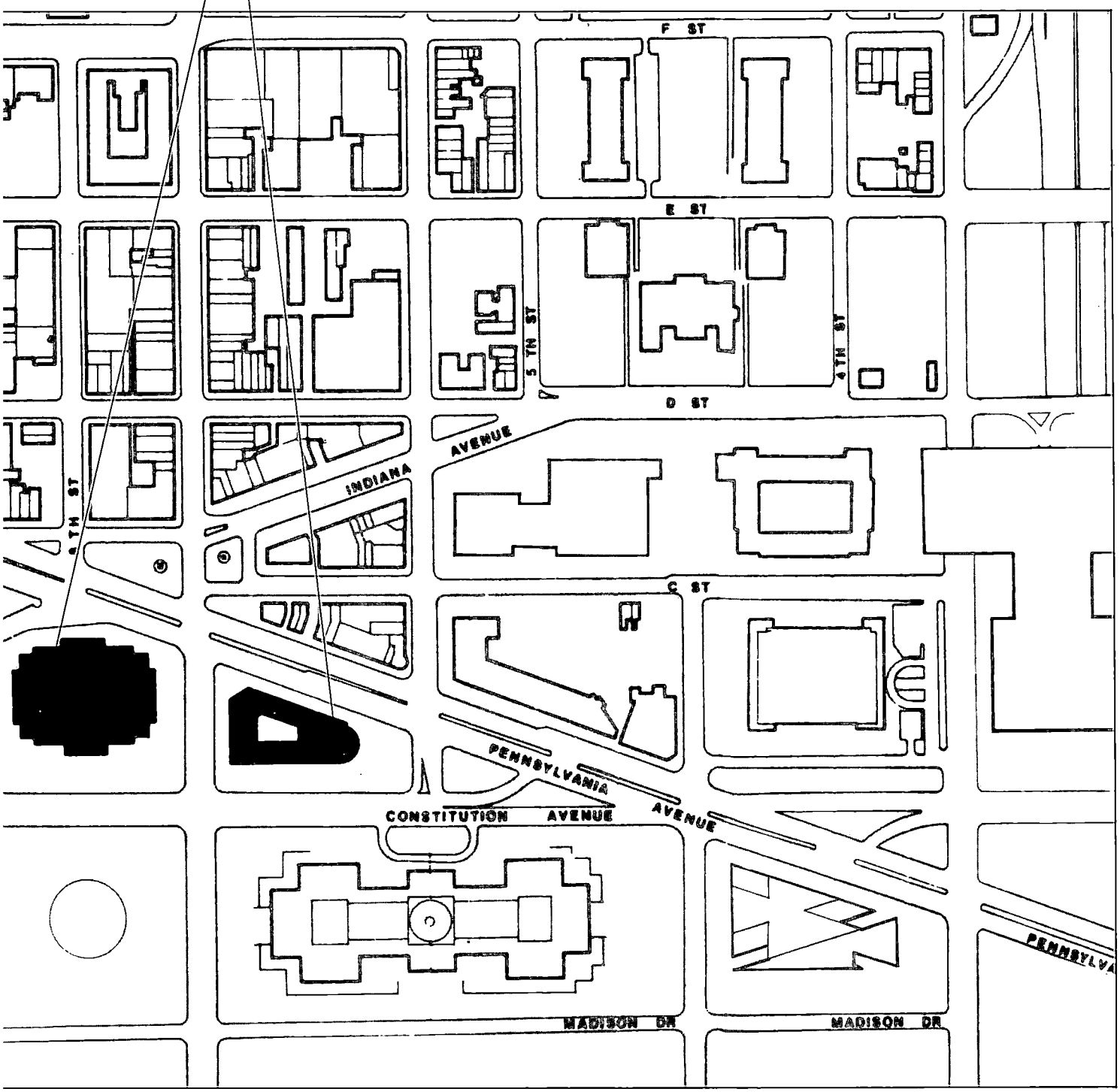

Archives
Federal Trade Commission
F ST
E ST
5TH ST
4TH ST
D ST
AVENUE
INDIANA
9TH ST
C ST
PENNSYLVANIA
AVENUE
CONSTITUTION AVENUE
MADISON DR
MADISON DR

Plate 9

"Aerial view of the Federal Triangle from the southeast, as the principal construction work came to a close. The Justice Building, third from the right, is essentially completed. The excavations on the Mall in the foreground are for the National Gallery of Art."[101] Photograph taken December 18, 1937. Collection: National Archives, Audiovisual; photo no. 18-AN-14043.



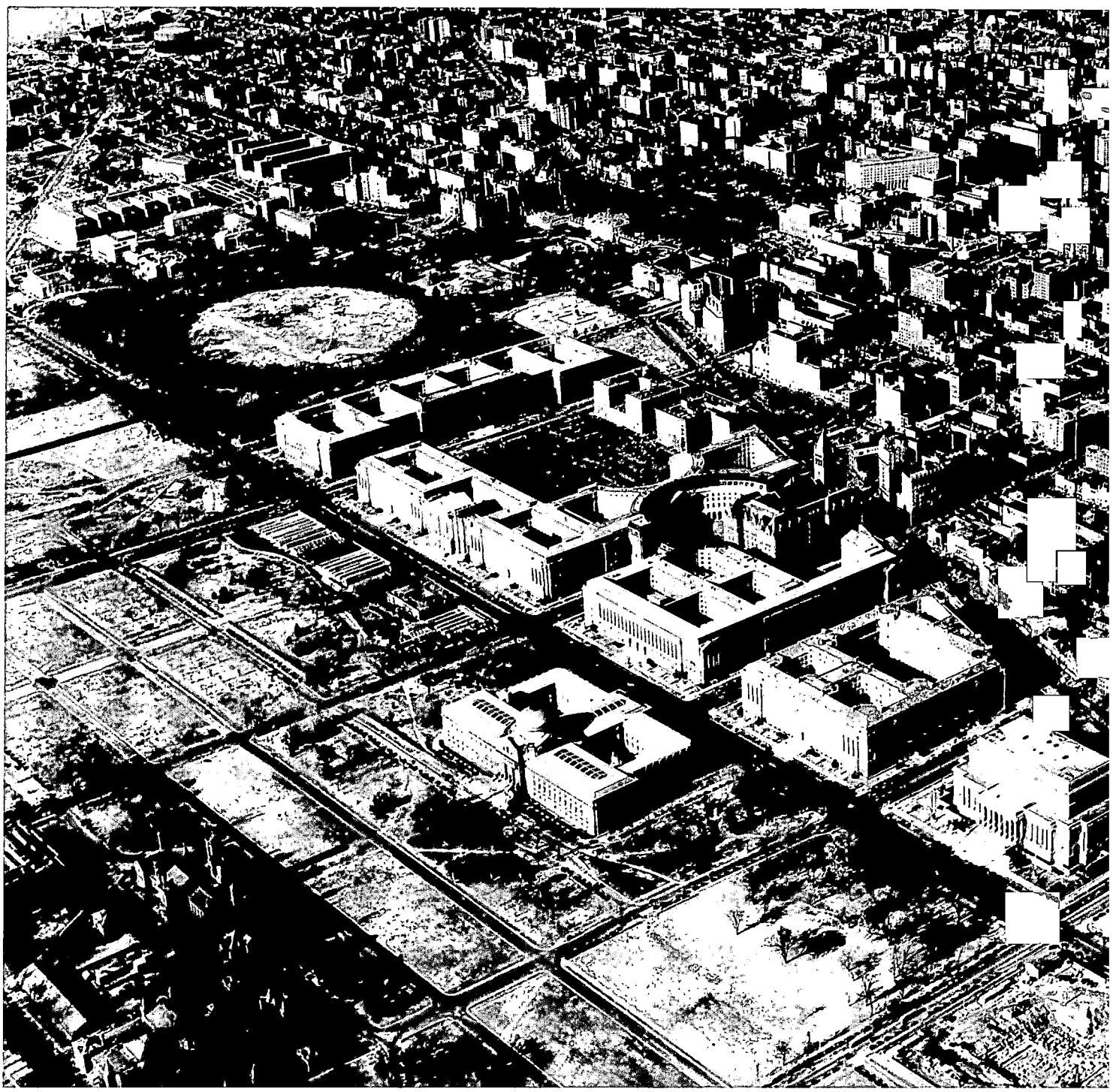


Plate 10

The old Hay Market on Louisiana Avenue, between Ninth and Tenth Streets, site of the present day Department of Justice, and, where Barnum's Circus got its start.[102]

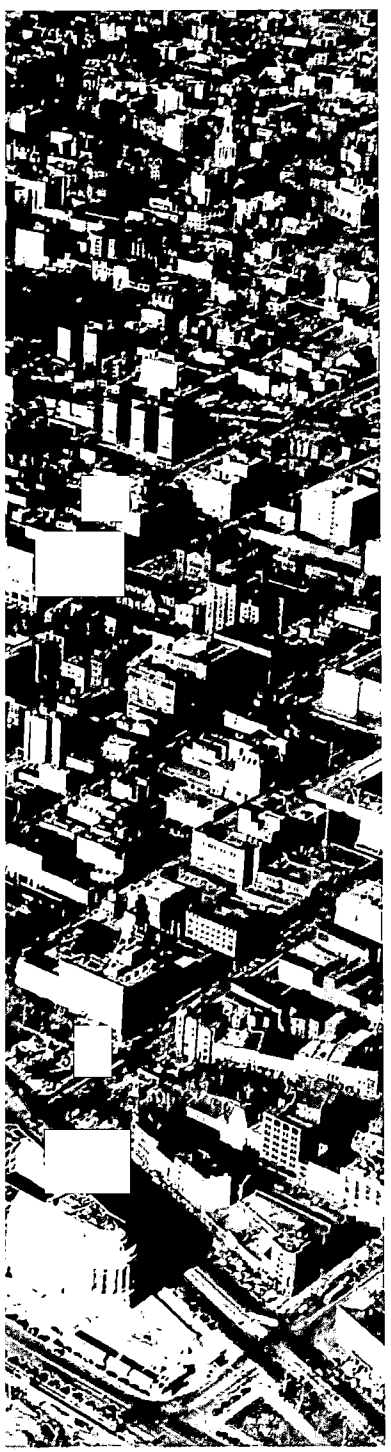
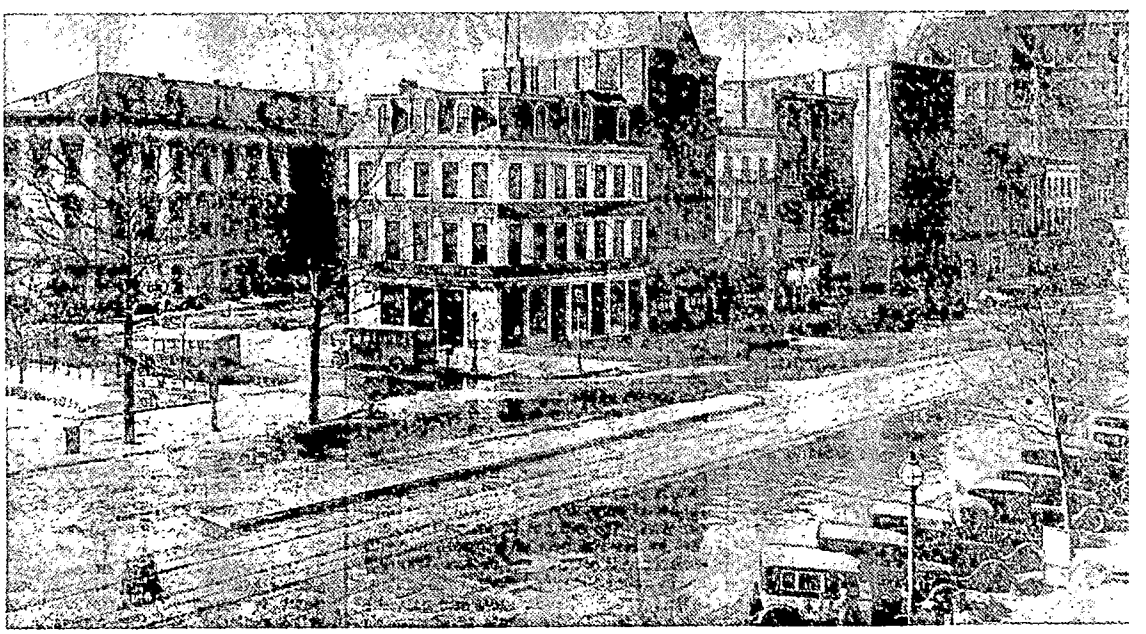


Plate 11

View of Pennsylvania Avenue between Ninth and Tenth Streets circa 1925.[103] At the extreme left is Ford's Opera House which opened on February 22, 1873. The theatre was renamed several times before being called the Bijou; it was demolished in 1931 to make room for the Justice Building.[104]



John Joseph Earley, highly skilled stone carver & sculptor.

Jennewein (1890-1978) statues in the Great Hall, symbolizing the *Majesty of Law* (male figure) and the *spirit of Justice* (female figure) (Plate 32).

The aluminum cost $100,000 more than the cost of steel used in the building. The architects justified the expenditure, however, by projecting reduced maintenance costs.[59] One contemporary account quipped that enough aluminum was used to "make not only forks and spoons but pots and pans for a whole city."[60] In fact, Jennewein's contract clearly stated that certain sculpture would be cast in aluminum rather than the traditional bronze.[61]

There are many unusual and unique features throughout the Building. Among the most intriguing are the mosaic ceilings spanning the entranceways leading to the Great Court from Ninth and Tenth Streets, as well as various loggias (Plate 33). They were completed by a highly skilled craftsman and technician, John Joseph Earley. Earley's father, James Farrington Earley, was the fourth generation of Irish stone carvers and ecclesiastical artists who had crafted works in churches throughout the British Isles and the continent.[62] He studied sculpture at the Royal Academy, London, before entering the family business in Dublin. In 1881, he emigrated to America eventually settling in Washington, D.C., where he began his stone carving and modeling business, the Earley Studio.[63]

In the summer of 1892, James Earley, who had been employed as a stone carver for the Dahlgren Memorial Chapel, visited Dr. J. Havens Richards, S.J., President of Georgetown University in Washington, D.C. Earley requested and was granted permission to carve a stone on the north wall of the chapel. Three hours later, as Father Richards passed the chapel, "a beautiful and delicate work . . . was finished."[64] The Irish sculptor had executed the Monk of Dahlgren without benefit of plans or models.[65] It is interesting to note that James Earley created the ornamental sculptures for the *Evening Star* Building at Pennsylvania Avenue and 11th Street, one of the buildings the Department of Justice currently leases.[66] James Earley's best-known sculpture, though not associated with his name, was the "Buffalo" nickel which he designed for the U.S. Mint.[67] Perhaps his most unusual commission was the

death mask of the assassinated President McKinley, it was made by an Italian model maker from Earley's studio.[68]

By the time the Justice Building had been conceived, John Earley, who had taken control of the studio after his father's death, had an extraordinary reputation. His studio, with the help of Basil Gordon Taylor (who had been in Earley's father's employ since 1900), completed a number of exceptional assignments. The studio had pioneered "architectural concrete" for several projects in Washington, D.C., including the Meridian Hill Park; the main gateway of the Rosary Portico at the Franciscan Monastery (which included a sculpture of St. Christopher and the Christ Child executed by Earley); and the colorful mosaic interior of the Shrine of the Sacred Heart Church.[69] When General George W. Goethals, the builder of the Panama Canal, visited the innovative and beautiful Sacred Heart Shrine, he was asked by Earley what phase of the undertaking he found most impressive. He is reported to have answered, "The nerve of the man who let you do it."[70] One commentator declared: "In his Washington studio he heads the finest group of craftsmen yet assembled in this country, a group that would compare favorably with the best bottega of the middle centuries."[71]

Mosaic finishing was traditionally produced by "selecting pieces of beautifully colored stone or by making beautifully colored enamels and then breaking them by hand into small pieces. These pieces are then placed side by side and pressed one by one into a soft mortar."[72] The architects of the Justice Building were confident that Earley's 15 years experience in applying modern methods to this age-old process would produce mosaic ceilings of beauty and permanence.[73]

For the Justice Building, Earley had carefully selected white quartz, blue and yellow ceramics, black and red vitreous enamel, and gold. These rare substances were crushed by machine and carefully screened to exact size. Pigments were unsatisfactory; only such materials as were chosen could provide permanent color given the exposure to fluctuations in temperature, dust from the streets, and Washington's characteristically humid summer months.[74] According to William Avery, the mosaics used in the Justice Building were the first ever made of American materials.[75]

The mosaics were the first ever made of American materials.

The mosaic ceilings were precast at the studio in Rosslyn, Virginia. They were taken to the building and set in place in the form of a shell into which the structural concrete of the second floor was poured.[76] The following account describes what was called the Earley Process after the exact mosaic-concrete mixture was completed:

The slabs are made face downward, and the mosaic decoration is accomplished by placing ridges about an eighth of an inch high on the plaster forms of the mold to mark the lines between the various colors of the design. The colored mixtures are then placed in their proper positions in the mold to a depth of about three-quarters of an inch, the wire-mesh reinforcing is placed, and the mold is filled to the required depth with ordinary sand-and-gravel concrete of the same proportions as the facing.[77]

With only a high school education from St. John's College, Washington, D.C., Earley had attained a level of excellence reminiscent of the Renaissance. During his career he orchestrated, designed, and executed his artistry and innovations on numerous buildings.[78] He wrote numerous articles for the American Concrete Institute (one of which was awarded the Institute's Wason Medal for the most meritorious paper of the year); and served as its Director, Vice President, and President. He earned at least three patents, one of these with Taylor, for his innovations.[79] Earley had been an extraordinary combination of artist, craftsman, inventor and businessman - the closest equivalent in modern times to the medieval guild master.[80]

A few weeks before Earley's death on November 25, 1945, he sold the Earley Studio to Basil Taylor for one dollar. Taylor retired in 1952 and was succeeded by his son Vernon G. Taylor who retired and liquidated the studio in 1973, ending an illustrious 84 year existence.[81] The Earley process for pictorial mosaic concrete may now be a lost art.[82]

From the beginning, the architects had planned sculptural detailing true to classical styling. Just after the site had been finalized, Zantzinger wrote:

...the desirability of employing a sculptor of, if possible, national reputation, not only to model all the monumental groups on the buildings, but also, during the fabrication of the drawings, to consult with the architects concerning the nature and form of the architectural details, mouldings, column caps, bases, running ornament,

Architects chose C. Paul Jennewein to design the building's sculpture.

etc., and who would, during the execution of the work, supply in the field full size plaster models for everything of this nature...

The distinction of a building depends a great deal on the character of its decorative sculptural detail. The cooperation of the sculptor in ancient Athens and Rome, and in Europe through the Gothic and Renaissance periods, and until within recent years, has produced national monuments of outstanding beauty.[83]

The architects chose C. Paul Jennewein to design the building's sculpture. Borie, one of the building's architects, was familiar with Jennewein's work from a previous project, the pediment for the Philadelphia Museum of Art.[84]

Jennewein's reputation was already established. In 1916, he had won the prestigious Prix de Rome competition and had subsequently opened a studio in New York City.[85] Within a year, he was elected to the National Sculpture Society and was awarded commissions for the Darlington Memorial Fountain in Washington, D.C.; the Pilgrims Memorial Fountain in Plymouth, Massachusetts; and the Barre War Memorial for Barre, Vermont.[86]

The sculptural figures in the Justice Building, as well as the inscriptions, were carefully chosen to provide a composite theme reflecting the role of the Department in a Constitutional Democracy. Jennewein retained Dr. Hartley B. Alexander (1873-1939), who had been chairman of the philosophy department at the University of Nebraska, to help render a unifying theme.[87]

Over the Constitution Avenue entrance, Jennewein designed a relief panel approximately 6 feet high and 14 feet wide. On it was inscribed, *LEGE ATQUE ORDINE OMNIA FIUNT*, taken from Pliny's *Epistle*, it means "Everything is created by Law and Order"[88] (Plate 34). The three nude male figures in the panel generated controversy. In the summer of 1933, Charles Moore, Chairman of the Fine Arts Commission, expressed concern over the nudity of the figures.[89] Jennewein attempted to allay Moore's concerns in a letter dated July 25:

I should like to speak of the nudity of the male figures. Do you think it would be possible to adopt the fig leaf for these figures? It is used in the Vatican and various denominations of the Church.[90]



C. Paul Jennewein in his studio, Bronx, New York, 1978. Photograph by Walter Smalling, Jr.

The Justice Building is among the most satisfactory structures in the Federal Triangle.

After Moore accepted this solution, Jennewein prepared a model. In October, Jennewein received another recommendatory letter from Moore:

The Commission of Fine Arts at their meeting on October 6, 1933, gave consideration to your model for sculpture of the Department of Justice building. The Commission [is] of the opinion that the fig leaves are not quite large enough. They request that you send a photograph of a revised model. Otherwise, the model is satisfactory.[91]

The incident had so amused Borie that in October he wrote the following to Jennewein:

I was hugely amused at Mr. Moore's plea of the Commission of Fine Arts to enlarge the fig-leaves on some of the sculpture for the Department of Justice Building. Surely someone ought to make a cartoon for "The New Yorker" or "Bally-Hoo," indicating the shocked appearance of the meeting of the Commission at which this momentous question was discussed. After all, how big is a fig-leaf? and should there not be some proportion between them and the figures they adorn? etc., etc., - ? I think that the Department of Agriculture should be consulted in this matter.[92]

Although the fig leaves were adopted, the remainder of the models attracted little criticism from the Commission of Fine Arts[93] (Plates 35-47). The sculpturing was completed in the fall of 1936 at a cost of $123,225.[94]

Jennewein was given the opportunity to create a complete concept of design for the Justice Building, the scale of which would not again present itself to him. He coordinated all aspects of the building's sculptural decoration, from the large pediments facing Constitution Avenue to the lighting fixtures.[95] A total of 57 sculptural designs were executed, 22 for the exterior and 35 for the interior.[96]

This unity of design was recognized by the members of the Commission of Fine Arts who resisted decorative changes considered unsuitable in quality or style.[97] Charles Moore wrote the following to Borie:

They [the members of the Commission of Fine Arts] feel that the Department of Justice Building is among the most satisfactory structures in the Triangle, and they deprecate including in it ornaments not in keeping with its high character and the exquisite beauty of the Jennewein sculpture.[98]

Plate 12

"Aerial view of the Federal Triangle area, looking east along Constitution Avenue. Beyond the recently completed Internal Revenue Service Building (center left) is the future site of the Department of Justice, National Archives and Apex Buildings. Center Market is still standing between Ninth and Seventh Streets."[105] Photograph taken August 1930. Collection: National Archives, Audiovisual; photo no. 18AA-151-44.

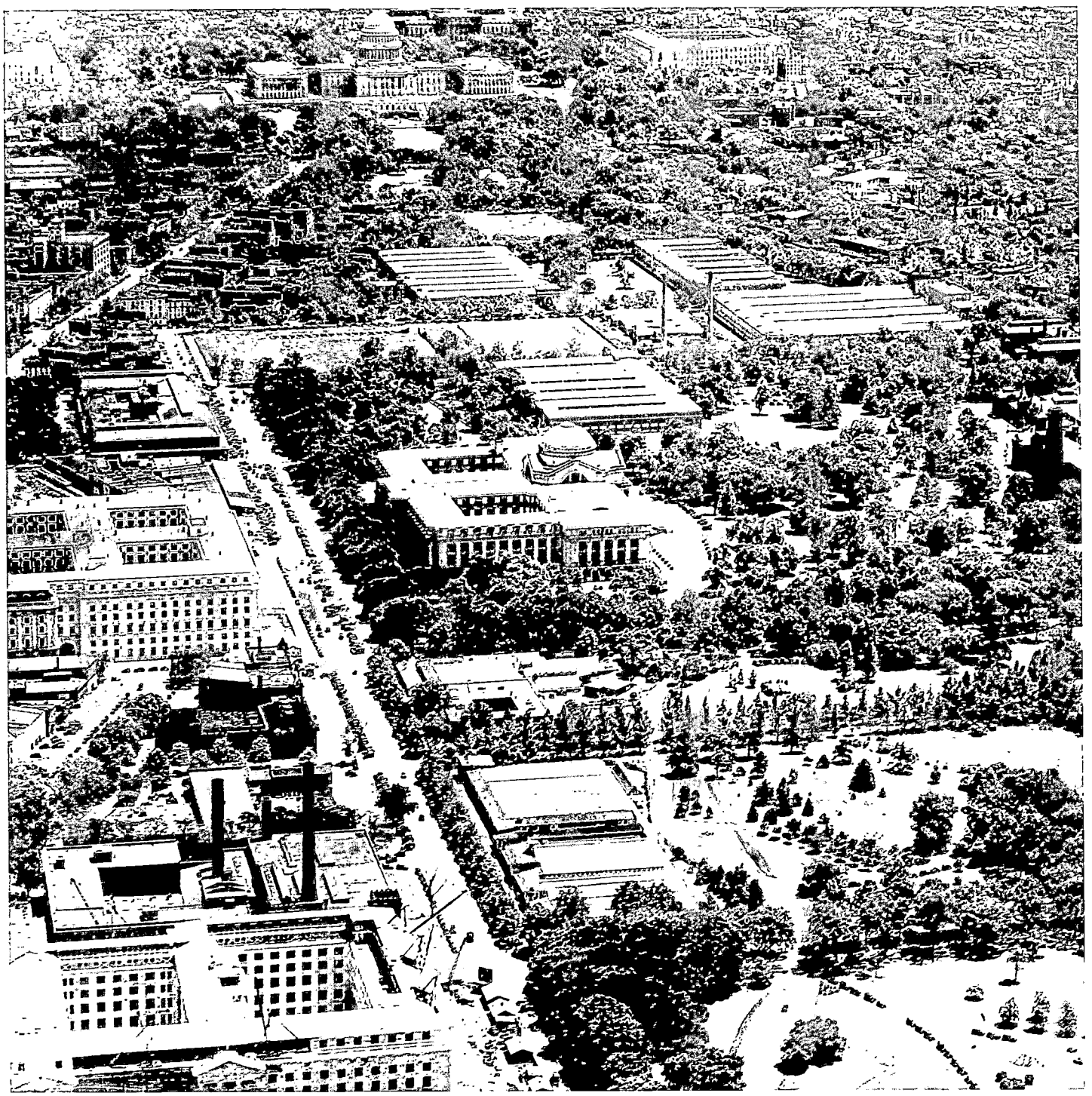
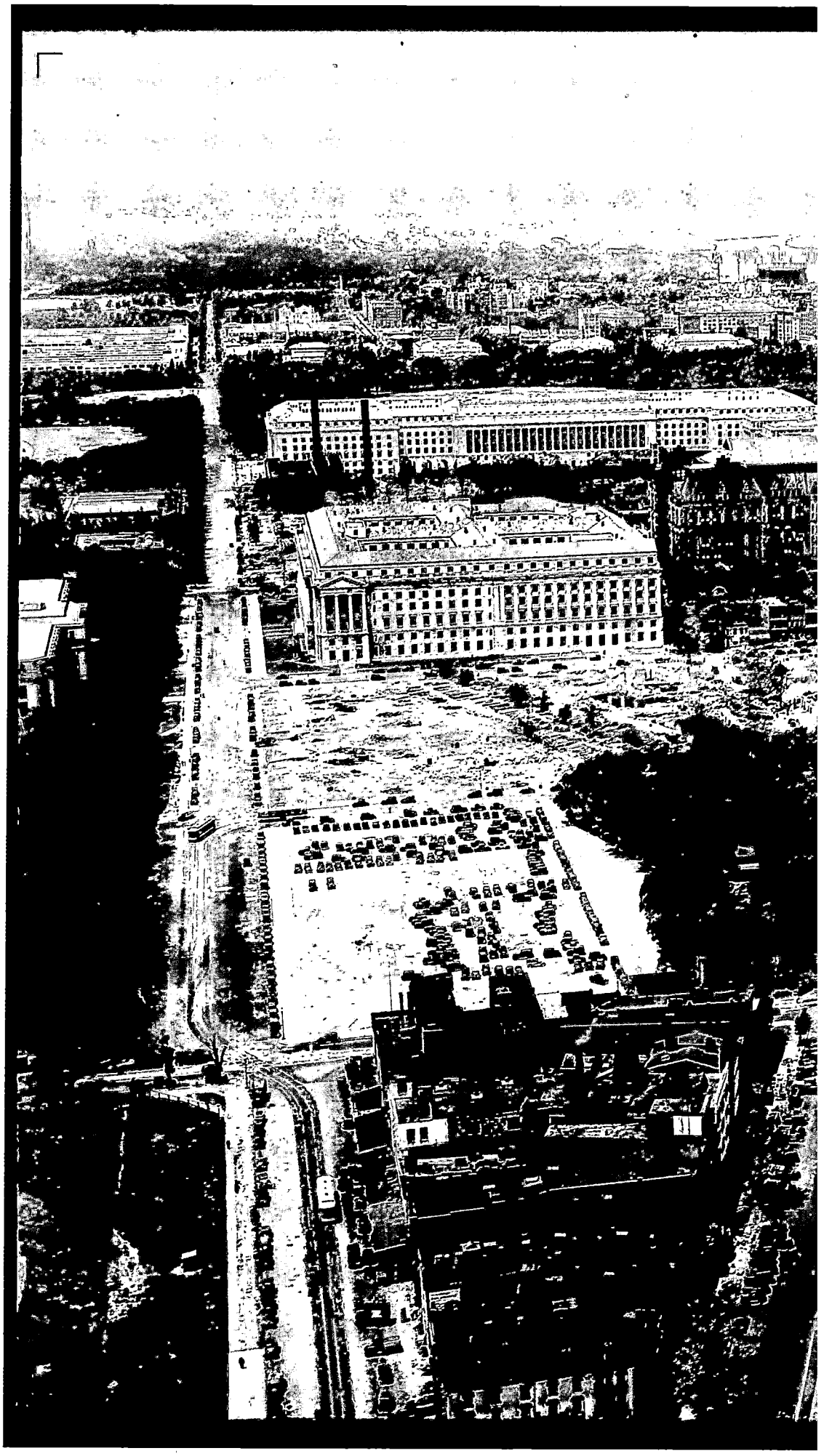


Plate 13

"Aerial view of the Federal Triangle area from the east, showing the cleared site for the Department of Justice Building immediately in front of the recently completed first portion of the IRS Building. The site for the National Archives Building is in use as a parking lot."[106] Photograph taken by Captain A.W. Stevens, July 1931. Collection: National Archives, Audiovisual; photo no. 18-AN-17072.



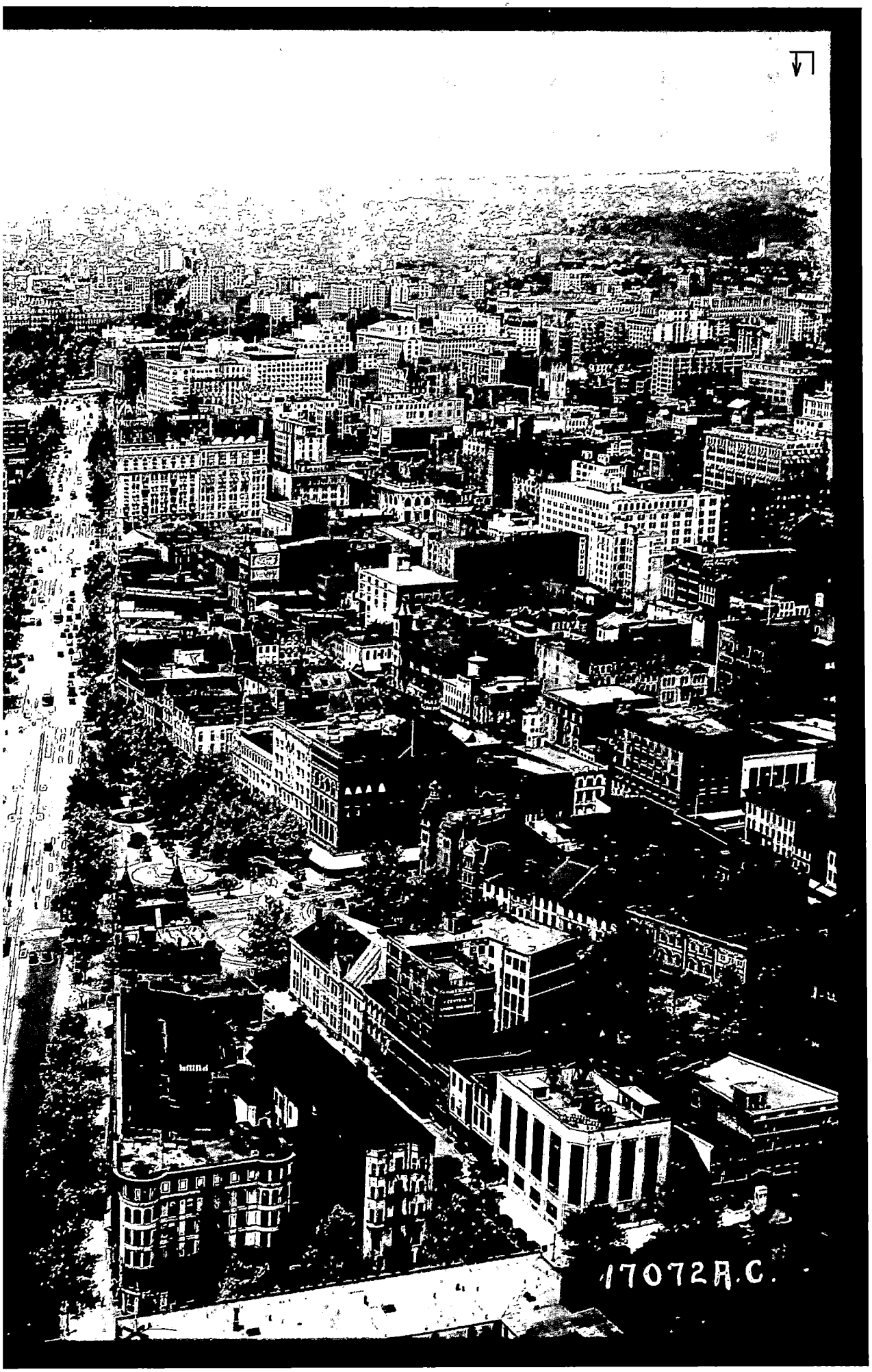
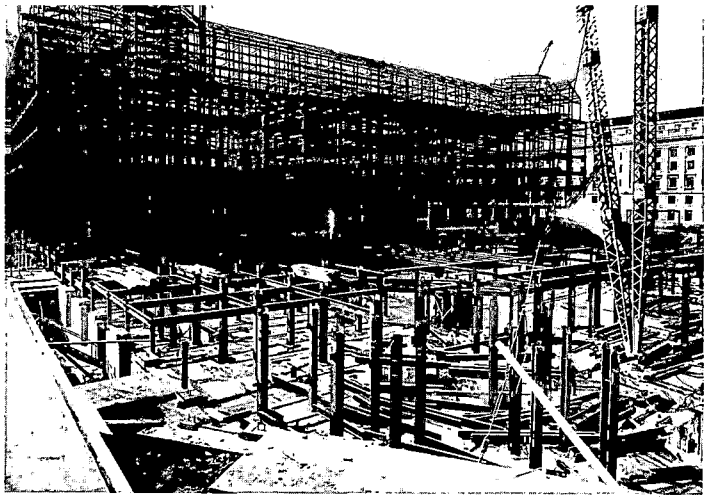

17072A.C.

Plate 14

Construction photograph taken in 1932, looking towards the north-east across the foundations of the building. "Constitution Avenue is in the foreground; at left is Tenth Street. Note the beginning excavations on the site of the National Archives Building at far right."[107] Collection: National Archives, Audiovisual; photo no. 121-BCP-137C-4.



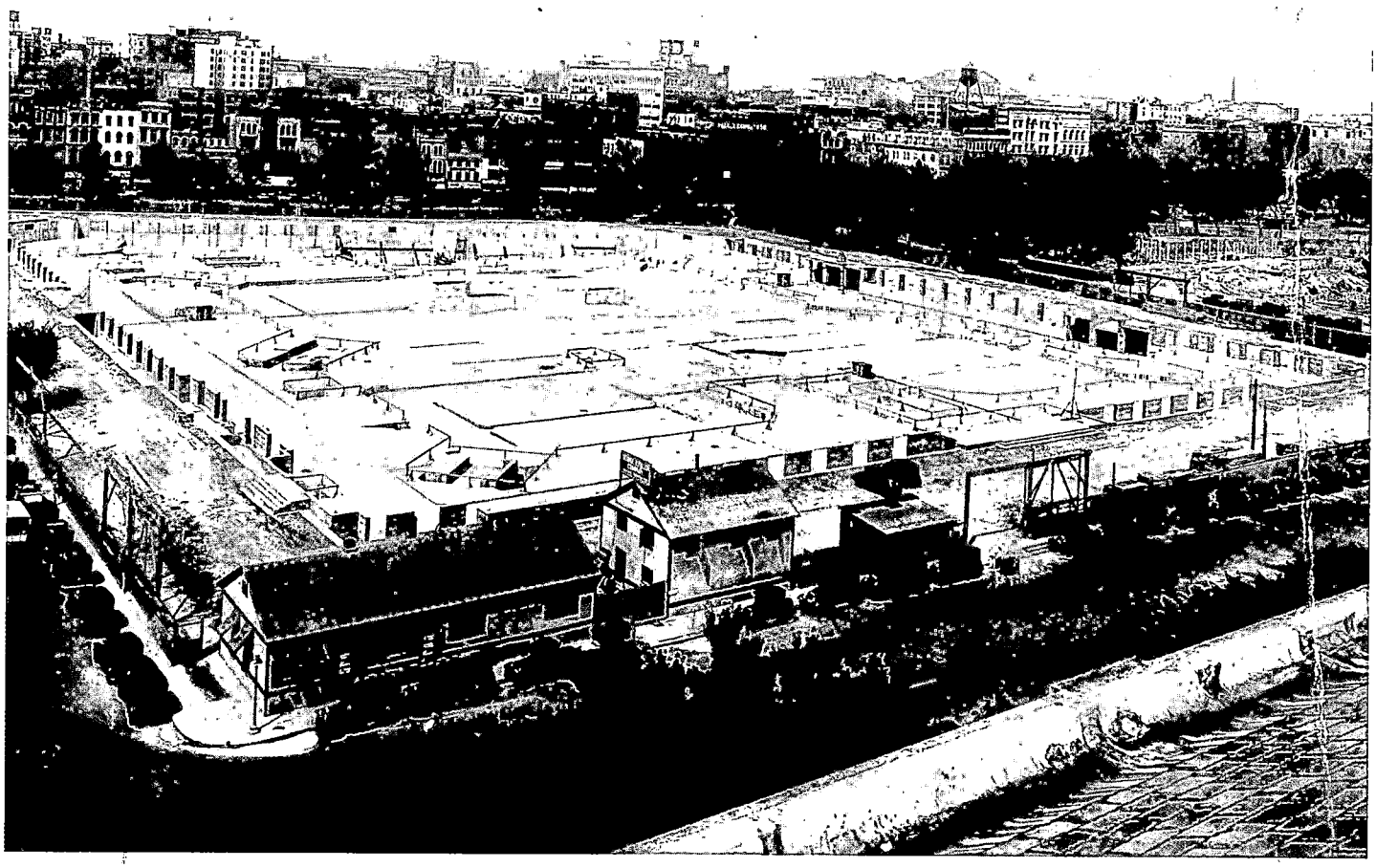


Plate 15

Construction photograph taken December 1, 1932, looking southwest at the steel frame of the building. "The upper stories of the frame are completed to the south line of the large courtyard. North of that line only the basement steel is in place. The Tenth Street side of the IRS Building is visible at right."[108] Collection: National Archives, Audiovisual; photo no. 121-BCP-137C-1.

Plate 16

"View from the corner of Pennsylvania Avenue and 10th Street, showing the northwest corner of the Justice Building under construction."[109] Photograph taken February 2, 1933. Collection: National Archives, Audiovisual; photo no. 121-BCP-138A-16.

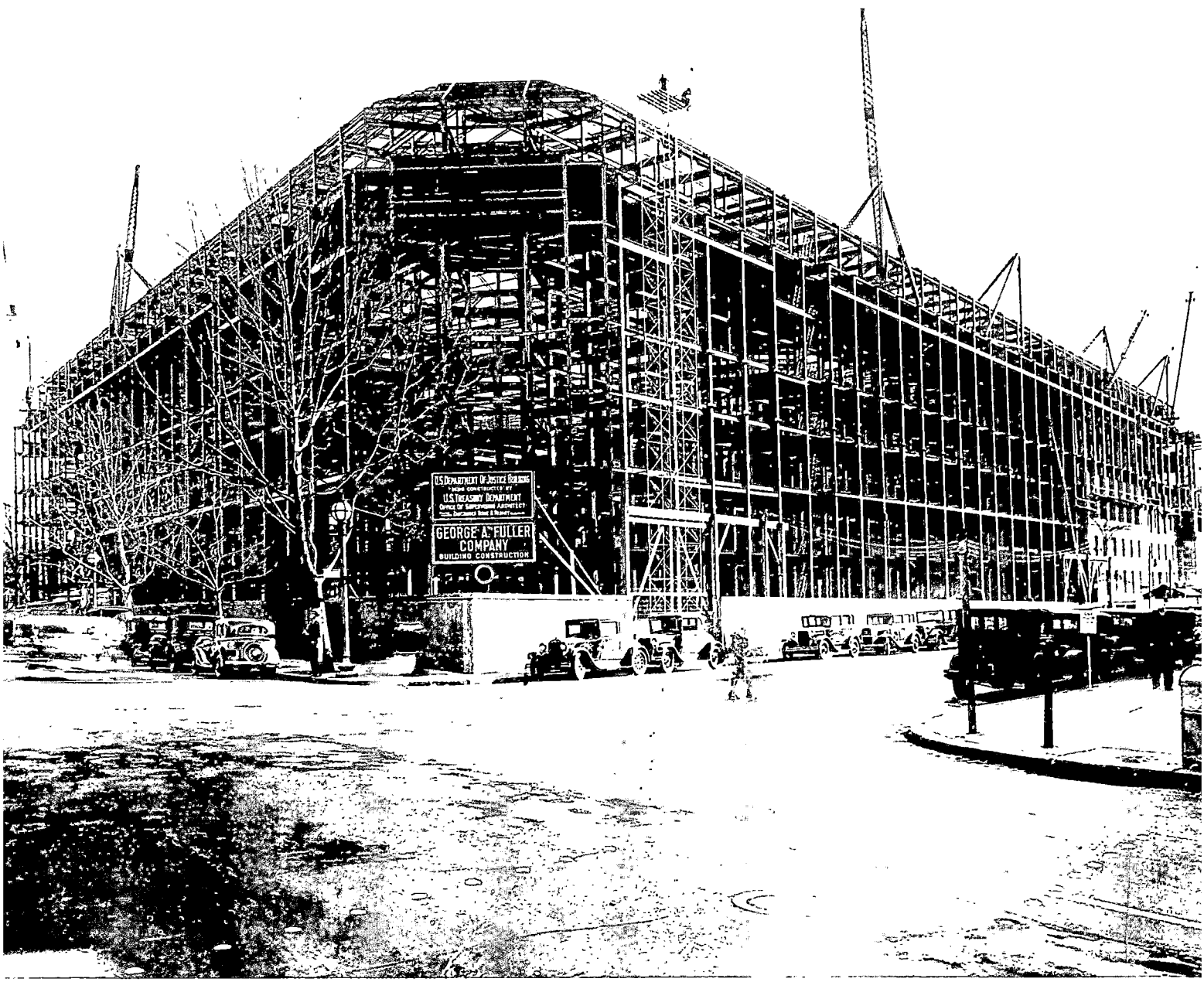


Plate 17

Aerial view from the northeast of the building showing the completed steel frame and part of the exterior stonework in place. The domed building above the Justice Building is the National Museum of Natural History, built in 1910.[110] Photograph taken February 28, 1933. Collection: National Archives, Audiovisual; Photo no. 18-AN-16335.



Plate 18

View of the Great Court toward the northeast.[111] The bowl of the fountain is made of aluminum. Note one of the four wind figures (*Eurus*, female east wind) in low relief. The courtyard attracted few employees until Attorney General Robert F. Kennedy had picnic tables installed in the early 1960s.[112]

The pediment over the courtyard entrance was carved from Carl Paul Jennewein's design for the *Scales of Justice*, bearing the inscription, "*Privilegium Obligatio,*" (Obligation or Duty is a Privilege).[113] While the "scales of justice" are shown without the blindfolded (suggesting impartiality) Greek goddess, Themis, the design is traditional. This symbology has become so endemic that the presentation of the scales alone, without the presence of Themis, blindfold, or sword (a symbol of power, authority, and protection, as shown in the *Ars Aequi* pediment, Plate 35) is synonymous with justice.[114]

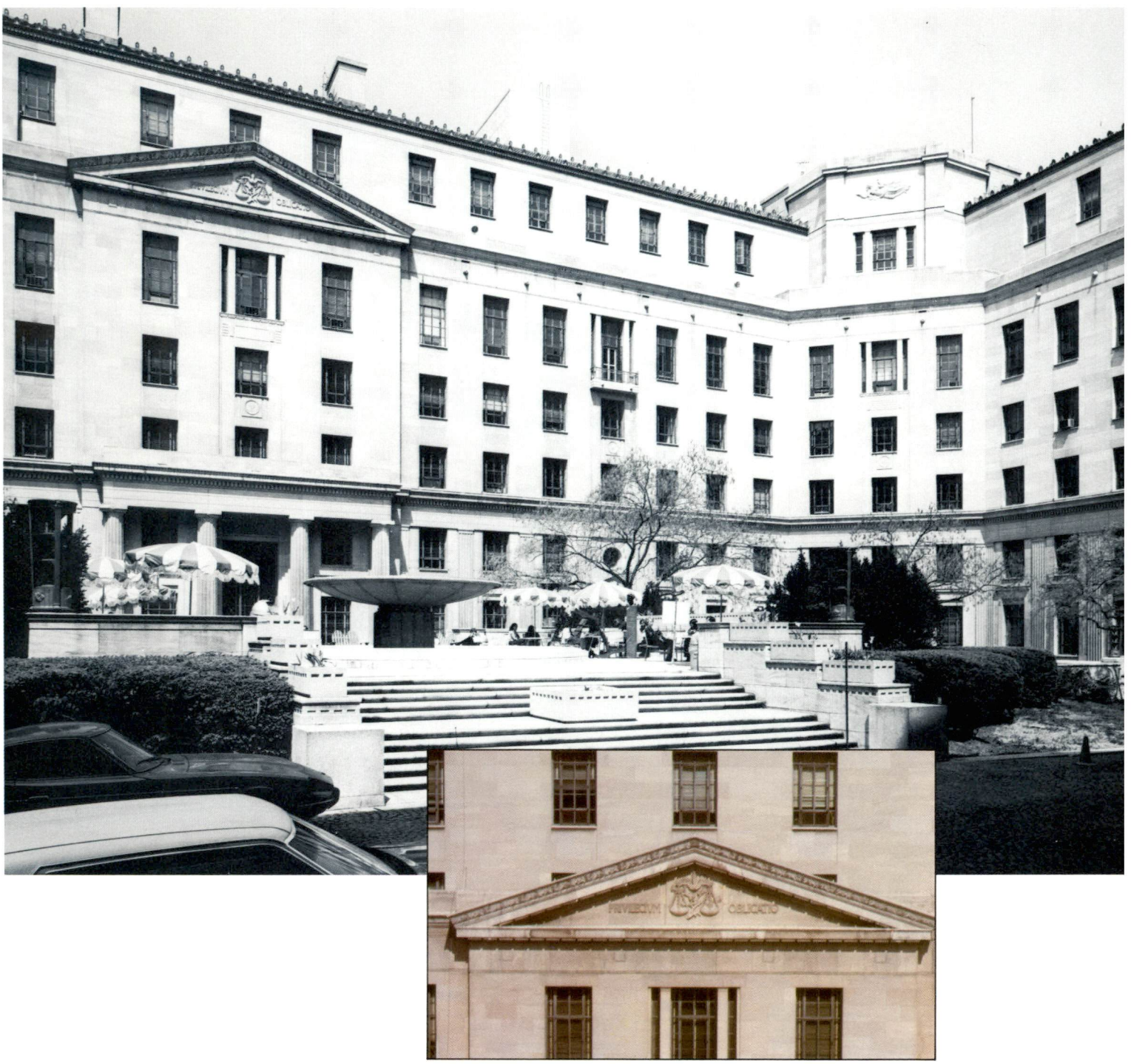


Plate 19

Construction photograph taken August 1934, showing the 10th Street (left) and Constitution Avenue fronts of the building. "Note the platforms along the parapet on the Tenth Street side and at the pediments on the Constitution Avenue side for the carvers working on the sculptural decoration of those areas."[115] Collection: National Archives, Audiovisual; photo no. 121-BCP-138B-15.

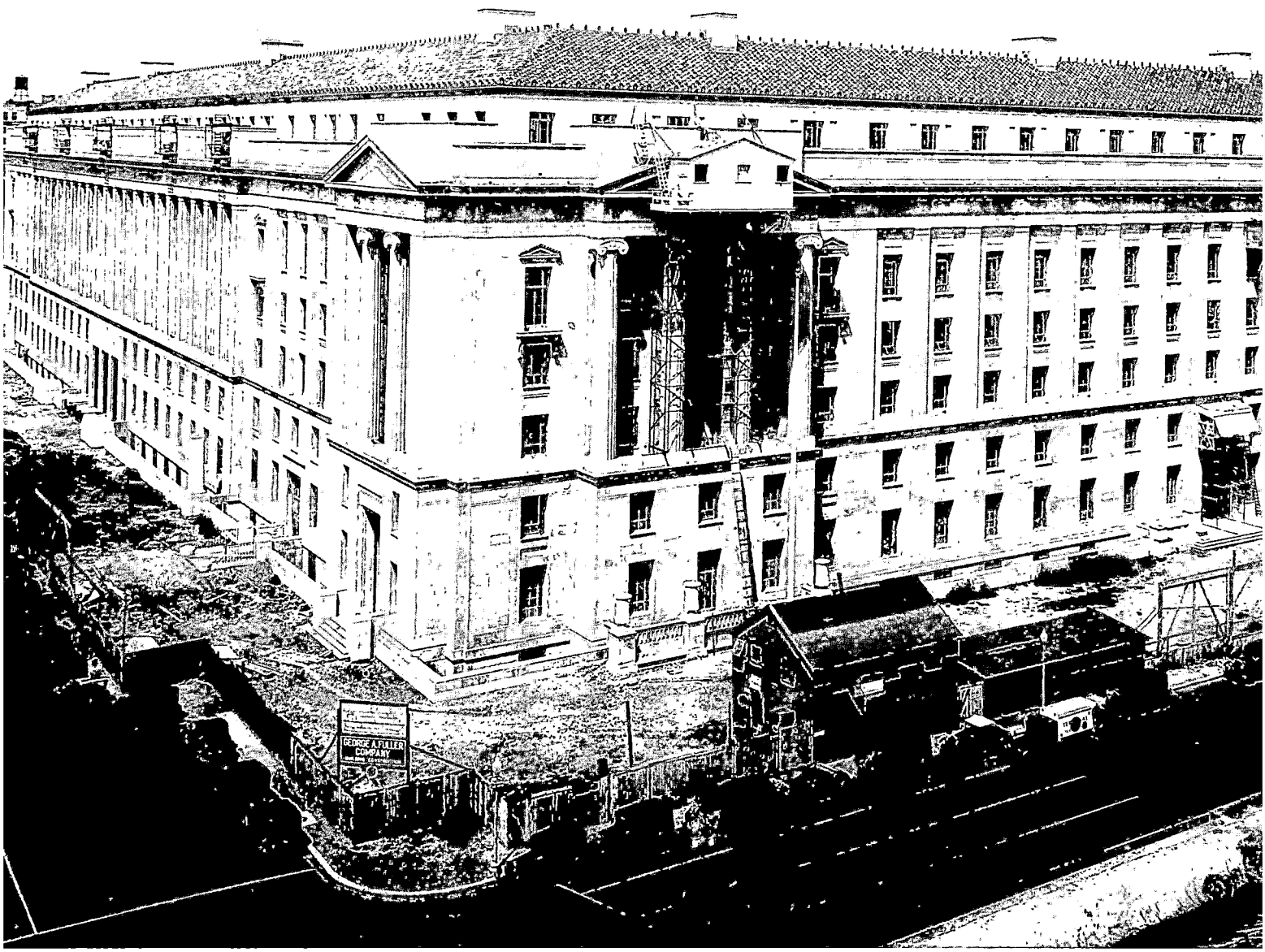
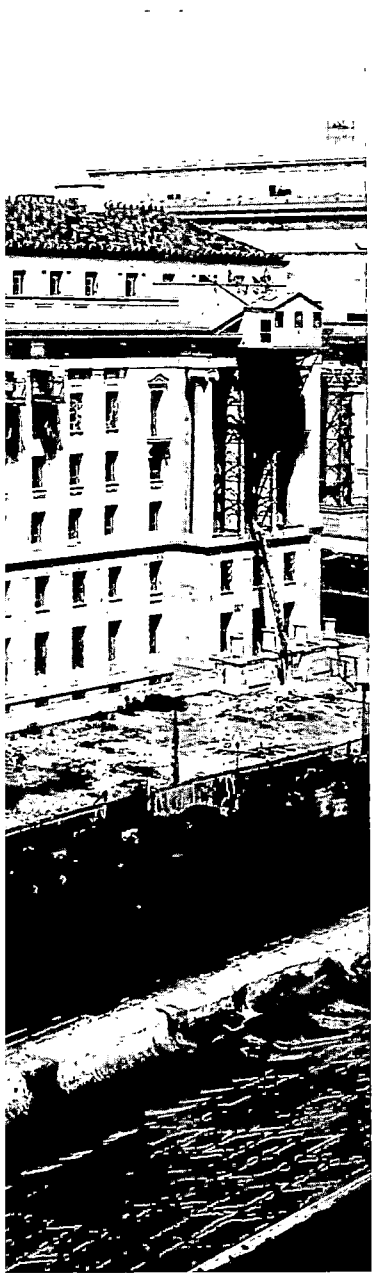


Plate 20

View of the building from the northeast, "showing the 9th Street (left) and Pennsylvania Avenue fronts. Note the use of inset Ionic columns on both the long colonnades and at the northeast corner"[116] as well as the 12 fasces on the Pennsylvania Avenue parapet. Literally, each of the fasces denotes "an ax tied up with a bundle of rods, [they] were carried by the chief Roman magistrates as a symbol of Authority."[117]



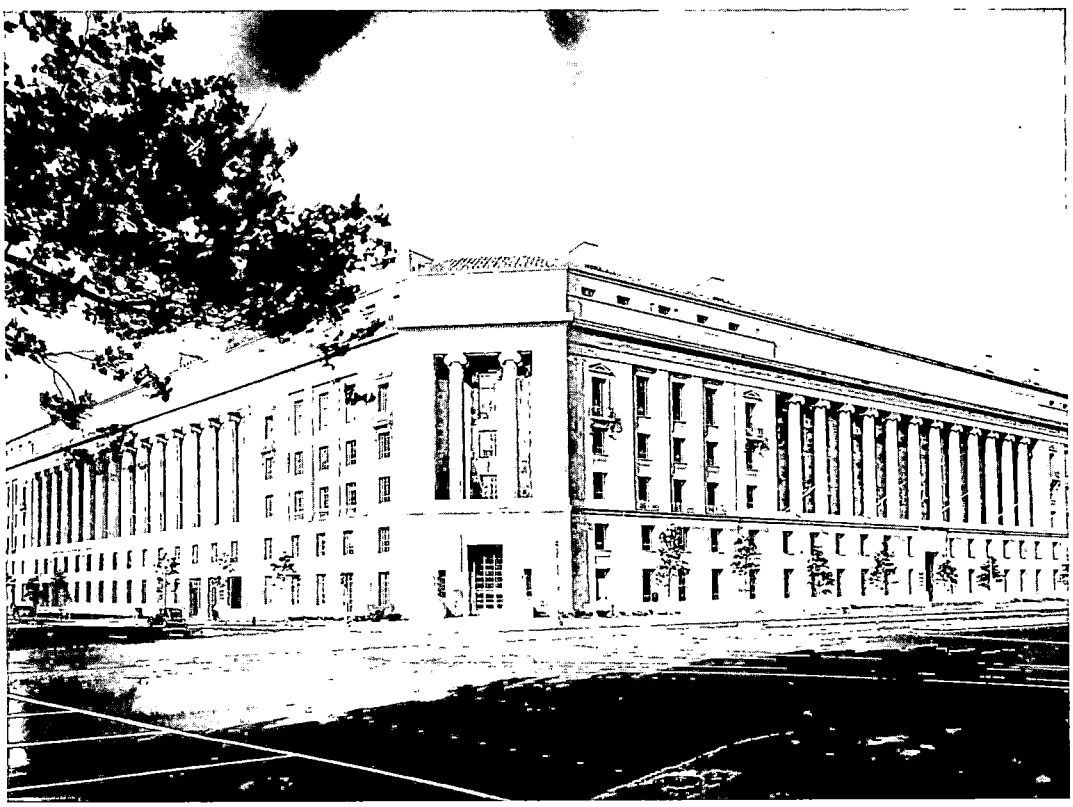


Plate 21

View of the building, "showing the Pennsylvania Avenue (left) and 10th Street fronts. The row of attached piers along the 10th Street side echoes the colonnades on 9th Street and on Pennsylvania Avenue. The monument in the foreground, sculpted by Jacques Jouvenal after a design by Ernest Plassman, depicts Benjamin Franklin and was erected in 1889."[118] This monument now stands in front of the Romanesque Revival Post Office Building which was completed in 1899 and is located between 11th and 12th Streets on Pennsylvania Avenue.[119]

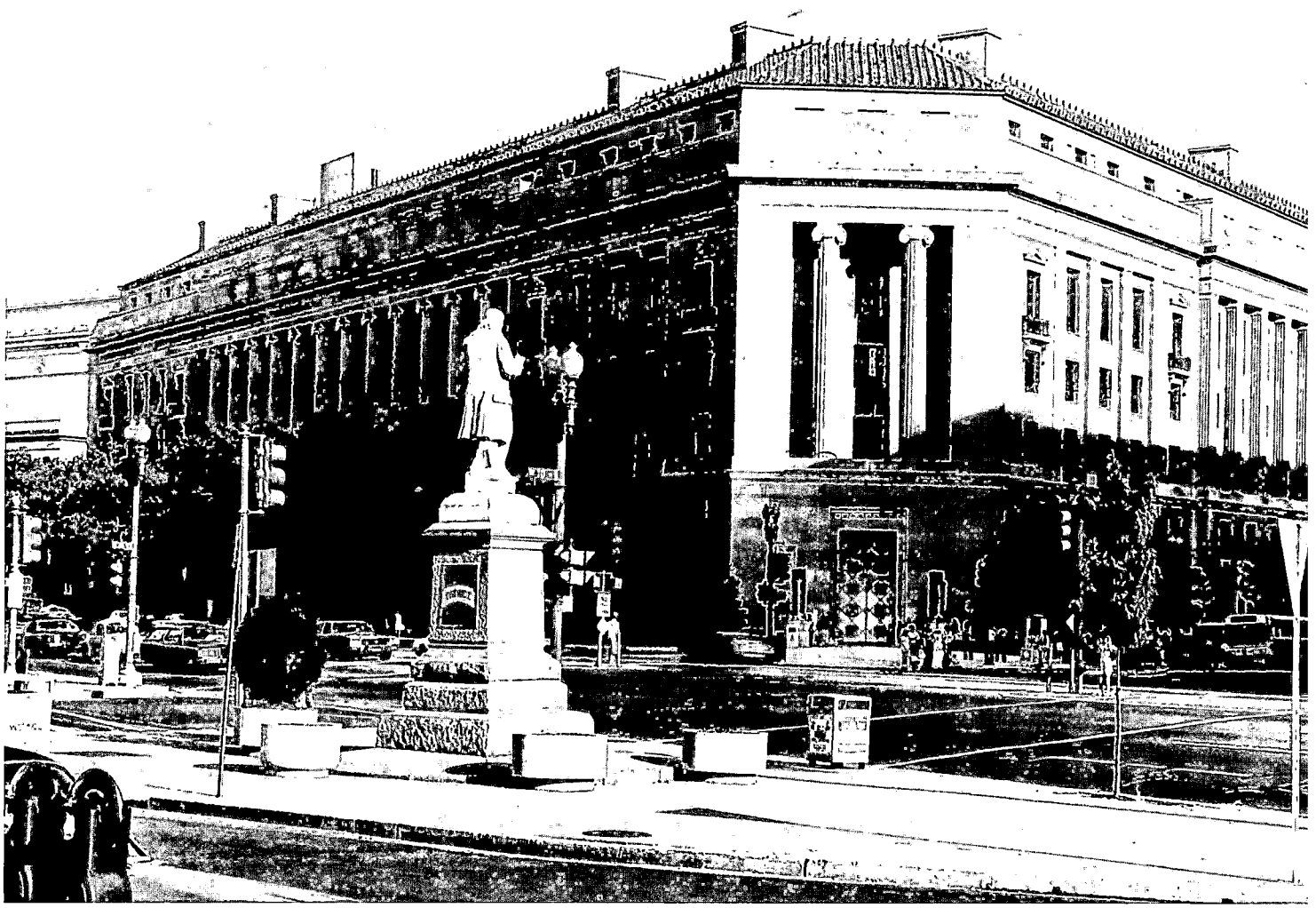
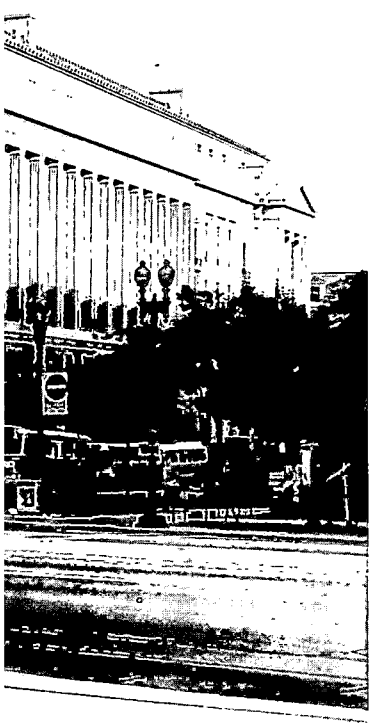


Plate 22

View of the southwest corner of the building as it appeared c. 1949 "showing the corner pavilions on 10th Street (left) and Constitution Avenue. While both employ the Ionic order, the latter has four columns and sculptural ornament in the pediment, while the former has two columns *in antis*, and a plain pediment."[120] Gurney states: "Although the pediment on Tenth Street was originally to have sculptural decoration, the architects decided after some discussion to leave it blank in order that it would balance the responding empty pediment across the street on the Internal Revenue Building."[121]



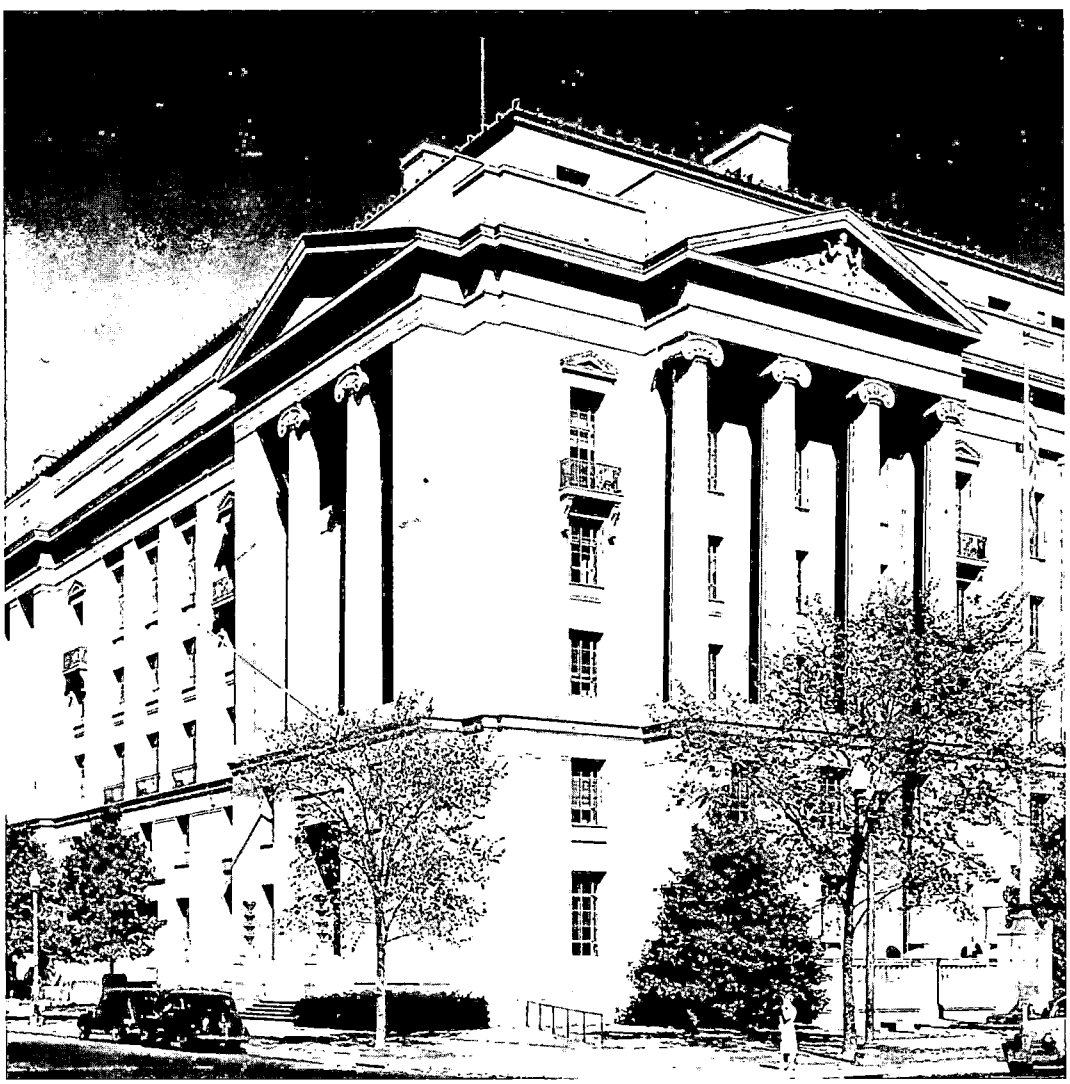


Plate 23

"Detail of an Ionic column and a fifth-story window on the Constitution Avenue front of the building."[122] The window frames are made of aluminum.



Plate 24

" . . . view to the west along Constitution Avenue, showing the Justice, IRS, and ICC - Auditorium - Labor Buildings. The elevation of the Justice Building, with its pedimented corner pavilions, echoes the form of both wings of the Labor - ICC group."[123] Collection: National Archives, Audiovisual; photo no. 208-LU-61C-8.



Plate 25

"The shadow of the Department of Justice superimposed upon the plan of the Acropolis illustrates the monumental scale of the building."[124] "The scope of the Federal Triangle scheme as an urban design, and scale of the individual buildings, promoted this kind of comparison to grand historic designs."[125]

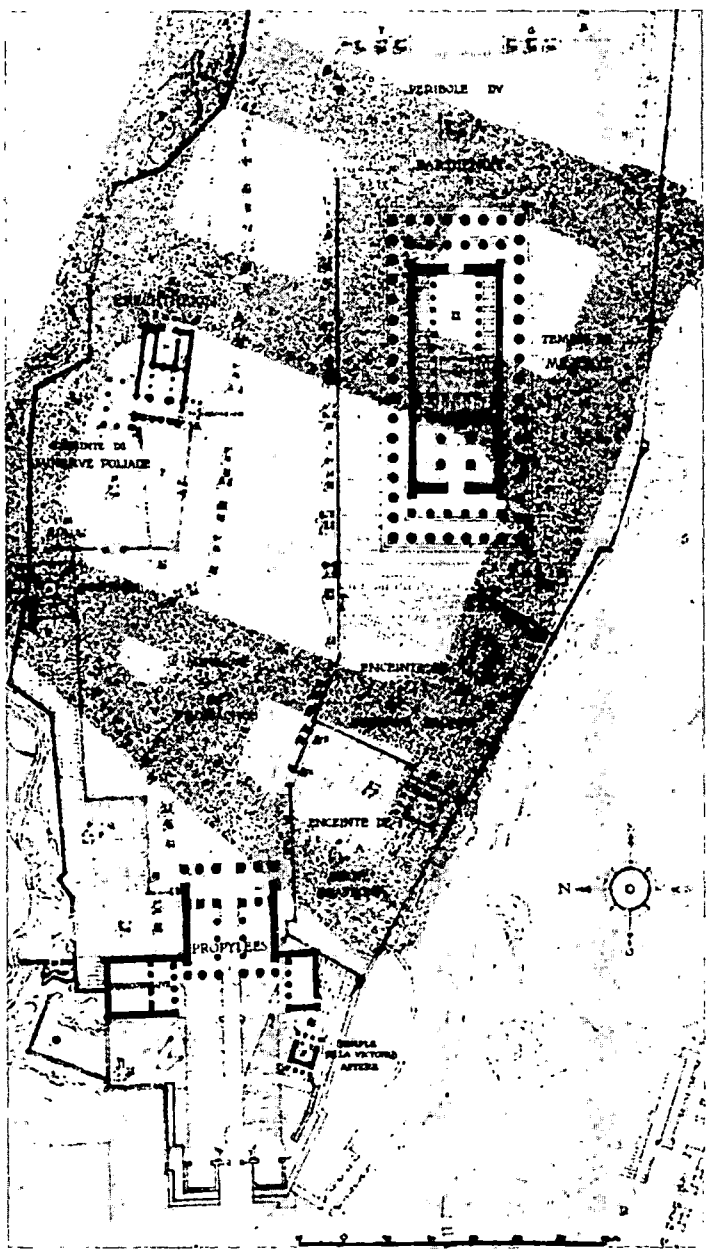


Plate 26

Detail of the northeast entrance of the building showing the aluminum doors (20' high) and flanking Art Deco torcheres (7'6" high).[126] Jennewein made plaster models from which the Edward F. Caldwell Company of New York City cast and fabricated the 38 torcheres for the exterior of the building. Eighteen of these torcheres appear on the outer perimeter of the building and 20 of a slightly different design are located in the Great Court.[127]

The total cost of the special lighting fixtures (Plate 29) including the 38 torcheres and the two desk lamps for the library (Plate 28) was $68,763. All the fixtures were finished by July 1935.[128]

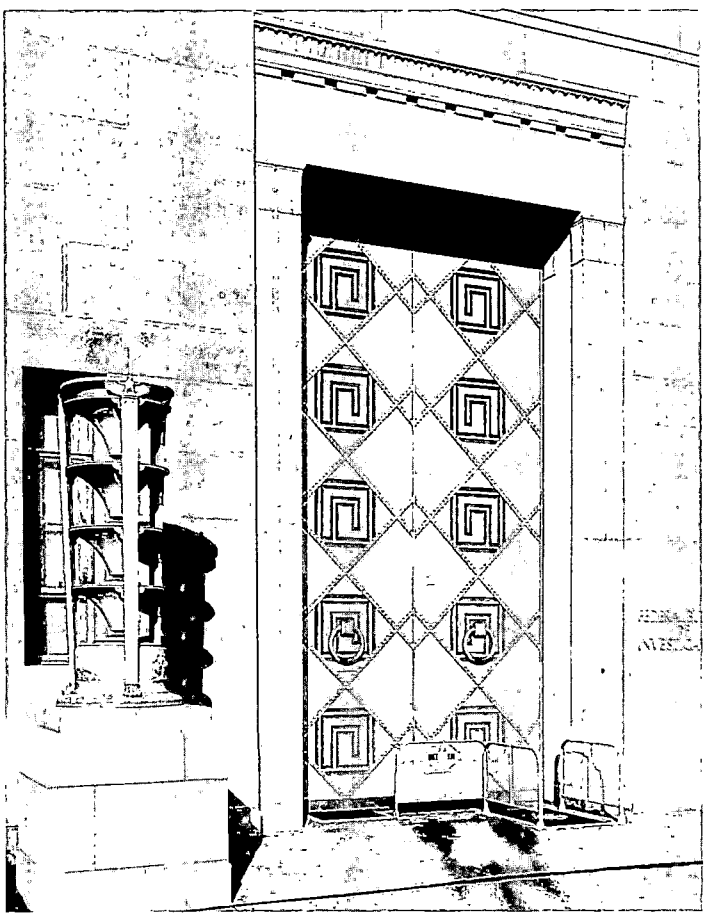


Plate 27

Detail of the base of one of the aluminum torcheres flanking the entrances to the building.[129] Armin A. Scheler (1901 Germany-) one of the six sculptors who worked with Jennewein in his studio modeled the torcheres after Jennewein's designs.[130] The decorative reliefs include dolphins, swifts, and buffaloes. It would appear that the eagle (upper part of torcheres with outstretched wings) (Plate 26), a symbol used on the DOJ seal, represents Justice and oversees all whether by land, sea, or air (Plate 40).

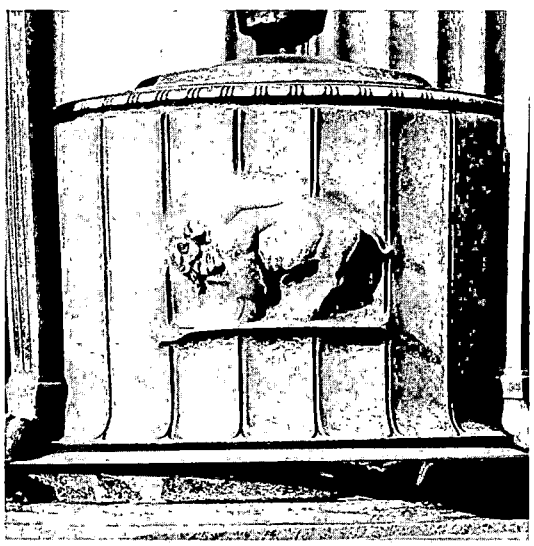


Plate 28

One of two aluminum Art Deco lamps designed by Jennewein for the law library. The top of the lamp is adorned by a rearing figure of Pegasus to connote inspiration.[131] (Pegasus had opened the spring of Hippocrene, sacred to the Muses and regarded as a source of poetic inspiration.) The small three-dimensional emblems surrounding the central shaft depict the four seasons: Spring is represented by a nude baby; Summer by a sheaf of wheat with a sickle; Autumn by a cluster of grapes; and Winter by pine boughs and cones.[132]

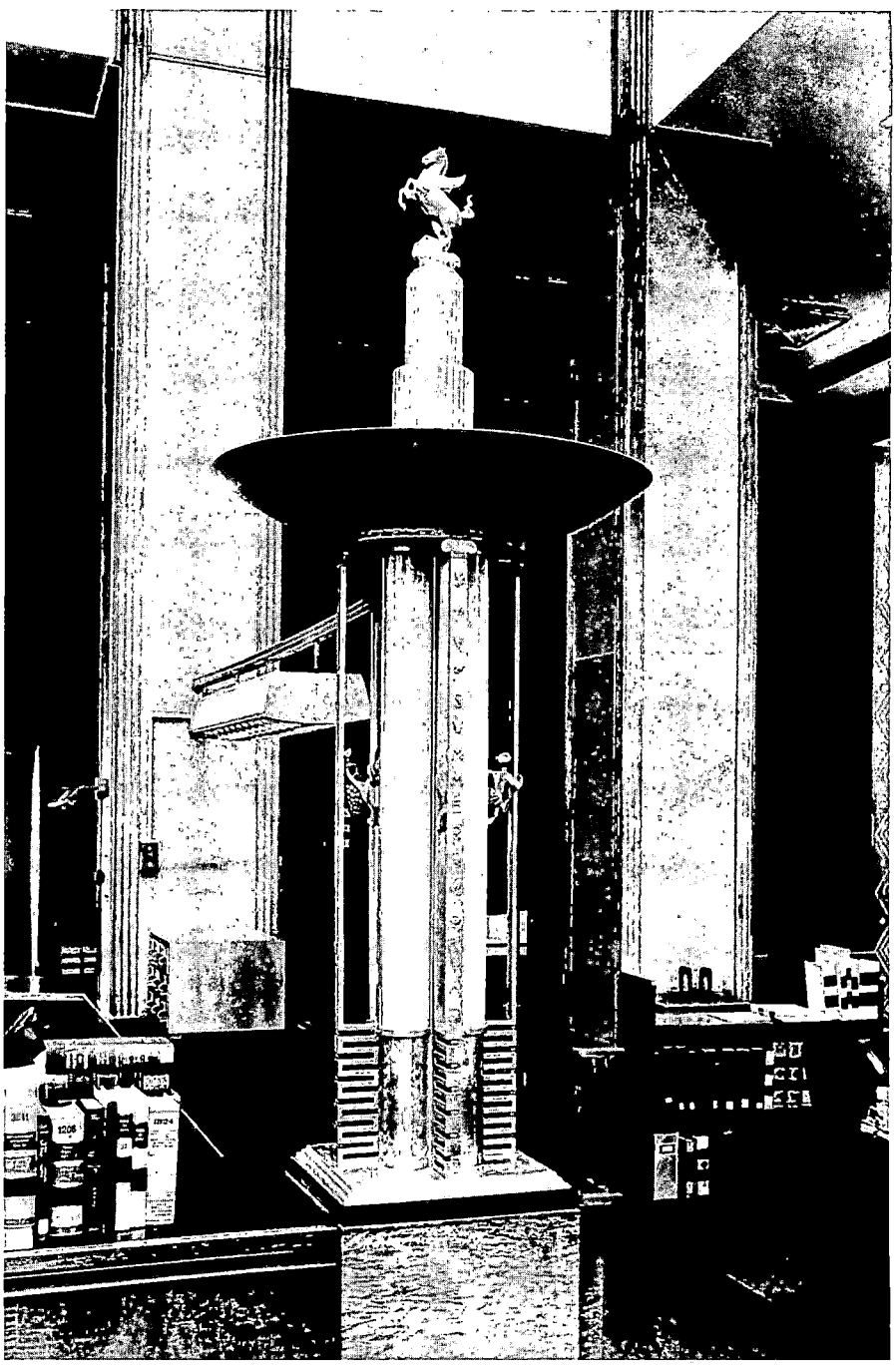


Plate 29

View of the decorated ceilings and ornamental Art Deco lighting fixtures. There are hundreds of these and similar fixtures placed throughout the building. They were cast and fabricated by the Edward F. Caldwell Company of New York City, New York, at a cost of $68,763 which included the aluminum torcheres for the entrances of the building. Note the railing with an Art Deco version of lotus leaves which were probably designed by the architects.[133] In Greek legend, the fruit of the lotus plant (believed to be jujube or elm) induced a state of dreamy and contented forgetfulness in those who ate it.



Plate 30

View of the first floor elevator lobby, 10th Street and Pennsylvania Avenue entrance to the building.[134] The geometrically detailed aluminum elevator doors are original. Many of the original doors and elevators were replaced or refurbished. There are 23 passenger, two private, and four freight elevators.

The main lobby floor is pink Mankato marble,[135] the circular corridor floors are Terrazzo,[136] the ceilings are plaster[137] and the walls are Alabama limestone.[138]

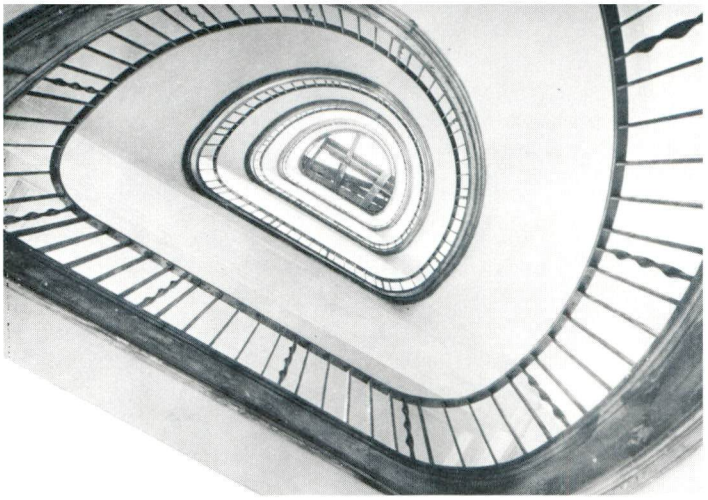


Plate 31

View of a spiral staircase taken during construction of the building. The railings are aluminum and the steps are marble. The photograph was taken July 2, 1934. Collection: National Archives; photo no. 121-BCP-138B-10.



Plate 32

The Great Hall is located on the second floor of the building. On the left is the female figure symbolizing the *Spirit of Justice*. She appears as a semidraped figure with arms raised in exultation and stands on "bulbous, star-specked clouds from which Moses' tablets of the law project at her feet."[139] To the right is the male figure, the *Majesty of Law* standing on a "rocky surface and holding a cluster of oak branches and arrows with jagged shafts in his right hand while raising his left hand upward in acknowledgement of the supreme authority that comes from above."[140] Both are 12'6" high, are made of aluminum and were cast after Jennewein's models (following Dr. Alexander's conception) by the Roman Bronze Works, a subsidiary of the General Bronze Corporation, located in Corona, Long Island City, New York.[141] They were completed by September 1936 at a cost of $7,275. Like the statues representing the four elements, these figures were conceived with this specific location in mind.[142]

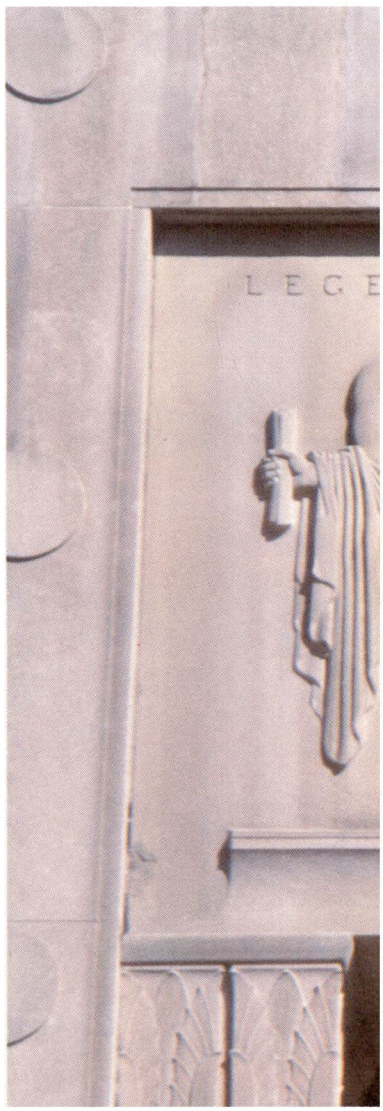
To the left are a series of what appear to be teller windows, through them employees were once paid in cash. Behind the left wall (near the female figure) there is a safe which kept the payroll. Note the modesty screen fastened to the railings, it is believed to have been installed at J. Edgar Hoover's request. The Great Hall is finely detailed; notice the aluminum designs bordering the lighting fixtures around the ceiling and the tile floors. The Great Hall can accommodate 400 people.



Plate 33

View of John J. Earley's mosaic ceilings over the 10th Street entranceway to the Great Court. The ceilings were precast at the Earley Studio then set in place in the form of a shell into which the structural concrete of the second floor was poured.[143] Carefully selected colored stones, ceramics and vitreous materials were chosen (according to William Avery, the first ever made of American materials)[144] for permanence and beauty. The mosaic ceilings remain in good condition after 50 years of outdoor exposure.[145]







John Joseph Earley. Photograph, Collection: American Concrete Institute, Detroit, Michigan.

Plate 34

Over the Constitution Avenue entrance, Jennewein designed a relief panel, (ca. 5′6″ × 13′6″) with the inscription, *LEGE ATQUE ORDINE OMNIA FIUNT,* taken from Pliny's *Epistle,* it means "Everything is created by Law and Order."[146] The central figure, Opportunity, is between two Doric columns representing Uprightness and Faith in the Future. The laurel and oak trees growing behind the columns symbolize civil and military valor. The two female figures beside Opportunity symbolize Peace and Prosperity. The two male figures at each end, Law and Order, are the attributes which create Opportunity, Peace and Prosperity. Law, on the left, holds a parchment and a sword while Order holds a staff around which the snake of Wisdom is coiled. The panel was installed in 1935[147] and was carved by William Kapp, Bruno Mankowski, Roger Morigi, and Otto Thieleman, stone carvers for the John Donnelly company.[148]

The ornaments of all the aluminum doors were designed by Jennewein and modeled at his studio.[149] The lions represent Watchfulness and Strength and at the top, the "heads of wheat . . . convey the idea of Fertility and the Bread of Life."[150]



Plate 35

The *Ars Boni* (The Good of the State) and the *Ars Aequi* (The Rights of Man) pediments facing Constitution Avenue. Jennewein used photographs of one of the architect's daughters, Mary Vaux Zantzinger Wurts, as an "architectural portrait" for the female visage on the *Ars Boni* pediment.[151] "In the *Ars Boni* pediment, while a nude boy (with fig leaf) holds an apple, presumably symbolizing knowledge in this instance, the female gestures with her left hand towards two doves, emblems of Peace, on the side of the bench; thus the knowledge of generations is used to promote Peace and Justice for 'The Good of the State.' "[152] In the *Ars Aequi* pediment, the scales of Justice were not used since Jennewein felt that the balance of the composition would have been upset and that the scales would present problems in the carving.[153] Dr. Alexander had suggested that the scales of Justice replace the sword (which seemed to emphasize too strongly the punitive aspects of Justice) in order to express the idea of equity.[154] "Nevertheless, the pediment projects the theme of the Justice Department as the defender of 'The Rights of Man.' "[155]

The theme for these 50 foot long pediments[156] could not have been more appropriate for a Department of Justice. The relation between the state and the individual has been a central focus of 'justice' in Western political thought. This theme can be traced to Plato's *Republic* wherein is discussed the proper order of the public and private realms in establishing a just society.[157] Recent discussions in Constitutional law have centered on balancing these ostensibly opposing interests.[158]

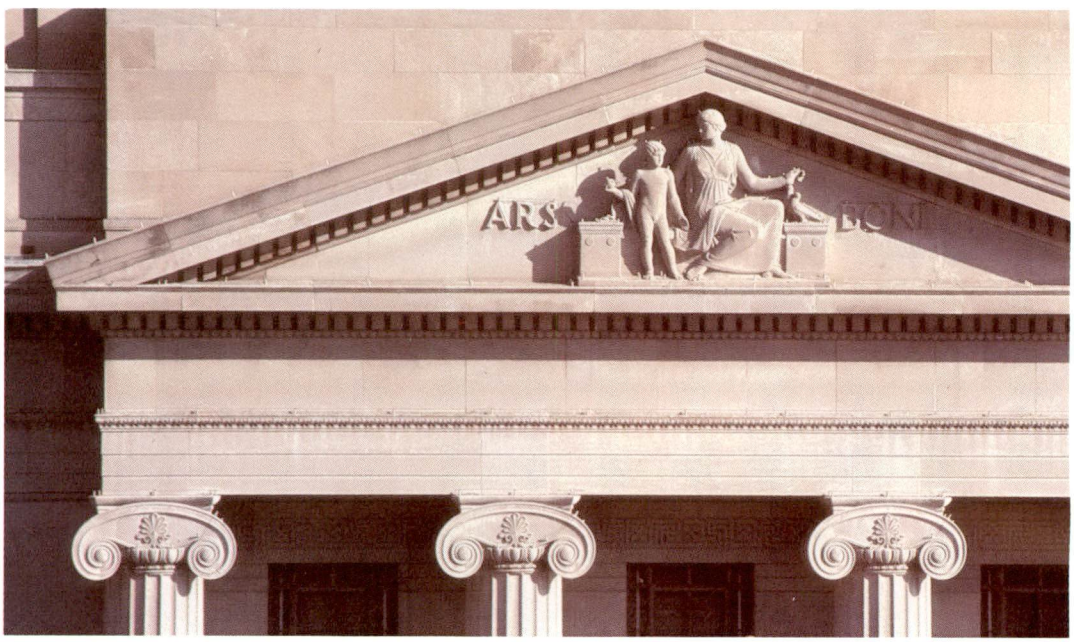




Plate 36

Detail of Jennewein's *Coat of Arms of the United States,* 1933-1935, limestone.[159] The inscription reads: JUSTICE IN THE LIFE AND CONDUCT OF THE STATE IS POSSIBLE ONLY AS FIRST IT RESIDES IN THE HEARTS AND SOULS OF THE CITIZENS.[160] This inscription and seal appears at the attic level at the corners of Ninth and Tenth Streets on Pennsylvania Avenue.

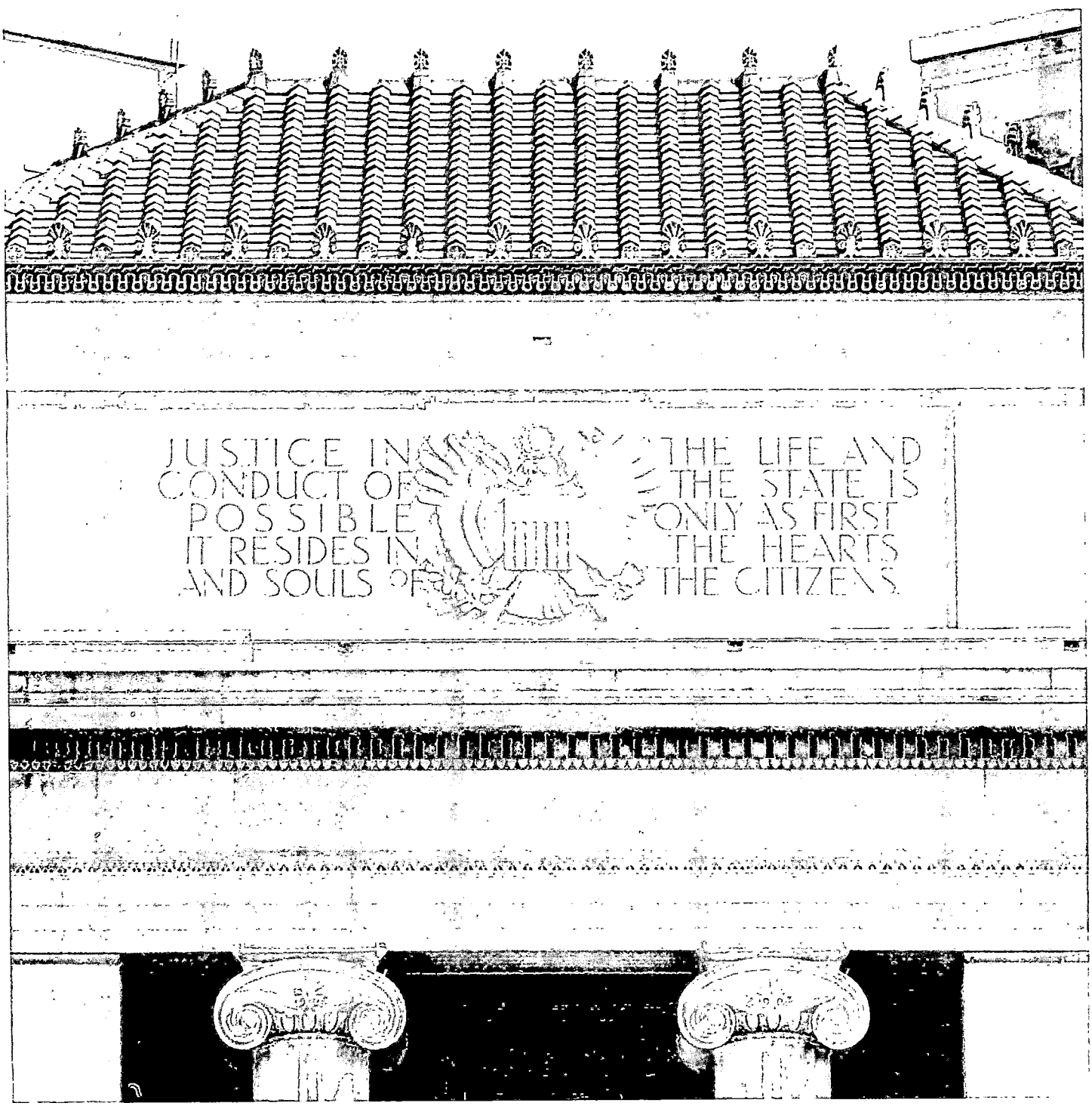


Plate 37

Shown are three of a total of 36 medallions on the Ninth Street and Tenth Street parapets. Carved in relief are Jennewein's alternating figures of *Fortitudo* (lion's mask), symbolizing strength and courage; *Vigilantia* (torch), the English cognate of this Latin word is vigilance; and *Defensio* (Corinthian helmet), the English cognate being defense.[161]







Plate 38

View of the Department of Justice seal in the pediment over the entrance leading to the Great Hall. Below the rising eagle with outstretched wings, grasping an olive branch (a symbol of peace) in the right talon, and arrows (a symbol of war) in the left, is inscribed the motto: *QUI PRO DOMINA JUSTITIA SEQUITUR*. While there has been much speculation and disagreement over the origins and meaning of this Latin inscription, its mysteries have been satisfactorily resolved. In an article written for the Department of Justice, Joseph A. Sanches, a Latin scholar, states:

There is only one source available to indicate the historical derivation of the departmental seal; its origin is placed in the Court of Queen Elizabeth I of England and used to describe her Attorney General as *qui pro Domina Justitia sequitur,* i.e., he who pursues (justice) on behalf of Lady Justice (the Queen).[162]

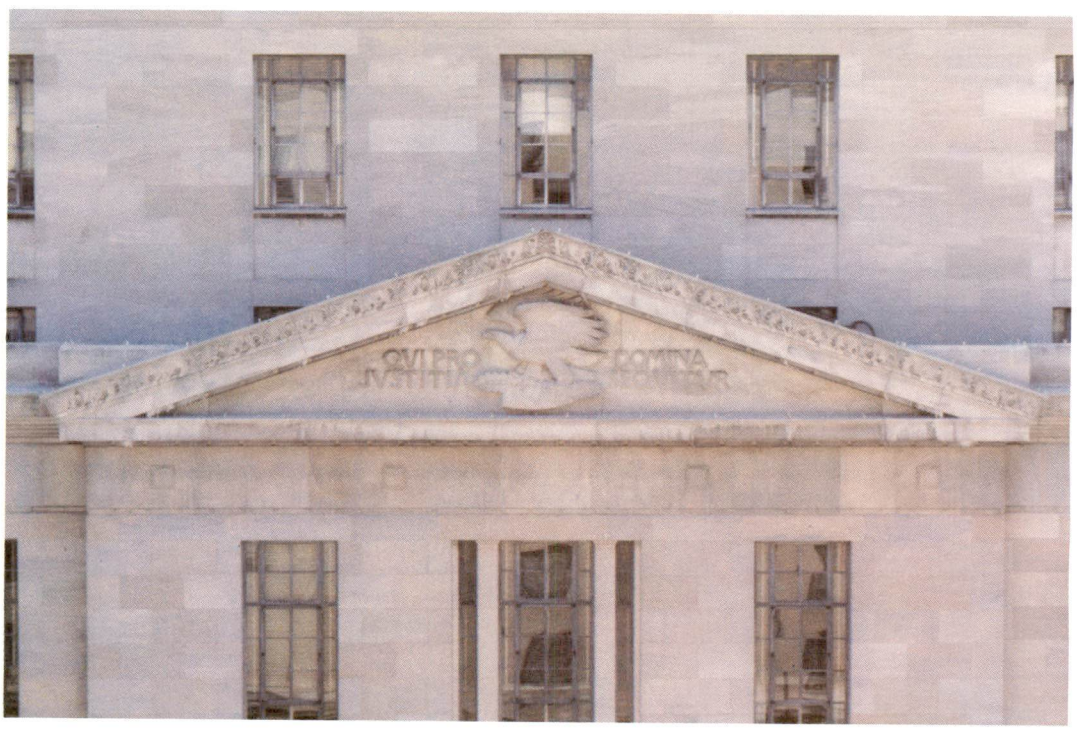


Plate 39

In the Great Court, Jennewein designed four figures, *The Four Winds*, 1933-1935 in low relief: *Boreas* (male north wind), *Zephyrus* (female west wind), *Notus* (male south wind), and *Eurus* (female east wind).[163] They symbolize the transport of Justice to the four corners of the country. Located in each corner of the courtyard facade, the figures are represented as racing through the air, their robes swept by the winds.[164] In a letter to Professor Alexander, Jennewein expressed the desire to "ignore the exact mythological significance," that is, the gender of the winds which are classically represented as all male. The four winds were positioned as closely as possible to the true cardinal points with *Boreas* facing northwest.[165]

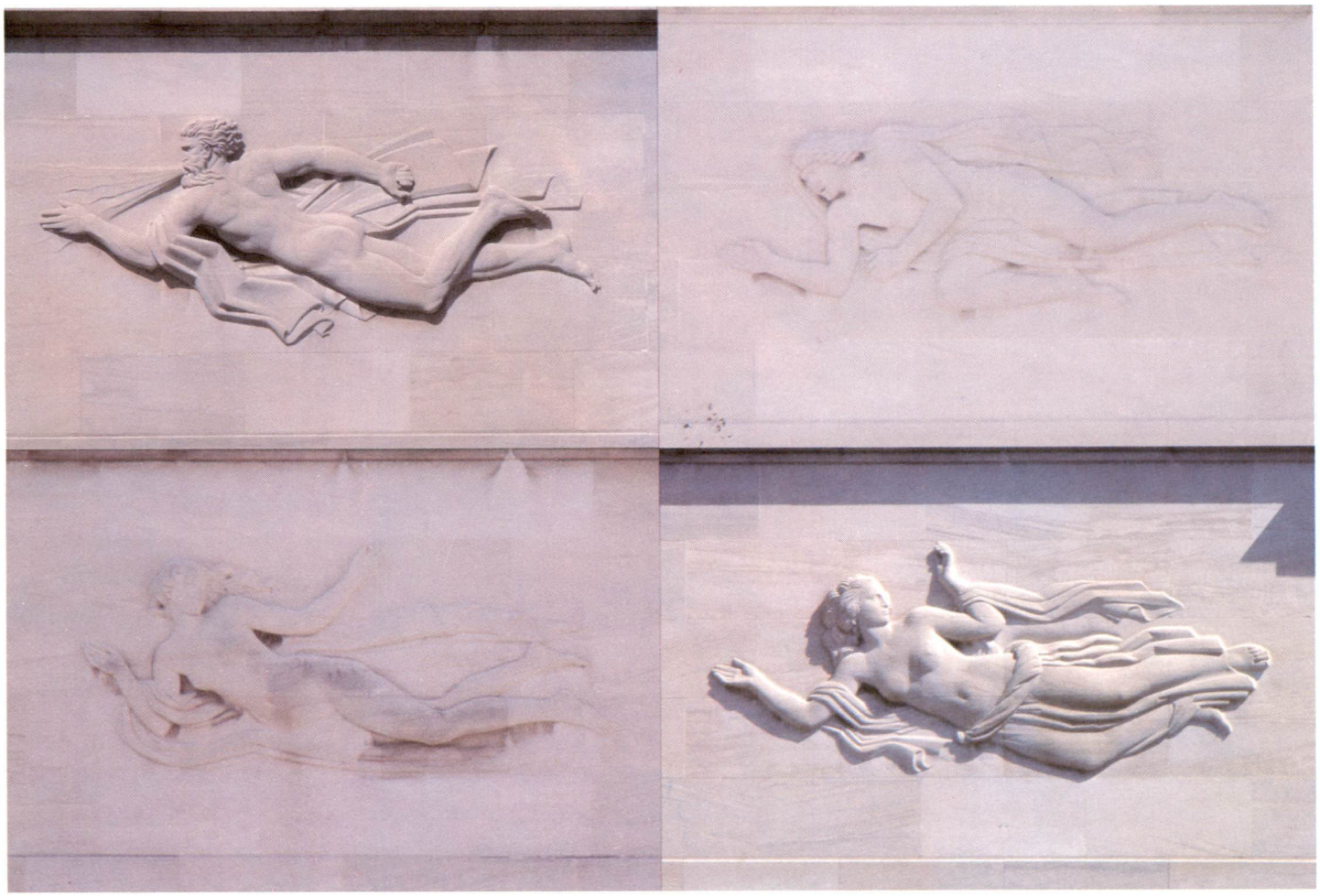
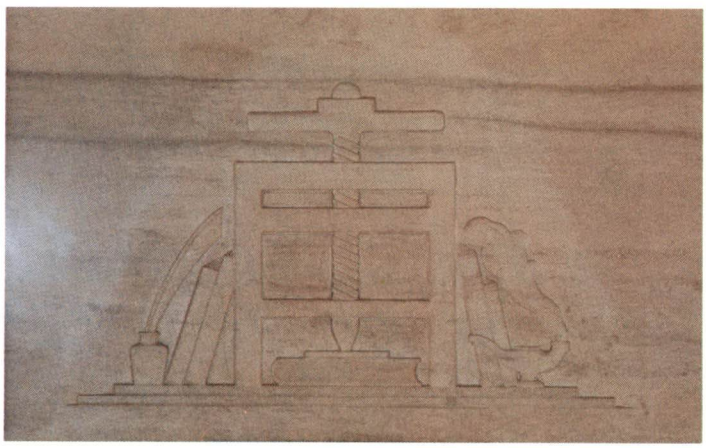


Plate 40

These three plaster relief panels, *Communication,* 1933-1934, appear over six elevator doors at the entrance of Ninth Street and Pennsylvania Avenue. They were modeled by Anthony di Lorenzo under Jennewein's supervision. They symbolize "Justice Communicated by the Word and Justice Carried by Land, Sea, and Air."[166]



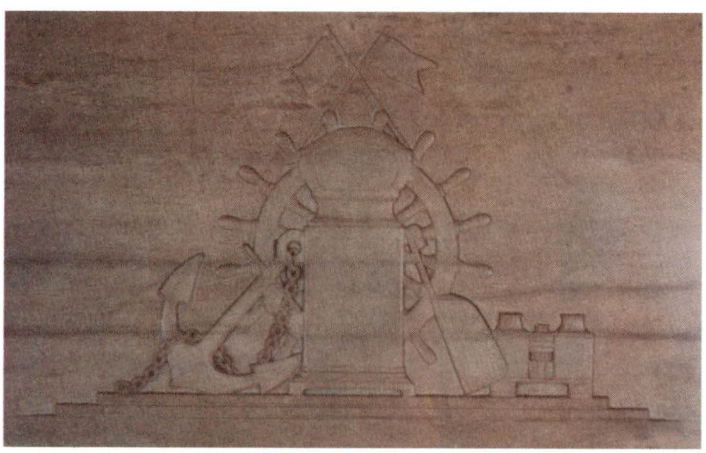




Plate 41

These painted plaster relief panels, 1933-1934, on the ceiling of the first floor elevator lobby, Constitution Avenue entrance, were modeled by Anthony di Lorenzo under Jennewein's supervision. They are *Justice, St. George and the Dragon, The State Protecting the Family,* and *The Muse and Pegasus.*[167]









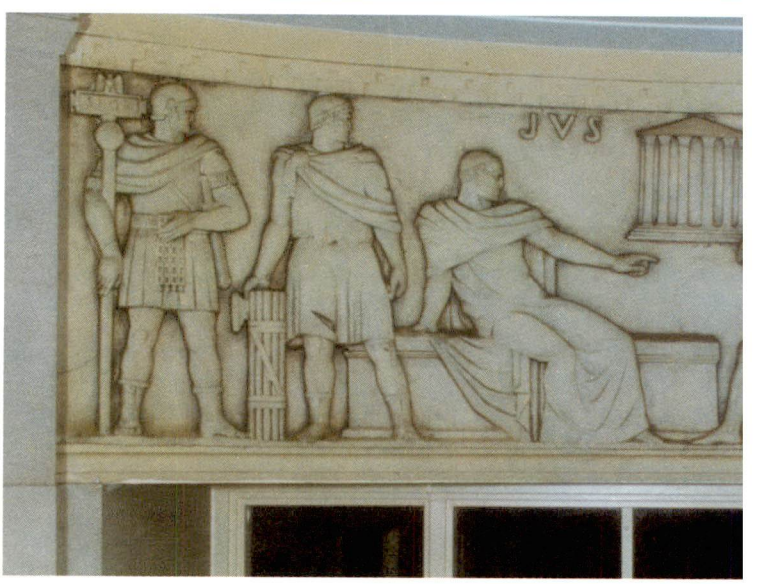
Plate 42

The panels in frieze, the "Four Fundamental Forms of Men's Development of the Idea of Justice," 1933-1934, are located on the first floor vestibule of Constitution Avenue. The panels were conceived by Dr. Alexander and were modeled by Oscar Mundhenk (?-1956) and Robert Calton Wakeman (1889-1964) after designs by Jennewein. The two small panels [*Fas*] (canon law, Ancient Orient), depict figures "from the Ancient Orient making a libation to convey the idea of canon law as the command or word of God;" *Mos* (common law, Nordic) depicts an assembly of Teutonic figures to typify "common law or the customs of the people;" the *Constitution 1789* (*Lex* or legislative law, American) is a representation of Benjamin Franklin, George Washington and others drafting the Constitution in 1789; *Jus* (equity, Roman) pictures Roman administration of justice through the concept of "equity or the natural rights of man."[168]










MOS


1789

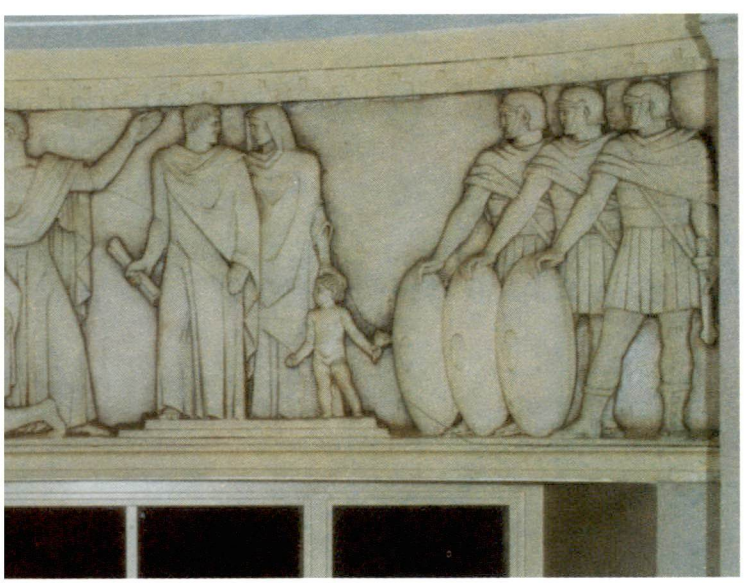




Plate 43

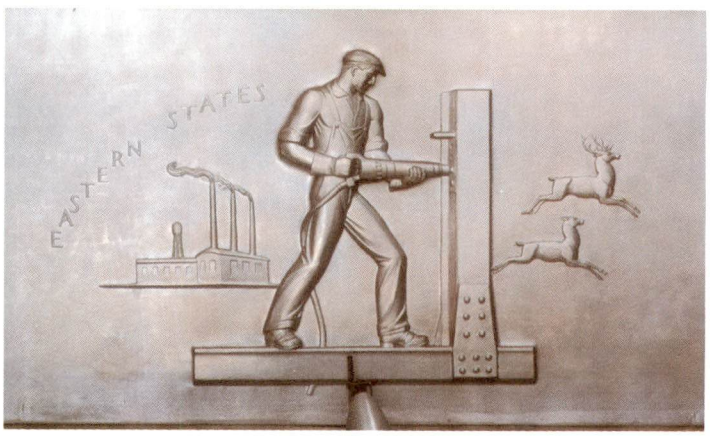
These four urns, 1933-1936, with figurative reliefs are located on the south central elevator lobby of the second floor behind the stage of the Great Hall. They were designed by the architects, modeled by Jennewein and cast in aluminum by the Roman Bronze Works. On each vase appears one of the four cardinal virtues: *Fortitude, Prudence, Temperance,* and *Justice.* Since the style of the urns was classical (Greek), Professor Alexander proposed that the composition of each relief represent "the four virtues which Plato finds essential to the perfection of Justice and which must exist alike in the soul of the citizen and in the organization of the state."[169]



Plate 44

These 12 panels are located on the fifth floor elevator lobby outside the law library. They were modeled by Henry Kreis (1899 Germany - 1963 USA) after Jennewein's designs. "The Twelve Physiographic and Industrial Regions of the National Domain," completed between 1933-1934, are painted plaster.[170] The following list includes a brief description of each composition: *New England*—a fisherman with a codfish, a lighthouse, and sea gulls; *Eastern States*—a welder working on a girder with a steel mill and a deer in the background; *The South*—a Black male and female picking cotton; *The Gulf States*—a Black female cuts sugar cane while a seated Black male holds an alligator in his lap; *The Great Lakes*—a stevedore wheels cargo with grain elevators and a transport ship in the background; *The Middle West*— a farmer carries a scythe with bundles of wheat and a mother and child in the background; *Rocky Mountains*—a







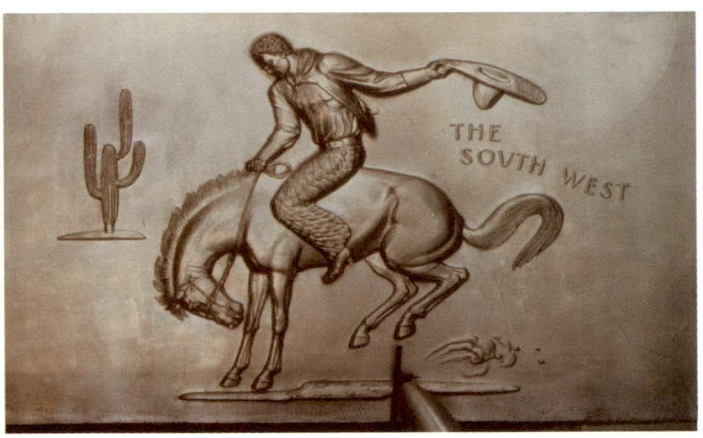
miner holds a pick with a mountain goat and mountains in the background; *The Southwest*—a cowboy rides a bucking bronco with a cactus in the background; *Pacific Coast*—a farmer standing on a shovel with grapevines, a palm tree, and mountain ranges; *The Northwest*—a lumberman with a howling timber wolf and pine trees; *Alaska*—a musher with a bobsled and two huskies; *The Islands*—a male figure picks pineapples and a female figure carries fruit in a basket on her head.[171]

The mother and child figures in *The Middle West* panel duplicates an earlier Jennewein sculpture called *The First Step* completed in 1919. The mother is represented by Jennewein's wife Gina and the child by his daughter Mimi.[172]









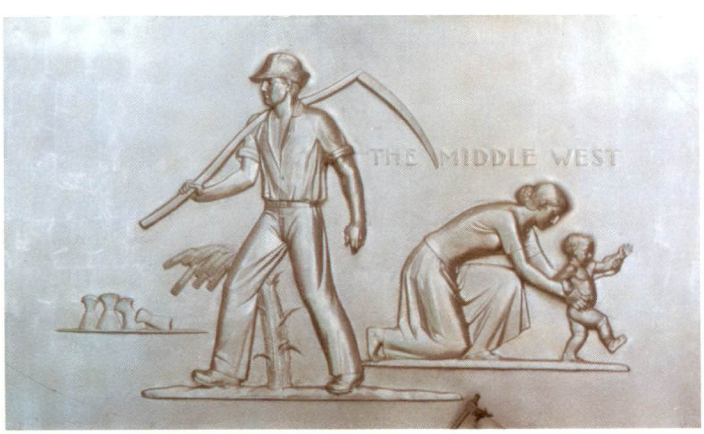




Plate 44—continued



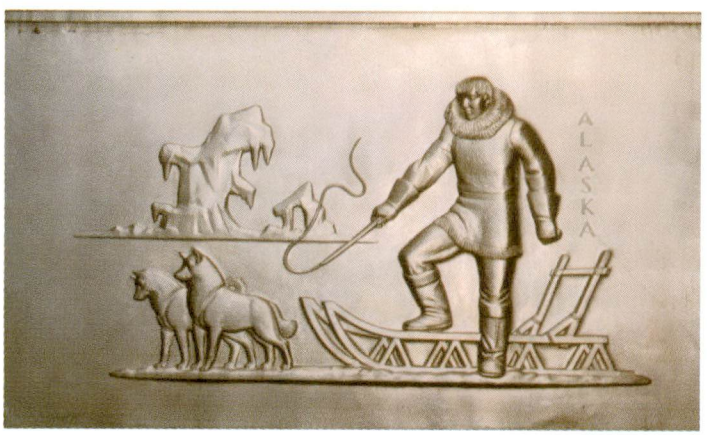




Plate 45

These four medallions, "The Civic Virtues which Sustain Society," 1933-1934, are painted plaster and were modeled by Leo Lintelli (1879 Italy - 1961 Italy) after designs by Jennewein.[173] Leo Lintelli was the sculptor of the statue in honor of James Cardinal Gibbons, located in front of the Shrine of the Sacred Heart, on 16th Street and Park Road, N.W., Washington, D.C.[174] *Fairmindedness* portrays a Justice of the Peace reading a lawbook by candlelight; *Public Security* is symbolized by a jailor with a huge ring of keys working on a cell lock; *Public Spirit* is represented by a town crier ringing a bell and carrying a lantern; and in *Public Service,* a policeman is shown with a large pistol.[175] The present locations are as follows: *Fairmindedness* is over the entrance to Room 5123; *Public Security* is over the entrance to Room 5122; *Public Spirit* is over the entrance to Room 5127; and *Public Service* is placed over Room 5130.



Plate 46

The four panels are painted plaster, 1933-1934, modeled by Carl Ludwig Schmitz (1900 Germany - 1967 USA) after designs by Jennewein.[176] *Interpretation of the Law* symbolizes "the past sources of the legal tradition as casting light upon modern interpretations." *Investigation of Truth* "pictures the classical idea of the Truth as the Mirror of Justice." These were placed over the Attorney General's entrance. *Defense of the Public* "is viewed as a female figure of Justice standing behind a family;" and *Master of Crime* depicts a "stern female figure, possibly in the guise of Columbia holding an eagle, presiding over three submissive figures in various states of imprisonment."[177] These two panels were placed over the Solicitor General's entrance. Two years after the four panels were installed, they were relocated at the request of the Section of Painting and Sculpture of the Treasury Department, with the consent of the architects, to make room for murals by Henry Varnum Poor.[178]

The present locations are as follows: *Interpretation of the Law* and *Mastery of Crime* are located over Rooms 5613 and 5614 respectively; *Investigation of Truth* is located over the entrance to the office of the Assistant Attorney General, Office of Legal Counsel, Room 5214; and *Defense of the Public* is located over Room 5213.





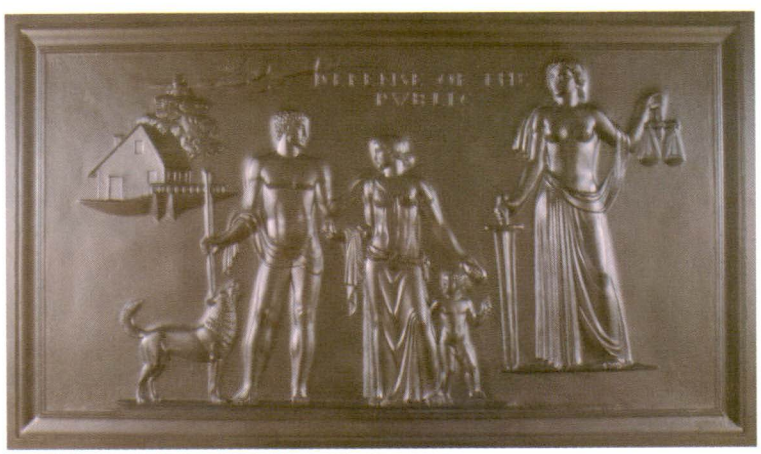


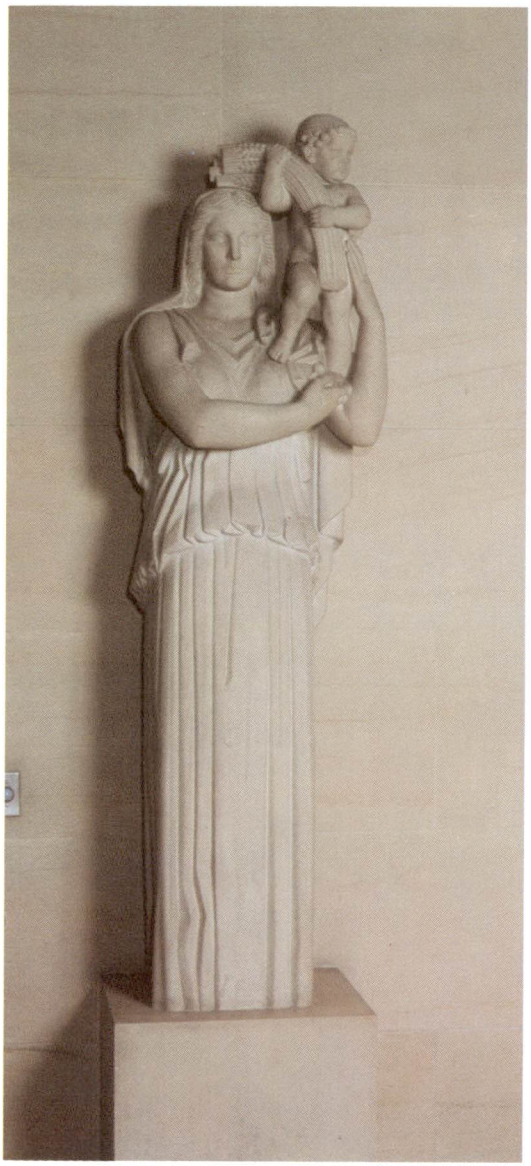


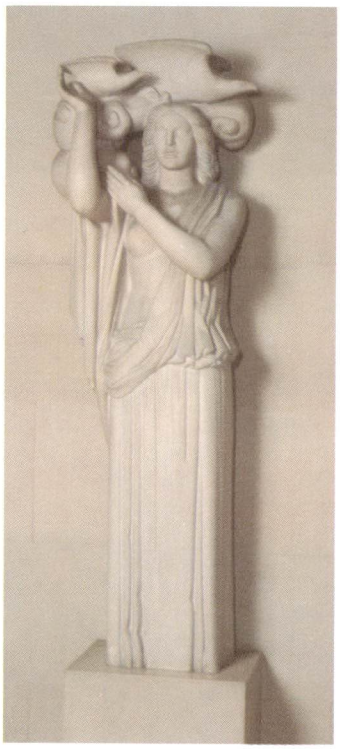
Plate 47

The four Statues, *Earth, Air, Water* and *Fire,* 1933-1936, Alabama limestone, in the south central elevator lobby, were modeled by Jennewein. Before settling on the "Four Element," alternatives had been considered. Among the rejected figures were: an ancient Semitic lawgiver, a Roman jurist, an Anglo Saxon promulgator of the code, an American Justice, and various "American types" to symbolize Reason, Duty, Idealism and Sovereignty of the People.[179] As with all the sculpturing, Jennewein prepared models of varying scale while others executed the work from his models. As with the figures—*Majesty of Law* and *Spirit of Justice*—the statues were conceived with this specific location in mind. Jennewein had used his daughter as a general model for the figure of *Fire.*[180] Roger Morigi, a master stone carver, executed the "Four Elements" with some assistance from Bruno Mankowski and William Kapp; they were completed by late May 1936.[181]

Mr. Morigi became an apprentice in Italy at the age of 11.[182] He has performed his artistry for 60 years on prominent buildings, for example, the Washington Cathedral and the Supreme Court. After one statue had been completed, Jennewein wrote the following to the Treasury:

. . . it is the most beautiful bit of carving that I have ever seen in my experience. I feel sure that you will agree with me that such perfection will easily explain the extra time taken.[183]





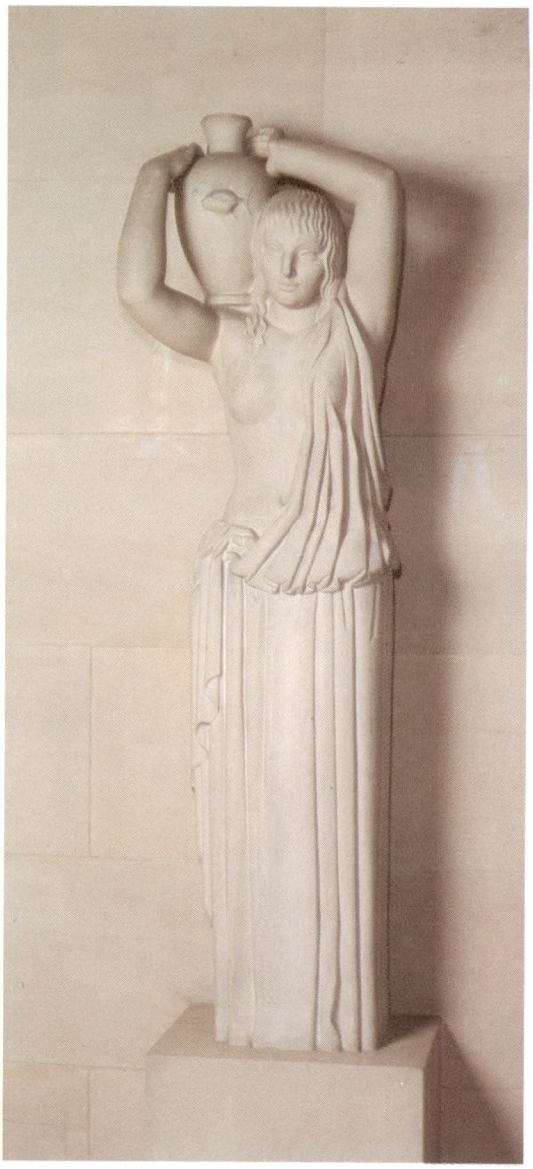
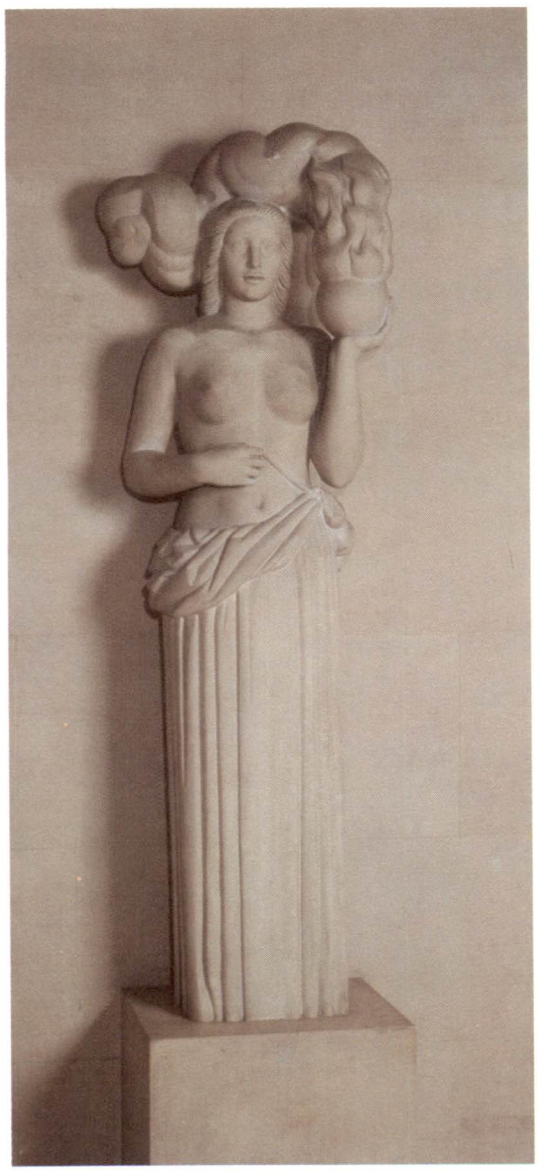
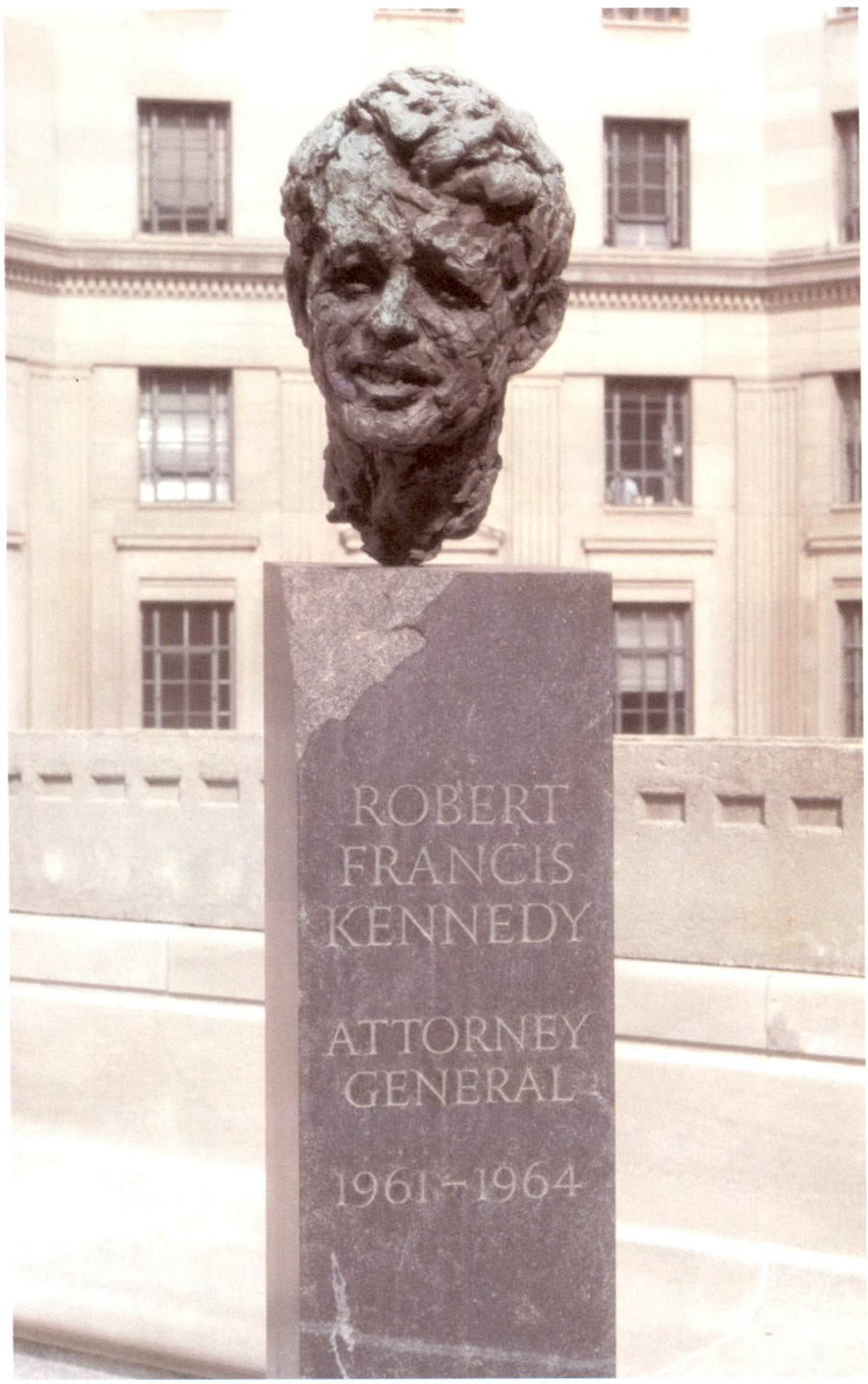


Plate 48

This life-size memorial to Robert Francis Kennedy (1925-1968), located in the Great Court at the request of his widow, was sculptured by Robert Berks (1922-). He has modeled busts of many prominent Americans including: President Lyndon B. Johnson, General William C. Westmoreland, Martin Luther King, Jr., and President John F. Kennedy (whose bust is located in the Kennedy Center for the Performing Arts in Washington, D.C.). The missing left corner of the top of the pedestal is symbolic of Attorney General Kennedy's uncompleted life. He was assassinated June 6, 1968, in Los Angeles, California.[184]






NATHAN HALE
CAPTAIN
ARMY OF THE UNITED STATES
BORN AT COVENTRY CONNECTICUT
JUNE 6 1755
IN THE PERFORMANCE OF HIS
DUTY HE RESIGNED HIS
LIFE A SACRIFICE TO
HIS COUNTRY'S LIBERTY
AT NEW YORK
SEPTEMBER 22 1776

Plate 49

The statue of Captain Nathan Hale (1755-1776) stands on the Constitution Avenue side of the building. It was sculptured by Bela Lyon Pratt (1867-1917), c. 1915.[185] Nathan Hale was, says James Goode (Keeper of the Smithsonian Building):

. . .the first well-known martyr of the American Revolution, was born in Coventry, Connecticut, graduated from Yale in 1773 and subsequently taught school in New London, Connecticut, until 1775. After the Battle of Lexington, he was commissioned an officer in the Continental Army, and then served against the British at Boston. When the American Army was evacuated from Boston in January 1776, Hale was reassigned to duty around New York City, which was then held by the British. In September of 1776, he volunteered to serve as a spy to secure information concerning the strength of the British on Long Island. By assuming the role of a school teacher and by carrying his college diploma as his credentials, Hale passed through the British lines, secured the information needed, and started back to Washington's headquarters.

While approaching his own picket lines, Nathan was betrayed by his Tory cousin, Samuel Hale, and was arrested as a spy and taken before the British Commander, General William Howe. Having found sketches and other military information on his person, Howe, without the form of a trial, gave orders for his execution the next day. Hale, while standing on the gallows, made a "spirited and sensible speech," as one witness recorded, of which the memorable words "I only regret that I have but one life to lose for my country" were the dramatic conclusion. This statue pictures Hale at that moment.

George Dudley Seymour, an attorney from New London, Connecticut, and a biographer of Hale, left this statue to the United States government upon his death in 1945. The statue formerly stood at Hale's birthplace in Coventry, Connecticut, which Seymour purchased in 1914, restored, and maintained as a museum for many years. A duplicate of the statue stands on the Yale campus. Many of Hale's wartime diaries and letters have been preserved in the Yale University Library. This memorial was rededicated by Attorney General Thomas C. Clark in April 1948; it is thought the statue was originally cast about 1930.[186]

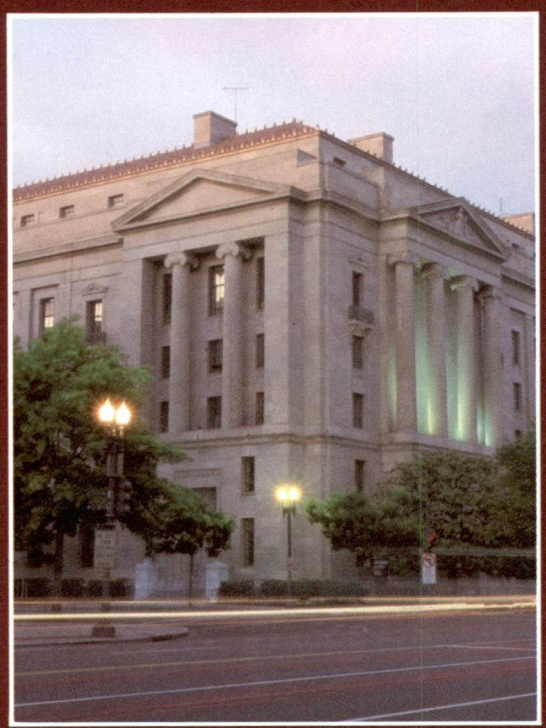
Hale's visage was probably left to the imagination of the sculptress; there is no known portrait of Hale.[187]

Plate 50

Shown here is one of two designs of a total of 1,100 polychromatic terra cotta antifixae (snow cleats) wired to the roof. These colorful cleats, which prevent snow from toppling, to our knowledge, adorn no other federal building in the Nation's Capital. Gold fired at approximately 1,400 degrees Fahrenheit produces the highly polished effect on the outer edges. A rough estimate of the current duplication costs, depending on the price of gold and the number of cleats, would be $500 each.[188]



ARTWORK



Eminent American mural artists commissioned to paint murals.

This section distinguishes various governmental art patronage programs before highlighting the Department of Justice murals (Plates 52-97). These murals must be distinguished from other governmentally supported art programs, often collectively referred to as "WPA Art."

The depression ravaged the artistic community in the United States. A market price index for art had decreased from 165 in 1929 to 50 by 1933.[189] Art importation decreased over 80 percent and the production of artists' materials was reduced by 50 percent.

George Biddle was convinced that governmentally sponsored art programs would enhance art appreciation in the country as well as providing assistance to needy artists. Biddle came from an established Philadelphia family. His great-great-grandfather was George Washington's first Attorney General; his brother Francis would become Solicitor General and Attorney General. George Biddle had been trained as a lawyer, attending Groton and Harvard, but decided upon a career as an artist. He traveled extensively learning from such famous artists as Mary Cassatt and Diego Rivera.[190]

On May 9, 1933, Biddle wrote a letter to his classmate, President Franklin D. Roosevelt, then in his third month in office (Plate 51). The letter emphasized the achievements of the Mexican muralists sponsored by President Alvaro Obregon and the conditions conducive to achieving similar results in the U.S. Biddle's suggestion of public employment of artists during the depression was not foreign to the President. When he was Governor of New York, artists had been on the state payroll under the work relief director, Harry L. Hopkins.

The President's terse response was encouraging. He advised Biddle to contact Assistant Secretary of the Treasury, Lawrence W. Robert. Biddle promptly recruited tentative commitments from eminent American mural artists, including: Thomas Hart Benton, Edward Laning, Reginald Marsh, Henry Varnum Poor, Boardman Robinson, and Maurice Sterne. The last three, along with Biddle and several others, would be commissioned to paint murals in the Justice Building.[191]

During Biddle's meeting with Robert in June 1933, the artist learned that the artwork authorized for the DOJ Building had not commenced.[192] Though funds were not being released for art during the depression, Robert informed Biddle that the policy might be changed.[193]

Roosevelt remarked that the prospects for Biddle's plan were discouraging.

Subsequently, Biddle met with prominent people for support; he outlined his plan to Eleanor Roosevelt, Secretary of Labor Frances Perkins, Secretary of the Interior Harold L. Ickes, and Assistant Secretary of Agriculture, Rexford G. Tugwell.

Biddle's proposals ran into trouble when Roosevelt forwarded the plan to the Commission of Fine Arts, presidential art advisors since its creation by Congress in 1910. The Commission held more conservative views than Biddle's group. Eugene F. Savage, a painter of note and a member of the Commission, wrote a long criticism of Biddle's plan; it was endorsed by Charles Moore, Chairman of the Commission, and sent to the President.[194] The report had characterized Biddle's group of muralists as "painters of easel pictures of an incidental nature."[195]

In forwarding the Commission's report to Biddle, Roosevelt remarked that the prospects for the plan were discouraging.[196] Biddle continued his efforts nonetheless. He had gained the support of Louis Simon, supervising architect for the Treasury Department, and Charles L. Borie, one of the architects for the Justice Building. Their support was promising. Traditionally, the architect of a building selected the artists to decorate it.[197] This was especially significant for Biddle since the design of many of the Federal Buildings in Washington were Classic Revival; his group was viewed by some as modernists and radicals.

Robert began showing more than casual interest. He believed that the Treasury Department could devise a program despite the Commission's adverse report. While Biddle attempted to pacify the Commission, an attempt which produced mixed results, Robert approached Edward Bruce for advice. Bruce had recently come to the Treasury Department as an expert in monetary policy. A man of many talents, he had attended Columbia Law School, owned the *Manila Times,* and, at the age of 44, had left his business ventures behind to study painting in Italy under the American artist Maurice Sterne. Before coming to the Treasury Department, he painted successfully for 10 years and held numerous exhibitions.[198]

From this point on, Bruce became the force for governmental patronage of the arts. On October 31, 1933, he arranged the first in a series of "working dinners" at his Northwest Washington home. Among the notables recruited in support of the cause were Assistant

One percent of the cost of the building was allocated for artwork.

Secretary Robert, Justice Harlan Stone of the Supreme Court, Jerome Frank of the Department of Agriculture, and Ralph Renault of the *Washington Post.*[199] With support from such prominent people, Bruce began the search for funds.

In November, Bruce and Biddle requested that Treasury Department officials fund their project, they were refused. The two men then approached the Administrator of the Public Works Administration (PWA), Harold L. Ickes; he could set aside a portion of the $400,000,000 for artists, these funds were being transferred from PWA to the Relief Administration, headed by Harry Hopkins. Hopkins agreed to provide $1,039,000 for the Public Works of Art Project (PWAP), the name Bruce had given to the proposed appendage of the Treasury Department.[200]

On December 8, 1933, the Fine Arts Advisory Committee for the Treasury Department met at Bruce's home. Bruce's plan for the PWAP, dividing the country into 16 geographic regions with museum directors as regional heads, was approved. Before the PWAP expired in the spring of 1934, 3,749 artists produced 15,663 pieces of art.[201] Ironically, George Biddle, an instrumental force for Federal patronage, never painted for the PWAP.[202]

On September 11, 1934, Bruce and Secretary of the Treasury Henry Morgenthau agreed to establish the Section of Painting and Sculpture, attached to the Treasury Department. The Section did not consider the artists' need for employment as the PWAP had. Rather, its goal was to secure art of the highest quality to embellish Federal buildings. The Section supervised art to be included in Federal buildings by working closely with architects and artists.

When the Section, the architects, and the Director of the Procurement Division agreed, the Section received (at least for the Justice Building) one percent of the cost of the building for artwork.[203]

Bruce devised a plan to select eminent American artists to be commissioned for the Justice and Post Office Buildings. He decided to appoint a committee of 22 people composed of artists, museum directors, Justice Harlan Stone, and Attorney General Homer S. Cummings. The

The murals took six years to complete.

Committee, not knowing the identity of the other members, in order to avoid collusion, submitted a list of 32 artists. Those mentioned most often would be commissioned for the two buildings.[204]

Among the artists selected for the Justice Building were Boardman Robinson, Maurice Sterne, Henry Varnum Poor, George Biddle, Leon Kroll, and John Steuart Curry. The artists would be paid in three installments contingent on the approved progress of the work.[205] A total of $68,000, one percent of the total cost of the building, was allocated for artwork.[206]

The artists' work was carefully reviewed at each stage. The preliminary sketches required approval by the Section staff, the Supervising Architect in the Procurement Division, the Director of Procurement, the Commission of Fine Arts, the architects for the building, and sometimes, various departmental officials. This laborious process delayed completion of the murals.

The murals for the Justice Building took six years to complete, from 1935 to 1941. Today, the murals are well preserved and continue to enrich the beauty of the Justice Building.

Plate 51

George Biddle's letter to President Roosevelt.[207]

GEORGE BIDDLE
CROTON ON HUDSON
NEW YORK

May 9. 1933.

Dear Franklin:

I never doubted of your ability and courage and perhaps that is the reason why I have so delayed in congratulating you on your achievements. The sincerest thing I can say to you is that you have grown and will continue to grow with the demands that America and the world puts on you. I am really proud to have known you at school and college.

There is a matter which I have long considered and which some day might interest your administration. The Mexican artists have produced the greatest national school of mural painting since the Italian renascence. Diego Rivera tells me that it was only possible because Obregon allowed Mexican artists to work at plumber's wages in order to express on the walls of the government buildings the social ideals of the Mexican revolution.



George Biddle. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0043766.

NRA 80-160(3)

GEORGE BIDDLE
CROTON ON HUDSON
NEW YORK

The younger artists of America are conscious as they never have been of the social revolution that our country and civilization is going through and they would be very eager to express these ideals in a permanent mural art if they were given the Government's cooperation. They would be contributing to and expressing in living monuments the social ideals that you are struggling to achieve. And I am convinced that our mural art, with a little impetus, can soon result, for the first time in our history, in a vital national expression.

You are too busy at present with more serious problems to give this matter any thought. Perhaps during the summer you will let me drive over from Croton on Hudson and pay my respects. Very sincerely

George Biddle.

Plates 52 - 69

These panels, surrounding the stairway leading to the Great Hall, represent the "Great Codifiers of the Law" painted by Boardman Robinson, c. 1935-1937, for a total of $20,000.[208] Justice Harlan Fiske Stone and Roscoe Pound advised Robinson on compiling the list, which includes: *Coke, Magna Carta, Blackstone, Marshall, Constitution, Kent, Papinian, Solon, Justinian, Thomas Aquinas, Holmes, Jesus, Grotius, Victoria, Socrates, Menes, Moses,* and *Hammurabi.* The medium for the panels was tempera on canvas; the eighteen murals cover 1,025 square feet.[209]

The eight signers depicted in the signing of the Constitution are Washington, Franklin, Madison, James Wilson, John Rutledge, Charles Pinckney, Rufus King and Governor Morris. For the likeness of Victoria, Robinson used a sketch of Dr. James Scott Brown, translator of the Spaniard's works and Secretary of the Carnegie Endowment for International Peace.[210] The bearded farm servant in the lower right section of the *Magna Carta* is a self-portrait of the artist.[211]

Boardman Robinson was born in Somerset, Nova Scotia, September 6, 1876. He studied at the Massachusetts School of Art in Boston, and, in Paris, at the Ecole des Beaux Arts as well as in several ateliers.[212]

Plate 52

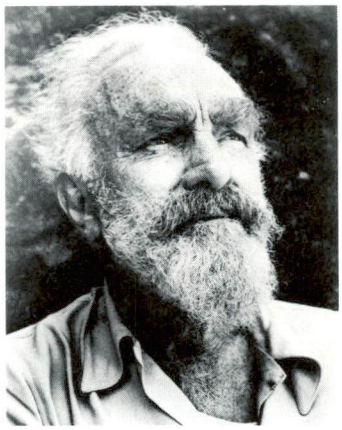


Plate 53



Plate 54





Boardman Robinson. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0002117.

Plate 55



Plate 56



Plate 57



Plate 58 *Plate 59* *Plate 60* *Plate 61*

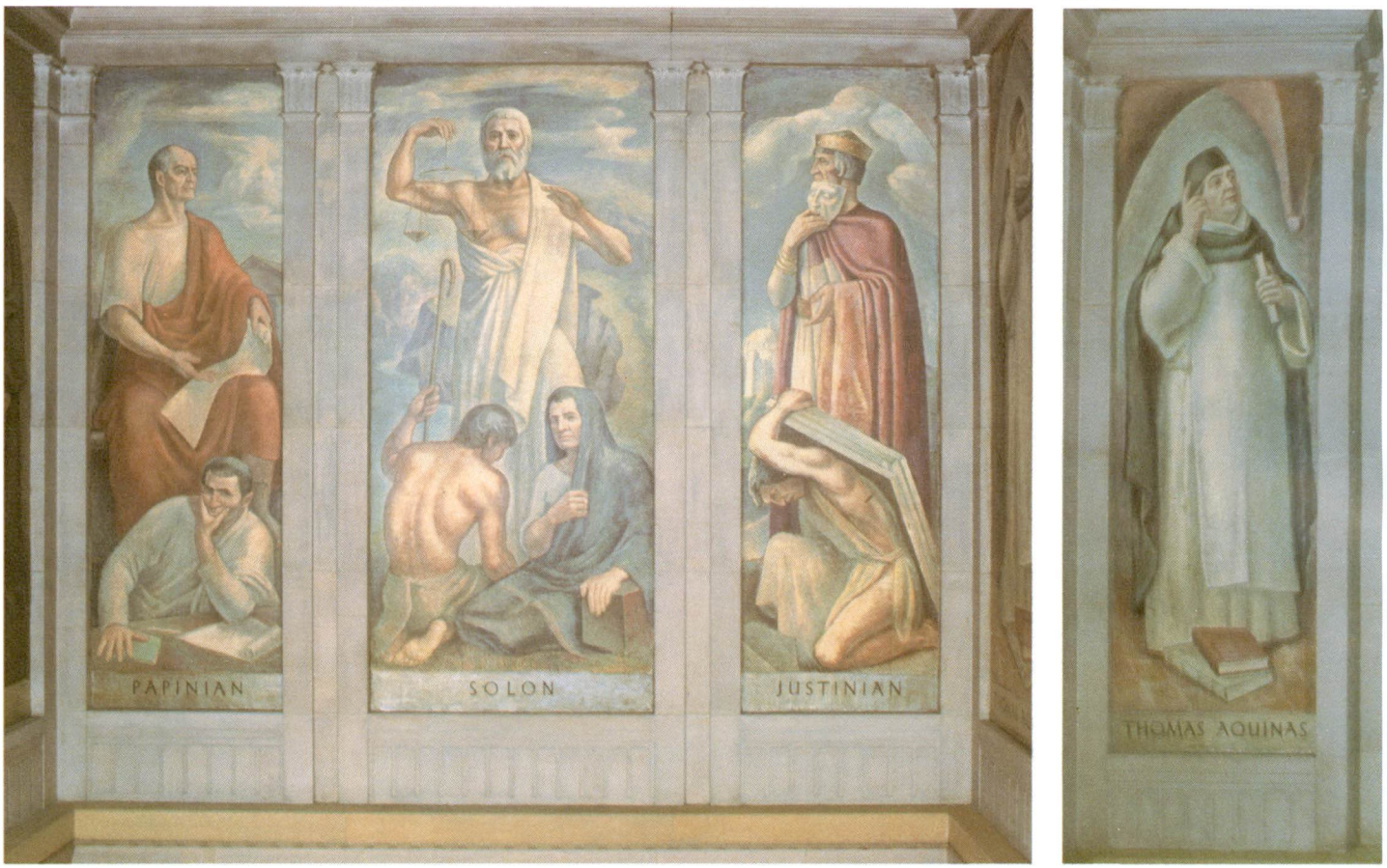


Plate 63



Plate 62



Plate 64



Plate 65



Plate 66

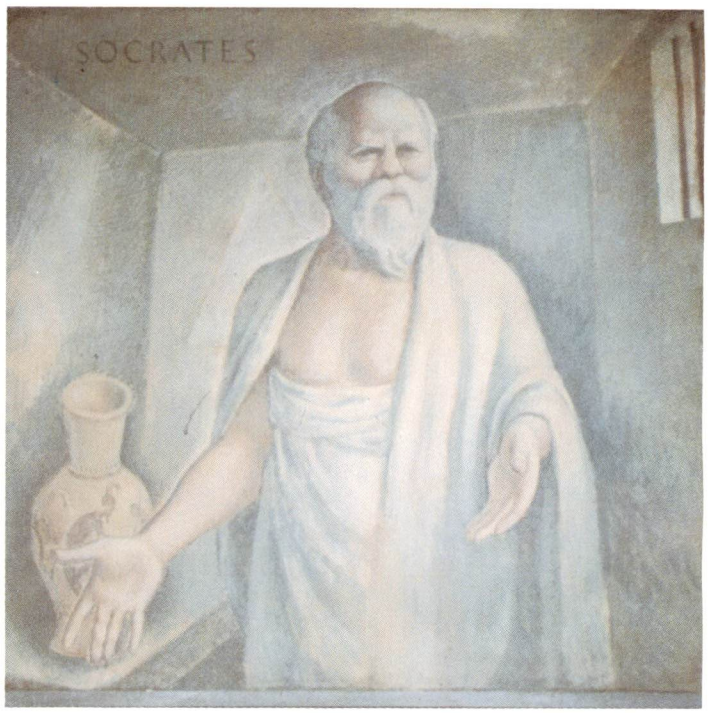


Plate 67 *Plate 68* *Plate 69*

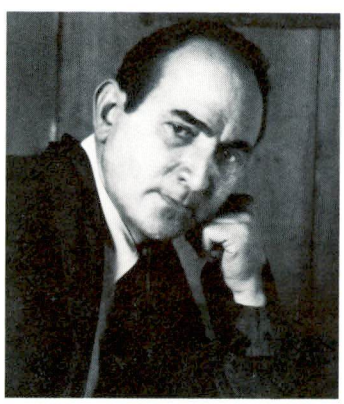


Plate 70

Brute Force **is the most primitive manner of settling disputes; superior strength replaces Justice.**[213]

These 20 panels, painted by Maurice Sterne and located in the law library, represent "The Search for Truth," c.1935-1941. The medium for the panels was oil on board.





Maurice Sterne. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0002204.

Plate 71

Greed **portrays a group fighting over and casting dice for the garments of Christ at the foot of the Cross.**

Plate 72

Ordeal **generated controversy by depicting a man undergoing trial by ordeal. The robed figure represents Pope Innocent III whose gesture is meant to convey a blessing upon the victim and a ban on the barbaric practice. Some officials of the Catholic Church felt that the depiction of clerics in the composition would associate the Church with trial by ordeal. The practice was prohibited by the fourth Lateran Council of 1215.**

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Plate 73

Justice Tempered by Mercy. **"He who is without sin should cast the first stone." The action is reflected in a mirror.**



Plate 74

Intolerance. **A Roman scene in which Sybiline literature is being burned. In the foreground, a figure collapsed over books, is being covered with tar. In the background, a dictator is surrounded by Roman soldiers.**

▼ *bottom of page*

Plate 75

Tradition. **Depicts a woman holding two babies seated inside a skeleton of the past. To the left are Hammurabi, Moses, and Justinian; to the right, are Roman, Medieval, and modern soldiers. The composition contrasts the constructive and destructive elements of tradition.**





Plate 76

Superstition **depicts the Delphic Sybil in a trance surrounded by attendants. In the background, there is a human sacrifice.**



Plate 77-79

The triptych represents *Continuity of the Law.* **Included are** *The Past, Continuity of the Law,* **and** *The Future.*



Plate 80

In this panel, *Belief In Magic,* we see a magician pulling a rabbit from a hat. He is also shown swinging ticker tape from which a Pied Piper entices people and their savings to follow him.

Plate 81

In *Competition And Monopoly,* men are shown in a tug-of-war. In the background two steers are fighting, while in the foreground, a figure stifles his competitors.

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Plate 82

False Witness. **Shown is a man with two faces, one honest, the other hiding behind it. Behind him is a figure of bribery while in the foreground we see Truth collapsing.**

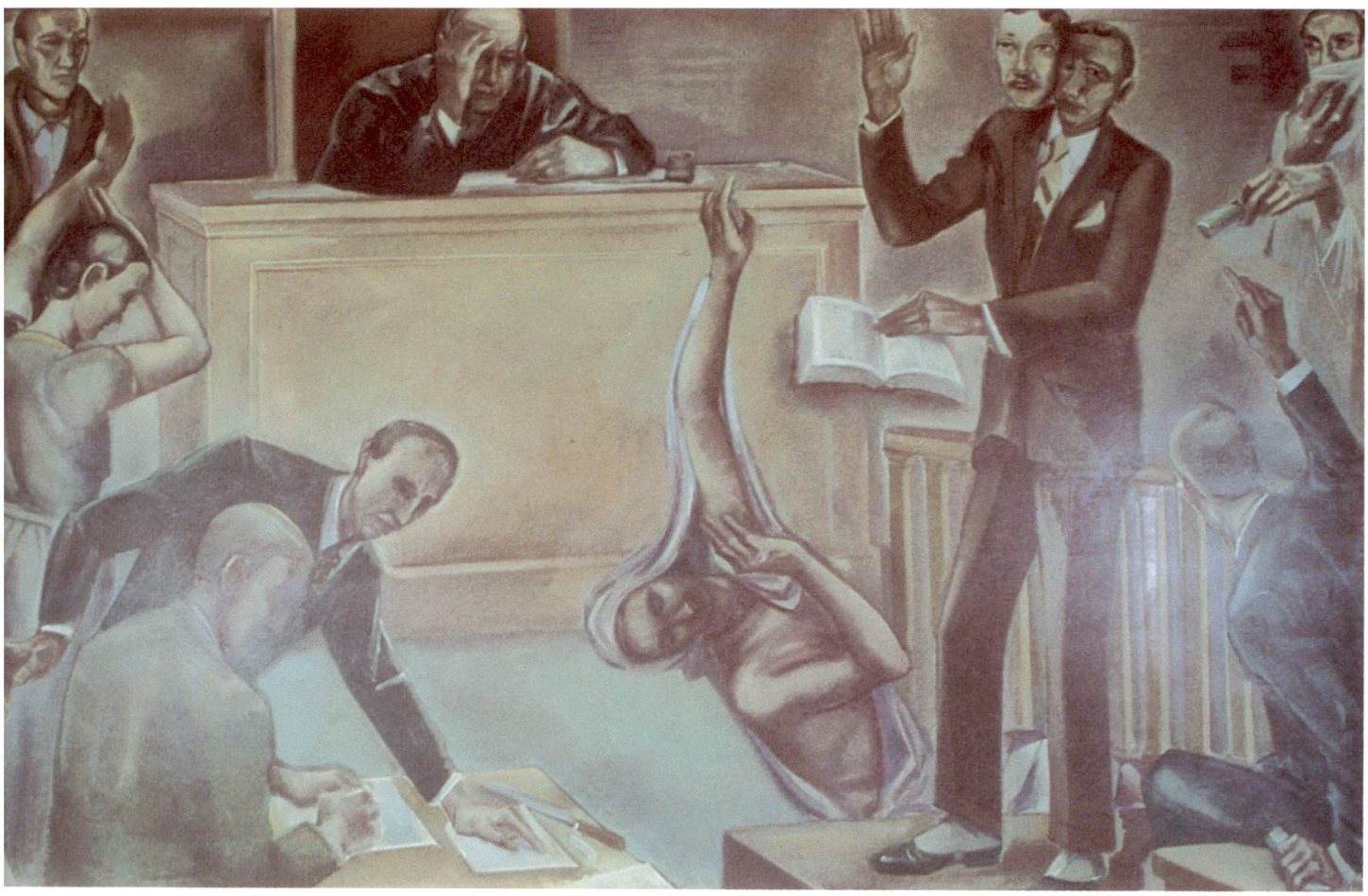


Plate 83

Justice And Science. **The central figure holds a lens which illuminates fingerprints. On the right, a kidnapping is depicted, while on the left, a criminal is being groomed in a barber shop.**



Plate 84

In the *Environment* we see children witnessing a hold-up, a woman handing flowers to a criminal, a vendor with "Daily Yellow Gazette," and a radio broadcast.



Plate 85

Ambition **depicts Jacob wrestling with an angel while people climbing up a rock represent earthly ambition.**

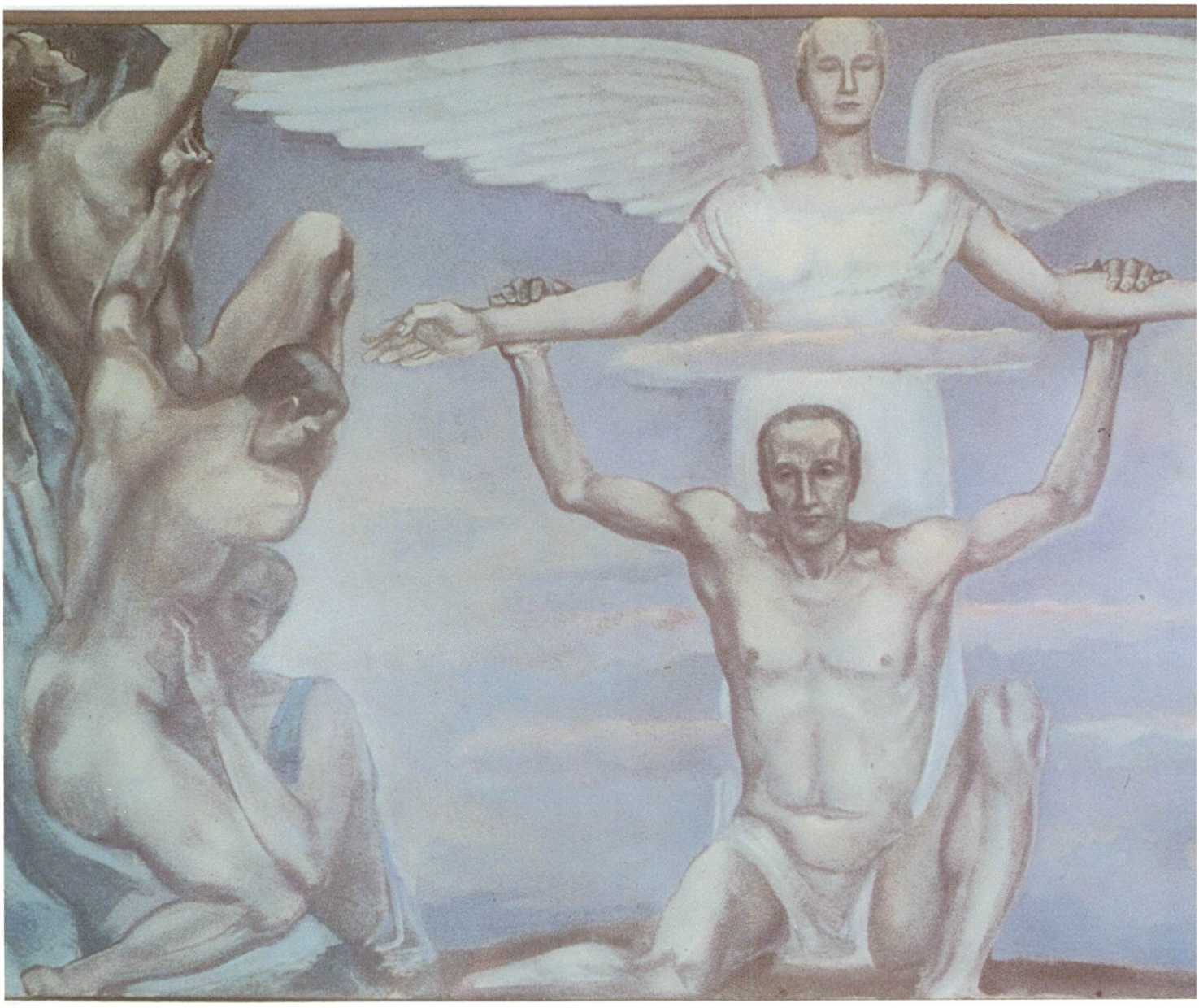
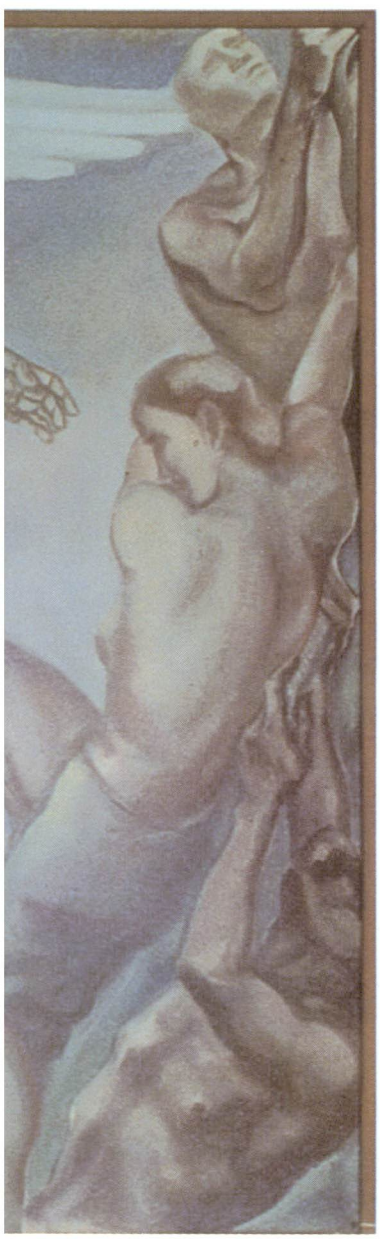


Plate 86

In *Red Tape* we see a huge spider web and a skull. The clock suggests the passage of time; the people caught in the web are being released by Justice Holmes pictured as Don Quixote.



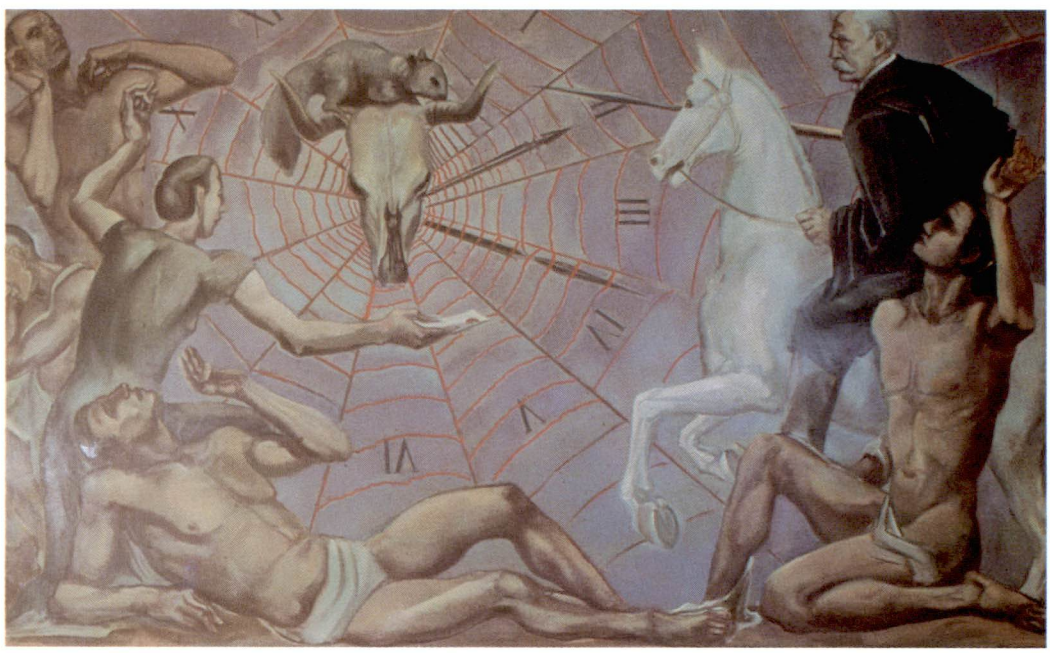
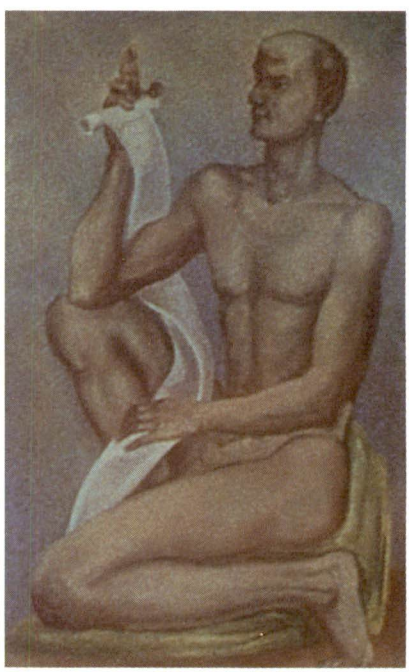


Plate 87-89

The triptych represents *Attributes of Justice*. Shown are *Intuition*, the *Scale of Justice*, and *Reason*.

Maurice Sterne was born in Libau, Russia, in 1877. He emigrated to New York in 1889 where he studied at the National Academy of Design; he also studied extensively in Europe. He received numerous awards and his work was represented in many museums, including: the Carnegie Institute, Pittsburgh; Rhode Island School of Design, Providence; Metropolitan Museum, New York; Boston Museum of Fine Arts; the Detroit Museum; Harrison Gallery; Los Angeles Museum; Corcoran Art Gallery, Washington, D.C.; Cleveland Museum of Art; San Diego, California, Fine Arts Gallery; Kaiser Friedrich Museum, Berlin; Cologne Museum; and the Tate Gallery, London.[214]





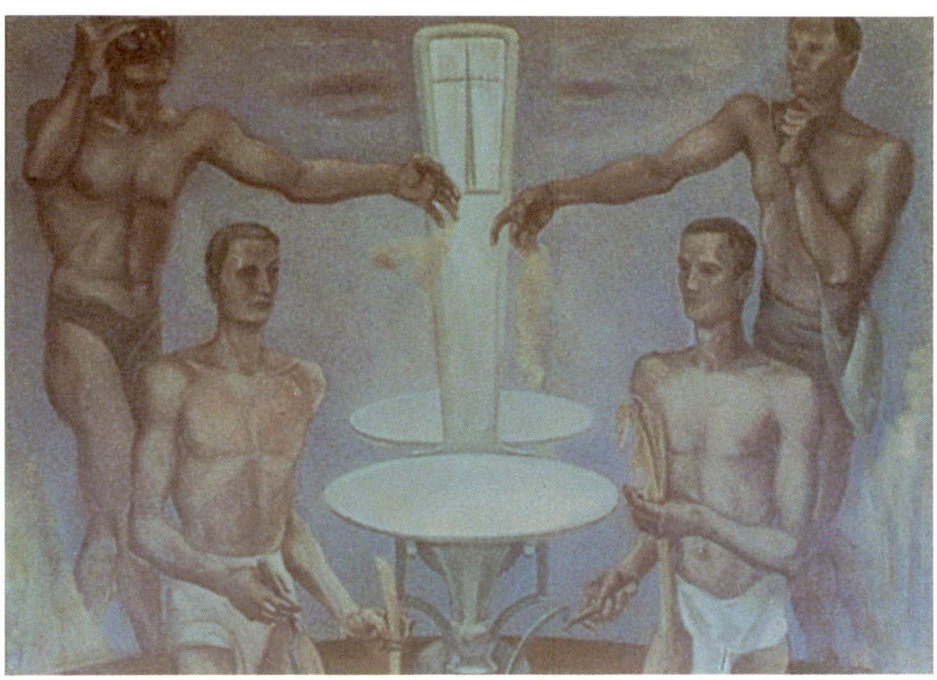
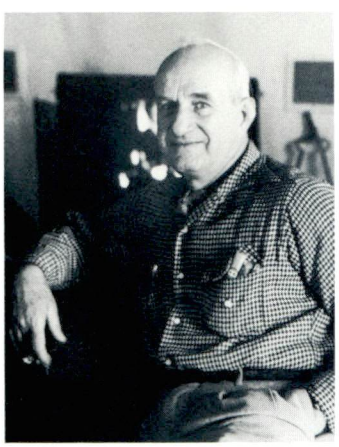


Plate 90

This mural by Emil Bisttram, c. 1937, located in the lobby of the Constitution Avenue entrance, is entitled *Contemporary Justice and Woman*. Bisttram was one of three winners of a national competition entered by 283 artists. The winning design shows a figure of Justice cutting the chains of tradition which is represented by an old crouching shrew who bound women. In the background, a freed woman heads toward the light of her new position in the world. The eight small panels at either side depict women engaged in their new found roles: as sculptor, student, scholar, executive, dancer, sports-woman, voter, and scientist. The bottom panel contrasts the traditional role of women. The mural is oil on canvas.

Emil Bisttram was born in Hungary on April 7, 1906. He came to the United States as a boy and later became a citizen. He studied at the National Academy of Design, New York. He also studied at the New York School of Fine and Applied Art, where he became an assistant instructor. He also worked with Diego Rivera in Mexico.[215]



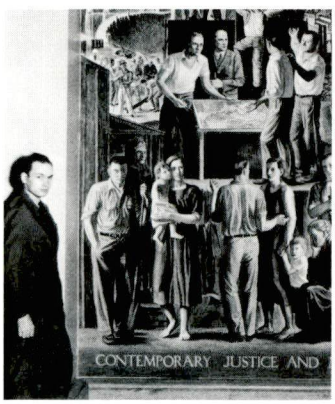
Emil Bisttram, Taos, N.M. Photographer, Mildred Tolbert; Collection: Archives of American Art, Smithsonian Institution.



Plate 91

John Ballator's mural, *Contemporary Justice and Man,* c. 1936-1937, was awarded by competition and is located on the second floor lobby behind the Great Hall. Ballator's composition suggests an ascending scale of values, with an ideally planned community (Greenbelt, Maryland) at the top.[216] While some in the Section of Painting and Sculpture were critical of the "wooden" figures in the lower portion, Somerset Maugham, the English novelist and art critic, declared the mural to be the best of the artwork contained in the Justice and Post Office Buildings.[217] The mural is tempera on canvas.

John Ballator was born in Portland, Oregon, on February 7, 1909. He studied at the University of Oregon and the Yale school of Fine Arts where in 1934, he received a Bachelor of Fine Arts degree.[218]



John Ballator next to his mural, *Contemporary Justice and Man.* Collection: National Archives, Audiovisual; Photo No. 121-PS-1096.

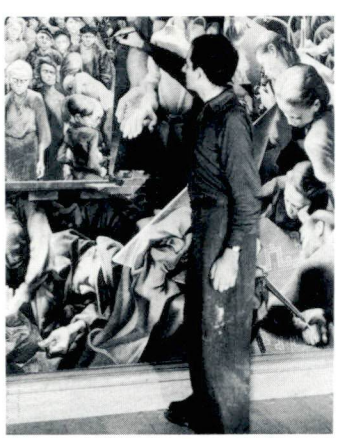


Plate 92

Symeon Shimin's *Contemporary Justice and the Child,* c. 1936-1940, was awarded by competition and is located on the third floor stairway behind the Great Hall. The mural portrays two groups; on the left we see dispossessed young boys and girls whose faces suggest the premature suffering of youth in an unnecessarily hard world; on the right are shown the ideal conditions in which youth is provided the opportunity to develop their capacities. Between the two groups is a boy looking directly at the spectator and is about to go forth from the protecting love of his mother to face the difficulties of the world. The two large hands holding a triangle and a compass are symbols of planning and building.[219]

The mural is tempera on canvas and has been restored. Several years ago, moisture had deteriorated the plaster and the mural began to peel. The plaster wall was replaced and the mural was restored.[220]

Symeon Shimin was born in Astrakhan, Russia, in November 1902, immigrated to the U.S. in 1912 and became a citizen in 1927. He was primarily self-taught though he spent two years in George Luks' Studio and in Europe.[221]



Symeon Shimin shown working on his mural, *Contemporary Justice and the Child.* Collection: Archives of American Art, Smithsonian Institution.

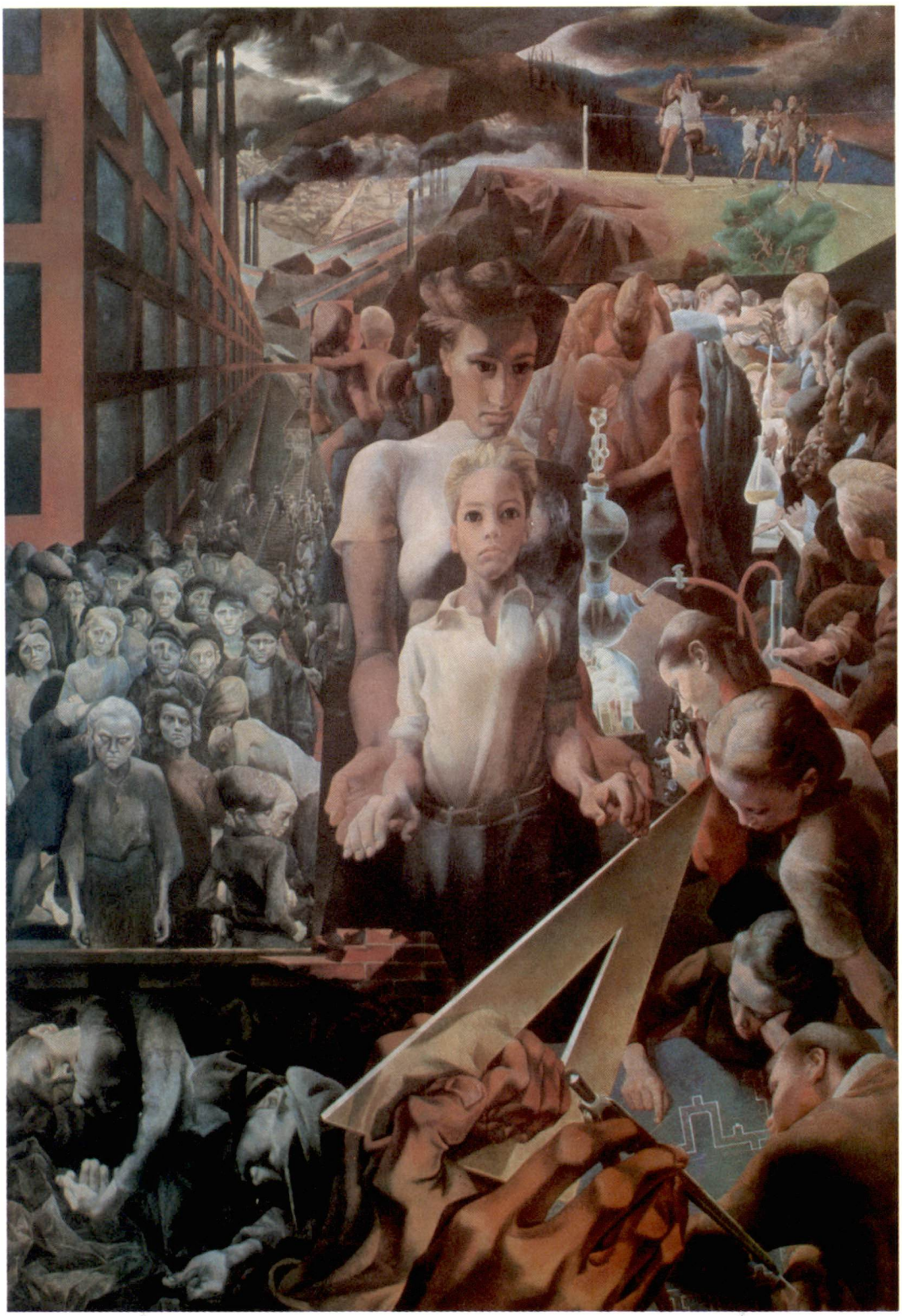


Plate 93

George Biddle's *Society Freed Through Justice,* c. 1935-1936, is located on the fifth floor stairway outside the Law Library. Though the mural is divided in five separate panels, the composition is unified. The artist illustrates the contrast between the life of workers in an unjust economic system versus an equitable social order.

The artist used the likeness of several people in his mural. In the first panel, over the inscription *The Life Of The Law Has Not Been Logic It Has Been Experience,* appears a self-portrait of the artist behind a sewing machine; the man standing behind George Biddle is Stuart Chase, economist and author. The woman beside Chase is his wife; Biddle and Chase were friends at Harvard University.[222] In the same panel, Secretary of Labor Frances Perkins is portrayed as the lady in the black dress.[223] In the third panel, seated at the head of the table over the inscription, *The Sweatshop And Tenement Of Yesterday Can Be The Life Ordered With Justice of Tomorrow,* appears the artist's brother Francis Biddle before he became Attorney General. The artist considered his brother an appropriate model since Francis had been chairman of the National Labor Relations Board.[224] The woman with bobbed black hair is pouring coffee for Malcolm Ross, press agent of the National Labor Relations Board. The blond woman seated beside Ross, as well as the woman pouring the coffee, are imaginary figures.[225] The man hanging his coat is Edward B. Rowan, the Assistant Director of the Public Works of Art Project who would become a member of the Section of Painting and Sculpture. The seated lady, lower right, holding her son Michael is Helene Sardeau Biddle, the artist's wife.[226] To the right of the panel depicting Frances Biddle, the artist portrayed a number of other people, including: Miss Camille Miller of the National Youth Administration as the woman stirring something in a pot; Mrs. Henry Hunt, wife of the Counsel of the Federal Emergency Relief Administration as the woman in the foreground outside the house helping Olin Dows, an artist friend of Biddle's, plant shrubs; and David Elwyn, son of Professor Elwyn of Columbia University, is shown assisting in the planting with a spade.[227] The Elwyns were George Biddle's neighbors at Croton-On-Hudson. One published account suggested that the river scene, upper right, is reminiscent of the Ohio near Wheeling, West Virginia, with power houses, manufacturing plants, and men with lunch boxes, apparently on their way to work.[228] Panel five, over the inscription, *If We Could Guide By the Light of Reason We Must Let Our Minds Be Sold,* appears a man sawing, the likeness is of the artist Henry Varnum Poor.[229] The second panel of the mural was restored c. 1973 due to damage to a room located behind the mural.[230]

George Biddle was born in Philadelphia, on January 19, 1885. He was educated at Groton School and at Harvard. It was his letter to former classmate, President Roosevelt, which began the process of Federally sponsored art programs. Biddle studied painting at the Pennsylvania Academy of Fine Arts and at Julien's Academy in Paris. His paintings were included in the permanent collections of the Whitney Museum of American Art, the Pennsylvania Museum of Fine Arts, and the Dallas Museum of Art.[231]

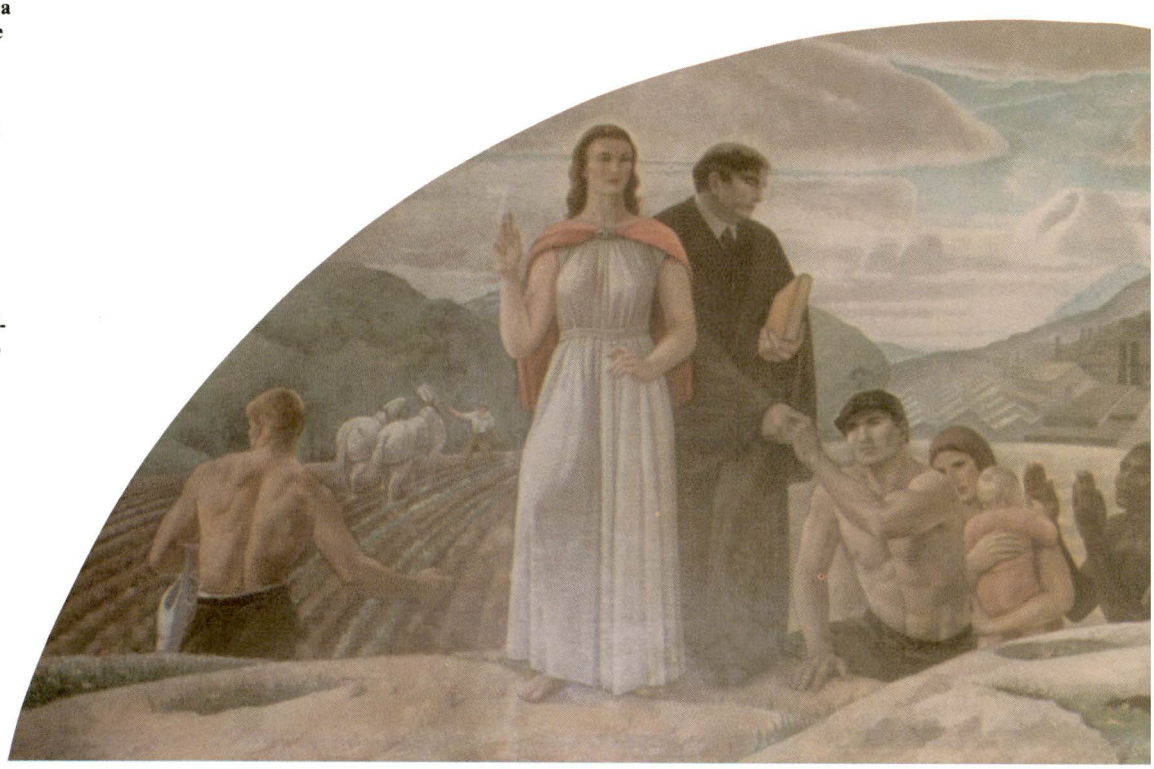



IF WE WOULD GUIDE BY THE
LIGHT OF REASON WE MUST
LET OUR MINDS BE BOLD

Plate 94

Leon Kroll's two lunettes, *Justice Triumphant* and *Justice Defeated,* are located in the Attorney General's conference room. In the first mural, there are two figures symbolizing Justice, a woman and a black-robed Judge portrayed by Justice Harlan Stone.[232] *Justice Defeated* represents the tragedy and havoc caused by the absence of Justice. The atmosphere is dark; dead trees, a threatening sky, and a barren landscape are depicted. The symbol of Justice in this mural is the beautiful recumbent woman; she has been overwhelmed by the black-robed figure holding a mask with a serene expression, but, revealing behind it his true face, cold, cruel, and vicious.[233] The mural is oil on canvas.

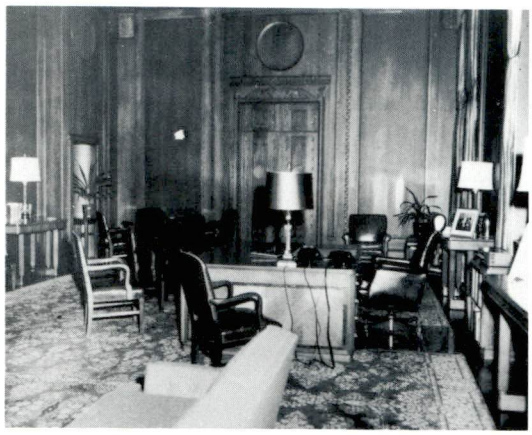
Leon Kroll was born in New York City on December 6, 1884. At the National Academy of Design, he won every first prize offered by the school. The artist also won practically all the celebrated prizes in various national exhibitions.[234]



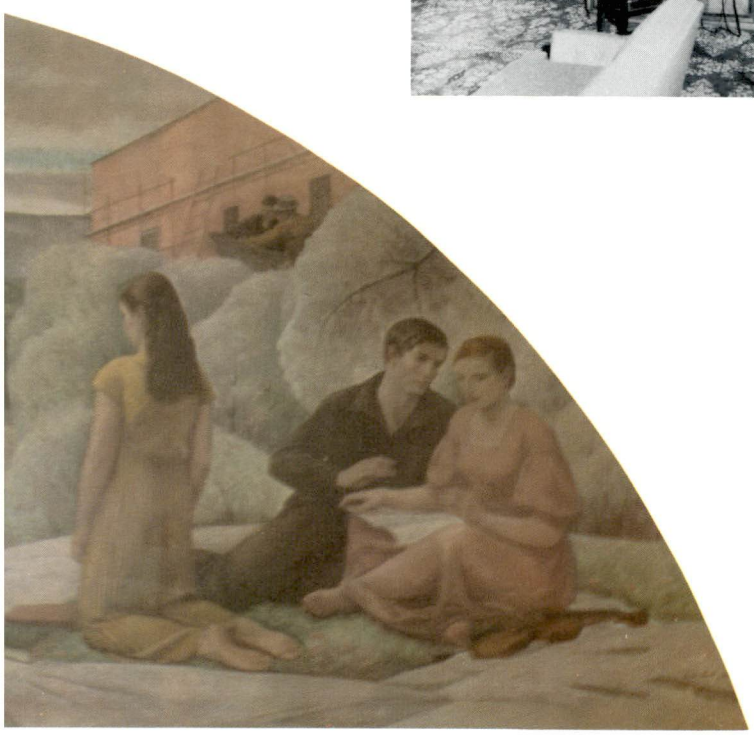


Leon Kroll. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0001784.





View of the Attorney General's conference room when it was used as an office by Attorney General Robert F. Kennedy.[235]





A recent view of the Attorney General's conference room. All the decorative features were modeled by Anthony di Lorenzo under Jennewein's supervision, 1933-1934.[236] The wood used in the offices of the Attorney General and Solicitor General was American Walnut.[237]



Plate 95

John S. Curry's two lunettes, *Justice of the Plains - Movement Westward* and *Law Versus Mob Violence,* are located on the fifth floor south central elevator lobby. The first mural shows families and their covered wagons facing the hardships of the trail which forces a balance between Justice and social needs. The second panel dramatically shows a desperate man fleeing from the lawless mob and taking refuge with constituted authority.[238] The red bandanna covering the "deathshead" was added later by the artist at the request of the Section of Painting and Sculpture and the Attorney General.[239] The murals are oil on canvas.

John Steuart Curry was born in Dunavant, Kansas, on November 14, 1897. He studied under Messrs. Norton, Reynolds, and Shoukieff. His work was included in the permanent collections of a number of museums, including: the Addison Gallery of American Art, Andover, Massachusetts; the Gallery of the University of Nebraska; Kansas State College; the Whitney Museum of American Art; the Metropolitan Museum of Art; and other public and private collections.[240]

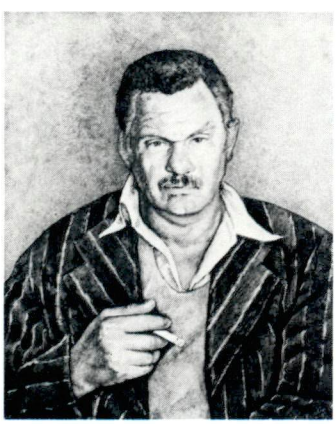




Plate 96

Henry Varnum Poor's frescos are located on the fifth floor surrounding the opposing doorway entrances to Rooms 5137-5138 and Rooms 5111-5114. The first two depict the activities of the *Bureau of Prisons* while the second, the *Bureau of Lands and Customs.* One of the panels to the right of the entrance to the Attorney General's office, Room 5111, shows a government lawyer, Attorney General Homer S. Cummings, arguing the celebrated gold case before the Supreme Court with his back turned to the Justices, Louis Brandeis on the left; Charles Evans Hughes in the center; and James C. McReynolds on the right.[241] The panel above the door is unusual in that the eagle is facing its left; typically, the eagle is depicted looking toward the right. This was clarified by President Truman who explained that the eagle, generally portrayed with an olive branch (a symbol of peace) in the right talon, and arrows (a symbol of war) in the left, should face the direction of peace.[242] The frescos over Room 5114 depict the beginnings of scientific crime detection by the Federal Bureau of Investigation (FBI). The dark-haired man with his hair parted in the middle is Edwin R. Donaldson, the first FBI chemist. He served the Bureau from 1934 to 1957. The man inspecting a test tube is Charles A. Appel; he headed the first FBI laboratory. The seated man looking through a microscope is Donald J. Parson; during his career, 1934-1961 he was an Assistant Director of the FBI Laboratory as well as Assistant to the Director.[243]

Henry Varnum Poor was born in Chapman, Kansas, on September 30, 1888. He studied at Stanford, the Slade School, the Julian Academy in Paris, and with Walter Sickert in London. His work was included in the permanent collections of many museums.[244]



Portrait of Henry Poor by George Biddle, 1947. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0043847.



Plate 97

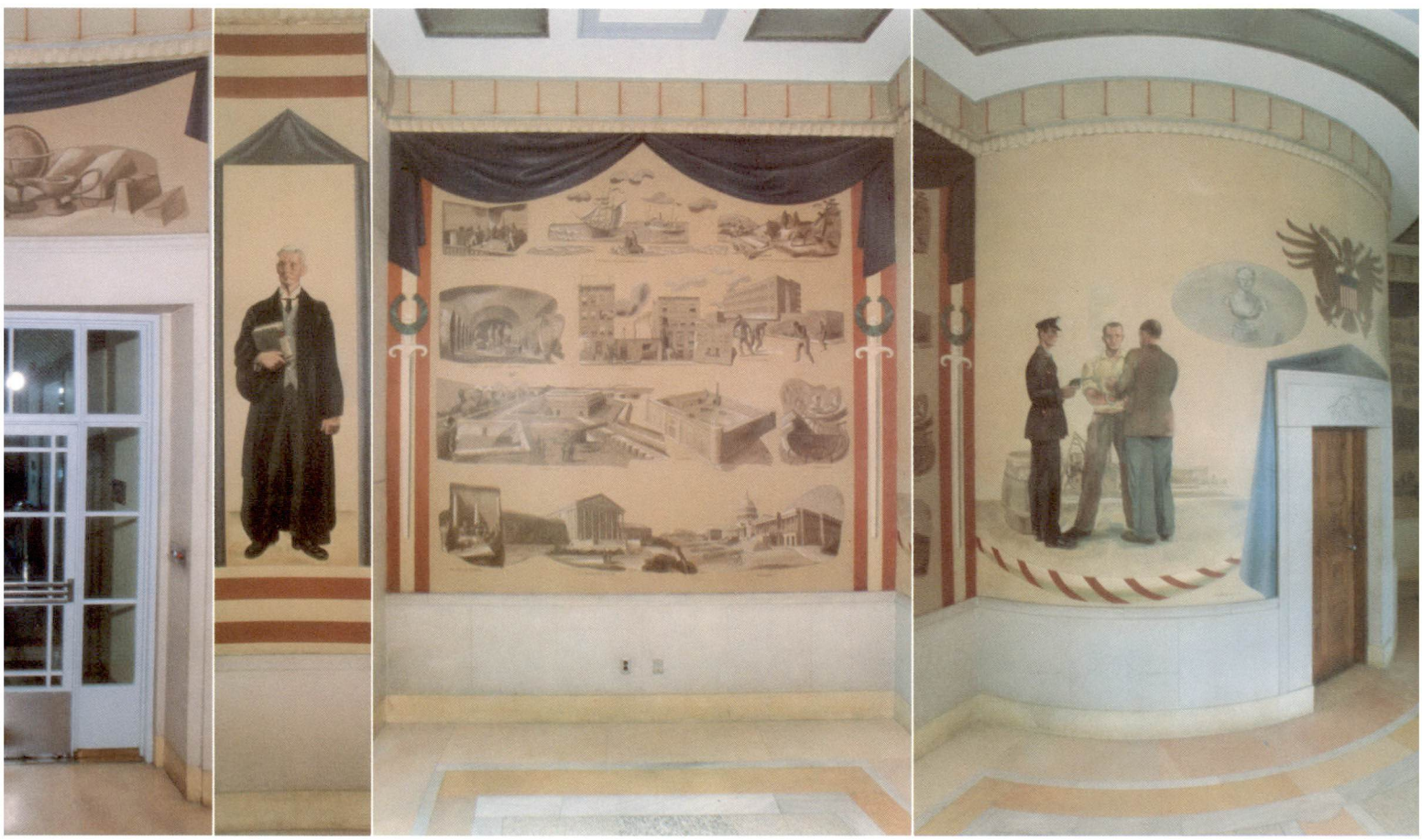
Louis Bouche's mural, *Activities of the Department of Justice,* is located on the fifth floor. The effect of Bouche's work is reminiscent of decorative wallpaper.[245] The first section displays the functions of the Department related to violence; followed by an arrest; the Eagle, symbolic of justice; an immigration scene; and the peaceful aspects of the Department's functions.[246] The two men facing the work are, on the left, Francis Biddle and on the right, Justice Brandeis.[247] The funding for the work came from the Treasury Relief Art Project, Bouche was paid $100 per month and was assisted by Charles Bateman.[248]

Louis Bouche was born in New York City on March 18, 1896. He studied in Paris with Desvaillieres, Lucien Simon, and others in the Colarossi School, and L'Ecole Des Beaux Arts. His work was included in the permanent collections of a number of museums, including: the Metropolitan Museum; the Duncan Phillips Memorial Gallery; and the Whitney Museum of American Art, New York City.[249]





Louis Bouche. Photograph: Peter A. Juley and Son Collection, National Museum of American Art, Smithsonian Institution. Number J0001232.



APPENDIX

MECHANICAL FEATURES

The responsibility for the maintenance of the building is complicated by its unique and historic features. A severe snowfall in 1983 detached some of the snow cleats from the roof (Plate 50). The cleats had to be refabricated and carefully rewired to the roof. The cobblestones and grassy areas in the Great Court, as of this writing, are being removed and relaid in order to waterproof the underground garage.

While services such as waterproofing and cleat repair are contracted to private companies, the Justice Management Division has overall maintenance responsibilities for the Justice Building. The Division provides preventive maintenance for the heating, ventilation, air conditioning equipment, plumbing, and other mechanical systems, and maintains the historical integrity of the building.

Building Information

Building Data[250]

Location: 10th and Pennsylvania Ave., N.W.
Washington, D.C. 20530
Height of Building: Eight stories (Flights)
Depth of moats: 10-12 feet
Number of stories: Eight
Building Occupied, Dedicated: 1934
Population: 2581
Official working hours: 9:00 AM - 5:30 PM

Building Statistics

Gross area	1,237,000	sq. ft.
Occupiable area	634,100	sq. ft.
Gross area of main corridor	28,689	sq. ft.
Gross area of main corridor (carpeted)	1,864	sq. ft.
Gross area of secondary corridor	132,366	sq. ft.
Gross area of secondary corridor (carpeted)	6,437	sq. ft.
Gross area of lobbies and entrances	8,250	sq. ft.
Toilet fixtures (excluding private fixtures)	758	
Exterior windows	1,908	
Plate glass	-0-	sq. ft.
Venetian Blinds	1,476	
Light fixtures	10,696	
Executive Space	56,172	sq. ft.
General office, file, libraries, conference rooms		
Bare floor	61,725	sq. ft.
Carpeted	388,318	sq. ft.
Health Unit area	1,400	sq. ft.
Storage space	11,748	sq. ft.
Stairways (flights)	87	
Passenger elevators	23	
Private elevators	2	
Freight elevators	4	
Garage and ramps	41,101	sq. ft.
Hard floor	174, 630	sq. ft.
Outside area	158,205	sq. ft.
Stairways	10	

Mechanical Features and Building Statistics

Ground plot (sq. ft.)		242,440
Building base (ft.)	576 ′ on 10th Street Side 476 ′ on 9th Street Side 420 ′ wide	
Cubic contents (cu. ft.)		17,910,000
Gross floor area (sq. ft.)		1,237,000
Net office space (sq. ft.)		615,935
Number of stories...7 stories, basement, & mechanical floor		
Number of rooms or equivalent space		1,712
Average dimensions of rooms (ft.)		15 ′ × 22 ′
Total length of corridors (ft.)		19,908
Average width of corridors (ft.)		11
Number of drinking fountains		88
Number of entrances		9
Number of windows		1,726
Number of toilets		90

Air Conditioning

Three Trane reciprocating Freon compressors of 650 ton capacity each, located in the basement, supply chilled water for the ten air conditioning systems in the attic. In each system, outside air is drawn and mixed with return air from the rooms, then passed through chilled water coils where it is cooled and dehumidified. The conditioned air is forced by large fans through duct work to window units located under the windows in each room. These units have automatic/manual operated thermostatic controls so the amount of air can be regulated by adjusting a set of dampers in each unit. After leaving the rooms, the air is returned to the attic where part of it is recirculated through the system.

The water used for the air conditioning system is obtained by a 48 inch pipe connecting the Tidal Basin to the building. This pipe is capable of carrying sixty thousand gallons per minute. When the water has circulated the system, it is sent to the Potomac River.

In winter, the air is heated and humidified. Steam for heating is supplied to the building through underground mains from the Government Central and West Heating Plants. It enters the basement from 9th Street at high pressure and is reduced to about 100 pounds pressure and distributed through mains to the attic. Here it passes through reducing valves and is distributed downward to concealed connectors in the window units. These connectors have individual thermostatic control valves. Entrance vestibules are heated by electrically driven steam unit heaters equipped with automatic temperature controls.

Electrical

Electrical energy for light and power is supplied by three 13,200 volt, three-phase, three-wire 60 cycle, alternating current services from the Potomac Electric Power Company's system. From these services separate feeders run to six network transformers on the machine floor and the secondary transformers are connected to a 120/208

volt, three-phase, four-wire network grid with grounded neutral. The general and power loads are connected to the network through switchboards concentrating the load at various points of the system.

A separate set of feeders from the incoming services run to current 3 three-phase transformers in the basement which supply current to 2,300 volt motors operating the refrigeration plant for the air conditioning.

In addition to light and power, the building is wired for a system of clocks, fire alarm, watchman's system, interior telephone and signal circuits, and conduits for telephones and floodlighting.

Elevators

High speed passenger elevators are arranged in 10 banks consisting of 34 shafts in which 23 elevators have been installed; there is room for 11 others should the need arise. There are four freight elevators and two private elevators leading to the suites of the Attorney General and Solicitor General.

Fire Protection

The structural frame of the building is steel and concrete fireproofing. The floor is reinforced concrete and clay tile fillers with precast concrete roofs. All motors are equipped with automatic safety devices.

In the basement is an Underwriter Fire Pump with a capacity of 1,000 gallons and a complete system of fire lines circling the building on the basement ceiling from which there are valve connections to roof hydrants and hose racks. Scattered about the building are automatic sprinklers connected to the cold water main on the basement ceiling. There is an extensive fire alarm system. The fire alarm starts tapper bells in the offices of the Captain of the Guards and the Engineer, and sounds a general alarm. Fire alarm stations are located on all corridors.

Plumbing

Water is supplied to the building through four 6-inch service lines from the municipal water supply system. Cold water to the basement and first six floors of the building is supplied by city pressure. The last two floors are supplied by floor booster pumps located in the basement. Sewage and waste water are ejected through the basement to the sewer by four pneumatic sewage ejectors.

FOOTNOTES

1. James S. Easby-Smith, *The Department of Justice: Its History and Functions,* (Washington, D.C.: W. H. Lowdermilk & Co., 1904), P. 4.
2. Albert Langeluttig, *The Department of Justice of the United States,* (Baltimore: The Johns Hopkins Press, 1927), P. 2.
3. Luther A. Huston, *The Department of Justice,* (New York: Frederick A. Praeger, 1967), PP. 36-37.
4. Easby-Smith, *Justice History,* P. 5.
5. Huston, *Justice,* P. 9.
6. Easby-Smith, *Justice History,* P. 5.
7. Huston, *Justice,* PP. 11, 29.
8. Easby-Smith, *Justice History,* PP. 5-6.
9. Huston, *Justice,* PP. 11, 23.
10. Easby-Smith, *Justice History,* P. 6.
11. Ibid., P. 10.
12. Ibid., P. 15.
13. Ibid., PP. 8-9.
14. Ibid., P. 9.
15. Ibid., PP. 11-12.
16. Huston, *Justice,* P. 9.
17. Easby-Smith, *Justice History,* P. 12.
18. Ibid., P. 16.
19. Ibid., PP. 15-16.
20. Ibid., P. 16.
21. Ibid., PP. 16, 20.
22. Huston, *Justice,* PP. 35-36.
23. Easby-Smith, *Justice History,* P. 11.
24. Huston, *Justice,* P. 59.
25. Easby-Smith, *Justice History,* P. 20.
26. Ibid., P. 21.
27. Ibid., P. 21
28. Ibid., P. 21; and James M. Goode, *Capital Losses: A Cultural History of Washington's Destroyed Buildings* (Washington, D.C.: Smithsonian Institution Press, 1979), P. 56.
29. Easby-Smith, *Justice History,* P. 25.
30. See Goode, *Capital Losses,* PP. 293-295; and Easby-Smith, *Justice History,* PP. 10, 12.
31. Goode, *Capital Losses,* P. 294.
32. Ibid., P. 294.
33. Ibid., P. 144. The photograph is from the collection of the Library of Congress.
34. The photograph is from The Columbia Historical Society.
35. Easby-Smith, *Justice History,* P. 20. Photograph, collection of the U.S. Geological Survey, Hooe Building, No. 1.
36. Goode, *Capital Losses,* PP. 338-339.
37. Easby-Smith, *Justice History,* P. 20. The photograph is from The Columbia Historical Society.
38. Goode, *Capital Losses,* P. 259.
39. Easby-Smith, *Justice History,* PP. 20-21.
40. Ibid., P. 21; and Goode, *Capital Losses,* P. 103. The photograph is from The Columbia Historical Society.
41. Goode, *Capital Losses,* PP. 102-103.
42. Ibid., PP. 56, 402.
43. Ibid., P. 402.
44. Office of the Administrative Assistant to the Attorney General, *Department of Justice Building,* pamphlet (Washington, D.C.: Department of Justice, 1960), P. 1.
45. Harry Weese & Associates, *The Master Plan For The Federal Triangle, Washington, D.C.: Master Plan Report* (Washington, D.C.: General Services Administration, 1982), PP. 11, 13; Harry Weese & Associates, *The Master Plan For The Federal Triangle, Washington, D.C.: Historic Report* (Washington, D.C.: General Services Administration, 1981), P. 9; Assistant to the Attorney General, *Justice,* pamphlet P. 2; and Goode, *Capital Losses,* P. 359.
46. See George Gurney, *Sculpture and the Federal Triangle* (to be published by the Smithsonian Institution Press in 1984); and Lois Craig, "Hidden Treasures of a Walled City," *American Institute of Architects Journal* 67 (June 1978): 21.
47. Reprinted by permission from *Sculpture and the Federal Triangle,* by George Gurney (to be published by the Smithsonian Institution Press in 1984).
48. Gurney, *Sculpture.*
49. Ibid.
50. Ibid.; Huston, *Justice,* P. 254.
51. Gurney, *Sculpture.*
52. Assistant to the Attorney General, *Justice,* pamphlet P. 17.
53. Gurney, *Sculpture.*
54. Weese & Associates, *Master Plan Report,* P. 15.
55. Weese & Associates, *Historic Report,* P. xvi.
56. *Art Deco of the 20s and 30s* (London: Studio Vista Limited, 1968), P. 13.
57. Weese & Associates, *Historic Report,* P. 104.
58. Ibid., P. 112.
59. Gurney, *Sculpture.*
60. Craig, "Hidden Treasures," P. 22.
61. Gurney, *Sculpture.*
62. Frederick W. Cron, *The Man Who Made Concrete Beautiful: A Biography of John Joseph Earley,* (Ft. Collins, Colo.: Centennial Publications, 1977), P. 5.
63. Ibid., P. 5.
64. Ibid., P. 5.
65. Ibid., P. 5.
66. Ibid., P. 6.
67. Ibid., P. 6.
68. Ibid., P. 6
69. Ibid., PP. 7-12, 21-28.
70. William M. Avery, "Earley's Mosaic Concrete Opens Limitless Vistas in Products Field," *The Concrete Manufacturer, A Special Section of Pit and Quarry (September 1944): 131.*
71. Cron, *Concrete,* P. 59. A bottega is an artist's workshop or studio, especially in Italy.
72. John J. Earley, "Mosaic Ceilings, U.S. Department of Justice Building," *Journal of the American Concrete Institute* 31 (1935): 559.
73. Ibid., PP. 557-558.
74. Ibid., PP. 558, 560.
75. Avery, "Vistas," P. 133.
76. Earley, "Mosaic Ceilings," P. 563.
77. Avery, "Vistas," P. 133.
78. This included ornamental precast concrete and/or concrete mosaic for the Mosque, Washington, D.C.; the Thomas Alva Edison Memorial Tower, Menlo Park, N.J.; the Baha'i Temple of Light, Wilmette Illinois; and the replica of the Athenian Parthenon, Nashville, Tennessee, to name a few.
79. Cron, *Concrete,* P. 59. Patent 1,376,748, a "Method Of Producing A Predetermined Color Effect In Concrete And Stucco" was granted to Earley on May 3, 1921; patent 1,412,392, a "Mold" process, was granted to Earley on April 11, 1922; and, patent 2,050,290, a "Building Structure And Method Of Producing The Same," was granted to Earley and Taylor on August 11, 1936.
80. Cron, *Concrete,* P. 60.
81. Ibid., P. 61.
82. Ibid., P. 61.
83. Reprinted from Gurney, *Sculpture.*
84. See Shirley Reiff Howarth, *C. Paul Jennewein, Sculptor,* (Tampa, Florida: Tampa Museum, 1980), PP. 111-112; and Gurney, *Sculpture.*
85. Gurney, *Sculpture.*
86. Ibid.
87. See Gurney, *Sculpture.*
88. Howarth, *Jennewein,* P. 112. Translation by Joseph A. Sanches. See his article, "Origins of the Inscriptions on the Justice Seal," *Justice News* 2 (November 1979): 4.
89. Howarth, *Jennewein,* P. 112.
90. Ibid., P. 112.
91. Ibid., P. 112.
92. Ibid., PP. 113-114.
93. Gurney, *Sculpture.*
94. Ibid.
95. Howarth, *Jennewein,* PP. 116-117.
96. Gurney, *Sculpture.*
97. Howarth, *Jennewein,* P. 117.
98. Ibid., P. 117.
99. Weese & Associates, *Historic Report,* P. 3.

100. Ibid., P. 5.

101. The Dunlap Society, *The Architecture of Washington,* Vol. 2, Chapter VII, (Essex, N.Y.: The Dunlap Society, 1979), C1.

102. Weese & Associates, *Historic Report,* P. 9. Photograph from Proctor news clips, Columbia Historical Society.

103. Photograph from Proctor news clips, Columbia Historical Society.

104. Andrew Craig Morrison, *Theatre Guide of Washington, D.C.,* (Washington, D.C.: The Theatre Historical Society, 1972), P 6.

105. Dunlap Society, *Architecture,* A 4.

106. Ibid., A 5.

107. Ibid., A 8.

108. Ibid., A 9.

109. Ibid., B 1.

110. Ibid., B 2.

111. The photograph by Richard Cheek, Summer 1976, is from The Dunlap Society, *Architecture,* D3, #75-3675.

112. Lois Craig and the staff of the Federal Architecture Project, *The Federal Presence: Architecture, Politics, and Symbols in United States Government Buildings,* (Cambridge, Mass.: The MIT Press, 1977), P. 310.

113. Translation by Joseph A. Sanches, "Inscriptions," P. 4.

114. See Lorraine A. Kulpa, "The Lady of Justice," *Law Library Journal* 64 (1971): 249-250; and Michael E. Gehringer, "Questions and Answers," *Law Library Journal* 73 (1980): 744-745.

115. Dunlap Society, *Architecture,* C 2.

116. Ibid., B 4. Photograph taken by Harris and Ewing. Collection: National Archives, Audiovisual; photo no. 208-LU-61H-9; the copyright is owned by the Historical Picture Service, Chicago, Illinois.

117. Reprinted from Gurney, *Sculpture.*

118. The photograph by Richard Cheek, Summer 1976, is from The Dunlap Society, *Architecture,* B 6, #75-1474.

119. See Weese & Associates, *Historic Report,* P. 31.

120. Dunlap Society, *Architecture,* C 5. Collection: State Department. Audiovisual; negative VS-188-49.

121. Reprinted from, *Sculpture.*

122. The photograph by Richard Cheek, Summer 1976, is from The Dunlap Society, *Architecture,* C 6, #75-3706.

123. Ibid., C 7.

124. Weese & Associates, *Historic Report,* P. 103.

125. The photograph is from The Dunlap Society, *Architecture,* A 7, #75-4477; it was originally published in the *Federal Architect,* Oct., 1935.

126. The photograph by Richard Cheek, Summer 1976, is from The Dunlap Society, *Architecture,* B 8, #75-1475.

127. See Gurney, *Sculpture.*

128. Ibid.

129. The photograph by Richard Cheek, Summer 1977, is from The Dunlap Society, *Architecture,* B 9, #75-4372.

130. See Gurney, *Sculpture.*

131. Gurney, *Sculpture.* The photograph by Richard Cheek, Summer 1977, is from the Dunlap Society, *Architecture,* E 9, #75-4390.

132. Gurney, *Sculpture.*

133. Provided by Karel Yasko, Counselor of Fine Arts and Historic Preservation, General Services Administration.

134. The photograph by Richard Cheek, Summer 1977, is from The Dunlap Society, *Architecture,* D 9, #75-4383.

135. Weese & Associates, *Historic Report,* P. 114.

136. Ibid., P. 115.

137. Ibid., P. 115.

138. Gurney, *Sculpture.*

139. Reprinted from Gurney, *Sculpture.* The photograph by Richard Cheek, Summer 1977, is from The Dunlap Society, *Architecture,* E 5, #75-4375.

140. Reprinted from Gurney, *Sculpture.*

141. Gurney, *Sculpture.*

142. Ibid.

143. See note 76.

144. See note 75.

145. The photograph by Richard Cheek, Summer 1977, is from The Dunlap Society, *Architecture,* D 7, #75-3715.

146. See note 88 for translation.

147. Howarth, *Jennewein,* P. 112.

148. Gurney, *Sculpture.*

149. Ibid.

150. Reprinted from Gurney, *Sculpture.*

151. Gurney, *Sculpture.*

152. Reprinted from Gurney, *Sculpture.*

153. Gurney, *Sculpture.*

154. Ibid.

155. Reprinted from Gurney, *Sculpture.*

156. Howarth, *Jennewein,* P. 114.

157. Plato, *The Republic,* trans. Allan Bloom (New York: Basic Books Inc., 1968), Book IV, Section 441c to 442d, PP. 121-122.

158. See Martin Shapiro, *Freedom of Speech: The Supreme Court and Judicial Review,* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1966), PP. 83-87.

159. Gurney, *Sculpture.*

160. The photograph by Richard Cheek, Summer 1976, is from The Dunlap Society, *Architecture,* B 7, #75-3678.

161. Identification of the medallions are from Gurney, *Sculpture.*

162. See note 88; and, the letter written by Roscoe Pound to Albert Levitt, then Special Assistant to the Attorney General, dated October 2, 1933 which corroborates the interpretation taken by Sanches. See Department of Justice Library, *DOJ Historic Files,* folder entitled "DOJ-Seal."

163. Identification of the Wind figures are from Gurney, *Sculpture.*

164. Howarth, *Jennewein,* P. 114.

165. Gurney, *Sculpture.*

166. Reprinted from Gurney, *Sculpture.*

167. Gurney, *Sculpture.*

168. Reprinted from Gurney, *Sculpture.*

169. Reprinted from Gurney, *Sculpture.* These virtues are discussed by Glaucon and Socrates in Book IV of *The Republic,* sections 431d to 432b, Bloom trans., P. 110.

170. Gurney, *Sculpture.*

171. Reprinted from Gurney, *Sculpture.*

172. Gurney, *Sculpture.* A photograph of *The First Step* is available in Howarth, *Jennewein,* P. 18.

173. Gurney, *Sculpture.*

174. A photograph of the six-foot tall statue of Cardinal Gibbons is available in James M. Goode, *The Outdoor Sculpture of Washington, D.C.,* (Washington, D.C.: Smithsonian Institution Press, 1974), P. 426.

175. Reprinted from Gurney, *Sculpture.*

176. Gurney, *Sculpture.*

177. Reprinted from Gurney, *Sculpture.*

178. Gurney, *Sculpture.*

179. Reprinted from Gurney, *Sculpture.*

180. Gurney, *Sculpture.*

181. Ibid.

182. Marvin Wall, "Stonecarver Returns To Justice After 40 Years," *Justice News.* Date unknown.

183. Reprinted from Gurney, *Sculpture.*

184. Goode, *Outdoor Sculpture,* P. 160.

185. Gurney, *Sculpture.*

186. Goode, *Outdoor Sculpture,* P. 158.

187. Provided by Karel Yasko.

188. Provided by John Barianos of Barianos Art Studio.

189. Richard D. McKinzie, *The New Deal for Artists,* (Princeton, N.J.: Princeton University Press, 1973), P. 4.

190. Ibid., P. 5.

191. Ibid., P. 6.

192. Ibid., P. 6.

193. Ibid., P. 6.

194. Ibid., P. 7.

195. Ibid., P. 7.

196. Ibid., P. 7.

197. Ibid., P. 6.

198. Ibid., P. 8.

199. Ibid., P. 8.

200. Ibid., PP. 8-10

201. Ibid., P. 27.

202. Ibid., P. 18

203. Provided by Karel Yasko. Cf. McKinzie, *Artists,* PP. 37-38.

204. Provided by Karel Yasko.

205. Belisario R. Contreras, "The New Deal Treasury Department Art Programs and the American Artists, 1933-1943" (Ph. D. dissertation, American University, 1967), P. 119.

206. Ibid., P. 119.

207. Biddle to Franklin D. Roosevelt, May 9, 1933, Franklin D. Roosevelt Papers (Franklin D. Roosevelt Library, Hyde Park) collection PPF 458.

208. "Jovial Artist of Justice Building Here to 'Hang' 16 Law-Givers," *The Washington Post,* Date unknown.

209. Art In Federal Buildings, Incorporated, *A Guide to the Painting and Sculpture in the Justice Department Building,* (Washington, D.C.: 1938), P. 7.

210. "Jovial Artist," *The Washington Post.*

211. Ibid.

212. Art, *A Guide,* P. 7.

213. The descriptions of plates 70-89 are from Maurice Sterene, "Department of Justice, Library Murals: 'Man's Struggle For Justice,' " *Justice Library Review* 2 (March 1941): 23-25.

214. Art, *A Guide,* P. 19.

215. Ibid., P. 5.

216. Contreras, "New Deal Art Programs," PP. 150-151.

217. Provided by Karel Yasko.

218. Art, *A Guide,* P. 11.

219. Art, *A Guide,* P. 13.

220. Provided by Karel Yasko.

221. Art, *A Guide,* P. 13.

222. "Biddle Paints Self Running Sweatshop Sewing Machine," *The Washington Post,* 14 March 1936.

223. Provided by Karel Yasko; See also Marvin Wall, "Real Life Figures Painted Into Murals," *Justice News* 1 (August 1978): 2.

224. "F.J. Biddle Is Put In Worker Mural," *Special to the New York Times,* 21 February 1936.

225. "Faces of Well-Known People In Justice Building Mural," *Washington, D.C. Evening Star,* 21 February 1936.

226. See note 223.

227. "Faces of Well-Known People," *Washington, D.C. Evening Star;* and Karel Yasko.

228. "F.J. Biddle," *Special to The New York Times.*

229. Provided by Karel Yasko.

230. Provided by Karel Yasko.

231. Art, *A Guide,* P. 15.

232. Leon Kroll, "Justice Triumphant," 1936. The original source is unknown. See the Department of Justice Library, *DOJ Historic Files,* folder entitled "DOJ Building-Artwork."

233. Leon Kroll, "Justice Defeated," 1936. The original source in unknown. See Department of Justice Library, DOJ Historic Files, folder entitled, "DOJ Building-Artwork."

234. Art, *A Guide,* P. 23.

235. Photography by Norval Lewis.

236. Gurney, *Sculpture.* Photography by George Duke.

237. Weese & Associates, *Historic Report,* P. 113.

238. Art, *A Guide,* P. 17.

239. Contreras, "New Deal Art Programs," PP. 148-149.

240. Art, *A Guide,* P. 17.

241. Marvin Wall, "Real Life Figures Painted Into Murals," *Justice News* 1 (August 1978): 2.

242. Provided by Karel Yasko.

243. Marvin Wall, "Former FBI Chemist, Lab Chief on the Wall," *Justice News* 1 (August 1978): 2. Additional information was provided by the Office of Congressional and Public Affairs, Federal Bureau of Investigation.

244. Art, *A Guide,* P. 21.

245. Pointed out by Karel Yasko.

246. See Administrative Services Staff, Materiel Policy Section, Artwork files. File #3, drawer 1, folder entitled, "Photographs -Murals, Justice Building."

247. Provided by Karel Yasko.

248. Artwork files, "Murals"; and Karel Yasko.

249. Art, *A Guide,* P. 25.

250. Most of the information in this section was obtained from Assistant to the Attorney General, *Justice,* pamphlet.

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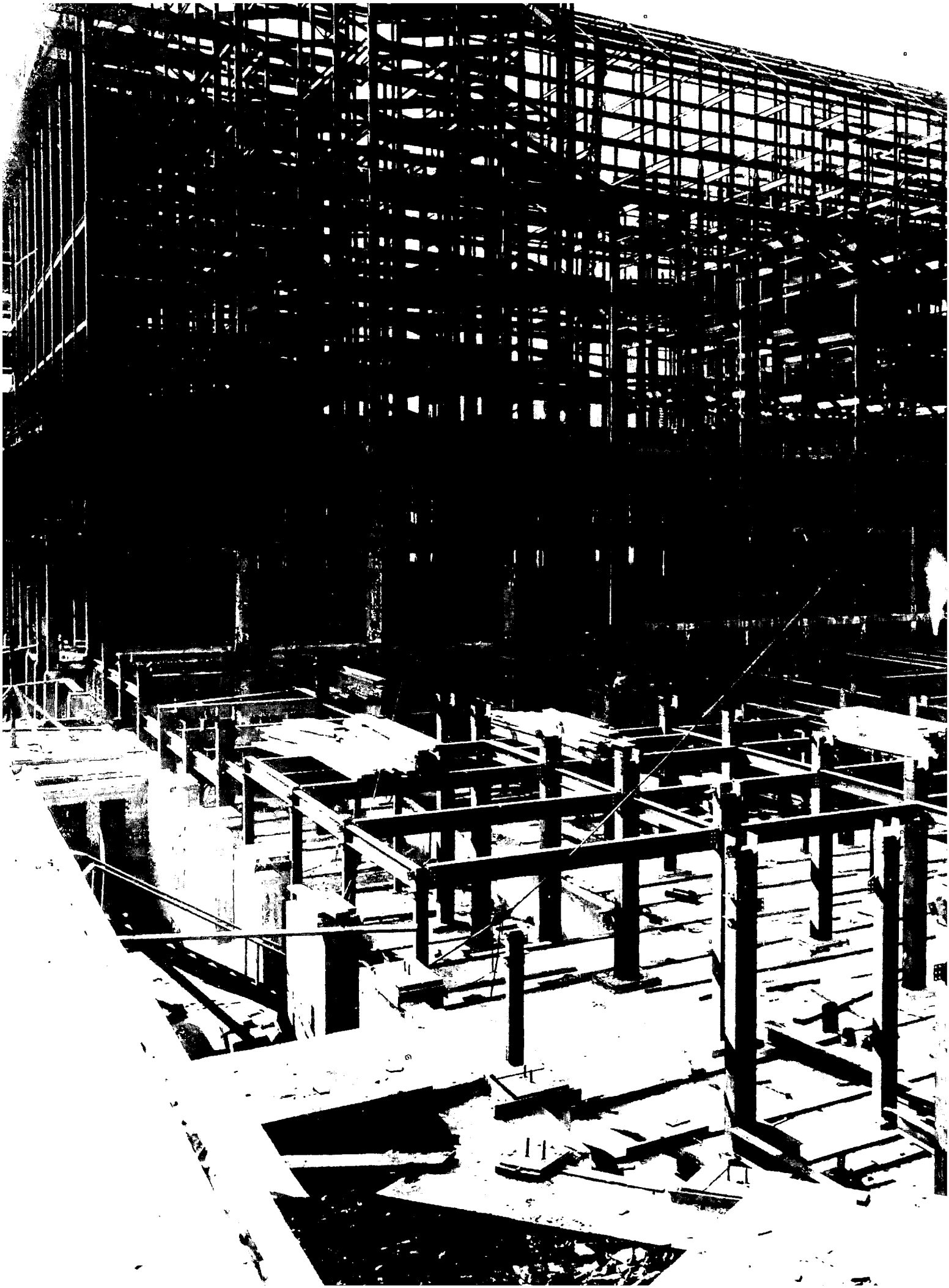
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Gideon Welles, Secretary of the Navy in the Cabinet of President Andrew Johnson, so acutely disliked William M. Evarts, the New York lawyer who was Attorney General for eight months from July, 1868, to March, 1869, that he believed lawyers in government generally were a nuisance.

"It is unfortunate for the country," Welles wrote in his diary, "that there is such a preponderance of lawyers in our public councils. Their technical training and extensive, absorbing practice unfit them to be statesmen."

GB: "I'll bet I could get quite an argument on that here today. (PAUSE) although I don't mind pointing out for the record that I am not a lawyer! (PAUSE)

Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement, and

progress of our race. And whoever labors on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name, and fame, and character, with that which is and must be as durable as the frame of human society.

—WEBSTER, Daniel, in *Life and Letters of Joseph Story* (William W. Story, ed., Boston: Charles C. Little and James Brown, 1851), Volume II, p. 624.

When William Wirt became A.G. in 1817, there were no official records or files, even of opinions, left by his predessors. His first act was to establish a record keeping system.

Wirt served longer than any other A.G. — more than 11 years — until 1829. (through the terms of James Monroe + J.Q. Adams)

(Source: Leither Houston)

On the day after Edmund Randolph was commissioned as the 1st A.G. (Sept. 27, 1789), President Washington wrote to him in a letter: "The administration of Justice is the firmest pillar of good govt."

The A. G. was paid a lower salary ②
than other cabinet members because
Congress expected him to earn
most of his income from private practice.
In 1795, John Marshall turned down the
A.G.'s job from Geo. Washington because
he couldn't afford the time away from
his private practice.

(source: Easby-Smith 1904)

Edmund Randolph, the 1st A. G., was not initially considered a member of the cabinet because he headed no dept. He attended his first cabinet mtg. on March 31, 1792. The A. G. ranked below all cabinet members in rank + salary until Congress permanently fixed his rank as 4th in 1886.

(Source: Daniel Meador 1980)

The first 22 A.G.s conducted private practices in addition to their govt. work

(source: Luther Hooton)

Until 1814, A: G.s often did not live in the capital, but did business at home by mail. They sometimes came to D.C. only to appear before the Supreme Ct. (S)

In 1814, Pres. Madison insisted that his A.G. William Pinkney move from his home in Baltimore to D.C. Pinkney refused + resigned. His successor, Richard Rush, was appointed on the condition that he live in D.C.

(Source: Erler-Smith (904)

1850 marked the 1st time the A.G's opinions were officially published by the govt. At this time, the A.G's office consisted of 2 clerks + 1 messenger. (6)

In 1855, this was increased to 7 clerks, 1 messenger + 1 general superintendent.

(Source: Easby-Smith 1904)

the first Attorneys General received no appropriation for office expenses or employees. The A.G.'s Office was litlaally a 1-man office until 1818, when Congress provided $1,000 to hire one clerk. The A.G. did not receive his first official office until 1822, when he received a room in the old War Dept. building.

(Source: Easby-Smith, 1904)

In 1829, Pres. Jackson was the first to recommend to congress that a Law Dept. be created with the A.G. as its head. The A.G would be given the power to supervise all US attorneys - who were at the time independent (and still are!) - and supervise all govt. lawsuits which were then handled by the Solicitor of the treasury. Sen. Daniel Webster opposed the plan, saying it would make the A.G.'s office a fractional monstrosity: "a half accountant, a half lawyer, a half clerk, a half everything and not much of anything."

The 1ST appropriation for the AG to buy law books did not come until 1831.

(Source: Luther Hooston)

one way
of dealing w/
the budget

Today, DOJ has 54,000 employees (7) including 4,200 lawyers.

(Source: 1989 Encyclopedia Americana.)

Benjamin Cardozo (1947): "The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest & the best."

12-19

24-28

Examples of great A. G. opinions: (11)

Robert H. Jackson's legal justification of the "bases for destroyers" deal that allowed FDR to send 50 surplus destroyers to Churchill at a crucial time in the battle for the atlantic (1940) before the US entry into the war.

William Rogers advice to IKE on the constitutional authority to send troops to enforce court-ordered desegregation in Little Rock, Arkansas. in 1957.

James Speed, A.G. for Andrew Johnson, wrote the shortest A.G.'s opinion on record – 28 words – relating to the trial of Lincoln's assassins:

"Sir: I am of the opinion that the persons charged with murder of the President of the United States can rightfully be tried by a military court."

T. R. had a way of getting the A.G. to produce what he wanted.

KNOX, Philander Chase (1853–1921), *US lawyer and political leader. He was attorney general (1901–04) and secretary of state (1909–13).*

1 In 1903 Theodore Roosevelt acquired the Panama Canal Zone. Though proud of his achievement, he knew that not all citizens approved of it. Philander Knox, his attorney general, was a corporation lawyer, and it was to him that Roosevelt went for a defense of his action. Knox is said to have replied, "Oh, Mr. President, do not let so great an achievement suffer from any taint of legality."

Little Brown's Anecdotes

T.R's successor, W.H. Taft, went to the opposite extreme. A former Solicitor General + federal judge, Taft sometimes liked to function as his own A.G.

After the passage of the pure food laws, the question arose as to the true definition of whiskey. A.G. Charles Bonaparte's narrow definition angered the distillers. So Taft ordered the Solicitor Gen. to do another report. The S.G. took 2 weeks of testimony and wrote a 1242 page brief — which Taft read in its entirety. Taft then summoned the A.G. + Sec. of Agriculture to the W.H. for 2 days of oral arguments. Only then did Taft draft + issue his own opinion as to the legal definition of whiskey. (OVER)

I think maybe a simple taste test would have sufficed!

(Source: Homer Cummings 1937)

Ebenezer Hoar was the last man to be A. G. before the creation of DOJ in 1870. When Grant nominated him for the Supreme Ct., the Senate refused to confirm him, largely because he insisted that a number of new fed. judgeships be filled on the basis of character & fitness, thereby earning the enmity of Senators concerned only with patronage.

(My, how things have changed!)

(Source: Leuchtenburg, Perils of Prosperity)