Duquesne Law Review

Volume 41
Number 4 *President Truman and the Steel Seizure Case: A Symposium*
Article 10

2003

A View from the Inside: Working with President Truman on the Steel Seizure Case

Milton Kayle

A View From the Inside: Working With President Truman on the Steel Seizure Case

Milton Kayle, Esq.[*]

When President Harry Truman left the White House in 1953, his approval rating was under 30 percent, reflecting the public's negative reaction to conditions prevailing at that time. Forty-seven year later, in a C-Span survey of fifty-seven historians regarding presidential leadership, Harry Truman ranked fifth behind Abraham Lincoln, Franklin Roosevelt, George Washington and Theodore Roosevelt, in that order. This confirms that only with the passage of time should one seek to evaluate the legacy of a President of the United States.

How fortunate, therefore, that the Duquesne University School of Law decided to undertake a 50-year retrospective dealing with President Truman and the Steel Seizure case. It has afforded those of us who played some part in the event the opportunity to go on record regarding that participation. It has also allowed us to present observations and insights that will be available in reviewing President Truman's role in the steel seizure episode. Indeed, thanks to this retrospective study, we too have had the benefit of time in reassessing the events leading to this judicial challenge of presidential authority.

As a lawyer, I worked for President Truman during the final two years of his administration, with the title of Special Assistant in the White House Office. I reported to two men, Charles Murphy, the President's Counsel, and Dave Stowe, an Administrative Assistant with primary responsibilities in the labor field. Both of these men would participate in the early morning Oval Office staff meeting during which the President would discuss the events of the day and give assignments to the staff members. He would, in turn, be briefed on matters of immediate concern by those present. In other words, Harry Truman was very much a hands-on president.

---

* Milton Kayle served as a Special Assistant to President Truman during the *Steel Seizure* case.

As Ken Hechler pointed out in the Panel discussions, President Truman, an avid reader of history in his youth, brought to his office a profound knowledge of, and respect for, the office of the presidency. Consequently, the attribution to him of demeaning that office by his conduct in the steel seizure case, as alleged by some of his critics, flies in the face of reality.

One aspect of the panel's presentation that was of particular interest to me was Chief Justice Rehnquist's observation that the Supreme Court in 1952 was affected by public opinion in deciding to entertain cases presented for its consideration. How ironic it was, therefore, that the very steps being taken by the Administration to contain the potential crisis in steel production would only add fuel to the fire of negative publicity being organized and promoted by industry.

In our panel discussions, David Feller, who had served as a union lawyer, pointed out that this controversy was not basically a labor dispute. It was a contest over the price of steel, which if granted in the amount sought by industry, would have undermined the economic stabilization program then in effect. Moreover, there were other conditions prevailing at the time of the seizure that were bound to have a negative effect on public opinion. These included the reckless charges by Senator McCarthy of communism in the government and allegations of petty graft on the part of the White House personnel. In addition, as a consequence of President Truman's efforts to rid the Internal Revenue System of corruption in its regional offices, already receiving wide coverage in the press, the Justice Department, which had the responsibility of enforcing the law, was being run by an Acting Attorney General. Finally, the public was weary of price and wide controls reimposed during the Korean War after the long period of similar regulation in World War II. All of these circumstances would only enhance the likelihood that the Supreme Court would entertain the case on an accelerated basis, which indeed proved to be the case.

There is another reason to welcome the advent of the Steel Seizure Retrospective. It has enabled us to make clear that the administration's objective at the outset was to let industry know that it could not sit back in reliance on the government's need to invoke the emergency provisions of the Taft Hartley Act or other statutory seizure provisions with their complicated and indecisive enforcement consequences. While we were aware of the possibility of a negative decision by the Supreme Court if the case were to reach

that level, there was a good chance that in the industry's pursuit of injunctive relief, the issue of the constitutional basis of the government's action in the first instance would not be raised. However, if the matter did reach the Supreme Court, the President and key members of the White House staff felt the government would prevail.

In fact, I sent a memorandum to Dave Stowe on April 1, 1952, which pointed out the questionable legal basis of seizure. Clearly the President and his advisors had been made aware of a possible adverse ruling by the Supreme Court. However, none of us could have predicted the negative developments that took place in Judge David Pine's Federal District Court where industry sought injunctive relief against the seizure.

In the first place, cases of this nature are usually decided on the principles of equitable jurisprudence in which there is a balancing of interests, consequently there was no need to raise the issue of the merits of the case. Here the damage to the public interest in the cessation of steel production during the Korean War far outweighed the potential monetary losses to the industry. Those losses could be readily ascertained by the maintenance of separate books of records while management continued daily operation of the steel mills. Certainly the government could have reimbursed the industry for any losses alleged to have been sustained.

Unfortunately for the government, developments in Judge Pine's court proved disastrous. Holmes Baldridge, Assistant Attorney General in charge of the Claims Division, initially made the mistake of emphasizing in his brief the President's inherent constitutional power to seize private property in times of national emergency. He compounded this misadventure by claiming in oral argument that there was no power in the courts to restrain the President's exercise of this power, which could only be challenged "by the ballot box and impeachment." He literally goaded the judge into ruling on the merits and raising the constitutional law issue, much to the surprise and delight of industry lawyers, as confirmed by Stanley Temko, the industry attorney who was a fellow member of our panel. In taking this action, Judge Pine also failed to follow the traditional judicial practice of avoiding litigation on any constitutional law question, if at all possible. In sum, the developments in Judge Pine's court virtually guaranteed a pursuit by industry to the highest courts on the fastest track possible.

One other aspect of the Steel Retrospective merits consideration because it confirmed how close we came to settling this controversy without a final resolution by a Supreme Court ruling.

As Dave Feller pointed out in the panel discussions, after losing in Judge Pine's court, the government went to the Court of Appeals to ask for a stay of the District Court's order granting the injunction. The Court of Appeals, in turn, reversed Judge Pine's decision, and in doing so, refused to enjoin the Secretary of Commerce from making any changes in hours or wages. Following this ruling, the President called the parties to the White House and claimed the Secretary was going to make changes that neither party would like. This caused the parties to start negotiating, and in due course, Arthur Goldberg, counsel to the union, authorized Feller to begin drafting the settlement documents. However, when word came down that the Supreme Court had granted industry's petition for certiorari, in which the government was prevented from making changes in terms and conditions of employment, industry no longer had any incentive to continue with the settlement negotiations. But for that speedy intervention by the Supreme Court, the Steel Retrospective would never have taken place!

As Ken Gormley, a professor at Duquesne University School of Law, observed in our panel discussion, historians like to say that President Truman got bad advice from his advisors in the steel case. Moreover, President Truman's major biographers criticize him for acting either recklessly, impulsively or without sound reasoning in his handling of the steel production crisis. Also, some of them either ignore the crucial developments that took place in Judge Pine's court or fail to recognize the key role Judge Pine played in causing this constitutional challenge.

I submit that these characterizations of President Truman's conduct do not do justice to the personal qualities he brought to the office and his methods of operation in meeting his presidential responsibilities. In addition, these critics of the President fail to acknowledge the government's plan of action that might well have avoided the constitutional challenge.

President Truman's role in this epic struggle will not be listed as one of his major achievements during his term of office. However, the Steel Retrospective has enabled us to amplify the record of this handling of this crisis. Such being the case, historians in the future may well find reason to list this episode on the positive,

rather than the negative side of the ledger of the presidency of Harry S. Truman.