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President Truman and the Steel Seizure Case: A 50-Year Retrospective:

Transcript of Video Interview Between Professor Ken Gormley and Chief Justice William H. Rehnquist, October 30, 2002

Professor Ken Gormley: Good Afternoon, Chief Justice Rehnquist. On behalf of everyone assembled at Duquesne University in Pittsburgh, as well as the Harry S. Truman Presidential Museum and Library that is co-sponsoring this event, I'd like to thank you for participating in this special program. I just have a few questions to set the stage as we begin this retrospective looking back fifty years in history. You were just a 27 year-old law clerk, clerking for Justice Jackson, only a few months in Washington at the time the Steel Seizure case landed in the courts. At the time, was this a case that everyone expected to be a constitutional landmark? What was the atmosphere surrounding it?

Chief Justice William H. Rehnquist: The atmosphere so far as one living in Washington was concerned was very much that it would. The law clerks talked at lunch about it. And it wasn't just the Supreme Court arguments that received press coverage. The arguments before Judge Pine in the district court were front page news in the Washington papers, perhaps not elsewhere.

Professor Gormley: And did you and your fellow law clerks have any prediction concerning what would be the final outcome when it worked its way through the Supreme Court?

Chief Justice Rehnquist: Well, I don't think most of us knew what position our Justices would take. We did have a vote at lunch one day. And I think, as I recall, we were evenly divided. But that was not on the basis of what we thought our Justices would do, because most of us did not know.

Professor Gormley: And what do you remember most vividly about the oral argument—I believe it was May 12, 1952?

Chief Justice Rehnquist: Well, the fact that John W. Davis argued for over an hour and I think was asked only one question. I mean, he had a style of advocacy that you don't hear nowadays, but it was very impressive. And then Solicitor General Perlman got a whole bunch of questions from the Court.

Professor Gormley: And Arthur Goldberg participated as well?

Chief Justice Rehnquist: Yes, he participated in oral argument, for the AFL-CIO I believe?

Professor Gormley: For the Steelworkers, yes. And in your book on the Supreme Court, you tell a wonderful story about the Justices' Conference that Friday, in which they voted on the case in private. What do you remember about that?

Chief Justice Rehnquist: Well, as I said, the clerks weren't present at the conference, but George Niebank, my co-clerk, and I were just dying to find out what happened as I suspect all the other clerks were, too. So we followed Justice Jackson into his office when he got back, just as we always did and he would tell us what happened at conference, and he said, "Well boys, the President got licked."

Professor Gormley: Justice Jackson's concurring opinion in the Steel Seizure Case is generally regarded by constitutional scholars as the most significant. What did he say about presidential powers and why did he write separately?

Chief Justice Rehnquist: I think he wrote separately because almost everybody wrote separately. I think the opinions had to be prepared in a fairly short time, and I think even those who agreed with Justice Black's outcome felt that there needed to be more said about the thing. And Justice Jackson's concurring opinion classified presidential power in three different ways. First where the President is acting with the approval of Congress. And there Jackson said only if the whole government is disabled does he lose. Second, where he is acting without congressional authorization, but without congressional disapproval, and there it is kind of a middle ground. And finally, what Jackson felt had happened in the Steel Seizure case, where he was acting in an area where Congress said "Don't do what you want to do, do something else." And there he said the power was at its nadir.

Professor Gormley: And did public opinion, do you think, influence the court's ultimate decision that President Truman had exceeded his constitutional powers?

Chief Justice Rehnquist: I think it did. The government made some extraordinary claims at the very beginning in the District Court. The president had all the authority that George the Third had unless it was taken from him by the Constitution. Well, you can imagine the press outcry about this. I mean, it just made headlines, and it just gave a negative aspect. The government

abandoned that argument long before it got to the Supreme Court, but it just got the government off on the wrong foot.

Professor Gormley: There was an ambivalence about the Korean War even at that point, wasn't there?

Chief Justice Rehnquist: Very much so. There were people fighting and dying in Korea, but very few sacrifices called for on the home front. In World War I, or rather WWII—I'm not that old—in WWII you had 14 million people take up arms, but a lot of things restricted on the home front. The Korean War you just didn't have those restrictions on the home front. So there was just a real ambivalence, as you said.

Professor Gormley: What would you say is lasting significance of the Steel Seizure Case as we look back on Constitutional history fifty years?

Chief Justice Rehnquist: Well, I think the subsequent opinions of the Court have adopted Justice Jackson's concurrence, and that kind of trifurcation is probably its contribution. I think people have expressed the view that had it come up in time of declared war it might have come out differently. So it's just one of many cases in this area, but I think the Jackson concurrence has been pretty much what it stood for.

Professor Gormley: I'm reminded that one of the great things about a retrospective like this is that it allows us to learn history from key people who actually participated in it, so your recollections are particularly relevant and meaningful. And it puts us in a good position now to step back a half century and examine a presidential decision that has really largely been lost to history books and law books but is still highly relevant. So thank you very much, Chief Justice Rehnquist, for introducing today's program.

Chief Justice Rehnquist : It's been a pleasure to be here, Professor Gormley.

Professor Gormley: Thank you very much.

