

PREFACE TO THE ABC LIST

1. Regular Staff Judges

Only regular-staff judges are named on the ABC list, or on the EOD list (names listed in order of EOD, “Entered on Duty,” by office location), or on the Unified EOD List that appears as the concluding list for this paper.

Other judges are not included. As briefly mentioned early in this paper, through the years, a variety of other judges (“Trial Examiner” was the early classification) have presided at the Board’s unfair labor practice trials. For many of the cases tried during the Board’s first year of operation, so-called “celebrity” judges sometimes presided. As summarized much earlier, these “celebrity” judges ranged from the Board itself to at least one academic and on to other Agency officials.

Very quickly the Board began using “per diem” judges — that is, judges paid by the day rather than by salary as regular government employees. While the Board hired a few regular-staff judges (that is, salaried government employees) during the first couple of years, many of the judges, as discussed earlier, worked on a “per diem” basis. As already noted, the Board closed the per diem practice effective August 1, 1938, deciding to rely instead on regular-staff judges for all cases other than in an emergency need situation.

In 1940, as previously summarized, the Board implemented a policy of gradually shifting the additional work of presiding at representation case hearings from the Judges Division to personnel in the Regional Offices (or, as might be assigned on occasion, attorneys from the General Counsel’s staff in Washington, such as lawyers from the Review Section), with the members of the Division of Judges assigned more and more to unfair labor practice cases almost exclusively. In those years, whoever presided (Division staff judge or someone from the Regional Office involved) at a representation case was designated the “trial examiner.” By the time the Taft-Hartley Act was passed in late June 1947, the Board’s policy in this respect was virtually exclusive, with staff judges occasionally called upon to preside at some of the more complex objections cases that might follow a representation election. For a time after the Administrative Procedure Act became effective in 1946, anyone presiding at a representation hearing was termed the “hearing officer.”

Eventually that was changed to reflect “Trial Examiner” whenever a Division Judge presided.

On no more than a handful of occasions during the early 1940s, and especially during the years of World War 2, someone apparently not from the Division of Judges, but from elsewhere in the Agency (usually the Review Section), presided at a complaint case (unfair labor practice trial). In those years, particularly before the 1946 Administrative Procedure Act and the 1947 Taft-Hartley Act, and perhaps on occasion because of wartime needs, the Board enjoyed more flexibility for such work assignments than it does today. Additionally, however, the impression is imparted that a principal reason a Review Section attorney, for example, served as a temporary judge was for the purpose of giving that attorney some “hands-on” experience in presiding over the types of cases that he regularly worked on back in his office in the Review Section. The names of these temporary judges are listed later in this Preface.

Finally, the Board has used “borrowed” judges (judges on detail from other federal agencies) to preside over unfair labor practice trials. For the most part, this limited practice appears to have been employed at times during the 1970s and into the 1980s, years when the trial docket facing the Division of Judges was especially heavy. (By contrast, in the late 1980s and early 1990s, when the Division’s case load dropped, some of the Division’s judges were loaned to other Federal agencies to help them with their trial dockets while, at the same time, permitting the Division to avoid having to lay off any judges.) So far as is known, no “borrowed” judge’s name appears on either the ABC or the EOD list.

2. List Methodology

For the lists of all the judges, the alphabetical (ABC) list appears first, and later the EOD list. The EOD date (either as reflected on the available rosters or derived for this paper by using a “deeming” process) for the early judges reflects the date that the judge has joined the regular staff of the Division. This choice, of not including the per diem judges who never (so far as presently can be determined) acquired an EOD date by becoming part of the regular staff of judges, is based on the overriding consideration of listing only regular-staff judges. Later in this **Preface** the names of those per diem judges who worked for a short time after August 1, 1938, are included on a list under a section heading for “Honorable Mention.”

The thought here is that virtually all of the regular-staff judges from the 1930s through the 1992 Division roster have been found and are named on the ABC and EOD lists. As summarized much earlier in the Acknowledgements section, the detailed research (that is, inspecting every decision in the bound volumes) for the paper has reached through NLRB Vol. 315, or Board decisions dated in January 1995. Reliance thereafter is based generally on staff

rosters (the next one is dated March 1999, and the rosters after that are reasonably frequent, and preserved), some press releases, and the memories of long-time judges, such as Chief Judge Giannasi.

With judges still aboard who arrived by 1980, it is unlikely that we are overlooking any judges from the 1980s or 1990s. However, if it is discovered that one or more names should be included with the other judges currently named on the ABC list, such corrections will be made with pleasure at the discovery. All regular-staff judges deserve to have their names recorded on the List of Judges. There they will share a place of recognition in our nation's labor history with those who have gone before, and with those who come after, as persons who have served as Division staff trial judges for the National Labor Relations Board.

3. The Deeming Process

Because the emphasis in this List of Judges is on the date that a person first began serving as one of the NLRB's regular-staff judges, rather than on the concept of strict seniority, in this list the original EOD date is used where it has been ascertained (from the available rosters or Division records) or approximated ("deemed"). Similarly, where the original EOD date is a product of the deeming process used in this paper, that deemed date likewise controls (until more accurate data confirm a different date to be the correct one).

The early rosters of the Division of Judges understandably followed a concept of seniority, for seniority may have some bearing on such matters as office location, preference as to a better desk, or similar incidentals. (As noted above, more recent rosters simply name the judges in alphabetical order.) By contrast, here the work has been completed for those who have retired, and for those still on the bench, there are no office locations to be claimed or other incidental preferences to be recognized from one's EOD placement on this List of Judges. In this ABC List of Judges, deemed dates are marked by one of several numerical symbols.

a. Symbol 1

Of the symbols used, this symbol 1 is applied the most, and most of the judges so designated are among the early judges, especially during the late 1930s. (As mentioned earlier, readers wanting to see how this is reflected in print may want to take a quick look at the first 50 or so names on the Unified EOD List, the final list in this paper.) The deeming process has to be used because there simply are no surviving rosters dating from the early years. Symbol 1 is used to reflect the approximate original EOD date as determined by the "deeming" process. Certainly for the early years, the "deeming" process generally refers to the process of inspecting the published decisions in the Board's bound volumes.

The “deemed” (approximated) EOD dates in this list are based on, principally, a review of decisions in the Board's bound volumes. Moreover, by listing some names of the early judges (see the Introduction), Prof. Gross provides some additional support for this process. For example, if a judge appears in the reported decisions as having presided at ULP trials on both sides of August 1, 1938 (the date when the Board's new policy was implemented so as to use only regular-staff judges), then a reasonable approximation of the judge's EOD date would be August 1, 1938 — his “deemed” date for this list. (However, judges who presided no more than two or three times or so after that August 1 are considered as having continued for that short time as per diem judges, and listed in the section below for “Honorable Mention.”)

The deemed date may be off by a few months as to some judges (an inaccurate deemed date will be corrected if better data is located), as would be the case if applied to Judge A. Bruce Hunt (EOD of 3-18-1939, per the roster of 1-10-1957), for his first reported trial, at 13 NLRB 1242, was not until April 1939. Even so, the deeming process appears to be reasonable and a far better choice than that of leaving the EOD date blank. The symbol one ① is used here to signify that the date given is one that is deemed to be correct as a result of this research.

For at least some of the early years, starting with FY 1938, the newer judges usually received training of some 3 to 6 months before they were sent out on their first assignment. This training is described at 4 *NLRB Annual Report* at 151, and is mentioned again at 5 *NLRB Annual Report* 123, fn. 1. Just how long that training program lasted is unclear. As the years rolled by, and those persons brought into the Division came with some, even substantial, experience in ULP cases as the Board's (during the Wagner Act years) trial attorney, or even as an attorney in the Review section (before the Review Section was dissolved by the Taft-Hartley amendments, to be replaced by the legal staffs of the individual Board members), it may be that such training was reduced in time or even abandoned. Certainly it has not been a regular feature in the later years.

As the opening date of the trials moves to 1939 and later (for the apparent first reported trials by a judge), a deemed EOD date beyond that of August 1, 1938, becomes more reasonable. When dates are deemed, the selection process settles on the first day of the month in which the first reported trial is found in the search process. As mentioned earlier, the selection of such date is a compromise offsetting some likely training time, described just above, against possible time serving in a per diem status. (Of course, the search could be faulty, and a trial for one or more judges possibly has been overlooked. Even with the possibility of such error, however, the List of Judges is better off having the judge listed, and with a somewhat erroneous EOD date, than not

having the judge listed at all, or with only a blank EOD date.) As mentioned above, the great majority of EOD symbols assigned are this symbol \supseteq .

b. Symbol 2

The symbol 2 marking an EOD date indicates a judge who has an original Division-assigned EOD date, who left the Division to serve elsewhere in the Agency, and who later returned to the Division. As we see in the examples that follow, the Division adjusts (moves up) the EOD dates of these judges so that such EOD dates reflect only Division seniority.

Judge Ralph Winkler is shown on the January 10, 1957 and the March 7, 1971 rosters (both reproduced in a few pages) with an EOD date of 4-3-1950. Inspection of the books confirms that this is his Division-assigned original EOD date because his first published case of presiding is in April 1950, as reported at 92 NLRB 1. Later, about June 1, 1961, Judge Winkler left the Division to serve for some 10 years as Chief Counsel for Board Member Gerald Brown (appointed 4-14-1961 — 131 NLRB at iii, fn. 1) during Member Brown's two terms. Judge Winkler did not immediately join Member Brown, for the Division alphabetical list of May 29, 1961 (not reproduced in this paper) contains his name. (For some reason, his departure from the Division, apparently about 6-1-1961, is not reflected on the LOS.) Member Brown's second term expired August 27, 1971, as noted at 192 NLRB at iii, fn. 1. As we will see on the June 30, 1970 roster (reproduced earlier), on his return to the Division (presumably in August 1971), Judge Winkler received an adjusted EOD date of 5-25-1960. (His return EOD is interlined in ink on the June 1970 roster.)

Let us do the arithmetic on this. From Judge Winkler's original EOD date of 4-3-1950 to his apparent departure date of 6-1-1961 shows Division service of almost exactly 11 years 2 months. Backing up that same 11 years 2 months from his presumed return date of August 1971 would yield an adjusted EOD date of June 1960. The actual EOD assigned by the Division on his return, as we have seen, is 5-25-1960. The difference of a few days no doubt is reasonably explained by a departure of a few days later, or a return of a few days earlier, or a little of both. Because, as earlier explained, the primary focus in this paper is on a judge's original EOD date, in this paper Judge Winkler's original EOD date of 4-3-1950 is marked by the symbol \bullet , and his adjusted return EOD date of 5-25-1960 is shown preceded by an "e" to denote a Division-assigned adjusted EOD date.

Another prominent example who fits into this category, but with a twist at the end, is **Judge Arnold Ordman**. His original EOD date is 4-20-1959, as is reflected by the March 1961 roster reproduced earlier. Judge Ordman left the Division to be Chief Counsel for Board Chairman Frank W. McCulloch (appointed 3-7-61 — 130 NLRB at iii, fn. 1), as reflected at 131 NLRB at iii. It

appears that Judge Ordman left for his new position after issuing his June 2, 1961 Intermediate Report in the case reported at 133 NLRB 240 (1961), for the LOS shows that he “resigned” from the Division on 6-9-1961. Less than 2 years later, on May 14, 1963 (142 NLRB 1963), Ordman was appointed the Agency’s General Counsel. After his second of two 4-year terms in that position expired on June 25, 1971 (see Board’s website; click on “About Us”; “General Counsel”; “GC and terms since 1935”), Judge Ordman returned to the Division, as reflected by decisions in the Board’s bound volumes. However, because Judge Ordman retired before the next (available) roster, the March 1981 list also reproduced earlier in this paper, the adjusted EOD date (backing up 2 years from his presumed return of June 1971) that he presumably would have been assigned on his return is not shown. Accordingly, in this paper the only date shown for Judge Ordman is his original 4-20-1959 EOD date, marked by the symbol •, but without any trailing “e” date.

After some 19 years 1 month with the Division, **Judge Arthur Leff**, (original) EOD 5-13-1944 (as shown on the January 1957 roster), succeeded Judge Ordman as Chief Counsel for Chairman McCulloch, apparently in late May or before June 21, 1963, the ending date for the decisions in 142 NLRB. (Judge Leff is shown there, 142 NLRB at iii, as Chairman McCulloch’s Chief Counsel.) When McCulloch’s second term expired on August 27, 1970 (185 NLRB at iii, fn. 1), Judge Leff returned to the Division. He had been gone from the Division for some 7 years and 2 months. As is shown by the June 30, 1970 roster, Judge Leff received an adjusted EOD date (shown by an entry interlined by hand in ink, reflecting that the entry came after the list was typed) of “4-16-51.” Subtracting Judge Leff’s prior Division service of 19 years 1 month from 1970, at 8 months, yields a return month of July 1951, a date within some 3 months of the actual adjusted EOD date, of 4-16-1951, that Judge Leff received on his return. The difference of 3 months suggests that Judge Leff may have left the Division a month or so later, and returned a month or so earlier, than indicated above. In any event, Judge Leff’s original EOD date is marked with the symbol • in this paper, and his Division adjusted EOD date is preceded by an “e.”

Judge William E. Spencer’s EOD date is shown as 11-1-1941 on the January 10, 1957 and March 7, 1961 rosters, but 5-1-1942 on the May 1, 1965 roster. Perhaps he left the Division to serve elsewhere in the Agency for 6 months between the March 1961 and May 1965 lists. (He retired before the June 1970 roster.) Perhaps the later EOD date is the result of a clerical mistake in typing the list. Regardless, in the List of Judges his original EOD date is shown and marked with a •, and the later date is preceded by an “e.”

c. Symbol 3

The symbol 3 marking an EOD date indicates a judge: (1) whose original EOD date is deemed; (2) who left the Division to serve elsewhere in the Agency; and (3) who later returned to the Division.

A prominent and early example of this category involves **Judge Stephen S. Bean**. As seen on the ABC List, Judge Bean has a deemed EOD date of 2-1-1950. The LOS informs us that Judge Bean was appointed to the Board (by President Eisenhower). He left the Division on 11-30-1955 and the next day, 12-1-1955, began serving as a Board member, a position he held through 8-27-1960. He returned to the Division on 8-28-1960. When Judge Bean left the Division, he had Division service of 5 years 10 months. Backing up 5 years 10 months from his return date of 8-28-1960, we arrive at the date of 10-28-1954. Although the LOS does not show EOD dates, for Judge Bean the roster of March 7, 1961, shows an adjusted EOD date of 10-3-1954. The difference of some 3 weeks is minor and no doubt is explained by other circumstances associated with either the departure or return factors, or both.

d. Symbol 4

If the original EOD date is later modified (such as by a mistake in application of policy or practice) by the Division on a subsequent roster, but then restored on a later list, and so left restored on the last roster on which the judge's name appears, then the original EOD date is marked with the symbol ≠ to indicate this category. One judge (perhaps the only one) fitting this category is Judge James H. Hemingway, EOD 2-1-1943≠.

Judge Hemingway's EOD date is shown as 2-1-1943 on the January 10, 1957 roster (with entries listing departures of about 3 months in the mid-1940s to, apparently, the Litigation section of the Agency, and a departure of some seven and a half months in 1952 to the "WSB," presumably the Wage Stabilization Board. Although Judge Hemingway's original EOD date is unchanged on the roster of March 7, 1961, on the May 1, 1965 list his EOD date is adjusted for the time spent at the WSB, but restored on the roster of June 30, 1970. To reflect that the Division on one roster had adjusted his EOD date, and then on a later list had (permanently) restored the original EOD date, Judge Hemingway's original date is listed here and marked with the symbol ≠.

e. Symbol 5

If a judge left the Agency to enter private practice, or for another Federal agency, then on his return he generally has received a new EOD date matching his return date, as shown in the examples below involving Judges Ruckel, Seagle, and Silberman. For example, Judge Robert L. Piper has a deemed original EOD date of 11-1-1948. Per the LOS, he left the Agency on

10-25-1955, transferring to the Federal Trade Commission (FTC). As reflected by the June 30, 1970 roster, Judge Piper later returned to the Division, receiving an EOD date of 5-30-1965, just missing the list of 5-1-1965. Because Judge Piper's resumption of presiding began barely a week later, on June 8 (156 NLRB 684), it seems clear that he received no credit for his earlier Division service, and that the new EOD date of 5-30-1955 matches his return date. Accordingly, Judge Piper's original EOD date of 11-1-1948 is marked with a ≡, and an "e" precedes the trailing EOD date of e5-30-1965.

Similarly, Judge Irving Rogosin, as discussed earlier at the May 1, 1965 roster, also has his deemed original EOD date marked with a ≡, and the trailing "e" EOD date of 1-14-1964 matches his return date from, apparently, private practice, with no credit for his earlier Division service.

Judge Horace A. Ruckel's deemed EOD date of August 1, 1938, is marked with a ⑤. His EOD date is so deemed because he presided on both sides of that date. Per the LOS he left on January 2, 1954, and was reinstated on August 2, 1961. Although the latter date, per the roster of May 1, 1965, was assigned by the Division as Judge Ruckel's new EOD date, for the List of Judges his earlier deemed EOD date is used, as is indicated by the symbol ⑤.

Respecting those judges who left the Agency and later returned to the Division, there have been a few inconsistencies in the EOD date used. (This is probably an oversight or two rather than a change in policy, or simply the result of different personnel processing the papers.) For example, on the roster of January 10, 1957, a half dozen judges (from a total of 45) left the Division (most during the 1940s) and later returned. Aside from those who served in some capacity related to the national defense (and they, as previously noted, generally, it seems, were treated as returning military veterans), three (Eugene E. Dixon, John H. Eadie, and Thomas S. Wilson) apparently left for private practice and then returned. All on the 1957 list are shown with their original EOD date on returning, although the dates of absence are also shown. (Judge Thomas S. Wilson's EOD date is discussed in more detail earlier at the 1965 roster.)

As noted earlier at the Division list of March 1981, Judge Gordon J. Myatt, who left the Agency on 1-20-1973, and later returned on 5-1-1977, is shown on the 1981 roster with his original EOD date, followed by the other data. (Although the 1981 list states that Judge Myatt left the Division in 1973, other evidence (the memory of one judge) discloses that he left to serve as a judge with the U.S. Department of Labor, and returned to the Division in 1977.) In any event, for this paper Judge Myatt's original EOD date is the primary listing, marked by the symbol ≡, followed by the trailing EOD date of e5-1-1977.

f. Symbol 6

For fewer than a handful of judges, the only available record of their EOD date is a copy of the Board's press release, other published announcement, or Division record, that such persons had been appointed as NLRB judges. Sometimes the actual EOD date may predate the announcement by several weeks. The choice made for the List of Judges has been to specify the first day, ordinarily, of the month in which the announcement was published as the deemed EOD date. This small group is assigned its own symbol of ⑥ rather than a ① to reflect its separate category. For example, a Board press release dated October 11, 1979, announced the appointment of C. Dale Stout as an Administrative Law Judge to be stationed in the Washington office. Therefore, Judge Stout is assigned the deemed EOD date of 10-01-1979, and that deemed date is marked with the symbol ⑥. As Chief Judge Davidson (retired) recalls, Judge Stout died soon after his arrival at the Division.

Similarly, although Judge William A. Pope's name appears in a December 1, 1981 Board press release, his EOD date, also marked with a ⑥, is set at 9-6-1981 because two other judges (Judges Charno and Kolko), also named in the announcement, have that EOD date.

g. Symbol 7

One judge fits in this category — James T. Rasbury. When data was being gathered early in the research for this paper, among the date gaps completed by the Division office, as described at the beginning of the paper under the section, **Acknowledgements**, was Judge Rasbury's EOD date, transmitted as 2-12-1957. It appears that the year should be "1959," for the publication showing his first trial as a presiding judge had for its opening (and only) date — March 3, 1959, in the case of *Tallapoosa River Electric Cooperative*, 124 NLRB 474 (8-13-1959). It seems quite likely that Judge Rasbury arrived at the Division about 3 weeks or so earlier, on February 12.

When deeming dates for this paper, the policy, as mentioned several times, is to go back no further than the first day of the month in which the first trial was held for that judge. However, that policy is not applicable here because this paper is not deeming a date for Judge Rasbury. This paper is merely correcting what appears to be an error in recording, either on the original Division record, or in copying that EOD year to the Internet transmission of the data. Accordingly, Judge Rasbury's EOD date is shown on the ABC and the EOD lists as a Division assigned date, with the correction of the year indicated by the symbol ∠. As discussed earlier at the 1965 list, Judge Rasbury, one of five judges named on the LOS who left the Agency (but later returned to the Division), presumably would have received a new EOD date on his return in the 1970s. (None is available because his return and eventual retirement fell between the 1970 and 1981 rosters.) Such a presumed EOD date

would have been preceded by an “e,” and, normally, his original EOD date would have been marked with the symbol ≡.

h. Symbol 8

One judge, David Karasick, fits this category which is reserved for judges who left the Division for some other position in the Agency and later returned, but at their return they received brand new EOD dates (as if they had left the Agency for private practice) rather than having their EOD dates adjusted to receive credit for prior service in the Division.

Judge Karasick, who began presiding in July 1943, presided over trials for about 17 months. Then, as noted below under the topic for Short Term Judges, he transferred to NLRB Region 8, Detroit, and later to Region 20, San Francisco. Eventually, in 1962, he returned to the Division for a couple of years or so before he left again. At his 1962 return, Judge Karasick received a new EOD date, matching his return date, and not adjusted to credit his earlier service. His deemed original EOD date is marked with the symbol |, and his 1962 Division assigned EOD date is preceded by an “e.”

4. Some Mysteries Solved

a. Judge William Seagle

The process of clarifying the EOD date sometimes clears up what otherwise might be a mystery. For example, was there more than one Judge William Seagle? Decisions in the 1930s show a Judge William Seagle at that time (and he is one of the early judges mentioned by Prof. Gross — see the Introduction at “Some early-day Judges) — and a Judge William Seagle appears on the March 7, 1961 roster with an EOD date of April 25, 1960. Could the second one possibly have been the son of the first? Or at least an unrelated person? No, for the latter list also gives the birth dates, and his is shown as January 14, 1898. Moreover, a May 29, 1961 alphabetical list of the judges gives their service computation dates, and this list shows Judge William Seagle with a service computation date of September 1, 1937. Thus, the conclusion for this list is that there was only one William Seagle who served as an NLRB Judge.

In this paper, Judge Seagle is assigned a deemed EOD date of April 1, 1937, the month of his first trial or hearing. Why not September 1, 1937, his service computation date? Does that date suggest that anything before then was as a per diem judge? On the other hand, did per diem service count in figuring the service computation date? Problem is, service computation dates can involve other matters to be considered (such as Federal service in another Federal agency or in the military) that are not available for evaluation here. For example, Judge William Ringer’s service computation date is shown as June 1, 1937, and we have seen that he started presiding in May 1937, yet his Division

EOD date is not until October 1, 1937. If we were to go by service computation dates, then Judge Ringer's EOD date would have to be moved back to just about the time he started presiding. Whether the correct procedure or not, in this paper the service computation date is not used.

In any event, clearly at some point before July 1, 1949 (the starting date for the 12-year period covered by the LOS), Judge Seagle left the Agency. Although this could have been in July 1939, following his last reported hearing (a representation hearing) in that month, as earlier discussed, since he testified before Congress in early 1940, it is assumed for this paper that he did not leave the Division until immediately after his Congressional testimony. He then, it appears, returned to the Division some 20 years later, on April 25, 1960. Thus, his deemed EOD date of April 1, 1937, in this List of Judges is marked with a ⑤.

b. Judge Herbert Silberman

Judge Herbert Silberman has a similar situation to Judge Seagle. Thus, a Judge Silberman appears on the roster of January 10, 1957, with an EOD date of 4-27-1953, and the LOS reflects that a Judge Herbert Silberman (no EOD date given) resigned on 2-13-1960. Then, on the roster of June 30, 1970 (and an earlier list of May 1, 1965), a Judge Silberman is shown with an EOD date of 1-14-1964. He apparently retired before the list of March 1981, for he is not named there. The "clincher" comes from former Chief Judge Davidson, now retired, who recalls that Judge Herbert Silberman left the Division for private practice and later returned. Thus, for this list, Judge Herbert Silberman is assigned his original EOD date of 4-27-1953 (rather than the Division assigned return date as the EOD), and that original EOD date is marked with the symbol ≡. In a single case, Judge Silberman, and the Board, give his middle initial: "M." The case is reported at 223 NLRB 709 (1976).

c. Judges James Fitzpatrick

For those who might wonder whether some mistake has been made respecting the name or EOD date of the two Judges Fitzpatrick, rest at ease. Chief Judge Giannasi recalls that Judge James J. (who died, per the LOS, on 1-22-1953) was the father, and that Judge James L. (who died after retiring in the early 1980s) was the son. The elder Fitzpatrick had trials on both sides of August 1, 1938 (as the Board's bound volumes reflect), and as earlier noted for the reconstructed rosters, his deemed EOD date of December 1, 1937, is marked with the symbol ①.

d. Judge Vincent M. Rotolo

In the later 1940s, Vincent Rotolo was a staff attorney with Region 2, New York. Apparently an "old timer" at Region 24, Ms. Chastity Pabon (Regional Director Marta Figueroa searched for someone who would know the

answer), who later transferred to Region 12, advises that Vincent M. Rotolo arrived at the Region about 1950, and later became the Regional Attorney there. Region 24’s current Regional Attorney, Efrain Rivera-Vega (thanks again to Ms. Figueroa for finding someone with additional information), confirms Ms. Pabon’s information.

Research has resulted in a deemed EOD date for Judge Rotolo of 4-1-1959. His last trial with the Division appears to have been in June 1960, with his IR issuing on 8-30-1960, as reported at 130 NLRB 1035 (1961). The LOS reports that Judge Rotolo transferred to Region 24 on September 11, 1960. Relaying “the rest of the story,” Regional Attorney Rivera-Vega reports his understanding that Judge Rotolo left the Division and returned to Puerto Rico as Region 24’s Regional Attorney. “After retiring in the mid 70’s, he worked as local Counsel for the ILGWU in Puerto Rico for several years. Thereafter, in the 90’s or late 80’s he moved to Florida and worked pro bono for some time with a law firm owned by Luis Gomez.” Further, “I am told Rotolo died at age 91 in Feb. 1999.” (Thank you Mss. Figueroa and Pabon and Mr. Rivera-Vega!!)

e. Judge Howard I. Grossman

With a Division-assigned EOD date of 5-4-1980, Howard I. Grossman was one of the first judges to arrive for duty at the newly designated Atlanta office. Judge Grossman retired in September 2001.

Now with Judge Grossman’s EOD date being May 4, 1980, how is it that we find him, or someone with the same name, presiding at the following NLRB trials in October 1972? Were there two separate NLRB judges with that name?

<u>Style</u>	<u>Cite</u>	<u>Trial Opened</u>	<u>JD Issued</u>
1. Southeastern Envelope	206 NLRB 933 (11-16-1973)	10-2-1972 Atlanta, GA	1-2-1973
2. Tamper, Inc.	207 NLRB 907 (12-14-1973)	10-11-1972 Columbia, SC	4-20-1973
3. GTE Automotive Electric	204 NLRB 716 (7-3-1973)	10-18-1972 Huntsville, AL	2-26-1973

The answer to the last question is No, there has been only one NLRB judge named Howard I. Grossman. The mystery is resolved by the now retired Judge Grossman himself, and by Judge Pargen Robertson, who was the General Counsel’s trial attorney in *Tamper*. From their reports we learn the following: Before becoming an NLRB judge in 1980, Judge Grossman was serving as an ALJ with the Social Security Administration. Before that, he had been a

prosecuting attorney with the Board's Miami, Florida office (Region 12, Tampa). Shortly after he went to the SSA as an ALJ, Judge Grossman was loaned to the NLRB to help with the Board's heavy case load. The three cases listed above were those handled by Judge Grossman as a judge borrowed by the NLRB from SSA. (Judge Grossman actually recalls that there was a fourth case, but only three were found in this research.)

Judge Grossman also thinks that the General Counsel's trial attorney in the *GTE* case, at Huntsville, Alabama, was future judge Robert C. Batson (EOD 4-3-1977), and he vaguely recalls that future judge William N. Cates (EOD 6-1-1980) assisted Batson. Associate Chief Judge Cates essentially confirms this account on the basis that the time was early in his career with the Agency when he in fact did work with Batson on a few trials.

Former Associate Chief Judge Hutton S. Brandon (retired) recalls observing, in the early 1970s time frame, a trial at the NLRB Region 10 office in Atlanta presided over by SSA Judge Grossman (later NLRB Judge Grossman), although he does not recall the name of the case. Thus, it may well have been *Southeastern Envelope*.

5. "Borrowed" Judges

Regarding judges "borrowed" from other federal agencies, Chief Judge Giannasi advises, in a June 3, 2004 email, that the Division borrowed a good many judges in the late 1970s and early 1980s. Indeed, in addition to borrowing judges to handle the heavy case load, the Division also called back some retired NLRB judges for limited periods during that time frame.

Respecting "borrowed" judges, see *East Texas Motor Freight*, 262 NLRB 868 at 875 (1982), where Judge James W. Mast reports (JD issued 10-5-1979) that he was "designated by the Civil Service Commission to conduct the hearing and to issue a decision." Some recall that Judge Mast earlier may have served as the Regional Attorney with NLRB Region 28. See also *Dutch Boy*, 262 NLRB 4 fn. 1, and 10 (1982), in which Judge Arthur G. Lanker (JD issued 2-10-1981), was designated to take over as the presiding judge after Judge Benjamin K. Blackburn (EOD 6-7-1968) died midway through the trial. The informal recollection of some judges is that Judge Lanker served briefly in the capacity of a judge borrowed from another Federal agency.

Although no effort was made during research for this paper to track all the "borrowed" judges, a natural result of turning the pages of the bound volumes of the Board's decisions was the opportunity to see, in addition to the names on the Division rosters, a few names of other judges. All indications are that these other judges were "borrowed" from other Federal agencies, through the Civil Service Commission, at times (generally, after 1960) when the Division was very busy. As can be seen from the following dates, after the

busy trial years of 1979 through 1981, the use of “borrowed” judges quickly ended. The evaporation of the need for borrowed judges came roughly close to the time when the Division reached about the historical top for the level of the number of judges in the Corps of Judges.

In the list that follows, we see the names of judges who, from all indications, were “borrowed” from other federal agencies. Note that, except for Judge Howard Grossman in 1973, as detailed above, and Judge Lloyd R. Fraker in 1961-1962, as detailed below, all the other judges presided at trials from 1978 into 1981.

Judge Fraker had been a staff attorney at Region 9, Cincinnati, for the reported cases show him serving as a hearing officer in many Region 9 cases, dating from 1958 back to 1949, the latter being a case where he was the “GC” — the Region’s trial attorney. For example, see 83 NLRB 981 (1949) (trial attorney) and 123 NLRB 1183 (1959) (hearing officer). It is possible that Judge Fraker was a regular judge of the Division, but it seems unlikely. From late October 1961 to late April 1962 (almost exactly 6 months), Judge Fraker presided at some eight reported unfair labor practice trials for the Board. (The first, somewhat middle, and last reported cases are shown in the list below.) And then he left. While that is more cases than the others on the list handled, it also is clear that additional borrowed judges were not needed in 1961-1962, for the one borrowed judge apparently was able to assist the Division as needed.

[For nearly 35 years, from January 3, 1951, to August 27, 1985, the Board, contrary to past and present practice in unfair labor practice cases, did not list the attorneys for the parties. See NLRB Vols. 95 and 276 for the stop and resumption. The absence of such names from the Board's bound volumes complicated the research. Although the BNA volumes frequently, or even usually, show the names, to switch back and forth on every case would have postponed the completion date of this paper beyond the author’s lifetime.]

In the period of 1979 to 1981, when the case load was extra heavy, and before the additional judges who came on board in 1980 were able to be assigned, several borrowed judges were needed to handle the work. With the arrival of the judges hired in 1979, 1980, and 1981, followed not too long thereafter by a decline in the trial docket, the need for borrowed judges simply disappeared.

**LIST OF “BORROWED” JUDGES
FOUND IN NLRB VOLUMES 136 THROUGH 271
(ROUGHLY 20 YEARS, FROM ABOUT 1961 TO ABOUT 1981)**

<u>Name</u>	<u>Board Vol.; Page</u>	<u>JDDate</u>	<u>Trial Opens Mo/Yr</u>
1. Browning, Philip M.	260:150 (1982)	7-31-1981	3/81
	265:39 (1982)	6-26-1981	3/81
2. Bernice, J. Lee	257:825 (1981)	5-8-1981	1/81
	260:1123 (1982)	9-29-1981	3/81
	260:907 (1982)	9-29-1981	3/81
	263:15 (1982)	2-2-1982	3/81
	268:1457 (1984)	9-29-1981	1/81
3. Dapper, William	248:99 (1980)	11-7-1979	8/79
4. Fraker, Lloyd R.	136:1556 (1962)	12-29-1961	10/61
	139:365 (1962)	4-26-1962	1/62
	137:1293 (1962)	4-30-1962	3/62
5. Grossman, Howard I.	206:933 (1973)	1-2-1973	10/72
	207:907 (1973)	4-20-1973	10/72
	204:716 (1973)	2-26-1973	10/72
6. Howder, Thomas F.	258:1303 (1981)	6-12-1981	12/80
	261:793 (1982)	11-20-1981	11/80
7. Hoyt, Helen F.	263:1101 (1982)	2-5-1982	3/81
	270:241 (1984)	12-30-81	3/81
8. Lanker, Arthur G.	262:4 (1982)	2-10-1981	1/80
9. Mast, James W.	262:868 (1982)	10-5-1979	1978/1979
10. Mathias, John J.	257:219 (1981)	2-10-1981	12/80
11. May, Joseph M.	261:940 (1982)	9-3-1981	4/81
12. Murphy, Richard J.	246:1120 (1979)	4-27-1979	2/79
13. Needelman, Morton	259:1025 (1981)	4-16-1981	1/81
14. Neumaier, Edmund A.	258:292 (1981)	7-14-1981	3/81
	264:1360 (1982)	2-17-1982	3/81
15. Nicchitta, Angelo G.	260:192 (1982)	9-4-1981	4/81
16. Parker, Lewis F.	259:1168 (1982)	4-15-1981	2/81
17. Rodriguez, Elias C.	245:1234 (1979)	7-31-1979	4/79
	247:943 (1980)	6-29-1979	5/79
18. Saunders, Joseph J.	244:1154 (1979)	6-30-1979	2/79
19. Schmitt, Marvin J.	250:228 (1980)	9-28-1979	3/79
20. Timony, James P.	259:725 (1981)	5-11-1981	2/81
	261:1145 (1982)	7-27-1981	5/81
	263:258 (1982)	7-9-1981	5/81
21. von Brand, Theodor P.	274:874 (1985)	1-16-1981	9/80
	258:122 (1981)	3-13-1981	10/80
	261:12 (1982)	5-26-1981	No date

6. One Presided First; The Other Served The Longest

a. Judge Walter B. Wilbur

Of all the Board's regular staff judges, it was Judge Walter B. Wilbur who first presided at an NLRB unfair labor practice trial — that being on December 5, 1935, as reported at 1 NLRB 892 (June 4, 1936). It appears that he left the Agency about August 1938, and returned about April 1941.

In early January 1946, as Judge Charles W. Schneider reports at 71 NLRB 192, 198 fn. 3 (1946), Judge Wilbur (who last presided in December 1945) resigned from the Board's staff. Judge Wilbur apparently left to begin representing management, for later, in a September 1946 representation hearing, “Walter B. Wilbur, of Charleston, S.C.,” appears as the Employer’s counsel of record.

b. Judge Marion C. Ladwig

When Judge Marion C. Ladwig (EOD 1-17-1966) retired on February 3, 2004, after 38 years 18 days with the Division, he had served, as Chief Judge Giannasi reports, with the Division longer than any judge in the Division’s history.

In addition to his regular judicial duties with the Division, Judge Ladwig, a computer expert, assisted the Division, and many judges, to get started with the Division’s first software application. He also authored the Agency’s Style Manual, and provided the editorial supervision for the Division’s Bench Book that was first published in 2001 under the inspiration of Chief Judge Robert Giannasi who assembled a team of the following judges to assist him in researching and writing the Bench Book: Clifford H. Anderson (SF); Steven Fish (NY), Richard Linton (ATL), C. Richard Miserendino (DC), William Pannier (SF; DC), and Richard A. Scully (DC). Judge Ladwig will be missed at the Division.

The following related story, with photo on the left, below (showing Judge Ladwig flanked on the right by Chairman Battista and on the left by Chief Judge Giannasi), is copied (with the permission of NLRB Library Chief Kenneth Nero) from 10 *All Aboard* No. 6 at 7 (Feb. 2004):

HEADQUARTERS HIGHLIGHTS

Judge Ladwig Retires

Administrative Law Judge **Marion C. Ladwig**, who has been an ALJ for 38 years and has served as an NLRB Judge longer than anyone in the history of the Board, has retired.

A native Texan, during World War II Judge Ladwig headed the U.S. Army's Office of Criminal Investigations in Naples, Italy. He received his B.A. from Texas Christian University and his J.D. from the University of Texas. While in law school, he organized an NAACP chapter to work for the admissions of African Americans into the school.

In addition to his many decisions, Judge Ladwig is the author of the Board Style Manual and has prepared computer and decision-writing aids for the internal use of the Judges.

A true Renaissance person, Judge Ladwig has interests ranging from swimming to traveling around the world. His wife, Irene, is an accomplished artist and shares with him an enjoyment of ballroom dancing, astronomy, opera, and the arts.

As Judge Ladwig leaves the NLRB, Chief Administrative Law Judge Bob Giannasi notes in appreciation:

During his record 38 years of service as an NLRB judge, Marion Ladwig exhibited the highest degree of integrity and commitment. He pursued justice with an unflinching sense of public duty. His contributions to the Agency included preparation of the Board Style Manual and several decision-writing and procedural handbooks for the Judges Division.



[Only the photo on the left appears in the ALL ABOARD issue. In both photos, Judge Ladwig appears in the center, with Chairman Robert Battista on the right, and Chief Judge Robert Giannasi on the left.]

7. Temporary Judges

After August 1, 1938, and during the 1940s, particularly the years of the World War 2, "Trial Examiners" not regular staff judges of the Division occasionally presided at an unfair labor practice trial. Most of these "temporary judges" are listed below.

<u>Name</u>	<u>Trial Opened</u>	<u>Citation</u>	<u>Notes</u>
1. Bachman, Mervin N.	11/46	75 NLRB 230	
<p>Bachman perhaps was in the Review Section (or perhaps was Member Houston's confidential legal assistant) at the time of this trial, and perhaps did this as a one time experience (similar to the 10/43 experience of future judge William Feldesman). In any event, it does not appear that Bachman was a regular staff judge in the Division.</p> <p>After Taft-Hartley became effective in August 1947, Bachman is listed as one of the five Chief Legal Assistants: 13 <i>NLRB AR</i> at 5, fn. 1 (FY ending 6-30-1948).</p> <p>When the Agency began listing (in Vol. 85, covering decisions issued July 1 to Sept. 19, 1949), the chief counsel at the July 1, 1949 beginning of FY 1950 in the bound volumes, Bachman is shown as the chief counsel for Board Member John M. Houston. (Per the Board's website, Houston was appointed March 15, 1943.) Bachman served as Houston's Chief Counsel until Houston resigned in August 1953. See 106 NLRB ii. Unclear whether Bachman remained on the legal staff or went elsewhere. [And Board volumes at this time were not listing attorneys of record on a case, C or R.]</p>			
2. Donovan, Charles S.	8/48	83 NLRB 524	
	8/48	83 NLRB 465	
3. Ford, Peyton	10/42	49 NLRB 122	
4. Lobingier, Charles S.	7/39	r 14 NLRB 1213	R case
5. Mett, Frederick P.	8/40	28 NLRB 64	

For the fiscal years ending June 30, 1940 and 1941, Frederick P. Mett was the Regional Attorney at Milwaukee, Region 12. 5 *NLRB AR* 9 at 10; 6 *NLRB AR* at 109. Mett served one day (August 7, 1940) as a “duly designated trial examiner” in a complaint case — *Algoma Net Co.*, 28 NLRB 64 (Nov. 23, 1940). The main portion of the trial had already been handled by Judge Joseph F. Keirnan (the spelling of his surname differs in different cases), who had issued his Intermediate Report on February 8, 1940, and the Board had sent the case back for some fill-in evidence. “Judge” Mett issued no Intermediate Report (IR) and made no credibility resolutions. His selection apparently was one of convenience largely for, no doubt, budgetary reasons of saving the travel expense of a staff judge. It appears that no party objected to the procedure. Indeed, they may have agreed to it in advance.

8. Turnover in the Early Years

Following the Board's decision to employ only Division staff judges as of August 1, 1938, the 1940s saw much turnover in the ranks of the judges. A

major reason for this was decisions by the judges to support the war effort in other federal capacities (recall Chief Judge Pratt's example, as mentioned earlier). Yet there were departures of the more common type, such as transfers to other spots in the Agency, or simply to enter private practice. Departures were still noticeable in the 1950s. Those, however, are listed in the LOS, as shown above.

After (roughly) the Board's first 25 years or so, and as the Agency entered what might be called the modern era, the impression here is that the tenure pattern for the judges began to stabilize. Thus, in modern times the impression is generated that our judges seem more likely to remain in the Division until retirement. No doubt one reason for so many departures in the early years of 1930s, 1940s, and 1950s, was that the law was new, and those with Agency experience, and particularly NLRB trial experience, apparently could, if so inclined, find a position in private practice with relative ease. As the national labor bar developed, with other employment laws (and jury trials) now the major part of almost every labor practice, leaving the Agency in modern times probably has become an option less available than it was in the earlier years.

Aside from the personnel departures noted on the LOS, an indication of a departure usually can be observed from the lack of additional Board decisions in which cases the judges presided at trial. Occasionally, some of the names of these judges appear later in the listings of other Board offices (such as Regional Director or Regional Attorney, or perhaps as an Assistant General Counsel), in the Board's Annual Reports or on the first couple of pages of the bound volumes of the Board's decisions. Or, for several former judges, their names show up as the Regional Office staff attorney prosecuting the complaint case or presiding at a representation case.

Why list them here at all, for they are named on the ABC List? So many departures so early call for a listing. As just noted, the impression is that in the last 30 years or so, our judges have been more likely to work in the Division until full retirement — thus, many are with the Division for at least 20 years. That things were different in, particularly, the 1940s, perhaps is a phenomenon to be noticed. And before the San Francisco office opened in about January 1951, travel for the judges was a substantial problem. Indeed, as mentioned much earlier in the **Reflections** section of this paper, we learned from the oral history interview given by former Judge Will Maslow that he left the Division because his wife could no longer cope with the fact that he would be in travel status at least half the time. *Maslow* at 3, 27. One might well assume, therefore, that one factor for the decision by some of these judges to depart the Division and to accept positions, such as those in the Agency, was the thought that there probably would be less travel in the new position.

1. **Paradise, James C.** (EOD 6-1-1937)

Perhaps the two most prominent of these transferring to the Regional Offices in the early years would be **Judge James C. Paradise** and **Judge Gustaf B. Erickson**. Judge Paradise left the Division in early 1942 for, apparently, a staff position at Region 2, New York. For several years thereafter his name appears on various cases with him either prosecuting or presiding at Region 2.

2. **Erickson, Gustaf B.** (EOD 3-1-1938)

Judge Erickson followed a path similar to that taken by Judge Paradise. As with Judge Paradise, Judge Erickson was a steady producer for several years. About March 1944, Judge Erickson switched to Region 13 (Chicago) as, apparently, a staff attorney there, and he appears for several years thereafter in Region 13 cases, either as a hearing officer in representation cases or as the Board's trial attorney.

Earlier, both Judges Paradise and Erickson were attendees at the at the Agency's November 15, 1938 conference, in Washington, D.C. The panoramic photograph of the attendees at that conference (a copy of the photograph was graciously supplied by Chief Judge Giannasi for this paper), divided into three sections for insertion in this paper, is reproduced earlier. Zoom-in copies of the images from that photo of Judges Paradise and Erickson follow:



Most of the other departing judges from the early years (particularly from the 1940s) are as follows:

3. **Baron, Max G.** (EOD 5-1-1943⊃)

Presiding over only about half a dozen cases, concluding in September 1943, Judge Baron, like others at this time, perhaps left in early 1944 to join the war effort in some capacity. The last Board decision regarding one of his trials (opened August 30, 1943) is reported as *Wyatt Metal and Boiler Works*, 55 NLRB 618 (1944). (Judge's IR issued 12-29-43.). This was an order by the Board remanding for a new trial because the judge had made rulings which prevented the company from introducing relevant and material evidence. (The point here is not to highlight the remand. Indeed, remands could be shown regarding a good many other judges, for worse than the basis described here. What is interesting for our purposes here is one of the two procedural points mentioned by the Board.)

One of the procedural points described by the Board is this one, 55 NLRB at 619:

In another such instance, the Trial Examiner ruled that counsel for the Board need not exhibit to the respondent, for the purpose of cross-examination of a Board witness, a document which had previously been shown to that witness by the Board's counsel and withdrawn without being marked in evidence.

This ruling is authority for the proposition that every document should be marked by the court reporter (or at least announced as the party's next exhibit number), and shown to opposing counsel, before being shown to a witness. While that is the desired, and wise, practice, it is rare to find a ruling that, by extension, reinforces the practice. The ruling goes further, of course, to require the party to produce the document (and here the previously assigned or marked exhibit number plays a helpful role), shown earlier to the witness, so that the opponent may use it in cross examination of the witness.

4. **Bland, Theodore R.** (EOD 8-1-1938⊃)

One of those who began presiding before August 1, 1938, Judge Bland (9 NLRB 1149), continued presiding for a while afterwards, concluding, initially, in June 1939 (13 NLRB 841). Apparently departing the Agency and then returning over 2 years later, in February 1942 (54 NLRB 912), Judge Bland thereupon concluded his career with the Division. Although very close to an arbitrary distinction between Judges Broadwin (named below in the Honorable Mention section) and Bland, with only the latter counted as a Division Judge for this paper, the rather slight difference is that Judge Bland continued well into 1939 to preside. Plus, he was able to return to the Division, even though his return appears to have been limited to a single case. Although the Board, in the 1942 case, was a bit critical of "many" of Judge Bland's rulings (while finding no prejudicial error), it seems unlikely that such had anything to do with Bland's deciding to leave the Division again. Thus, it is

presumed here that he, like others, left at this time to join the nation's war effort in some capacity.

5. **Boyd, Melton** (EOD 7-1-1944⊃)

Judge Boyd first appears listed as the Regional Director at Region 24, Puerto Rico: 7 *NLRB AR* 193 (FY ending June 30, 1942). He is not so shown for 1943 per 8 *NLRB AR* at 236. He next appears in July 1944 presiding over a complaint case: 58 NLRB 1. After not quite a year as a Division Judge (he appears to have presided last in June 1945 at 67 NLRB 627), he thereafter (after a gap of over 2 years) is seen as a staff attorney at Region 19, Seattle (80 NLRB 1054) over the next few years.

6. **Cushman, Bernard** (EOD 1-1-1943⊃)

Judge Cushman, who presided from January 1943 to the end of that year, is one of the 12 Division Judges, active, former, or retired, who were interviewed by the assistants of Prof. Gross as part of the research for his three books on the Agency. Cushman gave his oral history interview on March 19, 1969, following his return to the Agency (after an absence of nearly 20 years), in his position of Special Assistant to the General Counsel. (*Cushman* at 1, 14, 43). Unfortunately, the interview does not disclose where Judge Cushman went after he left the Division (perhaps to join the war effort), or where else he had been in the nearly 20 years that he was gone from the Agency.

7. **Edes, Samuel** (EOD 10-1-1941⊃)

Judge Edes began presiding in October 1941 (39 NLRB 229), and appears to have concluded in January 1943 (48 NLRB 604). Perhaps it was to join the war effort. Indeed, for Fiscal Year 1943 the Board noted that it was experiencing a "manpower problem created by heavy turnover and a decreasing staff" 8 *NLRB AR* at 13.

8. **Feldesman, William** (EOD 10-1-1943≡) e11-29-71

Initially, Judge Feldesman was listed under the previous section, **Temporary Judges**. This is so because, on the surface, when he presided in October 1943, as reported at 54 NLRB 1253, the case appears to be while Feldesman was in the Review Section. This is so for he appears "Of Counsel to the Board" in other cases at this time period. Moreover, when the Agency began listing (in volume 45, and for only a few issues) the Review Supervisors, on a separate page of officials, William Feldesman is one of the 11 so named in Volume 45. He was not, however, one of the Chief Counsels (Chief Legal Assistants, then) when they are first named at 85 NLRB at ii (covering Board decisions of July 1, 1949, to September 19, 1949). After James V. Constantine left the Solicitor's position, and a few months later joined the Division (EOD 10-2-1961), Feldesman moved into the Solicitor's spot, as reflected at 131 NLRB iii. In any event, it is nearly 20 years after this 1943 case before

Feldesman, as a matter of certainty, became a Division Judge with a Division-assigned EOD date of 11-29-1971. He retired in 1973.

In his oral history interview of July 28, 1988, Judge Feldesman sheds a small bit of light here. Summarizing his early years with the Agency, he reports that he arrived in 1942, left in 1956, returned in 1961, and retired in 1973. *Feldesman* at 1, 3, 28, 38. Judge Feldesman further informs us that his first position was as an Associate Attorney in the Trial Examiners Division. (The work of that position is mentioned earlier in this paper in the **Reflections** section.) From there he became the Confidential Legal Assistant for Board Chairman Harry A. Millis. “I then became a Trial Examiner for a very short while, and then was transferred to the Review Section and became a supervising review attorney.” *Feldesman* at 2. His position as a trial examiner was one that he held only “briefly” early in his Board career. *Feldesman* at 26.

Recall that in the early 1940s (before the APA or Taft-Hartley) the Board still enjoyed much flexibility for assigning and transferring personnel in order to meet the Agency’s needs or desires regarding hearings or even trials of complaint cases. Recall also that in FY 1943, in the depths of World War 2, the Board was experiencing “its own manpower problem created by heavy turnover and a decreasing staff ...” 8 *NLRB AR* at 13. It is just possible that the Board determined that it needed someone, perhaps a newly minted trial examiner, to transfer and help out in the Review Section. Granted, Judge Feldesman’s description of his admittedly brief time as a trial examiner could be a shorthand version for describing a mere temporary assignment before he departed for the Review Section. Given the overall circumstances, however, and in light of the fact that Judge Feldesman’s description, however briefly stated, is rather declarative, for this paper Judge Feldesman is assigned a deemed original EOD date of 10-1-1943≡. [Recall that symbol ≡ means that he left the Division and the Agency, and eventually returned to the Division, with a brand new EOD date.] Thus, Judge Feldesman is not considered here as, in fact, a temporary judge in 1943.

9. **Gardner, Hamilton** (EOD 12-1-1948⊃)

The **LOS**, set forth earlier, shows several judges who were with the Division for under 3 years, and three judges for less than a year. Most (14) of those leaving left before 1955. While most on the list went to other federal agencies, others simply resigned. As already discussed at the **LOS**, a deep cut in the Agency’s budget for Fiscal 1952 (17 *NLRB AR* at 1, 5) created pressure to reduce staff. Four judges left, three for other agencies, with one (**Hamilton Gardner**), simply resigning. Two other judges from the **LOS** listed in a moment are, **Josef L. Hektoen** and **Vincent M. Rotolo**.

10. **Gubbins, Joseph E.** (EOD 3-1-1945☞)

After presiding for about 7 months or so (apparently to 69 NLRB 1189), Judge Gubbins appears to have left the Division to enter private practice, for his appearance in that respect (representing labor) is reflected at 75 NLRB 274 (1947).

11. **Guffey, William F. Jr.** (EOD 2-1-1942☞)

Judge Guffey presided from February 1942 to March 1944. In the Board's 9th Annual Report, for the fiscal year ending June 30, 1944, a "Wm. F. Guffey, Jr." is listed as the Regional Director for NLRB Region 14, St. Louis. 9 *NLRB Annual Report* 96. By the next year, he had left Region 14 — 10 *NLRB Annual Report* 112 — and, apparently, the Agency.

12. **Hektoen, Josef L.** (EOD 10-1-1939☞)

A couple of other judges on the LOS should be mentioned in particular here. One is **Judge Hektoen** who died, as the LOS reflects, on November 15, 1950. What the LOS does not show is that Judge Hektoen left the Division about September 1944 to serve as the Regional Attorney at NLRB Region 13, Chicago, for over 3 years under Regional Director **George J. Bott** (himself a future General Counsel and a future NLRB judge, EOD 2-1-1960). See 10 *NLRB Annual Report* 112 through 12 *NLRB Annual Report* 184. About the time that **George Bott** left Region 13 and became an Associate General Counsel in Washington, D.C. (effective 10-14-1948, 79 NLRB iii fn. 2), **Judge Hektoen** also left Region 13 and returned to the Division (see, for example, 82 NLRB 497), from which he separated again, but this time by his untimely death. The other judge is **Vincent M. Rotolo**, listed in a moment.

13. **Hirshfield, Victor** (EOD 1-1-1946☞)

Judge Hirshfield fits into a category of judges who worked only a short time, no more than a few months, in 1946. This category includes two judges listed below, **Judges Midinock and Rein**. Although Judge Hirshfield did not have a training judge, as did Judges Midinock and Rein (which suggests regular-staff status), he did preside from January 1946 into November of that year (75 NLRB 621), and such time indicates regular status.

14. **Issacson, William J.** (EOD 4-1-1944☞)

Presiding for a bit less than a year (from about April 1944, 57 NLRB 1221), to about February 1945 (62 NLRB 229), Judge Issacson appears to have transferred to Region 3, Buffalo, as the Regional Director there. See 12 *NLRB AR* at 183. By the following year, he has departed from there, 13 *NLRB AR* 194.

15. **Karasick, David** (EOD 7-1-1943 |; e4-23-1962)

At least as early as 1941, David Karasick appears to have been a staff attorney at Region 13, Chicago, serving on occasion as the hearing officer in a representation case. See, for example, 38 NLRB 435 (hearing in December 1941) and 50 NLRB 516 (hearing in May 1943). By July 1943, Karasick appears to have become a trial examiner presiding over complaint cases in different Regions, such as Region 5, 53 NLRB 1313, to Region 19, 60 NLRB 787. He last presided at a complaint case in May 1944, in Region 14, 60 NLRB 1015 (a consolidated “C” and “R” case). After presiding at a couple of Region 13 representation cases in November 1944, Judge Karasick (it is not clear that he was still a trial examiner for the November cases, but it is assumed here that he still was) apparently transferred to Region 7, Detroit, to be a staff attorney there. This occurred about late November 1944, for he begins at Region 7 as the Board’s attorney in a couple of representation cases there that December 1944, 61 NLRB 4, and January 1945, 60 NLRB 885. Then he is seen presiding at representation cases at Region 7, beginning in February 1945, as reported at 60 NLRB 1234.

By 1946, Karasick appears to have transferred to Region 20, San Francisco, for he is seen presiding over representation cases there from September 1946 (72 NLRB 890) to at least as late as 1957 (118 NLRB 456). Eventually, in 1962 he returns to the Division, resumes presiding in May 1962 (139 NLRB 139), and is given the brand new EOD date (no adjustment for prior service) of 4-23-1962, as reflected by the roster of May 1, 1965. But by the list of June 30, 1970, he again has left. His deemed original EOD date of 7-1-1943 is marked with the symbol |, and his trailing EOD date of 4-23-1962 is preceded by the designation “e.”

16. **Lindsay, John T.** (EOD 10-1-1937 ⊃)

While not as short term as some of these others, Judge Lindsay is included here because he represents those judges, as described earlier in the subsection of **Reconstructed roster for July 1940**, apparently caught in the big layoff of the fiscal year ended June 30, 1940. 5 *NLRB AR* at 123. He began presiding in May 1937, along with future Chief Judge William Ringer. Judge Lindsay is assigned a deemed EOD date, for his Division Judge status, of 10-1-1937 ⊃, and first appears on the reconstructed roster of June 30, 1938, above. He did not survive the RIF that took place in the weeks leading up to the reconstructed roster for July 1940. He last presided in April 1940 (25 NLRB 265). Other judges, who had been steady producers, also did not survive the RIF, including Judges **Berdon Bell, Madison Hill, Waldo Holden, Joseph F. Keirnan, Albert L. Lohm, Joseph L. Maguire, D. Lacy McBryde, Henry W. Schmidt Jr., and Herbert Wenzel**. Several of these presided for the last time around April and May 1940. As research for this paper progressed

through the latter half of the 1930s, these names had become familiar. Then, they were gone.

Judge Lindsay was one of the attendees at the November 15, 1938 training conference in Washington, D.C. A zoom-in copy of his image in that photograph appears below. Also included is a zoom-in copy of future judge David Rein, mentioned below in this list of judges who left in the early years:



17. Maslow, Will (EOD 10-1-1941)

As already mentioned a couple of times, Judge Maslow, who began presiding in October 1941 (37 NLRB 1140), and concluded in June 1943 (52 NLRB 161), left the Division, and the Agency, because of family dissatisfaction with all the travel required by the work of his being a trial examiner.

18. McCoy, Whitely P. (EOD 6-1-1939)

After presiding a couple of times in August 1938, Judge McCoy appears to have been inactive, resuming the role of presiding judge in June 1939 (14 NLRB 920). However, his role in that regard was short lived, for he ceased presiding 2 months later (18 NLRB 195). Granted, his time of service in 1939, during the summer months, could indicate that the Division needed help from a per diem judge during summer vacation time. Nevertheless, during his short 1939 tenure he presided at least eight times, and that is consistent with the service of a regular staff judge. In the absence of more facts indicating per diem status, benefit of any doubt is resolved in the judge's favor for inclusion on the list of regular staff judges.

But even aside from the foregoing, the most likely explanation for Judge McCoy's early departure is the same as that for not including (as discussed earlier) the name of Judge Joseph F. Keirnan on the reconstructed roster for February 1940 — he was one of the first selected for layoff in Fiscal Year 1940 (which began July 1, 1939). Recall from the earlier discussion that, as the Board reports, the Agency sustained a budget hit for that fiscal year. 5 *NLRB AR* 123. Thus, for this paper, Judge McCoy is accorded the status of a

23. **Vincent M. Rotolo** (EOD 4-1-1959[⊃])

The other judge from the LOS is **Judge Vincent M. Rotolo**. On the LOS in the original, Judge Rotolo is listed simply as “Rotolo.” (The lack of his name, the many EOD dates missing from the LOS, not to mention the names missing, as well as EOD dates, of so many of those who were staff judges in the late 1930s and in the 1940s, were the primary motivations for the preparation of this paper.) **Judge Rotolo** was a long-time attorney with Region 2, New York. Eventually he joined the Division. Based on his first reported trial in April 1959, as reported at 124 NLRB 604 (1959), his deemed EOD date for this paper is 4-1-1959[⊃]. He did not remain long, with the Division, transferring, as shown on the LOS, to Region 24, Puerto Rico, on September 11, 1960.

24. **Scott, William J.** (EOD 5-1-1946[⊃])

One of the five who left that 1946, Judge Scott became a staff attorney at Region 17, Kansas City (see 76 NLRB 47), and is seen presiding over representation cases there (and a couple of times elsewhere, as is the Agency custom) well into the 1950s, as is reflected by a 1954 case at 111 NLRB 156.

25. **Smoot, T. B.** (EOD 2-1-1945[⊃])

Judge Smoot presided until June 1947 (78 NLRB 891). Even so, his tenure still was quite short.

26. **Strong, William** (EOD 10-1-1942[⊃])

Judge Strong presided from January 1943 (49 NLRB 1325) to October of that year (53 NLRB 1212). He appears to have left the Division to serve in the Board's Review Section in early 1944, for his name appears on published representation case decisions over the next several weeks as “of counsel to the Board.” For example, at 54 NLRB 1326 (2-14-44; hearing on 1-17-44 before Allen Sinsheimer Jr., EOD 2-23-66). Oddly, a “William Strong” is shown as the Regional Attorney at New Orleans, NLRB Region 15, for the fiscal year ending June 30, 1943. 8 *NLRB Annual Report* 236. It is possible that such listing is based on his service in that position for the last half of 1942, and that he then left for the Division. (In the Board's annual reports, he is not listed for New Orleans either in a prior or subsequent year.) As of the late spring of 1944, World War 2 was still raging, with D-Day at Normandy just a few weeks away. It is possible that around May 1944 Judge Strong left the Agency to join the war effort in some capacity. In any event, it appears that Judge Strong's tenure with the Division, and perhaps with the Agency, was rather short.

27. **Wells, Joseph C.** (EOD 3-1-1946[⊃])

Also one of the five who left in 1946, and who apparently left by the June 30, 1946 closing of FY 1947, Judge Wells is later seen named on the page of officials as an Associate General Counsel under the first statutory General Counsel, former Judge Robert N. Denham, when Denham began his term

shortly after the Taft-Hartley Act was passed in late June 1947. See 12 *NLRB AR* iii. As past and future Judge William Feldesman reports, when Feldesman was appointed an Assistant General Counsel on General Counsel Denham's staff, former judge Joseph C. Wells was his immediate superior. *Feldesman* at 3-4.

9. Honorable Mention

Finally, a few judges, not named on the ABC List, deserve to be included on this Honorable Mention List. They are so included because at least part of their service came after the August 1, 1938 change in policy as to using any per diem judges. All presided at only a few, or at perhaps several, trials after August 1938 (and even after allowing that the Division permitted a per diem judge to preside at a few cases already scheduled, and to complete his Intermediate Report), but not at enough cases thereafter to generate the image of a regular Division Judge. Granted, the selection process employed here is not perfect. Even so, a selection of some kind has to be made. For that process, the following judges are recognized here as part of this Honorable Mention List:

1. Broadwin, I. L.

I. L. Broadwin, who first presided in June 1938 (11 NLRB 1382), is one of those persons considered for this paper as probably per diem judges even though they presided a handful of times after August 1, 1938. He had a bit more than that (three times that August, four in October 1938, and once in March 1939: 19 NLRB 503). It is quite possible that the Division needed to phase out the per diem judges even though the Board's policy change was effective that August 1. Even so, he merits an honorable mention for his work, particularly after August 1, 1938, when other judges had just been selected as regular staff judges.

Additionally, Broadwin shows up again much later, about 1948, as a staff attorney at Region 2, New York, mostly presiding at representation cases, such as 87 NLRB 449 (1949), and on into the 1950s, as at 115 NLRB 1497 (1956). Had he been a Division Judge when he left in 1939, it seems likely, in view of others who left and later returned, that he could have returned to the Division. (Of course, he may have wanted to avoid all the travel that the judges had to do before the San Francisco office opened about January 1951.)

Broadwin was one of the attendees at the November 1938 training conference in Washington, D.C. A zoom-in copy of Broadwin's image appears below:



2. Clark, Wright

Presiding first in May 1938 (7 NLRB 1169), Clark worked beyond the cutoff date of August 1, 1938 — presiding over four cases that August, one in September, and two more in October 1938, the last one, a representation case, reported at 10 NLRB 625. Surely he can be given an honorable mention.

3. Griffin, William H.

With longer service than that of Lawrence Broadwin, above, and similar to the tenure of D. Lacy McBryde, below, William Griffin began presiding in July 1937 (4 NLRB 567). Following the Board's decision to employ only regular-staff judges effective August 1, 1938, Griffin presided over four cases, one each in August, November, and December 1938, and one in January 1939 (11 NLRB 1075). For his work after August 1, 1938, Griffin deserves placement on this Honorable Mention List.

4. Hurley, Harlow

We already are familiar with the name of Harlow Hurley (deemed in this paper to be a per diem judge), the “green trial examiner” as mentioned, from a quote, by Prof. Gross in *Reshaping* at 174. (And earlier, a statement in defense of “green trial examiners” from the 1930s is set forth in this paper in the section on **Officials and Other Early Day Judges**.) In any event, Judge Hurley served from March 1937 (7 NLRB 396) to October 1938 (10 NLRB 652). He deserves mention here.

5. Insirilo, L. Richard

Presiding first in February 1938 (12 NLRB 60), Richard L. Insirilo presided three times after August 1, 1938, the last time being in that September at a representation case, (9 NLRB 778). Although he appears not to have survived the cut made for the permanent staff that August 1, his brief service after that date justifies his mention here.

6. McBryde, D. Lacy

Judge McBryde began presiding before August 1, 1938, specifically in July 1937 (7 NLRB 408). He continued after August 1, 1938, in three cases that same year, the last being in December 1938, and one more several months later, in August 1939 (17 NLRB 1011). Although the impression is rather strong that Judge McBryde was never appointed to be a Division Judge, he deserves placement here.

7. Stephenson, Dwight W.

Similar to some of the others above, Dwight Stephenson began presiding in November 1937 (5 NLRB 65), and continued beyond August 1, 1938, in three cases, the last one being in December 1938 (24 NLRB 1136). For his service, he is recognized here.

A HISTORY OF THE NLRB JUDGES DIVISION