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**Gerhard Alden Gesell papers**

- LC control no.** mm 93081163
- Type of material** Archival Manuscript/Mixed Formats (Collection)
- Personal name** Gesell, Gerhard Alden, 1910-1993.
- Main title** Gerhard Alden Gesell papers, 1956-1993 (bulk 1968-1992).
- Description** 60,000 items.
171 containers plus 1 classified.
67.2 linear feet.
- Access advisory** Restrictions apply.
Classified, in part.
- Biography/History note** Judge and lawyer. Died 1993.
- Summary** Correspondence, memoranda, manuscripts of writings, speeches, agenda and minutes of meetings, opinions, orders, dockets, notes, sentencing information, case files, other legal papers, printed materials, photographs, and other materials pertaining primarily to Gesell's career as judge of the U.S. District Court for the District of Columbia. Documents Gesell's cases in the areas of civil rights, constitutional law, antitrust matters, patent cases, and government regulations. Specific cases pertain to the Watergate break-in and firing of special prosecutor Archibald Cox; the First Amendment in relation to the Pentagon Papers and other issues; legality of abortion; rioting in Washington, D.C. (1969); and Oliver North in the Iran-Contra Affair. Includes a sentencing file (1968-1992) reflecting economic and demographic changes in Washington, D.C., and containing social data concerning families, crime, the judicial system, and race relations; material pertaining to Gesell's assignment on the U.S. Court of Appeals for the District of Columbia Circuit; and a notebook containing his unpublished memoirs entitled, *My Jealous Mistress*. Correspondents include Dean Acheson, Harding F. Bancroft, Howard C. Bratton, Warren E. Burger, Joseph M. Fitzpatrick, John M. Harlan, Hubert H. Humphrey, Lyndon B. Johnson, Irving R. Kaufman, J. Edward Lumbard, John Lord O'Brian, Frank T. Remington, John J. Sirica, Potter Stewart, Lawrence E. Walsh, Earl Warren, and Frank M. Wilson.
- Notes** Thirteen original drawings of political cartoons: transferred to Library of Congress Prints and Photographs Division.
Video recordings: transferred to Library of Congress Motion Picture, Broadcasting and Recorded Sound Division.
Collection material in English.
MSS81163
- Finding aids** Finding aid available in the Library of Congress Manuscript Reading Room and at <http://hdl.loc.gov/loc/mss/eadmss.ms003019>
- Acquisition source** Gift, Gerhard A. Gesell, 1991-1993.
- Subjects** Acheson, Dean, 1893-1971.
Bancroft, Harding F. (Harding Foster), 1910-
Bratton, Howard C. (Howard Calvin), 1922-1964.
Burger, Warren E., 1907-1995.
— Cox, Archibald, 1912-2004.

Fitzpatrick, Joseph M. (Joseph Mark)
 Harlan, John M. (John Marshall), 1899-1971.
 Humphrey, Hubert H. (Hubert Horatio), 1911-1978.
 Johnson, Lyndon B. (Lyndon Baines), 1908-1973.
 Kaufman, Irving R. (Irving Robert), 1910-1992.
 North, Oliver.
 O'Brian, John Lord, b. 1874.
 Remington, Frank J., 1922-1996.

- Sirica, John J.
- Stewart, Potter.
- Walsh, Lawrence E.
- Warren, Earl, 1891-1974.
- Wilson, Frank M.
- United States. Court of Appeals (District of Columbia Circuit)
- United States. District Court (District of Columbia)
- United States. Constitution.
- Pentagon Papers.
- Abortion--Law and legislation.
- Administrative law.
- Antitrust law.
- Civil rights.
- Constitutional amendments--United States.
- Constitutional law.
- Crime.
- Demography--Washington (D.C.)
- Families.
- Iran-Contra Affair, 1985-1990.
- Justice, Administration of.
- Patent laws and legislation.
- Race relations.
- Riots--Washington (D.C.)
- Watergate Affair, 1972-1974.
- Washington (D.C.)--Economic conditions.
- Lumbard, J. Edward.
- Jurists.
- Lawyers.

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Gerhard Gesell

From Wikipedia, the free encyclopedia

Gerhard Alden Gesell (June 16, 1910 – February 19, 1993) was a United States federal judge.

Born in Los Angeles, California, Gesell received an A.B. from Yale University in 1932 and an LL.B. from Yale Law School in 1935. He was a Trial attorney of Securities and Exchange Commission from 1935 to 1940. He was a Technical advisor to the chairman, Securities and Exchange Commission from 1940 to 1941. He was in private practice in Washington, D.C. from 1941 to 1967. In 1945 and 1946, he served as chief Assistant Counsel for the Democrats' side during the Pearl Harbor hearings. He was a Chairman, President's Committee on Equal Opportunity in the Armed Forces from 1962 to 1964.

Judge of the United States District Court for the District of Columbia, Gesell was nominated by President Lyndon B. Johnson on November 29, 1967, to a seat vacated by Spottswood W. Robinson, III. He was confirmed by the United States Senate on December 7, 1967, and received his commission on December 12, 1967. He assumed senior status on January 22, 1993 and served in this status until his death four weeks later.

He died in Washington, D.C. on February 19, 1993.

Sources

- Gerhard Gesell (<http://www.fjc.gov/servlet/nGetInfo?jid=838&cid=999&ctype=na&instate=na>) at the *Biographical Directory of Federal Judges*, a public domain publication of the Federal Judicial Center.

Retrieved from "http://en.wikipedia.org/w/index.php?title=Gerhard_Gesell&oldid=473806223"

Categories: 1910 births | 1993 deaths | Yale University alumni | Yale Law School alumni

| Judges of the United States District Court for the District of Columbia

| United States district court judges appointed by Lyndon B. Johnson

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The New York Times

U.S.

Judge Gerhard Gesell Dies at 82; Oversaw Big Cases

By BRUCE LAMBERT
Published: February 21, 1993

Gerhard A. Gesell, a Federal judge who presided over momentous cases in the Watergate scandals, the release of the secret Pentagon Papers, the Iran-contra affair and the legalization of abortion, died on Friday at his home in Washington. He was 82.

The cause of death was liver cancer, his family said.

Judge Gesell (pronounced guh-ZEL) was appointed to the Federal District Court in Washington by President Lyndon B. Johnson in 1967. On Jan. 22, he had placed himself on senior status, continuing to work but in a limited capacity.

In crucial Watergate and Iran-contra cases, Judge Gesell stood resolute against what he considered abuses of power by the nation's highest officials.

During the 1989 criminal trial of Lieut. Col. Oliver L. North for his role in the Iran-contra affair, the judge instructed the jury, "Neither the President nor any of the defendant's superiors had the legal authority to order anyone to violate the law." Doctors' Office Burglarized

When sentencing two Watergate defendants, Bernard L. Barker and Eugenio Martinez, the judge said, "As you both know well, it is impossible to preserve freedom anywhere when the zealots take over and the rule of law is ignored."

The judge also ruled that national security was not a valid excuse in 1971 when agents broke into the office of the psychiatrist of Dr. Daniel Ellsberg, who helped write the secret Pentagon Papers study of the Vietnam War, which was later divulged to the news organizations.

Judge Gesell, a Democrat, was known as a staunch liberal, a strong civil rights jurist and a judge who exerted an imposing command over his courtroom.

In Mr. North's trial, the judge admonished Fawn Hall, Mr. North's secretary, to "keep your mouth shut while I'm talking." Alarmed by pretrial publicity on Watergate, he warned Special Prosecutor Leon Jaworski that "your good sense should keep you off talk shows" on television.

Henry Huger, a lawyer, once said: "He's like God up there, with his white hair. Sometimes you think he might throw thunderbolts from up there."

Judge Gesell's promptness and efficiency were legendary, and he helped modernize court procedures and train new judges. Chief Justice Warren E. Burger in 1977 placed him in charge of the thousands of suits filed claiming illnesses from defective swine flu vaccinations.

Decisive and incisive, Judge Gesell was quick to cut to core issues. A former clerk said, "When he was a trial lawyer, he thought the best way to try a case was to go for the jugular and leave the capillaries alone."

In his 25 years on the bench, the docket of trials Judge Gesell presided over and rulings he issued was full of celebrated cases.

Eager to tackle highly charged issues, he struck down the District of Columbia's abortion ban in 1969, in his first year as a judge. The Supreme Court overruled him, but later reversed itself and legalized abortion.

In 1978 he joined a three-judge panel that threw out regulations forcing the mandatory retirement of foreign service officers at the age of 60, a ruling that was an important step in the abolition of mandatory retirement.

During the Watergate investigations and litigation, Judge Gesell ruled that the dismissal of Archibald Cox as special prosecutor in the "Saturday night massacre" in October 1973 had been illegal. North Found Guilty

In 1989, a jury found Colonel North guilty of three of the 12 crimes he was charged with: obstructing Congress, destroying documents and receiving an illegal gratuity. The verdicts carried a maximum penalty of 10 years in prison and fines of \$750,000.

Judge Gesell surprised many people when he decided not to send the former Marine Corps officer to prison. Instead he fined Mr. North \$150,000, placed him on probation for two years and ordered him to serve 1,200 hours of community service. But he told Mr. North: "I believe you still lack full understanding, however, of how the public service has been tarnished."

"I do not think in this area you were a leader at all, but really a low-ranking subordinate working to carry out the initiatives of a few cynical superiors," Judge Gesell said.

On appeal, Mr. North won a reversal of part of his conviction and was granted a new hearing on whether his remaining conviction should be voided because of his being granted immunity testifying to Congressional committees. Prosecutors then dropped their case, and he was free of any penalty.

Presiding over the 1974 trial of John D. Ehrlichman, former President Richard M. Nixon's chief adviser on domestic affairs, Judge Gesell sentenced him to 20 months to five years in prison for his role in the break-in into a doctor's office to find out about Dr. Ellsberg, who had helped prepare a secret study on the Vietnam War, which came to be known as the Pentagon papers.

Judge Gesell called the break-in "a shameful episode in the history of the country."

In the complex Pentagon Papers litigation, which was heard by 29 Federal judges, Judge Gesell was the only one who did not issue a temporary order restraining publication.

On June 21, 1971, Judge Gesell ruled that The Washington Post could continue to publish a series of articles about the Vietnam War based on the secret study after the Government tried to halt publication.

"It should be obvious that the interests of the Government are inseparable from the interests of the public," Judge Gesell read from his handwritten opinion. "These are one and the same, and the public interest makes an instant plea for publication."

The New York Times had begun publishing the Pentagon Papers on June 13, 1971. On June 30, the Supreme Court upheld the right of The Times and The Post to continue publication.

In November 1969, Judge Gesell declared that the District of Columbia's abortion statute was unconstitutional. The statute, which permitted only those abortions meant to preserve a woman's life or health, was unconstitutionally vague, he ruled. Graduated From Yale

Born in Los Angeles, Judge Gesell grew up in New Haven. His father, Arnold, was a renowned pediatrician and child-development specialist who taught at Yale. Gerhard Gesell graduated from Yale in 1932 and its law school in 1935.

His first job was as a staff lawyer and adviser to Chairman William O. Douglas at the new Securities and Exchange Commission from 1935 to 1941. Despite his youth, he was put in charge of a major investigation of the New York Stock Exchange that called as witnesses major Wall Street figures like J. P. Morgan.

While still in his 20's, he also conducted hearings into the insurance industry for a Congressional committee. An editorial cartoon portrayed him as David against Goliath.

Then in 1941 he joined the prominent law firm of Covington & Burling in Washington, where he specialized in antitrust and other corporate cases, arguing some of them before the Supreme Court.

While in private practice, he also took on special government assignments. He served as a lawyer to the Joint Congressional Committee investigating the attack on Pearl Harbor and questions about advance warnings and preparations. He also served as chairman of President John F. Kennedy's Commission on Equal Opportunity in the Armed Forces from 1962 to 1964.

In 1989 Judge Gesell won the the Edward J. Devitt Distinguished Service to Justice Award, given annually to an outstanding Federal jurist.

Judge Gesell expressed his credo in a 1986 ceremony granting citizenship to 98 immigrants. "You are now part of a great experiment in government," he said. "Don't be willing to leave government to others. Participate." He added: "Demand competence in your leaders. Seek out the good, shun the bad. Vote. Work. Help others. Be useful. Obey the law. Speak out against intolerance. Get involved. Use your minds, not your fists. Your voice will be heard."

His major pastimes were spending weekends at his 358-acre cattle, sheep and honeybee farm near Leesburg, Va., and sailing and gardening during summers on Penobscot Bay, Me.

Surviving are his wife of 56 years, the former Marion Pike, known as Peggy; a son, Peter of Cambridge, Mass.; a daughter, Patsy Gesell of Manhattan; a sister, Catherine Walden, known as Tassy, of Guilford, Conn., and three grandchildren.

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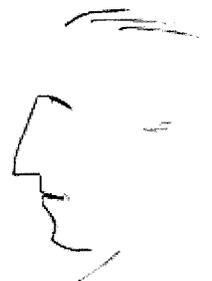
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Legal Spectator

There Were Giants in the Land

By Jacob A. Stein

The narrator in the novel I am reading commences this way: "Stupidity is not my strong suit." These words immediately brought to mind Frederick Bernays Wiener (1906-1996) and Judge Gerhard Gesell (1910-1993).



I start with Fritz Wiener. I recall seeing him at Connecticut and L in front of the Stoneleigh Court Building (no longer there), a beautiful antique apartment house converted to an office building. Although I did not know who Fritz was, I knew he must be somebody. He wore a cowboy hat that conflicted with his otherwise conservative dress and sported mustachios approaching the style of Oliver Wendell Holmes Jr.

Sometime later I was introduced to him by a friend with whom I was taking a walk along Connecticut Avenue. "There is Fritz. I want to say hello to the Colonel." We approached Fritz and my friend introduced me. Pleasant words were exchanged. We resumed our walk. I asked who Fritz Wiener was. "Fritz is the leader of the appellate bar. He was in the solicitor general's office. He also is the authority on military law."

Months later I called Fritz to ask him to take the appeal of a criminal case. Fritz suggested I come by his Stoneleigh Court office to discuss the case. Fritz had a working fireplace, large library rooms, and comfortable leather chairs. He lit up a cigar and analyzed the facts five different ways, reciting as he went along the relevant precedents.

Fritz was a grandnephew of Sigmund Freud. He graduated cum laude from Brown University and magna cum laude from Harvard Law School. He was assistant to the solicitor general from 1945 to 1948, when he entered private practice.

Fritz described in his book *Effective Advocacy* his favorite case, *Reid v. Covert*, 354 U.S. 1 (1957). In that case the Supreme Court first ruled against Fritz. Fritz moved for reconsideration. Granted. Yes, granted. He reargued the case. The Supreme Court reversed itself.

Fritz, in 1972, had a victory before the Supreme Court in a case involving the rights of a private club. He was then retained to file the petition for certiorari in another case with

similar issues. He had every reason to believe the petition would be granted. It was denied. The only justice who voted to grant certiorari was a justice for whom Fritz had a minimum of high regard.

Fritz took this very hard. He said that things had reached the point where it was time to call it quits. Doris and he had decided to say goodbye to the law practice and settle in Phoenix, Arizona. Perhaps the cowboy hat he wore was a clue to his desire to wind up way out west.

Fritz's friends convened a going-away party at the Army Navy Club. In attendance to wish Fritz and Doris goodbye was a group of well-wishers that included solicitor's office veterans, judges, and lawyers. The evening came off very well, with Fritz's friends telling stories of Fritz's star performances before the Supreme Court. There were descriptions of Fritz in his swallowtail coat, the only remaining private practitioner who dressed with such formality.

A friend recalled that in one of his appearances Justice Frankfurter commented to Fritz, "You are speaking of the conduct of the prosecutor. Let me say that when I was a prosecutor in the Southern District of New York we would not think of doing such a thing that you describe." Fritz's reply: "Justice Frankfurter, there were giants in the land in those days."

Another friend recalled Fritz's definition of a perfectionist. He is a person (Fritz) who takes infinite pains himself and gives infinite pain to others.



Now Judge Gesell. His father was a distinguished child development specialist connected with the Yale faculty. Judge Gesell was Yale 1932 and Yale 1935. He commenced his legal career as adviser to the Securities and Exchange Commission (SEC) chairman, William O. Douglas. In 1941 he joined Covington & Burling's trial section, specializing in antitrust and major corporate litigation. He had served on a number of presidential appointment committees, including the chairmanship of the President's Committee on Equal Opportunity in the Armed Forces, 1962-64. In 1967 he joined the United States District Court for the District of Columbia.

Judge Gesell was of medium height, portly, with a florid face topped by a full head of white hair. He had a dramatic, authoritative-speaking voice. He could be irreverent. He could be gruff. He could be friendly. He could be contrarian. He could be all four within five minutes.

His grasp of the facts and what the law should be was intuitive and instant. As a trial progressed he knew where the lawyers would go if he let them. He curbed them by saying, "Sir, some lawyers—of course you are not one of them—might be tempted to ask questions that would be out of place in a case like this. I know you will not do that."

Judge Gesell, decisive by nature, recalled an SEC commissioner

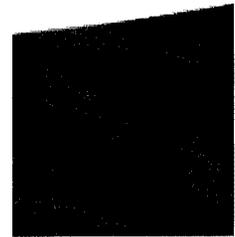
who could not make up his mind about anything. "If I met him on a staircase, I could not tell whether he was going up or coming down."

He took few things under advisement. Whenever the issue was close, he used oral argument to decide which lawyer was in the right. He listened first to the lawyer requesting a ruling. When that lawyer began to falter, Judge Gesell stopped him right there and asked the other lawyer to comment on what was just said. A few minutes of this give-and-take and Judge Gesell had what he needed to decide the case.

He believed that practicing law involved going to court and speaking up. He would not let his court become a document warehouse.

When Judge Gesell had before him a lawyer handicapped by unashamed ignorance, the judge rose to the acme of judicial distinction. He demonstrated the ability to look a lawyer straight in the eyes for two hours and not hear a damned word he said.

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