

Chapter 3

Pre-Natal Labor in the Birth of a Republic

Cromwell had on the Isthmus both American and Panamanian employees and officers of the Panama Railroad dependent on his goodwill for their livelihood. They were accustomed to taking orders from him because he, as general counsel of the railroad and of its owner, the New Panama Canal Company of France, was virtually the head of the operation. These potential instruments for revolution were Jose Augustin Arango, land agent and local attorney for the railroad, who was also its lobbyist in Bogota as Senator representing the Department of Panama; Captain James R. Beers, freight agent and port captain; James R. Shaler, superintendent; Herbert G. Prescott, assistant superintendent; and Dr. Manuel Amador Guerrero, the railroad's medical officer.

Senator Arango told some, but by no means all of the story of the "revolution" in his pamphlet, "*Data for a His-*

tory of the Independence.” It was printed in pamphlet form in 1905. Telltale data in an earlier version were deleted. Even the 1905 pamphlet was removed from the Congressional Library in Washington. In it Arango said he refused to attend the 1903 session of the Colombian Congress because he was convinced the Hay-Herran Treaty would be rejected and that secession would be “the only way for the salvation of the Isthmus.”

Arango’s official version was that he sought out Captain Beers, “a man of entire trustworthiness and excellent judgment having influence with persons in high places,” and asked him to go to New York. Also that “Captain Beers accepted the delicate mission and immediately left for the United States.” The persons with influence in high places whom Beers knew were in Cromwell’s office.

There was another version, known to several of Arango’s co-conspirators and confirmed by them later to representatives of *The World*. It was that Senator Arango’s first instructions were not to go to Bogota but to meet either Cromwell or his representative in Kingston, Jamaica; that this was changed to have Beers see Cromwell in New York. Nothing in Captain Beers’ record indicated that he would leave his Panama Railroad job to seek revolutionary help without explicit approval from top authority.

Beers on returning to Panama August 4, 1903, “brought us very satisfactory news,” the Arango pamphlet said. “He came well supplied with keys, codes and instructions from the friends who in that country were going to aid us when the movement started. Captain Beers subsequently also lent very important aid to the cause of our independence.”

Others present at the secret meeting in Panama to receive his report said Beers told them he got his instructions and code from Cromwell, and that they could count on Cromwell’s promise to “go the limit.”

Then Dr. Amador, the Panama Railroad’s medical officer, was put forward to give the revolutionary movement a native flavor. Ricardo Arias was to accompany Amador to

New York. They were instructed to obtain from Cromwell and from official Washington direct confirmation of the promises of financial aid and military protection which Beers had reported. The new commissioners were also told they must make sure of money in hand to finance the revolt.

The Arango pamphlet said Amador could go without exciting suspicion because of his family relationships. His son, Dr. Raoul A. Amador, was married in New York and was stationed at Fort Revere, Massachusetts, as an assistant surgeon with the United States Army. So Father Amador wrote Son Raoul to send a cable, "I am sick; come." The "sick" message arrived in time to equip Dr. Amador with a good alibi when he sailed from Colon August 26, 1903. (The history of Panama is sprinkled with planned alibis such as that one.) Ricardo Arias at the last moment found he could not go, so Dr. Amador had to keep his own counsel until he arrived in New York September 1, 1903.

The Arango-Amador conspiracy by that time had been officially extended to include Ricardo Arias, a large land and cattle owner; Tomas Arias, who represented Charles R. Flint's American Trading & Development Company on the Isthmus; Carlos C. Arosemena; Federico Boyd, a local capitalist; Manuel Espinosa B., Amador's brother-in-law, a retail druggist who was under contract to the Panama Railroad; and Nicanor A. de Obarrio. Unofficially, Captain Beers and Herbert G. Prescott of the Panama Railroad were kept advised of every move and they in turn informed Cromwell or his agents.

The conspirators equipped Dr. Amador with codes for secret communication by cable, but no expense money. They expected North Americans would pay the cost of a revolution. Being a good poker player, Amador won enough from fellow passengers to tide him over for several days but eventually had to borrow on his personal credit from the New York office of Joshua Lindo, a Panamanian merchant-banker.

Arriving in New York, Dr. Amador registered at the Ho-

tel Endicott, Amsterdam Avenue at Eighty-first Street, and retained Room 152-C until his departure for Panama October 20. As an employee of the Panama Railroad, he first visited the company's New York office and, with its vice president, E. A. Drake, went to see Cromwell and present Arango's letter of introduction.

The Arango pamphlet omitted Cromwell's name, and described him only as "the respectable person who through Captain Beers had opened the way for our hopes." Cromwell biographers now say that he refused to see or assist Dr. Amador and that neither he nor his associates promoted the Panama "revolution." But Dr. Amador in his own carefully-edited account, written within a year of his death in 1909, said:

The first interview was most cordial, and Mr. Cromwell made me a thousand offers in the direction of assisting us. But nothing could be done, he said, except when the Herran-Hay Treaty has been absolutely rejected, for in the end we believe it will be approved in spite of the great opposition of the houses of Congress. Vain were my efforts to convince Mr. Cromwell that no hope whatever should be entertained, and we continued the appointment to go on discussing the matter the following day.

While Cromwell was telling Amador that he believed the treaty would be ratified in Bogota, he was telling J. Gabriel Duque, owner of the *Panama Star & Herald* and of the Panama lottery, just the opposite. Duque came up on the same ship with Dr. Amador but they did not exchange confidences. Duque was taken to the Cromwell office by the press agent Farnham. Duque later told us that Cromwell said the treaty was dead and that Panama should make a revolution.

Duque went to Washington September 2, 1903. On advice of Farnham to avoid registering at a hotel, Duque went on the night train, waited for Secretary Hay to reach his office, conferred with him for two hours, and then paid a

friendly visit to Colombian Minister Herran. Duque's son, Carlos, was married into a distinguished Colombian family and had prospered in his business in Bogota. Duque suggested to Dr. Herran that a word of caution to Bogota about the threat of a revolt in Panama might yet hasten approval of the Hay-Herran Treaty before it would expire by limitation on September 22.

Minister Herran immediately cabled his government that a revolt in Panama would probably have "powerful support" from the United States, and that "the Canal Company and Panama Railroad are deeply implicated." Dr. Herran put detectives on the trail of Dr. Amador and wrote a note of warning to Cromwell and to the New Panama Canal Company that Colombia would hold them responsible for any secessionist plot in Panama.

The Arango historical pamphlet said the Herran warning "influenced so unfavorably the soul of the responsible gentleman with whom our representative had come to an understanding, that he evaded from that time, on various occasions, a meeting with Dr. Amador, and there was produced a notable change in his conduct."

Dr. Amador's earlier and unedited account, given orally to his fellow conspirators when he reported to them on his return from New York, said Cromwell discussed every phase of the situation in his first and second conferences, but refused to see Amador on two subsequent visits. When Amador waited and intercepted Cromwell in his outer office, Cromwell excitedly told him he would have nothing to do with the independence and pushed Amador out the door.

Then, for the record, to protect his French clients, Cromwell on September 10, 1903 cabled Colonel James R. Shaler, Superintendent of the Panama Railroad, to "take extra and every precaution to strictly perform our obligations to Colombia under concession and instruct officials and employees to be careful as heretofore not to participate in any movements or hostilities whatever . . . in order to prevent

even a pretext for complaint or claim by the Bogota or Panama governments (signed) Cromwell, General Counsel."

Having covered himself by that alibi, Cromwell sailed for Paris, October 15, "to confer rapidly and return." He arrived in Paris October 23 and did not return to New York until November 17. Meanwhile Bunau-Varilla took over where Cromwell ostensibly left off.

Bunau-Varilla's official version, as told in his encyclopedic book of Panama adventures published in London in 1913, boils down to this: His arrival in New York September 22, 1903 was by "a chance incident that was to have incalculable consequences." Bunau-Varilla had caused a prophetic and warning article to be published, September 2, 1903 in the Paris newspaper *Le Matin*. He said he sent a copy "under sealed envelope" to President Theodore Roosevelt at Oyster Bay, and that he intended "to await in Paris the revival of political activity in Washington." He arrived in New York several weeks ahead of his schedule solely because his wife was afraid to cross the Atlantic alone, and she was sailing to join their 13-year-old son, a victim of hay fever, who was summering on the Maine coast with the daughter of Bunau-Varilla's old friend John Bigelow, retired American Minister to France.

So it would appear that the astute and resourceful Cromwell, having invested ten years and hundreds of thousands of dollars in time in the Panama enterprise, fled to Paris without knowing for a certainty what competent hand would be there to guide and finance the "revolution."

Back in 1902 Cromwell telegraphed a cordial note of thanks and cooperation to Bunau-Varilla for having interceded with Senator Hanna to get Cromwell reinstated as general counsel of the French company. But at the end both denied they were cooperating when Cromwell left for Paris and Bunau-Varilla stepped in to carry through the revolutionary plan.

The Cromwell brief said, four years later, that the gap

was filled by one of Cromwell's partners, William J. Curtis and that Curtis "took up the management of the company's interests, of which we notified the President and Secretary of State by letter." Also that from Paris on October 31, 1903 Cromwell cabled President Theodore Roosevelt that the French company's management "express to you their entire confidence in the success of your masterful policy. I have received full powers to complete all details on my coming return."

Bunau-Varilla on arriving in New York September 22 registered at the Waldorf-Astoria, went immediately to see Joshua Lindo, the Panamanian merchant-banker, and was told that Cromwell had renegged on all his promises to Amador. Crushed by Cromwell's rebuff — so Bunau-Varilla recorded in 1913 — Amador went to see him at the Waldorf-Astoria the very next day. Bunau-Varilla's story was that he assured Amador, then went to Washington, saw Secretary of State John Hay and Assistant Secretary Francis B. Loomis, and was taken by Loomis to the White House for a conference with President Roosevelt on October 9.

Bunau-Varilla said he told the President that a revolution in Panama was certain. Then, by his own deductions, he figured out that the United States would not permit Colombia to put down a revolt, and that Amador should sail for Panama on October 20 to carry out the safe "revolution" under the guns of the United States Navy. Bunau-Varilla in his 1913 volume set forth in quotation marks what Amador said and what Bunau-Varilla said in such detail as to suggest that a then-non-existent tape-recorder was at hand. Taking to himself full credit for putting over the "revolution" and creating the Republic of Panama, Bunau-Varilla quoted himself as saying to Amador:

"The moment has come to clear the deck for action I can give you the assurance that you will be protected by the American forces forty-eight hours after you have proclaimed the new Republic of the Isthmus I take the responsibility of it. I take also the respon-

sibility of obtaining for you, from a bank, or of furnishing you myself, the one hundred thousand dollars which are necessary to you . . . I have prepared the programme of military operations, the Declaration of Independence, a base for the Constitution of the new Republic, and finally a code with which to correspond with me . . . It will be necessary to entrust me with the diplomatic representation of the new Republic at Washington."

Mme. Bunau-Varilla patched together the makeshift Panama flag, which Dr. Amador wrapped around his waist and delivered to his fellow conspirators the evening after he arrived in Colon on October 27. Herbert G. Prescott, assistant superintendent of the Panama Railroad, alone met Amador at the pier. He told Prescott that Bunau-Varilla had promised to have American warships on hand to protect Panama from Colombia. The documents that Bunau-Varilla had given to Dr. Amador were entrusted to Captain Beers' son, George K. Beers, purser of the S. S. Yucatan on which Amador came from New York.

In anticipation of trouble on the Isthmus United States Army officers, disguised as civilians, were in Panama and Colon and in the interior mapping possible offensive and defensive positions. President Theodore Roosevelt in October ordered the General Staff to report on what forces would be needed to hold the coastal towns. On October 16 he personally interviewed Captain C. B. Humphrey and Lieutenant Grayson Mallet-Prevost Murphy. Then three more "observers" were dispatched to Panama. Captain Sidney A. Cloman passed as "S. A. Otts, lumberman;" Captain William G. Hahn as "H. E. Howard, mining engineer," and Major Guy L. Edie, medical officer, as "G. E. Edie, New York capitalist." Hahn, alias Howard, with letters of introduction to Dr. Amador, made himself socially acceptable by playing poker with Captain Beers, whom he knew as Cromwell's confidential man.

Even before Dr. Amador could report to his revolutionary junta at Federico Boyd's house on the evening of Oc-

tober 27 the U.S.S. Dixie had been ordered to load 450 marines and be ready to sail from League Island "about the 23rd." And by October 24 U.S.S. Nashville had been ordered to load coal and proceed to Kingston. U.S. Navy ships were also heading south from San Francisco, under sealed orders.

All-important to the men of the revolutionary junta, next to being saved from the wrath of the Colombian Government, was how to meet the expenses. On October 26 — three days after Cromwell arrived in Paris — the Credit Lyonnais by cable to Heidelbach, Ickelheimer & Co. of New York opened in favor of Bunau-Varilla a credit of \$100,000. Bunau-Varilla always contended that this near-proximity of dates did not mean that he and Cromwell were cooperating.

Just how the Panama "revolution" was financed may always remain part of the untold story. Many versions have persisted for half a century. But dissatisfaction with Dr. Amador's report to the revolutionary junta at Federico Boyd's house on the evening of October 27, 1903, was indelibly remembered and told and re-told.

Dr. Amador outlined the plan agreed upon between him and Bunau-Varilla. Only the Canal Zone and the terminal cities of Panama and Colon would be declared independent. The United States Government would recognize this new nation as the "Republic of the Isthmus." Amador's unfurling of the proposed Panama flag, sewed together in New York by Mme. Bunau-Varilla, brought a storm of protest. It was an American flag with the jack cut out and in its place on a blue silk ground two stars were joined by a narrow strip of white ribbon indicative of the Canal.

Ricardo Arias interrupted the flag criticism to denounce the exclusion of the rest of the Department of Panama. In common with other substantial landowners, he would be ruined if his property was not protected from Colombian reprisal. Amador said he had reported only what had been suggested in Washington, and he was sure the United States would not let Colombian troops attack any part of

Panama. Tomas Arias and Federico Boyd joined the dissenters. Prescott, the only American in the meeting, was silent. The meeting broke up around 11 o'clock and Dr. Amador went home to share his concern with his cool-headed wife, Maria de la Ossa de Amador.

On the following day Tomas Arias went to Amador and told him he did not wish to go along with the plan as he was afraid it would not turn out well and he would suffer more than anyone else. Amador tried to reassure him, but Arias replied in phrases almost identical with statements made by other revolutionaries in 1909. Arias told Amador that both he and Jose Augustin Arango were "old men and don't care — but I do care; I don't like to be hung."

Seeing that Tomas Arias was determined to withdraw and that his disaffection would undoubtedly start a panic among the others, Amador offered to send a cable to obtain more certain assurance that American warships would be on hand. He asked Arias to await a reply. Then he went to Prescott, told him of the Arias threat, and on Prescott's advice sent the following cable to Bunau-Varilla in their private code:

"FATE NEWS BAD POWERFUL TIGER URGE VAPOR COLON."

Transalted, this message read:

"WE HAVE NEWS OF ARRIVAL OF COLOMBIAN FORCES BY ATLANTIC IN FIVE DAYS MORE THAN TWO HUNDRED. URGE WARSHIP FOR COLON."

Bunau-Varilla hurried to Washington, saw Assistant Secretary of State Loomis and, stopping off in Baltimore at noon of October 30, sent from there his cabled answer to Amador:

"THIRTY-SIX HOURS ATLANTIC, FORTY-EIGHT PACIFIC."

And the American warships arrived as scheduled.

The Nashville, as per Bunau-Varilla's promise, arrived at Colon November 2 at 5:30 P.M. The same day, by direction

of President Theodore Roosevelt, Acting Secretary of the Navy Charles Hial Darling cabled the commanders of the Nashville at Colon and the Dixie, not yet arrived from Kingston, to "maintain free and uninterrupted transit. If interruption threatened by armed forces, occupy the line of railroad. Prevent landing of any armed forces" And the Dixie's commander was cabled to "proceed with all possible dispatch from Kingston to Colon. Government force reported approaching the Isthmus in vessels. Prevent their landing if in your judgment this would precipitate conflict." And the commanders of the Marblehead at Acapulco, Mexico, and the Boston at San Juan del Sur, Nicaragua, were ordered to "proceed with all possible dispatch to Panama If doubtful as to the intention of any armed forces, occupy Ancon Hill strongly with artillery."

But before these orders could be delivered to the Navy commanders, 500 Colombian troops under Generals Juan B. Tovar and Ramon G. Amaya arrived at Colon aboard the Colombian gunboat Cartegena at 11:30 P. M. of November 2.

News of the unexpected arrival of so many Colombian troops was telephoned from Colon to Prescott, who was in Panama keeping in constant touch with Amador. The conspirators almost lost heart, but the resolute wife of Dr. Amador told them it was too late to draw back. It was hastily agreed that Colonel Shaler should bring over the Colombian generals and isolate their soldiers in Colon. Prescott had provided for this emergency by shifting all rolling-stock to the Panama end of the line. If troops did get a train by force, Prescott had planned to have their arms stacked in the rear car, then have it cut off on the way over and deliver unarmed soldiers into the hands of the rebels in Panama. If worse came to worst, Prescott would have a dynamite gang blow up the train at Miraflores. His brother Richard, also a Panama Railroad employee, would be on hand — as he was — to cut telephone and telegraph communications.

So "Independence Day" dawned with Colonel Shaler at

the Colon dock to welcome Generals Tovar and Amaya and escort them to seats in a special car. To their protest he replied that the troops would be on the next train. Then he blew a whistle himself and started the train to Panama, while he remained in Colon.

Meanwhile General Esteban Huertas, commander of the Colombian garrison in Panama, had been taken into the conspiracy — with ample promises. His small command had been depleted by sending Colonel Leoncio Tascon, who was believed to be loyal to Bogota, and 100 of his men to the interior town of Penonome to suppress a “reported” but non-existent invasion from Nicaragua.

Huertas with military escort welcomed Tovar and Amaya at the railroad station in Panama. The Governor’s coach took them downtown and they were entertained from noon until 5:30 P. M., when Huertas gave the order. Tovar and Amaya were surrounded with fixed bayonets and told they were prisoners of the revolution. At 6 P. M. Arango, Tomas Arias and Federico Boyd assumed charge as a “Junta of Government” and immediately notified Colonel Shaler, as superintendent of the Panama Railroad, that the new entity, to be known as “The Republic of the Isthmus,” would assume all obligations under the contract between the railroad company and Colombia. At the same time Commander Hubbard of the Nashville ordered Shaler not to transport either Colombian or revolutionary troops.

The only unplanned incident was the firing of five or six shells from the Colombian gunboat Bogota in Panama harbor. Its commander threatened to bombard the city if the Colombian generals were not released, but soon changed his mind. During the bombardment the Panama City Council was meeting and resolving to support the Provisional Government.

Prompt decisions were needed, for Colonel Eliseo Torres, in command of the troops stranded in Colon, was threatening to burn the town. No clashes resulted. Torres agreed to take his 500 soldiers back to Colombia provided he got

\$8,000 for himself and a guarantee that passage for his men on the Royal Mail steamer Orinoco would be forthcoming. Prescott appealed to the Junta, but it had used up all the credit it could then command from local bankers to pay off Huertas and his men. So Prescott approved using \$8,000 from the safe of the Panama Railroad in Colon, and the passage money was guaranteed by the signatures of Shaler for the railroad, Porfirio Melendez for the Provisional Government, and Commander Hubbard for the United States Navy.

News of the "spontaneous uprising" at Panama was withheld from North American newspapers until late at night November 3. As forecast by Cromwell's press agent Farnham back in midsummer, the "revolution" escaped conspicuous publicity in competition with election news. The *New York Herald* gave almost its entire front page to the election of George B. McClellan as Mayor of New York, under eight-column headlines. Buried in a lower corner was a short dispatch from its Isthmian correspondent, Samuel Boyd, brother of Federico. It was labeled "New York Herald Cable, Panama, Colombia, via Galveston, Texas." The heading was: "Panama Taken by Rebels, Independence Declared. Successful Revolution Coup Effected, War Ships at the Port Are Seized and Colombian Officials Are Prisoners."

Early on November 4 Dr. Amador made a rabble-rousing speech to General Huertas and his soldiers. Bribe money, obtained from local bankers, was paid promptly, and soon the soldiers and a mob of civilians were carrying Huertas in a chair around the plaza flanked by Dr. Amador carrying the new Panama flag and by Felix Ehrman, acting United States Consul General, carrying the Stars and Stripes. The parade ended with bottles of champagne doused on the head of the General of the Revolution. The price of this new loyalty was \$50 (silver, worth 50 cents in American money) per soldier; and, later, in thousands of silver dollars, according to rank of the Huertas lieutenants, up to \$30,000 silver for Huertas. Later the Amador Government retired

Huertas on a grant of \$50,000 gold.

With a similar setting early in the afternoon of November 4 the patriots assembled in solemn session in the Municipal Council. They recognized Arango, Arias and Boyd as their Provisional Government, rejected the designation "Republic of the Isthmus" and elected as the Cabinet of the about-to-be Republic of Panama: Secretary of Government, Eusebio A. Morales; Secretary of War and Navy, Nicanor A. de Obarrio; Secretary of Foreign Affairs, Francisco V. de la Espriella; Secretary of Treasury, Manuel E. Amador; Secretary of Justice, Carlos A. Mendoza; Secretary of Public Instruction, Julio J. Fabrega. They also listed General H. O. Jeffries, Commander of the gunboat *Twenty-first* of November, as one of the officials of the Provisional Government. When the Hay-Bunau-Varilla Treaty was formally ratified, December 4, 1903, Francisco Antonio Facio, as sub-secretary, signed in place of Fabrega.

The patriots then adjourned to a massmeeting in Cathedral Plaza to hear the Panama Declaration of Independence read from the Cathedral steps by their newly-elected Secretary of Justice, Carlos A. Mendoza.

Bunau-Varilla received his first direct news by cable from Dr. Amador at 10 P. M. of November 3. By 11:45 he was on the night train for Washington. He conferred with Assistant Secretary of State Loomis, but still lacking his promised diplomatic powers, he returned to New York and continued for two days to demand them by cable. His urgent messages were crossed by equally urgent demands from Amador for the \$100,000 which he said Bunau-Varilla had promised. Finally Bunau-Varilla came through with \$25,000 and the Provisional Government of Panama cabled Washington on November 6 that Bunau-Varilla had been appointed "Envoy Extraordinary with full powers to conduct diplomatic and financial negotiations."

On the same day, November 6, Colonel Torres, having received his reward of \$8,000 from the safe of the Panama Railroad in Colon and guaranteed passage for his troops'

return to Colombia, brought the War of Independence to its apparent end. Formal celebration in Colon was scheduled for the morning of November 7. A resolution of adhesion to the Provisional Government passed by the Colon Municipal Council was read, also the Manifesto of the Junta and the Declaration of Independence. Then the new flag of the Republic of Panama was hoisted by Major William Murray Black, U. S. A., and the crowd cheered "Viva la Republica! Vivan los Americanos!

So was born the little Republic whose radicals now cry: "Gringos, go home!"

Chapter 4

The Baby Republic Is Born

At 12:51 P. M. of November 7, 1903 Secretary of State Hay cabled instructions to United States Vice Consul General Felix Ehrman in Panama to enter into relations with the de facto government. At 1:40 P. M. Secretary Hay received Bunau-Varilla's telegram from New York announcing that "the Republic of Panama has been pleased to designate me as its Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States" and that "in spreading her protecting wings over the territory of our Republic the American Eagle has sanctified it."

Bunau-Varilla's authority was already in jeopardy. Dr. Amador cabled him — so wrote Bunau-Varilla in his 1913 book of Panama adventures — that his powers would be limited to those of a "Confidential Agent," and Arango, Boyd and Arias instructed him by cable to contract a loan of \$200,000. Bunau-Varilla said he ignored these instructions as beneath his dignity.

A newspaper story that a special commission would soon

leave Panama and do the treaty negotiating gave Bunau-Varilla the weapon he needed to belabor Secretary Hay to rush a treaty to conclusion. On November 13, 1903 President Theodore Roosevelt received Bunau-Varilla at the White House and extended formal recognition to the new Republic of Panama. By November 15 Secretary Hay sent to Bunau-Varilla a copy of the Hay-Herran Treaty, which Colombia had rejected, modified to apply to Panama.

Bunau-Varilla, according to his later story, worked all night redrafting and strengthening Secretary Hay's draft. His handling of the question of sovereignty is still a burning issue in Panama, and should be carefully noted here. Bunau-Varilla wrote in his 1913 book:

"After mature thought I recognized that if I enumerated in succession the various attributes of sovereignty granted, I ran the risk of seeing, in the Senate, some other attributes asked for. To cut short any possible debate I decided to grant a concession of sovereignty en bloc." The formula which Bunau-Varilla said seemed to him the best was expressed in his text of Article III of the Hay-Bunau-Varilla Treaty. The sovereignty of the United States within the Panama Canal Zone, despite Panamanian clamor for its abrogation, still stands.

Article III, Hay-Bunau-Varilla Treaty of 1903

"The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

In contrast, the rejected Hay-Herran Treaty provided: "The rights and privileges granted to the United States by the terms of this convention shall not affect the sovereignty

of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised. The United States freely acknowledges and recognizes this sovereignty and disavows any intention to impair it in any way whatever”

Bunau-Varilla recorded in his 1913 book that at 10 P. M. of November 17, 1903 he sent a note to Secretary Hay at his residence and on Mr. Hay's immediate response had a long conference that night preliminary to the final re-typing of the treaty in the State Department on the 18th. Bunau-Varilla wrote in 1913 that he condensed his impressions as to the necessity for acting rapidly in these words to Secretary Hay: “So long as the delegation [Amador and Boyd] has not arrived in Washington I shall be free to deal with you alone, provided with complete and absolute powers. When they arrive I shall no longer be alone. In fact I may perhaps soon no longer be here at all.”

Bunau-Varilla later confided to history that, with the assistance of Frank D. Pavey, an American lawyer whom he appointed counsel to the Panama Legation in Washington, he wrote the entire treaty. Also that Amador and Boyd came from Panama “under pretense of furnishing me with advice, but in reality to make the treaty themselves.” Further Bunau-Varilla accounted for Amador's dissatisfaction as being due to personal ambition. He said Amador objected when Bunau-Varilla told him before leaving for Panama in October to make the “revolution” that Bunau-Varilla insisted on being himself the first Minister, for Amador wanted that honor for himself.

Whatever may have been the secret motives of their journey, Amador and Boyd arrived from Colon on the steamer City of Washington early in the morning of November 17, 1903. Cromwell's Man Friday, Farnham, went down the bay on a revenue cutter and escorted them to the old Fifth Avenue Hotel. There they were registered from the morning of the 17th to 3:30 P. M. of the 18th. Amador spent the night at the home of his son, Dr. Raoul A. Amador, 216 West 112th Street.

Cromwell four years later in his brief to the French arbitrators of his fee said: "Before leaving Panama these personages had arranged by cable to meet Mr. Cromwell in New York for a conference, Mr. Cromwell being on his way at the same time from Paris to New York An important conference which lasted a whole day followed, in the course of which we obtained the assurance that the concessions and property of the Panama Canal Co. on the Isthmus would be fully recognized and protected."

New York papers reported that Cromwell was closeted with Amador and Boyd at their hotel for an hour, and quoted Cromwell and Boyd as saying the call was purely social; that Cromwell came simply to congratulate the patriots. Boyd's denial under oath in 1909 that he and Amador saw Cromwell on their arrival in New York is a later incident.

Knowing that Amador and Boyd were in New York, Bunau-Varilla sent them a "telegram of welcome, apologizing for not being able to go and meet them." Then he hastened to obtain an appointment to be at Secretary Hay's home to sign, at 6:40 P. M. of November 18, 1903, the historic Hay-Bunau-Varilla Treaty. Next, at 7:15 P. M. Bunau-Varilla cabled his government in Panama that the treaty had been signed, and that the special commissioners would arrive in Washington "in about two hours." He welcomed them at the Washington station and broke the news: they had arrived too late!

According to Bunau-Varilla, Dr. Amador was so incensed and disappointed that "he nearly swooned on the platform of the station," and Boyd "pretended that fresh negotiations on certain points would have to be opened with the Department of State."

How far the cleavage had spread was disclosed in Bunau-Varilla's book. He quoted a peremptory cable received by him from his government at 10:55 P. M. of November 19: ". . . . inform us of the cause which led you to sign the treaty before conferring with the delegates Amador and Boyd. Communicate to us the modifications introduced."

Convinced that Amador and Boyd were conspiring to have Panama delay, amend or even reject his treaty, Bunau-Varilla on November 25 cabled a long ultimatum, saying in effect, "You ratify or I resign." Opposition in Panama then faded or went underground. The treaty was ratified by Decree No. 24 at 11:30 A. M. December 2, 1903 and was signed by each member of the Cabinet of the Provisional Government. It was submitted to the United States Senate on December 7, 1903, but long and bitter debate continued until February 23, 1904, when ratification without amendment was voted, 65 to 15. Ratifications were exchanged between Secretary Hay and Minister Bunau-Varilla at 11 A. M. February 25, 1904, and thereupon Bunau-Varilla cabled his resignation to Panama.

During these exciting days when the swaddling clothes of the baby Republic were being adjusted, Cromwell was busier than ever. His trusted lieutenant, Herbert G. Prescott, the assistant superintendent of the Panama Railroad whom Amador thanked as his "first aid de camp," was commissioned by the Junta immediately after the "revolution" to transmit to President Theodore Roosevelt the precious first flag of the Republic. Prescott knew it should go through Cromwell's hands.

So, while busy coaching Amador and Boyd and having them meet the right men in Washington in preparation for the forthcoming debate in the Senate on ratification or rejection of the Hay-Bunau-Varilla Treaty, Cromwell took time to dispatch from New York on November 30, 1903 this cable:

H. G. Prescott, Panama

Inform Municipal Council and Junta I had honor and pleasure presenting to President Roosevelt the flag of the Republic, forwarded through you. Among other things, I remarked that while the United States would never part with its historic Liberty Bell, which first rang out the independence of this nation and the reverberation of which continues to be an inspiration to all liberty-loving

people, yet so fond was the gratitude and affection of the Republic of Panama to the President that they gave into his hands their most precious treasure, the sacred and historic flag, the first raised upon the Declaration of Independence. The President accepted the gift in most enthusiastic and grateful terms, and requested me to convey his unbounded thanks and pleasure, and to say he designs having a suitable inscription woven upon its surface to perpetuate its historic character and the grateful acts of its donors. I greet you all.

WILLIAM NELSON CROMWELL.

As told later by Cromwell in his brief, after his "all-day conference" with Amador and Boyd in New York on November 18, 1903, "at their request we met these personages in Washington to assist in taking up pending questions."

In order to assure ratification of the Hay-Bunau-Varilla Treaty, Cromwell said, "we arranged interviews between the special delegates [Amador and Boyd] and Senators Hanna, Fairbanks, Kittredge, Platt and other Members of Congress During their stay in Washington and New York, which lasted a long time, the special delegates conferred daily with one or several of our partners, asked and followed our advice on all phases of the unique situation We were relied upon to devote ourselves to the ratification of the treaty and we devoted ourselves to this task during the six following weeks with every resource at our command We prepared an exhaustive statement of the unjust wrongs that Panama had suffered for a period of 50 years, which statement we communicated to the government officials and Members of Congress to justify the independence"

Cromwell's "exhaustive statement of unjust wrongs" inflicted upon Panama was later attacked by Colombian historians and riddled for its inaccuracies. Even more severely Cromwell and his inaccuracies were denounced later by Bunau-Varilla. The French engineer-diplomat's interest back in 1902 in interceding with Senator Mark Hanna to

get Cromwell reinstated as general counsel for the French canal promoters was tempered, at first, by growing distrust; then by bitter hatred when he learned that Cromwell's press agent, Jonas Whitley, brought to *The World* background material for stories about Bunau-Varilla's alleged part in American speculation in the securities of the bankrupt French company.

Bunau-Varilla also charged in his 1913 book that Cromwell used Vice President E. A. Drake of the Panama Railroad at the New York end and Captain James R. Beers at the Panama end as coverups of his campaign to discredit Bunau-Varilla and have him removed as Panama's Minister. A cable message from Drake to Beers dated New York, November 30, 1903 said Bunau-Varilla was "trying to disturb the Junta" by reports "that there is great danger that Washington will make a trade with Reyes and withdraw warships"

This was a reference to the mission of General Rafael Reyes and other Colombian leaders to negotiate peace, and to the patrolling of Panama's Atlantic and Pacific coasts by United States Navy craft to prevent any attempt by Colombia to retake the Isthmus. These military activities went so far as to land United States forces at Yavisa, in the eastern end of Panama, but this was soon countermanded.

The Drake cable to Beers went on:

"Mr. Cromwell has direct assurance from President Roosevelt, Senator Hanna and other Senators that there is not the slightest danger of this. Evidently the Minister's [Bunau-Varilla's] pretense of influence is grossly exaggerated. We have fullest support of Mr. Cromwell and his friends who have carried every victory for past six years. Junta evidently do not know that objection exists in Washington to the Minister Cable me when will Junta appoint Pablo Arosemena [as Minister, replacing Bunau-Varilla] Answer today if possible. DRAKE."

While supplying Republican Senators with arguments to meet attacks on the pending treaty by Senator Morgan and

other critics, Cromwell was also cultivating General Reyes. He later told the arbitrators of his claim for fees that Reyes met him in New York "for a series of conferences which later were of great importance and in the course of which a warm friendship sprang up, a friendship which still endures." (September 5, 1907.)

Cromwell said in his brief that "we do not consider ourselves at liberty to set forth here the details of these conferences, but we can mention that General Reyes gave them such great consideration and encouragement that we at once sent Captain Beers to the Isthmus to explain the plan in detail to the Government of Panama, which promptly authorized its study." The result, for which Cromwell took full credit, was the signing of the protocol of a tri-partite treaty of peace between Colombia, Panama and the United States, August 17, 1907. This treaty was repudiated by Colombia and Reyes, who had risen to the Presidency, was discredited and driven into exile.

Throughout the period of the long and bitter debate in the Senate over ratification of the Hay-Bunau-Varilla Treaty, Navy and Marine forces of the United States were on both coasts of Panama actively preparing to defend the independence. Cooperation went so far as to provide Navy vessels small enough to penetrate little inlets. One of these escorted representatives of the Junta to the little town of David, near the Costa Rican border, to persuade that pro-Colombian community to accept the unwanted independence.

On the surface, hostilities practically disappeared after ratification of the Hay-Bunau-Varilla Treaty by the United States Senate on February 23 and its formal proclamation on February 26, 1904. But as late as 1909 chiefs of the San Blas Indians at the eastern end of the Isthmus were still avowing their loyalty to Colombia.

The United States still had to get title to the property of the New Panama Canal Company on the Isthmus and in return deliver \$40,000,000 to the owners of the bonds of

the Old Panama Canal Company and the shares of the New Panama Canal Company — whoever they might be; also to deliver \$10,000,000 to the Republic of Panama instead of the \$10,000,000 which would have gone to Colombia.

How all this was accomplished, and who really got the money, continued to be intermittent subjects of rumor and recrimination and political controversy — until Cromwell's self-defensive charge of attempted blackmail on October 1, 1908 led President Theodore Roosevelt to launch his mis-fired missile at Joseph Pulitzer of *The World* and the publishers of the *Indianapolis News*. Then began the slow unfolding of the untold story of Panama.

Chapter 5

Theodore Roosevelt Challenges a Free Press

After Senator Morgan's earlier failure to probe to the bottom of the Panama mess and in 1904 to block ratification of the Hay-Bunau-Varilla Treaty, public interest became engrossed in the bigness of the Panama Canal and its military and commercial importance. Well-publicized accounts of how "T. R. is making the dirt fly" helped to create an atmosphere jealous of further investigation and impatient of criticism.

Many editors came to feel that the Panama Canal had become sacrosanct and that the public could not differentiate between exposure and condemnation of the lawless acquisition of the Canal Zone and attacks on the Canal enterprise itself. As I said to the Latin-American Conference at Clark University, November 18, 1913, "there was a long period during which intelligent discussion and honest criticism of the Panama affair was so unpopular as to be almost entirely suppressed."

That was the situation when, at the height of the 1908 campaign to elect William Howard Taft as President Theo-

dore Roosevelt's successor, the astute Cromwell made his momentous miscalculation. Cromwell feared publicity as much as he valued its power. He had spent countless thousands of dollars to create it, as well as to suppress it. He had assembled a vast publicity and lobbying organization for his French canal clients and had billed them for its cost. The Paris arbitrators' cutting of his bill from \$832,449.38 to \$228,282.71 was still fresh in his memory.

Now, fearing a renewal of political attacks in the presidential campaign in which he was active, and having valuable financial ties with the new Panama Republic, Cromwell sent to bat, not his publicity experts but his ranking law partner, William J. Curtis. By this time Cromwell had become senior partner and dominating personality of the partnership founded in 1879 by Algernon Sydney Sullivan and Cromwell, who was then only 25 years old.

Curtis went to see William Travers Jerome, District Attorney of New York, on October 1, 1908 to lodge Cromwell's complaint that certain persons were trying to blackmail him about Panama. The Democratic National Committee had made the Panama scandal a campaign issue by its published statement of August 29, 1908. It pointed to Cromwell, "probably the most conspicuous trust lawyer in this country," as a close associate of Taft, the presidential nominee, and a member of the G. O. P.'s national executive committee. It described Cromwell as "attorney for the Panama Canal combine, Kuhn, Loeb & Co., the Harriman interests, the sugar trust, Standard Oil trust, et al."

News of the Curtis call on Jerome leaked into *The World* on October 2, 1908 and Allen Sangree, an experienced reporter, was sent to get the facts. Sangree saw Jerome, who said Curtis had called on him "regarding certain matters which he was not at liberty to give out." Sangree then went to Cromwell's office. Sangree's written memorandum, which is still in my files, said Cromwell was courteous but "had nothing to say." Sangree returned to the newsroom emptyhanded.

Normally, the blackmail story would have died then. But Cromwell, to make doubly sure, sent his second-string publicity man, Jonas Whitley, who, as a former employee knew *World* editors, to see Caleb M. Van Hamm, Mr. Pulitzer's managing editor. He told Van Hamm that the story he was about to publish would be libelous and dangerous.

Verifying first that no facts were in hand and that no Panama story was in preparation, Van Hamm listened as Whitley voluntarily related the substance of the Cromwell-Curtis complaint. It was that Cromwell and Bunau-Varilla had formed a speculative syndicate to buy up the French canal securities and unload them, at tremendous profit, when the Panama Canal became property of the United States.

The political dynamite in the story, said Whitley, was the allegation that participants in the syndicate were Charles P. Taft, brother of William Howard Taft, the G. O. P. candidate for the Presidency, and Douglas Robinson, brother-in-law of President Theodore Roosevelt. Whitley, without naming them, said that certain individuals were threatening to exploit the details unless Cromwell bought them off.

Van Hamm then went to his inside office, dictated to his stenographer details as Whitley had related them, and after the story was typed brought it out to Whitley for possible correction. Whitley crossed out Charles P. Taft's name, substituted that of Henry W. Taft, then changed it back to Charles P. Taft. Whitley then read the text over a news-room telephone to Cromwell, who approved it, and in that form the story was printed the following morning, October 3, 1908.

Late that night Cromwell telephoned his own supplementary statement. Van Hamm's stenographer took it down, read his notes back to Cromwell, and that statement, too, was published by *The World*. In it Cromwell denied that any syndicate existed. He said that neither he nor anyone connected with him had ever made a penny out of Panama Canal securities. But he never had the alleged black-

mailers indicted or tried.

In historic perspective the significant part of Cromwell's statement was: "I suppose it will be years before the beneficiaries [of the United States payment of \$40,000,000] will all be identified and the distribution completely made." Who got all of the American taxpayers' \$40,000,000 remained part of the untold story.

The World printed, in all, six articles on the incidents growing out of the Cromwell complaint. Reproduced in many newspapers across the country, they were ignored by President Theodore Roosevelt until the *Indianapolis News*, which had refused to support the Republican ticket that year, said editorially on the day before election that the American people were entitled to know "who got the money."

Humiliated politically by Taft's carrying Indiana by only 10,731 and Republicans losing the governorship and the legislature of that State, Theodore Roosevelt used the remaining four months of his Presidential term to belittle his newspaper critics. On December 1, 1908 he denounced the conduct of Delavan Smith of the *Indianapolis News* as "not merely scandalous but infamous." He called Smith "a conspicuous offender against the laws of honesty and truthfulness," occupying "the same evil eminence with such men as Mr. Laffan of the *New York Sun*." He said such newspapers "habitually and continually and as a matter of business practise every form of mendacity known to man."

The World, up to this time, had not discussed editorially this latest Panama controversy, but the attack on Delavan Smith led the Pulitzer paper to say editorially: "The inquiry was originally *The World's* and *The World* accepts Mr. Roosevelt's challenge Let Congress officially answer the question, Who got the money?"

The World challenged the accuracy of some of the Theodore Roosevelt statements concerning distribution of the \$40,000,000. T. R. immediately ordered an investigation of the French canal company's records, all of which were sup-

posed to have been delivered according to contract to the United States Government. Search by the Isthmian Canal Commission found only blueprints and engineering records. The *archives* of the bankrupt French company, which were to have been turned over as part of the property purchased by the United States, had not been delivered. They might have disclosed to whom the liquidators distributed the \$40,000,000.

The Isthmian Canal Commission's negative report, forwarded by General Luke Wright, Secretary of War, was in President Theodore Roosevelt's hands on December 14, 1908. The following day he sent his very special message to Congress—a specimen of vitriolic language unique in American history. He said Delavan Smith and Joseph Pulitzer had libeled the people and the government of the United States and should be prosecuted as criminals—not in the State courts where they were responsible if they published a libel, but in the Federal courts.

Obedient to the President's orders, Attorney General Bonaparte obtained criminal indictments in the District of Columbia, February 17, 1909, against Joseph Pulitzer, Caleb M. Van Hamm and Robert Hunt Lyman of the *New York World* and Delavan Smith and Charles R. Williams, co-owners of the *Indianapolis News*. They had distributed copies of their publications in the District of Columbia; therefore, contended the government lawyers, their alleged crime had been committed there rather than in the cities where their papers were issued.

United States District Attorney Joseph B. Kealing of Indianapolis, a Roosevelt appointee, resigned rather than be a party to such a stretching of the law. He said the order to extradite and try the Indianapolis publishers in Washington involved a dangerous principle “striking at the very foundation of our form of government.”

A more pliable Federal attorney was appointed. A Special Assistant United States Attorney General, Stuart McNamara, was sent to Indianapolis. Extradition proceedings,

instituted in June, were ended October 15, 1909, by Federal Judge Albert B. Anderson's historic decision. It closed with these words, which Theodore Roosevelt was never allowed to forget:

To my mind that man has read the history of our institutions to little purpose who does not look with grave apprehension upon the possibility of the success of a proceeding such as this. If the history of liberty means anything, if constitutional guarantees are worth anything, this proceeding must fail.

If the prosecuting authorities have the authority to select the tribunal, if there be more than one tribunal to select from; if the government has that power and can drag citizens from distant States to the capital of the nation, there to be tried, then, as Judge Cooley says, this is a strange result of a revolution where one of the grievances complained of was the assertion of the right to send parties abroad for trial. The defendants will be discharged.

Overlooked by historians of that decisive battle for freedom of the press was the part of Hilton U. Brown, General Manager of the *Indianapolis News* in 1909 and its Vice President until his death, September 20, 1958.

"If the spelling isn't fresh in your memory," I wrote Mr. Brown, "will you please ask one of your staff to let me know whether the Federal attorney's name was 'Kealing' or 'Keating,' since the old records do not agree." Mr. Brown replied on September 16, 1958:

I can set you right at once about the Federal attorney's name, for he was a college mate of mine. It was Joseph B. Kealing. He was a big, stalwart man of courage and a power in politics

I was subpoenaed to deliver books and papers of *The Indianapolis News* to the Federal attorney in Washington. Our astute attorneys told me to go to Washington but not to take any books. When they put me on the witness stand in Washington I said I did not bring the books

as demanded because as Manager of *The News* I was an employce and had no more right to them than I had to the presses that printed the paper. I was quickly released, of course, from any further testimony.

I hope to see you in New York next year, as you suggest, but as that will be beyond my 100th year, I had better not make any assurances.

February 20, 1958, was "Hilton U. Brown Day" in Indianapolis, by proclamation of the Mayor. Mr. Brown flew into New York in April, 1958, to attend his 58th meeting of the American Newspaper Publishers Association. Within a month of his death he pushed a button starting seven new presses for his newspaper, opened the new quarters of the Indianapolis Press Club, and flew to the national convention of his fraternity, Phi Delta Theta.

I had hoped to pay tribute in my Author's Preface of this book to the memory of Hilton U. Brown as the other "sole survivor" of the "libel war" with T. R.

The government could have asked the Supreme Court to reverse Judge Anderson, but it decided to avoid, at least temporarily, the issue of extradition. So it relied on an earlier indictment of the Press Publishing Company, as the corporation responsible for the alleged libel printed in Joseph Pulitzer's *New York World*, and one of its managing editors, Caleb M. Van Hamm. This indictment in the Federal jurisdiction of New York had been handed down on the day President William Howard Taft was inaugurated, March 4, 1909.

The New York indictment was based on the false assumption that there was a Federal libel law, and that the Federal Court had jurisdiction because *The World* had circulated 28 copies of the alleged libel "within the fort and military post and reservation of West Point" and one, for copyright purposes, had been mailed in the Federal Post Office in New York City. There were then no less than 2,809 similar Federal reservations in any one of which an editor might be in jeopardy!

My recollections of the indicting procedure in New York are vivid for this reason: For several days I was held under subpoena and was threatened with contempt proceedings when I reiterated to the grand jury that, because I was preparing the defense of my newspaper on questions of fact, I would not answer any question that might disclose the line of its defense.

We of *The World* were fully aware by then of ruthless espionage in support of Theodore Roosevelt's determination to destroy his critics. So I stood my ground. The stormy sessions ended with nothing but threats. Finally Special Assistant Attorney General Stuart McNamara whispered to me in the anteroom of the grand jury: "You needn't come back again."

The New York indictments, although finally quashed by unanimous decision of the United States Supreme Court on January 3, 1911, were pushed through in 1909; and then began the long struggle to uncover the hidden secrets of the Panama Canal scandal and the paternity of the Panama Republic.