

● PSF

Justice Dept. 1938-39

THE SOLICITOR GENERAL
WASHINGTON

file
personal
1938
January

My dear Miss Le Hand,

This is Justice Black's dissenting opinion in a utility valuation case. The papers have not carried this dissent. It supports the President's views on "prudent investment". He may be interested.

He may also be amused to know that the Duke Power case, decided yesterday, is the fifteenth case, argued ^{personally} by me and decided since February fifth, 1936. All were won. As these included, two gold clause issues, right to refinance government bonds and bullion; the Railway Labor Act; Wagner Act; Processing Tax Act, the Dravo Case and P.W.A, the change is obvious. A number were argued in groups.

January fourth
1938

Sincerely

Stanley Reed

SUPREME COURT OF THE UNITED STATES.

No. 90.—OCTOBER TERM, 1937.

Perry McCart, Samuel L. Trabue and
Moie Cook, members of and consti-
tuting the Public Service Commis-
sion, et al., Petitioners,
vs.
Indianapolis Water Company.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Seventh Circuit.

[January 3, 1938.]

Mr. Justice BLACK, dissenting.

I cannot agree that this cause brought here by the Public Service Commission and the Attorney General of the State of Indiana should be sent back to the District Court for a new trial. After an examination of the record, I am persuaded that the action of the Court of Appeals was wrong and that its judgment should not be affirmed either as rendered or in any modified form. The importance of the questions here involved leads me to set out some of my reasons for this belief.

Six years ago (1931) the City of Indianapolis filed a petition with the Public Service Commission of Indiana against the Indianapolis Water Company, seeking a reduction of water rates for small consumers. The commission fixed the rates in December, 1932. A *master* appointed by the District Court reported that there was *no confiscation* May 18, 1934. The *District Court* held there was *no confiscation* November, 1935. The *Court of Appeals* found there was *confiscation* March, 1937. Now, January, 1938, *this Court* sends the case back to the District Court for *trial "anew."* The cause goes back to the District Court with the admonition from the Court of Appeals that a "general and persistent rise in prices should have been given effect in fixing a fair valuation." Affirmance of the Court of Appeals's decree necessarily approves this statement and this statement requires an increased valuation of the Company's property. Experience demonstrates that rate cases continue to come to this Court until final decisions are reached. If the second trial follows the course of the first, the case should return to this Court by 1943. However, it will now be the duty of the District Court, in trying the case anew, to make a fore-

cast as to probable commodity values covering this future period up to 1943.¹ If its forecast should be wrong, the present case will be a precedent for reversing the cause in 1943 for still another trial. Sending the case back indicates that the Court of Appeals was right in reversing the District Court.

I believe the Court of Appeals was in error, that the evidence did not show confiscation, and I cannot agree to the action of the majority. This Court has announced the doctrine that the States have full and complete rights to regulate the rates of local intrastate utilities and that the Federal courts cannot and will not interfere with this regulation unless the rates are confiscatory. Furthermore, "upon that question (of confiscation) the complainant has the burden of proof and the Court may not interfere with the exercise of the state's authority unless confiscation is clearly established."² The judicial function does not extend beyond the decision of the constitutional question. Unless, therefore, the water company satisfactorily overcame the presumption that the rate set by the commission is not confiscatory, this Court should not invade the constitutional sphere of state rate regulation.³

I cannot say that the evidence in the District Court "compelled a conviction that the rate would prove inadequate";⁴ or that the rates were "palpably and grossly unreasonable";⁵ nor was the evidence sufficient to overcome the presumption that the rates, as fixed by the commission and reinforced by the judgment of the master and the District Court, were not confiscatory.⁶

The master reported the value of the company's property to be \$20,282,143.00 as of April 1, 1933. December, 1935, the District Court after a review of the evidence and the report of the master, refused to enjoin the enforcement of the rates fixed by the commission. That court excluded from consideration for rate making purposes a group of farms owned by the Company and estimated by the master to have a value of \$264,050.00, but increased the master's estimate of the value of "water rights" to \$500,000.00. Evidence having been given of the "reproduction value" of the Company's property, the District Court increased by \$1,333,333.00

¹ *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 408, 409.

² *Los Angeles Gas & Elec. Co. v. Railroad Commission*, 289 U. S. 287, 305.

³ *Chicago and G. T. R. Co. v. Wellman*, 143 U. S. 339.

⁴ *Galveston Elec. Co. v. Galveston*, 258 U. S. 401.

⁵ *San Diego Land Co. v. National City*, 174 U. S. 750.

⁶ *Darnell v. Edwards*, 244 U. S. 564, 569.

the master's "estimate" of the "estimated cost" of labor necessary to "reproduce" the Company's property; it raised the master's total "estimate" of this wholly imaginary reproduction from \$20,282,143.00 to \$21,392,821.00.

March 23, 1937, six years after the City of Indianapolis had originally initiated its efforts to obtain a reduction in water rates, the Court of Appeals reversed and remanded this cause. In doing so, it ordered that the Company's Indiana farms be included in the total valuation upon which the people of Indianapolis must pay the Company an income; added \$361,308.00 to the "estimate" of the master and District Court for "undistributed construction costs"; and raised "going value" \$250,079.00.

The principal reason given for the reversal, however, was that general price levels had risen, during the thirty-two months intervening between the date at which valuations were fixed (April 1, 1933) to the date of the District Court's decree (November 29, 1935). Looking at price index figures, the Court of Appeals decided that prices had ascended about twenty-five per cent during that period, and that if the District Court had given proper consideration to this increase in determining the value of the Company's property, that court would have found that the rate fixed by the commission was "clearly confiscatory."

One month and three days, however, after the price index method had been used by the Court of Appeals in finding the Indianapolis water rates confiscatory, this Court, in the case of *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U. S. 292, struck down a reduced telephone rate fixed by the Ohio Public Service Commission. The people of Ohio were deprived of the benefit of a reduced telephone rate because the decision of the Public Service Commission rested upon price indices. Yet, if the District Court follows the opinion of the Court of Appeals which is here affirmed, the people of Indianapolis will be deprived of a reduced water rate because a price index, not introduced in evidence, indicated to the Court of Appeals that the valuation fixed by the District Court was wrong. This opinion of the Court of Appeals as to value is not repudiated by the affirmance. The majority does not reverse the Court of Appeal's finding of confiscation.

I cannot agree that the District Court should be reversed for failure to prophesy the exact future course of commodity prices. The legal knowledge of few judges is such that they can accurately

foresee and forecast all price fluctuations. In the delays incident to rate litigation it is probably true that prices will fluctuate many times between the beginning of a litigation and the time when the cause is won, lost or abandoned.

It has now been more than five years since the commission fixed a valuation for this water works property and it has been more than four years since the master reached his conclusion. If it requires four more years for this case to return to the Court of Appeals, there can be no doubt but that some price index can be found to show other changes in prices. Such a result will add still further to the confusion and chaos of judicial rate making. I believe it forecasts a day when the present long delays in rate regulation will be endless.

The City of Indianapolis should not be subjected to another trial unless this Court believes the rates to be confiscatory. When the District Court tries the case anew it will be constrained to follow the decision of the Court of Appeals that a "general and persistent rise in prices should have been given effect in fixing a fair valuation." In the meantime, can a Judge be found who can accurately divine all future prices of commodities to be used for imaginary reproductions of this Company's property?

I believe this cause should be brought to a conclusion at this time.⁷ My belief that the Court of Appeals should be reversed is strengthened by a study of the record in the case of *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, of which record we take judicial notice.⁸

For the first hundred years of this Nation's history, federal courts did not interfere with state legislation fixing maximum rates for public services performed within the respective states. The state legislatures, according to a custom which this Court declared had existed "from time immemorial"⁹ decided what those maximum rates should be. This Court also said that "for protection against abuses by legislatures the people must resort to the polls, not to the courts."¹⁰ It was not until 1890 that a divided court finally repudiated its earlier constitutional interpretation and declared that due process of law requires judicial invalidation of leg-

⁷ See *Knoxville v. Water Works Co.*, 212 U. S. 16; also *McCardle v. Indianapolis Water Works Co.*, 272 U. S. 400, 420.

⁸ *National Fire Insurance Co. v. Thompson, etc.*, 281 U. S. 331, 336.

⁹ *Munn v. Illinois*, 94 U. S. 113, 133.

¹⁰ *Id.*, p. 134; see, *Peik v. C. etc. R.*, 94 U. S. 178.

islative rates which the courts believe confiscatory.¹¹ The dissenting Justices adhered to the long existing principle that regulation of public utilities was a "legislative prerogative and not a judicial one."¹²

From this decision in 1890, *supra*, has come the doctrine that the federal courts have jurisdiction to determine whether a rate fixed by a State for a purely local utility is confiscatory. This doctrine does not purport to give to federal courts more than the limited jurisdiction to determine whether a given state rate is so low as to be confiscatory.

The determination by the Court of Appeals that the rates in the present case are confiscatory can only be supported, if at all, by giving undeserved weight to evidence given to support the "reproduction cost" theory. The experience of the people of Indianapolis in their efforts to obtain fair and reasonable water rates from this company which has long had a monopoly in their community, discloses what appears to me to be the complete unreliability of the "reproduction cost" theory. Wherever the question of utility valuation arises today, it is exceedingly difficult to discern the truth through the maze of formulas and the jungle of metaphysical concepts sometime conceived, and often fostered, by the ingenuity of those who seek inflated valuations to support excessive rates. Even the testimony of engineers, with wide experience in developing this theory and expounding it to courts, is not in agreement as to the meaning of the vague and uncertain terms created to add invisible and intangible values to actual physical property. Completely lost in the confusion of language—too frequently invented for the purpose of confusing—commissions and courts passing upon rates for public utilities are driven to listen to conjectures, speculations, estimates and guesses, all under the name of "reproduction costs." In the testimony of professional witnesses employed by the litigants, courts listen to guesses about "going value"; "undistributed construction costs"; "water rights."¹³ This Court has even said, "Reproduc-

¹¹ *Chicago, Milwaukee and St. Paul R. Co. v. The State of Minnesota*, 134 U. S. 418.

¹² *Id.*, Bradley, J., dissenting, 461.

¹³ Compare:

" . . . and the conclusion of the court below rested upon that most unsatisfactory evidence, the testimony of expert witnesses employed by the parties." *Knoxville v. Water Company*, 212 U. S. 1, at 18;

"While the experts representing the opposing interests were thoroughly competent and of high standing, the wide difference in the results reached led the

tion value, however, is not a matter of outlay, but of *estimate*, and . . . proof of actual expenditures originally made, while it would be helpful, is not indispensable."¹⁴ Courts have gone further and further away from considering cost in determining the value of utility property. The cost of this company's property apparently was given little weight in previous litigation which came to this Court.¹⁵ This company's property was valued by this Court at \$19,000,000.00 in the prior litigation although the commission's valuation was \$16,495,000.00. It is interesting to note what this property valued at \$19,000,000.00 actually cost.

The record in the *McCardle* case, *supra*, showed: that the property was bought at a judicial sale in 1881 by the present company at a cost of not more than \$535,000.00, the purchase being financed by a sale of bonds; that apparently no cash was paid for the \$500,000.00 face value of stock issued at that time; that the maximum book value of the company's assets on December 31, 1923, was \$9,195,908.00 but a witness called by the commission testified that the company's records disclosed the actual book value of the property used for the public *convenience* to be only \$7,967,649.00; that from 1881 to December 31, 1923, stockholder's average annual net profits were \$189,255.00; that practically all of the added book value was the result of additional investments financed by borrowing and not by investment of stockholders; that no other investment was made by the stockholders in the company since 1881, but in 1909 a write-up of \$5,556,071.85 was made on the books by virtue of which a common stock dividend of \$4,500,000.00 was declared in 1910, making the total common stock \$5,000,000.00; that the \$5,000,000.00 stock was thereafter carried on the books of the company; that the stockholders not only paid no additional money for stock, but that the profits made by the company between 1881 and

commission to the 'irresistible conclusion that each was not unmindful of his client's interest.' " *Plymouth Electric Light Co. v. State*, 81 N. H. 4;

"To these perturbing tendencies, all operating to weaken the persuasive force of their (expert) opinions, there must be added still another, that of interest or bias, conscious or unconscious." *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290 at 299;

"Skilled witnesses come with such prejudice on their minds that hardly any weight should be given to their evidence." *Appleton Water Works Co. v. R. Comm.*, 154 Wis. 121, at 154.

¹⁴ *Ohio Utilities Co. v. Public Utilities Comm. of Ohio*, 267 U. S. 362.

¹⁵ See *McCardle v. Indianapolis Water Co.*, *supra*.

1932 were not reinvested in the company but were substantially all drawn out in dividends.¹⁶

This Court found in the *McCardle* case that the company was entitled to a rate based on a \$19,000,000.00 valuation as of December 31, 1923, although the record indicates; that the total actual investment made by the company up to that time was less than \$9,000,000.00 and was not stockholders' investment but was substantially all borrowed money; that the stockholders apparently had made no investment unless (which is very doubtful from the record) they paid for the \$500,000.00 stock in 1881; and that the stockholders had received the following percentage of return on common stock on a \$500,000.00 valuation for the five years preceding this \$19,000,000.00 appraisal:

1919.....	69%
1920.....	75%
1921.....	88%
1922.....	96%
1923.....	96%

While it is difficult to find in the present record what additional investments have been made since the \$19,000,000.00 appraisal, it does appear that the commission found that the books of the company showed an additional investment of \$6,661,292.00. If this is added to the 1923 book value, it would appear that there is a possibility that when the appraisal in this cause was made, there may have been between \$13,000,000.00 and \$16,000,000.00 invested through the company's borrowing activities. But the indebtedness kept pace with the investments and was \$13,746,900.00 at this time. The District Court is now reversed, however, because the Court of

¹⁶ The books of the company indicate that the company spent for additions between 1881 and December 31, 1923, \$8,112,399.00 but the books also show that on December 31, 1923, the outstanding indebtedness of the company on which it paid interest was \$8,231,000.00. During the same period, from 1881 to December 31, 1923, the books showed available for dividends \$8,337,232.74. Dividends paid out were as follows:

Cash Dividends	\$4,585,533.50
Bond Dividends	3,000,000.00
Stock Dividends	4,500,000.00

Total Dividends paid between
1881 and December 31, 1923.. \$12,085,533.50

During the same period the record shows that interest was paid by the company on the bonds issued to the stockholders as dividends and that interest amounted to \$3,076,250.00.

It thus appears from the books that the stockholders received an average of practically 38% profit on \$500,000.00 from 1881 to December 31, 1923.

Appeals found that rates based on an obviously inflated value of \$21,392,821.00 fixed by the District Court would confiscate the property of the company's stockholders.

There is a marked disparity between the actual cost of this company's property and its imaginary "reproduction value" I shall comment upon a few of many reasons for this disparity.

First, the so-called "water rights"—The company takes the position that water rights should have been valued at about \$2,000,000.00. Expert witnesses for the city valued these rights from nothing to \$75,000.00, and expert witnesses for the company at \$1,000,000.00 or more. This illustration is typical of the wide variations in expert evidence on "reproduction cost"; it is a typical "estimate." The company claims that the element of greatest value in the water rights is the "diversion right." This "diversion right" is based, in part, on the theory that for a long number of years the company has diverted water from the White River. According to one theory, it is claimed water which would otherwise flow down stream is diverted by the company; that the Tom Taggart Park in Indianapolis might possibly be injured by this diversion (but the city has not complained); that the stream offers possibilities of scenic beauty if there were adequate water and if it should be made suitable for navigation by small pleasure crafts. It does not appear that this formula evolved as a result of anyone's expressed or frustrated desire to sail this stream. From the possibility, however, that the stream could be used for this purpose if imaginary people should so desire, an imaginary damage to these imaginary sailors is discovered. Based upon this potential menace to these imaginary people and their imaginary desire to use this stream, an imaginary value of \$200,000.00 is suggested as the cost which the company might incur in discharging its imaginary duty to improve the stream for these imaginary sailors.

It is difficult to believe that such concepts of property can establish clear proof that the Constitution of the United States has been violated. Nor do I believe that, even if the people of Indianapolis and the surrounding community have permitted the Water Company to use this stream for a public service, there has been a grant of a prescriptive property right which can be capitalized by the company, in order to exact higher water rates from the very people who granted the privilege.

If the company had made actual investments in its property between 1933 and 1935, resort to illusory property concepts would not be necessary. Clearly, it would be entitled to a reasonable return upon such actual investment. Such is not the case. The order for a new trial is not based on a claim that the company has invested even one additional dollar. It is not claimed that the company bought additional land; added an inch to any of its dams; extended its distribution pipes; improved its filtration system; or purchased one additional piece of property.

This Court has frequently declared that in reaching a conclusion as to a reasonable rate, the public must be considered as well as the stockholders and bondholders.¹⁷ The doctrine against confiscatory rates is based upon the theory of protecting the right of bondholders to their interest and that of stockholders to a fair return upon the value of their actual investments. While this matter has been confused by the "reproduction cost" theory, the fact remains that, as applied to corporations, it is the interest of the stockholders and bondholders which the due process clause protects.

The evidence in this case clearly establishes that the bondholders have never been, and are not now, in any jeopardy as to their interest payments. In the margin appears the record of stockholders' dividends since the \$19,000,000.00 valuation.¹⁸ In view

¹⁷ See, *Covington, etc. Turnpike Co. v. Sandford*, 164 U. S. 578, 587; *Chicago and G. T. Railroad Co. v. Wellman*, *supra*, 346.

¹⁸ Since the approval of a \$19,000,000.00 valuation on this company's property was made, dividends were paid as follows:

Year	Amount	Rate paid on inflated	
		\$5,000,000 stock valuation	Rate paid on possible \$500,000 valuation
1924	500,000.00	10%	100%
1925
1926	600,000.00	12%	120%
1927	950,000.00	19%	190%
1928	1,000,000.00	20%	200%
1929	650,000.00	13%	130%
1930	1,225,000.00	24½%	245%
1931	600,000.00	12%	120%
1932	375,000.00	7½%	75%

"surely before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest and to the stockholders reasonable dividends." *Chicago and G. T. Railway Co. v. Wellman*, *supra*, 345.

of these dividends on this stock of uncertain cost, these stockholders were in no imminent peril because of the District Court's valuation of more than \$21,000,000.00.

This case is an illustration of the almost insuperable obstacles to rate regulation today. It involves a single company supplying water to a single community. It does not present the difficulties of a far-flung utility system covering much territory with many separate corporate creatures. Nevertheless, this particular case has already consumed more than six years and is apparently destined to remain suspended for six more years.¹⁹ More than 2000 pages of records and exhibits appear in this Court in the appeal.

This case was first heard by the Public Service Commission. Evidence and arguments were there introduced and the questions of value, rates, etc., were fully explored. Thereafter the Commission which had been specially created by the State of Indiana to investigate such cases rendered its decree.

Next, the case was investigated by a master in the District Court. This Court has admonished the lower court that a master should be appointed for such purposes.²⁰ Extensive hearings before the master produced voluminous testimony at tremendous expense to the litigants. While this expense may appear on the books of the Company it will ultimately be borne by the consumers.

¹⁹ The following illustrate the delays in rate litigation:

	Bill Filed	Decided	Time
United Fuel Gas Co. v. Railroad Comm., 278 U. S. 300	Dec. 1923	Jan. 1929	5 years
United Fuel Gas Co. v. Pub. Serv. Comm., 278 U. S. 322	April 1925	Jan. 1929	3 yrs. 8 mos.
Ottinger v. Brooklyn Union Gas Co., 272 U. S. 579...	June 1923	Nov. 1926	3 yrs. 5 mos.
Ottinger v. Kings County Lighting Co., 272 U. S. 579	June 1923	Nov. 1926	3 yrs. 5 mos.
Ottinger v. Consolidated Gas Co., 272 U. S. 576.....	June 1923	Nov. 1926	3 yrs. 5 mos.
Patterson v. Mobile Gas Co., 271 U. S. 131	Aug. 1922	April 1926	3 yrs. 8 mos.
McCardle v. Indianapolis Water Co., 272 U. S. 400	Dec. 1923	Nov. 1926	2 yrs. 11 mos.
Average			3 yrs. 7 mos.

See, also, Brandeis, J., concurring, *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 88 *et seq.*

Lindheimer v. Illinois Bell Telephone Company, 292 U. S. 151. Commission's order made 1923; cause last appeared in this Court in 1933.

Ohio Bell Telephone Co. v. Commission, 301 U. S. 292. This case started before the Commission in 1921. By 1931 the Commission announced its tentative order. 1934 the Commission made what purports to be a final valuation. April, 1937, this Court returned the cause for further action.

²⁰ *Chi., M & St. P. R. Co. v. Tompkins*, 176 U. S. 167.

After the master heard the evidence, it went to the District Court for a third review. Thereafter it appeared in the Court of Appeals where it was again reviewed. Since it has come to this Court I believe that the ends of justice require that it be concluded. History indicates that if it is not concluded, this is not likely to be the last journey made by the cause from Indianapolis to Washington. Litigation costs in rate regulation today constitute a heavy burden.

In the main, the dispute in this case, as in most rate cases, revolves around "intangibles" and "reproduction costs."

"Intangibles", as expounded by hired experts in rate litigations, might well be defined as "properties" that can neither be seen nor touched and which can rarely be understood. They can have little meaning when applied to property which is not for sale but for use. These property concepts are so uncertain, tenuous and elusive that no two witnesses give them the same value except on occasions when several witnesses have been employed by the same litigant.²¹

Witnesses in the present case varied as to "organization" costs from \$81,000.00 to \$325,000.00. Experts differed as to "going value" between \$1,000,000.00 and \$2,700,000.00, and on water rights from nothing to \$2,000,000.00.

Such differences are not exceptional. They occur in most cases that have reached this Court which involve expert appraisal of such phantom property concepts.

The estimates made by witnesses of "reproduction costs" of pipes for this water-works system strikingly illustrate this method of valuation. Witnesses guessed that if the pipes purchased and used by the company since 1881 had been purchased in 1932, the pipes would have cost \$4,599,711.00, and that the cost of laying the pipes in 1932 in the position in which they had been placed since 1881, would have been \$3,082,941.00. In this guess it was assumed that the pipe had a life of 125 years and that "as a matter of fact, it does not wear out in use." If these pipes last 125 years, the reproduction cost theory will subject the water consumers of Indianapolis to innumerable increases in the price of water during the next century. Experts can undoubtedly be found who will testify from time to time during the coming century, that the

²¹ For example, in the *McArdle* case, *supra*, the highest estimate was three times as great as the lowest. See Brandeis, J., dissenting, *Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S. at 299.

hypothetical digging up of old pipes and the hypothetical laying of hypothetical new pipes, will constantly increase the hypothetical reproduction value of pipes. In fact the actual pipes will not be dug up. They will continue to lie untouched and at rest—under the soil.

Under this reproduction cost theory, the constitutional water rate in Indianapolis must fluctuate during the next century with the price of cast iron pipes. One of the principal elements of the so-called "reproduction value" in this case is this very pipe. I do not believe that the constitutionality of an act of a sovereign State of this Union is dependent upon the market fluctuations of cast iron pipe.

Testimony was given in this case as to the "reproduction cost" of a canal used by the water company. The State of Indiana constructed this canal for navigation purposes a hundred years ago. Some years after its completion, it was obtained by the Water Works Company of Indianapolis and while the record is not clear, the price might have been as great as \$35,000.00. When the reorganization of the company occurred in 1881, this canal was placed upon the books of the present company at \$50,000.00. It remained on the books at this figure until the write-up in 1909 which preceded the \$4,500,000.00 stock dividend. At that time, it was hoisted to \$1,773,874.00. By 1911, this same canal apparently was carried at \$2,746,538.00. In the rate valuation case in 1923, experts of the company valued it at more than \$3,000,000.00. Extensive testimony has been given in this and the *McCardle* case, *supra*, concerning the "reproduction value" of this canal. The expert who was "reproducing" the canal in 1932 "assumed a similar set of conditions to those existing at the time the canal was originally constructed." In other words, the witness took himself and his staff back more than a hundred years to the conditions that existed in Indiana at the time and place of the construction of this State navigation canal. Thus projecting himself back into history he found that the water consumers of Indianapolis should pay to the present owners of the canal 6% income on more than \$3,000,000.00. I cannot subscribe to the belief that it would violate the Constitution of the United States for the State of Indiana to deny the company 6% income on a still higher valuation of a canal that never at the outside, cost the company more than \$50,000.00. The question in the federal courts in connection with rates is not what

would be a reasonable rate to be charged by such a company, but it is limited wholly and exclusively to a decision as to whether or not a rate will confiscate the property of the company. The evidence in this case is not so "compelling" as to justify a reversal of the District Court's valuation, which valuation, itself, necessarily contains a finding of value far in excess of what this canal cost or what it is reasonably worth. In a dissenting opinion by certain commissioners of the Public Service Commission of Indiana in the *McCardle* case, they said:

"Would any reasonable man entertain the proposition of duplicating the canal, if a new water-works system were to be constructed in Indianapolis? Certainly not.

"In the estimated reconstruction new cost there is the highly fancied estimate of the cost of duplicating the canal as it was constructed ninety years ago. It would be just as germane to the ascertainment of the actual value of the petitioner's property used and useful in the present water service of Indianapolis to indulge in a magnified imagination of the expense of repopulating the canal banks with the Indians."

The State of Indiana did not appeal from the judgment of the District Court. We therefore, are not called upon to decide whether the rates now in force are so extortionate as to confiscate the property of the consumers. The company appealed from the District Court seeking a higher valuation. The Court of Appeals decided that the company was entitled to a higher valuation.

As a reason for reversing and remanding this cause, the majority opinion points to the fact that no interlocutory injunction has been issued. I believe that the fact that no injunction was issued after the Public Service Commission of Indiana, the master in the Federal court, and the District Court had all found that the rates were not confiscatory, is but an added ^{reason} why this Court should not agree to overturn that finding and reverse the cause. It will be wholly impossible in my judgment for any trial court to try this cause again free from the plain implication, in the action of this Court, that the value of the Company's property should be found to be approximately twenty-five per cent greater than \$22,000,000.00. How can any trial court ignore the fact that the Court of Appeals has indicated a strong belief that the value should be raised twenty-five per cent? How can any trial court escape the conclusion that an injunction should *now be issued* to prevent the enforcement of the rates that have been in effect?

There is nothing strange or unusual about the decree of the District Court fixing a value as of November 23, 1935, as well as of April 1, 1933. Any other action by the court would have gone directly in the teeth of the plain mandates of this Court in other cases. Not only was the District Court compelled to attempt to find the value as of 1933 and as of 1935, but under the opinions of this Court it was necessary that it attempt to lift the veil of the future, peer into its mysteries, and determine the value of the Company's property for a reasonable time after 1935. His action was dictated by the command of this Court that "an honest and intelligent forecast of probable future values made upon a view of all relevant circumstances, is essential." *Southwestern Telegraph Co. v. Public Service Commission*, 262 U. S. 276, 288. If this language was not sufficient as an imperative admonition for the judge to become a prophet, there was the statement made by this Court in connection with the appraisal of this particular Company's property in *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, 408, 409, that: "It must be determined whether the rates complained of are yielding and will yield . . . a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future." Surely it is not a ground for reversing the cause now that the District Court has followed these instructions. Is the majority reversing these cases? Must the District Court, when the case is tried "anew," obey the former mandates "to prophesy" or does the opinion of the majority mean it should not prophesy? If the trial court does prophesy, and human fallibility brings error into the prophecy, will this Court again six years hence reverse and remand for another trial "anew"? I believe this ~~reversal~~^{affirmance} adds additional uncertainty to the existing chaos of rules and formulas created by judicial pronouncement in the field of rate litigation. I further believe it to be wrong to send this case back for another trial, because I believe the record affirmatively shows that the consumers of water in Indianapolis are already compelled to pay an unjustifiable price for their water on account of previous judicial overvaluation of this property.

I believe the State of Indiana has the right to regulate the price of water in Indianapolis free from interference by federal courts. The courts did not deny this right to the states for the first hun-

dred years after the adoption of the Constitution.²² But even under the comparatively recent doctrine purporting to give federal courts jurisdiction to invalidate rates fixed by a state, I am of the opinion that the federal courts have no jurisdiction to proceed in this cause. I base this belief on the record which does not show clearly that the stockholders of the Indianapolis Water Company have ever made any substantial investment which could be confiscated. I further believe that the evidence does not clearly establish that the rates fixed by the commission will fail to provide an income amply adequate to pay all interest on the company's funded debt and provide far more than a 6% profit on any actual value in excess of the borrowed capital remaining unpaid. I, therefore, believe that this Court should order this cause dismissed for want of jurisdiction or that the judgment of the Circuit Court of Appeals should be reversed and the opinion of the District Court dismissing the company's bill should be affirmed.

²² *Munn v. Illinois, supra.*

SUPREME COURT OF THE UNITED STATES.

No. 90.—OCTOBER TERM, 1937.

Perry McCart, Samuel L. Trabue and
Moie Cook, members of and consti- }
tuting the Public Service Commis- } On Writ of Certiorari to
sion, et al., Petitioners, } the United States Circuit
 } Court of Appeals for the
 } Seventh Circuit.
vs. }
Indianapolis Water Company. }

[January 3, 1938.]

[PER CURIAM.]

This suit was originally brought by the Indianapolis Water Company to restrain the enforcement of an order of the Public Service Commission of Indiana fixing a temporary schedule of rates pending the Commission's investigation. The District Court of three judges (28 U. S. C. 380) denied an interlocutory injunction and the temporary rates became effective. The Commission on December 30, 1932, adopted a different and permanent schedule of rates to be effective January 1, 1933. The Company then filed an amended and supplemental bill assailing those rates as confiscatory and invoking the Fourteenth Amendment of the Constitution of the United States. An interlocutory injunction was not sought and the case was properly heard in the District Court by a single judge. *Indianapolis Water Company v. McCart*, 13 F. Supp. 107; *Smith v. Wilson*, 273 U. S. 388; *Stratton v. St. Louis Southwestern Ry. Co.*, 282 U. S. 10; *Healy v. Ratta*, 289 U. S. 701. Pursuant to the Commission's final order, the Company filed the schedule of rates as prescribed, and these rates went into effect on January 1, 1933, and under that order have since been in effect without limitation of time.

The Commission found that the fair value of the Company's property as of November 1, 1932, was not less than \$22,500,000 and that the income under the new rates would be "approximately \$1,400,000, or a return slightly in excess of six per cent" on that amount. The District Court appointed a Special Master, who received evidence between May 1, 1933, and August 10, 1933, and held a further and reopened session on October 18, 1933, when the hearing of evidence was closed. On April 18, 1934, the Master offered to receive evidence as to the actual operations of the Com-

pany for 1933 but the respective parties informed the Master that they did not desire to offer any such testimony. The Master filed his report on May 18, 1934. The appraisals before the Master were made as of April 1, 1933. He found the fair value of the Company's property to be \$20,282,143 as of that date and also as of the time of filing his report. He estimated and found that the income applicable to return for the year 1933 and for a reasonable time thereafter would be \$1,294,566.51. He concluded that the rates were not confiscatory.

After a hearing upon exceptions to the Master's report, the District Court entered a final decree on November 29, 1935, dismissing the amended and supplemental bill of complaint. 13 F. Supp. 110. The court found that the value of the Company's property was \$21,392,821 as of April 1, 1933, and although the evidence of value had been addressed to that date, the court went further and found in its decree that this amount "was the fair and reasonable value thereof as of the time of filing the report of the Special Master herein and as of the date of these findings and that such value will continue to be a fair and reasonable value of the plaintiff's used and useful property for a reasonable time in the future". The court adopted the finding of the Master that the income would be not less than \$1,294,566.51 for the year 1933 and for a reasonable time thereafter.

Upon appeal, the Circuit Court of Appeals, reviewing the evidence upon disputed points, found that there should be certain increases, amounting to \$975,437, in the rate base, making it \$22,368,258. The court observed that from April 1, 1933, the valuation date, to the date of the decree of the District Court, November, 29, 1935, thirty-two months had intervened; that this period was no longer one for prophecy but had passed "from the field of speculation to one of experience"; and that experience had shown that in that period there had been "a constant and definite trend upward in commodity values". 89 F. (2d) 522, 525, 526. With respect to income, the court said that the amount found by the Master for 1933 (\$1,294,566.51) was about \$57,000 higher than that indicated by the testimony of any witness, but the finding was not overruled in view of the failure of the Company to take advantage of its opportunity to show the actual receipts and disbursements for that calendar year. *Id.*, pp. 527, 528. Holding that the District Court had erred in determining in its decree that the valuations as of April 1, 1933, were applicable to the date of the decree

in November, 1935, without taking appropriate account of changed conditions in the interval, the court reversed the decree and remanded the cause for further proceedings in accordance with the views expressed in its opinion. *Id.*, p. 528.

Petitioners urge that the Court of Appeals has virtually required the District Court to find confiscation. We do not think that this is the necessary import of the opinion. The appellate court took judicial notice of an upward trend in prices but did not attempt to make a specific application of that trend. The reversal of the decree requires a hearing anew in the District Court, and upon that hearing all questions pertinent to the issue of confiscation should be open. The economic changes to which the Court of Appeals has referred may affect income as well as values.

In the instant case, we do not have a situation in which rates as fixed by a Commission have been enjoined. Here the rates prescribed by the Commission's order have been in effect all through this litigation, and are now in effect. A decree for injunction could operate only as to the future. Another special circumstance is that the decree of the District Court expressly provided that the value it found was the value as of the date of the decree, November 29, 1935, although the evidence before the court related to April 1, 1933. A decree speaking as of the later date and operating thereafter should have a basis in evidence. On the hearing required by the Circuit Court of Appeals, the District Court will be able to ascertain what have been the actual results of the Company's business during the intervening years and thus to base its decree upon known conditions as to those years which may show clearly, in the light of the economic changes which have occurred, whether the prescribed rates are or are not of a confiscatory character and whether an injunction restraining the enforcement of the rates should be granted or denied.

To leave no question as to the authority of the District Court thus fully to rehear and determine the cause, the decree of the Circuit Court of Appeals is modified so as to provide that the cause is remanded to the District Court for further proceedings in conformity with the views expressed in this opinion. As thus modified, the decree of the Circuit Court of Appeals is affirmed.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

ROBERT H. JACKSON

ASSISTANT ATTORNEY GENERAL
WASHINGTON

THE WHITE HOUSE
FEB 11 9 14 AM '38
RECEIVED

*file
presmal*

February 9, 1938

My dear Mr. President:

I am grateful for the log of the fishing trip and for the inscription. I shall prize it as a souvenir of a very happy experience.

Faithfully yours,

Rob

The President
The White House
Washington, D.C.

PSF
Justice

THE ATTORNEY GENERAL
WASHINGTON

April 28, 1938.

file
personal

My dear Mr. President:

I transmit herewith, for your confidential information, a memorandum dealing with the present status of the bill to create an Administrative Office for Federal Courts. I think, if you will read it, you will be somewhat amused and a bit disgusted as well. However, we shall keep plugging, though I must say I doubt very much whether there is any chance for passing the bill at this session. Perhaps at the next session it may get through.

A surprisingly large number of people are in favor of the bill. Most everyone thinks it meets an important need and no one seems to be able to think of a better plan. Nevertheless, we seem to be stalled, at least for the present. We are the victims of the perverse psychology to which I referred at the last meeting of the Cabinet.

Sincerely yours,

Wm. Howard Taft

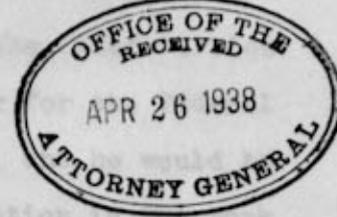
The President,
The White House.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

April 26, 1938

AH:eb



Confidential

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Bill to create an Administrative Office for United States Courts.

George Morris telephoned me this morning and talked at length, giving me a summary of conversations he had within the past day or two with Justice Stone, Chief Justice Hughes, and Arthur Vanderbilt:-

Justice Stone told Morris that he saw Senator Ashurst at the Judiciary dinner, at the White House, and told the Senator that neither he nor the other members of the Court favored the bill, but would not oppose the measure in view of the fact that they had no better alternative to suggest. (Perhaps this is the key to Senator Ashurst's change of attitude.)

Morris saw the Chief Justice yesterday and summarized the situation to him in detail and gathered the impression that, while the Chief Justice is willing to go along with the measure, he has a recalcitrant court. The Chief Justice told Morris that he has not had a chance to think the thing over and would like to do it during the summer. He said that what the Court

was afraid of was that under the bill the Chief Justice would become the Administrative Officer for the Federal judicial system for the entire country, and he would be partially retired from active participation in the work of the Court.

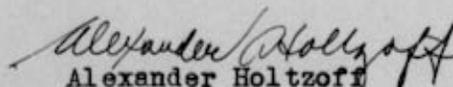
Morris told the Chief Justice of Vanderbilt's idea of having the Chief Justice confer with the senior circuit judges when they come here in May for the American Law Institute. The Chief Justice stated that he did not look upon that thought favorably, because he would rather think the thing through during the summer. Moreover, he indicated to Morris that his trouble was with members of his own court, rather than with the senior circuit judges, and that he wanted time to "nurse" his associates along.

Morris then saw Sumners, who said that he believes that the bill is the only real solution of the problem, but he has some sympathy with the reluctant attitude of the court, because the matter is so serious and far-reaching and, therefore, he is willing to let things develop instead of hurrying them along. He stated to Morris, however, that it is the job of the Supreme Court to handle the administration of the judicial system.

Morris then telephoned Vanderbilt at San Francisco, who was very much upset by the situation. Vanderbilt saw Judge Denman in San Francisco and has arranged for him to come here in May to address the American Judicature Society on this subject. Vanderbilt is also going to make some speeches relative to the matter.

Morris told me he would be glad to come over and discuss the matter with you, in case you signify the desire to see him. He suggested that it would be well when the senior circuit judges are here in May to discuss the matter with them individually, and possibly get support in that manner. I know that Judges Manton, Parker, and Kimbrough Stone are for the bill. I imagine that Judge Groner is; I thought I would talk to Judge Stephens about that phase of the matter. The attitude of Judges Bingham, Davis, Foster, and Evans appears to be unknown. This is also true of Wilbur and Lewis. Judge Denman undoubtedly would be a good man to discuss the matter with Judge Wilbur, and Judge Lewis' views would probably be affected by Judge Phillips⁶, who is a rather clear thinker.

Respectfully,


Alexander Holtzoff

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

*file.
confidential*

*Justice folder
1-1*

June 17, 1938

Personal and Confidential

Honorable Marvin H. McIntyre
Assistant Secretary to the President
The White House
Washington, D. C.

Dear Mr. McIntyre:

I am inclosing herewith a confidential memorandum which I mentioned to the President yesterday. I told him I would send it over to you so that you might hand it to him.

With best regards,

• Sincerely

J. Edgar Hoover

Inclosure

May 3, 1938.

MEMORANDUM

Since April 1, 1938, almost daily telephone calls have been made between a person giving the name of Davis, telephone Circle 7-2843 or Circle 7-2834, and a Miss Wihle, Long Distance No. 34 in Mexico City. During these telephone calls the party at New York purports to furnish to Miss Wihle information contained in cablegrams received by the New York party from Berlin, Germany. Many of these messages concern the movement of steamships, the names of two of these ships being the SS Kitty-Braenig and the SS Leiften.

On April 10, 1938, Davis called Mexico City and advised that the Kitty-Braenig would arrive at Vera Cruz, Mexico, on June 14, 1938. Five minutes after this call, a man using the name of Sam Morrison at Mexico City called Circle 7-2843 in New York City and told the individual answering the telephone, whose identity was unknown, to drop everything and send to Mexico City by air mail a list of all the oil tankers in the world, indicating their flag, name of owner and tonnage. At about the same time, Miss Wihle called Circle 7-2843 in New York City and dictated a cablegram to be transmitted to Berlin, Germany (addressee not ascertained). Miss Wihle told the party at New York City to sign the cablegram "Davis."

On April 18, 1938, between five and six PM, a man using the name of John Lewis at Washington, D. C., telephoned Elizando Carrillo at Mexico City and told him that Davis would leave New York on the 3 PM plane that day en route to Mexico City. Lewis told Carrillo to tell President Cardenas of Mexico that England was cancelling all charters on Davis due to the pressure brought by the Royal Dutch Shell Oil Company on the Bank of England, and that Davis was absolutely all right and could be depended upon, other reports to the contrary notwithstanding. Lewis told Carrillo to tell Cardenas that Italy and Germany were the only countries which it would be safe for Mexico to deal with and instructed Carrillo to see Cardenas that night, April 18th, and furnish this information to him without fail. During the conversation Lewis asked Carrillo if he had seen the article on Mexico appearing in the latest edition of the magazine "Ken" and he told Carrillo that he, Lewis, had furnished the material upon which the article was based. This telephone call emanated from Long Distance Loop 59 in Washington, D. C., which is listed to the United Mine Workers of America.

The Davis referred to is probably W. R. Davis of Davis & Company, Inc., New York City, who press dispatches indicate was endeavoring to contract to buy oil from the Mexican Government at an undisclosed price. It is interesting to note that according to the newspapers, on April 21, 1938, Davis flew to Mexico City, arriving there on April 20th.

The Carrillo referred to above appears to be Elizando Carrillo, Jr., thirty years of age, highly educated son of the former Mexican Consul General at San Antonio, Texas. It is believed that Carrillo is the head of the Workers' University of Mexico City at this time.

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

September 14, 1938

Strictly Personal and Confidential

Honorable Marvin H. McIntyre
Assistant Secretary to the President
The White House
Washington, D. C.

Dear Mr. McIntyre:

Under date of June 17, 1938, I addressed to you a letter transmitting some information which had come to me and in which I thought the President would be interested.

For your ready convenience in recalling this letter, I am transmitting herewith a copy of my letter together with a copy of the enclosure transmitted therewith.

I have now received additional information of the same general nature and accordingly I am transmitting herewith a memorandum dated today which you may desire to show to the party who is interested in these matters. The memorandum which is transmitted is a literal translation from a document received which was written entirely in the Spanish language.

With sincere personal regards, I am

Very truly yours,

J. Edgar Hoover

Enclosures

*File.
Private
Confidential*

Justice Folder

"COPY"

June 17, 1938

Personal and Confidential

Honorable Marvin H. McIntyre
Assistant Secretary to the President
The White House
Washington, D. C.

Dear Mr. McIntyre:

I am inclosing herewith a confidential memorandum which I mentioned to the President yesterday. I told him I would send it over to you so that you might hand it to him.

With best regards,

Sincerely

/s/ J. Edgar Hoover

September 14, 1938

"COPY"

May 3, 1938.

MEMORANDUM

Since April 1, 1938, almost daily telephone calls have been made between a person giving the name of Davis, telephone Circle 7-2843 or Circle 7-2834, and a Miss Wihle, Long Distance No. 34 in Mexico City. During these telephone calls the party at New York purports to furnish to Miss Wihle information contained in cablegrams received by the New York party from Berlin, Germany. Many of these messages concern the movement of steamships, the names of two of these ships being the SS Kitty Braenig and the SS Leiften.

On April 10, 1938, Davis called Mexico City and advised that the Kitty-Braenig would arrive at Vera Cruz, Mexico, on June 14, 1938. Five minutes after this call, a man using the name of Sam Morrison at Mexico City called Circle 7-2843 in New York City and told the individual answering the telephone, whose identity was unknown, to drop everything and send to Mexico City by air mail a list of all the oil tankers in the world, indicating their flag, name of owner and tonnage. At about the same time, Miss Wihle called Circle 7-2843 in New York City and dictated a cablegram to be transmitted to Berlin, Germany (addressee not ascertained). Miss Wihle told the party at New York City to sign the cablegram "Davis."

On April 18, 1938, between five and six PM, a man using the name of John Lewis at Washington, D. C., telephoned Elizando Carrillo at Mexico City and told him that Davis would leave New York on the 3 PM plane that day en route to Mexico City. Lewis told Carrillo to tell President Cardenas of Mexico that England was cancelling all charters on Davis due to the pressure brought by the Royal Dutch Shell Oil Company on the Bank of England, and that Davis was absolutely all right and could be depended upon, other reports to the contrary notwithstanding. Lewis told Carrillo to tell Cardenas that Italy and Germany were the only countries which it would be safe for Mexico to deal with and instructed Carrillo to see Cardenas that night, April 18th, and furnish this information to him without fail. During the conversation Lewis asked Carrillo if he had seen the article on Mexico appearing in the latest edition of the magazine "Ken" and he told Carrillo that he, Lewis, had furnished the material upon which the article was based. This telephone call emanated from Long Distance Loop 59 in Washington, D. C., which is listed to the United Mine Workers of America.

The Davis referred to is probably W. R. Davis of Davis & Company, Inc., New York City, who press dispatches indicate was endeavoring to contract to buy oil from the Mexican Government at an undisclosed price. It is interesting to note that according to the newspapers, on April 21, 1938, Davis flew to Mexico City, arriving there on April 20th.

The Carrillo referred to above appears to be Elizando Carrillo, Jr., thirty years of age, highly educated son of the former Mexican Consul General at San Antonio, Texas. It is believed that Carrillo is the head of the Workers' University of Mexico City at this time.

September 14, 1938

CONFIDENTIAL INSTRUCTIONS SENT BY VICENTE LOMBARDO TOLEDANO
FROM PARIS? TO THE DIRECTORS OF THE C. T. M. (NATIONAL COUNCIL)

Comrades:- We should not be entirely confident in the capacity of Chief Stalin to aid us with money to pay obligations in cash or with pressure to obtain large places in the matter of the expropriation of Petroleum. But we can hope that Roosevelt will constitute the surety in case Great Britain accepts the plan formulated by the president and communicated to Washington by our Ambassador.

The people say that the expropriation of petroleum is not without a machination to dismiss the English and to surrender the petroleum to the Americans. Although this has to do with the termination you ought to disprove such a belief by all possible methods because it would tend to discredit our Government as a national humbug. The people do not understand our ultimate goal nor the small importance of obtaining the petroleum at once, until the day of the final liquidation of imperialism.

You should understand the European situation which has a tremendous influence on us. Since 1936 the proletariat of the world has abrogated hopes of provoking a war among the so-called democracies and the totalitarian states, by means of the Spanish civil war. But unfortunately England and France have feared Italy and Germany who work quickly in support of the revolt of General Franco; without doubt Anthony Eden in England and George Mandel in France arranged that their respective governments would openly aid the Government of Azana. Eden failed and lost his position, leaving the total burden of the situation on George Mandel who is now the Secretary of the Colonies of France. The principal preoccupation of Mandel has been to check the policy "Realism" of Chamberlain, who formed a conditional pact with Mussolini with the object of securing the status of the Mediterranean, the Suez Canal, the Red Sea and the African colonies in exchange for allowing free hands for Franco in the war. George Mandel is on the point of shattering the plan of Chamberlain -- listing under the banner one hundred thousand African colonials. As a consequence of this, Mussolini refuses to retire a certain number of the African soldiers, which, from the point of view of Chamberlain are a threat to Egypt. Chamberlain can find a solution; but Mandel is equally capable of scattering most obstacles in the path of the English Minister, if he has the time. But if the English can form a block with Italy, Germany and the Spanish Nationalists, the combination will be unbeatable for a long time, no matter what the attitude of France is. For this reason Chief Stalin bids us to proceed without any delay. Another reason in his recommendation consists in that he does not desire to see Japan make such inroads in China that it could fight in support of Mussolini and Hitler.

In Mexico we are in a better position, to commence, for the following reasons:

1. The lack of cohesion and knowledge on the part of the Mexican People, which permits us, although we are a small minority, to dominate the country.
2. The manageability of President Cardenas in following our leadership.
3. The attitude of the Roosevelt administration, which known or unknown is in support of our plans.

4. Our alliance with the C. I. O. of Lewis
5. The progress of our propaganda in the South
6. Our geographic situation very distant from Europe and Asia, which we maintain
7. The character of our central organization on this Continent.

We should press ourselves, because Chief Stalin has urged this many times, we should begin no later than 1940.

We should avail ourselves of the said politics of our good neighbor before Roosevelt ends his term or the opposition becomes powerful enough to dictate the policies.

Lewis fears greatly the next elections of Deputies - in November.

In the United States as in Mexico the great masses of the people are conservatives and we hate them due to the contributing forces, to the lack of work and to hunger. Lewis reports to Chief Stalin that until the C. I. O. obtained control of the nationalist maritime union there were more than three million unemployed, capable of paralyzing the country and of transforming any international war into a civil war. According to Lewis, the first step in the United States ought to be that which we are taking with such haste: the nationalization of the Banks, Industries, manufactures, means of transport etc. etc. and the suppression of the periodicals because the bourgeois should be informed of nothing. We should continue our plans without repose. All the land should be divided and the electrical industry and Mexican railroads should be expropriated immediately. We should do the same with the Textile Industries.

Frankly my conversation with Lewis did not satisfy me. He confessed to me that the greater part of the industrial leaders who belong to the C. I. O. are not communists and they work deception. He told me that Roosevelt is a most stupid egoist in a high position. The people of the United States are awakening before the danger of a bank entirely general and of a revolution. From this, Lewis is far from being the forceful man whom we must have in the United States in order to support the International.

Before any other cause consumes you concerning the expropriation of the petroleum, realize that the Congress promulgated the juridical statute of the employees of the Government with the right to strike and to unite in the C. T. M. This is absolutely essential as a means of defense. If Great Britain decides to follow the United States by asking us for the devolution of the Petroleum Industry we ought to contest provoking a chaos by means of a general strike of the employees of the Government. Then the United States will attempt to establish order by armed intervention, which is exactly what Lewis needs to paralyze the United States and to promote a civil war. With the object of working with safety we should purge the army and give the arms to the proletariat.

I will discuss all the points with Lewis in a few days. I will be with you by the end of the month.

1
German Spy Ring
[10-38]

C.K.S. - 1-21-69

Refiled for
IRA and Foreign
Relations
1938

PSF: Justice Dept.

file [1938] No secret police to watch people
but we ought to watch them

"Note: If the President is asked the question "What about the spy case?" or "What are you going to do about the spy situation?" or some such question he can simply say: "Wait just a moment. Before I get to that I have an announcement to make." Then he can go on with the statement which appears below. If, on the other hand, no questions are asked about the spy case, the President can on his own initiative make a statement such as appears below."

I regret very much that my good friend Lamar Hardy, United States Attorney for the Southern District of New York, is going to retire shortly after the first of the year. He has served in that office for three years. For some time now he has wanted to get out. I have urged him to stay on until he could wind up the spy trials.

One of the real satisfactions which I have had has been the knowledge that there are people who are willing, at great personal sacrifice, to render public service. The United States Attorney's Office in New York has been the spearhead of the Department of Justice field offices, and Lamar Hardy has done an outstanding job in that office. He has been a vigorous prosecutor and under his administration the New York office has come to be feared, not simply by the ordinary criminal element, but -- (which is more important to the public, even if less dramatic) -- by those financial crooks sitting in high places who have fleeced thousands of persons out of their earnings. The easy course to take is to prosecute the petty crooks of the underworld. The hard job, and the job which takes courage and skill, is the prosecution of those more subtle and more

influential violators in the "overworld". I am extremely sorry to have Lamar Hardy leave, for he has been both an able and a faithful public servant.

We have seen recently the successful conclusion of the spy trials. They revealed an espionage system of a foreign government operating in our midst for a number of years. These trials demonstrated how unprepared we are to cope with this business of "spying" which goes on in our country.

~~The recent spy trials only scratched the surface.~~ The disclosures in the spy investigation, however, lead the Government to believe that only by the reenforcement of our intelligence services can we successfully combat the activities of foreign agents operating in our country. I don't mean for one moment that we need an OGPU or a GESTAPO, or any other form of secret police organization. Such things have no place in a democracy, but while we don't need and we don't want such organizations to watch our own people, we have come to the place where we most assuredly must watch the agents of other countries. We need ~~an~~ increased Army and Navy *facilities* ~~program~~ to handle espionage, possibly aided by the Department of Justice.

I can't say more about our program at this time, but you can be sure that it is something that is going to receive my personal attention.

JOHN EDGAR HOOVER
DIRECTOR

✓

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

November 12, 1938

Personal Attention

Honorable Marvin H. McIntyre
Secretary to the President
The White House
Washington, D. C.

Dear Mr. McIntyre:

I am inclosing herewith, as of possible interest to you, a memorandum which I prepared upon the Confederation of Chambers of Mexican Workers in North America. It portrays a rather interesting trend which I thought might be of some interest.

With best regards,

Sincerely

J. Edgar Hoover

Inclosure

November 3, 1938

MEMORANDUM

RE: CONFEDERATION OF CHAMBERS
OF MEXICAN WORKERS IN NORTH
AMERICA

An organization known as the Confederation of Chambers of Mexican Workers in North America, which is affiliated with the Confederation of Workers in Mexico, has issued a call to all workers of Mexican race in the United States to take part in the first congress of unification to be held in Dallas, Texas, on November 5, 6, and 7, 1938.

The formal notice of the congress declares that the appeal is made to workers of Mexican race,

".....and to all social sectors of the Mexican citizens in general who reside in the United States of North America, that they assist through their representatives or delegates the First Congress of Unification to be held by this confederation in this city.....with the object that those present will solve the problems that affect all the Mexicans, regardless of categories, political or religious creeds, in order that the result of this congress will be a powerful social force to protect and better the economic, social and moral conditions of the Mexicans who reside in this country."

No information is available with reference to the Confederation of Chambers of Mexican Workers in North America. It is reasonable to assume, however, that this is a new organization which has for its purpose the unification of all Mexican workers in the United States. It is noted that this organization is affiliated with the Confederation of Workers in Mexico. The Confederation of Workers in Mexico is also known as the Confederation of Mexican Workers (Confederacion de Trabajadores de Mexico or C.T.M.). The entire import of this unification congress to be held in Dallas, Texas, therefore, arises out of the fact that the organization calling the unification congress is affiliated with the Confederation of Workers of Mexico. There are briefly set out pertinent data with reference to this Mexican organization.

The Confederation of Workers of Mexico was organized in February, 1936 by a number of trade unions, principal among which was the trade union led by Vincente Lombardo Toledano and the Communist-led Mexican Unitary Trade Union Federation. Toledano was elected Secretary-General of this organization.

The C.T.M., as the Confederation of Workers of Mexico is popularly known, participates directly in the political life of Mexico as an independent force. It supports the Cardenas Government because of the latter's progressive policies. The C.T.M. under the leadership of Toledano has been working for the unification of the Latin-American labor movement, seeking the formation of a Latin-American Workers' Federation. This Federation was actually formed at a conference held in Havana, Cuba, in September, 1938, at which time Toledano was elected its President. This Federation represents thirteen Latin-American countries. The character of this Latin-American Workers' Federation is shown by the nature of several of the resolutions adopted at that time, which included: a resolution urging a party for Tom Mooney, another pledging moral support for Puerto Rican independence and the freedom of Pedro Albizu Campos, another Puerto Rican Nationalist imprisoned for independence activities.

It is, therefore, reasonable to assume that since the Confederation of Chambers of Mexican Workers in North America is an affiliate of the C.T.M., the calling of the congress in Dallas, Texas, is one more step on the part of Toledano toward the unification of all Latin-Americans in one consolidated labor union.

The importance of the C.T.M. in Mexican political life is indicated by a statement of Hernan Laborde, General Secretary of the Communist Party of Mexico, when he stated that the strength of the Mexican Government is based on the masses in the Workers Federation of Mexico (C.T.M.).

The C.T.M., as of February, 1938, had a membership of 945,913 and is made up of 3,594 affiliated organizations. It is the largest labor organization in Mexico. Toledano has been referred to as "the one and only brain-truster of President Cardenas and the driving force behind the seizure of foreign farm land and the confiscation of \$450,000,000 worth of foreign oil properties."

Information is outstanding to the effect that the preamble of the C.T.M. reads as follows:

"The proletariat of Mexico will fight fundamentally for the abolition of the capitalist system."

VINCENTE LOMBARDO TOLEDANO -

PERSONAL HISTORY

Toledano is reported to be "a thin, short, pale-faced bundle of inexhaustible energy." He first joined the labor movement when he was a student at the University of Mexico. He is forty-two years of age. He became a famous lawyer, a mouthpiece for labor, a Doctor of Philosophy, a college professor and a popular student leader. He is Mexico's best orator. He reads continuously and speaks English and French. He visited Russia four years ago and upon his return the Opposition press named him a "Grand Commissar" and called him a "Red." He has insisted, however, that he is not a Communist but rather a Socialist. He has been called the John L. Lewis of Mexico. The movement which he founded in Mexico has been patterned after industrial lines rather than craft lines.

The C.T.M. will be represented at the proposed congress in Dallas, Texas, during November 5, 6, and 7, 1938.

THE WHITE HOUSE
WASHINGTON

Justice

CONFIDENTIAL

November 11, 1938.

MEMORANDUM FOR

HON. J. EDGAR HOOVER

You might check further on that Navarro deposition. He must be all wrong about the California gentleman because I think the latter has been in California steadily since last June.

F. D. R.

*file
confidential*

New York, N. Y.
November 1, 1938

L, ALEX SYCOWSKI, also known as ANTONIO NAVARRO, which name I have legally adopted in Spain, make the following voluntary statement to Special Agents W. J. McNulty and J. L. Dalton. This statement is being given by me of my own free will, without threat or promise.

I left Spain for America on the Steamship Stancroft on July 31, 1938. I came to America in order to change the public opinion existing in that country against Spain. I arrived in Montreal, Canada about September 10, 1938. I was sent to this country by the Loyalists. The people here are calling Spain and the Loyalists "Red Bolsheviks" which is not true. The government is a Socialist Government. I came here to see if I could find a means to lift the embargo on airplanes and munitions. I stayed in Canada about ten days at the Mont Royal Hotel under the name of ANTONIO NAVARRO. While in Canada I did not contact any one and spent most of my time in the hotel, and attending movies. I came by train to New York City, and took a room for a couple of days at the Shelton Hotel. I then moved to the Beverly Hotel where I am now residing in a two room apartment. The number of this apartment is 6G.

After arriving in New York City I contacted BERNARD LICHTENBERG, President of the Institute of Public Relations, Inc., located in the Greybar Building, New York, N. Y. LICHTENBERG was to handle the publicity, advertising and propaganda work for my country. I also contacted KINGSLEY JARVIS, VAN ALSTYNE, NOEL & COMPANY, 52 Broadway, New York City to have them handle the importation of motion pictures from Spain.

About a month ago while in the lobby of the Hotel Beverly I saw a gentleman there. Someone referred to him as senator, and when he left the lobby, I stopped him and asked him, "I beg your pardon; are you a senator?" He said, "Yes, why?"

I said, "I am a stranger, a foreigner, and would like to speak to you if you would be kind enough to give me a few moments of your time. It might be worth your while."

He says, "What do you want? Who are you?"

I told him that I had arrived from Spain; that this was not the place to talk to him, and I asked him if he would come up to my room for a few moments. He came up to my room and I explained to him. "I am here to help Spain and the Spanish people." I asked him if he could do something to lift the embargo on munitions. He told

senator is...
agreed at the time...
deposited for...

me he was Senator Johnson from California, and he said, "Yes, provided you prove who you are", and then I replied to him, "You don't have to do business with me. You will do it direct with my country. The only thing I want to know is if you can do something to help my country, and if you can do it directly with my country."

He said yes he could. I agreed that he should be paid one million dollars if the embargo against Spain on arms and munitions was lifted. The agreement was to pay him five thousand dollars cash for his first expenses, and twenty thousand dollars later on for expenses.

The next morning he called on me at my hotel, and I paid him five thousand dollars in cash. When I paid him the money he showed me letterheads which read "Senator Johnson of California", and also mentioned the name of some firm of lawyers. I asked him to give me a receipt for the money and he says, "No, I don't want my name on nothing"

This man, who said he was Senator Johnson from California is about five feet, ten and one-half inches tall, more or less, full build, and very pale complexion. He had grey hair, and his hair was combed to his head. I called him Senator Johnson, and he told me that was his name. I do not know his first name.

This man, who said he was Senator Johnson, then came back to the Beverly Hotel about the 25th of October to see me, and he told me that he wanted the other twenty thousand dollars. If I didn't pay him the twenty thousand dollars, he would do nothing. I told him it was not up to me to pay him the twenty thousand dollars and that he must deal direct with the Spanish Government.

It was about five or six days after my first payment to this man that I received a telegram at the Belmont Plaza, across the street from the Beverly Hotel. This man had previously told me that he would not send any mail to me, only a telegram with no signature. In order to meet him or to get any news from him, I would have to go to the Belmont Plaza. The telegram he sent to me at the Belmont Plaza read about as follows:

"HAVE ARRANGED ALL POSSIBLE FOR THE PRESENT"

There was no signature on the telegram. It was sent from San Francisco.

In regard to the payment of one million dollars to the senator in order to have the embargo lifted, the arrangement was agreed at the first meeting that the one million dollars should be deposited for him with KUHN & LOEB.

I told him that part you will have to arrange direct with the Government because I have no power or control of the money. It was at the first meeting that he told me that it would cost a million dollars to get the embargo lifted.

I told him he would get twenty-five thousand dollars advance expense money, and I paid him the first five thousand dollars. When he came back about the 25th of October, he said, "I want my twenty thousand dollars."

I said, "I'm sorry. You have to get it direct from my country. I have no control over the money. I have to put you in contact with the Government."

It was at the first meeting that he told me he wanted his money deposited with Kuhn and Loeb, bankers in New York City.

I said, "That is up to you. It is not my business where the money is going to be placed." I again told him he would have to get in touch with the Government direct because I have no power.

This Senator Johnson said he was going to form a committee to have the embargo lifted, and he would be named chairman.

The telegram which he sent to me quoted above was forwarded by me to Spain. I expect to see the senator again as soon as he hears from my country, because he must get twenty thousand dollars more. The million dollars was to be the final payment to Senator Johnson, and this payment was to be made through Kuhn and Loeb at the senator's suggestion. He is in touch with them so I don't know what arrangements that they made.

I have been waiting for my own salary money from Spain. This money arrived so I was planning on leaving today for Montreal, Canada, and then come back to the United States in six days. Then I was going to Washington. This senator was supposed to meet me there. He was going to wire me at the Belmont Plaza where to meet him in Washington. After I visited Washington, I was going to wait for instructions from Spain.

I am a naturalized citizen of Loyalist Spain, and I am in the United States on a legitimate passport.

I have read this statement consisting of three pages typewritten, as it appears here, and it is the truth.

WITNESSES:

W. M. Kull
J. L. Dalton
SPECIAL AGENTS, FBI, US DEPARTMENT OF JUSTICE
607 US COURT HOUSE, FOLEY SQUARE, NEW YORK CITY

A. Navarra
Lycoursi

THE WHITE HOUSE
WASHINGTON

*PSF:
Justice
d. 1*

~~CONFIDENTIAL~~

November 16, 1938.

MEMORANDUM FOR

HON. J. EDGAR HOOVER

In regard to that Mexican
C.T.M., I think we should seek to
run down the money source that
keeps it going.

F. D. R.

DECLASSIFIED
By Deputy Archivist of the U.S.
By W. J. Stewart Date 2-25-72

THE WHITE HOUSE
WASHINGTON

Justice
y

January 14, 1939.

MEMO FOR THE P. S.

I can personally do
absolutely nothing about this.
It would be very unwise for the
White House to interfere in any
shape, manner or form.

F. D. R.

THE WHITE HOUSE
WASHINGTON

1-9-39

Memo. for Missy:

Tell her I think the only thing to do is try and find out whether Mr. Whitaker approves and if so it is all right.

F. D. R.

916 SHOREHAM BLDG.
WASHINGTON, D. C.

Dear Missis

This is a copy of memo
Helo Thuz weeks ago.

Jan. 11 hi Take of A. G's office
is ready to go so is Comptroller
General. They want to know
if a campaign to adopt the
standard set up by the neo-
enclosed - would not be in order.
set.

Memo not signed.

In the opinion of the Department of Justice the requiring, in bids, of information as suggested in the letter of December 16, 1938 of the F. L. Jacobs Company will tend to decrease patent infringement litigation.

INFORMATION WHICH THE NAVY DEPARTMENT

REQUIRES BIDDERS TO GIVE WITH RESPECT TO PATENTS

* * * * *

PATENT DATA:

Each bidder shall submit in triplicate, with his bid, the following classified information:

- (1) A list of patents owned or controlled by him which cover any portion of the material which he proposes to furnish.
- (2) A list of all patents covering any portion of the material which he proposes to furnish and under which he is licensed by others to manufacture such material for the Government.
- (3) A list of all patents covering any portion of the material which he proposes to furnish and under which he is not licensed to manufacture such material for the Government.

Where no patents are involved under any one of the above classes, bidder shall state explicitly that such is the case.

Where part or all of the material is to be furnished by a subcontractor, bidder shall also furnish the above information in addition for that portion of the material which is to be furnished by such subcontractor.

— PSF Justice

THE WHITE HOUSE
WASHINGTON

March 20, 1959.

~~CONFIDENTIAL~~

MEMORANDUM FOR THE ATTORNEY GENERAL:

Norman Davis says in regard to
Tennessee judgeship that Howell is O.K. but
that Stevenson has no character or ability.
This is merely for your information.

F.D.R.

No papers accompanied memo.

DECLASSIFIED
By Deputy Archivist of the U.S.
By W. J. Stewart Date FEB 25 1972

THE WHITE HOUSE
WASHINGTON
MAY 19 1954

Mr. Davis says:
The White House
Washington
Tamm Judge
Howell - NK

Stromson no character
re ability

SAM E. WHITAKER

ASSISTANT ATTORNEY GENERAL
WASHINGTON

June 13, 1939

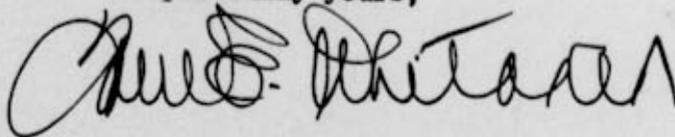
*File
Personal
Justice
Drances*

My dear Mr. President:

I feel highly honored that you desire to nominate me for a place on the Court of Claims. However, there is a contingency, which I have discussed with the Attorney General, the Honorable Frank Murphy, and which I understand he has mentioned to you, that may make it necessary for me to resign the latter part of this year. If you care to nominate me notwithstanding this contingency, I shall be very glad to have you do so, and if the Senate sees fit to confirm me, I shall accept and shall bend every effort to justify your confidence.

With assurance of my high esteem and warm regards, I am

Respectfully yours,



The President

The White House

PSF

Justice

Jan 2

Department of Justice
Washington

NORMAN M. LITTELL
ASSISTANT ATTORNEY GENERAL

July 21, 1939

Mrs. John R. Boettiger
2010 East Galer
Seattle, Washington

Dear Anna:

This afternoon, I have at last had the long deferred visit with Mr. Farley, and while the subject matter was necessarily of an extremely personal and confidential character, invoking doubts in my mind as to whether I may discuss the interview at all, two factors lead me to do so: first, the confidence and respect which Mr. Farley has for you, who, he observed to me before, "has promise of being a great woman like her mother", and secondly, the vital necessity of appraising Mr. Farley correctly because of the crucial part he will play in 1940 where we may very likely look down two crossroads, one to authoritarian government and the other, to liberal government and free institutions. Personal factors, even a personal confidence, may be subordinated where so much hangs suspended on a judgment- particularly if one can throw the tiniest ray of light on the whole subject.

I reminded him of our previous talk, which he evidently recalled quite well, and of the equation for our party success in 1940 as he then stated it- a liberal platform, a liberal candidate, and one having the support of Franklin D. Roosevelt. In the short interval since that interview in early April a great deal of water has flowed under the bridge with rather violent force. Did he still feel that that was the equation for 1940, or had the steadily increasing bitterness of personal feeling made a difference? Had the split in the party between the left wing and the right wing, which he had in April attributed to columnists reports, been widened?

Mr. Farley plunged into a discussion of the whole matter stating that we might just as well face facts, that the wedge had been driven deeper into the party and we might as well face it.

While he himself had been subject to sharp personal attack from the President's younger advisers, and a great many bitter things had been said about him, he had not answered back.

"You can ask any newspaper man in Washington", he said, "and every honest man of them will tell you that I have said no word of criticism of the President nor, for that matter, of Tommy Corcoran. I have been absolutely loyal to the President. You cannot disregard my many years of service with him and the fact that I have supported all of his measures to the best of my ability. There is only one matter in which I disagreed with the President and that is the matter of the purge which was Tommy Corcoran's idea." (You will recall Farley's previous statement that he had simply told Tommy Corcoran, in respect to the purge that Tommy had his orders from his Chief and he could carry them out, himself).

I might interpose here, Anna, a personal impression from being in Washington (which you may get in a live newspaper office even at three thousand miles) that the reactionary revolt "on the Hill" is something terrible to observe and feel. It can only be described as sickening and heartbreaking to those of us who know that the issue of the day is the preservation of liberal government through our democratic institutions. A liberal Senator, only a few days ago on the Hill, told me without bitterness but merely as a statement of fact, that the Senators were "sore" at not being consulted by the Executive branch of the Government, and over the deference to the Corcoran group.

I do not know Tommy Corcoran well, for as you know my connection is through Ben Cohen whom I admire immeasurably and believe to be a great and able mind of the Cardozo stamp, and knowing Ben has given me confidence and a great deal of admiration for the ability and achievement of these young liberals in your father's government. But with Mr. Farley, I was in search of the truth in respect to political factors in respect to which he is an expert, and therefore I asked a question which might otherwise have seemed disloyal to my own group.

"To what extent is the revolt on the Hill due to resentment at this source of advice and influence on the President and to what extent, in your opinion as a professional politician, is it due to

the accumulated prejudices which the executive builds up during two administrations?"

"No one can answer that precisely, but the largest measure of it is due, in my opinion, to the personal equation, and the fact that the elective representatives are not sufficiently consulted. There are men up there on the Hill who have been there a long time before President Roosevelt came here, and they feel that they are at least entitled to be consulted as party leaders."

"Mind you, I have nothing against Tommy Corcoran, personally. To me he just doesn't exist as a political factor. He is a bright, able young fellow who doesn't know anything about politics and the party."

"I am sure you recognize the brilliant service they have rendered to the country in respect to the drafting of important legislation like the Holding Company Bill- an achievement of immense stature", I added.

"There is no question about the service they have rendered in those respects. In legislative matters I fully appreciate the great work they have done, and if there are a lot of things I don't know about, which they have done along this line, I'll give them credit for all of those too. And still I say that they have rendered and are now rendering the country a great dis-service because they are splitting the party wide apart and we can't win without the party."

Mr. Farley grew very emphatic on this subject, leaning toward me from his end of the divan in his office on which we both sat. "I tell you they don't begin to realize what they are doing. There is a reaction starting to spread across this country which will completely defeat their own objectives. Their personal attack upon me is increasingly recognized as an injustice in view of my loyal service to the President and my silence at all times and failure to criticize the President in any way. I do nothing but sit here in my office and say nothing about the attempt to separate me from the President. I just take it. The foolishness of it is shown by the fact that they will defeat their own objectives. A reaction has already set in against them. People will not stand for injustice."

"Furthermore, the attacks are unjustified. I have a complete record of liberalism in having supported every measure which the President suggested. No chairman of the party since the days of Thomas Jefferson has ever worked more arduously for the party day in and day out with long hours at my desk. No chairman has ever made so many speeches in favor of the President's measures.

No chairman has ever traveled so many thousands of miles as I have traveled over this country in the interests of a party and of the President. People do not and will not forget that, and the President knows it too. If you could sit down and talk with the President and he would really "let his hair down" and be perfectly honest with you, he would tell you that no one around here has been a more faithful liberal than I have been."

"Not that I am important", added Mr. Farley, "I am only a cog in the whole works and what happens to me is of no importance whatever; what happens to the party in 1940 is of great importance to the country. I love my country and my party and that's why I am here."

"I feel very strongly", I observed, "that we are confronted not merely with a choice between the Democratic party and the Republican party in 1940, but between the preservation of liberal institutions as distinguished from some sort of an authoritarian government. Whether rightly or wrongly, I am convinced that if the party is split and a reactionary group gets in, with world affairs as they are, the election ladder will be pulled up and we won't see it again for a long time. Do you agree?"

"I agree with that", Mr. Farley replied, "and the President ought to know that if the work of the most liberal administration in the history of the country is to be preserved, and not repealed piece by piece by a reactionary party, our party must work together for 1940. It will be the end of liberal government for at least twenty years if we lose this time."

I could not help contrasting this sound observation, which I feel most strongly represents the true analysis, with the impatient statement of Tommy Corcoran at dinner about three weeks ago when Katherine and I dined with him and "Peggy" and Ben. Tommy had indicated in his usual courageous hard-hitting, incisive way that we must fight for a liberal government in 1940- liberal in the un-Farley sense of the word as being based upon principle politics as distinguished from party politics and then if we lost in 1940 leave a few mines behind us as we go out to blow up the conservatives of the next four years. Then we would get back in 1944.

While I am perfectly willing to do battle and go down with colors flying in a glorious head-on attack in a small band of brave troops who are fearless and uncompromising, I made a mental note at the time that I would prefer to bring up the reserves in a more orderly fashion, even if our movements had to be somewhat slower and our attack less heroic and uncompromising, in the hope that we would have a better chance to win the war in the long run. I think my view on this is sustained by pointing to the remarkable

achievements in the advance of liberal government during the short span of six years under your father's leadership.

There is much left undone, I agree, and the economic system has not really given ground, except in the direction of regulation (Holding Company law, SEC, Wagner Labor Relations Act, etc.) but immeasurable advances in the thinking of the people of this country have been made, and on this groundwork intelligent liberal government could achieve greater things if given greater continuity of power. I might even weigh Tommy Corcoran's impatience to get ahead in order to save democracy, against the fact that we have democracy here now under our very noses in the form of elective representatives of the people. There is a limit to the indifference with which they can be treated by an unelected representative like Tommy in our desire to get ahead. Leadership with its superior intelligence may roam the vast open spaces within the framework of democracy on horseback, (or even by airplane) and report back to the marching troops in the ranks of democratic government, but even the most intelligent leadership cannot make those troops move at a faster rate than they physically can. In other words, even if Tommy Corcoran is right in all of his conclusions, and in all of his impatience at the slow processes and selfish or unintelligent reactions of the legislators, there is simply nothing we can do about it but lead on and go as fast as we can. It is of the essence that Congress is based upon leadership. Your father's amazing success in the political history of this country is based upon leadership.

Feeling as I do about 1940, you can see why I felt myself in the presence of one of the important factors in the history of the country in talking to Mr. Farley, so convinced am I that a party cannot win if that vast network of party relationships, which he represents, is alienated from your father. He forms a personal link with a great mass of party workers who can only think in terms of personal loyalties. We cannot make them think more ably or act more courageously in support of essential social reforms than they are intellectually capable of, but if they can be lead in the right direction by a personal loyalty, then let us use that personal loyalty. You father's personal followers outnumber these "party" men of Farley's by far, but Farley's group would leave a fatal gap in the ranks.

I willingly accept the leadership of young liberals to whom the President has given his confidence, but on this vital matter of 1940 in which I feel that not only the achievements of this administration, but also my own stake in free institutions,- my own personal liberty without which life would be unendurable, are at issue,- I will yield my judgment to no one, not even to Tommy Corcoran.

Therefore I reach my own conclusion that Farley is essential to 1940.

Is he loyal to the President? Here again I cannot help contrast the opinion expressed by Tommy Corcoran of Jim Farley, with the opinion of Tommy Corcoran expressed by Jim Farley. At the dinner with Tommy and Ben, which I mentioned, I ventured to observe that whatever Mr. Farley's limitations were- and we know that he lacks perhaps that incisive and attacking intellectual quality which is characteristic of the best liberals of this administration, he made up for them with loyalty to the President, and that he did seem to me to be loyal up to the full capacity of his powers.

Tommy replied to this effect: "Of course he is loyal, what else can he do but be loyal. He is dependant upon the President for his position and for getting some sort of a good job out of his position with this administration."

"You don't mean to tell me that Farley is playing for some sort of a job", I replied.

"Why, certainly he is", Tommy replied.

Now that statement disturbed me at the time not as a reflection of any personal spleen which I understood existed between Tommy and Jim Farley, but as a mis-statement of fact and a complete misjudgment of character. Whatever Tommy's ability, that statement put me on guard against his insight, because I knew he was wrong.

Mr. Farley's estimate of Tommy Corcoran, on the other hand, has always been tolerant and generous. In both interviews he spoke of Tommy's ability, and in both interviews he spoke of his strong disapproval of certain things that Tommy had recommended, but that he had only actively opposed the purge, the consequences of which are still with us. I must admit that his impatience with the Corcoran influence was far greater in this interview than in April and one can well understand that as the feeling has grown more bitter recently.

"Why, only this morning", Mr. Farley said, "they tried to do something to me by hurting another man. I cannot tell you the circumstances, but the fact that I resent most is that they are hurting this other man who is essential to us in the party. I don't care what they do to me,- that isn't important- and it only defeats their own end and the party. I don't really care who gets the job and it takes no jurisdiction away from me to give them to people without consulting me, but it does hurt the party and hurt our effectiveness in 1940."

Nothing had, as yet, been said about the delicate subject as to who would be the nominee for Presidency in 1940. It would certainly be impertinent for me to ask a cabinet member and the chairman of the party his innermost opinions on this delicate subject, but in these tense times somebody has to ask somebody something- and I did.

"The equation for Democratic success in 1940 being as you have stated it to be, and with no leader having emerged possessing anything like the President's capacities, is there any escape from asking him to run again?"

"Until the President has discussed that subject with me, I don't think it is proper for me to discuss it with anyone else", he replied.

"It is an impertinent question, I realize, and I have no business in asking it of you", I said.

"No, it is not impertinent, and it is perfectly all right for you to ask me that question, but I think you will agree that until the President has talked with me about it and let me know his views, I shouldn't say anything. However, I will say in confidence, that I am inclined to think that the President is not interested in a third term. As recently as one week ago today at lunch, he indicated this to me. If he decides not to run, I think it would be appropriate for him to make a statement at the proper time to this effect, but that is up to the President."

"I am going to talk with the President on Sunday (July 23d) and you may know that he has publicly announced that he has invited me to Hyde Park to discuss matters", Farley concluded. I read this announcement in the evening paper later but had been unaware of it until Mr. Farley told me.

In conclusion we returned to the theme of the rift between Farley and Tommy Corcoran and its implications in 1940.

"To face facts squarely, what can be done about it?", I asked.

"That is entirely up to the President", Farley said. "The situation is not hopeless by any means. If he will sit down with party advisers and hear them, the difficulties would be overcome"- or words to this effect.

"Are you implying", I asked, "that the Corcoran set-up will have to be eliminated?" I assure you there was no disloyalty in this question but it was essential to determine the fact.

Mr. Farley replied in language which I cannot precisely recall, to the general effect that this was not necessary, but that in party matters Corcoran did not know what it was all about, and I rather gained the impression that Corcoran should be left to his proper sphere and that the party leaders should have something to say in their sphere. He repeated the previous statement that Corcoran et al "had rendered the country a great dis-service", although with due recognition of the valuable work they had done in certain lines.

"But do not forget", I added, "that they are also political factors in a very real sense! They are the accepted leaders, as lieutenants under their chief, of a new liberal movement in which the rank and file of politically untrained troops look up to these young liberals very earnestly as friends in court".

I am not sure but that this idea may have surprised Mr. Farley as he seemed to hesitate a moment. He observed that this was all right and that they could carry on as they saw fit with the liberal following. I might add at this point a statement he made early in the discussion, that the liberal vote is the vote which will turn the election and that the party never wins with a conservative or middle-of-the-road candidate.

In concluding this all too-long letter, Anna, I realize that I have left unmentioned the most delicate subject of all-Farley's possible presidential ambitions. Without any admission on his part one can assume that such thoughts have often been in his mind. They would spring naturally from his great popularity over the country and from his claim to a "liberal record". But this is as far as I would care to go along this line of surmise, and I am still definitely and firmly of the impression that adherence to the rules of loyalty, which has marked Farley's rise to his present position and which have undergone severe strain of late, still dominate in the man.

It may sound like a self serving statement, but nevertheless I believe him when he said early in our interview:

"Norman, I am a plain, loyal fellow and I have never been anything else as far as the President is concerned."

My impression is that he is still a loyal fellow, but I say this with full knowledge that the best judgment of human character can be upset by subsequent emotional developments, and particularly is this true where the stakes in power are large indeed. Nevertheless, on the delicate fulcrum of human character is nicely balanced the course of human events. From the practical viewpoints, where a given character is in a given spot at a given crucial point

-9-

in history, that character cannot be ignored. It must be dealt with realistically with every possible appeal made to its finer instincts. This much, and this much only of guidance can be given to the turn of human events balanced on that particular fulcrum. The rest depends upon the firmness and reliability of that particular character.

Affectionate regards from us all.

Sincerely,

W. M. W.

Grace:

You said you wanted to bring
this correspondence to the notice
of Gen Watson for his information.
Will you please return it to me.

Paula

Mrs. Roosevelt
page 2

and jurisdiction over the land has been ceded to the United States by the State of New York. All of which merely means that this transaction is now completed in every detail.

It so happens that I am flying to Seattle on business next Wednesday for about two weeks. I am looking forward with keen pleasure to seeing John and Anna again.

Very sincerely yours,

Norman M. Peters.

c
o
p
y

JOHN BOETTIGER

August 9, 1939

PERSONAL

Dear Norman:

Anna and I have discussed the Western States Conference between ourselves, and this morning with Howard Costigan. We are most enthusiastic over the prospects, and devoutly hope the meeting can be worked out in a most effective and successful manner.

First let me give you ideas developed by Anna and myself, and then I will tell you Costigan's reactions.

Anna and I realize that you and your group there will be ironing out the details, and we have no thought of substituting any of our ideas for your own. It occurs to us, however, that suggestions made to you privately might be of some value.

We hope that no announcement of any kind will be made until after the situation has been carefully canvassed in all the states concerned. We believe it would be useful to have a survey made by someone like Oscar Chapman in a quick tour of the Western states. I gather that Chapman is going to Alaska, which would eliminate him as a possibility for this job, and, of course, there are others who could do it effectively.

While we would be personally gratified to have such a meeting held in Seattle, we incline to the thought that it would be better to have the meeting in a more centrally located spot. Salt Lake City has been mentioned, and I believe supported by some of the liberal group, including Secretary Ickes.

Wouldn't it be possible for the President to address the conference at Salt Lake City on his return East from Seattle?

Consideration should be given to the fact that there is a sharp divisions between various factions of the Democratic Party in the State of Washington, and particularly in the City of Seattle. I do not mean that the reactionary Democrats, such as Governor Martin, Senator Drumheller, et al, are to be considered, but I think you will agree that there is feeling between factions of the Democratic organization which may be relied upon to support the New Deal in a conference of this sort.

While the situation is not as difficult as in California, due to the "ham and eggheads", somewhat the same embarrassments might arise were the meeting to be held in Seattle. Doubtless you are better posted on this than we are, and it may be that, if the auspices of the meeting are such that all the New Deal groups here will be able to participate without embarrassment, the meeting could be held with full satisfaction in Seattle.

The vitally important thing, as we see it, is to have the call issued by a group sufficiently broad to embrace ALL liberals within the party.

At the risk of repeating myself, I emphasize the need for arranging the meeting so that it will be attended and supported not only by members of the WCF and the OCF, but all other liberal Democrats, and members of other liberal organizations.

If the thought of holding the meeting in Salt Lake City has merit, the call could easily be made by Marriner Eccles, and it is possible he might make a good chairman. This is simply another thought that might have some objections, but might be of some value. Of course, if the meeting should be held anywhere except Seattle, it would be necessary to consult with the President to make sure that the change fitted in with his own schedule.

It might be of some importance also to reckon the transportation cost involved in holding the meeting in Seattle. Most liberals, as you know, have very slim resources and might be overtaxed in coming so far.

Now, with respect to Costigan's views, he is naturally very enthusiastic, but agrees wholeheartedly that no announcement of any kind should be made until the matter is fully organized. He believes it would be better to hold the conference in Salt Lake City, and suggests that, in addition to consulting with Eccles, Senator Thomas should be consulted. He did not, of course, go into the factional controversy here as a factor in deciding whether the meeting should be held in Seattle, and his preference of Salt Lake City, as he expressed it, is entirely on the basis of convenience and its central location.

Costigan is entirely cooperative, is intensely appreciative of your leadership in the matter, and I confident will do nothing of an embarrassing nature.

Will you please wire us as soon as you determine definitely the date of your arrival here. Our understanding of it is that you may be here the beginning of next week. We would also like to know just how Oscar Chapman fits into the picture, if at all, and whether he is likely to be here at the same time.

Anna has joined in the preparation of this letter. We both are very proud of you, send our best always to you and Katherine, and are anxious to see you.

Sincerely,

" JOHN "

John Boettiger

Mr. Norman M. Littell
Assistant Attorney General
Department of Justice
Washington, D. C.

P. S. Anna has brought up an additional vital point which I missed. The fact that the President will address this conference is a terrific drawing card, and by itself will guarantee the success of the conference. Whatever announcement is made concerning the conference ought to include the fact that he will address the conference.

J. B.

August 11, 1939

Mr. and Mrs. John R. Boettiger
2010 East Galer
Seattle, Washington

Dear John and Anna:

I ought to write for completeness' sake about last night's discussions of the proposed Western States Liberal Conference. I have already written in regard to the group meeting in my office last Monday night to discuss this and other subjects, and aside from the scattered fire of individual conversations throughout the last three months, these have been the only attempts to analyze the proposition from our point of view here.

At the outset of the discussion I stated on request of Oscar Chapman, the legal position of each of us under the Hatch Bill, to which as I wrote you I had given some considerable study as a member of the Attorney General's committee to formulate a release for employees of the department. Without dwelling on this problem at any length and to set your mind at rest on it if you are concerned, the conclusions are as follows: in respect to our group: (1) None of us is affected by Section 2 which is the penal provision of the act (\$1,000 fine, a year in jail, or both) because this involves using "official authority" to influence certain election, but using "official authority" involves an element of exacting obedience from inferiors, both by legal definition and by accepted definition of the Civil Service Commission. Clearly such authority is no way involved for any of us. (2) As to Section 2 of the act, the penalty in which is discharge from a service- here again there is no possible use "of official authority" for the above stated reason, and of course we are within the express permissive right of this section which reserves to all not only the right to vote but the right to express opinions on political subjects. The civil service law permits expression of opinions "privately", but that word was omitted in the Hatch law, and as the President said in his opening statement we can even express opinions publicly so long as it is not a part of an organized political campaign and does not constitute political management. There is one of the finest and most difficult lines of demarkation which will become increasingly significant as time goes on. When is a public speech a part of a political campaign? In any event a discussion group meeting as we think would have been proper even under the more strict civil

service provisions, and was clearly so under the Hatch law. (3)
The more delicate question is whether or not we were engaging in
political activity or management, or in fact a political campaign.
At this point the personnel becomes important and they are to be
divided into two groups:

<u>Assistant Department Heads and Exempt Positions</u>	<u>Others</u>
Oscar Chapman, Assistant Secretary of Labor	Dave Niles, an Assistant to Secretary of Commerce
Marshall Dimock, Assistant " " Labor	Ben V. Cohen, National Power Policy Committee
Lowell Mallett, Chairman of the Nation- Emergency Council	Paul Appleby, an Assistant to Secretary Wallace, Dept. of Agriculture
James Rowe, Secretary to the President	
Norman M. Littell, Assistant to the Attorney General	
Theodore Kreps, Temporary National Economic Committee	Isadore Labin, Department of Labor, Bureau of Labor Statistics (not present at last night's meeting)
Robert H. Hinckley, member of Civil Aeronautics Authority (not present at last night's meeting)	

The exemption of Hinckley and Kreps is due to the
fact that the former is the head of an independent bureau and comes
within the same exemptions as those of us who are of sub-cabinet
rating, and the former is engaged in an activity of the Legislative
branch of the Government and is therefore exempt from Section 9 which
applies only to employees in the Executive branch.

As for those in the right hand column, they engaged only
in the discussion of the Western States Conference and several other
subjects and participated in no decisions. In fact, we had no deci-
sions as we had no organization, no motions and no order. It was
really a smoker ending up in the dining room for a midnight snack.

As to that portion of the discussion which interests
you: No one but Dave Niles and Oscar Chapman and I knew of the
President's message delivered by General Watson the morning following
our last meeting advising that the Western States Conference should
be held in Seattle and that he would address it on the 7th or 8th of
October, so the announcement of this decision was either electrical
in its effect upon those who wanted the Western States Conference or
astounding to those who knew nothing about it.

THAT
OF F
JOHN
LRO
SOLA

Kreps was an addition to our group of great proportions, physically and mentally. Being from California he could quickly and readily sense the importance of the Western States Conference although he had not participated in our previous discussions, and he added a wealth of suggestions as the personnel.

The discussion halted and stumbled over the very elementary question which I thought was well out of the way, as to whether the Conference should be held at all, Jim Rowe being skeptical as its value and wanting to be advised as to what good it would do the President. Jim is originally from Montana but frankly admits what was perfectly evident that he had lost complete touch with politics in the state- in fact, he had no conception at all of the West. This was quite natural as he had been to Harvard and come down here as secretary to Tommy Corcoran and via that route into his present position which he handles very ably I believe. He is a fine fellow and has a first class mind, but like many first class legal minds appears to be utterly at sea among political factors.

was
He/horrified at my mentioning some of the western liberal organizations, labor unions, pension groups, etc. such as Howard Costigan has listed as basic elements, not sensing at all the undertow of liberalism emanating from these sources, nor having any consciousness of the force and vitality of conviction which moved these people. The motive power, the *raison d'être* of liberalism is there, but Jim doesn't know it.

"Why bother with these people", Jim asked. "They are ours anyway. They have no place else to go." |||

"You're wrong there", challenged Dimock of the Department of Labor, "There is a great deal of disillusionment and confusion of mind, even resentment at the New Deal for the W.P.A. cuts for which the New Deal is in no way responsible."

"Well, they are certainly not going to vote Republican", Jim added, "and if they are so foolish as to do that, then the Republicans will have to win in 1940"- or words to this effect.

Shades of Tommy Corcoran! If we have to go out in 1940 we'll come in in 1940. ||

Others made the necessary answer, that we need not go out in 1940, that the thriving liberal movement in the Pacific Coast area, with its counterparts elsewhere, constituted the fringe of liberal vote which would win the election.

"I think we should preserve the right to advise the President against addressing this conference, just the same," added Jim, "if it appears to us that it is not the kind of conference he ought to address". |

"That is always true", added Appleby, of Agriculture, without joining in Jim's objections. "We certainly change our advice to the Secretary when situations change requiring different conclusions".

"That goes without saying", I added, "but since (1) some sort of a conference is to be held, a good one or a half-baked one (2) without some help from us here, it will probably be a half-baked one which will end up with left-wing domination and an endorsement which will hurt rather than help us in 1940, aren't we compelled to do the best we can to give assistance to those who expect it in the West, to make this conference the success which it can be?"

It seemed so elementary to me that the decision having been made there was no alternative to making the thing go. That opinion was expressed by others and strongly concurred in, with the reservations noted on the part of Jim Rowe who seemed to suffer from a Harvard-revulsion at the low order of organizations mentioned in my list.

"You really should have named some of the outstanding intellectual liberals of the West first, Norman", observed Dave Niles. "These deodorizing liberals would not have offended Jim".

This is not the first occasion when I have felt genuinely sorry for a man of first class character and ability with liberal ideas which he could not translate into the terms of humanity because he did not like perspiration which always somehow seems to be incident to labor. Harvard struggles somewhat in vain toward the second half of Solomon's eternal equation for the educated man: it gives "wisdom" in the sense of knowledge, but it cannot give "understanding". I shudder when I think that I might have lived in a higher ivory tower than Jim (Harvard plus Oxford) had not fate manhandled me somewhat and somehow landed me in the fore'st'le of a ship at sea and later in the northwest swinging an ax and pulling on a saw in a lumber camp in the woods. There is some doubt in my mind whether a man ever understands the point of view of labor unless he has worn his body out day in and day out on a job for three or four dollars a day, but perhaps there are those who achieve understanding without going through this tough school. Certainly the President has.

Having wasted much of the evening plowing up old ground which was new to Jim Rowe and Lowell Mallette, (neither of whom had attended our first meeting, both of whom incidentally are in the Tommy Corcoran group, although Tommy himself, as I told you in the last letter, is now very much for this Western Conference), we proceeded to discuss details. I sought to get out of each man what suggestions as to personnel in the various states involved, he might have. What I gleaned on this subject can be brought back to you rather than recount it here.

Doubtless Costigan and others interested in the Western States Conference may have some sort of a plan in mind, but merely as a suggestion to start thinking along this line the ideas evolved in this group were approximately as follows:

- (1) There should be a control committee in each state in the nature of an Executive Committee of well chosen personnel having all groups interested in the perpetuation of liberal principles in government.

To which I now add as it occurs to me, that a much broader and more numerous general committee of each state could be named to issue the call for each state, or join in issuing the general call.

- (2) Have a pre-conference committee, or kind of Executive Planning Committee to meet and plan the whole event with ~~the~~ manager or coordinator of course meeting and working with them.
- (3) We should provide, somehow donated from our group here, a general organizer to act as a coordinator among the various state groups, conduct the correspondence, etc.

These are only the roughest ideas, for after all the best we could contribute is perhaps entre to outstanding leading liberals in the West to whom men like Costigan could not effectively appeal, and to aid, too, in getting the sanction and support from speakers, which we have already accomplished in the highest measure when the President offered to speak.

As to the place of meeting I read excerpts of John's letter as to the advisability of holding the conference in Salt Lake City rather than in Seattle, if it suited the convenience and wishes of the President to make his address there on the way back to Washington from Seattle, as John suggested. A consensus of opinion was that this would in every way be the wisest thing to do politically, providing the President thought so, due to the sharp division of the party in Seattle, the exceedingly left-wing tone of things in Seattle, the fact that Salt Lake City is more centrally located as a matter of economy in traveling from all parts of the eleven western states.

Also we have a good liberal set-up in Salt Lake City from which Hinckley himself comes and it was felt that proper leadership was available there for management of the conference locally. It was suggested that ^{the} Salt Lake group might issue an invitation to the liberals from the West to convene in Salt Lake at a given time.

Lowell Mallette was still unconvinced at the end of the

evening as we sat around the table in the dining room and I was compelled to remark that he was at a great disadvantage for not having had any previous discussion on this subject which must have struck him as new and unusual.

"It seems strange", he replied, "that the White House should not be informed", the implication being that neither he nor Jim Rowe were informed as to the enterprise.

Frankly, I thought that a very presumptuous statement to which there were two devastating answers; first, that the President and Mrs. Roosevelt lived in the White House and they knew a great deal about the proposed Western States Conference, so much so that the President had endorsed it and had agreed to speak at it.

But I only made the second answer: "I have telephoned to you twice since meeting you in Florida when I flew down there at the request of the Attorney General to discuss coming to Washington in his staff. You have not returned either telephone call, nor have you at any time communicated with me. Furthermore, ever since I have been here I have pursued Tommy Corcoran and Ben Cohen on this subject until they are tired of seeing me coming. Whether you answer my telephone calls or whether I ever see Tommy Corcoran again, the Western States Conference will be held just the same".

That was a bit strong under my own roof, but quite involuntary. Incidentally, it seemed to meet with extremely favorable acceptance from every one else in the group except possibly dear old Ben who perhaps thought I was a bit strong. I forgot to say that after expressing great eagerness to come, Tommy did not show up, but perhaps this was because he was quite sufficiently represented by Lowell Mallette and Jim Rowe and Ben Cohen.

Ben is and has been a strong supporter of this whole project. He went in to say goodnight to Katherine sitting in bed in her air-conditioned room, reading, and said in his quiet way that the Western States Conference offered the only chance to win because of the immense help which it could be in precipitating the liberal vote. I forgot to state that one of the principle functions of the conference, as agreed in this group, was to serve as a constant reminder of a possible third party movement which is nowhere nearer to realization than in the far West. As discipline to the conservative old party line of Democrats, the clear precipitation of an unadulterated liberal movement in the West would be strong medicine.

It has been pointed out by one or another members of the group that such a conference would be a distinct warning to the party organization prior to the convention in 1940.

even Jim

We all see the light here, now, /and with some differences of opinion as to how things should be done-(and nobody knows the answers on this subject- certainly not I), we will all have our shoulders to the wheel. Numerous written suggestions are being submitted to me this week before I go West.

The most disturbing uncertainty, in view of the shortness of time, is the question as to where the conference is to be held. As you urged in your letter, it was necessary to communicate with the President before he left on his cruise, and of course you felt it necessary to write to us and clear these suggestions through this group before communicating directly with Mrs. Roosevelt or the President at Hyde Park, which would have been a much more desirable course if only we had had time to ask you to do this.

As it was, having explored all other methods of communication and found none, (Jim Rowe would not wish to step out of his regular line of duties to communicate such a question to the President), Katherine and I decided we would have to telephone the question to Miss Thompson to submit to Mrs. Roosevelt. Your mother very kindly answered the telephone herself. I passed on your suggestion about Salt Lake City. She will ask the President and telegraph his reply.

Saturday, August 12th.

I held up this letter pending the receipt of a telegram from your mother. It has just come. The President will speak at Salt Lake City but it will have to be between October 3rd and 5th, on his way West, not on his way back.

Hinckley is in Salt Lake now and will receive instructions to set up the proper committee there after first writing me at Seattle what he suggests so that we can clear preliminary matters there. We have a fine liberal leadership there, I am told, and with a man of Hinckley's first class ability, management should be right.

Enough now. This is just preliminary to let you know how our minds are running. The money question is still unsolved, but we'll have a try at that too.

For the sake of protecting any and all parties mentioned in a letter of this character, and so that you will not be concerned in respect thereto, please be advised as follows: (1) I dictate these letters (any letters of this character) either very early in the morning or very late at night on a dictaphone at home or in my office. (2) My secretary, Mrs. Keil, is absolutely trustworthy; that is why I brought her here. (3) The cylinders are immediately shaved under her supervision as soon as she has transcribed

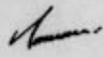
... of time. It is not necessary to
... of time. It is not necessary to

then. (4) Transcribing is done while she is standing by during the numerous conferences of my day, in a private office where there are no trespassers or intruders. (5) The only copy loose is the one that you have. My copy is under lock and key immediately upon being written. (6) Telephone calls like that to your mother at Hyde Park are made over our private telephone line from home.

This is stated only to inform you that privacy is maintained very carefully.

I am certainly looking forward to seeing you at the end of next week.

Katherine joins in sending love to you both.



*file
personal*
Norman Littell
Justice
1
PSF

Seattle, Washington
August 23, 1939

The Honorable
Herold L. Ickes
Secretary of the Interior
Washington, D. C.

Re: Western States Conference

Dear Mr. Secretary:

We very much appreciate the opportunity of talking with you on the telephone on Tuesday, the 22nd. So that you may have in hand a rough draft of ideas as developed thus far in respect to the Western States Conference, we enclose an outline of a tentative program, with the following comments:

We note from observations over the telephone that due to the tense state of affairs in Europe, it is doubtful whether the President will make the proposed western trip. This might make it impossible for him to appear at the conference.

We were much impressed with your observation, based upon your very considerable experience in organizing conferences of this sort, that a month was too short a time in which to do it well. This has really been our principal concern.

Following our telephone conversation as to the time limitation, John Easttger suggested that we postpone the holding of the conference from October 3rd, 4th or 5th, to a later date, probably at the end of October, or early November, depending on the rapidity with which organization as outlined in the enclosed memorandum can be effected. If this were done, possibly arrangements could be made with the President to address the conference from his study, by telephone. Clearly, this will not be as effective as if he addressed the conference in person. However, this might be less of a compromise than endeavoring to hold the conference in early October, without adequate time to organize it satisfactorily. We think, therefore, that the safe course is the former - to organize well, and invite the President to speak in absence. Furthermore, this course is compatible with a situation in which the President might be unable to come west at all.

We may thus have to be reconciled to the fact that the conference must be held somewhat later than the time for which the President's visit to the Northwest was planned.

I should advise you again, however, that in one way or another some sort of a conference is going to be held, irrespective of what assistance (by way of supplying speakers and suggestions) is provided by those of us in Washington, D. C., who have, upon request from the West, taken an interest in this matter.

Howard Costigan has indicated that he would consider "hitch-hiking around the country" himself to organize this conference as best he could, if he had to. He has already discussed the conference with most of the liberal groups in the West; the elements of an indigenous grass roots convention are all here. The western liberals, as I have endeavored to explain in Washington, D. C., feel strongly the need of a closer relationship with liberals in the government. This is their main reason for seeking our support.

I shall be in Portland, the Multnomah Hotel, on the 24th and 25th, and back in Seattle Saturday and Sunday the 26th and 27th. A telegram to me in care of John Boettiger as to when we should call you - preferably on Sunday, or even Monday, would give us an opportunity to get on a trunk line to make the telephone call.

Again our thanks for your interest in this matter. Kindest personal regards,

Sincerely,

Samuel M. Lattin

MEMORANDUM

Re

WESTERN STATES LIBERAL CONFERENCE

The following represents a rough draft, or preliminary outline of organization for the proposed conference. Ideas are derived from many sources, but particularly from persons in Oregon and Washington.

1. PRE-CONFERENCE ORGANIZATION

The General Call: Possibly the most effective way to issue the call for the conference would be through a group of liberal governors of the eleven western states (Oregon, Washington, California, Nevada, New Mexico, Arizona, Idaho, Montana, Utah, Colorado, Wyoming), but a canvass of the personnel discloses that aside from Governor Olson of California, and the possible exception of Governor Blood of Utah, a satisfactory group of men could not be assembled from this source. The most farsighted and hence most liberal men seem to have been drawn into the larger spheres of national politics.

After discussion in which Senator Schwellenbach participated, it was the concensus of opinion that the call should be made in the name of a group of liberal senators, or other outstanding men, representative of each state, Senator Norris, only, being included from a state outside of the region involved, because of his almost legendary status as a Western liberal. These names and the suggested methods of contacting them are as follows:

Senator Norris, of Nebraska; Senator Thomas, of Utah; and Senator Murray, of Montana: These men will all be approached by Senator Schwellenbach, either in person, or over long-distance telephone.

Governor Blood, of Utah: Discuss with Mr. Robert Hinkley the propriety of asking Governor Blood to join in the call, and the method of doing so if this is thought appropriate.

Governor Olson, and Lt. Governor Patterson, of California: With proper introductions in the Northwest or in Washington, D. C., Norman M. Littell could call upon Governor Olson and Mr. Patterson when in California on business during the next ten days.

Key Pittman, Nevada: Someone from Washington should telephone, or, if possible, see Senator Pittman. Possibly the contact with Senator Norris could be strengthened in this same manner.

Josephine Roche, Colorado: Oscar Chapman could secure the cooperation of Miss Roche in this matter, and might care to suggest one or two other names, but possibly this one name is sufficient for the call.

Nan Honeyman, Oregon: Norman M. Littell will see Mrs. Honeyman within the next few days, and is assured by others in Oregon that Mrs. Honeyman will probably be able to assist in this enterprise to a very considerable extent.

It is difficult to resolve the matter of Mahoney's status in Oregon. There was an inclination to leave him out, due to his recent abortive attempt to ride New Deal affiliations to one objective or another, but on the otherhand, Senator Schwollenbach feels that Mahoney should definitely be included. We would like further advice on Mahoney.

Barzilla Clark, Ex-governor of Idaho; and Pelham Glassford of Arizona: H. G. Costigen will see or call these men.

State Calls or Endorsements: The number of people who could effectively be included in a general call for the entire region is so great that it is doubtful whether such a list would be read, or even published, if all of these names were included in the original call suggested above. It was therefore thought that an endorsement of the general call for the conference could be issued and publicized within each state.

Attached hereto is a list of names of outstanding persons in each state expected to participate in the conference.

This list is only tentative, and is assembled for various purposes. It included liberals "in the battline" as well as "above the battline"; those involved in rank-and-file trade-union organizations and those in liberal democratic organizations. In a word, the list embraces those in vastly different walks of life having a common meeting ground of liberal viewpoints, although with different emphasis. For example, some are connected with foreign policy groups, some with anti-Nazi groups, some are interested in public power development in the West.

From this list, as amplified by further suggestions, can be chosen a call or endorsement list for each state in order to have the invitations to the conference appeal to a broad base of liberals within each area.

Manager or General Organizing Co-ordinator: The need for a competent man to give undivided time to organizing the conference is perfectly apparent. These names have been suggested for consideration:

Sinclair Kirby-Miller, of Reed College, Oregon, who has done effective and able work organizing the annual Reed Institute for the last two or three years. He is a thorough-going liberal, a New Dealer, and an experienced organizer.

Phillip Dunne, Secretary of the Democratic Committee in Hollywood. An excellent organizer and thorough-going liberal. (6513 Hollywood Blvd.)

Herbert V. Bibbermann, Hollywood California; a good organizer. Motion Picture Democratic Committee.

It is perhaps best that a representative from California be selected for this position, partially because there is already vigorous leadership in Oregon and Washington so that practically no "foot-work" is needed in those states. Also there is necessity for having an effective man widely known in California and with possible connections which would lead to financial support. An effective worker in California with proper connections might very well secure financial support from such sources.

This organizer will, of course, lead in the organization work in all eleven states.

Finances: There has been no time for a detailed estimate of costs for this conference, but Howard G. Costigan, Executive Secretary of the Washington Commonwealth Federation, estimates that \$10,000 would pay all expenses for putting on a well-prepared conference. Even half that sum, he says, would pay necessary expenses of a co-ordinator for travel, long-distance telephone, stationery, etc. One of the first tasks of the co-ordinator will be to raise this fund.

Possible sources of financial support are:

John R. Richards, investment banker in Los Angeles, and advisor to Governor Olson.

Melvyn Douglas, Hollywood Motion Picture Democratic Committee.

Herbert V. Bibbermann, Motion Picture Democratic Committee.

Pre-Conference Work Committee to Arrange Agenda: It is thought advisable to select a small committee of five to fifteen persons to confer in San Francisco and definitely arrange the agenda and order of events for the conference. This is a difficult problem in view of the possibility of slighting personnel not invited to attend, but on the other hand, if the calls have already been issued, taking in all outstanding names, an informally arranged committee could possibly be set up without giving offense to those not invited.

Local Committee Salt Lake: There must also be a local conference committee, or perhaps one individual such as Robert Hinkley, designated to supervise the details of arrangements in Salt Lake at the time to be hereafter set for the conference.

REPORT (SEE) FOR
TO HOLDING...
... ..

II. SUBJECT MATTER AND PROBABLE ORDER OF EVENTS
AT CONFERENCE

Subject Matter: The Conference should arouse Western Liberals to the recognition that the stake of the West in liberal government will be decided by the action taken at the 1940 convention of the Democratic Party.

The contributions made by the New Deal to the West and those which can be made if the anti-New Deal bloc is broken, are numerous and well-known to Westerners. It should be the objective of this conference to focus Western attention upon the fact that its dams, its flood control and reclamation projects, its hope for widespread and cheap public power, are issues which will be decided by the choice of candidates and platforms of the national Democratic convention.

The vital stake which labor has in the continuation of the New Deal both with respect to wage and hour legislation and legislation to safeguard the civil rights of labor should be heartily raised by the conference.

The question of adequate old age pensions, particularly important in the West, as well as insurance against unemployment, should be identified with the New Deal administration.

A large and growing interest in an embargo against the shipment of war materials to Japan should result in platform identification with this Western program through the conference.

Other vital subjects for discussion should include resettlement of migratory farm families, conservation of soil, timber and petroleum - the West's natural resources most seriously threatened by wasteful exploitation.

Conducting the Conference: The work of the pre-Conference committee will include determining the order of events at the conference, but the following is a rough example of how the matter can be handled:

1. First day; general addresses: There should be two main speakers in the morning, and two in the afternoon. The evening should be taken up in caucuses on various aspects of the western problems which are dependent for their solution upon the continuance of liberal government.

For those who have not witnessed such conferences, it should be explained that while a caucus on matters pertaining to public power is proceeding at one spot for those interested in power, another caucus on the subject of reclamation would be going on in another place, and another caucus on the subject of resettlement of migratory workers could be proceeding elsewhere. The function of these caucuses is to produce after discussion a resolution representing the sentiments of these groups. This type of program has been worked out successfully in other liberal conventions in the West.

2. The second day; reports of conferences or caucuses: Resolutions from the caucuses are read and adopted or amended by the general conference.

Certain general resolutions will also be considered endorsing the various liberal organizations participating in the conference and the work that each is doing in its respective field, where that work merits attention.

3. Political objectives: The Conference should result, if it is to attain the maximum success, in the following concrete proposals for political action:
 - a. The setting up of an interstate action committee to cement the eleven western states into a liberal, pre-primary political mechanism to insure selection either by the usual party caucuses or through direct primaries in such states as California and Oregon, delegates to the national Democratic party convention pledged to President Roosevelt, to be released only by the President.
 - b. The setting up of intrastate organizations to assure united New Deal mobilization in the primaries for candidates for Congress and for senatorial, legislative, and gubernatorial posts pledged to the broad program adopted at the Western conference and in order to give permanent form to a Western New Deal bloc in congress and to guarantee that the natural Western New Deal sentiment shall finally crystallize into a majority Western New Deal party -- The only possibly majority party for the West.

WESTERN STATES CONFERENCE

(Final verification of names will follow)

WASHINGTON STATE: Official Sponsors

Caples, Elwood D.
Carroll, Ed
Schwellenbach, Lewis
Eizer, Ben
Yantis, George
Parker, Joseph
Fisher, C. H.
Taylor, Jim
Fletcher, Jesse

Costigan, Howard
King, Ervin E.
Dennett, Eugene V.
Greenough, Judge Chas.

Chairman Democratic State Committee
Democratic National Committeeman
United States Senator

Pres. B'nai B'rith
Ex-Pres. Western Wash. College of Education
Pres. Am. Fed. of Labor
International Organizer Bldg. Service
Employees Union (AFOFL)
Commonwealth Federation
State Grange Master
C.I.O.

OREGON STATE: Official Sponsors

Dans, Marshall
Rabbi Berkowitz
Nan Wood Honeyman
Mahoney, Willis
Krb, Donald
Pierce, Chas.
McKinley, Chas.
Keezer, Dexter
Smith, Steve
Gill
Tompkins, Morton
A. F. of L.
Peoples, Ralph
Latourette, Howard
Tierney, Frank
Keenan, Harry
Robinson, Dave
Bull, Vernon

Kirby-Miller, Sinclair

Hosch, Dr. Fred

Pres. University of Oregon
U. S. Congressman (Democrat)
Prof. at Reed College
Pres. of Reed College
Pres. of Oregon Commonwealth Federation
Pres. State Grange
Farmers Union and Grange

Pres. State C. I. O.
Dem. National Committeeman
Chairman Dem. State Committee
State Senator (Rep.) - School Board
Past Pres. Western Div. B'nai B'rith
State Representative & Labor Leader
(R.R. Brotherhood)
Prof. Reed College - Good conference
organizer)
Outstanding liberal (Doctor)

CALIFORNIA STATE: Official Sponsors

Havener
Dunn, Phillip

Wanger, Walter

Richards, John R.
Douglas, Melvyn

Burgess, Louis
Rowell, Chester
Smith, Paul
Kidwell, Geo.
Parker, Wm. B.
Grady, Lucretia
Roosevelt, James
Beardsley, Judge John
Davis, Geo.
Bibberman, Herbert V.

Governor Olson
Lt. Gov. Patterson
Downey
Railroad Brotherhood
Goldblatt, Lew
Creel, Geo.
Steinbeck, John
Graham, Gladys Murphy
Burke, J. Frank

Bainbridge, Sherman

Mayor Baaran

U. S. Congressman
Sec'y. Dem. Committee
(6513 Hollywood Blvd., Hollywood, Calif.)
Producer
(1045 North Formosa Ave., Hollywood, Cal.)
Investment Banker (Advisor to Gov. Olson)
Hollywood Motion Picture Dem. Committee &
Anti-Nazi League (Hollywood)
Head of Information Bureau, Triple A.
Assoc. Editor, the Chronicle, San Francisco
Mng. Editor, the Chronicle, San Francisco
State Industrial Relations Committee (AFofL)
Director of Agriculture, State of Calif.
Dem. National Committeewoman

Superior Court
Lawyer
Motion Picture Dem. Committee - Director-
(Husband of Gale Sondgard)

U. S. Senator

C. I. O.
U. S. Commissioner World's Fair
Author
Vice Pres. Calif. League Women Voters
Los Angeles radio station operator & active
in Calif. Fed. for Political Unity
Former spokesman for Ham & Eggs, but
sympathetic to New Deal

UTAH STATE: Official Sponsors

Governor Blood
Trapp, Jacob
Knerr, Wm.
Anderson, Mayor Mark
Wanlass, Will
Christiansen, Parley
Angelman, Sidney
Peterson, Wm.

Maw, Prof. Herbert
Bosone, Mrs. Reva Beck
Allred, Paul

Unitarian Minister & State Welfare Board
Member State Industrial Committee
of Provo, Utah
Economist, Agric. College, Logan, Utah
Brigham Young University
University of Utah
Pres. State Agric. College (Devoted to
Eccles)
Law - University of Utah
Municipal Judge - Salt Lake City
Old Age Pension Union

UTAH STATE: Official Sponsors (Cont'd.)

Champ, F.
Murdock, Abe
Thomas
Peterson, Paul
Musser, Mrs. Burton

Eccles, Marriner
Hinkley, Robert
Isham, Mary
Wolfe, Mrs. James

Banker - Logan, Utah
U. S. Congressman - Beaver, Utah
U. S. Senator
Sec. State Federation of Labor
Clubwoman who has received several honorary
appointments from Pres. Roosevelt for
international meeting, especially in So. Am.

W. P.A.

COLORADO STATE: Official Sponsors

Roach, Josephine
Carroll

Pres. Att'y. of Denver - Friend of
Oscar Chapman's - young liberal leader

(Oscar Chapman will suggest other names)

IDAHO STATE: Official Sponsors

Pope
Clark, Barzila
Attorney General J. W. Taylor
C.I.O.
A.F. of L. (To be checked)
Grange
Nichols, L. O.
Rosequist, August
Ryan, Phillip

Farmers Union

U. S. Senator
Ex-governor
Boise, Idaho

W.W. Deal was head of the Grange in 1937
Pres. of State Fed. of Labor (AFofL)
Sec.-Treas. Idaho State Fed. of Labor
State Senator - Outstanding progressive
(Shoshone County)

WYOMING STATE: Official Sponsors

Farm Bureau Federation
(Oscar Chapman will suggest names)

WESTERN STATES CONFERENCE

-4-

NEVADA STATE: Official Sponsors

Pittman

U. S. Senator

MONTANA STATE: Official Sponsors

Murray, James
Walker, Frank
O'Connell, Jerry (?)
Head of Farmers Union
C.I.O.
A.F. of L.

U. S. Senator

ARIZONA STATE: Official Sponsors

Glassford, Pelham
Ashurst
Pension Lender
A. F. of L.
Railroad Brotherhood
C. I. O.
Grange
Miller, Robert J.

Former Police Commissioner, Wash. D. C.
U. S. Senator

Candidate for U.S. Senator - Phoenix, Ariz.

NEW MEXICO STATE: Official Sponsors

WORK COMMITTEE

Balbour, Buy

Coffee, John M.

Hill, Knut

Bibberman, Herbert V.

Garst, John

Chase, Howard

Burgess, Lewis

Dunn, Phillip

Burrough, Rube

Burke, J. Frank

Chairman of Board Co. Commissioners of

Lewis Co., Wash. State

Congressman, Wash. State

" " "

California

Fed. Surplus Commodities - San Francisco

Wash. D. C. - Retailers Ass'n.

Triple A. & Farm Security Administration

San Francisco and Portland

California

Head Municipal League - Los Angeles

Radio station in Hollywood

MISC. PERSONALITIES

Henderson, Donald

Robinson, Reed

Representatives from Railroad Brotherhoods

Leaders from Regional A.F. of L. and C.I.O. groups, etc.

Pres. United Cannery, Agricultural &

Allied Workers of America

Sec'y. Mine, Mill & Smelter Workers

SUGGESTED SPEAKERS

Ickes

LaGuardia

Schwellenbach

Jim Farley

Dearest Missy,

Will you be an
angel & get this
to Pa as soon as
possible as you
can see it has to
do with Pa's
trip west - if he
can make it.

Love,

Luna

P.S. - copies of attached have gone to Ben Cohen & Tommy Corcoran & Dave Hilden.

Dearest Pa,

This speaks for itself, & is for your information before you talk to Tommy Corcoran who says he intends to talk to you about the Western States Conference as soon as you arrive in Wash.

I hope you had a swell trip & a real, though short, rest. Love from us all. Anna

HAM-AND-EGG PLAN UP AGAIN IN CALIFORNIA;
OBSERVERS FEAR IT MAY BE ADOPTED THIS TIME

By B. W. HORNE

SAN FRANCISCO, Aug.--For the second time in a year California will vote Nov. 7 on an initiative amendment to the state constitution which seeks to assure every individual more than 50 years of age and unemployed or retired an income of not less than \$30 a week.

This proposition -- the \$30-every-Thursday or "Ham-and-Eggs" pension plan -- has made so many converts that it is given almost an even chance at the polls.

Originally offered to the electorate by an ex-convict, as a \$25-every Monday-morning pension, the idea was taken over by two brothers, named Allen, in Los Angeles. They were joined by Roy G. Owens, a self-styled industrial engineer, who came to Southern California an economic refugee from the Middle-West; Will H. Kindig, a Los Angeles propagandist, and others.

The others, including one of the Allen brothers, have dropped out of the picture, but Willis Allen, Owens and Kindig remain the brains and life of the movement.

When submitted to the people last November the renovated proposal called for weekly issuance of 30 certificates, each of \$1 denomination, to all retired persons of 50 or over. It sought to repeal the state's three per cent sales tax and required all teachers and state, county, city and other public employes to accept half their salaries in cash and half in the so-called warrants.

All taxes and other public obligations also could be paid with the warrants.

The warrants would have had no cash value. Merchants and others accepting them, under terms of the proposal, would have been required to affix a two-cent stamp to each warrant in their possession on Thursday of any week. By the end of a year every warrant that had \$1.04 in stamps on it was to be redeemable for \$1 in cash. The extra four cents were to go for administrative expenses.

More than a million voters indorsed the scheme, in the face of warnings by President Roosevelt and others that it would ruin the state if passed.

It was rejected by a margin of approximately 250,000 out of more than 2,650,000 votes cast on the issue, after a dramatic campaign during which the voters were warned that repeal of the sales tax would mean disaster to the public school system, because education in the

main was financed by the sales tax.

The beating did not dishearten the Ham-and-Eggs promoters. For several weeks they rebuilt the morale of their followers with charges that the election had been framed against them. This was followed by an intensive membership campaign.

Then, with more than 300,000 members in the fold, each contributing 10 cents or more a week, the promoters rewrote their plan and started a drive to get it on the ballot at a special election.

In dressing up the scheme Allen and Owens eliminated the clause repealing the sales tax and struck out the provision requiring public employes to accept half of their salaries in warrants. The votes of public employes were courted by a special clause under which their salaries would be automatically increased in the event the cost of living went up.

To attract the votes of small property owners, a paragraph was written in exempting from taxes all homes and farms with an assessed value of \$3000 or less. A three per cent gross income tax was authorized to offset the resultant loss of revenue, with incomes up to \$3000-a-year and all transactions in warrants exempted.

Having stopped all these loopholes the promoters faced another hurdle. Bankers pointed out the scheme would fail because the banks would not be allowed to accept the warrants. So the promoters provided for a state bank, to be capitalized by a 20-million-dollar bond issue and an additional 50 million dollars through sale of stock to the public.

Under the terms of the initiative, Owens or Kindig would have to be named administrator of the pension plan and chairman of the bank's directors.

The administrator would have powers superior to those of the state's governor, and his acts would not be subject to review by the courts. As chairman of the state bank's directors he would control more than 500 million dollars in public deposits, for the proposition makes it mandatory for all public agencies to deposit their funds in the state bank.

A commission of three would be in charge of collecting approximately 500 million dollars more in new taxes which it is estimated the gross income tax would produce. This commission would be named by the governor, who would have to choose from six names submitted by the administrator. As a practical proposition, the administrator thus

also would be boss of the tax commission and in control of another 500 million dollars, or a total of a billion dollars a year.

The draft complete, the promoters circulated petitions and in a month had more than 1,250,000 signatures. They and a group of their followers went from Los Angeles to Sacramento, the state capital, in a special train, and carried their petitions into the office of Gov. Culbert L. Olson on a hand truck.

The governor, not fully recovered from a collapse suffered last January, ended a two-hour private conference with the promoters by announcing he had decided to "afford more than 1,250,000 people another opportunity to test public sentiment," and called the special election for November.

Since calling the election Gov. Olson has criticized the proposition as unworkable and unsound. But that hasn't fazed the promoters. Their army of 300,000 converts has been working overtime. The opposition has not as yet fully organized, with the election only 10 weeks away.

That's the picture. Unless there is a material change during the next two months, and unless there is a record turnout at the polls, which is unlikely at a special election, California may vote in November to take the road which economists agree leads to economic ruin and which President Roosevelt last year said was a "fantastic short cut to Utopia."

Justice

August 31, 1939

Copy of Letter to the President with enc.
From John M. Carmody--Federal Works Agency

In re-attached copy of report that F.W.A. just made to the Dept of Justice in connection with the ability of the Federal Works Agency to wheel into War preparations. Report is outline of the work they could do along various lines.

See:Raw folder-Drawer 4-1939

Original Report was sent to Newman A. Townsend
Acting Solicitor General
Dept of Justice

file
Row 5

THE WHITE HOUSE
WASHINGTON

PSF
Justice

September 6, 1939

3:30 P. M.

MEMORANDUM FOR THE PRESIDENT:

The Solicitor General has just 'phoned me that he is ready to report to the President as to the extent of powers conferred upon the President by proclamation of national emergency. He awaits the President's convenience.

Emm.
E. M. H.

THE WHITE HOUSE
WASHINGTON



Office of the Solicitor General
Washington, D. C.

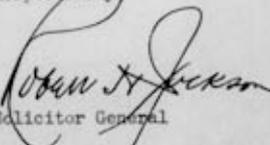
Mr. Justice

September 6, 1939

The President,
The White House.
My dear Mr. President:

In response to your request that a study be made to determine what powers may be brought into existence by the proclaiming of a National Emergency, I submit herewith a memorandum dealing with that subject.

Respectfully,


Solicitor General

Department of Justice

Washington

BANKING AND FISCAL CONTROL

(a) The President September 6, 1939.

System from transacting any business except to such extent and

MEMORANDUM

subject to such regulations, limitations, and instructions as

Re: Powers in a time of national
emergency.

may be prescribed by the Secretary of the Treasury with the

approval of the President. Sec. 4, Act of March 3, 1933, 48
Stat. 2; U.S.C., title 12, sec. 95.

In a time of national emergency the following powers,
listed under headings arbitrarily chosen but thought to be appropriate,
may be exercised. Except where otherwise indicated it is necessary
that the national emergency be proclaimed by the President.

1; U.S.C., title 12, sec. 95 (a).

AGRICULTURE

(a) The President may suspend the operation of the pro-
visions of the Sugar Act of 1937 relating to quotas, or the
provisions of that Act relating to child labor, wage standards,
pro rata share of production, payment of producer by processor
and soil preservation. Sec. 509, Sugar Act of 1937, 50 Stat.
916; U.S.C., title 7, sec. 1179.¹

APPROPRIATIONS

✓ (a) The monthly apportionments of appropriations for
governmental departments and agencies for expenses during the
fiscal year may be waived or modified. U.S.C., title 31, sec. 665.²

¹ The national emergency involved must be with respect to
sugar or liquid sugar.

² This action does not require a proclamation of national
emergency but it would undoubtedly be strengthened by
such a proclamation.

BANKING AND FISCAL CONTROL

(a) The President may prohibit banks of Federal Reserve System from transacting any business except to such extent and subject to such regulations, limitations, and instructions as may be prescribed by the Secretary of the Treasury with the approval of the President. Sec. 4, Act of March 3, 1933, 48 Stat. 2; U.S.C., title 12, sec. 95.

(b) The President may investigate, regulate, or prohibit transaction in foreign exchange, transfers of credit, and the export, hoarding, melting or earmarking of gold or silver coin, bullion, or currency.³ Sec. 2, Act of March 3, 1933, 48 Stat. 1; U.S.C., title 12, sec. 95 (a).

CUSTOMS

(a) The President may authorize the Secretary of the Treasury to permit, under regulations prescribed by the Secretary, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. U.S.C., title 19, sec. 1318.

COMMUNICATIONS

(a) The President may suspend or amend the rules and regulations applicable to all radio stations within the jurisdiction of the United States, and may cause the closing of any radio

³ The emergency required as a basis for this action has already been found to exist and the continuance thereof was indicated in Executive Order No. 6560 of January 15, 1934. It is thought that by amendment to such Executive order full powers authorized by the statute may be exercised without any finding as to a new emergency although the re-affirmation of the continuance of the emergency previously proclaimed may be necessary.

station for communication and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station and its apparatus and equipment by any department of the Government upon just compensation to the owner. Act of June 19, 1934, 48 Stat. 1104; U.S.C., title 47, sec. 606 (c).

EIGHT-HOUR LAW

(a) The President may suspend the provisions of law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by contracts with the United States. U.S.C., title 40, sec. 326.

FOREIGN SERVICE

(a) The President may recall temporarily to active service any retired foreign service officer. U.S.C., title 22, sec. 22.

(b) The President, whenever he finds that the lives of American citizens in a foreign country are in danger, may make available the sum of \$500,000 for the protection of such citizens. Public No. 156, 76th Congress, approved June 29, 1939.

NATIONAL DEFENSE

1. Army

(a) The President may order members of the Regular Army Reserve to active duty. U.S.C., title 10, sec. 343.

(b) Retired nurses may be employed on active duty in the discretion of the Secretary of War or the Secretary of the Navy. U.S.C., title 10, sec. 1032.

2. Navy

(a) The President may increase the enlisted strength of the Navy. U.S.C., title 34, sec. 151.⁴ ✓

(b) Enlisted men who have been furloughed are subject to recall to complete the unexpired portion of their enlistment. U.S.C., title 10, sec. 191. ?

(c) The statutory sea service requirements for promotion of naval officers rendering certain important duties may be suspended. U.S.C., title 34, sec. 311. 20

(d) The Secretary of the Navy may order to active duty members of Naval Reserve, including those on the honorary retired list and those who have been retired. U.S.C., title 34, sec. 853 (c). 7

3. Coast Guard

(a) The President may direct that the Coast Guard be operated as a part of the Navy. U.S.C., title 14, sec. 1.⁵ 7

(b) The Secretary of the Navy may order to active duty at sea or on shore commissioned and warrant officers of the Coast Guard on the retired list. U.S.C., title 14, sec. 164. 20

⁴ The statute does not state that a national emergency shall be proclaimed but authorizes the action by the President "whenever in his judgment a sufficient emergency exists."

⁵ The statute does not require a proclamation of a national emergency but provides that the action may be taken "in time of war or when the President shall so direct."

(c) The President may transfer to the Navy Department or the War Department vessels, equipment, stations, and personnel of the Lighthouse Service (now a part of the Coast Guard). U.S.C., title 33, sec. 758. no

4. Coast and Geodetic Survey.

(a) The President may transfer to the War Department or the Navy Department vessels, equipment, stations, and personnel of the Coast and Geodetic Survey. U.S.C., title 33, sec. 855. no

5. National Guard

(a) To the extent provided for by appropriations for the specific purpose, the President may order officers of the National Guard of the United States to active duty for not more than 15 days in any calendar year. U.S.C., title 32, sec. 81 (c). ✓

6. Designation of prohibited places.

(a) The President may designate any place as a prohibited area under section 1 of the Espionage Act, approved June 15, 1917. U.S.C., title 50, sec. 36. ✓

7. Emergency Forts.

(a) Temporary forts or fortifications may be constructed on private land with the consent of the owner. U.S.C., title 50, sec. 178. no

NEUTRALITY

(a) The President, after the issuance of a neutrality proclamation under section 1 of the Neutrality Act, approved May 1, 1937, may by further proclamation place restrictions on the shipment from the United States to belligerent states of articles or materials in addition to arms, ammunitions, and implements of war. Sec. 2 (a), Pub. Res. No. 27, 75th Cong., approved May 1, 1937. ✓

(b) The President during any war in which the United States is a neutral may place restrictions on the use of ports and territorial waters of the United States by submarines or armed merchant vessels of a foreign state. Sec. 8, Pub. Res. No. 27, 75th Cong., approved May 1, 1937. ✓

STOCK EXCHANGES

(a) The Securities and Exchange Commission may summarily suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily suspend all trading on any national securities exchange for a period not exceeding ninety days. U.S.C., title 15, sec. 78 (s) (4).⁶ ?

SHIPPING

(a) Without the consent of the Maritime Commission it will be unlawful-- ?

⁶ The statute does not require the proclamation of an emergency but states that the action may be taken when "the public interest so requires."

- (1) to transfer to foreign registry any vessel owned in whole or in part by a citizen or corporation of the United States,
- (2) to sell, mortgage, lease, charter, or deliver any such vessel or interest therein or any shipyard, drydock, ship building or ship repairing plant or facilities to any person not a citizen of the United States,
- (3) to contract or agree to construct a vessel in the United States to be delivered to any person not a citizen of the United States during the emergency,
- (4) to agree to the vesting in any person not a citizen of the United States of the controlling interest or majority voting power in a corporation of the United States owning any vessel, shipyard, drydock, ship building or ship repairing plant or facilities, and
- (5) to cause or procure any vessel constructed in whole or in part in the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States. U.S.C., title 46, sec. 835.
 - (a)
 - (b) The Maritime Commission may requisition or purchase any vessel or other watercraft owned by citizens of the United States or under construction within the United States or requisition or charter the use of any such vessel during the emergency. U.S.C., title 46, sec. 1242.

(c) The Maritime Commission may terminate all charters of its vessels without cost to the United States upon such notice to charterers as the President shall determine. U.S.C., title 46, sec. 1202.

(d) The President may suspend the citizenship requirement of officers and crew of subsidized vessels. U.S.C., title 46, sec. 1132.

(e) The President may authorize the Secretary of the Treasury under regulations to govern the anchorage and movement of all vessels, foreign or domestic, in the territorial waters of the United States, to inspect such vessels, place guards thereon, and to prevent damage or injury to such vessels or to any harbor or waters of the United States. For such purposes, if necessary, the Secretary may take full possession and control of the vessels, removing therefrom the officers and crews.

The Governor of the Panama Canal, with the approval of the President, may take similar action within the territorial waters of the Canal Zone. U.S.C., title 50, sec. 191.

TRANSPORTATION

- (a) The Interstate Commerce Commission may
 - (1) suspend the operation of any or all rules, regulations, or practices established with respect to car service,
 - (2) direct car service use without regard to ownership as between carriers,

RD

- (3) require joint or common use of terminals including main line tracks for reasonable distances outside of terminals, and
- (4) give preference or priority in transportation, embargoes, or movement of traffic. U.S.C., title 49, sec. 1 (15).⁷

There are other statutes relating to action which may be taken in the event of war or threatened war in which the United States is or might be engaged, but it was not thought necessary to call attention to those statutes in this memorandum.

⁷ The statute does not require a national emergency to be proclaimed. It authorizes the Commission to take the action specified when it "is of opinion that shortage of equipment, congestion of traffic, or other emergency" requires. It further provides that in time of war or threatened war the President may certify to the Commission that it is essential to the national defense that preference or priority be afforded.

expeditions, or otherwise
(4) the expenses of transport
of troops or supplies, and
(5) the expenses of transport of
troops or supplies.

§ 665. EXPENDITURES IN EXCESS OF APPROPRIATIONS; VOLUNTARY SERVICE FORBIDDEN: APPORTIONMENT OF APPROPRIATIONS FOR CONTINGENT EXPENSES OR OTHER GENERAL PURPOSES. No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than \$100 or by imprisonment for not less than one month. (R.S. § 3679; Mar. 3, 1905, c. 1484, § 4, 33 Stat. 1257; Feb. 27, 1906, c. 510, § 3, 34 Stat. 48.)

U.S. Code Annotated - Title 31, p. 322

(1) The President shall ascertain the just compensation for such use or control and verify the amount ascertained to Congress for appropriation and certify to the person entitled thereto. If the amount so certified is insufficient to the person entitled thereto, such person shall be paid only to the extent of the amount so certified and shall be entitled to sue the United States to recover such further sum as shall in such proceedings be justly due. The same shall apply to all persons claiming for the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owner.

(2) The President shall ascertain the just compensation for such use or control and verify the amount ascertained to Congress for appropriation and certify to the person entitled thereto. If the amount so certified is insufficient to the person entitled thereto, such person shall be paid only to the extent of the amount so certified and shall be entitled to sue the United States to recover such further sum as shall in such proceedings be justly due. The same shall apply to all persons claiming for the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owner.

Communication Act

Act of June 19, 1934, c. 652, Sec. 606, 48 Stat. 1104 (U.S.C., Title 47, Sec. 606).

Sec. 606. War powers of President

(a) During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this chapter. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is hereby authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: Provided, That nothing in this section shall be construed to repeal, modify, or affect either section 17 of Title 15 or section 52 of Title 29.

(c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(d) The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by paragraph 20 of section 41 of Title 28, or by section 250 of Title 28.

SECTION 151. GENERAL PROVISIONS. The permanent authorized enlisted strength of the active list of the regular Navy shall be one hundred and thirty-one thousand four hundred and eighty-five: PROVIDED, That the President is hereby authorized, whenever in his judgment a sufficient emergency exists, to increase the authorized enlisted strength of the Navy to one hundred and ninety-one thousand men. (July 1, 1918, c. 114, 40 Stat. 714; July 11, 1919, c. 9, 41 Stat. 137, 138.)

U.S. Code Annotated - Title 34, p. 25.

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

*File
Personal
Justice*

September 30, 1939

Strictly Personal
and Confidential

MEMORANDUM FOR MR. MATTHEW F. MCGUIRE,
SPECIAL ASSISTANT ATTORNEY GENERAL

With reference to your recent request for information regarding Dell Smith, Secretary to Senator Downey, I have received the following two teletype summaries of an investigation concerning Smith, the first summary being from the Special Agent in Charge of my Los Angeles Office and the second being from the Special Agent in Charge of my San Francisco Office:

"Delwin Wilson Smith, Information Concerning. Smith resides at 29 North Berendo Street, Los Angeles, and was appointed Secretary to Senator Downey, November 28, 1938. In 1929 was Vice President, Trojan Radio Corporation and subsequently was connected with various electrical companies interested in aircraft radios. As result of alleged patent infringement he is very adverse to all interests of aircraft companies at present time. Smith has also sworn revenge against Standard Oil Company as he alleges apparatus used in petroleum industry invented by him was wrongfully taken by that company. He became associated with John B. Elliott, Los Angeles attorney, political power, through oil suits and then joined with him in the Epic Plan sponsored by Upton Sinclair for Governor. He was reportedly to be appointed Oil Conservator in California had Sinclair won. He then met Olson, Downey and Pierson Hall, Ex-US District Attorney. He contributed heavily to Olson's campaign. He became Assistant to Chairman, Democratic State Central Committee, in 1936 and was subsequently elected to State Senate and Olson had him appointed Sergeant-at-Arms of that body. He was at one time private secretary to Olson when latter was State Senator. Smith was appointed to present position as result of pressure exerted by John B. Elliott on Downey. Reported that he and Elliott dictate policies to Downey. Smith regarded as strong liberal and friendly to radical organizations because he is political opportunist rather than because of his real belief in their cause. General indications that Smith joins liberal movements, such as Epic and Ham and Eggs, for

Mr. Matthew F. McGuire

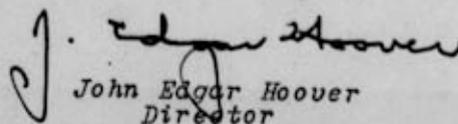
- 2 -

September 30, 1939

political reasons as stated. Confidential informant advises Smith is not presently a member of Communist Party and that he is not left wing at heart. No indication he has made public address before any radical organization. Informant advises he has no known connections with German-American Bund nor with CIO although he is well known to officials in latter organization. Reported Smith double-crossed Governor Olson in some manner in oil deal and now Olson and Downey are strongly opposed to him but because of Elliott cannot remove him from present office. Reported Smith will be candidate for California State Assembly next year if Elliott approves, and will be very adverse to all oil interests."

"Delwin W. Smith, Information Concerning. The informant through claimed reliable informants advises Smith some years ago operated small factory, Glendale, manufacturing radios and certain airplane instruments, abandoned because patent suits. Secretary, Democratic State Central Committee, 1934 and 1935 when Culbert Olson, now Governor, was Chairman. Olson detests Smith. 1937 session Smith made Sergeant-at-Arms, California Assembly at Sacramento, was regarded with suspicion, openly accused lobbyist in violation rules. During Sacramento County Grand Jury investigation alleged bribery, corruption of Legislature involving Speaker William Mosley Jones, Smith's backer. Smith's name mentioned frequently but never definitely connected. After 1937 session Speaker Jones became member McAdoo Neblett Law Firm, Los Angeles, and Smith by virtue connection with Jones gained free access to political legal circle. In this manner Smith obtained information which he relayed in written daily reports to McAdoo's political opponents being on their payroll. After some months double dealing appeared openly against McAdoo and had important hand in campaign resulting nomination election US Senator Sheridan Downey. Smith sent Washington handle practical political end of things reportedly with addition to regular secretary salary being underwritten by someone Los Angeles. Smith considered clever, shifty, born corruptionist out for money. While record unsavory apparently nothing of public record. Another source available to informant states Smith turned down by Communists as being too crooked, unreliable, double dealing."

Very truly yours,


John Edgar Hoover
Director

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300

MEMORANDUM FOR MR. MATTHEW F. MCGUIRE,
SPECIAL ASSISTANT ATTORNEY GENERAL

Strictly Personal
and Confidential

Mr. Matthew

to
next
date
file
down
Olson
organ
CIO
know
radio
info
Party
advis
poli

00732

JOHN EDGAR HOOVER
DIRECTOR

file
↓

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

October 5, 1939



PERSONAL AND
CONFIDENTIAL

MEMORANDUM FOR MR. MATTHEW F. MCGUIRE,
SPECIAL ASSISTANT ATTORNEY GENERAL

With further reference to my memorandum of September 30, 1939, concerning Delwin Wilson Smith, I have ascertained from a reliable source that Mr. Smith has resided at the Mayflower Hotel since December, 1938, and was as recently as October 2, 1939, occupying Room 805 at the Mayflower Hotel. While at the Mayflower Hotel Mr. Smith has cashed two or more checks payable to him and drawn upon the personal account of Joseph M. Schenk, an executive of the Metro-Goldwyn-Mayer Company in Hollywood, California. One check was cashed by Mr. Smith on May 30, 1939, and some time in March, 1939, a check payable to Smith in the amount of \$1500.00, drawn upon the account of Mr. Schenk, was cashed through the Mayflower Hotel.

Credit reports in Washington indicate that Smith has maintained an apartment in the Hightowers Apartments, 1530 - Sixteenth Street, N. W. Credit reports emanating from Los Angeles, California, indicate that Smith had resided in the vicinity of Los Angeles for about thirty years, his residence at one time being 2019 North Berendo Street, Los Angeles, where property was recorded in the name of Mrs. Smith, having a valuation of \$10,000.00, and being encumbered by a mortgage of \$5,000.00. In February, 1929, Smith was divorced from his wife, Roxie Mae Smith, and subsequently married Mrs. Edith L. Merritt, widow of George A. Merritt, it being alleged that Mrs. Merritt received \$50,000.00 in life insurance upon the death of her husband in June, 1929.

Very truly yours,

J. E. Hoover
John Edgar Hoover
Director

Now waiting for letter from Gen Holcomb

Jack Krindler correspondence

THE WHITE HOUSE
WASHINGTON

file
Confidential

Memo for the President:-

Without disclosing
the source of information,
I have tipped off the
Marine Corps re this
matter.

Gen. Hovey has
promised to let me know
what will be done about
it.

Respy.
S.J.B.

THE WHITE HOUSE
WASHINGTON

October 25, 1939.

MEMORANDUM FOR
CAPTAIN GALLAGHAN

Will you read this very
confidential report but do not
show it to anyone in the Navy!
Tip off the Marine Corps
Commandant that this thing is
not according to hoyle and
ask him what he is going to
do about it.

F. D. R.

Report from F. B. I. and
Mayor LaGuardia on John Carl
Krinkler's application for
a Commission in the Marine
Corps.

THE WHITE HOUSE
WASHINGTON

Justice
1

September 23, 1939.

MEMORANDUM FOR MISS LE HAND:

The following information is furnished in reply to your query regarding the issuance of a commission as Captain in the Marine Corps Reserve, to Mr. Jack Krindler of New York City.

While Mr. Krindler was very highly recommended by Senator Walsh, additional recommendations of the same character were also received in his case from Rear Admiral C. H. Woodward, U. S. Navy, Lieutenant Colonel R. C. Swink, U.S.M.C., and numerous civic officials and other prominent persons of New York City. Rear Admiral Woodward is Commandant of the Third (New York) Naval District, and Lieutenant Colonel Swink is the Inspector of the Third Battalion of the Fleet Marine Corps Reserve, with headquarters at New York.

Mr. Krindler is a naturalized American citizen, 40 years of age, having been born in Vienna, Austria, on November 28, 1898. His record at Marine Corps Headquarters indicates he has had no prior military service. Mr. Krindler has a brother who is also an officer in the Marine Corps Reserve.

From conversation with an officer now on duty at Marine Corps Headquarters, and from consulting Mr. Krindler's record, I have learned that he is a highly successful business man of New York City, being the owner and active manager of the well known "21 Club" in that city. There is no doubt but that he has the experience and executive ability to make himself a very valuable adjunct to the Quartermaster Department of the Marine Corps, should he be called to duty in the event of war or national emergency.

I have been assured by responsible officials here in the Department that when Mr. Krindler's age, experience and unquestioned ability are considered, his commissioning in the rank of Captain in the Reserve is quite in keeping with U. S. Marine Corps past and present policy in this regard.

Very sincerely,

D. J. Callaghan
D. J. CALLAGHAN,
Captain, U. S. Navy,
Naval Aide to the President.

Pending reply from Hoover
attach report to correspondence
in Hoover file-Justice folder

Conf Memo to Edgar Hoover from the President

October 5, 1939

In re-report from Captain Callaghan regarding a commission
of "Captain" for Kindler—Marine Corps Reserve—Pres asks Hoover
to check on Kindler.

See: Edgar Hoover -Justice folder-Drawer 1-1939

THE WHITE HOUSE
WASHINGTON

PRIVATE & CONFIDENTIAL

October 5, 1939.

MEMORANDUM FOR

HON. J. EDGAR HOOVER

Will you look into this
man? It may be all right but
I would like to have a check.

F. D. R.

Report from Captain
Callaghan in re Mr. Jack Krindler
of N. Y. C., and the issuance of
a commission as Captain in the
Marine Corps Reserve.

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

October 7, 1939

Brigadier General Edwin M. Watson
The White House
Washington, D. C.

Dear General Watson:

Under date of October 5 the President requested me by memorandum to conduct a discreet inquiry concerning John Carl Kriendler and I am accordingly attaching hereto a memorandum dated October 7 summarizing information developed concerning him. In view of the past activities of Kriendler as indicated by this memorandum, it being noted that he was born in Austria, has been named as correspondent in a divorce action, and operated for some time a speak-easy during the prohibition era, I do not believe he is the proper type of individual to hold a Reserve Commission as an Officer in the United States Marine Corps. I would appreciate your placing this memorandum concerning Kriendler's background before the President.

There is being returned herewith the memorandum for Miss LeHand dated September 23, 1939 which the President transmitted with his communication.

Sincerely yours,

J. E. Hoover

Enclosures

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

October 7, 1939

M E M O R A N D U M

RE: JOHN CARL KRIENDLER

It has been ascertained that John Carl Kriendler was born November 28, 1898, at Vienna, Austria, and is the son of Kieve Carl Kriendler and Sadie Kriendler. His father was a caterer and maintained a business in Austria until he came to the United States and began operating a catering and cafeteria establishment on Second Avenue in Lower East Side, New York City. John Carl Kriendler was naturalized in the Eastern District of New York, Brooklyn, New York, on February 23, 1906. He graduated from Stuyvesant High School, New York City and registered as a student at New York University for two years, following which he registered at Fordham University for six months. He left school after the death of his father to help support his family, which consisted of three brothers and four sisters.

For a time Kriendler operated a speak-easy with Charles Bernfeld, also known as Charles Berns, in Greenwich Village, New York City, under the trade name of "The Club Fonton." This business was in operation about 1923 and was subsequently sold to other individuals and John Carl Kriendler and Charles Bernfeld then opened an establishment at 42 West 49th Street, later moving to 21 West 52nd Street, New York City, where the Club eventually became known as "The Twenty-one Club." This Club is one of the most pretentious restaurants in New York City and is in reality operated by the Murray Hill Restaurant, Incorporated, of which John Carl Kriendler is Vice President and Treasurer. The President of the Murray Hill Restaurant, Incorporated, is Maxwell Kriendler and the Secretary and Treasurer is Charles A. Berns. The Club was incorporated under the laws of the State of New York on February 11, 1932 and eventually took over the assets and liabilities of "Jack and Charlie's Club," a trade name employed by John C. Kriendler and Charles A. Berns, which had been established in 1923 or 1924. Maxwell Kriendler, a brother of John Carl Kriendler, devotes only a small part of his time to the business. The business is said to have originally started as a high-class speak-easy during the Prohibition period and at various

times has been known as "Number Twenty-one," "The Twenty-one Club," "Jack and Charlie's Club," "The Punchoon," and "The Twenty-one West Fifty-second Club." The business is conducted on a large scale and as far as can be ascertained has never come under the scrutiny of local or Federal authorities. The property itself was purchased in 1931 and in 1935 was assessed at \$75,000. It is owned by a corporation known as "The Twenty-one West Fifty-second Street Club," of which John Carl Kriendler is President.

According to information obtained there has been considerable retail credit activities on the part of the Murray Hill Restaurant, Incorporated, and the company is considered a reliable firm by those having business relations with it. One of the larger banking institutions in New York City in January 1939 indicated that Kriendler had maintained a personal checking account with the bank since 1934 in good proportion and in addition stated that he was well and favorably known to the said institution in connection with various accounts carried by his office. According to a financial statement issued in 1935, the net worth of the firm was given as \$25,000. Another local banking institution has reported that the Murray Hill Restaurant, Incorporated, had done business with that institution for several years and that the said business had been found exceedingly satisfactory; further that this institution had carried other firms' accounts, in which Kriendler was financially interested, with satisfaction. In general, it may be stated that the financial institutions with which Kriendler had dealings give the opinion that Kriendler is good for any responsible credit extended to him.

Charles A. Berns, with whom John Carl Kriendler has been associated for a number of years, is native born and has had many years of experience in the restaurant business. He is reported to have accumulated considerable means and in fact holds fifty per cent of the stock in the Twenty-one West Fifty-second Street Club, which was chartered in 1931 and which company holds title to the property at that address.

John C. Kriendler is also reported to be Secretary and Treasurer of "21 Brands Incorporated," a local corporation chartered in November 1933 as wholesalers of wines and liquors. This concern occupies a building immediately joining that of the Twenty-one Club. Another credit report indicates that the fixtures and equipment used in connection with the Twenty-one Club were estimated to be worth over \$50,000, while another agency estimated that the property was purchased for \$200,000 and that the cost of equipping the building with fixtures and equipment was approximately \$100,000.

The New York Times of April 30, 1936, carried the following news item:

"Supreme Court Referee Thomas E. T. Crane, New York City, reserved decision yesterday in an independent divorce action brought by Norris Barrymore Gaddess of Greenwich, Conn., against Dorothy Irving Gaddess. John C. Kriendler, night club operator of Jack and Charlie's Twenty-one Club, was named as correspondent. Gaddess is seeking the custody of two children, Dorothy Irving, seven years old, and Barrymore Trowbridge Gaddess, four years old."

Kriendler is reported to have capitalized on this incident by placing on his restaurant tables miniature telephones and tapping devices on which appeared quotations from the newspapers about the affair.

In 1933 John Carl Kriendler purchased the North Castle Golf and Country Club in Westchester County, New York. Information has also been received that one brother of Kriendler is a stockbroker and a member of the New York Curb Exchange, while another brother is a lawyer and a graduate of Fordham University. Kriendler's four sisters are married.

Kriendler, who is single, at one time resided in Beverly Hills, California, but presently maintains a part-time residence on Newton Road, Hampton Bays, Long Island, New York, but more frequently resides with his mother at 2126 Benson Avenue, Brooklyn, New York. He is reported to have made some \$500,000 from business enterprises, but suffered reverses on the stock market, and at the present time has an estimated net worth of \$150,000. It has been further stated that Kriendler receives a salary of \$20,000 annually.

It is reported that John Carl Kriendler speaks German, French, and Italian. He filed an application for admission to the United States Marine Corps on August 21, 1939. He was commissioned as a Captain in the United States Marine Corps Reserve on September 1, 1939. He is reported to have been endorsed by Senator David I. Walsh of Massachusetts; Mr. Stanley H. Howe, Secretary to the Mayor of New York City; and N. H. Aylesworth, publisher of the New York World-Telegram.

The files of the Identification Division of the Federal Bureau of Investigation and the New York City Police Department do not reflect a criminal record for Kriendler.

Irving Robert Kriendler, a brother of John Carl Kriendler, resides at 5 West 86th Street, New York City, and was commissioned as a Second Lieutenant in the United States Marine Corps Reserve on April 4, 1939. He was born March 25, 1914 in New York City, and received a Bachelor of Arts Degree from Rutgers University, New Brunswick, New Jersey, in 1936. He was formerly a member of the United States Army Reserve Corps, Infantry Division, Camp Dix, New Jersey. He speaks French, Italian, and English and has been Assistant Manager of the Twenty-one Club since June, 1936. His wife is the former Florence Feller. He has been recommended by Mr. Ned E. Depinet, Vice President of RKO Pictures; Edward E. Spofford, Eight Bells Farms, Brewster, New York; and Mr. Milton S. McKay, 630 Fifth Avenue, New York City.

(I was told by Capt. Callaghan on Dec 6, 1939 that the above case was not finished as yet--they were waiting for Holcomb report) No word on the case on Jan 29, 1940

For previous correspondence on Krindler case
See:Edgar Hoover-Justice folder-Drawer 1-1939

No further covers on this up to June 27, 1940

P. J. L.

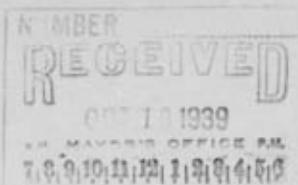
HOLD

For LaGuardia's report

Then file with other correspondence in

Justice file. (Edgar Hoover)

THE WHITE HOUSE
WASHINGTON



PRIVATE & CONFIDENTIAL

October 9, 1939.

Dear Fiorello:-

Do not let anybody see this file but would you be good enough, without bringing the Government into it in any way, to have a little check up of your own made on Mr. Kriendler and his brother? The whole thing may be all right but I hesitate to see Marine Corps Commissions handed around to people with no military experience unless there is some unusual reason and the individual has wholly clean hands.

As ever yours,

Honorable Fiorello H. LaGuardia,
Office of the Mayor,
City Hall,
New York, N. Y.
(Enclosures)

CITY OF NEW YORK
OFFICE OF THE MAYOR

Personal & Confidential!

October 19, 1939. g

Honorable Franklin D. Roosevelt,
President,
The White House,
Washington, D.C.

My dear Mr. President:

In reply to your confidential note of October 9th, 1939, in reference to one John Carl Krindler, I have caused a thorough investigation to be made and have come to the conclusion that I would not give him a commission to any office in the city government. To hold a commission in the city government, one must be a gentleman by nature, rearing and background. A commission in the armed forces of the United States makes one a gentleman by Act of Congress.

I find that this gentleman engaged in unlawful activities during most of the period of prohibition. In 1923 he operated a speakeasy in Greenwich Village. A "speakeasy" is a place where liquor is sold unlawfully. You are familiar with the geography of New York City and will readily locate Greenwich Village. His first venture was rather modest and later he blossomed out and opened the Club Fenton which was also a speakeasy. He prospered and in 1928 they moved to 42 West 49th Street, where his speakeasy became more exclusive and he called it the Mid Park Restaurant and later the Kayburn. Apparently their unlawful activities were incorporated, the name Kayburn being the phonetic sound of the initials of the men forming the corporation.

In 1929 he improved business and moved to 21 West 52nd Street, operating a restaurant known as the "21 Club". There liquor was likewise sold. February 17, 1932 the business was incorporated under a new company known as the Murray Hill Restaurant, Inc. and I believe dummy incorporators were used.

Apparently the speakeasy business was operated with little trouble as the records disclose but one arrest and conviction. On March 11, 1929 Krindler was fined \$100 which he paid. (U.S. Court)

Hon. Franklin D. Roosevelt

p-2

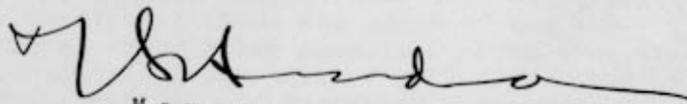
This person also featured in the press being involved in a divorce action. In 1933 or the early part of 34 he obtained a pistol permit and in his application failed to state or rather answered in the negative the question of previous arrests. In 1935 in a second application, photostatic copy of which is enclosed, he admits his conviction for the violation of the prohibition law but states the fine was \$50. Money was very plentiful in those days and in all likelihood the amount of the fine was not intentional. In a subsequent application for a pistol permit he has reverted back to his original application and swears that he was never arrested or convicted. We have cancelled his pistol permit.

I enclose the original report of the Deputy Chief Inspector who made the investigation. This investigation was made under my direct orders and conducted in a most discreet manner and the source for whom the information was desired is not known. This accounts for the creased condition of the file which I have carried in my pocket ever since.

In conclusion I would say that this person has the "leather" in his conscience instead of his neck, the place required to make a good marine.

As ever yours,

Sincerely yours,


Mayor.



POLICE DEPARTMENT
CITY OF NEW YORK

October 14, 1939.

From: Commanding Officer, Headquarters Squads.
To: Commanding Officer, 18th Division.
Subject: INVESTIGATION RE JOHN CARL KRIENDLER.

1. John Carl Kriendler resides at 21 West 52nd Street, New York City, Apartment 4-R (voting address). He also maintains a summer home at Newton Road, Hampton Bays, Suffolk Co., N.Y. He was born in Austria in 1898 and came to this country under the name of Jakob Kriendler at the age of two. The family settled in the lower Eastside of this City, where his father conducted a restaurant on Second Avenue.

2. After graduating from high school here, he attended the New York University from 1917 to 1918 as a law student. He also attended the School of Pharmacy at Fordham University from 1922/1923.

3. Subsequently he entered the retail shoe business and in 1923 he and his cousin, Charles Berns, formed a partnership with a capital of \$2,000.00 and conducted a speak-easy in Greenwich Village. This 'speak' is reputed to have been only a hole-in-the-wall. Later they took a third partner, one Gustave Luchs, and opened the Club Fenton, also in Greenwich Village.

4. In 1928 they moved to 42 West 49th Street, this City, where they conducted an exclusive speak-easy under the names of the Mid-Park Restaurant and the Kayburn. The latter name is derived from the names of both partners. During the latter part of 1929 they moved to their present address, 21 West 52nd Street, operating a restaurant known as the "21 Club". On February 17, 1932, they incorporated under the name of the Murray Hill Restaurant, Inc., Certificate of Incorporation #2268. The officers thereof are

- a. Leo Leichter, 33 West 42nd Street, N.Y.C.
- b. Israel Katz, 33 West 42nd Street, "
- c. Irving J. Katz, 33 West 42nd Street, "

5. Kriendler has a bank account at the Underwriter's Trust Co., 54th St. and 6th Avenue, and is reported to be worth about \$200,000, of which \$100,000 is invested in the "21 Club". He is also alleged to have \$25,000 invested in 21 Brands, Inc., 17 West 52nd Street, N.Y.C., which company is the sole distributors of Ballentines Scotch Whiskey. The directors of this corporation are:

- a. Francis T. Hunter, Pres., 480 Park Avenue.
(Mr. Hunter is the noted tennis player and, obviously, is only a "front".)

b. Charles A. Berns, Secretary, 129 E. 69 St., N.Y.C.

Certificate of Incorporation is numbered 13136, dated November 17th, 1933.

6. John Carl Kriendler, 21 W. 52 St., N.Y.C., is the bearer of a 1939 pistol license, #C-21267, and on the application for same he stated that he had never been arrested. His vouchers on the permit are:

- a. Francis T. Hunter, 17 W. 52nd St., N.Y.C.
- b. Jesse Libian, 920 Eighth Avenue, "
- c. Charles A. Burns, 17 W. 52nd St., "

7. The records of the Bureau of Criminal Identification were checked through his fingerprints on the said application, but did not disclose any criminal history. The files of the Bureau of Information were also searched and they revealed that John Carl Kriendler of Newton Road, Hampton Bays, L.I., received a summons for speeding on July 6, 1936, and sentence therefor was suspended by Magistrate Marvin, 4th District Court, Queens, on July 9th, 1936. On November 2nd, 1928, as John C. Kriendler, he was arrested by the Federal Authorities for violation of the National Prohibition Law, along with his partner, Charles Berns, alias Charles Bernfeld, and one Franklin James, alias William Hardy. After conviction, and on March 11, 1929, Kriendler and Berns were fined \$100 each, and James received a Suspended Sentence by Judge Frank J. Coleman of the United States District Court.

8. About September 5th, 1936, Kriendler received considerable newspaper publicity, being named as correspondent in a divorce action before the New York Supreme Court, which was instituted by Mr. Monte Proser, a well known press agent, against his wife, a former Scandals Girl, known professionally as Julia Jenner.

9. The United States Government files here do not show Kriendler ever having been a member of the United States Army, Navy or Marine Corps in any capacity.

10. The "21 Club" operates under Restaurant Permit #52099 - Document #80074, issued by the Department of Health, application for same being filed on June 1, 1939, and signed by Maxwell Kriendler. On October 1, 1939, the State Alcoholic Beverage Control Board issued a liquor license (#RL-21) to the Murray Hill Restaurant, Inc., 21 West 52nd Street, N.Y.C.

11. On September 20, 1939, Kriendler bought, from the Cadillac Motor Car Co., 224 W. 57 Street, N.Y.C., a 1939 Cadillac convertible coupe, engine and serial number 3291977, New York State Registration License No. 2R-21. His Motor Vehicle operator's license is No. 70363 and description on same states he was born Nov. 26, 1898; white; male; 175 lbs.; 5 ft. 11 in.; brown eyes and blonde hair; Newton Rd., Hampton Bays, L.I.

12. Investigated by Act. Lieut. George McNulty, #1213, Main Office Squad.

Deputy Chief Inspector
Deputy Chief Inspector.

LICENSE NO. 19030

FOR YEAR 1935

**POLICE DEPARTMENT—CITY OF NEW YORK
PISTOL LICENSE APPLICATION**

PRECINCT 18

**CARRY
PROVISIONS**

(Do not write in this space)

26 27 1935
I Hereby Apply for License to Carry a Revolver or Pistol concealed Upon my Person or

(STATE, PROVINCE, ETC. ENTERED)

For the following reasons: Assistant treasurer; protection of receipts and depositing same in bank, amounting to \$1000.



NAME John C Kriendler		RESIDENCE 21 W 52nd Street	
AGE 36	HAIR Brn	HEIGHT 5 11 1/2	WEIGHT 172
HAIR Brn	EYES Brn	RACE (COLOR) W	COUNTRY OF BIRTH AUSTRIA
EMPLOYED BY Murray Hill Rest Inc		PLACE OF BUSINESS 21 W 52nd St	NATURE OF BUSINESS Restaurant
OCCUPATION Asst Treasurer			
HAVE YOU EVER HAD A PISTOL LICENSE?	YES XXX	YEAR OF ISSUANCE 1934	HAS APPLICATION EVER BEEN DISAPPROVED?
NO		NO	
HAS PISTOL LICENSE EVER BEEN REVOKED OR CANCELLED?	YES NO	WHAT YEAR?	
NO		NO	
DO YOU POSSESS A REVOLVER?	YES XXX	IF SO, GIVE MAKE Colt	CALIBRE 32
NUMBER 153397		REVOLVER IS THE PROPERTY OF MYSELF EMPLOYER	
Have you ever been arrested?		YES XXX	
If so, state circumstances?		1928 Prohibition Law \$50 fine. Federal Ct	

1935

RENEWAL

1. NAME Francis T Hunter	2. NAME A. Tinguid	3. NAME Harold Miner
ADDRESS 17 W 52nd St	ADDRESS 6th Avenue	ADDRESS Misy Trust Co 5th Ave & 43rd St

CITY OF NEW YORK }
COUNTY OF } S. S.:

John C Kriendler.

being duly sworn, deposes and says that all of the answers to the foregoing questions are true.

Sworn to before me this 25th day of December, 1934.

David L. Watersbury
(NOTARY PUBLIC OR COMMISSIONER OF CORRECTIONS)

John C Kriendler
(SIGNATURE OF APPLICANT)

FIRST ENDORSEMENT

I recommend { APPROVAL } (If disapproved, state reasons briefly.)

FEB 16 1935 *Patrick Curry* 18
(DATE) (CAPTAIN) (PRECINCT)

THIRD ENDORSEMENT

I recommend { APPROVAL } (If recommendation differs from that of Commanding Officer of Precinct or Detective Squad, state reasons briefly.)

W. F. 22
(DATE) (RANK) (COMMANDING) (DET. DIST.)

SECOND ENDORSEMENT

I recommend { APPROVAL } (If recommendation differs from that of Commanding Officer of Precinct, state reasons briefly.)

7/4/35 *St George Mitchell*
(DATE) (RANK) (COMMANDING) (PCT. DET. SQUAD)

FOURTH ENDORSEMENT

I recommend { APPROVAL } (If recommendation differs from that of Commanding Officer of Precinct, Detective Squad or Detective District, state reasons briefly.)

FEB 19 1935 *W. F. 22*
(DATE) (RANK) (INSPECTOR) (DIVISION)

BUREAU OF CRIMINAL IDENTIFICATION RECORD



DATE _____ COPY OF RECORD VERIFIED BY _____

RIGHT HAND

1-RIGHT THUMB	2-R. FORE FINGER	3-R. MIDDLE FINGER	4-R. RING FINGER	5-R. LITTLE FINGER
(FOLD)				(FOLD)

LEFT HAND

6-L. LEFT THUMB	7-L. FORE FINGER	8-L. MIDDLE FINGER	9-L. RING FINGER	10-L. LITTLE FINGER
(FOLD)				(FOLD)

LEFT HAND

RIGHT HAND

Plain impressions of the four fingers taken simultaneously

Plain impressions of the four fingers taken simultaneously

9 00 17
19 M 17

CLASSIFICATION

If previously fingerprinted

License No. *221*

YEAR *1934*

Date

Jan 7, 1935

Signature of Applicant

John C. Kiehl

I hereby certify that I have compared photo with applicant and that the above are his signature and fingerprints.

Taken by

P. H. Hoffstaetter / *13537-18*

(NAME)

(SIGNATURE)

(SHIELD NO.)

(PRECINCT)