

● PSF

Justice Dept.

19~~50~~ - 1944



THE WHITE HOUSE  
Office of the Attorney General

Washington, D.C.

January 2, 1940.

RECEIVED

JAN 10 2 33 PM '40

PSF Justice

*File*

My dear Mr. President:

At its session today the Supreme Court decided eight cases on the merits to which the Government was a party. The decision was favorable in seven of these cases.

In American Federation of Labor et al v. National Labor Relations Board the question presented was whether a certification of a bargaining representative by the Labor Board under Section 9(c) of the Wagner Act was reviewable by a Circuit Court of Appeals under the Act. The Supreme Court held that a certification was not an "order" within the provision of the Act providing for review by Circuit Courts of Appeals. It expressly reserved decision on whether review of a certification could be secured by an independent suit in a District Court.

In Labor Board v. International Brotherhood of Electrical Workers, which was a companion case to the preceding case, the question was whether a direction of election made by the Labor Board was reviewable by a Circuit Court of Appeals. Since a direction of election is but a preliminary step towards a certification and since the Court had held in the preceding case that a certification was not reviewable under the Act, it came to the conclusion that a direction of election was likewise not reviewable.

In Labor Board v. The Falk Corporation the Board had ordered The Falk Corporation, inter alia, to disestablish a labor organization which the Board found to be fostered and dominated by the Corporation. The Circuit Court of Appeals modified the Board's order by providing that the union ordered disestablished must appear on the ballot at an election to be held by the Board as part of a representation proceeding. The Supreme Court directed that the order of the Board be enforced by the lower court without any modification.

In Le Tulle v. Scofield, Collector of Internal Revenue the Court held that a transfer of corporate property in exchange for bonds of the transferee is not a tax-free reorganization. Two other cases were decided in favor of the Government in a per curiam decision

upon the basis of the Le Tulle decision - Commissioner of Internal Revenue v. Tyng and Commissioner of Internal Revenue v. Buchsbaum.

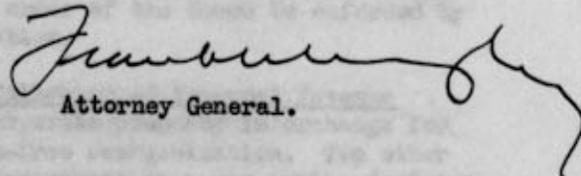
In Quanah, Acme & Pacific Ry. Co. v. United States, Interstate Commerce Commission, et al the Court affirmed in a per curiam decision a District Court judgment upholding an order of the Interstate Commerce Commission requiring the appellant to cancel certain tariffs on cottonseed oil.

In Haggar Co. v. Commissioner of Internal Revenue the Court held that a corporation may amend its declaration of value contained in its capital stock tax returns provided that the amendment be made within the time within which the original returns could have been filed.

In General American Tank Car Corp. v. El Dorado Terminal Co. there was involved a contract between a private car company and a shipper whereby the shipper leased certain cars from the car company at a fixed rental, and the car company agreed to pay over to the shipper any mileage allowances paid to the car company by the railroads for use of the cars. Despite this contract, the car company refused to pay over mileage allowances received by it in excess of the fixed rental, on the ground that such payments would constitute a rebate. The shipper thereupon brought suit, losing in the District Court but winning in the Circuit Court of Appeals. In the Supreme Court the Interstate Commerce Commission filed a brief amicus curiae, contending that the question of whether the payments constituted a rebate was one committed to the judgment of the Commission and that the District Court therefore had no jurisdiction. The Supreme Court held that the District Court had jurisdiction since the suit was one on a contract, but that it should not have exercised its jurisdiction until application was made to and a decision rendered by the Commission on the question of whether the payments constituted a rebate.

Of the petitions for writs of certiorari acted upon by the Court, two by the Government were granted and eight by opponents were denied.

Respectfully,



Attorney General.

The President,  
The White House,  
Washington, D. C.

July 30, 1940

J BF  
Justice  
1-40

MEMORANDUM FOR

HON. FRANCIS BIDDLE

The attached is self-explanatory.

M. A. LeHAND  
Private Secretary

Enclosures

tmb

Let to MALeH 7/27/40 from Neil Vanderbilt, Vanderbilt Ranch, Reno Nevada enclosing an account of SOLTAN CZAKO - pen name Lawrence Dodd. Until the war in France he has been Paris correspondent for European publications and for Rob Wagner's Script in Beverly Hill Calif. also enclosing a recent article which Dodd wrote for Script which explains how he happens to be at Ellis Island. Is being held there pending decision as to whether he shall be deported to Nazi controlled country where he will undoubtedly be executed. Letter from Dodd deals with fact that many of guards at Ellis Island belong to the Christian Front. Has overheard conversation held by Christian Front Bishop re campaign to discredit FDR and his collaborators -- first to be Kennedy Ambassador Joe Kennedy -- constant affair with gangster Larry Fay's widow -- second Edgar G. Hoover -- story to break in Balt. Sun -- third Walter Winchell. Thinks these things should be investigated at Ellis Island.

PSF:  
Justice



Office of the Solicitor General  
Washington, D. C.  
November 18, 1940

file → PERSONAL

Dear Steve:

I enclose the memorandum about which I spoke to you on the telephone.

My informant is very anxious that it be handled in the most confidential way, and therefore I suggest that this copy be returned unless the President should wish to keep it.

Sincerely yours,

*Francis Biddle*  
Francis Biddle

Stephen Early, Esq.  
Secretary to President Roosevelt  
White House  
Washington, D. C.

FRANCIS BIDDLE  
Solicitor General

PSF Justice



Office of the Solicitor General

Washington, D. C.

November 18, 1940

MEMORANDUM FOR THE PRESIDENT

The enclosed purports to be the contents of a report made by the General Chief of Staff to Adolf Hitler on September 30, 1940. It comes from a source which we believe to be reliable. A copy has been sent to the British Embassy.

It is interesting to note that "the main needs of Germany and her allies are: foodstuffs, non-ferrous metals and high-test fuel."

FRANCIS BIDDLE  
Solicitor General

C O P Y

Dear Mr. Biddle:

May I first of all express to you my deep satisfaction about the outcome of the election, which in my opinion assures to the United States the necessary continuity in the successful conduct of foreign and domestic affairs never needed as much as in these critical times.

I write this letter in longhand, as I do not wish to have its contents become known to any stenographer and I also beg you to use the information contained in it with all necessary precautions. It seems to me, that it is my duty to make this information through you available to the interested departments of the government of this country:

About in the middle of September of this year, when it became obvious, that an attempt to invade the British Isles could not be carried through successfully during the remainder of the year, Adolf Hitler demanded from his General Staff an espose about the further conduct of the war. This espose was finished by end of September. It constituted a main part of about 40 typewritten pages and a voluminous documentary part. One copy was circulated in a small circle of high officers, where one of my old political friends got acquainted with the content. He succeeded in transmitting to me a short complete rendition of the main part.

In the following I reproduce the information contained in this report:

Germany will have to end this war by a victory until end of next summer or victory will be dubious, if not impossible. The full weight of American aid to England will then begin to be felt. This does not necessarily mean defeat, but at least the possibility of a calamitous stalemate, impeding any lasting gain as compensation for tremendous sacrifice. England will be undefeated as long as the British Isles can usefully serve as a base for raids on German territory.

The means of warfare employed until now in order to subdue British resistance have proven insufficient. The use of psychological strategy in modern warfare is without any doubt of highest importance, but it is wrong to consider them as being the predominant instruments for final victory. The conduct of the war against Great Britain has hitherto neglected the really military objectives: the destruction of the fighting forces and supplies of the enemy. Psychological warfare has proven an efficient method only, when the "choc-effect" was closely followed up by direct engagement with mass formations of hostile troops. The tactic of psychological warfare will have to be adapted ~~for~~<sup>to</sup> the special conditions prevailing in the "battle of England" and the classical military points of view have to come to their right again. The attempts made in order to break down British moral have by no means to be discontinued, but in the future they will have to be considered as an additional weapon of secondary importance.

The main objectifs of German warfare have to remain the breaking down of the British blockade and the surrender of the British Isles. Both goals imply the necessity of destroying or at least of paralysing the action of the British navy and simultaneously the necessity of warfare against the British lines of supply. Consequently to the relativ weakness of the German navy, to doubt about the aid of the French navy and the limited fighting value of the Italian navy, even if the latter should succeed in leaving the Mediterranean after having defeated the British in this region, a decision against the English navy can not be reached in one major sea-battle or in a serial of such. Either have the four year plan authorities been able to fulfill the demand that for this winters/a flotilla of 350 submarines should be available; only about 200 will be ready for use in a few months. This state of things implies the increase in raider warfare and methodical

use of those submarines which can be sent out. The building program for submarines, smaller chasing craft and also larger speedy craft already in construction or just planned has to be sped up with all means. Also the use of air-craft in fighting against British shipping has to be methodically increased in spite of the heavy punishment inflicted on operation bases in the occupied territories.

Where the breaking of the blockade is concerned the main needs of Germany and her allies are: foodstuffs, non-ferrous metals and high-test fuel.

In this respect neither the entrance of the Balkans into the German orbit nor a successful campaign in the Mediterranean, in Northern Africa (Egypt - Suez) and in the Near East will by themselves be sufficient to secure the supplies needed for a decisive victory in a long drawn war. Those can only be obtained by free access to the resources of Central and South Africa and of the Western Hemisphere. A substantial increase of supplies from Russia is scarcely to be expected. Still a successful end of the Balkan and Mediterranean action will be of tremendous importance in order to keep going and to expect the final result of direct attack against the British Isles, and against the life lines of British supplies.

The military attack against British supplies has to be sustained by "psychologic" action in all countries where the inclination exists to support Great Britain. There "the inevitable collapse" of the British Empire has to be clearly shown in order to discourage further aid. At the same time proposals flattering national egotism by promising substantial gains through a British defeat can be used without prejudicing to the righteous German claims for a new world order. This "psychologic" action has to be accompanied by direct action wherever British supplies can be

destroyed at their home basis.

More specially the memorandum expresses doubts about the fighting value of the Italian army, dissuades -- "inspite of the restricted fighting value of the Red Army" -- from every act liable to involve Russia on the side of Germanys enemies and insists over and over again that the full effect of American aid to Britain will at least cause a "calamitous stalemate." Spring and Summer 1941 therefor must bring the final German effort to crush Great Britain."

I know, dear Mr. Biddle, that observations of this kind in themselves do not constitute anything new. Coming however from the source indicated in the first part of this letter, I consider them as being highly significant and worthwhile to notice.

I remain faithfully

Yours

copy

PSF Justice

THE WHITE HOUSE

JAN 6 12 46 PM '41

THE ATTORNEY GENERAL  
WASHINGTON RECEIVED

4

January 5 1941

My dear Mr President:-

I greatly appreciate  
your remembrance on Christmas with the  
gift of a writing portfolio. It will not only  
serve as a constant reminder of your  
friendship but also as an often needed  
hint of work to be done. With all good wishes

As ever

Bob

To  
The President  
The White House

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personal  
confidential  
Justice*

THE WHITE HOUSE  
WASHINGTON

January 10, 1941

~~CONFIDENTIAL~~

MEMORANDUM FOR  
THE ATTORNEY GENERAL

To prepare reply.

F. D. R.

Enclosure

Let to the President 1/8/41 from  
Gardner Jackson, 6 West Kirke Street,  
Chevy Chase, Md.

Re the Davis-Lewis-Mexican oil story  
and its implications; also concern  
over inadequacy of personnel and  
preparation characterizing the Asst.  
Atty. Gen. Milligan investigation of  
election matters including the Davis  
business.

January 17, 1941

My dear ~~Mr. Jackson~~:

*Gardner*

I have your letter of January eighth, urging a full and public development of all of the facts concerning the Davis-Lewis Mexican Oil story, as you call it.

I appreciate your interest in the matter, and want to assure you that your suggestions will receive careful consideration.

Very sincerely yours,

Gardner Jackson, Esq.,  
6 West Kirke Street,  
Chevy Chase,  
Maryland.

hm

January 16, 1941

Gardner Jackson, Esquire,  
6 West Kirke Street,  
Chevy Chase, Maryland.

My dear Mr. Jackson:

I have your letter of January 8, urging a full and public development of all of the facts concerning the Davis-Lewis Mexican Oil story, as you call it.

I appreciate your interest in the matter, and want to assure you that your suggestions will receive careful consideration.

Sincerely yours,



Office of the Attorney General  
Washington, D.C.

January 16, 1941

THE WHITE HOUSE  
JAN 17 11 24 AM '41  
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The President

The White House.

My dear Mr. President:

In compliance with your memorandum of January 10, I am sending you herewith a draft of a proposed reply that you may care to make to the enclosed letter from Gardner Jackson, dated January 8, 1941.

It occurs to me, however, that on further consideration, you may reach the conclusion that it is best not to write him personally, but to have a purely formal acknowledgement sent by your secretary.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert H. Jackson".

Attorney General.

THE WHITE HOUSE  
WASHINGTON

*Justice folder*  
*2-41*  
*F*

March 13, 1941.

MEMORANDUM FOR

JIM ROWE

FOR YOUR INFORMATION  
AND FILE.

F. D. R.

Department of Justice  
Washington

MATTHEW F. MCGUIRE  
ASSISTANT TO THE ATTORNEY GENERAL

~~Confidential~~

March 11, 1941



MEMORANDUM FOR THE ATTORNEY GENERAL

Under date of February 21, the President sent you the attached memorandum with reference to John Packard. In view of it, and his request that you speak to him about the matter generally, I thought you would like to have a summary of the report obtained by the Federal Bureau of Investigation.

John Packard was born November 1, 1892, at Oak Park, Illinois, and is therefore in his forty-ninth year. He is a graduate of the University of Southern California Law School, and was admitted to the practice of law in July, 1915.

During the World War, Packard served in the army. The concensus of opinion seems to be that he is a reasonably capable lawyer, but not outstanding, and there appears to be nothing in his record which would reflect upon his character or his integrity as a man.

His political history, however, is very interesting. Prior to 1936 he was a Socialist and allegedly a Communist. In that year he supported the President and was a delegate to the Democratic National Convention. He has always been a liberal - liberal to the point, it would seem, of out-and-out radicalism. This is so, not only in his capacity as an attorney, but in his association with radical groups. For example, he acted as attorney for Harry Bridges and for the International Longshoremen's Association. At one time he wrote an opinion to Long Beach City Management condemning the Police Department for arresting Bridges. Neither of these facts, however, in the absence of full disclosure of the circumstances, is important except insofar as they throw a general light on his activities. He is supposed to have been, or is presently, associated in the practice of law with Leo Gallagher and James Carter, both of whom have run for office on the Communist ticket.

These facts in themselves are innocuous, but *see to* indicate a pattern as far as Packard is concerned. In his high school days in Los Angeles, he joined the I.W.W. This was his initial step into radical movements. Apparently he has either been sympathetic with them or connected with them ever since that time.

He is reported, although it cannot be established, as a fact, to be a member of the Communist Party and a member of the Inner Circle of Ten of the party in Los Angeles. If this is so, it would throw a more effective light on his defense of sit-down strikers in 1937.

I think a fair conclusion to draw from the facts as outlined, is that while Packard is an able lawyer whose personal integrity and ethical concept of duty are apparently beyond reproach, his radical connections and the suspicion (although not verified) upon the part of a great many people on the Pacific Coast that he is or was a member of the Communist Party, would arouse such a furor as would militate against his confirmation for either the post of United States Attorney for California or for Federal Judge, and would stir up a great deal of opposition and rancor in Southern California.



Matthew F. McGuire  
The Assistant to the Attorney General

**THE WHITE HOUSE  
WASHINGTON**

February 21, 1941.

MEMORANDUM FOR THE

ATTORNEY GENERAL:

To speak to me about.

F.D.R.

RECEIVED  
OFFICE OF  
THE ASSISTANT  
FEB 24 11 37 AM '41  
TO THE  
ATTORNEY GENERAL

ATTORNEY GENERAL  
ASST. TO THE ATTY. GEN.  
DEPARTMENT OF JUSTICE  
FEB 24 1941 A.M.  
DIVISION OF RECORDS  
ATTORNEY GENERAL  
ASST. TO THE ATTY. GEN.

REC-7

B. M. 1

JOHN PACKARD - Federal Judgeship

Represents labor and fighting liberals.

Defended the right of labor to strike.

When twenty-five of our first lawyers, including the leader of the Bar, petitioned the court to issue an injunction against the right to vote of WPA and relief workers, Packard defended their right to vote, both before the lower court and the Supreme Court of California, and won on every point.

OK. Sit down strikers defended by him  
but only rt. to strike in fact of  
"sit down"

Tom Ford, J. Kuroki, Deak.

PSF

Justice folder  
1-41  
Copied in Morgenthau  
folder - 1-41

April 8, 1941

The President  
The White House

My dear Mr. President

Matter of PRINCESS STEFANIE von HOHENLOHE WALDENBURG

The Princess' case has been continued to April 30. Meanwhile she has notified Special Assistant to the Attorney General Schofield of her willingness to supply to the Government both statements and documents concerning her activities and the activities of others.

I am instructing that full statements be taken from her. England, the country from which she came, has refused to accept her return. The State Department advises that Japan has indicated a willingness to give her a transit visa, provided Russia does likewise, which is the only way she can be deported to Hungary of which she is a national. I have asked that this be expedited as much as possible.

Meanwhile, she is in custody in a highly hysterical condition. Her mother, aged 79, is with her. I will advise you the results of her decision to "talk".

Respectfully yours,

*Robert H. Jackson*

Attorney General.

*Justice Folder  
2-41*

THE WHITE HOUSE  
WASHINGTON

April 24, 1941.

MEMORANDUM FOR

JIM ROWE

Do you think this information should be communicated to Gardner Jackson? Will you use your discretion? If the answer is no, just return for our confidential files.

F. D. R.

*The answer is no.*

*J. F. R.*

THE WHITE HOUSE  
WASHINGTON

April 24, 1941.

MEMORANDUM FOR

JIM ROWE

Do you think this information should be communicated to Gardner Jackson? Will you use your discretion? If the answer is no, just return for our confidential files.

F. D. R.

THE WHITE HOUSE  
WASHINGTON

4-22-41

MEMORANDUM FOR THE PRESIDENT:

In accordance with your request, I turned over to J. Edgar Hoover the letter you received some time ago from Gardner Jackson, enclosing the pamphlet "The Fifth Column versus The Dies Committee", which contained libelous remarks about officials and friends of the Administration, including Mr. Jackson. Hoover in turn referred the matter to the Attorney General, and his report is attached hereto.



E. M. W.



Office of the Attorney General  
Washington, D. C.

April 15, 1941

Major General Edwin M. Watson  
Secretary to the President  
The White House.

My dear General Watson:

Mr. Hoover has turned over to me your letter of February 7, concerning the President's request that he ascertain the identity of the persons responsible for the dissemination of the pamphlet entitled "The Fifth Column versus The Dies Committee".

It appears that the organization responsible for the publication of the pamphlet calls itself "The Constitutional Educational League, Inc." with its principal office at 42 Church Street, New Haven, Connecticut. The president of the corporation is Joseph P. Kamp of 342 Madison Avenue, New York. A copy of a memorandum, dated March 10, prepared in the Federal Bureau of Investigation, concerning the League and Mr. Kamp, is enclosed herewith for your information.

A study made in this Department of the legal aspects of the matter, leads to the conclusion that publication and distribution of the pamphlet does not constitute any violation of any Federal criminal statute. There is always, of course, the possibility of libel proceedings. I should hardly recommend criminal prosecution for libel, however, without further consideration of the questions of policy involved. A civil action for libel on the part of one of the many individuals defamed by the pamphlet, would be another matter.

Respectfully,

*Robert H. Jackson*

Attorney General.

JOHN EDGAR HOOVER  
DIRECTOR

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

March 10, 1941

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL  
WENDELL BERGE

The Federal Bureau of Investigation is in receipt of a letter dated February 27, 1941, enclosing a communication received at the White House from Mr. Gardner Jackson, Chevy Chase, Maryland, together with a copy of a pamphlet entitled "The Fifth Column versus The Dies Committee" published by Joseph P. Kamp, 342 Madison Avenue, New York, New York, President and organizer of the Constitutional Educational League, Incorporated, New Haven, Connecticut. I am attaching hereto a copy of General Watson's communication, together with a copy of Mr. Jackson's letter to the President.

It will be noted that the President has requested that the sponsorship of this publication be ascertained and a determination made whether this pamphlet contains scurrilous or libelous matter making the use of the United States mail for its distribution unlawful. I am attaching hereto a copy of a memorandum containing a summary of data on file at the Federal Bureau of Investigation, Washington, D. C., concerning Joseph P. Kamp and the Constitutional Educational League, Incorporated.

For your information this Bureau instituted an investigation of the Constitutional Educational League and Joseph P. Kamp in October 1940. I am transmitting herewith copies of the following investigative reports reflecting investigation conducted to date in this matter:

Report of Special Agent O. H. Hago, dated  
December 14, 1940, at New Haven, Connecticut.

Report of Special Agent R. F. Fry, dated  
January 21, 1941, at Birmingham, Alabama.

In this connection reference is made to my memorandum to you dated February 24, 1941, at which time a copy of the publication entitled "The Fifth Column in Washington," which was prepared and

Memorandum for Mr. Berge

Page Two

distributed by Kamp was transmitted to you together with a resolution dated January 14, 1941, drawn up and transmitted to the President by the Rankin-Prout Post #1404, Veterans of Foreign Wars of the United States, Newport, Kentucky.

I am also attaching hereto a copy of the above mentioned pamphlet entitled "The Fifth Column versus The Dies Committee."

I would appreciate an opinion from you as to whether the distribution of the above described material through the United States Mail constitutes a violation of existing Federal statutes, and would also appreciate advice as to what investigation the FBI should undertake in connection with this matter.

Very truly yours,

John Edgar Hoover  
Director

Enclosures

March 10, 1941

**MEMORANDUM**

Re: JOSEPH P. KAMP  
President, Constitutional  
Educational League Incorporated  
New Haven, Connecticut

Joseph P. Kamp of 342 Madison Avenue, New York, New York, is President of the Constitutional Educational League Incorporated of 42 Church Street, New Haven, Connecticut. The League was incorporated under the laws of the State of Connecticut on April 20, 1937, and one of its subscribers was Joseph P. Kamp. Other subscribers of the organization are H. Byron Swartz, Vice-President of Old Tavern Road, Orange, Connecticut, Chester A. Hanson, Treasurer and Agent, 67 Maple Street, Milford, Connecticut, and Madelyn A. Carmon, Assistant Treasurer and Secretary, 1405 Chapel Street, New Haven, Connecticut.

The stated purposes of this corporation are, "to bring about a more complete understanding of the functions of our Government, and the guarantees and provisions of its basic instrument, the Constitution of the United States; to inculcate patriotism and love of country; to investigate and expose the subversive elements which are seeking to undermine the faith of the American people in their institutions and to foster this general program through the medium of the printed and spoken word."

On the letterhead of the stationery used by the Constitutional Educational League Incorporated, it is stated that the organization is a non-political and a non-profit group and that it was founded in 1919. Its national headquarters are located in the First National Bank Building, New Haven, Connecticut. It maintains a mid-west branch in the Pioneer Building at Madison, Wisconsin, and a southern branch in the First National Building, Birmingham, Alabama. The activities of the organization at Birmingham, Alabama, in October 1940, appeared to be nothing more than a political campaign against President Roosevelt. The southern branch has no bank account and the sole duties of the clerk in charge are to sell and distribute Kamp's publications.

Publications of the Constitutional Educational League Incorporated are:

- "Join The CIO And Help Build A Soviet America" (1937)
- "The Hell of Herrin Rages Again" (1937)
- "The Fifth Column In Washington" (1940)
- "The Fifth Column In The South" (1940)
- "The Fifth Column Versus The Dies Committee" (1941)

The first two booklets attack John L. Lewis and the CIO and characterize Lewis as being a "traitor to labor," and accuse him of encouraging violence and bloodshed in labor activity, and indicate that he is, "Communistically inclined." "The Fifth Column In Washington," claims to be an expose of Communists, Communist sympathizers, and fellow travelers working for the Federal Government. Included in the "List number 1 of America's Fifth Column," are such names as Robert M. Lovett, Secretary of the Virgin Islands, Robert H. Jackson, Attorney General of the United States, Harold L. Ickes, Secretary of the Interior, and Frances Perkins, Secretary of Labor. When publication of this latter pamphlet was planned, the original title thereof was planned to be, "Reds In Your Government," but upon publication it was given its present title. This publication received a wide distribution and has been sent all over the country since June 1940. A great number of these pamphlets were distributed at the Republican National Convention June 29, 1940, at Philadelphia, Pennsylvania, and none was sold.

This publication was commended and endorsed by Victor E. Devereaux, Director of Americanism Veterans of Foreign Wars of the United States and Mr. Devereaux distributed a mimeographed letter advising the recipients of this booklet "to bring these facts before the public in your community and before your Congressmen and Senators."

"The Fifth Column In The South," points out the alleged dangers of the growth of Communism in the south and accuses Mrs. Roosevelt of heading the Communist movement by her financial assistance to the Highlander Folk School at Monteagle, Tennessee. This booklet also attacks the spread of the CIO through the south and states that Communists and the CIO were working together among the southern people and particularly among the Negroes.

"The Fifth Column Versus The Dies Committee," which is the latest publication of the Constitutional Educational League defends the Dies Committee and advocates that substantial congressional appropriations be granted for its continued existence. It accuses the Department of Justice for its "tactics" in attempting to bring the Dies Committee into ill repute. "The Attorney General wanted the American people to believe that the Dies Committee was to blame for any failure of the FBI, and the Department of Justice to cope successfully with spies, saboteurs and Fifth Columnists. (Not a single arrest in the past year)." (Page 6) This pamphlet on page 16 criticizes the Department of Justice for allegedly nullifying results of investigations conducted by the FBI and states that it is not criticizing the FBI or its Director but blames the Department. Because of this alleged interference, the booklet asserts, the Dies Committee should be permitted to continue its work.

In 1939 the Constitutional Educational League published a periodical entitled, "Headlines and What's Behind Them," which attacked the Workers' Alliance and the alleged Communist infiltration into the W.P.A. In this periodical it was stated that the Constitutional Educational League is "engaged in anti-Communist endeavors."

At the present time little is known concerning Kamp's personal history. His name is not listed in the current issue of "Who's Who in America." On the inside cover of the booklet, "The Fifth Column In Washington," the following brief history of Kamp appears:

"In 1933-34, Mr. Kamp was executive Vice-President of the Richard J. Wagner Democratic Association in the Democratic stronghold of the nation, Senator Robert F. Wagner's district. In September 1933, he was named Secretary of the General Committee of the Westchester County (N.Y.) Democratic Organization, a designation which, however, he was unable to accept. An editor of newspapers and magazines, and for more than twenty years a student of subversive movements, he writes with authority."

According to the August 17, 1940, issue of "The Hour," Kamp claims to be an influential member of the Democratic Party but he is actually known for his fascistic activities. This periodical claims that on December 16, 1938, he was one of the sponsors of

the retired Major General George Van Horn Moseley when the latter delivered an anti-semitic and anti-Government speech in the Hotel Biltmore in New York. On May 24, 1939, Kamp was one of the sponsors of the so-called, "pro-American mass meetings," which was addressed by John E. Kelley described by "The Hour" as being a notorious Jersey City Fascist who had previously addressed the German-American bund, and Joe McWilliams, New York fascist and anti-Semite. "The Hour" describes Kamp as being anti-Semitic and anti-labor. It claims Kamp has distributed violent anti-labor propaganda and that he is a vicious foe of the CIO.

Until 1937 Kamp was executive editor and publisher of the now defunct magazine "Awakener," which is described by "The Hour" as having been a Fascist publication. He has also distributed anti-semitic literature and at one time distributed copies of the forged Benjamin Franklin letter and a pamphlet entitled, "Why are the Jews Persecuted for their Religion?"

It was reported that Kamp had certain printing done at the shop operated by Beatrice Brown, 480 Lexington Avenue, New York, New York, for which the printer never received payment.

Associated with Kamp in his publication of the "Awakener" was Harold Lloyd Varney. Varney was connected with the Italian Historical Society of New York and collaborated with Kamp in the publication of the pamphlet entitled, "Join The CIO and Help Build a Soviet Union."

On July 18, 1937, a convention of 10,000 employees of the Remington Rand Company in Auburn, New York, was held under the auspices of the Constitutional Educational League, Inc. Claire E. Hoffman, United States Representative of Michigan addressed this convention and bitterly criticized John L. Lewis and the CIO. According to the "Labor Fact Book" Volume 2, published in 1934 by the Labor Research Association, the Constitutional Educational League held "patriotic meetings," in front of industrial plants where the workers were out on strike. Kamp was accused of being a strike breaker and it was reported in the "Labor Fact Book" above mentioned that he distributed leaflets critical of workers of national textile mills in Connecticut. He was said to have been active against strikers at the I. Miller and Sons Incorporated plant of Long Island, New York, in 1932.

"The Daily Worker," in its issue of June 24, 1939, accused Kamp of attempting to inveigle W.P.A. workers into signing statements that they had been fired by "Communist" superiors because the workers "were good Americans." This article charged that the La Follette Senatorial Civil Liberties investigation had found that the Constitutional Educational League was a "professional union busting outfit."

Kamp was reported to be an intimate acquaintance of Mrs. Elizabeth Dilling, author of the book entitled, "The Red Network," and the "Roosevelt Red Record," and a close friend of Carl O. Orgell, Nazi bund officer. According to "The Hour," Kamp has been given assistance by Gerald B. Winrod of Wichita, Kansas, who issued circulars publicizing the pamphlet, "The Fifth Column in Washington," and offering these pamphlets for sale in quantity lots. According to "The Hour" the Constitutional Educational League distributes its pamphlets gratis, although the stated price of the later publications are 25¢ a copy.

It was recently reported that Kamp has an autographed photograph of Adolf Hitler in his office at 342 Madison Avenue, New York, New York, and that an individual named Fred Pryor who is allegedly a wealthy Republican Committeeman is financing Kamp in the latter's activities.

Kamp has made numerous speeches of an anti-Communist nature. According to a newspaper article appearing in the Buffalo New York Courier Express October 22, 1940, Kamp made an address before the American Legion in which he charged that Communism had worked its way into the United States Army. He accused then Assistant Attorney General Rogge of giving, "aid and comfort to the Communist cause."

Additional inquiries concerning the Constitutional Educational League and Joseph P. Kamp are presently being made.

THE WHITE HOUSE  
WASHINGTON

F

*Confidential*  
*file. V. J. [unclear]*

June 26, 1941

Memorandum For The President:

Subversive Employees

Francis Biddle, Acting Attorney General, asked me to give you this memorandum concerning subversive employees in defense plants. I understand you initiated the discussion.

It would seem that the suggestion beginning on page four is the most practicable, not only in political terms, but also in results.

In this realistic world this particular problem seems to have become academic anyway, from the moment Hitler started toward the Pripet marshes.

Any of these procedures are bound to cause "headaches". The problem will of course rise again in a few months, but the only thing that now seems to be necessary is to have the machinery ready. Any public step now would be greeted by an indifferent public and an embittered labor group.

JHR

James Rowe, Jr.

JRJ  
I agree - What do you do next?  
Biddle will <sup>continue</sup> discuss.  
JHR JHR



Office of the Attorney General

Washington, D.C.

June 23, 1941

*Justice Folder*  
*PSF*

MEMORANDUM FOR THE PRESIDENT

The Attorney General about two weeks ago asked Charles Fahy and myself to consider the advisability of setting up by Executive order a Board of five individuals not in Government service to pass on cases of alleged communistic and subversive activities of employees in plants engaged in national defense work, for the purpose of advising the employer that the Government desired the particular employee discharged. I understand the original suggestion of some action along these lines came from Sidney Hillman and that the matter was discussed informally with the President by the Secretary of War and the Attorney General. Mr. Fahy and I conferred with Mr. Hillman and Mr. John Lord O'Brian. Mr. Hillman was less interested in any particular method dealing with subversive activities in defense plants than working out some solution for the problem, which he considered pressing. He suggested that we see Mr. Philip Murray. We did so. Mr. Murray was strongly opposed to such a Board and said that he would not approve such a plan or cooperate in its execution. He was of the opinion it would be considered another "Dies Committee"; that the problem of communists was not primarily a

labor one, but a governmental one; he pointed out that it is perfectly lawful for employers to hire communists; and when they are employed labor could not be blamed for the fact that they join unions of fellow-employees.

The difficulty with the Board plan is that it contemplates ex parte determinations, leading to discharge, on the basis of reports from governmental investigative agencies, without a "due process" hearing, although the setting up of a Board carries the illusion of "due process" without its substance.

We discussed the problem with the Secretary of Labor and Mr. Gerard Reilly, the Solicitor of the Department of Labor, and suggested for consideration the possibility of a simpler mechanism consisting of an interdepartmental committee composed of the Secretary of Labor, the Attorney General, the Secretary of War and the Secretary of the Navy, or their appointees. This committee could meet whenever necessary to pass on cases presented to it by the Army or the Navy on the basis of reports of their Intelligence Services which had been examined by the F. B. I. The committee could seek the cooperation of responsible leaders of the A. F. of L. and the C. I. O. as to appropriate action through their internationals or locals, failing in which the committee could request the employer to dismiss a particular employee. The National Labor Relations Board assures us that in such event the employer would be protected under the Wagner Act. The Secretary of Labor did not express any final opinion but thought the matter should be carefully

considered and suggested that it might be discussed at a cabinet meeting.

Mr. Hoover, Director of the F. B. I., prefers such a committee to the Board first referred to.

While such a committee would be less formalized than a Board created by Executive order, the arbitrary character of its determinations in a particular case would still exist; and there would still be danger of arousing fear on the part of labor generally that the formula was used to rid employees in defense industries of proper union leadership.

Bearing on the handling of subversive activities, but not limited to activities of employees in defense industries, the following is noted:

1. The so-called Smith Act adopted June 28, 1940 provides that persons may be criminally prosecuted who belong to any party that advocates violent overthrow of the Government. An investigation by the Department of Justice is now pending which it is believed will lead to grand jury proceedings under this statute. This may have some salutary effect, but it is realized that criminal cases may be difficult to prove as a rule. Nevertheless, the Department of Justice has responsibility for the enforcement of this statute and must proceed whenever practicable.

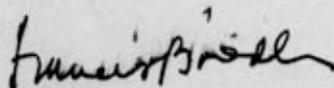
2. Criminal conspiracy proceedings have been suggested, based upon the old Criminal Conspiracy statute making it a crime to conspire to defraud the United States. Assuming that a case could

theoretically be made out under this statute, such proceedings would involve difficulties of proof and would be available only rarely.

Finally, and having specific reference to employees working under Army and Navy contracts, it is now true that many Navy and some Army contracts contain provisions giving the Navy or Army contracting officer the right to direct an employer to discharge an employee whom the contracting officer "deems incompetent, careless, insubordinate, or otherwise objectionable"; or "whose continued employment is deemed inimicable by the contracting officer to the public interest"; or "persons designated by the Secretary of the Navy for cause as undesirable to have access to work and/or materials for the Navy Department."

I understand that under such provisions certain employees have been discharged on request of the Army or the Navy without, so far as I know, creating unnecessary difficulties with unions. The principle thus now recognized in certain contracts seems to afford the basis for all the authority necessary to rid defense industries of subversive employees. In order that this authority may be exercised only in justifiable cases and as a safeguard against its use so as to interfere with union activity protected by the public policy guaranteeing the right of self-organization and collective bargaining, the Army, where one of its contracts is involved, and the Navy, where a Navy contract is involved, might have individual cases passed upon by a representative of the Labor Department and

of Mr. Hillman's office [the branches of the Government peculiarly qualified to review the matter from a labor standpoint] sitting with a representative of the armed service involved. I understand the War Department would not be averse to a procedure of this character.



Francis Biddle,  
Acting Attorney General.



Office of the Solicitor General  
Washington, D. C.

June 24, 1941

Dear Jim,

I enclose a memorandum for the President reporting on the advisability of some form of machinery to handle "subversive" employees in defense plants.

You will note that the problem has been informally discussed with the Secretary of Labor and the Secretary of War.

Sincerely yours,

FRANCIS BIDDLE,  
Acting Attorney General.

Enc.

James Rowe, Esq.,  
The White House,  
Washington, D. C.



Office of the Attorney General

Washington, D.C.

June 23, 1941.

MEMORANDUM FOR THE PRESIDENT

FROM THE ACTING ATTORNEY GENERAL.

Re: Handling "subversive" employees  
in defense plants.

Summary: Representative of Labor Department and O. P. M. (Hillman's office) to pass upon individual cases suggested by War and Navy Departments for discharge because of subversive activities.

Alternative: An interdepartmental committee consisting of War, Navy, Labor and Justice is suggested to pass on individual cases and direct employers to take action.

*Justice Folder*

THE WHITE HOUSE  
WASHINGTON

July 21, 1941.

MEMORANDUM FOR

THE ACTING ATTORNEY GENERAL

What is the situation in regard to alien property? As I remember it, we abolished the Office of Alien Property Custodian but that was a few years ago when the World War alien property had been almost wholly liquidated.

Would we now be justified in appointing someone to the position, which I think is still on the statute books, and is there enough new alien property coming under our jurisdiction to give enough work to it?

Frankly, I want to do something for Leo Crowley and he would be, I think, a very good man to handle it.

F. D. R.

THE WHITE HOUSE  
WASHINGTON

July 18, 1941

MEMORANDUM FOR THE PRESIDENT:

From: T.G.C.

"Leo Crowley wants to be Alien Property Custodian very badly. As he is a western Catholic, it might help in the Department of Justice and also, at the same time, he could probably handle the political end of it.

"Ed Flynn had told Leo Crowley that he was to be appointed in Schram's place and when Henderson was appointed he was very much disappointed."

What can I tell T.G.C.?

G.

THE WHITE HOUSE  
WASHINGTON

*file  
personal*

October 9, 1941

Memorandum For The President.

FBI Investigations

The Attorney General asked me to give to you these two memoranda.

If agreeable to you he would like to discuss both at tomorrow's cabinet meeting, and, if possible, would like to know before cabinet whether you want this done. For policy reasons you may not want it discussed right now and he points out there is no way of knowing your attitude after cabinet starts.

*JWR*

James Rowe, Jr.

PSF: Justice Folder



Office of the Attorney General  
Washington, D.C.

October 8, 1941

MEMORANDUM FOR THE PRESIDENT

You will remember that under your directive of September 6, 1939, the investigation of all subversive activities was centered exclusively in the Federal Bureau of Investigation.

In June 1940, at the request of the Advisory Commission of the Council of National Defense, the FBI was directed to investigate its employees; and, owing to the fact that her name was on a list submitted to the Federal Bureau of Investigation, Mrs. Edith B. Helm was investigated, her name having been carried on the payroll of the Advisory Commission. As a result of this, on February 14, 1941, Attorney General Jackson directed the FBI to discontinue all personnel investigations, except those relating to the Department of Justice. These instructions were later modified to permit the Bureau to investigate prospective employees to defense posts where the White House Secretariat had requested investigation.

The Treasury Department and the Civil Service Commission have since then been investigating personnel for the national defense agencies. They, obviously, are not in the best position to conduct such investigations as they do not have the reservoir of information contained in the Federal Bureau of Investigation files. Moreover, the actual practice is

October 8, 1941

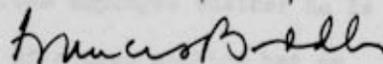
for these two agencies to obtain their information from the Federal Bureau of Investigation. At present there are 3,000 requests emanating from the Treasury for information. Mr. Hoover is of the opinion that the present system involves a good deal of duplication and waste of time; and that the FBI could make the investigations in almost the same time as it now takes to supply the information to the other agencies. Information now being obtained by the Treasury and the Civil Service Commission is not being forwarded to the Federal Bureau of Investigation. The directive is, therefore, not being carried out. Such investigations are, of course, not intended to relate to the technical fitness of the applicant, but to his affiliation with some subversive group.

The Bureau has, of course, no information concerning the identity of persons contemplated for appointment in the national defense agencies. There is information in the Federal Bureau of Investigation files with respect to the employees recently referred to by Congressman Dies in connection with Leon Henderson. This information should have been available to Mr. Henderson before these positions were filled; and whatever investigation was made did not bring out the information.

Mr. Hoover has vigorously and several times recommended that this system be changed so as to center all investigations of this nature in the Federal Bureau of Investigation.

I concur in this recommendation.

Respectfully yours,



Francis Biddle  
Attorney General



Office of the Attorney General  
Washington, D. C.

October 8, 1941

MEMORANDUM FOR THE PRESIDENT

In the last appropriation act, Congress gave the Federal Bureau of Investigation

"\$8,000,000, of which \$100,000 shall be available exclusively to investigate the employees of every department, agency, and independent establishment of the Federal government, who are members of subversive organizations or advocate the overthrow of the Federal government, and report its findings to Congress."

This was approved June 28, 1941. The practice since then has been for the F. B. I., upon receiving complaints of a serious nature, to write to the department head with a request that advice be given as to whether investigation is desired. This followed the usual practice where criminal charges had been made against employees of the Department.

Of the 1,597 cases thus transmitted, 193 have been authorized for investigation by the Federal Bureau of Investigation; 254 certified for no investigation, and 1,150 have not been acted upon by the interested governmental agency.

The present system is thoroughly unsatisfactory because the sending of such communications to the departments disturbs the morale; and does not fulfill the obligation imposed by Congress on the Federal Bureau of Investigation. It results either in a direct inquiry to the employee whether he is a member of the subversive organization, which is of course nothing but an

October 8, 1941

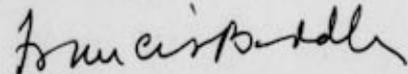
ex parte procedure; or in a separate investigation by the agency involved. Such an investigation is inadequate, overlapping, and contrary to the policy of the government under the Act and under the President's directive of September 6, 1939, concentrating all investigative work of this nature in the Federal Bureau of Investigation.

Under the statute the F. B. I. must report to Congress. It is believed that a report showing the present situation will bring about attacks on the Administration for failure to carry out the Act. It is said that those opposed to the activities of the Dies Committee earmarked the \$100,000 for this purpose believing that, if the investigation were competently done by the Federal Bureau of Investigation, it would make it more difficult for Dies to obtain another appropriation when the time came.

I recommend that hereafter the Bureau make a direct investigation, without reference to the Departments, of all cases which seem to have a substantial basis of complaint. In order to eliminate friction the employees will be examined in a room at the F. B. I. field office and not in the office of the agency. Inquiries among the employee's office associates will be avoided as much as possible. The employee's statement, which will be taken at the end of the investigation, will be incorporated in the files of the F. B. I. This will be fairer to the employee, and will make a complete record.

With your approval, I shall announce this procedure at the next Cabinet meeting.

Respectfully yours,



Francis Biddle  
Attorney General

*PSF Justice Folder*

THE WHITE HOUSE  
WASHINGTON

~~CONFIDENTIAL~~

November 17, 1941.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you please speak to me about the possibility of a Grand Jury investigation of the money sources behind the America First Committee? It certainly ought to be looked into and I cannot get any action out of Congress.

F. D. R.

12-29-41

Respectfully referred to  
the President.

E. M. W.

*file  
personal*



Office of the Attorney General  
Washington, D.C.

December 27, 1941

Justice Folder  
241

MEMORANDUM FOR GENERAL WATSON

I thought the President would be interested  
in the enclosed report.

*FRB*  
Francis Biddle  
Attorney General



Office of the Attorney General  
Washington, D. C.

December 27, 1941

~~CONFIDENTIAL~~

MEMORANDUM FOR THE PRESIDENT

You will be interested to know that recently the Federal Bureau of Investigation has been monitoring frequencies on the West Coast in the belief that enemy vessels were broadcasting on these frequencies. On December 26, the FBI monitored the frequency of "6908 kilocycles". The FBI charted reports received from various stations taking bearings upon signals broadcast on this frequency and advised the Coastal Frontier Unit of the Navy Department that an enemy vessel appeared to be operating at a point 180 miles north of San Francisco off Point Mendocino. Navy planes were dispatched at once and sighted a submarine. We are advised they were unable to get her.

Respectfully yours,

*F. Biddle*

Francis Biddle  
Attorney General

PSF: Justice Folder

February 28, 1942

The President  
The White House  
Washington, D. C.

My dear Mr. President:

Director Hoover has sent me a report of the investigation conducted by the FBI at the request of the Navy Department into the burning of the U.S.S. Lafayette, formerly the Hornumde.

The evidence clearly establishes the origin of the fire to be accidental. On the morning of February 9, 1942, a crew was assigned to cut down four light stanchions in the grand salon of the vessel by acetylene torch. A number of kapok life preservers packed ten to a bale, each bale having been wrapped in water resistant tar paper and burlap, were piled near one of the stanchions. Before cutting operations were started, some of the bales were removed to a distance of approximately five feet from the stanchion. As an added precaution, a sheet of steel about five feet long and two feet wide was set up lengthwise between the stanchion and the bales. As the point at which the cut was being made was six inches higher than the metal shield, it was necessary for two men to hold the stanchion above the shield to stop flying sparks. After the stanchion had been cut, and as it was being lowered to the deck, it got out of control and fell, damaging the metal spark shield. There remained to be cut a portion of steel approximately three inches long which had been used to steady the stanchion as it was being lowered. Because of the damage to the metal shield, it was the bales of life preservers. The sheets were so held that a space of approximately one and a half feet was left between the bottom of the sheets and the deck. A few minutes after the resumption of cutting operations, it was observed by several of the men that sparks and molten metal had escaped the asbestos sheets and had ignited the life preservers in several spots. Efforts to subdue the flames with buckets of water, by stamping out, etc., were of no avail, and as the heat and smoke drove the men away, the fire spread beyond control.

Original in Mary Folder - 2-42

Nowhere in the evidence obtained by the FBI is there basis for the suggestion that sabotage was involved in the damage to the Lafayette.

Respectfully,

Attorney General

PSF: Justice Folder  
2-42

THE WHITE HOUSE  
WASHINGTON

March 20, 1942

File  
Completed

~~CONFIDENTIAL~~

MEMORANDUM FOR THE PRESIDENT:

I saw J. Edgar Hoover this morning and told him that you wanted action taken against publishers of seditious matter. Hoover agreed that much seditious writing and publishing is going on in the country.

But, Hoover told me his hands were tied by the Attorney General and until some of the Attorney General's instructions had been changed his agents could not operate.

Under a direction by the Attorney General, Hoover said his agents could not apply for warrants of arrests to any United States Attorneys. His men must, in all cases where sedition is charged, apply to the Department of Justice in Washington for warrants.

Hoover further stated that the Attorney General has publicly stated that he will not have any men arrested for sedition unless he, as Attorney General, personally approves the case in advance of the arrest.

The warrant for the arrest must be obtained from the Department of Justice -- not from the United States Attorneys.

I was told that in the case of the opera singer, Pinza, who was arrested on an emergency warrant issued by the United States Attorney in New York, the Attorney General called the United States Attorney to Washington and reprimanded him for issuing the warrant and permitting the arrest to be made without departmental approval, in advance.

In the case of a certain Noble, recently arrested by F.B.I. agents in Los Angeles, and dishonorably discharged from the Navy in World War No. I, the Attorney General directed Noble's release and ordered the release over J. Edgar Hoover's objections.

- 2 -

Hoover said Noble was a rabble-rouser and a Jew-baiter; that Noble -- after Pearl Harbor -- held a mock trial of the President of the United States. The President appeared in effigy. Noble presided at the trial and held the President guilty on impeachment charges.

Hoover said he and his men have been blocked by the Attorney General time and time again in case after case.

I told Mr. Hoover that you nevertheless wanted action on sedition cases and that he should advise the Attorney General of your desires as I outlined them to him. He said he would do this immediately. He felt, however, that it would be necessary for the President in person to talk to the Attorney General before he (Hoover) would be permitted to act in these cases.

S.T.E.

PSF: Justice <sup>M</sup> ~~F~~

THE WHITE HOUSE  
WASHINGTON

June 17, 1942.

MEMORANDUM FOR

MRS. ROOSEVELT

To read and return for my files.

F.D.R.

Memorandum (apparently from FBI) June 2, 1942  
re the investigation of suspected Communists  
in and out of the govt. service.

*Justice Folder*

THE WHITE HOUSE  
WASHINGTON

**CONFIDENTIAL**

June 17, 1942.

MEMORANDUM FOR

HON. FRANCIS B. BAYRE

Can you give me any line  
on this?

F. D. R.

FBI report June 15th re Andres Sorriano  
Secy. to President Quezon.

Statements that the members of President Quezon's official party, now in Washington, are of Spanish extraction and that the Malayan Filipino members were not included. Sorriano, Treasurer of the Commonwealth and Secretary to the President, was a heavy contributor to Franco's campaign, and he has stated that Hitler promised the Philippines to Spain when the war was over. It is believed that Sorriano was planted in the Philippines by Franco and Hitler to engage in espionage.

DECLASSIFIED  
By Deputy Archivist of the U.S.

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2-42

By W. J. Stewart Date 2-25-72

THE WHITE HOUSE

WASHINGTON

June 30, 1942

~~SECRET~~

MEMORANDUM FOR THE ATTORNEY GENERAL

I have not had an opportunity to talk with you about the prosecution of the eight saboteurs landed from two German submarines nor have I recently read all the statutes which apply.

It is my thought, however:

1. That the two American citizens are guilty of high treason. This being wartime, it is my inclination to try them by court martial. I do not see how they can offer any adequate defense. Surely they are just as guilty as it is possible to be and it seems to me that the death penalty is almost obligatory.
2. In the case of the other six, who I take it are German citizens, I understand that they came over in submarines wearing seamen's clothes -- in all probability German Naval clothes -- and that some of them at least landed on our shores in these

MEMO

THE WHITE HOUSE

WASHINGTON

German Naval clothes. I think it can be proved that they formed a part of the German Military or Naval service. They were apprehended in civilian clothes. This is an absolute parallel of the case of Major Andre in the Revolution and of Nathan Hale. Both of these were hanged. Here again it is my inclination that they be tried by court martial as were Andre and Hale. Without splitting hairs, I can see no difference.

Offenses such as these are probably more serious than any offense in criminal law. The death penalty is called for by usage and by the extreme gravity of the war aim and the very existence of our American Government.

F. D. R.

Original sent to AG, marked  
Secret + Confidential 6/30/42  
at 5:30 PM,

WAR DEPARTMENT  
WASHINGTON

Justin Folds  
PSF

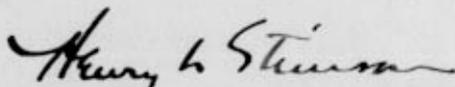
July 7, 1942.

Dear Mr. McIntyre:

I have received the letter from Colonels Dowell and Royall together with the letter of the Attorney General of July 6th to the President suggesting three choices of action for the President. I have read these papers with interest.

You have now informed me over the telephone that the President has already acted in deciding not to answer the inquiry of the two Colonels and I therefore return the letters to you. I quite concur with the decision of the President.

Very sincerely yours,



Secretary of War.

Hon. Marvin McIntyre,  
The White House.



Office of the Attorney General  
Washington, D.C.

July 6, 1942

The President

The White House

My dear Mr. President:

The communication of July 6, 1942, from Colonels Dowell and Royall presents three choices for action:

1. You can affirmatively deny authority to counsel for the defendants to seek redress in the courts.

I think this would be a mistake. First, it might tend to give the public impression that the prisoners are not being given a fair trial. Secondly, it cuts back into your original order by assuming it is not clear, and, therefore, would in substance amend your original order.

2. You can tell them that your order of July 2nd, creating the Military Commission is clear and that the problem of interpretation - if any - is one within their province as defense counsel.

If I represented the defendants I would have no hesitation in construing the Order to permit me to petition for habeas corpus if I thought it wise to do so.

However, the defense counsel apparently feel that the Proclamation denying access to the courts operates as a military order, forbidding defense counsel to take any steps in a civil court on behalf of the prisoners.

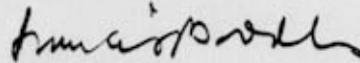
The President

July 6, 1942

3. You can clear their doubt by telling them that, while you believe the order and proclamation are valid, they can use their own best judgment as to whether they should try to petition for habeas corpus, just as counsel can in any case.

My recommendation would be to take this choice, and a suggested reply along these lines is attached.

Respectfully yours,



Francis Biddle  
Attorney General

Suggested memorandum for the President's signature

MEMORANDUM TO Colonel Cassius M. Dowell and  
Colonel Kenneth C. Royall

1. I have your communication of July 6, 1942
2. While I believe that the Order of July 2nd, 1942, creating the Military Commission and the Proclamation of the same date denying access to the courts to certain enemies are valid and clear, you can use your own best judgment as to whether you should try to petition for habeas corpus, just as counsel can in any case.

The President

The White House

The President:

There has been delivered to us your Order of July 2, 1942 which provides for a Military Commission for the trial of Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, and which further designates us as defense counsel for these persons.

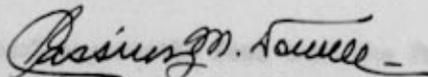
There has also been delivered to us a copy of your Proclamation of the same date, which Proclamation provides that a military tribunal shall have sole jurisdiction of persons charged with committing classes of acts set forth in the Proclamation and that such persons shall not have the right to seek any civil remedy.

Our investigation convinces us that there is a serious legal doubt as to the constitutionality and validity of the Proclamation and as to the constitutionality and validity of the Order. It is our opinion that the above named individuals should have an opportunity to institute an appropriate proceeding to test the constitutionality and validity of the Proclamation and of the Order.

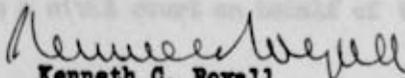
In view of the fact that our appointment is made in the same Order which appoints the Military Commission, the question arises as to whether we are authorized to institute the proceeding suggested above. We respectfully suggest that you issue to us or to someone else appropriate authority to that end.

We have advised the Attorney General, the Judge Advocate General, General McCoy, General Winship and Secretary Stimson of our intention to present this matter to you.

Respectfully,



Cassius M. Dowell  
Colonel, United States Army



Kenneth C. Royall  
Colonel, Army of the United States

Washington, D.C.  
July 6, 1942

7-7-42

NOTE:

Original of letter to the President, 7-6-42, from the Attorney General and original of the memorandum to the President, 7-6-42 from Colonel Cassius M. Dowell and Colonel Kenneth C. Royall, in re the trial of the saboteurs, sent to the Secretary of War, attention of Mr. Schott, PERSONAL AND CONFIDENTIAL, by special messenger.

July 6, 1942

The President

The White House

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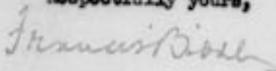
The President

July 6, 1942

3. You can clear their doubt by telling them that, while you believe the order and proclamation are valid, they can use their own best judgment as to whether they should try to petition for habeas corpus, just as counsel can in any case.

My recommendation would be to take this choice, and a suggested reply along these lines is attached.

Respectfully yours,



Francis Biddle  
Attorney General

Suggested memorandum for the President's signature

MEMORANDUM TO Colonel Cassius M. Dowell and  
Colonel Kenneth C. Royall

1. I have your communication of July 6, 1942
2. While I believe that the Order of July 2nd, 1942, creating the Military Commission and the Proclamation of the same date denying access to the courts to certain enemies are valid and clear, you can use your own best judgment as to whether you should try to petition for habeas corpus, just as counsel can in any case.

July 6, 1942

MEMORANDUM FOR THE ATTORNEY GENERAL:

6           The attached is self-explanatory.  
I just spoke to you about it over the 'phone.

M. H. McINTYRE  
Secretary to the President

**Attachment:** Memo to President from Colonels Dowell and  
Royall re trial of saboteurs, per copy attached.

MHM:J

The President

The White House

The President:

There has been delivered to us your Order of July 2, 1942 which provides for a Military Commission for the trial of Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, and which further designates us as defense counsel for these persons.

There has also been delivered to us a copy of your Proclamation of the same date, which Proclamation provides that a military tribunal shall have sole jurisdiction of persons charged with committing classes of acts set forth in the Proclamation and that such persons shall not have the right to seek any civil remedy.

Our investigation convinces us that there is a serious legal doubt as to the constitutionality and validity of the Proclamation and as to the constitutionality and validity of the Order. It is our opinion that the above named individuals should have an opportunity to institute an appropriate proceeding to test the constitutionality and validity of the Proclamation and of the Order.

In view of the fact that our appointment is made in the same Order which appoints the Military Commission, the question arises as to whether we are authorized to institute the proceeding suggested above. We respectfully suggest that you issue to us or to someone else appropriate authority to that end.

We have advised the Attorney General, the Judge Advocate General, General McCoy, General Winship and Secretary Stinson of our intention to present this matter to you.

Respectfully,

Cassius M. Dowell  
Colonel, United States Army

Kenneth C. Royall  
Colonel, Army of the United States

Washington, D.C.  
July 6, 1942

*Justice Folder*  
*PSF*

THE WHITE HOUSE  
WASHINGTON

July 8, 1942.

MEMORANDUM FOR THE  
ATTORNEY GENERAL:

For preparation of reply,  
though I do not think one is necessary.

F.D.R.

Letter from Cassius M. Dowell, Colonel, United States Army, and Kenneth C. Royall, Colonel, Army of the United States, Washington, D. C., 7/7/42, to the President. In re Order of 7/2/42 and the Proclamation of the same date, and they are of the opinion that they are authorized, and their duty requires them, first, to try to arrange for civil counsel to institute the proceedings necessary to determine the constitutionality and validity of the Proclamation and Order of July 2 and, second, if such arrangements cannot be made, to institute such proceedings themselves at the appropriate time. Unless ordered otherwise, they will act accordingly.



Office of the Attorney General  
Washington, D.C.

July 9, 1942

*Justice Files*

THE WHITE HOUSE  
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MEMORANDUM FOR THE PRESIDENT

I return the letter of Colonel Dowell and Colonel Royall dated July 7 addressed to you with respect to their duties under the Commission, which you sent me for the preparation of a reply. I agree with you that no reply is necessary or desirable.

Respectfully yours,

*f.m.*

Francis Biddle  
Attorney General

The President

The White House

The President:

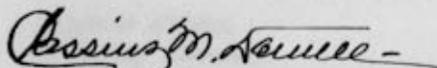
This morning we received from Mr. McIntyre over the telephone your reply to our letter of yesterday, which reply was to the effect that we should make our own decision as to our duties and authority under the Order of July 2.

We have considered carefully this Order and the Proclamation of the same date and are of the opinion that we are authorized, and our duty requires us, first, to try to arrange for civil counsel to institute the proceedings necessary to determine the constitutionality and validity of the Proclamation and Order of July 2 and, second, if such arrangements cannot be made, to institute such proceedings ourselves at the appropriate time.

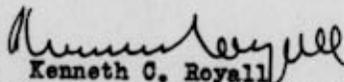
Unless ordered otherwise, we will act accordingly.

Copies of this letter and of the letter of yesterday are being sent to the Attorney General, the Judge Advocate General, and Secretary Stimson.

Respectfully,



Cassius M. Dowell  
Colonel, United States Army



Kenneth C. Royall  
Colonel, Army of the United States

Washington, D.C.  
July 7, 1942

PSF Justice Files  
JULY 21, 1942

My dear Mr. President:

Immediately following receipt of your memorandum of July 11, concerning the Princess von Hohenlohe and her son, I sent my Executive Assistant, Mr. Garnet, to Gloucester City, New Jersey, and Ellis Island, to make a thorough inquiry into the situation.

Following an examination of the regulations and records, and after talking at great length with many of the alien detainees as well as the officers and employees of both stations, he reported to me that he found no substantiation of the charge that favoritism was being shown these two persons, and, indeed, that all evidence he could obtain disproved it.

In checking with Director Hoover of the FBI, I learned that the information which he had received from confidential sources indicating favoritism was accepted by him as gossip and rumor not worthy of investigation. He had no corroboration of the statements, nor did he seek any.

Nevertheless, in order that ground for suspicion might be removed, the Princess von Hohenlohe was transferred last week to the internment center at Seagoville, Texas. Earl Harrison, the new Commandant of Immigration and Naturalization is, of course, aware of the reasons for the transfer, and I have every confidence that he will keep a watchful eye on the situation.

The son, Prince Hohenlohe, was apprehended several months ago; the review of his case was expedited, and he has now been interned. From now on he will be in the custody of the War Department.

In my judgment, this is a satisfactory disposition of the matter.

Respectfully yours,

Attorney General

The President

The White House

*file  
Confidential*

*Justice Folder  
PFS*

August 12, 1942

MEMORANDUM TO THE SECRETARY OF WAR

The Order of August 7, 1942 to you and the Provost Marshal with reference to the carrying out of the sentences against the eight Nazi saboteurs contained a provision that the sentences of Ernest Peter Burger and George John Dasch should be commuted to imprisonment. The United States Penitentiary at Atlanta, Georgia was designated as the place of confinement.

It was the President's intention and desire to have these two prisoners turned over by you to the Attorney General, with discretion in the Attorney General to receive them at Washington, D. C., and to place them in any Federal penitentiary or other institution, in accordance with the powers given to him under the applicable provisions of law. Your responsibility would be ended when you turn these two prisoners over to the Attorney General in the District of Columbia.

OSC:dbm

M. H. McINTYRE  
Secretary to the President

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

August 11, 1942

M E M O R A N D U M

TO: The Judge Advocate General

FROM: Oscar Cox

SUBJECT: Custody of saboteurs Burger and Dasch prior to their  
delivery to Atlanta Penitentiary.

I.

The President's order approving the sentences imposed by the Military Commission on the saboteurs and commuting the sentences imposed on Burger and Dasch contains the following sentences:

"The United States Penitentiary, Atlanta, Georgia, is designated as the place of confinement. The Secretary of War is directed to issue necessary orders for the transfer of said Ernest Peter Burger and George John Dasch to said United States penitentiary for confinement therein."

The President's order to Brigadier General Cox commanded him to cause the sentences imposed upon the saboteurs other than Burger and Dasch to be executed, but imposed no duty upon General Cox with respect to the execution of the sentences imposed upon Burger and Dasch.

II.

The "necessary orders" which the Secretary of War has been directed to issue "for the transfer of" Burger and Dasch to the Atlanta Penitentiary comprise orders directing that the prisoners be placed in the custody of the Attorney General in the District of Columbia upon the latter's issuance of a receipt for them. The orders may properly recite the fact that the President has designated the Atlanta Penitentiary as the place of confinement.

FOR DEFENSE



BUY  
UNITED  
STATES  
SAVINGS  
BONDS  
AND STAMPS

Burger and Dasch, having been convicted by a military commission, not by a court martial, must be transported to their place of confinement by agents of the Department of Justice at the expense of that Department. U.S. Code, title 18, sec. 753g provides that prisoners convicted by a consular court or by a court martial shall be transported from the court to the place of confinement by agents of the Department of State or the Department of War, as the case may be, but that all other prisoners shall be transported by agents of the Department of Justice nominated by the Attorney General or his authorized representative. In the latter case, expenses are to be paid from an appropriation to the Department of Justice; in the former cases, out of the Treasury "in the manner provided by law".

Since the President has designated the Atlanta Penitentiary instead of a military prison as the place of confinement, it is clear that after their delivery to the Atlanta Penitentiary Burger and Dasch will be in the custody of the Attorney General and he alone will be responsible for them and for their whereabouts. The Bureau of Prisons, whose director is appointed by and serves directly under the Attorney General ( U.S.Code, title 18, sec. 753 ), is charged not only with the management and regulation of all federal non-military prisons but also with the "safe-keeping, care, protection, instruction, and discipline" of all persons not confined in military prisons who have been convicted of offenses against the United States. (U.S. Code, title 18, sec. 753a). And the Attorney General is "authorized to order the transfer of any person held under the authority of any United States statute from one institution to another" for "any" reason. (U.S. Code, title 18, sec. 753f, last sentence.)

When the War Department delivers custody of the prisoners to the Attorney General in the District of Columbia, whether the Attorney General ~~must~~ transport them immediately to the Atlanta Penitentiary and then exercise his power under the statutory provision last quoted, or whether he may delay their transportation to the Atlanta Penitentiary until after they have appeared as witnesses in certain criminal prosecutions is a matter for him to decide. The Secretary of War will have complied fully with the President's mandate that he issue the orders necessary for the transfer of the prisoners to the Atlanta Penitentiary when he has ordered the prisoners transferred in the District of Columbia to the custody of the Attorney General.

Osca Cox

*file  
personal*

*Justice Folder  
PSF*

THE WHITE HOUSE  
WASHINGTON

Mr. President: Aug. 28, 1942.

The Attorney General wants you to know that the suit against the AP (about which he spoke to you some time ago) is being filed in N.Y. right away. He wanted you to have this information before doing it.

dj

*The President  
saw & says  
OK*

NORMAN M. LITTELL

ASSISTANT ATTORNEY GENERAL  
WASHINGTON

March 29, 1943

*PSF Justice Fred*

*To take up with  
General Marshall  
PSF*

*file*

Dear Mr. President:

In view of the pending vacancy in the office of Surgeon General of the United States Army, I feel constrained to pass on to you the views of young and able medical men in whom I have confidence in urging the appointment of General David Grant, now Air Surgeon, to fill this vacancy.

The comments in the attached memorandum present views which are quite widely held by younger members of the medical profession who are not in the Fishbein hierarchy and who have no official channel of communication, but whose ultimate leadership in the profession would undoubtedly be strengthened by the appointment of such a man as David Grant, whom I do not have the pleasure of knowing personally.

Respectfully,

*Norman M. Littell*

NORMAN M. LITTELL  
Assistant Attorney General

The President  
The White House  
Washington, D. C.

March 26, 1943

Memorandum re:

BRIGADIER GENERAL DAVID N. W. GRANT, AIR SURGEON,  
UNITED STATES ARMY

General background and immediate command: General Grant, who graduated from the University of Virginia Department of Medicine, Charlottesville, in 1915, is fifty-one years old. He has been in the regular army for many years.

As Air Surgeon heading a personnel of 10,000 medical officers and several hundred thousand enlisted medical men, he is responsible for the physical fitness and health of the entire Army Air Corps, numbering several million men. Despite the size and the difficulty of the task, he has done a fine job. This accomplishment is all the more extraordinary in view of the fact that he is handling the Air Corps situation on a basis of four physicians per thousand men as against the use of seven to eight physicians per thousand men for the rest of the Army.

"Dave" Grant is no swivel chair general. He believes in direct action. He has visited both the Atlantic and Pacific fighting fronts, being now in the Pacific area. In addition, he has visited personally every one of his Air Corps hospitals, and he certainly knows his individual men, including many of the enlisted personnel.

Air Corps convalescent program: He has established and developed hospitals which have a convalescence record that is often fifty percent better than that in other hospitals. The Air Corps convalescent training program developed by Major Howard A. Rusk at Jefferson Barracks has been adopted not only in the Air Corps hospitals but as standard for the entire Army.

Specialized use of trained personnel: He is using his medical officer personnel in the special fields in which the individual doctors have worked in civilian practice. Many complaints have come from physicians assigned to ground forces that they are not being used to the best advantage. Such complaints are few in regard to the Air Corps.

His research organization has proved itself of the first quality. His men are exploring many medical frontiers and rapidly helping to develop the new science of "Aviation Medicine."

Leadership in Air Corps and civilian medical circles:

General Grant is surrounded by able, well chosen men. Colonel Walter Jensen, his executive officer, is one of the top "idea" men in the Army -- whether in or out of the medical corps. Colonel Paul Holbrook, Major J. Ray Dawson, and Captain Clarence Munns are a grand supporting "team".

The entire Army Medical Corps will eventually embrace approximately 50,000 civilian doctors. It is essential to the Army and vital to the future of post war medicine that this group be under the right leadership. General Grant has already demonstrated his capacity for such leadership because out of 10,000 medical officers only 237 are regular Army medical officers. Grant and his staff feel very strongly, and in a measure have already demonstrated, that the individual physician who enters the Army medical service should be and can be a better all-round doctor as a result of his Army medical experience. There is no waste of manpower under his direction--such as seven x-ray specialists who were on duty at one hospital, one serving as supply officer and one serving as mess officer, with a dearth of such experts elsewhere in the service. The old-fashioned military practice of medicine ("standing sick call and dishing out pills") cannot be countenanced and is not to be found anywhere in Grant's organization. Instead of commissioning young medical graduates and assigning them to a detachment with no specialized training for military service to which they are attached, Grant has initiated a training program starting in the Army Air Corps hospitals, to be officially announced soon, whereby these men are given internships until their qualifications and adaptability are determined. Like the convalescent training program mentioned above, this far-sighted plan is destined to become standard procedure. He also urges his men to take every advantage of specialty training courses and post graduate education.

General Grant is most popular in civilian medical services. He has a wide and first hand knowledge of the practicing doctors throughout the country and their problems. He has their wholehearted confidence. He has a fine personality, is a good mixer, and altogether is no brass hat.

His advisers in the medical world would be among the progressive element in American medicine. We feel he would receive the wholehearted backing of the younger physicians of the country -- some 10,000 of whom are now serving under him.

He believes in the patient-physician relationship but maintains that medicine in the future must recognize its great responsibility to the public and believes that medical organization should get busy and work out an acceptable program.

High morale of organization: The best and quickest sign of natural leadership and ability is morale in supporting personnel. Even the most casual visitor is struck with the extremely high morale of the Army Medical Air Corps. There isn't a single one of his men who "wouldn't go to hell for Dave Grant." Throughout the Air Surgeon's organization red tape is "out" so far as possible. The Air Surgeon's headquarters staff functions informally and efficiently. Often coats are off. Men are called by their first names. It has the air of a well run newspaper office. The job is the main thing -- and the job is done. He functions with a headquarters staff of some thirty officers, whereas the Surgeon General's Office has almost 200 officers.

Dave Grant is a leader who is vitally needed at this critical period in the history of medicine and of America.

*PSF Justice Dept folder  
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Personnel 2-13*

THE WHITE HOUSE  
WASHINGTON

October 25, 1943.

MEMORANDUM FOR  
THE ATTORNEY GENERAL

There is a good deal of a  
howl because the Department of  
Justice has refused to participate  
as "amicus" in the Texas Primary  
case.

How about it?

F. D. R.

LAWRENCE S. GREENBAUM  
EDWARD S. GREENBAUM  
HERBERT A. WOLFF  
MORRIS L. ERNST  
JONAS J. SHAPIRO  
SAMUEL J. SCHUR  
ALEXANDER LINDEY  
JEROME HANDLER  
THEODORE S. JAFFIN  
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LEO ROSEN  
HAROLD H. STERN  
HARRIET F. PILPEL

SYLVESTER BENJAMIN  
MILTON ROSS  
GRACE R. BADER  
RUTH SCHWARTZMAN

GREENBAUM, WOLFF & ERNST  
285 MADISON AVENUE  
NEW YORK 17, N. Y.  
TELEPHONE CALEDONIA 5-1582

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OCT 23 11 34 AM '43  
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October 22, 1943.

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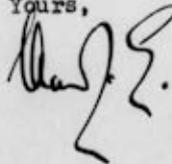
Hon. Franklin D. Roosevelt  
The White House  
Washington, D.C.

Tidbits

Dear Governor:

1. At dinner the other night, we discussed the examination of the facts as to the number of people Palestine could support. Jerome Frank would be an ideal choice to do the job quietly and now. He is itching to do some more work.
2. You are thinking along the lines of the multiple oil companies<sup>4</sup> from the oil wells to the consumers. I understand that the Telephone Company has all of the processes developed for telephones without lines; in other words, all by air. This process will no doubt be held up for a decade or more because the Telephone Company owns too much of an interest -- copper wire, copper mines and collateral industries.
3. The answer to the Little Oil Man which Elliot raised, will be found in part in a memorandum which you can get from Randolph Paul, which discusses lower incentive rates of taxation for small business. O'Mahoney will sponsor and fail with some such tax program. Randolph's Boys prepared a memo, but shy away from such a tax. I'm sure you can give them the additional courage and guts they need. Surely a tax to stop discrimination favoring giants will work no worse than monopoly prosecutions.
4. Negro groups are frightfully exercised about the refusal of the Department of Justice to participate as amicus in the Texas Primary case. I think Francis is wrong. Enclosed find letter from the NAACP. Leave my name out of it but you might want to check up with Justice.

Yours,



N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

69 FIFTH AVENUE, NEW YORK

*President*

ARTHUR B. SPINGARN

*Vice-Presidents*

HUBERT T. DELANY  
DR. WILLIAM A. NEILSON

*Treasurer*

MARY WHITE OVINGTON

TELEPHONE: ALGONQUIN 4-3551

October 20  
19 43

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ROY WILKINS Assistant Secretary  
THURGOOD MARSHALL Special Counsel  
PRENTICE THOMAS Assistant Special Counsel

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ARTHUR D. SHOES, Birmingham, Ala.  
A. T. WALDEN, Atlanta, Ga.

Morris L. Ernst, Esq.  
285 Madison Avenue  
New York, 17, N.Y.

Dear Morris:

Thanks so much for sending me Biddle's letter to you which I have noted in my mind and am returning to you herewith.

It is almost unbelievable that the Department of Justice would take this stand on this case. I am even more disgusted by his statement that it is "inadvisable to file" a brief amicus curiae. From my past experience with the Justice Department I am very much afraid that it is "inadvisable" to enter into any case in which southern politicians are opposed. I am sure you realize that recent developments in the Department culminating in this decision concerning the Texas Primary case are all the more revolting to us when we realize that the Attorney General at the present time is Francis W. Biddle of Philadelphia with a long "liberal" reputation who has always been considered a good friend of our cause. When it reaches the place that our "friends" cannot see that to take a firm stand for the rights of citizenship for a large percentage of the population, we are bound to believe that although we are winning the war for the Four Freedoms abroad we are at the same time losing the battle at home. To say that I am disgusted with the situation is putting it quite mildly.

However, we most certainly appreciate your cooperation and efforts even though Mr. Biddle refuses to agree with us. It is quite apparent that the President and others are listening to Tom Connally and his group. I wonder

PERSONAL

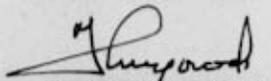
Morris L. Ernst, Esq.

-2-

October 20, 1943

if the President has decided that he would prefer to have their votes than the votes of Negroes. If he wants it this way, Negroes might reluctantly let him have it this way--come next November.

Yours sincerely,

  
Thurgood Marshall  
Special Counsel

TM:amb



Office of the Solicitor General  
Washington, D. C.

October 29, 1943



MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The Texas Primary Case (Smith v. Allwright, et al. No. 51, Present Term, Supreme Court)

This case is a private suit brought in the District Court of the United States for the Southern District of Texas by a qualified negro voter against Democratic primary election officials. It involves the question of his right to participate in a Texas Democratic primary, contrary to the regulations of the Party in Texas. Those regulations admit only white persons to State Party membership and participation in Party primaries. The District Court, following the decision of the Supreme Court in Grovey v. Townsend, 295 U.S. 45, held against the negro and the circuit court of appeals affirmed. The Supreme Court has granted certiorari.

In the Grovey case the Supreme Court decided in 1934 (with the concurrence of Justices Stone, Brandeis and Cardozo) that the exclusion of negroes from participation in the Texas Democratic primary, in which federal officers are voted for, does not deprive them of a federal constitutional right. The basis of the decision was the proposition that the disqualification of negroes for membership in the Party and their exclusion from the primary was the act of the Party as a private organization and not the act of the State.

The plaintiff in the present case seeks to overrule this unanimous decision. His principal reliance is upon the later decision of the Supreme Court in United States v. Classic, 313 U.S. 299. There the Supreme Court held that the right of a person qualified to vote in a Democratic Congressional primary election in Louisiana is a right secured by Article I, Section 2, of the Constitution. The decision was that where as a matter of state law the primary is made a part of the state election machinery for choosing Representatives in Congress or where, as a matter of fact, the primary is decisive of the ultimate election, the right of a person qualified to vote in the primary to do



so is as much secured by the Constitution as the right to vote in the ultimate election. They are both parts of the right to choose representatives secured by Article I, Section 2, to the people in the several states who have the qualifications requisite for electors of the most numerous branch of the state legislature.

The legal difference between the Classic case and this case (as well as the Grovey case) is that the former dealt with the right of a person admittedly qualified to vote in the primary; the latter deals with a person excluded from party membership and from primary voting by the rules of the party itself. A decision favorable to the plaintiff in this case will require the holding that a state may not permit political parties within its borders to organize themselves on lines of their own choosing, or, at least, on lines which exclude potential members on grounds of color or race alone. There is a likelihood that the Supreme Court will reach that conclusion, but what is involved is a substantial step beyond the decision in the Classic case.

The Supreme Court has not requested us to file a brief amicus, as it not infrequently does when it desires the views of the Government in litigation between private parties. But we have very carefully considered the advisability of filing a brief urging that in the light of the Classic case the Grovey case should be overruled. A strong argument can undoubtedly be made to this effect and is being made by the private counsel who will present the case, including attorneys for the Civil Liberties Union who are filing a brief. From our experience in the argument of the Classic case and from the character of the arguments that will be made it is unlikely that our participation would affect the result. Hence, although the legal questions have difficulties, whether or not to participate is essentially a policy question. We have already assisted the negroes by winning the Classic case which gives them their principal ammunition. Should we go further in their behalf and make a gesture which cannot fail to offend many others, in Texas and the South generally, in a case in which we are not a party? I think not. Most of the better minds in the American Civil Liberties Union believe this judgment to be sound and have not pressed us to change our minds. We are pressing several other cases in vindication of the civil rights of the negroes, one of which is now in the Supreme Court.

That we should not file a brief amicus is the general view of those in the Department who have been consulted, including Mr. Rowe when he was here -- who felt very strongly that we should not -- and Mr. Wechsler, who argued the Classic case in the Supreme Court. Mr. Berge, when head of the Criminal Division, thought otherwise.

*Charles Fahy*



Office of the Attorney General

Washington, D.C. 25

October 30, 1943

*Justice Dept. Files  
file  
preserved 2-43*

THE WHITE HOUSE  
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MEMORANDUM FOR THE PRESIDENT

On October 25th, you suggested to me that there had been a "good deal of a howl because the Department of Justice" did not participate "amicus" in the Texas Primary case. The howl comes chiefly from the National Association for the Advancement of Colored People (Walter White) and from Morris L. Ernst, who has written to me and has tried to stir up the Civil Liberties Union, unsuccessfully.

Charley Fahy's attached memorandum gives you the picture in detail. The Supreme Court have not asked our help (as they often do) and don't need it. The question is purely political. We did fight the Classic case and have been active and successful in defending the rights of the Negroes in the South in the Civil Liberties Unit, recently securing a conviction under this Act in Georgia. If we intervened it would be widely publicized and Texas and the South generally will not understand why we are taking sides.

The question is a close one and, should you be inclined the other way, a brief will of course be filed.

Respectfully yours,

*Francis Biddle*

Francis Biddle  
Attorney General

Encl.

22

HENRY T. HACKETT  
ATTORNEY & COUNSELLOR AT LAW  
226 UNION STREET  
POUGHKEEPSIE, NEW YORK

PSF  
Justice

Nov. 2, 1943.

Hon. Franklin D. Roosevelt  
Hyde Park  
Dutchess County, N. Y.

Dear Franklin:

Mr. Norman M. Littell, Assistant Attorney General, has called me on the telephone from Brooklyn twice about the proposed conveyance of your property at Hyde Park to the United States of America.

He said that he believes that the reservation of the life use of this property for the lives of yourself, Mrs. Roosevelt and your five children violated Section 43 of the Real Property Law of New York.

"Sec. 43. Limitation of successive estates for life  
Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created."

He suggested that you reserve the life use only for Mrs. Roosevelt and one of your children. He also said that he believed that the clause relating to the establishment of a committee to determine when a life tenancy is deemed to end violated Section 1448 of the Civil Practice Act of the State of New York.

"Sec. 1448. A controversy cannot be arbitrated, either as prescribed in this article or otherwise, in either of the following cases:

2. Where the controversy arises respecting a claim to an estate in real property, in fee or for life."

This morning I received a telegram stating that he was returning to Washington tonight and would send a memorandum and alternative drafts of deed for your consideration.

With kindest regards, I am

Sincerely yours,

Henry T. Hackett

Department of Justice  
Washington

NORMAN M. LITTELL  
ASSISTANT ATTORNEY GENERAL

November 6, 1943

*PSF  
Justice*

Miss Grace Tully  
Secretary to The President  
The White House  
Washington, D. C.

Dear Miss Tully:

In the matter of the conveyance of the Hyde Park property, please find enclosed for the President the following:

- (1) A letter to the President summarizing the conclusions of a legal memorandum which may be too extensive for him to read;
- (2) A memorandum of authorities exploring the New York law and suggesting possible courses of action which the President may wish to consider.

Forms of deeds have been tentatively drafted but are not submitted pending a decision by the President on the matters herein forwarded to him.

As I had telephone conversations in regard to this problem with Mr. Henry T. Hackett, the President's personal attorney, at Poughkeepsie when I was in New York last weekend, and I am sure the President will wish him to be kept fully advised, I enclose extra copies of the above instruments so that you can forward them to him if you so desire.

I know this matter is pressing, and if the President wishes to discuss it, I will be available at any time. If he wishes to see me during the weekend, please telephone to me at home (Glebe 0354) and I could come in on very short notice.

Kindest personal regards.

Sincerely yours,

*Norman M. Littell*  
NORMAN M. LITTELL

Assistant Attorney General



Enclosures

Department of Justice

Washington 25

November 6, 1943

NORMAN M. LITTELL  
ASSISTANT ATTORNEY GENERAL

The President  
The White House  
Washington, D. C.

Dear Mr. President:

In drafting a deed to the Hyde Park property in accordance with your wishes as expressed at Hyde Park, reserving a life estate to yourself and granting successive life estates to Mrs. Roosevelt and your five children, we squarely confront one of the most troublesome questions of the New York law. Section 42 of the New York Real Property Law (McKinney's, 1916) provides in substance that any future estate will be void if the absolute power of alienation is suspended for a period longer than "two lives in being at the creation of the estate." Section 43 provides that successive estates for life shall be limited to two lives in being at the time the estate is created, and that all life estates subsequent to those "of the two persons first entitled thereto shall be void."

It is quite clear that the suggested deed would not violate Section 42 because the power of alienation is not suspended. That occurs only "when there are no persons in being by whom an absolute fee in possession can be conveyed." Clearly this is not true here, for all of the grantees are in being and could at any time execute a conveyance. Purdy v. Hayt, 92 N. Y. 446, 451 (1883); Dana v. Murray, 122 N. Y. 604, 618, 26 N. E. 21 (1890); Murphy v. Whitney, 140 N. Y. 541, 546, 35 N. E. 930 (1894); In re Stanton's Will, 107 Misc. Rep. 326, 177 N. Y. S. 743 (1919).

The real problem is in respect to Section 43, for the suggested deed, providing for seven successive life estates, would be partially void under this Section in that all of the life estates subsequent to the first two would fail. The property would vest in the United States Government at the expiration of two first lives "in the same manner as if no other life estates had been created." Matter of Wilcox, 194 N. Y. 288, 296-299, 87 N. E. 497 (1909); Sawyer v. Cubby, 146 N. Y. 192, 196, 40 N. E. 869 (1895); In re Perry, 48 Misc. Rep. 285, 96 N. Y. S.



879 (1905); Vandenburgh v. Vandenburgh, 85 Misc. Rep. 131, 147 N. Y. S. 244 (1914).

Inasmuch as a deed creating successive life estates would fail for the foregoing reasons, the question then is whether or not your objectives could be attained by granting a joint life estate to Mrs. Roosevelt and the five children instead of successive life estates to each, for there is authority to the effect that joint life tenants "count as a class and in the eye of the law as one life in being." They would hold one life estate and not several. In a decision sustaining this view of joint tenancy under a statute of Michigan identical with the New York provision here at issue, a joint life estate was created in a wife and three sons with the remainder to the City of Sault Ste. Marie. The joint tenancy was sustained "as one life in being." Kemp v. Sutton, 233 Mich. 249, 206 N. W. 366 (1925).

While no New York decisions constitute clear and unequivocal authority to support this view, the leading textbook, Chaplin on "Suspension of the Power of Alienation," which is frequently cited with approval by the New York courts, states positively in an edition of 1891 (sec. 262, pp. 203-4) that neither Sections 42 nor 43 would apply to an estate for life created in a number of joint tenants with the remainder in fee, where all the persons, both life tenants and remaindermen, were in being when the estate was created. In a later edition (1928) he reaches the same conclusion although less categorically. He cites the only court decision bearing strongly upon the point at issue, Murphy v. Whitney, 140 N. Y. 541, 35 N. E. 930 (1894), in which a remainderman, claiming an estate after the last of seven joint life tenants sought to convey to a third party, was sustained, and a deed from the last surviving joint tenant was set aside. The status of the joint tenancy was not expressly adjudicated although it was inferentially sustained in order to protect the obvious equities of the remainderman.

Over eight hundred cases have been reported involving these controversial New York Acts, the result being that "in no civilized country is the making of a will so delicate an operation and so likely to fail of success as in New York." (Gray, "The Rule Against Perpetuities," 4th Edition, 1942, App. C, sec. 750).

You may recall one phase of the controversy over these two Sections which reached you as Governor of New York in 1931 when you vetoed a bill to repeal one and amend the other of these two Sections, not only on the grounds that the bill was

badly drafted but also because the Bar Association of New York and the New York County Bar Association had pointed out that the rules regarding perpetuities --

have been so fixed and settled in our law that intelligent lawyers now have no difficulty in making proper trust provisions in one instrument for any number of living children or grandchildren.\*

This veto message raised an inference that perhaps one of the methods relied upon by "intelligent lawyers" drafting instruments pursuant to Sections 42 and 43 might be the use of "joint life estates," particularly in view of the fact that Chaplin's authoritative statement in his "Suspension of the Power of Alienation" constituted for more than a generation, an open invitation to the lawyers of New York to utilize the joint life estate. However, a confidential inquiry through one of the principal law firms of New York, confirmed upon submission of a hypothetical case to the General Counsel of the leading Title and Trust Company of New York, discloses to the contrary that the uncertainties inherent in the joint life estate have been too great to be generally trusted by the Bar of New York. The validity of the joint life estate is therefore still an open legal question for the New York courts to decide.

It may be said that there is a possibility, and perhaps even a probability, of sustaining the legality of a deed reserving a life estate to yourself and granting a joint life estate to Mrs. Roosevelt and your five children, if the matter should reach the courts in the State of New York. It might also be considered that such a conveyance is probably beyond any reasonable possibility of contest in view of the fact that the United States Government is the remainderman, unmotivated as in the ordinary case by a desire to accelerate the vesting of its interest, but waiting only to receive for safe-keeping as a national monument, the home of a President. It is difficult to see from what other source a contest could arise, as there would be no occasion for attack by creditors and under all the circumstances surrounding the deeding of your home to the country, the possibility of contest among the children is practically nil. Nevertheless, in view of the present state of the law in New York, I can not recommend that a deed be used creating a joint life estate.

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\* Combined Reports of Decedent Estates Commission, 1928-1933, Legislative Document (1933), No. 55, p. 62.

Other courses of action to accomplish your objectives as nearly as may be are as follows:

(1) Reserve a life estate to yourself and grant a life estate to Mrs. Roosevelt, thus complying strictly with Sections 42 and 43.

(2) Reserve a life estate to yourself and create a life estate in one of your children. In order to create the longest life use, the youngest or one of the youngest children might be selected, unless the fact that all of the boys are in military service and have been and may be again under fire, suggests the advisability of creating the second life estate in a life seemingly more secure -- that of your daughter Anna.

(3) Reserve a life estate in yourself and create a life estate in one of your grandchildren, or, to assure against the premature death of the grandchild, create a life estate in favor of whichever one of two or three named grandchildren is the oldest at the time of your death. A longer possible use of the property would thus be assured to you and to your immediate family. A private understanding could be arranged providing for the use of the property by Mrs. Roosevelt and the five children during their lives.

(4) The possibility of leasing the property to Mrs. Roosevelt and your children has not been thoroughly explored as a matter of law, but it immediately encounters the language of the Act of July 18, 1939 (53 Stat. 1062), which authorizes acceptance of the grant by the United States subject to any "life estate." The Act is silent as to leasehold interests. It would also be necessary to make sure that such a lease did not constitute avoidance of Section 43 of the New York real property law, hereinbefore considered.

(5) A lease might be executed to The Franklin D. Roosevelt Library, Inc., for whatever term of years you deem appropriate, such a lease to be accompanied by instructions to and commitments by the Corporation to provide first for occupancy by you for life, then for subleasing the property, first to Mrs. Roosevelt, and then to the eldest child on the death of Mrs. Roosevelt, and successively to each eldest child until the designated term of years is exhausted. Other terms and conditions which you desire could be provided in the subleases. A conveyance of the property to the United States could be made subject to this lease to The Franklin D. Roosevelt Library, Inc.

It appears that the purposes and powers in the charter of The Franklin D. Roosevelt Library, Inc., are sufficiently broad to authorize the suggested lease and subleases. If you executed a lease now, prior to any conveyance of the property to the United States, the later conveyance would naturally be subject to the outstanding lease, but an amendment to the existing Act expressly authorizing acceptance of the property subject to such a lease would probably be advisable.

The foregoing summarizes a more extended memorandum exploring the law in this matter, a copy of which is submitted with this letter. I am not enclosing forms of deeds which have been drafted, but will await your further instructions as to what course of action you wish to follow after you have had an opportunity to consider and discuss the matter in the light of the opinions herein expressed.

Respectfully,

*Norman M. Littell*  
NORMAN M. LITTELL

Assistant Attorney General

Department of Justice  
Washington

NORMAN M. LITTELL  
ASSISTANT ATTORNEY GENERAL

November 6, 1943

MEMORANDUM TO THE PRESIDENT

Re

DEED TO THE UNITED STATES OF THE HYDE PARK PROPERTY  
PURSUANT TO THE ACT OF JULY 18, 1939, 53 STAT. 1062

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### I. THE FACTS.

The President desires to convey the property described in accompanying forms of deed to the United States, pursuant to the Act of July 18, 1939, 53 Stat. 1062, reserving a life estate in the President and granting successive life estates to Mrs. Roosevelt and to their children, Anna R. Boettiger, James Roosevelt, Elliott Roosevelt, Franklin D. Roosevelt, Jr., and John A. Roosevelt. Proposed forms of deeds to accomplish this purpose are submitted, subject first, however, to consideration of certain questions which arise under New York Law of Real Property.

### II. THE QUESTIONS EXAMINED.

In endeavoring to carry out the President's wishes by drafting a deed providing for successive life estates in the President, Mrs. Roosevelt, and their five children, the following provisions of the New York Real Property Law (McKinney's 1916) are immediately encountered. In so far as material, these sections are as follows:

SEC. 42: The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; \* \* \*

SEC. 43: Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

1. WOULD A DEED FROM THE PRESIDENT TO THE UNITED STATES, RESERVING A LIFE ESTATE IN THE PRESIDENT AND CONVEYING SUCCESSIVE LIFE ESTATES TO MRS. ROOSEVELT AND EACH OF THE FIVE CHILDREN, BE INVALID UNDER SECTION 42 OF THE NEW YORK REAL PROPERTY LAW, OR WOULD FIVE OF THE LIFE ESTATES BE VOID SO AS TO ACCELERATE THE REMAINDER IN FEE TO THE UNITED STATES UNDER SECTION 43?

2. WOULD A DEED BE VALID UNDER THE NEW YORK LAW IF THE PRESIDENT RESERVED A LIFE ESTATE IN HIMSELF AND GRANTED A JOINT LIFE ESTATE TO MRS. ROOSEVELT AND THEIR FIVE CHILDREN AS JOINT TENANTS AND NOT AS SUCCESSIVE LIFE TENANTS OR TENANTS IN COMMON WITH CROSS-REMAINDERS TO EACH OTHER UPON THE DECEASE OF ANY TENANT IN COMMON?

1. Effect of Section 42 of the  
New York Real Property Law.

Clearly the proposed deed reserving a life estate in the President and granting a life estate to Mrs. Roosevelt and each of the five children successively would have been permissible at common law. It would not violate the Rule Against Perpetuities, which would have permitted the creation of as many life estates as the grantor desired in favor of persons in being, but Section 42 of the New York Real Property Law quoted above supplants common law rule, and is sometimes in fact referred to as the Rule Against Perpetuities in New York. It provides that "every future estate shall be void in its creation" when it suspends the power of alienation for longer than the "continuance of not more than two lives in being at the creation of the estate," thus cutting arbitrarily across the common law power to dispose of property.

As pointed out in Gray's Rule Against Perpetuities (4th Edition 1942, Appendix C, sec. 750), the effect of the above statutes is that "in no civilized country is the making of a will so delicate an operation, and so likely to fail of success, as in New York."<sup>1/</sup> While there seems to have been but one case reported prior to

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<sup>1/</sup> Nevertheless, New York statutes against suspension of the power of alienation have been adopted in whole or in part in no less than thirteen jurisdictions, the Michigan statutes being identical with those of New York. See Whiteside, Suspension of the Power of Alienation in New York (1927), 13 Cornell Law Quarterly 31, 32.

the passage of these acts in which the "remoteness" of the limitation was called in question, there have been since the statutes were enacted over 800 cases.

Through this maze of litigation there may be found a few beaten paths which can be followed with reasonable safety. One of these might be termed the rule in Purdy's case. In that leading case of Purdy v. Hayt, 92 N. Y. 446 (1883), the testator sought to devise his farm to his two sisters, J and C, during their respective lives and at the death of the survivor of them the farm was to be sold and the income paid to the testator's niece E for life. On the death of E, the principal was to be distributed to "any children she ('E') may leave," but if E died leaving no children, then the property would be distributed to other parties named in the will. The testator died and the two sisters, J and C, enjoyed the estate for their lives, J dying first, then C. After the death of C, the executor sold the real estate, paying the income to E who had two children, apparently born after the death of testator.

Upon settlement of the executor's accounts, the heirs at law of the testator intervened to claim that the will was in violation of law in seeking to create three successive life estates, one to continue during the joint lives of the testator's sisters J and C, another for the life of the survivor, and the third (in the proceeds after sale by the executor) for the life of E. In discussing the application of what is now section 43 of the New York Real Property Law, the court said at page 451:

The prohibition against the creation of more than two successive life estates in the same property has no necessary connection with the law of perpetuities. There is no suspense of the power of alienation of land by the creation of successive life estates therein unless they are contingent. Any number of successive vested life estates may be created without violating the statute of perpetuities. The prohibition against creating more than two successive life estates in the same property applies to such estates, whether vested

or contingent. \* \* \* The statute, however, does not avoid the whole limitation where more than two successive life estates are limited. It permits the first two to take effect, avoiding those only which are in excess of the permitted number.

The court was careful to point out that a joint life estate was not created by the will in the sisters, J and C, and that by force of the New York Statute "every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be a joint tenancy," the estate created in the sisters was that of a tenancy in common for life with cross-remainders to each other.

While the case is complex to review, it may be said to hold as follows insofar as material here:

(1) There was "no valid disposition of the fee in the undivided half of the farm" which represented the interest of J because under section 42 the absolute power of alienation was suspended for a period longer than two lives -- the life of J, the life of C and the life of E with the remainder to the children of E contingent upon two uncertainties, namely, their birth which was uncertain at the time of the testator's death and their survivorship of E, which was equally unknown. The testator's attempted disposition of the undivided one-half interest of J was therefore void and undoubtedly could have been attacked by the heirs at a much earlier date before the life estate had been enjoyed. Such factors are not involved in the proposed deed here considered.

(2) The undivided interest of C created by the testator for life, although not set off or partitioned, was a valid creation of a life estate which could and did pass to E for life. The remainder to E's children was also valid because it would be definitely ascertained within the period of two lives, namely upon the death of E.

The holding in the Purdy case was followed in Dana v. Murray, 122 N. Y. 604, 26 N. E. 21 (1890). As construed by the court (p. 617) a deed created a life estate in Mrs. Murray, and she by her will, under a power of appointment contained in the deed, created a life estate in her husband and three daughters as tenants in common with cross-remainders.<sup>2/</sup>

After the termination of the life estates, a trustee named in the will was to sell the premises after the expiration of a year and divide the proceeds among all of Mrs. Murray's children "who may then be living" (p. 610). The court defined a vested remainder as one to a person in being with the immediate right to possession of the land upon the ceasing of the intermediate estate and as contingent where the remainderman or the event upon which he is to take is uncertain (p. 616). The remainder was held contingent and the court said, citing the Purdy case, (p. 617):

\* \* \* The rule is that where by the terms of a deed creating an estate there may be an unlawful suspension of the power of alienation, the limitation is void although it turns out by a subsequent event that no actual suspension beyond the prescribed period would have taken place. \* \* \*

The Purdy case, supra, was distinguished in respect to the undivided one-half interest which was held valid in that case. With respect to section 43, the court said (p. 618):

The provisions of sec. 17 (sec. 43) of the statute, to the effect that when a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, doubtless refers to estates in which the remainder is vested and is not contingent. In such estates the power of alienation is not suspended.

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<sup>2/</sup> It was held immaterial that the life estates were determinable upon the marriage of any two of the daughters.

The case of Murphy v. Whitney, 140 N. Y. 541, 35 N.E. 930 (1894), more fully discussed subsequently, was one in which seven brothers and sisters held a farm for life, and upon the death of the last survivor the remainder was to vest in fee in the nephew of six and the son of one of these life tenants. The arrangement was held valid in the face of what is now section 42 for the reason that all the parties were in being and were able to convey. The court said (p. 546):

\* \* \* The absolute power of alienation is not suspended because there were at all times persons in being who could convey an absolute fee in possession. All the brothers and sisters (7) united with the plaintiff (remainderman) could at any time have conveyed a perfect indefeasible title to the real estate. \* \* \*

The court then pointed out that neither of the two conditions which render a remainder contingent were present: first, there was no creation of a valid trust so that the estate would be inalienable for a period of more than two lives at the creation of the trust, and second, there was no creation of future contingent or expectant estates so that there are no persons in being who could convey a perfect title at the termination of two lives.

These cases and other authorities are analyzed in In re Perry, 48 Misc. Rep. 285, 96 N. Y. S. 879 (1905). There the authorities collected hold that section 42 is applicable only when the power of alienation is suspended, and that this is effected only by: "(1) The creation of a trust which vests the estate in trustees. (2) By the creation of future estates, vesting upon the occurrence of some future and contingent event." (p. 882)

Section 43 is construed (p. 883) under the authority of the Purdy case as applying only to a vested remainder (valid under section 42) and limited on more than two successive life estates, and that the effect of that section is to cut off all of the successive life estates save two  $\frac{3}{4}$  (p. 883). The same analysis is well made with the citation of prior authority in Vandenburgh v. Vandenburgh, 85 Misc. Rep. 131, 147 N.Y.S. 244,

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$\frac{3}{4}$  This principle was previously applied in Woodruff v. Cook, 61 N. Y. 638 (1875).

248, 249 (1914). <sup>4/</sup>

Examples of the precision with which the lower courts of New York apply these rules will be found in New England Trust Co. v. Wilcox, 41 N.Y.S. 2d 527 (1943) (in which the rule of the Purdy case with respect to section 42 was last followed); In re SoleysEstate, 150 Misc. Rep. 839, 271 N.Y.S. 595 (1934); Wells v. Rowland, 155 App. Div. 354, 140 N.Y.S. 341 (1913); In re Perkins' Estate, 127 Misc. Rep. 193, 216 N.Y.S. 426 (1926), aff'd, 245 N.Y. 478, 157 N.E. 750 (1927).

In the light of these authorities the question first stated above may clearly be answered: A deed from the President to the United States reserving the life estate in himself and granting successive life estates to Mrs. Roosevelt and each of the five children would not be invalid under section 42 of the New York real property law, but five of the life estates would be void under section 43 and the remainder would be accelerated so that the remainder would vest in the United States after the expiration of the first two life estates, those of the President and Mrs. Roosevelt, respectively.

2. Effect of Section 43; Joint  
instead of Successive Life Estates.

Chaplin, an authority recognized and oft-cited by the New York courts, in his first edition (1891) of Suspension of the Power of Alienation, was very positive that neither section would apply to an estate for life to any number of joint tenants with the remainder in fee where all the persons, both life tenants and remaindermen, are in esse (sec. 362, pp. 203, 204). While in the case of a tenancy in common, the estate which each survivor takes in cross-remainder upon the death of one tenant in common, "constitutes a separate successive estate," in the case of joint

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<sup>4/</sup> See also Sawyer v. Cubby, 146 N. Y. 192, 196, 40 N. E. 869 (1895); Matter of Wilcox, 194 N.Y. 288, 296-299, 87 N. E. 497 (1909).

It may be noted that the Wilcox case involved statutes governing personal property and that substantially identical rules govern both realty and personalty in the State of New York (p. 300).

It may also be well to note here that the prohibition is not affected by the fact that the ultimate taker is an exempted entity such as a charity. Robb v. Washington and Jefferson College, 185 N. Y. 485, 495, 496, 78 N. E. 167 (1906).

tenancy "there are no such things as remainders among the tenants" as "each is, in legal contemplation, at all times seized of the entire estate. When one dies, the enjoyment of the others is increased, but not the estate." This reasoning is certainly unquestionable under the common law. The same conclusion is repeated in Chaplin's later edition (1928), but he recognizes that the matter is not wholly free from doubt (sec. 423, p. 326):

What view may be adopted hereafter by the courts concerning the bearing of the general scheme of all the provisions in this field, may be regarded as not free from doubt. It is believed that a vested remainder in fee limited on a life estate in joint tenancy, even though there are more joint tenants than two, is valid.

Chaplin points out that the Supreme Court of Michigan, construing a statute practically identical with the New York statute, expressly sustained a joint life estate in a widow and three sons, with the remainder over to the City of Sault Ste. Marie in Kemp v. Sutton, 233 Mich. 249, 206 N.W. 366 (1925). He cites the only New York decision, Murphy v. Whitney, 140 N. Y. 541, 35 N.E. 930 (1894), in which A died, leaving a farm to seven sons and daughters who all agreed to own the farm "as joint tenants" until the death of the last surviving tenant when it would pass to a nephew. When the last surviving joint tenant sought to convey the fee in violation of this agreement, the nephew sued to set the deed aside and to protect his remainder in fee. On demurrer to the complaint, the Court of Appeals held that the arrangement did not violate Section 42 (p. 545) and that the complaint stated a valid cause of action, saying (p. 546):

The absolute power of alienation is not suspended because there were at all times persons in being who could convey an absolute fee in possession. All the brothers and sisters uniting with the plaintiff could at any time have conveyed a perfect indefeasible title to the real estate. Estates can be rendered inalienable by vesting them in trustees upon some one of the valid trusts mentioned in section 55 of the article upon trusts, so that they become inalienable under section 65 for a

period of more than two lives in being at the creation of the trust, or by the creation of future, contingent or expectant estates so that there are no persons in being during the two lives who can convey a perfect title. (Citing authority.) Here none of these conditions existed. \* \* \*

As stated by Chaplin, the court might well have ruled on the validity of a joint life estate; it did so only inferentially by recognizing the last of the seven survivors as a life tenant (p. 547), but only the sufficiency of the complaint was before the court and it was not alleged that the estate of the remaining life tenant was void under Section 43.

In Purdy v. Hayt, 92 N. Y. 446 (1883), Dana v. Murray, 122 N. Y. 604, 26 N. E. 21 (1890), and Vandenburgh v. Vandenburgh, 85 Misc. Rep. 131, 147 N. Y. S. 244 (1914), the court is careful to point out that the estates created were those of tenants in common with cross-remainders, and being separate life estates of more than two in number, they would suspend the absolute power of alienation for a longer period than that of two lives, and were, therefore, void in violation of Section 42.

These cases all leave open the question of whether or not a joint life estate created for more than two tenants would be recognized and sustained by the New York courts as "one life in being." A case somewhat persuasive by analogy is that of In re Stanton's Will, 107 Misc. Rep. 326, 177 N. Y. S. 743 (1919) in which a testator gave to his wife the use of all property for life, and on her death to his five children the use of the homestead to be supported and maintained by income from his estate handled by an executor. The survivor of the five children was to have absolute ownership. The arrangement was upheld as not being in violation of Section 42, the court saying:

\* \* \* it is sufficient if there are persons in being who, by combining the several estates, rights, interests, and possibilities that they represent or are authorized to speak for, can, if they all wish to, patch up an absolute fee.  
\* \* \*

However, the strongest authority is the Michigan case, Kemp v. Sutton, supra, in which a will leaving property to a widow

and three sons with remainder in fee to a municipality, was challenged on the grounds that the power of alienation was suspended beyond two lives in being. In overruling this contention and finding that no inalienable trust was involved, the court said (p.368):

The life tenants are known, their rights clearly defined, and, at the death of the last survivor, the tenancy ends and the city, as fee owner, will come to possession. The fee in the city is vested, subject to no contingency and not upon any condition, except to use the property for municipal purposes. There being no trust, no occasion for a trust, and no cestui que trust, renders the fact that there were several persons entitled to enjoy the life estate of no moment. No suspension of power of alienation is here involved.

The court then stated (p. 369):

The life tenants are joint holders. They count as a class and in the eye of the law as one life in being. \* \* \*

\* \* \* \* \*

The rule of cross-remainders does not operate in case of joint tenancy, for "joint tenants have one and the same interest; accruing by one and the same conveyance; commencing at one and the same time; and have the same possession." \* \* \*

This case was last cited with approval in Dodge v. Detroit Trust Co., 300 Mich. 575, 600, 2 N. W. 2d 509 (1942). A critique of the Sutton case in XXVI Columbia Law Review (1926) 635, may or may not be of some significance. The criticism may be divided into two parts: first, that the court erred in holding that the tenancy created was joint rather than in common; and, second, conceding the joint tenancy, the court should have ignored the common law principle or "metaphysics" of tenure by joint tenants in applying a statute "promotive of the modern social policy in favor of the liquidity of land" (p. 636).

It is true that the theory of the Columbia Law Review critique might be adopted by the New York courts. Its vice lies in the fact that, fictitious or metaphysical though it be, joint tenancy has not been abolished by the New York Legislature. It seems somewhat over-reaching to suggest that by judicial legislation the court should do, at least in part, that which the legislative body has not seen fit to do.

It should be noted that controversies over Sections 42 and 43, which have thus far produced over eight hundred cases, resulted in 1931 in the passing of a bill to amend and repeal these sections, but the bill was vetoed by the Governor of New York, then Franklin Delano Roosevelt, not only on the grounds that the bill was poorly drafted but because the Bar Association of New York City and the New York County Lawyers Association had pointed out —

that the present rules regarding perpetuities have been so fixed and settled in our law that intelligent lawyers now have no difficulty in making proper trust provisions in one instrument for any number of living children or grandchildren. 5/  
(Underscoring supplied)

This veto message, and the report of the New York Bar Association upon which it was evidently based ("Committee on State Legislation of the New York Bar Association" for 1931, page 140) raises an inference that perhaps one of the provisions relied upon by "intelligent lawyers" was the use of "joint life estates." Furthermore, the strength of Chaplin's authority at the New York bar would seem to have been sufficient to induce a general use of the joint life estate. However, inquiry through one of the principal law firms of New York, confirmed by the General Counsel of the leading title and trust company of New York, discloses, to the contrary, that the uncertainties inherent in the joint life estate have been too great to be generally trusted by the bar of New York, and that resort has generally been had, instead, to trust estates for the life of the testator's wife with provisions for a distribution of the income to her children after her decease, with the right of survivorship in each child. A trust estate is not adaptable to the purposes of this case. The validity of the joint life estate in the face of Section 43 is still an open question for the New York courts to decide.

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5/ Memorandum of Governor Roosevelt on Disapproval of Bills Passed at 1931 Legislative Session, as reported in Combined Reports of the Decedent Estates Commission, New York State, Legislative Document (1933), No. 55, p. 62.

III. CONCLUSIONS AND RECOMMENDATIONS.

1. A deed providing for a Joint Life Estate in Mrs. Roosevelt and the five children.

In the light of the foregoing authorities, the use of a deed reserving a life estate to the President and granting a joint life estate to Mrs. Roosevelt and the five children cannot be strongly urged. There is a possibility, and perhaps even a probability, of sustaining such an arrangement in the courts of New York on the authority of the Michigan decision, Kemp v. Sutton, supra, the statements of Chaplin, slight support from and the absence of opposing decisions in the State of New York, and on the common law reasoning of the matter.

In further support of using a deed creating a joint life estate in Mrs. Roosevelt and the children is the fact that this case is probably beyond any reasonable possibility of contest with the United States Government as the remainderman, unmotivated, as in the ordinary case, by a desire to secure the profits of an estate, but waiting only to receive for safe-keeping as a national monument the home of the President. There would be no occasion for attack from creditors, and under all the circumstances surrounding the deeding of the President's home to the country, the possibility of any contest among the children is exceedingly remote. Nevertheless, in view of the present state of the law in New York, a deed creating a joint life estate cannot be recommended.

2. A deed creating two life estates only.

Other courses of action which are open to the President are the following:

- (1) Reserve a life estate to the President and grant a life estate to Mrs. Roosevelt, thus complying strictly with Sections 42 and 43.
- (2) Reserve a life estate to the President and create a life estate in one of the President's children. In order to create the longest life use, the youngest might be selected, unless the fact that all of the boys are in military service and have been or may be under fire, suggests the advisability of creating the second life estate in one seemingly more secure — Anna R. Boettiger.

(3) Reserve a life estate in the President and create a life estate in one of the President's grandchildren, or, to assure against the premature death of the grandchild, create a life estate in favor of whichever one of two or three grandchildren is the oldest at the time of the President's death. The longest possible use of the property would thus be assured to the President and his immediate family. A private understanding could be arranged providing for the use of the property by Mrs. Roosevelt and the five children during their lives.

All of these plans are subject to a hazard based upon the life of the second life tenant, whoever it be. There is no assurance that a child or grandchild will outlive Mrs. Roosevelt.

3. A lease for a term  
of years.

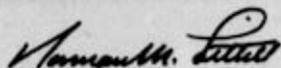
An alternative to the foregoing plans is that of leasing the property, and this might take one of the following forms:

(1) The possibility of leasing the property to the President's wife and children has not been thoroughly explored as a matter of law, but it immediately encounters the language of the Act of July 18, 1939 (53 Stat. 1062), which authorizes acceptance of the grant by the United States subject to any "life estate." The Act is silent as to leasehold interests. It would also be necessary to make sure that such a lease did not constitute avoidance of Section 43 of the New York real property law, hereinbefore considered.

(2) A lease might be executed to the Franklin Delano Roosevelt Library, Inc., for whatever term of years the President deems appropriate, such a lease to be accompanied by instructions to and commitments by the Corporation to provide first for occupancy by the President for life, then for subleasing the property, first to Mrs. Roosevelt, and then to the eldest child on the death of Mrs. Roosevelt, and successively to each eldest child until the designated term of years is exhausted. Other terms and conditions desired by the President could be provided in the subleases. A conveyance of the property to the United States could be made subject to this lease to the Franklin Delano Roosevelt Library, Inc.

A copy of the charter of the Franklin Delano Roosevelt Library, Inc., is being secured to determine whether the Corporation has the power to enter into such a lease, but in any event the power, if lacking, could be provided by amendment. If such a lease were executed now prior to any conveyance of the property to the United States, the later conveyance would naturally be subject to the outstanding lease, but an amendment to the existing Act would probably be advisable, expressly authorizing acceptance of the property subject to such a lease.

Respectfully submitted,



NORMAN M. LITTELL  
Assistant Attorney General

(1944)  
Memo

PSF; Justice Dept

MEMORANDUM FOR THE ATTORNEY GENERAL

1944

I understand that the House Committee that is investigating the Federal Communications Commission has asked Mr. Hoover to testify about some transactions between the Department of Justice and the Commission that relate to the internal security of the country. It is not in the public interest to have these transactions discussed publicly at this time. I do not wish Mr. Hoover or any other officer of the Department of Justice to testify as to these matters, and the correspondence relating to them should not be publicly disclosed. I gave similar directions to the Secretaries of War and Navy last summer when certain officers were asked to testify before the committee with regard to matters relating to the exercise of war powers by the Army, Navy, and F. C. C.

FRANKLIN D. ROOSEVELT

January 15, 1944

No papers accompanied the original of this memorandum to the Attorney General.

(copy of this memo filed - F.C.C. folder, 2-20)

Original filed in  
PSF: Justice Dept: Biddle

OFFICE OF  
THE ATTORNEY GENERAL



January 14, 1944

Miss Grace Tully

The White House

Dear Miss Tully:

Attached is the draft of a memorandum about which I telephoned you a few moments ago.

For the reasons I gave you, I hope the President can do this right away.

Sincerely yours,

*Franklin D. Roosevelt*

Attorney General

THE WHITE HOUSE  
WASHINGTON

January 14, 1944.

MEMORANDUM FOR THE PRESIDENT:

The Attorney General just telephoned me to say that the House Committee investigating the F.C.C. has asked J. Edgar Hoover to appear before it. This because he had a very vigorous controversy with Chairman Fay over fingerprinting. Hoover does not wish to go up and the Attorney General does not want him to. Therefore, the Attorney General wonders if you would be willing to sign a letter similar to the ones you sent to the Secretaries of War and Navy when certain of their personnel were asked to appear before this same Committee.

G.G.T.

~~T-319~~

PSF: Dept. of Justice folder  
2-44

THE WHITE HOUSE  
WASHINGTON

June 15, 1944.

MEMORANDUM FOR

THE ATTORNEY GENERAL:

FOR PREPARATION OF REPLY FOR  
MY SIGNATURE.

F.D.R.

Letter to the President, 6-13-44, from  
Lord Halifax, re Imperial Chemical  
Industries, Ltd.



Office of the Attorney General  
Washington, D. C. 25

June 3, 1944

THE WHITE HOUSE  
JUN 5 4 40 PM '44  
RECEIVED

The President  
The White House

My dear Mr. President:

I have your memoranda of May 29 and June 1, with respect to postponing the time within which answers may be filed by Dupont and the Imperial Chemical Industries in the Antitrust case. Jimmy Byrnes, to whom it was referred, thinks that it should be postponed until after hostilities.

This is the first time a request has ever been made to postpone a pleading on account of the war effort. If we grant it to this English company, it means greatly increased pressure from every other defendant in Antitrust cases.

We do not propose to try the case in the immediate future, or while it would interfere with the war effort. But, I think, filing of the answer should not be postponed indefinitely. I am reliably informed - *confidentially* - that Dupont's answer is ready. Mr. Bingen, representing Imperial Chemicals, spent several months here preparing the answer and when he left, immediately before Lord Halifax's request for postponement, he had a draft of the answer in his pocket and told us it had been substantially finished.

Although it is true that the bill of complaint is long, its allegations are entirely based on files taken from Dupont, or its subsidiary Remington Arms, or from the office of Imperial Chemical in New York. Most

of this material consists of record matters now known to the defendants which cannot be denied.

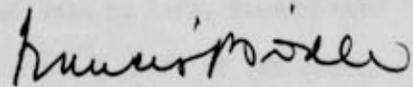
The answer was due February 1, 1944. We have agreed to postpone it successively to April 1, June 1, and July 1; the last time on the understanding that there would be no further postponement. I suggest that you say to Lord Halifax and to the Secretary of War, that it is agreeable to have it postponed again to August 1, 1944. It should always be remembered that the defendants at any time can file an amended answer. The reason we want to get the answer filed is so that we can move for a judgment on the admissions.

When the case was filed it caused a great deal of comment here and abroad. The German papers are now saying that the case will never be tried. There has been vigorous criticism of Lord McGowan, in England and Canada, for entering into these restrictive cartel agreements. That may explain one reason he is disinclined to admit them at this time.

I believe that under no circumstances should any agreement be made for postponement except for a definite time and not "during hostilities."

I am returning you the correspondence attached to your memoranda.

Respectfully,



Attorney General

THE WHITE HOUSE  
WASHINGTON

June 1, 1944.

PERSONAL

MEMORANDUM FOR

THE ATTORNEY GENERAL:

What can I say to Lord Halifax?

F.D.R.

Personal letter to the President, 5-30-44,  
from Lord Halifax, British Embassy, Wash.,  
D.C., re Dept. of Justice suit against the  
United Kingdom firm of Imperial Chemical  
Industries, Ltd., under the Sherman Anti-  
Trust Act. Lord Halifax's govt. would ask  
that suit be stayed until after the war.

BRITISH EMBASSY,  
WASHINGTON, D.C.

PERSONAL

30th May, 1944.

Dear Mr. President,

I had hoped to be able to see you before I have to leave Washington tomorrow morning about one particular matter of some urgency, but as I cannot, you will perhaps forgive me for sending you this note.

And I will look forward to the pleasure, if you have any spare time, of seeing you next week.

You probably know that the Department of Justice have instituted a suit against the United Kingdom firm of Imperial Chemical Industries Limited, under the Sherman Anti-Trust Act.

My Government are not of course concerned to express any view on the merits of the case, but they are <sup>greatly</sup> ~~vitaly~~ concerned to avoid the placing of any obstacle in the way of this Company's war effort, which is both great and vital, by imposing on them at this moment the necessity of preparing an elaborate defence.

The preparation of such defence would, so I am advised, involve working through some thousands of documents that, to avoid German bombers, have been dispersed to the

The Honorable

Franklin D. Roosevelt,  
President of the United States.

various /

BRITISH EMBASSY,  
WASHINGTON, D. C.

various places of safety in England, and switching off from their present work, many of the Company's top men who are giving all their time to war jobs.

What, therefore, my Government would urgently ask is that the suit might be stayed until after the war, and that Imperial Chemical Industries should also be relieved of the burden of preparing an answer to the charges until after the conclusion of hostilities.

All this without prejudice to ultimate justice!

Yours sincerely,

*Halifax*

The Honorable  
Franklin D. Roosevelt,  
President of the United States.

OFFICE OF WAR MOBILIZATION  
WASHINGTON, D. C.



JAMES F. BYRNES  
DIRECTOR

May 26, 1944

MEMORANDUM FOR THE PRESIDENT

SUBJECT: UNITED STATES v IMPERIAL CHEMICAL AND DUPONT

After reading the letter of the Secretary of War and the memorandum, my opinion is that the stay asked by the Army and Navy and by Lord Halifax should be granted.

Justice says it expects to take no action after the filing of an answer. If that be so, no great harm will be done to the cause of the government by not insisting upon an answer at this time. Under existing law, all rights of the government are preserved.

Justice contends that the preparation of an answer will require only the time of lawyers. The lawyers must get from the executives the facts upon which to base an answer. The bill of complaint is 87 pages and covers the period from 1897 to date. Lord Halifax says that the British claim is that nearly 100,000 documents would have to be examined in order to prepare the answer for the Imperial Company. Even allowing for exaggeration, it seems to me, in the case of each company, lawyers would require the constant assistance of executives in order to explain documents and transactions referred to in such documents.

If DuPont executives are engaged in the S-1 project in which you have invested so much money and in which you have such hopes, I think it unwise to take the risk of diverting the attention of key men at this time to prepare an answer which can be prepared just as well when hostilities have ceased.

*J. F. B.*  
J. F. B.

(3012)

*lms.*

THE WHITE HOUSE  
WASHINGTON

May 29, 1944.

MEMORANDUM FOR  
THE ATTORNEY GENERAL

What do you think now?

F. D. R.

Memorandum for the President from Hon. James F. Byrnes, 5/26/44, in re U.S. v. Imperial Chemical and DuPont. Attached is letter for the President from Dr. Vannevar Bush, 5/22/44, and letter for the President from the Secretary of War, 5/22/44, with enclosure, regarding the matter.

## OFFICE OF WAR MOBILIZATION

WASHINGTON, D.C.

May 26, 1944

James F. Byrnes  
Director

MEMORANDUM FOR THE PRESIDENT

SUBJECT: UNITED STATES v IMPERIAL CHEMICAL AND DUPONT

After reading the letter of the Secretary of War and the memorandum, my opinion is that the stay asked by the Army and Navy and by Lord Halifax should be granted.

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If DuPont executives are engaged in the S-1 project in which you have invested so much money and in which you have such hopes, I think it unwise to take the risk of diverting the attention of key men at this time to prepare an answer which can be prepared just as well when hostilities have ceased.

J. F. B.



THE WHITE HOUSE  
WASHINGTON

May 24, 1944.

MEMORANDUM FOR

HON. JAMES F. BYRNES

What do you think?

F. D. R.

Letter to the President from the Secretary of War, dated May 22, 1944, re suit brought by the U. S. against Dupont and the Imperial Chemical Company, together with memo from Judge Patterson and a letter from Dr. Vannevar Bush of the same date saying he agrees with the Secretary of War's recommendation in this case.

WAR DEPARTMENT  
WASHINGTON

May 22, 1944

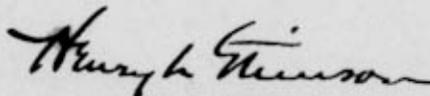
  
Dear Mr. President:

When the question of the suit brought by the United States against Dupont and the Imperial Chemical Company came before the Cabinet last Thursday, I regret that I did not recall that this Company was connected with S-1 project, sometimes referred to as Tube Alloys. As a matter of fact the Dupont Company has entire charge of the construction and operation of the two main installations, and the top executives are the key to the successful operation of this project. In my opinion any diversion of their time would be disastrous. We have been urging upon them that there must be no delay even for a day in the progress of this project.

By imposing upon them at the present time the time-consuming burden which would inevitably be involved in preparing for this litigation, we would be taking a position so at variance to that which we have been heretofore strenuously taking with them in regard to the necessity of haste that I think it would inevitably cause a slackening up in promptitude in the completion of the work. I therefore strongly urge that the litigation be stayed entirely for the present.

I do not think the Attorney General is familiar with the implications of this S-1 situation and I have not undertaken to advise him because of its peculiar nature. I enclose herewith a memorandum received from Judge Patterson which goes into somewhat more detail on this litigation.

Faithfully yours,



Secretary of War.

Encl: Memo. from  
Judge Patterson 5/22/44.

The President,  
The White House.

Franklin D. Roosevelt Library

DECLASSIFIED

DOD DIR. 5200.9 (9/27/58)

Date- 2-25-72

Signature- 

22 May 1944

MEMORANDUM:

Subject: U. S. v. Imperial Chemical and Dupont.

Status

The War and Navy Departments requested complete stay including postponement of answers. Justice appealed to the President. The question of referring such appeals to Justice Byrnes is pending.

Nature of case

It is an equity suit involving complex cartel charges, from 1897 to the present time, in an 87 page Bill of Complaint.

Interference with defendants

Dupont has charge of both construction and operation of S-1, our most vital project. The Attorney General was not informed as to the nature of S-1. General Groves states work of Dupont's top executives is key to success of S-1 and any diversion of their time would be disastrous. President and Chairman of Dupont are defendants. They and other executives must assist in preparing answer. In addition Dupont and its subsidiary, Remington Arms, which is also a defendant, have 1½ billion dollars of direct Army supply contracts and operate 9 Ordnance plants. Imperial Chemical is the largest British maker of explosives and chemicals. Many of its Executives are in government work. Lord Halifax requested Secretary Hull to obtain complete stay, as preparation of answer requires examination of 100,000 documents and burden will be thrown on key men fully engaged in war work.

Attorney General's Claims

It is contended that the preparation of an answer is the work merely of lawyers and that our agreement with Justice that on our request it will defer all activity does not apply to pleadings. Both contentions are patently groundless. Dupont and Imperial state their executives must devote much time to supplying facts for answer.

Franklin D. Roosevelt Library

DECLASSIFIED

REF ID: A62009 (9/27/58)

Date-

2-25-72

Signature-

MP

OFFICE FOR EMERGENCY MANAGEMENT  
OFFICE OF SCIENTIFIC RESEARCH AND DEVELOPMENT

1530 P STREET NW.  
WASHINGTON 25, D.C.

VANNEVAR BUSH  
Director

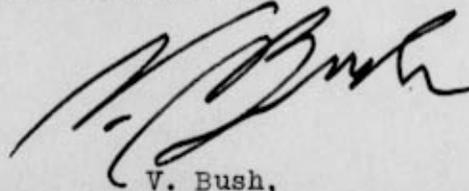
May 22, 1944.

The President,  
The White House,  
Washington 25, D.C.

Dear Mr. President:

The Secretary of War has shown me his letter to you dated May 22nd in regard to the Dupont litigation. I am familiar with the Dupont Company participation in the project to which the Secretary refers and agree earnestly with the Secretary's recommendation as to the litigation.

Respectfully yours,



V. Bush,  
Director.



REGRADED UNCLASSIFIED

*kins*

*dept. of Justice folder 2-44*

*PSF*

June 19, 1944

My dear Mr. Ambassador:

The Attorney General tells me that it is agreeable to him that the time for filing the answer be extended to July thirty-first, and that the Company at any time thereafter may file an amended answer.

However, he does not believe it appropriate to agree that no further proceedings should take place until a reasonable time after the termination of the hostilities. The Attorney General believes that if sufficient facts are admitted on the pleadings to warrant a motion for summary judgment, there is no reason why that motion should not be made and argued immediately. The Attorney General does not propose to press the case for trial, and would not do so without ample opportunity for the defendants to object on the ground that the war effort would be interfered with.

It seems to me that the Attorney General's view is appropriate and I have accordingly so advised him.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

His Excellency  
The Right Honorable  
The Viscount Halifax, K. G.,  
The British Ambassador,  
3100 Massachusetts Avenue,  
Washington, D. C.

*PSF  
Justice*

BRITISH EMBASSY,  
WASHINGTON, D. C.

June 13th, 1944.

Dear Mr. President,

You will remember when I saw you last week we spoke shortly about the case of Imperial Chemical Industries, and about the possibility of finding some middle course that might be acceptable both to the Department of Justice and to Imperial Chemical Industries.

I have been able to make some inquiry into the actual state of affairs as regards the preparation by the Company of their answer to the case, which you gave me to understand on your information was thought to be well advanced. I find that the Company has, in fact, felt obliged to do a good deal of work on the preparation of their answer, irrespective of the interference with their war activities which this has involved, since they could not be assured that their request for postponement of answer would be granted.

I am advised, however, that such answer will not

The Honourable  
Franklin D. Roosevelt,  
President of the United States.

necessarily/

BRITISH EMBASSY,  
WASHINGTON, D.C.

- 2 -

necessarily be as complete as it would have been had they been able to place a number of their staff unreservedly at work upon it.

I understand that in all the circumstances my Government would feel that the reasonable case of Imperial Chemical Industries was fairly met by the United States Government if it were possible:

1. For the time for the filing of the answer to be extended to July 31st.
2. For it to be understood that it was open to the Company at any time to submit an amended , or further, answer.
3. If it were understood that subsequent to the filing of the answer all further proceedings in the action, whether in the form of a trial, a motion for summary judgment, or otherwise, should be stayed until a reasonable period after the termination of the hostilities.

I hope this compromise may be acceptable to the United States Government, and that, if so, you may be pleased to give instructions accordingly and that we may be so informed.

Believe me,

Yours very sincerely,

*Halifax*

⤿

PROPOSED LETTER FOR SIGNATURE OF THE PRESIDENT

June 1944

My dear Halifax:

The Attorney General tells me that it is agreeable to him that the time for filing the answer be extended to July 31, and that the Company at any time thereafter may file an amended answer.

However, he does not believe it appropriate to agree that no further proceedings should take place until a reasonable time after the termination of the hostilities. The Attorney General believes that if sufficient facts are admitted on the pleadings to warrant a motion for summary judgment, there is no reason why that motion should not be made and argued immediately. The Attorney General does not propose to press the case for trial, and would not do so without ample opportunity for the defendants to object on the ground that the war effort would be interfered with.

It seems to me that the Attorney General's view is appropriate and I have accordingly so advised him.

Very sincerely yours,

H. E. The Ambassador from Great Britain  
3100 Massachusetts Avenue  
Washington, D. C.

Office of the Attorney General  
Washington, D. C.

The President

The White House

BY MESSENGER

0 0 8 8 8

MR. LATTA:

I called Mr. Summerlin's office about this, and he advised that while the British Ambassador is an Earl, he has not decided how he is to be addressed. Mr. Summerlin, therefore, suggested that we address him as per the attached draft.

hss

THE WHITE HOUSE  
WASHINGTON

June 18, 1944

MEMORANDUM FOR

MR. LATTA:

The President requests that this letter be rewritten in order to have the address of Lord Halifax correct. I believe he has lately been made an Earl.

In any event, the salutation should not be "My dear Halifax".

Regards.

W. D. H.

Justice folder 2-44

file

BRITISH EMBASSY,  
WASHINGTON 8, D. C.

22nd June, 1944

My dear Mr. President,

I write to acknowledge the receipt of your letter of June 19th in which you were so good as to inform me of the views of the Attorney General about the case against Imperial Chemical Industries and of your agreement with them.

I have transmitted the substance of your letter to my Government.

Yours very sincerely,

*Halifax*

The Honourable  
Franklin D. Roosevelt,  
President of the United States  
of America,  
Washington, D.C.