

PSF

Justice Dept.: Homer Cummings

1938-39-1944

*file
personal.*

THE ATTORNEY GENERAL
WASHINGTON

January 3, 1938.

My dear Mr. President:

You will recall that Mr. Justice Brandeis did not concur in the new Supreme Court Rules. Since then I have ascertained, upon reliable authority, that apparently his objection grew out of his belief in the efficiency of the Massachusetts Rules, which he did not like to have displaced in the Federal Courts by the new rules.

It strikes me that this is a rather narrow point of view when we consider that the new rules also apply to forty-seven other States and the District of Columbia.

Sincerely yours,

Wm. H. Taft

The President,
The White House.



Office of the Attorney General
Washington, D.C.

*File
Personal*

January 3, 1938.

My dear Mr. President:

The principal decisions rendered by the Supreme Court at its session today were those in Alabama Power Co. v. Ickes and Duke Power Co. v. Greenwood County. In these cases the Court ruled that the utility companies had no legal standing to question the constitutional validity of the public works provisions of the federal statutes or the compliance by the Administrator with those statutes. The Court held that the threatened loss of business by the companies, being attributable to lawful municipal competition, afforded no basis to attack the loan and grant of federal funds to the municipalities. Decisions favorable to the Government were also rendered in three tax cases, two criminal cases and a forfeiture case.

In Railroad Commission of California v. Pacific Gas and Electric Co. the Court, by a six to two decision, reversed a decree of the District Court which had set aside a rate order of the California Commission. The Court did not, however, pass upon the question argued in the brief filed by the Federal Power Commission as amicus curiae, i. e., whether the rule of prudent investment or historical cost should be substituted for the rule of fair present value as a basis for rate making.

The Court also decided to review on certiorari the case of Electric Bond and Share Co. v. Securities and Exchange Commission, which involves the validity of the registration provisions of the Public Utility Holding Company Act of 1935. A motion to advance this case for early argument will be made by the Government.

Respectfully,

Attorney General.

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

Homer Cummings

Jan. 10, 1938.

In re-unsigned memo to Homer Cummings

Subject--information that Justice McReynolds will leave
Court within the year etc.

SEE--Supreme Court folder- Drawer 2--1938

PSF; Justice
file
Cummings

January 17, 1938.

Memo for Attorney Gen. Cummings

From J. Edgar Hoover

Subject: Information received to effect that there has been formed in N. Y. City an organization known as the Continuation Committee of the Trade Union Conference Against Unemployment which is sponsoring a "march" on Wall Street to be effective Feb. 19, 1938.

SEE--Justice folder-Drawer 1--1938

THE WHITE HOUSE
WASHINGTON

att. Gen.

January 18, 1938.

MEMORANDUM FOR
THE ATTORNEY GENERAL

I think you have the following
vacancies; or will shortly have them:

2 Assistant Attorney Generals
District Attorney, District of Columbia
District Attorney, Eastern, N. Y.
District Attorney, Northern, W. Va.

Marshal, Second, Alaska
Marshal, Fourth, Alaska
Marshal, Eastern, N. Y.

F. D. R.

THE ATTORNEY GENERAL
WASHINGTON

January 27, 1938.

Justice

P.F.

My dear Mr. President:

The attached is a personal and
confidential memorandum from Mr. Hoover.

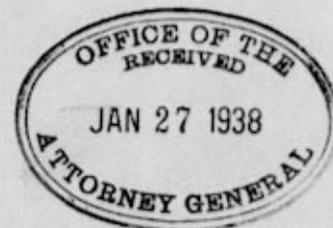
Sincerely yours,

Wm. C. Clegg

The President,

The White House.

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.
January 26, 1938.



Personal and
Confidential

MEMORANDUM FOR THE ATTORNEY GENERAL

Information has been obtained from a confidential source to the effect that Charles Krumbein, New York State Secretary of the Communist Party and member of the Central Committee of the Communist Party, U. S. A., has disclosed plans of the Communist Party to commence the military training of its members. The courses of instruction are to include theory and practice and are to commence on or about February 15, 1938.

During the winter months it is intended that the training will be in theory only, but during the spring and summer months training in the practical aspects of military drill will be given to each member for a period of three months. It has been learned that approximately 200 members of the Communist Party are presently receiving military instruction at the Workers School, 12 East 13th Street, New York City, from 10 a. m. to 4 p. m. daily. The persons who are presently being trained in New York are to constitute the future military instructors for the Party membership.

New members of the Party, with less than six months' membership, are exempt from this course of training. It has been decided, however, that when such new members have remained in the Party for a period of six months or more, which constitutes a probationary period, and should their Party activities warrant it, they will be recommended for such training. The reason for caution in recommending such training for new members, according to Krumbein, is to safeguard the "privacy of our military training from undesirable publicity." ▲

It has been reported that all Party districts will soon receive instructions from the Central Committee of the Communist Party to prepare the registration of membership for this course of training and to obtain places to conduct such training classes.

I have likewise received information from a confidential source, imparted by an intellectual member of the Communist Party in New York City, to the effect that the purpose of the Communist Party in sending men to Spain to fight in the ranks of the Loyalists is to train such individuals in the art of military science so that they can be returned to the United States to lead the vanguard of the revolution in this country. The source of this information pointed out that in numerous instances Americans have been brought back to the United States after serving in the Loyalist forces and their positions have been filled by new recruits from this

Memorandum for the
Attorney General

- 2 -

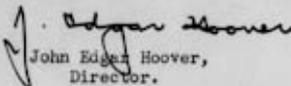
1-26-38

country; that the purpose in returning them is to preserve their lives for the "American revolution"; and that the purpose in refilling their positions in Spain is to train new military leadership for the coming "American revolution."

I wish to point out that I have also received confidential information of a similar nature from an entirely different source connected in no way with the source mentioned hereinbefore.

I thought that in view of the nature of this information you might desire to bring it to the attention of the President.

Respectfully,


John Edgar Hoover,
Director.

OFFICE OF
THE ATTORNEY GENERAL



file
personal

Jan 27/
58

Dear Mr President:

Of course you
are not going to read
the enclosed speed -
but perhaps you will
look at the material
pages. They develop
on them from a
slightly different
standpoint (pp. 2 & 6 ind).

Sincerely,

W. W. Rogers

"Preserving Democracy"

PSF
Justice

Handwritten text, likely a letter or note, written in cursive. The text is mostly illegible due to blurring and fading.



THE NATIONAL ARCHIVE
SERIAL 100

PRESERVING
DEMOCRACY
HOMER CUMMINGS

PSF
Justice

To
The President,
With the affectionate greetings.
I
Alma Brown
Jan 27/38

PRESERVING DEMOCRACY

*Address delivered at the JACKSON DAY BANQUET
held at the Stevens Hotel, Chicago, Illinois
Saturday, January 8, 1938*

by

Honorable HOMER CUMMINGS
ATTORNEY GENERAL OF THE UNITED STATES

Broadcast over the network of the Mutual
Broadcasting System. Reprinted in the Congressional Record
for January 11, 1938

United States Government Printing Office
Washington, D. C., 1938

PRESERVING DEMOCRACY

*Mr. Chairman, Distinguished Guests
Ladies and Gentlemen:*

ONE hundred and eight years ago an historic event took place at a banquet held at Brown's Indian Queen Hotel in the City of Washington. The air was tense with anticipation. Statesmen, politicians, and men of business, by common consent, regarded the long-awaited moment as one of national significance. When, following the custom of the day, the appropriate time arrived, a tall, gaunt man, much hated and much loved, arose to offer a toast to America. It was Andrew Jackson, and this is what he said:

"Our Federal Union; it must be preserved."

We have just heard another message to the American people. It was from the lips of President Franklin D. Roosevelt, who, perhaps more completely than any other Chief Executive, has vitalized and carried forward the Jacksonian tradition. Under conditions strangely dissimilar and yet strangely alike, it is as if he had raised his glass and said, "Our Federal Union; it must and shall be preserved—as an instrument of progress, a servant of justice, a guardian of the happiness and general welfare of the people."

The voice of Jackson was heard by a small group assembled in but one room; and it took weeks, even months, for his message to filter out to the people. The words of Roosevelt were instantly heard throughout the length and breadth of the land. Thus is symbolized the change that has come over America and the unchanging purposes of those who love democracy.

Do not for a moment assume that it is a simple task to preserve democracy and to make it an efficient instrument of government. Great reforms do not come easily. Even after the people have determined upon them, the attempt to enact them into law precipitates a terrific struggle.

Let me tell you a brief but significant story. Those who stood amid the wreckage of the Hoover administration will recall that 6,067 banks had been forced to close their doors. Simultaneously, there was a great demand for money of all kinds for hoarding, not only in safe deposit boxes, but in mattresses and in holes dug in the cellar.

Early on Monday, the sixth of March 1933, President Roosevelt issued his first proclamation which suspended the operation of all our banking institutions and preserved them from destruction. Thereafter, the President, acting in close cooperation with the Congress, approved a series of acts, and promulgated Executive Orders that effected a sweeping change in the financial structure of our country.

Moreover, the Administration secured the enactment of a law insuring deposits to the extent of \$5,000 each in all of the banks within the Federal system. Fifty-eight million accounts come within the protecting folds of that beneficent law; and their owners do not have to lie awake nights worrying about their deposits. These measures were but a part of the inspiring story of a troubled nation finding its way successfully out of financial chaos.

Do you suppose that these great reforms were brought about without a battle? Not for a moment did the great financial interests that center in Wall Street relax their resistance, or forego any opportunity to poison the minds of the people against the policies of the Administration.

When the anti gold-hoarding measures were promulgated, there was a great hue and cry in ultra-conservative quarters. They were assailed as a wicked and unconstitutional encroachment upon private rights. But surely there can be no right to hoard in time of national peril any more than there can be a right to seize the best life boats in a storm at sea, or sequester food in a city under siege. The Administration was obliged to defend these measures in court—and defended them successfully.

Did the struggle end there? Not at all. Those who maintained that the whole financial policy of the Administration was unconstitutional instituted a series of suits, and the Government was obliged to resist in

the courts the attempts of private litigants to destroy the system that the President and the Congress had created.

It was not until the Supreme Court, by a 5 to 4 decision, upheld the position of the Administration that the battle subsided; and, even now, we hear muffled rumblings of it from time to time, in irreconcilable quarters. The last case that finally rung down the curtain on these subversive efforts was decided less than a month ago. Had this crucial litigation gone against the Government it would have added ten billion dollars to the public debt. It would have written up the public and private obligations of our country by sixty-nine billion dollars, and would, overnight, have reduced the balance in the Treasury of the United States by more than two billion five hundred million dollars. It would have spelled chaos in every quarter of the land.

And what has been the actual result? Our credit never stood higher than it does today, and the American dollar is the soundest monetary unit on the face of the earth.

The same forces that fought the gold clause legislation were active and recalcitrant as each new reform was put forward. They lobbied in the Congress, they advertised in the newspapers, and they fought in the courts. For fully three years municipal power projects have been blocked in 23 States by the injunctive process. The national will as expressed in the

Public Works legislation, the desires of the affected communities, and the hopes of those who counted upon work or planned to sell materials were alike set at naught while this unwarranted litigation dragged its weary length through the courts. It was not until last Monday that a Supreme Court decision in the Duke and Alabama Power cases brought to a close this wholesale campaign of obstruction.

To prevent the operation of the Public Utility Holding Company Act seven major suits were brought simultaneously in the District of Columbia and over forty similar suits in twelve different judicial districts, when one test suit would have served every legitimate purpose. There seemed to be, and I say it with regret, a deliberate purpose to engage the Government upon so many fronts that effective defense would be rendered difficult or impossible.

In September 1935, a group of fifty-eight eminent lawyers solemnly admonished the Nation that the Wagner Labor Relations Act was unconstitutional and not worthy of obedience. They formulated an elaborate opinion covering one hundred and twenty-six pages, published it in the newspapers everywhere, sent copies of it to lesser legal lights, and did incalculable harm in fostering litigation and disregard of law. They spoke as if from on high, they entertained no doubts, they acted with superb confidence, and, as the opinion of the Supreme Court subsequently disclosed, they were completely wrong.

It is something of an anomaly that when great problems are to be met we expect our public servants to supply the legislative solutions, while at that very moment many of the most gifted members of the bar exercise their ingenuity and their experience to break down the structure thus created.

Naturally there is a growing distaste for the elaborate tactics of obstruction that make it so difficult for a democracy to function. The public is fully persuaded that what was unplanned or selfishly guided in the past must take its place in an orderly governmental process and that a great cleansing and rebuilding program must go forward. It is increasingly irritated by those refinements of logic which are calculated to render attempts at social reconstruction sterile or abortive.

And still the struggle goes on. So long as there are evils to be corrected, there will be beneficiaries of evils to resist the measures of correction.

Of late years there has been an increasing trend toward an undue concentration of wealth and economic control. It is a situation of which any responsible government must take notice.

While our antitrust laws have checked the growth of monopoly, they have not prevented it. We have come into an era of price control by concerted group action and that, I undertake to say, is an intolerable situation. We cannot be expected to permit such practices to impair our prosperity or to throw it out of balance.

A Nation as capable as ours of producing an abundance of wealth is not adequately using its powers if there is an insufficient distribution of such wealth amongst the masses of the people. If their incomes are depleted by unjust prices and inequitable wages, there will be precisely that much less to spend for the good things of life. The purchasing power of the future lies in the standard of living of those on the lower rung of the ladder; and there will be found the answer to our hope of a well-ordered national home.

Mass production and all the advantages that flow from operations on a large scale may be, and often are, the sources of great public service. That fact has been demonstrated over and over again. Indeed, it is one of America's outstanding achievements. It must not be forgotten, however, that the control of the vast power involved carries with it not only high responsibilities, but also dangers of misuse against which we must safeguard our Democracy.

In dealing with these problems our purpose should be constructive, not merely destructive. Monopolistic practices should be more clearly defined. This would be helpful to a just administration of law, and would be a mantle of protection to those whose honest desire it is to live within the law. Let it be remembered that the well-intentioned business man is desirous of knowing not only what he is forbidden to do, but also what he is permitted to do. I repeat what I stated on November 29th in a formal address:

In rewriting the antitrust laws, thought should be devoted not only to strengthening them and making them more intelligible, but attention should also be given to providing protection and encouragement to legitimate efforts of enlightened business men to increase production and employment, to improve working conditions, to eliminate waste, to provide more effective methods of distribution, and to supply better services to consumers and to the public.

I say with all the earnestness at my command that until agriculture, labor, and capital, with the aid of the government, have learned the lesson of friendly and intelligent cooperation our Democracy will not rest on a safe foundation.

Most of those in charge of great enterprises realize the significance of this problem and are patriotically concerned about it. There are minorities, however, within these groups that blindly resent any activity upon the part of the Government and insist upon a free hand to deal with industry and labor as they see fit.

They have not grasped the idea or the ideals of a modern democracy. They do not realize that a new day has dawned and that the yesterdays will not return.

The Moving Finger writes and having writ
Moves on. Nor all your piety nor Wit
Shall lure it back to cancel half a line
Nor all your tears wash out a Word of it.

In these modern days our industrial and financial system is so delicately poised that the creation of a morbid psychology may have injurious results. Those who spread disturbing rumors or indulge themselves in forebodings of disaster, curiously enough, end by terrifying themselves. They remind me of children who tell ghost stories around the fireplace and frighten themselves so much that they are afraid to go to bed.

The opposition to the President's policies does not come from the people; it comes from relatively small but very influential and powerful groups.

It is, perhaps, not strange that those who have long controlled the affairs of Government and have turned their power to private advantage, should be resentful of a leadership that is less concerned with their privileges than with the needs of the country as a whole.

No tribune of the people ever stored up love for himself in the House of Privilege. Every great leader we have ever had has been the victim of calculated slander and reckless invective. All of our great Presidents have had their detractors. Washington knew them. Jefferson knew them; and so on down the list of the illustrious men who gave all they had in the service of their country. No one knew them better than the Great Emancipator, whose body lies not far from here and whose mighty spirit still broods over a troubled people. He knew them in all their meanness, all their malice, and all their venom. These wretched traducers proclaimed him a tyrant, a

dictator, and a usurper. They said that he had loaded the country with intolerable taxes and had "piled an enormous debt incalculably high." They said that he was an enemy of our form of government and had "torn the Constitution to tatters."

The struggles of Andrew Jackson with political and financial privilege; his sturdy attempts to make the doctrines of Jefferson living and breathing things; his titanic battle with Nicholas Biddle and the Bank of the United States; and the unbridled criticism to which he was subjected have their counterparts today.

The popularity of Jackson survived all his battles, and such was the reverence in which he was held, it is said, that many people went on voting for him fifty years after his death—even in the State of Vermont. And so it is with Roosevelt. After each struggle he emerges stronger than before.

Nor has the Administration been less successful in foreign affairs. Through international understandings skillfully arranged by a great Secretary of State, our languishing trade across the seas has been expanded and revived. The doctrine of "the Good Neighbor" was promulgated and a feeling of friendliness fostered amongst the nations on this side of the Atlantic which has not been known for generations.

So hard put to it are the critics of the Administration that they suggest that affairs in Europe have been better handled than here and that the unemployment problem abroad no longer creates a serious menace.

I think it was Josh Billings who, with reference to a certain person, remarked that "the difficulty with him is that he knows so many things that are not so." If you look across the waters to the troubled peoples in foreign lands, you will find little encouragement for the criticism of conditions in this country. To mop up unemployment by putting millions into the army and setting more millions to work manufacturing munitions may be one way to meet the unemployment situation, but it does not accord with American ideals.

And let me add this too! With millions of storm troops set upon a hair trigger for release into another international conflict, with constantly accumulating bombing planes ready to destroy the cities and the populations of Europe, with supplies of poisonous gas being feverishly prepared for their hideous purpose, with one country already plunged into the vortex of a ghastly fratricidal conflict, and with two great nations slaughtering thousands upon the field of battle and destroying countless numbers of innocent noncombatants, we are justified in uttering a fervent prayer of thanks to Heaven that we have in the White House a man who loves peace, and, above all men else, knows how to preserve it with honor.

We face the future with high courage. Our country will go on and it will prosper. It will contribute increasingly to the happiness of its people and gain in dignity and in influence amongst the nations of the world. I sometimes think that the people are wiser

than the wise men of finance and industry. They know a great leadership when it comes to them, and just as they loved and trusted Jackson, so they love and trust Roosevelt.

The rich and the powerful may have forgotten what he did for them, but the lowly and the dispossessed have not abated one iota of their faith. The people have not forgotten. They could not forget. No one can make them forget. They know what they have been through with him, and they propose to go with him to the end of the road.

THE ATTORNEY GENERAL
WASHINGTON

February 4, 1938.

*file
"journal"*

My dear Mr. President:

There have been so many requests for copies of my recent report to the Congress, that a portion of the report has been reprinted. I enclose herewith a copy of it.

I think you will find pages 1 to 6 inclusive especially interesting. This report forms the basis of pending Bills which are now before the Judiciary Committee of the Senate and House, and which have apparently excellent chances of enactment. If these Bills can be successfully piloted to enactment, I think we shall have made a great contribution to the improvement of the administration of law in the Federal Courts.

Sincerely yours,

Wm. C. Clegg

The President,
The White House.

"Statement and Recommendations"

THE BUREAU OF
LABOR RELATIONS

... I am sure that the people of the United States
will support the Labor Union and the people
of all nations who are struggling for the rights
of all working men and women. I am sure that the
people of all nations will support the Labor Union
and the people of all nations who are struggling
for the rights of all working men and women.

RECEIVED 11/19/37

**STATEMENT AND
RECOMMENDATIONS**

of Honorable Homer Cummings
ATTORNEY GENERAL OF THE UNITED STATES

REPRINTED FROM ANNUAL REPORT OF THE ATTORNEY
GENERAL TO THE CONGRESS FOR THE FISCAL YEAR 1937

PSF
Justice

STATEMENT AND
RECOMMENDATIONS

OF HONORABLE HOMER CUMMINGS
Attorney General of the United States

REPRINTED FROM ANNUAL REPORT OF
THE ATTORNEY GENERAL
TO THE CONGRESS
FOR THE FISCAL YEAR 1937

United States
Government Printing Office
Washington : 1938

STATEMENT AND RECOMMENDATIONS

OF *Homer Cummings*

ATTORNEY GENERAL OF THE UNITED STATES

DEPARTMENT OF JUSTICE,
Washington, D. C., January 3, 1938.

*To the Senate and House of Representatives of the
United States of America in Congress Assembled:*

I have the honor to submit a report of the business of the Department of Justice for the year ending June 30, 1937, as detailed in the reports of the heads of the principal offices, divisions, and bureaus, together with various exhibits.¹

CONGESTION AND DELAYS IN THE FEDERAL COURTS

Delay in the administration of justice is still the outstanding defect of our Federal Judicial system. The principal types of delay (aside from those incident to perfecting appeals), may be divided into three classes:

First—the gap between the date of filing of suit and the time that the case is in shape for trial, i. e., the date on which issue is joined by the filing of the final pleading. This period is protracted beyond all reason in almost every jurisdiction. It is the stage characterized by dilatory pleas, motions to dismiss, demurrers, and other technical proceedings. In many districts this defect is accentuated because matters of this kind are heard only once a month and sometimes only on the first day of the term. In places, and there are many, in which only one or two terms of court are held annually, the filing of a dilatory plea, a motion to dismiss or a demurrer may result in a postponement of the trial for at least 6 months or perhaps a year. I brought this situation to the notice of the Judicial Conference which announced in its report that “this matter was considered by the Conference and will be taken up by the senior circuit judges with respect to each district within their circuits.” A further remedy lies in an increase of judicial personnel.

Second—delay arises because of the time elapsing between joinder of issue (the date on which the final pleading is filed) and the earliest date on which the case can be reached for trial in due course, even

¹ The reports of the heads of the various offices, divisions and bureaus, and exhibits are omitted in this edition.

if no attempt to postpone it is made by any of the parties thereto. Even when measured by this standard in 17 districts the trial dockets are in arrears. In three of them (the District of Columbia, the Eastern District of Michigan, and the Western District of Washington), the congestion is so severe that the time-lag is between 1 and 2 years. A table annexed to this report shows the length of this waiting period. This computation, of course, does not include the time consumed in the preliminary stages of the case prior to joinder of issue.

We must not be misled by the statement that in the other districts the trial dockets are said to be "current." All that this means is that after the final pleading is filed in any case, the trial may be had at the next ensuing term of court, if the parties and the court cooperate. It does not follow, therefore, that in such districts the business is actually "current" in any true sense, for the word "current" does not take into account the time consumed during the preliminary period before the case is in shape for trial or the time lost between the time when a case may theoretically be tried and the time when it is actually tried; nor does it make any allowance for the fact that in many divisions and at many places of holding court, terms are convened but once or twice a year. The interval elapsing between terms of court may alone account for a delay of as much as a year between the time the case is in shape for trial and the earliest date upon which it can actually be heard. That this is an important factor may be deduced from the fact that sessions of the United States District Courts are held at 376 different places. At 115 of these places there is only one term a year, while at 242 of them there are only two terms annually. At only 19 places are there more than two terms a year. Ingenious counsel are frequently able to postpone actual trial despite the utmost efforts of adversary parties to bring matters to a hearing. Overworked judges are at a disadvantage in their efforts to drive forward the business of the courts.

The existence of actual delay even in districts where the trial dockets are reported to be in a so-called current condition is conclusively demonstrated by the large number of pending cases that were filed more than 2 years ago and are still undisposed of.² For example, in New Jersey and in the western district of Wisconsin over 60 percent of the pending cases are more than 2 years old, while in the northern district of Indiana and in the southern district of Illinois this is true of over 59 percent of the pending cases. In Delaware this is true of over 46 percent of the cases; in Vermont of over 42 percent; in the western district of Missouri of over 39 percent; in Kansas of over 37 percent; in the southern district of Ala-

²These computations were made as of September 30, 1937.

bama of over 32 percent. Yet, in all of these districts the trial dockets are reported as being in a so-called "current" state.

Third—delay arises out of the intervals frequently elapsing between the final submission of a matter for judicial decision and the date upon which a decision is rendered. Some of the judges have called attention to this unfortunate situation and have asserted that the volume of business confronting them is so great and the time during which they are not actually sitting on the bench is so limited that they do not have adequate opportunity to study the cases or prepare their decisions.

It must not be forgotten that our problem has to do with the quality as well as the quantity of the judicial output.

The situation that I have depicted is manifestly inconsistent with any sound idea of judicial efficiency. The problem will remain with us until we make shift to remedy the conditions that have created it. The fault does not lie with individual judges. Almost without exception they are conscientious and hard-working. The defects are in the system and may be summarized under three heads:

- (a) An insufficient personnel.
- (b) A tolerance of technicalities and lack of a unified, simple, and coherent system of procedure.
- (c) A lack of efficient administrative methods.

A

The need of an increase in personnel is recognized in the report of the Judicial Conference at the session that convened on September 23, 1937, and which I have the honor to submit herewith. The conference recommended the following permanent increases in judicial personnel:

- One circuit judge for the second circuit.
 - One circuit judge for the fifth circuit.
 - One circuit judge for the sixth circuit.
 - One circuit judge for the seventh circuit.
 - One district judge for the northern district of Georgia.
 - One district judge for the eastern district of Louisiana.
 - One district judge for the western district of Louisiana.
 - One district judge for the southern district of Texas.
 - One district judge for the eastern district of Michigan.
 - One district judge for the northern district of Ohio.
 - One district judge for the western district of Washington.
 - One district judge for the southern district of California.
 - One district judge for the district of Kansas.
 - Three district judges for the District of Columbia.
- The foregoing recommendations are amply justified, and I shall

be glad to submit to the appropriate committees of the Congress data bearing upon the propriety and wisdom of still further increases, as follows:

One associate justice for the United States Court of Appeals for the District of Columbia.

One district judge for the eastern and western districts of Arkansas.

One district judge for the northern district of California.

One district judge for the southern district of Florida or jointly for the northern and southern districts of Florida.

One district judge for the northern district of Illinois.

One district judge for the district of Massachusetts.

One district judge for the district of New Jersey.

One district judge for the southern district of New York.

One district judge for the eastern district of Pennsylvania.

One district judge for the eastern, middle, and western districts of Tennessee.

One district judge for the western district of Virginia.

B

Distinct progress has been made in the matter of eliminating technicalities and in coordinating the rules of practice. In 1792, the Supreme Court was empowered by statute to adopt uniform rules of practice for the Federal courts in equity and admiralty cases, and in 1898 for bankruptcy cases. Under these statutes rules were promulgated by the Supreme Court as to these groups of cases and have been in effect for many years. The results have been highly satisfactory. On the other hand, the Conformity Act of 1872 barred progress along this line in respect of actions at law, for it required the Federal courts to conform as near as may be to State practice. The result has been that as to actions at law, there are 49 different procedures in the Federal courts—one for each State and for the District of Columbia. In some instances the practice is archaic and cumbersome, and still enforces the technical intricacies and refinements that prevailed in England in the seventeenth and eighteenth centuries, but have long been abandoned in the land that gave them birth.

I strongly urged the Congress to authorize the Supreme Court to adopt and promulgate uniform rules of practice for the Federal courts for actions at law, as it had done for suits in equity and admiralty, and proceedings in bankruptcy. The Supreme Court was granted this power by the act of June 19, 1934 (48 Stat. 1064).

The Supreme Court thereupon appointed an advisory committee, consisting of eminent members of the bar and teachers of law, to

carry forward the preliminary work. The Department of Justice heartily cooperated with this committee. A thorough study of the matter was made, innumerable suggestions were examined, and a report was submitted to the Supreme Court. It was a monumental and difficult task, deserving of the utmost praise. When these rules, as modified by the Supreme Court, are promulgated and submitted to the Congress, another milestone will have been passed in the weary progress toward judicial reform.

C

Permanent additions to the judicial personnel in circuits and districts where they are urgently needed and reforms of procedure will be of enormous help, but will not entirely solve the age-long problem of the law's delays. Congestion is apt to be a temporary phenomenon, making its appearance sporadically in various districts as a result of special conditions that are not necessarily lasting. For example, the illness or incapacity of a judge, the filing of a large number of actions of special kind, such as war risk insurance cases or suits for damages affecting a great many persons, may temporarily clog the dockets. A protracted trial of a mail fraud case or a prosecution under the Sherman Act, may postpone the disposition of other business and cause an accumulation of arrears that will take months to dispose of. Circumstances of this kind frequently recur, making their appearance when least expected. A system of some degree of flexibility is indispensable. It is gratifying to note that at the last session of the Congress the rigidity of the old rules was somewhat relaxed. Nevertheless, serious thought should be given to increasing that flexibility by appropriate measures that will involve a greater coordination of the judicial machinery, a better method of assembling data and continuous oversight by the judiciary itself of its functions and efficiency.

An efficacious administrative machinery is as necessary in the courts as it is in other branches of Government and in private enterprise. Individual judges must of necessity confine their time and energy principally to the transaction of judicial business. The senior circuit judges are occupied with their judicial labors and can give but scant time to the performance of administrative duties. The conference of senior circuit judges meets but once a year and continues in session only three days. It performs a valuable and useful function, but obviously it does not and cannot act as a continuous administrative body. It is highly desirable that provision be made for a permanent administrative officer, with adequate assistance, to devote his entire time to supervision of the administrative side of the courts; to studying and suggesting improvements in the matter of handling dockets; to assembling data and keeping abreast of the

needs of the various districts for temporary assistance; and to ascertaining what judges are available for such assignments, as well as performing other incidental functions. Such an officer should be appointed by the Supreme Court and act under the supervision of the Chief Justice. It is interesting to note that the appointment of an officer of this kind was recommended in England in January 1936, in a Report of the Royal Commission on the Despatch of Business at Common Law.

I believe, too, that there is something inherently illogical in the present system of having the budget and expenditures of the courts and the individual judges under the jurisdiction of the Department of Justice. The courts should be an independent, coordinate branch of the Government in every proper sense of the term.

Accordingly, I recommend legislation that would provide for the creation and maintenance of such an administrative system under the control and direction of the Supreme Court.

CRIME

Changes in social and economic conditions and modern inventions greatly facilitating interstate travel, transportation, and intercommunication between distant points, have radically modified many features of the crime problem. Crime has taken on national aspects. The automobile has enabled roving bands of desperate criminals rapidly to shift their zone of operations from one State to another, and quickly to make their departure from the scene of their depredations. State and local law enforcement agencies are no longer able to cope without assistance with this type of crime.

At my recommendation legislation was enacted by the Congress to extend Federal jurisdiction over a number of grave and serious types of crimes, which theretofore had been within the exclusive cognizance of the States. Thus interstate transportation of stolen property valued at \$5,000 or over; robbery of a national bank, a member bank of the Federal Reserve System, or a bank insured by the Federal Deposit Insurance Corporation; the murder of or assault on certain Federal officers; fleeing from one State to another to escape prosecution for certain specified crimes, or to escape testifying as a witness in cases involving such crimes; and the transmission in interstate commerce of extortion letters, were made Federal offenses. Traffic in machine guns, sawed-off shotguns and rifles, and silencers was placed under Federal regulation. Moreover, the scope of the Federal kidnaping statute was considerably broadened and extended.

This substantive legislation gave rise to problems of administration and enforcement. The Federal Bureau of Investigation of the Department of Justice is no longer a purely investigative unit; it is a

law enforcement agency. Authority was sought and granted by the Congress to the personnel of the Bureau to make arrests and carry arms—an essential function which, surprisingly enough, had been previously lacking. With a very moderate increase of personnel, the integrated branch offices, through which the Bureau functions, were augmented, until as of June 30, 1937, the Bureau had 47 regional offices, at as many different points.

The criminal fingerprint file, built up by a system of exchange of information with police departments and other law enforcement agencies, penal institutions, and the courts, not only throughout the United States, but in all parts of the world, was greatly augmented. On June 30, 1937, there were 6,422,959 fingerprints on file at the headquarters of the Federal Bureau of Investigation in Washington, representing approximately 4,000,000 different individuals. A civil fingerprint filing system was also established in which, as of June 30, 1937, there were 393,207 fingerprints voluntarily submitted by interested citizens. The daily average of fingerprints received during the year was 4,955.

The facilities and activities of the criminal laboratory were expanded and it has become an indispensable aid in the solution of many crimes that would otherwise have remained a mystery. The facilities of the fingerprint file and the criminal laboratory are used not only for the work of the Federal Bureau of Investigation, but are extended to all State and local law enforcement agencies, many of which have taken advantage of the opportunity and have found the assistance thus rendered of great aid in the detection and apprehension of criminals.

The personnel standards are on the basis of merit and have been at a high level. Graduation from a law school is a prerequisite to appointment to a position as special agent, except as to a certain percentage of agents who are required to be competent accountants. New appointees are required to undergo an intensive training course of 14 weeks in duration. Members of the staff are brought back to Washington for a short retraining course every year or two.

A police academy has been established to which law enforcement officers are sent by State and local agencies for the purpose of receiving training in methods developed by the Federal Bureau of Investigation. Many graduates of the academy have been assigned by their superiors to establish local training schools in their respective departments.

State and local responsibility and authority are not superseded by the Federal Government. The keynote of the program is cooperation. The activities of Federal, State, and local authorities must be coordinated in a friendly spirit without an attempt on the part of any to encroach on the proper sphere of the others. In most

respects the crime problem is a local problem and the Federal Government can concern itself only with interstate aspects, and with those phases of it which affect Federal activities.

The treatment and punishment of the offender after he has been apprehended, convicted, and sentenced, are likewise problems to which this Department has given a great deal of care and attention. It must be borne in mind that sooner or later the prisoner will be returned to society, and the aim of penal treatment must be to endeavor to return him in a state of mind and body which is likely to enhance his chances of a law abiding existence. Undoubtedly a certain percentage of criminals are beyond reasonable hope of rehabilitation, but as to a great majority of them an effort at reform is fruitful.

The Department of Justice has developed a series of institutions graded according to types of prisoners, so as to permit classification of inmates as far as possible. Early in my administration as Attorney General, I secured the establishment of a special institution on Alcatraz Island in the San Francisco Harbor for the more dangerous prisoners and those who present disciplinary problems at other institutions, and who hamper the efforts at rehabilitating the offenders for whom there is hope for reform. It is an essential part of our prison system and has amply justified itself. Several of the penitentiaries are devoted to the average person convicted of a felony and sentenced to penitentiary treatment. One penitentiary—the Northeastern, located at Lewisburg, Pa.—is restricted principally to first offenders and others for whom the chances of rehabilitation appear to be especially bright. Two reformatories also constitute a part of the Federal penal and correctional system. To them are committed young men and first offenders generally, as well as convicted persons whose crimes are not sufficiently grave in character to require incarceration in a penitentiary. Road camps are also used with good results. In addition there is an institution for women prisoners.

Activities are carried on in each institution for the purpose of giving constructive occupation to every inmate insofar as possible. The industries are so diversified as to cause the least possible competition with free labor. Prison products are not sold on the open market, but are disposed of solely to governmental agencies. It is essential that habits of industry be inculcated in all prisoners, so that they may be accustomed to performing useful labor regularly and may, therefore, have a better opportunity to earn an honest living upon their release. At the reformatories, trades are taught to young prisoners capable of benefiting by such instruction.

Short-term prisoners serve their sentences either at one of the several Federal jails maintained by the Department, or at one of the

numerous local jails. The problem of jails has been a troublesome one, in view of the fact that many of the local institutions are unsafe and permit easy escape; while others are insanitary and permit inhumane conditions to prevail. Our system of jail inspection has worked exceedingly well. Additional Federal jails are, however, needed and I am elsewhere requesting appropriations for the construction of such new institutions. A similar problem exists in respect of women prisoners for whom the Federal institutions do not have sufficient accommodations, and new facilities for that purpose are required.

One of the vital subjects in connection with the administration of a penal system is the matter of parole. A properly administered parole system represents an efficacious means for effectuating the transition between imprisonment and freedom. It protects society by placing the paroled prisoner under supervision and by summarily returning him to the institution if he fails properly to conduct himself. At the same time it assists a prisoner to make his adjustment in the community to which he returns.

In order to be successful, however, it is indispensable that the decision as to who should receive parole, and when paroles should be revoked, should be made by an impartial board actuated by no consideration other than the merits of the cases before it; that the prisoners receiving parole should be carefully and prudently selected, the test in each instance being the likelihood of the beneficiary of such treatment becoming a law-abiding member of society, and only those for whom the prospect of rehabilitation is good, should be favorably considered; and that the parolees should be constantly under supervision by an adequate and efficient staff of officers. These principles govern the Federal parole system, which is efficiently administered by a board of three members, devoting their entire time to this activity, and by probation officers located in practically every judicial district. During the past fiscal year, approximately 36 percent of Federal prisoners eligible for parole were paroled before the expiration of their sentences. Only approximately 6.9 percent of those paroled have failed to live up to the conditions on which they were released. It should be noted that these violators are frequently returned for breaches of the rules which do not necessarily involve the commission of any criminal offense.

FIREARMS LEGISLATION

I have heretofore called attention to the fact that one of the pressing problems in connection with the enforcement of the criminal law arises out of the traffic in and possession of firearms by members of criminal groups. In 1934, at my request, the Congress, through

the exercise of its taxing power, placed machine guns, sawed-off shotguns, sawed-off rifles, and silencers under Federal regulations. In my opinion, this law should be extended to cover all firearms, but, at the very least, revolvers and pistols should be brought within its scope. I strongly urge legislation in this direction. The honest and law-abiding citizen is caused no greater hardship by a requirement that he register his firearms than by the requirement that he register his automobile. On the other hand, a general system of registration of firearms would place a potent weapon against crime in the hands of law-enforcement officers.

CRIME PREVENTION

Society does not completely fulfill its duty in respect of the crime problem if it devotes its attention solely to efforts at crime suppression, no matter how well directed and efficient such endeavors may be. Just as preventive medicine plays an important role in maintaining the physical health of the community, so must preventive methods be used in the field of crime. One of the startling features of the crime problem is the alarming number of juvenile delinquents and the appalling proportion of young men among the offenders that become inmates of Federal penal and correctional institutions. Affirmative steps to prevent the growing child from becoming an offender against the law constitute a far greater service to the community, and needless to say of much greater benefit to the individual, than punishment, no matter how sure, swift, and severe, after the crime is committed. Many commendable efforts have been made along this line by private organizations. The subject is, however, far too vast to be left solely to private initiative. The Government must ultimately enter upon an intensive study of means of crime prevention and the correlation of efforts in that direction on the part of governmental agencies—Federal, State, and local—on the one hand, and private agencies on the other. How far the Department of Justice should enter this field is a matter for present consideration. Much useful information will be found for such work in the Survey of Release Procedures, which was completed during the past fiscal year under my supervision, and the results of which are now being assembled.

ANTITRUST LAWS

The Sherman antitrust law dates back to 1890. Subsequent amendments have related largely to matters of detail but the basic provisions of the act of 1890 stand as originally enacted. In the meantime, however, it has undergone many modifications by judicial interpretation. During the 47 years that the statute has been in effect our economic and social structure has undergone a vast change. Though aimed at

the suppression of monopolies and restraints of trade, efforts to enforce the law have been only partially successful. Obviously, the statute, in its present form, is not adequate for the purpose of dealing with the many ramifications of the problem. A thorough and comprehensive study is necessary. I recommend the inauguration of such an inquiry with a view to analyzing the various phases of the subject and suggesting legislation needed to bring the antitrust laws into harmony with present needs.

In considering this subject it must not be forgotten that the present system or any plan that may be devised will not operate automatically. It is quite useless to pass laws with the expectation that they will be enforced unless the Department of Justice is supplied with personnel and appropriations adequate to the task.

OTHER LEGISLATION

At my request a number of bills drafted in the Department of Justice were introduced and are now pending before the Congress. Their purpose is to eliminate archaic technicalities and to make possible greater expedition in the disposition of criminal cases without depriving defendants of any substantial rights to which they should be entitled. Among such measures are the following:

To permit the defendant to waive indictment by grand jury and to consent to prosecution by information.

To require a defendant who proposes to rely on the defense of alibi to give to the prosecution notice of that fact before the trial.

To permit comment on the defendant's failure to testify.

To abolish appeals in habeas corpus proceedings instituted to test the validity of a warrant for the removal of the defendant from one district to another.

I urge the enactment of the foregoing measures as well as certain other bills of a technical nature which I have heretofore submitted to the Congress and which are now pending.

HOMER CUMMINGS,
Attorney General.

THE ATTORNEY GENERAL
WASHINGTON

*file
personal*

February 5, 1938.

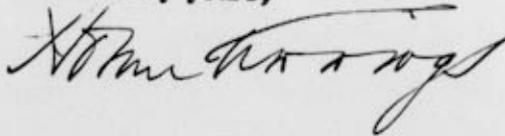
My dear Mr. President:

I receive letters from time to time from Judge Denman who, as you know, is intensely interested in our attempts to improve the administration of justice. He is lavish in his words of commendation and in his last letter says: "Great luck to you in the most important piece of legislation affecting the courts in the 65 years since the formation of the Department of Justice."

I think I ought to add that in this campaign for judicial improvement, Judge Denman has rendered service of marked importance. He has been indefatigable in assembling data, in supplying arguments and in writing for law publications.

Strange as it may seem, I think we shall have the support of leading factors in the American Bar Association. President Vanderbilt of this organization has taken a very progressive and liberal viewpoint and is helping a lot.

Sincerely yours,



The President,
The White House.

THE ATTORNEY GENERAL
WASHINGTON
February 10, 1938.

*file
passed*

My dear Mr. President:

The arguments in the Electric Bond
and Share Company case have been finished
and the matter is in the hands of the Supreme
Court.

Excellent arguments were made by
both Mr. Jackson and Mr. Cohen and the sit-
uation seems to be satisfactory.

Sincerely yours,

Robert H. Jackson

The President,
The White House.

OFFICE OF
THE ATTORNEY GENERAL



File
General

Feb 14
1938

Dear Mr. President:

Here is a nice letter
from Judge Parker - which
indicates what he thinks
your program -

Sincerely yours,
Wm. C. Clegg

UNITED STATES CIRCUIT COURT OF APPEALS

FOURTH JUDICIAL CIRCUIT

February 7, 1938.

Hon. Homer Cummings,
Attorney General of the United States,
Washington, D. C.

My dear Mr. Attorney General:

You have made three outstanding contributions to the administration of justice in this country: you have organized the Department of Justice to combat organized crime, securing from Congress the necessary legislation for the punishment of crime affecting interstate commerce; you have secured the reform of federal civil procedure by rules of the court, when those who had been advocating the reform had abandoned it in discouragement; and you have had introduced and will secure the passage of a bill which will establish the judiciary on an independent financial basis as one of the three coordinate branches of the government.

I want you to come to Asheville to the Judicial Conference this year and tell us about these things and tell the country about them. Of course you can talk about anything you want to; but we really should like you to come and see our Conference in session and let us see you. We will be in session June 2nd, 3rd and 4th; and, if you will come, my idea is to plan our entire program around your presence. I hope that you will write that we may expect you and that Mrs. Cummings will be with you. She made many friends when she was with us before who have been hoping she would come again.

With highest regards and best wishes always, I am

Respectfully yours,

JOHN J. PARKER

THE ATTORNEY GENERAL
WASHINGTON

*File
Personal*

February 14, 1938.

My dear Mr. President:

Should the so-called Pyramid Lake cases in Nevada be brought again to your attention by Senator McCarran or by anyone else interested, I thought you might like to have before you my letter of the twenty-eighth of January, 1938 which I wrote to Secretary Ickes on the subject, and which sets forth the attitude of the Department of Justice towards these matters.

Sincerely yours,

Norman Thayer

The President,

The White House.

Suits to be processed with

FAR

90-2-10-70

January 28, 1936

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

My dear Mr. Secretary:

You will recall your telephone call to me on January 22, from which I gathered that, so far as the Department of the Interior was concerned, the so-called Pyramid Lake cases in Nevada might be held in abeyance pending the consideration of legislation on the matter introduced by Senator McCarran.

After your call, I examined the record. It appears that the United States first undertook litigation in 1909. Thereafter bills were introduced in Congress from time to time for the relief of those in possession of the Indian lands involved. By Act of June 7, 1924, the Secretary of the Interior was authorized to fix the terms and sell the lands to the possessors. Seven of them finally paid for and secured patents to certain of the lands. On November 30, 1934, you directed certain other entrymen to comply with reduced terms; and on May 13, 1936, none of them having complied, their entries were formally canceled.

Then, pursuant to your request, the United States Attorney was directed to file actions in ejectment; but, after the receipt of a memorandum from the White House dated October 28, 1936, enclosing a memorandum from Senator McCarran asking that the suits be withheld "until we can ask Congress to pass an Act to relieve the white settlers", the suits were held in abeyance. You were asked for your views; and on January 8, 1937, you advised

10-5-10-10

as that in arriving at your decision you had taken account of all elements, and you urged that the suits be prosecuted immediately. A few days thereafter Senator McCarran introduced a bill (S. 840, 78 Cong. 1 Sess.) which, as amended, later passed the Senate and was referred to the House Committee on Indian Affairs.

You then wrote the President on September 11, 1907, stating that

a suit in ejectment was filed by the Department of Justice as early as 1909. Subsequently, repeated efforts were made by this Department to bring the case to issue, but each time legal representatives of the squatters or members of the Nevada Congressional Delegation succeeded in persuading the Department of Justice to defer action until Congress might have an opportunity to pass remedial legislation. The Act of June 7, 1924, gave these squatters the right to file entries on lands admittedly belonging to the Pyramid Lake Indians.

On October 20, the President sent me the papers in his possession, with a note to speak to him about the matter. Examination of our file disclosed no reason why the Department of Justice should withhold the suits and the United States Attorney was accordingly directed to proceed. On November 4, I returned the file to the President together with a memorandum setting forth the whole history of the matter. The memorandum indicated that the United States Attorney had been directed to proceed.

Thereupon Senator McCarran again took the question up with representatives of this Department and requested delay until he could present the matter to the President. The suits were therefore held in abeyance

pending this further appeal by the Senator. On January 11, 1936, Miss Durand telephoned from the White House to convey a message from the President through Mr. McIntyre to "go ahead with the Pyramid Lake cases immediately." The United States Attorney was thereupon directed to file the actions.

Accordingly, since the matter has been brought to the attention of the President repeatedly, since he has my assurance that the cases will be prosecuted, and since he has directed that the suits be instituted, I am hardly in a position to consent to any further delay.

Sincerely

Attorney General

PSF
Justice
Cummings

File
personal

THE WHITE HOUSE
WASHINGTON

Mr President:

Mad 4/38

I have interviewed
the man who is to
take Jackson's place.*
He is well pleased
& glad to accept - but
must get certain
clearances at Yale.
He is at work at it &
will notify me.
It looks ok -

HSC

THE WHITE HOUSE
WASHINGTON

To The President
Personal

THE ATTORNEY GENERAL
WASHINGTON

March 5, 1938.

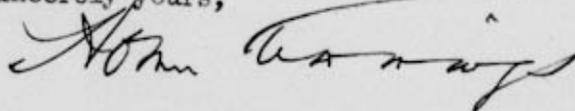
P.F.
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My dear Mr. President:

You will recall that sometime ago I spoke to you about taking a vacation. Cecilia and I are planning to leave Washington tomorrow, Sunday, at 5:25 P. M. for Boca Raton, Florida. I hope that this has your approval.

I think everything is in good shape. Mr. Jackson will, of course, be Acting Attorney General during my absence and I shall be in constant touch with the office.

Sincerely yours,



The President,
The White House.

THE WHITE HOUSE

WASHINGTON

~~HIGHLY CONFIDENTIAL~~

March 16, 1938.

*PSF: Cummings
Justice*

MEMORANDUM FOR

THE ATTORNEY GENERAL

I understand that Circuit Judge Bingham of the First Circuit may retire. He is a fine type of liberal New Hampshire Democrat. If he does so, will you please consider his son -- an equally fine type and even more liberal. While young he might be a solution of the problem.

Please do not talk with anyone else about it.

F. D. R.

THE WHITE HOUSE
WASHINGTON

*PSF; Cummings
Justice*

CONFIDENTIAL

April 8, 1938.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you read this and come
to see me with it at two o'clock?
It is not to be used except in
conjunction with another Message
of "peace and good-will" and,
therefore, will not scare the
country to death.

F. D. R.

Message to Congress

OFFICE OF
THE ATTORNEY GENERAL



file personal

April
1938

Dear Mr. President:

This is an illustration of the value of an order I issued some weeks ago.

W. H. C. W.

P.S.

With especially p. 2.

T. D. QUINN
ADMINISTRATIVE ASSISTANT TO
THE ATTORNEY GENERAL

Department of Justice
Washington



April 1, 1938.

MEMORANDUM FOR THE ATTORNEY GENERAL.

I thought you would be interested in the case of Deputy Marshal Joseph Flanagan.

You will recall that some weeks ago the procedure was initiated of having the fingerprints taken of all United States Marshals and their deputies and forwarded to the Department and searched through the Identification Division of the FBI.

In Mr. Flanagan's case we received information that his record reflected by the FBI files was as follows:

PD, New York, N.Y.	Joseph Flanagan	1897 P.L.
	#E-4626	4-11-30 (revolver)
" " " " "	1915, drugs; Warwick Farms.	
" " " " "	2-21-17, NYC., drugs; on 11-22-17, sentence suspended.	
" " " " "	9- 4-18, NYC., hypo needle; on 12-9-18 sentence suspended.	
" " " " "	1920, NYC, drugs; 90 days workhouse.	
" " " " "	2-2-21, NYC, petty larceny; on 7-16-21, 4 mos. workhouse.	
" " " " "	5-31-22, NYC., drugs; on 6-5-22, 6 mos. workhouse.	
" " " " "	1925, NYC, drugs; on 1-19-25, workhouse.	

Upon ascertaining this information Marshal John J. Kelly, Southern District of New York, was communicated with by letter on March 14, 1938, and requested to secure the resignation of Mr. Flanagan immediately.

Congressman O'Connor of New York conferred with me several times in an effort to see if something could not be worked out in this case whereby Mr. Flanagan could be permitted to remain on the payroll as a Deputy Marshal. I, also, conferred with Mr. Flanagan. Congressman O'Connor, as well as Mr. Flanagan, was informed that in view of all of the circumstances the Department's action would have to stand and his resignation has been submitted and accepted.



T. D. QUINN
Administrative Assistant
to the Attorney General.



*file
personal*

Office of the Attorney General
Washington, D. C.

(11)

April 22, 1938.

The President,
The White House.

My dear Mr. President:

A large number of investigations and a considerable amount of litigation have been handled by the Department of Justice in connection with violations of the statutes and Executive Orders relating to the hoarding of gold. You may be interested to receive this brief resume of the work done by the Department of Justice in that connection.

As you of course recall, beginning with the Act of Congress of March 9, 1933, Executive Orders and Acts of Congress prohibited the withdrawal, hoarding and exportation of gold, and required all persons to surrender gold bullion, gold coin and gold certificates in exchange for other currency. Provision was made for the punishment of violators and the seizure and forfeiture of such gold unlawfully withheld, acquired, transported, exported or earmarked.

After full opportunity had been given to all persons to comply voluntarily with the Executive Order of April 5, 1933, I instructed the Federal Bureau of Investigation of this Department to undertake a comprehensive investigation of failures or refusals to fulfil the requirements of the Order. The result was the discovery of numerous gold hoarders, many of whom, upon discovery, voluntarily surrendered their gold, while some remained recalcitrant, making further action necessary.

In the course of their work, the Agents interviewed 5,629 persons. By September 28, 1933, when the investigations had been completed, the amount of gold which was returned and can be attributed directly or indirectly to these activities was \$38,901,009.95. Of this amount \$8,700,597.26 was definitely due to the activity of Special Agents in particular cases. Thereafter legal proceedings, civil and criminal, were instituted to reach persons who remained obdurate.

In the aggregate, seventeen criminal prosecutions were instituted. In nine of them defendants returned their gold to the Treasury, after the commencement of proceedings, and thereupon the cases were nolle prossed.

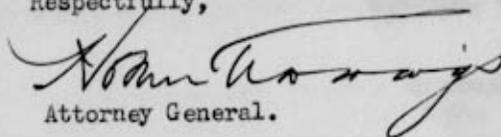
Two cases were dismissed for lack of sufficient evidence. Five cases went to trial, in four of which there were convictions, one terminating in an acquittal. One defendant was fined \$50; another fined \$10,000 and sentenced to 40 days' imprisonment in jail; one was given a suspended sentence of one year in jail and a fine of \$500; and one was sentenced to imprisonment in jail for six months.

Three actions were filed to recover the double penalty provided by the Gold Reserve Act of 1934. All three were eventually dismissed. Ten libel proceedings were instituted under the Gold Reserve Act of 1934, against gold held by defendants named in such proceedings. Decrees of forfeiture were entered in nine of these cases, involving in the aggregate over \$17,000. In the tenth case, which involved \$200,000, a settlement has been recently consummated.

In two instances, the Government intervened in equity suits between private parties involving title to a large amount of gold coin, which was eventually turned over to the Treasury.

Except for small cases which may occasionally arise, we may consider the matter brought to a close.

Respectfully,


Attorney General.



Office of the Attorney General
Washington, D.C.

April 25, 1938

file
personal
()

My dear Mr. President:

At its session today the Supreme Court decided six cases on the merits in favor of the Government and four against it. In two cases no disposition on the merits was made by the Court, the cases being remanded for further proceedings in the trial court. In another case in which the Government was not formally a party its position was stated to the Court and the Court's decision was contrary to such position.

In United States v. Bekins the Court held that Chapter X of the Bankruptcy Act, added by the Act of August 16, 1937, and known as the new municipal bankruptcy act, is constitutional in so far as it provides for the composition of the indebtedness of state taxing agencies, in this case an Irrigation District, with the consent of the State. Although the case of Ashton v. Cameron County District, 298 U.S. 513, was not expressly overruled, the Court rejected each of the grounds which formed the basis of that decision. Justices McReynolds and Butler dissented. In United States v. Carolene Products Co. the Court upheld the constitutionality of the Filled Milk Act of March 4, 1923, which prohibits the shipment in interstate commerce of skimmed milk compounded with any fat or oil other than milk fat, so as to resemble milk or cream. In Tennessee Electric Power Co. v. Ickes the Court, upon the authority of Alabama Power Co. v. Ickes, 302 U. S. 464, affirmed the decision of the lower court dissolving a temporary injunction, issued by consent several years ago, which restrained the Administrator of Public Works from making a loan and grant to the City of Chattanooga to build a municipal light plant. In United States and Interstate Commerce Commission v. Pan American Petroleum Corp. and Same v. Humble Oil and Refining Co. there were upheld orders of the Interstate Commerce Commission which commanded the railroad or railroads serving industrial plants of the appellees to cease and desist from the payment of allowances for switching services performed by plant facilities. In Baltimore & Ohio Railroad v. United States and Interstate Commerce Commission the Court sustained orders of the Interstate Commerce Commission affecting the rate structure on coke moving into central territory from southern points.

In Hinderlider v. La Plata River and Cherry Creek Ditch Co. the Court held valid a compact by which Colorado agreed to furnish to New Mexico a certain proportion of the flow of the La Plata River. In carrying out this compact, the Colorado Court held that the State by compact could not deprive the ditch company of the water to which it was entitled under an earlier court decree. The Supreme Court reversed, holding that New Mexico was entitled to its fair share of the water of the river, and that all private water rights were held subject to such a recognition by Colorado, by compact or otherwise. The Government's contention (presented by memorandum on certification by the Court of a constitutional question) that the consent of Congress made the compact an "act of Congress" was rejected.

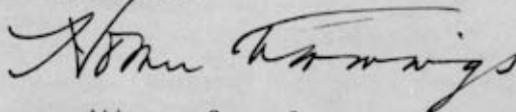
In Guaranty Trust Co. v. United States the Court held, against the contentions of the Government, that the New York statute of limitations applies in an action by the United States to recover a bank deposit of \$5,000,000 made by a former Russian government in 1917 and assigned to the United States by the Soviet Government in 1933. The holding included decisions that a foreign sovereign is not exempt from a state statute of limitations and that, on the question of limitations, the United States, as assignee, was in no better position than the Soviet Government. The case has been remanded to determine whether the evidence discloses an issue of fact as to repudiation which must be tried. In Morgan v. United States the Court held that the right to a hearing under the Packers and Stockyards Act of 1921 embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and that this was not accorded appellants because the findings prepared by government officials who conducted the general inquiry were not served on appellants before being signed by the Secretary of Agriculture. The Court agreed with the Government's contention that it was not the function of the court to probe the mental processes of the Secretary in reaching his conclusions, if he had given the required hearing. In United States v. Shoshone Tribe of Indians, in which the Court had previously held that the Government, in 1878, had taken the Tribe's land by putting upon its reservation, without its consent, another band of Indians, the Court today ruled that under its treaty with the Government the Indians' right of use and occupancy was equivalent to a fee simple ownership and that, therefore, they were entitled to the value of all the timber and minerals upon or in the land taken. In United States v. The Klamath Tribe the Court held that an exchange by the Government of tribal lands for other lands in 1906 constituted a taking for which the Government must pay just compensation, including interest from the date of taking. The Court also held upon the authority of the Shoshone case that the Indians were entitled to recover the value of the timber upon the land taken. The result of the decisions in the Shoshone and Klamath cases is the affirmance of judgments against the Government totaling over ten million dollars.

In Interstate Circuit v. United States and Paramount Pictures Distributing Co. v. United States the Court did not dispose of the case on the merits but, two Justices dissenting, remanded it to the District Court for the entry of findings of fact and conclusions of law. In this case the Government sued for an injunction against the carrying out of an alleged conspiracy in restraint of interstate commerce between distributors and exhibitors of motion picture films.

In Federal Power Commission v. Metropolitan Edison Co. the Government succeeded in frustrating an attempt in the Supreme Court by certain power companies to delay disposition of the case at the present term. The case involves the review of a decision by a Circuit Court of Appeals which had the effect of halting an investigation by the Federal Power Commission of inter-company charges within the Associated Gas and Electric System.

The Court acted upon petitions for writs of certiorari in eight cases filed by opponents, granting only one of them. The Court also denied a petition by the Government in a tax case for a writ of certiorari.

Respectfully,



Attorney General.

The President
The White House
Washington, D. C.



*file
personal*

Office of the Attorney General
Washington, D.C.

*PSF
Justice
Cummings*

April 26, 1938.

The President,
The White House.

My dear Mr. President:

Today I received a visit from six of the seven Democratic Congressmen in Philadelphia, to wit:

James P. McGranery
Leon Sacks
Frank J. G. Dorsey
Michael J. Bradley
Ira W. Drew
J. Burwood Daly.

They say that the seventh Congressman from Philadelphia, namely Michael J. Stack, is not in their group and is a sort of a lone wolf. Incidentally they told me that Mr. Stack was against the Reorganization Bill and has been against the Administration's measures off and on at many crucial moments.

They asserted that the six mentioned have been pro-Administration and strong supporters of all your policies. They said also they were a unit in active and open support of the Reorganization Bill. They also asserted they were endeavoring, so far as possible, to keep out of the political struggle now going on in Pennsylvania.

Incidentally they stated that, in their judgment, the organization ticket headed by Governor Earle would be overwhelmingly successful in the Primaries to be held on the seventeenth of May. They insisted it would not even be a semblance of a struggle and that the result would be so one-sided that it would be ludicrous. They maintained that their chief interest was in the Party and its success in the November election. They deplored the present situation in Pennsylvania and went into great detail with reference to it.

The primary purpose of their visit was to suggest that no Judicial appointments should be made until after May 17. They had heard that Senator Guffey had recommended Judge Maris for a place on the Circuit Court of Appeals. Apparently they had nothing against Judge Maris and had no alternative candidate to suggest. In fact they said they were not particularly interested in this position nor concerned as to the eventual appointee. They were concerned, however, as to the time when the appointment should be made. They maintain that it would be highly unfortunate if a nomination should be made before the seventeenth of May, which is the date of the Primaries. They said

that this would be immediately seized upon and widely advertised as indicating that you had taken sides in the primary struggle and that this would be an unfortunate outcome all around. They felt that the fairest way to deal with the matter was to do nothing about it until the present political turmoil subsides.

They also suggested that in the entire Democratic Delegation from Pennsylvania not more than about six could be found supporting the Guffey ticket and that some of the six were quiescent about it. They said that Congressman Faddis and Congressman Walter were the only two Congressmen vociferous in the matter and that Walter, although he knew the vote was coming up on the Reorganization Bill, absented himself and that Faddis was active in his opposition to the bill.

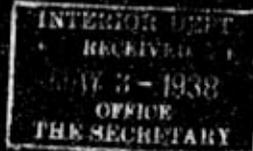
All in all they seem to feel they are entirely warranted in making the suggestion not that something should be done, but that nothing should be done in the matter of the judicial appointments until after the Primaries. That, they felt, would be to the advantage of the Administration and of the Party as a whole. They also said they felt they spoke in disinterested fashion. Only one of the six has any opposition in the matter of renomination and that opposition is so slight as to be of no consequence. They did feel, therefore, that all will be renominated and they also felt they will be re-elected no matter what the outcome of the Primaries may be. They said their opposition is only in the party interest and has to do with the general results in November next, and for that matter in 1940.

Sincerely yours,

Tommy A. A. A.



Office of the Attorney General
Washington, D.C.



April 27, 1938

The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

I have your letter of April 13, 1938, requesting my opinion as to the extent of your "supervisory authority with respect to the activities of the United States Housing Authority under section 3 (a) of the United States Housing Act of 1937."

The United States Housing Authority is a body corporate of perpetual duration created by the United States Housing Act of 1937 (c. 896, 50 Stat. 888), which provides for the eradication of slums and the erection of decent, safe, and sanitary dwellings for families of low income. The statute vests the powers of the Authority in an Administrator appointed by the President by and with the consent of the Senate and all other officers and employees are appointed by the Administrator. The act provides for a three year program, authorizing the making over such period of loans not exceeding the total amount of \$500,000,000 to public-housing agencies to assist in the development, acquisition and administration of low-rent-housing or slum-clearance projects by such agencies and the making of annual contributions or capital grants in prescribed amounts

to assist in achieving and maintaining the low-rent character of the undertakings. Section 6 (d) provides that no annual contribution, grant, or loan, and no contract for any annual contribution, grant or loan, under the act, shall be undertaken by the Authority except with the approval of the President.

Section 3 (a) to which you refer provides as follows:

"There is hereby created in the Department of the Interior and under the general supervision of the Secretary thereof a body corporate of perpetual duration to be known as the United States Housing Authority, which shall be an agency and instrumentality of the United States."

The act contains no definition of the term "general supervision" or of its extent and scope. Insofar as your supervision pertains to any annual contribution, grant, or loan, or any contract therefor, it expressly is subordinated by section 6 (d) to the approval of the President. Any action by you in respect of those matters, therefore, necessarily must be in the nature of intermediate general supervision. The situation thus differs from that discussed in the case of Knight v. United States Land Association, 142 U. S. 161, in which the Court held that the Secretary of the Interior had full power to superintend and control the sale and disposal of public lands. There the Secretary's supervisory power over proceedings affecting titles to lands was made final by statute; whereas here should the Authority or the Secretary undertake any of the activities enumerated in section 6 (d) the power of neither would be final. Here the Congress has placed the President in complete control by making him the final arbiter

to determine in what manner the funds and credit, as provided in the act, best may be employed to assist the several States and their political subdivisions in carrying out the purposes of the act. While the President may not delegate to the Secretary the power of final approval so expressly conferred upon the President, the act is sufficiently broad to enable him to determine the extent and scope of the Secretary's duties in respect to the functions mentioned in section 6 (d).

In respect to the extent of your supervisory authority over activities of the United States Housing Authority other than those heretofore considered, the words "general supervision" in section 3 (a) must be taken to have been used by the Congress in their commonly accepted sense, there being nothing in the statute to indicate a contrary intention. "To supervise" is defined in Webster's New International Dictionary as "to oversee for direction; to superintend; to inspect with authority; as to supervise the printing of a book," and the word is defined in the Standard Dictionary as meaning "to have general oversight of, especially as an officer vested with authority; superintend; inspect."

The decisions of the courts substantially adopt the above definitions, holding that "general supervision" implies more than a mere power to advise and suggest and that it includes power to superintend and oversee the acts and proceedings of those subject to such general supervision. Snyder v.

Siekles, 98 U. S. 203; Knight v. United States Land Association, supra; Hawley v. Diller, 178 U. S. 476, 485; Vantongerren v. Heffernan, 5 Dak. 180; State v. F., E. & M. V. R. R. Co., 22 Neb. 313, 328; Great Northern R. Co., v. Snohomish County, 48 Wash. 478, 485.

Originally the Housing Authority was planned as an independent agency, but during consideration of the bill in the Senate, section 3 (a) was amended by placing the Authority in the Department of the Interior and under the general supervision of the Secretary thereof. This action was deemed advisable in order that the Authority should have the full benefit of the housing experience of the Public Works Administration, and should conform to the organization recommendations of the President by being placed within one of the permanent Departments (H. Rept. 1545, 75th Cong., 1st sess).

Only a few Senators took part in the discussion of the scope and effect of the proposed amendment, and their views were strongly divergent. Some were of the opinion that the amendment would give to the Secretary of the Interior control and authority over the activities of the Housing Authority. The sponsor of the amendment, on the other hand, stated that the term "general supervision" meant the general direction, not the specific control, of the Authority and that in his judgment the amendment meant "in an advisory capacity" (Cong. Rec. vol. 61, pp. 8354-8357, 8356). The majority of the Senators voting gave no expression of their understanding of the significance of the words "general supervision." The debate upon the

amendment, therefore, discloses no intention of the Congress to use the words in other than their ordinary meaning.

Accordingly, it is my opinion that, subject to the requirement that no annual contribution, grant or loan, and no contract for any annual contribution, grant or loan may be undertaken by the United States Housing Authority either directly or under your supervision except with the approval of the President, you are empowered to superintend and oversee the activities of the Housing Authority.

Respectfully,


Attorney General.



*file
journal*

Office of the Attorney General
Washington, D.C.

May 2, 1938

THE WHITE HOUSE
MAY 3 9 25 AM '38
RECEIVED

My dear Mr. President:

Only two Government cases were decided upon the merits by the Supreme Court at its session today. In these cases (Pacific National Co. v. Welch, Former Collector of Internal Revenue and United States v. Kaplan) the Court sustained the Government's contentions, holding that a taxpayer who in one year reports the total income from the sale of property, to be paid in installments in later years, makes a binding election and cannot change to the installment basis of reporting income in seeking refunds.

Two petitions for certiorari filed by opponents were denied.

In Federal Power Commission v. Metropolitan Edison Co. the Court on Thursday last, after frustrating an attempt by certain power companies to delay disposition of the case at the present term, granted the Government's petition for writ of certiorari and the case, pursuant to direction of the Court, is being heard today. It involves the review of a decision by a Circuit Court of Appeals which had the effect of halting an investigation by the Federal Power Commission of inter-company charges within the Associated Gas and Electric System.

After its session today the Court will recess until Monday, May 16th.

Respectfully,

Attorney General.

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



file personal

Office of the Attorney General
Washington, D.C.

THE WHITE HOUSE
MAY 17 2 44 PM '38
RECEIVED

May 16, 1938

My dear Mr. President:

The Supreme Court at its session today decided fifteen cases on the merits in favor of the Government and one against it.

In Heiner, former Collector of Internal Revenue v. Mellon (two cases) it was held that surviving partners are taxable on their distributive shares of the profits of a partnership in liquidation, after dissolution upon the death of a partner, during the year in which the profits are received by the partnership and not after a completed liquidation discloses the profits of the business venture as a whole. In National Labor Relations Board v. Mackay Radio and Telegraph Co., the Court again upheld an order of the Labor Board which had been held invalid by a Circuit Court of Appeals. The case establishes the principle that employees who voluntarily go on strike continue to be protected by the National Labor Relations Act, and that unfair discrimination against them at the conclusion of the strike may be remedied by an order of reinstatement. The case also demonstrates that the Board has been correct in its contention that the recent decision in the Kansas City Stockyards case has only narrow, if any, application to Labor Board proceedings. In Commissioner of Internal Revenue v. National Grocery Co. the Court, reversing a judgment of the Circuit Court of Appeals for the Third Circuit, held that the Company had been availed of for the purpose of escaping the surtax on its sole stockholder and that, therefore, a fifty per cent penalty tax was properly assessed. The opinion discusses and sustains the constitutionality of the provision of the Revenue Act imposing such liability. Justices McReynolds and Butler dissented. In Taft v. Commissioner of Internal Revenue the Court agreed with the Government that promises to make gifts to charitable institutions by the decedent, even though enforceable against the estate, are not deductible from the value of the gross estate either as claims incurred for an adequate and full consideration in money or money's worth or as transfers to charitable institutions. In Federal Trade Commission v. Goodyear Tire & Rubber Co. the Court held that a proceeding instituted by the Federal Trade Commission against the Company for violation of Section 2 of the Clayton Act,

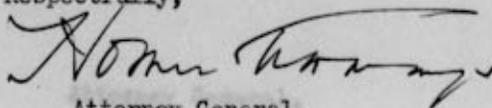
prohibiting sales at discriminatory prices, did not become moot by virtue of the amendment embodied in the Robinson-Patman Act of 1936, or by virtue of discontinuance of the practice which the Commission found to be illegal. The case was therefore remanded to the Circuit Court of Appeals for the Sixth Circuit for decision on the merits. In Zerbst, Warden v. Kidwell et al (a group of eight cases) the Court held that the Parole Board had power to require complete service of a Federal sentence where the prisoner had been paroled and had committed a second Federal offense during the period of parole for which he was reincarcerated in a Federal institution. In Lowe Bros. Co. v. United States the Court held that the District Courts are without jurisdiction to entertain a suit against the United States to recover income and excess profits taxes in excess of \$10,000 when they were collected through a credit by the Commissioner of an overpayment of taxes for another year. In Lang v. Commissioner of Internal Revenue the Court, answering questions certified by the Circuit Court of Appeals for the Ninth Circuit, ruled (contrary to the Government's contention) that only half of the proceeds of insurance policies, premiums on which were paid out of the community funds, can be included in the deceased husband's gross estate for inheritance tax purposes. The decision adds another to the numerous tax advantages enjoyed by spouses fortunate enough to live in community property states.

In the Republic Steel case the Court granted the motion of the National Labor Relations Board for leave to file a petition for original writs of prohibition and mandamus, and issued a rule returnable next Monday to the judges of the Circuit Court of Appeals for the Third Circuit. The Court's ultimate action upon the Board's petition will finally settle the question, much litigated recently, of the power of the Board to vacate its orders after proceedings for review have been commenced in a court, but before the record has been filed.

In California v. Latimer the Court, without opinion, gave leave to the State to file an original bill of complaint against the members of the Railroad Retirement Board and the Commissioner of Internal Revenue seeking an injunction against collection of taxes under the Carriers Taxing Act, and against making orders under the Railroad Retirement Act, with respect to the operations of the State Belt Road, a railroad owned and operated by the State of California. Exemption is claimed because the Railroad is said to be an instrumentality in the State's governmental functions.

The Court also granted one petition for writ of certiorari filed by the Government in a tax case. Eight petitions for writs of certiorari filed by opponents were denied and three granted, as to one of which, however, the Government concurred in the issuance of the writ.

Respectfully,



Attorney General.

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

May 20, 1938.

(1) PSF
Justice
Cummings

Dear Cecilia:-

Thank you ever so much for that very amusing and interesting letter and also for the stamps which are a real addition to my collection.

I think the description of your dinner party in Florida is priceless. Go to it and bite them every chance you get!

I had a grand cruise to the Virgin Islands -- some fishing, no work and lots of rest.

My best wishes to you and I hope to see you very soon.

As ever yours,

Mrs. Cummings,
2700 Tilden Street, N.W.,
Washington, D. C.

THESE STAMPS ARE NOT TO BE USED FOR ANY OTHER PURPOSES
AND NOT TO BE USED FOR ANY OTHER PURPOSES

NO. 107 JUNE

MEMO FOR THE P. S.

Please prepare a nice line of thanks for letter and stamps and tell her to go to it and bite them every chance she gets.

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]

May 4, 1938.

Dear Mr. President.

From Mr. Sam E. Woods
I received three stamps issued
about March 17th in Hungary
in connection with the Catholic
Congress about to be held
there and to honor Hungary's
patron saint, St. Stephen. I
hope they add to your collection.

You are now out
in the midst of some ocean
and I've just returned from

the wars, that is, ^{the} overrunning repairs on
the Greenwich house & in interviewing
real estate men with a view to
getting a tenant - our former one
got so many in-laws in he had to
get more bedrooms.

While in New York I
heard "Parsifal" at the Met. and saw
"Our Borrowed Time" - a charming
fantasy and ^{also} a play that I think
one of the most wonderful
things I have ever seen in the
theatre - "Our Town". If I were Mr.

Sam Goldwyn I say it was
super-colossal. I came out from
it under a spell and was so
happy when it received the
Pulitzer Prize. I hear that the
P.W.H. play "One-third of a Nation" is
splendid. Last year I saw "Murder
in the Cathedral" by T.S. Eliot and
"Macbeth" done by colored actors. The
former was beautifully written and

played. you would have enjoyed the
latter seeing the Scottish miter
turned in to Voodoo doctors with Haitian
palms waving over their prancing. Why
don't we have them all done in Washington?

Before I went North Homer & I
went to Florida. For 2½ weeks we were
at the Boca Raton Club where everyone
is down to his last 40 millions.
Lordy, are they mad at Whitney! A
former utility man gave a dinner one
night & I sat on his right. We
were just in the midst of soup
when someone (not I this time) asked
him about a forementioned Mister W.
He almost had a stroke and the
center piece got a good sprinkling
of rice green brittle with sherry - "He
ought to be hanged, drawn & quartered."
That was my cue so I said in my
most dulcet tones "Why, Mr. Munroe?
at that he had ½ a stroke making 1½
knowing he was good for 3 before
passing out I still persisted. "Why,
why, why, because he's a traitor

+ ought to be hanged."

"No, says I, still in dulcet tones, I don't agree with you. Mr. Whitney didn't do very much - he stole only from the rich; no one is missing a meal on his account, certainly not his brother who is Mr. J.P. Morgan's partner; nor his wife - nor the members of the N.Y. Yacht Club. Really, Mr. Munroe, if you wanted to carry the analogy far enough, he was one-half of a modern Robin Hood. He stole from the rich, true he didn't give to the poor, but I can't feel he ought to be in prison so long as Mr. Insull and Mr. Charles E. Mitchell are out."

"Oh, no, oh no, that's different - Mr. Insull + Mr. Mitchell just made an error."

"They certainly did," said Sweetness + Light - they were found out."

By that time he suddenly

discovered he had to dance with one
of the ladies way across the table
& I was glad to see him go, because
he was on the verge of the third fatal
stroke & not being a huntsman I
didn't want to be in at the death.

Jim what is known as the
Death of The Party when I get with
that crowd, & Jim discovered a new
technique: I shoot my barbs on
dulcet tones. They stick deeper and
they can't refute the facts nor
resent the tone.

I had a lovely time!

The old blood pressure
jumped up a bit, but is steadily
declining - 190 the other day - the
doctor hopes to stabilize it at 175
which will be normal for me.

The news about the
results in Florida has just come in -

Isn't it wonderful?

Homer and I so enjoyed your last Fireside Chat. It was splendid.

Mr. Edsel Ford sat next to me at a luncheon at Mr. Gene Turner's in Florida.

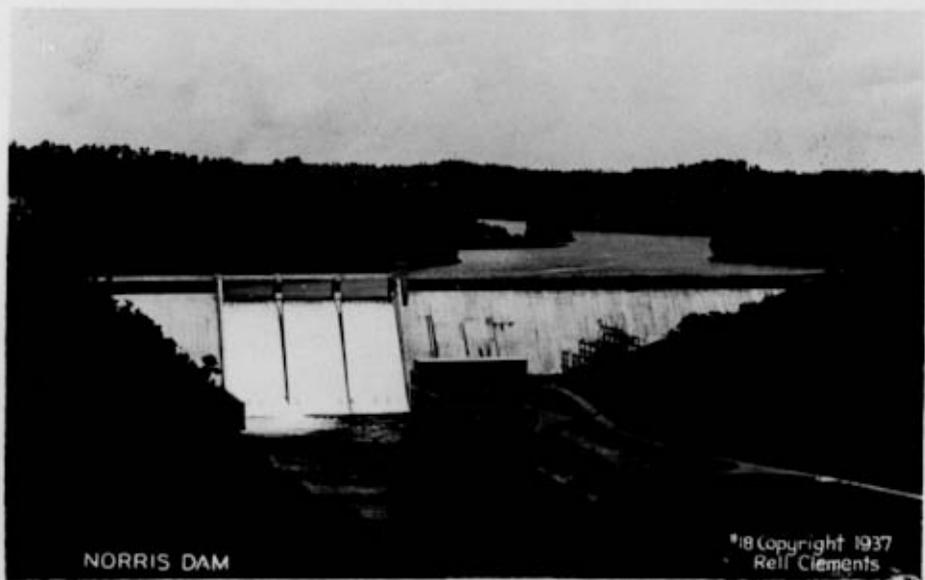
He's a nice, quiet little man who never says a word to anyone, but we kept going because I suddenly became interested in his father's antiques and even went back to The Peace Ship to keep conversation going. It just proves you don't have to have

any brains to make money. He's
so afraid of kidnapers he won't
build a house down there, but
lives on a boat tied up to the
property he owns. I liked him -
he was so simple.

I'm getting to be a sylph!
Wouldn't it be my luck to
have Ziegfeld dead just when
I'm trying to be a Glamour
Girl! Shucks.

Homer has given me
your various messages and
thank you for your kind
inquiries. With every good
wish.

Cecilia.



NORRIS DAM

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Reif Clements

file
 Personal Cummins
 Branch 12

POST OFFICE
 CORRESPONDENCE

NO. 1
 JUN 15
 4 - PM
 1938
 TENN.

1 CENT

Just missed in
 morning mail
 this week
 in this district
 of Tennessee. Please see
 the attached's judicial
 conference in Nashville.
 Wash DC
 (see the enclosure)

The President,
 The White House,
 Washington,
 D.C.
 Att. Miss G. Hand.

THE WHITE HOUSE
WASHINGTON

*PSF
Justice
Cummings*

June 17, 1938.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Please obtain a personal and confidential recommendation in this case from Judge Revill at Greenville, Georgia, but it is important that this be obtained in strictest confidence. He can be told that it is for me.

I believe Judge Revill is with the R. F. C. in Atlanta.

F. D. R.

Case from the Department of Justice
MOZART STRICKLAND

THE ATTORNEY GENERAL
WASHINGTON

June 18, 1938.

*file
personal*

THE WHITE HOUSE

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My dear Mr. President:

A few days ago I was speaking to you about the successful operation of the Judicial Conference in the Fourth Circuit. Enclosed herewith you will find a copy of the Court Rule adopted by the Fourth Circuit which established the Conference. The session I attended was the Eighth Annual Conference.

You may have noticed that the idea is beginning to take hold as evidenced by the action of Judge Groner and his associates in calling a Judicial Conference in the District of Columbia. This conference, the first of its kind, occurred on Thursday, June 16. I was in attendance during a portion of the proceedings and I am hopeful that a beginning has been made for effective work in the District of Columbia. It is my purpose to encourage the holding of similar conferences in all of the Circuits.

Sincerely yours,

Norman Thaw

The President,
The White House.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT

JANUARY TERM, 1938

It is hereby ordered by this Court that the following Rule, be, and the same is hereby, adopted as a Special Rule of this Court, viz:

SPECIAL RULE—JUDICIAL CONFERENCE

(a) There shall be held each year at the Asheville term of this Court a Conference of all of the Circuit and District Judges of the Circuit for considering the state of business in the various Districts, for devising means for relieving congestion of dockets where this may be necessary, for improving procedure in the courts and for exchanging ideas with respect to the administration of justice. It shall be the duty of every Judge of the Circuit to attend such Conference.

(b) The first day of the Conference shall be for the Judges alone and shall be devoted to a discussion of matters affecting the state of the dockets and the administration of justice in their respective Districts. Members of the Bar to be chosen as set forth in the succeeding paragraph shall be members of the Conference and shall participate in its discussions and deliberations on the second and third days.

(c) Members of the Conference from the Bar shall be composed of the following:

(1) The Presidents of the State Bar Associations of the States of the Circuit, and five delegates from each of such State bar associations to be appointed by the President thereof.

(2) All United States Attorneys of the Circuit.

(3) One representative of each Grade A Law School within the Circuit.

(4) Lawyers of the Circuit appointed as Members of the Conference by the Circuit Judges. Each Circuit Judge shall

annually appoint three lawyers as Members of the Conference for that year.

(5) Members of Committees on Rules and Procedure appointed by District Judges. Each District Judge shall appoint two members of a Committee on Rules and Procedure to serve within his District for a period of 3 years, and all such committee members shall during their periods of service be Members of the Conference.

If any State Bar Association President or District Judge shall fail, upon request, to appoint the delegates or members of committees which he is herein designated to appoint, the Senior Circuit Judge of the Circuit shall make such appointments.

(d) The Clerk of this Court shall be Secretary of the Conference and shall make and preserve an accurate record of its proceedings.

JANUARY 15TH, 1938.

JOHN J. PARKER,
Senior Circuit Judge.
ELLIOTT NORTHCOTT,
U. S. Circuit Judge.
MORRIS A. SOPER,
U. S. Circuit Judge.

A true copy:

Teste:

CLAUDE M. DEAN, *Clerk,*
U. S. Circuit Court of Appeals, Fourth Circuit.

Cum gratia
d-1

PSF
Justice

file
private

THE WHITE HOUSE
WASHINGTON

6/24/38

MEMORANDUM FOR THE PRESIDENT

Both the Attorney General and I feel that the Moving Picture prosecution should not be started without first conferring with you.

However, there is a great deal of talk now going on among the Independents which bothers me because sooner or later some sort of story is coming out that the Moving Picture prosecution is being stopped. I am at present dodging the attorney for the Independents after having stopped a set of resolutions which they contemplated passing at the last meeting.

There is, therefore, need for an early decision and early announcement.

Thurman Arnold
THURMAN ARNOLD

THURMAN W. ARNOLD
ASSISTANT ATTORNEY GENERAL

*file
private*

Department of Justice
Washington

June 24, 1938

MEMORANDUM FOR THE PRESIDENT

I am informed by Mr. Jackson that there is a possible conference with prominent individuals connected with the moving picture industry. For your information in connection with matters that may arise at that conference, I show you a tentative statement which has been prepared for release if and when the court action is taken. This statement has not been passed or approved as yet, and it is given you only as our tentative ideas of what it should contain in case they should be useful to you.

Thurman Arnold
THURMAN ARNOLD
Assistant Attorney General

For immediate release.

DEPARTMENT OF JUSTICE

in accordance with their gross annual revenues.
Reasons That Led Department to Take Jurisdiction - The investigation
tion by the Department of Justice was made in _____, 1938.

In accordance with its previously announced policy, the Department of Justice today issued the following statement:

A petition in equity was filed today in the District Court of the United States for the Southern District of New York against the major motion picture companies, their associated and subsidiary companies and numerous individuals connected with the industry. The petition was filed under the Sherman Anti-Trust Act and it alleges that the defendants jointly and severally violated the Act.

Parties Defendant. The defendants named in the petition are the eight major motion picture companies; viz., Paramount Pictures, Inc., Loew's, Incorporated, Irving Trust Company, New York, New York, as Trustee in Bankruptcy for Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation, Columbia Pictures Corporation, Universal Corporation, and United Artists Corporation, 25 subsidiary or associated corporations and 152 individuals, officers or directors of the corporate defendants. The Motion Picture Producers and Distributors of America, Inc., a trade association commonly referred to in the industry as the Hays organization, as well as its principal officers, are also made party defendants. The membership of this association is made up, for the most part, of the major companies who are the other defendants in this suit. Its activities are wholly financed by those companies through a system of fees and dues which are levied upon them exhibitors has given them the actual power to exclude those producers

in accordance with their gross annual revenues.

Reasons That Led Department to Make Investigation. The investigation by the Department of Justice was made in response to numerous complaints by independent producers, distributors, and exhibitors and by the theatre-going public. Independent companies complained that the defendants were threatening their complete exclusion from the business. The Department of Justice was interested on its own initiative because the motion picture business is not a private affair, but a matter of vital concern not only to those immediately interested but to 85 to 90 million people who attend the picture theatres every week.

I. ECONOMIC CONDITIONS IN THE INDUSTRY WHICH
CREATED MONOPOLISTIC CONTROL

Producer-Exhibitor Combinations. The public theatres constitute the only market for the commercial distribution of motion picture films. The finer theatres and theatre chains are now under the domination of five of the major companies, Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation, who, together with the three other major companies, United Artists, Columbia Pictures Corporation and Universal Corporation, control about 65% of all pictures produced.

The actual control of product is even greater than would appear from this figure, because from 80% to 90% of the quality feature films upon which exhibitors are dependent for the successful operation of their theatres are produced or distributed by the eight major companies.

The control of the finer theatres by the five major producer-exhibitors has given them the actual power to exclude other producers

from those markets. This is the very essence of monopolistic power forbidden by the Sherman Act.

Absence of Competition between Major Companies. In acquiring theatres and chains of theatres, the major companies have not occupied, to any great extent, the same territory. Indeed, there is a virtual division of territory. Operating in their separate divisions of territory, the theatres of each major company afford a market for the pictures produced by the others. As the aggregate annual production of the major companies is sufficient to fill comfortably the theatre programs of their respective theatres, outside pictures are put under an impossible handicap. So close is the combination that these companies have pooled their most valuable assets and made them available to each other. These assets consist of stars and feature players of known drawing power, as well as directors, technicians and physical properties such as sets and scenes. Seldom are these facilities made available to independent producers.

Suppression of Independent Theatres. So far as ownership is concerned, there are enough independent theatres to furnish the basis for substantial competition with the theatres controlled by the major companies. This competition, however, is suppressed by the major companies by denying to independents equal access to the films distributed by them. A theatre affiliated with a major company is given first access to the product of all the major companies before the independent is permitted to exhibit it on any terms. Thus, in a territory where an independent exhibitor is in competition with a theatre affiliated with a major pro-

ducer, he can not obtain first-run pictures. He must wait until the affiliated theatre has skimmed the cream by prior exhibition. This is true regardless of the price which the independent might be willing to pay for the film. This is not the only handicap. There are special types of contracts and contract modifications, including various possible reductions in film rentals where pictures turn out to be unpopular, which are given to the affiliated theatre. The independent theatre is denied such contracts.

The independent theatre is also subject to numerous discriminations such as block booking, full line forcing, the imposition of preferred playing time, and discriminatory rentals which are most oppressive.

This monopolistic power has a tendency to force independent theatres into bankruptcy or to sell to the producer-owned theatre chains at the latter's terms. The power of life or death in the hands of the major producers as exercised today goes even further than government's power of eminent domain, because it is controlled by no judicial hearing.

Economic Effects of the Combination. The broad effects of the exercise of this arbitrary power may be summarized as follows:

(1) Theatre patrons in any community are given no choice of the pictures they desire to see. It is impossible for the taste of any community to find expression in its own local theatre. Each community is regimented into accepting the kind of picture which will make the most profits on a nationwide scale.

(2) There is no opportunity for new forms of artistic expression which are not approved by those in control of the major companies, even though there exist communities which would support them.

(3) The charge on independents for the use of the films is all the traffic will bear and they have no place to turn for relief. They are in a virtual state of peonage through the control exercised by the major companies. Pictures may be withheld for any reason, or no reason at all. The best summary of the evils of this producer-exhibitor control has been made by Mr. Adolph Zukor, now chairman of the board of directors of the defendant Paramount Pictures, Inc., in a statement published in 1918 in which he predicted exactly what has happened since that day:

The evil of producing and exhibiting coalitions is one of the gravest perils that has ever confronted the motion picture industry. For some time past this condition has been developing and now threatens to halt the industry's progress, if indeed it does not set it back beyond the point at which it first took its place among the organized industries of the day. It has been permitted to develop this far because no one individual, either producer or exhibitor, has dared face the facts himself, and compel other producers and exhibitors to face them with him.

* * * * *

We should all realize that the most effective way to develop the industry to its largest capacity is to maintain a broad open field of endeavor in its every branch. The exhibitors now enjoy the advantage of having the choice of several well-established feature programs from which they can select any range of subjects suitable to their individual requirements. Also because these producing firms are well established they are in a position to produce pictures far ahead of release date, giving the exhibitor an added advantage in being able to arrange his bookings far in advance, and therefore avail himself of a careful selection of subjects. The producers, in feeling that they have all the exhibitors in the country as prospective customers, are encouraged to make greater efforts and expend bigger sums for their productions and equipment. On the other hand, the exhibitors, in keeping all their lines open, have the choice of all the productions on the market. In this manner the business opportunities of both factors are unrestricted and permissible of any possible expansion. The moment exhibitors limit

the market of producers, or the producers limit the buying opportunities of the exhibitor, the business is retarded and its growth is stunted. * * *

* * * * *
If the business is to progress it must advance upon the basis of free and unhampered selection of product for exhibitors, large and small, and the exhibitors alone can cure this evil by a resolute refusal to be drawn into any allied scheme, even if the results promised are of temporary benefit to themselves. * * *

(4) The monopolistic control of the defendants has resulted in colossal waste and fantastic salary scales on the part of the producers which, through the prices charged, are a direct tribute levied upon the public.

Growth of Combination During Last Twenty Years. In the early days of the industry, the three branches of production, distribution and exhibition were to a large extent operated separately. A struggle for industry control developed between producers and exhibitors, as a result of which some producers entered the exhibition field--as in the case of the defendants Paramount Pictures, Inc., and Warner Bros. Pictures, Inc.--and some exhibitors entered the production field, as in the case of Loew's, Incorporated. In 1919, the very next year after issuing his prophetic statement of the evils expected from such a combination, Adolph Zukor, then a leading producer, determined to obtain control of as many theatres as possible. He moved swiftly. Other companies moved to keep up with him. The period of the 1920's became one of constant and aggressive acquisition by major companies of independent theatres. That struggle has resulted in complete domination and control of moving picture theatres on a nationwide scale by the major companies.

II. REASONS FOR PROCEEDING IN EQUITY

The petition in equity which has now been filed comes as a result of an investigation conducted by the Department and its observation of the operation of the motion picture industry over a period of years. The Department has concluded after long and careful study that there can be no hope of restoring free competition to the industry (both in production and exhibition) until the business of production and distribution is divorced from that of exhibition. Such a result can be accomplished only through an equity decree which will require the major companies to divest themselves either of their ownership of theatres or of production and distribution facilities. One reason for determining to proceed first in equity rather than criminally is, therefore, the fact that only an equity decree can accomplish the result which the Department believes to be essential.

A further reason for instituting equity rather than criminal proceedings at this time should be noted. In the course of its study of the motion picture industry the Department attempted, through the voluntary cooperation of the major producers, to adjust the difficulties of independent exhibitors who brought their problems to the Department and who consented to such a course. This effort on the part of the Department to secure relief for independent exhibitors was almost wholly unsuccessful. The major producers were advised approximately a year ago that although the Department would continue to submit the problems of independent exhibitors to them for adjustment, it would do so upon the distinct understanding that it was to have an entirely free hand in instituting such proceedings under

the antitrust laws as it might in its discretion determine to be necessary and proper. The Department believes that in the light of its dealings with the industry in the past, it would be inequitable to institute a general criminal proceeding at this time.

It should, however, be understood that the equity proceeding which has now been instituted may be followed by criminal prosecutions in specific instances of deliberate and aggravated violations of the law which have continued subsequent to the date upon which the producers were notified that further efforts to make voluntary adjustments would not prejudice the Department in its choice of remedies.

III. ECONOMIC RESULTS TO BE ANTICIPATED FROM THE PRESENT ACTION

Restoration of Competition Is Primary Aim. Restoration of free enterprise and open competition amongst all branches of the motion picture industry is the primary objective of this proceeding. To this end, and as a first step, a separation of production and exhibition interests is sought in order that all motion picture theatres shall be free from the domination and control of any producer or any group of producers, and shall be immediately responsive and responsible to the tastes and demands of their respective patrons. Freed from producer control, it is believed that the theatres of the country will constitute a free, open and untrammelled market to which all producers may have access for the distribution and licensing of films based upon merit. Exhibitors likewise will have access to all available motion picture product in accordance with their respective abilities to pay for and utilize that product.

Permanent injunctions to restrain all discriminatory practices against independent producers and exhibitors are also sought. It is firmly believed that the public interest will be served by restoring free enterprise to an industry which affects so vitally the welfare and morals of large sections of our citizenship.

Suit May Throw Light on Application of Antitrust Laws to Other Industries. In addition to the benefit to this particular industry and its patrons, the present suit may settle questions that are vital in the application of the antitrust laws to other industries in which manufacturers or producers knit together through a common trade association, seek directly or indirectly to dominate and control markets.

Suit May Develop Need For Congressional Action. Until the evidence is produced, it is too early to state whether the antitrust laws by themselves are sufficiently effective to restore competitive conditions. If it appears from such evidence that further aid is needed, the results of the investigation and trial will be brought to the attention of Congress.

Assistant Attorney General.

Approved:

Attorney General.

HSC:MOB

*Clawson
8/1-*

*BSF
Justice*

*Norman
Thomas file
5/26/37*

July 7, 1938.

The President,
The White House.

My dear Mr. President:

I return you herewith the letters received by you from Norman Thomas, dated respectively June 25 and July 5. It does not appear to me to be desirable for you to answer these letters personally. If any answer at all is made, it would, I think, be preferable to have the reply made by one of your Secretaries.

With this end in view I enclose herewith draft of a proposed letter which may be of service. In this proposed letter you will note that I refer to Mr. Arthur T. Vanderbilt as the attorney for Mr. Thomas. I know that he does represent Mr. Thomas because the latter wrote to me and informed me that he had employed Mr. Vanderbilt and, on his advice, was making a complaint before the United States Commissioner in connection with the so-called kidnaping charges. In view of the fact that Mr. Thomas had thus taken decisive steps, under advice of counsel, to prefer criminal charges against certain police officers it seemed to me that no particular action was required by the Department of Justice pending such proceedings.

It is my understanding that the Commissioner heard the matter and rather unexpectedly held the defendants for a Grand Jury. It now appears, from the letter of July 5, that Mr. Thomas went before the Grand Jury and discouraged action by the Grand Jury on his own complaint.

I have reason to doubt, from certain letters that have come from Mr. Thomas, whether he has any faith in his complaint that he was kidnaped under the terms of the Federal Statute. That Statute, as you know, was under consideration by the Supreme Court of the United States in the case of *Gooch v. U.S.*, 297 U.S. 124, which seemed to indicate that to support a Federal prosecution there should not only be an interstate kidnaping or transportation, but that it should be for the purpose of benefit, gain, or advantage to the kidnaper.

July 7, 1938.

I assume that what happened was that the officers put Mr. Thomas on a ferry boat in Jersey City and that the boat sailed away with him. It has also been held in the case of U. S. v. Wheeler, 254 U. S. 281, that the deportation of individuals by an aroused community, or its police authorities, without any specific motive or purpose of selfish benefit or gain, except the desire to rid the community of such individuals or to avoid public disorder, cannot be brought within the Federal Statutes. This latter decision was, of course, prior to the passage of the so-called Lindbergh Kidnaping Act.

Moreover, for your information, May I add that there is a New Jersey Statute which much more clearly covers the situation than any Federal Statute that could be cited. No doubt Mr. Thomas has been advised by his attorney with reference to the legal difficulties involved in making his kidnap charge effective.

In addition to all the foregoing, we have obtained copies of the proceedings before Judge Clark and are having them very carefully analyzed to see whether any other Federal Statute is involved which would warrant action by the Department of Justice.

To say the least Mr. Thomas is a very unreasonable person and, in my judgment, one of the most mentally dishonest men in public life and his primary purpose in bombarding you and me with letters is for propaganda and public consumption. I am perfectly willing, and indeed would be glad, to receive from Mr. Vanderbilt, who is a high-class man and a fine attorney, a coherent statement of any claim that he can make in behalf of Mr. Thomas and any suggestions that he may care to submit which would indicate a violation of any Federal Statute. The moment this arrives it will be given full, complete, and courteous consideration.

In view of the foregoing it rather seems to me that a short letter along the lines of the draft enclosed, written by one of your Secretaries to Mr. Thomas, would fully meet the situation.

Sincerely yours,

Signed

HOMER CUMMINGS

PROPOSED LETTER FOR SIGNATURE OF ONE OF THE SECRETARIES
TO THE PRESIDENT

Honorable Norman Thomas,
206 East 18th Street,
New York, N. Y.

Dear Sir:

The President has directed me to reply to your recent letters.

It is my understanding that you have employed Mr. Arthur T. Vanderbilt, an eminent attorney of New Jersey, to represent you. I would, therefore, suggest that Mr. Vanderbilt communicate directly with the Attorney General, setting forth any suggestions that he may have to make relative to the law and facts as they may be pertinent to the acts of which you complain. In this way it will be possible to dispose of the matter in orderly fashion.

Very truly yours,