●PSF Justice Dept.: Jackson

file personal

PSF
Justice
Jackson

Office of the Solicitor General
Washington, D. C.

January 11, 1940

MEMORANDUM FOR THE PRESIDENT

A suggestion in the matter we discussed on the telephone last night:

Some statement concerning this matter might appear after those who could state that there is no case were silenced by being on the Court.

I agree that Frank should make no statement to the press on the subject at this time.

I think, however, it might be of great help to us if he made a written report to you now to the same effect as the statement he offered to make to the press. It would then be available if ever needed. I am sure he will do so if you ask it.

RHJ

PSF
Justice

Robert H Jackson

January 19, 1940

Memorandum for the President from Jim Rowe

Re-Minnesota W.P.A. cases (Prosecutions)

See:W.P.A. folder--Drawer 2-1940

Jackson 1-46

Office of the Attorney General
Washington, D.C.

File Personal

January 29, 1940.

My dear Mr. President:

At its session today the Supreme Court decided nine cases on the merits in favor of the Government and one against it. In another case in which the Government filed a brief as amicus curiae the Court's decision sustained the Government's contention.

In a group consisting of Commissioner of Internal Revenue v. Hallock and four other cases, trusts were created granting life estates to persons other than the grantors. The grantors, however, reserved the right to remainders in the event that they survived the life tenants. The Supreme Court held that the remainders were held subject to the estate tax as transfers intended to take effect in possession or enjoyment at or after death. In so holding the Court found it necessary to overrule two cases decided by a bare majority in 1935 which made taxability depend upon the form of the conveyance rather than the economic quality of the interests created. The Chief Justice concurred in the result; Justices Roberts and McReynolds dissented.

In Morgan v. Commissioner of Internal Revenue the Court held that an estate tax was properly levied upon property passing under a power of appointment upon the ground that the power was a general power as required by the Federal statute; and the Court rejected as immaterial the fact that such power was designated as a "special" power under state law, the important consideration being whether the donee actually had the right to appoint to anyone.

In Commissioner of Internal Revenue v. Fitch the Court held that the grantor of a trust was taxable with respect to income therefrom employed to pay alimony to his divorced wife. The decision seemed to turn upon whether, under applicable Iowa law, the local courts retained power thereafter to modify the alimony decree, and

the Court held that the taxpayer had failed to show the absence of such power. Mr. Justice Reed concurred in the result and Mr. Justice McReynolds dissented.

In Federal Communications Commission v. The Pottsville Broadcasting Co. the facts were that after the Court of Appeals for the District of Columbia had held that the Commission had committed an error of law in denying the respondent's application for a permit for the construction of a broadcasting station, the Commission set the application for argument along with two rival applications, for the purpose of determining which "on a comparative basis" in the judgment of the Commission would best serve the public interest. The Court of Appeals for the District of Columbia issued a writ of mandamus directing the Commission to set aside this designation for argument and to reconsider the respondent's application on the basis of the record as originally made and in accordance with the Court's opinions in the original review and in the mandamus proceedings. After reviewing the purposes of the Communications Act of 1934, the Supreme Court held that the writ of mandamus was erroneously issued, since the Commission, on remand of the proceedings from the Court of Appeals, was charged under the statute with the duty of judging the respondent's application in the light of "public convenience, interest, or necessity." A similar decision was rendered in Fly v. Heitmeyer upon slightly different facts. Mr. Justice McReynolds concurred in the result in both cases.

In Yearsley v. W. A. Ross Construction Co. a contractor, under his contract with the Government, built dikes on the Missouri River. The dikes caused land to be washed away and the landowners brought suit against the contractor to recover just compensation for the taking of their land, to which they contended they were entitled under the Fifth Amendment. The Government filed a brief as amicus curiae in which it took the position that if there was a taking within the meaning of the Fifth Amendment, as the landowners contended, their only remedy was a suit against the United States under the Tucker Act, and that the contractor could not be held personally liable for the taking since it acted under valid authorization of the United States. The Supreme Court adopted this view.

In Kobilkin v. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, which involved the construction of the limitation provisions of Section 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, the Circuit

Court of Appeals rendered a decision in favor of the Deputy Commissioner. In the Supreme Court the Government contended that this decision was erroneous in several respects. The decision was, however, affirmed by an equally divided Court and consideration will be given to the question whether, in view of the appointment of Mr. Justice Murphy, an application should be made for a rehearing of the case before a full bench.

One petition for writ of certiorari by the Government was granted. In another case in which the writ was granted the Government sought its issuance as amicus curiae. Six petitions for writs of certiorari filed by opponents were denied.

Respectfully,

Robert H. Jackson

Attorney General.

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

PSF
Justice
Jackson

THE WHITE HOUSE
WASHINGTON

file
personal.
Bob Jackson

March 4, 1940

MEMORANDUM FOR

THE PRESIDENT

A reminder to take this up personally with Bob Jackson.

G.

TELEGRAM

The White House
Washington

9WU. RA. 20- 2:00 p.m.

Hyde Park, N. Y., February 23, 1940

Miss Grace Tully.

In accordance with instructions am having memorandum unsigned sent to you special messenger for Jackson. Telephone collect if any questions.

G. Hall Roosevelt.

Early this week, Mr. Horton of the Department of Justice went to New York and summoned Mr. Cullom, the representative of the Metropolitan Museum of Art in New York.

Mr. Horton was most intemperate and discourteous. He stated to Mr. Cullom that somebody from the White House had gone through his files on this case and accused Mr. Cullom of improper action in taking this matter up with the White House. Mr. Cullom replied that any citizen who feels aggrieved has a right to request the Executive to act in the matter.

Mr. Horton stated that he was going to decide the case and that he would not pay more than $71,000.00 and that if the Museum did not immediately agree in writing to accept $71,000.00, he would turn the case down in full. Mr. Horton has no legal power to decide the case since it vests in his superiors, neither has he any authority to pay any money. His references to the White House and to the Executive were by inference very slighting.

It is suggested that this case be transferred from Mr. Horton's jurisdiction to some other attorney in the Department of Justice. The above statements indicate strongly that Mr. Horton will not handle this case impartially if it remains in his jurisdiction for recommendation.

THE WHITE HOUSE
WASHINGTON

February 8, 1940.

MEMORANDUM FOR

THE PRESIDENT

I called the Attorney General about this case and he turned it over to Assistant Secretary Clark who called to say that they had no record of it in Justice. However, he is checking with the Treasury and will let us know when he locates the case.

G. G. T.

This came from Hall Roosevelt

MEMORANDUM OF LAW

1. The Metropolitan Museum of Art is a charitable corporation, whose income is exempt from taxation under Section 103 of the Revenue Act of 1928, and all later Revenue Acts. (See Exhibit A, attached hereto.)

2. Frank A. Munsey died December 22nd, 1925 and by his Will left his entire residuary estate to The Museum which included among others, the entire stock of Sun-Herald Corporation and News Publishing Company of Baltimore City.

3. The Museum owns all of the stock of Museum Estates, Inc., a charitable corporation, whose income is exempt from taxation. See ruling of Commissioner of Internal Revenue, dated January 19th, 1929, attached hereto as Exhibit A. Museum Estates, Inc. has owned the stock of the Sun-Herald and News Publishing Company since February 29th, 1928, when the executors formally transferred the entire residuary estate to The Museum. The two companies which were out of business had certain negotiable notes which were duly transferred by delivery to Museum Estates, Inc. on February 29th, 1928. Under the Negotiable Instrument Law of New York, Sec. 79 title to these notes thereby passed to the exempt institution. The distribution of these notes to the Museum constituted a constructive dividend. (See Exhibit B, attached hereto.)

4. Consequently, even though some checks were made payable to the publishing companies, the analysis of documentary proof submitted to the United States Attorney's office confirms that even these checks were endorsed and deposited in the bank account of the Museum Estates, Inc., which was clearly the owner of the income from said notes.

5. Therefore, all of the income received from February 29th, 1928 and during 1929, the years in dispute, was received and belonged to an exempt institution, and was free from any income taxes.

6. The income was further exempt under specific provisions of the Bureau's own ruling, made by the Chief Counsel of the Bureau of Internal Revenue, GCM 21610, 1939-41-100053. This ruling is attached hereto as Exhibit C.

7. Any settlement which is made will be paid to the Metropolitan Museum of Art, and devoted solely for charitable purposes.

8. The United States Court of Appeals for the Second Circuit, has already ruled that the Sun-Herald Corporation and the News Publishing Company of Baltimore City are in themselves not exempt companies merely because they are owned by Metropolitan Museum of Art or Museum Estates, Inc. This decision was handed down prior to the ruling of the Bureau of Internal Revenue cited here as Exhibit C.

9. The Complaints were amended then so as to allege the facts with respect to the transfer of the notes prior to the taxable period involved and that the income in question received since February 29th, 1928 was never the property of the Sun-Herald Corporation or News Publishing Company of Baltimore City. The total amount involved in these cases, with interest, is approximately $295,000.

10. The symbols of the Department of Justice in these cases are as follows:

RE: - REFUND CLAIMS - SUN-HERALD CORPORATION:

1928 Income Taxes - No. IT/~~EBW~~:AR:A-5

1929 Income Taxes - No. IT/CJ :AR:A-6

1930 Income Taxes - No. IT :C:CC:3:KMM

REFUND CLAIMS - NEWS PUBLISHING COMPANY:

1928 Income Taxes - No. IT/EBW:AR:A-5

1929 Income Taxes - No. IT/CJ:AR:A-6

1930 Income Taxes - No. IT:C:CC:3-GPC

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11. On behalf of the taxpayers I have made an offer of settlement to the Department of Justice (Mr. Horton is handling the case), of 50% of the $295,000. involved.

EXHIBIT A

(Letterhead of Treasury Department)

IT:E:RR
WRC

January 19th, 1929.

Museum Estates, Incorporated,
c/o De Forest Brothers,
30 Broad Street,
New York, N. Y.

Sirs:

Reference is made to the evidence submitted by you in support of your claim to an exempt status for Federal income tax purposes.

An examination of the evidence submitted discloses that you were incorporated December 28th, 1927, under the laws of the State of New York. Your purposes are to take title to property for the Metropolitan Museum, hold same collecting the income therefrom and turning such income less expenses over to the Metropolitan Museum. The Metropolitan Museum is an organization which is itself exempt. No part of your income in any manner inures to the benefit of any private shareholder or individual.

In view of the foregoing it is held that you come within the exempting provisions of Section 103 (14) of the Revenue Act of 1928. You will, therefore, be relieved of the duty of filing returns of annual income so long as your purposes and activities remain unchanged. Any changes, however, in your purposes or activities must be reported by you immediately to the Collector of Internal Revenue for your district in order that the effect of such changes upon your present exempt status may be determined.

The exemption referred to in this letter does not apply to taxes levied under other titles or provisions of the Revenue Act of 1928 except in so far as the exemption is expressly granted under those provisions to corporations enumerated in Section 103.

The Collector of Internal Revenue, Customhouse Building, New York, N. Y. is being furnished a copy of this ruling.

By direction of the Commissioner.

Respectfully,

C. B. ALLEN,
Deputy Commissioner

EXHIBIT B

See: Queensboro National Bank v. Kelly, 48 Fed. (2) 574, cert. den 284 U. S. 620;

Lipten v. Columbia Trust Company (N.Y.) 194 App. Div. 384;

8 Corpus Juris, Bills and Notes, Sec. 568;

Roeder v Roeder, 236 App. Div. (N.Y.) 87;

See Chattanooga Savings Bank v. Brewer, Collector, 17 Fed. (2) 79, cert. den. 274 U. S. 751;

Hadley v. Commissioner, 36 Fed. (2) 543.

EXHIBIT C

G C M 21610, 1939 - 41 - 100053

"Internal Revenue Code, Revenue Act of 1938 and prior Revenue Acts.

/Exempt corporation: Charitable organizations: Determination of status./ As a general rule, in determining whether an organization is exempt from Federal income tax, the purpose of the organization should be determined from the instrument creating it. This rule is subject to the exception that where the net income of an organization is required by some other binding instrument to be used for charitable purposes its exemption will not be defeated by the fact that its charter or other instrument under which it exists does not indicate an exclusively charitable purpose. The exception to the general rule does not include cases where there is no binding instrument requiring the income to be devoted to charity even though the income is so devoted, and should be confined to cases where the intent prompting the original organization was to create an organization to be operated exclusively for charitable purposes."

file
Personal
Jackson D. 1-14-41

THE ATTORNEY GENERAL
WASHINGTON

March 9, 1940.

My dear Mr. President:

Re: Matter of Congressman Frank Welchel.

It is widely known that this case is scheduled for presentation to this Grand Jury and any change of plan would attract considerable inquiry and criticism.

It is a plain case of selling Post Offices and every consideration has been given to him. His own explanation of the affair is admitted to be incriminating by his best friends.

Walter George and Congressman Cox were in to see me but decided not to urge anything more than that I make personally sure that the case was a good one. I understand that Speaker Bankhead made some inquiry of his own and notified the Department that he would not interfere in behalf of Welchel. My recommendation is that we let the matter take its course.

Respectfully,

Robert H. Jackson

The President
The White House

Jackson

THE WHITE HOUSE
WASHINGTON

~~CONFIDENTIAL~~

April 18, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

I am told by Senator Ellender that down in Louisiana the case of two defendants had been put over to the October Grand Jury but that former Governor Leche's case has been put on for the May Grand Jury. Why the distinction?

F. D. R.

Jackson
of C 15th
1

THE WHITE HOUSE
WASHINGTON

May 9, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

FOR PREPARATION OF REPLY

FOR MY SIGNATURE - DEAR DICK.

F. D. R.

Letter from former Governor Leche of Louisiana in re his trial.

May 21, 1940.

Dear Dick:-

I have forwarded your letter to the Department of Justice with the request that it be given consideration.

You will, I am sure, agree with me that it would not be appropriate for me to attempt an interference with the procedures and dates fixed by the courts in these matters and that any action in connection therewith should be upon application to the court in which the proceeding is pending.

Very sincerely yours,

Hon. Richard W. Leche,
Covington,
Louisiana.

PROPOSED LETTER FOR THE SIGNATURE

OF THE PRESIDENT

Mr. Richard W. Leche
Mayflower Hotel
Washington, D.C.

Dear Dick:

I have forwarded your letter of May 27 to the Department of Justice with the request that it be given consideration.

You will, I am sure, agree with me that it would not be appropriate for me to attempt an interference with the procedures and dates fixed by the courts in these matters and that any action in connection therewith should be upon application to the court in which the proceeding is pending.

Sincerely yours,

Franklin D. Roosevelt

Office of the Attorney General
Washington, D.C.

OK

May 16, 1940

MEMORANDUM FOR THE PRESIDENT

I have some doubt whether it is advisable for you to send a letter to Mr. Leche which might be put to some unexpected use, inasmuch as he is to be tried.

The enclosed seems to be as much as it is prudent to say.

Robert H. Jackson

Robert H. Jackson

PROPOSED LETTER FOR THE SIGNATURE

OF THE PRESIDENT

Mr. Richard W. Leche
Mayflower Hotel
Washington, D.C.

Dear Dick:

I have forwarded your letter of May 27 to the Department of Justice with the request that it be given consideration.

You will, I am sure, agree with me that it would not be appropriate for me to attempt an interference with the procedures and dates fixed by the courts in these matters and that any action in connection therewith should be upon application to the court in which the proceeding is pending.

Sincerely yours,

Franklin D. Roosevelt

THE WHITE HOUSE
WASHINGTON

OFFICE OF THE ATTORNEY GENERAL
RECEIVED
MAY 9 - 1940

May 9, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

FOR PREPARATION OF REPLY

FOR MY SIGNATURE - DEAR DICK.

F. D. R.

CRIMINAL DIVISION
MAY 13 1940
RECEIVED

117-32-17
DEPARTMENT OF JUSTICE
MAY 13 1940 P.M.
DIVISION OF RECORDS
CRIM. DIV.-BEATON

R.H.C.

CRIMINAL DIVISION
MAY 13 1940
RECEIVED
The Mayflower
Washington, D.C.

117-32-12
DEPART
MAY 1940
DIV
CRIM. DIV. - BEATON

My dear Mr. President —

It is not the purpose of this note to add to your many burdens by recounting the details of my personal situation, nor to ask for or even suggest any course incompatable with honor, decency or law.

It is rather an appeal to an old friend for simple justice.

The facts are these — The Department of Justice has fixed for trial on May 27th a case against me in the Western District of Louisiana.

Louisiana is still surcharged with all the hate and vindictiveness of a bitter political contest and no man in my position could have any chance of trial in a fair and impartial atmosphere.

The trial date, as fixed, is only a few days after the inaugural ceremonies of the new governor. The assistant attorney general of the U.S. who will try my case has made himself a central figure in the political scene and insists on trial of the case as part of the political picture.

This is directly contrary to the policy of Attorney

General Jackson clearly stated in his address of April 1st to the District attorneys.

I think you will readily see the gross injustice of fixing my trial virtually as a part of the inaugural proceedings.

Even so I would hesitate to make this appeal but for the fact that two other political figures, indicted before me, have had no difficulty in having their trials postponed until the fall term.

I feel that as a matter of simple justice the same opportunity should be granted me.

I am willing and anxious to face every issue. I am not seeking a dismissal or nolle prosequi. I am simply asking that my trial be a fair hearing at the regular fall term rather than an effort to provide a guillotine spectacle for an inflamed populace as part of an inaugural show.

As ever your friend

Sincerely

Dick Lecher

PSF Justice

Bob Jackson

COPY

April 18, 1940.

MEMORANDUM FOR JIM ROWE

Please show this to Bob Jackson in confidence.

F.D.R.

Enc-Memo from Jim Rowe in re appt of Senator McGill to the Customs Court in New York.

PSF
Justice

Office of the Attorney General
Washington, D.C.

file personal

May 14, 1940.

THE WHITE HOUSE
MAY 14 10 54 AM '40
RECEIVED

Japan

MEMORANDUM FOR THE PRESIDENT.

After consultation with Mr. Hoover we have concluded that it is not desirable to ask for additional funds for the F. B. I. at this time. The work of the Bureau is progressing and, with the use of the expediting provisions in case it becomes necessary, it seems probable that it can go on until another deficiency bill will be necessary.

R. H. J.

Attorney General.

file personal from Robert Jackson

PSF Justice Jackson

5/16/40 (May 16, 1940)

The Governor of Arkansas appoints the Democratic State Committee in Arkansas. The Democratic State Committee in Arkansas selects the delegates to the National Convention. If there is no reason why the President should not do so, the simple act of calling Governor Bailey to Washington for a conference with the President would insure the Arkansas delegation for the President.

The only two possible considerations that could argue against the extension of this gesture by the President would be: (1) Damage to relationships with the Arkansas Congressional Delegation, which is rather solidly opposed to Bailey; (2) the possibility that FBI or some other Federal agency may have some investigation on hand which would reflect badly on Governor Bailey. There have been rumors that such an investigation is now under way. If the investigation should disclose anything serious, it might mean that the State Committee would have to repudiate Governor Bailey. Otherwise the State Committee will go along with him.

About the possible objection numbered (1) above, it is not likely that the Arkansas Congressional delegation would hold seriously against the President his extension of a hand of friendship to Governor Bailey. The delegation would not be pleased but they would hardly be in a position to make a major issue of it; in a general way they will have to go along with the President, and in a general way that will be their inclination in any case.

PSF: Justice folder

THE WHITE HOUSE
WASHINGTON

Jackson

~~CONFIDENTIAL~~

May 21, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

I have agreed with the broad purpose of the Supreme Court decision relating to wire-tapping in investigations. The Court is undoubtedly sound both in regard to the use of evidence secured over tapped wires in the prosecution of citizens in criminal cases; and is also right in its opinion that under ordinary and normal circumstances wire-tapping by Government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights.

However, I am convinced that the Supreme Court never intended any dictum in the particular case which it decided to apply to grave matters involving the defense of the nation.

It is, of course, well known that certain other nations have been

engaged in the organization of propaganda of so-called "fifth columns" in other countries and in preparation for sabotage, as well as in actual sabotage.

It is too late to do anything about it after sabotage, assassinations and "fifth column" activities are completed.

You are, therefore, authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigating agents that they are at liberty to secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies. You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.

F. D. R.

PSF
Justice

File
personal
+
confidential
Jackson

Office of the Attorney General
Washington, D.C.

May 24, 1940

The President,
The White House

My dear Mr. President:

I have the list of aliens entering since January 1, 1939 as visitors, and in view of the very limited information contained in it, the checking of the complete list will be a rather extensive job.

After conferring with Mr. Hoover I have instructed that the list be spot-checked through the selection of groups which will determine the accuracy of the lists. They will be carded and sent to the different field agencies for checking as rapidly as possible.

Sincerely yours,

Robert H. Jackson
Attorney General

PSF Justice

Jackson file

THE WHITE HOUSE
WASHINGTON

May 29, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Please check this second case of William W. Hinckley.

I spoke to Miss Perkins about the first case -- Walter Reuther. There is no further thought of giving him any position in the Department of Labor.

F. D. R.

Memorandum to the President from Adolf Berle in re "Appointment of Communists to Key Positions.

Jackson

THE WHITE HOUSE
WASHINGTON

May 29, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

I spoke to Miss Perkins about Reuther. He will be employed under no circumstances.

F. D. R.

THE ATTORNEY GENERAL
WASHINGTON

May 24, 1940.

Dear Missy:

I enclose something that it seems to me the President should know about. I do not know Reuther myself and have no information about this matter except the contents of this report.

Sincerely yours,

Miss Marguerite LeHand
The White House

JOHN EDGAR HOOVER
DIRECTOR

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

May 22, 1940

OFFICE OF THE ATTORNEY GENERAL
RECEIVED
MAY 23 1940

MEMORANDUM FOR THE ATTORNEY GENERAL

I am transmitting herewith a memorandum covering material in the files of the Federal Bureau of Investigation relative to one Walter P. Reuther.

Walter P. Reuther, I have been informed, is the individual whom Madam Frances Perkins, The Secretary of Labor, contemplates appointing as head of the Safety Device Board of the Department of Labor. This Board makes inquiry into safety devices in various factories throughout the country.

Respectfully,

J. Edgar Hoover

John Edgar Hoover
Director

Enclosure

May 22, 1940

MEMORANDUM

RE: WALTER P. REUTHER

Information has been received to the effect that Madam Frances Perkins, The Secretary of Labor, contemplates appointing Walter P. Reuther as head of the Safety Device Board of the Department of Labor. This Board makes inquiry into safety devices in various factories throughout the country. The following information appears in the files of the Federal Bureau of Investigation relative to Walter P. Reuther.

Walter P. Reuther originally came from West Virginia. His father was a labor organizer there. He attended Wayne University, Detroit, Michigan, from 1930 until 1933.

It has been alleged that Walter P. Reuther, accompanied by a brother, departed from the United States for Russia during 1933; that after residing in Russia for several months and while there they engaged in a study of agitation propaganda, taking courses allegedly given under the auspices of the Soviet Union. During 1933 Walter P. Reuther is said to have advised the Soviet authorities relative to labor conditions in the United States. The date of his return to the United States is not definitely known. However, upon his return he enrolled in the Brookwood Labor College, at Katonah, New York (now out of existence).

The following is a letter written in 1934 by Walter Reuther and his brother Victor to Melvin and Gladys Bishop:

"Abmosavos, Topkini,
January 20, 1934.

"Dear Mel and Glad:

"Your letter of December 5 arrived here last week from Germany and was read with more than usual interest by Wal and I. It seemed ages since we had heard from you so you might well imagine with what joy we welcomed news from Detroit. It is precisely because you are equally anxious I know to receive word from the 'Workers' Fatherland' that I am taking this first opportunity to answer you.

"What you have written concerning the strikes and the general labor unrest in Detroit plus what we have learned from other sources of the rising discontent of the American workers, makes us long for the moment to be back with you in the front lines of the struggle; however, the daily inspiration that is ours as we work side by side with our Russian comrades in our factory, the thought that we are actually helping to build a society that will forever end the exploitation of man by man, the thought that what we are building will be for the benefit and enjoyment of the working class, not only of Russia, but the entire world, is the compensation we receive for our temporary absence from the struggle in the United States. And let no one tell you that we are not on the road to Socialism in the Soviet Union. Let no one say that the workers in the U.S.S.R. are not on the road to security, enlightment and happiness.

"Mel, you know Wal and I were always strong for the Soviet Union. You know we were always ready to defend it against the lies of reactionaries. But let me tell you, now that we are here seeing all the great construction, watching a backward peasantry being transformed into an enlightened, democratic, cultured populus, now that we have already experienced the thrill, the satisfaction of participating in genuine proletarian democracy, we are more than just sympathetic toward our country, we are ready to fight for it and its ideals. And why not? Here the workers, through their militant leadership, the proletarian dictatorship, have not sold out to the owning class like the S.P. in Germany and like the Labor Party in England. Here they have against all odds, against famine, against internal strife and civil war, against sabotage, against capitalist invasion and siolation, our comrades here have maintained power, they have won over the masses, they have transformed the 'dark masses' of Russia into energetic enlightened workers. They have transformed the Soviet Union into one of the greatest industrial nations in the world. They have laid the economic foundation for Socialism, for a classless society. Mel, if you could be with us for just one day in our shop you would realize the significance of the Soviet Union. To be with us in our factory Red Corner at a Shop Meeting and Watch the Workers as they offer suggestions and constructive criticism of production in the shop. Here are

no bosses to drive fear into workers. No one to drive them in made speed-ups. Here the workers are in control. Even the shop superintendent has no more right in these meetings than any other worker. I have witnessed many times already when the superintendent spoke too long, the workers in the hall decided he had already consumed enough time and the floor was then given to a lathe hand who told of his problems and offered suggestions. Imagine this at Fords or at Briggs. This is what the Outside World calls the 'Ruthless Dictatorship in Russia.' I tell you, Mel, in all the countries we have thus far been in, we have never found such genuine proletarian democracy. It is unpolished and crude, rough and rude, but proletarian workers' democracy in every respect. The workers in England have more culture and polish when they speak at their meeting but they have no power. I prefer the latter.

"In our factory, which is the largest and most modern in Europe, and we have seen them all, there are no pictures of Fords and Rockefellers, or Roosevelts and Mellon. No such parasites, but rather huge pictures of Lenin, ... etc., greet the workers' eyes on every side. Red banners with slogans 'Workers of the World Unite' are draped across the craneways. Little red flags fly from the tops of presses, drill presses, lathes, kellers, etc. Such a sight you have never seen before. Women and men work side by side -- the women with their red cloth about their heads, the men with their fur hats. We work here seven hours per day, five days a week (our week here is six days long). At noon we all eat in a large factory restaurant where wholesome plain food is served. A workers' band furnishes music to us from an adjoining room while we have dinner. For the remainder of our one hour lunch period we adjourn to the Red Corner recreation where workers play games, read papers and magazines or technical books or merely sit, smoke and chat. Such a fine spirit of comradeship you have never before witnessed in your life. Superintendent leaders and ordinary workers are all alike. If you saw our superintendent as he walks through the shop greeting workers with 'Hello Comrade' you could not distinguish him from any other worker.

"The interesting thing, Mel, is that three years ago this place here was a vast prairie, a waste land and the thousands of workers here who are building complicated dies and other tools were at that time peasants who had never before even seen an industry let alone worked in one. And by mere brute determination, by

the determination to build a workers' country second to none in the world; urged on by the spirit of the Revolution they have constructed this huge marvelous auto factory which today is turning out modern cars for the Soviet Union. Through the bitter Russian winters of 45 degrees below they have toiled with bare hands digging foundations, erecting structures, they have with their own brute strength pulled the huge presses into place and set them up for operation. What they have here they have sacrificed and suffered for; that is why they are not so ready to turn it all over again to the capitalists. That is why today they still have comrades from the Red Army on guard at the factory at all times to prevent counter-revolutionists from carrying on their sabotage.

"About a twenty minute walk from the factory an entirely new Socialist City has grown up in these three years. Here over 50,000 of the factory workers live in fine new modern apartment buildings. Large hospitals, schools, libraries, theaters and clubs have sprung up here and all for the use of those who work, for without a worker's card one cannot make use of all these modern facilities. Three nights ago we were invited to the club house in 'Sesgor' (Socialist City) to attend an evening of enjoyment given by the workers of the die shop. Imagine all the workers with whom we daily work, came together that evening for a fine banquet, a stage performance, a concert, speeches and a big dance. A division of the Red Army was also present as guests. In all my life, Mel, I have never seen anything so inspiring. Mel, once a fellow has seen what is possible where workers gain power, he no longer fights just for an ideal, he fights for something which is real, something tangible. Imagine, Mel, Henry Ford throwing a big party for his slaves. Here the party was no gift of charity from someone above for we own the factory, we held the meeting and decided to have the party and it was paid for from the surplus earnings of our department. What our department does is typical of the social activities which are being fostered throughout the entire factory and the entire Soviet Union.

"Mel, we are witnessing and experiencing great things in the U.S.S.R. We are seeing the most backward nation in the world being rapidly transferred into the most modern and scientific with new concepts and new social ideals coming into force. We are watching daily Socialism being taken down from the books on the shelves and put into actual application. Who would not be inspired by such events?

"And now my letter is getting long and still I have said little, for there is so much to say and so little time in which to do it. We have written Merlin and Coach rather lengthy letters and have requested they forward them to you to save duplication of material.

"I believe there is little in this letter which they have not already received so there will be no need of your forwarding this to them.

"A word about your letter. You mentioned that . . . . . .

"Keep your eye on the S.P. It being affiliated to the Second International I am not so certain it is 'drifting' in the right direction, certainly not in the light of recent events.

"Let us know definitely what is happening to the YPSL and also the 'Social Problems' club at C.C.C.

"Carry on the fight for a Soviet America.

Vic. and Wal."

The foregoing letter is thought to be significant inasmuch as it definitely reflects the attitude of Walter P. Reuther in January of 1934.

In 1936 Walter P. Reuther was a C.I.O. organizer on the West Side of Detroit, Michigan.

According to information in the files of the Federal Bureau of Investigation, Walter P. Reuther, in May of 1937, at which time he was president of the United Automobile Workers of America, Local #174, was one of the speakers at a Conference for the Protection of Civil Rights (an affiliate of the Committee to Aid the Spanish Democracy). Walter P. Reuther, according to this report, was alleged to have stated that he had made a study of the Fascist situation and that he was a disciple of Anna Louise Strong. He further stated at that time that he had spent two years in the Soviet Union, where he had worked in a factory.

Walter P. Reuther has two brothers, Victor and Roy Reuther, both of whom are said to have been engaged in similar activities.

According to information received, the appointment of Walter P. Reuther was sponsored by Lee Pressman, attorney for John Lewis and other members of the International Juridical Association, 100 Fifth Avenue, New York City.

There is on file in the Identification Division of the Federal Bureau of Investigation a fingerprint record, received April 20, 1937, indicating that one Walter Reuther was taken into custody with one Victor Reuther, in connection with "recent sit-down strikes", and fingerprinted by the Police Department of Detroit, Michigan. There is also a fingerprint record indicating that the same Walter Reuther was fingerprinted, in connection with an application for a pistol permit, by the Police Department at Detroit, Michigan, on January 9, 1940.

PSF
Justice

Jackson

August 27, 1940.

The President,

The White House.

My dear Mr. President:

In accordance with your request I have considered your constitutional and statutory authority to proceed by Executive Agreement with the British Government immediately to acquire for the United States certain off-shore naval and air bases in the Atlantic Ocean without awaiting the inevitable delays which would accompany the conclusion of a formal treaty.

The essential characteristics of the proposal are:

(a) The United States to acquire rights for immediate establishment and use of naval and air bases in Newfoundland, Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad and British Guiana; such rights to endure for a period of 99 years and to include adequate provisions for access to, and defense of, such bases and appropriate provisions for their control.

(b) In consideration it is proposed to transfer to Great Britain the title and possession of certain over-age ships and obsolescent military materials now the property of the United States, and certain other small patrol boats which though nearly completed are already obsolescent.

(c) Upon such transfer all obligation of the United States is discharged. The acquisition consists only of

For original of this which was sent to R.F. for the President on Sept 4-1940
See: Navy - drawer 1-1940 (Corres re destroyers)

> rights, which the United States may exercise or not at its option, and if exercised may abandon without consent. The privilege of maintaining such bases is subject only to limitations necessary to reconcile United States use with the sovereignty retained by Great Britain. Our government assumes no responsibility for civil administration of any territory. It makes no promise to erect structures, or maintain forces at any point. It undertakes no defense of the possessions of any country. In short it acquires optional bases which may be developed as Congress appropriates funds therefor, but the United States does not assume any continuing or future obligation, commitment or alliance.

The questions of constitutional and statutory authority, with which alone I am concerned, seem to be these.

First. May such an acquisition be concluded by the President under an Executive Agreement or must it be negotiated as a Treaty subject to ratification by the Senate?

Second. Does authority exist in the President to alienate the title to such ships and obsolescent materials, and if so, on what conditions?

Third. Do the statutes of the United States limit the right to deliver the so-called "mosquito boats" now under construction or the over-age destroyers by reason of the belligerent status of Great Britain?

I.

There is, of course, no doubt concerning the authority of the President to negotiate with the British Government for the proposed exchange. The only questions that might be raised in connection therewith are (1) whether the arrangement must be put in the

form of a treaty and await ratification by the Senate or (2) whether there must be additional legislation by the Congress. Ordinarily (and assuming the absence of enabling legislation) the question whether such an agreement can be concluded under Presidential authority or whether it must await ratification by a two-thirds vote of the United States Senate involves consideration of two powers which the Constitution vests in the President.

One of these is the power of the Commander-in-Chief of the Army and Navy of the United States, which is conferred upon the President by the Constitution but is not defined or limited. Happily, there has been little occasion in our history for the interpretation of the powers of the President as Commander-in-Chief of the Army and Navy. I do not find it necessary to rest upon that power alone to sustain the present proposal. But it will hardly be open to controversy that the vesting of such a function in the President also places upon him a responsibility to use all constitutional authority which he may possess to provide adequate bases and stations for the utilization of the naval and air weapons of the United States at their highest efficiency in our defense. It seems equally beyond doubt that present world conditions forbid him to risk any delay that is constitutionally avoidable.

The second power to be considered is that control of foreign relations which the Constitution vests in the President as a part of the Executive function. The nature and extent of this power has re-

cently been explicitly and authoritatively defined by Mr. Justice Sutherland, writing for the Supreme Court. In 1936, in United States v. Curtiss-Wright Export Corp., et al, 299 U. S. 304, he said:

> "It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution. It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results."

The President's power over foreign relations while "delicate, plenary and exclusive" is not unlimited. Some negotiations involve commitments as to the future which would carry an obligation to exercise powers vested in the Congress. Such Presidential arrangements are customarily submitted for ratification by a two-thirds vote of the Senate before the future legislative power of the country is committed. However, the acquisitions which you are proposing to accept are without express or implied promises on the part of the United States to be per-

formed in the future. The consideration, which we later discuss, is completed upon transfer of the specified items. The Executive Agreement obtains an opportunity to establish naval and air bases for the protection of our coastline but it imposes no obligation upon the Congress to appropriate money to improve the opportunity. It is not necessary for the Senate to ratify an opportunity that entails no obligation.

There are precedents which might be cited, but not all strictly pertinent. The proposition falls far short in magnitude of the acquisition by President Jefferson of the Louisiana Territory from a belligerent during a European war, the Congress later appropriating the consideration and the Senate later ratifying a treaty embodying the agreement.

I am also reminded that in 1850, Secretary of State Daniel Webster acquired Horse Shoe Reef, at the entrance of Buffalo Harbor, upon condition that the United States would engage to erect a lighthouse and maintain a light but would erect no fortification thereon. This was done without awaiting legislative authority. Subsequently the Congress made appropriations for the lighthouse, which was erected in 1856. Malloy, Treaties and Conventions, Vol. 1, p. 663.

It is not believed, however, that it is necessary here to rely exclusively upon your constitutional power. As pointed out hereinafter (in discussing the second question), I think there is also ample statutory authority to support the acquisition of these bases,

and the precedents perhaps most nearly in point are the numerous acquisitions of rights in foreign countries for sites of diplomatic and consular establishments--perhaps also the trade agreements recently negotiated under statutory authority and the acquisition in 1903 of the coaling and naval stations and rights in Cuba under the act of March 2, 1901, c. 803, 31 Stat. 895, 898. In the last-mentioned case the agreement was subsequently embodied in a treaty but it was only one of a number of undertakings, some clearly of a nature to be dealt with ordinarily by treaty, and the statute had required "that by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

The transaction now proposed represents only an exchange with no statutory requirement for the embodiment thereof in any treaty and involving no promises or undertakings by the United States that might raise the question of the propriety of incorporation in a treaty. I therefore advise that acquisition by Executive Agreement of the rights proposed to be conveyed to the United States by Great Britain will not require ratification by the Senate.

II.

The right of the President to dispose of vessels of the Navy and unneeded naval material finds clear recognition in at least two enactments of the Congress and a decision of the Supreme Court--and any who assert that the authority does not exist must assume the burden of establishing that both the Congress and the Supreme Court meant

something less than the clear import of seemingly plain language.

By section 5 of the act of March 3, 1883, c. 141, 22 Stat. 582, 599-600 (U.S.C., title 34, sec. 492), the Congress placed restrictions upon the methods to be followed by the Secretary of the Navy in disposing of naval vessels, which have been found unfit for further use and stricken from the naval registry, but by the last clause of the section recognized and confirmed such a right in the President free from such limitations. It provides:

> "But no vessel of the Navy shall hereafter be sold in any other manner than herein provided, or for less than such appraised value, unless the President of the United States shall otherwise direct in writing." (Underscoring supplied)

In Levinson v. United States, 258 U. S. 198, 201, the Supreme Court said of this statute that "the power of the President to direct a departure from the statute is not confined to a sale for less than the appraised value but extends to the manner of the sale," and that "the word 'unless' qualifies both the requirements of the concluding clause."

So far as concerns this statute, in my opinion it leaves the President as Commander-in-Chief of the Navy free to make such disposition of naval vessels as he finds necessary in the public interest, and I find nothing that would indicate that the Congress has tried to limit the President's plenary powers to vessels already stricken from the naval registry. The President, of course, would exercise his powers only under the high sense of responsibility

which follows his rank as Commander-in-Chief of his nation's defense forces.

Furthermore, I find in no other statute or in the decisions any attempted limitations upon the plenary powers of the President as Commander-in-Chief of the Army and Navy and as the head of the State in its relations with foreign countries to enter into the proposed arrangements for the transfer to the British Government of certain over-age destroyers and obsolescent military material except the limitations recently imposed by section 14(a) of the act of June 28, 1940 (Public No. 671). This section, it will be noted, clearly recognizes the authority to make transfers and seeks only to impose certain restrictions thereon. The section reads as follows:

> "Sec. 14 (a) Notwithstanding the provision of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies, or equipment, to which the United States has title, in whole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold, or otherwise disposed of in any manner whatsoever unless the Chief of Naval Operations in the case of naval material, and the Chief of Staff of the Army in the case of military material, shall first certify that such material is not essential to the defense of the United States."

Thus to prohibit action by the constitutionally-created Commander-in-Chief except upon authorization of a statutory officer subordinate in rank is of questionable constitutionality. However, since the statute requires certification only of matters as to which you would wish, irrespective of the statute, to be satisfied, and as the legislative history of the section indicates that no arbitrary restriction is intended, it seems unnecessary to raise the question

of constitutionality which such a provision would otherwise invite.

I am informed that the destroyers involved here are the survivors of a fleet of over 100 built at about the same time and under the same design. During the year 1930, 58 of these were decommissioned with a view toward scrapping and a corresponding number were recommissioned as replacements. Usable material and equipment from the 58 vessels removed from the service were transferred to the recommissioned vessels to recondition and modernize them, and other usable material and equipment were removed and the vessels stripped. They were then stricken from the navy register, and 50 of them were sold as scrap for prices ranging from $5,260 to $6,800 per vessel, and the remaining 8 were used for such purposes as target vessels, experimental construction tests, and temporary barracks. The surviving destroyers now under consideration have been reconditioned and are in service, but all of them are over-age, most of them by several years.

In construing this statute in its application to such a situation it is important to note that this subsection as originally proposed in the Senate bill provided that the appropriate staff officer shall first certify that "such material is not essential to and cannot be used in the defense of the United States." Senator Barkley and others objected to the subsection as so worded on the ground that it would prevent the release and exchange of surplus or used planes and other supplies for sale to the British and that it would consequently nullify the provisions of the bill (see section 1 of the act of July 2, 1940, H. R. 9850, Public No. 703) which the

Senate had passed several days earlier for that very purpose. Although Senator Walsh stated that he did not think the proposed subsection had that effect, he agreed to strike out the words "and cannot be used." Senator Barkley observed that he thought the modified language provided "a much more elastic term." Senator Walsh further stated that he would bear in mind in conference the views of Senator Barkley and others, and that he had "no desire or purpose to go beyond the present law, but to have some certificate filed as to whether the property is surplus or not." (Cong. Rec., June 21, 1940, pp. 13370-13371)

In view of this legislative history it is clear that the Congress did not intend to prevent the certification for transfer, exchange, sale or disposition of property merely because it is still used or usable or of possible value for future use. The statute does not contemplate mere transactions in scrap, yet exchange or sale except as scrap would hardly be possible if confined to material whose usefulness is entirely gone. It need only be certified as not essential, and "essential," usually the equivalent of vital or indispensable, falls far short of "used" or "usable."

Moreover, as has been indicated, the congressional authorization is not merely of a sale, which might imply only a cash transaction. It also authorizes equipment to be "transferred," "exchanged" or "otherwise disposed of"; and in connection with material of this kind for which there is no open market value is never absolute but

only relative--and chiefly related to what may be had in exchange or replacement.

In view of the character of the transactions contemplated, as well as the legislative history, the conclusion is inescapable that the Congress has not sought by section 14(a) to impose an arbitrary limitation upon the judgment of the highest staff officers as to whether a transfer, exchange or other disposition of specific items would impair our essential defenses. Specific items must be weighed in relation to our total defense position before and after an exchange or disposition. Any other construction would be a virtual prohibition of any sale, exchange or disposition of material or supplies so long as they were capable of use, however ineffective, and such a prohibition obviously was not, and was not intended to be, written into the law.

It is my opinion that in proceeding under section 14(a) appropriate staff officers may and should consider remaining useful life, strategic importance, obsolescence, and all other factors affecting defense value, not only with respect to what the Government of the United States gives up in any exchange or transfer, but also with respect to what the Government receives. In this situation good business sense is good legal sense.

I therefore advise that the appropriate staff officers may, and should, certify under section 14(a) that ships and material involved in a sale or exchange are not essential to the defense of the United States if in their judgment the consummation of the transaction does not impair or weaken the total defense of the United States,

and certainly so where the consummation of the arrangement will strengthen the total defensive position of the nation.

With specific reference to the proposed agreement with the Government of Great Britain for the acquisition of naval and air bases, it is my opinion that the Chief of Naval Operations may, and should, certify under section 14(a) that the destroyers involved are not essential to the defense of the United States if in his judgment the exchange of such destroyers for such naval and air bases will strengthen rather than impair the total defense of the United States.

I have previously indicated that in my opinion there is statutory authority for the acquisition of the naval and air bases in exchange for the vessels and material. The question was not more fully discussed at that point because dependent upon the statutes above treated and which required consideration in this section of the opinion. It is to be borne in mind that these statutes clearly recognize and deal with the authority to make dispositions by sale, transfer, exchange or otherwise; that they do not impose any limitations concerning individuals, corporations or governments to which such dispositions may be made; and that they do not specify or limit in any manner the consideration which may enter into an exchange. There is no reason whatever for holding that sales may not be made to or exchanges made with a foreign government or that in such a case a treaty is contemplated. This is emphasized when we consider that the transactions in some cases may be quite unimportant, perhaps only dispositions of scrap, and that a domestic buyer (unless restrained by some authorized con-

tract or embargo) would be quite free to dispose of his purchase as he pleased. Furthermore, section 14(a) of the act of June 28, 1940, supra, was enacted by the Congress in full contemplation of transfers for ultimate delivery to foreign belligerent nations. Possibly it may be said that the authority for exchange of naval vessels and material presupposes the acquisition of something of value to the Navy or, at least, to the national defense. Certainly I can imply no narrower limitation when the law is wholly silent in this respect. Assuming that there is, however, at least the limitation which I have mentioned, it is fully met in the acquisition of rights to maintain needed bases. And if, as I held, the statute law authorizes the exchange of vessels and material for other vessels and material or, equally, for the right to establish bases, it is an inescapable corollary that the statute law also authorizes the acquisition of the ships or material or bases which form the consideration for the exchange.

III.

Whether the statutes of the United States prevent the dispatch to Great Britain, a belligerent power, of the so-called "mosquito boats" now under construction or the over-age destroyers depends upon the interpretation to be placed on section 3 of title V of the act of June 15, 1917, c. 30, 40 Stat. 217, 222. This section reads:

> "During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel, built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel

shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States."

This section must be read in the light of section 2 of the same act and the rules of international law which the Congress states that it was its intention to implement. (H. Rep. No. 30, 65th Cong., 1st Sess., p. 9) So read, it is clear that it is inapplicable to vessels, like the over-age destroyers, which were not built, armed, equipped as, or converted into, vessels of war with the intent that they should enter the service of a belligerent. If the section were not so construed, it would render meaningless section 2 of the act which authorizes the President to detain any armed vessel until he is satisfied that it will not engage in hostile operations before it reaches a neutral or belligerent port. The two sections are intelligible and reconcilable only if read in light of the traditional rules of international law. These are clearly stated by Oppenheim in his work on International Law, 5th ed., Vol 2, sec. 334, pp. 574-576:

"Whereas a neutral is in no wise obliged by his duty of impartiality to prevent his subjects from selling armed vessels to the belligerents, such armed vessels being merely contraband of war, a neutral is bound to employ the means at his disposal to prevent his subjects from building, fitting out, or arming, to the order of either belligerent, vessels intended to be used as men-of-war, and to prevent the departure from his jurisdiction of any vessel which, by order of either belligerent, has been adapted to warlike use. The difference between selling armed vessels to belligerents and building them to order is usually defined in the following way: —

"An armed ship, being contraband of war, is in no wise different from other kinds of contraband, provided that she is not manned in a neutral port, so that she can commit

hostilities at once after having reached the open sea. A subject of a neutral who builds an armed ship, or arms a merchantman, not to the order of a belligerent, but intending to sell her to a belligerent, does not differ from a manufacturer of arms who intends to sell them to a belligerent. There is nothing to prevent a neutral from allowing his subjects to sell armed vessels, and to deliver them to belligerents, either in a neutral port or in a belligerent port. ***

"On the other hand, if a subject of a neutral builds armed ships to the order of a belligerent, he prepares the means of naval operations, since the ships, on sailing outside the neutral territorial waters and taking in a crew and ammunition, can at once commit hostilities. Thus, through the carrying out of the order of the belligerent, the neutral territory has been made the base of naval operations; and as the duty of impartiality includes an obligation to prevent either belligerent from making neutral territory the base of military or naval operations, a neutral violates his neutrality by not preventing his subjects from carrying out an order of a belligerent for the building and fitting out of men-of-war. This distinction, although of course logically correct, is hair-splitting. But as, according to the present law, neutral States need not prevent their subjects from supplying arms and ammunition to belligerents, it will probably continue to be drawn."

Viewed in the light of the above, I am of the opinion that this statute does prohibit the release and transfer to the British Government of the so-called "mosquito boats" now under construction for the United States Navy. If these boats were released to the British Government, it would be legally impossible for that Government to take them out of this country after their completion, since to the extent of such completion at least they would have been built, armed, or equipped with the intent, or with reasonable cause to believe, that they would enter the service of a belligerent after being sent out of the jurisdiction of the United States.

This will not be true, however, with respect to the overage destroyers, since they were clearly not built, armed, or equipped

with any such intent or with reasonable cause to believe that they would ever enter the service of a belligerent.

In this connection it has been noted that during the war between Russia and Japan in 1904 and 1905, the German Government permitted the sale to Russia of torpedo boats and also of ocean liners belonging to its auxiliary navy. See Wheaton's International Law, 6th ed. (Keith), Vol. 2, p. 977.

IV.

Accordingly, you are respectfully advised:

(a) That the proposed arrangement may be concluded as an Executive Agreement, effective without awaiting ratification.

(b) That there is Presidential power to transfer title and possession of the proposed considerations upon certification by appropriate staff officers.

(c) That the dispatch of the so-called "mosquito boats" would constitute a violation of the statute law of the United States, but with that exception there is no legal obstacle to the consummation of the transaction, in accordance, of course, with the applicable provisions of the Neutrality Act as to delivery.

Respectfully submitted,

Attorney General.

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

1940 (53)

1201

R. B. WHITE, PRESIDENT
NEWCOMB CARLTON, CHAIRMAN OF THE BOARD
J. C. WILLEVER, FIRST VICE-PRESIDENT

SYMBOLS
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THE HONORABLE FRANKLIN D ROOSEVELT=

HYDEPARK NY=

PSF Justice Jackson

6.10

YOUR LETTER TO CONGRESSMAN SULLIVAN ARRIVED DURING HIS ABSENCE STOP IT WILL BE BROUGHT TO HIS ATTENTION UPON HIS RETURN TO THE CITY TUESDAY MORNING-STOP KINDEST REGARDS=

BERT STAND SECRETARY TAMMANY HALL.

STAND.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

AG
2-40

August 27, 1940

Private

My dear Christy:

Bob Wagner, as you know, has pleaded with me for the appointment in the District Court of his partner Cy Rifkin. I do not see how I can continue to delay this because frankly Rifkin is qualified.

Do please send me a very high-class name for the other position. I fear Kane is disqualified under my sixty-year rule.

Very sincerely yours,

Honorable Christopher D. Sullivan,
Tammany Hall,
New York, N. Y.

PS F
Justice
Jackson

hm

RAJ

DRAFT OF LETTER FOR THE PRESIDENT'S SIGNATURE

My dear Christy:

Bob Wagner, as you know, has pleaded with me for the appointment in the District Court of his partner Cy Rifkin. I do not see how I can continue to delay this because frankly Rifkin is qualified.

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Tammany Hall
New York, N. Y.

RAP

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By W. J. Stewart Date FEB 29 1972

PSF
Justice
Bob Jackson

THE ~~WHITE HOUSE~~

WASHINGTON

September 13, 1940

[redacted]MORANDUM FOR

THE ATTORNEY GENERAL

Please read this over and especially the last paragraph in which Mr. Wenk emphasizes the necessity for speed and caution. Please write him that you are looking into it.

F. D. R.

Enclosures fdr.tmb

Let. to the President from John G. Wenk, Nat. Headquarters, Utopian Society of America 1919 South Western Avenue, Los Angeles, California 8/19/40 re citizenship case of Joseph Buchta of L. A. a resident of the U. S. beafore the outbreak of the World War of 1914 and at one time an employee of the U. S. Govt. Intelligence Service.

PSF Justice R. Jackson 1

October 10, 1940.

MEMORANDUM FOR THE PRESIDENT

MATTER OF MARSHAL, SOUTHERN DISTRICT OF NEW YORK

Edward J. Flynn has been demanding on behalf of the Tammany Organization the appointment of William J. Connolly to the Marshalship of the Southern District of New York. I cannot agree that it is either a good appointment or a wise political appointment.

The Marshal for the Southern District of New York is paid from $6,500 to $7,500. It is the largest office in the country with about eighty deputies and employees. It is an office which requires detailed and exact experience. He handles all of the witness fees, fees for jurors, pays the salaries of the Court, and is the representative of this Department in all of its fiscal transactions in that district. He is under a $50,000 bond and the amount of money which he handles for this Department runs to approximately $1,200,000.

You will recall that under Marshal Kelly we came near to a scandal. He was obliged to leave because of the Hatch Act, and if not we would have been obliged to remove him for neglect of his office. You will recall that the situation was so bad at about the time he left that Mr. Justice Stone called it to your attention and the matter had produced great dissatisfaction among Judges and others in New York.

We have never filled this place, but the Court appointed Lowenthal who had experience as a deputy and who was believed by the Judges to be qualified for the task. He has made great improvements in the office in spite of the fact that he does not have the assured position of an appointee and has been handicapped in his work. I have talked with Judges there and they speak in high terms of his work. Certainly, if we displace a man who has been doing this good work at the selection of the Judges themselves, there is a heavy burden upon us to name a fit man as successor.

For original of this memo and FDR's memo of Oct 10, 1940 to Ed Flynn — See: Flynn folder - Drawer 2 - 1940

Memorandum for the President October 10, 1940.

Politically Lowenthal is a close friend and protege of Senator Wagner, who has said that he would yield him to Farley's brother but to no other person. Farley, you will recall, requested that no appointment be made until after election. Senator Mead does not want to mix into the situation because he is a candidate, but tells Mr. McGuire that he would regard the proposed change at this time as an enbarrassment to himself.

Now as to the merits of Connolly. There were intimations that he had been in some mix-up which involved court procedure. This seems to have been the result of mistaken identity for his name is also held by several others. So far as we can ascertain he is not the man by that name who has been in any of the court cases involved.

Connolly can by no stretch of the imagination be said to measure up to this job even though he is vindicated of any criminal charges. The highest earnings he appears ever to have made were between 1924 and 1930 when he was a Ticket Agent for the Jacobs Agency and realized $50.00 to $75.00 per week. He was employed by Senator J. J. McNaboe from May to November, of 1938 in the Joint Legislative Committee at $125.00 per month.

His most recent employment is at the Worlds Fair where he served as a ticket taker from April to October of 1939 at 62 1/2¢ per hour, then as a Lieutenant in the Worlds Fair Corps (police) at $40.00 per week, and is now Supervisor of Revenue control at $45.00 per week.

To my mind the displacement of a man of excellent record by Connolly at this time would not be for the good of the service and would be extremely bad politics.

Respectfully,

Robert H. Jackson

Attorney General

File personal letter

Office of the Attorney General
Washington, D.C.

November 13, 1940

My dear Mr. President:

The Supreme Court at its session yesterday decided five cases on the merits in favor of the Government and two against it.

In Republic Steel Corporation v. National Labor Relations Board et al the Labor Board, in directing the Republic Steel to pay over back pay to various employees whom it had deprived of employment in violation of the National Labor Relations Act, directed the Company to deduct from the back pay any amounts which the employees had received from work relief projects, and to pay over the amounts so deducted to the appropriate governmental agencies. The Supreme Court held that the provision for reimbursement of governmental agencies was beyond the power of the Board; the Court had previously refused to review any of the other aspects of the case. The basis of the Court's decision is that the power of the Board is limited to redress of the grievances of employees, and does not extend to the redress of any public injury after the employees have been made whole. Mr. Justice Black and Mr. Justice Douglas filed a separate opinion in which they concurred in the result. Mr. Justice Roberts took no part in the decision.

In International Association of Machinists et al v. National Labor Relations Board the Labor Board set aside a closed-shop contract between the employer and the International Association of Machinists, an A. F. of L. affiliate, and ordered the employer to bargain with the United Automobile Workers of America, a C. I. O. affiliate. The Supreme Court upheld the order, against the attack of the International Association of Machinists. The Court held that that organization had been assisted by the employer in obtaining its majority membership in the unit of the plant which was covered by the closed-shop contract, and that the contract was therefore invalid under Section 8(3) of the National Labor Relations Act. The Court upheld the order to bargain with the United Automobile Workers of America, which had represented a majority of the employees in the plant at the time of the hearing, despite a claim submitted to the Board shortly before its

decision by the International Association of Machinists that the latter organization then represented a majority of the employees. On this point the Court held that the Board might disregard any shift of membership which occurred before the employer's unfair labor practices had been remedied by compliance with the order to bargain with the United Automobile Workers.

In Neuberger v. Commissioner of Internal Revenue it was held, in an opinion by Mr. Justice Murphy, that under Section 23(r)(1) of the Revenue Act of 1932, a taxpayer in computing his net income may deduct from his gross income losses sustained from sales or exchanges of stocks and bonds held less than two years to the extent of the gains realized from such sales by himself and to the extent of his share of the gains realized from such sales by his partnership. Three Justices dissented (Roberts, Black and Douglas).

J. E. Riley Investment Co. v. Commissioner of Internal Revenue involved the proper construction of Section 114(b)(4) of the Revenue Act of 1934, which required taxpayers to state in their "first return" under the Act whether they elected to have depletion allowance computed with or without regard to percentage depletion. The Supreme Court sustained the Government's contention that an amended return, filed after the period for filing original returns, was not a "first return" within the meaning of the Act and that consequently a taxpayer who made an election only in such an amended return was not entitled to percentage depletion.

In Helvering v. Northwest Steel Rolling Mills, Inc., the Supreme Court held that a corporation was not entitled to a credit in the computation of its undistributed profits tax simply because it was prohibited by state law from distributing its profits by way of dividends during the tax year. The Court further held that the undistributed profits tax, so construed, was constitutional. Crane-Johnson Co. v. Helvering, a companion case, was similarly decided.

In United States v. Stewart it was held, in an opinion by Mr. Justice Douglas, that gain on sale of Federal land bank bonds is not exempt from income tax under a statute which declares that such bonds and the "income derived therefrom" shall be tax-exempt. Mr. Justice Roberts dissented.

Petitions for certiorari in ten cases filed by the Government were granted. The most important of these was that in United States v. The Cooper Corporation et al. The question presented in this case is whether the United States has the right to maintain an action under Section 7 of the Sherman Act to recover triple damages for injuries inflicted upon it for losses alleged to have resulted from identical bids submitted by eighteen rubber tire manufacturers on Government purchases. The final decision in this case may have far-reaching effect on Government buying under the defense program.

Of the fourteen petitions for writs of certiorari filed by opponents upon which the Court acted, ten were denied and four granted, the Government concurring in the issuance of the writ in these cases.

Respectfully,

Robert H. Jackson

Attorney General.

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

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Office of the Attorney General
Washington, D.C.

November 18, 1940.

File personal

My dear Mr. President:

Of the two opinions rendered by the Supreme Court at its session today, the one of most general interest is that in Milk Wagon Drivers' Union, Local No. 753, et al v. Lake Valley Farm Products, Inc., et al. In this case, in which the Government did not participate, the Court held that the Norris-LaGuardia Act forbade issuance of an injunction in a labor dispute, even though the labor activities were alleged to be in violation of the Sherman Anti-trust law. The other opinion was rendered in three cases to which the Government was a party. In these cases (Wilson and Co., Inc. v. United States, and two other cases), the Court, in an opinion by Mr. Justice Murphy, sustained a collateral contention of the Government, to the effect that a denial of the export-refund claim by the Commissioner of Internal Revenue under Title IV of the Revenue Act of 1936 could not be reviewed, at least when the record did not show the basis of his action; the Court did not pass upon the more significant issue in the case, whether an exporter-processor could present an export refund claim under Title IV or must present a single claim for all processing taxes paid, under Title VII.

The Court also granted two petitions for writs of certiorari filed by the Government and denied one. Petitions by opponents were granted in three cases, the Government concurring in the issuance of the writs in two of these cases. Three petitions by opponents were denied.

Respectfully,

Robert H. Jackson
Attorney General.

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

file personal

PSF Justice Jackson

Jackson

Office of the Attorney General
Washington, D.C.

THE WHITE HOUSE
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November 29, 1940

MEMORANDUM FOR THE PRESIDENT

I have your note about the material from Secretary Ickes on Sparks, Briggs, and others regarding the Philadelphia Convention. I have had Mr. Milligan going into this matter, and he will investigate it thoroughly with grand jury. In fact, he is going down the line on the whole works.

R. H. J.

Attorney General

PSF
Justice
Jackson

THE WHITE HOUSE
WASHINGTON

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atty Gen Jackson

November 30, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

The enclosed is for your confidential information.

F. D. R.

THE WHITE HOUSE

WASHINGTON

COPY

Before you appoint Rifkind to the Federal Bench at Senator Wagner's request, you might wait for the outcome of the investigation which I understand the Government is now making of the Barron Collier bankruptcies here, in which Senator Wagner's firm, including Rifkind, is one of the counsel.

PSF Justice Jackson

Justice 1-40

DECLASSIFIED
By Deputy Archivist of the U.S.
By W. J. Stewart Date FEB 20 1972

[redacted]

Aboard Presidential Special
December 3, 1940.

MEMORANDUM FOR

THE ATTORNEY GENERAL

I have been getting a lot of complaints about our friend Rogge -- that he is a self-seeker and that he is overbearing.

F. D. R.

Foi
Please file under
Met. Museum and
Hall Roosevelt —

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1-40

Office of the Attorney General

Washington, D.C.

THE WHITE HOUSE

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December 7, 1940.

MEMORANDUM FOR THE PRESIDENT OF THE UNITED STATES

In re: Sun-Herald Corporation v. Duggan
News Publishing Company v. Duggan

As you may recall, these cases arise out of certain bequests made by Frank A. Munsey to the Metropolitan Museum of Art. Recovery is sought of taxes totalling approximately $215,000, paid on income received, in the first instant, by the Sun-Herald Corporation and News Publishing Company, but ultimately by the Museum. Because of your interest in the matter, I wish to bring to your attention the fact that a settlement offer contemplating a refund of approximately $107,000 has been rejected.

I am, of course, keenly aware of the position of the Museum in these cases. Unfortunately, however, while a different procedure might have been followed, the original transaction was not carried out in such a way as to place the income in question definitely in a tax-exempt category. On the contrary, it is reasonably clear that it does not fall within the exemptions created by Congress for religious, charitable and educational institutions. While the defense of the Government, of course, is not absolute, under the circumstances I believe that an offer to accept a refund of fifty per cent. is excessive.

For your information, there is attached a copy of a memorandum which sets forth the facts in some detail.

Respectfully,

Robert H. Jackson

ATTORNEY GENERAL.

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DEPARTMENT OF JUSTICE

WASHINGTON

November 26, 1940

SAMUEL O. CLARK, JR.,
Assistant Attorney General

MEMORANDUM FOR ASSISTANT SOLICITOR GENERAL FAHY

In re: Sun-Herald Corporation v. Duggan
News Publishing Company of Baltimore v. Duggan

OFFER IN SETTLEMENT OF CIVIL TAX CASES

These suits are pending in the Southern District of New York to recover income taxes alleged to have been erroneously collected for the years 1928 and 1929 in the respective amounts of $17,285.50 and $18,493.24 from the Sun-Herald Corporation, and $35,544.74 and $71,316.52 from the News Publishing Company, all totaling $142,640, plus interest to total approximately $215,000. An amended offer has been proposed to settle the above cases on the basis of a refund of 50% or $71,320, plus interest thereon to September 13, 1939 of $36,013.40, making a total refund of $107,333.40.

The Chief Counsel, Bureau of Internal Revenue, the United States Attorney, and Messrs. Horton, Sharpe, Samford, Slack and Tweedy, of this Division, recommend rejection. An offer in compromise to accept 90%, without interest, or $128,862 was rejected July 15, 1939.

The questions involved relate to whether income was received by the plaintiffs as agents or trustees of the Museum Estates, Inc. which was created for the Metropolitan Museum, both being exempt corporations; whether proper claims for refunds were filed by the plaintiffs to support amended complaints; whether amended complaints were new causes of action and subject to the applicable statutes of limitations or related to the original complaints filed; and also the applicability of the doctrine of equitable estoppel in the News Publishing Co. case.

At the time of his death on December 22, 1925, Frank A. Munsey through his personal holding corporation owned all of the stock of the plaintiffs. He made a residuary bequest to the Metropolitan Museum of Art and accordingly all of the stock of the plaintiffs was turned over to Museum Estates, Inc., an exempt holding company, organized by the Metropolitan Museum for the sole purpose of receiving and liquidating assets of the Munsey Estate. The plaintiffs' property consisted of notes which they had received from the sale of their newspaper businesses. They conducted no business, had no bank accounts, no employees, no offices, and the officers served without compensation and performed no duty other than to endorse checks received by it to Museum Estates, Inc.

It appears that about March 1, 1928, the stock of the plaintiffs and the notes held by them were physically turned over to Museum Estates, Inc, but the notes were carried on the books and reported on the returns of the respective plaintiffs for the years in question as assets. The directors' minutes disclose that a resolution to transfer the title to the notes was not adopted until

REJECTED - DEC 4, 1940
ROBERT H. JACKSON, A. G.

December 18, 1930. On this date the Government insists that title to the notes passed to Museum Estates, Inc., and up to this time the plaintiffs owned the notes and collections of interest were subject to tax.

The original claims for refund and suits filed by each taxpayer were based upon the theory that both companies were exempt from taxation under the provisions of Section 103 (14) of the Revenue Act of 1928, which provides exemption to —

> Corporations organized for the exclusive purpose of holding title to property, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; * * *.

All refund claims were rejected and these suits were duly instituted resulting in a favorable decision to the taxpayer. The Circuit Court of Appeals for the Second Circuit (73 F. (2d) 928, certiorari denied, 294 U. S. 719) reversed the decision and specifically held in the Sun-Herald Corporation case that the theory upon which the refund claims and the then existing complaint were predicated was untenable—that the Sun-Herald Corporation was not organized to collect and pay money to an exempt corporation, but was a newspaper corporation, to which the income in question belonged and was taxable.

After the decision of the Circuit Court of Appeals, amended complaints were filed in each case, based upon the theory that in the collection and transmission of the income in question the corporations were acting as trustees or agents for an exempt corporation. Since this theory is a new one, the question arises as to whether it is supported by the claims for refund as the plaintiffs must, of course, rely for recovery solely on the precise grounds presented to the Commissioner. While the amended claims for refund(1) contain certain "conduit" language, an examination of the entire claim indicates with reasonable certainty that the taxpayers were claiming under Section 103(14) and not under the theory of a trust relationship. Accordingly, a strong contention may be made that the claims for refund are insufficient to support a cause of action based upon a fiduciary relationship between the publishing companies and Museum Estates, Inc. If such contention were successful, there would, of course, be no recovery in either case.

If the last amendment to the complaint sets forth a new and distinct cause of action, claims totalling approximately $70,000 may be barred by the statute of limitations.(2) The original petition was based upon the full ownership of the assets of the Sun-Herald Corporation,

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(1) See Mr. Samford's memorandum of October 8, 1940, Appendix A.

(2) See Exhibit C of Mr. Samford's memorandum of October 8, showing in tabular form the dates when the claims were filed and rejected and when the complaints were filed. See also memorandum of September 24, 1940.

by that corporation as a separate entity, and the last amendment sets forth the existence of an agreement relating to a trust or agency, the proof of which would involve new facts concerning, among other things, the alleged written instrument, dates, the transfer of assets and the passage of equitable title. Accordingly, it is doubtful if the theory of relations back is applicable, even though it may be expected, particularly in the light of the new rules (Rule 15c)(3), that the court would be inclined to adopt a liberal attitude.(4)

If the amendments do contain new actions, $18,493.24 may be barred in the Sun-Herald case for 1929, and $34,390.34 may be barred in the News Publishing case for 1928, and if the consideration of an amended claim concerning the year 1928 in the Sun-Herald case reopens the original claim, an additional $17,285.50 may be barred for that year. These amounts total about $70,000, without interest, or approximately 50% of the principal taxes involved, which is the basis of the offer in settlement.

Apart from the foregoing defenses of limitations, the physical documentary evidence available in the cases indicates that during the years 1928 and 1929 the income involved was the income of the plaintiff corporations. The balance sheets and their returns list the notes as their assets and taxes were paid on the basis that the income from these notes was the income of the plaintiffs. The minutes of the corporation show that on December 18, 1930, they transferred the notes to Museum Estates, Inc. All of this tends to negative the trust or agency theory, based upon an agreement expressed or implied. Equitable estoppel may be urged to prevent the new theory from being advanced at this late date in the News Publishing Company case.

A troublesome case, when compared to the cases at bar, is Roche's Beach, Inc. v. Commissioner (C.C.A. 2d, 1938, 96 F. (2d) 776), wherein Judges Manton and Swan, with L. Hand dissenting, decided that a corporation organized by a testator to operate his bathing beach property and turn over the income to a charitable foundation to be created according to his will, was not exempt from taxation under Section 103(14), but was exempt as a corporation organized and operated for purposes other than private profit, and hence fell under Section 103(6). This decision appears to be wrong in view of Helvering v. Gilbert, 296 U.S. 369; Gagne v. Hanover Waterworks Co., 92 F. (2d) 659, and Trinidad v. Sagrada Ordan, 263 U. S. 578.(5)

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(3) The referred-to amendment was filed prior to the adoption of the new rules.

(4) The trial court has allowed the filing of the amendments, but apparently upon the ground that they are new causes of action and still filed within the statutory period of limitation (15 Fed. Supp. 415).

(5) Augustus Hand wrote the opinion in the Sun-Herald appeal, which was

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This case, in addition to a rather complicated factual set-up, presents certain equitable factors which may influence the court to a greater or less extent. The transaction could have been handled originally in such a way as to have been entirely tax-exempt. Further, the fact that the Metropolitan Museum would be the ultimate bearer of any tax burden may well tend to weight the scales against the Government, particularly in so far as technical contentions are concerned. In view of these factors, as well as others, I believe the case to be a compromiseable one. Nevertheless, since recovery will be entirely defeated if either of two contentions is successful, and materially reduced if the third contention is sustained, I believe that the offer is too high. Accordingly, I concur in the recommendations that it be rejected.

(Signed)
SAMUEL O. CLARK, JR.,
Assistant Attorney General.

December 3, 1940.

Rejection recommended

Charles Fahy
Assistant Solicitor General

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(5) (Continued)

concurred in by Judge Chase, and Judge Learned Hand dissented in the Roche case, but Judge Swan concurred in the decision for the taxpayer in the latter. No petition for certiorari was filed in the Roche case, apparently on the ground that although the decision was technically wrong, the facts involved were unusual and probably non-recurrent.

BF Justice Jackson Felder

COPY OF LETTER WRITTEN IN LONGHAND BY THE PRESIDENT

January 18, 1941

Dear Bob:

I do hope you're feeling better -- Don't try to attend anything Monday unless the M. D. really says yes.

Thank you for your note. It can only have one answer -- Stay put.

Affec.

F. D. R.

PSF Justice

THE ATTORNEY GENERAL
WASHINGTON

File Personal

January 16, 1941

My dear Mr. President:

I hereby present my resignation as Attorney General of the United States effective at your pleasure.

You are about to enter a new administration significant because of problems peculiar to these rapidly moving times. It seems appropriate to relinquish a position for which I was chosen in very different conditions and for qualifications which may no longer be appropriate.

It would be impossible in words to express my appreciation for the honor of your confidence.

Respectfully yours,

Robert H. Jackson

The President
The White House
Washington, D.C.

BP Justice Jackson folder 1-41

file

Confidential

THE WHITE HOUSE
WASHINGTON

Cruise file

March 15, 1941

MEMORANDUM FOR THE PRESIDENT:

Bob Jackson telephones to say that he understand the Navy Department will ask you to make a statement in reference to enlistments (in the United States) for Canadian service. Bob suggests that because of a very technical and troublesome statute in re enlistments of this kind it would be well to check with him before you give any statement on this subject to the Navy Department.

Bob says that if he should not happen to be immediately available, when and if the check is made, we should get in touch with a Mr. Berge, in charge of the Criminal Division, Department of Justice.

S.T.E.

PSF: Justice Jackson folder

I file personal

THE WHITE HOUSE

WASHINGTON

March 20, 1941.

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1941

MEMORANDUM FOR

THE ATTORNEY GENERAL

TO READ AND RETURN

FOR MY FILES.

F. D. R.

Mr President

I think Harold is right.

Slattery told me however after calling on you that you had told him you would name him. I think he has made the same representation to others as a basis for the pending legislation.

R.H.J.

Jackson folder
1-41

THE SECRETARY OF THE INTERIOR
WASHINGTON

March 17, 1941.

My dear Mr. President:

I heard recently that you were contemplating the appointment of former Senator James Slattery to the Federal Bench in Chicago. In my opinion such an appointment would be a mistake.

In the first place, Slattery does not rate such an appointment either as a lawyer or as a citizen. His practice was based, to a considerable extent upon a clientage that, in the main, consisted of violators of the Volstead Act. He has had no enviable reputation or standing as a lawyer in Chicago. As a citizen I have never known him to be interested in any liberal movement. I think that he has been, and still is, unconscious of the social problems of our times.

Slattery's temporary prominence in politics was due to the late Governor Horner. The relationship was purely personal. You will recall that, before Horner appointed him to fill the Lewis vacancy in the Senate, Slattery was Chairman of the Illinois Commerce Commission. While chairman there came into his possession some $25,000 of the securities of utilities that it was the function of his board to regulate. His explanation, when this fact became known, that his daughter had bought the securities with cash and later sold them for cash, impressed no one. This circumstance was a heavy handicap last November.

In appointing Slattery to the Senate, Governor Horner did his party no good. Granting that he supported the Administration while he was here,

he was still a weak candidate last November. Nearly anyone else who conceivably could have been named to run against Brooks in Illinois last fall could have won. From the day that he was appointed by Governor Horner, I predicted that he would be a load on the ticket when he should run for the short term. The consensus of opinion of politicians of Illinois with whom I have talked think that Brooks could not have beaten anyone else.

The belief, as expressed to me by people of Illinois, is that if Slattery should be appointed to the Bench, it would weaken the democratic chances to elect a Senator next year when Brooks will be running for a full term. The appointment of an outstanding citizen, an able lawyer and a liberal to the Bench would go far to help elect a Senator in 1942.

In short, from a political point of view, I do not see that Slattery has earned any such appointment, and, from a political point of view, I apprehend that if he should be put on the Federal Bench it will be detrimental to democratic success in Illinois next year.

Sincerely yours,

Harold L. Ickes

Secretary of the Interior.

The President,
The White House.

Jackson folder
1-41

THE WHITE HOUSE

WASHINGTON

March 20, 1941.

MEMORANDUM FOR

THE ATTORNEY GENERAL

TO READ AND RETURN

FOR MY FILES.

F. D. R.

Letter to the President, dated March 17, 1941, from Secretary Ickes re Senator Slattery. Secretary Ickes feels that it would be a great mistake to appoint him to the Federal Bench in Chicago.

BF Justice Jackson folder 1-41

THE WHITE HOUSE
WASHINGTON

4-2-41

MEMORANDUM FOR THE PRESIDENT:

Leon Henderson says the Attorney General has Okayed the freezing of the coal prices. Henderson wants to know if he can go ahead by noon today.

E. M. W.

Sent original to Henderson with President's notation to take up first with Stellman

PSF Justice Jackson Folder

THE WHITE HOUSE
WASHINGTON

June 23, 1941

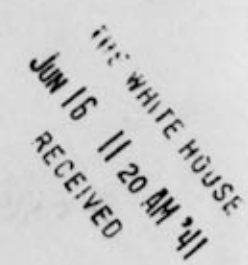
MEMORANDUM FOR THE ATTORNEY GENERAL:

The President has been delighted to see the attached letter which I am returning to you herewith.

G.G.T.

PSF Justice

Office of the Attorney General
Washington, D.C.



June 14, 1941

The President
The White House
Washington, D.C.

My dear Mr. President:

I attach a letter from M. Lorimer Moe, of Swedish descent, a newspaper reporter from "Yamestown."

His observations about the actual operation of the convoy system as viewed in his recent trip are completely confirmatory of your statements to the Cabinet and to me and are so vigorously and so refreshingly detailed that I thought the letter worth your examination.

Respectfully yours,

Robert H. Jackson

Attorney General

PSF
Justice Jackson

File under Robert H. Jackson

~~Frank Taft~~

Members of this Administration, in view of the current discussion about the Supreme Court, will find several interesting things in Pringle's recent "The Life and Times of William Howard Taft".

After the election of President Wilson, Taft received the newspaper correspondents. "Above all other things, the President said, he was proudest of the fact that six of the nine members of the Supreme Court, including the Chief Justice, bore his commission. 'And I have said to them,' Taft chuckled,'"Damn you, if any of you die, I'll disown you."'" (p. 854) It will be recalled that they all hung on so that Wilson had only three vacancies to fill during his eight years.

It appears that Chief Justice White, whom Taft had named, had substantially promised to retire. After Harding's election, however, White gave no indication of retirement. On March 26th Taft called on Harding and also on Chief Justice White. Taft's biographer sums up his attitude: "The most kindly of men, Taft's anxious appraisal of the jurist's health was a degree ghoulish". (p. 956) Taft later found his ambition considerably thwarted, or at least delayed, because "a new complication had arisen". "The President (Harding), he learned, had promised to elevate Senator George Sutherland of Utah to the Supreme Court at the first opportunity." (p. 957)

The biography reveals Taft calling on Chief Justice White to ascertain the attitude of Justice Hughes towards becoming the Republican candidate for President. "Taft admitted that Hughes entertained a few 'Progressive notions,' but the associate justice was not fatally poisoned by that virus." (p. 886) Mr. Hughes wrote to Mr. Taft after his defeat:"'I do not think that anyone of common sense has entertained the idea that my acceptance hurt the dignity of the court.'" (p. 900)

Under the Hoover Administration Taft wrote to Horace Taft on November 14, 1929: "'I am older and slower and less acute and more confused. However, as long as things continue asthey are, and I am able to answer in my place, I must stay on the court in order to prevent the Bolsheviki from getting control. . .'" (p. 967)

These are interesting commentaries in view of the ethical standards which the reactionaries now advocate in connection with the Court. We can only hope that they have reformed since they last had an opportunity to put their ethics into force.

R.H.J.