

PSF

Justice Dept. : Murphy

PSF Justice

Murphy

THE WHITE HOUSE
WASHINGTON

January 26, 1939.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you get me a report on
Bernhard Knollenberg, expert tax
lawyer, now Librarian of Yale
University?

Do not tell anyone but he
is being considered for General
Counsel of the Treasury.

F. D. R.

DECLASSIFIED
By Deputy Archivist of the U.S.

By W. J. Stewart Date FEB 29 1972

THE WHITE HOUSE
WASHINGTON

not sent -

PRIVATE AND
CONFIDENTIAL

February 7, 1939

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you have a check made on Mr. Knollenberg - - formerly prominent lawyer and tax expert in New York City but said to be a Liberal and now he is the Librarian of Yale University.

The reason for the investigation should be kept very confidential, but actually Henry Morgenthau, Jr. is considering him for Assistant Secretary of the Treasury to supervise Foley who would become General Counsel for the Treasury.

F. D. R.



DECLASSIFIED
By Deputy Archivist of the U.S.

By W. J. Stewart Date FEB 29 1972



*file
personal*

Office of the Attorney General
Washington, D.C.

THE WHITE HOUSE
JAN 31 4 08 PM '39
RECEIVED

January 30, 1939.

My dear Mr. President:

The Supreme Court at its session today decided fourteen Government cases on the merits. Counting related cases as a single case, the Government won six of these cases and lost three.

The two decisions of most importance rendered by the Court were those in Tennessee Electric Power Co. et al v. T. V. A. et al and D. T. Currin et al v. Wallace, Secretary of Agriculture, et al. In the T. V. A. case the Court sustained the Government's position that the appellant companies had no standing to question the validity of the sale of power by T. V. A. The Court held that the companies could not question competition on the ground that the commodity acquired by the competitor was acquired in alleged violation of the Constitution. The Court also held that no unlawful conspiracy had been shown between T. V. A. and P. W. A. The constitutionality of the T. V. A. power sales was therefore not discussed or decided. The opinion was announced by Mr. Justice Roberts. Justices McReynolds and Butler dissented. Justice Reed did not participate in the consideration or decision of the case.

In the Currin case the Court upheld the constitutionality of the Tobacco Inspection Act of August 23, 1935, saying (1) that sales of tobacco at auction warehouses for shipment to other states or abroad are interstate or foreign commerce and subject to Federal regulation under the commerce power; that sales on such markets for manufacture or use within the state are so comingled with interstate and foreign sales that the regulation may apply also to such local sales; that in connection with the regulation of such sales inspection of tobacco to establish its conformity with Federal standards may be required before the sales occur; (2) that the Act's provision for selection of some markets for regulation while facilities are being developed to extend it gradually to all markets is not unconstitutionally discriminatory; (3) that the Act contains no unconstitutional delegation of legislative power either to the Secretary of Agriculture or (in a provision for a referendum among growers as to whether inspection shall be effective on the market where they sell) to tobacco growers; and (4) that although the warehousemen show no deprivation of property which entitles them to injunctive relief, they do show an actual controversy which entitles them to invoke the Declaratory Judgments Act. Justices McReynolds and Butler dissented without opinion.

In Inland Steel Co. v. United States and Interstate Commerce Commission, and another case, the Supreme Court affirmed decrees of a District Court holding that the appellants were not entitled to allowances for switching cars within their plants during the pendency of interlocutory injunctions against cease and desist orders of the Interstate Commerce Commission, which were sustained upon final hearing. In Bowen v. Johnston, Warden, the Court held that the United States had exclusive jurisdiction of offenses committed within the Chickamauga and Chattanooga National Park, located in Georgia. In Utah Fuel Co., et al v. National Bituminous Coal Commission, et al, it was held that the Commission has the power under the statute creating it to make available for inspection at hearings cost reports filed as confidential, and therefore that a cause of action was not stated in a suit in the District Court for the District of Columbia to enjoin the disclosure of such information. The Court disagreed with the decision of the Court of Appeals for the District of Columbia that the District Court was without jurisdiction over the controversy. Justice Black concurred with the view of the Court of Appeals. In Arrow Distilleries, Inc. v. Alexander, Administrator of Federal Alcohol Administration, the Court granted a motion by the Government to affirm a decree of the District Court for the District of Columbia denying a temporary injunction to restrain the Administrator of the Federal Alcohol Administration from proceeding with hearings in connection with the suspension of appellant's permits.

In United States v. Midstate Horticultural Co., et al, and another case, the Court held that indictments charging that rebates or concessions were paid and received in New York in 1935 in connection with the transportation of goods in 1932 from California through the Eastern District of Pennsylvania to New Jersey did not charge a violation of the Elkins Act which was committed within the Eastern District of Pennsylvania, where the full lawful rate was paid when the transportation took place and there was at that time no agreement or intention that any rebate or concession should be made. In United States v. Durkee Famous Foods, and two other cases, it was held that under the Act of May 10, 1934, which permits a new indictment to be returned after a prior indictment is found to be defective or insufficient for any cause, the Government could not reindict at the same term at which the prior indictment was held to be defective. In Commissioner of Internal Revenue v. R. J. Reynolds Tobacco Co. the Court held that a corporation was not taxable on profit from sales of its own stock in 1929 for the reasons that the Treasury Regulations so provided from 1920 to 1934 and that they could not be amended retroactively. A similar holding was made in First Chrold Corp. v. Commissioner of Internal Revenue.

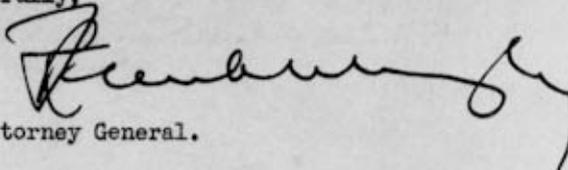
The Court restored to the docket for reargument on Monday, February 27th, the cases of Coleman v. Miller, Chandler v. Wise and United States v. Morgan. The first two cases involve the validity of

ratifications of the proposed Child Labor Amendment by the legislatures of Kansas and Kentucky. The Morgan case presents the question whether the commission men were entitled to recover funds impounded during litigation, which resulted in the invalidity of the order of the Secretary of Agriculture under the Packers and Stockyards Act because of procedural error, or whether the Secretary could resume hearings in order to correct the error as of the date of his original order.

The Court also denied petitions for certiorari by opponents in five of the six cases upon which it acted. The Government concurred in the granting of the writ in the other case.

Professor Felix Frankfurter was today administered the judicial oath and took his seat as an Associate Justice of the Supreme Court.

Respectfully,



Attorney General.

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



Tracy

*File
Personal*

Office of the Attorney General
Washington, D.C.

February 27, 1939

THE WHITE HOUSE

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RECEIVED

My dear Mr. President:

At its session today the Supreme Court rendered three decisions on the merits sustaining the contentions of the Government and five decisions overruling the Government's contentions.

In National Labor Relations Board v. Fansteel Metallurgical Corporation the Court, in an opinion by the Chief Justice, modified and, as modified, affirmed the decision of the Circuit Court of Appeals for the Seventh Circuit, setting aside an order of the National Labor Relations Board. The case involved several questions. As to some, the Court agreed with the Board. In this category are the holding by the Board that the employer had dominated and interfered with a company union, that it had used labor spies, that it had isolated the Union president to prevent him from assisting in Union activities, and that it had through its superintendent made numerous anti-union statements. On the basis of these conclusions the Court reversed so much of the order of the Circuit Court of Appeals as had refused enforcement of those provisions of the order of the National Labor Relations Board based upon these violations.

The Court also agreed, as was admitted by the employer, that there had been a refusal to bargain with the employees in violation of Section 8(5) of the Act. On the basis of that refusal to bargain the Board had ordered the reinstatement of a number of employees notwithstanding the fact that they had, subsequent to the refusal, engaged in a sit-down strike and had been discharged therefor. The Chief Justice holds that the Labor Board was not empowered by the statute to order the reinstatement of these employees. He states, first, that the employer was not prevented from discharging them by any provisions of the National Labor Relations Act and, second, that having been discharged, the Board was not empowered by its general authority to require affirmative action to "effectuate the policies of the Act" to require their reinstatement notwithstanding their discharge. The Chief Justice also holds that 14 employees, who were not specifically discharged but who assisted the sit-down strikers in violation of the injunction and whose places were subsequently filled, were also improperly ordered reinstated.

Mr. Justice Stone, in a separate opinion, concurs in so much of the Chief Justice's opinion as holds that the sit-down strikers were improperly ordered reinstated. He disagrees with the conclusion that the 14 strikers who were not specifically discharged were not properly ordered reinstated. Mr. Justice Reed, with the concurrence of Mr. Justice Black, dissented, holding that by the terms of the Act the Board possessed the power to order the reinstatement of the strikers notwithstanding the discharge, and that under the circumstances of the present case it was not an abuse of discretion for the Board to order their reinstatement.

In National Labor Relations Board v. Sands Manufacturing Co. the Court, in an opinion by Mr. Justice Roberts, affirmed a decision by the Circuit Court of Appeals for the Sixth Circuit denying a petition by the Labor Relations Board for the enforcement of one of its orders. Two questions were involved: First, whether the respondent had discharged certain of its employees because of their union activity in violation of Section 8(3) of the Act. The Board had found that the discharge was due to union activity. The Circuit Court of Appeals had held to the contrary, stating that no substantial evidence supported that conclusion of the Board. Mr. Justice Roberts agrees with the conclusion of the Circuit Court of Appeals and holds that the Board's finding is without evidence to support it. Second, the case involved the question whether the employer had failed to bargain with its employees in violation of Section 8(5) of the Act. The Board had held that although the company had met with representatives of its employees many times there was no reason to believe that further negotiations would not have resolved the dispute. The Circuit Court of Appeals disagreed and Mr. Justice Roberts again agrees with the Circuit Court of Appeals. He holds that the employer had bargained sufficiently with the employees and that at the time of the request to bargain upon which the Board relies the employer was no longer obligated to comply. Mr. Justice Black and Mr. Justice Reed dissented without written opinion.

In National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc. the Court, in an opinion by Mr. Justice Stone, affirmed the judgment of the Circuit Court of Appeals for the Seventh Circuit setting aside an order of the National Labor Relations Board. The court below had decided that the employer had not violated the Act, since the employees by striking - allegedly in violation of a contract - had forfeited their rights under the Labor Relations Act. Mr. Justice Stone inferentially rejects that conclusion. His opinion makes the critical question one of fact - whether the employer had known when requested by federal conciliators to meet with them and the Union committee that the request was made on behalf of the Union. Contrary to the finding of the Board, he concluded that there was no substantial evidence that the president had known, when he refused to meet, that the request for a meeting had been made on behalf of the Union. Mr. Justice Black, with whom Mr. Justice Reed concurred, dissented, stating that the evidence, particularly in view of the company's past relations with the Union, was adequate to support the finding of the Board that the employer had refused to bargain with the Union.

In Keifer & Keifer v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Sioux City, Iowa the Court, in an opinion by Mr. Justice Frankfurter, held that Regional Agricultural Credit Corporations, which are not expressly made subject to suit by statute but, pursuant to statute, are chartered by the Reconstruction Finance Corporation, which is expressly subjected to suit, are subject to suit in contract generally and particularly in this case for improper care of cattle in the custody of a Regional Agricultural Credit Corporation under a cattle feeding contract. In United States v. Bertelsen & Petersen Engineering Co. and United States v. Jaffray, the question at issue was the jurisdiction of the District Court to entertain a suit to recover an amount in excess of \$10,000 brought by the taxpayer on the theory that the Commissioner of Internal Revenue had credited admitted overpayments to deficiencies barred by the statute of limitations. The Government contended that under such circumstances the jurisdictional statute required that the suits be brought in the Court of Claims and that the decisions of the lower courts allowing recovery were erroneous. The Court disagreed and held that, since the action might have been maintained against the collector were he still alive and in office, it could be maintained against the United States in the District Court thereafter.

In United States v. Towery the Circuit Court of Appeals for the Seventh Circuit had held that suits on contracts of war risk insurance alleged to have matured by total permanent disability might be brought by living veterans at any time to recover the benefits accruing within six years prior to the bringing of the suit, and by beneficiaries of the policies of deceased veterans at any time within six years after the death of the insured. The Supreme Court held, in accordance with the Government's contentions, that no suit could be brought either by the insured or a beneficiary upon a contract alleged to have matured by total permanent disability, unless it was brought within six years after the happening of the disability which was relied upon as having matured the contract. The cost to the Government, had the decision of the Circuit Court of Appeals been affirmed, would have been many millions of dollars. In United States v. Jacobs and Dimock v. Corwin, Collector the Court, in an opinion by Mr. Justice Black, held that the full value of a joint tenancy created before the first Estate Tax Act of 1916 may be included in the gross estate of a decedent dying after the enactment of the Revenue Act of 1924, where the decedent contributed the funds with which the property was purchased. In the Dimock case this principle was also held to apply to property contributed to the joint tenancy by the survivor before 1916, where the survivor, prior to that time, had acquired the property so contributed by gift from the decedent. Three Justices (McReynolds, Butler and Roberts) dissented. Mr. Justice Stone took no part in the consideration or decision of the case. In Hale v. Bimco

Trading Inc. and Broward County Port Authority, a case in which the Government was not formally a party, the Court, in an opinion by Mr. Justice Frankfurter, held that a statute of Florida providing for the inspection of all imported cement and the payment for such inspection of a fee of 15¢ per hundred pounds was invalid because it contravened the commerce clause. The Government had filed a brief as amicus curiae urging the unconstitutionality of the statute. In this brief it was pointed out that the statute operated virtually as an embargo on foreign commerce in cement and tended to imperil the efforts of the State Department to negotiate trade agreements with foreign countries.

Petitions for certiorari by opponents were denied in nine out of the ten cases considered.

Respectfully,


Acting Attorney General.

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

THE WHITE HOUSE
WASHINGTON

PSE
Justice
Murphy

March 11, 1939.

MEMORANDUM FOR
THE ATTORNEY GENERAL

Will you speak to me
about this?

F. D. R.

Letter from Irving Brant in re Supreme Court appointment. Also enclosure of confidential letter from Rutledge to Brant.



Office of the Attorney General
Washington, D.C.

File
Personal

March 27, 1939

My dear Mr. President:

From the standpoint of the Government the principal decision rendered by the Supreme Court at its session today was that in Graves v. New York ex rel. O'Keefe. There the Court held the salary of an employee of the Home Owners' Loan Corporation subject to the New York State income tax. The opinion, by Justice Stone, followed closely the argument made by the Government as amicus curiae. It assumed that the Corporation and its employees were entitled to the same immunity that would be granted in the case of any branch of the United States Government. It left open the precise extent to which Federal instrumentalities may be entitled to a greater immunity than those of the States when Congress has so provided. Since there was no statutory exemption, the question was considered under the Constitution alone. The tax was sustained because it was non-discriminatory, because it was imposed on the income after it had left the Government and become that of the employee, and because there was no basis for an assumption that any economic burden would be imposed upon the Government as a result of taxing its employees. Collector v. Day, decided in 1870, and New York ex rel. Rogers v. Graves, decided in 1937, which respectively ~~sustained~~ the immunity of state and federal officers from taxation by the other government, were expressly overruled. The Chief Justice concurred in the result.

Justice Frankfurter filed a concurring opinion. It does not depart from the logic of the opinion of Justice Stone, but seems to have been filed because of the propriety that the Justices give individual opinions when overruling established constitutional doctrine. "The seductive cliche that the power to tax involves the power to destroy" was said to have arisen "partly as a flourish of rhetoric and partly because the intellectual fashion of the times [of Chief Justice Marshall] indulged a free use of absolutes." He said that "in this Court dissents have gradually become majority opinions, and even before the present decision the rationale of the doctrine had been undermined." He justified the sweeping reversal of doctrine found in the opinion on the ground that "the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."

Justices McReynolds and Butler, in a brief opinion by the latter, dissented. They concluded: "safely it may be said that presently marked for destruction is the doctrine of reciprocal immunity that by recent decisions here has been so much impaired."

The decision completely sweeps away the doctrine of tax immunity of officers and employees. This makes the pending salary legislation in Congress unnecessary, except so far as it waives liability for taxes due in past years by state employees. Similar legislation might be appropriate in the minority of the states which have an income tax statute which has not in the past exempted the salaries of federal officers and employees. On the other hand, Congress possibly has power itself to provide that federal officers and employees should not be subjected to state taxation for past years.

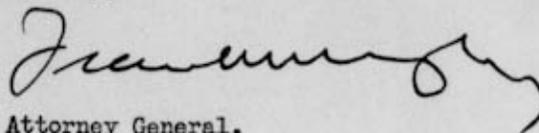
The opinion of the Court contains very little that is directly applicable to the question of taxing of income realized from Government bonds. So far as it emphasizes that the tax on the salary does not result in any economic burden on the Government, it does not reach the bond question. But it makes clear that one of the chief arguments which this Department has used in advocating elimination of the statutory exemption of interest on state and municipal bonds is valid. The Court expressly says that the old doctrine that a tax upon the income is a tax upon the source has been rejected in its recent decisions. The concurrence of Mr. Justice Frankfurter is probably broad enough markedly to influence, if not to cover, the bond question; the dissent of Justices McReynolds and Butler indicates that they view the bond issue as largely determined by the present decision.

In State Tax Commission v. Van Cott the question was whether the State Court had rightly held an attorney for the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation exempt from the Utah income tax, which exempted salaries paid by the United States "in connection with the exercise of an essential governmental function." The Court held that the decision of the Utah court was based both on an assumed constitutional immunity of the federal officer from state taxation and upon the exemption granted by the State statute. It therefore reversed the case for reconsideration by the State Court in the light of the statute alone, since the constitutional immunity was abolished in the O'Keefe case.

In Douglas Fairbanks v. United States the Court decided in favor of the Government's contention that gain derived by Fairbanks from redemption of bonds during 1927, 1928 and 1929 was not "capital gain" within the meaning of the controlling Revenue Acts and therefore held that this gain was taxable at normal and surtax rates rather than at the special rate applicable to capital gain.

Petitions for writs of certiorari filed by opponents were denied in nine cases. In two cases (H. P. Hood & Sons, Inc. et al v. United States et al and The Whiting Milk Co. v. United States et al), involving the constitutionality of the Agricultural Marketing Agreement Act of 1937, a petition for writs of certiorari filed by opponents was granted, with the concurrence of the Government. In another case (United States v. Rock Royal Cooperative, Inc. et al), involving a similar question, the Court decided to entertain the case on appeal. These three cases have been set for hearing on Monday, April 24th.

Respectfully,



Attorney General.

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

THE WHITE HOUSE
WASHINGTON

PSF: *murphy*
Justice

PRIVATE

April 14, 1939.

MEMORANDUM FOR

THE ATTORNEY GENERAL

FOR YOUR INFORMATION

F. D. R.

Telephone message from Congressman Casey of Massachusetts in re the appointment of McClellan to the Circuit Court of Massachusetts. Asks that the President wait until he (Casey) has had a chance to talk with the Attorney General on Friday, April 14th.

THE ATTORNEY GENERAL
WASHINGTON

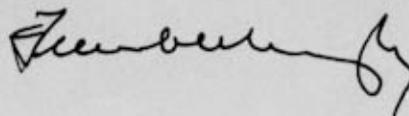
*P. J. Lee
Personal
Financial*

April 15, 1939

Dear Missy:

Attached is the opinion on the
income tax matter that I spoke to you
about yesterday.

Sincerely,



Miss Marguerite LeHand
The White House
Washington, D. C.



Office of the Attorney General

Washington, D.C.

April 15, 1939

Dear Mr. President:

Your attention is invited to Section 207 of H.R. 3790, signed by you a few days ago, otherwise known as the Public Salary Tax Act of 1939, which reads as follows:

"Sec. 207. No collection of any tax (including interest, additions to tax, and penalties) imposed by any State, Territory, possession, or local taxing authority on the compensation, received before January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof which is exempt from Federal income taxation and, if a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States, shall be made after the date of the enactment of this Act."

In view of this provision, it will not be necessary, in my opinion, for you and others similarly situated to include in New York State income tax returns compensation received before January 1, 1939, for personal services as officers of the United States.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank B. Rowland".

The President

The White House



Office of the Attorney General
Washington, D.C.

*file
personal*

April 17, 1939

My dear Mr. President:

At its session today the Supreme Court decided eight cases on the merits in favor of the Government and two against it.

The decision of principal importance decided in accordance with the Government's contentions was that in Mulford v. Smith. In that case the Court sustained as constitutional those provisions of the Agricultural Adjustment Act of 1938 which provide for the payment of penalties in connection with the marketing of flue-cured tobacco in excess of quotas prescribed by the Secretary of Agriculture for each farm on which such tobacco is produced. The decision holds first, that the statute does not purport to control production of tobacco but merely to regulate interstate commerce in tobacco at the throat where such tobacco enters the stream of commerce; that the provisions of the Act being intended to foster, protect and conserve interstate commerce or to prevent the flow of commerce from working harm to the people of the nation is within the congressional power; that within these limits the grant of power being unlimited in its terms, the exercise of the power may lawfully extend to the absolute prohibition of such commerce and a fortiori to the limitation of the amount of the given commodity which may be transported in such commerce; and that the motive of Congress in exerting the power is irrelevant to the validity of the legislation. Second, that the Act involves no unlawful delegation of legislative power. Third, that its application to the crop year 1938 does not deprive tobacco growers of their property without due process of law; that although the exact amount of the quotas was not made known until after the crop had been produced, inasmuch as the Act regulates not production but marketing of tobacco, it was not retroactive, but prospective in its application to the activity regulated; that it did not prevent any producer from holding for later sale tobacco which could not be sold within the quota; and that the circumstance that the producers involved had provided no facilities for preserving the tobacco for later sale is not of legal significance. Two Justices (Butler and McReynolds) dissented on the grounds that the statute was a regulation of production; that even if not it did not regulate interstate commerce and that its application to the 1938 crop was retroactive and therefore in violation of the due process clause.

In United States v. Maher the Court held to be lawful an order of the Interstate Commerce Commission denying a certificate under the "grandfather clause" of the Motor Carrier Act, 1935, on the ground that Maher's abandonment of the anywhere-for-hire service in which he was engaged on the "grandfather" date (June 1, 1935) destroyed his right under the "grandfather clause" to a certificate authorizing him to conduct a new and different kind of service.

In United States Trust Co. of New York v. Commissioner of Internal Revenue it was held that the proceeds of a War Risk Insurance policy payable to a deceased veteran's widow were properly included in his gross estate under the Federal estate tax laws.

In Rochester Telephone Corp. v. United States and Federal Communications Commission the Commission determined that the Rochester Company was under the "control" of the New York Telephone Company and consequently was not entitled to classification as a mere connecting carrier under Section 2(b) of the Communications Act of 1934. It accordingly ordered the Rochester Company classified "as subject to all common carrier provisions of the Communications Act of 1934, and, therefore, subject to all orders of the Telephone Division." The District Court dismissed on the merits a bill to review the order of the Commission. In the Supreme Court the Government supported the District Court's decree on the merits but contended that under the doctrine as to "negative orders" the Commission's order was not reviewable. After an analysis of prior decisions with reference to "negative orders", the Court, in an opinion by Mr. Justice Frankfurter, stated that "We conclude * * * that any distinction, as such, between 'negative' and 'affirmative' orders, as a touchstone of jurisdiction to review the Commission's orders, serves no useful purpose, and insofar as earlier decisions have been controlled by this distinction, they can no longer be guiding." And it held that the Commission's order was reviewable for the reasons that "It was not a mere abstract declaration regarding the status of the Rochester under the Communications Act, nor was it a stage in an incomplete process of administrative adjudication. The contested order determining the status of the Rochester necessarily and immediately carried direction of obedience to previously formulated mandatory orders addressed generally to all carriers amenable to the Commission's authority. Into this class of carriers the order under dispute covered the Rochester, and by that fact, in conjunction with the other orders, made determination of the status of the Rochester a reviewable order of the Commission." The Court held, however, that the Commission's order must be sustained on the merits since the record justified the Commission in finding that the Rochester Company was under the control of the New York Company. Mr. Justice Butler, Mr. Justice McReynolds concurring, was of the opinion that the order was affirmative in nature since, when read in connection with the general orders of the Commission, it placed the Rochester Company under a series

of affirmative mandates which, if valid, may be enforced under the Act. He accordingly declared that "There is no occasion to review earlier decisions dealing with affirmative and negative administrative orders and obviously none to overrule any of them or to repudiate or impair the doctrine they establish." On the merits these Justices agreed with the majority decision that the findings of the District Court were amply supported by the evidence and its decree must therefore be affirmed.

In National Labor Relations Board v. Fainblatt the Court upheld the jurisdiction of the Board as applied to an enterprise in New Jersey which processed but did not at any time own materials which themselves were obtained from without the State of New Jersey and were ultimately sent out of that state. Mr. Justice Stone stated that title to the goods was irrelevant to the jurisdiction of the Board and also that jurisdiction could be sustained notwithstanding the fact that the concern was small in comparison to concerns which had theretofore been held subject to the jurisdiction of the Board, although relatively quite a large concern since it employed approximately two hundred people. Mr. Justice McReynolds and Mr. Justice Butler dissented solely on the ground that a concern so small as this one should not be considered to be within the constitutional power of Congress.

In McCrone v. United States the Court held that an order adjudging the petitioner in contempt for failing to testify before a revenue agent in connection with the tax liability of another and directing that the petitioner be held in jail until he purged himself of such contempt, was a judgment of civil and not criminal contempt and therefore was governed by the statutory rules relating to civil appeals.

In Chippewa Indians of Minnesota v. United States the Court held that the United States had not, as charged by the Indians, diverted certain alleged trust funds.

In Goins v. United States the Court, in a per curiam decision, held that under the facts of the case the petitioner was not prejudiced because of the failure of the trial judge to instruct the jury as to the quantum of evidence necessary to convict in a perjury case.

In Driscoll v. Edison Light & Power Co., a non-Government case, the majority of the Court sustained an order of the Pennsylvania Public Utility Commission fixing rates of the utility under the so-called temporary-rate provisions of the Pennsylvania statute, which are modeled on a New York statute. The Government filed a brief as amicus curiae urging that the temporary-rate provisions should be

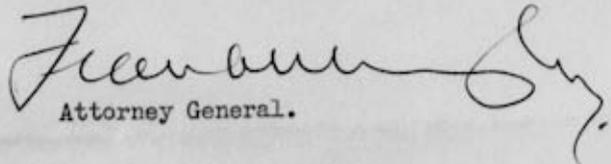
upheld on the ground that they provided for original cost or prudent investment as the rate base and that the so-called fair value or reproduction new base should no longer be a constitutional requirement. The majority found it unnecessary to reconsider the question of the proper rate base, in view of the fact that the rates fixed were not confiscatory on any base. A separate opinion was delivered by Mr. Justice Frankfurter, Mr. Justice Black concurring, maintaining that the Court should have taken the occasion to abandon its old doctrine.

The decision of principal interest rendered against the Government was that in Kessler, District Director of Immigration and Naturalization v. Strecker. In this case the Court, in an opinion by Mr. Justice Roberts, held that Strecker was not deportable under the deportation provisions of the Act of October 16, 1918, as amended in 1920, because such provisions do not embrace an alien who, after entry, has become a member of an organization, membership in which, at the time of his entry, would have warranted his exclusion if such alien ceased to be a member at the time of his arrest. The Court also held that the record did not justify a reversal of the holding of the Circuit Court of Appeals that the evidence was insufficient to support the finding of the Secretary of Labor that Strecker was deportable because of his personal beliefs. The Court accordingly ordered that the writ of habeas corpus be granted and that Strecker be discharged from custody. In view of its holdings the Court found it unnecessary to pass upon the conflicting contentions of the parties with reference to the adequacy of the evidence before the Secretary concerning the purposes and aims of the Communist Party or the propriety of the courts taking judicial notice thereof. Mr. Justice McReynolds, in an opinion joined in by Mr. Justice Butler, disagreed with the Court's construction that the statute covered only present membership, saying, "The construction of the statute adopted by the Court seems both unwarranted and unfortunate. If by the simple process of resigning or getting expelled from a proscribed organization an alien may thereby instantly purge himself after months or years of mischievous activities, hoped-for protection against such conduct will disappear. Escape from the consequences of deliberate violations of our hospitality should not become quite so facile."

In Federal Power Commission v. Pacific Power & Light Co. the Court held that an order of the Federal Power Commission under Section 203 of the Federal Power Act denying an application of public utility companies to consolidate and merge their properties was an order subject to review by the Circuit Court of Appeals under Section 313(b) of the Act.

Petitions for writs of certiorari by the Government in three cases were denied. Of the cases in which opponents petitioned for certiorari, the writ was denied in twelve cases and granted in three cases. The Government did not oppose the granting of the writ in two of these cases.

Respectfully,


Attorney General.

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

PSF
Justice
Murphy

THE WHITE HOUSE
WASHINGTON

File
Phormal

Marshall - Ck. First Dist.

Sumers - Ck.

Sam Miller, Ck.

" Curaway Ck.

May 11, 1939

Honorable James L. ~~Coke~~ to be
Chief Justice of the Supreme Court
of the Territory of Hawaii

Bernard J. Flynn to be
United States Attorney for the
District of Maryland

*O'Connor
D. Lewis*

Frank E. Flynn to be
United States Attorney for the
District of Arizona

OK *←*

Charles H. Sisson to be
United States Marshal for the
Southern District of Ohio

OK *←*

Francis H. Inge to be
United States Attorney for the
Southern District of Alabama

OK *←*

Honorable Robert A. Cooper to be
United States District Judge for the
District of Puerto Rico

OK *←*

1. Robert M. Wilkin to be
United States District Judge for the
Northern District of Ohio

check my file

Marvin Jones to be
Associate Justice of the
District Court of the United States
for the District of Columbia

? (Ct of Claims?)

2. Alva M. Lumpkin to be
United States District Judge for the
Eastern and Western Districts of
South Carolina

OK *←*

3. Leslie A. Barr to be
United States District Judge for the
Middle and Eastern Districts of Tennessee

OK *←*

Joseph Henry Goguen to be
United States Marshal for the
District of Massachusetts

OK *←*

Leo Calvin Crawford to be
United States Attorney for the
Southern District of Ohio

Felipe Sanchez y Esca to be
United States Marshal for the
District of New Mexico

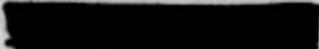
AK ✓

Ask Company

BF Justice

Murphy

THE WHITE HOUSE
WASHINGTON


May 17, 1939.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you please speak
to me about this? Keep it con-
fidential.

DECLASSIFIED
By Deputy Archivist of the U.S. F. D. R.

By W. J. Stewart Date FEB 29 1972

Letter addressed to Secretary Wallace dated April 20, 1939, in re misunderstanding and misinformation prevailing about barter arrangements with Germany and other European countries, stating that the farmers of the country are going to demand that these markets be opened up to their surplus commodities. The letter with enclosures comes from Newton Jenkins, 39 South La Salle St., Chicago, Ill.

THURMAN ARNOLD

ASSISTANT ATTORNEY GENERAL
WASHINGTON

File Personal

June 3, 1939

THE WHITE HOUSE
JUN 5 4 18 PM '39
RECEIVED

My dear Mr. President:

I appreciate very much your thoughtfulness in taking the time to send me a memorandum commenting on the work of the Antitrust Division before the Monopoly Committee.

Needless to say, Mr. Cox and Mr. Borkin were greatly pleased to have received letters from you. It has increased their morale tremendously, and you may be sure they will cherish them.

Sincerely,

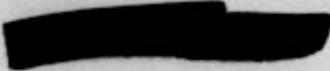
Thurman Arnold

The President
The White House
Washington, D. C.

PSF Justice

monkby

THE WHITE HOUSE
WASHINGTON



June 9, 1939.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you speak to me
about this?

F. D. R.

E. A. Tamm
S.M.S.

DECLASSIFIED
By Deputy Archivist of the U.S.

By E. J. Stewart, Date FEB 29 1972

THE WHITE HOUSE
WASHINGTON

June 7, 1939.

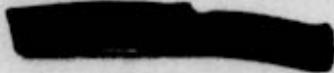
MEMORANDUM FOR THE PRESIDENT:

Mr. Brien McMahon asked
me to give you this list, which he
claims was prepared at your request.

E.M.W.
E.M.W.

PSF Justice Murphy

THE WHITE HOUSE
WASHINGTON



June 15, 1939.

MEMORANDUM FOR

THE ATTORNEY GENERAL

Will you speak to me
about this?

F. D. R.

President's longhand note:

F. M.

Jones of Pittsburgh for C.C.A. -
3rd Circuit.

?

DECLASSIFIED F. D. R.
By Deputy Archivist of the U.S.

By W. J. Stewart Date FEB 29 1972

PSF Justice

THE WHITE HOUSE
WASHINGTON

*mostly
file
personal*

July 1, 1939.

Memorandum for the Attorney General:

Will you look at this last paragraph and think it over so that we can talk about it next week. As you know, the V.P. takes the definite position that the President should not be bound at all by legislation as such legislation offends his constitutional powers. If we fail to get any Neutrality Bill, how far do you think I can go in ignoring the existing act -- even though I did sign it? !

F. D. R.

Letter to the President from Secretary Ickes 7-1-39 as to Neutrality Act, & stating the President justified in taking position that Constitution gives Executive power to conduct foreign affairs, etc.

DECLASSIFIED
By Deputy Archivist of the U.S.

By W. J. Stewart Date ~~FEB 29~~ 1972

PSF
Justice

Memo Murphy

Memo from Murphy
For the President
July 26, 1939

In re-Hatch Bill.

See Hatch Bill folder-Drawer 2-1939

PSF
Justice
Murphy

Atty Gen

Memo of Telephone conversation
Charley Michelson had with Kannee
August 4, 1939

In re-delegates to the Young Democrats
Convention in Pittsburgh and the Atty Gen's
word thru Swinehart unofficially that no
Govt. employee can be a delegate etc.
Likewise that Perry Coleman of Agriculture
cannot hold convention in the District to
elect delegates to the Pittsburgh Conf.

See--Charles Michelson-Gen corres Drawer 2-1939

See--Raw--done by P.T.L.

Fr. Murphy

September 6, 1939

The President,

The White House.

My dear Mr. President:

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

Respectfully,

Solicitor General

Robert Jackson

*file
personal*

*RF
Justice*

Murphy

THE WHITE HOUSE
WASHINGTON

September 27, 1939.

MEMORANDUM FOR THE PRESIDENT:

The Attorney General phoned that he was disturbed about the activity of the Catholic pastors in California who are sending thousands of telegrams to their Congressmen in Congress.

Also, he says that Bishop Schrembs of Cleveland, Ohio, has called a mass meeting of 30,000 Sunday and Coughlin has been invited to address them.

He says Schrembs was pro-German even before the last World War.

He thinks it a good idea, in addition to Al Smith (which he says is the finest thing that has happened so far), that two or three Catholic liberals should also go on the air.

E.M.W.

E.M.W.

PSF
Justice

THE WHITE HOUSE
WASHINGTON

Murphy

November 2, 1939

MEMORANDUM FOR
FRANK MURPHY

To speak to me about.

F. D. R.

Let. to the President from J. David Stern, Philadelphia, Pa. 10/31/39 enclosing 10/30/39 front page of Phila. Record containing story by Frank Rhylick re "U. S. Probers seek 'Killer' of Race Bill - Wheeler says he and son are ready to be investigated."

Sent to the A. G. in sealed envelope
11/2/39



*file
personal*

Office of the Attorney General
Washington, D. C.

*PSF
Justice
Murphy*

December 9, 1939

Dear Mr. President:

You will agree, I am sure, that in the selection of a successor to the late Justice Butler, we must think only of the nation itself. Its needs and interests are paramount.

In view of the discussion we had about this matter, and knowing how anxious you are to make the best appointment that can be made for the good of the entire country, I would feel remiss if I did not bring several names to your attention for appropriate consideration.

Among the qualifications that are needed by a member of the Supreme Court, if he is to deal satisfactorily and competently with the varied and difficult questions of major importance that are constantly being presented to that body for determination, are these:

A thorough knowledge of law and constitutional principles, and sound judgment in their application.

A liberal and open mind with respect to problems of government in a modern democratic society, coupled with an intelligent understanding of its structure and essential relationships and a profound faith in democratic principles.

Urbanity of spirit and a broad tolerance for the opinions of other persons.

Capacity for clear objective thinking, and lucid expression.

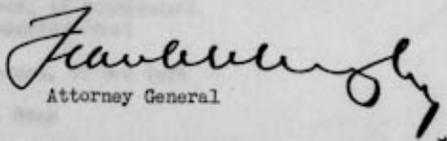
Unquestioned moral and intellectual integrity.

Such an appointment would ensure an enlightened, sound, and progressive interpretation of the federal constitution and laws. It would be greeted with general acclaim, would preserve public confidence in the decisions of the court, and would be a credit to your administration.

Members of the Supreme Court are not called upon nor expected to represent any single interest or group, area or class of persons. They speak for the country as a whole. Considerations of residential area or class interest, creed or racial extraction, ought therefore to be subordinated if not entirely disregarded.

I am taking the liberty of appending a list of persons, with a brief biographical sketch of each one, each of whom in my opinion possesses the desired qualifications and would be well qualified to sit on the court. Undoubtedly there are others who are equally qualified.

Respectfully,


Attorney General

The President,

The White House

Henry F. Ashhurst, of New Mexico
Francis Biddle, of Pennsylvania
Sam Gilbert Bratton, of New Mexico
John Joseph Burns, of Massachusetts
James F. Byrnes, of South Carolina
John P. Devaney, of Minnesota
Joseph C. Hutcheson, Jr., of Texas
Robert M. Hutchins, of Illinois
James M. Landis, of Massachusetts
Patrick B. O'Sullivan, of Connecticut
Judge of Superior Court
Robert Porter Patterson, of New York
Harold M. Stephens, Utah
George F. Sullivan, of Minnesota
John D. Wickham, of Wisconsin

Handwritten initials

PST Justice

THE WHITE HOUSE
WASHINGTON

Hyde Park, N. Y.,
December 18, 1939.

MEMORANDUM FOR

MRS. ROOSEVELT

TO READ AND RETURN FOR
MY FILES.

F. D. R.

Faint handwritten notes

Hyde Park, New York
August 9, 1939.

~~CONFIDENTIAL~~

MEMORANDUM FOR THE ATTORNEY GENERAL:

I enclose for your personal eyes only some correspondence relating to Navy contracts. Please do not, under any circumstances, disclose the source of these allegations.

I think F.B.I. should make a more thorough examination than has apparently been made to date. After you have read these, will you send them back to me.

F.D.R.

Enclosures.

Correspondence between Mrs. Roosevelt and Mrs. Stellan Larsson
207 A N 37th St.
Milwaukee, Wis.

RE: "Husband works for Falk Corporation of Milwaukee. They build Main Gear Turbine Units for the Navy under the terms of the Vinson Act. This limits the Corp. to a 10% profit over the cost." In 1935 noticed that husband had his time, as well as time of fellow workers charged to Navy jobs. "In reality, they were working on jobs for The American Tin Plate Co." From evidence on hand claims are "that our Govt. has been defrauded of over \$50,000,000 in the last 4 years just thru one Governmental department." Mrs. Roosevelt's note to Pres. "It looks as though Navy Intelligence was in on a bit of graft. Don't give names but get F.B.I. to really investigate themselves."

Gave Grace original carbon of this
to do something about-Oct 12, 1939

On the strength of the above reminder
the President sent Murphy the memo of
Oct 19th.

Grace:

This was strictly conf to the
Atty Gen only. I am wondering if
he sent the letter back with a report
to the President and what happened it
if he did.

P.T.L.

P.S. I have been holding the carbon for the
return of the letter as the President
requested its return.

THE WHITE HOUSE
WASHINGTON

October 19, 1939

~~CONFIDENTIAL~~

MEMORANDUM FOR FRANK MURPHY:

I can find nothing further on
this. Have you anything further?

F.D.R.



Office of the Attorney General
Washington, D. C.

December 13, 1939

THE WHITE HOUSE

Dec 15 11 23 AM '39

RECEIVED

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

My dear Mr. President:

This is in response to your memoranda of August 9 and October 17 concerning complaints that the Falk Corporation of Milwaukee, Wisconsin, has been defrauding the Government in connection with contracts with the Navy Department. The complaints originated from former employees of the concern.

Since the receipt of your memorandum of August 9, a comprehensive investigation of the matter was made by the Federal Bureau of Investigation. The specific allegation is that in its cost accounts the company from time to time charged to cost of work under Government contracts the cost of certain items for work performed in connection with contracts with private concerns. The necessity for keeping an account of costs under Government contracts arose out of the provision in the agreements with the Navy Department, under which the contractor limited himself to ten percent profit and agreed to refund to the Treasury Department any profit in excess of that amount.

It appeared in the course of the investigation that the informants based their assertions largely on hearsay, as all of them were members of the mechanical force, and none of them were charged with the duty of keeping the records. In connection with the investigation the accounting records of the company were closely scrutinized by Bureau Agents. The investigation does not substantiate the charge that any frauds of the type charged have been committed or are being committed.

It is my understanding that the Treasury Department is investigating the matter from the standpoint

- 2 -

of determining whether as a matter of fact any balances are due the Government, irrespective of any alleged fraud.

I am returning herewith the correspondence which you have heretofore forwarded to me in regard to this matter.

Respectfully,

Franklin D. Roosevelt
Attorney General

207-A, N. 37th Street
Milwaukee, Wisconsin
July 22, 1939

My Dear Mrs. Roosevelt,

I am very grateful for your interest in the matter that I wrote you about on July 10.

My husband works for the Falk Corporation of Milwaukee. They build Main Gear Turbine Units for the Navy under the terms of the Vinson Act. This limits the Corporation to a 10% profit over the cost.

In the early part of 1935 my husband began to notice that his time as well as that of his fellow workers was being charged to Navy jobs. In reality, they were working on jobs for The American Tin Plate Co., Luckenbach Steamship Co., or some other company. He also knew that under the N.R.A. provision the Corporation should have paid skilled labor \$1.20 per hour. In many cases they did not pay one half, and in no case did they pay anywhere near the rate that the contracts called for. He felt very badly about it; he could not understand how any Corporation with so much wealth could be so low. I believe it was in July of the same year that he confided these facts to a good friend who was also a fellow worker. This friend advised my husband to keep tab on all the erroneous charges, and that he would see what could be done when sufficient evidence was collected.

Early in 1936, this friend of my husband wrote a letter to our President, your distinguished husband. I was told this letter was turned over to the Department of Justice. A few months later the Corporation changed the system by which they were defrauding the Government. This new system made it more difficult for the workers to keep a check on the fraud. However, the evidence did not stop accumulating, but from the

JUL 24 1939
S.W.A.

Handwritten notes:
I looked at the copy
but was in only
part of it
I don't know how
but I'll try to
find it

many new developments in the shop it became very apparent that the Corporation had been tipped off about the letter Mr. Kinoh wrote to the President. Mr. Kinoh was discharged in December 1936. A few days later news went around the plant that it was because of a letter he sent to Washington; and that the Corporation had received a letter from Washington a few days before Mr. Kinoh was discharged, asking if they (the management) knew who Mr. Kinoh was. Mr. Kinoh was discharged after many ~~years~~ years of very satisfactory service to the Corporation. He was also a member of the shop Works Council and I was told that he did much to improve the working conditions in the plants. After he was discharged he wrote a letter to you, which like his letter to the President was turned over to the Department of Justice to be put to sleep.

About the middle of January 1937 Mr. Kinoh went to Washington only to find that his letter to the President and the evidence that he had given to one of the F.B.I. men was turned over by the Department of Justice to the Navy Intelligence Department; who in turn reported later that no facts were found to support Mr. Kinoh's charge. Still, no one from the Navy Department ever saw Mr. Kinoh in reference to the matter in question. My husband further told me that on that trip to Washington Mr. Kinoh succeeded in interesting the Hon. Senator La Follette in the case. To collect more evidence, Mr. Kinoh has visited many shipyards and plants that are filling navy contracts. He has been in Washington several times in the last two years. On his latest trip he spent seven weeks working on this case at his own expense. Upon his return he told my husband that sometimes it looks as though some of the higher Government officials are protecting and encouraging fraud.

Just think of it Mrs. Roosevelt, Mr. Kinoh has been working constantly for over two and one half years on this case, putting in 10 to 14

hours a day and paying his own expenses from years of savings. My husband tells me that more than twenty men, my husband is one, gather evidence for Mr. Kinch, whereas, all aid received from the Government is delay of action.

From the evidence on hand Mr. Kinch claims that our Government has been defrauded of over \$50,000,000 in the last four years just through one Governmental department. Some of the largest corporations of the country are involved in one of the most colossal frauds that was ever perpetrated on the American people.

If it will be necessary, I am sure Mr. Kinch will willingly supply all records and evidence regarding this case.

My husband and I are at your command ready to do anything in our power to end the corruption that is eating the foundation of our Government.

Sincerely yours,

Frances Larsson
Frances Larsson

Mrs. Stellan Larsson

July 17, 1939

100

My dear Mrs. Larsson:

I appreciate your interest in reading my article and in writing to me.

Can you give me the facts about your husband's work, to be used for investigation, his name not to be used, of course?

Very sincerely yours,

Mrs. Stellan Larsson
207- A N. 37th St.
Milwaukee
Wisconsin

0

PST
Justice

Murphy

December 26, 1939.

Dear Frank:-

This is precautionary.
You still have plenty of time
to fall for cigarettes.

With all good wishes
for a Merry Christmas,

As ever yours,

REPORT FROM--Secretary Hull, Acting Secretary Hanes
and the Attorney General

IN RE--Action that may be taken upon outbreak of
hostilities in Europe (1) WITHOUT declaration
of a national emergency and (2) WITH dec-
laration of a national emergency.

EXHIBITS Mentioned in attached report in folder

See--Raw folder

PSF
Justice

Frank Murphy
1

In re-James Townsend's son getting a job

See:Dutchess County folder-Drawer 3, 1939