

● PSF

Grenville Clark

Subject File

Box 140

PSF, GRENVILLE CLARK  
DUBLIN  
NEW HAMPSHIRE

file  
personal

July 4: '36

Dear Franklin:-

Here is quite a long  
reply <sup>as</sup> to Blancy and Mandelbaum. I  
really hate to differ with you on  
this, - the more so because I like  
so many things you are doing and  
spend a fair amount of my time  
saying so. Also I spend considerable  
time sticking up for Felix, as to  
whom many people, otherwise fairly  
sane, have a real neurosis.

Your job is terrific and  
I have literally put up an

occasional prayer that you be given  
insight and resolution to deal  
with it.

I hope to get a glimpse  
of you on Sept. 18.

With best wishes,

Sincerely yours,

Grenville Clark

To

The President  
The White House

ROOT, CLARK, BUCKNER & BALLANTINE  
31 NASSAU STREET  
NEW YORK

(2)  
PSF  
G. Clark

ELIHU ROOT  
COUNSEL

AMERICAN SECURITY BUILDING  
WASHINGTON, D. C.

July 3, 1936.

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

Dear Mr. President:

Thanks for your letter of June 22 in reply to mind of June 19 with regard to the appointments of Messrs. Mandelbaum and Clancy to the District Court.

(I have been away or would have replied sooner.)

Your letter says:

"The difficulty is that I do not agree with your statement that the two appointees you mention are not up to the standards of the District Court. What makes you think they are not?"

The crux of the matter comes on the definition of what the standards for the District Court should be. Good character we can take for granted. Beyond that, my view is that no man ought to be appointed to this Court unless (1) he has demonstrated marked ability and all-around quality in the legal profession and unless (2) he is so well and favorably known that the appointment commands respect and general confidence among members of the Bar. I do not think that this standard is unduly high. Certainly it is not impossible or even difficult of attainment. Many lawyers have been appointed to this Court who measured up to it and furthermore there is today a sufficient supply of men in New York (good Democrats too)

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who would not only measure up to this standard, but would be available to go on the Court. This being so, I cannot see how any lower standard can be accepted if the right of the public to have the best possible administration of justice is to be recognized. I think that you will agree that this definition of the standard is fair and reasonable.

The reason why I said that Messrs. Clancy and Mandelbaum fall below the required standard is that when tested in this way they simply do not measure up. This seems to be the unanimous testimony of those who have looked into the matter and thought about it. Certainly neither of them has demonstrated such marked ability and all-around quality in the practice of law as to command confidence among members of the Bar that they are up to this position.

The resolution of the Committee on the Judiciary of the New York County Lawyers' Association, sent to Senator Ashurst, said:

"Neither of the nominees has achieved such a position at the Bar as to command the confidence of the profession and the community with respect to the adequate performance of the duties of this office."

A letter of the Committee on the Judiciary of the Association of the Bar of the City of New York to Senator Ashurst said that these two men

"do not possess the essential qualifications for this high office \*\*\*"

These opinions represent the judgment of two

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responsible groups, most of whom are good men, and I think they fairly represent the opinion of the profession without regard to party.

I have made some other inquiries of disinterested persons and I have heard no one say that the appointments were up to the required standards nor have I heard anyone defend them.

The evidence in the case seems to be conclusive that these appointments are not nearly up to the standard which I have defined.

The other point in my letter was that the method by which the appointments were made was wrong. The appointments are, I think, universally regarded by the Bar and the press and the public as having been dictated by political considerations rather than by a wish to put the best qualified men on this bench. This conclusion seems inevitable under the circumstances, - the best proof being that no canvass appears to have been made to ascertain who would be the best qualified available men.

I have observed these appointments now for thirty years and could, I think, prove to you that where politicians have been permitted to dominate the appointments they have almost invariably been weak, whereas, when a real effort has been made to find the best available men, the appointments have almost always been excellent or good. The reason is

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simple, viz., that the politician almost necessarily has in mind different considerations than the sole desire to get the best men possible on the bench. His inevitable tendency is to recommend someone who has served the organization well, - to put that first and other considerations second. It can almost be said that if the politician does not do that he does not do his job. Anyhow, it is what almost always happens and this case is an excellent example of it. To illustrate: I remember a conversation some years ago with John Delaney, in which he expressed concern over the quality of the judges who were being put in by Tammany Hall and asked my opinion as to what ought to be done. I suggested that Tammany ought to put the nomination of judges up to a small committee of the ablest and most reputable Democratic lawyers, - a few such men as Martin Conboy. His reply was that this would not do, because such a committee would be likely to exclude members of the organization who had a claim on it and had to be taken care of. I remember his saying that only men in this category were really "eligible" and that few if any of such men would be on a list made up by a committee of the kind I suggested. Experience shows that there is just one way to get good judges, viz., to search out the best available men without regard to their standing with the political organizations. This is not a counsel of perfection because many judges, and our best ones, have been appointed here by that method who would not have come anywhere

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near being suggested by the political leaders. On the other hand, if one were asked to suggest the best possible way of securing weak judges, one would say: "That is very simple. Just put it up to the political leaders to recommend them. That will be almost a sure guaranty that they will not be the best available men, and if you get a first-rate man it will be only by good luck or accident."

It seems to me that the evidence here demonstrates: (1) that these two appointees are not up to the required standard; and (2) that this has been the direct result of employing the wrong method of selecting the appointees.

I am awfully sorry to have to say this but there is no way out of it. The fact is that although I have talked about this to a number of disinterested men, whose opinions you would respect, I have not seen a single person, no matter how favorably disposed to you, who has had a word to say for these appointments.

Sincerely yours,

*Greenville Clark*

file  
P.S.F.

PSF: Greenville Clark

31 Nassau St

New York

Sept. 18

[1937]

Dear Franklin:-

Attached are some  
 observations on the Black affair.  
 He ought, of course, to resign  
 except in the remote contingency  
 that he can disprove membership  
 at any time. The essence of the  
 thing is that by silence during  
 the discussion in the Senate he  
 misled the Senate and the public.  
 The retention of an office so stained  
 would be a continual reproach  
 against you and against him and  
 is really not tolerable.

No doubt his hide is  
 so thick that he'll try to hang

now, but all the same you  
can get him off since the  
public would approve any measure  
you choose to apply.

Sincerely yours

Gerrille Clark

ROOT, CLARK, BUCKNER & BALLANTINE  
31 NASSAU STREET  
NEW YORK

ELIHU ROOT  
1915-1937

AMERICAN SECURITY BUILDING  
WASHINGTON, D. C.

September 18, 1937.

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

Dear Mr. President:

Senator Black certainly "let you down" badly by not disclosing his Klan connection.

However, I suggest that an even more serious feature is that by his silence he also deceived the Senate and the general public. He might claim as an alibi for non-disclosure to you that you didn't inquire and the matter wasn't then before the public. Such an alibi is a little weak anyhow, but it could not be pleaded at all to justify his silence during the discussion in the Senate and the country after the nomination. By that time, allegations of the Klan connection were widely and publicly current and Senator Black must have and did know this. Nevertheless, he remained silent and by that very silence implicitly approved denials of his connection.

Thus during the Senate debate on August 16, Senator Borah said:

"There has never been an iota of evidence that Senator Black was a member of the Klan.\*\*\* We know that Senator Black has said in private conversation, not since the matter came up but at other times, that he was not a member of the Klan, and there is no evidence to the effect that he is."

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Although the above statement of Senator Borah was on the floor of the Senate and had wide publicity, Senator Black said nothing. Other Senators are now daily saying that they were "assured" that Senator Black wasn't in the Klan and wouldn't have supported him if the facts now brought out had been known.

What kind of a man is it that not only failed to disclose to you but sat silent while assurances contrary to the fact were given by colleagues?

I am assuming, of course, that Mr. Black cannot successfully deny at least a former membership. The documentary evidence in his handwriting of membership at least at July 9, 1925, seems conclusive, - unless it is forged, which is hardly conceivable. Any attempted quibble that his membership had ceased and that he had no obligation to disclose a former membership could not satisfy anyone or relieve him from the grave <sup>imputation</sup> ~~implication~~ resting on him.

It is plain (unless he can disprove the statement that he was a member) that by his silence he gravely misled (1) yourself, (2) the Senate and (3) the public. In that case, there is, I suggest, only one thing to do, i.e., secure his resignation. To speak frankly, he appears to have secured an office by what is usually called false pretenses, - for one may do this by failing to deny incorrect

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statements in one's support just as effectively as by making the false statements directly.

He will likely try to keep the appointment and fight for time, hoping that the scandal will pass out of the public mind. But I think this is one of those rare cases where the public will really demand that the facts be fully ventilated.

It seems to me that an ordinary regard for you should lead him to resign immediately, - save in the remote contingency that he can disprove the charge that he was a member. And if he could disprove this, why hasn't he said so?

Since it would appear that you and the Senate and the public have all been misled, public opinion would, of course, support you in any pressure you need to bring to get him out.

With great respect, I am,

Very truly yours,

*Sumner Clark*