

PSF - ^{Subject File}
Frankfurter, Felix

1936 - 1938

Frankfurter

PSF
Subject File "F"

Box

~~118~~ 150

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PSF
Lobby File, F. Frankfurter

1936 or before

I had lunch this week with Governor Landon at his house in Topeka and talked with him for several hours.

Landon is not the smartest man in the world, but I think possibly he has more qualities which might appeal to the rank and file of the voters than any of the other Republican possibilities except Borah. Borah today would come nearer carrying a good many of the agricultural states than any other Republican candidate, but I think it is inconceivable that the party leaders would ever permit Borah to be nominated, and I am not sure that the eastern voters would stand for Borah's unorthodox money ideas.

Landon is essentially a high-charactered, sincere, competent, small town business man. He strikes me as having an enormously large bump of common sense without having any profound knowledge of a good many of the complicated questions bothering the world today.

He believes in individual and private initiative and the profit motive, but he agrees to the principles underlying a good deal of the New Deal philosophy. He thinks the administration of the New Deal is horrible.

He thinks, for instance, that the federal social security law is sound in principle, but that the law itself is extremely badly drawn and impossible of successful administration. He is not in favor of discarding that legislation, but rather is in favor of amending it to make it actuarially sound and possible of administration. He thinks the taxing laws should definitely be used for social ends. For instance, I think he believes that graduated corporation taxes are perhaps socially desirable as a means of breaking down some of the largest corporations and unsocial pools of wealth which are perhaps monopolistic and stopping free play of competition.

He is a great believer in an economical, simple, federal administration. He thinks that the government at Washington has grown absurdly large and complex, not only under the New Deal, but also under the preceding Republican administrations.

So much for Landon.

Mr 13 [1936] PSF Frankfurter
This is F.F.'s draft
of Hatfield.

PSF
File
Platform
1936

Franklin D. Roosevelt and John N. Garner have led the American people out of panic and collapse onto the safe highway of courage and recovery. They have guided us through an internal crisis of disaster comparable to the dark days when the unity of the nation hung upon the patient wisdom and bold foresight of Washington and Lincoln. They have taken up the task of safeguarding our institutions where that task was laid down by Wilson. They have conceived the necessary adjustments of economic realities to the Jeffersonian ideal of political democracy. They have pursued these ends with the fearless determination of Jackson.

On March 4, 1933, as never before, this was a nation bereft of confidence, bewildered by failure, bankrupt of morale. The great majority of our citizens lived in poverty or insecurity absurdly, and tragically, out of relation to our natural resources and our means of production. Twelve years of virtual surrender by Government to the blind control of a dominant few had made our economic organization obsolete for distributing to the people as a whole the wealth they produce as a whole. In this fiercest test of moral leadership that ever faced America the present Administration has won an unchallengeable moral victory. It has stirred hope and constructive intelligence in a people who had lost hope. It has awakened faith that by intelligence our traditional system of individual enterprise can be reorganized to operate anew.

The Democratic Administration has saved that traditional

system of individual enterprise and free competition. It has sought to vindicate it for its service to the common man and to enable it to operate for the children's children of today's free men and women by buttressing it against collapse in panic in another twelve years.

Through the Banking Acts, the Securities Act, the Securities and Exchange Act and the activities of the Reconstruction Finance Corporation, the Administration has given individual enterprise a truly sound financial system in which to operate by ensuring the stability of the banking system, whose credit creates our currency, and the integrity of the securities market whose trustworthiness makes it possible for capital to function.

By the revaluation of our currency in fair relation to our own debt structure and to the prevailing standard of international trade, the Administration has made possible a continuation and resumption of domestic and foreign trade and has supported the purchasing power of the nation against the vicissitudes of foreign disturbances and domestic maladjustments.

By the operations of the Farm Credit Administration, the Home Owners' Loan Corporation, the Reconstruction Finance Corporation and the Federal Reserve System, the Administration has refunded and reduced the fixed charges against the annual national income of vast aggregates of debt which endangered social order and the economic fabric.

By the enactment of the N. R. A. at a critical juncture of the depression, the Administration broke the psychology of deflation, ostracized child labor and at the demand of industry itself con-

ducted searching tests to ascertain the practical advantages and limitations of self-government in industry for capital, labor and the consuming public.

By its agricultural legislation, the Administration for the first time consciously helped to restore the lost balance of production and income between agricultural and industrial producers which is essential to the functioning of the national economic exchange.

By its tax legislation policy and its utility legislation, the Administration has made a beginning of deliberate encouragement to moderate-sized, independent industry upon which the maintenance of our economic traditions of free enterprise and the continuance of our political democracy depend.

By its labor legislation the Administration has made a beginning of legal guarantee of an adequate bargaining status for our _____,000,000 workers upon whose adequate sharing in the product of the nation the stability of our economic traditions of free enterprise and the continuance of our political democracy likewise and to no less degree depend.

By its Social Security legislation the Administration has made a beginning of ensuring employment stability for the worker during his years of reasonable efficiency, and a self-respecting pension when those years of efficiency are past.

By its continuing program of public works and the resolute conservation of natural resources, the Administration has aimed at constructive solutions of the problems of technological unemployment and made a beginning of linking together the conservation

and development of the nation's fundamental material resources and its human resources. For a standing army of unemployed is inconsistent with the purposes for which our country was founded.

By its housing, resettlement and rural electrification projects, the Administration has aimed at the adoption of more healthy and intelligent ways of life and has definitely committed itself to the principle that higher standards of life for the great body of our men and women will not only be conducive to a higher social contentment but are indispensable to the fullest employment of our productive capital.

By its Public Utility Holding Company Act, its Tennessee Valley project, its Electric Home and Farm Authority program, its Rural Electrification program, the Administration has utilized constitutional powers of the nation to realize for the benefit of the country as a whole the possibilities of the Age of Electric Power already upon us.

By the repeal of the Eighteenth Amendment and the Volstead Acts, the Administration revived and restored our traditional faith in personal liberty. It recognized that it is the function of law to safeguard personal, political and economic liberty, but that neither enterprise nor temperance can be achieved by governmental regimentation.

Such policies have not only brought immediate relief; they have started the recuperative process of recovery; they promise the stability of an economy of individual enterprise designed to serve the enterprising many rather than the grasping few.

A common national purpose born of common suffering must not be lost as soon as national prosperity shows signs of returning. A return to the blind and selfish policies of the past would spell not recovery but relapse. There are grave and urgent economic problems confronting the nation, which cannot be shirked or avoided. The promise of American life has not yet been realized. If we would preserve our heritage of political freedom, men must again become economically free.

(1) Necessitous men are not free men. Freedom comes from a sense of security. Work for every able-bodied individual who wants to work has been an essential part of our American heritage. Its realization has made us a free, self-reliant nation. With the passing of the frontier of free land and the development of a mechanized civilization that precious heritage can be maintained only if Government cooperates with private enterprise to create conditions which, barring temporary and inevitable vicissitudes, will ensure the opportunity of livelihood to all who are willing and able to work. Until the average man has attained a standard of life far beyond that which he now enjoys, we cannot afford to require the employed portion of our people to support the unemployed in idleness or require the employed portion permanently to divide their work with the unemployed. Our aim must be not a lower but a higher standard of life for the average man. Our task is to find useful employment for all of our people by increasing the interchange of goods and services among them. Only thus can we utilize permanently the progressive advances in technology and not have the machine become our undoing. Work, not unemployment, creates wealth; without opportunity for free and normal work there can be no real political freedom.

(2) The pressure of unemployment and the terrible warning of the recent droughts and floods demand a well-formulated policy of action which will ensure the carrying out of works necessary to the conservation and prudent utilization of our natural resources when labor is idle and capital not productively employed. Such works are vitally essential to safeguard America's capital resources and to assure the future prosperity and contentment of our people both in the cities and on the farm. Such works the nation cannot afford to neglect.

(3) The fiscal and financial policies of the Government must be directed towards increasing not simply the Government's income but also the national income from which the Government's income is derived. The national wealth and the national income can be increased only by the wise employment of our human resources and the prudent utilization of our natural resources. So long as a nation which is not burdened with foreign indebtedness does not consume more than it produces, its national solvency and strength cannot be questioned. As recovery proceeds, the Government's expenditures must be carefully scrutinized to determine their effect upon employment and the national income. As the national income is restored, the reduction in relief expenditures and the increase in the tax revenues should make possible the balancing of the budget at the earliest moment consistent with the widest practical employment of our human resources and national capital. Balancing the budget through increased tax revenues or decreased expenditures, as the national income is restored, is an indispensable element in the eventual and complete success of a program of permanent recovery requiring Government intervention entailing deficit - financing when an economic recession is imminent and entailing debt-curtailement when inflation or excessive speculation threatens the stability of the national economy.

(4) Private enterprise is at the basis of our American system not because of the opportunity it affords a few to make fabulous or unearned fortunes, but because of the encouragement and freedom of action it gives to men to shape their own lives and to plan their own destinies. We have believed in private enterprise not because it assures inherited wealth but because it has made men free to venture; because it has not forced the workingman's son to pursue the job of his father or the banker's son to pursue his father's calling, but because it has left men free to choose among many jobs and many callings. Considering the limitations of men, the social and economic interests of all of us are best served not by the minute orders of an all-directing state, governed by non-existent supermen, but through the multitudinous activities, experiments and strivings of all those whom Lincoln called the common people.

(5) Our American conception of the relation of Government to business and labor has always been to create conditions which would permit business to function and labor to find employment. The time has long since gone by when the best interests of all classes required that the Government should leave all business to its own devices. The whole post-war period has proved that private enterprise in the modern world is a far more complicated and fragile mechanism than in the early days of small-scale industry when the laws of supply and demand worked fairly automatically. It is doubtless difficult to devise controls which will be intelligently flexible. But we have no choice but to continue to apply ourselves to the task consciously and intelligently. The more far-sighted business men, especially the younger generation, are agreed with all students of modern economics that left wholly to itself private enterprise will destroy itself -- as it came perilously near doing in the dark days preceding the present administration.

(6) The new economic freedom must be a freedom not of theoretical absolutes but of concrete realities. Wholesome competition is the life of trade in a system of individual enterprise. To destroy effective competition is to destroy capitalism. The trend toward concentration is a very real threat against our traditional competitive system. If that trend is not reversed there is a danger of a private socialism in this country as alien to traditional Americanism as state socialism. The backbone of that trend is the creed of greed - that no aggregation of property can be so large as to be beyond the control of concentrated and centralized managers, and that competition is an out-moded, discredited, useless feature of economic life. There is no practical way to regulate the economic oligarchy of autocratic, self-constituted and self-perpetuating groups. With all their resources of interlocking directors, interlocking bankers and interlocking lawyers, with all their power to hire thousands of employees and service workers throughout the country, with all their power to give or withhold millions of dollars worth of business, with all their power to contribute to the campaign funds of the acquiescent or to subsidize the enemies of the obdurate, they are as dangerous a menace to political as they are to economic freedom. It is necessary to destroy the roots of economic fascism in this country, if we wish to remove the dangers of political fascism, which engulfed freedom in other lands.

(7) The "merging out" of effective competition has brought neither economic freedom nor economic leadership to the modern world. As it has closed one by one the doors of independent enterprise, it has destroyed the only way men can work for themselves. In the words of the President, the process of concentration of power "has made most American citizens, once traditional owners of their own business, helplessly dependent for their daily bread upon the favor of a very few". Competitive freedom has undoubtedly been hampered by the inequitable distribution of wealth. But far more menacing to that freedom has been not mere inequality in individual fortunes but the undue concentration of economic power over other people's fortunes, other people's businesses and other people's lives. The breaking down of that socially and economically unwarranted power over other people's property and destiny will best promote our traditional system of private property. Neither the ownership nor control of property can be permitted to be the perquisites of a privileged few; in a truly democratic community the average citizen must have a stake worth preserving in the economic system.

(8) As fair competition is essential to the life of trade so equality of bargaining power is essential to the dignity and security of labor. We cannot expect real industrial peace and sympathetic efforts on the part of labor to meet the problems of industry until we can expect and ask for cooperative responsibility of labor; and we cannot expect cooperative responsibility on the part of labor without a frank recognition of a democratically chosen leadership. Without such cooperative responsibility on the part of labor, industry will be unable to protect itself from the unfair undercutting of labor costs by a recalcitrant minority of employers. No one can today justify child labor, chiseling workers' wages, stretching workers' hours as necessary methods of competition. We must safeguard and improve the standard of living of the average man and protect him against the vicissitudes of irregular employment. America must again become the land of opportunity, and those who give full measure of service must be enabled to obtain opportunities to render such service and obtain adequate recompense for their labor and their enterprise.

(9) America, if she does not waste her resources, has and may enjoy indefinitely advantages of relative economic self-sufficiency possessed by few other powers. Yet we do not and cannot live without the friendship and trade of other countries. A large percentage of our cotton and other crops have always gone abroad and we cannot wholly abandon these markets without radical disturbance of our domestic economy. If we sell abroad, we must buy abroad. True, we may grant foreign credits or make foreign investments to enable other countries to pay for our exports, but unless we maintain a healthy interchange of trade we will again find our loans uncollectible and our investments worthless. We must seek wholesome and reciprocal channels of trade with foreign nations which will not expose our domestic markets to ruinous and unfair competition. The trade agreements authorized by Congress and which already have been and are being carefully negotiated by our State Department give promise of providing for the most intelligent handling of the tariff problem and for the wholesome extension of our foreign trade for the benefit, not of any special interests, but for the nation as a whole.

(10) The United States has during the past four years been at peace and has maintained friendly relations with all foreign powers. America cannot be unmindful of the wars which have broken out abroad and of the war clouds that hang ruinously over other lands. Much as America deprecates the strife and threatened strife abroad and the failure of some foreign countries to abjure war as an instrument of national policy, it is not America's function to interfere in the quarrels of other nations. America, while prepared to defend its own interest in case of unwarranted aggression, must faithfully observe not merely the forms but the actualities of neutrality. It must not permit private trading or international banking to endanger public peace. It must guard against being drawn unawares into other people's wars against the wishes and interests and conscience of the American people. America's task is not to fight abroad but to set an example at home of the kind of constitutional government a peace-loving, liberty-loving people can have if they will, - a democratic government without dictators, a government which recognizes the dignity and worth of the humblest of humanity and which values above material things freedom of thought and of speech and the pursuit of happiness for all men regardless of race or religion.

(11) To the realization of such a program, the Democratic Party dedicates itself and pledges its candidates. Modern government involves not merely the enactment of wise and honest laws but effective, skilled and unbiased administration. To perfect such administration the Democratic Party pledges itself to the progressive improvement and extension of the permanent civil service to the greatest degree compatible with maintenance of free government. The purposes of a modern democracy must not be thwarted or discredited by ineffective and unimaginative administration.

Platform

() The Democratic Party pledges itself anew to the principles of constitutional government under our Federal system. The Fathers of the Constitution wisely contemplated that the States should have essential governmental powers in all matters of local concern and that the Federal Government should have the necessary authority over all commerce among the States, with wise guarantees against arbitrary use of such power by either the Federal Government or the States. In the words of the great Mr. Justice Holmes, who fought the war caused by the Dred Scott decision, "It is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found." The Tenth Amendment was expressly intended to leave to the States the sovereign power of legislation in all matters not delegated to the Federal Government. It is inconceivable that there is a No Man's Land where no government — not all the powers of the States and the Nation combined — can safeguard either liberty or property or protect the weak against exploitation and legitimate business against unfair competition. ~~A tortured construction of the Constitution must not be permitted to make Constitutional government unworkable and bring it into disrepute.~~

To apply the platform of Lincoln of 1860 after the Dred Scott case, ^{to} "the new dogma" — that the Constitution is said to deny to both the Federal and State Governments power to deal with vital social and economic problems within their traditional spheres of action — "is a dangerous political heresy, at variance with the explicit provisions of that instrument itself, with contemporaneous exposition and with legislative and judicial precedents, is revolutionary in its tendency and subversive of the peace and harmony of the country".

Law School of Harvard University,
Cambridge, Mass.

[1936]

Dear Mr. C. *file personal* 16 May
PSF
Frankfurter

Please tell the President
that the substance of
his was made known
to Judge Taft et al.
and that we are
all grateful for his
intervention.

It was a joy to
see you so fit again.
Remember, strenuous
exercise is a lead, and conversation
means strength. *Very cordially*
72

State Dept
(S) Drawer 1-36
Op. 13

DEPARTMENT OF STATE
WASHINGTON

January 7, 1936

January 7, 1936

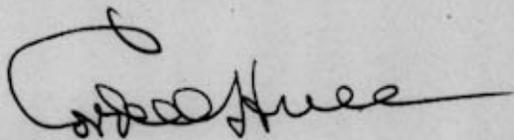
My dear Mr. President:

Recently you requested me to obtain information from our Minister at Bucharest regarding a report which had reached you to the effect that the Rumanian Government was contemplating steps which might have a far-reaching effect upon the Jewish population.

Mr. Harrison was instructed to report upon this matter and I submit herewith a copy of his reply for your consideration.

Faithfully yours,

Enclosure:
From Bucharest,
Telegram No. 24,
December 28, 1935, 9 p.m.



The President,
The White House.

Department of State

BUREAU } **NE**
DIVISION } -----

ENCLOSURE

TO

Letter drafted **January 7, 1938**

ADDRESSED TO

The President

The White House

Department of State

BUREAU } **NE**
DIVISION } -----

ENCLOSURE

TO

Letter drafted -----

ADDRESSED TO

The President

COPY LVD

TELEGRAM RECEIVED

Bucharest

Dated December 28, 1935

Rec'd. 29th, 1:10 p.m.

Secretary of State,
Washington.

34, December 28, 9 p.m.

Department's telegram No. 27, December 20, noon.

The present Rumanian Government has taken no measure nor in my considered opinion does it contemplate any action of the nature referred to in the Department's telegram. Such action could not be taken legally except by modification of the Constitution. Latter could be effected only by prerogation Parliament and convoking special Assembly.

In all probability basis of reports reaching Department was an acute uneasiness engendered in Rumanian Jewish circles by fear that present National Liberal Government would be succeeded by Rightist coalition of National Christians and Rumanian front. The former are openly anti-Semitic with clear Nazi leanings, the latter strongly nationalistic.

This fear was brought to a head on December 8 when Jewish lawyers were prevented by force from participating in Bucharest Bar Association elections. An anti-Semitic slate was elected. Street disturbances followed similar to but less extensive than those of last April (despatch

No. 255

No. 255 of April 19). As in April also the Government failed to take prompt action to enforce public order and was severely criticized in Parliament principally by national peasants.

Prior to 1919 a bare two hundred of Rumania's two hundred fifty thousand old Kingdom Jews enjoyed political rights. Only five had been admitted to the bar. Today in Bucharest the number of lawyers is four to five hundred, i.e., twenty to twenty-five percent of total. The current uneasiness includes apprehension that by threats of violence and discriminatory application of rules governing membership in and admission to bar Jewish lawyers will be prevented from freely exercising their profession.

During past fortnight tension has eased. Rightist coalition leaders have failed to agree among themselves and have gained no new adherents among other Rightist parliamentary front. I know no competent observer who now believes that they will be invited to form new government. There is however still some apprehension that further disturbances will occur after the holidays.

HARRISON

DEPARTMENT OF STATE
WASHINGTON

January 14, 1936.

My dear Mr. President:

In my letter of January 7, 1936, I transmitted a copy of a telegram from our Minister at Bucharest relating to a report which had reached you that the Rumanian Government was contemplating steps which might have a far-reaching affect upon the Jewish population in Rumania. Our Minister has now telegraphed reporting an attempt on the life of the Grand Rabbi of Rumania. A copy of the Minister's telegram is submitted herewith for your information.

Faithfully yours,

Cordell Hull

Enclosure:
From Bucharest,
Telegram No. 3,
January 11, 6 p. m.

The President,
The White House.

P.S.F. J.F.

PSF
Frankfurter File F.F.

January 16, 1936

Note from Felix Frankfurter
with the return of report of Minister of
Bucharest regarding steps contemplated by Rumanian
Gov. which might have far-reaching effect upon
Jewish population.

SEE--War File--(S) Drawer 1---1936

July File
Law School of Harvard University,
Cambridge, Mass.

*File PSF
Frankfurter*

17 January 1936

Dear Mr. President:

(1) Herewith a draft of message, for your destructive and constructive blue pencil, in submitting new agricultural legislation to Congress. A number of factors seem to me important, however poorly I may have applied them. They involve impressions to be left in the mind of the general public as well as cautions to be exercised as a matter of legal strategy. To me it seems necessary (1) to launch the new legislation as a carefully considered mature effort and not as rabbit pulled out of a hat; (2) to build on the authority which the Supreme Court itself has furnished in the Hoosac Mills opinions; (3) to do so without any concession to the rightness of the majority opinion and yet (4) without making the message a vehicle of legal controversy with the majority; but instead (5) again quietly to educate the public mind to the significance of the two opinions; and finally (6) not to make any commitments which might conceivably be embarrassing to the Government when this legislation will have to be defended before the Supreme Court.

(2) I have been mulling over in my mind ever since Sunday, the Bonus situation. The conviction becomes stronger and stronger that on the balance there would be clear loss in doing anything except to stand pat on your last year's veto, doing it as gently as possible, and also, promptly after the veto is over-ridden, to work out with the Legion leaders a cordial and vigorous cooperative method for carrying out the legislation.

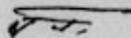
Law School of Harvard University.

Cambridge, Mass.

Through two of my editorial friends here, I have had the feeling among the men in the composing rooms sounded. My friends report that, now that the men are convinced that the Bonus in some form will go through Congress, their feelings have greatly changed. They don't expect you to sign the bill, they understand your position, and will feel, once the fight is over, that there was an honest difference of conviction which grew not at all out of any unfriendliness on your part to them or their needs. And they will admire a fighter who has stuck by his guns in a friendly way. On the other hand, any retreat now will only stimulate new demands and continue to keep alive the issue which, so far as you are concerned, you can now bury.

I have talked also with important representative samples of your well-wishers who are not Legionnaires, and I think the effect upon them and their like throughout the country, of a disregard of the reasons that moved you last year, would be very unhappy. I think it is perfectly clear that whatever ill-feeling your message last year aroused cannot be wiped out by a reversal now, while, on the contrary, the great gain that came and comes from the kind of quiet determination and genially dogged adherence to purpose which the Jimmy Walker business manifested, and again the Bonus, will have enormous power in touching and winning the admiration and support of masses of American men and women.

Always faithfully yours,



Hon. Franklin D. Roosevelt.

OFFICE OF
THE ATTORNEY GENERAL



*file
personally*

*P. 97 J. F.
Frankfurter*

Jan 23/36

Dear Mr President: -

*The attached envelopes
with the papers sent
over last night.*

Truman

Sally Lee
Law School of Harvard University,
Cambridge, Mass.

Frankfurter
PSF

January 30, 1936

Dear Mr. President,

Herewith are materials bearing upon practices in pursuit of unconscionable lawyers' fees which directly affect the national Treasury and the Federal administration of justice. They concern (1) outrageous contingent fees in claims against the Government, and (2) illegitimate claims for lawyers' fees in the Federal courts.

(1) I need not recall to you the enormous role played by opportunities for indecently opulent contingent fees in drives against the Treasury. Very early in your Administration you saw the need for putting an end to these abuses. And you will recall that it was Lew Douglas who, in his soft-spoken voice, agreed with the principle but objected to its application. Few things are more needed in the interests of the Treasury, and not less to improve the morality of the bar. Of course there will be outcries from the beneficiaries. But I can hardly imagine a more popular response than would be received by publishing the amounts of some of the fees. And what a tribe of gentry it would take care of!

Senator Norris' bill introduced in the Second Session of the 73rd Congress (S. 2805) is the result of careful draftsmanship with every provision soundly based on precedents in Federal and state legislation.

I enclose a copy of this bill with a memorandum in its support as well as notes on specific provisions.

(2) Judge Coxe's recent decision regarding fees in the Paramount reorganization is only one of a series of recent instances of disallowance of big lawyers' fees by Federal Courts in various parts of the country. I enclose a list of recent cases on fees. Surely the Senate Judiciary Committee

ought to direct public attention to these abuses, as part of an educational effort for effective and enduring correction of these attempts to misuse other people's money.

Always with warm regards,

Faithfully yours,

Hon. Franklin D. Roosevelt

20
J. H. Chamberly

Memorandum in Support of a Bill to Protect Treasury
Against Chamberly and Maintenance.

1. Just claims against the Government should of course be paid. But at a time when the Government is seeking to tap every possible legitimate source of revenue, to close the gaps in the present law through which taxpayers have escaped their obligations, and to levy deficiency assessments where taxpayers have made too liberal deductions the Government should take the necessary steps to curb tax lawyers in raids on the Treasury through the temptation of unconscionable fees. When counsel fees for refund of taxes in individual cases run into the millions—as they notoriously have—litigation is bound to be fomented, and every device and ingenuity will be exploited to withdraw vast sums from the Treasury. The temptation has, as is well known, even enlisted spies within the Government service to discover possible claims against the Treasury.

2. The amounts involved (apart from the vast items under the Pro-cessing Tax) may be gleaned from the following figures which give the total of refunds, credits and abatements for the years 1921 through 1932.

1921.....	\$ 28,656,000	1927.....	\$ 366,151,000
1922.....	182,372,000	1928.....	341,589,000
1923.....	430,577,000	1929.....	418,940,000
1924.....	492,635,000	1930.....	326,774,000
1925.....	378,041,000	1931.....	283,208,000
1926.....	513,358,000	1932.....	331,201,000

3. These amounts represent sums which were paid by taxpayers after making all the deductions and allowances to which they, generally of course with the advice of counsel, thought they were entitled. A conservative estimate would attribute at least half of the sums so recovered, e.g. one hundred and sixty million dollars even in the depression year of 1932, to the pro-

motion of law suits by attorneys interested in the large fees involved in such claims. It is of course impossible to compile statistics on attorneys' fees in claims against the Government—such secrets are deeply buried—but it is common knowledge that contingent fees in tax cases often run to 50% and that fabulous sums have been recovered.

4. The bill which this memorandum accompanies is an amendment of S. 2805 introduced by Senator Norris at the Second Session of the 73rd Congress. It seeks to protect the Treasury against raids stimulated by the inducement of large contingent fees and fee-splitting by making claims against the Government only reasonably profitable to lawyers and so removing the major incentive to their presentation, as well as prohibiting fee-splitting for services in connection with claims against the Government. The bill establishes as a standard for such fees \$5,000 or 20% of the claim, whichever is the smaller, but in all cases the tribunal is authorized to approve a higher fee for the attorney's services, if the tribunal is of the opinion that a higher fee is reasonable.

5. The constitutionality of such a protection of the Government's finances is not open to question. Broad powers of Congress over the enforcement of claims against the Government have been recognized from the beginning of our government. The Supreme Court has sanctioned laws "placing limitations upon the fees properly chargeable for services" by which "Congress has sought both to prevent the stirring up of unjust claims against the Government and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees, contingent upon success, have sometimes been supposed to encourage. The constitutionality of such legislation, although resembling in its nature the exercise of the police power, has long been settled." Calhoun v. Massie, 253 U.S. 170, 174; and see the latest case Margolin v. United States, 269 U.S. 93, 102.

Notes on Specific Provisions.

(a) The requirement of filing fee agreements adapts and enlarges upon the present law as to pension claims. ¹ The device of enforcing this requirement by a refusal to recognize agents or attorneys who have not complied is suggested by several provisions now in force refusing absolutely to recognize agents or attorneys in certain cases ², the power to enact such a provision follows readily from its legitimacy as a means of insuring the observance of Section 2. The validity of similar provisions with regard to pension claims and services to Indians has not been questioned. ³

(b) The limitation of fees to twenty per centum follows the percentage set in the Omnibus Claims Act of 1915. ⁴ The limitation to \$5000 is included in recognition of the fact that as to large claims a fee of 20% would be exorbitant. Allowance of any fees above that amount should depend upon explicit permission of the tribunal. Allowance of a charge, even though the preceding is unsuccessful, is essential; so long as the charge is slight there is no reason why it can not be made without the assistance of the tribunal. But inasmuch as there is no means of controlling more substantial charges directly by statute it seems wise to require resort to the tribunal whenever any considerable charge is to be made. The use of the tribunal to regulate fees is well established by earlier statutes. ⁵

(c) The provision as to fee-splitting has been adapted from the statutes in New York ⁶ and Wisconsin ⁷ and the American Bar Association's canons of professional ethics. ⁸ It follows, primarily, the New York statute which has been in successful operation since 1876. ⁹ Although it is new to the laws of the United States, its constitutionality is incontestable.

(d) Section 5 is not essential, inasmuch as it is not likely that this Act could be regarded as inconsistent with existing special provisions. But it avoids possible controversy to be explicit.

1. 38 U.S.C. 114.
2. 38 U.S.C. secs. 286, 325, 326, 363.
3. See 38 U.S.C. sec. 114; cf. 25 U.S.C. sec. 82.
4. Act of March 4, 1915, c. 140, sec. 4, 38 Stat. 989.
5. See Act of May 20, 1918, c. 77, sec. 1, 40 Stat. 555; 38 U.S.C. sec. 111; 43 U.S.C. 842; cf. 38 U.S.C. secs. 286, 324, 326, 361, 363.
6. N. Y. Penal Code, sec. 274 (2).
7. Wis. Laws of 1927, c. 459, p. 670.
8. Canon 34.
9. See N. Y. Laws of 1876, c. 448, sec. 74.

(B)
SUGGESTED TREATMENT OF REMAINING CONSTITUTIONAL CASES
BEFORE SUPREME COURT

(1) Supreme Court cases involving acts of Congress are far enough along in the lower courts to reach the Supreme Court during this term in approximately the following order:

- (1) PWA - housing activities - land condemnation.
- (2) Guffey Act.
- (3) Securities Act of 1933 (the original Securities Act).
- (4) Resettlement Administration - Bound Brook suburban housing development - injunction by local taxpayers because project purports to be exempt from local taxes.
- (5) PWA - municipal power plant loans.
- (6) Wagner Labor Act.
- (7) Holding Company Act - Baltimore case.

Of these, the Government may reasonably expect to win on the Securities Act, the PWA power loans, the holding companies and, so far as its constitutionality is concerned, the Wagner Labor Act.* On the contrary, the Government can feel very certain of losing the Guffey Act, the PWA housing condemnation cases and the Resettlement Bound Brook case.

(2) Since the TVA case, there is no longer any general political benefit to be derived from a succession of decisions declaring Administration activities unconstitutional. Any benefit from further decisions against constitutionality must derive from a specific and well organized class feeling directly and specifically aggrieved.

Of the cases which are expected to be lost, only the Guffey Act case will raise a specific resentment, i.e., of the coal miners. A narrow interpretation of the Wagner Act may also raise resentment among other labor groups. But the loss of neither the PWA housing condemnation case nor the Resettlement Bound Brook case will raise any resentment of any conscious class directly affected.

On the other hand, since the public will again consider the Court fair to the Administration because of the TVA case, unnecessary defeats in these two cases will carry more political damage than heretofore. The bad lawyer criticism is an active and politically dangerous criticism which is being taken up even by the Administration's friends (See Scripps-Howard editorial as well as Krook attached). The Guffey Act has been constantly represented to the public as a doubtful constitutionality; its invalidation will draw no criticism that the Administration's lawyers are bad lawyers. But the same excuse of doubt honestly professed at the time of passage of the legislation does not apply to either the PWA housing condemnation case or the Resettlement Bound Brook case.

(3) Both the PWA condemnation case and the Resettlement Bound Brook case can be very easily mooted with specific justifications which will forestall criticism.

Neither of the housing projects involved in the PWA cases (Louisville or Detroit) is essential to the PWA housing program; both would be long delayed by subsequent technicalities of actual condemnation even if the Court upheld the right to condemn. On such ground of delay and otherwise, the abandonment of each of these projects could be fitted into the announced policy of the new housing program now being publicized and made to appear a constituent part of that program. Any action mooted these PWA cases must be taken immediately.

The Resettlement Bound Brook case could be mooted by passing a very simple and politically popular statute permitting local communities to tax federal proprietary ventures of this kind on some equitable basis. Such a statute would be an intelligent anticipatory recognition that the Supreme Court will certainly eventually rule (as is very implicit in the recent decision permitting state taxation of RFC holdings of bank stocks) that the Federal government is not exempt from state taxation in its proprietary as distinguished from its governmental functions.

(4) The public reaction toward the repeal of the Bankhead Act, the Tobacco Act and the Potato Act shows that the public approves rather than condemns a policy of withdrawing doubtful cases. The withdrawal of the PWA housing condemnation and Resettlement Bound Brook cases—both certain to be lost without any compensating value of public reaction against the Court—will give the Administration good legal and political prospects for the remainder of this Supreme Court term. And recent developments occurring since the decision was made to permit these two cases to go up to defeat,—i.e., the TVA case, the Baltimore Bank Shares case, the announcement of the new housing program, and the repeal of the Bankhead, Tobacco and Potato Acts—provide a very real change in external conditions to justify reconsidering the earlier decision on the policy in respect of these two cases.

* There is some possibility that the Court may narrowly restrict the Wagner Act as a matter of statutory construction.

SUGGESTED TREATMENT OF REMAINING CONSTITUTIONAL
CASES BEFORE SUPREME COURT

(1) Supreme Court cases involving acts of Congress are far enough along in the lower courts to reach the Supreme Court during this term in approximately the following order:

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- (5) PWA - municipal power plant loans.
- (6) Wagner Labor Act.
- (7) Holding Company Act - Baltimore case.

Of these, the Government may reasonably expect to win on the Securities Act, the PWA power loans, the holding companies and, so far as its constitutionality is concerned, the Wagner Labor Act.* On the contrary, the Government can feel very certain of losing the Guffey Act, the PWA housing condemnation cases and the Resettlement Bound Brook case, and in all cases by unanimous decision.

(2) Since the TVA case, there is no longer any general political benefit to be derived from a succession of decisions declaring Administration activities unconstitutional. Any benefit from further decisions against constitutionality must derive from a specific and well organized class feeling directly and specifically aggrieved.

Of the cases which are expected to be lost, only the Guffey Act case will raise a specific resentment, i.e., of the coal miners. A narrow interpretation of the Wagner Act may also raise resentment among other labor groups. But the loss of neither the PWA housing condemnation case nor the Resettlement Bound Brook case will raise any resentment of any conscious class directly affected.

On the other hand, since the public will again consider the Court fair to the Administration because of the TVA case, unnecessary defeats in these two cases will carry more political damage than heretofore. The bad lawyer criticism is an active and politically dangerous criticism which is being taken up even by the Administration's friends (See Scripps-Howard editorial attached as well as Krook. The Guffey Act has been constantly represented to the public as a doubtful constitutionality; its invalidation will draw no criticism that the Administration's lawyers are bad lawyers. But the same excuse of doubt honestly professed at the time of passage of the legislation does not apply to either the PWA housing condemnation case or the Resettlement Bound Brook case.

(3) Both the PWA condemnation case and the Resettlement Bound Brook case can be very easily mooted with specific justifications which will forestall criticism. The PWA housing case is completely academic. Neither of the housing projects involved (Louisville or Detroit) is essential to the PWA housing program. Secretary Ickes has no funds to build either. Both would be long delayed by subsequent technicalities of actual condemnation even if the Court upheld the right to condemn. On such ground of delay and otherwise, the abandonment of each of these projects could be fitted into the announced policy of the new housing program now being publicized and made to appear a constituent part of that program. Any action mooted these PWA cases must be taken immediately.

The Resettlement Bound Brook case could be mooted by passing a very simple and politically popular statute permitting local communities to tax federal proprietary ventures of this kind on some equitable basis. Such a statute would be an intelligent anticipatory recognition that the Supreme Court will certainly eventually rule (as is very implicit in the recent decision permitting state taxation of RFC holdings of bank stocks) that the Federal government is not exempt from state taxation in its proprietary as distinguished from its governmental functions. The Resettlement Administration wants to pay such taxes even without a statute but Comptroller McCarl will not permit the payment.

(4) The public reaction toward the repeal of the Bankhead Act, the Tobacco Act and the Potato Act shows that the public approves rather than condemns a policy of withdrawing doubtful cases. The withdrawal of the PWA housing condemnation and Resettlement Bound Brook cases—both certain to be lost without any compensating value of public reaction against the Court—will give the Administration good legal and political prospects for the remainder of this Supreme Court term. And recent developments occurring since the decision was made to permit these two cases to go up to defeat,—i.e., the TVA case, the Baltimore Bank Shares case, the announcement of the new housing program, and the repeal of the Bankhead, Tobacco and Potato Acts—provide a very real change in external conditions to justify reconsidering the earlier decision on the policy in respect of these two cases.

* There is some possibility that the Court may narrowly restrict the Wagner Act as a matter of statutory construction.

PSP Frankfurter

THE WASHINGTON



The News

"Give light and the people will find their own way."
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LOWELL MELLETT
Editor

HOWARD PARISH
Business Manager

SLOPPY LAWMAKING

THE GOVERNMENT'S lawyers are prepared to "fight to the end" a ruling by Federal Judge Welsh applying the Veterans Preference Act to WPA. But there is no assurance that the case will be reversed in the higher courts.

This seems to be another chapter of an already too long story of sloppy lawmaking. The ruling is one of the most crushing blows so far dealt the Administration's work relief. If it sticks, every veteran applying for WPA work must be given a job. If a needy non-veteran holds the only available job he must be fired in favor of any veteran who may apply, regardless of whether the veteran classifies as needy or not. Thus, on the heels of a bonus act that taps the Treasury for two billion dollars, the Government is instructed to shove the civilian needy out of line to make way for a special group.

If the law says this—and we fear it does because of the manner in which it was drawn—we must agree with Dickens' Mr. Bumble that "the law is a ass." Neither Congress nor the President intended that the veterans should have preference in emergency relief jobs. That is shown by the fact that a year ago the Senate rejected an amendment offered by Sen. Metcalf of Rhode Island to give veterans, their wives and widows preference in the work relief program, and by the further fact that in vetoing the bonus in 1935 the President emphasized that work relief was for all the needy.

"Is it not better," he asked, "to treat every able-bodied American alike and to carry out the great relief program adopted by this Congress in a spirit of equality to all?"

But if the "law is a ass," who decorated it with long ears? The work relief act should have been made decision-proof. In that portion of it which relates to highway projects, veterans are not given preference, the judge found. Why was the rest of the act left open to such an interpretation?

This question raises several broader ones that are all too evident:

Why does the Roosevelt Administration, with all the brains at its call, let itself in for legal jams like this and so many others?

Why does Congress pass sloppy laws? We feel a bit like the taximan who asked Al Smith, "Governor, ain't there any lawyers in Congress any more?"

And may we not need a legal new deal inside the Administration—an alert, aggressive and sure-footed Attorney General with a staff expertly fighting for the millions of the Government's voiceless clients—to whom these major policy measures could be submitted before they are signed?

July 1922
192 Broad St.,
Law School of Harvard University,
Cambridge, Mass.

File
Personal

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Dhamu 2-36. 36

Dear Miss L. H. H.

Please be good
enough to put my letter,
with its enclosure, into
the President's hands, at
a convenient moment.

Very cordially
FTL

Law School of Harvard University,
Cambridge, Mass.

BF
Frankfurter

February 6, 1936

Dear Mr. President,

(1) My warmest thanks for giving your time and yourself so generously to Captain Cazalet and Francis Hackett. Cazalet was deeply grateful for "the great privilege" of a talk with you and wrote to me in terms of admiration quite uncharacteristic for an Englishman. There is one paragraph from Francis Hackett's letter that I must quote:

"And when are you going to give us another history", he asked me. I said, "I am going to do Charles V." He then delighted and astounded me by saying that DeLannoy (DeLano), to whom Francis surrendered his sword at the Battle of Pavia, was his own great-great-great-grandfather. (Now DeLannoy was a real fellow. He worked coolly and intelligently for the right solution of the conflict between Spain and France. He was up against the tough Spaniards, and could not sway them, and then Francis went back on them. He really was a good European. He stood up to his problems until he died of the plague, I think, in 1528.) I saw a glint of something ancestral in this handsome and valiant man, sitting there in his swivel chair, and talking so lightly and so finely about anything and everything in the world."

And Hackett concludes with a regret for his loquacity that I have hardly ever heard him make in the twenty-odd years of our friendship:

"I am afraid I talked too much with F. D. R., but it wasn't an interview, but a private chat and a glowing, powerful impression."

Again my warm thanks for seeing Cazalet and Hackett. And anyone who cares about civilization must share Marion's gratification that we have a President who cares about folk as Lincoln did, but who also fires the imagination of sophisticated cultured people like Cazalet and Hackett.

(2) Last Saturday I went to New York to see Alice Duer Miller about editing those pamphlets that you and I talked about. I tried to make her see the importance of the contribution she can make, there were some difficulties in the way in view of her literary commitments, but I put it to her as strongly as I could and reinforced it with a letter on my return. And now comes a

Kata School of Harvard University,
Cambridge, Mass.

- 2 -

a letter expressing readiness to draw the pen from her scabbard. I wonder if you could send her just two lines of appreciation. *How to hope in deep peace we can have a fall about his program.*

(3) I have a long letter from Wise. He is like a fire horse, rarin' to go. He asked for my judgment as to his activities. And I hope much I can have yours to advise him. *He writes:*

"I want your judgment and counsel on when to begin to speak. I think I ought to deal with the 'Tories of 1936' in something like the way, though a little more smoothly, in which I dealt with them at the Ford Hall meeting. What a rotten thing to speak of Roosevelt as inciting the class warfare, when his sin consisted in nothing more than coming to the rescue, in the American way, of the masses made up of forty millions who would have been overwhelmed by the economic disaster of 1929 had not Roosevelt intervened on their behalf as against the Shouses and Raskobs and the DuPonts.

"I am going to put aside, as far as I can, all of September and October in order to make such contribution as it is possible for me to make towards Roosevelt's election."

(4) And now for two English comments: In a letter this morning, one of the most distinguished English scholars writes me, "My warm congratulations on your President's speech on the tyrants." And Laski a day or so ago wrote:

"I hope that F. D. R. has got two or three big speeches up his sleeve for the spring. The Congressional address was superb, the kind of thing that puts heart into a people. The vital thing is for him to keep the initiative in his own hands. So long as he does that he makes the issues of the campaign."

(5) Speaking of the issues of the campaign, and the line-up, why were they not put with meticulous accuracy in Woodrow Wilson's letter of January 31st, 1915, to Mrs. Toy. I am enclosing a copy of it, although you probably have already seen it in Baker's fifth volume.

With warmest regards,

Faithfully yours,

Hon. Franklin D. Roosevelt

On Jackson Day, 1915, President Wilson made a speech which aroused a great deal of criticism. In reply to a letter from one of his friends, Mrs. Crawford H. Toy of Cambridge, President Wilson under date of January 31, 1915, wrote in part as follows:

"Of course you did not like the Indianapolis speech (that palapable lapse of taste, 'Woodrow, etc.' was only a silliness of the moment; was not in the notes; was produced by the psychology of the stump, no doubt, and admits of no excuse); I instinctively knew that you would not: any more than you would like a real fight, or anything that wore the aspect of partisanship. But there is a real fight on. The Republicans are every day employing the most unscrupulous methods of partisanship and false evidence to destroy this administration and bring back the days of private influence and selfish advantage. I would not, if I could, imitate their tactics; but it is not time for mere manners. The barriers of taste may be overstepped in stating the truth as to what is going on: it must be displayed naked. All that I said was true, to my knowledge, though I did not shade it or trace the lines of it artistically or with literary restraint. The struggle that is on, to bring about reaction and regain privilege is desperate and absolutely without scruple. It cannot be met by gentle speeches or by presidential utterances which smack of no bias or party. A compact and fighting party must be led against them. I think you cannot know to what length men like Root and Lodge are going, who I once thought had consciences but now know have none. We must not suffer ourselves to forget or twist the truth as they do, or use their insincere and contemptible methods of fighting; but we must hit them and hit them straight in the face, and not mind if the blood comes. It is a blunt business, and lacks a certain kind of refinement, but so does all war; and this is a war to save the country from some of the worst influences that ever debauched it. Please do not read the speeches in which I use a bludgeon. I do not like to offend your taste; but I cannot fight rottenness with rosewater. Lend me your indulgence. At any rate forgive me, if you can do nothing else."

PSF: Frankfurter

THE WHITE HOUSE
WASHINGTON

Hyde Park, N. Y.
February 24, 1936.

MEMORANDUM FOR F. F.

Will you get in touch with David Niles and tell him that Wolf is a grand fellow but he is green at the game? Tell him Wolf should be used all we can use him and ask Niles to steer him straight.

F. D. R.

THE WHITE HOUSE
WASHINGTON

February 20, 1936.

MEMORANDUM FOR THE PRESIDENT

This information comes from Niles. Wolf, who is Franklin's tutor, has been appointed as Roosevelt Club organizer in Cambridge. He has summoned all kinds of people to Cambridge and has made more trouble than can probably be straightened out in six months. He is riding high-handed up there and consulting no one and everyone is furious.

file
Law School of Harvard University,
Cambridge, Mass.

*Jully File PSF
Frankfurter*

February 28, 1936

Dear Mr. President,

Herewith a miscellany of week-end reading to while away part of the large supply of leisure you must find heavy on your hands! Seriously speaking, there are a number of items that have come to me recently, some of which I think have real importance. In any event, they seem to me to be deserving of your attention. For brevity of comment, I will give the enclosures exhibit letters marked, of course, in red.

(1) The writer of "A" is a most devoted friend of the Administration, who has unusual opportunities for gauging opinion in various parts of the country and tested judgment in interpreting it. What he says bears interestingly on the observations of Professor Laswell in "B"--regarding the ideas that are stirring among small business people, especially on the West Coast.

(2) You probably know Bishop William Scarlett of St. Louis. In any event, I hope you may find an early opportunity to see him. He is one of the finest characters I know or know anything about. I learned to know him during the War when he had the most important pulpit in Phoenix, and during the copper strike told the Lewis Douglasites of those days, in no uncertain terms of their duties to God and man rather than to Mammon. His moral and intellectual attainments make him a person of wide-spread influence.

(3) Lincoln--not E. A.--Filene's letter, "D", speaks for itself. I shall only add what I am sure is unnecessary, that I know of no one who cares more disinterestedly for your reelection or feels more passionately

This oversized item has been
filmed in sections

Andover Undergraduate paper - Editor will be as good as Chairman - 62.

F THE PHILLIPIAN
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Andover, Mass., February 12, 1936

Franklin D. Roosevelt

Andover Hill seems to be in the throes of the current anti-Roosevelt wave which is now at full tide in New England. If for no other reason than to attempt to retain a proper perspective, we are pro-Roosevelt. A poll of the Academy would unquestionably indicate an overwhelming sentiment against the President, so that there is certainly no originality in being on that side. From an analytical standpoint, however, the case for him is clear and sound.

President Roosevelt is the same man with the same character and the same ideals he had when he came into office in the spring of 1933. One of the arguments against him is that he has completely repudiated his platform. This criticism, unfortunately, is three years late. Why was it not made when he initiated his emergency measures? The answer is obvious. The drowning man does not need help when he gets ashore.

The Democratic platform was constructed in July, 1932. Almost a year elapsed before the first of his emergency measures was taken. Will any fair-minded critic undertake to maintain the stand that the action called for in 1933 should have been based on the conditions of the country in the spring of 1932?

As for the charge of socialism, every progressive step, every humanitarian movement has had that tag put on it by its opponents. Students of political history point to the interesting fact that

joined the majority of Democrats in passing the Bonus Bill over the President's veto.

As we see it, the only real argument that the critics can hang their hats on is that they were willing to accept the New Deal as an emergency policy, but that in normal times it is unconstitutional and un-American. That Roosevelt himself agrees with them is becoming clear with his recent announcement of the withdrawal of unused credits in the hands of the emergency organizations and the generally expected announcement in the very near future that the emergency is over and that these special bodies will be disbanding. Some of his critics are so prejudiced that they distort everything that happens. For example, being forced to admit that we are emerging from the depression, they say that the recovery is "in spite of" Roosevelt.

In view of the fact that they argue that Roosevelt's activities are destroying the country, how do they reconcile themselves to the admission that there is any recovery at all? This is another illustration of the difficulty of a man who is arguing on both sides of the question.

If the fair-minded observer will hark back to the situation that existed on March 4, 1933, with the country in the depths of despair, the banking system paralyzed, the business clock run down, millions of homes about to be lost, and life savings gone, and compare with that condition the situation as it exists today, he cannot help but be impressed. During that period, with a high courage that served as a beacon light, Roosevelt has led the American people through the obstacles of formalistic constitutionalism, the slow red tape of customary government, the vicious dangers of inflation, Coughlinism, Huey Longism, and Townsendism.

Through a strengthening of the banking system, a house cleaning of the security markets, and the initiation of a humanitarian social security program he has given the insecure new masses a bright vision of a better world. At the same time, corporation statements now appearing show that profits are attaining records.

Let not those of us who enjoy more of the material benefits of American life be so selfish as to begrudge the underprivileged greater security than a previous era assured them. After all, Roosevelt is not the President of only the upper classes. He is the President of the whole American people, and not only the history of the past but also current events amply demonstrate that the upper classes can well take care of themselves. In conclusion, let us be honest with ourselves in answering this question—"Who is the man who could have done a better job?"

Communication

To the Editor of THE PHILLIPIAN:

As an interested observer of THE PHILLIPIAN, I have seen it time and time again plead for Communications from the student body on various controversial subjects. It has asked for criticism of its editorial policy, of its news articles, or of any other part of it; yet it has received no definite results. It has offered to initiate a political forum if students would contribute to it; but here again the latter have not responded. This apparent lack of interest may be attributed to at least two reasons. One of these causes is that the Andover students do not take any sizable interest in political or other national affairs. I have found this to be true, and I consider it a grave fault of us modern youths. Another possible reason is they do not study THE PHILLIPIAN well enough to criticize it. But I do not think this likely. Having personally heard grumblings about the paper, I know there is criticism to be found. I know there has been much dissent to the recent student government editorials as well as several dry news articles. But what happens to this criticism? Either the students are too cowardly or too lazy to describe it for THE PHILLIPIAN. As it is, they act as a flock of sheep, lacking the courage to present their convictions.

In order to stir up some controversy, I am going to strongly attack the present administration. In a recent PHILLIPIAN one editorial prophesied eight years of Roosevelt as president. I do not believe the American people will submit to New Deal Socialism for four more years. I think that by next fall they will in majority acknowledge the fallacy of the present Government by voting Republican. I think that they will be so tired of alphabetical organizations and professors' theories by then that they will

SPORT SHOTS

By FRED STOTT

The Royal Blue hockey sextet, which seemed destined to terminate Exeter's nine year reign of supremacy, certainly came through in grand style on Saturday. Not since the days of Frank Luce have we seen such a powerful high-scoring line as that first string line of Captain Curtis, Eurenien, and Hazen. It accounted for seven points, including three goals and four assists.

When the majority of the members of the U. S. winter Olympic team sailed in January, there was high hope of victory, but now the feeling is that we'll be lucky to come out on top in any event. First the hockey team made the rounds of most of the better so-called amateur teams of France and Great Britain, and succeeded in winning almost half as many as it lost. It opened up the Olympics with a lucky 1-0 victory over a pretty fair German combination whose star, oddly enough, was a Jew who was called from a self-imposed exile to lead the team. Against a mediocre Swiss six it played real hockey for a brief stretch and won handily 3-0. But on Saturday the Italians, one of the weakest groups, won a 2-1 battle. The U. S. stars can't seem to learn how to play against teams that don't play hard, bruising hockey.

In pre-Olympic meets the Norwegians clearly demonstrated their superiority over the Americans in speed skating. The Americans were thought to have a chance in the downhill and slalom events in skiing, but Ted Hunter hurt his leg badly and Dick Durrance, after hanging up his ankle two days previous to the race, did no better than eleventh in the downhill. There is a somewhat small chance of placing in the jumping, but the Norwe-

(Continued on Page 4)

man does not need help when he gets ashore.

The Democratic platform was constructed in July, 1932. Almost a year elapsed before the first of his emergency measures was taken. Will any fair-minded critic undertake to maintain the stand that the action called for in 1933 should have been based on the conditions of the country in the spring of 1932?

As for the charge of socialism, every progressive step, every humanitarian movement has had that tag put on it by its opponents. Students of political history point to the interesting fact that many of the "radical" proposals of the socialist party a generation ago were commonplaces of both major parties before the depression, and that what is an extreme in one period is an accepted fact in the later one. The Socialists were the only party which opposed our entrance in the World War. Only they proposed taking the profits out of war in 1917. Now, the agreement is practically unanimous on that score.

Theodore Roosevelt's planks for "popular referendum" and "recall of judges" were considered violently socialist by the conservatives of his day. Direct election of senators as well as woman suffrage have not only been accepted but are now actually part of the Constitution—the fundamental law of the land. In the last analysis, why be frightened by the term socialism? We are altogether too prone to be swayed by blanket terms, instead of examining the merits of the propositions themselves.

Those who condemn the spending which has taken place have yet to offer an alternative to starvation and revolution, other than providing relief. As for the administration of relief, why be petty and quibble because it has not been perfect? Unemployment today, despite an increase in population, is not over 75 percent of the number of unemployed when Roosevelt took office. England has had a serious unemployment problem for over a decade. The absurdity in expecting President Roosevelt to solve it in three years is obvious.

If we were to have as great a debt per capita as England has today, our national debt would total over a hundred billion as compared with our actual debt of thirty or thirty-one billion. And against our debt of thirty-one billion we have two billion dollars in the treasury devaluation fund and several billion in assets owned by the R. F. C. The debt which Hoover left with us was approximately twenty-one billion.

Even Roosevelt's most bitter opponents today urged him to take the drastic measures he has taken, on the ground that our country was faced with a war on depression—as great a conflict as any other war in the country's history. Now that the financial skins of these critics have been saved by the President's vigorous leadership during the crisis, they forget that in the two years in which we were engaged in the World War we went into debt to the extent of twenty-eight or so billions in addition to the huge taxes collected during one of the greatest boom periods in our history. In the fiscal year 1919 alone, we spent nineteen and one-half billion dollars.

As for Roosevelt's being interested only in spending money, it is an interesting commentary that the majority of Republicans in Congress

terial benefits of American life be so selfish as to begrudge the underprivileged greater security than a previous era assured them. After all, Roosevelt is not the President of only the upper classes. He is the President of the whole American people, and not only the history of the past but also current events amply demonstrate that the upper classes can well take care of themselves. In conclusion, let us be honest with ourselves in answering this question—"Who is the man who could have done a better job?"

A Tribute From Dr. Fuess

The following is an excerpt from a speech to be delivered by Dr. Fuess at Yale on the occasion of Abraham Lincoln's Birthday. The Andover student body heard it in abbreviated form in morning chapel.

Abraham Lincoln is the despair of believers in heredity. His father was shiftless and indolent, "without a vestige of book-learning"; his mother could not sign her own name. His ancestry promised nothing. "No family in all Kentucky," we are told, "was more obscure." No preparatory school trained him for public service. In all his life he had less than a year of schooling. Compared with Edward Everett, who was valedictorian at Harvard at the age of seventeen, or with Robert E. Lee, who was second in his class at West Point, Lincoln had a wretched education. Nothing in his origins, or in his early experience, or in his physiognomy, indicated that he would become a leader.

Abraham Lincoln was forty-six years old before his mission became apparent. In 1854, he was milking his own cow and cutting and carrying in his own wood in an Illinois town of less than five thousand people; within eight years he was in the White House. Physically he was only one hundred and eighty pounds of water and phosphorus and lime and salt, but some miracle had blended these chemical elements with some mysterious factor to produce what we call genius. This man of amazing contradictions and varying moods, of abysmal gloom and boundless humor, of fatalism and superstition, who had been not far from suicide and madness, had acquired sympathy and patience and wisdom, the qualities necessary for meeting the crisis of civil war. He was to become, as few other heroes have even been, "the instrument of events." It is difficult to explain Lincoln in terms of heredity and environment, but it is even more difficult to explain his soul.

What is inexplicable in Lincoln is what is inexplicable in life itself,—the intangible element which to date no biologist has been able to put under the microscope or imprison in test-tube. Lincoln's honesty, his tact, his understanding of motives, his sagacity, his unselfishness,—all these are known, and respected. But they are not enough. And it is this knowledge which brings a materialist or a mechanist sharply up against a power not ourselves,—a power working in and through Lincoln, a power of which he seems vaguely to have been aware, a power which no biographer can ever describe in words, but which he cannot possibly ignore.

recent PHILIPIAN one editorial prophesied eight years of Roosevelt as president. I do not believe the American people will submit to New Deal Socialism for four more years. I think that by next fall they will in majority acknowledge the fallacy of the present Government by voting Republican. I think that they will be so tired of alphabetical organizations and professors' theories by then that they will overwhelmingly return to the principles of sound government. I believe that they will be so strongly disgruntled by the loss of foreign markets through the A.A.A., the higher food prices caused by the A.A.A., the decrease in dividends through the strictly political "soak-the-rich" taxes, the political fight against the Utilities, the complete Socialism of the T.V.A. (which is underselling private companies at a loss), the tremendous spending that will burden our children and grandchildren so heavily, the use of relief money for political success (shown in the Utility farce last summer); the thousands of superfluous bureaucrats in Washington, the undermining of the Constitution, and lastly the unnecessary expenditures for ineane projects throughout the land (such as spending thousands for sidewalks in towns of 150 people) that they will return once more to sane leadership, under the guidance of the Republican Party.

P. A. '37

Prom Rules

Students who go home will be allowed to leave school Friday when their classes are over. (Classes that ordinarily are held at four and five will be moved forward to two and three, all classes being finished at four.) Please note that only those who go home or to join parents will be allowed to leave school on Friday afternoon.

All other week-ends will begin on Saturday morning after Chapel.

Boys who attend the Prom may not leave until after Chapel Saturday morning.

This week-end will count as one of the regular allowance.

No one who is on the no-excuse list or probation may leave for this holiday. (Students living in Williams Hall are excepted.)

Please secure your excuses from Mr. Maynard in the Registrar's Office as early as possible during the week.

superiority over the Americans in speed skating. The Americans were thought to have a chance in the downhill and slalom events in skiing, but Ted Hunter hurt his leg badly and Dick Durrance, after hanging up his ankle two days previous to the race, did no better than eleventh in the downhill. There is a somewhat small chance of placing in the jumping, but the Norwe-

(Continued on Page 4)

MOVIE PREVIEW

For the movie program Saturday night, Mr. Cook has announced a double feature billing comprising the two full-length films, "It's a Gift," and "Hands Across the Table." The former is a vehicle for the talented old-time vaudeville humorist, W. C. Fields, while "Hands Across the Table" stars Carole Lombard and Fred MacMurray.

Both movies are in the light comic vein, "It's a Gift" being of the slap-stick variety reminiscent of other Fields films, and "Hands

(Continued on Page 5)

IN PULPIT SUNDAY



THE REV. HENRY K. SHERRILL
OF BOSTON

For the best buys in
COUCHES CHAIRS TABLES
BOOKCASES and SOFAS
Go to the
COLONIAL FURNITURE SHOP
53 Park Street

Law School of Harvard University,
Cambridge, Mass.

*Bill
Lowell*

February 29, 1936

Dear Mr. President,

When the other fellow's arrogance reaches such proportions as to become ludicrous, one's feelings become disengaged and the mind is left free to exercise a "ca'm judgment". And so I am as clear and as sure as I can possibly be that the following are the ingredients for the right answer to Lowell: great brevity, impeccable courtesy, complete disregard of the impertinent inquiries and implied rebuke.

Words yield to your touch, but I offer as a scratch pad the enclosed draft, for which I only claim that it is the product of real calm and very considerable care.

With warmest regards,

Faithfully yours,

F.D.

Hon. Franklin D. Roosevelt

*F.D. I returned here with
the Lowell letter.*

Enclosed file from President Conant and Jerome Greene in re invitation to Harvard in September

THE WHITE HOUSE
WASHINGTON

PSF
Frankfurter

~~Harvard Folder~~
~~Putty File~~

February 28, 1936.

MEMORANDUM FOR F. F.

On looking over the file there appears an interesting situation. On November 7, 1934, President Conant writes - "Dear Mr. Roosevelt (sic)... I am now extending to you on behalf of the University a formal invitation to be present." Am I invited in my official capacity or just as a graduate? I wonder -----!

On November 14, 1934, Jerome Greene says - "Dear Mr. President I amwriting to you in support of President Conant's official letter ... the preliminary arrangements for the great day would have to take very largely into account the welcoming of the President of the United States to his own College"

The plot thickens! It is developing into a Detective story like that one that you and A. A. Ballantine were the principle actors in.

F. D. R.

TELEGRAM

27WUD 69 DL

**The White House
Washington**

WU Cambridge Mass 425pm Feb 26 1936

The President

The White House

Would much like to see if possible terms of original invitation could you therefore let me have Conants letter to you and your acceptance in the meantime I should not have been terribly sorry if you had taught the gentleman a lesson in manners and written to him what you felt like replying however you shall have my calm judgment after I have had two days to cool off.

Felix Frankfurter

5o2pmd

*Conants
Feb 27*

Frankfurter

Hyde Park, N. Y.,
February 24, 1936.

Dear Felix:-

Very confidentially, what do you think of this? I felt like replying - "If I am invited in my capacity as a Harvard graduate I shall, of course, speak as briefly as you suggest -- two minutes if you say so - but if I am invited as President to speak for the Nation, I am unable to tell you at this time what my subject will be or whether it will take five minutes or an hour."

I suppose some people with insular minds really believe that I might make a purely political speech lasting one hour and a half. Give this your "ca'm judgment" and suggest a soft answer "suitable to the occasion."

As ever yours,

Professor Felix Frankfurter,
Law School of Harvard University,
Cambridge,
Massachusetts.

(Enclosure) Letter from President A. Lawrence Lowell
in re the President's visit to Harvard in
September.

July file

*BF
Frankfurter*

March 2, 1936.

MEMORANDUM FOR F. F.

(b) I wish you and Lasswell would try to work up a list of these smaller, independent business men -- say fifteen or twenty - whom I could invite to Washington. I know of no way of getting up such a list. Please let me have Professor Lasswell's letter back to read again.

(c) Thank you for letting me see the Bishop's letter. I hope to see him sometime this spring.

(d) I hope to have a talk with Lincoln Filene. I saw him the other day for a minute but only with a group. Please ask him if he can come down a little later on.

(e) I will try to see Buxton again this spring if he will let me know when he is coming to Washington.

F. D. R.

Law School of Harvard University,
Cambridge, Mass.

March 4, 1936

Dear Mr. President,

1. First and foremost, let me congratulate you on your tax message. Wisdom and resourcefulness and determination are behind it, and I hope the legislation will embody the essentials of your outline. You will be glad to know that Oliver Sprague has come out warmly in this morning's Boston Herald in support of your tax program.

2. Speaking of the tax bill, I hear from lawyer friends of mine, not knowing of my interest in the subject, of the wind they had regarding the Administration's plan to curb lawyers' fees in claims against the Government and their confidence in being able to kill any such "outrageous attempts" to restrict the free pursuit of profit by the great leaders of the bar!

3. Many thanks for your memorandum of the 2nd:

(1) In accordance with your wish, I return herewith Laswell's letter. I am communicating with him, and will do my utmost to get him to work up a list of these smaller, independent business men.

(2) In this connection, don't forget Clarence Avildsen, who continues to be a warm supporter of yours and ought to be able to help. Also, he absorbs a great deal of knowledge that is valuable through his business associations. Perhaps you can see him before very long.

(3) I am passing your message on to Lincoln Filene.

(4) I think it is just as well if you don't see Buxton until after your reelection. The poor fellow has to do the bidding of his masters, and he is now fiercely, on paper, on the other side.

(5) Instead of seeing Buxton, I wish you might, out of a clear sky, ask to see Lawrence Winship of the Boston Globe. He is true blue and a really wise New Englander.

Marion joins me in warmest regards.

Faithfully yours,

Hon. Franklin D. Roosevelt

*V.T. I told Dave Miles of
your chit about Wolf. Of
course Miles will hear him
straight.*

The University of Chicago

Department of Political Science

" B " 19 January 1936

Dear Professor Frankfurter:

I am sending you in this note the gist of some observations which I made on the developments taking place on the West Coast. I just returned from a semester spent as a visiting member of the department of political science at Berkeley.

You may remember my interest in the emergence of the middle income skill groups to effective expression in modern politics. As a rule the distemper of small business and professional people has spent itself on ephemeral partisan programs.

Now, however, a functional basis for "middle class" politics seems in the making.

An example is the association of independent druggists. In three years this organization has made itself felt at Sacramento in "anti-chain" legislation and in "fair trade practices" legislation. By boycott pressure has been brought on the sellers of nationally advertised goods.

The druggists work with an association of independent grocers, an association of independent hardware dealers, and certain other groups.

These separate organizations give tacit support to an association designed to promote INDEPENDENT and HOMEOWNED business which now has forty full time organizers working in the state of California.

These developments are paralleled in many other states (movements which I am following). Plainly they lay the basis, sooner or later, for a national

The University of Chicago

Department of Political Science

chamber of small business and professional interests.

It would be possible to develop a counter-weight to the U. S. Chamber of Commerce, whose control by big business groups is plain, by organizing another AMERICAN chamber of INDEPENDENT business. Such an organization could provoke the secession of many units in the existing Chamber of Commerce, especially in the West and South.

The present U. S. Chamber, you recall, was organized during the later days of the Taft administration with the active cooperation of members of the Taft cabinet.

May it not be that the time will soon ripen for another "consultation" of the smaller as well as the larger business interests of the country? And to prevent the use of the symbol "business" by the spokesmen of one single organization which assumes to speak in the name of all business?

A functional basis for skill group politics would no doubt foster the policies desired by the liberal elements in the Roosevelt administration.

I dispatch this brief memo to you because I am aware of your interest in a comprehensive view of social action.

Sincerely yours,

Harold D. Lasswell

Harold D. Lasswell

Law School of Harvard University,
Cambridge, Mass.

PSF ~~Harvard Files~~
~~Tracy Files~~
Frankfurter

March 4, 1936

Dear Mr. President,

My warm thanks for letting me see the file - herewith returned -
on the Harvard Tercentenary invitation.

The controlling letter - that of November 7, 1934 - leaves no
possible room for doubt that President Conant's invitation was addressed
to the President of the United States. I don't mean to rely on the minor
fact that the Conant letter went to

Honorable Franklin D. Roosevelt
President of the United States

in contrast to Dr. Lowell's form, "Mr. Franklin D. Roosevelt". What is cru-
cial is that President Conant extended to you "on behalf of the University
a formal invitation to be present", so that the "celebration of the 300th An-
niversary of the founding of Harvard College may be honored by your presence,
as the celebration of the 250th Anniversary was honored by that of President
Cleveland".

It is the Cleveland visit that I had in mind in sending you the
scratch pad draft reply. Grover Cleveland was not an alumnus. He came as
President of the United States. The whole tenor of President Conant's let-
ter, with its explicit reference to the Cleveland visit, unequivocally pro-
ves that the invitation went to you not as alumnus but as President. Natur-
ally enough, Jerome Greene, as director of the Tercentenary celebration,
placed that interpretation upon "President Conant's official letter". No o-
ther construction is tenable.

In sum, of course you were invited in "your official capacity" and
not "just as a graduate". I'll bet you a St. Croix rum highball that even

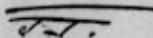
Law School of Harvard University,
Cambridge, Mass.

- 2 -

the Supreme Court would so rule, the Supreme Court, that is, ex McReynolds.

And so I stand pat on the form for a reply which I ventured to submit to you a few days ago. I have been sleeping on it for a good many days now, and time only confirms the feeling of its appropriateness. Of course I don't mean the exact words, but that brief, courteous, conclusive kind of thing which, being what he is, (in the light of his letter I ought to tell you one of these days a story which will shock even you), Dr. Lowell will fully understand.

Always faithfully yours,



Hon. Franklin D. Roosevelt

dd

Larry Fite

Frankfurter BF

Laws School of Harvard University,
Cambridge, Mass.

File

March 10, 1936

Dear Mr. President,

You may be interested in the following telephonic conversation this morning:

Larry Winship - "Groves sent me word that McIntyre asked him whether I could come down and see the President on Friday. Is it imperative that I go?"

F. F. - "Why do you raise the question?"

L. W. - "Well because F. D. ought not to waste his time seeing me; instead he ought to see some of these Democratic sore-heads."

F. F. - "Don't you think the President of the United States ought to be allowed to waste his time in his own way?"

L. W. - "I guess that's right too, but why should he waste his time on me?"

F. F. - "I don't know why he should. But maybe by way of change he would like to talk with a sensible fellow who really doesn't want anything - doesn't even angle to see him."

L. W. - "Go to Hell."

Winship is really a shyish fellow and rather laconic - a poor boy who came to Harvard and never moved in the great world of the Arthur Ballantines - until he really gets going. And so I hope you will find enough of a free stretch on Friday to see him alone and for some little time. He is a real newspaperman, not one of these modern columnists or "interpretative" fellows. The Globe, as you know, is essentially a newspaper, having no editorial policy. And Winship has radiating connections with news sources all over the United States.

Faithfully yours,

[Signature]

Hon. Franklin D. Roosevelt

My. And what did you write to A. A. Lawrence Kowles?

1
PSF Frankfurt

~~Putty Hill~~

Law School of Harvard University,

Cambridge, Mass.

March 13, 1936

Dear Mr. President,

file

(1) You will have seen items in connection with the conviction, *at the old Bailey,*
of three important business and financial people who were engaged in the pepper
pool and in furtherance of it failed to make certain disclosures in a prospect-
us inviting popular subscriptions. When next you hear yapping about how much
more room is left to "rugged individualism" in England, you might not only recall
that instance, but also quote the following from the most substantial financial
periodical in England. The Economist for February 29th asks precisely for those
safeguards which the Securities Act furnishes:

"Many will think that that the 'pepper pool's' operations, legal
as they are, have immeasurably fortified the demand for a strengthen-
ing of the 1929 Companies Act, especially in relation to the liabili-
ties of promoters, the positive requirements of a prospectus, the
compulsory publication of subsidiaries' results, consolidated balance
sheets, and the disclosure of all relevant current contracts to au-
ditors."

(2) A friend of mine who sits on the Board of a financial concern
with very large utility holdings reports, "in deepest confidence", the following
comments made by their counsel, John Foster Dulles, on the utility situation:

1.) The Baltimore suit he thought would be thrown out by the Supreme
Court on jurisdictional grounds.

2.) The Government's strategy in handling the utility cases had been
remarkably astute. He referred to B. V. Cohen by name as chiefly re-
sponsible for the strategy, and called him "a very bright young man",
but "a misguided idealist".

3.) In selecting the Bond & Share case for a test case, the Government
had selected the best possible case. And he doubted very much that
Bond & Share could prove that the Act as applied to it was beyond Fed-
eral power. The Government had also shown great strategy in refusing
to do battle in any of the other cases which the utilities had so tempt-
ingly offered them.

4.) He thought the litigation, however, might be very prolonged, and
might never reach the Supreme Court on the basis of the present Act. He
indicated that the Government was already making overtures to the uti-
lities to see whether the Act couldn't be amended so as to make it more

Law School of Harvard University,
Cambridge, Mass.

-2 -

acceptable to the utilities and relieve the Government of some of the burdens placed upon it by the Act. The S. E. C., he said, in other fields had shown a distinct inclination to be more merciful to the victims of misguided legislative zeal than the proponents of these measures.

4.) In any event, the Act could not be carried out in its entirety for several years. The income of the utilities was increasing. He considered Utility stocks "cheap and a good buy."

If you don't look out, you will ruin these fellows into prosperity.

Ever faithfully yours,

Hon. Franklin D. Roosevelt

Sum in
April 27

192 Brattle Street
Grad School of Harvard University, ^{Daily File}

Cambridge, Mass.

16 April

PSF

68

[1936]

Dr. Ricey - Frankfurter

next week I have to go
to Chapel Hill to deliver
four lectures on the his-
tory of North Carolina
if I could see the Pres-
dent - of course I'd love
to see him and report on
a few matters - I could
arrange to speak Wed-
nesday, April 22nd, in
Washington, arriving
on the Federal and leaving
for North Carolina late
that night. Would I stop

Mr. I should of course
~~appreciate~~ want to see
some of the Nile,
but would appreciate
date any time with
them to the President's
wishes.

As so I will to
ask if the President
would have time to
see me next Wed.
Wedday and if so
when. May I trouble
you to let me know.
Very cordially

STANDARD FORM No. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

FROM

The White House
Washington *

U. S. GOVERNMENT PRINTING OFFICE: 1926

April 20, 1936.

PROFESSOR FELIX FRANKFURTER
100 BRATTLE STREET
CAMBRIDGE
MASSACHUSETTS

IF YOU PLAN TO ATTEND FUNERAL TOMORROW COME AND SWIM
AT FIVE-THIRTY

M. A. LE HAND
PRIVATE SECRETARY

STANDARD FORM NO. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

FROM *mac* The White House
Washington

U. S. GOVERNMENT PRINTING OFFICE: 1926

April 18, 1936.

PROFESSOR FELIX FRANKFURTER
192 BRATTLE STREET
CAMBRIDGE
MASSACHUSETTS

PRESIDENT DELIGHTED TO HAVE YOU COME AND SWIM WITH HIM ON
WEDNESDAY, APRIL TWENTY-SECOND, AT FIVE-THIRTY STOP SORRY
HAS EVENING TAKEN

G. G. TULLY

70

PSF ~~Frankfurter~~ ~~July 1936~~

Op. 13

[April 1936]



Carlton Hotel
Washington

Paula

Dear Paula:

Nature alone does not explain it - for nature is usually, at least in part, fractious and always gets weary. And so you must have harnessed nature to wise ends, and also disciplined her. Only thus could you have achieved the kind of serenity and hu-

manly and galvanizing
humor, which I again
witnessed and experienced
in such generous mea-
sure. For I know,
partly at least, what
a driving day it
was - what tribu-
lations and unexpec-
ted irritations it
brought. And yet,
and yet - you
slew those Sena-
torial children
off with cheer, and
hope & finer purpose.

I once said to Marion that
with most people optimism is
an evasion - a way of avoiding
hard facts - but with F.H. of
optimism is a moral energy, a
source and resource for
hurdling difficulties and tri-
umphing over them. That's
the feeling I had when I left you
early this morning. Dear old you

2p ~~Faculty File~~ ~~Manufactures~~ ~~PSF~~ Return to
Law School of Harvard University, U.S.S.
Cambridge, Mass. Office of [1936]

Dear Randall - T.B.C. 1932

The writer of the enclosed is a past student of mine, was in his second year at the Law School here.

Some day I hope you will permit me to send Richard to you. He is a wonderful lad, from Kentucky, who is, I am confident, destined to go far.

Ever devotedly yours
V.S.

92
~~July 21st~~ PSF Frankfurter
Law School of Harvard University,
Cambridge, Mass.

file
personal

192 Brattle Street
Cambridge, Mass.
April 29, 1936

Dear Mr. President:

In raising for your consideration the suggestion I am about to make, I may well overlook a number of elements in an important situation. But I am confident that you will charge the suggestion to my great devotion to you and acquit me of intrusion into what is a very personal problem.

In brief, if you have not yet selected someone to take over some of the functions of the irreplaceable Louis, isn't Ray Stevens worth considering?

Of course, you know better than I all the circumstances of Ray's career, the qualities they reveal and their relevance to the manifold and personal functions for a member of the President's secretariat. But I don't think you have ever seen Ray as I have seen him — on his native heath of Landaff, N. H. — and had the revelation, on the spot from which they spring, of his Lincolnian shrewdness and simplicity, his genius for the common touch and his intuitive wisdom that seizes just the right way for putting straight all sorts of queer human quirks. What makes him so incredibly unique is that the same Yankee solitary who worked his milk farm all alone for years should have been equally at home in the palace of the last absolute monarch of the Orient.

Well I don't have to say more. But am I quite wrong in wondering whether there's anybody else who so epitomized the kind of hard-headed, practical political experience that enables him to find his way around on the main road as well as on the most obscure detours, who has such a sure instinct for knowing the difference between sense and nonsense, who can recognize cranks and fools without letting them be aware of it, who can placate dignity without subordination and subordinate with dignity important pretenders.

I am looking ahead, of course. I am thinking of all the domestic and international snarls that you will have to disentangle during the next four years, all the gallant fights that you will be leading. And I am thinking of the priceless value of a self-effacing, dedicated, palpitating background that understands without being talked to, and never talks except with understanding.

That's my story and I stick to it — provided you think it's any good.

Devotedly yours,

PSF

Hon. Franklin D. Roosevelt

Harvard Folder
Felix Frankfurter

PSF
Frankfurter

April 29, 1936.

Dear Felix:-

The enclosed has gone. Marion was right. Tell her, however, that I must be getting old because after two weeks of thinking things over I became a cecing dove. You will note that I have completely ignored the latter and more important half of A. L. L.'s epistle. Enough said!

As ever yours,

Professor Felix Frankfurter,
Law School of Harvard University,
Cambridge,
Massachusetts.

(Enclosure)

PSF:Harvard

*file
pres mal*

April 29, 1936.

Dear President Lowell:-

Thank you for your letter of April fourteenth. You are right in thinking that I will want to say something of the significance of Harvard in relation to our national history.

Very sincerely yours,

Dr. A. Lawrence Lowell,
171 Marlborough Street,
Boston,
Massachusetts.

LAWRENCE LOWELL
171 MARLBOROUGH STREET
BOSTON

April 14, 1936

To the President of the United States:
Washington, D.C.

Dear Mr Roosevelt:

You are certainly right that you were invited to come to Harvard on the Alumni Day of the Tricentennial celebration as President of the United States. In that capacity I suppose you will want to say something about what Harvard has meant to the nation. In arranging the occasion there are about half a dozen other speakers, - partly alumni, but mainly representatives of other institutions over the world, who will naturally speak. I am thinking of asking each of them to take about ten, or at most fifteen, minutes. Does not this strike you as appropriate ?

Yours very sincerely,

A. Lawrence Lowell

Jelly Pitts
1922 Braintree St.
Law School of Harvard University,

Cambridge, Mass.

PF Frankfurter

14 May
y

Dear Sir

Please be good
enough to accept
this to the President

Your brother
having tea with
me next Monday
Very cordially
Yours

7

you think they are
making a serious mistake
to string out the Democratic
convention for five days -
with not a thing to do -

podrumping for few days - during
the convention will disintegrate -

trip for a Sat into crowd

FD's speech — Short &

appy convention would be better

chique — many sessions

with deserted halls will have had
effect ~~to~~ had news dispatches —

Larry

CHAMBERS OF
HARLAND B. HOWE
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT
BURLINGTON, VT.

May 11, 1936.

Prof. Felix Frankfurter,
Harvard University,
Cambridge, Mass.

Dear Professor:

If you know of a member of the bar who would make a good law clerk and anxious for such a position I wish you would give him the enclosed memorandum.

Vermont has been republican for eighty-two years without a skip or a miss. We have only fourteen members of the bar who are democrats. I won't give the appointment to a republican, and as none of the democrats here want the position, I'm going outside where the democrats are plentiful.

With much esteem, I am,

Yours sincerely,

Harland B. Howe.

(1 enc.)

81
July 1921
Law School of Harvard University,
1921
Cambridge, Mass.

Cambridge, Mass.

22 Aug

Dear Sir -

file
personal

Please favor let
to the President - and
see Grace work to
reflect the Honorable
Solon from his duties.

And my warm regards
to you. It was joyous
to see you again.

100-10732-1011

Frankfurter PSF

Law School of Harvard University,
Cambridge, Mass.

May 22, 1936

Dear Mr. President,

Very few things seem to me more promising in their implication for the future than the settlement between the Railway Executives and the Railroad Unions which your gentle but firm pressure upon both sides, your far-sightedness and your tact alone made possible. It is a heartening example of constructive intelligence applied to modern technological problems. But it also proves that without effective organization among the men, such collaborative solutions of the common problems of industry are not possible. That is why the Tory leaders of industry know not what they do in their obstinate resistance to the intelligence and character that unions in the long run foster, by training men in organized responsibility.

And let me tell you again what a great thing it is for the country for you to have solved the trying T. V. A. situation. I know what it meant in time and patience, in human understanding and incredible tact to save for the country continuity in the work of T. V. A.

You know how we all occasionally like to play at the children's game of what we would do if we were God. I would add four hours to your day.

Faithfully yours,
FT.

Hon. Franklin D. Roosevelt

*It was a grand
visit - and I told
Harris about the
parts!*

4p 13

PSF
Franfurter

PSF: Platform
Box 13
tey

As of 192 Brattle Street
Cambridge, Massachusetts
June 13, 1936

Dear Mr. President:

First, let me tell you what an absolutely ripping speech you made at Arkansas. "Forward March" is precisely the right temper of command with which to impregnate the campaign atmosphere. I know I am just a professor, but I eat the proverbial hat if I am wrong in believing that over and beyond this and that detail of the campaign is the necessity of charging the emotions of the American people anew with hope and confidence, and with the conviction that you are the only dependable instrument for pushing forward their hopes and justifying their confidence. And so as I take off, I express the deep hope that the temper of the Arkansas speech is the one that you will maintain throughout the campaign.

Feeling as I do, I cannot withhold my strong disappointment in the preliminary draft of the platform that Tom has just brought, as it comes from Rifkind's hands. I shall try to have my say, at least over the 'phone, with Bob Wagner and Rifkind before I leave tomorrow but it may not be possible to reach them. Therefore I am compelled briefly to say to you what I am about to say. I understand that this is only a draft and that it certainly does not satisfy Wagner and Rifkind but is the result of pleasing everybody by omitting everything

+ Since dictating this I've read the Sallas speech, & that's grand!

opposed by anybody. Well, all-things-to-all men produces precisely this kind of a wishy-washy, uninspiring mush, worse than tame cat. This draft has no inspiration, no generalized philosophy, no call to arms, nothing to hearten anybody, nothing that anybody will remember the day after it is published in the newspapers. In substance it hardly differs from the Landon platform, and in tone it is even duller.

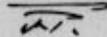
Of course, your acceptance speech will be the call to arms and will furnish the philosophy. Nevertheless the platform ought to serve as your auxiliary; the platform certainly should not be a handicap to you, at the lowest the handicap of a collection of dead words without impact, without lift and without courage. It ought not to leave any possible room for the suggestion that the official party utterance does not fully express your own outlook. For the life of me I don't see why the platform shouldn't express the kind of general outlook that you expressed in the Commonwealth Club speech, that ~~was~~^{is} reflected in the major policies of the Administration, and will serve as the general direction for the next four years.

Rifkind himself is aware of the flatness, the lack of cohesion and organic eloquence of this draft. I am not remotely suggesting that the draft which I placed in your hands should serve as anything more than as a draft for improvement and stiffening. But I do hope that you will find

time to read that draft and compare the objectives in platform-making which underlay it with the present proposal.

I am asking Tom to put this letter in your hands. He will also give you in his own inadequate, un-Celtic way my affectionate greetings and my good wishes for everything, until I am gone -- and way beyond.

Devotedly yours,



The President
The White House
Washington, D.C.

~~July File~~

13 July 36

22, Queen Anne's Gate,
Westminster, S.W. 1.

Dear Mopsy -

Be good enough
to hand her letter to
the President.

I don't know where
this will reach you -
I only hope not in the
cruel Washington heat.
Even to read about it
is painful - the more
so because we've been
having everlasting
snows, hardly a

ray of sunshine.

Apart from seeing
old friends (and making
some new ones) -

You know what artistic
inhospitality the English
are - this is not a
happy country at
present.

Our best wishes to
you for some gay
holidays. Very cordially
Thurs. Langford

Frankfurter BSF

DF

22, Queen Anne's Gate,
Westminster, S.W. 1.

11th July, 1936.

Dear Zarek:

1. Unfortunately I could not hear your Philadelphia speech as conveyed by your own voice, but the vibrancy of your utterance triumphed over the cold type of the extracts which Wilmott Lewis conveyed and stirred feelings in me that have been aroused by not more than a dozen speeches in my life-time. And now that I have read the full text, I find in the speech (with all the insulation of feelings that time produces) that enduring quality which makes a classic. You have given us something not only to win with, but to win for.

2. Apart from all else, you have taken the aggressive, and again proven that the only effective defensive is an offensive. Political life, as all other life, means affirmation and not negation, and the lead you have taken in Philadelphia has been the dominant political news from America since Philadelphia. Your persuasion of Herbert Lehman has of course had psychological effects much beyond the immediate New York

22, Queen Anne's Gate,
Westminster, S.W. 1.

- 2 -

contest. You must have handled him just right. The new drought is a terrible plight, but Lewis' cable indicates the bold and imaginative leadership with which you are meeting it.

3. In so-called upper class and even Tory circles here one moves in a wholly different mental climate from that which one finds on Park Avenue or Beacon Hill. In the first place there is an immense amount of warm feeling for you personally on this side, not less than for the gallantry with which you reversed the national morale in 1933. But in addition, there is a much calmer realisation that the general direction of your measures - never mind the details - is indispensable for the sake of capitalism itself, and that, in the language of Macaulay, in order to conserve we must reform. I have seen a number of your friends like Margot and Elizabeth Bibesco, who are passionately eager for the successful outcome of next November.

4. I have been importuned by some of those closest to Herbert Lehman to try to prevail upon Charlie

22, Queen Anne's Gate,
Westminster, S.W. 1.

- 3 -

Poletti to stay with Herbert after this year. I know that Charlie told H.H.L. some time ago that in any event he would not stay in his present post after January. I have been thinking about the business a good deal and I wonder if the whole problem could not be most effectively solved by running Charlie as Lieut.-Governor - this, of course, on the assumption that for one reason or another Bob Jackson is not to be named. Charlie would make a powerful appeal not only to his own people but also to the young, and thus enormously further the whole cause in New York. I am also assuming that Bennett will want to continue as Attorney General; otherwise Charlie could be named for that post, for he is in addition to all else a very good lawyer. Charlie's youth rules him out as a serious rival to the ambitions of others as Herbert's successor in 1938. At least, this is the way ^{New York} ~~year~~ politics strike a mere professor across the ocean.

5. There will be much to say about the British

22, Queen Anne's Gate,
Westminster, S.W. 1.

- 4 -

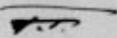
situation when I return. For the present suffice it to remark that it is my impression, with some knowledge of the history of the England of Chatham and Burke and Fox, that not even the defeat of the mother-country by the thirteen colonies left such a sense of national humiliation as has followed in the wake of the Abyssinian affair. Great Britain is now feverishly aroused to make herself strong, for whatever contingency may be in store. There is, as you know, not a little sentiment in the City and other high quarters looking towards terms with Germany - which means giving her a free hand in the East - but as soon as these tendencies reach proportions they are severely checked by such Nazi performances as the recent conduct of Capt. Greiser before the Council of the League on the Danzig matter. By the way, has that delightful euphemism, "to cock a snook", reached you? It was the delightful way in which The Times described Capt. Greiser's thumbing his nose at the Council of the League.

22, Queen Anne's Gate,
Westminster, S.W. 1.

- 5 -

I hope nothing will interfere for a
real holiday for you before the strenuous months
of the campaign begin. Marion joins me in
affectionate greetings.

Ever yours,



July 29
Law School of Harvard University,
Cambridge, Mass.

Frankfurter R.S.F.
y. y.
Cornish, N. H.

July 29, 1936

Dear Mr. President

My affectionate greetings! I hope much that you have had some really care free loafing and much refreshment, after the long, hard pull of the last session and for the long, hard days that are ahead.

I venture to enclose a few platitudinous remarks which derive from the conservative lawyer's soul in me. But I really think that these observations are important, even if needless to be put before you. I'm sure that you concur.

I'm looking forward much to seeing you.

Always faithfully,
F.T.

You know how very deeply I care for your championship of social insurance as part of your program and how basic I deem it for its greatest success. It is in the light of my great desire both for the realization of that program and for your success that I venture strongly to urge against premature commitment on the details of the program for social insurance. I speak as one who has had a good deal of responsibility in connection with such legislation over a long period and in the light of a rather close study during my recent visit in England of British experience with unemployment insurance. That experience makes clear the extreme intricacy involved in formulating wise, enduring legislation as well as the important bearing of details, not only upon effective administration, but upon the economic life of the country. The United States multiplies manifold the complexities and difficulties revealed by English experience. The diversity of conditions in our various regions and even in the various States and the factor of distance, despite all the modern appliances ^{quite} for communication, make administrative and political problems of insurance legislation in this country radically different from the situation that confronts English legislation and administration. The relative advantages and disadvantages of the Wisconsin plan as against the Ohio plan, and still more the relative advantages of a single, national scheme as against a scheme through the States but sponsored by the nation, or fostered by it, calls for long and careful exploration and thereafter a matured process of formulation. Moreover, our Federal system presents legal complications from which England is wholly free. You will recall that the Supreme Court invalidated TR's first Employers' Liability statute because it transcended the reserved powers of the States. That case, considering that only in

i. e. before your legislative process is well advanced

refer to logon

terstate carriers were involved, should warn us of the great importance of the specific legal mold into which legislation is cast and of the constitutional obstacles in the way of an all-embracing national scheme. I should think what is wanted at this time is the generous and ample elucidation of the general objectives of social insurance, without any reference to State or national action, and without committing yourself at this time to any decisive choice or form of legislation, which may gravely embarrass the attainment of your aims.

If you are to speak in Wisconsin on this subject, would it not be well, by way of illustration of a commendable effort, without again committing yourself to the details of legislation, to refer to the characteristic pioneer legislation of Wisconsin in dealing with unemployment legislation? You will remember Mr. Justice Holmes' observation in one of his opinions that our Federal system gives us the great advantage of making social experiments in the "insulated chambers of the individual States". That aspect, not of state rights but of state opportunities, might be emphasized with particular advantage in the State of Wisconsin.

K.P.

TUCK'S POST CARD

CARTE

POSTALE

(FOR ADDRESS ONLY)



SHELDONIAN THEATRE. In "the Broad," holding 1500 spectators and built by Wren 1669 at the expense of Archbishop Sheldon. Here is held the annual commemoration in June, commemorating benefactors of the University, when honorary degrees are conferred, usually with a running commentary from undergraduates in the galleries.

1936

30 July

Dear Missy -

may I trouble you to put
this letter into the President's hands.

Harold & I have discovered the
best cheap way to the East - The Day
London. Tomorrow will have it. Hope the
lines are OK

OXFORD, Printed in England. Copyright, London. Raphael Tuck & Sons. "The Postcard Service" Patent No. 2207. All particulars to their publishers THE KING & COY., and to S.W.A. THE POSTAGE OF GREAT BRITAIN.



Sheldonian Theatre Oxford

July 1922 Brattle Street
Cambridge, Mass
30 July 1926

22, Queen Anne's Gate,
Westminster, S.W. 1.

file
personal

Dear Anne -

PSF
Frankfurter

Your noble speech has just come over the wireless, across the ocean, clear as a bell - and it was a joy to hear again your warm, full-throated voice, with its felicitous expression of the eternal and therefore ever-fresh sentiments of wisdom and humanity. It was gripping to hear the thunderous applause when you broke into French - altogether you said the right things, in your own inimitable right way. It will please opinion here much.

And they used to hush up.
As never before, I believe, in English

22, Queen Anne's Gate,
Westminster, S.W. 1.

history they feel low - and fear,
the hard practical fear of Germany
dominating everything. They are
working feverishly to get strong -
and now the least important
aspect of the English situation is
that poor Baldwin has lost his
confidence.

But of all that when we meet -
I have, of course, seen all sort
of people in and out of Government.
We are sailing on August 5th (the
"Britannic") and will be in London
about the 29th.

Only today, came the full text of
your Jefferson speech - which I
liked enormously. But your the
appliance grows and grows in my
love

memory. L. W. B. calls it "a noble
utterance". No one of the perma-
nent speeches in American history.

You found as tho you had a
truly refreshing cruise - and
froaled for the month ahead. Soon
the summer emptiness will be
over - and the negativism of
Lansdown will be relegated
to the obscurity for which its
"bined-up" deserves it.

The enclosed will show you
how intelligent the Editorial
Committee of The Times can be.

Marion joins in affectionate
greetings. Ever faithfully yours

SL 7-30-36 July 31/36
PSF: Frankfurter

FINANCE AND COMMERCE

In "City Notes" comment is made on:—Credits for Soviet Russia; the London Midland and Scottish Railway Dividend; Foreign Interests in Spain; Union-Castle Mail Steamship Company's New Directors; Chartered Accountant's Retirement; Rising Beer Consumption; British Shipping Policy; and Decca Record Reconstruction Plans. (p. 19)

After weakness dollars and francs rallied, the New York and Paris rates closing lower on the day at 35.014 and 75 61-64f. respectively. The Bank of England showed an expansion in the note circulation. The Bank bought £1,104,986 in bar gold. Gold declined 1d. to 138s. 9 1/2d. per oz., \$198,000 being sold. (p. 19)

The Stock Markets yesterday maintained a good tone. Following the declaration of the L.M.S. dividend a general rise occurred in Home Railway stocks. An outstanding movement in the Miscellaneous market was a rise of 144 in Imperial Continental Gas. Dealings began in the Plymouth Loan, the scrip being quoted at a premium of 1/2. (p. 19)

PRAIRIE TO DUST

For many years American men of science have been declaring that the golden prairie would not last for ever. Ill-treat it (they said) and it will return to dust. Few people heeded them; it was only a tale out of a book and, besides, the corn was growing better than ever, bringing the farmers more and more profits, more and more land to develop. During the War and in the years immediately afterwards the area under plough was extended beyond all dreams. Even when the dust-storms came, the black blizzards which lifted the top soil bodily into the air like a blanket and carried it at a smart rate towards New York, the truth was not generally seen. These events were treated largely as isolated phenomena. "Uncle will be along soon," the farmers would tell each other, "I've just seen his farm go by." The men of science repeated their warnings; and now the blunt truth of their words has been brought suddenly home to the American public. A great belt of territory stretching from the prairies of Western Canada, down through the Middle West and across to the Missouri and the south-eastern States, has been seared by drought during the whole of the past two months. For the States of the Middle West it is the third drought they have had in six years; and it is now generally realized that these afflictions have not been isolated or freakish, but to a large extent simply steps in a process which must be countered by every possible means if cultivation in these areas is to be saved.

Rain has now been reported over most of the territory, and the Canadian wheat is said to be reviving before the harvest. The yield there will be below the average, but not so much below it as had been feared three weeks ago. In the south-eastern States also some of the crop will be saved in a more or less marketable condition. But in parts of the north-central States the showers are worse than useless; they have come merely to wash the top soil into the dried river channels. Especially in the Dakotas and Montana the position is desperate. These States seem to have had the worst of the drought and they were least prepared to withstand it. Every report has drawn the same pictures—of wheat

large tributary of the Tennessee) has been the means of saving large stretches of land in the lower Tennessee Valley at a time when scorching winds were blowing from the Middle West and temperatures each day were soaring above a hundred degrees. It is by such means, by more intensive irrigation, by a more evenly balanced system of crops, and by afforestation, that the Administration are planning to avert the menace which Mr. ROOSEVELT interpreted in clear words the other day: "If nothing is done now, the parched area will spread until a great section of the United States is little better than a "desert."

75
Meanwhile the American farmers have more troubles than drought to overcome. The history of the last twenty years of most of them can be summed up in a few words—high prices after the War and heavy mortgages with which to extend their farms; then the collapse of their prices and maintenance of high industrial prices behind tariff walls; then widespread bankruptcy. When Mr. ROOSEVELT took office it was estimated that, out of every hundred unemployed in the towns, sixty of them had been thrown out of work because of the collapse of the agricultural market. The wretched tale of the expedients employed to curtail production and so force up prices is well known; it is a tale to which Nature has written several tragic sequels since. At one time Mr. ROOSEVELT'S Agricultural Adjustment Act seemed to be helping the farmers. It gave them a fresh start in life by handing over to them the proceeds of a tax on processing—in other words, on the mills which first handled agricultural products. But the Supreme Court in January of this year declared the A.A.A. unconstitutional; the farmers saw the bankruptcy court before them again; and they rallied more closely to the Roosevelt Administration than ever before. In Mr. WALLACE—late of Wallace's Farmer, Iowa, and now Secretary of Agriculture—they feel that they have a man who has helped them in the past and will help them again if Mr. ROOSEVELT is returned in November. Mr. WALLACE is already vigorously tackling the problem of drought and its prevention. The farmers are wanting him again to tackle bankruptcy relief and its prevention.

Government Reinforcements

A batch of changes in the junior ranks of the Government is announced to-day. I PLYMOUTH takes the place which LORD STAN recently vacated at the Foreign Office promotion to be First Commissioner of

This oversized item has been
filed in sections

be saved in a more or less marketable condition. But in parts of the north-central States the showers are worse than useless; they have come merely to wash the top soil into the dried river channels. Especially in the Dakotas and Montana the position is desperate. These States seem to have had the worst of the drought and they were least prepared to withstand it. Every reporter has drawn the same picture—of wheat crops "burned to a crisp," as the *New York Times* put it, or no higher than a man's hat at best; of cattle dying in hundreds for lack of water, and the stronger of them being transported to other States where there is still grass and shade; of yellow dust-clouds rolling slowly across country; and, every few miles, an abandoned farmstead with drifts of dust piling against the doors. Some photographs illustrating the havoc appear on another page this morning, and an article in a neighbouring column from our Correspondent in New York adds to the statistics already published. In their combined effect the figures are appalling. Over a hundred million bushels of wheat have been burned up. The United States will have no corn for export this year, and already the millers of the north-western States have been buying from Canada. Over two thousand families are destitute and receiving Federal relief. Five million families have suffered heavy losses of crops and stock. Many thousands of men have been taken from the farms and put on public works schemes. The loss to the nation as a whole due to actual damage is estimated at £60,000,000. As for the cost of the great schemes of relief, Mr. ROOSEVELT gave the best answer concerning that the other day: "Matters more important than costs are being discussed at the moment." A great stretch of land has been swept as though by the plagues of Egypt, and the problem now being faced is whether life can return there.

It is easy for outsiders to say that the whole thing was as plain as porridge—that if prairies were ploughed and no hedges planted, forests felled and no seedlings set to replace them, pastures over-stocked and cropped to the roots, then the soil would certainly turn to dust and bring the danger of drought in summer and floods in winter. There would be nothing left to hold the water. Every one can see that now. But even in our own small country, with all its hills, streams, and hedges, we have not quite overcome the problem of drought and flood; and in some of our tropical and sub-tropical Dependencies we have allowed wide stretches of grassland to be over-cropped. The balance of Nature is a tricky problem under the best of conditions. In a newly opened country such as America was, with the land untried and settlers not bound by any common agricultural tradition, it was all too easy to break through Nature's defences. The difficult task comes now when, if the defences are to be rebuilt, the whole policy of exploitation must be reversed. "I tell you frankly," Mr. ROOSEVELT has said, "that it is a new and untried path." Yet the Administration are guided by two or three plain factors in the present situation. The heat wave struck most of the States of the Union; but the Eastern States are coming well out of it, still fresh and green except where the corn is white for harvest and where the hay has been gathered into the yards. The land has been saved because of the system of rotation of crops and because the woods and streams have been preserved. Already therefore it is planned, when the Middle West recovers, to have vegetable crops and fallow land among the farms which were formerly used for wheat alone. In the Southern States also the crops were saved—mainly because of the irrigation systems leading from the dams that have been built in recent years. The Boulder Dam, for example, can hold back two years' normal flow of the Colorado River. The Norris Dam across the Clinch (a

Mr. RAMSOTHAM, who
 Mr. ELLIOT'S lieutenant
 now becomes Minister of
 one of the best, though
 nized, tributes to our
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 tion of MAJOR TRYON,
 becoming almost a sin
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Frankfurter

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

July 2
1914

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.

B+

WESTERN UNION

(11)

H. B. WHITE
PRESIDENT

NEWCOMB CARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE-PRESIDENT

SYMBOLS

- DL = Day Letter
- NM = Night Message
- NL = Night Letter
- LC = Deferred Cable
- NLT = Cable Night Letter
- Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.
Received at 234 Main Street, Poughkeepsie, N. Y. 1914 AUG 15 PM 7 14

NAZ225 6 RADIO VIA RCA=SS BRITANNIC N CHATHAM 15

PRESIDENT ROOSEVELT=

HYDEPARKNY=

file

[Signature]

CHAUTAQUA SUPERB=

FRANKFURTER.

*VZ m m
me - 10/10/14*

PSF Frankfurter

~~*Felix Felix*~~

TELEGRAM

The White House
Washington

File

15 WU JM 40 1036am

Cambridge, Mass., Sept. 12, 1936.

The President:

Your Green Pastures and Power Congress speeches grabd double-header. The former powerful in its beauty, the latter most skillful in giving large directions and avoiding shoals and reefs. Both of them the best kind of national education.

Felix Frankfurter.

RF Frankfurter

Fully

78

TELEGRAM

The White House

20WU. RA. 47-D. L 11:47 ^{Washington} a.m.

Cambridge, Mass., Sept. 19, 1936

THE PRESIDENT.

Hope much you did not catch cold It was really a great triumph you furnished a striking example of the civilized gentleman and also of the importance of wise sauciness Charlie Burlingham Marion and some of the rest of us celebrated your performance with enthusiasm last night.

Felix Frankfurter.

TELEGRAM

25WUC 25 6:22pm.

The White House
Washington

Cambridge, Mass., 6:11PM. Sep. 18, 1936.

Miss Marguerite LeHand,
The White House.

It came off beautifully. You should have heard and seen it.
He turned a difficult situation into a triumph. He was at his
very best.

Felix Frankfurter.

September 22, 1936.

Dear Felix:-

Did you really and truly like it -- more important still, did Marion really and truly like it? Your expression of the "importance of wise sameness" is perhaps better than mine. I told the boys afterwards that I had stuck my chin out and said "hit me" -- and nobody dared!

I was awfully sorry not to see you both -- I gave a wave to Charlie Burlington.

As ever yours,

Felix Frankfurter, Esq.,
Law School of Harvard University,
Cambridge,
Massachusetts.

Copy B

~~July File~~

192 North St.

Law School of Harvard University.

PSF Cambridge, Mass.

Frankfurter

Sunday

Sept 27

[1936]

file
normal

Dear Miss

Will you be good
 enough to put the
 enclosed into the
 President's hands -
 These days he seems
 to have a dozen hands,
 and scores of eyes
 and ears.

With warmest regards

W.S.

86

192 Brattle St.

Sept. 27, [1986]

Dear Mr. President,

Yes, I did really
and truly like the speech
you made at the garden
I paddled out in the
rain to hear it, when
I might have heard

it at home, because I
wanted to be seen
applauding. But the
applause was so general
and prolonged that
my hostility was un-
noticed! Rather a blow
for me.

Wish you a
good trip.

Sincerely,

Maxim Gorky

Op. 13 ~~2000~~ 192 Bra Dr Lk.

Law School of Harvard University,

PSF Cambridge, Mass.

Frankfurter

Wes

[10-7-1934]

Dear Sir,

Be good enough
to put the enclosed
into the President's
hands, and also
tell him that much
as I relish work
from him, he should
not bother to take
time to acknowledge
what I may write or wire.
Good luck - for the home stretch.
Yr very cordial
Wes

October 7th

192 BRATTLE STREET
CAMBRIDGE, MASS.

Y [1936]

Dear Faull.

This is merely to wish
you "God speed!" on your
forth coming western trip,
and to express the confi-
dent hope that you will
safely return with
all of best of the Missis-
sippi in your bag.

If a cab may look
at a King, perhaps
you'll let me see
you with what ad-
miration I have

followed the strategy
and tactics that
you have pursued
in the Campaign. The
enclosed from some
Morgan shows you with
a glance. I think
you had to talk
over on the budget,
but you did it so
that the woman and
woman at the re-
cruiting end got
"the cake" in terms

They were successful
and been successful. I know that
Morgan thinks you have been
friendly & flexible in turning
the Campaign into your
exercise and pushing the
Moss & defeat the Post. I go's
and that ought to be - and
I know you've been

Enough beached
and in the water
on the port bowing
trip.

But - as I said -
this is to wish you
all that is good
and propitious -
Keep on blowing
winds into ^{the} sails
of America!
Ever affect'ly yours
V.T.

BF

file
by Frankfurter

Copy of FF's letter to C.C. Burlingham
in re-J.P. Morgan.

SEE--Burlingham-Gen-corres-Drawer 2--1937

82

file
personal

~~Jelly Pitts~~

Frankfurter
DSF

192 BRATTLE STREET
CAMBRIDGE, MASS.

January 11, 1937

Dear Frank -

1937

And now I have re-read and read again your *Chantéque Address*, and it warmed and re-awakened the *glow* and *stir* I felt when I heard it on the high seat, some ward bound, last summer. Ever since I have reinforced your views and underlined your philosophy.

But you showed things

of all with their exquisite
pressing - the Govern-
ment Printing Office
has done itself proud
in turning out the
thing of beauty - of all
enduring utterance
that now belongs to
History is most precious,
and fills us with
happy gratitudes.

What I want for
you, from the best year
and the year to come,
is the fulness of your
strength, physical

and spiritual - and all the
rest will be added unto
you, and through you to the
Country.

Trustedly yours
Rus. Langwell

Gully File *Frankfurter*
PSF ✓

January 16, 1937.

Dear Felix:-

The enclosed letters are, of course, typical -- but is it not true that many of the youngsters get tired and lose enthusiasm when the novelty of the job wears off? What should be everlastingly inculcated into these boys is that a thing like TVA is a twenty year goal (at least) and that in the process of succeeding months there will be of necessity many temporary discouragements, such as the present injunction and the strange problem of Dr. Arthur Morgan. The injunction must wait on courts and the Morgan-Lillienthal head-on collision will probably be solved in the next few months by the adoption of the national power policy which I am in the midst of here in Washington, and which is going to make definite progress whether I get the legislation or not.

If I were writing to this youngster I would tell him that if he is looking for (a) a new thrill; (b) a higher salary; (c) an immediate assured and permanent future, he had better leave -- but that on the other hand, if he is willing to go through with a great ideal, remain on Government pay and hope that the Government will some day set up adequate pensions, etc., he had better stick.

The other day Ed Mcbrady came in to see me to tell me of an offer of three times his present salary; that he is sixty-two years old and that he ought to think of his declining years. I told him he was right in doing the thinking but to weigh against that thought the fact that he is an important part of a great human movement, doing a splendid job and almost impossible to replace. I said "Ed, I want you to stay." He said "Right Boss, you have given the word and I will stay."

Very confidentially, I may give you an awful check in about two weeks. Even if you do not agree, suspend final judgment and I will tell you the story.

As ever yours,

Professor Felix Frankfurter,
Law School of Harvard University,
Cambridge,
Massachusetts.

192 Breckle St.
Law School of Harvard University,
Cambridge, Mass.

Sam J

Ranking -

Please be good enough
to hand this to the next
desk.

And may I be glad for
be full of gladness
and good things to you.

Very sincerely
S. J.

Law School of Harvard University,

Cambridge, Mass.

January 9, 1937

Dear Mr. President:

The Lord, I hope, will forgive me for breaking the confidence imposed by a trusting young man in letting another than myself see the enclosures. And your eyes were the very last for whom they were intended. But occasionally a single wisp of cloud shows the shifting of the wind into a bad quarter.

Bill Nichols, the writer of these letters, is not a lawyer, but he has crossed my path up here. He is the nicest kind of a Harvard man—he has ability, character, public zeal, and the common touch. He entered the government as did so many youngsters—he graduated from Harvard in 1926—under the inspiration of your leadership. From all accounts, he has served the government with a fidelity and usefulness for which private enterprise usually pays many times what his salary is.

TVA has, of course, its own peculiar problems. But Nichols faces what, I am sure, agitates scores of able men in other branches of the government. I know that the realization of your purposes predominantly depends on your own leadership, but I am sure you will agree that your ability to achieve your purpose depends in no small measure on a successful contest between you and private interests for the command of brains. Now, I see too many able young men every year and keep in too close contact with many of them after they leave here, not to be justifiably confident of the ability of the Government to attract the best brains. You can have them, provided certain conditions of security and elan in serving the country are satisfied in the breasts of youth. Napoleon's wisdom of the ribbon on the coat and the baton in the

Law School of Harvard University,
Cambridge, Mass.

knapsack still wins great battles. And the young Assistant Secretary of the Navy who directed naval operations overseas need not be reminded that, although imaginative captains of thirty may never be seen at G. H. Q., they are the ones who too often have to take the objectives which grand strategy needs.

You will forgive me for saying things of which no one has had more experience than you. But you also know how passionately I care about the still greater triumphs for your second Administration. Not even you can do it all yourself. And I am greatly troubled about brains leaving you. Indeed, the strange paradox is that the more recovery you bring the more good men you are in danger of losing. Every good man you lose unsettles ten other good men, and debilitates their enthusiasm. The great civil service of England gets down to about a thousand really commanding brains. The same is true of the kind of government to which you are summoning the nation. Like Gideon, you may wisely say to the Lord, as you fight his battles, "By the three hundred that lapped I shall save thee."

I am not suggesting anything or recommending anything. This letter has no specific purpose. It conveys a general concern which I venture to believe has more concrete applications and is more immediately practical than any specific thing I might put to you.

With warmest regards,

Always faithfully yours,



Hon. Franklin D. Roosevelt

W. I. NICHOLS
OLD POST OFFICE
CHATTANOOGA

December 28, 1936

Dear Mr. Frankfurter -

I hope I am not making a nuisance of myself, sending you "pieces" for editorial review. But recently, while our directors have been in their tents, I have had several occasions to pinch-hit on fairly important talks. I have taken it pretty seriously, both because of the TVA and because it offers a good form of personal training and experience. The Springfield, Illinois, talk that I sent you some time ago was one. More recently, a 36-hour notice came through to substitute for Dr. Arthur Morgan at a talk he was supposed to give before a lot of high school debaters in Purdue, Indiana. It meant sitting up all night on the Pullman and trying to write something without any references at hand, but anyhow I am sending you a copy of the result. I am doing so because I genuinely want some frank, and if necessary, brutal criticism, as that is the only way to make the next one better. You will note that I attempted no discussion of TVA: that was because I had no opportunity to check with the directors, so I thought it best to avoid any statement that might involve them.

More than advice on speech-making, however, I need advice on Things-in-General. I am attaching copy of a letter I have just written to Mr. Lilienthal. Naturally, I hope you will treat it as confidential. The job in this case is the editorship of a prosperous West Coast magazine with a chance for development of editorial policies, and a participation in its growth. I think you can appreciate the difficulty of making a decision in the face of all the present confusion, but a number of those in the TVA who, I feel, have the best minds and imaginations, are now facing the same problem. If they all go, there won't be much left of the TVA except a lot of concrete and some pretty hopeless office-holders. My own inclination is to stay on, because I enjoy life here, because I still feel the TVA is a magnificent conception, and because the latest 19-company injunction has made me mad and I'd like to stand by and help "larn 'em". On the other hand, -however, pleasant the immediate job, people in my circumstances just simply can't afford to get lost in the shuffle and wake up in middle age to find themselves on a siding. I think you realize that I am talking not about money alone, but about the opportunity for growth and personal fulfillment.

Well, it's an old story, and probably a boring one to anyone like yourself who has been in loco parentis to so

W. I. NICHOLS
OLD POST OFFICE
CHATTANOOGA

-2-

many people. But anyhow, I am mentioning it to you, for, from the beginning of my stay down here, I have been conscious of your friendly interest and grateful for it.

With all best wishes,

Faithfully,

Bill Nichols

Mr. Felix Frankfurter
Law School of Harvard University
Cambridge, Massachusetts

88
December 28, 1936

Dear Mr. Lilienthal -

At a time when you undoubtedly have a great many bothers of your own, I hesitate to write you a bothersome, personal letter.

My reason for doing so is that I am trying to use this vacation season for a year-and "stock taking" about my present work and future plans. Within the past few weeks a reasonably attractive opportunity for private employment has turned up, and I feel confident that others could be discovered with a little effort.

In trying to determine what to do, the principal "unknown", of course, is the future course of events at TVA. I don't need to tell you how much I have enjoyed life in Chattanooga, and the opportunity to do what I felt was interesting and fairly constructive work for the TVA. On the other hand, the question now arises as to how long it is wise or desirable to continue, and on that I badly need advice. The injunction and the power pool are, of course, disturbing factors, but only superficially so, I feel. More serious to me is the feeling that TVA has lost some of its sense of direction, that morale is rapidly going to hell, and that bureaucracy is beginning to creep in to the extent that the personal leadership of the directors is being withdrawn.

Through your personal knowledge of Mary and me, I think you are familiar with our dilemma. We are entirely dependent on our own efforts for survival and success. There are no incomes or endowments or rich relations in the offing, and so we have got to keep moving and growing. Under these circumstances, can we afford to sit still here and wait on the chance that things will get straightened out, or should we strike out for ourselves? I know that is a hard question. Perhaps I am wrong to ask it. But I hoped that you might be able to help us with some advice, sent not as a Director, but as a friend.

Mary joins me in best holiday wishes.

Faithfully,

Mr. David E. Lilienthal
115 West Morris Road
Morris, Tennessee

25
file
personal
Law School of Harvard University,
Cambridge, Mass.

~~Sally Fife~~ PSF
Frankfurter

January 18, 1937

Dear Mr. President:

Many, many thanks for your letter of the fifteenth, especially because it sounded as though I heard you actually talking.

1. I did not deal with the case of the particular youngster except as a straw in the wind, else I would have told you that I promptly replied to him in terms that you would have found strikingly like your own. I have been singing that song for a great many years and particularly during the last few years, summarizing it all in the phrase that the kingdom of heaven cannot be stormed by a single sortie.

2. You know that there is no single aspect of public affairs with which I have been more deeply concerned than the promotion of public service as a permanent career for the nation's best abilities. That, in a way, has been my predominant interest in the School here. Nothing brought home to me more poignantly the post-war materialism and the debasing influence of the so-called leaders of the bar than the standards of worldly success by which youngsters of generous impulse were so often deflected from public service. After all, we live by symbols, as Holmes was fond of saying, and, if the symbols of leadership and distinction are high monetary returns in the service of so-called big interests, the youngsters naturally will follow such lodestars. Relatively very few people can be expected to be either heroes or saints. That is why the force of example and right standards are so important.

But you and your leadership during the last few years have made an enormous difference. In many ways, perhaps the single most far-reach-

Law School of Harvard University,

Cambridge, Mass.

ing achievement--because everything else, I believe, is dependent upon it--is the extent to which you have stirred the imagination of younger people to the adventure of, and the durable satisfactions to be derived from, public service, and have made them realize its indispensability in maintaining the best traditions of the past and bending them to a civilization worthy of our times. And the youngsters, I think, do respond and will respond in ample measure. I haven't any doubt, as I have indicated to you, that you can get in sufficient numbers as good brains for the sake of service, as those on the outside buy with money.

3. But that means that somehow or other the vibrant stimulus, which you so frequently impart to the Ed McGradys, must by some galvanic rays be sent down the line. I know that you cannot see hundreds or thousands of the juniors--it is a source of constant surprise to me how, in the brief hours of each day, you manage to hold as many hands as you do--but it does mean that that stimulus or inspiration must, somehow or other, be conveyed by the sub-chiefs, the atmosphere must somehow or other be impregnated with at least a part of the exhilaration that you radiate in the immediate precincts of the White House.

4. Perhaps one of these days before very long you will give me a chance to talk to you about all this in some detail. How to build up a passionate, devoted, capable, fighting personnel for national administration has been the one subject about which I have been continuously thinking for thirty years. I hope, therefore, there will be a chance of talking with you about all this in your good time. I hope to see you shortly--I mean literally to see you, for Marion and I will be among the many

Law School of Harvard University,
Cambridge, Mass.

thousands who will see you on Wednesday.

5. Are you trying to find out how well I can sit on top of a Vesuvius by giving me notice that "an awful shock" is in store for me "in about two weeks?" Well, I shall try to hold my patience and fortify my capacity to withstand "an awful shock", but you certainly tease my curiosity when you threaten me with something with which I may not agree. That, certainly, would be a great surprise.

Ever faithfully yours,

87.



The President

P.S. If you have not seen
the enclosed it will
interest you - coming
as it does from a
wide-bowed Republican
paper, but from an Editor
who has seen the always
been for you.

Boston Traveler

WEDNESDAY, JANUARY 13, 1937

Barnacles on the Ship of State



President Roosevelt politely but firmly threw a challenge at Congress when he asked for sweeping changes in the administrative department of government. His is one of the most important messages sent to Congress in many years and when the public fully understands the plan the President will have back of him even more Americans than the millions who voted for him last November.

For the good of our editorial soul let your newspaper confess at the outset that when word was first flashed of the President's proposal, our instant thought was: "What's this fellow trying to do; set up new powers for the executive?" Come to find out, all President Roosevelt asks is the co-operation of Congress in aiding the executive to exercise his responsibility under the constitution.

In short, the President's purpose is not to venture upon the road to greater power. He merely wishes to give the ship of state a chance to progress. He would remove the almost countless barnacles that have fastened themselves to the hull during many years.

President Theodore Roosevelt tried to do the same thing. So did President Taft and President Wilson and President Hoover. As does President Franklin D. Roosevelt, they wished to junk much antiquated government machinery.

President Roosevelt wishes to overhaul over 100 separate federal departments, boards, commissions, administrations, authorities, corporations, committees and agencies and put them efficiently under cabinet heads—and add two members to the cabinet—secretaries of public works and of social welfare. And he would overhaul all government agencies with the view of establishing, under civil service and with higher pay in the higher brackets, a system served by what eventually will be career men and women.

Not once does the President's plan intrude upon the legislative or judiciary. Hence it constitutes no threat to democracy; rather it strengthens democracy.

Bill
Personal 192 Brattle Street
Frankfurt / Cambridge Mass.
Tully File

Dear Frank:

[1-21-37]

Had Providence vouch-
safed us children and
had a grandchild of mine
asked me, in my bedage,
what an uncle of mine
was this President Franklin
D. Roosevelt, I think
I should have replied by
telling the child a story,
something like this:

Very often, the wisest
experiences of life is
- compressed in one of

2

Rose pity, kindly pro-
verbs that have come
down the ages. Such
one is the saying "little
master, little man". For
what matters about
people is not their
noble sentiments, but
the extent to which they
live up to them, and
nothing proves that
better than the habits
that they unconsciously
generate in those about
them, the "moral cli-

mate" that they create in their in-
mediate vicinity or near. And to
the quickest way to see you what
manner I mean this J. P. was
to see you the experience that
with me & his closest, colored
woman, on that memorable
day of January 20, 1937 - on
the occasion of his second inauguration.

when the ⁴river opened
their flood gates. 84

And then I'd see
Lord Mc Duffie some-
how found out that
I was drenched inside
and shivered, and sent
word that he would
help me out, if I came
upstairs, and there he
was, a joyous, ef-
ficient first-aid
to the shiverer, & when
protested, and asked
whether it was all right

84

for him to help me
out of the President's
own clout," he said
in looks and ac-
cents that left no
doubt, "Hu-ah, yes-
sah, the President
would want me to
do this - he sure
will be tickled
when he hears what
I've done. There,
I'd say to that grand-
child, that little

Episode tells more than
most of the "Source
materials" that his-
torians pour over.

And how? Shall say
no more, except that
one can be ^{as} sure as
one can be of any-
thing in the future,
that the kids of
2036 (on the occasion
of the two hundredth
anniversary of Mr. Buffin's
Reader) will be

reading and reciting your
Second inaugural.

With warmest frat wishes.

Ever faithfully
yours

Thursday
January 21, 1937

Gully File
Law School of Harvard University,
Cambridge, Mass.

PSF Frankfurter

January 27, 1937

*file
personal
- 37*

Dear Mr. President:

1. A press dispatch reports Rudolph Wurlitzer's having told you that his company "has gone far toward solving its seasonal employment problems" and providing all-year employment for most of its men. This tempts me to send you the enclosed recent statement of the J. F. McElwain Company which has achieved the extraordinary result of keeping its factories operating for fifty weeks a year. (This company, you know, manufactures shoes sold under the trade name of Tom McAn). Not only has Frank McElwain achieved this remarkable continuity of employment but I have the best of reasons for believing that the public gets its shoes at a lower cost and the employees a higher wage than is true of the biggest shoe concern in the country--the International Shoe Company of St. Louis.

It occurs to me that you might find it profitable to talk with Frank McElwain, a money-making, hard-headed, nice fellow. The way the McElwain Company has been able to accomplish what it has been able to accomplish would give you a further factual leverage in trying to secure really constructive action instead of merely constitutional fundamentalism from some of our industrialists.

2. I thought you handled Lewis' explosion with neat effectiveness, and yesterday you showed how incorrigibly men like Sloan have the habits of an overlord.

3. And I read with relief and pleasure your termination of the pooling conference which has been used so mischievously in seeking to dis-
policy
tort your settled power. As I watch this power fight I cannot help recal-

Law School of Harvard University,
Cambridge, Mass.

ling the prescient words of T. R. in his famous message to Congress on the power situation. How foolish these people are who think that convictions of yours, which are as deeply rooted in knowledge and experience as are your views on the power situation, will change overnight although the facts remain the same. But that such foolish views should be entertained in some quarters is not without its public good, for it must be one of the sources that gives you fun in life.

With warm regards,

Faithfully yours,



The President

J. F. McELWAIN CO. WAGE INCREASE

Advance Of 5% Announced Effective Jan. 1, 1937—Will
Amount To Approximately \$300,000

Directors of the J. F. McElwain Co., large New Hampshire shoe manufacturer, have decided that beginning Jan. 1, 1937, all hourly and piece work rates in the factories of the company shall be increased to the extent of 5%. This will mean an additional income to the employees of approximately \$300,000 for 1937.

In announcing the increase, Pres. J. F. McElwain says:

"It has always been the policy of the company to maintain a high weekly wage and to put all it can into the regular weekly pay check, instead of supplementing the wage by occasional or anticipated bonuses. As a result of this policy, and of steady employment throughout the year, the average weekly and yearly earnings of our employees are believed to be the highest in the shoe industry.

"Notwithstanding these outstanding wage conditions, the increase in wages for 1937 is now announced in anticipation of good business and of the possibility that the return of better times may increase the cost of living.

"Our average weekly earnings, exclusive of the executive and supervisory force, for each of the years 1935 and 1936, are approximately \$28, at least 33 1/3% higher than the average in the shoe industry. Because our factories have operated with a uniform production for fifty weeks in each year, an unusual and difficult attainment in the shoe industry, our average yearly earnings have approximated \$1400.

J. F. McElwain Co.: (2)

"In common with other manufacturers we have adhered to the rules and regulations established under NRA relative to minimum wages, maximum hours and employment of child labor.

"Although since 1929 our hours of employment have been reduced 16 2/3%, and the cost of living is estimated to have declined 15%, the average weekly and yearly earnings of our employees have increased. Therefore, 'real wages', the amount that can be purchased with the money wage, are about 20% better than in 1929.

"The foregoing has been accomplished in spite of the fact that the price of our product to the ultimate consumer is less by 21% than in 1929."

~~Friday Feb~~ ~~Trumbull~~ [Feb, 1937]

PSF 192 Brattle Street,

Law School of Harvard University,
Cambridge, Mass. Sunday.

Dear Frank:

And now you have blown me off the top of Parnassus where you sat me some weeks ago. Yes, you "shocked" me by the deftness of the general scheme for dealing with the mandate for national action which you received three times, in '32 and '34 and '36, and each time with increasing emphasis. You "shocked" me as less by the dramatic, untarnished secrecy with which you kept your scheme until you took the whole nation into your confidence. Dra-

rationally and artistically you
did "shock" me.

But beyond that — well,
the momentum of a long
series of decisions not de-
fensible in the realm of
reason nor justified by
settled principles of Consti-
tutional interpretation
had convinced me, as they
had convinced you, that
measures had to be found
to save the Constitution
from the Court, and the
Court from itself. No
disinterested student of
our Constitutional system
and of the needs of our

Society could bleed with complacency
the impasse created by a blind and
stubborn majority of the Court. There
was no perfect nor easy way out. Risks
had to be taken - for you had to consider
the costs and limitations of possible choices
of action, as well as the risks of non-action.

And so it was clear that some major
operation was necessary. Any major opera-
tion to the body politic, no less than to the
body physical, involves some shock. But

I have, as you know, deep ⁸⁸
faith in your instinct to
make the wise choice -
the choice that will carry
intact the motley aggrega-
tion that constitutes the
progressive army toward
the goal of present-day
needs, and that will, at
the same time, maintain
all that is good in the
traditional democratic
process.

With all good wishes,

Ever faithfully yours
F.T.

*file
preserved*

(5) FF ✓

February 9, 1937.

Dear Felix:

I am awfully glad to have your Sunday letter and to know that although shocked you have survived; but most important of all that you understand the causes and the motives.

As a matter of fact, the decision was arrived at by a process of elimination. The amendment process, as you will remember, was fought bitterly by the conservative element through the past four years — the only concession being a few words from Landon which meant absolutely nothing. It is interesting to note that these same people this week are demanding the amendment method in place of any other.

The reason for the elimination of the amendment process was to me entirely sufficient: to get two-thirds of both Houses of this session to agree on the language of an amendment which would cover all of the social and economic legislation, but at the same time, not go too far would have been most difficult. In fact, the chance of a two-thirds vote in this session was about fifty-fifty.

Supposing such an amendment had passed at the close of this session, every state legislature would have adjourned for the year. In 1938, only about one-third of the legislatures meet and because of the Congressional elections in 1938 the issue would, in all probability, be delayed in enough states to make ratification in 1938 impossible.

That brings us to 1939. The chances are that quite aside from this issue an unwieldy Democratic majority in both Houses will be slightly reduced as a result of the 1938 elections. Any such reduction would be used as an argument against ratification thus, in all probability, leaving the amendment unratified up to and through the 1940 national election.

If I were in private practice and without a conscience, I would gladly undertake for a drawing account of fifteen or twenty million dollars (easy enough to raise) to guarantee that an amendment would not be ratified prior to the 1940 elections. In other words, I think I could withhold ratification in thirteen states and I think you will agree with my judgment on this.

It is my honest belief that the Nation cannot wait until 1941 or 1942 to obtain effective social and economic national legislation to bring it abreast of the times, avoid serious labor troubles, maintain farm prices, raise the purchasing power of the "one-third of the population that is ill-housed, ill-clad and ill-nourished."

The return of prosperity, at this moment, may blunt our senses but under it all I am very certain that the maintenance of constitutional government in this Nation still depends on action -- but it is the same old story of the failure of those who have property to realize that I am the best friend the profit system ever had, even though I add my denunciation of unconscionable profits.

After this elimination, I searched through all the other proposals for legislative action and almost at once came face to face with the problem not of the Supreme Court but of the whole Federal Judiciary. From this it was a logical step to build up a program covering the whole of the judiciary impartially. You will realize that in this process I eliminated the suggestions of compulsory retirement, seven-to-two decisions, etc. as being, in all probability, unconstitutional per se.

Do you want to help me? Probably, I shall in the course of a normal fireside chat, in a few weeks, dwell on the reorganization of the judiciary, at the same time that I speak of the reorganization of the executive and of flood relief, etc. Do you want to send me a little elaboration of what you have mentioned in your letter and anything else you think I could use in a talk to the people themselves?

As ever yours,

Professor Felix Frankfurter,
192 Brattle Street,
Cambridge, Massachusetts.

FDR/dj

77
file
"Personal"

Law School of Harvard University,
Cambridge, Mass.

~~Judy 222~~
PSF
Frankfurter

February 15, 1937

Dear Mr. President:

You are extremely generous of your time and thought to write me as fully as you do in your letter dated the ninth. I deeply appreciate the analysis you make of the "process of elimination" by which you reached your present major proposal.

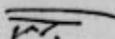
Of course if any "elaboration" of the central remarks I made in my letter will be of help to you, I want to see if I can helpfully elaborate them. Let me mull over the thoughts that I tried to express and see what I can put on paper in the course of the next few days, and write you again.

The issues raised are, of course, very complicated and rather subtle because of the great mystery with which the work of the Court is enveloped, and the uncritical assumptions that are made as to what the Court does when it decides constitutional controversies. The situation presents a very difficult problem in public education because, I believe, the easy, emotional slogans are mostly the other way. If you have no objection I plan to go over the situation very thoroughly with Tom and then have him convey to you the way the matter lies in my mind.

You will hear from me in a few days. Again let me thank you very warmly for your full, generous letter.

With warmest regards,

Very faithfully yours,



The President

~~July 7~~

Chase's article put in Judiciary
Message folder-Drawer 2-1937

18
30
THE WHITE HOUSE
WASHINGTON

February 18, 1937.

MEMORANDUM FOR

F. F.

PSF
Frankfurter

In case you have not
seen this, it is worth reading.
What would happen, for example,
if I were to go on the air and
talk to America along the lines
of Chase's article to the TIMES?

F. D. R.

(ENCLOSURE)

89
FELIX FRANKFURTER
CAMBRIDGE, MASS.

192 Brattle Street,

February 23, 1937

Dear Frank:

Many thanks for sending me the Stuart Chase letter, otherwise I should not have seen it, for it was not published in the Times that comes to Cambridge.

What would happen if you were to say over the radio what Chase wrote in his letter? The American people would get some enlightenment. Why shouldn't you explain these things - saying them pitched, of course, in your key. And you should enlarge upon Chase's recital - pointing out the long course of judicial abuse in preventing both only national but also state action - denying Maryland the right & duty to regulate telephone rates reasonably, and Vermont the right to devise its own local tax policy, and so

FELIX FRANKFURTER
CAMBRIDGE, MASS.

also North Dakota, and denying Nebraska
the means of preventing short-weighting
of bread, and deny you the means
of preventing exploitation of the eco-
nomic necessities of working women,
and protecting the bulk of fair-
minded employers, etc., etc., etc -
and always over the powerful
protest of the great mass of the
Court against putting private
social biases into the Constitution.

And then, why not tell the
American people the various re-
medies that were open to you for
dealing with his major problems
of democracy - what the costs &
difficulties of each were, why
you discarded them & why
you chose what you did.

I believe that you should
take the country to school - give
them a full dress exposition &
analysis such as you can give them.
Ever yours
F.F.

T.S.C.

copy P.S. 7

Frankfurter
F.F.

FELIX FRANKFURTER
CAMBRIDGE, MASSACHUSETTS

192 Brattle Street

February 23, 1937.

Dear Frank:-

Many thanks for sending me the ~~Stuart Chase~~ letter, otherwise I should not have seen it, for it was not published in the Times that comes to Cambridge.

What would happen if you were to say over the radio what Chase wrote in his letter? The American people would get some enlightenment. Why shouldn't you explain these things -- saying them pitched, of course, in your key. And you should enlarge upon Chase's recital -- pointing out the long course of judicial abuse in preventing not only national but also state action -- denying Maryland the right and duty to regulate telephone rates reasonably, and Vermont the right to devise its own local tax policy, and so also North Dakota, and denying Nebraska the means of preventing short-weighting of bread, and New York the means of preventing exploitation of the economic necessities of working women and protecting the bulk of fair-minded employers, etc., etc., etc., -- and always over the powerful protest of the great men of the court against putting private social views into the Constitution.

And then, why not tell the American people the various remedies that were open to you for dealing with this major problem of democracy -- what the costs and difficulties of each were, why you discarded them and why you chose what you did.

I believe that you should take the country to school -- give them a full dress exposition and analysis such as you can give them.

Ever yours,

F. F.

Robert P.S.C.

PSF Frankfurter 192 Braute St.

FELIX FRANKFURTER
CAMBRIDGE, MASS.

30 March
[1937]

Dear Frank

And now, with the shift
by Roberts, even a blind
man ought to see that
the Court is in politics,
and understand how
the Court is "judi-
cially" constructed. It is
a deep object-lesson - a
curious demonstration
of the relation of men
to the "meaning" of the
Constitution.

This behavior (in the

light of the outrageous
misrepresentation by
Butler of the scope of
the issues in the Tipaldo
case, confirmed as
late as October 12,
in denying the pe-
tition for rehearing)
comes on top of the
Hughes letter. That
was a characteristic
Hughes performance -
part and parcel of that
pretended withdrawal
from considerations
of policy, while trying
to shape them, which is

the case of the arch chief of which the
majority have ^{so long} been guilty. That
Brandeis should have been per-
suaded to allow the Chief Justice
his name in a source of sadness
to me that I need hardly dwell on
to you.

I have absolutely dependable
editorial friends on the other side
who tell me that some foolish

(enclosure of yours)
folk are doing their
damndest to make ⁹¹
me attack the Court
so as to start a new
line of attack against
your proposal. They
miss their guess. I
shant help them to
divert the issue
from the misbehavior
of the Court. These
are baroque ways
of fighting a fight.

I wish that you
had a refreshing
warm Springs treat-
ment. My fondest wishes
to you. ^{Ever yours}
H.

April 5, 1937.

Dear Felix:-

It is good to get yours of the thirtieth. I wish I could see you and have a good long talk. Is there no way in which you can slip into town and to the White House unobserved -- any time after April twelfth? You are dead right in keeping -- for the moment -- wholly out of the hearings. As you know, we are carrying out the dignified process of keeping still and watching each new witness damn the proposal and offer a new remedy. My last count runs to over two hundred amendment proposals and over one hundred legislative proposals.

It is quite clear that the utter confusion of our opponents among themselves means success for us even though it may be deferred until June or July. The opposition has daily epilepsies because we are keeping "our shirts on."

As ever yours,

Professor Felix Frankfurter,
192 Brattle Street,
Cambridge,
Massachusetts.

Handwritten notes in Urdu script, left column, including a small diagram at the top left.

Handwritten notes in Urdu script, right column, starting with a large number '7'.



Handwritten numbers and text at the bottom left of the page.

93

Felix Frankfurter PSF 192 Rattle Head

FELIX FRANKFURTER
CAMBRIDGE, MASS. April 8, 1933

Dear Sam - PF

Many thanks for your letter. I'm delighted to have your authoritative estimate of what one inferred were happy prospects.

Of course I'm eager to come down for a talk. I can manage to be here Wednesday week, the 14th - but I have to be in bed here on the 15th, to speak at the annual din-

all of the Harvard Law
School Alumni, and
who will be here on the
following Saturday,
who will be at
the 50th anniversary
of the Harvard Law
Review. And so, if
Wednesday is not
convenient for you,
I can come any
time after Monday
in the week of the
19th. Please let me
know your wishes
and I shall act

accordingly. As for managing
the visit - I shouldn't think
that would be very difficult. I
might stay either with Butler &
or McRay & Olds &. - that would
make my visit wholly Constitutional!

Tex - You're "keeping your
shirt on beautifully".
Kaiser joins me in ^{warm regards}
~~heartfully~~ yours

July 1937 PSF Frankfurter

TELEGRAM

27WUC 7:25 p.m. 13

**The White House
Washington**

*PF
In regard to
Wagner Decision
by Supreme
Court*

Cambridge, Mass., 6:57 p.m. April 12, 1937.

The President.

After today I feel like finding some honest profession to
enter. Affectionately yours,

Felix Frankfurter.

~~Daddy's~~ PSF April 21, 1937

FELIX FRANKFURTER
CAMBRIDGE, MASS.

file
(personnel)

Dear Frank -

In the glare of the
white light of Pennsylvania
Avenue and under the
eagle eyes of three Secret
Service operatives I
"slipped" out of the White
House. But, in any event,
"slipped out" is a very in-
accurate expression. If
anything, I fled out.
For, after my long lather,
exhilarating hours
with you & war, as it

were, on beings, and you
put more spirit into me
than possibly could any
Baccardi piece - or
any that you will have
put in wood, even for
forty years, in the Virgin
Islands.

What you did to me,
and what you do to
all who have the
good fortune of your
personal influence -
winds into sails, air
into flat tires - is the
reason why I so much

Hope too you will be able to meet
on a familiar, friendly board the
junior administrative officials
once a year. It will give them
a tonic the effect of which you ^{yourself} can
hardly appreciate.

And it was such a comfort and
reassurance to find you so fit
in every way - so unabated in your
vitality and understanding as the

great democratic leader
your time - fully⁹⁴
aware of the qualities
and difficulties of the
wotter progressive forces
whom you are leading
and the task before you
for hope and fulfillment
but not too aware of
the forces, pleasant and
otherwise, who are ar-
ranged against you.
The Good Lord keep you
strong and fit - and
may the principle of well
continue ~~to~~ to mark you
as its own. ^{Very best}
Fairly, ^{Ever yours} ~~St.~~

File PSF Frankfurt 192 12a 12c Street
Law School of Harvard University,

Cambridge, Mass.

27 April 37

Dear Frank -

This is from one
of my pet projects
here - and used one of
my junior colleagues:
grand person, of whom
we "distinguished
career men" do not
speak. Strange - isn't it?

I hope the fish will
be for you, heartily &
all - both on land &
sea. A gay good time.
Ever yours, modestly
F.T.

Harvard Alumni Bulletin

April 16, 1937

The United States Supreme Court

An Argument on the President's Side

By Henry M. Hart, Jr., '26, LL.B. '30, S.J.D. '31.

PRESIDENT Conant's public statement opposing the proposed increase in the number of Supreme Court Justices raises several questions which invite further consideration, bearing both upon the merits of the proposal itself and upon the process by which opinion is being formed on the issue.

First. President Roosevelt is described as attempting to "pack" the Court in order "to affect decisions on the constitutionality of acts of Congress". Like so many expressions which achieve wide popular currency, "packing the Court" contains a critical ambiguity. Does it mean—as the analogy to juries and the House of Lords suggests—that President Roosevelt is attempting to secure specific decisions on specific legislation from subservient Justices pledged to render such decisions? If so, the charge encounters the difficulties that, under our system, Justices of the Supreme Court, once appointed, are independent of the executive; that appointees of a character mean enough not to exercise that independence in some cases would be the surest ultimately to abuse it in others, and so to defeat the larger purpose; that, indeed, experience has shown that the independence will be exercised and that the attempt to predetermine future votes is futile. Unless those difficulties are met, the charge casts a reflection upon the integrity of the President, the Senate, and the prospective appointees, which seems out of place in anticipation of the event. And it reflects also upon present members of the Court whose concurrence would be necessary to make the scheme effective.

Or does the expression simply describe an effort to secure more Justices of a certain cast of mind—in this case Justices who will practice the judicial self-restraint exemplified by Holmes, Brandeis, Stone, and

Cardozo? This is quite a different matter. For, of course, Presidents in the past have steadily thus inquired, with entire propriety, at least into the philosophic attitude of prospective appointees toward the Constitution, and often into their views on the substantive issues of the day. There remains, indeed, the serious question whether a President, with the concurrence of Congress, should be permitted to create an opportunity to do this with respect to six members of the Court all at once. But the gravity and difficulty of this question are obscured by the emotional slogan, "packing the Court".

Second. President Conant sees in the proposal, as many others have seen, a threat to "freedom of speech and inquiry", to "liberty itself". He refers to "the number of instances in which the Supreme Court served to protect the fundamental principles of a free country—freedom of speech and assembly". He does not suggest that these personal liberties will not be safe for the time being, even in the hands of the proposed new Justices. Rather are we asked to look forward to a later crisis when the foundations of democratic society are crumbling. If the second of the two meanings of "packing the Court" is the proper one, this is an expression of fear that a proposal now advanced for a defensible purpose will, if adopted, be later perverted for a sinister one.

Whether the survival of personal liberties in the United States is so largely dependent upon the Supreme Court as this warning implies is worth inquiry. That a healthy state of civil society, and not the Court, is the ultimate safeguard of all civil liberty would have seemed axiomatic, were it not so widely assumed to the contrary—and now with the authority of the country's unofficial first minister of education.

So far as concerns the interest most immediately dear to a university—freedom of scholarly inquiry and expression—the assumption plainly will not hold. That interest can be impaired in ways too subtle to be vindicated, in any important degree, by the relatively crude mechanism of constitutional guarantees invoked in litigation. Its protection depends, as it always has depended, upon the vigilance of a free people, convinced of its importance. Courts are not barriers against mischiefs like the teachers' oath acts. Is the case significantly different as to those other liberties of expression which members of a university exercise in common with all citizens?

To conceive of a situation in which the Supreme Court first repels an assault upon personal liberties and is then sought to be overwhelmed by Congress and the President, we must conceive also of the circumstances under which Congress or the President would either desire or dare so to act. The assumption is that what is now done will have a bearing—in such a climate of national opinion—on what then happens. But does experience show that the actions of a would-be dictator are thus determined by precedent? Are popular majorities, stirred by deep forces to give support to such a leader, thus respectful of the guidance of the past? The assumption is also that the Supreme Court itself would be unaffected by the forces which made for such a state of opinion. It is a relevant but minor point that, so far as constitutional power goes, many members of the present Court have consistently taken a restrictive view of the scope of civil liberties even in normal times. The major point can be made by recalling that the Supreme Court did not decide *Ex parte Milligan* until after Appomattox, that *Abrams v. United States* fairly represents its attitude during the Great War. These facts should be a warning against easy confidence that in some dread cataclysm of the future the Court as an institution will set itself, in such matters, against the emotional temper of the times. But suppose

that the Court does so set itself. What then? Decisions of the Court defending civil liberties, it must be remembered, are an infinitesimal part of all the instances occurring in the nation, whether in normal times or emergency, in which civil liberties are brought into question. Of course those decisions have large symbolic value. But so far as judicial action counts at all, what is primarily decisive is the action of trial courts and juries, which the Supreme Court can only in limited measure control. And trial courts and juries, even more than the Supreme Court, are responsive to deeply-felt currents of popular opinion.

Again and again we are thus thrust back upon the question, what is it which will set those currents of anger and intolerance in motion? It is no service to the cause of civil liberty to neglect this inescapable nexus between the satisfaction of the reasonable wants of mankind and the survival of democratic processes. Two conditions will be indispensable to the success, or near-success, of any movement seeking a violent break from established ways. The first will be many empty stomachs, the second widespread despair of filling those stomachs by the established ways. Consideration of the relation of President Roosevelt's proposal to the future of personal liberty must include consideration of the relation of his larger purposes to the avoidance of those two conditions.

Third. Of these broader questions, President Conant says: "I am not one who believes that the recent decisions of the Supreme Court confront the country with no serious problems. I believe they do". The limitation of this statement to the "recent decisions" of the Court may convey the impression that we have to do solely with a current controversy between President Roosevelt and a transient majority of the Supreme Court. Such, of course, is not the fact. We are witnessing the culmination of an historic process in a disaster foreseen, as long ago as 1905, by Mr. Justice Holmes in his dissenting opinion in *Lochner v. New York*, in which five

Justices held that a State law forbidding employees in bake-shops to work more than sixty hours a week was arbitrary and capricious, and bore no reasonable relation to any legitimate purpose of government. Such cases as the *Child Labor Case* (1918), the *Adair case* (1908), and *Coppage v. Kansas* (1915), have substantially the same contemporary significance as the AAA case, the Guffey coal case, and the New York minimum wage case.

President Conant does not elaborate upon the "serious problems" with which the country is confronted, except to express his own preference for "the present Constitution as written, but as interpreted by the minority of the present Court". Yet the implications of that statement are of the essence of the question. For the differences between the majority and the minority of the present Court are not differences as to what is good for the country. They are differences as to how far the Court can properly go, under the Constitution, in imposing its own view of what the country's good is. One who aligns himself with the minority of the Court, therefore, aligns himself with the opinion, which is widely and seriously held, that the Supreme Court has overstepped the limits of its appropriate functions under the Constitution. But what does this mean? It means that because of the unconstitutional action—in effect—of five or six men, women in New York must continue to labor for inadequate wages.* Children must be kept in factories. The legitimate aims of labor organizations must be frus-

*This letter was written before the recent decision upholding—by virtue of one Justice's change of vote—the Washington minimum wage law for women. This decision places the Court's own authority behind the statement that earlier decisions invalidating such legislation were themselves "unconstitutional". It underscores the problem presented by the continued presence of four Justices who still regard themselves as authorized, under the Constitution, to pronounce even so familiar a type of regulatory measure as this, beyond doubt, arbitrary and capricious and without reasonable relation to any legitimate purpose of government.

trated. Widespread defiance of law must be encouraged by lawless judicial decisions. The efforts of Congress to master national economic problems must again and again be embarrassed, delayed, or nullified.

These are serious problems, indeed. They are the more serious because they are problems arising out of the state of mind of conscientious Justices, exercising normally unrestrained power, who, being conscientious, are of course outside the purview of the corrective process of impeachment. And they are problems of liberty. They are problems of actual impairment of present liberty which have to be taken into account no less fully than problems of hypothetical danger to future liberty. Diagnosis of the evil must precede consideration of the cure. The overwhelmingly important issue now before the country is to determine whether the asserted evil is a real one. The keenness with which any commentator realizes the gravity of the problem to which the President's proposal is addressed and the carefulness with which the problem is stated furnish the best index to the adequacy of the comment.

The importance of formulation of the problem in discussion of the cure is aptly illustrated at two points in President Conant's statement. Thus, attention is called to the need of examining with the greatest care the claim that an emergency exists, lest "the country may proceed under the banner of emergency legislation down a road which leads to the abolition of democratic government". A proposed whittling away of constitutional limitations is one matter. An accomplished whittling away of constitutional powers is another. If the second is the true problem, its ultimate solution, by whatever means adopted, will entail not the abolition of democratic government but its restoration. Democracy, granted a breathing spell between the last depression and the next, may hurry to restore to itself its own powers, where it should be slow to free itself from its own restraints.

Again, President Conant forcefully

PSF: Frankfurter
4-27-37

1937

points out that "the appeal of law is in the last resort to the conscience of mankind", and that it is important that law should satisfy that conscience. But he considers the application of this canon only to the President's proposal. Is the New York minimum wage case satisfactory to the conscience of mankind? Or the *Child Labor Case*? Is the conscience of mankind satisfied that a narrow majority of Supreme Court Justices should continue to hand down other decisions which it is reasonable to believe are improper for them to hand down? These questions cut deep. Responsible men, of whatever political faith, have earnestly to ask themselves whether the increasing popular dissatisfaction with the Court may not so undermine respect for the Court, and for all courts, as to threaten damage far exceeding anything which, by any calm view, may be anticipated from President Roosevelt's suggestion.

Fourth. If an evil exists, what solutions are possible other than President Roosevelt's proposal? Grave difficulties are involved in all the various drafts of a constitutional amendment. President Conant recognizes this in declaring his own preference for "the present Constitution as written". One such amendment, however, he does mention. "Even the proposal now before the Senate," he says, "if cast as a constitutional amendment (thereby fixing the size of the Court), might be defensible." Surely this amendment would be particularly difficult to defend. The clearest objection to President Roosevelt's plan is that a Court of fifteen is too large. That objection can be outweighed only by the belief that greater dangers threaten the Court and the country than the danger of a cumbersome membership. Such an amendment would shackle the Court with

a permanent handicap in order to remedy an evil which, it can be hoped, will be temporary. The whole American tradition of a flexible constitutionalism would be a reproach to such hand-to-mouth statesmanship.

Although President Conant concludes by urging that there is ample time "for submission of an amendment to the country," it appears from the context of the statement that his primary insistence is not upon an amendment, as such, but upon some kind of submission "to the voters". He regrets that such a submission was not made. Would a more thorough consideration and a wiser verdict have been possible had the issue been injected into the heat of the campaign? Or was it necessary, or preferable, to decide first the issues which were decided in the campaign? Evidently these are debatable questions. One can say only two things. First, the immediate question is the merit of the measure, not of its proponent; a measure which is for the well-being of the country should not be rejected out of hand because of the circumstances under which it was proposed. Second, if the inference is that the issue will not now be settled by "time, discussion, debate, orderly processes of government," it can scarcely be accepted. If, as Senator Ashurst suggests, the Senate will not come to a vote until July we shall have an abundance of these, though we may never count heads. The discussion, moreover, will have the benefit of being concentrated upon a single problem instead of being distracted by many. In that great national debate, the transcendent need will be to defend the Court from the charge which has been brought against it, if it can be defended, and, if not, to aid in a wise choice among the various proposals for corrective action or inaction that are advanced.

Frankfurter

P. A. F.

THE WHITE HOUSE
WASHINGTON

4/29/37

TOM CORCORAN:

To read and return to Paula Larrabee
to be filed in confidential file.

*Noted
T.G.C.*

F. D. R.

192 Bradstreet

FELIX FRANKFURTER
CAMBRIDGE, MASS.

June 27

Dear being

Be good enough
to place this in the
President's hands.
And don't let anything
beat "Jeb" you -
it can be seen, as I
remember from a
long memory here
in 1912. Anyhow,
you cannot be talking
in any of the things
very best
F.F.

1 B.F. Frankfurter 192 An. St. Ch.

FELIX FRANKFURTER
CAMBRIDGE, MASS.

June 8/37

Dear Lane

That is a belated word
of warm appreciation for
your conversation message.
T.D. more than thirty years
ago stirred even my un-
derstanding (I, who don't
know what "winter wheat"
is! So you say!) of the fun-
damental significance
of the soil, and you have
now given classic ex-
pression to the many phases
of the organic problems by
pointing out that
"freedom of land use and
our national estate requires"

3
far-sighted management.
It was a beautiful piece
of exposition - for it so
admirably related the
aspects of nature to the
needs and duties of
man.

What a temper of mind
F. D. Morgan revealed
in this morning's press.
I nearly exploded - so
I had to write his
kind letter to Charlie
Burlingame. I thought
I'd touch one or two
censor spots of C. S. B.
Keep on keeping well fit.
Ever yours
J. T.

882#

June 8, 1937

Dear C. C.:

Evidently J. P. Morgan confounds Christianity with the ethic of "getting away with it." Before he again gives his moral sanction to the incorporation of a yacht, as a means of "avoiding" taxes, some one should suggest to him that he ask his good friend, the Archbishop of Canterbury or his other good friend, the late Prime Minister, Lord Baldwin, whether an English gentleman would think of doing such a thing, or, having done it, continue to enjoy the esteem of his class. And while he is about it he might ask some of his eminent legal friends in England how long such decisions in tax cases, as that in the Stock Dividend Case and Heiner v. Donnan, and others which the Supreme Court rested on the Constitution, would survive in England.

The mentality revealed by Morgan furnishes a striking commentary on the claims of the Walter Lippmanns that F. D. R.'s tax message was merely wealth-baiting. When the most esteemed of financiers discloses such a morally obtuse, anti-social attitude, one realizes anew that the real enemy of capitalism is not communism but capitalists and their retinue of scribes and lawyers.

Ever yours,

C. C. Burlingham, Esq.

~~Daddy Felix~~ PSF
Frankfurter

June 25, 1937.

Dear Felix:-

I have not time for more than to dictate this brief note before I leave for three days at Jefferson Island. It is good to have yours of June twenty-third.

Things are all right except for the strike situation. That is a real headache.

Van Zeeland is a grand fellow -- wish you knew him.

What about your plans for the summer?

As ever yours,

Professor Felix Frankfurter,
192 Brattle Street,
Cambridge,
Massachusetts.

FELIX FRANKFURTER
CAMBRIDGE, MASS.

192 Brattle Street

June 23, 1937

Dear Frank -

You've been much in my thoughts these days, and I wish deeply that I could help to lighten even so little the load of your heavy burdens. For no President ever carried a heavier one - not even in war-time. There, at least there are some restraints against unbridled misrepresentation and sniping. Now, the obligations of loyalty and cooperation are taken very lightly. Heavily even by those whose party and personal ties ought to bind to your leadership.

Well - that's the lot of a great leader in the throes of salvaging the best of the past and meeting the new problems of a new age. Especially hard are the tasks of a leader of the wretched groups

FELIX FRANKFURTER
CAMBRIDGE, MASS.

out of which a progressive move-
ment is to be forged. I wonder
if you read Aquino's remarks
in one of his Letters to Margaret.
I'm enclosing the extract. If
that was true in the pre-
war days of England ^(about 1894), how
much more true is it on the
baster and more complicated
stage of action that confronts
you.

And so, I marvel at the
serenity, self-restraint,
good-humor and wise
resourcefulness with which
you are steering your course
to avoid the shoals of re-
action and the reefs of T.R.'s
"tematic fringe."

This is just to send you
a word of affectionate good wishes.
Ever yours
F.F.

P.S. Dr. Leader from the London Times on your
conversion to the League is nice in letters you. If you
have an alternate view let me know.

Gutty file - Frankfurter
PSF

July 23, 1937.

Dear Felix:-

If you had got me on the telephone your language would have been just like Bernie Baruch's when he heard of the Lehman episode. Like you, I have no anger but only sadness. If I were British I would say only one thing - "It isn't cricket" - and you know all the implications of that remark.

As you know, you and I will continue to think in terms of the ultimate objective and, where occasionally we run into barbed-wire in front and people who take pot-shots at us from the rear, we still do not lose sight of the goal.

As ever yours,

Professor Felix Frankfurter,
192 Brattle Street,
Cambridge,
Massachusetts.

99

July 20

FELIX FRANKFURTER
CAMBRIDGE, MASS.

Dear Saul -

Last night I tried to reach you by phone, and, on the whole, I am glad that I did not succeed. For I'm afraid I would have used language hardly decorous over the wire. I was - and am - hot all over regarding Herbert Lehman's letter. Some things just aren't done -

They violate the de-
cencies of human
relations and offend
the good taste and the
decorum of friendship.
Orid to "I war - and an-
ket" - but less with
anger than with sad-
ness.

I wanted to see
you this - at least
inadequately ^{to} limit
at my feelings,
and to wish for you
your own powers
of serenity and

...thority and good humor
and pertinacity in the good fight,
the long, patient resource-
fulness in vindicating
democratic ideals to which
Country is dedicated.

Trustedly yours

T. T.

File
Personal

~~July 21st~~
Law School of Harvard University,
Cambridge, Mass.

J. Frankfurter PSF
Crescent, N. H.

August 31, 1934

Dear Mr. President:

1. You sent me off with wind in my sails, gas in my engine, air in my tires - and all the other figures of speech, mixed and unmixed, to indicate the exhilaration of our visit. You can hardly realize what a renewed sense of hope and joy you gave us both. I can't tell you all she said, but I shall quote one remark of Harrison's:

"I now understand his optimism better. It is not merely temperament, it is partly fate. But with Lincoln it is an achievement as well as an heritage. Optimism is something that he has conquered - a positive principle of life - well - it was really great."

2. And what was very inspiring was to find you in such serene spirits with full realization of

Law School of Harvard University.

Cambridge, Mass.

of the forces that are, however quietly and with professed lip-service of devotion, enlisted against your real objectives. But, then, all great generals - Wellington and Washington, Grant and Foch - knew the strength of the enemy and the deployment of its troops.

3. On my return I found a letter from a close English friend who is an intimate of Lord Sankley, ^{Relayer} ~~is~~ is continuing in the Macdonald book to see the India Bill through. Let me quote from my friend:

"Sankley was very alarmed at the big heavy ramp now in full swing among the Tories. I think it would be very helpful if your President could at the right moment but soon, say publicly that he expects the Conference of '35 to result in drastic reductions."

Law School of Harvard University,
Cambridge, Mass.

4. I wrote Lloyd Garrison - & sk sk, don't tell anyone, but he is a pet pupil of mine! - that he must stay on his job for a year. It seemed to suggest that the Wisconsin Law School cannot run on without him.

5. You probably have seen this interesting financial item in the today's Times. Evidently T. U. A. looks like Santa Claus to the North West bondholders of utilities.

Well - it was a very good visit. Of course I am at your disposal either at Hyde Park or Washington if I can be of any use. We shall be back in Cambridge on September 6th.

Always faithfully yours
F.T.

July 4th P. Frankfurter PSF
192 Brattle Street

FELIX FRANKFURTER
CAMBRIDGE, MASS.

October 7, 1937

PF 2 -

Dear Raoul -

Welcome back - after a trip that was as admirably conceived as it was successfully executed. To one who reads all sorts of papers and has had long experience in reading between the lines, there can be no shadow of a doubt about the great value of your travels. Mississippi alone, and I infer that, with all its omissions, it also brought you refreshment.

I am ever so glad that you read Justice Clarke's letter. What he wrote expressed my own deepest feelings - of late expressed in private - that your efforts aimed "to accomplish in eight years what should have been in process of accomplishment through the last forty or fifty years."

And from the vantage ground of his vision - from the perspective

FELIX FRANKFURTER
CAMBRIDGE, MASS.

of his age and distance - the dear
old gentleman expresses what
may be called the verdict of
contemporary posterity when
he says that

"you have put a new face
upon the social and political
life of our country."

I have the deepest conviction
that this will be the judgment
of history as to your signifi-
cance in the unfolding of
American civilization.

There is much to talk about,
and perhaps there'll be a
chance if you get back for
a stretch at Hyde Park.

Marion followed the trip
with eager zest and satis-
faction, and sends me in
affectionate regards.

Faithfully,
Felix Frankfurter

20 Oct 1937

~~July 1937~~

B. Frank

Please, being, fair to
me to the President. Will
Diamond

And when are you
again coming to our
gay Chamber of Cock-tail
bar. Will-beam regard
17

Law School of Harvard University,
Cambridge, Mass.

with PSF
192 Brattle Street

October 20, 1937

Ben Zauel

Handwritten note: (S) Zauel 2-37

You may be interested in the following in a letter from Laski which has just come:

"F. D. R.'s speech has had a terrific effect over here—better than anything I could have hoped for. It has undoubtedly stirred the decent average man with the feeling that words are not enough; and, if either Italy plays the fool in Spain—which is said to be very likely—or Chamberlain says nothing about Japan, I think we can get up something like a national campaign."

Incidentally, if you have not already heard, it will interest you to know that Laski has just been elected a member of the executive of the Labor party.

The latest number of the Economist is also interesting on your Chicago speech, and, on the chance that you have not seen it, I enclose it.

What awful tripe poor Landon dished out last night—and not even good tripe. How little even the Republicans cared for it, is evidenced by the comment in this morning's Boston Herald.

With warmest regards,

Ever yours,

W. T.

I am also enclosing some illuminating figures on unemployment which come from confidentially from a leading source

I am also enclosing the figures which I mentioned to you at lunch. These 140 industrial companies include General Motors, the Penney Store, Montgomery and Ward, Chrysler, Packard, milling companies, U. S. Rubber, Goodyear Tire, Melville Shoe, Julius Kayser, Proctor & Gamble, Pillsbury Flour, American Woolen, American Agricultural Chemical, Timken Axle, Armstrong Cork, Chapman Valve, Pacific Mills, Burroughs Adding Machine, Pepperell Mfg. Co., National Steel Car, Atlas Powder, DuPont and Alpha-Portland Cement.

COMPARISON OF MID-YEAR BALANCE SHEETS OF 140 INDUSTRIALS

	<u>1937</u>	<u>1936</u>	<u>% Change</u>
Inventories	1,426,614,000	1,073,612,000	plus 32.9
Receivables	589,972,000	484,440,000	" 21.7
Cash	763,413,000	876,306,000	- 12.9
Curr. Liabilities	775,860,000	572,067,000	plus 35.6

Comment: - Of interest is the fact that an aggregate increase of \$458,534,000 in inventories and receivables was offset by a \$316,786,000 combined reduction in cash and increase in current liabilities. Roughly \$141,746,000 was thus indicated as having been financed by new capital and earnings.

THE LANDON SPEECH

Few Republicans will be dissatisfied with Gov. Landon's speech of last night, but most of them will probably remain unsatisfied and uninspired. They will agree with him that an administration should have head, in addition to heart, as he declared in his final sentence. They know that the President has sought too much power and that he has not been over-scrupulous about his methods of acquiring it. But what the Republicans are yearning for, besides a new leader, is a constructive, comprehensive program, positive, practical and, most of all, concrete.

A party policy of which the best that can be said is that it is not unconstitutional will cause no enthusiasm among those millions of Republicans who are as loyal as ever to the underlying doctrines of traditional Republicanism. A great deal more is required than a slashing speech of denunciation, sound as the attack may be.

Gov. Landon did not offer anything of a specific nature, and, in his failure to give at least a rough outline of precisely the sort of platform which Republicans can support with some hope of success, he was disappointing. He blew no clarion note. The arguments which he developed have been familiar for many months. If the Republicans are to make a good showing in the congressional elections next year and in the presidential contest of 1940, they must have something more stirring and stimulating than came from Gov. Landon last night.

*Landon Speech
October 3, 1936*

THE ECONOMIST

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America Takes a Hand

THE profound emotion which was stirred last week throughout the world by the news of Japan's slaughter of civilians in China has been followed this week by a sequence of events which—if the public opinion of the world responds to them—may prove to be of historic importance. At Geneva, the Assembly of the League of Nations, following up its resolution of last week specifically condemning the bombing of open towns, has adopted a resolution which declares that the Japanese invasion of China constitutes a breach of Japan's obligations to China and of her obligations to other countries under the Boxer Agreements and the Nine-Power Treaty. The resolution further expresses moral support for China and it recommends the members of the League "to refrain from taking any action which might have the effect of weakening China's powers of resistance" and to "consider how far individually they can lend aid to China." Finally, the Assembly requests the signatories of the Nine-Power Treaty to meet as soon as possible for consultation.

Meanwhile, in this country, public opinion has spoken clearly. On Monday the Labour Party Conference condemned Japan's action and called upon the British Government to mobilise the nations for the application of economic and financial pressure. On Tuesday, at a great protest meeting in the Albert Hall, the ARCHBISHOP of CANTERBURY sponsored a resolution to the same effect, and supported it in words which were the more impressive because of their very restraint.

These demonstrations of deep feeling, these protests against aggressive barbarism coupled in every case with demands for preventive action, were at once reinforced and overshadowed by a speech made by PRESIDENT

ROOSEVELT at Chicago on Tuesday. Speaking, with almost symbolic significance, in the capital of the Middle West, and investing his words with all possible emphasis, the PRESIDENT deliberately took a hand in the defence of democracy. He drew the attention of his audience to the present alarming state of the world and left them with no doubt that he placed the blame on the shoulders of three aggressive nations. "Innocent peoples and nations," he said, "are being cruelly sacrificed to a greed for power and supremacy which is devoid of all sense of justice and humane consideration." So far the speech differed from previous pronouncements only in its greater emphasis. What gave it the character of an historical occasion was that MR ROOSEVELT proceeded to draw the practical conclusions from his analysis of the world's malaise. "If these things come to pass in other parts of the world, let no one imagine that America will escape, that it may expect mercy, that this western hemisphere will not be attacked. . . . The peace-loving nations must make a concerted effort in opposition to those violations of treaties and those ignorings of humane instincts which are to-day creating the international anarchy and instability from which there is no escape through mere isolation or neutrality." The PRESIDENT dared to be not merely positive but specific. "When an epidemic of physical disease starts to spread the community approves and joins in the quarantine of the patients in order to protect the health of the community against the spread of the disease." Similarly the contagion of war should be prevented from spreading by placing in quarantine those nations infected with the aggressive virus.

Direct attack by the President of the United States

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upon the conceptions of isolation and neutrality, recently so close to the American heart, is something very new. The suggestion of something uncommonly like economic sanctions is even newer. Immediately after the speech there were grounds for thinking that Mr ROOSEVELT had been too courageous, and the Berlin Press felt justified in warning him of the fate of WOODROW WILSON. But it was evident within twenty-four hours that the PRESIDENT had not been touring the country for nothing. The reaction of the American Press and public to his speech has been surprisingly favourable. And as a further indication of the PRESIDENT's purpose, the State Department on Wednesday issued a statement announcing its "general accord" with the resolution of the League Assembly, and concluding:—

In the light of the unfolding developments in the Far East the Government of the United States has been forced to the conclusion that the action of Japan in China is inconsistent with the principles which should govern the relationships between nations and is contrary to the provisions of the Nine-Power Treaty of February 6, 1922, regarding the principles and policies to be followed in matters concerning China, and to those of the Kellogg-Briand Pact of August 27, 1928. Thus the conclusions of this Government with respect to the foregoing are in general accord with those of the Assembly of the League of Nations.

The speech and the declaration, taken together, have changed the diplomatic climate. It is too early yet to say what precise form will be taken by America's altered policy. It is taken almost for granted that the United States will attend the projected Conference of the signatories of the Nine-Power Treaty, and it has been suggested that Washington would be the best place for it to meet. Beyond that the new policy is undefined, and there are at least two important unknown factors in the situation. One is the exact degree to which the PRESIDENT can carry American public opinion with him. The main objective of American policy—as of almost every Government in the world—is "to avoid involvement in war." The American public has probably moved far enough from its erstwhile love of pure isolation to agree with the PRESIDENT that the avoidance of war cannot be

secured by that route. Whether it has moved far enough to authorise him to join in "concerted action" strong enough to achieve anything in the face of determined aggression is one of the questions to which only the passage of events can supply an answer. But the PRESIDENT is reported to be sufficiently confident of his own reading of opinion to call a special session of Congress next month at which any reversal of "neutrality" and any legislative authorisation of alternative policies will have to be discussed. The second unknown factor is whether the British Cabinet, with their grave preoccupations in the Mediterranean, will be able to respond to the PRESIDENT's initiative in the right psychological key.

These considerations belong to the future and they do not detract from the hopefulness with which it can be approached. For the present, the importance of the PRESIDENT's speech lies in the psychological sphere. It should not be forgotten that though the United States never accepted the Covenant of the League it was an American initiative that that document came into existence. A new voice calling from the West for international morality and respect for treaties cannot fail to be an encouragement to everything that the League stands for. The American Government may be hesitant in implementing the doctrine of quarantine. But the idea, nevertheless, may spread throughout the world.

Even at the lowest estimate, the PRESIDENT has helped immeasurably. Within forty-eight hours of the delivery of his speech, its implications had obtained a warm welcome from the PRIME MINISTER of France and from MR WINSTON CHURCHILL at the British Conservative Party's Annual Conference. The PRESIDENT has opened up a great opportunity for constructive co-operation in securing international order and in drawing closer not merely the political but also the financial and economic relations of all the great nations who adhere to common standards of decency in conduct. Opportunities such as these do not occur often. The extremity of the world's peril provides at once the need for seizing the chance and the hope that it will not be let slip.

His Majesty's Opposition

THE constitutional conflict of parties is the very stuff of our parliamentary democracy. "The House of Commons," wrote WALTER BAGEHOT, "lives in a state of perpetual potential choice; at any moment it can choose a ruler and dismiss a ruler; and therefore party is inherent in it, bone of its bone and breath of its breath." The Opposition, no less than the Ministry, is a part of government. Its function is to oppose and, if need be, to govern; to assist by constant constructive criticism in the shaping of national policy, and to take office on the turn of the electoral tide.

The vital rôle of His Majesty's Opposition in British politics was directly recognised last April when a salary was given by statute to the Leader of the Opposition. But mere recognition of the need for an official Opposition does not automatically bring an effective Opposition into existence. The Labour Party has met in conference this week at Bournemouth under grave suspicion of failure in some of its essential constitutional duties. For some time past it has been evident that the Party is making no headway in the country—and that for two reasons. On the one hand its personnel, depleted by the loss of its leaders in 1931, has failed to convince the country that it could adequately staff an alternative Government with chiefs of political judgment and experience; and on the other

hand its Socialist programme, though too tepid to set the masses of the country ablaze with revolutionary enthusiasm, has been too much concerned with cloudy doctrinaire slogans to win the confidence of the hard-headed artisan or the shy middle classes. The Party has long been struggling to allay the fear that a Labour Government would mean financial collapse; but post-Coronation by-elections showed little evidence that the country was sufficiently convinced to be ready to give Labour its full confidence.

The recent campaign in the constituencies has done a little to stir this apathy, but the public as a whole is still sceptical; and in recent times its doubts have been increased by the equivocal and discordant attitude which the Party has displayed to the subject of re-armament.

There are millions of voters in this country who believe that the arms race would never have reached its present stupendous dimensions if British foreign policy had been firmer and more single-minded. It has not been easy—it is not easy now—for those who hold this opinion enthusiastically to entrust the task of making Britain strong to the same Government whose foreign policy they believe to have been partly responsible for the emergency. The fact that it is so clearly necessary for Britain to be strong if she is to make her voice effective for peace and democracy makes the dilemma more

Frankfurter P.S. 7

THE WHITE HOUSE
WASHINGTON

Hyde Park, N. Y.,
October 29, 1937.

MEMORANDUM FOR

FELIX FRANKFURTER

I am sorry if all this is true about Santayana's personal problems. It seems to me that Harvard ought to do something for a man who was, after all, one of our great teachers. Will you talk with some of the crowd about it in confidence of course?

F. D. R.

Enclosures - two letters from Harrison Reeves of 142 East 37th Street, New York City, and copy of our reply, in re Santayana.

PSF: Frankfurter

COPY

Felix
(2)

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

49 Fifth Avenue, New York

November 29, 1937
(Dictated November 27th)

Dear Felix:

Thank you for your two notes. Everyone is asking whether or not the President is going to recommend to Congress passage of the bill. I have been indirectly informed that he fears to do so since he will have to rely on some of the southern Senators and Congressmen to get other legislation through. It seems too bad, however, that since passage of the bill is now almost definitely assured he should not get some credit since he has done some things for the bill without publicity. Not only would it please a good many people, but a message would, according to a number of newspaper men and others in Washington and elsewhere, serve to reassure many persons who are disturbed by the Black appointment.

Ever sincerely,

Walter /s/
Secretary

Prof. Felix Frankfurter
Harvard University Law School
Cambridge, Massachusetts

VW:CTF

Lucy F. de

*PSF
Frankfurter*

TELEGRAM

23WUC 19 7:56pm

**The White House
Washington**

*McCowan
FF*

Cambridge, Mass., Dec. 21, 1937.

Miss Marguerite Le Hand,
The White House.

Your special has just come. You will have my comments
within time limit. All good wishes from us both.

F. F.

REGULARLY REFERRED
FOR ACKNOWLEDGMENT
AND CONSIDERATION
W. M. Dwyer
RECEIVED
U. S. DEPARTMENT OF JUSTICE