

PSF <sup>Subject File</sup> Frankfurter, Felix

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Subject Files "F"

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Justice File 4p. 13  
file  
Supreme Court of the United States  
Washington, D. C.

PSF  
CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

January 9, 1941

Dear Missy:

Here are three letters that may interest the  
President:

(1) Buxton's expert glimpse into New England  
or certainly Massachusetts sentiment.

(2) Further and confirming view of what seems  
to be going on in France.

(3) The Swope on The Little Flower.

Don't bother either to return or to acknowledge  
these.

Ever yours,  
FR

Miss Marguerite A. Le Hand

805  
REYNAL & BROWN, INC.  
**THE BOSTON HERALD**

MORNING AND SUNDAY

BY THE BOSTON HERALD TRAVELER CORPORATION

FRANK W. BUXTON  
Editor



① ②  
**Boston Traveler**

EVENING

IN THE COMMONWEALTH OF MASSACHUSETTS

BOSTON, MASSACHUSETTS  
6, 1941

Jan. 6, 1941

Dear Felix:

One F.C.D. and one F.W.B. are considering a proposal by the former to go to Washington for the Inauguration. To be sure, he has an invitation to the White House spread and I have not, but that's only a trifle. We are wondering whether you would be so diverted by official duties and so busy with un-courtly affairs that we could not sit down and eat and talk -- you to do most of the talking. If January twentieth is a particularly inappropriate and embarrassing time for you, kindly say so, Mr. Justice. There is some casual information that I'd like to purvey to you, but I assume that you have a great deal more to give than I.

→ There are a few international temblors hereabout, but they are quakes of the lowest order -- lowest in more respects than one. It is of some significance to me that persons who write to The Herald advocating no further aid to England usually prefer to remain anonymous. The proportion of pro-aid to anti-aid communications is 9 or 10 to 1. The proportion of intelligent men and women to non-intelligent folks is 50 or 100 to 1. I doubt that the country was ever more unified on an international topic in a period of peace than at present.

The best to you and Marion and the children. You may be interested in the enclosed little editorial which Bullard wrote.

I have suggested to the British Bureau of Information that it reprint in cheap form the collection of Winston Churchill's war addresses issued by a Saskatchewan contemporary (referred to in the enclosed editorial "Churchill in Review"). If you haven't read the booklet, please do so. You will see between the lines the great Burke, the great Pitt, the great Gladstone, the great Disraeli, and the great spirit of the English people.

Best ever,  
*Frank*

Mr. Justice Felix Frankfurter,  
Supreme Court of the United States

THE BOSS

(2)

REYNAL AND HITCHCOCK, INC.  
388 FOURTH AVENUE NEW YORK

January 6, 1941

Justice Felix Frankfurter  
Supreme Court of the United States  
Washington, D. C.

Dear Felix:



Our own very special Saint Exupery got in from France last week and he reports, among other things, that all France is now divided into two parties -- the Anglophiles and the Anglophobes. The difference between them, he says, is that the Anglophiles want the British to win and the Anglophobes want the bloody English coohons to win. I wonder if that report from the front would entertain the President?

Incidentally, if Saint X should come to Washington while he is here I'd like to send him to you. He is a marvelous fellow -- a really unique human being. His only fault is that he doesn't speak a word of English.

We finally fixed up the MEIN KAMPF book with Francis Hackett. And again many thanks. He wasn't able to get completely clear of his publishing entanglements but did secure the right to take time out to do this particular book. And if all goes well I think there's every real reason to hope that eventually he will come over to us entirely -- which would be grand.

Yours ever,

*Curtis*  
Curtis Hitchcock

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(3)

HERBERT BAYARD SWOPE  
30 ROCKEFELLER PLAZA  
NEW YORK

January 6, 1941.

Dear Felix:-

We have had a Hell of a time because of the White situation, but I think this is straightened out. I think the old bird is becoming slightly venomous, although the mistakes he made were wholly of his own making. More anon.

South America is not good. Nelson Rockefeller, apparently, is taking too much time to better conditions there. Here is a suggestion I think will spark our Engine of Good Will:

→ Send the best man available to South America, as an Ambassador of Friendliness, who represents all that is fine in the Latin eyes - Fiorello LaGuardia. He can speak enough Spanish, Portugese, Italian, French and German to get by. It seems to me he would be ready made and God-ordained just for this job. I would have him make a swing around the circle and preach the story of attractive neighborliness this country is assuming. Take it up with The Boss.

I need not tell you how much stuff Florellic - as Al calls him - has got.

Ever,

Mr. Justice Frankfurter,  
1511 - 30th St.,  
Washington, D.C.

Op. 13

Supreme Court of the United States.  
Memorandum.

file  
personal

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Dear Miss

As a student of  
Jefferson, the best way  
may like to see Mr.  
Dumas Malone is  
one of our best Jeffersoni-  
an historians. So,  
perhaps, you'll throw this  
into the bedside basket.

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~~Justice Felix~~ BF Felix Frankfurter

HARVARD UNIVERSITY PRESS ♦ CAMBRIDGE ♦ MASSACHUSETTS

DUMAS MALONE  
Director



*Jan*

EXECUTIVE OFFICES  
88 Quincy Street

January 14, 1941

Justice Felix Frankfurter  
Supreme Court of the United States  
Washington, D. C.

Dear Felix:

Of course I shall be delighted for you to see my paper on T. Jefferson. I have had a fresh copy made because I promised to let Dr. Park see the carbon before he writes up the minutes, so you may feel free to take your time about it.

I am trying to get the blasted thing published and have already received one rebuff. From the magazine point of view it looks the wrong way, that is, it deals more with Jefferson than with the present crisis. I started out to write an article in which a comparison would be made between interpretations of Jefferson, which seem to me false or at least incomplete, and the man himself as I understand him. The main point is that the negative aspects of his philosophy have been emphasized and I wanted to show that he was far more than negative and that, whenever he was most negative, as in his own executive ventures, he was far from being an unmitigated success. Then I conceived of the idea of putting this in the form of a letter to Roosevelt. However, it is mostly about Jefferson. Perhaps it might be entitled, "Jefferson Explains Himself."

I wish you would let me know if you think it has any value for our own times. The Examiner group liked it, I think, but probably they thought that for academic stuff it was relatively lucid and interesting. Magazine editors use a different basis of comparison. Ted Weeks has it now and will let me know this week what he thinks about it. I'm rather expecting him to turn it down, so I may need publishing counsel.

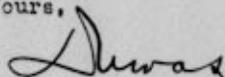
I wish I had known that your wife was at Saranac with Alderman, for I should have liked to take counsel with her. I hope she won't detect many mistakes. If and when I next come to Washington, I shall

Justice Felix Frankfurter  
Page 2

January 14, 1941

certainly count on seeing you. I miss you much more than I can say. I've been giving a lot of time this year to our Defense Group here and have got myself run down, so, at the moment, I'm a little low in my mind. Writing a letter to you is a tonic.

Yours,



DM:MG  
Enc.

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The President of the United States

Dear Sir, -- This letter is being written shortly before your third inauguration and several months in advance of my own birthday, when I should be one hundred and ninety-eight years old had I continued on earth. To you it may seem unnatural for me to speak now, but the times are strange. On April 13 there may be some celebrations in my honor, as there have been in the past, and at one of these you may speak. I do not presume to suggest that you read these words of mine in public at a dinner, but if you should do this you would do it much better than I. My voice was never as good as yours and I always preferred a written message to a speech. That's one reason why I abandoned the custom of addressing the Congress in person, though there were some other motives in my mind a hundred and forty years ago. I had a horror of seeming to dictate to anyone, and I generally tried to make my thoughts and wishes known in informal ways.

Next to unhurried conversation with understanding friends, I always liked letters best. A large number of those I wrote in years long past have been preserved, I believe. One that I sent to a French friend in 1793 comes to mind just now. In this I said: "I continue eternally attached to the principles of your Revolution. I hope it will end in the establishment of some firm government, friendly to liberty, and capable of maintaining it. If it does, the world will become inevitably free." I understand that, after a century and a half, a revolution of another sort is raging on earth and that few remaining governments are friendly to liberty or capable of maintaining it. For this reason I am constrained to speak.

Your times are strangely like and strangely unlike my own. I also lived in a momentous age of change. As you know, I began my career by participating actively in the struggle for American independence. This was a relatively mild upheaval as revolutions go, but it which spread from France. I was in that country when the storm began served to stimulate the far-reaching movement to gather there; I heard of its later fury from personal friends after I had returned home; and I lived to read of Bonaparte's rise and fall. There was no real peace until after I had retired to my hilltop in Virginia and become old.

You have lived in an even more cataclysmic period. You have witnessed a transformation in the mechanics of civilization, and of destruction, the like of which I never dreamed of, though I was an enthusiastic votary of natural philosophy, which, in its maturity, men now call science. You have survived one world war and have been cast into the midst of another; and you have witnessed the rise of Hitler, who seems more powerful and more dangerous than Bonaparte, just as the reign of terror which he has imposed far surpasses anything that ever occurred in France. The difference between the two eras, however, is not merely one of degree: it is a difference in kind. The violence of my day was an incident in the struggle for new freedoms; in your day it seems to be designed to make men slaves.

Throughout the early part of my career, when my major immediate concern was the winning of human liberty, I was deeply sympathetic with the revolutionary movements of the age, for they were directed toward the ends to which my own life was dedicated. I was by no means averse to the use of violence in such a cause. You may recall a saying of mine that has been often quoted in this connection: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.

It is their natural manure." This was at the dawn of the French Revolution. In later years my utterances were more restrained. One reason for this, besides my advancing age, was that, as a responsible public official, I was confronted with the problem of preserving the measure of freedom that this country had already gained. In your case, the chronological order is reversed. Your immediate problem, in a time of worldwide conflict, is the maintenance of the Republic and its existing liberties, insufficient though these may seem; but I have no doubt of your desire to extend them as you can. You must first check a revolution aimed at the overthrow of freedom, but you must remain ever mindful of the necessity that the revolution of freedom shall be resumed.

My comrades and I, as we struggled for the overthrow of ancient tyrannies and the establishment of a government that should be more just, thought of ourselves as living in an era of beginnings, and our faith was fresh as the light of dawn. To you it must often have seemed that you have labored through the pitiless heat of noonday and that you are now witnessing the setting of some sun. I will not pretend to claim that the unrolling of the nineteenth century, with all its splendors and triumphs, has fully satisfied the hopes of one who saw the new era born, for new tyrannies have appeared to replace the old and against these I should have struggled had I lived on. Some of the methods that I used in my own time may now seem as antiquated as the clothes I wore and the coaches in which I rode, but the spirit of liberty which burned within my breast is, I believe, an undying flame. So I will voice to you my faith that what seems to you an end may prove to be another beginning, and that those peoples who have the will to struggle are destined to see the dawn of a better day.

In this perpetually recurring battle to win, to maintain, and

to extend human liberty, I venture to hope that my countrymen can gain some inspiration and guidance from the things I did and said. I deem it important, however, that they see me as I was, and not merely as I have been reported and described. Accordingly, with your consent, I will present certain mature reflections upon my own career. Rarely have I been so subjective.

Before saying anything else I want to state frankly that I am glad that I am not now the president of the United States. This is not primarily because, in my own time, I thought that two terms were enough for anybody, for, much as I always feared the perpetuation of political power, I abide by the principle stated in my first inaugural: absolute acquiescence in the decisions of the majority is the vital principle of republics. This, I hope, no American will ever forget.

The most important reason for being glad that I am not president instead of you is that I never was temperamentally suited to executive office, and least of all in time of military crisis. I was governor of Virginia in the American Revolution, when Tarleton's raiders drove the legislators and me from Richmond, and then forced me to flee from Monticello to Poplar Forest, another plantation of mine. My enemies were unjust in seeing any personal cowardice in this, but my contemporaries were right in believing that in such stormy times the helm of state required another hand. I had been much happier and more useful as a legislator, designing a new government for the Commonwealth, or drafting papers for the Continental Congress, such as the Declaration of Independence, of which doubtless you sometimes speak.

When I was first nominated for the presidency a couple of decades later, by the informal methods which then prevailed, I told one of my friends that my private gratifications would be most indulged by that

issue which would leave me most at home. When my old friend John Adams was declared the victor and, according to the laws then in operation, I became vice president, many people did not believe me when I said that I was glad. The government was then in Philadelphia and the unexacting duties of the second office left me ample leisure to engage in scientific conversations at the American Philosophical Society with the successors of the great Dr. Franklin. Then and afterward the first magistracy seemed to me but splendid misery.

When I was elected four years later, at the dawn of the nineteenth century, I was less reluctant, for more vital issues were at stake. My election didn't constitute a revolution exactly, as my friends and I sometimes claimed, but it seemed to us that the victory of our party was a significant event. The Federalists had become aristocratic and intolerant, while we spoke for a larger group; they looked backward, but we looked ahead.

We called ourselves Republicans because we thought our opponents monarchists. They tell me that on the eve of your Civil War the name was revived by another party, in the effort to restore doctrines of human equality and freedom such as had been advocated by me. I am sure that one of their standard bearers, Mr. Lincoln, understood these principles, whether or not all of his successors did. The doctrines of popular rule which people were also so kind as to identify with me were perpetuated in the name of the other party, the Democratic, though, at a later time, many Democrats actively identified themselves with the institution of human slavery, to which I was consistently opposed. At the outset both parties declared their loyalty to me, so I may be pardoned the hope that both of them will remember the principles with which they began.

My reelection was generally attributed at the time to the Louisiana Purchase, which was undoubtedly the most momentous event of my presidency, though I could not claim that the credit was solely mine. This relieved the young Republic immeasurably by removing the menace of Bonaparte from our shores. I detested that unprincipled tyrant and shudder to think that in your own day new despots have arisen to invoke his name. The acquisition of the imperial domain of Louisiana also provided room in which republican government could spread. Like the vast majority of our people, I believed profoundly in the spread of our political institutions, and I attributed the opposition of the Federalists in this instance to narrowness, provincialism, and complacency. If they had had their way they would have confined and insulated republicanism and thus insured its decline and death. If I were living in your day I should doubtless be opposed to further territorial expansion if this should involve any considerable degree of human exploitation, but it is not inappropriate to remind you that in my time we believed that our institutions deserved adoption elsewhere and that the spread of them constituted the fullest guarantee of their persistence here.

Unfortunately, the purchase of Louisiana was accompanied by disturbing circumstances. We could not consult the Congress at the crucial point in the negotiations, and in acquiring this territory I had to go beyond the letter of the Constitution by which the actions of the federal government were restricted and restrained. The natural charge of inconsistency was deeply embarrassing to me, even though it was raised chiefly by men who opposed me on other grounds. In form, this action was not compatible with certain things that I had previously said, but who can now doubt that by means of it the empire of freedom was extended.

My second term was even more embarrassing, for the government, in the effort to secure the country against foreign dangers, adopted certain restrictions on private commerce in the form of an Embargo. It seemed to me that the only alternatives were war or abject submission to the flagrant infringements of our neutral rights by the contending banditti of the time, the English and the French. Events proved this law to be the most embarrassing one we were called upon to enforce. Many citizens seemed to set their private gain above the peace and honor of the Republic and were openly defiant. The enforcement of the law involved greater infringements upon the liberty of individuals than I had anticipated, and the cost of safe abstention from the affairs of Europe proved greater than certain vocal elements in our society were willing to endure. From the moment that this became apparent I could see no system which would keep us entirely free from the European agents of destruction. In the end the Embargo had to be repealed, much to my chagrin.

It was then, on the eve of my return to Monticello, where throughout my life all my wishes ended, that I wrote to my friend Du Pont de Nemours: "Nature intended me for the tranquil pursuits of science, by rendering them my supreme delight." I had said some years before that no man would ever bring out of the presidency the reputation which carried him into it. Since my temperament was sanguine, the mood of depression did not linger; and in the perspective of history the temporary decline in my personal reputation seems unimportant; but, in my own final judgment, my most valuable services were performed, not as an administrator, but as a herald of freedom and enlightenment.

I was convinced that if misfortunes should befall the country under my successor, Mr. Madison, it would be because no human wisdom could avert them. Actually, he suffered from foreign invasion. From

the turmoil of world war we did not escape, much as we had wanted to. It was ironical that such a fate should have befallen him, for he was as unsuited to military leadership as I was. He had shared with me and others the struggle against the Colossus of the Federalists, Mr. Hamilton, but that brilliant statesman found greater joy in battle for its own sake. Had we lived in your day, it is entirely possible that neither Mr. Madison nor I should have been in political life at all. I should have loved to experiment in one of your wonderful laboratories, though I shouldn't have wanted to do only that, and he would have been supremely happy in the library of one of your schools of law. As I said with entire sincerity in my old age, "No man ever had less desire of entering into public offices than myself." During my extended tour of duty I often longed for my books, my friends, my farms; but there was a tradition then which I fear grew weaker at a later time, when men were more absorbed in the pursuit of wealth, that a good citizen owed a debt of public service, in whatever line he could be useful.

I also served my country as a party leader, but I was never a politician in the full modern sense. I was a Patriot against the Loyalists, and a Democratic-Republican against the Federalists; but politics was not my profession any more than it was the profession of General Washington, and I hated the bickerings of partisan strife. But a man of my position could not afford to resist the challenge of public life at the dawn of our national history when there were so many great things to be done.

To all those who have described me as a political philosopher, spinning fine theories in the rarefied air of Monticello, I should like to state that such I never had the opportunity to become. I had thought and studied much about the principles of human government before even

I became a member of the House of Burgesses of Virginia, and I continued to muse upon them throughout my long life. But I never wrote anything approaching a treatise on political philosophy. Indeed, except for my Notes on the State of Virginia, I never wrote a book, and I didn't really intend to publish that. I drafted state papers in great number, I drew up party manifestos, and I wrote hundreds of letters to my associates and to correspondents in other lands. It is these writings that friends and enemies have quoted in succeeding years, and it is from these that my political philosophy has been deduced.

Without retracting anything, let me issue to you and to my countrymen a word of warning about the use of these sayings and writings of mine, which were so generally directed toward some specific situation and designed to meet some specific end. I hope that I had the gift, which has been attributed to me, of discerning the universal in the particular, as in the Declaration of Independence; but I must insist that my words be judged in the light of the conditions that called them forth and that my philosophy be perceived, not in isolated sayings, many of which are inconsistent, but in the trend of my policies as a whole. Human nature being what it is, I could hardly be expected to speak just the same way about newspapers when I was trying to encourage them as instruments against Alexander Hamilton, as when they were maliciously attacking me as President of the United States. My emphasis could not be exactly the same when I was leading the opposition against the Alien and Sedition Acts, as when, in the capacity of President, I was trying to enforce the Embargo. Anyone who reads the letters that I wrote during those years ought to use his common sense in separating immediate opinions from abiding convictions. I am fully aware of the fact that since my death careless and unscrupulous men have quoted me for their own parti-

cular purposes, without regard to the major trends of my thought and life.

Let me illustrate from the history of the doctrine of state rights, which has been so often identified with me. For a long generation after my death my southern compatriots regarded my emphasis on the importance of the individual states in the Federal Union as the outstanding feature of my political philosophy. Some of them went so far as to trace the doctrine of secession straight back to me, despite my just claim to be one of the founders of the Republic. The War between the States may be presumed to have settled this particular question for all time, and it may now seem to be of no more than academic interest. None the less, there are abiding issues here and I want to set the record straight. I don't care to be quoted in defense of positions to which I was opposed.

On close examination it will appear that my strongest utterances in favor of the states, and in opposition to the increasing power of the federal government, grew out of my struggle against the Federalists when they were in power. The one most often quoted, perhaps, was in the Kentucky Resolutions, when I was protesting against the notorious Alien and Sedition Acts. As the spokesman of the opposition, I rightly condemned the tyranny of the ruling majority; and I hope that under similar conditions men will continue to protest until the end of time. The doctrine of state rights, as I invoked it then, was designed to safeguard the minority and to uphold eternal principles of individual freedom. It is not surprising that the New England Federalists reversed themselves by using similar arguments when Mr. Madison and I were in power and seemed to be encroaching upon the states. On both sides there was unquestionably inconsistency though this seems to have bothered them less than it did me. It would appear that the doctrine of state rights has generally been invoked in behalf of minority groups and that, in itself,

it is an incomplete philosophy of government. In its nature it is negative, and I myself discovered as President that it constituted a distinct embarrassment when positive action was required.

I do not mean to deny that the doctrine was characteristic of me, for few men have been so attached to their locality as I was. My heart was always in Albemarle County and even in old age I sometimes referred to Virginia as "my country." Local institutions always seemed important to me. In the main, however, I emphasized the state as the best available means of combatting the political tyranny that I always feared. I never thought of setting up a shield for inequality and injustice.

At a later time many of my southern compatriots adopted part of my doctrines, in their outward form. They ignored the fact that I had opposed slavery and its extension into the West, and some of them characterized the egalitarian phrases of the Declaration of Independence as glittering generalities. Convinced that they were falling into the minority, they emphasized the rights of the state against the federal government. What, in reality, they were attempting to do was to buttress the social system in which they lived. Of their surpassingly difficult social problem I was and am fully aware, but it is hard for me to forgive those among them who viewed slavery and a system of social caste, not as evils to be gradually overcome, but as positive goods to be safeguarded and extended. As you know, the doctrine of state rights proved a handicap when they themselves set up a government. The President of the ill-fated Confederacy was hampered throughout his tragic career as an executive by the selfish bickering of the states he sought to unite in a common cause.

Long before the secession of the southern states, however, the political and social philosophy of the slave-owners had crystallized into

a rigidity which never characterized my thought. It assumed classic form in the syllogisms of Calhoun, whose powerful but gloomy mind looked backward, not forward. My enthusiasm was ever for the future and, however I may have emphasized the states against the encroachments of the federal government when protests seemed to be required, as a responsible statesman I was forced to adjust myself to circumstances, and I always tried to put the interests of the entire country first. If I were living now I am sure that I should not forget the importance of the smaller local units of government, but, as a practical man, I should certainly be foolish if I failed to recast my thinking in terms of the extraordinary changes that have taken place. In my time it took three days to drive the hundred-odd miles from Washington to Monticello, and we had no telegraph or telephone. It would be absurd to talk as though there had been no change.

I hope I shall be remembered most, not as an advocate of particular measures, which may be ill adapted to another age, but as a life-long devotee of human liberty. An oft-quoted sentence from one of my letters to Dr. Benjamin Rush sums up my essential philosophy as few of my sayings do: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." My efforts were naturally and properly directed against those tyrannies which seemed most menacing in my own time. Thus, when I wrote the Declaration of Independence I was thinking of the despotism of kings. In your day there is little to be feared from crowned monarchs, but the principle remains that government should rest upon the consent of the governed and not be imposed upon men against their will. In my struggle against the established church in Virginia I was particularly aware of the tyranny of clergymen and priests. I understand that the danger of this has

lessened with the years, but the truth remains that in conscience men are free.

I was prejudiced against political rulers in general and feared the encroachments of governmental power on the freedom of the individual, which I always valued most. It seemed to me that the natural tendency was for liberty to yield and for government to gain ground. I suspected my rival, Mr. Hamilton, of valuing governmental power for itself, and not merely as a means to human happiness and well-being. If there are those in the world today who value force and power for their own sake, to these I should be unalterably opposed.

One danger was less obvious in my time than it has been in yours. There was nothing in my lifelong insistence on minority rights which can be held to justify the dominance of a powerful minority against the interests of the country as a whole. Some have pointed out that I was suspicious of a group which has come to be termed capitalistic and which, it is held, Mr. Hamilton favored. At the beginning of our government under the Constitution there were men who speculated in securities and lined their nests with paper, and for these men I had scant respect; but the enormous growth of financial power in this country came long afterward. To use language which is more common now than it was then, I feared capitalists, dreaded industrialization, and distrusted the urban working class as I had observed it in Europe. My hopes were centered on the tillers of the soil. But I sought to limit the privileges of the landed aristocrats of Virginia and for this some of them never forgave me. My preference for a land of small, independent farmers is an index of my distrust of the concentration of private wealth and power. The growth of industry has been greater and more rapid than I even dreamed and certain of my fears have been more than realized. What measures

should now be taken to correct the ills to which industrialism has given rise, I am not prepared to say, but the logic of my entire career points to an emphasis, not on machines or on money, but on men.

In individuals I always believed and to them I always sought to give opportunity. It is not correct to say that I believed all men to be alike or intrinsically equal, for no one realized more than I that gifts and natural endowments vary. It was my thought to remove all artificial obstacles, such as inherited privilege, and thus to free men to win such positions as they deserved. If, since my day, there has been any crystallization of economic classes, serving to impede the free movement of talent, this I should deplore.

Besides removing obstacles, I favored the granting of opportunities, in proportion to natural abilities and individual desert. My plans for public education in Virginia were not carried out in my time, but the development of public schools of all grades, the establishment of libraries, the development of science and the arts, were second in my thought only to the overthrow of tyranny itself. These represented my program in its most positive form.

If I were living now, you may be sure that I should oppose with all the force at my command whatever should seem to be the greatest tyrannies of the age, the chief obstacles to the free life of the human spirit; and I should favor what seemed to be the most effective means of bringing appropriate opportunity within the reach of all, regardless of race or economic status. If there are those who quote me in regard to the limitations of government and the dangers of its power, proper inquiry may be made about the objects they have in mind. If they are sincerely concerned for the well-being of the individual citizen, however humble he may be, and are not disposed to buttress some existing inequality,

their judgment about the means to be employed should be listened to with respect. But I must protest against the use of my name in defense of purposes that are alien to my spirit. If there is anything eternal about me it is the purposes that I voiced and the spirit that I showed. So far as methods are concerned, the supreme law of life is the law of change. It must not be forgotten that I was regarded in my day as a revolutionary. I was never a defender of an imperfect and unjust status quo. The road to human perfection has proved longer than I thought, and men have employed the language of individualism as a cloak for selfishness and greed, but never has it seemed more important than it does not to reassert faith in the dignity of human personality and in the power of the human mind.

Since I was so deeply concerned during so much of my life with the problems of foreign affairs, perhaps I may add a final word about the world setting in which the American experiment of democratic government was carried on in my day and is being carried on in yours. The two great powers and rivals of my time were England and France. I have often been described as opposing the one and favoring the other, but my policy never was anything but pro-American. At the outset of my career, when we were struggling to rid ourselves of the British yoke, naturally I was against King George III and his minions. For aid in this conflict we were and should have been grateful to the French. Both governments seemed to me corrupt, and, as I wrote one of my friends, the English required to be kicked into common good manners.

However, I also said that the English would never find any political passion in me either for them or against them, but that whenever they should be prepared to meet us halfway I should meet them with satisfaction. I could not overlook the fact that, after the Revolution, they

sought to hold us in commercial subjection and refused to carry out fully the terms of peace. There were individual Americans of the time who were willing to disregard these offenses against the Republic because of hopes of immediate financial gain. And, somewhat later, there were those who feared the explosive power of French democratic ideas and preferred a degree of subjection to the British to any sort of dealings with the unholy Jacobins. If you change the labels, you can probably find men of the same sort in the United States today.

To begin with, as a nation we had little to fear from France because there was no real conflict of interest. Indeed, the Spanish, established on our southern border, constituted a far greater menace. As the American minister, I lived for several years among the French, sipping their wines, listening to their music, and talking with the savants. They seemed to me the most agreeable of Europeans; and, at that time, almost every civilized human being saw in that lovely country his second home. At the outset their Revolution seemed closely akin to our own, and, despite the excesses into which they fell, I continued to maintain faith in them until their government appeared to crystallize in despotic form. Their subsequent depredations on our commerce I deplored, and when Bonaparte threatened to acquire Louisiana he became a direct menace which had to be removed. Few rejoiced more than I in his ultimate overthrow, though, in the course of the conflict, the British, as a maritime power strongly established in our own continent, had seemed to imperil us the more.

With the downfall of this despot and the appearance of a more conciliatory spirit on the part of the British, now that their own grave danger was past, my attitude toward these traditional enemies of ours greatly changed. In the course of time the hope that I had voiced to John Adams has been largely realized. "Were the English people under a government

which should treat us with justice and equity," I said, "I should myself feel with great strength the ties which bind us together, of origin, language, laws, and manners; and I am persuaded the two people would become in the future, as it was with the ancient Greeks, among whom it was reproachful for Greek to be found fighting against Greek in a foreign army." Subsequently, after Mr. Monroe announced the doctrine which was destined to become famous, I went so far as to say: "These two nations, holding cordially together, have nothing to fear from the united world." In the year 1941, when new and even more sinister forces than Bonaparte are threatening the world, I respectfully commend this remark of my old age to the consideration of my countrymen.

It was at the height of the conflict between the French robbers and the British pirates, shortly after my presidency, when this young Republic seemed to have no choice but to oppose the immediate offender, that I wrote the following: "When we reflect that the eyes of the virtuous all over the world are turned with anxiety on us, as the only depositories of the sacred fire of liberty, and that our falling into anarchy would decide forever the destinies of mankind, and seal the political heresy that man is incapable of self-government, the only contest between divided friends should be who will dare farthest into the ranks of the common enemy."

At this moment, in your administration, our spiritual isolation is less complete, for those countries where the language of freedom and democracy is still spoken and still understood are our friends, even though the mists of ancient prejudice may still divide us. At such a time I beg of you and all my countrymen not to think of me as an apostle of negation, but as a sworn enemy of tyranny, ready to join forces actively with every friend of liberty, wherever he may be.

18.

My best wishes for your felicity attend you, and believe me to  
be assuredly

Your humble servant,

Th: Jefferson

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XB:

~~July 21~~ 13

1/21/41 3

1511-30 Theat

20 January 1941

Supreme Court of the United States

Washington, D. C.

PSF

Frankfurter

Mr. Raul:

The sun has set upon  
 inauguration day, and  
 the last echoes of pomp  
 and circumstance have  
 died upon the night's  
 stillness. Four words  
 have passed into history,  
 to join the utterances  
 of Washington and Lincoln  
 who alone, of all our  
 presidents, represent  
 the destinies and fate

of our Country comparable  
to Love which you sym-  
bolize.

And in the quietness  
of my study I see  
your grace and kindly  
countenance, as you  
stood here shortly after  
noon, the response to  
our needs and the  
hope of their fulfilment.  
There must be literally  
millions upon millions  
who share my thoughts  
and prayers - those

untold thoughts and prayers  
in the vast recesses of the  
heart, the strength may be  
wondered upon you, strength of body  
and mind and spirit, to carry  
the burden but also the people have  
put upon you, strength, also, to  
sustain the people with the strength-  
required for the great enterprise!  
I pray for you and your people  
and your country.

Jully File

Supreme Court of the United States.  
Memorandum.

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being

That Coover from  
my salty friends  
Fred Succaine &  
away in the next the  
President. He -  
Fred & - is keep fully  
active among his  
friends! KIP

[1-20-41] PSF Frankfurter Lieder  
W

From sources that have never failed me,  
it's reasonable to expect Aiken, White, Brewster  
and even Tobey will vote right in the final  
analysis, perhaps with some reservations.

Apparently the new self-appointed London  
Ambassador is receiving a lot of newspaper  
space with little or no cost.

I'm thinking of making a trip to Berlin  
to call upon Hitler. Do you think with  
proper passport and letter he might turn out  
the Imperial Guard to receive me? My German  
is very poor, however.

Everything good to you.

S. A. W.

Styer "I believe very sincerely in the  
objectives of this bill and I intend  
to support it with a few limiting  
amendments."

4, 1941, 17

This oversized item has been  
filmed in sections

# Chicago Daily Tribune

THE WORLD'S GREATEST NEWSPAPER

FOUNDED JUNE 16, 1847

REFERRED AS SECOND CLASS MATTER MAY 14, 1908,  
BY THE POSTOFFICE AT CHICAGO, ILL., UNDER ACT  
OF MARCH 3, 1879.

All unsolicited articles, manuscripts, letters and pictures  
sent to the Tribune are sent at the owner's risk, and  
The Tribune assumes no responsibility for their safe custody or return.

MONDAY, JANUARY 20, 1941.

THE TRIBUNE OFFICES.  
CHICAGO—TRIBUNE SQUARE.  
TORONTO—IMPERIAL HOTEL.  
LONDON—135 FLEET STREET.  
PARIS—3 RUE Scribe.  
BERLIN—HOTEL REPLICANER.  
MEXICO CITY—QUEMADOCATE PALACE.  
PANAMA CITY—HOTEL CENTRAL.  
MILWAUKEE—110 EAST WISCONSIN BUILDING.  
NEW YORK—180 EAST 43D STREET.  
DETROIT—555 GENERAL MOTORS BUILDING.  
WASHINGTON—215 ALLEN BUILDING.  
LOS ANGELES—SPRING AND FIRST STREET.  
SPECIAL REPRESENTATIVE.  
SAN FRANCISCO—145 MONTGOMERY STREET.

## THE TRIBUNE'S PLATFORM FOR ILLINOIS AND CHICAGO

1. End the Parole Business.
2. Build Deathproof Highways.
3. Make Chicago the First City in the World.
4. Faster Suburban Service.
5. Up to Date Local Transportation.
6. A Lake Front Airport.
7. A Motor Ferry to Michigan.
8. Cut Taxes in Half.

## THE FRAMED TIMBERS OF A WAR CONSPIRACY.

Mr. Willkie did not appear at the Town Hall meeting with merely a listener's interest in what Dr. Klingdon and Norman Thomas might have to say for and against war bill 1778. He went there to take an unannounced part in the discussion and to make his avowal of complete accord with the granting of what he called "extraordinary powers" to Mr. Roosevelt.

A suspicion that this was not spontaneous but prearranged led to inquiry, and Mr. Thomas said he had been informed in advance that Mr. Willkie would be there and was asked if he had any objection if Mr. Willkie followed him in the discussion. Mr. Thomas says that Mr. Denny, the moderator, acted in good faith and consent was given to the arrangement. Visitors occasionally do take part in the program when called on, and Mr. Willkie fitted himself into this scheme.

By doing so he obtained for his announcement not only the small audience gathered to hear the broadcast but a nationwide audience habitually listening to this program. To that audience the unexpected character of Mr. Willkie's appearance would have dramatic effect, exceeding any of a prearranged and scheduled use of the radio. The value of the effect was probably calculated for the occasion.

Mr. Willkie also is appearing in movie shorts, making the same declaration that Mr. Roosevelt must be given these powers for war and dictatorship, because the American way of life will perish if, without them, Mr. Roosevelt is unable to rescue the nation from its frightful position. We heard a great deal from Mr. Willkie during the campaign about the American way of life, but he did not then say that unless the

the Roosevelt administration and we didn't know it.

No doubt he wanted to be President. No doubt he would have liked to have defeated Mr. Roosevelt if he could do so on a mere issue of personality. He might have made good on his pledge to create a different climate for business and private enterprise. We don't know. We do know now that the interventionists who want to make Mr. Roosevelt a war lord, even if they have to destroy the republic to do so, had placed an alternate in the election, not an opponent, and that even if they lost the man they preferred they would still have one who would suit their purposes.

Lincoln saw a similar conspiracy when Buchanan, in his inaugural, revealed his knowledge of what the Dred Scott decision was to be and, altho Lincoln could not prove the conspiracy in detail, he could see thru it. "We cannot absolutely know," he said, "that all these exact adaptations are the result of preconcert. But when we see a lot of framed timbers, different portions of which we know have been gotten out at different times and places and by different workmen—Stephen, Franklin, Roger, and James, for instance—[Douglas, Pierce, Taney, and Buchanan]—and when we see these timbers joined together, and see they exactly make the frame of a house or a mill, all the tenons and mortises exactly fitting and all the lengths and proportions of the different pieces exactly adapted to their respective places, and not a piece too many or too few—not omitting even scaffolding—or, if a single piece be lacking, we can see the place in the frame exactly fitted, and prepared to yet bring such a piece in—in such a case, we find it impossible to not believe that Stephen and Franklin and Roger and James all understood one another from the beginning, and all worked upon a common plan or draft drawn up before the first hick was struck."

We again see all the tenons and mortises exactly fitting and all the different pieces exactly adapted to their respective places by Franklin and Wendell and Henry and Frank and the others who came upon the scene, each with his piece of the framed timbers. The least honorable part taken in this was taken by Mr. Willkie. But he is out of the Republican party, if he ever was in it.

## HUNGER IN FRANCE.

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the occasion.

Mr. Willkie also is appearing in movie shorts, making the same declaration that Mr. Roosevelt must be given these powers for war and dictatorship, because the American way of life will perish if, without them, Mr. Roosevelt is unable to rescue the nation from its frightful position. We heard a great deal from Mr. Willkie during the campaign about the American way of life, but he did not then say that unless the chief executive could force congress to give him powers to control all the resources of the country and to transfer all its military material of every kind to certain warring nations the United States would be destroyed within a few years. Neither did Mr. Roosevelt say till after election that he was going to demand the powers of an unlimited ruler.

Republicans now realize that they were the victims of an audacious and unscrupulous conspiracy. The scene in Philadelphia would have been complete if Mr. Ickes, Mr. Hopkins, Mr. Jackson, and Mrs. Perkins had appeared in the back rooms to pull the wires and procure the nomination of a man who would go along with them during the campaign and would go along with Mr. Roosevelt after the election. Republicans realize now that Mr. Roosevelt and Mr. Willkie were brothers in arms, going down the same road together when they were supposed to represent opposing views. Mr. Willkie made the Republican party by this deception, which was not perceived, not a party of opposition such as is needed if this is to be a republic, but a party of compliance and cooperation, with a candidate saying yes to what the other candidate proposed.

It is plain now that there was a conspiracy somewhere. Mr. Roosevelt decorated the scene for it by trying to assume a detached rôle. He passed over competent men in his own party and appointed two Republicans, one to the war department and the other to the navy, because he knew they would go anywhere he wanted them to and because he thought their names would carry weight. They had both been favored by the party they deserted, and what distinction they had in public life had accrued from these favors. They rewarded their party by turning their backs on it and working against it, taking part in the conspiracy which was to pull off its biggest job in the Republican convention.

Mr. Roosevelt had tried to draw Mr. Landon into this network and had failed. Mr. Landon refused to do what Mr. Stimson and Mr. Knox did and he has denounced Mr. Willkie for the part he is playing now in aiding Mr. Roosevelt, Mr. Hull, Mr. Stimson, and Mr. Knox in trying to force the war dictatorship bill thru congress.

Mr. Landon is among the Republicans who realize that they were taken in. So were nearly all of us. Such a vast and deep deception had been outside political experience. People didn't believe it was possible.

At Philadelphia it was plain enough that the galleries were filled with interventionists clamoring for Willkie, but the east is that way and most of these people had the money to spend and could easily make a large noise in the convention city. The Republican party was in an unwholesome atmosphere but nobody could suspect that manipulators had got into the convention itself and that Mr. Dewey was going to lose the nomination he had fairly won because the seaboard social and money caste had turned him down. He would have fought Mr. Roosevelt, and even if he had been defeated he would be fighting him now.

Of course we don't know the full story yet. We can see how certain things were done and what has come of them. We could see Mr. Roosevelt moving about, preceded and followed by emergencies and assuming the pose of a man too distracted by the peril to his country even to know that he was in a campaign or was asking for a third term. We could see Mr. Willkie also moving about from one position to another, surrounding them to his Democratic opponent, opposing not Mr. Roosevelt but the Republican leaders in congress, abandoning Republican principles and giving up the fighting points. He had already followed Mr. Stimson and Mr. Knox into

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~~Supreme Court~~ <sup>Apr. 13</sup> D7  
1511-30 <sup>These</sup>  
Supreme Court of the United States  
Washington, D. C. <sup>Jan 27</sup> 41  
PSF Frankfurter

Dear Frank:

It was thrilling  
to hear of your adven-  
ture yesterday from  
your own lips, and  
this morning's account  
excited me all over  
again. Thank God  
you have shown again,  
and most dramatically,  
that Protocol is ill-t



~~Justice Brandeis~~ *Ms. 13 Felix Frankfurter*

Supreme Court of the United States  
Washington, D. C.

*Box 151*

*RF*

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

February 4, 1941

Dear Missy:

1. A little while ago the President asked me to give him a memorandum on the more recent judicial work of Judge J. J. Parker. Here it is. A page and a third summarize the general impressions that his opinions have made on me.

2. The other day over the phone I told the President that there were two or three matters of real importance on which I am very anxious to have talk with him as soon as he has a stretch of free time, preferably on some unhurried evening. I appreciate, of course, what days these are for him, but I want to see him in the hope of relieving and not adding to his burdens. Therefore I am keeping free every evening this week (except Saturday) in the hope that he may be able to find time to see me. The Court is now sitting, and that makes the daytime pretty impossible for me.

Ever yours,

*[Signature]*

Miss Marguerite A. Le Hand

Attached is an abstract of the more significant opinions of Parker, J., as found in a reading of volumes 89 through 114 F.2d, together with a less systematic search in earlier volumes.

The opinions cannot fail to give an impression of a high degree of competence. They regularly contain a clear statement and painstaking discussion of the issues, and a careful survey of the authorities. They are more noteworthy for these qualities than for freshness or resourcefulness or creativeness. There is a recurrent search for the "case directly in point" -- not an objectionable undertaking on the part of a judge of an inferior court.

In the controverted fields of public law, the opinions exhibit marked receptiveness to light and learning. On P.W.A. and the Railway Labor Act, the opinions served as foundations for the decisions of the Supreme Court, though they were not, to be sure, voices crying in a total wilderness. On the N.L.R.B., the opinions show, on the whole, a spirit of cooperation with the Board, after two early decisions had held the Act invalid as to manufacturing companies and valid as to interstate carriers. Recently there has been some tendency to refuse enforcement to Board orders on the ground of want of substantial evidence; but the cases appear to have placed a strain upon the tolerance of the court.

The appeal in the Burco case offered an opportunity to delimit the arena for attacks on federal statutes; but the opinion of Soper, J., brought forth no dissent. This silence perhaps reflects a general spirit of liberality in passing upon constitutional issues, as indicated in the P.W.A. cases, where the opinions proceeded to sustain the federal activities after holding that the companies had no standing to object, and the Tobacco Inspection case,

which announced that one who is not damaged by enforcement of a statute may nevertheless attack it either under the Declaratory Judgments Act or by way of enjoining the imposition of penalties for non-compliance.

There is little of explicit philosophy of the judicial process in the opinions. What there is appears to be inferior to the product of the process itself. Reference should be made in this regard to the case last cited on the accompanying pages, in which an unexceptionable result is supported by the gospel that decisions of judges do not make law but are merely evidences thereof!

## A. CONSTITUTIONAL QUESTIONS

### Railway Labor Act of 1934.

Virginian Railway Co. v. System Federation No. 40, 84 F.2d 641 (aff'd 300 U.S. ). Sustains Railway Labor Act as amended. The groundwork had been laid in the Brotherhood of Railway Clerks case.

### P.W.A.

Duke Power Co. v. Greenwood County, 91 F.2d 665 (aff'd 302 U.S. 485). Reviews history of the litigation: 79 F.2d 995, remanding case to consider new agreement; 81 F.2d 986, holding loan and grant valid and, in alternative, utility company without standing to complain; the latter decision had been reversed and remanded by the Supreme Court for procedural irregularities in connection with the original remand. Opinion in 91 F.2d adheres to prior opinion, adducing additional reasons in support of the validity of the delegation of power to the administrator: Congressional ratification through subsequent appropriations, and the special nature of appropriation acts, as pointed out in the Cincinnati Soap Co. case, 301 U.S. 308. Until the last-mentioned decision, the Court approached the problem of delegation simply in terms of the criteria set out in the Panama case.

Greenwood County v. Duke Power Co., 107 F.2d 484. Denies recovery to county for profits earned by utility company during pendency of injunction against construction of plant by the county. Certiorari denied. The decision may rest on the conjectural nature of the earnings of the county's plant had it been constructed during the period in question.

### Civil Liberties.

Alston v. School Board of Norfolk, 112 F.2d 992. Declaratory judgment and injunction granted restraining discrimination against negroes in the salary schedules of the Norfolk School Board. The decision reversed that of Judge Way; but the result reached by the C.C.A. had been anticipated in a decision by Judge Chesnut.

N.L.R.B.

In two cases decided before the Supreme Court decisions on the Act, Foster Bros. Mfg. Co. v. N.L.R.B., 85 F.2d 984, and N.L.R.B. v. Washington, Virginia and Maryland Coach Co., 85 F.2d 990, per Soper, J., Parker, J., sitting, the court held that the Act could not be applied to a manufacturer which shipped over 50 per cent of its products to other states, but that the Act was valid as applied to an interstate bus company.

Farm Mortgage Act.

Wright v. Vinton Branch, 85 F.2d 973 (rev'd 300 U.S. 440). Holds amended Frazier-Lemke Act unconstitutional. Asserting that provision for judicial modification of the moratorium does not cure the invalidity found in the prior Act by the Supreme Court, the opinion adds curiously that the provision violates the requirement of uniformity in bankruptcy legislation, since the benefits of the Act would vary with judicial findings concerning local financial conditions.

Holding Company Act.

Burco v. Whitworth, 81 F.2d 721. Opinion by Soper, J., Parker, J., sitting, holding Act invalid as applied, and rejecting Government's contention that the case was an improper vehicle for constitutional decision.

Taxation.

*White Packing Co. v. Robertson*, 89 F.2d 775. Affirms refusal of District Court to enjoin collection of so-called windfall tax on net income of processors attributable to shifting to others the burden of processing taxes paid into court and returned upon the decision in the *Butler* case. The opinion goes beyond the ground of lack of equity jurisdiction and upholds the validity of the tax. It contains broad language on permissible classification and irrelevance of motives in taxation.

*Helvering v. Claiborne-Annapolis Ferry Co.*, 93 F.2d 875. Holds that annual payment by state to ferry company for maintenance is income, not capital contribution, and is not immune under the doctrine of inter-governmental immunity; opinion relies on the *Dravo* case in the Supreme Court.

*Dravo Contracting Co. v. James*, 114 F.2d 242. Upholds apportionment of gross income between West Virginia and Pennsylvania for purposes of West Virginia tax. (Parker, J., did not sit on the three-judge District Court that had held the West Virginia tax invalid under the inter-governmental immunity doctrine.)

Agricultural Control.

*Robertson v. Taylor*, 90 F.2d 812. Following *Butler* decision by the Supreme Court, holds unconstitutional the tax imposed by the Kerr-Smith Tobacco Act. The Act itself had been repealed in view of the *Butler* decision.

*Wallace v. Currin*, 95 F.2d 856 (aff'd 306 U.S. 1.) Upholds validity of Tobacco Inspection Act. On the question of standing of plaintiff warehousemen to complain, the opinion concedes that they showed no damage to them from enforcement of the Act, but the opinion maintains that one who believes a statute is unconstitutional may attack it if failure to comply would subject him to penalties, even though compliance would not be damaging. This rather surprising

view is softened by reference to a "salutary statute of recent enactment, the Declaratory Judgments Act." In affirming, the Supreme Court, per Hughes, C.J., rested the standing of plaintiffs solely on the Declaratory Judgments Act.

#### B. REVIEW OF N.L.R.B. AND OTHER ADMINISTRATIVE AGENCIES

*Hartsell Mills Co. v. N.L.R.B.*, 111 F.2d 291. Sustains order of Board, holding circumstantial evidence as to discrimination sufficient, but modifies order to exclude requirement that company post notice stating it will "cease and desist." This modification in the form of the notice to be posted was supported by a decision in the Second Circuit, 110 F.2d 148, per L. Hand, J., Clark, J., dissenting on this point.

*N.L.R.B. v. Highland Park Mfg. Co.*, 110 F.2d 632. Upholds order requiring agreement to be reduced to writing. The opinion follows similar holdings in the Second and Fifth Circuits, and disagrees with the Seventh Circuit decision to the contrary. A number of citations to writings of economists are given. The opinion states: "If reason and not force is to have sway in industrial relationships, such agreements should be welcomed by capital as well as by labor. They not only provide standards by which industrial disputes may be adjusted, but they add dignity to the position of labor and remove the feeling on the part of the worker that he is a mere pawn in industry subject to the arbitrary power of the employer."

*N.L.R.B. v. Norfolk Shipbuilding Corp.*, 109 F.2d 128. Modifies order of Board on ground of no substantial evidence to support finding of discriminatory discharge of one employee.

(In *L. Greif & Bro. v. N.L.R.B.*, 108 F.2d 551, refusing to enforce an order relating to an assertedly company-dominated union, Parker, J., did not sit.)

Newport News Shipbuilding Co. v. N.L.R.B., 101 F.2d 841 (rev'd, 308 U.S. 241). Majority refused to enforce an order requiring company to disestablish a company-dominated union; Parker, J., filed a dissenting opinion.

Virginia Ferry Corp. v. N.L.R.B., 101 F.2d 103, grants enforcement of order except as to form of notice to be posted.

Jeffery-DeWitt Insulator Co. v. N.L.R.B., 91 F.2d 134. Holds Act applies to existing labor dispute even though at date of enactment of statute the members of the union were out on strike. Opinion utilizes statistical data on the success of conciliation to meet the argument that failure to negotiate further was proper in view of an impasse in negotiations prior to the Act.

Newport News Shipbuilding Co. v. Schauffler, 91 F.2d 730. Per curiam decision affirming dismissal of bill to enjoin hearing by Board. At least five Circuit Courts of Appeals had so held, only the First Circuit holding otherwise.

N.L.R.B. v. Mathieson Alkali Works, 114 F.2d 796. Denies enforcement of order of Board for want of substantial evidence.

(Martel Mills Corp. v. N.L.R.B., 114 F.2d 624. Same, Parker, J., sitting but not writing opinion.)

(In Mooresville Cotton Mills v. N.L.R.B., 97 F.2d 959, per Soper, J., Parker, J., sitting, the Court held that the Board has no power to order reinstatement of strikers who are found by the Board to have received substantially equivalent employment elsewhere.)

Oliver Bros. v. F.T.C., 105 F.2d 763. Grants enforcement of order under Section 2 (c) of Robinson-Patman Act, directed against the business of purchasing agent for distributors, the agent being paid by the distributors a fixed monthly fee and passing on to them commissions received from sellers. The decision relies on a similar case in the Second Circuit, Biddle Purchasing Co. v. F.T.C.,

96 F.2d 687, in which certiorari had been denied. The cases presented a difficult problem of statutory construction, as indicated by the dissent of Swan, J., in the Biddle case, particularly since the statute here was aimed at chain store practices while the practice here involved helping independent distributors to match the buying power of the chains. Something of the technique used in the Apex case might have been employed here to limit the scope of the provision in question to purchasing agents more closely controlled by distributors, i.e., having fewer of the characteristics of intermediaries than the agent here involved. The opinion states: "The language of this section is so clear that there is no occasion to resort to the reports of Congress to ascertain what was intended. It may not be amiss to note, however, that H. Rep. 2687 ... has this to say with regard to it. ..." By contrast, the opinion of Swan, J., had described the section as "ungrammatically phrased." The opinion of Parker, J., is, however, much more satisfactory than the majority opinion per Manton, J., in the Biddle case.

U.S. v. Appalachian Electric Power Co., 107 F.2d 769. Dissenting opinion supporting order of Federal Power Commission requiring license for New River hydroelectric project. Decision reversed by Supreme Court.

#### C. FEDERAL JURISDICTION, PROCEDURE, ETC.

Anderson v. Aetna Life Ins. Co., 89 F.2d 345. Upholds decision of District Court under Declaratory Judgments Act in suit by insurance company to obtain declaration that a policy of group insurance had been properly terminated by insurance company and employer; after institution of this suit, several employees had brought actions at law in a state court seeking damages from the insurance company for fraudulent cancellation of the policy; the prosecution of the state-court proceedings was enjoined by the District Court until final hearing. C.C.A. holds that District Court as a matter of discretion might

have stayed its proceedings to await decision in the state cases, but that the District Court did not lack jurisdiction and its judgment must be affirmed. The result may be rested on several circumstances: No appeal was taken from the temporary injunction; no objection was saved to the hearing of the case in the District Court in equity without a jury; and the actions in the state court were apparently not class suits. The opinion, however, indicates a wide application of the Declaratory Judgments Act.

Injunction against collection of taxes. See *White Packing Co. v. Robertson*, 89 F.2d 775, supra, p. 2, affirming denial of injunction. Apparently the C.C.A. 4th, like most courts of appeals, rendered no decision on injunctions against the collection of A.A.A. processing taxes. In Senate Document 42, 75th Cong., 1st Sess., p. 1, it is stated that injunctions were granted by all District Courts in the Fourth Circuit but that no appeals by collectors were decided prior to the Supreme Court decision in the *Rickert* case and the appeals were thereafter dismissed.

#### D. MISCELLANEOUS

*Glen L. Martin Co. v. U.S.*, 100 F.2d 793 (rev'd, 308 U.S. 62). Holds that social security taxes, both those paid to Federal Government and contributions to state fund which are credited against the Federal tax, are comprehended in a provision in contracts between contractors and the United States adjusting the price in the event of imposition of taxes by Congress "directly upon production, manufacture or sale of the supplies ... and paid by the contractor on the articles or supplies. ..."

*Legg's Estate v. Commissioner*, 114 F.2d 760. Holds that, where power of appointment was exercised to give life estate to person who would have taken the fee in default, the life estate is not taxable under the federal

estate tax as it did not "pass under" the power of appointment. Decision follows similar holding in Third Circuit. On an additional issue, holding that a state decision rendered after the death of the donee of the power, and overruling a prior decision, should be followed on the question of violation of the Rule Against Perpetuities, the opinion states: "Decisions are mere evidences of the law, not the law itself; and an overruling decision is not a change of law but a mere correction of an erroneous interpretation." The question, under the Tompkins case, would seem to have been simply whether the state decision would have been applied to this transaction by the state courts; and it is to be observed that application of the later decision did not defeat the transaction but instead sustained the creation of the power of appointment.

PS <sup>File</sup> Personal ~~23rd June 20~~  
9<sup>2</sup>

I called the Justice's  
Secretary and explained  
that the President was  
jammed this week but  
we would let him know  
about an evening next  
week. Will you arrange?

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PSF  
Frankfurter

~~Supreme Court~~, 190.16  
1511 - So. 1st

Supreme Court of the United States  
Washington, D. C.

Today

[Feb. 12-41]

Mr. Justice:

file  
personal

Re: Consider letting you see  
these applications of two  
recent sojourners in  
London, you will want  
to know the following:

Yesterday, in the midst  
of a most technical and  
difficult argument of a  
complicated case, my  
baby Brother turned to me,  
on the Bench, and said:

"I wonder if the President  
knows how bad things  
are in the Philippines?"

to Mexico, which also  
needs attention"

Here indeed that  
day's lesson!

That was a really  
framed talk with  
you, the other morning,  
and I've been  
thinking about it  
much.

Ever devotedly yours  
W. T.

hear from my friends  
out there constantly, in-  
cluding, since a week,  
from Mr. Ingeau. No  
one in the United States  
knows that problem as  
well as I do, and I  
knew how to handle it  
at. "Would you be  
willing to go out there?"  
7. W. "Not permanently.  
But, while I lose the  
work of the Court, I do  
want to see my country,  
and I'd be glad to go out  
there for a few months, and  
then on the way back go

Felix Frankfurter  
PSF

Our Ex-Ambassador

Joe, Joe,  
Kennedy, Kennedy,  
Went to the Court of St. James  
Where he liked to be seen  
With the king and the queen  
At cricket and other games.

Joe, Joe,  
Kennedy, Kennedy,  
'Till Britain went to war  
Said "swapping stories  
With ducal Tories  
Is what God made me for."

But when hell was popping  
And bombs were dropping  
All over London town,  
Said Joe, Joe,  
"I've got to go,  
The British have let me down."

So he sailed away  
To the U.S.A.  
Where he spoke on the radio  
Telling us all  
That should Britain fall  
It would be a fatal blow.

To our own defense —  
Deducing thence  
The conclusion quite distracted  
That legislation  
To save the nation  
Ought not to be enacted.

In this fateful hour  
We should give no power  
To our Army and Navy Chief —  
Just sit on our tails  
Emitting wails  
And similar sounds of grief.

*Montreal Daily Star*

SATURDAY, FEBRUARY 8, 1943

"That pepper castor is the Axis, see? And this mustard-pot is us. These nuts are enemy U-boats, and now, just here — by the way, I s'pose you haven't got a spare nutcracker about you?"



EXPLAINING IT TO HARRY HOPKINS

(Copyright in All Countries)

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*file resumed*  
~~Friday~~ <sup>4p. 13</sup> ~~Thurs~~ <sup>15/11-30</sup> ~~Thurs~~  
PSF Frankfurt February 26  
Supreme Court of the United States  
Washington, D. C.

Dear Frank:

This morning's papers report three items which rejoice my heart because all three serve still further to "enple-ment" (how I love that word!) your spirit with actions, to wit:

- 1° Your admirable letter on wire-tapping - limiting its use to the strictest possible area, and seen only under strictest safeguards.
- 2° Your declaration of the

"war aims" to be winning  
the war!

3<sup>d</sup>: Your un-compromising  
insistence on the passage  
of the Lend-Lease Bill  
adequate to the needs  
of the emergency.

Hand - all three per-  
formances for their own  
sakes, and the drive  
and energy that they  
brought that you brought  
back from Hyde Park.

Respectfully,  
W.T.

PSF ~~Missy Hand~~  
F. Frankfurter

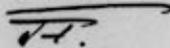
Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

March 6, 1941

Dear Missy:

The President will want to see this letter because Ham Armstrong speaks on matters affecting Jugoslavia with a knowledge that is seasoned and mature, and not acquired over night.

Ever yours,  


Miss Marguerite A. Le Hand

# FOREIGN AFFAIRS

AN AMERICAN QUARTERLY REVIEW

HAMILTON FISH ARMSTRONG  
EDITOR

48 EAST SIXTY-FIFTH STREET  
NEW YORK

CABLE ADDRESS: FORAFFAIRS, NEW YORK

March 4, 1941

Private

Mr. Justice Felix Frankfurter  
1511 Thirtieth Street  
Washington, D. C.

Dear F.F.:

I knew you would take to Sforza. I'll see what I can do in connection with the matter he mentioned in his telegram to you.

But this letter is about Yugoslavia, the European country which I probably know best, having been Military Attaché there just after the last war, and having kept up my personal friendships there by almost annual visits in the intervening twenty years. Fotitch, the Yugoslav Minister, has just been up in New York to see me about the crisis developing there. He is one of the very best of the foreign diplomats now in Washington.

Hitler is bringing all possible pressure to bear on Paul to take Yugoslavia into the "new order" by signing up with the Axis. I know Paul pretty well. Though he is nothing like so strong as Alexander was, he is honest, pro-English, and anxious to turn over his trusteeship to the little King without any diminution of the Karageorgevitch patrimony. He is resisting Hitler as best he can, supported by the very general anti-German and anti-Italian sentiment of the Yugoslav people.

The best Paul can hope for is to avoid actually signing up with the Axis - e.g. to persuade Hitler to leave Yugoslavia in the position of Sweden rather than in the position accepted by Hungary, Rumania and now Bulgaria. Paul has just gone to his country place up in Slovenia, where I have often visited him, either to receive Ribbentrop there or en route himself to Berchtesgaden. Thus a showdown is coming.

Fotitch is convinced that Paul is sincere in telling us and the British he will do everything possible to avoid joining the Axis, but he realizes, as I do, that the Nazi menace may become too great and that Paul may be forced to give in. If that happens it is Fotitch's intention

Mr. Justice Felix Frankfurter

March 4, 1941

to resign as Minister in Washington. He will hope to join with other Yugoslavs in this country, and with various Yugoslav-Americans, in keeping alive the ideal of Yugoslav independence and working for the restoration of the country after the war is over. He has no intention of attacking Paul or the present Yugoslav Government. He feels, however, that if Yugoslavia joins the Axis, the country will soon be disintegrated by Nazi and Fascist agents, and that puppet governments will be set up in Belgrade and Zagreb under bandits chosen by Hitler and Mussolini respectively.

I am writing to urge that if the worst happens, if Yugoslavia does join the Axis, and if Fotitch does resign, our Government shall express a disinclination to accept a new Minister in Fotitch's place. Fotitch's present assistant could continue to act as Chargé. A request by the present Rumanian Government that we accept a new Rumanian Minister is now pending. I hope it is not going to be accepted. In any event, I urge very strongly that if Yugoslavia joins the Axis under the menace of invasion, we indicate our disapproval of that act, and our hope for the reassertion of full Yugoslav independence at a later date, by leaving the Yugoslav Legation in Washington in the hands of the Chargé.

I also believe that in this event we would be wise to freeze the Yugoslav balances here. We might well have taken such a course with the Hungarian balances when Hungary joined the Axis. If Yugoslavia joins the Axis, I think it would be a kindness to her to freeze her assets here immediately.

I am writing you thus at length because I am extremely anxious that the implications of the decision in foreign policy which is about to be made should be brought to the President's attention at once. As I hope you know, I don't set myself up as an authority on many matters. But I do believe that no other American has been a more continuous student of Balkan affairs than I have in the last twenty years. Can't you find an opportunity to make my views on this matter known to the President before the Yugoslav crisis actually arrives?

I am pretty well tired out, and also have been having sinus trouble again, so when Mrs. Dwight Morrow asked me to go with her and one or two other friends to Mexico the end of this week, I jumped at the chance. I am starting Saturday night and will be gone about two weeks. If you have any advice after I am gone won't you telephone Fotitch and ask him to come and see you?

Yours ever sincerely,

Hamilton Lincoln

*Wilson's policy toward the Danubian and Balkan peoples was an important weapon in winning the last war. Roosevelt's can be in this m.*

*F. D. R. Frankfurter folder*

*Sp. 13 3-41*

*File Personal*

THE WHITE HOUSE  
WASHINGTON

CONFIDENTIAL

March 10, 1941.

MEMORANDUM FOR

~~THE SECRETARY OF STATE~~ ~~THE UNDER SECRETARY OF STATE~~ **NOTED**

SECRETARY OF STATE  
MAR 10 1941

TO READ AND RETURN.

F. D. R.

UNDER SECRETARY OF STATE  
MAR 14 1941  
MR. WELLES

*PSF*

THE WHITE HOUSE  
WASHINGTON

CONFIDENTIAL

March 10, 1941.

MEMORANDUM FOR

THE SECRETARY OF STATE  
THE UNDER SECRETARY OF STATE

TO READ AND RETURN.

F. D. R.

*Noted by Pd/D  
and Ew*

THE WHITE HOUSE  
WASHINGTON

**CONFIDENTIAL**

March 10, 1941.

MEMORANDUM FOR

THE SECRETARY OF STATE  
THE UNDER SECRETARY OF STATE

TO READ AND RETURN.

F. D. R.

Letter dated March 6th to  
Miss Le Hand from Mr. Justice  
Frankfurter enclosing letter  
from Mr. Hamilton Fish Armstrong,  
Editor of "Foreign Affairs".

*July file PSF Frankfurter folder 3-41*

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

March 13, 1941

*all personal*

Dear Missy:

These two enclosures may interest the President.

1. The penciled paragraph in the letter from Fred Dumaine is particularly interesting. You know what a pirate the old boy is, but beneath the pirate's crust there is real understanding of what matters in this world. And that paragraph shows it. Incidentally, the letter is a reply to a note of mine to him on his seventy-fifth birthday.

2. The piece on Germany vs. America is written by a very able professor of the Columbia Law School. I call particular attention to the penciled paragraph on page 9.

Ever yours,

*[Signature]*

Miss Marguerite A. Le Hand

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I've seen no squeal from Palm  
Beach lately.

Just the same it's too bad  
there's quite so much graft in some of these  
Government projects.

My best to the readymade family,  
to you and your devoted Marion, long life and  
continued advancement.

Sincerely,

*Fred Durrain*

Mr. Justice Felix Frankfurter  
1511 30th Street  
Washington, D. C.

SEARS BUILDING  
BOSTON

March 7th, 1941

Dear Felix:

No doubt there are a number of persons living today born on the 6th of March '66. I'll bet a good red apple not one of them received a nice letter from a United States Justice, some compensation for "an age of sorrow and a life of storm."

Frank sent this jingle and I ran across a quotation of one Holmes, think you have some memory of him.

I'm reading Carl Sandburg; changing the dates from '62 to '42, the name Lincoln to Roosevelt and there'll be no need of a Biography for the Chief. With those changes it's already written.

March, 1941

# Germany vs. America

By FRANCIS DEAK

PSF: Frankfurter  
3-13-41

Page Nine

IN PUBLIC AND PRIVATE discussions concerning the United States and the war, one of the fundamental issues confronting the American people has heretofore been pretty much overlooked. Much of the controversy over the assistance which this country could and should extend to the British Commonwealth of Nations and to other peoples resisting the Axis powers has been concerned with whether or not such or such a step would keep the United States out of war. In using possible involvement as a yardstick to measure the quantity or form of the assistance the United States might render to Great Britain or the other hard pressed nations, we disregard the fact—fundamental in my opinion—that preservation of peace does not depend wholly on the desire of the nation wishing to keep out of war.

Man's memory is indeed short. It is especially so in this age when we crowd so much into our lives that we no longer have time to ponder and contemplate and to judge events in their true perspective. We hear it said with honest conviction that we, the American people, should have no concern with the type of society other peoples wish to build for themselves; that our government had no business "meddling" in the affairs of other nations by expressing criticism or disapproval of their conduct. It has been forgotten that our form of government and mode of life was condemned many years ago by Signor Mussolini who declared war on democracy at a time when we "meddled" in other peoples' affairs so little that our State Department hardly seemed to realize that the League of Nations existed. And many people blithely assume—indeed they are being so told by some of our respected leaders in public life—that had we been less prejudiced against the present regime in Germany, we would not have incurred the animosity of that country nor would the threat of a war with Germany and her allies be hanging over our heads.

True, we have never been enthusiastic about Adolf Hitler's national socialism. Our government has repeatedly expressed concern about the policies proclaimed and followed by Germany since 1933; and the American people recoiled from the methods whereby those policies, both internal and international, were pursued. But no objective observer can say that, before the war, disapproval was directed at a time against the German people, as distinguished from its leadership. Neither can it be said that responsible circles had at any time contemplated hostile action aiming at the destruction of Germany.

On the other hand, the National-Socialist leadership took a position of open and aggressive hostility against democratic countries—particularly against the United States—from the moment it took office. No one who has read *Mein Kampf* could doubt that National-Socialist Germany declared war on democracy, and that such a declaration of war included the United States as well.

The methods of Germany in pursuing her aims are by now more or less familiar to the American public. Despite many adverse comments on our press, the march of events has been, as a whole, pretty accurately reported. We know that these methods are unorthodox, cunning

and subtle—so subtle, indeed, that the intended victim is the last one to realize what is in store for him. Germany's preparation for conquest or subjugation is not merely military, it is also psychological. At the same time that efforts are made to undermine the morale of the would-be enemy, the German people is carefully prepared for the coming events. This "educational" process is made easy through the absolute control of all media of publicity by the government—particularly the daily press and the radio and by the complete isolation of the German audience from information from abroad.

In order to ascertain the German attitude toward the United States, a survey of German newspapers was recently undertaken. The survey included German newspapers available in this country—some of them complete sets—and covered roughly the five-year period from 1935 to the outbreak of hostilities on September 3, 1939. All items relating to the United States, whether friendly, unfriendly or indifferent, were carefully analyzed and translated. The aggregate result of this survey of close to a thousand editorials, feature articles and news reports clearly indicates that the attitude of the government-controlled German press toward us was one of outspoken, deliberate hostility. The German arguments upon which this animosity was created may be stated as follows:

First, the United States is held responsible for the plight of Germany by making the Versailles Treaty possible. Second, the foreign policy of the United States, by "meddling" in European affairs and by seeking the political and economic consolidation of the Western Hemisphere, is detrimental to the "legitimate" interests of Greater Germany. Third, Greater Germany, admittedly no longer a national but a racial state, has the right to the political and cultural allegiance of foreign citizens of German blood—including American citizens of German blood—and she is both prepared and powerful enough to enforce that right by whatever means necessary. Fourth, since German contributions supposedly were decisive in the establishment and development of the United States and since German blood is very considerable in the American population, Greater Germany is entitled to reap the benefit by securing a dominant position in the United States for persons of German descent.

Since the German leaders realize that the accomplishment of their aims in this hemisphere would in all likelihood encounter opposition on the part of the United States, the psychological preparation of the German people for an eventual conflict with this country appears to have been decided upon. This preparation takes the form of a persistent campaign of increasing antagonism not merely toward the American government (singling out with particular ferocity the President of the United States) but toward the American people: our form of government, our institutions, our mode of life, our morals and habits, our history, and our cultural accomplishments.

The true significance of these statements of German grievances and claims and of these distorted descriptions of the United States can be appreciated only if we constantly keep in mind two facts. First, that no printed

(Continued page 13, column 2)

# French Do What They Must

By MAURICE LE FRANÇ

ON FEBRUARY 13, General Franco was solemnly received by Marshal Petain at Montpellier. At the same time, American papers published a dispatch from Marseilles saying that Rudolf Breitscheid and Rudolf Hilferding, two of the most prominent German refugees, had been surrendered to Hitler.

These two events must cause us a certain amount of anxiety. The visit to France of General Franco—who had to be protected by an unusually heavy police guard—just after his conversation with Mussolini, can only indicate that new pressure is being put on France to draw her into the Axis. Surrender of the two German refugees creates fear for what may be happening to many others, both German and Spanish. Just before Franco went to Italy and France, it was announced that the Spanish government would grant amnesty to 140,000 refugees. But what we know of actual repressions in Spain only makes us feel very skeptical. We shudder to think of all the "non-political" crimes with which many of these innocent Spanish Republicans will be charged, so that, once they are back home, sentence may be passed on them by Spanish courts.

There have been many reports in the United States about certain German refugees in unoccupied France being surrendered to the Nazi authorities, and about the probability that some Spanish refugees had been turned over to Franco in the same manner. Vichy, however, has previously insisted that the only refugees taken back to the Reich or Spain from France were those seized by the Gestapo. But so far, Vichy has not denied the turning over of Herr Breitscheid, former president of the Reichstag Foreign Affairs Department and Herr Hilferding, former Reich minister of finance. These two prominent members of the Social-Democrat party—who had been granted American visas to come to the United States—were not allowed to leave France. At the same time, French authorities assured them that they would be protected against the Germans. That Vichy did not keep its word proves two things: One, that notwithstanding declarations to the contrary, Petain's France is under German control and does not escape the tyrannies of the Gestapo; two, that the Petain regime has dealt a hard blow to the high reputation France has made for herself by giving shelter to persecuted ones of sister democracies. It is natural that Americans—who wanted to judge the regime of Marshal Petain impartially and who admired what seemed to be the Marshal's resistance to German demands and to Laval's machinations—should be much disturbed by these recent events, which throw a bad light on Vichy practices.

Many of the attacks made by the German and Parisienne press—taking orders from Herr Goebbels, under the pens of MM. Deat, Georges Suarez and Jean Luchaire—against the Petain regime, had inspired hope that Vichy was able to maintain a certain degree of independence; but the attitude of the German press and radio today, in regard to Marshal Petain and Admiral Darlan, arouses fear that any independence the new cabinet may have will not last long.

There is one factor, however—and an important one

—which is much more encouraging. That is the reaction of the French people to the different aspects of this policy of collaboration and alignment with the "new order" in Europe. Under the present tragic circumstances, the French people have no means of systematic resistance of the Nazis; and it can be imagined that the dictatorial powers assumed by Petain, with the help of the strong French-German police, do not leave many means for popular expression. Nevertheless, virtually all the reports, all the letters, reaching this country from France lead to the same conclusion, and here we quote Louis Dolivet, who wrote in the January issue of this magazine: "The reality of the Hitler domination very rapidly made quite clear what nazism means and how great a danger it is to the world. The French people, in occupied as well as unoccupied France, after having indulged in self-reproach and reproach of their leaders, began to organize passive resistance."

In all parts of France clandestine committees and groups are being organized to crystallize French opinion and study the duties incumbent upon the nation and the means that there may be for the country to help—when the time comes—Great Britain in her fight for the liberation of the world. Courageous French people take the risks of writing to their friends in America, describing the real state of mind in France. I quote from two letters recently received. From the first one:

"American comrades, veterans of the World War, you brought us the help that decided the victory. I speak to you in the name of all French veterans of the other war. Do not believe, I beg you, the lies of our press, of our radio, held or controlled by the Nazis. Don't send anything to France. Our enemy would take it. We will go through all the sufferings, and this will be our way of contributing to the British victory, since treason has taken away from us the means of fighting. Help the British with all your strength and all your resources. The evil spirit must disappear. We must kill the beast. You will stop, I am sure, the fulfillment of Hitler's monstrous dream of world domination; you will contribute toward giving back to France her independence and honor. Comrades in the American Legion, the France that you saved cries out to you that she does not want to die; that she wants to live in freedom."

From the other letter:

"On the walls of the city (Paris) you see such inscriptions as 'Vive de Gaulle,' and the anti-British posters put up by the Germans are torn or transformed by the public. For instance, under a picture representing a Frenchman among ruins, the words 'Britain did this to you' were changed to read: 'Germans did this, Britain will save you.' Everyone admires the courage of the English people. It is here, under the Nazi rule, which threatens to become every day harsher, that we can, knowingly, say that liberty must be saved from this paganism."

The turmoil in Africa is so great that General Weygand has much trouble in holding back his men, who want to help Britain. Recently, we heard that the Italian garrison of Gademes, located near the borders of Tunisia,

(Continued page 12, column 1)

We must not start with a feeling of defeat. We must have faith in ourselves, in our institutions and in our abilities to adapt our way of life to the challenge of today and to the greater challenge of tomorrow. We must make democracy work. That is the price of responsible citizenship in our country and in the world. Neither the legislator nor the executive can secure sound policy, foreign or domestic. He may advise, he may implement, he may execute, but ultimately, policy must be finally determined by the expressed will of the people. That is the tradition of freedom; let us make it the practice in all walks of life and all fields of work. We have no time to pause. We have already begun to lay the cornerstone for the democratic world order of tomorrow. What we do together can never fail.

## Germany vs. America

By Francis Deak

(Continued from page 9)

word can reach the German people, except with the approval of the Propaganda Ministry; in other words, every article or comment is the voice of the German government or directly "inspired" by it. Second, that all these views and opinions were uttered and published before the outbreak of hostilities; in other words, during a period throughout which the leaders of Germany, including Herr Hitler, formally and repeatedly disclaimed any intent to conquer and rule the European continent by force of arms or, which is more important, to extend such rule in any form, shape or manner to the Western Hemisphere.

In the light of this attitude manifested in the German press prior to the war, the arguments stressed in debates pertaining to our involvement in war by aiding Great Britain do not appear to possess the importance attributed to them. In deciding our course of action, account should be taken of the undeniable hostility which the leaders of National-Socialist Germany sought to implant in the minds of the German people long before the present war and ostensibly apart from Nazi war plans. The view that Germany was antagonized because of our stand in this war and our support of Germany's enemy is quite erroneous. And those who deny the existence of any danger to the United States ignore the fact that the pretense of limited claims based on the *Lebensraum* theory has been long discarded by Germany in favor of the new goal of world domination based on Germany's claims of "race-superiority" and the concept of *Grossraumordnung*.

◎ ◎ ◎

"AT A FULL utilization of our industrial capacity, American production would amount to 90-100 billion dollars per year. Working 8 hours per day, each hour would produce about 12 billion dollars per year. Today, domestic armament production (an average of 290 million dollars during the last 6 months), and exports to Britain (210 million dollars) amount to about 500 million dollars per month, or 6 billion dollars per year, representing one sixteenth of the total American production at a full utilization of capacity. Thus, America spends but 30 minutes out of the full 8 hours of a work day on the production of armaments, i.e., 15 minutes for its own, and 15 minutes for British needs."

—Fritz Sternberg in "In Order to Survive"

## About Henry Ford

UNLIKE COLONEL LINDBERGH and General Wood, of the America First Committee, Henry Ford is not in favor of a negotiated peace, according to a copyrighted interview in *The Atlanta Constitution*. He advocates aid for Britain—and for the Axis. The United States should give Britain and the Axis powers, he is reported as saying, "the tools to keep on fighting until they both collapse."

Probably the Detroit automobile maker got this idea from remembering Woodrow Wilson's urging at one stage of the last World War that there should be "peace without victory." But a stalemate peace in 1916 would have been one thing and a stalemate peace in 1945, 1950, or 1960, after the Axis and the Allies have bled each other white, would be something entirely, and horribly, different. Mr. Wilson did not propose to make it the business of the United States to keep the Allied and Central Powers fighting each other until they were torn to pieces and the world was in collapse. For a brief time, he believed in the possibility of the war being stopped while the nations were still intact and Europe might be restored to something like the *status quo ante bellum*. Germany was then a civilized country, with a considerable degree of parliamentary government; apart from imperialistic ambitions—which were not exclusive to Germany—she could, even under the Hohenzollerns, have become a worthy citizen of a community of nations. Today, Germany is barbarian, and as long as it exists so there can be no peaceful community of nations. In order to get rid of this barbarism, Henry Ford would have civilized Britain destroyed. What would become of the United States when Europe had reduced itself—as it would if followed the policy Ford advocates—to a heap of debris? He says the United States could then "play the role for which it has the strength and ability." Reason says that, with the rest of the world bled white, the United States would no longer have strength and ability.

The "little people," Mr. Ford says, have been the dupes of an international clique of greed—"and we have its members in this country too." That is strangely similar to the stock talk of the Communists and Nazi-Fascists. The Communists say that the international clique of which the little people are dupes is of capitalists, and anti-labor industrialists. Probably Mr. Ford does not mean these, since they are the ones among whom he is numbered. The Nazis say it is the clique of international Jewry. Is it that Ford still holds the anti-Semitic views which he publicly recanted when faced with a libel suit?

But why get excited about what Henry Ford has to say on international affairs. The man who was going to get the boys out of the trenches in 1915 by sailing a boatload of American peace advocates around belligerent waters, who financed the viciously anti-Semitic Dearborn Independent and accepted a decoration from the Nazis, is hardly a worthy leader of American opinion in this dire hour. Let the shoemaker stick to his last and those who have genius for making motor-cars or for flying airplanes stay in the fields where their expertness is genuine.—J.W.T.

# LOOKING AT THE NEWS

## In the Spring

Now as never before the world confronts the coming of spring as a season of terror and doom. The end of winter always heralds increased activity in warfare, but this year it seems evident that the forces which are bent on overturning the order of the world must strike staggering blows if they are to achieve victory.

No one is in any doubt that the chances of the totalitarian powers for victory will be at their best this spring. Thereafter, the increasing importance of American aid, the weariness of their own peoples, and the disillusionment which will follow if victory is not obtained will all operate to decrease the probability of their final victory. There is room for doubt, however, as to the exact procedures which Germany, Italy, and Japan are apt to follow in attempting to deal a knockout blow to the British Empire and its associates. Perhaps the chief question is as to whether Germany will concentrate upon a direct attack on the British Isles in the near future, or will attempt to facilitate the success of such an attack by preliminary blows struck in various parts of the world by her own forces or those of her axis partners.

As this is written, the latter alternative seems more probable. Large German forces have for some time been in complete control of Rumania, thereby prompting Britain to consider herself at war with that former ally. It is not clear to what extent German troops have already penetrated Bulgaria and southern Yugoslavia, but there seems to be no doubt that Germany is determined to reverse the decision in the Italo-Greek war. Perhaps she has come to this determination through the realization that, unless she moves quickly, Italy's complete collapse is imminent and, as a result, the possibility of a British invasion of the Italian peninsula might become a real possibility. The operation of British parachute troops in southern Italy provided a real basis for such a supposition.

Germany can certainly overcome the resistance of the Greeks if she is determined to do so. In fact, Athens may well feel that it can make the best possible terms before the German legions move to occupy the country. It will be another major tragedy in the history of our world if the heroic resistance of the Greeks is transformed into a defeat by a dictate from Berlin which requires settlement upon the terms prescribed by Mussolini. This will be a severe blow for the British, but it is absolutely impossible for them to furnish the Greeks with sufficient resources in men and materials to prevent the accomplishment of Germany's design. With the Germans in control of the entire Balkan peninsula, any pressure by the British to keep the Greeks from sur-

render will mean merely the futile sacrifice of thousands of lives and untold destruction from the war planes of the Reich.

The signing of a non-aggression accord between Bulgaria and Turkey ended the last possibility of a successful resistance to a German drive to the south. As this is written, the exact terms of the accord are not known and their revelation may somewhat change the Balkan picture. It is clear that the agreement between Sofia and Ankara must have been made with the acquiescence if not the approval of Moscow. It still would seem amazing if Russia permits, without protest, the occupation of Turkish territory by German forces. This move, however, is not immediately contemplated.

Germany's ultimate aim may well include more extensive operations than the mere subjection of Greece. The Reich may wish to overcome the recent British successes in North Africa. If so, she will have to attempt to negate General Wavell's brilliant victories, either by aerial operations from Greek bases, designed to cut the British off from their supply bases, or else by actual shipment of troops by land or sea in an attack upon Egypt and Suez.

This latter move would be extremely difficult, since it would require the successful passage of troops across a sea dominated by the British navy, or over many miles of highway or railroad through Asia Minor against the possible resistance of the Turks and certain resistance of British forces in Palestine and elsewhere. Because of this, it seems more probable that Germany will, for the present at least, merely harass British operations in North Africa by attacks from the air. This may not prove to be successful and it is extremely doubtful that Germany can pass from a victory in Greece to effective blows against the British North African forces.

The German air attacks upon Britain herself are again increasing in frequency and violence. One can still say, however, that Hitler will not risk a concentrated attempt at invasion of Britain unless he feels that success is sure. Every indication points to a lack of any such conviction and the probabilities are, therefore, that blows against Britain in other parts of the world will precede any such attempt.

Nevertheless, Britain stands guard ceaselessly against the threat of invasion and there is grave concern that Germany may attempt the occupation of Ireland in the immediate future. Such a move would vastly increase Germany's power of blockading Britain and thus shutting off vital supplies and overcoming the effect of American aid. It would also serve as an important preliminary step to the actual invasion of Britain herself. Were

the British to attempt to forestall this move by themselves occupying southern Ireland, it would seem certain that they would not only meet with resistance but that Germany would move at once to "protect Ireland" against a British invasion.

## By Pennington Haile

### The Battle of Africa

The British forces in Africa are now in control of a large part of Italian Libya and their compatriots are rapidly surrounding the Italian legions remaining in Ethiopia. Unless German aid to Italy can become very effective indeed, it is entirely possible that Italian forces will be ousted from Africa during the coming spring. While the effect of this on the ultimate course of the war may not be decisive, the immediate effect on Italian morale may be incalculable.

In the meantime, pressure by Germany and Italy upon General Franco continues. As this is written, German troops are marching over the French border into Spain "at the invitation of Foreign Minister Serrano," it is announced, "to relieve victims of the hurricane and fire that almost levelled Santander." Whether this is the beginning of an immediate Nazi movement through Spain toward Gibraltar or of a more gradual penetration remains to be seen.

### In the East

In Asia, as well as in Europe, every indication points to acceleration of the tempo of action. After a long period of relative quiescence, Japanese forces are apparently ready to take new and important action. Whether or not that action is actually attempted may still depend upon the attitude not only in London but in Washington.

At the moment, reports show that the Japanese naval forces in the Gulf of Siam have been materially increased. This move has been facilitated by the Japanese engendered war between Indo-China and Thai which ended in an agreement favorable to Tokyo's plans. Britain is strengthening her naval and land forces at Singapore and has sown a large mine field to block off approach from the northeast. At any moment a major engagement by land, sea, and air may occur at this key point in the Far East.

Should the Japanese overcome British resistance at Singapore, the way to the rich Dutch East Indies would be opened, but it is not at all certain that the Japanese can do so. It is probable that strong pressure would be exerted in Washington for full naval cooperation with Britain in meeting the threat of an all-out Japanese drive to the southward. Whether or not that pressure would be sufficient to take us into war with Japan is not certain.

*Copy into 4p 13 Frankfurter folder - 3841*  
*BF file personal*

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

March 15, 1941

Dear Mr. President:

It is a pity you do not know Arthur D. Hill of the Boston bar. Thanks to T.R., who sent me to him (Hill was one of his most devoted Bull Mooses) when I joined the Harvard Law School faculty, he became the closest and most delicious of my friends in Boston. The following, from a letter of his that has just come, will give you a sample of his quality:

"The old Yankees are working themselves up to a considerable state of zeal. The amount of knitting is large, substantial funds are being raised and sent, and there is a reasonable amount of talk. I think they are even getting a kick out of being loyal to F.D.R., it is so very disagreeable to them. On the other hand, your Irish Democratic friends are many of them in a state that with a less gifted and superior race one would describe as the sulks. I enclose herewith a clipping giving an account of a meeting of the Ancient Order of Hibernians. I have written Mr. Murphy for a full copy of his speech and if I get it I will send it to you. I am all against Judges being allowed to live on Olympian heights without knowledge of what is going on in their constituencies.

"By the way, I hope you are as pleased as I am with Woodbury's selection as the new Circuit Judge in your circuit. He is a first-rate fellow, and incidentally a friend of Sherman's as well as mine. He and Sherman are on the Board of an Episcopalian Church School which Sherman usually describes as his meeting of bishops and sons of bishops.

"Apropos of New Hampshire I wish I had time to write you a full description of the center of war feeling, Portsmouth, New Hampshire. That city has not been as prosperous since the war of 1812 and its inhabitants are confidently looking forward to getting a large proportion of the new \$7,000,000 asked for this morning. But I have got to get to work on several tangled matters, none of importance - but all taking time. However, as the white king said - "important - unimportant".

Faithfully yours,

*FF*

The President



PERSONALITIES at annual banquet of Ancient Order of Hibernians of Massachusetts caught last night at the Hotel Lenox by Herald Staff Artist Joseph Stern.

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## Irish Favoring Aid to England Fill Capt. Murphy with Shame

Capt. John Joseph Murphy, former assistant district attorney of Suffolk county, told members of the Ancient Order of Hibernians in Massachusetts last night that he was "ashamed of the Irish in America" who were in favor of lend-lease aid to Britain.

Murphy, principal speaker at the organization's annual St. Patrick's banquet at the Hotel Lenox, declared the "men and women, too, who are preaching the doctrine of forgive and forget the ancient wrongs are unworthy of their glorious heritages."

"I hold no brief for Hitler or Hitlerism," he said, "but I can find charity in my Irish-American heart for the oppressed German people and the oppressed people all over the earth. We, as Americans, must remember that British dignitaries, statesmen and industrialists that British wealth helped to finance Hitler and Hitlerism and that British munitions armed Hitler and Hitlerism."

"Today," he continued, "worn down by the incessant propaganda from across the sea, the Irish in America have become lackadaisical and listless. That is why I say that for the first time in my life I am ashamed of the Irish in America. We owe to this beloved land of op-

portunity the duty of protecting her—of protecting all enemies, both from within and from without."

Robert C. Donovan of Framingham, state president, was the toastmaster. Others at the head table were Joseph E. Kerrigan of Lawrence, national president; Miss Mary Kinella of Salem, national president of the auxiliary; Miss Margaret Looney of Chicopee, state president of the auxiliary; Judge John E. Fenton of Lawrence, past national president; Francis J. O'Brien of Lawrence, editor of the National Hibernian; Councilman Maurice Sullivan of Brighton; Miss Mary Curran, secretary of the state board, and Miss Helen Condrick, treasurer.

Others assisting included Miss Mary M. Doyle, past state president; Miss Mary Gleason, vice-president; Mrs. Helen O'Brien, Suffolk county auxiliary president; Mrs. Elizabeth Tierney, Middlesex county auxiliary president; Mrs. Mary Kelly, Essex county auxiliary president; Fred Coy's, state vice-president; Edward Ring, treasurer; Michael O'Connell, historian; P. Frank Egan, Suffolk county president; Hugh Caffrey, Plymouth county president, and John Donohue, Essex county president.

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~~Handwritten scribble~~ 3/6/41 MW

15-11-30 Street

March 4, 1941

Supreme Court of the United States  
Washington, D. C.

PSF

Frankfurter

Dear Frank:

Not even a Norris  
Amendment can make  
8 less than H + 4. And  
so today will live in  
history as the eighth birth-  
day of your Presidency,  
and, through that, of the  
birth of the renewed  
Republic. For there is  
not any doubt that  
history will see even  
more clearly than con-  
temporary historians  
already recognize, that

because you came to the  
headship of the nation,  
March 4, 1933 brought  
new courage and new  
hope to our people  
and you achieved  
such an ultimate ac-  
complishment of states-  
manship, not by any  
magic or miracle,  
but by proving anew  
what Lincoln told  
the people of Aiken's  
2500 years ago —  
that the secret of

Katharine is freedom, and the  
secret of freedom is a stout  
heart. To apply the principles  
of freedom to the complexities of  
modern society in the <sup>best</sup> and  
fast of your "charter," and the  
cause you are preserving it, as  
you have been preserving for  
eight years, that heart is hope and

216

Courage not only among  
the people of our  
own country, but  
the world over - in  
China and Canada,  
in Palestine and  
Persia, and not least  
among the millions  
helplessly writhing  
under the tyrant's  
heel.

I greet you with  
affection and gratitude,  
and may the Mercies of  
the world give you continued  
strength. <sup>Ever yours</sup> This <sup>is</sup> <sup>your</sup> <sup>friend</sup> <sup>and</sup> <sup>brother</sup>

*Frankfurter folder*  
*3-4/1*

March 10, 1941.

Dear Felix:-

That was certainly a grand letter you sent to me on March fourth. I was deeply touched by it and, as always, I am grateful for your friendship and counsel.

My best to you,

As ever yours,

Honorable Felix Frankfurter,  
1811 Thirtieth Street, N.W.,  
Washington, D. C.

full  
personal

~~Frankfurter~~ PSF D  
Frankfurter 1511-30 (hand)  
March 16 '41  
Supreme Court of the United States  
Washington, D. C.

Dear Frank:

I did not need  
the wireless to tell me  
that all England and  
Scotland and Wales  
would be listening  
in - Even tho your voice  
would not come to  
them till the early morn  
and in the caves, that  
are now the homes of  
so many of their free

people. Still less  
did anyone who  
knew them at all  
need to be told that  
your voice and words  
were to them as fresh  
water to parched  
throats, as food to  
the hungry. For them,  
as for all of us, the  
power of your speech  
derived from our  
own inner needs and

from the fact that your voice  
is the sign of humanity;  
a sign that, and the assurance  
that your peoples of our long  
was the expression of our de-  
terminations to a voice it.

But that your voice and  
action at this hour is there  
to leave you educated and

people to make <sup>219</sup>  
your purpose their,  
and by your almost  
uncanny wisdom  
imparted your  
insight to our con-  
glomerate popu-  
lation so as to  
unify their wide  
point of meeting  
the present effort  
possible. It was  
a noble speech - but  
more than that, an inspiring  
act of leadership for a free world.

270

Frankfurter

PSF

File personal

~~1511-30~~

1511-30 (hand)  
March 18 '41

Supreme Court of the United States  
Washington, D. C.

Bar Zaul:

1. My Brother continued to show uninterrupted pre-occupation with affairs outside the narrow confines of the law. He asked me how things, I thought, were going, and I replied, sans chit, that from all I heard I was cheered by the way supplies were moving to Britain, he replied

"Yes, but now it's necessary to work on the front - Central America,

the Orient, and the salient  
Labor situation at home.

I've never known such  
restlessness - and I have  
ample opportunity for  
hearing and seeing and  
reading kind holds true.

2. Yes - the dedication of  
the National Gallery has  
a most relevant way  
of proving that this  
world struggle is about,  
and your address con-  
veyed the significance of  
the struggle for freedom  
and advancing the things

of the spirit that alone, peace men  
above the land of pacifists, leaders  
well-fed or secure or care free and  
ever kind.

3. I'm very glad for the opening of  
to the referendum of the sea - it  
may need to await your vote. The  
good trip!

Love  
Ever yours

Supreme Court of the United States.

Memorandum.

April 3, 1941

See diary <sup>PSF</sup> Frankfurt

Re: — !

And I hope that  
you had done  
real sure & perfect  
work. Yes

file  
this mail

1511-3<sup>rd</sup> Floor

Office 314

Supreme Court of the United States  
Washington, D. C.

Dear Paul:

You may want to see  
his letters from Ham  
Quintony.

Welcome home! —

glad as I was that you  
went away. Your Saturday  
day speech had, I hope,  
an important by-product  
in making all sorts of  
people realize the im-  
portance for everyone  
to go, at least figuratively,

... : : :  
down to the sea in order  
to go down into one's  
soul, and not be stoun-  
ized by the daily grind  
of details. That speech  
had a fine simplicity  
and directness -  
the simplicity and  
eloquent directness of  
ultimate issues. And  
that quotation from  
Lincoln goes to the very  
heart of civilized society.

With fondest regards,  
Always, devotedly,

Frankfurter folder  
3-41

FOREIGN  AFFAIRS

AN AMERICAN QUARTERLY REVIEW

HAMILTON FISH ARMSTRONG  
EDITOR

48 EAST SIXTY-FIFTH STREET  
NEW YORK

CABLE ADDRESS: FORAFFAIRS, NEW YORK

March 28, 1941

private

Mr. Justice Felix Frankfurter  
1511 Thirtieth Street  
Washington, D. C.

Dear F. F.:

The Jugoslavs have come through handsomely, as well as we dared hope. I have been in constant touch with Fotitch, to whom a generous amount of the credit for what has happened must go. He has had splendid cooperation from the State Department, in particular from Sumner Welles. Indeed, I think the influence both of the Department and of the Yugoslav Legation has been about as intelligently directed vis-à-vis Belgrade as possible.

I have one specific suggestion, namely that when the President gets back to Washington, he should send for Fotitch for a personal talk. In the first place, it would be a natural way for the President to show his appreciation of Fotitch's intelligence and character. Secondly, it would not only reward Fotitch, who is definitely on our side, but would also further strengthen his influence at home, which is highly desirable. Thirdly, it would give the President a chance of sending a friendly word of encouragement and advice to the young King and his new ministers. This would have the advantage of keeping up the President's own influence in Belgrade and throughout the Balkans, which can be of continuing value both in this crisis and in the future. I have already spoken to you about the similarity between the role that the President is playing and Wilson's role in Eastern Europe and the Balkans in helping win the last war. I can't over-emphasize the importance of this consideration.

Yours ever sincerely,

*Hamilton Fish Armstrong*

P. S. If we could give Jugoslavia concrete help now under the lend-lease bill even in token amounts, the effect not in Jugoslavia alone, but in Turkey also, would be electric. Can't it be done at once, while the iron is hot? Jugoslav ships to carry planes, anti-tank guns, etc., are already in U. S. ports.

207

*file personal*  
~~Sup. Ct. 4511-30~~ folder 4545  
Sup. Ct. 4511-30  
April 8, 1941  
Supreme Court of the United States  
Washington, D. C. PSF  
Frankfurter.

Dear Paul:

Loring Christie was  
one of my oldest and  
closest friends. His  
personal life was very  
tragic. Now that he is  
gone, I should like you  
to know that your warm  
friendliness toward him  
and the comfort your  
generous message to  
him during his earlier  
illness brought him, here,

as he told me not once  
but many times, among  
the few, deep personal  
satisfactions of his  
life. Dr. Alfred Cohen,  
who had charge of him  
at the Rockefeller,  
told me that in all  
his long medical career  
he had never had a  
more gallant patient  
than Loring. It  
a sad day for me  
truly,  
Wm. G. W. G.

~~July 7~~ Frankfurter 4d. 10  
3-41

Supreme Court of the United States. PSF  
Memorandum.

April 15, 1941

Dear Miss

Re: from the  
chief of CBS in  
Europe, asking in -  
struction the President.

Ever  
Yours  
ST

FAST



# RCA

DIRECT



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UNITED STATES SUPREME COURTS

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MANY THANKS FOR SENDING ME THE BATTLE OF 1776 STOP YOUR FRIENDS

WINANT AND COHEN ARE DOING EVEN BETTER THAN YOU SUSPECT REGARDS

ED MURROW

*File personal*

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~~Justified~~

Frankfurter Folder  
PSF 3-41

Executive Order of the United States

THE WHITE HOUSE  
WASHINGTON

April 19, 1941

MEMORANDUM FOR  
JUSTICE FRANKFURTER

The President has asked me  
to return the enclosed letter to  
you. He was much interested in it.

M. M. LeHAND  
Private Secretary

Enclosure

Let. to the Justice 3/24/41 from Lord  
Wright, Durley House, Burbage, Nr.  
Marlborough, Wilts., England



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~~Supreme Court~~ PSF <sup>Franklin D. Roosevelt</sup> 1511-30 Street

Supreme Court of the United States  
Washington, D. C.

5 May 1941

File  
Personnel

Dear Frank:

Your Wilson speech  
was a gem of a Greek  
chorus - or, shall I  
say, an admirable  
curtain-raiser. It  
was more like the  
finest example of  
the Greek chorus, in  
that it told in  
pointed but general

terms the plot of  
the play to follow. For  
from what you said  
at Staunton, I infer  
that you will speak  
soon and tell the  
plot so that not  
even the Sabers -  
rather in factum  
(whether German or  
Italian or Sapa-  
lice) will possibly  
misunderstand.

"And the labours of the hands  
shall call him blessed"

It was least-fitting to  
have heard said - you the  
other morning.

Your devoted  
son  
W. W.

~~July 1941~~

1571-30 <sup>Final</sup>

over 3  
quarters  
filled

May 21 '41

Supreme Court of the United States

Washington, D. C.

ASF

Frankfurter

Dear Harry -

The President sees  
so many cry-babies,  
he may be relieved for  
a passing minute  
to look at two of  
our little English  
children. Yours ever

RF

Please return photos.



227

file  
personal

~~Supreme Court~~  
P. Frankfurter 511 - So. Inc.  
PSF  
Supreme Court of the United States  
Washington, D. C.

Sunday  
Number 3  
[5-25-41] 7

Dear Paul:

Yesterday I ventured to  
express my deep conviction  
that the backed-up energy  
of our people's will and  
feeling can be effectively  
released and directed  
only by your concrete  
guidance. I now have seen  
the paragraphs that Stinson  
has sent to you today,  
and you will let me say  
how strongly I hope that  
some such concrete state-  
ment in your address will  
convince itself to you.



228

~~1511-30 Street~~ 1511-30 Street  
P. S. F. May 28, 1941  
Supreme Court of the United States  
Washington, D. C.

Dear Randall:

Even history has accelerated its tempo and projected its sights to the present. The Gibbon of the future will confer the judgment on each night's speech and not recede it. I have not known greater uncertainty in our life-time. Straws have been blown any way by the winds gathered from all over

the country, and the  
response was every-  
where the same. That  
sense of Election and  
Lush when great deeds  
have been resolved  
and the purpose to  
pursue, seen uttered  
with an impressive  
worth of the audacity  
of the sense - its aw-  
fulness, but also its  
majesty. For it is not  
less than that our  
demeanor to fulfill

his dream of freedom: it only  
serves to show of beauty of the  
heart's own means that are  
animal, capable of moral  
glorious but not foregoing it.

They are being journey - that  
they only and are in the world.

Walter Scott,

*The Baltimore Sun*

WEDNESDAY MORNING, MAY 28, 1941

For All The World To See



*PSF: Frankfurter  
File personal folder*

THE WHITE HOUSE  
WASHINGTON

6-4-41

MEMORANDUM FOR THE PRESIDENT:

Justice Frankfurter will  
not leave before June fourteenth.

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

AVRINGTON  
THE WHITE HOUSE

PA:

Call up Felix and let me  
know when he is going away. I  
want to see him before he leaves.

F.D.R.

~~James G. Thompson~~ 4/13  
F. Frankfurter  
Supreme Court of the United States.

Memorandum.

BF  
1941

Dear King

Of the President  
has not seen his  
speech by Bishop  
Hulley, he will  
want to, especially  
the portions I have  
indicated.

Respectfully,  
FF

Handwritten notes on a folded piece of paper, including the number 229 and some illegible scribbles.

*Frankfurter*

THE WHITE HOUSE  
WASHINGTON

June 10, 1941.

MEMORANDUM FOR

F. F.

This really is excellent.  
Thank you for letting me see it.

F. D. R.

230

file  
removed

~~July 20~~

BF Frankfort  
June 11, 1961

Supreme Court of the United States  
Washington, D. C.

Dear Frank:

Says Marion "what a  
lot he sees where other  
people are blind, what a  
lot he feels where other  
people are without what  
they call "evidence" ". And  
so you must have seen  
and felt how you made  
me feel regarding your  
visit last Monday. Now,  
your phone conference it  
all out I am deeply

Happy.

I wish you could have been the fly on the wall during my talks with Isaiah, Steve & Bob <sup>(who told me etc.)</sup> I'll tell you since your phone this morning. It makes me know that your decision is <sup>you</sup> certainly right, and history will vindicate <sup>you</sup> as will the world. Like the best things in the world, the by-products will be most important.

I am as sure as I am of anything that you will be an early advocate of the existence of the space services of the nation - and, after we do that our conflict of civil air laws regarding will be handled in favor of us. We are precisely because we have our aerospace resources will be the several strength and power of right and spiritual outlook and leadership of spirit. <sup>and Steve & Bob</sup>

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~~Tracy~~ PSF <sup>Frankfurter</sup> ~~Keller~~ <sup>Addes</sup>

Supreme Court of the United States  
Washington, D. C.

[6-11-47]

Dear Hank:

After leaving you  
I felt as tho I had champagne,  
and damn good champagne,  
for lunch. It was a great  
joy to see you so fit -  
your energy of mind  
and spirit, and, above  
all, the serenity of  
your soul. Only a man  
has come to know  
with himself, and find  
nothing for himself and

to people, ever achieves  
such security. And so,  
a deep inner peace  
and confidence came  
also to me.

Guidance are here,  
and firmness ahead.  
You, I know, are ready  
for them - and how  
fortunate the Country  
that you were called  
to its guidance.

Devotedly yours  
W

~~July 15-30 June~~  
16-15-41  
Monday

Supreme Court of the United States  
Washington, D. C.

Full  
personal

Dear Frank:

Of course my mind  
these days is absorbed with  
only one subject - the world  
situation and our dear  
country. And some of my  
thinking attempts on getting  
on paper - and getting  
to you. I cannot help,  
therefore, reminding you that  
I have written in the en-  
closed memorandum,  
not because it says any-  
thing that you have not  
thought of, and probably  
long ago. I venture

to bother you with it, be-  
cause it sometimes is  
not without value to  
see one's own thoughts  
on paper through another  
man's language.

Anyhow - here it is,  
without further apology.

God may be good  
hold keep you for  
His special love!

Affectionately,  
Ruth

555  
PSF Frankfurter Folder

1. The assumption of this memorandum is that action affecting any of the Atlantic islands fits much more into the conception of defense made explicit in the speech of May 27th than action on any European or African mainland. Public opinion has been educated readily to understand protective action affecting such non-belligerent island territories.

2. The occupation of Iceland and its development as an American base for transit purposes both by sea and by air is the ideal first move. It is ostentatious yet innocent in that it does not involve any immediate risk of hostilities.

3. The Azores and Cape Verde islands would be a natural next step. But this requires an invitation from Portugal and perhaps an active movement into Spain. Thus it is problematical how soon such a move can become effective.

4. Meanwhile there is another Atlantic island of the greatest possible importance from every aspect, military, psychological and political, namely, Ireland. The safeguarding of Ireland as a defensive measure against Nazi aggression by collaborative arrangement between Ireland and the United States would be appealing to the needs of De Valera, be responsive to our political climate and afford these signal practical advantages:

(a) It would be a case not of relieving the British but of providing a vitally necessary safeguard which they are precluded from providing themselves.

(b) The chance of a German invasion of Ireland in the first instance are surely greater than that of a direct invasion of England. It is not easy to see what effective opposition Ireland could now put up. The protection of Ireland is thus an overwhelmingly urgent need.

(c) Not only would the protection of Ireland carry with it the use of bases denied to the British navy but it would provide an ideal depot for the American navy and air force for any subsequent deployment. As in the case of Iceland, except more so, it would advance enormously the effective defense of the Atlantic and its approaches without implying the risk of hostility.

5. That such a coincident protection both of Ireland and of this country, would touch the imagination and bring comfort to some American groups otherwise troubled, cannot be doubted. And for these somewhat kindred reasons it would surely appeal to De Valera:

(a) There can be no doubt that he is anxious about the risks that Ireland is running and its inadequacy in defense. In no other direction is it politically possible for him to look for help. What is proposed would be collaboration of one non-belligerent with another non-belligerent for purely defensive purposes, and mutually defensive.

(b) It is common knowledge that Ireland is facing acute and increasing economic difficulties which would be greatly eased by the execution of the present proposal. For it would involve a flow of necessary supplies and also provide a local demand for Ireland's own surplus produce.

(c) The United States by such active collaboration would be placed in a peculiarly effective position for a final and satisfactory solution of partition and of the whole Irish problem.

~~Telegram~~ BF File Frankfurter  
personnel

TELEGRAM

The White House  
Washington

40wuki 46 D.L. 7:22 p.m.

CAMBRIDGE, MASS., June 19, 1941

THE PRESIDENT:

Of course your absence was a sorrow otherwise it went off admirably. Pa faced the Harvard crowd almost as calmly as he would have the enemy but I am under painful duty to report that he disobeyed his Commander in Chief's order regarding old Virginny.

Affectionately,

Felix Frankfurter.

NEW MILFORD, Conn.

~~July 20~~

Supreme Court of the United States

Memorandum.

PSF

June 25, 1941

file

Mr. Missy Frankfurter

You might find this  
among the President's  
bed-time stories!

And I hope the days  
will be better and better  
for you. Marion & I  
send you our loving  
good wishes. See you  
soon.

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THE BOSTON DAILY GLOBE—WEDNESDAY, JUNE 18, 1941

# No Ersatz for Morality, Says Justice Frankfurter!

## Full Text of Radcliffe Commencement Address

The address of Justice Felix Frankfurter of the United States Supreme Court, speaker at the Commencement exercises of Radcliffe College this morning at Sanders Theatre, Cambridge, follows:

"College Commencements have long been more than local festivities touching only on the interests of local college communities. They have become a national occasion to celebrate and fortify the national spirit. In the recent past this great event in the lives of young men and young women was a symbol of hope in youth. The generations mingled to take heart, one with another, to promote the promises that lay ahead. But never before, I believe, have college Commencements been so appropriate to the times, nor so symbolic of all that we hold dear. For events compel us to reconsider the significance of our history.

"Circumstances which even the most strict-like can no longer disregard, challenge the worth of our past, the validity of the faith that founded this nation, and our power to vindicate it. This issue concerns the very basis of our history and the underpinning of our civilization. Of this view of our life and of the means for its pursuit an institution like Radcliffe is the most emphatic expression. For our colleges and universities are the distinctive product of what we cherish as western civilization. They shelter and bring to fruit the purposes which must again be the ideals and the pursuit of the whole world if civilization is to maintain itself. The human spirit cannot here have that security and serenity essential to its dignity and achievement while the soul of man is everywhere else enclosed.

Thomas Jefferson understood this fully. And the epitaph which Jefferson wrote for himself cannot be recalled too often. Here was a man who held all the high offices of state. Yet when he came to commend himself to posterity, this is how he wished to be remembered:

"Here was buried Thomas Jefferson, Author of the Declaration of American Independence, Of the Statute of Virginia for Religious Freedom, And Father of the University of Virginia."

In that epitaph Jefferson made clear the relation of Radcliffe Col-

lege and every other college and university in the land to the awful issue that now confronts the world. Man is without dignity unless he has freedom. And there cannot be freedom without the right to pursue truth. The university which Jefferson founded in Virginia and the university which the builders of Massachusetts founded more than 200 years before, almost contemporaneously with the establishment of the colony, and all the other institutions of learning throughout the country are the special instruments for the unremitting pursuit of truth. You therefore represent to a peculiar degree the trusteeship of civilization.

"Just as colleges as we know them are at once the fruit and the necessary condition of a civilized society, so democracy is its indispensable political expression. Democracy is neither a mystical abstraction nor a mechanical gadget. In the long course of human experience it has proven itself the only form of social arrangement which adequately respects, and by so doing helps to unfold the richness of human diversity. All the devices of political machinery—votes and parties and parliaments—are merely instruments to enable men to live with one another, with full respect for one another, under conditions eliciting the maximum gifts of each for the simplest enjoyment of all.

"Colleges and universities are the recognized guardians of the life of reason. Democracy furnishes the political framework within which alone reason can thrive most imaginatively on the widest scale—least hampered, by the accidents of personal anecdotes and most regarded of the intrinsic qualities in man. Nature herself is democratic in that she plants gifts and graces in ways that defy the deavings of all of man's artifices. Therefore, we must have political institutions which allow these mysterious gifts and graces their fullest outlet.

"Until recently men were either too shy or too cynical to talk about

these great simple themes. The pace of material development not only preoccupied the energies of men; it overawed their thought. The deficiencies of democracy became a favorite jibe of the worldly-wise. And thus the faith that gave us birth and has maintained us was subtly undermined. Even those from whom better things were to be expected erected impatience with Congress into a political philosophy. A certain university president in the Babylonian twenties added his voice to the chorus urging the elimination of politics and gleefully reported that his students were turning away from sociological studies.

### Civilization Our Business

"It seemed strange then and it seems appalling now that men should forget that politics is the free exchange of opinion regarding the wisest policy for the life of a society, and as such is the essence of a free people. These men forgot that in the last analysis we are governed either through talk or through force. Now at least they must realize that a dictatorship means precisely the prohibition of politics. So completely were the governing minds of America under the powerful illusions of materialism during this era that a President of the United States could say that 'the business of America is business' and believe he was uttering a truism.

"The business of America is civilization. Our professed realists had lost sight of the wisdom of the most hard-headed political realist of the 19th Century. It was Bismarck who gave currency to the term 'imponderable' for he, however unsympathetically, was alive to those spiritual forces of man which are the ultimate forces of an enduring society. The things not made by hand nor seen by eye are the things that rule. Beauty and truth, reason and justice—these unattainable but ever to be striven for longings of men are now seen to be man's most indispensable needs. By these needs the most gifted and the humblest are bound into a common brotherhood. I am unashamed to speak of these longings of mind and heart today. They are the only themes worthy of your concern.

"These needs are so immediate that we take their satisfaction for granted until we are threatened with their denial. And the imagination is so narrow that too many of us are blind to threats that are wrapped in euphemisms. To acclaim the worth of democracy is

not to deny the inadequacies and injustices of our society. It is merely to insist that in striving for the better we should not discard the good. The ultimate justification of democracy is that it affords the only opportunity for continuous social improvement.

"What we have already achieved, what is ours to preserve and to defend, has been set out in words by one of the finest spirits of our time. It is the utterance of a great historian who has lived and not merely written about those aspirations of men which have found immortal expression in the Declaration of Independence, the French Rights of Man, and the Gettysburg Address.

"What I am about to read was meant only for my eyes, but I am taking the liberty without his permission to read from a letter written by someone you all know, who, in the autumn of his life became an American citizen of his own free choice.

"There is in this country," he wrote, "a wider area of generosity than in any other country—at least in Europe. It is this feeling that one is at home here that conquers you little by little. And one fine day you feel that you are no longer an exile but a citizen in your own country. When I took my oath I felt that really I was performing a grand function. I was throwing away not my intellectual and moral but my juristic past. I threw it away without any regret. The Ethiopian war, the rape of Albania, the Spanish crime, and this last idiotic crime, had really broken my connection with sovereigns, potentates, and all those ugly things which are enumerated in the formula of the oath. It is a wonderful formula. Your pledges are only juridical and political. You are asked to sever your connection with the government of your former country, not with the people and the civilization of your former country. And you are asked to give allegiance to the Constitution of your adopted country, that is, to an ideal of life.

"Thus I took my oath with a joyous heart, and I am sure I will keep it with the whole of my heart as long as I am alive."

### Freedom Needs Effort

"Democracy, so conceived as the means by which man can best find his own good, is a subject for interchange of views and humble searching of hearts. The old convention of utilizing an occasion like this for uttering homilies and pronouncements of policy now seems as impertinent as it was futile. A Commencement is really a common confession. But the old should no more abdicate their experience than the young their ardor. Merely because you are young, you are not necessarily wise. Nor is Miss Comstock, because she is older, necessarily un-understanding.

"We are enlisted, old and young, in a common enterprise—the bold experiment of freedom. It involves the most exacting collaborative effort. It demands the exercise of reason on the largest scale and self-discipline of the highest order. For it places ultimate faith for the achievement of the common good in the responsibility of the individual.

"We are thus engaged in the most difficult of all arts, the art of living together in a gracious society. For this it is not enough to be literate; it is not even enough to be literary.

# FORD REASONS CAN'T BE BEAT!

...himself to posterity, this is  
 ...to be remembered:  
 ...Jefferson  
 ...of the University of Virginia  
 ...of the University of Virginia  
 ...Jefferson made  
 ...the relation of Radcliffe Col-

Nature herself is democratic in that  
 she plants gifts and graces in ways  
 that defy the deavings of all of  
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 ual.  
 "We are thus engaged in the most  
 difficult of all democratic activity. You  
 together in this hour are the

...of the days preceding the Civil  
 War when the smallest men of his  
 father's circle indulged in "tall talk"  
 and averted their minds from grim  
 reality. The issues presented by  
 slavery could not be settled by  
 denying the rights of man. They  
 cannot make the most ancient of  
 tyrannies into a "new order." While  
 mankind is literate as never before,  
 the environment for reason is least  
 congenial.

"Ours is a civilization of hubbub  
 where raucous voices drown out  
 the still, small voice of reason. We  
 want to get rich quick morally and  
 intellectually. We resort to short  
 cuts and easy ways. But there is  
 no short cut to reason, no Ersatz for  
 morality. The mechanical triumphs  
 of the machine age cannot be trans-  
 ferred in the workings of democ-  
 racy. All evasions of hard thinking  
 are self-defeating.

"One of the most paralyzing evo-  
 sions of thought is what Lincoln  
 called "pernicious abstractions."  
 Post-war teaching greatly suffered  
 from them, and to them much of our  
 recent bewilderment is attributable.  
 This is not the occasion for didactic  
 exposition. An example or two  
 must suffice.

"One of the most current of these  
 evasions of thought is that 'war  
 never settles anything.' The Civil  
 War settled slavery. This war will  
 settle the quality of your lives and  
 your children's lives. It simply is  
 not true that war never settles any-  
 thing. I respect the convictions of a  
 conscientious objector to war and I  
 believe I understand the philosophy  
 underlying Gandhi's nonresistance.  
 But the relentless choice events may  
 force on every individual cannot be  
 met by such a fair-sounding perni-  
 cious abstractions as that 'war never  
 settles anything.'

**Confluence of Peoples**

"Another favorite topic for the  
 mind is the claim that a country at  
 war is already under dictatorship.  
 Democracy in this country has ex-  
 panded despite four wars. And only  
 those unfamiliar with what has  
 taken place in Great Britain since  
 September, 1939, will deny that Eng-  
 land is more democratic today than  
 she has ever been. By that I mean  
 very specifically that her present  
 government is more responsive to  
 the common will of her people, al-  
 though to be sure that will has im-  
 posed self-restraints not required in  
 times of peace.

"I recommend to any doubter of the  
 alertness of British democracy a  
 reading of the debates in the House  
 of Commons since this war began.  
 What is more heartening, and to what  
 the enemy at the gates, than to find  
 the government proposing measures  
 for the public security and, after free  
 discussion, to have the representa-  
 tives of the people rejecting and "choc-  
 olating" them in the interest of the  
 "liberty of the subject."

"Life is an act of faith. What  
 ever destiny awaits you, the ulti-  
 mate question for each is to decide  
 to what unseen powers and to what  
 dimly defined ends we dedicate our  
 lives. The United States has a spe-  
 cial destiny because a unique fact  
 gives it moral cohesion. This is the  
 only country without a racially  
 homogeneous population rooted to a  
 particular soil. We represent a con-  
 fluence of peoples who derive their  
 bond of union from their common,  
 intrinsic human qualities. This is  
 your heritage. And in the con-  
 fidence that you will maintain it, this  
 nation was founded.

"In days of trial and tribulation  
 we go for sustenance to those few  
 whose compassionate hearts and  
 courageous minds lighted the way  
 through past ordeals. Thus it is that  
 Lincoln today lives perhaps more  
 vividly than when he walked among  
 men. A great man's wisdom is al-  
 ways con-  
 ting the Con-  
 States on Dec.  
 immediately  
 problems of al-  
 of life which  
 as just as reli-  
 freedom that  
 world. Families  
 may be. I mak-  
 ing you Gods  
 "The dogma  
 are inadequate  
 present. The o-  
 with difficulty  
 with the occa-  
 now, so we m-  
 act anew. We  
 ourselves, and  
 our country.  
 "Fellow-cit-  
 scape histor-  
 significance or  
 spare one or  
 any trial thou-  
 will light us do-  
 mestic to the  
 We say we are  
 world will not  
 this. We, even  
 power and bear  
 in giving freed-  
 assure freedom  
 erable alike in  
 what we prefer  
 we or merely  
 hope of earth."

# FORD REASONS WHY FORD



**IT A FORD!**

See and drive the present Ford and you'll find lots of good reasons to make it your next car. Here are 5 of the most outstanding. Take a moment now to read them. Then go to your Ford dealer and see if the finest Ford car ever built isn't *your* best buy.

## 1 • 90 SMOOTH HORSEPOWER!

Out on the open road you'll appreciate the smooth response of the only V-8 engine ever put in a low-priced car.



## 2 • MORE ROOMINESS!

The Ford car out-measures all others in the low-price field in actual passenger room.



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## 3 • NEW STYLING • NEW BEAUTY!

With new sweeping lines, Ford is one of the few cars, at any price that's really new in styling, this year!



## 4 • BRAND-NEW RIDE!

The soft, level ride of this year's Ford is a wholly new experience for buyers of low-priced cars!



## 5 • EXTRA VALUE!

Never before has Ford extra quality shown so clearly. Mechanically excellent throughout, the car is a standout at its price.



PSF Franklin

*July 13*  
*Justy Note*  
**BF** Frankfurter  
3-41

July 25, 1941.

Dear Felix:

Just a line dictated before I leave for Hyde Park. I am delighted you approved of the Campello conference. A little bird told me that you had remarked you never had such hard work on such a skimpy diet in your life! Don't forget the range in the kitchen was built for a family of eight and not a family of forty. Come and see us very soon and I will give you some caviar and cocktails to make up for it.

If somebody kidnaps Wheeler and shanghai's him on board an outgoing steamer for the Congo, can a habeas corpus follow him thither? You need not answer, if you don't want to because it would never get as far as the Supreme Court. Wheeler or I would be dead, first!

As ever,

F.D.R.

Honorable Felix Frankfurter,  
New Milford,  
Connecticut.

rdr/dj

(Dictated but not signed)

New Milford, Conn

19 July 1941

Supreme Court of the United States  
Washington, D. C.

Dear Friend:

I want to add to my pleasures at Campobello by telling you a few words about them.

And my pleasures were in any - way by introduced by that wonderful scenic ferry boat. That might be called an elegant Commencer!

In the appropriate vernacular of your students'

colony, your Mother gave  
me the biggest "kick". She  
had improved so enormous-  
ly from the time I last  
saw <sup>her</sup> a short sketch, at  
Hyde Park. What extra-  
ordinary resilience for  
her years. We really had  
a gay time - at least  
she gave me one. I wish  
I had known her fifty  
years ago, or rather sixty  
years ago. In her twenties  
she must have been a  
real menace to men!

Your friends will have told you that  
I said Lot Love has said quite  
It was a most imaginative thing to have  
your name on the Expedition. It's  
just the right thing for these - and is  
an old hand with young men (though  
not, I think, with young women!) I  
can assure you that they are a funny  
silly group of kids, and you  
must come to it.

Then there was <sup>235</sup> doubt  
That is an expression of  
which you and the country  
should feel deeply proud.  
It is a stirring achievement.  
I know enough  
about facts to feel sure  
that those leaders - some  
700 of them - are happy  
because they are effec-  
tively functioning.

It was a joy to see Lincoln  
& his wife. He has grown with-  
out a shadow. He speaks exceed-  
ingly well - just to the right pro-  
portion and emphasis. He was ad-  
mirable, as I told Harlan,

Supreme Court of the United States  
Washington, D. C.

in substance & form. That  
led has real stuff in  
him.

Iceland turned out as  
you had a right to sus-  
pect it would -  
real, pervasive support &  
approval from the country,  
and discomfiture for  
the enemy, at home &  
abroad. I feel it deep-  
ly in my bones that  
we have entered a new



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~~July 24~~  
PSF Frankfurter J  
192 Brant St.  
Chicago Ill  
[1947]

Dear Mr. President,

This tells me  
that you are concerned for  
my disappointment about  
the trip abroad, and  
write in haste to say

With all good wishes  
for your own eventual  
holiday.

Affectionately yours,  
Chairman Frankfurter

That I am much touched  
that you should have it  
on your mind, and to  
beg you not to think of  
it again. I am a  
stout-hearted gal, and  
like most gals never  
better than in an  
emergency.

file  
personal

PSF Frankfurter  
New York, N.Y.

August 1, 1941

Supreme Court of the United States  
Washington, D. C.

Dear Paul:

On my return from Campobello I was greeted by Marion with "Heaven! How many pounds have you put on. Did you do nothing up there except eat - I thought you went to feed their minds and not your stomach!" I shall not say your amorous little bid die was wholly unavailing - but I did count on that bird also having a generous humor. They not only had plenty food-

it must be a very flexible  
range - they even had a  
dietician! And you and  
I are not addicted to  
merely wholesome food!!

Did you also hear from  
your little bird that  
Dr. Cohen and I took up  
two bottles of Bellows'  
Club Special - of course  
for medical purposes -  
which, with Susan's  
able help, your Mother  
served us at lunch. So  
you see I wasn't starving!

The tide seems to be turning all  
in the right direction. That a good  
batch of ideas to last these days -  
you in plastic surgery, Harry in  
Horseback, the girls - Joan & Margaret,  
the Russ - Jessi's last Tom Courauly;  
vacations to Foreign, the Carlin's class -  
Monday, the Starlight, the land affair  
next, the Walter Board!! Oh - I see  
it is very good that the train stops!

moving powerfully and  
right.

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As for Burp Wheeler -  
he needs the medicine  
you used to administer  
to poor Charlie Tuttle &  
Oggie Miller. Eat  
with dry salt beef (not  
plus food, long rope.

I dare to think  
that the Nazis may  
be done in before the  
winter of '42-'43 is  
well be over.

Marion & ours are in  
affectionate regards.  
We send

BT

~~Frankfurt~~ Frankfurt Sp. 13

PSF

1511 THIRTIETH STREET

Aug 13 11  
PS  
Thank you  
very much.

Dear Mr. President,

I am sending you the  
enclosed letter because Felix  
thought you might like to see  
it. I might add that the  
writer lost his last name in the  
last war, and has a truly son

By w. e. l. e. y. e. g. e. 1911

With all good wishes,

Ever affectionately,

John W. Fitzgerald

Sunday

11 POWELL STREET  
BROOKLINE, MASSACHUSETTS

Marion my dear.

I waste you the night before the Terrible happenings to Holland, Belgium & Luxembourg. And mailed off my letter with only a glance at the unbelievable headlines of the following morning.

But since then, as the horror, atrocity & cowardice have been unfolded by newspaper & by radio I have been left as shaken & dumb as all of us who have not had the

11 FOWELL STREET  
BROOKLINE, MASSACHUSETTS

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wit to read the handwriting on  
the wall, or who have deluded them-  
selves into believing that reason  
might prevail over fury. I  
never thought I should reach,  
after the last war, the point  
of view that America should  
take up arms short of invasion.  
But I think that that is  
the realization we have all  
been shaken into at last.

I listened to the President's  
radio address on Friday Night  
or was much impressed by the  
quality of his voice, thoughtful  
or saddened.

Love,  
Grace

file  
personal

July File P5F Frankfurt  
New York, Conn.

August 18, 1941

Supreme Court of the United States  
Washington, D. C.

Dear Frank:

Not even Court and Mis-  
use can rob some prayers  
of their noble meaning. There-  
fore regard for the Counselors  
one today that somewhere in  
the Atlantic you did make  
history for the world. God  
like all the great historic  
events, it wasn't what was  
said or done that defined  
the scope of the achievement.  
It's always the forces - the  
unpalpable the spiritual  
forces, the hopes, the

purpose, the dreams and  
the endeavors - that are  
released that matter.

And so, all that is im-  
plied in the fact, <sup>that</sup> you  
and Churchill met, in  
the circumstances under  
which, and the aims for  
which, you met that is  
the vital achievement  
from which all else will  
flow. "We live by symbols,"  
as we cannot too often  
recall. And you too,  
in that ocean, freed from

all the limiting accommodations & things  
journalistic, in the setting of the  
Sunday School, give meaning to the  
conflict between sailing's peace and  
war with the challenge, and give  
promise, more powerful and binding  
than any formal treaty could, that  
sailing's trust has claims and resources  
that history will not be able to overcome  
because it will find the force and will

and the free spirit of man <sup>237</sup>  
are more powerful than  
force and will alone.

It was all grandly  
conceived and finely  
executed. All those  
tattlers of press and pro-  
fessors and "release" and  
what not, are the  
delicest trivia. The  
deed and the spirit  
and the vivification of a  
common human fraternity  
in the hearts of men will  
endure - and steel  
will and kindle actions  
toward the goal of ridding the  
world of its horrors. Affectionately yours  
W. J.

File  
Journal

~~July 1944~~ Frankfurter  
vs. ~~Hofstadter~~ <sup>and</sup> ~~Case~~  
August 25, 1944  
PSF

Supreme Court of the United States  
Washington, D. C.

Dear Frank:

I am very glad that  
you will speak on Labor  
Day. The country needs  
your voice again.

The enclosed fees and  
stamps settled up within  
me. I am sorry to  
send them because  
you have a waste-basket  
habit. Ever devotedly,  
FT

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

In any case, whether in private industry or in government, to take advantage of the grave national emergency in order to lower the standards of living of any portion of our people or to make inroads on those rights of free association that have so largely made possible such civilized standards, is to play, however unwittingly but forcefully, into the hands of the enemies of democracy. And for those who toil with their hands, or for those who lead them, to jeopardize national

2.

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

security by failing to utilize  
orderly and effective means  
for asserting their claims  
or pressing their grievances  
without interruption of the  
processes of defense production,  
is to put in peril all those  
free institutions on which  
rest the very existence of our  
Bill of Rights, including  
the right of free association,  
and the means for achieving  
progressive betterment. Hitler  
has said the present conflict  
is one between "two worlds" —  
his and ours. He is absolutely

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3

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

right. Shall it be his world  
or ours, to the awful  
issue. Consciously or un-  
consciously to help his victory  
or to hinder its defeat, it  
to promote a world of  
human slavery.

~~File~~  
R. J. [unclear]  
Supreme Court of the United States  
Washington, D. C.

Frankfurter  
Folder

PSF

Sept. 5, 1941

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

Dear Grace:

These two enclosures may  
interest the President - I'll say  
anecdotal kind - if, by chance,  
he has not already seen them.

The President of course knows  
both of Laurence's age, but you  
may not know that that ad-  
mirable letter was written by a  
man in his 92<sup>nd</sup> year! That's  
the way to grow old.

Yours very cordially  
Felix Frankfurter -

# THE MAIL BAG

## Bishop Lawrence To a Soldier

Bishop William Lawrence of Boston wrote the following letter on Aug. 15 to a young friend, a private in the army, who had asked him for his opinion on the causes of the supposed decline in the morale of the troops. The Herald is publishing the letter with the permission of the Bishop.

My dear \_\_\_\_\_

Your letter of a few weeks ago has been waiting for an answer to your question. "I should like it very much if you would give me an equally frank opinion of your own." You have a right to it although I really do not think as I have not been a soldier, that I have much right to an opinion, and very little right to advise a soldier. However, I have lived more years than most and have passed through three wars, and this is the fourth, and have thus gathered some knowledge.

The first thought that comes to me is this. Democracy, thank God, is not made for war, or for prestige in war. Hence, as compared with autocracy, democracy at the first is at immense disadvantage. It is unready, and it takes time, strength, brains, money and patience to get ready. But, given time, democracy can beat autocracy in war, man for man, because a man educated in freedom has more intelligence, individualism, initiative and real fighting power than the man who through a life of military experience has been under orders, is not obliged to think and has sharp limitations to his growth and power.

Hence, in the early part of a war, the soldiers of a democracy are liable to become critical, disoriented and restless; to "tear the hooks" on to the officers, the politicians and the general inefficiency. I have seen this in each war. To go further back, Valley Forge, Washington and the Continental Congress are familiar to every American school-boy.

In the last "Atlantic Monthly" is an account of the city of Washington and the Northern Army in 1800. I was there when a boy, and I know. The stupidity, slackness, political influence, crankiness and general confusion, there is nothing to compare with it.

While watching a dress parade of a Massachusetts regiment just outside Boston, my father said to me "Watch Colonel \_\_\_\_\_ as he is being drilled." Sure enough, before the regiment the Colonel ordered \_\_\_\_\_ to get his sword in the scabbard and \_\_\_\_\_ would not do it, he would go and the

This oversized item has been  
filmed in sections

...in the early part of a war...  
...the general indignity. I have seen...  
...in the last "Atlantic Monthly" is...  
...the account of the city of Washing-  
...the and the British Army in 1800...  
...I was there when they and I...  
...know, the solemn, solemn, pro-  
...tical influence, drunkenness and...  
...general indignity, there is nothing...  
...to be done. I think a large parade of...  
...a demonstration, which is being...  
...the cause, the father said to me...  
...of the... in a...  
...there enough. Before the...  
...of the... the General attempted...  
...the... in the... of the...

...through political indignity, he...  
...reached by command by...  
...In the first two years of the Civil...  
...War, general after general was killed...  
...and thousands of lives were sacri-  
...ficed, before Grant and Sherman...  
...were discovered. In the Spanish...  
...war, through ignorance and neglect...  
...diseases swept through the army...  
...At Montauk Point on Long Island...  
...to which the sick were brought...  
...there was awful carnage of disease...  
...and death.

...In the World War, I was chair-  
...man of the chaplains and army...  
...committees of our church and vice-  
...chairman of the commission of all...  
...the churches. We came up, again...  
...and again, against the conservatism...  
...of the higher officers. The Secre-  
...tary of War, Baker, was help-  
...less, the chief of staff stubborn and the...  
...whole army suffered until, after...  
...months, younger men were found...  
...and took command. Hence, I think...  
...that we all may assume that in this...  
...tremendous adjustment, greater and...  
...sharper than any nation has had...  
...in history, there will be criticism...  
...discontent, desertions and perhaps...  
...as in the Civil War, dangerous...  
...riots.

...The immediate question is, what...  
...is there to be done about it? Of...  
...course it is up to the whole people...  
...to give support to every leader...  
...congressman and officer in supply-  
...ing what is today badly lacking in...  
...every camp. While there is ineffi-  
...ciency, stupidity and perhaps dis-  
...honesty, there has been a marvelous...  
...work done in these last few months...  
...and more is being done each week.

...Apart from unpreparedness, there is...  
...the fact that we are not yet at war...  
...nor in the fight; and that situation...  
...stands and may stand for months...  
...We have not got the stuff to fight...  
...with. What, then, is the soldier to...  
...do? I hesitate about expressing an...  
...opinion for I am not a soldier and...  
...am living a comfortable life.

...I should like to say this, how-  
...ever:  
...The country for which our fathers...  
...sacrificed and died, in which we...  
...have enjoyed freedom, home and...  
...liberty, and which we hope to hand...  
...down to our children is in danger...  
...There is real danger that it be over-  
...whelmed and liberty wiped off the...  
...face of the earth. Every man, wom-  
...an and child is bound to do his or...  
...her part, we have hardly begun yet...  
...but we, all of us, have got to take...  
...our part.

...The soldier, strong, young, fitted...  
...to stand up and fight, has his part...  
...perhaps the hardest, especially now...  
...when there is no fight. It is his...  
...privilege to lead in sustaining a...  
...spirit which will strengthen the...  
...whole country. Since he is sworn...  
...to do his part in army and navy...  
...and will remain there for some...  
...time, he will be wise if he do more...  
...than his duty and gain such a rep-  
...utation of soldierly spirit that he...  
...may be given more and more re-  
...sponsibility.

...P. S. Since I wrote this the Secre-  
...tary of War has issued a broad-  
...cast which every soldier and citizen...  
...should hear or read—and also the...  
...result of the conference of the Presi-  
...dent and Prime Minister which...  
...speaks for itself.

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# THE SILK SHORTAGE

By Dahl

U.S. CONSULTS MARLENE DIETRICH ON STOCKINGS, SHES TO POPULARIZE SILK SUBSTITUTES. (NEWS ITEM)



CONSIDER THEM POPULARIZED.

THE GOVERNMENT FIGURES THAT IF MARLENE ADOPTS COTTON STOCKINGS OTHERS WILL FOLLOW -



AND NO DOUBT THAT'S RIGHT -

BUT WHETHER THE WOMEN WILL YEARN FOR COTTON STOCKINGS REMAINS TO BE SEEN -



MARLENE BEING A DAME WHO'D GET BY WEARING A GOALIE'S SHIN-GUARDS

AFTER MARLENE OVERCOMES THE SILK SHORTAGE SHE CAN POPULARIZE THE GAS SHORTAGE.



SUGGESTED SLOGAN - "RUN OUT OF GAS WITH MARLENE DIETRICH."

AFTER ALL THE ONLY DIFFERENCE BETWEEN THE SILK SHORTAGE AND THE GAS SHORTAGE IS THAT THERE IS A SILK SHORTAGE.



ALL MARLENE NEEDS TO DO IS POPULARIZE HAROLD ICKES.

MARLENE COULD HELP TAKE CARE OF THE ALUMINUM SHORTAGE TOO.



MARLENE SEEMS TO BE THE SORT OF GIRL WHO COULD GIVE UP A FRYING PAN WITH NO REGRETS.

file  
personal

~~Early File~~ Frankfurter  
September 12, 1941  
Folder

Supreme Court of the United States  
Washington, D. C.

PSF

Dear Frank:

After you had finished  
last night, there was that  
physical inhibition -  
that respectful period of  
silence - which always  
follows, its pause that  
succeeds, a tremendous  
performance. Whether  
it is a very, very rare  
musical performance,  
Toscanini conducting

Beethoven's Fifth, or the kind of a speech that carries the credit of history in its own utterance, our faculties are too concentrated and tense for words. And so, Madison and I sat silent for a stretch at your final words - "assault upon their democracy, their sovereignty and their freedom" - Kept peering in

over Sears. "He never spoke," Madison's voice at last quizzed, hostile & sterner. "It was so lean, clear, out to the bone, with an eerie simplicity - never equal to the rugged plainness of the tone." And Wood stated I have heard and heard the speech, in its early morning freshness. I am sure indeed it

spell - and still feel <sup>240</sup>  
Marion has given the  
key to its nobility and  
enduring history -  
you gave the occasion  
with a grace worthy of  
the audience of the  
time. You remember  
Dante's remark that  
true eloquence stands  
crest by the strength of  
its own substantive  
well - you bowed the  
knees and the angels sang  
might of humanity. We  
breathe it with God. *Ever faithfully*  
*for*

724  
BF: Frankfurter

See memo: 26 Sept 1941

Roosevelt Memorial

Supreme Court of the United States  
Washington, D.C.

Chambers of  
JUSTICE FELIX FRANKFURTER

May 6, 1950

My dear Mr. Kahn:

You will recall my reference to a memorandum I made of a talk with President Roosevelt, in which he expressed to me the kind of a memorial he desired to be erected, if any was to be. Here is a copy of the memorandum.

It was a great pleasure to see you.

Cordially yours,

[Signed] Felix Frankfurter

[On April 20, 1950, Justice Frankfurter told me that he had given copies of the attached memorandum to President Truman & Justice Byrnes shortly after President Roosevelt's death.]

Herman Kahn]

Q Q Q X

In the forenoon of Friday, September 26, 1941, General Watson phoned to say that the President would like to see me after the funeral of G. Hall Roosevelt at about half past three that day. I duly turned up, was ushered by General Watson into the President's office, where the President and I talked about sundry matters while he was having his hair cut. The President seemed under considerable strain and plainly enough he just wanted to talk. After the barber left, talk continued, going hither and yon, and the President told me of a letter to Fred Delano, which the latter had sent to him, from a correspondent who had apparently just discovered that Jackson Park contains the statues of four Revolutionary heroes and that the equestrian statue of Jackson was incongruous in this Revolutionary setting. He read me his memorandum in reply to the suggestion for the removal of the Jackson statue. (A copy of the memorandum which, at my request, he sent me, is herewith annexed.)

When he finished reading the memorandum, this followed:

F.D.R. "This leads me to say something that I want you to remember because you are much more likely to be here longer than I shall be."

F.F. (jocosely) "You mean that I shall remain on the Supreme Court longer than you will remain in the White House."

F.D.R. (smilingly but sharply) "No, that isn't what I mean at all. I mean in plain English that I am likely to shuffle off long before you kick the bucket. And if that should happen and if any memorial is to be erected to me, I know exactly what I should like it to be. Now please remember what I am telling you as my wish in case they are to put up any memorial to me. About half way between here and the Capitol is the Archives Building. Now I have some relation to Archives. And right in front of the Archives Building is a little green triangle. If, as I say, they are to put up any memorial to me, I should like it to be placed in the center of that green plot in front of the Archives Building. I would like it to consist of

a block about the size of this (putting his hand on his desk). I don't care what it is made of, whether limestone or granite or whatnot, but I want it to be plain, without any ornamentation, with the simple carving "In memory of \_\_\_\_\_". This is all, and please remember that, if the time should come."

F.F. "I shall indeed remember and you deeply honor me in putting this wish in the keeping of my memory."

F.D.R. "Don't you think I am right in wanting that kind of a memorial and none other?"

F.F. "The founder of your party, Jefferson, left specific instruction for that beautifully simple memorial of his at Charlottesville, and I think your idea entirely comports with wisdom about such things."

Our talk then drifted to other matters.

---

After leaving the White House, I made pencil notes of the above conversation and I have dictated the above from these notes the following morning, Saturday, September 27, 1941.

(Signed) Felix Frankfurter

Copy: FURL: 5-28-55: edm

C O P Y

The White House  
Washington

September 26, 1941

MEMORANDUM FOR

F.A.D.

I think you should tell Mr. Kay-Smith that, in my judgment, we should let sleeping heroes lie. The District is pock-marked with Generals, statesmen, foreigners, visiting firemen, etc., on horseback, standing and sitting - all without any particular reference to a plan.

Personally I want to see old man Jackson and the horse which is balanced on its tail, in front of the White House as long as I am here. How the General is able to wave without holding on to his pommel, I have never known. I am still fascinated - and I think almost everyone else is too.

From the practical point of view, we should spend no money these days in re-distributing heroes round the parks and squares of Washington.

F.D.R.

Copy: FDRL:7-28-55:odm

Supreme Court of the United States  
Washington, D.C.

Chambers of  
JUSTICE FELIX FRANKFURTER

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Jopy:FRU:5-28-55:edm

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The White House  
Washington

September 26, 1941

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From the practical point of view, we should spend no money these days in re-distributing heroes round the parks and squares of Washington.

F.D.R.

Supreme Court of the United States.

Memorandum.

-----  
Dear Grace *Quinn Tamm*

If the President  
has not seen this,  
it might be good for  
his bed-side  
basket.

*W. S.*  
E. B.

AM-10-3091  
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PSF  
Frankfurter  
DUPLICATE  
Foundry

# THE ATLANTIC MONTHLY

VOLUME 168  NUMBER 4

OCTOBER 1941

## ROOSEVELT AGAINST HITLER

BY GERALD W. JOHNSON

**T**HERE was a period of approximately twenty-four hours in the year 1933 more fateful for the destiny of mankind than any other one day in the century.

A little after noon on March 4, 1933, Franklin D. Roosevelt was inaugurated as President of the United States. Before midnight on March 5, 1933, the German Reichstag had passed the Enabling Act, putting absolute power into the hands of Chancellor Adolf Hitler.

Eight years later these two men faced each other as the champions of two ways of life so antagonistic that the world is not wide enough for them to exist together in peace. In 1933 not many people were able to perceive any relation whatever between them; but in 1941 not many doubt that one of these men is destined to destroy the other, and it is not beyond the bounds of credibility that they may destroy each other. Hitler has said that the outcome of the duel between the systems they represent will fix the destiny of mankind for a thousand years, and it is by no means certain that his assertion is extravagant.

If Mr. Roosevelt is described as the chief protagonist of the way of life

preferred by the democracies it is not by his own choice, nor by reason of his personal superiority to other democratic leaders. The man who saved Britain in her desperate hour, for example, has attributes of mind and character that make it preposterous to rate him as inferior to any man alive; Mr. Roosevelt's resources, not Mr. Roosevelt himself, give him the central position in the present situation. Mr. Churchill does not have available 25 million men of military age, nor a national income of 70 billion dollars, nor the incomparable industrial plant of the United States, nor 359 million acres under the plough. The last reserves of the free peoples are the forces commanded by the President of the United States.

But there is another reason why the President, rather than the Prime Minister, is the central figure on his side. The President shares the quality that has made Hitler strong; he is associated in the minds of the masses with the dynamic, rather than with the static, theory of government. Churchill is a conservative. That doesn't mean that he is a less ardent believer in human freedom than Roosevelt; but it does

mean that his first care has always been to preserve what is best out of the past. But it was revolt against the abuses of the past that heaved both Roosevelt and Hitler into power — and has demolished a dozen other governments. The people who revolted do not associate a victory of Roosevelt with a return to the old conditions. As a matter of fact, neither would a victory of Churchill involve such a return, because the old conditions are demolished, and there is no possibility of returning to them. But Roosevelt has no desire to return to them, and all the world knows it; hence a movement led by him cannot possibly be branded as counter-revolutionary.

If there is anything certain in human affairs, it is certain that he did not envisage the present situation on March 4, 1933. He had plans, indeed, that were wide-spreading and far-reaching; but peace is the first prerequisite to the development and perfection of that sort of plan. 'Adapting existing economic organizations to the service of the people' is work that cannot be performed with artillery, tanks, and bombing planes. This is not to say that he wasn't aware of the possibility of war, even eight years ago. He is not feeble-minded, and every man above the intellectual level of a half-wit has been aware of the possibility of war ever since firing ceased in 1918. But the President, like the majority of the American people, rejected war as an instrument of national policy. It was present in his mind, as it was in the minds of most of us, as a calamity to be avoided as long as possible, not as an opportunity to be carefully studied and considered.

It is doubtless true enough that Hitler never intended to face Roosevelt under the circumstances that now exist. Difficult as it is for us to believe, Hitler evidently thought that he could defeat Britain by psychological weapons and then face Roosevelt, or whoever happened to be President of the United States, with all, or nearly all, the power

of Europe solidly organized behind him. For the destruction of free government in this country is a necessary part of any plan of world domination, and Hitler must have envisaged it from the beginning.

Yet in the month of March, 1933, the positions of the two men were strangely similar. Both had risen to power on the crest of a wave of protest set in motion by the same sort of grievances. Both took over countries economically in a state of collapse and visibly disintegrating socially. Both faced the problem of putting millions of idle men back to work immediately, and the even more urgent problem of putting some spirit into an apathetic and despairing people.

There were other similarities. In Germany, as in America, the people were not so much aflame with enthusiasm for the new leader as inflamed with wrath against the old ones. In Germany, as in America, the gravamen of the old leaders' offense was not so much what they had done as what they had failed to do. In Germany, as in America, the indictment of the old leaders included a multitude of counts, but there as here they may all be summed up as failure to obey the injunction of the Constitution of the United States 'to provide for the general welfare.' Finally, in Germany as in America, the new leader, largely because he was new, was given *carte blanche* to do what he thought best.

Even if you are one of those who regard the New Deal as Americanism at its worst, it is still Americanism. However distorted you may think its ideas, they are still ideas whose origin is to be found in the Constitution and the *Federalist*, not in Wagnerian opera. Its traditional hero is Mr. Jefferson, not Wotan; and Mr. Jefferson, with all his faults, was recognizably a statesman, and not a baritone singer seven feet high with cow-horns on his hat. We may have come off badly, but at least we came off with something that looks more like a government than like a lunatic stage man-

AM-10-3091  
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DUPLICATE  
Foundry

## ROOSEVELT AGAINST HITLER

ager's setting of the Ride of the Valkyries.

The protest that brought both Hitler and Roosevelt to power has been described by Mrs. Anne Morrow Lindbergh as 'the Wave of the Future.' No doubt it is, but it is also the same old wave that has surged up in the past under the same stimulus. Since the beginning of recorded history, the king has never been conceded a right to demand allegiance of his subjects except as he could, and would, protect them from dangers against which they could not protect themselves. In this respect human nature has not changed; what has changed is the enemy. In modern times, and especially since the beginning of the Industrial Revolution, the ordinary man has had less reason to fear human robbers with tangible weapons than the impersonal, intangible operations of the economic system. Yet death by starvation is still death by starvation, whether the proximate cause is the irruption of a band of men-at-arms who have ravaged a peasant's farm and taken away all his food or an economic collapse that has deprived a workman of any chance to earn a living. A government not clever enough to prevent starvation through economic wreckage cannot command the faith and loyalty of its citizens today.

The government owes no man a living, but it does owe every man protection of his life. It incurs this obligation when it exacts of him loyalty and support; and the obligation has never been denied. As far back as human records go it has been acknowledged that, when the ruler can no longer protect the subject, the subject is released from his obligation to support the ruler. In 1933, in Germany and in the United States, millions of men were threatened with death by starvation because the government did not know how, or did not dare, to protect them from the economic forces that were destroying them; so, in both countries, the people revolted against the government. But this was certainly nothing

new, nothing without precedent; on the contrary, it has been the common fate of every government guilty of a similar failure.

But it was none the less a sinister thing. It was the old nightmare that has haunted the dreams of every ruler, and of every ruling class since organized government was established. For time and time again it has been demonstrated horribly that when the *Jacquerie* once gets out of hand there is no limit to its ferocity, nor to its stupidity. It was this that Alexander Hamilton had in mind when he declared, 'Your people, sir, is a great beast!' Leaderless, or led by scoundrels, a people is a great beast, capable of rending its friends as readily as its enemies, incapable of distinguishing virtue from vice, patriotism from treason, philanthropy from rapacity. Time and time again it has been demonstrated that a popular movement that starts from the depths cannot be stemmed, cannot be dammed, cannot be arrested. It can be guided, but only by the highest political skill; and rarely, indeed, is it so guided. New? Why, it is the oldest terror that organized government knows.

### II

Perhaps it is the supreme triumph of the American genius for self-government that in this crisis the American people turned to a man of their own blood, steeped in their traditions, and a sincere believer in their way of life. The Germans, on the other hand, turned to a foreigner, little acquainted with the true greatness of Germany, and contemptuous of what he did know. The Germans were perhaps the more logical; since the old system had failed them, why not turn to a man as far removed from it as possible? The old system had failed the Americans, too, but they listened to a man who insisted that the system was basically sound and could be made to work satisfactorily by the use of different methods.

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DUPLICATE  
Foundry

Once in power, though, the two leaders began to diverge at once. Perhaps the essential difference in their philosophies is that Roosevelt believed that the wreckage with which he was surrounded was due, for the most part, to stupidity, whereas Hitler believed that the wreckage of Germany was due to crime. Roosevelt realized that the wealth of America had been dissipated and lost. Hitler believed that the wealth of Germany had been stolen. Roosevelt's aim, therefore, was recovery; Hitler's aim was recapture. One leader said to his ruined countrymen, 'Let us make.' The other said to his, 'Let us take.'

They agreed, however, on one point, which was that the sacredness of private property is not absolute but is conditioned on the safety of the nation. Neither hesitated, therefore, to spend enormous sums to establish national safety. By 1939 Roosevelt had spent about 40 billion dollars over and above the ordinary operating expenses of the government, and Hitler had spent a sum which, owing to his incomprehensible methods of accounting, cannot be determined with precision, but which is generally supposed to range between 90 and 100 billions.

But Roosevelt spent the bulk of his money on such matters as roads, bridges, dams, powerhouses, irrigation projects, schoolhouses, land reclamation, and reforestation. Hitler spent the bulk of his on arms. This was the natural result of the difference in the two men's aims. Roosevelt proposed to restore the prosperity of the American people by creating new wealth. Hitler proposed to restore the prosperity of the Germans by taking other people's wealth away from them. In view of Hitler's plans, perhaps Roosevelt would have done better to spend his money on arms, too, but who would have believed it in 1933?

In the end, of course, Hitler forced his scheme on all the world. Under modern conditions no one nation can afford to devote even the major part of its ener-

gies to planning for peace while another large nation is furiously preparing for war. People are always referring to this as one of the inherent weaknesses of democracy, but it is hard to see where there is anything in it peculiar to democracy. It is rather the weakness of every nation, democratic or not, that cherishes the concept of the citizen-state as opposed to the concept of the bandit-state. There is no apparent reason why a benevolent and intelligent despot should not regard his domain as a member of a larger community, a citizen of the world-state. Up to 1939 the Russians, for instance, vociferously proclaimed that this was precisely their concept of the position of their totalitarian régime; and until their attacks on Poland and Finland revealed the insincerity of the claim there was so much evidence to support it that many Americans at least half believed it.

There is a school of thought which holds that in this Hitler was the realist, and Roosevelt the idle dreamer, whose drowsy amiability is the real source of his nation's peril. This is the school of the moral defeatists, which has surrendered in advance the principle that is the very cornerstone of American political philosophy. For if men not only lack at present but are forever incapable of developing the capacity to manage their own destiny intelligently, then the Constitution of the United States is nonsense and the republic itself a futility and a fatuity. Logically, this doctrine is not impossible. Perhaps we are essentially bestial. Perhaps there is in us no capacity for self-government, not even latent. But this is not the doctrine of the republic, hence a man who holds it is not eligible to be President of the republic. A man who holds that office must take it as axiomatic that intelligent self-government is possible, that liberty is an attainable ideal, that a continuing elevation of the cultural level of the masses is practicable, that the people are capable of drawing steadily closer to justice. He

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must frame his policy on this basis, and not on the basis of barbarism, unless the threat that is offered by barbarism is so close and so plain that none can doubt the necessity of turning to meet it. Roosevelt undoubtedly foresaw the possibility of war in 1933; but he would have been no American had he thrown all the energies of the country into preparations for a war still so far away that few of the people perceived it at all.

In any event, the moment Hitler marched into Poland it made little difference what Roosevelt regarded as the wise course through which to repair the damage of the economic and social collapse. At that moment the threat of barbarism did become plain. From that moment the thought and energy, as well as the money, of the country had to be applied in ever-increasing proportion to the problem of national defense. The New Deal is a peacetime program. The moment the threat of war overshadowed the land it had to be held in abeyance. Mr. Roosevelt tacitly admitted that fact when he appointed to head the War and Navy Departments, and the enormously important Office of Production Management, men who were not New Dealers and not even Democrats.

It is undeniably true, therefore, that of the two great antagonists who came to power in 1933 Hitler was the winner, up to the summer of 1941, not on the field of battle only, but in the field of governmental theory as well. He had forced Roosevelt to abandon his own course and follow that of Hitlerian Germany — that is, the diversion of the national energies from the problems of peace to the single task of creating as rapidly as possible the most formidable military power possible.

There are some Americans pessimistic enough to believe that this represents the loss, not of a battle only, but of a campaign. Strongly anti-New Deal, they hold that the six years and the 40 billions devoted to that program represent losses that have weakened us dangerously as

we face the menace from abroad. This feeling is natural, doubtless inevitable, in a man who dislikes and distrusts everything Roosevelt has done from the start; yet even in such a man it is hardly justified by the facts.

Grant, for the sake of argument, everything this man asserts. Grant more than has ever been asserted by reasonable anti-New Dealers. Grant that the New Deal was downright criminal, which none except those driven madlin by hatred of Roosevelt have ever asserted. Nevertheless, the fact remains that 27 million American voters, a clear majority of the whole, more than 55 out of every 100, believe the contrary so strongly that they trampled down the thitherto sacred third-term tradition in order to reelect the chief New Dealer. If, as few observers doubt, the prejudice against giving any man a third term cost Mr. Roosevelt several million votes, then even the tremendous figure of 27 million does not represent all the American voters who believe that the New Deal was a move in the right direction.

It is important to eliminate Hitler's armed forces as menaces to our peace and safety; it is vastly more important to eliminate Hitler's ideas if we are to enjoy peace for any considerable length of time. But an idea is impervious to bayonets and bullets. It can be killed only by another idea. Now Roosevelt has given a majority of the American people the idea that democracy can be made to work to the satisfaction of the average man, and this idea, whether true or false, is a powerful prophylaxis against infection with the idea that the only hope for common people is embodied in the 'leadership principle,' the 'master race,' the 'protection of the blood,' and all the other fantasies of which Germany has been so fearfully productive in recent years.

The 27 million may be deluded, of course, but the New Deal has given them faith that the American system is, or can be made, the best system of gov-

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ernment as yet devised. Being full of faith, they are full of fight. In that sense, the country was being well armed during those six years when more money was going into bridges and schoolhouses than into tanks and battleships. The anti-Roosevelt man, assuming that he is himself profoundly American, can take satisfaction in this. Without those six years, most of the people might not have been so jubilantly confident that theirs is a government worth shedding their blood to preserve. In consideration of this, much can be forgiven by a patriot, even though he is an anti-New Dealer.

III

As a matter of fact, now that the lines are drawn, not as between Democrat and Republican, but as between American and foreigner, most of us are disposed to welcome those phases of government which we can point out with pride to a foreigner, more than those which we can criticize privately at home. But the years of terrific domestic battling have obscured from its opponents even the incontestable merits of a group whom they oppose. Let it never be forgotten that for eight years it has been politically, and sometimes financially, profitable to paint the New Deal as black as possible; and when blackening is profitable no one need doubt that a good job will be made of it.

Surely it is not mere Democratic propaganda to point out, at this time, those features of the Roosevelt administration which even its opponents admit are not bad, and which shine brilliantly when contrasted with the régime which it now opposes. There have been many things in Washington during the last eight years in which any American can take pride, no matter what ticket he votes, and which he can justifiably emphasize when it is a matter of his country against any other. Certainly now is the time to remember them, without regard to our domestic differences.

The first and greatest of them all is, in fact, to be credited only in part to the New Deal. This is the sharp rise in the level of political debate during the last eight years. The New Deal, simply because it has challenged many long-established concepts, has forced a reconsideration of the fundamentals of our political system, which has been reflected in all public debates but especially in those on the floor of the United States Senate. It is doubtful if the intellectual level of the present Senate is conspicuously higher than that of the Senates of the twenty years prior to the New Deal; but its debates have been markedly above that level. The reason is that a Senator of mediocre intellectual attainments, when he is talking about something important, talks better than a brilliant man who is talking without anything to say. For the last eight years the Senate has had before it a succession of great constitutional questions which could not be discussed at all without some cerebration, and which could not be discussed adequately without long and severe mental effort. As a result, the Senate has talked well.

Perhaps it is not to be listed among the great periods of the Senate. Few would compare it, for sheer brilliance, with the days when 'Old Bullion' Benton stood in the Senate like a bull in the ring, tormented but deadly dangerous, while the incomparable picadors Webster, Clay, and Calhoun circled around and around, prodding him. But it certainly was far above the period when the Republican leader, Senator Smoot, could fill hours of the Senate's time and columns in the newspapers with his horror at discovering a dirty book; and when Heflin, the Democrat, could gain country-wide attention and waste other hours by hurling billingsgate at the Pope. Of late the Senate at least has had too much to do to spend its time considering either *Lady Chatterley's Lover* or the religious prejudices of Alabama. This may be an indication of more distress in the coun-

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try, but it is certainly an indication of more thought in the Senate.

What is true of the Senate debates is applicable, in a measure, to political debating in general for the period. Neither Mr. Landon nor Mr. Willkie, Mr. Roosevelt's opponents in the Presidential races of 1936 and 1940, is a pettifogging type, but, if either had been, that sort of thing would not have served, for nobody thinks of Mr. Roosevelt as a petty misdeedant. He may be pulling down the very pillars of the temple, but he certainly is not running away with the altar cloth.

It would be silly to imply that the advent of this President has converted Washington into a serious rival of the Old Academy, but it is sober truth that it has driven Americans to a more careful consideration of the first principles of government than any other administration of recent years has inspired. Among other things, it has had the effect of restoring some validity to party divisions. To be sure, the old party names of Republican and Democrat are still untrustworthy guides to a man's political philosophy, as they have been for thirty years and more; but the terms 'New Dealer' and 'anti-New Dealer' have meaning. Republicans and Democrats are frequently indistinguishable; but there is a difference between New Dealers and anti-New Dealers.

Another characteristic of the New Deal about which there is no dispute is its notable freedom from the grosser forms of misconduct in office. The spending that has gone on in Washington has been unapproached in time of peace; but the stealing there apparently has been confined to the petty cash and to officials of the rank of clerks and office boys. There have been peculations of considerable size. Several cases have been prosecuted, and it is highly probable that more have been successfully covered; but the stealing was not done in Washington. All the important cases that have come to light were discovered

where construction work was going on or funds were being distributed for other reasons out in the country, not under the eye of the administration chiefs.

Nor has the partisanship that unquestionably has stained the record been most blatant and unashamed in Washington. Prodigious efforts were made to connect James A. Farley while he was Postmaster-General — traditionally the Cabinet post of the Politician-in-Chief of the administration — with the improper use of relief and recovery funds for partisan purposes, but none was successful. Of course this did not acquit him. There are people with whom it is an article of faith that Jim Farley bought the election of 1936 with relief funds; and they are quite unshaken in that belief by the complete lack of evidence. If an archangel were Postmaster-General there are people who would believe that he had played dirty politics and was too smart to get caught at it.

It is strange that men are unable to perceive the self-stultification that this belief involves. Anyone who believes that Mr. Farley, or anyone else, could buy the American electorate necessarily believes that the republic is rotten to the core. If the people in the mass are purchasable, then democracy is a fraud on its face, and ought to be abolished forthwith. A man who believes the election was bought has no sound reason for opposing Hitler, or any other conqueror who will reduce a venal nation to the satrapy that is all it deserves to be. [A man who believes the election was bought is an apostate American who has repudiated the faith on which the republic was founded. Of course there are men of intelligence and personal integrity who do believe that the republic is thoroughly rotten, and that democracy is a sham and a fraud; but every such man of my acquaintance is also opposed to universal suffrage and to the continuance of the American political system in general. Most of them see no point in opposing Hitler. It is possible to retain

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respect for such a man, as it is possible to recognize the ability in war and statecraft and the many admirable personal traits of the Emperor Julian, who also was an apostate. But when a man in the same breath proclaims his faith in democracy and his belief that the election was bought, it is impossible to retain respect for his intelligence, whatever one thinks of his sincerity.

The truth is, of course, that Jim Farley all but dislocated his spine leaning backward in his effort to avoid the use of relief funds for party purposes. There is never a doubt that the smaller fry in some of the states were less scrupulous. Some open scandals resulted, and there were evil smells from states where nothing was ever brought to light. But no Cabinet officer was involved.

The noteworthy lack of stench in the air of Washington ought to be peculiarly gratifying to Americans at this time when they remember the appalling fetors that every breeze from Berlin has brought to their nostrils for eight long years. When the official press was through describing, after the blood purge of 1934, the official and private characters of the men who had stood next to Hitler in the Nazi hierarchy, the average American was pretty well convinced that any plain embezzler or bribe taker would be disgraced by being found in such company. But is there really anything extraordinary in this situation? Is it not, indeed, an old and familiar pattern? When, in all human history, has a revolutionary movement concentrated all power in an individual without being attended by an upheaval in the moral as well as in the political realm? There is a tradition that Nikolai Lenin ruled in an atmosphere of puritanical austerity, and so, apparently, did Oliver Cromwell; but both men are regarded as remarkable on that account. Ordinarily the dictator, for the very reason that he has overthrown the regularly constituted government, is forced to make use of some worse than dubious

instruments; and these questionable fellows usually disgrace his régime.

We are not hearing from Washington well-authenticated tales of misappropriation, bribe taking, and embezzlement; of misuse of the sword of justice to gratify private spite; of perjury in the highest places, and cynical betrayal of trust; of great officers of state employing the methods commonly attributed to Al Capone during the prohibition era. Still less are we hearing whispers of disgusting personal habits among the leaders of the government; of strange orgies in official residences; of drug addicts in high office; of men convicted of infamous crimes put in positions of command; of perversion and degeneracy among those who bear the honors of the nation. Mr. Roosevelt himself has been accused of many things, but no one as yet has suggested that there is anything epicene about him, nor has he been seen gnawing the carpet in a fit of hysteria.

It is fatuous to account for this with the smug assertion that such things simply couldn't happen in America. They could happen, and they would happen, fast enough, if there were in Washington a government possessed of supreme power and holding itself accountable to no one. Indeed, they could happen in Washington faster than anywhere else, for the simple but sufficient reason that there is more wealth in Washington than anywhere else; and when the swine are in control their swinishness is in direct proportion to the amount of wealth they find at hand. The relative inoffensiveness of the air in Washington is the most conclusive evidence of all that no dictatorship, but an accountable government, aware that it may be brought to book, holds sway there.

## IV

Finally, there is one accomplishment of Mr. Roosevelt which his opponents ordinarily dislike even to consider but in which, at this juncture, they may find

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a certain comfort. This is his remarkable success in nationalizing our domestic politics.

Franklin D. Roosevelt is the first Democratic President since the Civil War who did not need the support of the Solid South in order to win. He has been supported by the South, to be sure, but that support was not essential. In any, or all, of his three campaigns he might have given his opponent the entire electoral vote of the eleven states that formed the Confederacy, plus the vote of the border states of Maryland, West Virginia, Kentucky and Missouri, and yet have been elected easily. This is a consideration that naturally annoys Republicans under ordinary circumstances, but under the circumstances that exist at present it has a certain nonpartisan value. It proves that our representative in the crisis is a national figure, and not a sectional hero who obtained national office by a political fluke. There is no possibility of a split in our ranks because one section of the country suspects the President of being Jeff Davis in disguise. This gains importance as it applies to a situation in which unity is the first essential.

There is something more than a jest in the apothegm that he who would know the sturdiest manhood in all America should study a Vermont Democrat or a Georgia Republican. The strength of character that can sustain defeat after defeat with no yielding of conviction, that can fight campaign after campaign with no hope of success, and that can bow to the will of the majority without a thought of bowing to its wisdom, is part and parcel of the bedrock on which our political institutions are based. To suggest to a man who has believed all these years that Mr. Roosevelt is wrong that he should now change his opinion, simply because for the third time most of the people have declared that they believe Mr. Roosevelt is right, is more than an insult to the man; it is an insult to the very spirit of Americanism. A man who

based his vote for Willkie on conclusions reached after carefully weighing all the facts, and nothing but the facts, would be a poor American if he changed his opinion simply to conform to the election returns.

But Americans, without regard to party, feel an obligation to support the President — any President — whenever the nation is threatened from without. Not all the inhabitants of this country accept that obligation; but not all the inhabitants of this country are Americans. Not even all the natives are Americans except in a strictly technical sense.

There are some men so blinded by partisan passion that they would rather see the nation remain in peril than see it delivered by a member of the other political party. But they are partisans, not Americans.

There are some so steeped in class and caste prejudice that they would prefer to see Hitler lord of America than see American workmen gain another inch. But they are Tories, not Americans.

There are some so eaten by avarice that they fear a dictator less than they fear the doctrine that property is not as sacred as the duty of the government to see that famine shall not slaughter the poor. But they are not even civilized men, much less Americans.

No one would waste words on these, any more than one would waste words on those who have secretly transferred their allegiance to Hitler, or to Mussolini, or to Stalin. In time of war there is a person officially designated to do all the talking to these people that is necessary; he is the provost-marshal.

To Americans, though, who must support the President, it is not an insult, it is a relief, to consider in as favorable a light as they can the qualifications of the man whom fate has made their leader during the critical years ahead. The fortunate people, of course, are the majority who have believed in Roosevelt from the start. They need no reassur-

ance, for they have no doubts; they can, and do, face the future calmly confident. But in what can a member of the minority find reassurance? Judging the future by the light of the past, what can he reasonably expect of Mr. Roosevelt, not as the leader of the New Deal, but as President of the United States charged with the duty of assuring the safety of the nation against the threat of physical force?

Well, he can expect the first and most essential quality of courage. Whatever else may happen to the man who represents our side in this clash between two worlds, he will not be appalled. Infantile paralysis is a more terrifying devil than Hitler, but Roosevelt faced it. Economic collapse is more terrifying than a bombing raid, but Roosevelt faced it. Whoever may blench, whoever may quail, as we plunge into the fog and smoke, we may rest assured that the man at the top is not afraid, for he has seen worse than this, yet came through all right.

By the same token, we may expect resolution — this not only on the testimony of Mr. Roosevelt's friends, but on the even more enthusiastic testimony of his enemies. They call him the stubbornest man alive. Perhaps this is where his Dutch ancestry counts. At any rate, if he could battle seven long years to reach the point where he can walk limpingly, and could battle seven years more to bring the country to the point where it could get about without crutches, is there any doubt that he will fight quite as stubbornly to prevent the enslavement of the American people? No, another thing that is certain is that the man at the top will not quit.

In addition to courage and resolution, we may expect inflexibility. This will be denied. The idea is firmly imbedded in many minds that Mr. Roosevelt is a master of sinuosity and deviousness, but the idea has been created and propagated by two classes of people — first, those to whose interest it was to make

him seem so, including, of course, his political opponents; second, those who have put into Mr. Roosevelt's mouth words he never spoke, and into his mind ideas he never held, and have denounced him for not adhering to these things. An example was furnished by the isolationists, with their denunciations of the President for breaking his promise to keep us out of war. Of course he never made any such promise, any more than he promised to maintain 25.8 grains as the weight of a gold dollar. He said that he hoped to keep us out of war. He said he would do all that lay in his power to keep us out of war. He said he would never send an American soldier to fight in a foreign war. But no man, not an utter fool, would make a flat promise to prevent war, and Mr. Roosevelt is no fool. Neither did he say that he would never send an American soldier to fight on foreign soil. No man not a fool would make that promise either. On the contrary, any man not a fool knows that if we must fight we are lucky indeed if we can fight on foreign soil instead of on our own.

Mr. Roosevelt is a politician, and any politician whose ethics are examined by the standards of a doctor of moral philosophy is pretty sure to show some wavering along the edges. But doctors of moral philosophy do not get elected President of the United States. If it is immoral to accept a man's support simply because he does not, or will not, understand the English language and insists on putting his own false interpretation on plain words, then Mr. Roosevelt is guilty; but so is every man who has held the office of President.

As it happens, the test of this man's straightforwardness is not difficult. Let any fair-minded man take the Commonwealth Club speech, in which he said what he was going to do, and lay it alongside the record of what he actually did — omitting his whirlwind action during the banking crisis, which was not contemplated when he made the speech.

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The exactness of the parallel between promise and performance will bear comparison with the record of any politician whatsoever, not excluding either Lincoln or Washington.

Mr. Roosevelt has declared that this nation, while he directs its foreign policy, will not submit to domination of the world by Hitlerism. That's that. Whatever else happens, we may rest assured that the man at the top is not going to flatten us with a sudden announcement that he has made a non-aggression pact with Hitler.

All this, of course, still leaves plenty of doubts. Whether or not Mr. Roosevelt will make a good Commander-in-Chief in time of war I don't know. Neither does anyone else. It all depends upon whether he can tell the difference between a general and a stuffed tunic, and that can never be determined with certainty until his selection has been tested in actual battle. They all look alike on the parade ground. Whether Mr. Roosevelt can spur the armament industry to maximum production I don't know; but I do know that he will be accused of fumbling the production program. I also know that if the President were not Roosevelt, but Tubal-cain, father of all workers in metal, he would be accused of fumbling the production program. From now on, denouncing the fumbling at Washington will be one of the easiest ways of impressing the credulous and making oneself seem important. There will be fumbling enough, God knows; but for every fumbler the denouncers will be twice as numerous and ten times as loud. It was so in Wilson's day. It was so in Lincoln's day. Indeed, as far back as 712 B. C. (according to Archbishop Ussher), the Prophet Isaiah was complaining, 'Behold, I have created the smith that bloweth the coals in the fire, and that bringeth forth an instrument for his work; and I have cre-

ated the waster to destroy.' Let us bear this in mind.

The editors of the *London Economist* ended their inconclusive attempt to define the New Deal with these words: 'Mr. Roosevelt may have given the wrong answers to many of his problems. But he is at least the first President of modern America who has asked the right questions.' He is always at his best in a crisis; and in this greatest crisis of all he has certainly asked the right question.

As a nation we are full of imperfections, and it is only too likely that the stresses and strains of the next few years may reveal them horribly. But such as we are we intend to remain, not that we cherish any crazy delusions of being a 'master race,' and not that we have any God-given mission to regenerate the world, but because we know that the things we value we have created by our own methods and in our own way; and we are certain that if we submit to dictation all that is worth having will slip from our possession, and we shall never again create anything that is excellent or worth the world's attention. We are aware that in determining to live our own national life in our own way we are challenging the aggressors; for even one nation of freemen is a standing reproach and a perpetual menace to all tyrannies. But shall we apologize for living?

Not now. Not while we remain American. Not under the leadership of a man who, whatever his faults, is at least bold, resolute, and inflexible; whose roots are buried deep in American soil; whose blood is American blood, and whose hopes, desires, ideals, and dreams are of and with and for America. Let us stand to arms, then, steadily, knowing that under our latest President, as under our first, we have raised a 'standard to which the wise and honest can repair; the rest is in the hands of God.'

~~Justice~~ *Frankfurter*  
*PSF*  
Supreme Court of the United States  
Memorandum

*Field*  
*W. M.*

*Please Grace — !*

*Thank you !*

W. M.

1511-30<sup>th</sup> Street

October 2, 1941

Supreme Court of the United States  
Washington, D. C.

Dear Rand:

After sleeping on the questions about the big transport which you put to me last night, I awoke with a very definite answer. My feel is perfectly clear - for what it may be worth - against the proposal.

Did the present procedures result in loss of life the public would be prepared for it - indeed it would be merely the expected. But loss of life

on one of these transports -  
howsoever legal the ven-  
ture may be - will be  
wholly unexpected, will  
startle discussion. Early  
leading to the exploitation  
of public confidence. I  
cannot believe that the  
gain would compensate  
for such dangerous con-  
sequences in public  
opinion. The tide is  
running much too strongly  
your way to be disturbed  
for such doubtful gains.  
It was fraud & lying you.  
P.S. opposite page Ever yours  
K.M.

Mr. Allen you find out why the  
policy of kids is especially suitable  
for South America please let me  
know.

[10-3-41]

~~2 copies~~ 4 Frankfurter  
PSF Folder

Supreme Court of the United States.

Memorandum.

Mr. Chase

file  
personal

Unless you think  
that the President  
would prefer having  
his Comptroller treated  
with civility, his  
may is what you

FT



PSFI Frankfurter

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**ALL MESSAGES TAKEN BY THIS COMPANY ARE SUBJECT TO THE FOLLOWING TERMS:**

To prevent certain mistakes or delays, the sender of a message should order it repeated, that is, interpreted back to the originating office by retransmission. For this one-half the conventional message rate is charged in addition. (These otherwise indicated in the text, this is an exceptional message and paid for as such, in consideration where it is agreed before the sender of the message and the Company as follows.)

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the conventional-message rate beyond the sum of five thousand dollars, unless specially valued; nor in any case for delays arising from unavoidable interruptions in the working of its lines, nor for errors in cipher or obscure messages.

2. In any event the Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message, whether caused by the act of God or by the negligence of the sender, beyond the amount here set excepting in any case where the sender of such message represents that the message is valued, unless a greater value is stated in writing by the sender hereat at the time the message is received for transmission, and unless the repeated message paid is paid or served in full, and an additional charge equal to one-third of one per cent of the amount by which such valuation shall exceed five thousand dollars.

3. The Company is hereby made the agent of the sender, without liability or payment, for the transmission of any message over the lines of any other company when necessary to reach its destination, and the Company shall not be liable for any delay or non-delivery of such message over the lines of any other company when necessary to reach its destination, and the Company shall not be liable for any delay or non-delivery of such message over the lines of any other company when necessary to reach its destination, and the Company shall not be liable for any delay or non-delivery of such message over the lines of any other company when necessary to reach its destination.

4. No responsibility attaches to the Company concerning messages until the same are accepted at one of its transmitting offices, and if a message is sent in each office by one of the Company's transmitters, he acts for that office as the agent of the sender.

5. The Company will not be liable for damages or monetary penalties in any case where the claim is not presented in writing to the Company within sixty days after the message is received by the Company for transmission; provided, however, that this condition shall not apply to claims for damages or arrears within the purview of Section 412 of the Communications Act of 1934.

6. It is agreed that in any action by the Company to recover the tolls for any messages or messages the prompt and correct transmission and delivery thereof shall be presumed, without the necessity of competent evidence.

7. Special terms governing the transmission of messages according to their classes, as enumerated below, shall apply to messages in each of such respective classes in addition to all the foregoing terms.

8-40 No employee of the Company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY  
INCORPORATED  
R. B. WHITE, President

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A full-rate expedited service.

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A deferred service at lower than the standard telegraph rates.

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Messages up to 4 P.M. for delivery not earlier than the following morning at rates substantially lower than the standard telegraph or day letter rate.

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Overnight plain-language messages.

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Messages taking precedence over all other messages except government messages.

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file  
personal

~~PSF~~ PSF Frankfurter

192, Braith St.

Colo. 13

[1941?]

Dear Mr. President,

Indeed to have  
a lovely time and is,  
an Farmer Peter said,  
you had more time.

please me to see you. I  
hope the cold is much  
better.

Please give my warm  
regards to Mrs. Rowland,  
and to Miss LeHard.

Affectionately yours.

Marion Frankfort

I would tell you all  
the things I liked  
about it. Chief  
among them is the  
fact that you had  
time to have us, but  
as always it gave  
us with the greatest

*Delivered to Felix Frankfurter*

Supreme Court of the United States

Memorandum

*Case #*

*Frankfurter  
Handwritten notes*

*Dear Mr. Justice*

*Letter P from the Editor  
of the Boston Herald  
on Mass. Opinion  
may interest the  
President J.*

243  
Republ  
Sabbath Count of the United States

PSF

MORNING AND SUNDAY

THE BOSTON HERALD



BY THE BOSTON HERALD TRAVELER CORPORATION

FRANK W. BUXTON  
Editor



EVENING

Boston Traveler



IN THE COMMONWEALTH OF MASSACHUSETTS

October 22, 1941

Dear Felix:

Thanks for the note of October 20th, the advice of which I shall be delighted to disregard. The only striking feature of the Murphy case is that Morgan cleaved loyally to him after he had failed to qualify for a second year at the Harvard Law School. Morgan was as much interested in Murphy the man or boy as in Murphy the student.

You referred a week or two ago to the apparently changed attitude of the Boston Post. That was a semi-compulsory or compulsory change. I think that one or two advertisers spoke to the Post folks about the Lindbergh speech. The Post is still sniping -- more or less like the Saturday Evening Post, which seems to have remorse of conscience for performing a good deed.

How delightful the Holmes-Pollock correspondence is! It was all the better to me because I read it in the sylvan solitude of my favorite state. I had a chuckle when I read that, like Roscoe Pound, Pollock was specializing on masonic literature.

Probably you noticed that there was a disproportionately large number of Massachusetts persons who signed the Willkie document. From what I can now observe, the outlook of Massachusetts Republicans is almost identical with that of Southern Democrats. The Middlesex Club, the most reactionary or stalwart or blackest--take your choice-- of G.O.P. outfits, has just come out with a slambang declaration for repeal of the Neutrality Act. This club has not exactly dominated Massachusetts politics in the last 75 years but it has been a sort of keynote organization. The speeches of presidential and other candidates at its annual Lincoln Day dinners have always had a great deal of attention everywhere. The Republican Club of Massachusetts is now getting the judgment of its members on neutrality repeal and my guess is that the members will vote for it world without end.

*Best*  
The best to you and Marion,

Mr. Justice Felix Frankfurter,  
Washington, D.C.

~~July File~~

file  
per mail

PSF Frankfurter Folder

October 27, 1941.

Dear Felix:-

I was really sorry to hear of the death of your uncle. I did not even know that he had been put in a concentration camp. There would have been no possible reason why the State Department should not have asked for his release. I think that even a Justice of the Supreme Court is entitled to ask his own Government to help out persecuted people, even though they be his own close relatives, in any part of the world. I hope the old gentleman died in his own home and in his own bed.

As ever yours,

Honorable Felix Frankfurter,  
Supreme Court of the United States,  
Washington, D. C.

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

October 24, 1941

Dear Mr. President:

Your omniverous eye may have seen in the New York papers notice of the death of my revered uncle, Dr. Solomon Frankfurter, and therefore you may have noted a statement that upon Hitler's entry into Vienna this aged scholar was put in a concentration camp and his release was afterwards secured through our State Department. I write you this note on the assumption that truth has its own excuse for being.

Precisely because I wanted to avoid the criticism even of the evil-minded and hardhearted against any charge of favoritism by your administration, I did not invoke the good offices of the State Department. On the contrary, I secured his release through the kindness of Lady Astor's intervention with her then German friends.

Faithfully yours,

*Felix Frankfurter*

The President

[70-124-41] *Bundy file* *Frankfurter Folder*

Supreme Court of the United States.

Memorandum.

*PSF*

-----, 194

Grace, too, from  
Mr. Burlington,  
may please the  
President.

V.T.

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*file  
personal*

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file  
personal

~~Frankfurter Folder~~  
October 29, 1934

Supreme Court of the United States  
Washington, D. C.

PSF

Dear Aunt:

It was most sweet  
of you to write me about  
my uncle. He was truly  
a scholar and a gentle-  
man, and to the very last  
of his 85 years lived a  
devoted and brave life.  
He kept his soul free  
from violence & brutality  
though to break it.

I would not have

added a word - nor  
subtracted one - from  
your Navy Day speech.  
Every word told - and  
the people had the power  
of action as well as  
of education.

I think much these  
days of all the burdens  
that rest on you -  
and pray for your con-  
tinued strength and the  
undoubted example of  
your spirit. Brookings  
1941

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file  
personal

d-v

July 29 [70-29-41]

re: [unclear]

Supreme Court of the United States  
Washington, D. C.

PSF

Frankfurter

Dear Frank -

What a perfect  
sense of the fitness of  
things you have! It  
was just right, in  
feeling and substance,  
and the few barbs  
were pleasantly in-  
serted.

Best of all, I was  
delighted to see the  
grand health effects of  
music and naval warfare.

Ever faithfully  
[unclear]

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~~Early file~~

file  
Personal  
1511-34  
Franklin D. Roosevelt  
November 6, 1944

Supreme Court of the United States  
Washington, D. C.

PSF

Dear Frank:

You may be interested  
in these comments to our  
N. Y. election by dress  
Charlie Buckingham. Please  
return it at your con-  
sultance.

I know how prickly it is  
to tell a prolific author  
how much one likes a  
particular brain child  
of his. But I am too  
old, I find, to care.

prudence. And so I shall stick my neck and tell you that your talk to the Hyde Park simply delighted me. It was, of course, very charming - but it was much more. It had much wisdom tucked away in a casual-seeming way. I wish that address were printed in all books on civics. It gives more of the

wisdom of governments and of our democratic ways. Let's have our civics usually carried. It will be in our hearts as your next fifty years hence.

Wesley and I were pleased to try to get the book done - and we had hope that Harry will keep his for his great spirit.  
Benedict Jones

Thursday morning

Supreme Court of the United States  
Washington, D. C.

Dear Paul:

I'm a tough sleeper,  
but I became restless  
early this morning, and  
here it is, a little  
after seven, and I'm  
writing this note  
to you. For it's your  
cares that roused me  
from my sleep. As I  
came home last  
night and Marion

and I saw those dread-  
ful headlines, we could  
talk of nothing else  
except all the burdens  
that the selfishness  
and ignorance and  
shortsightedness of  
others cast upon you.

And so I woke -  
thinking of coal and  
rails and the cars  
and the tax, and  
wondering that I could

to get even so little from your  
shoulders. But all I can  
do is to send you my warm  
best-wish good wishes for  
your strength and health and  
my devoted affection.  
Ever yours,  
W. H. H.

*Lucy file*

*RF Frankfurter Folder*

November 14, 1941.

Dear Felix:-

Ever so many thanks for that sympathetic note. I wish I could put you in charge of this coal production problem but I am afraid that the legalities of what I fear I must do may come before you for final approval! Is there any way I can cut you in half, leaving your starboard side on the bench and putting your port side to work in the Executive Branch of the Government!

As ever yours,

Honorable Felix Frankfurter,  
Supreme Court of the United States,  
Washington, D. C.

P.S. The word "port" in the above is a nautical term and not spirituous. Never having been an admiralty lawyer, I thought you might need this clarification.

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~~July 21st~~ 1511-30<sup>th</sup> (next)

November 17, 1941

Supreme Court of the United States

Washington, D. C.

PSF

Frankfurter

Dear Paul:

You doubtless know it already, but what follows will take you only a minute to read. Someone whom I have known since childhood, famous to know the difference between evidence and gossip, professes to have reliable information as to the specific instructions of Germany. Because of scepticism as to the dependability of Nomura's word, not to say the intentions of this country in case of need aggressive war.

Sapau, Kurusu was sent  
here to find out if he  
means business in case  
Sapau moves. The rest  
of Kurusu's bedroom is all  
window-dressing.

BUT, even if that is not  
the first time that I tell  
you some thing you already  
know, why must you  
make my nautical ig-  
norance a matter of record -  
you, master of "off-the-  
record!" Anyhow, I should  
certainly confess I care more  
for alcoholia than nautical

fact? Does that mean I am listing  
to veterans?

I hope that you have forgotten  
them and all the other minor  
details.

Ever faithfully yours,  
A.T.

251

file  
passed

July 20

1511-80  
Franklin D. Roosevelt

Supreme Court of the United States  
Washington, D. C.

23 November 41

PSF

Dear Frank:

Your suaviter in modo,  
fortiter in re has again  
been vindicated. How easy  
it is for people to solve  
a problem who do not ap-  
preciate its complexities.  
These "crack-down-on-'em"  
critics have not the wisdom  
to understand that the only  
abidingly "practical" way  
for a statesman is to mo-  
bilize and employ the  
spiritual resources of a

nations for its practical  
ends. You have had to  
retain and still further  
gain the confidence and  
devotion of humble folk  
without alienating them  
from old and inti-  
mate loyalties. And  
you have done it.

Thusly you have won  
new good will and  
increased prestige to  
move for larger ends  
on a wider front.

We have come for a  
second Thanksgiving Day.  
Ever affectionately,  
R. T.

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Frankfurter Folder 1511-80 Hunt  
Daddy's  
PSF The fateful Sunday  
Supreme Court of the United States  
Washington, D. C. [12-7-41]

File  
Personal

Dear Saul:

No one is now so ig-  
norant as not to know  
that the whole Queerian  
people are behind you.  
And one may venture to  
say, in all humility,  
that the God of Righteous-  
ness is with you - and  
you are His instrument.

Our devoted prayers  
attend you.

Affectionately yours  
W.T.

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*file personal* ~~July 27~~ 77 49.13  
171-30 (ind)

Supreme Court of the United States  
Washington, D. C.

PSF Frankfurter  
Mr. Frank:

[12-9-41]

Fear is the child of  
ignorance and the parent  
of intolerance. Therefore  
your first task was to  
bring calm and confi-  
dence to our people.  
And that your fireside-  
talk undoubtedly will  
accomplish, with its  
blend of concrete facts  
and the high mood of a  
firm, common humanity.

with which you began  
and closed. And your  
own warming, con-  
firming voice must,  
unconsciously, have  
greatly helped to  
quicken the firm,  
vigorous and strenuous  
forces among all  
our people. The ground  
work for action - the  
right atmosphere -  
has thus been laid  
by you. Keep fit -  
and give the Country your  
continuing self. Ever yours  
E. J. Ford

*File  
Pres mem.*  
*Justice Felix Frankfurter Folder*

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

December 17, 1941

Dear Mr. President:

The least I can do is not to waste your time and not be like the fellow whose memorandum Lincoln endorsed "From a young man on how to win the war".

That is not the purpose of this enclosure. But it may not be without value to summarize a good many talks I have had since September 1939 with some of the best brains who were intimately familiar with the defects and inadequacies of the British and French war effort, and to indicate the meaning of their experience to some of the problems that now confront you.

I did not feel justified in relying solely on my own judgment before sending this memorandum to you. I submitted it to Jim Byrnes who asks me to say that he entirely agrees with it and that he looks forward to an early opportunity of talking with you about carrying out the suggestion made in the memorandum.

With affectionate good wishes,

Faithfully yours,

*Felix Frankfurter*

The President

52  
MINISTRY OF JUSTICE  
MEMORANDUM OF  
I

A rapid summary of the basic conditions, familiar though they be, will give the setting to what follows.

All other belligerent countries have already mobilized practically all their resources and man-power. Little expansion of their forces can be expected. Only one major element would add greatly to the resources of the Axis, namely, the conquest of the oil resources of the Caucasus and of the Netherlands. The forces of Great Britain and Russia have also been mobilized. Apparently all that can be expected from them is that they maintain their effort in men and materials.

It is fair to assume that from now on the drive of the Axis will be to use as quickly as possible for some decisive results the instruments of war which they have accumulated. The events of the last ten days offer clear proof that the Axis believe that they have reached a point of maximum mobilization and that they can use these forces successfully before the potentials of this country come into effective operation.

The decisive shift in the development of the conflict is therefore due to the fact that the United States has entered it with its immense potentialities of men and resources, the mobilization of which is only partial as compared with that of the other belligerents. Inevitably, therefore, final victory depends on the speed with which the full forces of this country will be brought into being and how they will be used.

But before they can be used they must exist. This memorandum concerns itself with that problem.

II

Specifically, the experience of other countries since the beginning of the

war in achieving effective mobilization of a nation's resources is believed to be relevant to the quickest translation of potentiality into actuality.

France and England were at war in September 1939. French man-power had certainly been mobilized before the war to the full. Her armament effort was far from being mobilized - indeed was only beginning to be mobilized when she was out of the war. England's forces did not begin to be mobilized in full until after the French disaster. Even then it took many months before the production of Great Britain and the utilization of her full resources began to bring real results.

Two fundamental weaknesses explain the course of British and French events, according to the analysis of those capable of judging and fearless in doing so:

- (1) Lack of a definite goal set by either Great Britain or France at the beginning of their efforts;
- (2) Slowness in execution, because the British and French war administration was not organized so as to make quick decisions possible.

The goals to be achieved were devised on the installment plan and the machinery of administration in both countries was constantly stalled because of failure to make or to obtain decisions on major questions in executing paper policies. Two causes were responsible for this state of affairs: (1) the substantial continuance of peacetime governmental machinery for the war effort; and (2) the failure appropriately to differentiate in action between the function of those charged with setting goals to be achieved - policies - and the function of those charged with carrying out these policies and reaching these goals.

Take the French situation. Daladier, at a time when he had almost full power for the conduct of the war, found himself crowded by requests for all sorts of decisions which should have been taken by people in charge of executing policies. As a result, his time and energy became absorbed with settling day-to-day questions leaving him no energy or freshness of thought for the vital problems of the conduct of

the war. Daladier was pressed by the various agencies for these day-to-day decisions, partly because the French government had failed to determine in due time the main objectives to be achieved, but partly also because the questions that were put to Daladier involved conflicting or overlapping functions between various agencies of the government. It was necessary to arbitrate between them. Since no one was authorized to act on behalf of Daladier, these questions were constantly thrown up to him.

As to England. The peacetime provision of a system of coordination between the various departments on the one hand, and on the other hand the existence of a War Cabinet with a permanent secretariat went a good distance toward avoiding the French confusion. But even the British system creaked and crawled because it did not face up to basic requirements, namely, the determination of objectives by the heads of governments not burdened by the responsibility for the details of their execution and the necessary delegation of authority to achieve relentless execution of objectives. British machinery is orderly but slow. While execution of policies has very much improved, the mechanism is still cumbersome and too often creaky.

### III .

The fact of the matter is that in times of peace the democratic system of administration is purposely so arranged as to assure that decisions are preceded by extensive discussion and their execution is constantly controlled. Ample debate not only enters into devising policy but into executing it. That is not a system designed for war. Problems arising in the mobilization of the resources of the country for the achievement of goals set must be disposed of promptly and the machinery of administration must be so organized as to make this possible. It is essential, therefore, that the organs of government which decide on policies or objectives be not saddled with the task of day-to-day decisions in the execution of policies. Otherwise, men soon find their energies absorbed in making all kinds of decisions, major and minor, -

deciding questions of policy as well as questions relating to their execution. And in making innumerable decisions on execution, major objectives imperceptibly but inevitably become clouded and lost to view.

IV

What concrete lesson can we learn from these British and French experiences?

The total mobilization of our resources will, of course, touch innumerable phases of our national life. But plainly, the most urgent need is to produce the necessary armaments for war. This is no time for paper plans. But adaptation of means to ends - how to translate policies into ammunition and armaments - is the most exigent and practical of questions. And as British and French experience proves, effective administration plays an indispensable part.

Apply the British and French experience to the realization of our Victory program. This is in process of formulation through the Army and Navy Departments and SPAB, in consultation with our allies. The scope of such a Victory program must of course be determined by the President. The goal once set by him will be turned over for administrative execution. At that stage the present administrative situation bristles with difficulties.

For the agencies dealing with various phases of production are many. But each is under a different authority, none has responsibility for achieving the over-all objective. Appropriations having been ordered by Congress, orders are placed by the Ordnance Divisions of the Army and Navy Departments because the money has been voted to the Army and Navy. But the task of increasing and, in many cases, of creating, the capacity for production of such orders belongs to OPM, while the authority to reduce the civilian production without which increased armament capacity cannot exist, belongs to SPAB. Each one of these agencies will thus deal with the part of the problem which concerns it, but responsibility for the main objective is nowhere except with the President. But in the execution of this objective questions

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are constantly bound to arise within these agencies but beyond the scope of any. Inescapably, they will be sought to be put before the President for decision. The result will be that many decisions of importance, but nevertheless merely decisions to be taken in carrying out objectives already set by the President, will be delayed or will not be taken without submission to the President.

Either multitudinous decisions will thus be put to the President, submerging him, slowing down execution and subordinating attainment of the main objective, or, if controversies are not brought to the President's attention and decisions upon them do not reflect his will, agencies will not consider them as final. Again delay and confusion are bound to arise.

There does not seem any escape from the conclusion that some one should be capable of acting for the President in seeing that the Victory program adopted by him is promptly and effectively carried out. Such a person would be charged with the over-all view of the program, the execution of which is in the hands of various agencies, and to such a person these various agencies would turn for day-to-day decisions. He would be acting for the President and as such there will arise occasionally great questions for which the President's direct judgment and decision would be necessary. He would be the eyes and ears for the President on the various phases of the program through whom the President would get a whole picture without himself doing the picture puzzle. He would be an instrument of the centralized execution of the President's will - an instrument of dispatch, concentration and responsibility.

As the war develops there may arise other phases of the war administration for translating the President's will into day-to-day execution through a single channel of normal communication between him and the myriad agencies for achieving high objectives without unduly drawing on the strength and vision of the President for tasks that are his and his alone, not merely as President but as Commander-in-Chief. But the translation of the Victory program from things on paper to actualities is an immediate problem for effective administration.

Chase  
Bilby  
Op. 13

PSF  
31 December 41

Supreme Court of the United States  
Washington, D. C.

Dear Paul -

Frankfurter

how that Old about  
to back in the Union,  
Mexico and I would  
like you to share with  
us a choice product  
of the Green Mountain  
State that a cheese-  
loving friend sent us.

For you a Happy New  
Year - a Victorious New  
Year for our Cause. *Ever yours*

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