

● PSF

Floyd H. Roberts - Subject File

Box 177

PS F: F. H. Ro

March 18, 1939.

My dear Carter:-

I have your note of March seventeenth asking if recommendations made by a Senator of Virginia for important Federal appointments, requiring the advice and consent of the United States Senate are to be subject to the effective veto of the Governor of Virginia.

I am reliably informed that since the Constitution of the United States went into effect in 1789, the Congress of the United States has exercised all legislative powers (see Article I, Section I) ^{under} in the Article conferring legislative powers. The power of appointment of executive officials is in no place conferred ^{in that Article}.

Article II of the Constitution vests the Executive power in the President. Section II of Article II directs that the President shall nominate and by and with the advice of the Senate shall appoint all officers of the United States whose appointments are not otherwise provided for in the Constitution; and the Congress may vest the appointment of inferior officers in the President alone or in courts of law or in the heads of departments.

It seems hardly necessary to assure you that time-hallowed courtesy has in most instances, though not always, permitted Senators, Representatives and others to make recommendations for nomination and appointment to the President.

Every President has followed the custom of obtaining such information in regard to the character, ability and fitness of individuals proposed for nomination and appointment as he may deem advisable.

This constitutional procedure, having obtained for one hundred and forty-nine years, is, I think, sufficiently sacred to continue in the years to come.

Always sincerely,

PSF: F. H. Roberts

208 J

July 6, 1938.

My dear Harry:-

After mature consideration I have concluded that I should appoint Judge Floyd H. Roberts of Bristol, Virginia, to be United States District Judge for the Western District of Virginia, to fill the existing vacancy.

As you know, a number of gentlemen have been suggested to me for this place but I believe that Judge Roberts is the best fitted. He bears an excellent reputation as an Attorney and as a Judge and has, I believe, the confidence of the people of his community.

Very sincerely yours,

Honorable Harry F. Byrd,
Berryville,
Virginia.

PPF 2934
x 920

68/5/38

PS F. H. Roberts

file

THE WHITE HOUSE
WASHINGTON

*map the
I think
had better
get file*

8/8/38

MEMORANDUM FOR MISS LeHAND:

Mr. McIntyre asked if you would give
this to the President on his return.

Not carded

THE WHITE HOUSE
WASHINGTON

January 23, 1939.

MEMORANDUM FOR

HON. JOSEPH B. KEENAN

You are absolutely right in regard to filling judiciary appointments.

Several months ago I wrote to Senator Glass pointing out that members of the Senate are given opportunity to recommend or give their advice on such appointments. That is in strict conformity with the Constitution. We should continue to do this, and, as you say, the practice is quite routine.

I pointed out to the Senator, however, that the Constitution vests the nominating power in the President and does not require the President to nominate those recommended by Senators. If the Constitution had intended Senators to give advice which the President was bound to accede to, it would not have given the nominating power to the President.

Reductio ad absurdum. So be it!

(over)

F. D. R.

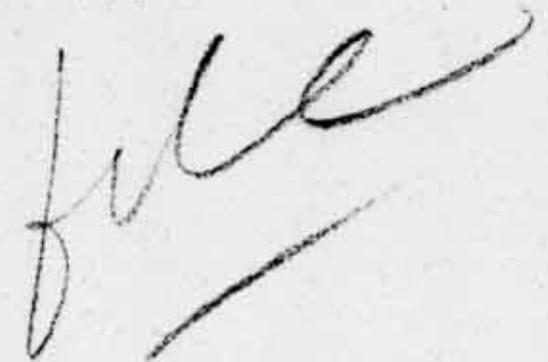
Letter from Hon. Joseph B. Keenan,
The Asst. Attorney General, 1/19/39
to the President. States that Sen. Carter
Glass has notified the Judiciary Committee
that the appt. of Judge Roberts to the Dist.
Court of Virginia is personally obnoxious
to him. Mr. Keenan calls attention to
policy used by the Dept. of Justice in such
appts.

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

January 31, 1939

Memorandum For Secretary McIntyre.



This has been shown to Joe Keenan
in the absence of the Attorney General, who
is sick (it was cleared through the Attorney
General's office). Keenan is handling this
case.

James Rowe, Jr.

B. KEENAN
THE ATTORNEY GENERAL

Department of Justice
Washington

January
27th
1939

MEMORANDUM FOR THE ATTORNEY GENERAL:

The Judge matter has been and is a troublesome one, and I would like to send this memorandum to the President if you have no objection.

J.B.K.

Joseph B. Keenan,
The Assistant to the Attorney General

Department of Justice
Washington

January
27th
1939

MEMORANDUM FOR THE PRESIDENT

Dear Mr. President:

I thought you would be interested in learning of the developments in the matter of the nomination of Floyd H. Roberts to the United States District Court for the Western District of Virginia.

In accordance with the routine practice, a subcommittee of three was appointed to make a recommendation to the full Judiciary Committee of the Senate on this nomination. This subcommittee consisted of Key Pittman, Chairman, and Senators Van Nuys and Borah.

I told Key Pittman that we wanted to have an open hearing on the qualifications of the nominee. He told me that such hearing would be granted. However, when I talked with him early yesterday afternoon he told me that both Senators Glass and Byrd, have registered their objection with the subcommittee, such objection being that the appointment of Judge Roberts was personally obnoxious to them. The subcommittee, thereupon, decided to and did refer the matter back to the full committee without recommendation. Senator Pittman said that this course was taken because he believed that the ruling on such objections should be made by the full committee. He said that many years ago the committee held that it was not sufficient for a Senator to register his protest on the ground that an appointment was personally obnoxious to him; that the rule as interpreted required the ground of such claim to be placed before the full committee for its action.

I told Senator Pittman that we had asked for a hearing and had been promised that a hearing would be granted. I asked him if he had any objection to my taking the matter up with the Chairman of the full committee and he said he would be very glad if I would.

I, thereupon, immediately called on Senator Ashurst and I went into the entire situation fully with him. I further told

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him that it was our desire in justification of the President's nominee to call as witnesses some of the well-known and respected citizens of Virginia who would testify as to the qualifications and character of Judge Roberts, that this list would include such men as Governor Price and one or two former Governors, also many leaders of the Bar, and other citizens of repute in business and the professions.

I told him further, and candidly, that it was not our intention to permit this nomination to be pigeon-holed, and if the Senators from Virginia attempted to block this nomination we wanted not only the people of Virginia to know exactly why, but the country also.

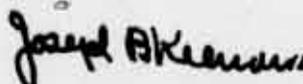
Senator Ashurst conferred with Senator Pittman over the telephone and he ordered a special meeting of the entire Judiciary Committee for Wednesday, February 1, 1939, at 2:00 P. M. All the members were notified, and notification was sent to the two Virginia Senators. Judge Roberts was also notified by telegram last night by the Clerk of the Judiciary Committee and "invited to be present" if he so desired.

I gave this information to Representative Flannagan, and I intend to confer with Walton Moore today.

I have taken the liberty of acquainting you with these details because I believe this is a most important matter. Since we are to go into this contest, I believe we should get all the good possible out of it, and I am not at all sure that the Senate will fail to confirm Judge Roberts if we make a vigorous and impressive showing as to his qualifications. I believe it also important that we stress and emphasize the significance of the provisions of the Constitution as pointed out in your memorandum. It may well be that there will be further instances of a similar nature relative to other nominations in other states.

Although this relates to a matter which developed before Governor Murphy became Attorney General, I want you to know I have kept and am keeping him fully informed.

Respectfully,



Joseph B. Keenan,
The Assistant to the Attorney General

THE WHITE HOUSE
WASHINGTON

ASF
Roberts
Box 177

January 28, 1939.

MEMORANDUM FOR THE ATTORNEY GENERAL:

Thank you for your memorandum in regard to Judge Floyd H. Roberts. I agree with you that we should justify the appointment by stating the qualifications.

I enclose, for your information, copies of letters between Senator Glass and me relating to this nomination.

Don't suppose they should be used publicly as they are in a sense personal
F.D.R.
Enclosures. *FR*

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

February 1, 1939

Memorandum For The President.

Joe Keenan telephoned and asked that you be told of developments in the Judge Robert's matter:

Ready to testify were Governor Price and 3 former Governors of Virginia. Also ready to testify were the President of the County Bar Association (also former President of the State Bar), many ministers, bankers and leading citizens.

The Committee decided to go into executive session. Senator Neely moved, however, that Governor Price be heard before doing so. This was defeated 14 to 7. The Committee then went into executive session to determine procedure, which means to determine whether or not they will accede to the request of Byrd and Glass to report Robert's name out without going into his qualifications. If they do this, it will mean they have refused to hear a witness they invited, and Mr. Keenan believes such action would serve the purpose of focusing attention on their refusal to go into Robert's qualifications.

The press and photographers are well represented and there is a large crowd waiting for the session to end. They have been in session for an hour and a quarter.

James Rowe, Jr.

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

*file
personal*

2-3-39

Memorandum for Mr. McIntyre:

Governor Price phoned and said to tell you that he had had a message from Congressman Flannagan this morning that there is a rumor that an effort will be made by certain Senators to ask the President to recall Roberts' nomination.

Judge Moore of State Dept, Cong. Flannagan, and other dependable advisors are asking for an appointment with the President to discuss the situation briefly, and if you can hold the matter in abeyance until these gentlemen can see the President, the Governor will appreciate it.

He is leaving town today to go down to Washington-Lee to see his son.

PSF: F. H. Roberts

February 6, 1939.

My dear Judge Roberts:-

I feel that in justice to you and your family I should write to you in regard to the refusal of the Senate to confirm your appointment as United States District Judge for the Western District of Virginia.

First of all, I tender you my thanks for the honorable, efficient, and in every way praiseworthy service that you have rendered to the people of the United States in general and to the people of the Western District of Virginia in particular.

Second, I wish it known that not one single person who has opposed your confirmation has lifted his voice in any shape, manner or form against your personal integrity and ability.

In order that you may know the full history of what has occurred, I take this opportunity to summarize the story.

On March 17, 1938 I received a letter from Senator Glass enclosing a clipping from a local Virginia paper. This newspaper article, quoting an editorial in another local Virginia paper, made the assumption that it would henceforth be necessary to receive the backing of Governor Price of Virginia before any Virginian could hope for a Federal appointment.

Senator Glass in his letter asked if Federal appointments, for which Senate approval was necessary, would be subjected to the effective veto of the Governor of Virginia.

To this I replied on March 18th, explaining to the Senator the difference between the appointive power, which is in the President, and the power of confirmation, which is in the Senate. I pointed out to the Senator that time hallowed courtesy permits Senators and others to make recommendations for nomination, and, at the same time, that every President has sought information from any other source deemed advisable.

On March 19th Senator Glass wrote me again, covering his construction of Article II of the Constitution, and asking me again as to the accuracy of the newspaper statement. He winds up by saying "the inference is, of course, that you approve the offensive publication which was the basis of my inquiry".

I replied to this letter from the Senator on March 21st in a personal and friendly vein. I stated that I was glad that we seemed to agree in our construction of the Constitution. I told him that I was not in the habit of confirming or denying any newspaper article or editorial. Obviously if I were to begin that sort of thing, I would have no spare time to attend to my executive duties.

I told the Senator to go ahead as before and make recommendations; that I would give such recommendations every consideration; but that I would, of course, reserve the right to get opinions from any other person I might select. I ended by asking the Senator to forget the newspaper article and wished him a good vacation and expressed the hope that he would come to see me on his return.

Subsequent to this date, I received a number of recommendations for the position of United States District Judge for the Western District of Virginia -- among them recommendations in behalf of two gentlemen from Senator Glass. I am not certain whether these recommendations were at that time concurred in by the Junior Senator from Virginia, but this is possible. Other recommendations were received from citizens of Virginia to a total number, as I remember it, of five or six.

The Attorney General was asked by me to report on these recommendations, paying attention as usual to the qualifications of each person suggested. I might add that your name was on this list but that at no time, to my knowledge, did you seek this office of Judge.

The Attorney General and I held several conferences with the result that we concluded that you were best fitted to fill the Judgeship.

As a result, I wrote on July 6th to both of the Virginia Senators stating that I had concluded to appoint you, that a number of gentlemen had been suggested for the place, but that I believed you to be the best fitted.

The following day, July 7th, I received a telegram from Senator Glass stating that he and his colleague would feel obliged to object to your appointment as being personally objectionable to them, and that a letter would follow. A few days later I received a letter from the Senator stating that he could not conceive any fair reason why one of his candidates had not been appointed.

It is worth noting that neither Senator on July 7th or subsequently raised any question as to your integrity or ability, and the only objection was that you were personally objectionable.

In regard to the original newspaper article suggesting that Governor Price had been given the veto over Federal appointments, this and similar stories are, of course, not worth answering or bothering about, for the very simple reason that no person -- no Governor, no Senator, no member of the Administration has at any time had, or ever will have, any right of veto over Presidential nominations. Every person with common sense knows this.

Your appointment followed, you took the oath of office, and have been serving with great credit as District Judge since then.

Your name was sent by me to the Senate in January, 1939, together with many other recess appointments.

We come now to the last chapter. Your nomination was referred to the Judiciary Committee of the Senate and by the Chairman of that Committee to a Subcommittee of three. It appears from the record that both Senators from Virginia registered their objection with the Subcommittee saying "this nomination is utterly and personally offensive to the Virginia Senators whose suggestions were invited by the Department of Justice only to be ignored". The Subcommittee reported back the nomination to the full Committee without recommendation, stating the raising of the matter of Senatorial courtesy and saying that this matter had not been a direct issue since 1913.

At a special meeting of the full Committee on the Judiciary, and before the Committee went into executive session, attention was invited to the presence of the Governor of Virginia, to the presence of two former Governors of Virginia, and to the presence of the nominee and his Counsel.

After lengthy discussion the Committee went into executive session, reopening the doors an hour later.

The record shows that at this time the Committee heard the Governor of Virginia in favor of the nominee and also former Governor E. Lee Trinkle and former Governor Westmoreland Davis; also, George M. Warren, Esq., Counsel for nominee. Thereupon the Committee, instead of hearing other witnesses in behalf of the nominee, many of whom were present, moved that a list of these further witnesses be incorporated in the record without hearing them. The Committee also agreed to receive certain letters and editorials in behalf of the nominee, and, finally, a record of designations you have received from former Governors of Virginia to sit in other judicial districts, this list including many designations of you made by former Governor Harry F. Byrd.

That was followed by your own testimony.

The privilege of making the closing and sole arguments against you was accorded to the two Senators from Virginia.

Senator Glass stated that neither he nor his colleague had formally or definitely made any statement affecting your capabilities.

He proceeded to review the newspaper reports of last March, stated that he had not communicated with the Governor to ascertain whether or not the latter had authorized the publication, and spoke of his letter to me. He went on to state that the President had not answered his question up to this date, except by sending the nomination to the Senate.

You will recognize from what I have written you that as far back as last March, in reply to Senator Glass' letters, I told him categorically that I never answered any questions relating to the credibility or otherwise of newspaper articles or editorials, and I asked him to forget the newspaper article altogether. Therefore, the statement of Senator Glass to the Committee does not square with the facts.

Continuing, the Senior Senator from Virginia referred to other newspaper articles which spoke of "rebukes" to the Senators. It is almost needless for me to suggest that neither you nor I pay any attention to such excuses. Finally, Senator Glass stated "as a matter of fact, the President of the United States did give to the Governor of Virginia the veto power over nominations made by the two Virginia United State Senators". I am sorry, in view of my long personal friendship for the Senior Senator, that he has made any such statement, and I can only excuse it on the ground of anger or forgetfulness.

At the end of his speech Senator Glass says "Mr. Cummings never had the slightest idea of giving consideration to the recommendations of the two Virginia Senators because the Governor of Virginia had been promised the right of veto on nominations that they made". Neither of these statements is true.

Senator Glass was followed by Senator Byrd who stated that your nomination was personally offensive to both Senators, in fact, "personally obnoxious".

At the very close of the Judiciary Committee hearing Governor Price stated "Senator Glass has made a charge against me. He is entirely mistaken about it". The Governor further stated that he was not involved in the newspaper story.

The Committee thereupon abruptly closed the hearing and went into executive session, with the result, as you know, that your nomination was reported adversely to the Senate.

This brief history repeats several episodes in the history of the United States, which have occurred from time to time during the past one hundred and fifty years. In other cases nominations by former Presidents of men of outstanding ability and character have been denied confirmation by the Senate, not on the plea that they were unfitted for office but on the sole ground that they were personally obnoxious to the Senator or Senators from the State from which they came.

During this whole period Presidents have recognized that the constitutional procedure is for a President to receive advice, i.e., recommendations, from Senators.

Presidents have also properly received advice, i.e., recommendations, from such other sources as they saw fit.

Thereupon Presidents have decided on nominations in accordance with their best judgment -- and in most cases basing their judgment on the character and ability of the nominee. In many cases, of course, the recommendations of Senators have been followed, but in many other cases they have not been followed by Presidents in making the nominations.

Thereupon, under the Constitution, the Senate as a whole -- not the Senators from one State -- has the duty of either confirming or rejecting the nomination.

It is, of course, clear that it was the intention of the Constitution of the United States to vest in the Senate as a whole the duty of rejecting or confirming solely on the ground of the fitness of the nominee.

Had it been otherwise, had the Constitution intended to give the right of veto to a Senator or two Senators from the State of the nominee, it would have said so. Or to put it another way, it would have vested the nominating power in the Senators from the State in which the vacancy existed.

On somewhat rare occasions the Senate, relying on an unwritten rule of Senatorial courtesy, which exists in no place in the Constitution, has rejected nominees on the ground of their being personally obnoxious to their Senators, thus vesting in individual Senators what amounts in effect to the power of nomination.

In the particular case of which you are the unfortunate and innocent victim, the Senators from Virginia have in effect said to the President -- "We have nominated to you two candidates acceptable to us; you are hereby directed to nominate one of our two candidates, and if you do not we will reject the nomination of anybody else selected by you, however fit he may be".

Perhaps, my dear Judge Roberts, the rejection of your nomination will have a good effect on the citizenship and the thinking of the whole nation in that it will tend to create a greater interest in the Constitution of our country, a greater interest in its preservation in accordance with the intention of the gentlemen who wrote it.

I am sorry, indeed, that you have been the victim. Against you not one syllable has been uttered in derogation of your character, or ability in the legal profession or your record on the Bench.

Very sincerely yours,

Honorable Floyd H. Roberts,
Bristol,
Virginia.

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

February 7, 1939.

MEMORANDUM FOR MR. FORSTER:

I want these letters copied in sequence as they have been numbered by the President, with lines drawn across the page on the typewriter at the conclusion of each of the letters and other papers.

I want an original copy for the President to send as an enclosure to the letter which Miss Tully has and will transcribe in the morning addressed to Judge Roberts — as many carbons to be made as is necessary for the files and for the use by the Staff Room in cutting stencils.

Stencils are to be cut in exactly the same form as the memorandum which the President sends Judge Roberts.

Stencils to be held in confidence subject to my release.

As soon as the President has signed his letter to Judge Roberts, stencils of that are to be cut, marked for the press, immediate release, today's date. Those stencils also to be held in confidence subject to my release. Miss Tully will give you the copy of the President's letter to Judge Roberts as soon as the President has signed and approved it.

S.T.E.



PSF: F. H. Roberts

February 7, 1939.

MEMORANDUM TO JUDGE FLOYD H. ROBERTS

Copies of letters and other papers which comprise the official files in the case of the nomination by the President of the Honorable Floyd H. Roberts to be U. S. District Judge for the Western District of Virginia:

United States Senate

WASHINGTON, D. C.

March 17, 1938

My dear Mr. President:

I am venturing to inquire whether the attached newspaper statement, widely published in Virginia, is true. In short, I desire to ask if recommendations made by me as a Senator of Virginia for important Federal appointments requiring the advice and consent of the United States Senate are to be subject to the effective veto of the Governor of Virginia?

Sincerely yours,

Carter Glass
H

Honorable Franklin D. Roosevelt,
The White House,
Washington, D. C.

March 16, 1938

Price Backing Seen Necessary For Federal Job

Henceforth the indorsement of Governor Price will be necessary before any ambitious Virginian may hope to land an "important" Federal job, according to the Bristol Herald Courier, which is published by State Senator Charles J. Harkrader, one of the Governor's most ardent supporters in the General Assembly and in the Ninth Congressional District.

In a lengthy editorial, the paper states without reservation that President Roosevelt himself has made this decision.

"This does not mean that the Governor is to be a Federal patronage dispenser," the editorial asserts, "but it does mean that he is to have the veto power on all appointments of any consequence in Virginia."

Capital Visit Recalled

More than usual significance was attached to the paper's statement in view of the fact that Mr. Harkrader, after conferring with the President in Washington on Monday, quoted him as saying he was "delighted" that the Virginia General Assembly had passed a slum-clearance enabling act and an old-age assistance program, and "complimented Governor Price for his championship" of the slum-clearance measure during the last days of the session when it seemed in danger of being killed.

Since it isn't customary for a President to be quoted so speedily after a conference, the assumption is that Mr. Harkrader spoke with Mr. Roosevelt's consent.

When attention was called to the editorial here yesterday afternoon, Governor Price was entertaining Postmaster-General James A. Farley, chief patronage dispenser in the Federal Government who was here for a speech at the Mosque last night, and could not be reached for comment.

United States Senator Byrd is generally regarded as the key man in Washington in the matter of Federal patronage for Virginians, chiefly because Senator Glass does not care to be bothered with such problems.

C O P Y

THE WHITE HOUSE
WASHINGTON

March 18, 1938.

My dear Carter:-

I have your note of March seventeenth asking if recommendations made by a Senator of Virginia for important Federal appointments, requiring the advice and consent of the United States Senate are to be subject to the effective veto of the Governor of Virginia.

I am reliably informed that since the Constitution of the United States went into effect in 1789, the Congress of the United States has exercised all legislative powers (see Article I, Section I) under the Article conferring legislative powers. The power of appointment of executive officials is in no place conferred in that Article.

Article II of the Constitution vests the executive power in the President. Section II of Article II directs that the President shall nominate and by and with the advice of the Senate shall appoint all officers of the United States whose appointments are not otherwise provided for in the Constitution; and the Congress may vest the appointment of inferior officers in the President alone or in courts of law or in the heads of departments.

It seems hardly necessary to assure you that time-hallowed courtesy has in most instances, though not always, permitted Senators, Representatives and others to make recommendations for nomination and appointment to the President. Every President has followed the custom of obtaining such information in regard to the character, ability and fitness of individuals proposed for nomination and appointment as he may deem advisable.

This constitutional procedure, having obtained for one hundred and forty-nine years, is, I think, sufficiently sacred to continue in the years to come.

Always sincerely,

Honorable Carter Glass.

United States Senate

WASHINGTON, D. C.

March 19, 1938

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My dear Franklin:

Permit me respectfully to acknowledge yours of March 18, the first paragraph of which accurately states the purport of the question which I ventured to ask in my note of March 17, albeit you omit, as far as I am able to discern, an answer to the question except by implication.

I am not entirely unfamiliar with those articles of the Constitution which define the powers of the executive and legislative branches of the government, nor of the well-established practices thereunder. Nothing in my note of the 17th assumed to suggest that the appointment of executive officials rests in the Congress or either branch thereof.

Article II of the Constitution, if I have understood it aright during the many years of my public service, does textually give to the United States Senate the right to advise and consent as to nominations of certain federal officials made by the President; and it has usually been assumed that Senators from the State involved know best the requirements of each case. The Constitution does not confer this function upon the governor of any State. The offensive publication, plainly intended to discredit the Senators of Virginia, stated that you had specifically determined to transfer this power of advising and consenting to the governor of Virginia and given that official the right to "veto" any recommendation made by the Senators.

It is needless to say that I have never at any time challenged the right of anybody to recommend nominations and appointments to the President or the right of the Executive to obtain full information from any source with respect to the character, ability and fitness of individuals proposed for nomination and, "by and with

the advice and consent of the Senate", for appointment; but what I did do, respectfully, was to inquire as to the accuracy of a malicious newspaper statement which signified that, in the matter of appointments to Federal positions in Virginia, the President now so distrusts the Senators of that State as to have decided no longer to follow the "time-hallowed courtesy" of advising with and requesting the consent of Senators.

I do not misconceive the meaning of your letter to me. The inference is, of course, that you approve the offensive publication which was the basis of my inquiry.

Sincerely yours,

Carter Glass.
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Honorable Franklin D. Roosevelt,
The White House,
Washington, D. C.

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Senate
S
March 21, 1958.

My dear Carters:

All the same -- and in spite of yours of March nineteenth -- you are still a good old unreconstructed rebel for whom I have and always will have a very great affection.

What makes me happy is that you and I seem to agree 100% in our construction of the Constitution of the United States, including the fact that the Constitution does not take away the right of Senators to advise the President on nominations and confer the right on State Governors.

Fortunately for my own peace of mind (and this is not a dig at you) I am not a newspaper editor, nor am I in the habit of answering any human being when I am asked if a newspaper article represents my views or not. As I pointed out in the last campaign, 85% do not represent my views -- and as election day proved the 85% were wrong.

Boil it down to this on which you and I can both agree -- you go ahead as you have before and make recommendations. I will give them every consideration. But I reserve the right, also, to get the opinions of anybody else I may select -- Governor Price or Herbert Hoover, your old friend who makes moonshine in the Blue Ridge or Father Coughlin -- Nancy Astor or the Duke of Windsor.

Forget the newspaper article, have a grand trip, stay in the sun, come back full of vim and vigor -- and come to see me.

As ever yours,

Honorable Carter Glass,
United States Senate

July 6, 1938.

My dear Carter:-

x After mature consideration I have concluded that I should appoint Judge Floyd H. Roberts of Bristol, Virginia, to be United States District Judge for the Western District of Virginia, to fill the existing vacancy.

As you know, a number of gentlemen have been suggested to me for this place but I believe that Judge Roberts is the best fitted. He bears an excellent reputation as an Attorney and as a Judge and has, I believe, the confidence of the people of his community.

Very sincerely yours,

Honorable Carter Glass,
Lynchburg,
Virginia.

PPF 687
x 9^{en}

TELEGRAM

208-3 The White House
Washington

File 7
Show to R7 before
going

23WU. RA. 21-

Lynchburg, Va., July 7, 1938

THE PRESIDENT.

The Virginia Senators would feel obliged to object to the
appointment of Judge ^{Floyd H} Roberts as personally objectionable to
them Letter follows.

Sarter Glass.
X

445 - 8

CARTER GLASS, VA., CHAIRMAN
 KENNETH MC KELLAR, TENN.
 ROYAL S. COPELAND, N. Y.
 CARL HAYDEN, ARIZ.
 ELMER THOMAS, OKLA.
 JAMES F. BYRNES, S. C.
 HILLARD E. TYDINGS, MD.
 RICHARD B. RUSSELL, JR., GA.
 ALVA B. ADAMS, COLO.
 PATRICK MCCARRAN, NEV.
 JOHN H. OVERTON, LA.
 JOHN H. BANGHEAD, ALA.
 JOSEPH C. O'MAHONEY, WYO.
 WILLIAM GIBBS MC ADOO, CALIF.
 HARRY S. TRUMAN, MO.
 F. RYAN DUFFY, WIS.
 EDWARD R. BURKE, ILL.
 HERBERT E. HITCHCOCK, S. DAK.
 THEODORE F. GREEN, R. I.

KENNEDY F. REA, CLERK
 JOHN W. R. SMITH, ASST. CLERK

United States Senate
 COMMITTEE ON APPROPRIATIONS

*Short Note
 given to the
 President on
 his return*

7-7-38

THE WHITE HOUSE
 JUL 15 8 46 AM '38
 RECEIVED

July 7, 1938.

208 J

Honorable Franklin D. Roosevelt,
 The White House,
 Washington, D. C.

Dear Franklin:

Touching yours of July 6th announcing your purpose to designate Judge Floyd H. Roberts, of Bristol, as United States Judge for the Western District of Virginia, I to-day wired you that this appointment would be regarded by the Virginia Senators as personally offensive to them.

x10
 x

At the request of the Department of Justice the two Virginia Senators suggested the appointment for this position of either Judge A. C. Buchanan, an outstanding Virginia Circuit Judge, or Frank Tavenner, Assistant United States Attorney for the Western District of Virginia, stating that the selection of either would be satisfactory to the Senators. The endorsements of these gentlemen by their colleagues of the bar were unsurpassed and I cannot conceive any fair reason on earth why one of them should not be chosen. However at the time it was publicly announced that the recommendation of the two Virginia Senators would be disregarded and the appointment controlled by certain politicians in the State.

Harry F (Bud) x

X PPF 2834

In these and other circumstances the designation of Roberts appears to be intended as an intentional affront to the Virginia Senators and they will of course resist his confirmation. I might add that neither of the Virginia Senators agrees with your suggestion that the appointment is a fitting one.

Very respectfully,

Carter Glass

CG/M.

(End)

X PPF 687

PSF: F. H. Roberts

February 7, 1939.

My dear Judge Roberts:-

I feel that in justice to you and your family I should write to you in regard to the refusal of the Senate to confirm your appointment as United States District Judge for the Western District of Virginia.

First of all, I tender you my thanks for the honorable, efficient, and in every way praiseworthy service that you have rendered to the people of the United States in general and to the people of the Western District of Virginia in particular.

Second, I wish to express to you my deep regret that you have been made the victim of personal and political vengeance, while at the same time not one single person who has opposed your confirmation has lifted his voice in any shape, manner or form against your personal integrity and ability.

In order that you may know the full history of what has occurred, I take this opportunity to summarise the story and to implement it by sending you a memorandum giving the correspondence which has passed between Senator Glass and me during the past year.

On March 17, 1938 I received a letter from Senator Glass enclosing a clipping from a local Virginia paper. This newspaper article, quoting an editorial in another local Virginia paper, made the assumption that it would henceforth be necessary to receive the backing of Governor Price of Virginia before any Virginian could hope for a Federal appointment.

Senator Glass in his letter asked if Federal appointments, for which Senate approval was necessary, would be subjected to the effective veto of the Governor of Virginia.

To this I replied on March 18th, explaining to the Senator the difference between the appointive power, which is in the President, and the power of confirmation, which is in the Senate. I pointed out to the Senator that time hallowed courtesy permits Senators and others to make recommendations for nomination, and, at the same time, that every President has sought information from any other source deemed advisable.

On March 19th Senator Glass wrote me again, covering his construction of Article II of the Constitution, and asking me again as to the accuracy of the newspaper statement. He winds up by saying "the inference is, of course, that you approve the offensive publication which was the basis of my inquiry".

I replied to this letter from the Senator on March 21st in a personal and friendly vein. I stated that I was glad that we seemed to agree in our construction of the Constitution. I told him that I was not in the habit of confirming or denying any newspaper article or editorial. Obviously if I were to begin that sort of thing, I would have no spare time to tend to my executive duties.

I told the Senator to go ahead as before and make recommendations; that I would give such recommendations every consideration; but that I would, of course, reserve the right to get opinions from any other person I might select. I ended by asking the Senator to forget the newspaper article and wished him a good vacation and expressed the hope that he would come to see me on his return.

Subsequent to this date, I received a number of recommendations for the position of United States District Judge for the Western District of Virginia -- among them recommendations in behalf of two gentlemen, from Senator Glass. I am not certain whether these recommendations were at that time concurred in by the Junior Senator from Virginia, but this is possible. Other recommendations were received from citizens of Virginia to a total number, as I remember it, of five or six.

The Attorney General was asked by me to report on these recommendations, paying attention as usual to the qualifications of the names of each person suggested. I might add that your name was on this list but that at no time, to my knowledge, did you seek this office of Judge.

The Attorney General and I held several conferences with the result that we concluded that you were best fitted to fill the Judgeship.

As a result, I wrote on July 6th to both of the Virginia Senators stating that I had concluded to appoint you, that a number of gentlemen had been suggested for the place, but that I believed you to be the best fitted.

The following day, July 7th, I received a telegram from Senator Glass stating that he and his colleague would feel obliged to object to your appointment as being personally objectionable to them, and that a letter would follow. A few days later I received a letter from the Senator stating that he could not conceive any fair reason why one of his candidates had not been appointed.

It is worth noting that neither Senator on July 7th or subsequently has raised any question as to your integrity or ability, and the only objection was that you were personally objectionable.

In regard to the original newspaper article suggesting that Governor Price had been given the veto over Federal appointments, this and similar requests are, of course, not worth answering or bothering about, for the very simple reason that no person -- no Governor, no Senator, no member of the Administration has at any time had, or ever will have, any right of veto over Presidential nominations. Every person with common sense knows this.

Your appointment followed, you took the oath of office, and have been serving with great credit as District Judge since then.

Your name was sent by me to the Senate in January, 1939, together with many other recess appointments.

We come now to the last chapter. Your nomination was referred to the Judiciary Committee of the Senate and by the Chairman of that Committee to a Subcommittee of three. It appears from the record that both Senators from Virginia registered their objection with the Subcommittee saying "this nomination is utterly and personally offensive to the Virginia Senators whose suggestions were invited by the Department of Justice only to be ignored". The Subcommittee reported back the nomination to the full Committee without recommendation, stating the raising of the matter of Senatorial courtesy and saying that this matter had not been any direct issue since 1913.

At a special meeting of the full Committee on the Judiciary, and before the Committee went into Executive Session, attention was invited to the presence of the Governor of Virginia, to the persons of two former Governors of Virginia, and to the persons of the nominee and his Counsel.

After lengthy discussion the Committee went into executive session, reopening the doors an hour later.

The record shows that at this time the Committee heard the Governor of Virginia in favor of the nominee and also former Governor E. Lee Trinkle and former Governor Westmoreland Davis; also, George M. Warren, Esq., Counsel for nominee. Thereupon the Committee, instead of hearing other witnesses in behalf of the nominee, many of whom were present, moved that a list of these further witnesses be incorporated in the record without hearing them. The Committee also agreed to receive certain letters and editorials in behalf of the nominee, and, finally, a record of designations you have received from former Governors of Virginia to sit in other judicial districts, this list including many designations made by former Governor Harry F. Byrd.

That was followed by your own testimony.

The privilege of making the closing and sole arguments against you was accorded to the two Senators from Virginia.

Senator Glass stated that neither he nor his colleague had formally or definitely made any statement affecting your capabilities.

He proceeded to review the newspaper reports of last March, stated that he had not communicated with the Governor to ascertain whether or not the latter had authorized the publication, and spoke of his letter to me. He went on to state that the President had not answered his question up to this date, except by sending the nomination to the Senate. You will recognize from what I have written you and from the memorandum enclosed, that as far back as last March, in reply to Senator Glass' letters, I told him categorically that I never answered any questions relating to the credibility or otherwise of newspaper articles or editorials, and that I told him to forget the newspaper article altogether. Therefore, the statement of Senator Glass to the Committee does not square with the facts.

Continuing, the Senior Senator from Virginia referred to other newspaper articles which spoke of "rebukes" to the Senators. It is almost needless for me to suggest that neither you nor I pay any attention to such excuses. Finally, Senator Glass stated "as a matter of fact, the President of the United States did give to the Governor of Virginia the veto power over nominations made by the two Virginia United States Senators". I am sorry, in view of my long personal friendship for the Senior Senator, that he has made any such statement, and I can only excuse it on the ground of anger or forgetfulness.

At the end of his speech Senator Glass says "Mr. Cummings never had the slightest idea of giving consideration to the recommendations of the two Virginia Senators because the Governor of Virginia had been promised the right of veto on nominations that they made". Neither of these statements is true ~~has xxxxxxxx xxxxxxxx xxxxxxxx~~.

Senator Glass was followed by Senator Byrd who stated that your nomination was personally offensive to both Senators, in fact, "personally obnoxious".

At the very close of the Judiciary Committee hearing Governor Price stated "Senator Glass has made a charge against me. He is entirely mistaken about it". The Governor further stated that he was not involved in the newspaper story.

The Committee thereupon abruptly closed the hearing and went into executive session, with the result, as you know, that your nomination was reported adversely to the Senate.

This brief history repeats several episodes in the history of the United States, which have occurred from time to time during the past one hundred and fifty years. In other cases nominations by former Presidents of men of outstanding ability and character have been denied confirmation by the Senate, not on the plea that they were unfitted for office but on the sole ground that they were personally obnoxious to the Senator or Senators from the State from which they came.

During this whole period Presidents have recognized that the constitutional procedure is for a President to receive advice, i.e., recommendations, from Senators.

Presidents have also properly received advice, i.e., recommendations, from such other sources as they saw fit.

Thereupon Presidents have decided on nominations in accordance with their best judgment -- and in most cases basing this judgment on the character and ability of the nominee. In many cases, of course, the recommendations of Senators have been followed, but in many other cases they have not been followed by Presidents in making the nominations.

Thereupon, under the Constitution, the Senate as a whole -- not the Senators from one State -- has the duty of either confirming or rejecting the nomination.

It is, of course, clear that it was the intention of the Constitution of the United States to vest in the Senate the duty of rejecting or confirming solely on the ground of the fitness of the nominee.

Had it been otherwise, had the Constitution intended to give the right of veto to a Senator or two Senators from the State of the nominee, it would have said so. Or to put it another way, it would have vested the nominating power in the Senators from the State in which the vacancy existed.

On somewhat rare occasions the Senate, relying on a rule of Senatorial courtesy, which exists in no place in the Constitution, has rejected nominees on the ground of their being personally obnoxious to their Senators, thus vesting in individual Senators what amounts in effect to the power of nomination.

In the particular case of which you are the unfortunate and innocent victim, the Senators from Virginia have in effect said to the President -- "We have nominated to you two candidates acceptable to us; you are hereby directed to nominate one of our two candidates, and if you do not we will reject the nomination of anybody else selected by you".

Perhaps, my dear Judge Roberts, the rejection of your nomination will have a good effect on the citizenship and the thinking of the whole nation in that it will tend to create a greater interest in the Constitution of our country, a greater interest in its preservation in accordance with the intention of the gentlemen who wrote it.

I am sorry, indeed, that you have been the victim. Against you not one syllable has been uttered in derogation of your character, or ability in the legal profession or your record on the Bench.

Very sincerely yours,

Honorable Floyd H. Roberts,
Bristol,
Virginia.

PSF
F. H. Roberts

THE WHITE HOUSE
WASHINGTON

February 7, 1939.

MEMORANDUM TO JUDGE FLOYD H. ROBERTS

Copies of letters and other papers which comprise the official files in the case of the nomination by the President of the Honorable Floyd H. Roberts to be U. S. District Judge for the Western District of Virginia:

UNITED STATES SENATE
WASHINGTON, D. C.

March 17, 1938

My dear Mr. President:

I am venturing to inquire whether the attached newspaper statement, widely published in Virginia, is true. In short, I desire to ask if recommendations made by me as a Senator of Virginia for important Federal appointments requiring the advice and consent of the United States Senate are to be subject to the effective veto of the Governor of Virginia?

Sincerely yours,

/s/ CARTER GLASS

Honorable Franklin D. Roosevelt,
The White House,
Washington, D. C.

RICHMOND TIMES-DISPATCH
March 16, 1938

PRICE BACKING SEEN NECESSARY
FOR FEDERAL JOB

Henceforth the indorsement of Governor Price will be necessary before any ambitious Virginian may hope to land an "important" Federal job, according to the Bristol Herald Courier, which is published by State Senator Charles J. Harkrader, one of the Governor's most ardent supporters in the General Assembly and in the Ninth Congressional District.

In a lengthy editorial, the paper states without reservation that President Roosevelt himself has made this decision.

"This does not mean that the Governor is to be a Federal patronage dispenser," the editorial asserts, "but it does mean that he is to have the veto power on all appointments of any consequence in Virginia."

CAPITAL VISIT RECALLED

More than usual significance was attached to the paper's statement in view of the fact that Mr. Harkrader, after conferring with the President in Washington on Monday, quoted him as saying he was "delighted" that the Virginia General Assembly had passed a slum-clearance enabling act and an old-age assistance program, and "complimented Governor Price for his championship" of the slum-clearance measure during the last days of the session when it seemed in danger of being killed.

Since it isn't customary for a President to be quoted so speedily after a conference the assumption is that Mr. Harkrader spoke with Mr. Roosevelt's consent.

When attention was called to the editorial here yesterday afternoon, Governor Price was entertaining Postmaster-General James A. Farley, chief patronage dispenser in the Federal Government who was here for a speech at the Mosque last night, and could not be reached for comment.

United States Senator Byrd is generally regarded as the key man in Washington in the matter of Federal patronage for Virginians, chiefly because Senator Glass does not care to be bothered with such problems.

THE WHITE HOUSE
WASHINGTON

March 18, 1938

My dear Carter:-

I have your note of March seventeenth asking if recommendations made by a Senator of Virginia for important Federal appointments, requiring the advice and consent of the United States Senate are to be subject to the effective veto of the Governor of Virginia.

I am reliably informed that since the Constitution of the United States went into effect in 1789, the Congress of the United States has exercised all legislative powers (see Article I, Section I) under the Article conferring legislative powers. The power of appointment of executive officials is in no place conferred in that Article.

Article II of the Constitution vests the executive power in the President. Section II of Article II directs that the President shall nominate and by and with the advice of the Senate shall appoint all officers of the United States whose appointments are not otherwise provided for in the Constitution; and the Congress may vest the appointment of inferior officers in the President alone or in courts of law or in the heads of departments.

It seems hardly necessary to assure you that time-hallowed courtesy has in most instances, though not always, permitted Senators, Representatives and others to make recommendations for nomination and appointment to the President. Every President has followed the custom of obtaining such information in regard to the character, ability and fitness of individuals proposed for nomination and appointment as he may deem advisable.

This constitutional procedure, having obtained for one hundred and forty-nine years, is, I think, sufficiently sacred to continue in the years to come.

Always sincerely,

/s/ FRANKLIN D. ROOSEVELT

Honorable Carter Glass,
United States Senate,
Washington, D. C.

UNITED STATES SENATE
WASHINGTON, D. C.

March 19, 1938

My dear Franklin:

Permit me respectfully to acknowledge yours of March 18, the first paragraph of which accurately states the purport of the question which I ventured to ask in my note of March 17, albeit you omit, as far as I am able to discern, an answer to the question except by implication.

I am not entirely unfamiliar with those articles of the Constitution which define the powers of the executive and legislative branches of the government, nor of the well-established practices thereunder. Nothing in my note of the 17th assumed to suggest that the appointment of executive officials rests in the Congress or either branch thereof.

Article II of the Constitution, if I have understood it aright during the many years of my public service, does textually give to the United States Senate the right to advise and consent as to nominations of certain federal officials made by the President; and it has usually been assumed that Senators from the State involved know best the requirements of each case. The Constitution does not confer this function upon the governor of any State. The offensive publication, plainly intended to discredit the Senators of Virginia, stated that you had specifically determined to transfer this power of advising and consenting to the governor of Virginia and given that official the right to "veto" any recommendation made by the Senators.

It is needless to say that I have never at any time challenged the right of anybody to recommend nominations and appointments to the President or the right of the Executive to obtain full information from any source with respect to the character, ability and fitness of individuals proposed for nomination and, "by and with the advice and consent of the Senate", for appointment; but what I did do, respectfully, was to inquire as to the accuracy of a malicious newspaper statement which signified that, in the matter of appointments to Federal positions in Virginia, the President now so distrusts the Senators of that State as to have decided no longer to follow the "time-hallowed courtesy" of advising with and requesting the consent of Senators.

I do not misconceive the meaning of your letter to me. The inference is, of course, that you approve the offensive publication which was the basis of my inquiry.

Honorable Franklin D. Roosevelt,
The White House,
Washington, D. C.

Sincerely yours,

/s/ CARTER GLASS

THE WHITE HOUSE
WASHINGTON

March 21, 1938.

My dear Carter:

All the same -- and in spite of yours of March nineteenth -- you are still a good old unreconstructed rebel for whom I have and always will have a very great affection.

What makes me happy is that you and I seem to agree 100% in our construction of the Constitution of the United States, including the fact that the Constitution does not take away the right of Senators to advise the President on nominations and confer the right on State Governors.

Fortunately for my own peace of mind (and this is not a dig at you) I am not a newspaper editor, nor am I in the habit of answering any human being when I am asked if a newspaper article represents my views or not. As I pointed out in the last campaign, 85% do not represent my views -- and as election day proved the 85% were wrong.

Boil it down to this on which you and I can both agree -- you go ahead as you have before and make recommendations. I will give them every consideration. But I reserve the right, also, to get the opinions of anybody else I may select -- Governor Price or Herbert Hoover, your old friend who makes moonshine in the Blue Ridge or Father Coughlin -- Nancy Astor or the Duke of Windsor.

Forget the newspaper article, have a grand trip, stay in the sun, come back full of win and wigor -- and come to see me.

As ever yours,

/s/ FRANKLIN D. ROOSEVELT

Honorable Carter Glass,
United States Senate,
Washington, D. C.

THE WHITE HOUSE
WASHINGTON

July 6, 1938

My dear Carter:-

After mature consideration I have concluded that I should appoint Judge Floyd H. Roberts of Bristol, Virginia, to be United States District Judge for the Western District of Virginia, to fill the existing vacancy.

As you know, a number of gentlemen have been suggested to me for this place but I believe that Judge Roberts is the best fitted. He bears an excellent reputation as an Attorney and as a Judge and has, I believe, the confidence of the people of his community.

Very sincerely yours,

/s/ FRANKLIN D. ROOSEVELT

Honorable Carter Glass,
Lynchburg,
Virginia.

TELEGRAM

Lynchburg, Va., July 7, 1938

THE PRESIDENT.

The Virginia Senators would feel obliged to object to the appointment of Judge Roberts as personally objectionable to them. Letter follows.

/s/ CARTER GLASS

UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS

July 7, 1938

Honorable Franklin D. Roosevelt,
The White House,
Washington, D. C.

Dear Franklin:

Touching yours of July 6th announcing your purpose to designate Judge Floyd H. Roberts, of Bristol, as United States Judge for the Western District of Virginia, I to-day wired you that this appointment would be regarded by the Virginia Senators as personally offensive to them.

At the request of the Department of Justice the two Virginia Senators suggested the appointment for this position of either Judge A. C. Buchanan, an outstanding Virginia Circuit Judge, or Frank Tavenner, Assistant United States Attorney for the Western District of Virginia, stating that the selection of either would be satisfactory to the Senators. The endorsements of these gentlemen by their colleagues of the bar were unsurpassed and I cannot conceive any fair reason on earth why one of them should not be chosen. However at the time it was publicly announced that the recommendation of the two Virginia Senators would be disregarded and the appointment controlled by certain politicians in the State.

In these and other circumstances the designation of Roberts appears to be intended as an intentional affront to the Virginia Senators and they will of course resist his confirmation. I might add that neither of the Virginia Senators agrees with your suggestion that the appointment is a fitting one.

Very respectfully,

/s/ CARTER GLASS

(END)

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

February 7, 1939.

MEMORANDUM FOR RUDOLPH FORSTER:

Here is the letter to Judge Roberts.
It is to be mimeographed as corrected and held
in confidence until released to the press,
probably by the President at his 4 o'clock
press conference.

In the mimeographing, will you please
have it marked for the press, immediate release,
today's date.

S.T.E.

used

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

My dear Judge Roberts:-

I feel that in justice to you and your family I should write to you in regard to the refusal of the Senate to confirm your appointment as United States District Judge for the Western District of Virginia.

First of all, I tender you my thanks for the honorable, efficient, and in every way praiseworthy service that you have rendered to the people of the United States in general and to the people of the Western District of Virginia in particular.

Second, I wish ^{it known that} to ~~express to you my deep regret that you have been made the victim of personal and political vengeance, while at the same time~~ not one single person who has opposed your confirmation has lifted his voice in any shape, manner or form against your personal integrity and ability.

In order that you may know the full history of what has occurred, I take this opportunity to summarise the story, ~~and to implement it by sending you a memorandum giving the correspondence which has passed between Senator Glass and me during the past year.~~

On March 17, 1938 I received a letter from Senator Glass enclosing a clipping from a local Virginia paper. This newspaper article, quoting an editorial in another local Virginia paper, made the assumption that it would henceforth be necessary to receive the backing of Governor Price of Virginia before any Virginian could hope for a Federal appointment.

Senator Glass in his letter asked if Federal appointments, for which Senate approval was necessary, would be subjected to the effective veto of the Governor of Virginia.

To this I replied on March 18th, explaining to the Senator the difference between the appointive power, which is in the President, and the power of confirmation, which is in the Senate. I pointed out to the Senator that time hallowed courtesy permits Senators and others to make recommendations for nomination, and, at the same time, that every President has sought information from any other source deemed advisable.

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I replied to this letter from the Senator on March 21st in a personal and friendly vein. I stated that I was glad that we seemed to agree in our construction of the Constitution. I told him that I was not in the habit of confirming or denying any newspaper article or editorial. Obviously if I were to begin that sort of thing, I would have no spare time to attend to my executive duties.

I told the Senator to go ahead as before and make recommendations; that I would give such recommendations every consideration; but that I would, of course, reserve the right to get opinions from any other person I might select. I ended by asking the Senator to forget the newspaper article and wished him a good vacation and expressed the hope that he would come to see me on his return.

Subsequent to this date, I received a number of recommendations for the position of United States District Judge for the Western District of Virginia -- among them recommendations in behalf of two gentlemen from Senator Glass. I am not certain whether these recommendations were at that time concurred in by the Junior Senator from Virginia, but this is possible. Other recommendations were received from citizens of Virginia to a total number, as I remember it, of five or six.

The Attorney General was asked by me to report on these recommendations, paying attention as usual to the qualifications of ~~the~~ each person suggested. I might add that your name was on this list but that at no time, to my knowledge, did you seek this office of Judge.

The Attorney General and I held several conferences with the result that we concluded that you were best fitted to fill the Judgeship.

As a result, I wrote on July 6th to both of the Virginia Senators stating that I had concluded to appoint you, that a number of gentlemen had been suggested for the place, but that I believed you to be the best fitted.

The following day, July 7th, I received a telegram from Senator Glass stating that he and his colleague would feel obliged to object to your appointment as being personally objectionable to them, and that a letter would follow. A few days later I received a letter from the Senator stating that he could not conceive any fair reason why one of his candidates had not been appointed.

It is worth noting that neither Senator on July 7th or subsequently ~~was~~ raised any question as to your integrity or ability, and the only objection was that you were personally objectionable.

In regard to the original newspaper article suggesting that Governor Price had been given the veto over Federal appointments, this and similar ~~statements~~ are, of course, not worth answering or bothering about, for the very simple reason that no person -- no Governor, no Senator, no member of the Administration has at any time had, or ever will have, any right of veto over Presidential nominations. Every person with common sense knows this. *Stovins*

Your appointment followed, you took the oath of office, and have been serving with great credit as District Judge since then.

Your name was sent by me to the Senate in January, 1939, together with many other recess appointments.

We come now to the last chapter. Your nomination was referred to the Judiciary Committee of the Senate and by the Chairman of that Committee to a Subcommittee of three. It appears from the record that both Senators from Virginia registered their objection with the Subcommittee saying "this nomination is utterly and personally offensive to the Virginia Senators whose suggestions were invited by the Department of Justice only to be ignored". The Subcommittee reported back the nomination to the full Committee without recommendation, stating the raising of the matter of Senatorial courtesy and saying that this matter had not been a direct issue since 1913.

At a special meeting of the full Committee on the Judiciary, and before the Committee went into Executive Session, attention was invited to the presence of the Governor of Virginia, to the ~~persons~~ presence of two former Governors of Virginia, and to the ~~persons~~ presence of the nominee and his Counsel. *presence* *presence*

After lengthy discussion the Committee went into executive session, reopening the doors an hour later.

The record shows that at this time the Committee heard the Governor of Virginia in favor of the nominee and also former Governor E. Lee Trinkle and former Governor Westmoreland Davis; also, George M. Warren, Esq., Counsel for nominee. Thereupon the Committee, instead of hearing other witnesses in behalf of the nominee, many of whom were present, moved that a list of these further witnesses be incorporated in the record without hearing them. The Committee also agreed to receive certain letters and editorials in behalf of the nominee, and, finally, a record of designations you have received from former Governors of Virginia to sit in other judicial districts, this list including many designations *of you* made by former Governor Harry F. Byrd.

That was followed by your own testimony.

The privilege of making the closing and sole arguments against you was accorded to the two Senators from Virginia.

Senator Glass stated that neither he nor his colleague had formally or definitely made any statement affecting your capabilities.

It He proceeded to review the newspaper reports of last March, stated that he had not communicated with the Governor to ascertain whether or not the latter had authorized the publication, and spoke of his letter to me. He went on to state that the President had not answered his question up to this date, except by sending the nomination to the Senate. You will recognize from what I have written you ~~and from the newspaper enclosed~~, that as far back as last March, in reply to Senator Glass' letters, I told him categorically that I never answered any questions relating to the credibility or otherwise of newspaper articles or editorials, and ~~that~~ *I asked* ~~him~~ *him* to forget the newspaper article altogether. Therefore, the statement of Senator Glass to the Committee does not square with the facts.

Continuing, the Senior Senator from Virginia referred to other newspaper articles which spoke of "rebukes" to the Senators. It is almost needless for me to suggest that neither you nor I pay any attention to such excuses. Finally, Senator Glass stated "as a matter of fact, the President of the United States did give to the Governor of Virginia the veto power over nominations made by the two Virginia United States Senators". I am sorry, in view of my long personal friendship, for the Senior Senator, that he has made any such statement, and I can only excuse it on the ground of anger or forgetfulness.

At the end of his speech Senator Glass says "Mr. Cummings never had the slightest idea of giving consideration to the recommendations of the two Virginia Senators because the Governor of Virginia had been promised the right of veto on nominations that they made". Neither of these statements is true.

Senator Glass was followed by Senator Byrd who stated that your nomination was personally offensive to both Senators, in fact, "personally obnoxious".

At the very close of the Judiciary Committee hearing Governor Price stated "Senator Glass has made a charge against me. He is entirely mistaken about it". The Governor further stated that he was not involved in the newspaper story.

The Committee thereupon abruptly closed the hearing and went into executive session, with the result, as you know, that your nomination was reported adversely to the Senate.

This brief history repeats several episodes in the history of the United States, which have occurred from time to time during the past one hundred and fifty years. In other cases nominations by former Presidents of men of outstanding ability and character have been denied confirmation by the Senate, not on the plea that they were unfitted for office but on the sole ground that they were personally obnoxious to the Senator or Senators from the State from which they came.

During this whole period Presidents have recognized that the constitutional procedure is for a President to receive advice, i.e., recommendations, from Senators.

Presidents have also properly received advice, i.e., recommendations, from such other sources as they saw fit.

Thereupon Presidents have decided on nominations in accordance with their best judgment -- and in most cases basing their judgment on the character and ability of the nominee. In many cases, of course, the recommendations of Senators have been followed, but in many other cases they have not been followed by Presidents in making the nominations.

Thereupon, under the Constitution, the Senate as a whole -- not the Senators from one State -- has the duty of either confirming or rejecting the nomination.

It is, of course, clear that it was the intention of the Constitution of the United States to vest in the Senate, the duty of rejecting or confirming solely on the ground of the fitness of the nominee.

in whole

Had it been otherwise, had the Constitution intended to give the right of veto to a Senator or two Senators from the State of the nominee, it would have said so. Or to put it another way, it would have vested the nominating power in the Senators from the State in which the vacancy existed.

On somewhat rare occasions the Senate, relying on an *unwritten* rule of Senatorial courtesy, which exists in no place in the Constitution, has rejected nominees on the ground of their being personally obnoxious to their Senators, thus vesting in individual Senators what amounts in effect to the power of nomination.

In the particular case of which you are the unfortunate and innocent victim, the Senators from Virginia have in effect said to the President -- "We have nominated to you two candidates acceptable to us; you are hereby directed to nominate one of our two candidates, and if you do not we will reject the nomination of anybody else selected by you," *however fit he may be*

Perhaps, my dear Judge Roberts, the rejection of your nomination will have a good effect on the citizenship and the thinking of the whole nation in that it will tend to create a greater interest in the Constitution of our country, a greater interest in its preservation in accordance with the intention of the gentlemen who wrote it.

I am sorry, indeed, that you have been the victim. Against you not one syllable has been uttered in derogation of your character, or ability in the legal profession or your record on the Bench.

Very sincerely yours,

PSF: F. H. Roberts

THE WHITE HOUSE
WASHINGTON

*file
personal to
confidential
NH M talks
to AG ab*

2-9-39

Memo. for Mac:

Check with Justice as to legality.
How can Roberts continue to serve with-
out compensation and how can he be given
a recess appointment.

F. D. R.

THE WHITE HOUSE
WASHINGTON

February 6, 1939



Memorandum For Secretary McIntyre.

The President may have this information after his conference with Congressman Flannagan. If not, I pass it on to you:

Joe Keenan asked that the President be informed that Judge Roberts is willing to sit without compensation and therefore, at the end of the present session he can again be given a recess appointment.

James Rowe, Jr.

file
personal

PSF: F. H. Roberts

Bristol, Virginia

February 9, 1939

THE WHITE HOUSE

FEB 11 10 36 AM '39

RECEIVED

My dear Mr. President:

I gratefully acknowledge receipt of your esteemed letter of February 7th.

I regret very much that I may have been the cause of embarrassment to you or to anyone.

I consider it the greatest honor of my life to have been your choice for the office in question. Your approval of my character and fitness for the position will always be remembered and appreciated by me and my friends.

My family and I will ever cherish your unqualified expressions of trust and confidence in me.

With the highest regard and best wishes for you, I am,

Sincerely yours,

Floyd H. Roberts

Hon. Franklin D. Roosevelt,
The White House,
Washington, D. C.

PSF: F. H. Roberts

1 XU

NOMINATION OF FLOYD H. ROBERTS

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
SEVENTY-SIXTH CONGRESS
FIRST SESSION
ON THE
NOMINATION OF FLOYD H. ROBERTS TO BE
UNITED STATES DISTRICT JUDGE FOR
THE WESTERN DISTRICT OF
VIRGINIA

—
FEBRUARY 1, 1939
—

Printed for the use of the Committee on the Judiciary



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COMMITTEE ON THE JUDICIARY

HENRY F. ASHURST, Arizona, *Chairman*

WILLIAM H. KING, Utah	WILLIAM E. BORAH, Idaho
MATTHEW M. NEELY, West Virginia	GEORGE W. NORRIS, Nebraska
PAT McCARRAN, Nevada	WARREN R. AUSTIN, Vermont
FREDERICK VAN NUYS, Indiana	JOHN A. DANAHER, Connecticut
M. M. LOGAN, Kentucky	ALEXANDER WILEY, Wisconsin
CARL A. HATCH, New Mexico	
EDWARD R. BURKE, Nebraska	
KEY PITTMAN, Nevada	
TOM CONNALLY, Texas	
JOSEPH C. O'MAHONEY, Wyoming	
JAMES H. HUGHES, Delaware	
JOHN E. MILLER, Arkansas	

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2 XU

NOMINATION OF FLOYD H. ROBERTS

FEBRUARY 1, 1939

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to call, at 2 p. m., in the committee room, Capitol, Senator Henry F. Ashurst (chairman) presiding.

Present: Senators Ashurst (chairman), King, Neely, McCarran, Van Nuys, Logan, Hatch, Burke, Pittman, Connally, O'Mahoney, Hughes, Miller, Norris, Austin, Danaher, and Wiley.

Present also: Hon. Carter Glass and Hon. Harry F. Byrd, Senators in Congress from the Commonwealth of Virginia.

Present also: Hon. James H. Price, Governor of the Commonwealth of Virginia.

Present also: Hon. Westmoreland Davis and Hon. E. Lee Trinkle, former Governors of the Commonwealth of Virginia.

Present also: Hon. Floyd H. Roberts, the nominee herein, and his counsel, George M. Warren, Esq., Bristol, Va.

The CHAIRMAN. The committee will please come to order. This is a special meeting of the Senate Committee on the Judiciary, called to consider the nomination of Floyd H. Roberts, of Virginia, to be United States District Judge for the Western District of Virginia. The nominee is now serving under a recess appointment.

When this nomination was received, the clerk of this committee, in accordance with a long-established rule, issued and forwarded to the Senators from Virginia the usual letters. The chairman of this committee appointed a subcommittee, as is always done in such cases, to consider the nomination, and the subcommittee was composed of Senators Pittman, Van Nuys, and Borah. The subcommittee made no recommendation other than the following:

WASHINGTON, D. C., January 26, 1939.

HON. HENRY F. ASHURST,

Chairman, Committee on the Judiciary, United States Senate,

Washington, D. C.

MY DEAR MR. CHAIRMAN: Your subcommittee upon the nomination of Judge Floyd H. Roberts, composed of Senators Pittman, Van Nuys, and Borah, beg leave to submit the following report:

The Senators from Virginia are desirous of having the nomination considered by the full committee at its meeting on Monday, January 30. The Department of Justice has requested the subcommittee to set some date at least a week hence in which matters may be presented to the committee by the Department of Justice.

The Senators from Virginia, in reply to the request of the chairman of the Judiciary Committee for information concerning the nomination, said: "This nomination is utterly and personally offensive to the Virginia Senators, whose suggestions were invited by the Department of Justice only to be ignored."

This objection raises the question as to the custom of the Senate in the matter of senatorial courtesy when such objections are raised by a Senator as to a nominee from his State and as to whether such objections shall be sufficient without the presentation of facts tending to justify such objections. This matter has not been in direct issue since 1913. It is evident that it should be considered by the full committee.

For the reasons stated, your subcommittee herewith reports back the nomination, without recommendations, for action by the full committee.

Sincerely,

KEY PITTMAN, Chairman.

Thereupon, the chairman of this committee took the liberty to call a special meeting of the entire committee to consider this nomination. Invitations to be present were forwarded to the two Senators from Virginia and to the nominee.

The following letter was received from the nominee, addressed to the clerk of this committee, dated January 27:

DEAR SIR: I acknowledge receipt of your telegram of January 26, reading as follows:

"The Senate Committee on the Judiciary will hold a meeting at its rooms in the Capitol Building on Wednesday February 1 at 2 o'clock in the afternoon to consider your nomination to be district judge in the western district of

by the full committee at its meeting on Monday, January 30. The Department of Justice has requested the subcommittee to set some date at least a week hence in which matters may be presented to the committee by the Department of Justice.

The Senators from Virginia, in reply to the request of the chairman of the Judiciary Committee for information concerning the nomination, said: "This nomination is utterly and personally offensive to the Virginia Senators, whose suggestions were invited by the Department of Justice only to be ignored."

This objection raises the question as to the custom of the Senate in the matter of senatorial courtesy when such objections are raised by a Senator as to a nominee from his State and as to whether such objections shall be sufficient without the presentation of facts tending to justify such objections. This matter has not been in direct issue since 1913. It is evident that it should be considered by the full committee.

For the reasons stated, your subcommittee herewith reports back the nomination, without recommendations, for action by the full committee.

Sincerely,

KEY PITTMAN, *Chairman.*

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DEAR SIR: I acknowledge receipt of your telegram of January 26, reading as follows:

"The Senate Committee on the Judiciary will hold a meeting at its rooms in the Capitol Building on Wednesday February 1 at 2 o'clock in the afternoon to consider your nomination to be district judge in the western district of Virginia. You are invited to be present at this meeting if you desire."

I thank you for the information.

Yours very truly,

FLOYD H. ROBERTS.

Senators, the case is now before you.

Senator VAN NUYS. Mr. Chairman, I move the committee go into executive session to determine the procedure in this particular case.

Senator McCARRAN. I second the motion.

The CHAIRMAN. You have heard the motion, that the committee go into executive session to consider the procedure in this case. Are you ready to vote?

Senator KING. Mr. Chairman, I shall vote for the motion, but, so far as I am concerned now, I will state that under no circumstances will I vote for any nominee against the protest of the Senators from that State, where they state the nominee is personally obnoxious to them. I am willing to vote now to reject the nomination, but I support the motion that we go into executive session.

Senator BURKE. Mr. Chairman, I notice that the distinguished Governor of the State of Virginia is present, and it seems to me it would be very proper procedure to hear him, if he desires to make a statement, and then the committee might decide what to do thereafter.

Senator VAN NUYS. I have no objection to the Governor making a statement, but I think we should precede that statement with an executive session. Then, if he wants to be heard, it is satisfactory to me. That applies also to the Senators from Virginia.

Senator BURKE. It is merely a matter of courtesy to the Governor to permit him to make a statement. Following that I hope some member of the committee will suggest that, inasmuch as the technical qualifications of the nominee are not in issue, we do not hear witnesses who desire to address themselves only to that point.

The CHAIRMAN. The question is now before you on the motion of the Senator from Indiana that the committee go into executive session to determine the procedure to be followed in this case. Senator Burke, of Nebraska, made the suggestion or observation that the Governor of Virginia is present, and that the nominee is present with his counsel. I am requested to state that two former Governors of Virginia are present, who wish to be heard at some appropriate time. I refer to the Honorable Westmoreland Davis, sometime Governor of Virginia, and to Hon. E. Lee Trinkle, also sometime Governor of Virginia.

Senator BURKE. Mr. Chairman, I move as a substitute that the committee hear Governor Price, of Virginia.

The CHAIRMAN. The Senator from Nebraska moves, as a substitute to the motion of the Senator from Indiana, that the committee hear the Governor of Virginia.

Senator LOGAN. Before we vote, Mr. Chairman, there is one suggestion I should like to make. It seems to me we are taking up time unnecessarily to have an executive session to determine the procedure, and then have an open session to hear witnesses. I do not see any procedure to be followed except to let these gentlemen make their statements and then go into executive session.

Senator HATCH. As I understand the motion of the Senator from Indiana, it goes to that very point.

Senator VAN NUYS. That is exactly the purpose of this motion. I agree with Senator King that when two outstanding Senators like the Senators from Virginia object to a nomination I do not care to go any further with it or hear any further evidence. If the committee takes that view we are not only wasting time by hearing witnesses but accomplishing nothing.

Senator LOGAN. Perhaps we might agree with you on that, but it seems to me there is another custom from which we should not depart. That is that when any reasonably responsible citizen wants to be heard we ought to hear him, regardless of what our private views may be. I do not think we should discriminate against anyone who wants to be heard. If the Senators from Virginia and the nominee want to be heard, I think we should hear them.

Senator McCARRAN. Do you not think that is a matter to be determined in executive session?

Senator LOGAN. I think the executive session should follow the hearing.

Senator McCARRAN. It is a question of whether we want to hear them or not.

Senator LOGAN. I always favored hearing anybody who wants to come before the committee, either in approval or disapproval of a matter pending before the committee.

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Senator KING. It is a matter that is very easily determined. When a protest is made by the two Senators, that ends it, as far as I am concerned. I do not care to hear any witnesses, whether the distinguished Governor or the distinguished ex-Governors or any other witnesses. When two Senators from a State say the nominee is personally offensive to them, I am willing to terminate the case and vote against the confirmation of the nominee.

Senator LOGAN. Senator King, let me submit this practical question to you. I know you are always practical and sensible. The Senate may not hold the same views that we may hold in relation to this matter. We have to make a report to the Senate. Then when some Senator raises the question, which may well be done, as to the qualifications or fitness of the nominee, we should be prepared to make a statement to the Senate when it comes up. That is my point of view about it. If we do not follow that procedure, it seems to me we would be properly subject to criticism.

Senator BURKE. Mr. Chairman, I withdraw the substitute motion I offered.

The CHAIRMAN. Is there any further discussion? The question is on the motion of the Senator from Indiana that the committee go into executive session to determine the procedure in this case.

Senator NEELY. Mr. Chairman, if the Senator from Nebraska withdraws his substitute, I offer a substitute motion that the committee proceed to hear the Governor and Senators of Virginia and any other responsible people who want to be heard, and that they be heard in open session instead of behind closed doors.

Senator VAN NUYS. There is no intention to hear any witness behind closed doors. I merely moved that the committee go into executive session to determine its procedure.

Senator NEELY. Less than a year ago another committee considered a case that stands on all fours with this one, so far as the objections to confirmation were concerned.

The precedent set by that committee is not binding, but may be persuasive. That committee held open sessions and permitted anybody who desired to appear and testify. That was the nomination for collector of internal revenue in West Virginia. One Senator from that State objected to confirmation on the ground that the nominee was personally obnoxious to him. The committee appointed a subcommittee which conducted hearings and a record was made. It seems to me that if anyone wants to be heard in relation to this matter, we should afford that opportunity.

The CHAIRMAN. The question is on the substitute motion of the Senator from West Virginia, which substitute is that the committee proceed to hear the Governor and Senators from Virginia and any other coherent persons who desire to be heard. How will you vote?

Senator NORRIS. Let us have a roll call.

The CHAIRMAN. The clerk will call the roll.

(After the roll was called:)

Six Senators have voted aye and 11 Senators have voted no. The motion is lost.

The question is now on the motion of the Senator from Indiana.

Senator HATCH. That merely relates to procedure?

Senator VAN NUYS. That is all.

The CHAIRMAN. Are you ready for the question? How do you vote?

Senator KING. Call the roll.

The CHAIRMAN. The clerk will call the roll.

(After the roll was called:)

Thirteen Senators have voted "aye," and four Senators have voted "no." The motion is carried, and the committee will now resolve itself into executive session.

(Whereupon, at 2:15 p. m., the committee went into executive session. At 3:15 p. m. the doors were opened and the open session was resumed.)

The CHAIRMAN. It has been determined that the committee will hear the two Senators from Virginia if, as, and when they desire to be heard; also His Excellency, the Governor of Virginia, and such other citizens as have heretofore indicated a desire to be heard, including the nominee and his counsel.

Mr. WARREN (counsel for nominee). Mr. Chairman, I should like to ask a question.

The CHAIRMAN. Please state your name.

Mr. WARREN. George M. Warren.

The CHAIRMAN. Where do you live?

Mr. WARREN. Bristol, Va.

The CHAIRMAN. Proceed.

Mr. WARREN. I want to be sure that I understand the ruling of the committee. We have a number of witnesses here, probably 15. None of them has requested to be heard. I just want to understand

Senator KING. Call the roll.

The CHAIRMAN. The clerk will call the roll.

(After the roll was called:)

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Mr. WARREN (counsel for nominee). Mr. Chairman, I should like to ask a question.

The CHAIRMAN. Please state your name.

Mr. WARREN. George M. Warren.

The CHAIRMAN. Where do you live?

Mr. WARREN. Bristol, Va.

The CHAIRMAN. Proceed.

Mr. WARREN. I want to be sure that I understand the ruling of the committee. We have a number of witnesses here, probably 15. None of them has requested to be heard. I just want to understand the ruling of the committee. We want to introduce those witnesses.

The CHAIRMAN. That will be determined later.

Senator MCCABAN. That has already been decided, as the chairman stated the question, that those who have already requested to be heard are those involved in the motion.

The CHAIRMAN. The committee has indicated that the Senators from Virginia may be heard now or at any time they choose.

Senator GLASS. I think I should prefer to hear what those favoring the nomination have to say. For if they can tell me better than I know myself whether this nomination is personally offensive to me, I shall be greatly obliged to them.

The CHAIRMAN. The committee will hear the Senators from Virginia at any time they indicate a desire to be heard.

Senator BURKE. Should we not hear the Governor of Virginia at this time?

The CHAIRMAN. The committee will be glad to hear His Excellency, the Governor of the Commonwealth of Virginia.

STATEMENT OF HON. JAMES H. PRICE, GOVERNOR OF THE COMMONWEALTH OF VIRGINIA

Governor PRICE. Mr. Chairman and members of the committee, in order to conserve your time I have jotted down some statements with reference to the fitness of Judge Roberts for the position to which he has been appointed.

Senator CONNALLY. You mean the nominee, do you not?

Governor PRICE. I stand corrected. I may say that I did not request to be heard. I was invited to come up here and make a statement.

I am here today, as a representative of Virginia, to bear testimony to the character and ability of Judge Floyd H. Roberts.

When the appointment of Judge Roberts was announced last summer, I stated in substance that the President had made an excellent appointment; that Judge Roberts was one of the best qualified men in Virginia, as was evidenced by a quarter of a century's distinguished service on the bench, and that he was a man of unquestioned ability and character. I am still of that opinion. As a member of the bar, with 30 years' experience as a practitioner of the law and with numerous opportunities to observe Judge Roberts and his work, I can unhesitatingly say to this committee that I regard him as one of Virginia's best judges. In fact, no question, so far as I know, has ever been raised as to the qualifications of Judge Roberts to hold the office to which he has been appointed.

He was originally appointed as judge of the corporation court of the city of Bristol, Va., by Gov. Henry Carter Stuart in 1915. His service has been outstanding and he enjoys in unstinted measure the confidence and affectionate regard of his people. He has been prominently mentioned, and even considered for the Supreme Court of Appeals of Virginia. Although seriously handicapped by territorial considerations, in a contest a few years since, he lacked but three or four votes of being chosen as one of the nominees of the Democratic caucus of the General Assembly of Virginia for the supreme bench. His services have been profitably used by several Governors of Virginia for special designations. As the chief executive of the Commonwealth I have used his services several times, and my immediate predecessor had occasion to call on him also. The late Governor Pollard designated him for special service 12 different times during his administration. Governor Byrd availed himself of the services of Judge Roberts for special designations, many of them for considerable periods, on 17 different occasions during his 4 years of service as Governor of Virginia. One of these designations, to hold the circuit court of Gloucester County, on February 15, 1929, was one of the most difficult assignments ever given to a Virginia judge. Our judges are elected by the General Assembly of Virginia. The records of the general assembly show that Senator Byrd, as a member of that body, joined with me and others in voting for the election of Judge Roberts to succeed himself at the session of 1920, when he was unanimously endorsed.

He was unanimously reelected in 1928 and again in 1936. Not a single vote has ever been recorded against him in the General Assembly of Virginia during his long term of service.

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In all of my public service, as a member of the General Assembly of Virginia for 14 years, as lieutenant governor for 8 years, and as the present chief executive of the Commonwealth, I have never heard a single adverse criticism of Judge Roberts, either as a man or as a member of the judiciary of the State. I have known him rather intimately for 20 years. The people of Virginia believe in Judge Roberts, and the bench and bar of the State generally regard him as eminently qualified to discharge the duties of the Federal judgeship to which he has been appointed. Very shortly after his appointment he resigned as judge of the corporation court of the city of Bristol and entered upon the duties of his new position. During the several months of his incumbency he has abundantly justified the expectations of his friends in a record of faithful and efficient service.

In my opinion, the integrity of the judiciary will be impaired if a jurist whose qualifications and fitness are unchallenged should be denied high Federal office to which he has been appointed and in which he is now serving for reasons entirely unrelated to his judicial fitness.

The CHAIRMAN. Does that conclude your statement?

Governor PRICE. That concludes my statement. Thank you very much.

STATEMENT OF HON. E. LEE TRINKLE, FORMER GOVERNOR OF THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. The committee will be pleased to hear from former Governor Trinkle. You were sometime Governor of Virginia?

Mr. TRINKLE. Yes; for 4 years.

The CHAIRMAN. You may proceed.

Mr. TRINKLE. As has been stated by Governor Price, I did not come to this hearing on my own initiative, but I was invited to come up and give a statement of my acquaintance with and knowledge of Judge Roberts' career as a man and as a lawyer and as a judge.

The CHAIRMAN. Were you invited by the committee?

Mr. TRINKLE. No; by acquaintances and friends of Judge Roberts.

The CHAIRMAN. The committee invited no one except the Senators from Virginia and the nominee.

Mr. TRINKLE. I made no request to be heard. I was asked to come here and testify, if the committee saw fit to hear me.

I have known Judge Roberts for many years. I happen to live in the section of Virginia from which he comes, where I have known him as a lawyer and as a judge, and have been rather intimately acquainted with him. Judge Roberts, so far as I know, is as highly respected a man as we have in Virginia. I have never heard an intimation that would in any way convey the thought that he did not occupy that position in the minds of the people of our State. I have always heard from attorneys who have practiced before him that he was a most capable judge and one with peculiar talent for using legal ideas and views.

I am confident, unless I am greatly mistaken, that least 95 percent of the people in the section of the State where he lives would like to see him on the Federal bench. Of course, when the statement came out that he was personally offensive, in the minds of the people of Virginia that created a rather bad odor. They feel they would not like to have that statement made about them by any person. The people in southwest Virginia felt that it was due to Judge Roberts that some of us should appear before you gentlemen and make a statement as to the esteem and regard with which he is held.

That is about all I have to say about it. I am here at the request of friends of Judge Roberts. I am in no way related to him. I do feel that it is due him that I make this statement of the high regard the people of Virginia have for him.

The CHAIRMAN. Thank you.

STATEMENT OF HON. WESTMORELAND DAVIS, FORMER GOVERNOR OF THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. Please state your name for the record.

Mr. DAVIS. Westmoreland Davis.

The CHAIRMAN. Were you sometime Governor of Virginia?

Mr. DAVIS. Sometime Governor of Virginia.

The CHAIRMAN. You may proceed to make such statement as you desire to make.

Mr. DAVIS. Mr. Chairman and gentlemen of the committee, I come

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Mr. DAVIS. Westmoreland Davis.

The CHAIRMAN. Were you sometime Governor of Virginia?

Mr. DAVIS. Sometime Governor of Virginia.

The CHAIRMAN. You may proceed to make such statement as you desire to make.

Mr. DAVIS. Mr. Chairman and gentlemen of the committee, I come here to bear witness to the character and the reputation for high ability and good citizenship of Judge Roberts. If I am asked to speak as to whether or not he is personally offensive to any individual in this America of ours, I am compelled to state that I do not believe that is the test of democracy.

I want to say that during my period as Governor of Virginia, I was familiar with the work of Judge Roberts on the bench. I have known him over a long period of years. I have lived by him as neighbor. He is highly respected by the people of Virginia who know him, and I know I speak for them when I say they rejoice in the opportunity that you gentlemen have to honor him and honor us by approving him for this high office.

I cannot say more upon this subject, except to say that I was not invited here by your august body. I was asked to come here by the friends of Judge Roberts, but had I not been asked by his friends or by your committee, you would have found me knocking at this door as a citizen of Virginia to give you the benefit of my opinion of this man, and I am very glad to have had this opportunity to do so.

We thank you.

STATEMENT OF GEORGE M. WARREN, ESQ., BRISTOL, VA., COUNSEL FOR NOMINEE

The CHAIRMAN. You are counsel for the nominee?

Mr. WARREN. Yes, sir.

The CHAIRMAN. Do you wish the nominee to be heard?

Mr. WARREN. Yes, sir. We have other witnesses.

The CHAIRMAN. Have they heretofore applied to be heard?

Mr. WARREN. No. We have a number of witnesses we have notified to come here, whom we would like to have heard. We did not know it was necessary for witnesses to ask permission to be heard.

Senator DANAHER. May I ask whether their testimony would be cumulative of what has been heard?

Mr. WARREN. It would; yes.

Senator LOGAN. Their testimony would be about the same as that which has already been given?

Mr. WARREN. It would.

Senator LOGAN. Would it not have the same effect to place in the record the names and addresses of these witnesses, and state that their testimony would be similar to that of the Governor and former Governors of Virginia?

Mr. WARREN. If that is the ruling of the committee, we shall have to abide by it. We will file that list. I would like to make the particular request that Colonel Hartfield, an eminent lawyer of New York City, one of the outstanding lawyers of the Nation, be permitted to make a statement. He is present in the committee room.

The CHAIRMAN. What is your pleasure, Senators?

Senator DANAHER. Mr. Chairman, I move that we hear Colonel Hartfield.

The CHAIRMAN. The Senator from Connecticut moves that the committee hear Colonel Hartfield.

Senator O'MAHONEY. Is he a resident of the district in which Judge Roberts resides?

Mr. WARREN. No. He is a lifelong friend.

Senator O'MAHONEY. His testimony would be to the same effect as that of those who have already testified?

Mr. WARREN. Yes.

The CHAIRMAN. What is your pleasure, Senators?

Senator MILLER. Mr. Chairman, I offer a substitute motion that counsel for the nominee be permitted to file a list of further witnesses, which may be incorporated in the record, in connection with the statement that their testimony would be cumulative of that already given.

Senator LOGAN. I second that motion.

The CHAIRMAN. The Senator from Arkansas, seconded by the Senator from Kentucky, moves as a substitute, that the list of witnesses may be incorporated in the record, with the statement that their testimony would be cumulative of that already given. Those in favor of the motion will say "aye"; contrary, "no." The ayes appear to have it. [After a pause.] The ayes have it. You may read the list into the record.

Mr. WARREN. The following are the names of the witnesses who are present at the hearing of the Senate Judiciary Committee to testify

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as to the character and qualifications of Judge Floyd H. Roberts, of Bristol, Va., on a hearing by the committee as to whether his nomination for judge of the District Court for the Western District of Virginia should be confirmed by the Senate:

- Gov. James H. Price, Richmond, Va.
- Ex-Gov. Westmoreland Davis.
- Ex-Gov. E. Lee Trinkle, Roanoke, Va.
- Dr. Robert Yost, professor, King College, Bristol, Tenn.
- Hon. John W. Price, lawyer, Washington, D. C.
- Mr. Lee Long, vice president and general manager, Clinchfield Coal Corporation, Dante, Va.
- Mr. C. E. Gentry, clerk, United States District Court for the Western District of Virginia, Roanoke, Va.
- Mr. Alexander Sands, attorney, Richmond, Va.
- Mr. James A. Bear, attorney, Roanoke, Va.
- Mr. Clarence Daniels, vice president and general manager, Enterprise Wheel & Car Corporation, Bristol, Va.
- Mr. Claud Pobst, attorney, Grundy, Va.
- Mr. R. E. Williams, ex-member, Virginia Legislature, and ex-chairman, Corporation Commission, Grundy, Va.
- Mr. Donald T. Stant, member, Virginia Legislature, Bristol, Va.
- Mr. Scott Litton, member, Virginia Legislature, Lebanon, Va.
- Mr. Bolling H. Handy, ex-chairman, Industrial Commission of Virginia, Richmond, Va.
- Mr. H. T. Parrish, treasurer, Bristol, Va.

I wish to add the names of W. Leon Bazile, attorney at law, Richmond, Va., at one time assistant attorney general; Col. Joseph M. Hartfield, of New York City; and H. G. Peters, president of the Bristol Bar Association.

I want to ask the committee to allow us to file documentary exhibits, consisting of letters of endorsement from over the State and endorsements from the district in which this appointment is made, and have them appear in the record.

The CHAIRMAN. Senators, you have heard the request. What is your pleasure?

Senator CONNALLY. How many letters are there? We do not want to fill the record with a large number of letters.

Mr. WARREN. There is not a large number of them. It also includes several editorials from papers over the State, and a number of designations by different Governors, including Senator Byrd when he was Governor, of Judge Roberts to sit as judge in various districts.

The CHAIRMAN. Shall we receive these and incorporate them in the record? Those in favor will say "aye"; contrary, "no." [After a pause.] The ayes have it, and it is so ordered.

(The documentary evidence referred to is here set forth, as follows:)

Designations of Judge Roberts to set in other judicial districts by—	
Former Gov. Harry F. Byrd.....	14
Gov. James H. Price.....	1
Former Gov. George C. Peery.....	1
Former Gov. John Garland Pollard.....	11
Former Gov. E. Lee Trinkle.....	1

[From the Bristol Herald Courier, July 10, 1938]

VIRGINIA IN GENERAL PRAISES APPOINTMENT OF FLOYD H. ROBERTS—LAWYERS, JUDGES, PUBLIC OFFICIALS, AND PRESS OF THE STATE UNITE IN COMMENDING ABILITY OF THE NEW WESTERN DISTRICT FEDERAL JUDGE

Lawyers, judges, public officials, and the press of Virginia have united in praising the action of President Roosevelt in appointing Judge Floyd H. Roberts, of Bristol, as the new Federal judge for the western district of Virginia, which was announced Thursday as the President started for his epochal swing through the West. The several other applicants for the post congratulated Judge Roberts and expressed their judgment that the President had selected an able man for the important office.

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"The President picked his man with care," said the Richmond News Leader, in discussing the appointment and the failure of the President to allow Senators Glass and Byrd to name the new judge. "Because of the admitted fine qualities of Judge Roberts, he has a certain strategic advantage."

"No one questions the high qualifications of Judge Roberts for the office," editorializes the Norfolk Ledger Dispatch.

[From the Bristol Herald Courier, July 10, 1938]

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STRONG JURIST SAYS ROANOKE TIMES

"Judge Roberts is universally regarded as a strong and able jurist," says the Roanoke Times. "Still in the prime of life he will bring to the discharge of his duties as Federal Judge qualities of industry and intelligence, reinforced by a profound knowledge of the law and seasoned judicial acumen. Since the President saw fit to go over the head of the Virginia Senators and disregard their recommendations, he could hardly have made a choice which would be more generally satisfactory to the bar and people of southwest Virginia. In its political aspects the appointment of Judge Roberts is decidedly a feather in the cap of Representative Flannagan and correspondingly a pointed rebuff to the Senators."

"All I have to say is that he is considered a very fine judge, and undoubtedly is well qualified for the Federal bench," was the statement made to the Associated Press by Congressman Woodrum when asked for a statement concerning the appointment.

"Judge Roberts is a splendid choice," says the Bluefield Sunset News. "He is qualified by background and experience and enjoys the high esteem of the bar and citizens generally in the southwest. Senators Byrd and Glass have opposed most of the policies of the administration and many of its appointments. Why should the President ignore a friend and appoint a man, eminently qualified though he may be, who was put forward by foes of the administration?"

GLASS THREATENS TO BLOCK APPOINTMENT

No sooner had the President announced Roberts as his choice than Senator Glass gave out a statement in which he said he and Byrd would seek to block confirmation on the ground that the President had not permitted them to make the selection of the new judge. They had offered the names of Frank Tavenner, of Woodstock, and Judge Arch Buchanan, of Tazewell, the latter former law partner of Ex-Governor Peery. Ex-Governor Peery tried to get the place for himself but was barred by the President's statement that he would consider no applicant over 60 years old. When the former Governor was thereby eliminated he at once went to work for Buchanan. This circumstance revived discussion as to why Peery did not appoint Judge Buchanan to the State supreme court during his term as Governor.

NO ONE DOUBTS ROBERTS' QUALIFICATIONS

"No one doubts Judge Roberts' high qualifications for the post," says the Richmond Times Dispatch. The same editor argues that the only issue is that the President did not let the Senators make the selection. Like other Virginia editors, he assumes that if the President deigns to recognize Congressman Flannagan, who is the only Member of the Virginia delegation who has gone "all the way" with the Roosevelt program, such recognition is ipso facto an act of hostility to the Senators.

One observer points out that even if the Senators could block Roberts' confirmation and thereby make a political martyr of him, they might by this act kick him a couple of flights upstairs, because the President would be almost certain in such circumstances to recognize him in an even larger way.

The press of Virginia, much of which is friendly to Byrd and Glass, while unanimously praising the character and ability of the Bristol jurist, interpreted the appointment as a rebuff to the Senators. They nearly all laid emphasis, however, on the fact that the President had named a man of conspicuous ability. Whether Senator Glass will oppose Judge Roberts' confirmation and whether Senator Byrd will join him, is the next issue. Judge Roberts is entitled to qualify and enter upon his duties at once but will have to be confirmed by the Senate to hold the office permanently.

[From the Bristol Herald Courier, July 10, 1938]

WESTMORELAND DAVIS FELICITATES ROBERTS

Westmoreland Davis, former Governor of Virginia and one of the largest planters in the South, yesterday telegraphed his congratulations to Judge Floyd Roberts on the latter's appointment by President Roosevelt as a United States judge for the western district of Virginia.

"Your appointment to the Federal court by the President is a proper appreciation of character and ability," Mr. Davis said. It is also evidence of the high appreciation of John Flannagan, who as a loyal Democrat has steadfastly supported the President in his great work for the betterment of all the people."

IS WELL QUALIFIED, GOVERNOR PRICE ASSERTS

RICHMOND, VA., July 9. (AP)—Asserting that he was "glad to voice the almost unanimous opinion that Judge Roberts is regarded as one of the best qualified men in Virginia," Governor Price declined today to comment further on President Roosevelt's appointment of Judge Floyd H. Roberts, of Bristol, as the new Federal judge for western Virginia.

"His service on the bench, for practically a quarter of a century," the Governor said, "has been outstanding."

Senator Carter Glass announced after Judge Roberts' appointment that Senators Glass and Harry F. Byrd would oppose confirmation by the Senate on the grounds that their recommendations had not been followed by the President.

The Senators recommended Circuit Judge A. C. Buchanan, of Tazewell, and Frank Tavenner, of Woodstock, assistant United States attorney for the western Virginia district.

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NEW JUDGE CONGRATULATED BY COMPETITORS FOR POST—FLANNAGAN IS "PLEASED"— OTHER PARTY LEADERS SEND MESSAGES

BRISTOL, July 7 (AP).—Circuit Judge A. C. Buchanan, of Tazewell County, who had the support of Senators Byrd and Glass, led southwestern Virginians today in congratulating Judge Floyd H. Roberts, of Bristol, on the latter's selection as the new Federal Judge for the western district of Virginia.

"I extend to Judge Roberts my congratulations," said Judge Buchanan. "He is a very capable judge and will fill the bill."

FLANNAGAN PLEASED.

Congressman John W. Flannagan, Jr., of the "Fighting Ninth" District, strong Roosevelt supporter who championed the candidacy of Judge Roberts, stated tonight that "I am pleased that the President has recognized the brilliant qualifications of Judge Roberts, whom, as I before have stated, is in touch and sympathy with the best and most progressive thought of the times."

Kennon Whittle, Martinsville candidate, telegraphed: "Congratulations upon your appointment. May you have many years of pleasurable service."

"By ability, character, and personality no man in Virginia is better qualified for the Federal Judgeship," ex-Governor E. Lee Trinkle wired from Roanoke. "I have known him through the years, and he measures up to every requirement of the important office. I am greatly pleased that the President has so fittingly recognized him, and I also congratulate Congressman Flannagan."

State Senator R. R. Parker, of Wise County; Delegates H. M. Bandy and Maynard Sutherland, of Wise and Dickenson; Delegate W. N. Neff, of Washington County; Lee Long, prominent coal operator; and other prominent southwestern Virginians were quick to offer congratulations to Judge Roberts.

Bolling Handy, of Richmond, formerly of Bristol, telegraphed: "I don't think Judge Roberts has a superior as a judge in Virginia, and I am overjoyed at his appointment. No man could have had a larger or more distinguished list of endorsements from all over Virginia and from without the State."

NEW JUDGE IS 59

Judge Roberts, a native of Washington County, recently celebrated his fifty-ninth birthday.

He attended the public schools of Washington County and the old Abingdon Male Academy, and later attended the University of Virginia, from which he took his law degree in 1902. In the same year he began practicing in Bristol and in September 1914 he was appointed Judge of Bristol, Va., corporation court by the late Gov. Henry C. Stuart.

Judge and Mrs. Roberts, the former Miss Eliza Clapp, of Abingdon, are the parents of three children, Bradley Roberts, prominent young Bristol attorney; Randolph Roberts; and James Roberts.

[From the Bristol News Bulletin, August 25-26, 1938]

ROBERTS AND CANTWELL LAUDED BY ATTORNEYS—ROBERTSON, CARTER, PENNINGTON, SUMMERS, FLANNAGAN, WARREN, CUDWELL AND OTHERS JOIN IN TRIBUTES TO NEW UNITED STATES JUDGE AND LOCAL CORPORATION COURT JUDGE

At a testimonial dinner here last night circuit judges and practicing attorneys paid tribute to Judge Floyd H. Roberts, of Bristol, who in early July was named associate Federal judge for the western district of Virginia by President Roosevelt, and to Judge Joseph L. Cantwell, Jr., who was appointed by Governor Price to succeed Judge Roberts as judge of the corporation court of Bristol, Va.

Among the jurists who lauded the elevation of Judge Roberts to the Federal bench were Judge Walter Robertson, of the Washington and Smyth County circuit, and Judge Ezra T. Carter, of the Scott and Lee County circuit.

"I expect to see Judge Roberts become one of the most noted district judges of the United States," said Judge Carter, who termed the new Federal judge "one of the most capable lawyers in southwest Virginia."

"I certainly share with the Bristol Bar Association a very deep and keen pride in the elevation of Judge Roberts to the Federal bench," he said. "I have known him for a long time and he was one judge, being my closest neighbor, that I relied upon very much," Judge Carter asserted, mentioning that on several occasions Judge Roberts has presided over court for him in his judicial circuit.

WORTHY OF THE HONOR, ROBERTSON DECLARES

Judge Robertson said that "a great honor has been conferred upon Judge Roberts, and I think that he is altogether worthy of that honor."

Judge Roberts was presented by R. L. Pennington, former president of the Virginia State Bar Association, who said that President Roosevelt "made a good choice" when he selected Judge Roberts as a Federal judge. "He is well prepared in education, in the practice of the law, and in the administration of it; he is able, quick, and efficient," said Mr. Pennington.

"The trend of the time is toward speedy justice," Mr. Pennington declared, "and Judge Roberts is the very acme of speed. He is able in determining the facts and the law, and then quick to decide upon the proper application of the law," said Mr. Pennington. "He has a distinguished record, not only in southwest Virginia, but from Norfolk to Cumberland Gap."

PRAISE VOICED BY REPRESENTATIVE FLANNAGAN

Congressman John W. Flannagan, Jr., of the Ninth Virginia District, who recommended the appointment of Judge Roberts immediately after President Roosevelt had signed the bill creating an additional Federal Judgeship for the western district, said that "the western district of Virginia has always been blessed with able men upon the Federal bench. We can point with pride to all of the men who have administered justice in the Federal courts scattered over our great mountain district. Judge Roberts, in character, in legal learning, and in judicial temperament will rank among the best. I cannot pay him a greater tribute than to state that I know he is going to make a record that every mountain man, woman, and child—and mountain people have an innate

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"As to my friend, Joe Cantwell, I do not believe I could pay him a higher compliment than to say he is a worthy successor to a great Judge," said Congressman Flannagan.

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Lewis P. Summers, dean of the Abingdon Bar Association, declared that "the President of the United States in his wisdom has selected as able a man for the position as lives in the western district of Virginia. I believe that Judge Roberts will make a record on the Federal bench and will not be surpassed by any man that has preceded him or any man that will succeed him." He described Judge Roberts as "one of the most distinguished minds that has ever come under my observation."

ROBERTS LAUDS HIS SUCCESSOR

Responding to his introduction as Federal judge, Judge Roberts declared that "the confidence of the people is one of the prime requisites of a judge" and that the "manifestation and confidence on the part of the lawyers and the citizens in general is an inspiration to me and prompts me to do my best."

Judge Roberts led the jurists and lawyers in paying tribute to his successor on the corporation court bench. At the outset of his response to Judge Pennington's presentation remarks, Judge Roberts said he wanted to "congratulate this bar and this community and the Honorable Joseph L. Cantwell, Jr., on his selection as judge of the corporation court of Bristol. I predict that he will measure up to the expectations of his friends and will fill the office with distinction and ability."

Judge Roberts said that he believed "the good name that has followed Joe Cantwell as a lawyer will follow him as a judge."

Judge Carter said he expected "to see my friend, Mr. Cantwell, make you a very fine, capable, and conscientious judge."

George M. Warren, with whom Mr. Cantwell has been associated in the law firm of Warren & Cantwell, presented Judge Cantwell. "A more loyal man never lived." Mr. Warren said of the new corporation judge. "He has integrity, ability, and application, necessary requisites of a good judge," said Mr. Warren.

Joseph A. Caldwell, of Bristol, Tenn., who said, "I feel that the Federal bench is honored in the appointment of Judge Roberts, and I feel that the State court is honored in the appointment of Judge Cantwell."

Judge Robert Burrow, of Bristol, Tenn., lauding the appointment of Judge Roberts and Judge Cantwell, said he hoped that "in the near future we will have another meeting of the bar to pay tribute to a Federal judge, and we hope that he will be appointed from Bristol, Tenn." Joseph A. Caldwell is one of the Tennesseans most prominently mentioned for the new Federal judgeship in Tennessee.

Other speakers included Mayor T. W. Preston and Delegate Donald T. Stant. Herbert G. Peters Jr., president of the Bristol Bar Association, presided.

The banquet and meeting was held in the Parisienne room of Hotel Bristol.

At 9 o'clock yesterday morning Mr. Cantwell entered the corporation court-room and took the following oath before Dan Drinkard, clerk of the court:

"I, Joseph L. Cantwell, Jr., do solemnly swear that I will support the Constitution of the United States, and the constitution of the State of Virginia, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as judge of the corporation court of Bristol, Va., according to the best of my ability. So help me God."

Upon execution of the oath he was congratulated by friends, including George M. Warren, with whom for the past 11 years he has been associate and junior partner in the law firm of Warren & Cantwell.

Judge Cantwell was born in Birmingham, Ala., December 17, 1904. He received his grammar-school and high-school education in Princeton, Ind., and Asheville, N. C., and took his law courses from the University of North Carolina, graduating with honors in June of 1927. He came to Bristol that year and entered the law office of Mr. Warren.

The new judge is a member of the Bristol Kiwanis Club, of the State Street Methodist Church, and of the masonic order. He was married last year to Miss Anna Katherine Ragen, of Christiansburg, Va.

[From the Bristol Herald Courier, July 9, 1938]

PRESIDENT CHOOSES JUDGE ROBERTS

Thousands of Virginians were delighted and amazed in connection with the appointment of the new Federal judge for Virginia, when President Roosevelt designated Judge Floyd H. Roberts, of Bristol. They were delighted by the President's recognition of the distinguished ability of the Bristol jurist, and amazed at the fire which the appointment drew from Senator Glass. Speaking for himself, and chiding also to speak for Senator Byrd, the senior Senator issued a statement that they would seek to block confirmation, because the President had not followed their recommendation. Justice Roberts will immediately be commissioned and is entitled to assume the new office. He will have to be confirmed by the next session of the Senate.

While Senator Glass claimed to speak for Senator Byrd, there may be some doubt as to the extent of his authority to do so, for the reason that the junior Senator certainly has too much political sense to throw himself into a fight that could not, if successful, help him politically, and which would be almost certain to destroy his chance for renomination in 1940. The Senators must admit, as everybody concedes, Judge Roberts' outstanding qualifications for the position. Even Judge A. C. Buchanan, whom Glass and Byrd sought to have nominated, praised the fitness of the Bristol jurist.

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The Senators will be foreclosed on this point by the unanimous agreement of the other applicants that the President selected a well-qualified person whom he named Judge Roberts. For them to oppose his confirmation under such conditions would outrage the sense of justice of thousands of Democrats of Virginia who are not interested in petty political considerations. Moreover, Senator Glass always has insisted that he cared not a whit for patronage—in fact, abhorred it. Feeling as he claims to feel about patronage, how can he conscientiously seek to block an appointment that is so unanimously accepted in Virginia as an excellent one?

We can understand Senator Glass' disappointment in not getting the place for his choice, but would he have the President completely yield the Presidential prerogative of naming Federal Judges and become a rubber stamp for the Senators? A lot has been said in Virginia about public officials becoming rubber stamps. As long as the President has made a good appointment, we have the feeling that when Senator Glass has had time for more mature consideration he will decide against making objection to confirmation. Senator Byrd has avoided any direct statement, and may it not be fairly assumed that he will bow to public sentiment and accept the situation? He has nothing to gain and much to lose by adopting a course that would be petty and spiteful.

At any rate, the President has designated a new Federal Judge whose character and ability will bear the most searching investigation. He has the right judicial temperament, and the prompt and careful manner in which he dispatches business in his courts is in line with the general demand for a greater expedition of public business in the Federal courts. Before the question of confirmation comes up 6 months or more hence, the people of Virginia will have an opportunity to see the Bristol jurist in action on the Federal bench. His learning in the law, his passion for judicial work, his knowledge of human nature, together with his physical vigor and ever-youthful outlook, make him an ideal man for the newly created Federal Judgeship. His thoroughness and love of justice are only slightly less important elements that go to make up his general fitness.

[From the Bristol Herald Courier, July 12, 1938]

JUDGE ROBERTS AND THE SENATORS

For the second time in a week President Roosevelt has appointed a Federal Judge against the wishes of certain United States Senators. Yesterday he appointed Go. James Allred, of Texas, to a district Judgeship in that State, notwithstanding the fact that the Texas Senators—Connally and Sheppard, had asked otherwise. The other case was that of Judge Floyd H. Roberts, of Bristol, who was appointed after Senators Glass and Byrd had endorsed another candidate. The situation in Texas is somewhat different however. Senator Sheppard, who was disappointed in not having his man chosen by the President, immediately issued this statement: "I accept the President's decision. Governor Allred will make an able Judge." Senator Connally has not yet made a statement but best opinion in Washington is that he will follow the suit of his colleague and accept the situation.

Senator Glass has said that he and Senator Byrd will attempt to block the confirmation of the Bristol jurist in the Senate. Senator Byrd has avoided any direct commitment as to his course of action. In view of the fact that the press of Virginia has unanimously praised the fitness of the Bristol jurist and in view of the widespread acceptance of his appointment from one end of the State to the other, it may be doubted whether the Senators will go as far as Senator Glass' statement might indicate. It might be pointed out that Senator Byrd has recognized the ability of Judge Roberts. During his term of office as Governor he selected Judge Roberts from among all of the trial judges of the State, to crack the hardest judicial nut of his term of office as Governor. It was when the oyster tongs' war was threatened in eastern Virginia over the rights of the tongs to take oysters from the public rocks. Rioting and civil war were imminent. The tongs were organized and armed to defend their rights by violence if necessary, but finally agreed to submit their claims to the courts. In this tense situation, Governor Byrd selected Judge Roberts to go there and try the case. The selection certainly implied full confidence on the part of the executive in Judge Roberts' wisdom and judgment.

The outstanding ability of the Bristol jurist is so recognized all over Virginia that the Senators will not be able to oppose his confirmation on any ground except that the President did not delegate to them the right to name the man. How Senator Glass reasons that to appoint the Bristolian on recommendation of Congressman Flannagan is an offense to the Senators involves reasoning hard to follow. This is especially true when one realizes that Flannagan has stood steadfastly by the President from the beginning, and, more, that his candidate for the Federal Judgeship is a man of preeminent character and ability. The State press as a unit and public officials generally have hastened to commend the appointment. The Baltimore Sun, among other influential out-of-State papers, has said editorially that Judge Roberts' qualifications for the office are the highest.

[From the Bristol Herald Courier, Bristol, Va., July 16, 1938]

THE SENATORS AND THE JUDGESHIP

About the fairest comment we have seen in any Virginia newspaper on the action of President Roosevelt in naming Judge Floyd Roberts, of Bristol, to the new Federal Judgeship in the western district of the State comes from the Norfolk Virginian-Pilot. "To orthodox members of the Glass-Byrd organization," that newspaper says, "the nomination of Judge Roberts has the appearance of a deliberate crack at the two Senators—an act of reprisal for their hostility to various aspects of the President's governmental program. It is, however, just as accurate to regard it as a reward to Representative Flannagan for his 100 percent support of the President and his policies." And further:

"Had the two Senators endorsed for the new Judgeship an individual residing outside of the ninth district, they would have avoided drawing a class issue

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[From the Bristol Herald Courier, Bristol, Va., July 15, 1938]

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About the fairest comment we have seen in any Virginia newspaper on the action of President Roosevelt in naming Judge Floyd Roberts, of Bristol, to the new Federal judgeship in the western district of the State comes from the Norfolk Virginian-Pilot. "To orthodox members of the Glass-Byrd organization," that newspaper says, "the nomination of Judge Roberts has the appearance of a deliberate crack at the two Senators—an act of reprisal for their hostility to various aspects of the President's governmental program. It is, however, just as accurate to regard it as a reward to Representative Flannagan for his 100 percent support of the President and his policies." And further:

"Had the two Senators endorsed for the new judgeship an individual residing outside of the ninth district, they would have avoided drawing a sharp issue between themselves and Representative Flannagan. When they invaded a district under the adverse factional control of Mr. Flannagan and endorsed a judge in that district who is sympathetic with their own political group, they confronted the President with a choice between rewarding them for their intransigence and penalizing Representative Flannagan for his loyalty. While they have reason to dislike and oppose the President's choice, they have no reason, considering the way they helped to sharpen the issue, to be surprised over it."

This does not make happy reading for Senators Byrd and Glass and their partisans in Virginia, but it sets forth facts which are commended to their attention and which it would do them no harm to think over. The two Senators have been in opposition to most of the President's governmental program, they have been among the severest critics of his policies, and they have seemed to expect him to like it. And their followers have watched the President closely for some word or act that might be construed as a retaliation against the Senators who have harassed him for some years. They think they have found such an act in the appointment of Judge Roberts to the Federal judgeship.

Members of the Glass-Byrd organization say political considerations influenced this appointment and that it was a slap at the two Senators. Of course, the Senators were not influenced by political considerations when they invaded the Ninth District, represented in Congress by Mr. Flannagan, and endorsed a judge or judges sympathetic with their own political group. By proposing that the President name a judge who shared the views of two of his most consistent critics, and that he reject the recommendation of one of his most loyal supporters, the Virginia Senators attempted to take another slap at the President and also at Mr. Flannagan.

It has not been forgotten here in the Ninth District that 2 years ago the Glass-Byrd organization undertook to dictate the Democratic nominee for Congress in the district. That is to say, the organization undertook to put an end to Representative Flannagan's political career by defeating him for renomination. Mr. Flannagan was so thoroughly in accord with the Roosevelt policies that he must be driven out of public life. In this overreaching itself, the organization stirred the resentment of the Congressman's constituents to such an extent that he was overwhelmingly renominated and reelected by the greatest majority in the history of the district.

Senators Glass and Byrd invaded the Ninth District, which is Roosevelt-Flannagan territory, and endorsed one of their followers for the new Federal judgeship. Representative Flannagan endorsed Judge Roberts a friend of the administration and a jurist whose qualifications are not questioned even by partisans of the two Senators. They concede his ability and criticize the President's action in naming him only because he was not recommended by the Senators. Their attitude is that, while Judge Roberts is as well equipped for the Federal bench as any other judge who was proposed for the position, he should not have been named because the Senators recommended someone else. The President was not able to see it that way, so he is accused of taking a crack at the Senators. The nomination must be confirmed by the Senate, and Senator Glass has announced that he and Senator Byrd will fight confirmation. We are of the opinion that if they carry out that threat they will be spanked.

[From the Bristol Herald Courier, October 26, 1938]

OPPOSING PRESIDENTIAL APPOINTMENTS

Senator John E. Miller, of Arkansas, while in Bristol the other day, told an interviewer he did not think an organized group had been formed, or that any group of Senators will be formed, to indiscriminately oppose the confirmation of any appointment by President Roosevelt. Senator Miller, who has opposed several administration measures, made this statement in commenting on an Associated Press dispatch from Washington which said Senators hostile to some major New Deal policies had disclosed that they had laid the groundwork for bloc opposition to Senate confirmation of a number of appointments made by the President since Congress adjourned.

The dispatch from Washington stated that these Senators predicted that a test of the loosely formed bloc's strength would come on the question of confirming the appointment of Floyd H. Roberts, of Bristol, as United States judge for the western district of Virginia. "If the group is successful in preventing that confirmation," the dispatch continued, "Members said they had reason to think that the administration might agree to withdraw some other appointments to which they object. Senator Glass, of Virginia, has served notice publicly that he will oppose Judge Roberts' confirmation vigorously, and Senator Byrd, of Virginia, has joined him in this stand. Glass has declared the nomination, endorsed by Representative Flannagan, was intended to be offensive to the Virginia Senators."

Both Senators Glass and Byrd recommended well known members of the Virginia bar for appointment to the new Federal judgeship, while Representative Flannagan of the Ninth District recommended Judge Roberts, also a well known member of the bar. Senator Glass declared, when the Roberts' appointment was announced, that he and Senator Byrd would oppose confirmation. We have noticed no similar declaration from Senator Byrd and have no means of knowing whether the statement in the dispatch from Washington that he will join the senior Senator in opposition to confirmation of the appointment is based on reliable information. We hope it is not.

Judge Roberts is recognized as one of the able jurists in Virginia. There may be other men, including those recommended by Senators Glass and Byrd, who are well qualified for the new Federal judgeship. But we submit that the personal political objections of the two Senators to the Roberts appointment should not be permitted to deprive the Federal bench of the services of one so finely equipped for the responsible position, who would fill it with distinction, and whose appointment by the President was freely commended by the gentlemen endorsed by the Senators. There has been no criticism of this

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appointment in any quarter that did not spring from partisan political prejudice.

It is to be hoped that Senator Miller is correct in the belief that no group of Senators will be formed to oppose confirmation of Presidential appointments. Evidently the Arkansas Senator will not become party to such a plan. There should be enough Senators like him to defeat any such move if it is attempted.

[From the Roanoke Times, July 9, 1939]

JUDGE ROBERTS APPOINTED

Practically without exception all of the various gentlemen advanced by their friends for the new Federal Judgeship in the western district of Virginia were worthy of the honor and it is meant as no disparagement whatever of Judge Floyd H. Roberts, of the corporation court of Bristol, on whom the President's choice has fallen, to point out that his appointment will be construed in political circles as a slap at Senators Glass and Byrd, who had recommended to the Department of Justice the appointment of either Frank Tavenner, assistant district attorney, or Circuit Judge A. C. Buchanan of Tazewell.

In naming Judge Roberts the President has overridden the Virginia Senators in a manner which gives pointed emphasis to the disfavor in which they are held at the White House on account of their frequent opposition to New Deal policies. It is not without political significance that the appointment goes to the candidate who had the endorsement of Representative John W. Flannagan, of the Ninth District, perhaps the most ardent New Dealer in the ranks of the Virginia congressional delegation.

Judge Roberts, who is 55 years old, has presided over the corporation court of the city of Bristol since 1914, in which year he was appointed to the bench by Gov. Henry C. Stuart. A native of Washington County, he was educated at the University of Virginia and practiced law in Bristol from 1902 until his appointment to the bench in 1914.

When the membership of the Virginia Supreme Court of Appeals was increased from five to seven, Judge Roberts' name was placed in nomination in 1930 before the Democratic caucus of the general assembly and he failed of election by only a few votes. It was in that same caucus that Judge Herbert B. Gregory, then judge of the Roanoke law and chancery court, was chosen to go on the bench of the State's highest tribunal, a position he has subsequently filled with distinction and ability.

Judge Roberts is universally regarded as a strong and able jurist. Still in the prime of life, he will bring to the discharge of his duties as a Federal judge qualities of industry and intelligence, reinforced by a profound knowledge of the law and seasoned judicial acumen acquired in the service of the State. Since the President saw fit to go over the heads of the Virginia Senators and disregard their recommendations, he could hardly have made a choice which would be more generally satisfactory to the bar and people of southwest Virginia.

In its political aspects the appointment of Judge Roberts is decidedly a feather in the cap of Representative Flannagan and correspondingly a pointed rebuff to the two Senators from Virginia.

[From the Roanoke Times, July 9, 1938]

THE ROBERTS APPOINTMENT

Judge Floyd H. Roberts, of the corporation counsel of Bristol, has been selected by President Roosevelt as the new Federal judge in the western district of Virginia. The appointee was recommended by Representative John W. Flannagan, ardent New Deal Democrat from the ninth district.

In appointing Judge Roberts the President overrode Virginia's two United States Senators, Carter Glass and Harry F. Byrd, who had jointly recommended to the Department of Justice the appointment of either Frank Tavenner, of Woodstock, assistant district attorney, or Circuit Judge A. C. Buchanan, of Tazewell. While Senator Byrd, as far as the World-News knows, has made no comment on the action of the President in appointing Judge Roberts to the newly created Federal Judgeship in Virginia, Senator Glass has been quick to indicate his displeasure, announcing that both of the Virginia Senators "will resist confirmation of the nomination on the ground, among others, that the President disregarded their recommendation."

Provided the Senators adhere to the course announced by Senator Glass, Judge Roberts' confirmation promises to be the occasion for a spirited battle over the confirmation when the Senate meets next January. Judge Roberts will serve under a recess appointment until Congress meets, at which time his nomination, along with that of other Federal judges appointed since the Seventy-fifth Congress adjourned, will be considered by the Senate with a view to voting or withholding confirmation.

In its political aspects the appointment of Judge Roberts is unmistakably a rebuke to the Virginia Senators for their anti-New Deal attitude toward much of the administration's legislative program and a corresponding feather in the cap of Representative Flannagan, a staunch supporter of the New Deal from the outset of the Roosevelt administration. We dare say there is nothing personal in the opposition of Senators Glass and Byrd to the appointment. But it is entirely natural that they should be nettled over the pointed manner in which their recommendations were ignored and the choice plumb awarded on Mr. Flannagan's suggestion.

As far as Judge Roberts is concerned, there is nothing but praise on all sides for his fitness to go on the Federal bench. Judge Buchanan, one of the two aspirants who received the endorsement of Senators Glass and Byrd, together

of Virginia. The appointee was recommended by Representative John W. Flannagan, ardent New Deal Democrat from the ninth district.

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As far as Judge Roberts is concerned, there is nothing but praise on all sides for his fitness to go on the Federal bench. Judge Buchanan, one of the two aspirants who received the endorsement of Senators Glass and Byrd, describes him as "a very capable judge" and predicts that he "will fill the bill." Even stronger is the laudatory statement of former Gov. E. Lee Trinkle, who declares that "by ability, character, and personality no man in Virginia is better qualified for the Federal judgeship." In Mr. Trinkle's estimation, the appointee "measures up to every requirement of the important office."

Many prominent citizens of southwest Virginia, including such men as State Senator R. R. Parker, of Appalachia; Delegates H. M. Bandy, of Wise; Maynard Sutherland, of Dickenson; and W. N. Neff, of Washington, have been quick to congratulate Judge Roberts on his appointment and to express gratification at the President's choice.

A native of Washington county, Judge Roberts was graduated from the University of Virginia and practiced at the Bristol bar until his appointment to the bench of the corporation court of Bristol by Gov. Henry C. Stuart in 1914. In 1930 his name was presented to the general assembly for the State supreme court of appeals when the membership of that tribunal was increased from five to seven, and in the Democratic legislative caucus he fell short by only a few votes of the nomination. He is regarded as an able judge of unquestioned ability and fine judicial temperament. That is why we feel warranted in saying there is nothing personal in the objections of Senators Glass and Byrd, who have indicated their intention of opposing confirmation of the nomination on the ground that their recommendations were ignored by the President.

[From the Richmond Times Dispatch, July 9, 1938]

ROOSEVELT ON THE WARPATH

It looks as though the first open break between President Roosevelt and the Virginia Senators has come, with the President's refusal to choose either of the men recommended by Senators Glass and Byrd for the new Federal judgeship in the western district of Virginia. No one doubts Judge Floyd H. Roberts's high qualifications for the post, and the only question which is being debated now is whether he will be confirmed despite the political antagonisms which have been engendered by the President's action.

On the one side, of course, there will be the weight of the New Deal. On the other will be the weight of those opposed to the New Deal, together with those Senators who may vote with the administration most of the time, but who are jealous of their prerogatives with respect to patronage. They may reason that if the White House is successful in disregarding the recommendations of the two Virginia Senators in this instance, it may treat them the same way at some future time.

How the fight will end remains to be seen. No one can attempt with safety to predict the outcome today. The issue will not be joined until January and many things can happen between now and then. The result of the fall elections throughout the country may have a direct bearing on Judge Roberts' fate, for if the New Deal makes a better or worse showing than is expected, that fact will be reflected in the attitude of Congress.

At any rate the episode would seem to be further evidence that President Roosevelt is more than ever determined to institute reprisals against those legislators who have fought his program. His mild endorsement of Senator Burkley yesterday in Ohio, and his vigorous espousal of the cause of Senator Burkley later in the day, were cumulative evidence that he is on the warpath. It may be that he will be less aggressive for the remainder of his transcontinental tour, but certainly he laid about him with sufficient gusto yesterday in the Bluegrass State.

[From the Richmond News Leader]

IT MEANS PARTY WAR

There can be no denying the fact that President Roosevelt's nomination of Floyd H. Roberts, of Bristol, for the newly created second judgeship of the western district of Virginia is a declaration of war on the Virginia Senators.

The President picked his man with care and, because of the admitted fine qualities of Judge Roberts, has a certain strategic advantage. On the other hand, so deliberate a disregard of the courtesy shown Senators in respect to an appointment is a challenge that Mr. Glass and Mr. Byrd cannot, and they will receive much support in their effort to defeat confirmation. Virtually all Senators who are not committed without reservation to the New Deal will see in the Virginia appointment a threat to them. This one question in doubt is whether the battle that will be waged in the Senate will spread to Virginia politics.

[From the Petersburg Progress-Index]

Of course, those who do not like Mr. Roosevelt and his administration are entirely within their rights in criticizing his actions, but such criticism should be fair.

No Virginia newspaper, so far as we have seen, in criticizing Mr. Roosevelt for disregarding the recommendation of the Virginia Senators and the Senators from Texas and Nevada in making Federal appointments, has intimated that other Presidents likewise have disregarded the recommendations of Senators of their own party in making such selections. None of these critics, so far as we have seen, have mentioned that Grover Cleveland, notably in the case of Samuel J. Randall, Member of the House from Pennsylvania and Democratic floor leader, refused to accept his recommendation for Federal appointments because Mr. Randall would not support Mr. Cleveland's efforts for tariff reform legislation. In his second term, Mr. Cleveland disregarded recommendations

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of Senator Gorman, Democrat of Maryland, in making Federal appointments in that State, for the reason that Gorman led the fight in the Senate which resulted in the emasculation of the Wilson tariff bill to such a degree that Mr. Cleveland would not approve the measure, although permitting it to become a law without his signature. Mr. Cleveland made two appointments to the Bench of the Supreme Court, those of Hornblower and Peckham, of the New York Bar, ignoring the recommendations of Senator David B. Hill, Democratic Senator from that State. Hill successfully opposed confirmation of both nominations.

President Wilson disregarded recommendations of Senator Reed of Missouri, a Democrat, for Federal appointments. President Taft in the previous administration had absolutely barred Senator La Follette, Republican, from the patronage counter.

The list of Presidents who have refused to follow recommendations of Senators of their own party in matters of patronage could be greatly lengthened if space permitted.

[From the Norfolk Ledger-Dispatch]

PURGING BY REPRISAL IN VIRGINIA

Since neither of the Virginia Senators comes up for reelection this year, the President has no opportunity of applying in Virginia the "purge" which has been instituted by the administration against Members of the United States Senate who have opposed New Deal measures. Lacking this opportunity, Mr. Roosevelt apparently has hit upon another means of punishment in the appointment of an additional Federal judge for the western district of Virginia, in which he has overridden the endorsement of the Virginia Senators and has made the appointment on the endorsement of one representative.

When the extra judgeship for the western district of Virginia was created, Senator Carter Glass and Senator Harry F. Byrd jointly placed before the Department of Justice the names of Judge A. C. Buchanan, of the Twenty-second Circuit Court, and Frank Tavenner, assistant district attorney for the western district, and recommended that one or the other be named. Almost invariably the endorsement of Senators in such cases prevails. Such an appointment is a State-wide appointment in the sense that the duties of the office are not confined to any one congressional district. But the usual order has been abandoned. The name of Judge Floyd H. Roberts, of the corporation court of Bristol, was submitted by Representative John W. Flaunagan, Jr., of the Ninth District. Mr. Flaunagan is a bitter political enemy of Senators Byrd and Glass, and is one of the most ardent and outspoken supporters of the New Deal. The announcement of the appointment of Judge Roberts to the Federal judgeship, then, tells the story.

No one questions the high qualifications of Judge Roberts for this office. He has served on the bench in Bristol since 1914. He narrowly missed election to the Supreme Court of Appeals of Virginia when its membership was increased from five to seven. He is widely known as an able jurist. But Judge Buchanan, likewise, has had much experience on the bench, and his ability has been generally recognized. Mr. Tavenner, while lacking judicial experience, is, no doubt, amply qualified by education, study, and training. There is little, if any, possibility that the question of qualification was the question on which this appointment turned. There is little doubt that this action by the President was intended as punishment for the Virginia Senators, particularly for Senator Byrd, who is known to be regarded by President Roosevelt with enmity if not with actual bitterness. It is impossible to construe this action by the President as anything else than an act of reprisal against two Senators who had the courage of their convictions in refusing to take dictation from the White House.

Of course, they will resist confirmation of the President's hostile appointment.

[From the Portsmouth Star, July 10, 1938]

JUDGE ROBERTS, THE LIBERAL.

The appointment of Judge Floyd H. Roberts, of Bristol, to the new United States judgeship in the western district of Virginia, created by the Seventy-fifth Congress, places on the Federal bench one of Virginia's outstanding jurists. Judge Roberts, most favorably considered on several occasions for place on the Supreme Court of Virginia, but denied this because of his failure to wear the political yoke of the Byrd political machine in Virginia, is a liberal, as the term applies in Virginia. His long tenure on the bench of the corporation court of Bristol and his outstanding decisions in many important Virginia cases has given him a record enjoyed by but few Virginia jurists.

Judge Roberts, first appointed to the bench when the late Judge Kelly, of Bristol, was elevated to the Supreme Court of Virginia, in the term of the late Gov. Henry Stuart, has frequently been named by succeeding Governors to hold special terms of court in various sections of the State. His opinions have often attracted the attention of the bar of Virginia, and some of these decisions have at times been adopted almost in toto as the decision of the appellate court at Richmond, Staunton, and Wythville, when appeals have been taken from Judge Roberts rulings.

Judge Roberts, the liberal, did not bear the endorsement for appointment to the bench of United States Senators Glass and Byrd, and these have announced determination "for this and other reasons" to oppose Judge Roberts' nomination when the new Congress meets. But in the meantime, with Congress in adjournment, Judge Roberts takes his place on the Federal bench and will hold this place until the Senate fails to confirm or adjourns without confirma-

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Judge Roberts, the liberal did not bear the endorsement for appointment to the bench of United States Senators Glass and Byrd, and these have announced determination "for this and other reasons" to oppose Judge Roberts' nomination when the new Congress meets. But in the meantime, with Congress in adjournment, Judge Roberts takes his place on the Federal bench and will hold this place until the Senate fails to confirm or adjourns without confirmation, and thereafter, under such circumstances, Judge Roberts could be reappointed by the President pending further action on confirmation.

Commenting on the appointment of Judge Roberts to the Federal bench, the Northern Virginia Daily says:

"In naming Federal judges it has been the custom of Presidents to follow the recommendation of the Senators from the States in which the appointments were to be made, particularly in view of the fact that the nominations later would have to be approved by the Senate. Both of the Virginia Senators have opposed the key measures of the President's legislative program.

"Senator Glass, who, with Senator Byrd, had sent two names to the White House—those of Judge A. C. Buchanan, of Tazewell, and Frank Tavenner, Jr., of Woodstock—with a statement to the effect that the nomination of either of these two men would meet their approval, announced in Lynchburg last night that both he and Senator Byrd would oppose the confirmation of Judge Roberts' nomination when it is sent to the Senate. Ordinarily such opposition would prove effective, but it remains to be seen to what extent the next Congress will be dominated by the will of the Executive.

"The contest will be an interesting one, because it will not only involve the matter of senatorial courtesy, but also, in a sense, it will put the Senate in the position of having to decide whether or not it will defend the established prerogatives of its Members against the encroachment of the Lower House."

[From the Sun-Set News, Bluefield, W. Va., July 9, 1938]

JUDGE ROBERTS NAMED

Friends of Circuit Judge A. C. Buchanan, of Tazewell, are greatly disappointed by his failure to receive the appointment to the new Federal judgeship in the western district of Virginia, although they should have been prepared, in the very nature of things, for what has finally happened.

In appointing Judge Floyd H. Roberts, of Bristol, to the new judgeship yesterday, President Roosevelt did what any other President would have done in a like situation. He named a candidate recommended by Congressman John W. Flannagan, of the Ninth District, and opposed by Senators Glass and Byrd, who had recommended the appointment of either Judge Buchanan or Frank Tavenner, assistant district attorney, of Woodstock. Representative Flannagan is a loyal administration man, who is regarded by Roosevelt supporters on Capitol Hill as "the only Democrat in the Virginia delegation." Senators Glass and Byrd have opposed most of the administration policies and many of its appointments. Why should President Roosevelt ignore the recommendations of a friend of the administration and appoint a man, eminently qualified though he may be, who is put forward by foes of the administration? That's what we mean by the "very nature of things."

The appointment may not be confirmed, however, inasmuch as Senator Glass has already made it plain that he and Senator Byrd will fight its confirmation. If senatorial courtesy is observed, as it generally is in such cases, the new judicial robe may yet be snatched from the Bristol jurist.

But if the appointment is confirmed, Virginia need have no misgivings about its new judge in the western district. Judge Roberts is a splendid choice. He is qualified by background and experience and enjoys the high esteem of the bar and citizens generally in the southwest. Congratulations showered upon him from admirers in business, industrial, and educational spheres, as well as in political life, indicate the universal approval that greets his appointment.

[From the Progress-Index, Petersburg, Va., July 16, 1938]

SENATORS AND FEDERAL APPOINTMENTS

President Roosevelt appointed Gov. James V. Alfred to the bench of the south Texas Federal court, although Senator Sheppard and Senator Connally had recommended another for the nomination. Senator Sheppard has said that since Governor Alfred is in every way qualified, in his opinion for the position to which he has been nominated, he will not oppose his confirmation. Senator Connally has not indicated what his course will be when the question of confirmation comes up in the Senate. It is not likely that he will interpose objection.

Senators Sheppard and Connally would be entirely justified in opposing the confirmation of Judge Alfred's nomination if in their opinion he is unfitted for judicial service. We have some doubt concerning the soundness of our Virginia Senators in their determination to oppose the confirmation of the nomination of Floyd H. Roberts, of Bristol, to the bench of the new Federal district court of western Virginia solely upon the ground that they had recommended to the President somebody else for the appointment. Defeat of the nomination solely through invocation of the doctrine of "senatorial courtesy" would not be justified and would not be approved, in our opinion, by the people of Virginia.

[From the Baltimore Sun, July 10, 1938]

DOES SNUBBING PAY?

President Roosevelt has taken advantage of his privilege to give a recess appointment to Judge Floyd H. Roberts, of Bristol, to be a United States district judge in Virginia. By this act he places this Virginian temporarily on the Federal bench and challenges the Virginia Senators to oppose the confirmation next winter, not of a new appointee, but of a sitting jurist.

Such an act as this is an adroit (perhaps a maladroit) device repeatedly resorted to by Mr. Roosevelt to embarrass the opposition to his judicial appointees. It is not always easy for that opposition to make a case against a judge on the bench, as the President well knows, particularly when the appointee in question is a man of unquestioned integrity and of manifest fitness.

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All of which may be said, we are ready to assume, regarding Judge Roberts. He has served ably on the bench of his State. He is regarded in his part, of Virginia as a lawyer of fine attainments. All that he has lacked to make him generally acceptable to the bar, it may be assumed further, was the indorsement of his two United States Senators.

These Senators had another candidate for the judgeship in Circuit Judge A. C. Buchanan, of Tazewell, a man whose fitness for the Federal bench is not less pronounced than that of Judge Roberts. As between the two, the President selected the candidate who represented the more sympathetic element of the party in the State.

Whether Senators Glass and Byrd will exercise their right to oppose the confirmation of Judge Roberts when Congress reconvenes in January is a matter which they will have plenty of time to consider during the intervening months. They naturally feel outraged that their recommendation should have been ignored, and that they should now be found in a humiliating position before their friends.

[From the Lexington Gazette, Lexington, Va.]

In the State daily papers of this week we have had occasion to read the oath required of Federal judges and we presume that each lesser judge takes one similar. The oath given to Judge Roberts, recent Federal Justice appointee, reads as follows:

"I, Floyd H. Roberts, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as United States district judge, western district of Virginia, according to the best of my ability and understanding, agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to same, that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter so help me God."

Being a judge is not the office for a careless man who knows little and cares less, or the man who is swayed by oratory or dramatics. He must have stamina enough to withstand the influences of friends and neighbors and go about the business of administering justice regardless of where the chips may fall. That kind of judge will make a good one, and he it is whose name will go down among the jurists of history who have dared to do right. We believe that from all we have learned of Judge Roberts that this Federal district is in good hands.

Mr. Warren submitted to the committee the following endorsements from various citizens of Virginia:

To the Judiciary Committee of the United States Senate:

In connection with the confirmation of Judge Floyd Roberts as judge of southwestern district of Virginia, we submit the following endorsements:

(1) Endorsements signed by the leading ministers in Bristol as follows: Dr. J. S. French, pastor State Street Methodist Church; Dr. H. H. Thompson, pastor First Presbyterian Church; Rev. Donald McIver, pastor Central Presbyterian Church; Dr. J. Emerson Hicks, pastor First Baptist Church; Rev. James J. Hickie, of St. Annes Catholic Church.

(2) Endorsements signed by the mayor, judge of corporation court, and superintendent of schools of Bristol as follows: T. W. Preston, mayor; Judge J. L. Cantwell, Jr.; Dr. B. D. French, superintendent of schools.

(3) Endorsements of the president and editor of the Bristol Herald Courier as follows: Herschel Dove, editor of the Herald Courier; Munsey Slack, president, Bristol Publishing Corporation.

(4) Endorsements of the presidents of the following Bristol banks: H. E. Jones, president of Washington Trust & Savings Bank; J. Walter Wright, president of Union Trust Corporation; Carl A. Jones, president of First National Bank.

(5) Endorsements of the presidents of the three colleges situated in Bristol as follows: Dr. W. E. Martin, president of Sullins College; Dr. H. G. Noffsinger, president of Virginia Intermount College; Dr. Thomas P. Johnston, president of King College.

(6) Endorsements of the following attorneys, namely: Judge Robert L. Pennington, of Bristol, formerly president of Virginia State Bar Association; Herbert Peters, Jr., president of Bristol Bar Association; D. D. Hull, president of Virginia Iron, Coal & Coke Co., and formerly general counsel of said company.

(7) Letters of endorsement from two ex-Governors of Virginia as follows: Ex-Gov. E. Lee Trinkle, ex-Gov. Westmoreland Davis.

(8) Letters of endorsement of the following State senators of Virginia: Senator Lloyd M. Robinette of the sixteenth senatorial district. Senator C. J. Harkrader of the fifteenth senatorial district, Senator Jack W. Witten of the eighteenth senatorial district, Senator R. R. Parker of the seventeenth senatorial district, Senator Vivian Page of the second senatorial district.

(9) Letters of endorsement from the following members of the General Assembly of Virginia, namely: W. N. Neff, Abingdon, Va.; Donald Stant, Bristol, Va.; H. M. Sutherland, Clintwood, Va.; T. B. Ely, Jonesville, Va.; V. C. Smith, Grundy, Va.; Leon M. Brazile, Richmond, Va.

(10) Endorsements of the following bars: City of Bristol Bar; Scott County, Virginia Bar; Smith County, Virginia Bar; Wise County, Virginia Bar; Dickenson County, Virginia Bar; Buchanan County, Virginia Bar; Lee County, Virginia Bar; Russell County, Virginia Bar; Washington County, Virginia Bar; Wythe County, Virginia Bar; Carroll County, Virginia Bar; Grayson County, Virginia Bar.

GEORGE WARREN,

Member of the Bristol, Virginia Bar:

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GEORGE WARREN,
Member of the Bristol, Virginia Bar.

JUDICIAL COUNCIL OF THE METHODIST EPISCOPAL CHURCH, SOUTH,
STATE STREET METHODIST CHURCH.

Bristol, Va., December 21, 1938.

JUDICIARY COMMITTEE

United States Senate,

Washington, D. C.

DEAR SIR: I most sincerely hope that the nomination of Judge Floyd H. Roberts may be confirmed.

He is a gentleman of the highest type, a man with a judicial temperament, a lawyer who knows the law, and altogether incorruptible. Such men as he are needed on the bench, and his confirmation will enhance the idea of the value of law and order among those who come into contact with him.

Very truly yours,

J. S. FRENCH.

FIRST PRESBYTERIAN CHURCH,

Bristol, Tenn., Va., December 21, 1938.

THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE.

Washington, D. C.

DEAR SIR: It gives me pleasure to say that I have known Judge Floyd Roberts during the several years that I have resided in Bristol. While my personal acquaintance has not been intimate yet I have come to know him quite well by reputation.

Judge Roberts has a good name as an upright citizen both in this city and in the surrounding country. His circle of friends embrace many of the leading people of this section, and by all of them he is most highly esteemed.

He has also made a good record in his chosen line of work, the legal profession. It has been his good fortune to enjoy a splendid practice and in all his work he has acquitted himself well. He enjoys the good favor of clients and others.

Serving in the capacity of judge, Mr. Roberts is known for both integrity of character and ability. He is worthy of confidence that may be reposed in him.

I am happy to bear my testimony to the good name and to the ability of Judge Floyd Roberts.

Very sincerely,

H. H. THOMPSON.

CENTRAL PRESBYTERIAN CHURCH,

Bristol, Va., December 20, 1938.

The JUDICIAL COMMITTEE,

Washington, D. C.

GENTLEMEN: Permit me to give my testimonial in behalf of Judge Floyd H. Roberts, of Bristol.

I have known him 17 years. His high sense of honor and his standard of correct living as head of his home, as ruling elder in his church, and in the discharge of his duties as judge entitle him to the esteem in which he is held. He is eminently fitted for the high position to which he is commended.

Very respectfully,

DONALD McIVER, Pastor.

FIRST BAPTIST CHURCH,

Bristol, Va., Tenn., December 20, 1938.

JUDICIARY COMMITTEE

United States Senate, Washington, D. C.

GENTLEMEN: Having lived in Bristol, Tenn., Va., for the past 6 years, I have had the privilege of knowing Judge Floyd H. Roberts, both in his capacity as a citizen and a jurist. I have the highest personal regard for him as a man of noble integrity and character. As a lawyer and corporation judge I have watched his growing career with much interest and have signaled him out for the highest attainment in his chosen field.

He has a brilliant mind, an unusual ability as a student and interpreter of the law. He possesses a judicial temperament and a versatile mind that fit him in a peculiar way for the high position to which he has been chosen. I predict for him a career of distinction and of growing usefulness.

My sincere hope is that the Senate will confirm his appointment as circuit judge of the western district of Virginia.

Very sincerely,

Dr. J. EMERSON HICKS, Pastor.

ST. ANNE'S CATHOLIC CHURCH,

Bristol, Va., December 20, 1938.

SENATE JUDICIARY COMMITTEE

United States Senate, Washington, D. C.

GENTLEMEN: May I, as a humble resident of this community for nearly 10 years, respectfully request your serious consideration and confirmation of Hon. Floyd Roberts as Federal judge of the western district of Virginia? To my personal knowledge he is a man of the highest moral integrity, his character is above reproach and above all he has what is generally termed "the judicial temperament." Should his confirmation to this office succeed, I feel he will bring to it all the justice and dignity the position demands.

Very sincerely yours,

Rev. JAMES J. HICKIE.

CITY OF BRISTOL, VA.,

December 22, 1938.

TO THE JUDICIARY COMMITTEE

United States Senate, Washington, D. C.

GENTLEMEN: The name of Judge Floyd H. Roberts will be presented to your committee for recommendation to the Senate for confirmation of his appointment as a judge of the United States Court for the western district of Virginia.

I am writing to add my endorsement to the number that have been sent you in his favor.

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Judge Roberts has lived in this community all of his life and I have known him since school days. His reputation for honesty, sobriety, and civic righteousness is without blemish. His record as a just and upright judge is unsurpassed. As a presiding judge he demands respect and inspires confidence in his interpretation of the law and evidence. He has a keen, analytical mind and is a constant student of the latest decisions and rulings. He has the confidence and esteem of the entire bar of this district and is favorably known throughout the State.

It would be a sad mistake to put a black mark against an unsullied reputation such as Judge Roberts now has. I urge you gentlemen of the committee to report his name favorably and that you do all in your power to secure his confirmation. This action on your part will meet with almost unanimous approval of the electorate of this district and of his friends throughout the State.

Yours very truly,

T. W. PRESTON, Mayor.

BRISTOL, VIRGINIA, PUBLIC SCHOOLS.
Bristol, Va., December 30, 1938.

JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: I deem it a distinct privilege to be able to state a few words in behalf of Judge Floyd H. Roberts, of Bristol, Va. I have known the reputation of Judge Roberts for a number of years, and since my coming to Bristol as superintendent of the public schools, I have learned to know him rather intimately. He is considered by all Bristol as one of its most outstanding citizens. He is a man of high ideals, possesses a keen sense of justice and fair dealing, has sterling character, and by members of his own profession is rated as being a jurist of extraordinary ability.

It is my sincere wish as well as that of the people of the western district of Virginia and the State at large that his appointment be unapiously confirmed by the United States Senate.

Respectfully submitted,

B. D. FRENCH,
Superintendent of Schools.

CORPORATION COURT, CITY OF BRISTOL,
Bristol, Va., December 21, 1938.

TO THE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: It is with great pleasure that I voice my recommendation in the hope that you gentlemen will report favorably on the nomination of the Honorable Floyd H. Roberts as Judge of the United States District Court for the Western District of Virginia.

Prior to August of this year, I had been engaged in the general practice of law in this territory for some 11 years, and had occasion to appear in many courts in southwestern Virginia. Through my contacts with the members of the bar and public generally, I had ample opportunity to acquire first-hand information as to the reputation of Judge Roberts, both as a judge and as a man. He has been designated as various times to hold many different courts in this territory. He has acquired an outstanding reputation. His conduct on the bench has been so admirable that it has always caused voluntary, favorable comment from the members of the various bars and from strangers who have heard him in action. This was only a confirmation of my own opinion acquired from many years of personal contact with Judge Roberts.

He is a man of exceptional learning in the law, has an alert mind, a keen sense of justice, and has always been characterized by his ability to dispatch the business of his courts. He is a man of the highest personal integrity and of excellent personality. His extreme popularity in southwestern Virginia cannot be denied. He is eminently qualified both professionally and personally in every respect, and is highly deserving of the position to which his nomination is being urged.

Respectfully yours,

J. L. CANTWELL, Jr.

BRISTOL PUBLISHING CORPORATION,
Bristol, Va.-Tenn., December 29, 1938.

SENATE JUDICIARY COMMITTEE,
Washington, D. C.

GENTLEMEN: I am taking the liberty of writing to you about Judge Floyd H. Roberts, of Bristol, who has been nominated by President Roosevelt for the new Federal Judgeship for the western Virginia district.

As judge of the corporation court of Bristol for many years, and serving as special judge on occasion in different parts of Virginia, Judge Roberts made a splendid record—a record in which you could find little if anything to criticize.

That record was made, of course, because Judge Roberts is a most capable jurist, and a conscientious jurist as well. I know nothing about law, but I think I do know when the law is properly administered. And the law is properly administered when Judge Roberts is on the bench.

Besides being an able jurist, whose record is his best recommendation, Judge Roberts is a comparatively young man. While his chief interest is the law and his judicial duties, he is also interested in political affairs, of which he takes a liberal view.

There may be opposition to Judge Roberts, but it cannot be based on his record as a judge, or as a man, or as a citizen. He is as well qualified for the new Federal Judgeship as any man who may be suggested—and I take it for granted that qualification will be the determining factor in filling the place. Looked at from any angle Judge Roberts measures up. Allow me to express

be denied. He is eminently qualified both professionally and personally in every respect, and is highly deserving of the position to which his nomination is being urged.

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J. L. CANTWELL, JR.

BRISTOL PUBLISHING CORPORATION,
Bristol, Va.-Tenn., December 29, 1938.

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With highest regards to the Judiciary Committee and to its members individually, I am

Very truly yours,

HERSCHEL DOVE,
Editor Herald Courier.

BRISTOL PUBLISHING CORPORATION,
Bristol, Va.-Tenn., December 26, 1938.

JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: If judicial ability, character, and temperament are to be the controlling factors, I do not believe your committee will hesitate to recommend confirmation of the appointment of Judge Floyd H. Roberts, as judge of the western district of Virginia, which position he has been occupying now for some months.

In my judgment, Judge Roberts has in him all of the essential elements necessary for the discharge of the duties of this important office. He is well known in Virginia and has been recognized for years as one of the outstanding judges of the State. Along with thousands of other Virginians I share the hope and belief that it will be the pleasure of your committee to favorably report the nomination.

Respectfully,

MUNSEY SLACK, President.

WASHINGTON TRUST & SAVINGS BANK,
Bristol, Tenn.-Va., December 22, 1938.

TO THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE,
Washington, D. C.

SIRS: We have well and favorably known Judge Floyd H. Roberts of Bristol, Va., since his beginning law practice here some 25 years ago and wish to urgently recommend the confirmation of his appointment as United States judge for the western district of Virginia.

Judge Roberts is a man of great integrity, fair-minded, and a thoroughly Christian gentleman.

He is eminently qualified and capable in all respects to fill the position creditably. His legal and judicial ability is unquestioned.

Respectfully,

H. E. JONES,

UNION TRUST CORPORATION,
Bristol, Tenn.-Va., December 24, 1938.

To the Judiciary Committee of the United States Senate:

I am writing you in regard to Judge Floyd H. Roberts whose recess appointment by the President to be judge of the Western District of Virginia will come up for confirmation during the next session of the Congress.

Judge Roberts is a man of outstanding character and a Christian gentleman. His record as a lawyer and judge of the local corporation court of Bristol, Va., for more than 20 years is outstanding.

We believe his confirmation will meet with the approval of the vast majority of this State and especially throughout southwest Virginia.

Cordially yours,

J. WATER WRIGHT.

THE FIRST NATIONAL BANK IN BRISTOL,
Bristol, Tenn.-Va., December 20, 1938.

TO THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE,
Washington, D. C.

GENTLEMEN: I trust that it will be the pleasure of your committee to report favorably on the nomination of Judge Floyd Roberts as United States district judge for the western district of Virginia.

Mr. Roberts is one of the best-known citizens and most distinguished judges of Virginia, and, in my opinion, a better choice could not have been made.

I am a voter, a citizen, and a business executive in western Virginia and I know from an extensive acquaintance over the territory the high regard in which Judge Roberts is held, both as a gentleman and in a judicial capacity.

Cordially,

CARL A. JONES, President.

SULLINS COLLEGE,
Virginia Park, Bristol, Va., December 20, 1938.

THE CHAIRMAN OF THE SENATE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: I should like respectfully to recommend the confirmation of the appointment of the Honorable Floyd H. Roberts to the office of the United States district judge for the western district of Virginia.

Judge Roberts is, in my opinion, eminently qualified to serve as district judge, both by his long experience as a member of the State courts in Virginia and by virtue of the confidence which he inspires in his fairness, integrity, and ability in public office.

I have known Judge Roberts intimately for many years and consider his personal record and character beyond reproach.

I am sure that the people of western Virginia will appreciate the endorsement of Judge Roberts by your committee. He is undoubtedly the "people's choice," and I know that we will all be greatly disappointed should anything occur to prevent his continuing in office.

Respectfully yours,

W. E. MARTIN.

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VIRGINIA INTERMONT COLLEGE,
Bristol, Va., December 29, 1938.

THE SENATE JUDICIARY COMMITTEE,
Washington, D. C.

GENTLEMEN: I am writing in behalf of my friend, Judge Floyd Roberts, whom I have known for 25 years. I regard Judge Roberts as a splendid Christian gentleman of the highest type of character. He is regarded as a judge above reproach and of great legal ability.

I trust it will be your pleasure to confirm his nomination for the position to which he has been chosen.

Cordially yours,

H. G. NOFFSINGER, *President.*

KING COLLEGE,
Bristol, Tenn., December 28, 1938.

THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE,
Washington, D. C.

DEAR SIR: It has come to my attention that your committee will have the name of Judge Floyd H. Roberts presented for the recommendation to the Senate for confirmation as judge of the United States Court for the Western District of Virginia.

Judge Roberts has served his community and State as judge in the Virginia courts with distinction for a number of years. He is held in the highest esteem by those who know him, both as an able jurist and as a gentleman of the highest integrity. It has been a source of real pleasure to his friends to know of his appointment to the United States court, and I take pleasure in urging upon you the recommendation of the confirmation of his appointment. I feel that such action on your part would be a recognition of genuine ability and true worth and at the same time a most wise selection for the fulfillment of the high services expected from such an appointment.

Very truly yours,

THOS. P. JOHNSTON, *President.*

LAW OFFICES, ROBT. L. PENNINGTON,
Bristol, Va., December 28, 1938.

In re Presidential nomination of Judge Floyd H. Roberts to judgeship of the United States District Court for the Western District of Virginia.

JUDICIARY COMMITTEE, UNITED STATES SENATE,
Washington, D. C.

DEAR SIR: I take pleasure in adding my endorsement of Judge Floyd H. Roberts, of Bristol, Va., for confirmation by the Senate of the United States.

It also gives me pleasure to add my testimony to that of numerous other attorneys who have practiced in Judge Roberts' courts to his high standing for character and ability and fitness.

I have personally known Judge Roberts for nearly 30 years and have practiced in his courts 25 years. For 25 years I have lived within a few blocks of his residence. He is a man of fine Christian character, a fearless and able judge, peculiarly fitted for speedy disposition of all contested matters in his courts. He is a diligent and tireless worker. In this territory he has been recognized as one of the most efficient trial judges in our district and has the confidence and respect of the members of the bar throughout this territory. I believe the confirmation of his appointment would meet with general, if not unanimous, commendation of the bars in this territory.

Respectfully,

ROBERT L. PENNINGTON.

BRISTOL BAR ASSOCIATION,
Bristol, Tenn.-Va., December 19, 1938.

To the JUDICIARY COMMITTEE, UNITED STATES SENATE,
Washington, D. C.

GENTLEMEN: I write to respectfully urge the confirmation by your committee of the appointment of Judge Floyd H. Roberts, of Bristol, Va., as one of the Federal judges in the western district of Virginia. As you may know, Judge Roberts, since his appointment by the President several months ago, has been carrying on his duties in this position.

I cannot state too highly the qualifications of Judge Roberts for this Federal judgeship. His record as a judge has been exceptional and has led to his reputation as being one of the outstanding judges in the State. He would have been appointed to the Supreme Court of Virginia long ago if it had not been for the proximity of another justice of the supreme court.

This appointment to the Federal bench comes as a fitting promotion to Judge Roberts' fine career as a judge. His fine ability, experience, and character as a judge will further add to the prestige of the Federal bench in this State.

The bars in this immediate section of the State, who know him best, are looking forward to his early confirmation by the Senate of the United States.

Very truly,

HENRY G. PETERS, Jr.,
President, Bristol Bar Association.

of the members of the bar throughout this territory. I believe the confirmation of his appointment would meet with general, if not unanimous, commendation of the bars in this territory.

Respectfully,

ROBERT L. PENNINGTON.

BRISTOL BAR ASSOCIATION,
Bristol, Tenn.-Va., December 18, 1938.

To the JUDICIARY COMMITTEE, UNITED STATES SENATE,
Washington, D. C.

GENTLEMEN: I write to respectfully urge the confirmation by your committee of the appointment of Judge Floyd H. Roberts, of Bristol, Va., as one of the Federal Judges in the western district of Virginia. As you may know, Judge Roberts, since his appointment by the President several months ago, has been carrying on his duties in this position.

I cannot state too highly the qualifications of Judge Roberts for this Federal Judgeship. His record as a Judge has been exceptional and has led to his reputation as being one of the outstanding Judges in the State. He would have been appointed to the Supreme Court of Virginia long ago if it had not been for the proximity of another justice of the supreme court.

This appointment to the Federal bench comes as a fitting promotion to Judge Roberts' fine career as a Judge. His fine ability, experience, and character as a Judge will further add to the prestige of the Federal bench in this State.

The bars in this immediate section of the State, who know him best, are looking forward to his early confirmation by the Senate of the United States.

Very truly,

HENRY G. PETERS, Jr.,
President, Bristol Bar Association.

VIRGINIA IRON COAL & COKE CO.,
OFFICE OF PRESIDENT,
Roanoke, Va., December 28, 1938.

JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: When the President had under consideration the appointment of a suitable man for the new Virginia Federal Judgeship I wrote him as follows: "I wish to commend for your consideration as a fit appointment for the new Federal Judgeship in Virginia the name of Judge Floyd H. Roberts, of Bristol, Va.

"Judge Roberts is a man of ability and industry. He is in the very prime of life insofar as efficiency is concerned. His personal standing is high and commands the confidence and respect of all who know him.

"I was educated as a lawyer myself and have been so situated as to observe the career of Judge Roberts since he came to the bar. I was early impressed by his grasp of the law; his clear, direct thinking; his keen sense of justice; and his unusual power to readily distinguish between 'the wheat and the chaff' in litigation. Since his elevation to the bench of the corporation court for the city of Bristol, Va., he has demonstrated these qualities in a way to justify the belief that he would be a happy choice for any high judicial post.

"It is my considered conclusion that Judge Roberts would be an admirable selection for this new Virginia Federal Judgeship."

For the reasons stated I desire to repeat to you my conviction as to the eminent fitness of Judge Roberts for the position in question and to express the hope that on the ground of Judge Roberts' splendid qualifications for judicial service you may see your way clear to report favorably on his confirmation.

Yours very truly,

D. D. HULL, President.

SHENANDOAH LIFE INSURANCE CO., INC.,
OFFICE OF THE PRESIDENT,
Roanoke, Va., December 21, 1938.

JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: I give this letter for the purpose of stating that I have known Judge Floyd Roberts, of Bristol, Va., for many, many years.

He is a gentleman of high character, patriotic and sincere in all of his purposes and efforts.

Through the years he has made a splendid and most satisfactory Judge, and if it is your pleasure to approve his appointment by the President, I feel certain that it will never occasion regret.

Yours respectfully,

E. LEE TRINKLE.

MORVEN PARK,
Leesburg, Va., January 12, 1939.

JUDICIARY COMMITTEE OF THE UNITED STATES SENATE,
Washington, D. C.

DEAR SIR: I am writing to commend to you Judge Floyd H. Roberts, of the Federal district court, whose appointment by the President of the United States is before the Senate for confirmation.

Judge Roberts is a man of high character, learned in the law, and of judicial temperament; he is kindly and sympathetic and in the discharge of his official duties fearless and forceful. Beloved by his neighbors, Judge Roberts is universally respected.

This is my first, if I remember aright, letter of this character. I am constrained by a sense of civic duty, so far as in my power lies, to counteract the malign influences that would, because of petty, political, partisan prejudice, deprive our people of the loyal service Judge Roberts would render as a member of the Federal Judiciary.

Again I earnestly recommend the confirmation of Judge Roberts' appointment.

Respectfully,

WESTMORELAND DAVIS.

COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,
Richmond, December 29, 1938.

JUDICIARY COMMITTEE OF UNITED STATES SENATE,
Washington, D. C.

GENTLEMEN: It affords me much pleasure to state that I have known Judge Floyd H. Roberts, of Bristol, Va., for a great many years and have had ample opportunity to observe his ability and demeanor both on the bench and otherwise. I have no hesitancy in saying that I do not know of a man in Virginia that is better fitted for United States district Judge in judicial temperament, by legal ability, in pulse, and in character than Judge Floyd Roberts. I had an opportunity to observe him at a recent term of his court at Big Stone Gap, Va., his first sitting as United States district Judge. I was very much impressed with his conduct on the bench, his courtesy to litigants and attorneys, and his uniform fairness. I heard expressions from practically every lawyer who attended that session of the United States District Court for the Western District of Virginia, and in each case the comment was of most favorable character.

The people of the western district of Virginia are highly pleased with the appointment of Judge Roberts and you may rest assured that his confirmation will meet with the approval of our people in this section of Virginia. I trust, therefore, that it will be your pleasure to recommend the confirmation of the appointment of this most worthy jurist when his name is presented to you for your consideration.

Yours very sincerely,

LOYD M. ROBINETTE.

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COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,
Richmond, January 20, 1939.

Re Judge Floyd Roberts, western district of Virginia.
JUDICIARY COMMITTEE OF THE SENATE OF THE UNITED STATES,
United States Senate Chamber,
Washington, D. C.

GENTLEMEN: My attention has been called to the matter of confirmation of the appointment of the Presidential appointment of July 6, 1938, of Hon. Floyd Roberts, of Bristol, Va., as Judge for the western district of Virginia, now pending before your committee.

While Judge Roberts was not my "first" choice for the position of judge for the western district of Virginia, inasmuch as he has received the Presidential appointment and no question has been or, in my judgment, can be raised as to his character or ability, confirmation should follow.

I have known Judge Roberts and practiced in his court more or less ever since he has been upon the bench and have always found him courteous, painstaking, well versed in the law, and possessing a fine sense of right and wrong. It was my pleasure to try two very important cases, one involving about \$90,000 and the other about \$25,000, in his court within the past 8 or 10 years, both of which cases went to the Supreme Court of Appeals of Virginia and in each instance his decision was sustained. They were important cases, involving some very nice questions of law and really rather complicated. Although his appointment was really that of judge of the corporation court of the city of Bristol, he has held court all through southwest Virginia for other judges and has rendered satisfactory service in every instance.

He held the October term of the Federal court at Big Stone Gap, Va., and his services were considered very satisfactory. He exhibited great patience and consideration of his cases and was very pleasant to lawyers. The expression of the lawyers in this section generally was favorable to his confirmation, even among those who, like myself, did not at first endorse him for this position. The bar of Wise County, consisting of 36 members, in my opinion, with possibly two or three exceptions, favor Judge Roberts for this appointment, and I have heard the lawyers of the adjoining counties of Lee and Scott express the same thought.

He is generally regarded as an able judge, a good student of the law, and possessing a judicial temperament, enjoying the confidence of the bar and the people in this section generally.

Personally he has always been looked upon as a man of the very highest character, being an outstanding churchman and very prominent in church work. His personal habits have been exemplary in every respect, and I doubt very seriously that any question will be or can be raised as to his character or ability.

From my association and conversation with attorneys throughout the Ninth District, I feel justified in saying that the confirmation of Judge Roberts will be very satisfactory to the bar generally and the people of this district as well.

Respectfully,

R. R. PARKER.

RRP:EC.

COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,
BRISTOL, VA., December 26, 1938.

Re Judge Floyd H. Roberts.
To the Judiciary Committee of the United States Senate, Washington, D. C.

GENTLEMEN: It is a pleasure to recommend Judge Roberts, whose name is before the Senate for confirmation as United States district judge for the Western District of Virginia.

No judge in Virginia ranks higher than Judge Roberts. He is a man of unimpeachable personal character and the highest judicial ability. He is in the prime of life, robust physically, and with a youthful and optimistic outlook on life. I know that his confirmation will meet general approval from the people of Virginia and add to the list of district judges a man who is worthy and abundantly qualified.

Respectfully,

C. J. HARKRADER,
State Senator, Fifteenth Senatorial District of Virginia.

COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,
NORTH TAZEWELL, VA., December 18, 1938.

Senate Judiciary Committee, Washington, D. C.

GENTLEMEN: It has been my pleasure to know in an intimate way Judge Floyd Roberts, of Bristol, Va., and I consider it a privilege to offer for your consideration this distinguished son of Virginia, and add my endorsement for one whose character is above reproach, whose ability is unsurpassed, and whose judicial temperament should unquestionably place him in the front rank of United States district judges.

I earnestly request you report his nomination favorably.

Yours very truly,

JACK W. WITTEN.

COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,
NORTH TAZEWELL, VA., December 18, 1938.

District of Virginia.

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COMMONWEALTH OF VIRGINIA,
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I earnestly request you report his nomination favorably.

Yours very truly,

JACK W. WITTEN.

COMMONWEALTH OF VIRGINIA,
SENATE CHAMBER,

Richmond, December 23, 1938.

Senate Judiciary Committee, United States Senate, Washington, D. C.

GENTLEMEN: I have known Judge Floyd Roberts, of Bristol, Va., the President's nominee for the United States Judge for the western District of Virginia, for a number of years. He is capable, honest, and fair and I hope it will be your pleasure to recommend his confirmation to the United States Senate.

Respectfully yours,

VIVIAN L. PAGE.

THE VANCE COMPANY, INC.,
ABINGDON, VA., December 21, 1938.

Judiciary Committee of the Senate, Washington, D. C.

GENTLEMEN: The nomination of Hon. Floyd H. Roberts for the position as Federal Judge for the western district of Virginia will come before you in the coming session of Congress.

Will you allow me to say that I consider the appointment of Judge Roberts to be a very suitable one from every standpoint? It has met with almost universal approval in this district. He has had a very fine record, as a judge, in his service of many years, and his character is above reproach. He is universally regarded as one of the finest type of men produced in this section, and the public has full confidence in his integrity, his love of justice, and his ability to expedite the operations of the courts of law.

I wish to recommend that his nomination be considered favorably by your committee and that this action be taken as promptly as possible in justice to this fine gentleman, who has been nominated by the President and has already rendered splendid service for a number of months in the position for which he is nominated.

Respectfully yours,

W. N. NEFF,

Member of the General Assembly of Virginia.

COMMONWEALTH OF VIRGINIA,
HOUSE OF DELEGATES,

Richmond, December 24, 1938.

THE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: This letter is addressed to you in urging your recommendation for confirmation of Hon. Floyd H. Roberts, who has recently been appointed by the President as Judge of the western district of Virginia.

I have been practicing here since the year 1910, and Judge Roberts preceded me here by some years. I have had occasion to observe his work as a lawyer and also as a judge. When there was a vacancy on our corporation court here in 1914, his ability and fitness for the place prompted me to be one of his active supporters. He was appointed by the late Governor Stuart, of Virginia, and has been elected and reelected by the State Legislature at 4-year intervals ever since. When a vacancy existed on the Supreme Court of Appeals of our State in later years, I was again much interested in his election to that place. He missed getting there by two or three votes, as I recall.

We have considered ourselves exceedingly fortunate to have on our local bench a man of the ability which Judge Roberts possesses. He has presided over trial courts in some other sections of the State, and in every such locality his ability and fitness have been quickly recognized by members of the bar and litigants as well. It may truly be said that Judge Roberts has a passion for the law and is almost constantly pursuing his study thereof when not engaged in the trial or disposition of cases. It is well known in this section that he has the capacity to brush aside a great deal of the chaff which generally accumulates in law cases and to quickly get down to the real and decisive questions involved. He also has a way of finding the authorities which many of us do not possess so well as he.

As you will find from his record, many of the most useful years of his life have been given to the judiciary. I do not believe a more capable appointment could have been made by the President from all the large territory composing the western district of Virginia, and I feel it would be quite a reflection somewhere if such an appointment should not be confirmed by your distinguished body.

Yours very truly,

DONALD T. STANT.

COMMONWEALTH OF VIRGINIA,
HOUSE OF DELEGATES,

Clintwood, Va., December 21, 1938.

THE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: I am grateful for the opportunity of adding my voice to the many who deeply desire the confirmation of Judge Floyd Roberts in his present capacity. We of Dickenson County are unanimous in his hope, because he has served us on the circuit court bench on occasion and we have learned to admire and respect his unusual ability and fairness.

I am sure that it is the united wish of all my mountain people that Judge Roberts receive the recognition which he so richly deserves.

Very sincerely,

H. M. SUTHERLAND.

COMMONWEALTH OF VIRGINIA,
HOUSE OF DELEGATES,

Richmond, December 20, 1938.

Judiciary Committee of the United States Senate, Washington, D. C.

GENTLEMEN: I want to endorse for appointment Hon. Floyd H. Roberts as Federal Judge for the Western District of Virginia. I feel that Judge Roberts through education, ability, and experience is a suitable man for such appointment and want to recommend him.

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Judge Roberts is honest, conscientious, and courageous, as well as being practical and a good student. His opinions to me seem scholarly and guided by reason and justice. I want to recommend him.

Yours very truly,

T. B. ELY, M. D.

COMMONWEALTH OF VIRGINIA,
HOUSE OF DELEGATES,
Grundy, Va., December 23, 1938.

To the Judiciary Committee of the United States Senate, Washington, D. C.

GENTLEMEN: As a lifelong citizen of Buchanan County, Va., and the present representative of said county in the House of Delegates of Virginia, I want to express my support of Judge Floyd H. Roberts whose appointment as United States district judge for the Western District of Virginia will soon come up for confirmation.

I have been personally acquainted with Judge Roberts for several years, as he held the circuit court in my county and town for 3 or 4 years. I never knew a judge to be more universally liked. He is an exemplary man in all respects, and his qualifications and ability as a judge I have never heard questioned by anyone. If there should be any objections to the confirmation of his appointment it cannot be based upon his lack of ability or qualifications for this honor that has been conferred upon him.

I sincerely hope that his appointment will be confirmed.

Yours very truly,

V. C. SMITH,
Member of the House of Delegates of Virginia, from Buchanan County.

COMMONWEALTH OF VIRGINIA,
HOUSE OF DELEGATES,
Richmond, December 21, 1938.

To the CHAIRMAN AND MEMBERS OF THE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: It has been brought to my attention that your committee will in due time have for consideration the nomination of Judge Floyd H. Roberts, of Bristol, Va., as one of the district judges for the western district of Virginia.

My purpose in writing this letter is to ask that a favorable report on the nomination of Judge Roberts be made by your committee to the Senate.

The writer has been a practicing attorney in Virginia for more than 25 years, and for 15 years was assistant attorney general of Virginia. During my service in that office I had occasion to follow with interest the work of the members of the judiciary in Virginia.

Judge Roberts was for many years judge of the corporation court of the city of Bristol, and, in addition to his work as judge of that court, he was called upon on numerous occasions to sit in other courts of the State. Judge Roberts, during the time he served as a member of the Virginia judiciary, was called upon to hear and decide many varied and complex matters in which the Commonwealth of Virginia was an interested party.

It has been my observation that Judge Roberts, while a member of the Virginia judiciary, showed marked ability in the handling of cases which came before him.

I know him to be a man of sterling character and one who has outstanding ability as a judge. He is patient, courageous, and courteous in all that he does, and his discerning mind is ever on the alert to discover and decide the issues of litigants without fear or favor. He, to a very material degree, possesses that judicial mind and temperament so essential to the proper administration of justice.

With the greatest respect and deference, I unhesitatingly urge the favorable consideration of Judge Roberts by your committee, feeling and believing that he will serve with honor and distinction on the Federal bench just as he did while a member of the Virginia judiciary.

With great respect, I remain

Very truly yours,

LEON M. BAZILE

The following petition, signed by 24 members of the bar of Bristol, Va., was submitted:

To the Judiciary Committee of the United States Senate

On July 6, 1938, the President appointed Hon. Floyd H. Roberts of Bristol, Va., judge for the Western District of Virginia, and on August 1, 1938, Judge Roberts duly qualified and since then has been discharging the duties of his office to the great satisfaction of the bar and the people of said district.

Believing the appointment, considered from every view, an excellent one, we, the undersigned members of the bar of the city of Bristol, Va., respectfully request this honorable committee to confirm said appointment.

We state: Prior to his appointment to the Federal bench, Judge Roberts was judge of the corporation court for the city of Bristol, Va., for 24 years. During this period, due to outstanding ability, he was called upon from time to time, when some particular judge was disqualified, to preside over many other State courts. In all cases, at home and away, he has always discharged the duties as a judge with conspicuous ability. His reputation as a judge is State-wide.

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Judge Roberts is a man of the very highest character. His personal habits are exemplary in every respect. He is an outstanding churchman of the Presbyterian faith and for the past 20 years has held the office of elder in his church.

We do not believe that there is a man to be found anywhere that is better equipped in all respects to discharge the duties of this new judgeship than Judge Roberts, and with this feeling we heartily endorse him and pray that his confirmation will be the pleasure of this honorable committee.

An identical petition, signed by 10 members of the bar of Scott County, Va., was submitted.

An identical petition, signed by 9 members of the bar and six county officials of Smyth County, Va., was submitted.

An identical petition, signed by 10 members of the bar of Dickenson County, Va., was submitted.

An identical petition, signed by 10 members of the bar of Buchanan County, Va., was submitted. This petition contained the following notation:

The above are all the members of the bar of Buchanan County, Va.

An identical petition, signed by 10 members of the bar of Lee County, Va., was submitted.

An identical petition, signed by 11 members of the bar of Russell County, Va., was submitted.

An identical petition, signed by 13 members of the bar of Washington County, Va., was submitted.

An identical petition, signed by seven members of the bar of Wythe County, Va., was submitted.

An identical petition, signed by eight members of the bar of Carroll County, Va., was submitted.

An identical petition, signed by eight members of the bar of Grayson County, Va., was submitted.

All of the foregoing petitions endorsed the nomination of Judge Roberts and urged the committee to report it favorably.

STATEMENT OF HON. FLOYD H. ROBERTS, THE NOMINEE HEREIN

Mr. WARREN. Your name is Floyd H. Roberts?

Judge ROBERTS. Yes.

Mr. WARREN. Where do you reside?

Judge ROBERTS. Bristol, Va.

Mr. WARREN. When did you start practicing law?

Judge ROBERTS. In October 1902.

Mr. WARREN. When did you enter into the work of the judiciary?

Judge ROBERTS. The first Monday in September of 1914, in the corporation court of Bristol, Va.

Mr. WARREN. What other judicial work have you done besides that of judge of the corporation court?

Judge ROBERTS. Whenever called upon by the Governors, or they issued these designations at the request of other judges, I have gone out and held court away from home.

Mr. WARREN. Under our statute, judges may be called upon, when designated, to hold court away from home?

Judge ROBERTS. Yes. The statute under which I have been working was not in effect until about 1918, when I commenced to go away from home to hold court.

Mr. WARREN. How many years did you hold the circuit court of Buchanan County, Va., and at the same time do your own corporation court work?

Judge ROBERTS. Judge Burns, the judge of that court had more than he could do, and I went in there and did some of that work for about 4 years. It was a very much congested docket.

Mr. WARREN. At the same time were you sitting for the judge of the circuit court in Washington County?

Judge ROBERTS. Yes. He was in bad health, and I held court there frequently.

Mr. WARREN. How many years have you served on the bench?

Judge ROBERTS. I went on the bench on the first Monday in September 1914, and served until July 31, 1938.

Mr. WARREN. Approximately 24 years?

Judge ROBERTS. Yes.

Mr. WARREN. During that time how many reversals have you had in the Supreme Court of Virginia in civil cases?

Judge ROBERTS. Eleven.

Mr. WARREN. How many in criminal cases?

Judge ROBERTS. Seven.

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Mr. WARREN. When you undertook the work in Buchanan County, how many criminal cases were on that docket?

Judge ROBERTS. Between 600 and 650.

Mr. WARREN. Have you ever said or done anything offensive or injurious in any way or attempt in any way to injure either of the Virginia Senators?

Judge ROBERTS. I have not.

Mr. WARREN. Have you ever contacted them in a personal or political way?

Judge ROBERTS. I have not.

Mr. WARREN. Until this charge was made did you ever have any information that there was any feeling on the part of either of them against you for any reason?

Judge ROBERTS. No.

Mr. WARREN. Have you now any feeling against the Virginia Senators?

Judge ROBERTS. No.

Mr. WARREN. You may make any further statement you desire.

Senator LOGAN. Are we to understand that you did not even ask the endorsement of either Senator Glass or Senator Byrd for this appointment?

Judge ROBERTS. He did not ask me that question.

Senator LOGAN. Did you ask for their endorsement?

Judge ROBERTS. I never really asked anybody.

Senator LOGAN. You did not even refer it to Senator Byrd or Senator Carter Glass?

Judge ROBERTS. I never spoke to anybody about it.

Senator LOGAN. How old were you when you began practicing law?

Judge ROBERTS. I just do not know; about 23, I guess. I was born in 1879, and graduated in June 1902, and went to work that fall. I had been in the practice 12 years when I went on the bench.

Mr. WARREN. Did you solicit this appointment in the beginning?

Judge ROBERTS. No.

Mr. WARREN. It came to you unsolicited?

Judge ROBERTS. Yes.

Mr. WARREN. Have you ever gone to any Senator or Congressman and solicited his support?

Judge ROBERTS. No.

Senator O'MAHONEY. Did you ask them to endorse you at any time?

Judge ROBERTS. I never did. My friends did.

Senator O'MAHONEY. Did you know that they were doing it?

Judge ROBERTS. Yes; I knew in a general way what they were doing.

Senator O'MAHONEY. Do you know whether they approached either of the Virginia Senators?

Judge ROBERTS. I do not know.

Senator KING. What jurisdiction does the corporation court have?

Judge ROBERTS. The same class of jurisdiction, tries the same kinds of cases in the city limits that the circuit court tries in the county. It is a court of general jurisdiction, coordinate jurisdiction with the circuit court, or what is called the superior court in some States.

Senator KING. Is the jurisdiction limited to crimes committed outside?

Judge ROBERTS. It tries all kinds of cases. Under the Virginia practice a regular trial judge of a court of record tries all kinds of cases—law, equity, criminal, civil—and that court has jurisdiction in all classes of cases.

Senator KING. Does the corporation court have jurisdiction of offenses committed outside the limits of the city?

Judge ROBERTS. In one sense, it does. The jurisdiction of the corporation court, of Bristol, is within the territorial limits and 1 mile beyond the limits, which is the zone in which either court has jurisdiction of criminal matters.

Senator KING. Do you have justices of the peace there?

Judge ROBERTS. Yes. They can issue warrants, but all those police-court cases are tried by police judges or trial judges.

Senator KING. Were you elected by persons outside the limits of the corporation when you were on the corporation court?

Judge ROBERTS. The judges of courts of record in our State are only elected by the legislature, by the General Assembly of Virginia.

Senator KING. Were you elected by the General Assembly of Virginia?

Judge ROBERTS. Yes; in a joint session of the General Assembly of Virginia.

Senator NEELY. Do appeals lie directly from the corporation court to the Supreme Court of Virginia?

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Judge ROBERTS. Yes; in a joint session of the General Assembly of Virginia.

Senator NEELY. Do appeals lie directly from the corporation court to the Supreme Court of Virginia?

Judge ROBERTS. Absolutely.

Senator NEELY. By "appeals" I mean writs of error or any other manner of bringing a case before the supreme court.

Judge ROBERTS. The Supreme Court of Virginia is the next court above it.

Senator NEELY. I believe it was stated that you have been reversed in only 11 civil cases and 7 criminal cases?

Judge ROBERTS. Yes.

Senator NEELY. When I refer to "appeals," I mean any method of bringing a case to the supreme court. In how many cases were there appeals from the corporation court?

Judge ROBERTS. I could not tell you how many there were, but in that territory during that time I tried a good many cases. They did not always grant an appeal. At this point I will say that lies within the discretion of the supreme court. A good many were turned down and never got into the supreme court. If they do get there, they may be reaffirmed or reversed.

Senator NEELY. Will you state approximately how many cases were actually appealed from your court to the supreme court? I want to find the value of the 18 cases which were reversed.

Judge ROBERTS. There were 11 civil cases and 7 criminal cases. I never undertake to estimate that. It is a big job to undertake to get the full data on that. When I went to Buchanan County there were something like 600 cases to be disposed of, in one way or another, either nolle prossed, or tried, or pleas of guilty. The same thing was true in Washington County. I held court there often because the judge was in bad health. There were cases there quite often that would go to the next assignment or two, and I would find a badly congested docket, and try to clean it up again. I might try 20 or 30 cases, but probably not all of them were contested.

Senator NERRIS. I think the Senator from West Virginia is trying to bring out what I was trying to bring out. I would like you to give us an idea, approximately—we do not expect you to be definite—as to what percentage of cases went to the supreme court from your court. We would like to know what percentage of the total number of cases the 11 civil cases and 7 criminal cases constitute.

Judge ROBERTS. A very small percentage, when you consider the cases in which writs of error and appeals were refused.

Senator CONNALLY. You have given the number of reversals. Do you know how many cases were affirmed?

Judge ROBERTS. I do not want to be in the attitude of testifying on that. I have a list of cases, but that is not exhaustive. Some of my friends had asked me about it. I did not make that for the committee.

Senator CONNALLY. I just wanted to know if you had a record of how many cases were affirmed as against the number reversed.

Judge ROBERTS. I have no statistics on that. The cases in which writs were denied or appeals were refused is the same as an affirmance.

Senator CONNALLY. That has the same result, but the court does not give it the same consideration.

Senator NERRIS. Eleven civil cases reversed does not mean much unless we know how many cases were affirmed, or the approximate number.

Judge ROBERTS. I suppose in that length of time I must have tried many thousands of cases. I just could not say. I tried cases in Washington County, Smyth County, Scott County, Buchanan County, Russell County, and Dickenson County, in which I did most of the work helping other judges. Those dockets were rather heavy.

Senator NEELY. Have as many as 100 civil cases been affirmed by the Supreme Court of the State of Virginia?

Judge ROBERTS. I would certainly say so.

Senator NEELY. Have your decisions in as many as 50 criminal cases been affirmed by the Supreme Court of Virginia?

Judge ROBERTS. I would certainly say so.

Senator MILLER. Do you mean cases that were heard on their merits and appeal granted?

Judge ROBERTS. That is considered as an affirmance.

Senator MILLER. That is not my point. I understand when they refuse a writ of error that has nothing to do with the merits. I would like to know in how many cases the issues have been determined by the supreme court on the merits in cases appealed from your court.

Judge ROBERTS. Under our practice they do not present a petition, for a writ of error or appeal except by presenting the whole record, and when they decline to review it, that is an affirmance on the merits.

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Senator MILLER. It is just an affirmance because there is no apparent error?

Judge ROBERTS. They say no error has been pointed out which would justify a reversal.

Senator MILLER. Are there many reasons why they are not pointed out?

Judge ROBERTS. Not under our practice. If they do not point them out they are not appealed.

Senator MILLER. The point that Senator Neely and Senator Norris were trying to bring out is the number of actual affirmances upon the merits, where the court took jurisdiction.

Senator NEELY. I should not have gone into it, but it was brought out by your counsel that you have been reversed in 11 civil cases and 7 criminal cases. Standing alone, as I see it, that has no value to the committee.

Standing alone, somebody might assume only that number had been appealed and you had a 100-percent record all of the time. I thought it was rather important, from the point of the nominee, that it should be cleared up.

Judge ROBERTS. There was a far greater number of affirmances than reversals over the whole territory I covered. The great number of cases were affirmed by the refusal of a writ.

Mr. WARREN. During your 24 years on the bench, 11 civil cases and 7 criminal cases constitute a very small percentage of the total number of cases, do they not?

Judge ROBERTS. Yes.

Senator DANAHER. I would like to inquire with reference to a comment made by Governor Price, that you lacked three or four votes of confirmation for what position?

Judge ROBERTS. The Supreme Court of Virginia.

Senator DANAHER. Is that an elective office?

Judge ROBERTS. By the general assembly.

Senator NEELY. How many votes were cast in that election?

Judge ROBERTS. All the members of the general assembly.

Senator NEELY. We do not know how many there were.

Judge ROBERTS. There were 40 senators and 100 in the house.

Senator DANAHER. How long ago was that?

Judge ROBERTS. That was in January 1930, as I recall.

Senator MILLER. That was a Democratic caucus, was it not?

Judge ROBERTS. That is the same as an election under our practice.

Senator MILLER. I suppose there were a few Republicans scattered around there?

Senator CONNALLY. Not very many. They were scattering.

Mr. WARREN. How many times were you designated by Senator Byrd, when he was Governor of Virginia, during the 4 years in which he held that office, to try cases in other courts?

Senator CONNALLY. I do not see where that has anything to do with the question before the committee.

Judge ROBERTS. Governor Price referred to that in his statement.

Senator CONNALLY. I withdraw the objection.

Judge ROBERTS. I could not say exactly now, but a goodly number. It is shown in those exhibits.

Senator McCARRAN. Those designations were issued where there was a vacancy or the judge was disqualified, and the Governor called in another judge?

Judge ROBERTS. Yes, sir.

Senator CONNALLY. You were a judge down there and it was your duty to go, if you were needed somewhere?

Judge ROBERTS. Yes.

Senator CONNALLY. And it was the duty of the Governor to assign some judge to go where he was needed?

Judge ROBERTS. That is the way I felt about it. I always went when they asked me.

Senator CONNALLY. It was your duty to go, was it not?

Judge ROBERTS. I considered it that way.

Senator CONNALLY. Did not the law require you to go when the Governor requested it?

Judge ROBERTS. I do not know that the statute has been construed, but I always complied with the request.

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Judge ROBERTS. I do not know that the statute has been construed, but I always complied with the request.

Senator CONNALLY. You construed it that way?

Judge ROBERTS. I think so.

Senator NEELY. How many judges were there to choose from when you were selected by these Governors, and particularly Governor Byrd, to hold court? Were there 3 or 4 or 8 or 10?

Judge ROBERTS. There were about 30 circuit judges—I could get that exactly, but I think something like 50 judges. In the larger cities they have a larger number of judges.

Senator McCARRAN. You were not the only judge that Governor Byrd and other Governors selected, were you?

Judge ROBERTS. Oh, certainly not; certainly not.

Mr. WARREN. How many terms of the United States district court have you held since your recess appointment?

Judge ROBERTS. The regular trial term, the criminal term. I held court at Abingdon, and in Danville, trying some criminal cases.

Mr. WARREN. How many cases have gone to the circuit court of appeals?

Judge ROBERTS. One.

Mr. WARREN. Was it reversed or sustained?

Judge ROBERTS. It was sustained.

Senator NEELY. Has only one case been appealed from your court since you have presided over it?

Judge ROBERTS. Yes. They have hardly had time to get anything more.

Senator NEELY. I just wanted to get your batting average. That would mean you have a 1,000-percent batting average on appeals from your decisions.

Judge ROBERTS. That is the only case in which an appeal has been perfected that I know of.

The CHAIRMAN. Does that complete the statement?

Judge ROBERTS. Yes; thank you, Mr. Chairman.

STATEMENT OF HON. CARTER GLASS, A SENATOR IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. What is your pleasure, Senators? Shall we hear the Senators from Virginia?

Senator CONNALLY. It is now nearly 4 o'clock. The Senators are here all the time. I suggest we might hear them at some other time.

The CHAIRMAN. Whatever the pleasure of the Senators might be will undoubtedly govern the action of the committee.

Senator GLASS. It will not take me very long to say what I have to say. I think this is as good a time as any.

The CHAIRMAN. Very well, Senator Glass. You may proceed.

Senator GLASS. Mr. Chairman, the Virginia Senators have not formally or definitely made any statement affecting the capabilities of this nominee. The committee needs to know the background of the whole episode, in order to reach the minds of the two Virginia Senators in substantiations of their written statement that the nominee is personally offensive to the Virginia Senators.

Back in March, about the 15th, as I recall, there appeared in various newspapers in Virginia, notably in the home newspaper of this nominee, an editorial or press notice or statement that the Governor of Virginia had been given by the President of the United States the right of veto of any nominations that the two Virginia Senators should make. The statement in one of the Richmond papers had at its head the picture of the Governor of Virginia, who was at that time in Richmond. I did not communicate with the Governor to ascertain whether or not he had authorized the publication, but he had ample time then and has had since to deny the accuracy of the statement. I did address a letter to the President of the United States, calling his attention to the publication, and asking him if the Virginia Senators were to understand that their nominations to Federal positions in Virginia were to be subject to the veto of the Governor of Virginia. The President of the United States has not answered that question up to this date, except in this nomination to the Senate.

There were six applicants for the position of district judge, which was created by a bill offered by me in the Senate. The western judicial district is composed of territory in the State represented by six Congressmen. All of the applicants, except the nominee, either personally or through their friends, sought the advice of the two Virginia Senators. This nominee, neither through his friends nor himself, communicated with the Virginia Senators about the matter.

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We were told through the newspapers that this nomination was to be made as a rebuke to the two Virginia Senators for their failure to vote for measures proposed to Congress by the President of the United States.

On the 22d of May, as I now recall the date, the Department of Justice communicated with the two Virginia Senators and asked them to make nominations for this position immediately, as it wanted to present the nominations to the Senate before the adjournment of Congress in order that there might be confirmation before adjournment, indicating that there was considerable hurry about the matter. The two Virginia Senators first decided to recommend former Governor Peery for the position; but, having learned that the Executive and the Department of Justice were both opposed to naming a judge more than 60 years of age, I communicated with the President and asked him if he intended to adhere to that rule. He said he did. I communicated with the Attorney General and he definitely advised me, and I suppose my colleague likewise, to nominate some man between 40 and 50 years of age, who might have a long term of service.

We conferred hastily, but very definitely, and decided to present two names to the President, stating that either one of these gentlemen would be satisfactory to the Virginia Senators. One name was that of Circuit Judge A. C. Buchanan, of the same congressional district represented by the nominee here. The other was Frank Tavenner, at that time and now assistant United States district attorney.

I doubt if there is a lawyer in Virginia who would come in this room and say that A. C. Buchanan has not a notable reputation as a circuit judge, not subordinate to any man on the bench in Virginia. If this were a question of a man's character or qualifications solely, I could fill five rooms like this with lawyers from Virginia, with judges from Virginia, with prominent citizens of Virginia, who would attest the character and capabilities of A. C. Buchanan. I doubt whether there is a man present in this assembly now, advocating this nomination, who would get on the floor and challenge the character and capabilities of Judge Buchanan. If there is, I will yield some part of my time to let him stand here and make the challenge.

I shall give you some very concrete and definite ideas of what sort of man Buchanan is, because I do not want the committee to get the notion that either or both of the Virginia Senators are recommending for a position of this kind any man who is not completely qualified in character and capabilities to sit upon the bench in this court. I have made some investigation of cases passed on by the court of appeals, but we have not desired to bring that matter into consideration here. However, I think it is important and that I am justified in indicating to the committee the type of man that we recommended to the President through the Department of Justice.

Over and over again the Court of Appeals of Virginia, known as the supreme court of appeals, has taken the decisions of A. C. Buchanan bodily as its own decisions. To give you an example, in September 1928 the court of appeals said:

The memorandum opinion of the Honorable A. C. Buchanan, the able judge who decided the case in the lower court, is so completely in accord with the views of the members of this court that we have adopted his opinion, copied herein, as the opinion of this court in the case.

Again, in September 1932 the supreme court said:

In a written opinion, the judge of the circuit court, Hon. A. C. Buchanan, has, in our opinion, so ably demonstrated the correctness of the decree entered that we adopt and reproduce his opinion.

Again, in the case of *Seal versus Puckett*, tried by Judge Buchanan in the circuit court of Russell County, the supreme court said:

The Honorable A. C. Buchanan, judge of the twenty-second judicial circuit, presided at the trial of the present case, and in holding that the executions in question should be quashed handed down an opinion in which he expressed the view that a writ of error or an appeal does not operate as a supersedeas. In this view and holding we concur. The reasoning of Judge Buchanan so strikingly presents our view and his conclusion so satisfactorily answers the question here presented that we adopt his opinion as the opinion of this court.

Over and over again, I might read extracts from the opinions of the Supreme Court of Virginia, indicating that it held and does hold Judge Buchanan in the highest esteem. So that we did not nominate

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Over and over again, I might read extracts from the opinions of the Supreme Court of Virginia, indicating that it held and does hold Judge Buchanan in the highest esteem. So that we did not nominate to the President of the United States somebody who was not thoroughly well qualified for the position.

Judge Buchanan did not want to be an applicant for the place. The two Virginia Senators were so impressed by his reputation as an outstanding circuit judge that they urged him to permit the use of his name. And although petitions had been circulated in that congressional district, one of six congressional districts represented in the western judicial district, for other candidates, even before the ink was dry on the bill that Congress passed and that I offered, Judge Buchanan received a most creditable endorsement in that very congressional district. He was endorsed by George C. Peery, a former Governor of Virginia. He was endorsed by every single solitary lawyer in his judicial circuit—every one. He was endorsed by the Lieutenant Governor of Virginia, by many members of the General Assembly of Virginia, by the president of Washington and Lee University, by the president of Hampden-Sydney College. He was endorsed by Dr. Eggleston, at one time superintendent of public instruction of Virginia. He was endorsed by the judge of the twenty-fourth judicial circuit, by the judge of the twenty-first judicial circuit, by the entire membership of the bar of Tazewell County, by the entire membership of the bar of Giles County, by the entire membership of the bar of Bland County. The counties of Tazewell, Giles, and Bland comprise the twenty-second judicial circuit, over which Judge Buchanan now presides. He was endorsed by the entire membership of the bar of Montgomery County, by the entire membership of the bar of Radford City, by the entire membership of the bar of Floyd County.

Judge Buchanan was endorsed by members of the bar, in varying numbers, in these following other counties and cities in the district: Pulaski County, Wise County, Lee County, Scott County, Wythe County, Washington County, Carroll County, Smyth County, Rockbridge County, Craig County, Russell County, Dickenson County, city of Bristol, city of Roanoke, and Alleghany County.

As I have said, if it were a question of maintaining the reputation of A. C. Buchanan here before this committee, both for character and for capability, I could fill five rooms like this with his friends, but we have not cared to go into that.

As a matter of fact, the President of the United States did give to the Governor of Virginia the veto power over nominations made by the two Virginia United States Senators. He was given ample opportunity by me personally to deny the accuracy of that statement, and he has not done so. He has confirmed it by taking from the six applicants for that position, all of high character and capabilities, the only man who is personally offensive to the two Virginia Senators—offensive to them in that he lent himself to the conspiracy to discredit and to dishonor their recommendations to the President. Any man would be personally offensive to me, whoever he might be, however near he might be, how much he may have supported me politically, if he would be a cheerful and willing recipient of the benefits of a proposal that the two United States Senators from Virginia, charged by the Constitution with the duty of advising and consenting to Federal appointments, should have their recommendations vetoed by the Governor of Virginia, who has not disputed his connection with the proposition.

This is what the two Virginia Senators say. We were asked for our recommendation. We did not volunteer it, because there were these men of high character applying for the office, and the Senators naturally did not want to take sides, but we were hurried into a recommendation. The other recommendation was Frank Tavenner, and I am told that every bar association in his congressional district endorsed him for the place. Everybody who knows him or knows of him knows that he is a young man of the finest character, 43 years of age, to meet Mr. Cummings' requirement, as Judge Buchanan was 48 years of age, to meet Mr. Cummings' requirement. But Mr. Cummings never had the slightest idea of giving consideration to the recommendations of the two Virginia Senators, because the Governor of Virginia had been promised the right of veto on nominations they made.

I do not feel that there is any necessity of taking further time of the committee. I have presented the case from our point of view.

While I have not gone into the record of the Supreme Court as to the affirmance of appeals or reversals of appeals, I can do so if the committee insists upon it, but I did not want to do it, because that is no part of our opposition to this nominee.

STATEMENT OF HON. HARRY F. BYRD, A SENATOR IN CONGRESS
FROM THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. Senator Byrd?

Senator BYRD. Mr. Chairman and gentlemen of the committee, my colleague has very adequately stated the objections of the Virginia Senators to the confirmation of this nomination. It is my sincere and honest conviction that this nomination was made for the purpose of being personally offensive to the Virginia Senators, and it is personally offensive to the Virginia Senators, and is personally obnoxious to me, as well as to my colleague. I am well aware of the responsibility that I take in making this statement of complaint of personal obnoxiousness, but I want to say to the committee that I make that complaint with full knowledge of that responsibility as a Senator from Virginia.

Senator CONNALLY. I move we go into executive session.

Governor PRICE. Mr. Chairman, Senator Glass has made a charge against me. He is entirely mistaken about it. I would be glad to have this committee interrogate this young man from the Department of Justice. The first I knew of Judge Roberts' appointment was when Mr. Keenan told me the President was considering his appointment.

Senator GLASS. We are not so simple in Washington as not to know perfectly well that Mr. Keenan was told to confer with the Governor to find out if the appointment was agreeable to him.

Governor PRICE. I was not involved in the statement in the Bristol Herald Courier. At the time I became Governor it was an empty honor. All the patronage had been distributed. There was none when I became Governor.

Senator CONNALLY. You are not a resident of this judicial district?

Governor PRICE. No.

The CHAIRMAN. The Senator from Texas moves that the committee go into executive session. Those in favor will say aye; contrary, no. The ayes have it, and it is so ordered.

(Whereupon, at 4:15 o'clock p. m., the hearing was closed, and the committee went into executive session.)