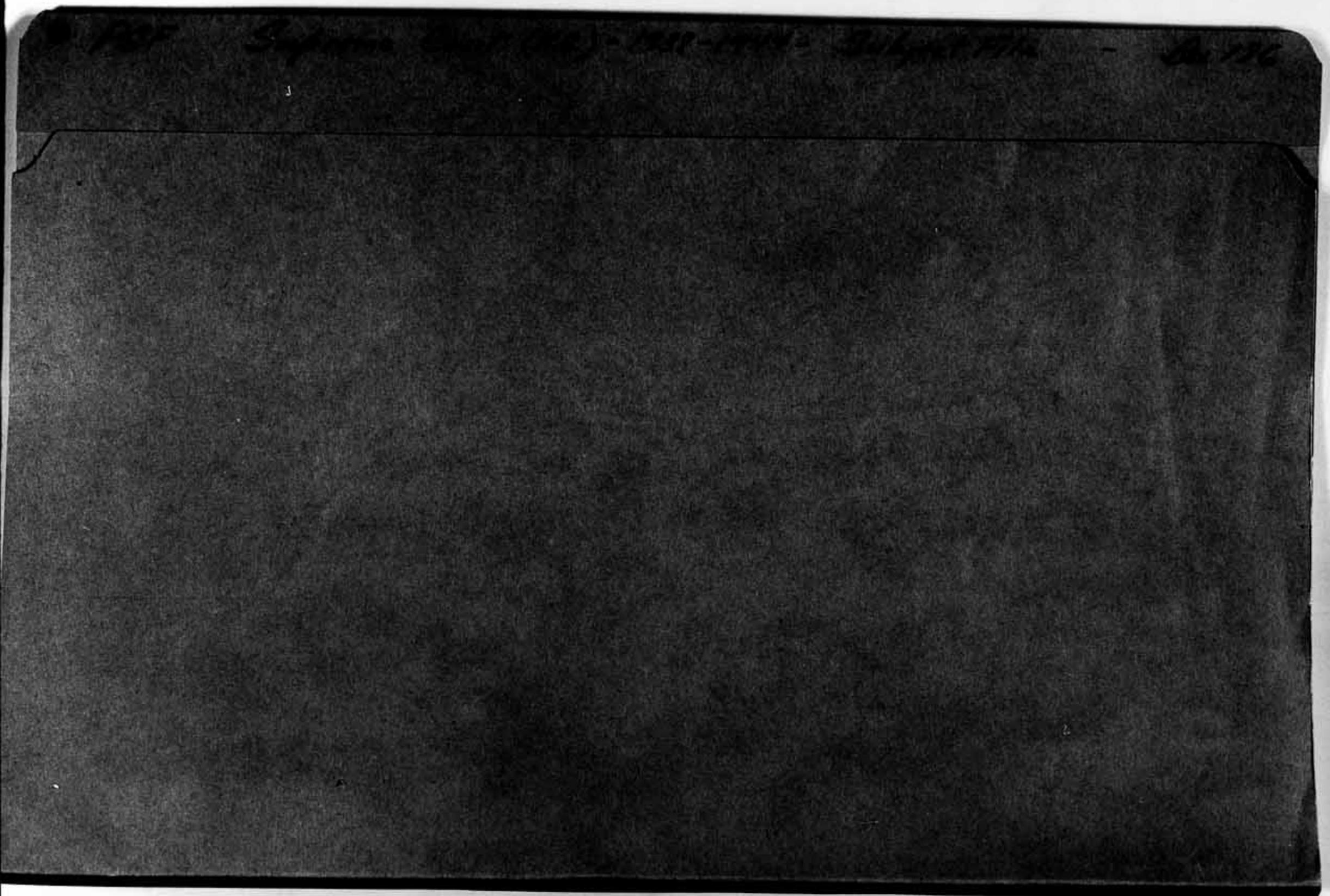


1



*PST
Supreme Court
2*

January 4, 1938.

Dear Chief:-

I have been sorry, indeed, to hear that you have been confined to the house -- especially with such an annoying and painful thing as shingles. You have been much in my thoughts.

During the "amenities" of 1937, I thought perhaps that it was best not to ask you to come and have tea or dinner with me -- because, as you know, the White House is a glass house -- and the American press is not accurate on all occasions!

I do hope, however, that as soon as you are wholly recovered you will come in some afternoon or evening and let us renew old times and ties. Don't forget that not only I but the whole country counts on you and applauds you.

With my affectionate regards,

As ever yours,

Honorable Benjamin N. Cardozo,
2101 Connecticut Avenue,
Washington, D. C.

PSF
J. Court

President of the United States
Washington, D. C.

January 5, 1938.

My dear Mr. Justice Sutherland:-

I have received your letter telling me of your proposed retirement from regular active service on the bench, this retirement to be effective on and after January 12, 1938.

May I send you my felicitations on your many years of public service.

May I also express the sincere hope of Mrs. Roosevelt and myself that we shall have the pleasure of seeing you and Mrs. Sutherland at the dinner at the White House on January twentieth.

Very sincerely yours,

The Honorable
George Sutherland,
Associate Justice of the Supreme Court
of the United States,
2029 Connecticut Avenue,
Washington, D. C.

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

January 5, 1938.

My dear Mr. President:

Having reached the age of more than seventy-five years, and having held my commission as Associate Justice of the Supreme Court of the United States, and served in that court, for fifteen years, and thus being eligible for retirement under the Sumners Act of March 1, 1937, entitled "An Act to Provide for Retirement of Justices of the Supreme Court", I desire to avail myself of the rights, privileges and judicial service specified in that act; and to that end I hereby retire from regular active service on the bench, this retirement to be effective on and after Tuesday, the 18th day of January, 1938.

Very respectfully yours,

George Sutherland

The President.

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

Official Business
Penalty for Private Use, \$ 300.

The President,
The White House.

P.S.F.

Supreme Court

January 5, 1938.

January 6, 1938.

My dear Mr. Speaker:

In response to your request for an expression of opinion regarding the proposed resolution calling for a referendum vote as a prerequisite for a

My dear Mr. President:

I am enclosing herewith the suggested letter for you to send to the Speaker with regard to the Ludlow Resolution which you desired and which has been approved by the Secretary.

Believe me

Faithfully yours,

**The President,
The White House.**

The Honorable

William B. Bankhead,

Speaker of the

House of Representatives.

rights with impunity.

January 8, 1938.

I fully realize that the sponsors of this amendment
sincerely believe that it would be helpful in keeping

My dear Mr. Speaker: I am convinced it would

In response to your request for an expression
of my views respecting the proposed resolution call-
ing for a referendum vote as a prerequisite for a
declaration of war, I must frankly state that I con-
sider that the proposed amendment would be impracticable
in its application and incompatible with our representa-
tive form of government.

Our Government is conducted by the people through
representatives of their own choosing. It was with
singular unanimity that the founders of the republic
agreed upon such free and representative form of govern-
ment as the only practical means of government by the
people.

Such an amendment to the Constitution as that
proposed would cripple any President in his conduct of
our foreign relations, and it would encourage other
nations to believe that they could violate American

The Honorable

William B. Bankhead,

Speaker of the

House of Representatives.

rights with impunity.

I fully realize that the sponsors of this proposal sincerely believe that it would be helpful in keeping the United States out of war. I am convinced it would have the opposite effect.

Yours very sincerely,

10 Jan 1938

CONFIDENTIAL

MEMO FOR THE PRESIDENT FROM H.S.C.

D. F.
PSF: Supreme Court

Dependable information has come to me that Justice McReynolds will leave the Court within the year.

Marshall George Devinney, of the United States Court of Appeals for D. C. is very well acquainted with McReynolds and Judge Robb. He worked for many years with Judge DeVries, former Democratic Congressman from California, now practicing law here. DeVries and Judge Robb have been close friends of McReynolds for many years. They go to McReynolds' for breakfast and he goes to their homes for dinner. Two weeks ago at Judge Robb's home McReynolds told Robb he was getting sick of the whole thing and that he and Sutherland were going to quit. After Sutherland retired, he told Judge DeVries he wouldn't be there much longer. The impression was it would be this year. Robb and DeVries each told Devinney, who told my informant.

Another informant tells me that Senator Moore has reason to believe that Mr. Justice Cardozo, quite irrespective of the condition of his health, plans to resign from the Supreme Court this year. Mr. Justice Cardozo is under 70 and has not yet served 10 years.

January 10, 1938.

THE SOLICITOR GENERAL
WASHINGTON

file
personal PSF
Supreme Court

My dear Mr. President,

The confidence you have shown in me moves me deeply.

It is gratifying to receive this nomination from the hands of a President in whom I have such faith.

I shall express to you personally my appreciation when I see you later today.

Very respectfully yours

The President
The White House

Stanley Reed

January 15-1938

PSF
S. Court

VERY PRIVATE & CONFIDENTIAL

March 21, 1958.

Dear Lew:-

For more than two weeks I have been confronted with the making of a choice between two old friends -- you and Bill Douglas.

Both of you, I felt, to be wholly and fully qualified for the Supreme Court -- equally so in fact.

I want you to know that I did not come to the final decision until yesterday morning and that the final determination was based on the very simple fact that I need you, and the party needs you and the country needs you in the Senate.

The cause of a liberal democracy is at least equal to, and probably more important than, any individual Supreme Court Justiceship. Our people in the Senate are rather definitely reduced in numbers insofar as the total who can be counted on goes.

You are of very definite importance not only in keeping this group together but in waging an active and unremitting fight. If I had been a party to taking you out of the Senate, I really think it would have hurt the cause. Hence, the final decision.

I thought I ought to tell you this quite

United States Senate

WASHINGTON, D. C.

frankly, and I know you will understand the reasons,
and at the same time have renewed assurance of my
affection for you and of my great confidence in you
and the work you are doing.

The President
The White House

As ever yours,

My dear Mr. President:

I want to express to you my appreciation of
your very kind note of March 10th.

**Honorable Lewis B. Schwellenbach,
United States Senate,
Washington, D. C.**

for the choice and wish to assure you that the
fact that you made this choice will be the
fact my attitude toward you is the attitude in
which we believe.

Respectfully yours,

Lewis B. Schwellenbach

Lewis B. Schwellenbach

LBS/ea

12
Private Sales
United States Senate

WASHINGTON, D. C.

March 25, 1939

*file
personal*

Personal and Confidential

The President
The White House

My dear Mr. President:

I want to express to you my appreciation of your very kind note of March twenty-first. I would not be truthful if I should attempt to say that I was not disappointed. However, I do appreciate very much the statement as to the reasons for the choice and wish to assure you that the fact that you made this choice will in no way affect my attitude toward you or the principles in which we believe.

Respectfully yours,

Lewis B. Schwellenbach

Lewis B. Schwellenbach

LBS/em

United States Senate

SPECIAL COMMITTEE ON CONSERVATION AND
UTILIZATION OF AQUATIC LIFE

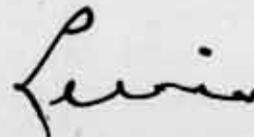
March 27, 1939

Colonel Edwin M. Watson
Secretary to the President
The White House
Washington, D. C.

Dear Colonel Watson:

The other day I received a personal note
from the President to which the enclosed is a reply.
I would appreciate your seeing to it that he re-
ceives it, personally.

Very truly yours,



Lewis B. Schwellenbach

LBS/jm
Enclosure

PSF: Supreme Court

~~Handwritten initials~~
2

November 21, 1939.

Personal and Confidential

Dear Harry:

It is good to get your letter and I fully and heartily concur in every word that you say about Jimmy Byrnes, who is one of the best. I won't make any decision immediately and, as you know, I am faced with a good many problems -- geographic and otherwise.

My warm regards and I hope to see you one of these days soon.

As ever yours,

Honorable A. Harry Moore,
Governor of New Jersey,
Jersey City, New Jersey.

FDR/dj



THE WHITE HOUSE
NOV 18 8 34 AM '39
RECEIVED

A. HARRY MOORE

THE GOVERNOR OF NEW JERSEY

Jersey City
November 17, 1939

Dear Mr. President:

May I, as one who has fought for the Democratic Party all his life and for you each time you ran for President, respectfully make a suggestion.

In considering an appointee for Justice of the Supreme Court, why not take a man who is eminently fitted for it in every possible way by ability, regularity and loyalty? I refer to Senator James Byrnes of South Carolina, who has always been your friend and, at your behest, carried many fights to victory on the floor of the Senate. He hasn't any money and he devotes himself to the public weal but, after all, he cannot go on forever. His appointment would meet with popular acclaim and would be a deserved recognition.

He does not know, of course, that I am writing to you about him.

With every sentiment of regard,
I am

Sincerely yours,

Hon. Franklin D. Roosevelt
President of the United States
The White House
Washington, D. C.

*file
personal*

*PSF
Supreme Court
2*

THE WHITE HOUSE
WASHINGTON

January 19, 1940.

MEMORANDUM FOR THE PRESIDENT:

Justice Frank Murphy called me up again and explained he thought perhaps Assistant Attorney General Rogg was not showing good judgment in the way that he is mixing up in state elections and state activities generally. Justice Murphy says he considers him an excellent trial lawyer but young and perhaps inclined too much to go outside of court action. He thinks that Senator Ellender probably has good grounds to censor Rogg and his representatives for not confining themselves strictly to court procedure.

Emm
E. M. W.

January 29, 1960.

My dear Mr. President:

At its session today the Supreme Court decided nine cases on the merits in favor of the Government and one against it. In another case in which the Government filed a brief as amicus curiae the Court's decision sustained the Government's contention.

In a group consisting of Commissioner of Internal Revenue v. Hellock and four other cases, trusts were created granting life estates to persons other than the grantors. The grantors, however, reserved the right to remainders in the event that they survived the life tenants. The Supreme Court held that the remainders were held subject to the estate tax as transfers intended to take effect in possession or enjoyment at or after death. In so holding the Court found it necessary to overrule two cases decided by a bare majority in 1935 which made taxability depend upon the form of the conveyance rather than the economic quality of the interests created. The Chief Justice concurred in the result; Justices Roberts and McReynolds dissented.

In Morgan v. Commissioner of Internal Revenue the Court held that an estate tax was properly levied upon property passing under a power of appointment upon the ground that the power was a general power as required by the Federal statute; and the Court rejected as immaterial the fact that such power was designated as a "special" power under state law, the important consideration being whether the donee actually had the right to appoint to any one.

In Commissioner of Internal Revenue v. Fitch the Court held that the grantor of a trust was taxable with respect to income therefrom employed to pay alimony to his divorced wife. The decision seemed to turn upon whether, under applicable Iowa law, the local courts retained power thereafter to modify the alimony decree, and

the Court held that the taxpayer had failed to show the absence of such power. Mr. Justice Reed concurred in the result and Mr. Justice McReynolds dissented.

In Federal Communications Commission v. The Pottsville Broadcasting Co., the facts were that after the Court of Appeals for the District of Columbia had held that the Commission had committed an error of law in denying the respondent's application for a permit for the construction of a broadcasting station, the Commission set the application for argument along with two rival applications, for the purpose of determining which "on a comparative basis" in the judgment of the Commission would best serve the public interest. The Court of Appeals for the District of Columbia issued a writ of mandamus directing the Commission to set aside this designation for argument and to reconsider the respondent's application on the basis of the record as originally made and in accordance with the Court's opinions in the original review and in the mandamus proceedings. After reviewing the purposes of the Communications Act of 1934, the Supreme Court held that the writ of mandamus was erroneously issued, since the Commission, on remand of the proceedings from the Court of Appeals, was charged under the statute with the duty of judging the respondent's application in the light of "public convenience, interest, or necessity." A similar decision was rendered in Zay v. Helms upon slightly different facts. Mr. Justice McReynolds concurred in the result in both cases.

In Yeatsley v. W. A. Ross Construction Co., a contractor, under his contract with the Government, built dikes on the Missouri River. The dikes caused land to be washed away and the landowners brought suit against the contractor to recover just compensation for the taking of their land, to which they contended they were entitled under the Fifth Amendment. The Government filed a brief as amicus curiae in which it took the position that if there was a taking within the meaning of the Fifth Amendment, as the landowners contended, their only remedy was a suit against the United States under the Tucker Act, and that the contractor could not be held personally liable for the taking since it acted under valid authorization of the United States. The Supreme Court adopted this view.

In Kehlman v. Pillsbury, Deputy Commissioner of the United States Panlovers' Compensation Commission, which involved the construction of the limitation provisions of Section 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, the Circuit

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

PSF: *Sup*

CHAMBERS OF
JUSTICE FRANK MURPHY

Dear Mr. President:

I hope your favor
has abated and that you and the
family will enjoy a blessed Easter.

I have missed
you greatly and hope that you will
find for me for a visit soon.

And remember I
don't want to lose the ~~franchise~~
wider because of ~~locks~~ - ~~se function~~.

Affectionate regards

Franklin D. Roosevelt

March 22nd 1940.

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

Dear Mr President:

While I am no
miles Standish I will be obliged
if you will speak in my behalf to
the somewhat restles but, I am sure,
glamorous widow from Tennessee

As you know I
need to be coaxed and believe
that 'others are better qualified'.

Gratefully!

Featherhough

March 15th 1940.

Supreme 2
THE WHITE HOUSE
WASHINGTON

March 15, 1940.

MEMORANDUM FOR

HON. FRANK MURPHY

Jim Farley has sent me a very interesting communication from a widow by the name of Arky of Nashville, Tennessee. I take it that you have had a copy too.

Is there anything I can do to help? Just because you are on the Supreme Court you should not fail to call on your old friends. I am, as you know, highly discreet and my fees are reasonable!

F. D. R.

COPY TO JIM FARLEY

DEMOCRATIC NATIONAL COMMITTEE
HOTEL BILTMORE
NEW YORK CITY

JAMES A. FARLEY
CHAIRMAN

THE WHITE HOUSE
MAR 14 8 50 AM '40
RECEIVED

March 13, 1940

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

Dear Mr. President:

For your information, I attach a copy of a very interesting letter from Mrs. Rebecca L. R. Arky, 2003 Murphy Avenue, Nashville, Tennessee.

Inasmuch as she makes reference to a distinguished member of the Supreme Court, I thought you might want to give him some advice in this matter, having appointed him to the position he now occupies.

I am sending a copy of the letter to Justice Murphy so that he can make his own decision.

With every good wish, I am

Sincerely yours,



JAF
km

COPY

Feb. 13, 1940

Postmaster General Hurley
Wash. D.C.

Dear Mr. Hurley:

I am a Democrat, and I feel that it is most important that we nominate the right man. The Democratic Party certainly has plenty of good leaders. If you should refuse a third term, to elect a Democratic President, you certainly know the value of the country better than any one else from your past experience. If there is anything I can do or assist in any way, please let me know. I would you like along the way let me know. Please for YES

March 13, 1940

Honorable Frank Murphy
United States Supreme Court
Washington, D. C.

Dear Frank:

I attach copy of a letter from Mrs. Rebecca L. E. Arky, Nashville, Tennessee, which is rather interesting.

It is pretty complete in detail except that the lady does not indicate her age.

If you are interested at all please let me know, and I shall be glad to use my good offices in any way you deem advisable.

With every good wish, I am

Sincerely yours,

In all seriousness, there is no one who has a wider acquaintance or better judgment than you have. I trust you.

With best wishes to you personally and hoping for success of our party.

Very truly yours,

Mrs. Rebecca L. E. Arky
2003 Murnig Ave.
Nashville, Tenn.

C O P Y

Feb. 19, 1940

Postmaster General Farley
Wash. D.C.

Dear Mr. Farley:

I am a Democrat, and I feel that it is most important that we nominate the right man for the place. The Democratic Party certainly has plenty good timber, if the President refuses a third term, to elect a Democratic President. You certainly know the pulse of the country better than anyone else from your past experiences. If there is anything I can do or assist in any way, please let me know. I wrote you this slogan for FDR for last election: "Vote for FDR and go forward to peace, progress and prosperity!". I was highly flattered when you used it over the radio in one of your speeches. You can also do me a personal favor because you know so many prominent people throughout the country. I have been a widow for 12 years now. My husband Herman Arky was accidentally killed by an automobile and I have no children. I want you to keep me in mind if you know of a high-class man that wants to marry. I would have you introduce me. Mr. David Morse, Rich Printing Company here, is a brother-in-law of mine. I have in mind a man of the type of Hon. Frank P. Murphy, Supreme Court Judge or a man between 55 to 65 years old. I am a God-fearing lady but do not belong to any church myself. I would join the church of the man I marry. I have no bad habits, do not gamble, smoke or drink. I stand high in the community. I taught piano lessons, published and edited a cookbook and I finished a Bachelor of Laws degree several years ago since I have been a widow. I used to write the advertisements for my husband's department store in Oklahoma. I am 5 feet 4 inches tall, brunette type and considered good looking. Remember this is leap year and I am taking advantage of it.

In all seriousness, there is no one who has a wider acquaintance or better judgment than you have. I thank you.

With best wishes to you personally and hoping for success of our party.

Very truly yours,

Mrs. Rebecca L. R. Arky
2003 Murphy Ave.
Nashville, Tenn.

PSF: Supreme Ct.

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

*File
personal*

*Mystic, Conn.
July 2, 1940*

Dear Mr. President:

I have sent to you
via my secretary the news
I promised you
I am leaving today for
Texas where I will write you
again my observations.

Bill Douglas

Ever yours
Bill

PSF: SUBJECT FILE: SUPREME COURT

Photograph of William O. Douglas holding salmon, Sequim, Washington, August, 8 1940, has been placed in the Photograph File.

(came to file Aug 16-1940)

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

2 - Jimmy
Byrnes

PSF: Supreme
court
2

CHAMBERS OF
JUSTICE FRANK MURPHY

Dear Missy:

The president might like
to see the attached. The author is the
~~President~~^{Treasurer} of the Kurgel - 5 and 10 unit store
chain - operations.

Obviously it is one of those
'or else' letters - in its implications -
because of the official position of the
writer. It is a good example of the
coercive technique that will be practiced
in the industrial areas.

Best wishes to all and call me
if there is anything I can do.

Frank Murphy

July 25th 1940.

(Enclosure did not come to file - P. 2)

PS F¹ Supreme Court
2

September 5, 1940.

Dear Bill:-

The suggestion of a salmon derby looks like a sporting event at first blush. However, I have always prided myself on not taking money from children, and in the case of fishing there are so many youngsters on the Supreme Court that it would take me years (at least the next four) to educate them up to the skill of my Cabinet. Besides which it would be sheer cruelty to put a big salmon on one end of the line and Felix on the other end!

It is true, of course, that in favor of the Court is the long four months holiday which has doubtless put you in better physical condition than the members of this unfortunate Administration who really have to work for a living.

Therefore, I am suggesting that in place of the salmon derby we substitute an old fashioned poker derby. It would have a distinct advantage because you and I could Captain our respective teams and between us take all the money from the other members of both teams.

My love to Mildred. Take good care of yourself and let me know as soon as you get back.

As ever yours,

Honorable William O. Douglas,
La Grande,
Oregon.

November 13, 1940

My dear Mr. President:

The Supreme Court at its session yesterday decided five cases on the merits in favor of the Government and two against it.

In Republic Steel Corporation v. National Labor Relations Board et al the Labor Board, in directing the Republic Steel to pay over back pay to various employees whom it had deprived of employment in violation of the National Labor Relations Act, directed the Company to deduct from the back pay any amounts which the employees had received from work relief projects, and to pay over the amounts so deducted to the appropriate governmental agencies. The Supreme Court held that the provision for reimbursement of governmental agencies was beyond the power of the Board; the Court had previously refused to review any of the other aspects of the case. The basis of the Court's decision is that the power of the Board is limited to redress of the grievances of employees, and does not extend to the redress of any public injury after the employees have been made whole. Mr. Justice Black and Mr. Justice Douglas filed a separate opinion in which they concurred in the result. Mr. Justice Roberts took no part in the decision.

In International Association of Machinists et al v. National Labor Relations Board the Labor Board set aside a closed-shop contract between the employer and the International Association of Machinists, an A. F. of L. affiliate, and ordered the employer to bargain with the United Automobile Workers of America, a C. I. O. affiliate. The Supreme Court upheld the order, against the attack of the International Association of Machinists. The Court held that that organization had been assisted by the employer in obtaining its majority membership in the unit of the plant which was covered by the closed-shop contract, and that the contract was therefore invalid under Section 8(3) of the National Labor Relations Act. The Court upheld the order to bargain with the United Automobile Workers of America, which had represented a majority of the employees in the plant at the time of the hearing, despite a claim submitted to the Board shortly before its

PST
Supreme Ct

decision by the International Association of Machinists that the latter organization then represented a majority of the employees. On this point the Court held that the Board might disregard any shift of membership which occurred before the employer's unfair labor practices had been remedied by compliance with the order to bargain with the United Automobile Workers.

In Neuberger v. Commissioner of Internal Revenue it was held, in an opinion by Mr. Justice Murphy, that under Section 23(r)(1) of the Revenue Act of 1932, a taxpayer in computing his net income may deduct from his gross income losses sustained from sales or exchanges of stocks and bonds held less than two years to the extent of the gains realized from such sales by himself and to the extent of his share of the gains realized from such sales by his partnership. Three Justices dissented (Roberts, Black and Douglas).

J. E. Riley Investment Co. v. Commissioner of Internal Revenue involved the proper construction of Section 114(b)(4) of the Revenue Act of 1934, which required taxpayers to state in their "first return" under the Act whether they elected to have depletion allowance computed with or without regard to percentage depletion. The Supreme Court sustained the Government's contention that an amended return, filed after the period for filing original returns, was not a "first return" within the meaning of the Act and that consequently a taxpayer who made an election only in such an amended return was not entitled to percentage depletion.

In Helvering v. Northwest Steel Rolling Mills, Inc., the Supreme Court held that a corporation was not entitled to a credit in the computation of its undistributed profits tax simply because it was prohibited by state law from distributing its profits by way of dividends during the tax year. The Court further held that the undistributed profits tax, so construed, was constitutional. Craig-Johnson Co. v. Helvering, a companion case, was similarly decided.

In United States v. Stewart it was held, in an opinion by Mr. Justice Douglas, that gain on sale of Federal land bank bonds is not exempt from income tax under a statute which declares that such bonds and the "income derived therefrom" shall be tax-exempt. Mr. Justice Roberts dissented.

Petitions for certiorari in ten cases filed by the Government were granted. The most important of these was that in United States v. The Cooper Corporation et al. The question presented in this case is whether the United States has the right to maintain an action under Section 7 of the Sherman Act to recover triple damages for injuries inflicted upon it for losses alleged to have resulted from identical bids submitted by eighteen rubber tire manufacturers on Government purchases. The final decision in this case may have far-reaching effect on Government buying under the defense program.

Of the fourteen petitions for writs of certiorari filed by opponents upon which the Court acted, ten were denied and four granted, the Government concurring in the issuance of the writ in these cases.

Respectfully,

Attorney General. *(J. C. Larson)*

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

7

PSF: Supreme Ct.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 12, 1940.

THE WHITE HOUSE
DEC 16 9 02 AM '40
RECEIVED.

My dear Mr. President:

Your gracious letter to the Bar Association of the City of New York, on the occasion of its recent dinner for me, touched me deeply.

I appreciate much more than I can express in words your generous comments. I hope that in a lifetime of effort in the democratic cause I can measure up, at least in part, to the ideals you expressed and which are most notably exemplified in your own immortal service to humanity.

I will tell you, when I see you, about some of the humorous aspects of the dinner.

Yours faithfully,

Wm O Douglas

The President
The White House

XP

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

PSF: subject file
JAN 4 11 19 AM '41
RECEIVED
THE WHITE HOUSE
Court folder

January 3, 1941

My dear Mr. President:

Ferry Frank told me today that he would accept an appointment to the C.C.A. in New York even subject to the condition that he would step down at any time, if Patterson wanted his old position back.

I did not tell Jerry of my conversation with you. When he raised the question, I said that the position might not be

unconditionally vacant.
It was then that he expressed
ready agreement to any
such arrangement.

I thought you
should know this, as Jerry
said he would try to see
you soon to discuss his
personal plans.

He would really be
"tops" in the C. C. A.; and
he would render a grand
service even if he were
there only for a year or so.

As ever -

Bill

file
private &
confidential

THE WHITE HOUSE
WASHINGTON

Supreme
Court
Folder
PST

Justice McReynolds has
decided to retire from the
Scotus. Only waiting to
decide the timing of his
retirement which probably
will be soon after the
Inauguration.

J.R.

June 10 1941

file
personal

PSF Supreme Court
4-41

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

April 12, 1941

Dear Mr. President,

Your extraordinary
appraisal of my youth has
almost turned my head.
While I am old enough
to know better, I am
young enough to like it.

It is most kind
of you, in the midst of
your heavy responsibilities,

It send me such a powerful
and encouraging greeting.
I heartily reciprocate
your good wishes.

Very sincerely yours,

Charles E. Hughes

The President -
The White House

Supreme Court folder
4-41

COPY OF LONGHAND LETTER WRITTEN BY THE PRESIDENT TO
THE CHIEF JUSTICE OF THE UNITED STATES

THE WHITE HOUSE
WASHINGTON

April 11
1941

Dear Chief:

My affectionate regards & best wishes
on your Birthday. You are not a day older --
mentally or physically than I am -- just 59!

As ever yours,

(Signed) FRANKLIN D. ROOSEVELT

The Chief Justice
of the United States.

PSF: Supreme Ct.

Supreme Court of the United States.

Memorandum.

File
Personal

June 3

1941

Dear Mr. Chief -

I thought the
President would be
interested in the
attached.

We are leaving
for the West in the
morning. Hope you
have a good summer

As ever -

Bill

Supreme Court Folder
Number 4-

SUPREME COURT OF THE UNITED STATES.

No. 832.—OCTOBER TERM, 1940.

State of Oklahoma, *ex rel.* Leon C.
Phillips, Governor of the State of
Oklahoma, Appellant,

vs.

Guy F. Atkinson Company, Cleon A.
Summers, United States Attorney
for the Eastern District of Okla-
homa, et al.

Appeal from the District
Court of the United
States for the Eastern
District of Oklahoma.

[June 2, 1941.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

This case involves primarily the constitutionality of the Act of June 28, 1938 (52 Stat. 1215) insofar as it authorizes the construction of the Denison Reservoir on Red River in Texas and Oklahoma.¹

The bill in equity was filed by the State of Oklahoma seeking to enjoin the construction of any dam across Red River within the

¹ The Act provides in part:

“Sec. 4. That the following works of improvement for the benefit of navigation and the control of destructive floodwaters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated: *Provided*, That penstocks or other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam herein authorized when approved by the Secretary of War upon the recommendation of the Chief of Engineers and of the Federal Power Commission.

“The Denison Reservoir on Red River in Texas and Oklahoma for flood control and other purposes as described in House Document Numbered 541, Seventy-fifth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, is adopted and authorized at an estimated cost of \$54,000,000. . . .

“The Government of the United States acknowledges the right of the States of Oklahoma and Texas to continue to exercise all existing proprietary or other rights of supervision of and jurisdiction over the waters of all tributaries of Red River within their borders above Denison Dam site and above said dam, if and when constructed, in the same manner and to the same extent as is now or may hereafter be provided by the laws of said States, respectively, and all

domain of Oklahoma which would impound the waters of the Red River (or its tributary, Washita River) so as to inundate and destroy any of the lands, highways or bridges belonging to or under the jurisdiction and control of the state or which would obliterate or interfere with its boundaries. The bill also seeks to restrain the institution or conduct in any court in Oklahoma of proceedings to condemn lands for the purpose of the dam or reservoir.²

The bill alleges that Oklahoma will be injured in the following manner by construction of the project: The greater part of the dam will rest on Oklahoma soil and will form a reservoir inundating about 150,000 acres of land, of which 100,000 acres are located in Oklahoma. Of those acres about 3800 are owned by the state. The United States will acquire title to the inundated land. The land owned by the state is used for school purposes, for a prison farm, for highways, rights of way, and bridges. The basin to be inundated is inhabited by about 8,000 Oklahoma citizens. Much of the land is rich soil in a high state of cultivation. Much of it has large potential oil reserves. On some of it there are large producing oil wells and on other parts there are drilling operations and exploration for oil and gas. At least 15,000 acres will be highly productive oil lands and at least 50,000 acres are underlaid with oil and gas. There are thirty-nine school districts and townships in the four counties in which the affected area is located. Those governmental units are largely supported by *ad valorem* taxes. The taking of the 100,000 acres will decrease the taxable property in each of the counties and take virtually

of said laws as they now exist or as same may be hereafter amended or enacted and all rights thereunder, including the rights to impound or authorize the retardation or impounding thereof for flood control above the said Denison Dam and to divert the same for municipal purposes, domestic uses, and for irrigation, power generation, and other beneficial uses, shall be and remain unaffected by or as a result hereof. All such rights are hereby saved and reserved for and to the said States and the people and the municipalities thereof, and the impounding of any such waters for any and all beneficial uses by said States or under their authority may be as freely done after the passage hereof as the same may now be done."

In October, 1939, the State of Oklahoma filed with this Court a motion for leave to file a bill of complaint seeking an injunction against the then Secretary of War from proceeding with the construction of this project. The motion for leave to file was denied by an equally divided court. *Oklahoma v. Woodring*, 309 U. S. 623.

² Appellees are Guy F. Atkinson Co., alleged to be constructing the dam under a contract with the War Department; and Cleon A. Summers and Curtis P. Harris, who as attorneys for the government are alleged to have instituted numerous condemnation suits for the purposes of the proposed reservoir.

all of the taxable property in many of the townships and school districts. Each of these governmental units has a large bonded indebtedness payable from an annual levy of taxes. Inundation of the land will deprive those units of much of the tax revenue, so that many will be practically destroyed and the remainder seriously hampered. Since the state derives much of its revenue from a gross production tax on oil and gas, it will suffer great losses in tax revenues from the inundation of the oil and gas lands. The "annual wealth production" to the citizens of Oklahoma from the lands in the reservoir basin is about \$1,500,000. Aside from such losses and losses from oil revenues and personal property taxation, the net taxable loss to the counties, townships and school districts will be about \$40,000 annually.

It is also alleged that the construction of the dam will be a "direct invasion and destruction" of the sovereign and proprietary rights of Oklahoma in that: the boundary of Oklahoma will be obliterated for approximately 40 miles (see *Oklahoma v. Texas*, 260 U. S. 606); there will be a "forcible reduction of the area of plaintiff as one of the United States"; lands owned by it will be taken; its highways and bridges will be destroyed causing an interruption in communication between various parts of the state; the waters to be impounded belong to Oklahoma but will be taken from it without payment of just compensation; those waters will be diverted from Oklahoma and will be run through turbines located in Texas for the generation of power for sale principally in Texas; the removal of citizens from the 100,000 acres of land will create a "serious social and economic problem", the burden of which will fall on Oklahoma for which no compensation is afforded.

The bill incorporates H. Doc. No. 541, 75th Cong., 3d Sess. (hereinafter called the Report) which contains the War Department's survey and recommendations on the Denison Reservoir and which served as the broad definition of the project which was authorized by the Act of June 28, 1938. The bill alleges that under the statutory scheme flood control and power purposes are "inextricably and inseparably involved". It alleges that, as described in the Report, the first 110 feet of the dam are to be used "solely and exclusively for the development of waterpower", while 40 feet "superimposed" on the power reservoir are to be used "solely and exclusively" for flood control. That is to say, from elevation 510

feet (sea level) to 590 feet there is to be a dead storage pool for waterpower head, from 595 feet to 620 feet there is to be a water power reservoir, and from 620 feet to 660 feet there is to be a flood control reservoir. It is alleged that those purposes are "functionally separate and neither is the incidental or necessary result of the other"; that the same part of the reservoir will not and cannot be used for both flood control and waterpower purposes; and that the power portion of the dam is created at the expense of its utilization for flood control. The bill further alleges that as a result of the modification of the statutory plan set forth in the Report the dam is being constructed so as to provide dead storage for water head from 510 feet to 567 feet, a power pool reservoir from 587 feet to 617 feet and a flood control reservoir from 617 feet to 640 feet. It is alleged that by reason of that modification the reservoir will inundate 3,080,000 acre feet for power and 2,745,000 acre feet for flood control as contrasted to 3,400,000 acre feet for power and 5,900,000 acre feet for flood control under the original plan;³ and that, as a result, the statutory scheme has been changed from one preponderantly for flood control to one preponderantly for water power. It is also alleged that no part of the Red River in Oklahoma is navigable.

³ In this connection it is alleged that under the statutory scheme 75% of the height of the dam is for power and 25% for flood control, and 37% of the acre-feet inundated is for water storage for power and 63% for flood control, while under the modified plan 82% of the height of the dam is for power and 18% for flood control, and 53% of the acre-feet inundated is for water storage for power and 47% for flood control.

The original plan or statutory scheme as set forth in the Report (H. Doc. No. 541, 75th Cong., 3d Sess., p. 45) was described therein as follows:

"The project plan as designed for the combined flood control and power-development scheme with top of dam at elevation 695 is based upon the following allocation of reservoir capacity, the volumes being given in round figures.

"(a) Dead storage.—Stream bed elevation 505 to lower power pool elevation 595, 1,400,000 acre-feet.

"(b) Power pool storage.—Elevation 595 to elevation 620, 2,000,000 acre-feet.

"(c) Flood pool storage.—Elevation 620 to crest of spillway, elevation 660, 5,900,000 acre-feet.

"(d) Detention flood storage.—Storage above the spillway crest, elevation 660, to the maximum reservoir surface reached by the impounded floodwaters, which in the case of the project flood would be 6,400,000 acre-feet for elevation 687."

Under § 4 of the Act of June 28, 1938, the Secretary of War and the Chief of Engineers were authorized to modify the project as it was described in the Report. A modification has been made. Definite Project for Denison Dam &

The bill alleges that the Act under which appellees are proceeding is unconstitutional in that it violates the Tenth Amendment, that it is not within the powers of Congress conferred by Art. I, Sec. 8 of the Federal Constitution, and that since appellees are acting under a void and unconstitutional statute they should be enjoined. By an amendment to its bill, the state of Oklahoma also challenges the constitutionality of § 4 of the Act of October 17, 1940⁴ (Pub. No. 868, c. 895, 76th Cong., 3d Sess.). The amended bill alleges that the project "does not in any way protect or improve the navigable portions of the lower reaches of Red river or of the Mississippi river either by enriching the low water flow . . . as the incidental result of the operation of said flood control and hydroelectric power project, except in the intangible, indirect, inconsequential and unsubstantial way" set forth in the Report; and that such inconsequential and intangible benefits to navigation as may result will flow from the flood control, not the power feature, of the project.

By motions to dismiss the appellees asserted, *inter alia*, that the Acts of Congress so challenged were constitutional and valid. The case was heard by a three judge court (Act of August 24, 1937, c. 754, § 3, 50 Stat. 751, 28 U. S. C. § 380a) which sustained the Act authorizing the project. 37 F. Supp. 93. From a judgment dismissing the complaint and denying the injunction, a direct appeal was taken to this Court.

We are of the view that the Denison Dam and Reservoir project is a valid exercise of the commerce power by Congress.

Reservoir, Red River, Corps of Engineers, U. S. Army (not printed). Those changes were reported to a committee of Congress. Hearings, S. Subcom. on Appropriations, H. R. 6260, 76th Cong., 1st Sess., pp. 25-26, 201. Under the Definite Project (pp. 10-14) the following allocation of reservoir capacity has been made:

(a) *Dead Storage*. Stream bed elevation 505 to lower power pool elevation 587, 1,020,000 acre feet.

(b) *Power pool storage*. Elevation 587 to elevation 617, 2,060,000 acre feet.

(c) *Flood pool storage*. Elevation 617 to spillway crest, elevation 640, 2,745,000 acre feet.

(d) *Detention flood storage*. Elevation spillway crest, 640, to crest of dam, 670. Appellees on the basis of Definite Project, Appendix A, Plate A-23, place the acre feet at approximately 3,300,000 for elevation 662—the condition which, it is asserted, will exist in case of the maximum probable flood.

⁴ That section provides: "The project for the Denison Reservoir on Red River in Texas and Oklahoma, authorized by the Flood Control Act approved June 28, 1938, is hereby declared to be for the purpose of improving navigation, regulating the flow of the Red River, controlling floods, and for other beneficial uses."

This project is a part of a rather recent chapter in the long history of flood control on the Mississippi River.⁵ The federal government had concerned itself with the problems of navigation and flood control on that river long before⁶ the establishment of the Mississippi River Commission (21 Stat. 37) in 1879. Earlier efforts towards a more comprehensive flood control program on a national scale⁷ were accelerated by the disastrous Mississippi flood in 1927. The agitation and concern over that disaster⁸ led to the enactment of the Flood Control Act of May 15, 1928 (45 Stat. 534), § 10 of which provided that the Secretary of War should submit to Congress "at the earliest practicable date projects for flood control on all tributary streams of the Mississippi River system subject to destructive floods which projects shall include: The Red River and tributaries" That section of the Act also required a report on the effect on flood control of the lower Mississippi to be attained through the use of a reservoir system, the "benefits that will accrue to navigation and agriculture" from the prevention of siltage and erosion, the "prospective income from the disposal of reservoir waters", and "inquiry as to the return flow of waters placed in the soils from reservoirs, and as to their stabilizing effect on stream flow as a means of preventing erosion, siltage, and improving navigation." Pursuant to that authorization and direction a report (H. Doc. No. 378, 74th Cong., 2d Sess.) was submitted on December 2, 1935, dealing at

⁵ For a summary of various flood control projects on the lower Mississippi, see Report of the Mississippi Valley Committee of the Public Works Administration (1934), pp. 207 *et seq.*; Elliott, *The Improvement of the Lower Mississippi River for Flood Control & Navigation* (1932), pp. 1-21; Frank, *The Development of the Federal Program of Flood Control on the Mississippi River* (1930); Beman, *Flood Control* (1928).

And see H. Doc. No. 541, 75th Cong., 3d Sess., p. 3; Fly, *The Role of the Federal Government in the Conservation and Utilization of Water Resources*, 86 U. Pa. L. Rev. 274; Kerwin, *Federal Water-Power Legislation* (1926).

For bibliography, see H. Com. Doc. No. 4, 70th Cong., 1st Sess.

⁶ See Elliott, *op. cit.*, pp. 1-21; S. Ex. Doc. No. 20, 32d Cong., 1st Sess.; S. Ex. Doc. No. 8, 40th Cong., 1st Sess.; H. Ex. Doc. No. 127, 43 Cong., 2d Sess. For the history and work of the Mississippi River Commission, see H. Rep. No. 1072, 70th Cong., 1st Sess., pp. 334-354.

⁷ See, for example, the so-called First Flood Control Act of March 1, 1917, c. 144, 39 Stat. 948.

⁸ H. Rep. No. 1072, 70th Cong., 1st Sess.; H. Doc. No. 90, 70th Cong., 1st Sess.; Hearings, H. Comm. on Flood Control, 70th Cong., 1st Sess., on *The Mississippi River and its Tributaries*; Hearings, S. Comm. on Commerce, 70th Cong., 1st Sess., on *Flood Control of the Mississippi River*.

And see Hoover, *The Improvement of our Mid-West Waterways*, 135 Annals, No. 224, p. 15.

great length with the problems of the Red River and its tributaries and their relationship with the Mississippi.

On June 22, 1936, there was enacted⁹ the Flood Control Act of 1936 (49 Stat. 1570). Sec. 1 of that Act set forth a broad Congressional policy, stating, *inter alia*, that "the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected" and that "destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare." That Act authorized the construction of various flood control projects. By § 7 of that Act the Secretary of War was authorized and directed to continue the investigation of other projects, including the Denison Reservoir, where "opportunities appear to exist for useful flood-control operations with economical development of hydroelectric power whenever sufficient markets to absorb such power become available."

Following the disastrous Ohio River flood in January, 1937, the House Committee on Flood Control requested¹⁰ the Chief of Engineers to submit "comprehensive plans for protective works against floods in the Ohio Valley" and plans "to further insure protection in the Mississippi Valley". He submitted a report pursuant to that direction and recommended the construction of 45 flood-control reservoirs on the tributaries of the Ohio and 24 on other tributaries of the Mississippi, including the Red River.¹¹ As to the proposed Denison Reservoir he stated that it "would remove the threat of the coincidence of a large flood from the Red with a flood in the

⁹ See Hearings, S. Subcom. on Commerce, 74th Cong., 2d Sess., on S. 3531; Hearings, H. Comm. on Flood Control, 74th Cong., 2d Sess., on S. 3531; Hearings, S. Comm. on Commerce, Ex. Sess. 74th Cong., 2d Sess., on H. R. 8455; S. Rep. No. 1963, 74th Cong., 2d Sess.; H. Rep. No. 2918, 74th Cong., 2d Sess.; H. Rep. No. 2583, 74th Cong., 2d Sess.; S. Rep. No. 1662, 74th Cong., 2d Sess.

¹⁰ The resolution is set forth in Com. Doc. No. 1, H. Comm. on Flood Control, 75th Cong., 1st Sess., p. 1.

¹¹ Com. Doc. No. 1, *op. cit.*, p. 11.

Mississippi, and would also afford highly desirable protection to the fertile bottom lands in the lower Red River Valley. Besides its flood-control benefits, it has valuable potentiality for power purposes."¹² And he added: "On the Red River . . . investigations indicate that a flood far exceeding any of record is distinctly possible. The Denison Reservoir would prevent such a flood from reaching disastrous proportions in the valley below it."¹³

On March 12, 1938, the Acting Secretary of War transmitted to Congress a report from the Chief of Engineers, United States Army, pursuant to the direction contained in § 7 of the Flood Control Act of 1936. That Report, being the one here involved, (H. Doc. No. 541, 75th Cong., 3d Sess.) recommended the construction of a dam near Denison, Texas, for the combined purpose of flood control and development of hydroelectric power. After hearings¹⁴ Congress passed the Flood Control Act of 1938, here challenged, which authorized,¹⁵ *inter alia*, the Denison project on the basis of the Report and at an estimated cost of \$54,000,000. This was followed by appropriations for the construction work¹⁶ and by the Act of October 17, 1940, also challenged by appellant, declaring the Denison Reservoir to be "for the purpose of improving navigation, regulating the flow of the Red River, controlling floods, and for other beneficial uses."¹⁷ Thus, while the Report spoke of the dam as a "dual purpose" project, Congress did not so limit it but authorized it for multiple purposes.

From this history it is plain that this project, which is part of a comprehensive flood control plan, is designed to control the watershed of one of the principal tributaries of the Mississippi in alleviation of floods in the lower Red River and Mississippi valleys. The

¹² Com. Doc. No. 1, *op. cit.*, pp. 7-8.

¹³ Com. Doc. No. 1, *op. cit.*, p. 8. The Chief of Engineers, United States Army, on February 12, 1935, had submitted a special report to the House Committee on Flood Control, entitled Flood-Control Works in the Alluvial Valley of the Mississippi River, Com. Doc. No. 1, 74th Cong., 1st Sess. And see the Message by President Roosevelt to Congress June 3, 1937, 81 Cong. Rec., pt. 5, 75th Cong., 1st Sess., p. 5280.

¹⁴ Hearings, House Comm. on Flood Control on H. R. 10618, 75th Cong., 3d Sess., pp. 605-686.

¹⁵ Sec. 4 of that Act is set forth in part in note 1, *supra*.

¹⁶ Act of June 28, 1939, c. 246, 53 Stat. 856; Act of June 24, 1940, Pub. No. 653, c. 415, 76th Cong., 3d Sess. See H. Rep. No. 604, 76th Cong., 1st Sess., p. 4; Hearings, S. Subcom. on Appropriations on H. R. 6260, 76th Cong., 1st Sess., p. 13.

¹⁷ See note 4, *supra*.

Red River, sixth in length among rivers in the United States, has one of the largest watersheds in the country, draining an area about 50 per cent larger than New England—an area of 91,430 square miles, of which 38,291 square miles are above the dam site.¹⁸ It rises near the east edge of New Mexico, flows easterly about 850 miles across the Texas Panhandle and between the states of Oklahoma and Texas to Fulton, Arkansas. From there it flows south and southeast some 460 miles and enters the Mississippi at Red River Landing. The site of the Denison dam is 228 miles up the river from Fulton. The contribution which the Red River makes to disastrous floods in its basin and in the lower Mississippi has long been recognized. Huge crop damage, the loss of buildings, bridges and livestock, pollution of fertile fields, the erosion of rich farm lands, bank cavings, interruption of navigation, injury of port facilities, the creation of sand bars in the channels, interruption or stoppage of interstate transportation by rail, truck and motorcar, disease, pestilence and death, relief of the homeless and destitute—all these are now familiar costs of the floods on the Mississippi.¹⁹ And the history of the Red River valley shows that it has long been plagued by such disasters and burdened by their costs.²⁰

¹⁸ Report, p. 17.

¹⁹ As respects the January, 1937 Ohio River flood, the Chief of Engineers reported in April, 1937: "The river rose to a height of 80 feet above low water at Cincinnati, being nearly 9 feet above any flood heretofore of record. The resulting damage was enormous. Practically every community along the entire river suffered heavy loss. Water, electricity, and gas services were discontinued in many cities. More than 500,000 persons were driven from their homes and suffered great discomfort and distress. Highway and railway communications were severed and business and industrial activities were completely disrupted for several weeks. Relief agencies were taxed to the utmost to provide for the flood refugees. Although the direct damages have not yet been fully ascertained, they may conservatively be estimated at more than \$400,000,000. The War Department expended more than \$5,000,000 in relief work and in providing supplies and materials for the flood areas, and approximately \$5,000,000 for emergency work to protect existing structures. The Works Progress Administration provided labor and services. The relief activities of the American Red Cross aggregated more than \$7,500,000. The expenditures of the Federal Government and of the Red Cross for rehabilitation will add greatly to the expenditures already made." Com. Doc. No. 1, H. Comm. on Flood Control, 75th Cong., 1st Sess., p. 3. And see H. Doc. No. 90, 70th Cong., 1st Sess., p. 2; H. Rep. No. 1072, 70th Cong., 1st Sess.; H. Doc. No. 455, 76th Cong., 1st Sess.; H. Doc. No. 91, 76th Cong., 1st Sess.; H. Rep. No. 616, 64th Cong., 1st Sess.; Thomas, *Hungry Waters* (1937).

²⁰ See H. Doc. No. 378, 74th Cong., 2d Sess., pp. 372 *et seq.*; Report, pp. 29, 70-71, 84-87, 88, 94.

Floods pay no respect to state lines.²¹ Their effective control in the Mississippi valley has become increasingly a subject of national concern²² in recognition of the fact that single states are impotent to cope with them effectively. The methods of dealing with them have elicited a contrariety of views.²³

The idea of reservoir control on the tributaries of the Mississippi is not new. The Ellet report²⁴ to the War Department in 1852 urged the making of surveys for the installation of reservoirs on the Red River and other tributaries which would serve the "double purpose" of "keeping back the floods" and relieving "summer navigation from obstruction, by allowing the surplus so retained, to pass down in the season of low water."²⁵ The emergence in recent years of comprehensive plans for reservoirs in the Mississippi river basin²⁶ marks the development of an integrated system designed not only to alleviate ultimately flood conditions on the Mississippi itself but also to avoid or reduce local flood disasters. A part of the local benefits of flood control is frequently protection of navigation in the tributary itself. That is present here to a degree. It is true that "no part of the [Red] river within Oklahoma is navigable." *Oklahoma v. Texas*, 258 U. S. 574, 591.

²¹ The flood protection afforded by Denison Reservoir will accrue to four states: two-fifths to Louisiana, and one-fifth each to Oklahoma, Texas, and Arkansas. Report, p. 11. And see Report of the Mississippi Valley Committee of the Public Works Administration (1934).

²² National Resources Board, Report 1934, pp. 26-30, 325-329; National Resources Committee, Drainage Basin Problems and Programs (1936), pp. 73-77; H. Doc. No. 306, Ohio River, 74th Cong., 1st Sess.; S. Rep. No. 891, 64th Cong., 2d Sess.

On forest and flood relationships in the Mississippi river watershed, see H. Doc. No. 573, 70th Cong., 2d Sess., pp. 57 *et seq.* S. Doc. No. 12, 73d Cong., 1st Sess., pp. 299 *et seq.*; pp. 1509 *et seq.*

²³ H. Rep. No. 1072, 70th Cong., 1st Sess., pp. 5-16. And see *United States v. Sponenbarger*, 308 U. S. 256; H. Doc. No. 90, 70th Cong., 1st Sess.; S. Doc. No. 1094, 62d Cong., 3d Sess.; S. Rep. No. 1662, 74th Cong., 2d Sess.; H. Rep. No. 2583, 74th Cong., 2d Sess.

²⁴ S. Ex. Doc. No. 20, 32d Cong., 1st Sess., pp. 13, 99, *et seq.* And see the review of the ideas for reservoirs contained in Final Report, National Waterways Commission, S. Doc. No. 469, 62d Cong., 2d Sess., App. II; National Waterways Comm., Doc. No. 14, Jan. 1910; H. Doc. No. 1289, 62d Cong., 3d Sess.

²⁵ S. Ex. Doc. No. 20, 32d Cong., 1st Sess., p. 102.

²⁶ See H. Doc. No. 259, 74th Cong., 1st Sess.; Nat. Res. Com., Drainage Basin Problems and Programs (1938); H. Doc. No. 798, 71st Cong., 3d Sess., Vol. 2; H. Rep. No. 1072, 70th Cong., 1st Sess., pp. 101-109; H. Doc. No. 395, 73d Cong., 2d Sess., Pt. 5; H. Rep. No. 1100, 70th Cong., 1st Sess., p. 14; H. Rep. No. 1120, 75th Cong., 1st Sess.

Though appellant alleged that the stream is not now a navigable river of the United States, it has heretofore been authoritatively determined that in years past "the usual head of navigation" was Lanesport, Arkansas, near the Oklahoma boundary. *Id.*, p. 589. At the present time commerce on the Red River is limited to the section below Alexandria, Louisiana, 122 miles above its mouth.²⁷ The fact that portions of a river are no longer used for commerce does not dilute the power of Congress over them. *Economy Light & Power Co. v. United States*, 256 U. S. 113, 123; *United States v. Appalachian Power Co.*, 311 U. S. 377, 409-410. And it is clear that Congress may exercise its control over the non-navigable stretches of a river in order to preserve or promote commerce on the navigable portions. *United States v. Rio Grande Dam & Irrigation Co.*, 174 U. S. 690, 703, 706, 708; *United States v. Utah*, 283 U. S. 64, 90. It is obvious that at least incidentally Congress has done precisely that in this case. Congress was not unmindful of the effect of this project on the navigable capacity of the river. In authorizing it, Congress exercised all the power it possessed to control navigable waters. The Acts in question contain a declaration that one of their purposes is to improve navigation. And the Report clearly shows that the Denison Reservoir will have at least an incidental effect in protecting or improving the navigability of portions of the Red River. The District Engineer reported that "Inasmuch as any new navigation system for the Red River would require flow regulation to furnish a dependable navigable improvement, the Denison Reservoir would be of considerable benefit."²⁸ In his view it would decrease bank caving and silt carriage, substitute "moderately high stages of long durations for high-flood stages of short duration", "furnish more dependable navigable stages especially in the upper portions of the navigation pools",²⁹ and have a "favorable effect on open-channel navigation by reducing flood stages and increasing low-water flows."³⁰ The Division Engineer expressed the view that a "dependable low-water flow of 2,200 to 3,000 cubic feet per second which would result from construction and operation of the power

²⁷ Report, pp. 2-3; and see p. 65.

²⁸ Report, p. 67. And see p. 72.

²⁹ *Id.*, p. 67.

³⁰ *Id.*, p. 68.

project at Denison would be of distinct benefit to the small commerce now developed upon those reaches of the lower Red River which are included in approved navigation projects, and might have a material bearing upon future studies of the Red River with a view to its further improvement. In the present state of knowledge upon this point, it is necessary to classify these benefits among the intangibles. But there is no doubt that a dependable low water supply would simplify, perhaps materially, such future development of the river as may be undertaken.³¹ Thus the effect on the river is tangible, though the value may be uncertain³² since it depends in part on future action of Congress. But that is not our concern.

We would, however, be less than frank if we failed to recognize this project as part of a comprehensive flood control program for the Mississippi itself. But there is no constitutional reason why Congress or the courts should be blind to the engineering prospects of protecting the nation's arteries of commerce through control of the watersheds. There is no constitutional reason why Congress cannot under the commerce power treat the watersheds as a key to flood control on navigable streams and their tributaries. Nor is there a constitutional necessity for viewing each reservoir project in isolation from a comprehensive plan covering the entire basin of a particular river. We need no survey to know that the Mississippi is a navigable river. We need no survey to know that the tributaries are generous contributors to the floods of the Mississippi. And it is common knowledge that Mississippi floods have paralyzed commerce³³ in the affected areas and have im-

³¹ Report, pp. 79-80. The initial project for improvement of navigation on the Red River was authorized in 1828. Federal expenditures to June 30, 1936, exceeded \$4,000,000. *Id.*, p. 3.

³² As to the intangible benefits from flood control see H. Doc. No. 455, 76th Cong., 1st Sess., entitled Value of Flood Height Reduction from Tennessee Valley Authority Reservoirs to the Alluvial Valley of the Lower Mississippi River; H. Doc. No. 91, 76th Cong., 1st Sess., pp. 22 *et seq.*, entitled The Chattanooga Flood Control Problem; Cooke, On the Relations of Engineering Science to Flood Control, 84 Science (Supp.) 40.

³³ As respects benefits from flood height reduction to railroads and highways, see H. Doc. No. 455, 76th Cong., 1st Sess., pp. 21-27; Report, App. H. (not printed) §§ 8-10, 16; H. Doc. No. 378, 74th Cong., 2d Sess., pp. 35-36, 264-265, 372-373; H. Rep. No. 1072, 70th Cong., 1st Sess., pp. 224-228, 246-248; Hearings, S. Comm. on Commerce, Ex. Sess., 74th Cong., 2d Sess., on H. R. 8455, pp. 71-72, 307. For a full account of flood damage to railroads see: Bull. Amer. Ry. Eng. Ass'n (1928) Vol. 29, No. 303, pt. 2.

paired navigation itself. We have recently recognized that "Flood protection, watershed development, recovery of the cost of improvements through utilization of power are . . . parts of commerce control." *United States v. Appalachian Power Co.*, *supra*, p. 426. And we now add that the power of flood control extends to the tributaries of navigable streams. For just as control over the non-navigable parts of a river may be essential or desirable in the interests of the navigable portions, so may the key to flood control on a navigable stream be found in whole or in part in flood control on its tributaries. As repeatedly recognized by this Court from *M'Culloch v. Maryland*, 4 Wheat. 316, to *United States v. Darby*, 312 U. S. 100, the exercise of the granted power of Congress to regulate interstate commerce may be aided by appropriate and needful control of activities and agencies which, though intrastate, affect that commerce.

It is, of course, true that the extent to which this project will alleviate flood conditions in the lower Mississippi is somewhat conjectural. The District Engineer estimated that the Denison project would cause a reduction of 35,000 cubic feet per second in the lower Mississippi in case the May, 1908 flood were repeated; 8,000 cubic feet per second, in case of the May, 1935 flood; and 100,000 cubic feet per second, in case of the estimated maximum probable flood.³⁴ But the Division Engineer pointed out that "the magnitude of the effect would depend upon the size and origin of the concurrent flood in Red River, and upon the basis of reservoir operation."³⁵ In his view, a reduction in flow of 35,000 cubic feet per second in case of such a flood as 1908 "if long enough sustained, would imply a reduction in stage averaging 1.3 feet between Alexandria and Moncla, and a reduction of 0.15 foot in the flow lines of the Atchafalaya Basin and the main river below Old River, provided they were at peak stage. At lower stages the effect would be greater, but less necessary."³⁶ This matter was again reviewed in the Definite Project and the following observations were made:³⁷ "Floods in the

³⁴ Report, p. 74. Cf. H. Doc. No. 798, 71st Cong., 3d Sess., Vol. 2, Annex 18, pp. 1496-1498.

³⁵ Report, p. 86.

³⁶ *Id.*, p. 86.

³⁷ Definite Project, App. D., p. 7. As respects the relation of the Mississippi River as a commerce carrier to flood control, see H. Rep. No. 1072, 70th Cong., 1st Sess., p. 359.

Mississippi River usually occur in the spring as a result of flood flows out of the Ohio River. The coincidence of flood flows out of the Red River with the Mississippi River spring floods is rare. However, the early summer floods out of the Missouri River occasionally coincide in the Mississippi River with the summer floods out of the Red River. The control provided by the proposed Denison Dam and Reservoir on the Red River summer floods has been estimated to produce a reduction of approximately 0.6 foot at the mouth of Old River on the Mississippi. This reduction, while not substantial with respect to Mississippi flood stages is important when flood crests seriously tax the Mississippi levee system."

Such matters raise not constitutional issues but questions of policy. They relate to the wisdom, need, and effectiveness of a particular project. They are therefore questions for the Congress not the courts. For us to inquire whether this reservoir will effect a substantial reduction in the lower Mississippi floods would be to exercise a legislative judgment based on a complexity of engineering data. It is for Congress alone to decide whether a particular project, by itself or as part of a more comprehensive scheme, will have such a beneficial effect on the arteries of interstate commerce as to warrant it. That determination is legislative in character. Cf. *United States v. Appalachian Power Co.*, *supra*, p. 424. The nature of the judgment involved is reemphasized if this project is viewed not in isolation but as part of a comprehensive, integrated reservoir system in the Mississippi River basin. A War Department survey in 1935 reveals promising engineering prospects in a system of 157 reservoirs³⁸ throughout the tributaries of the Mississippi. To say that no one of those projects could be constitutionally authorized because its separate effect on floods in the Mississippi would be too conjectural would be to deny the actual or potential aggregate benefits of the integrated system as a whole. That reveals the necessity from the constitutional viewpoint of leaving to Congress the decision as to what watersheds should be controlled (and what methods should be employed) in order to protect the various arteries of interstate commerce from the disasters of floods.

Nor is it for us to determine whether the resulting benefits to commerce as a result of this particular exercise by Congress of the

³⁸ H. Doc. No. 259, 74th Cong., 1st Sess.

commerce power outweigh the costs of the undertaking. *Arizona v. California*, 283 U. S. 423, 456-457; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 329-330. Nor may we inquire into the motives of members of Congress who voted for this project in an endeavor to ascertain whether their concern over the great national loss from soil erosion, the enormous crop damages, the destruction of homes, the loss of life and other like ravages of floods overshadowed in their minds the desirability of protecting the Mississippi and other arteries of commerce. *Arizona v. California*, *supra*, p. 455, and cases cited. It is sufficient for us that Congress has exercised its commerce power, though other purposes will also be served. *Id.*, p. 456.

But Oklahoma points out that the Denison Reservoir is a multiple purpose project,³⁹ combining functionally and physically separate and unrelated purposes. It says that only the top 40 feet of the dam is set apart for flood control and that the lower portions of the dam are designed for the power project and are neither useful or necessary for flood control. It points out from the Report⁴⁰ that a reservoir for flood control only would have a maximum height of 165 feet while a reservoir for flood control and power development would require a maximum height of 185 feet. It therefore earnestly contends that the additional 20 feet in height of the dam requires a very much greater acreage of appellant's domain than would a project for flood control only. And it insists that Congress is without authority to authorize a taking of Oklahoma's domain for the construction of the water power feature of the project.

There are several answers to these contentions. We are not concerned here with the question as to the authority of the federal government to establish on a non-navigable stream a power project which has no relation to, or is not a part of, a flood control project. While this reservoir is a multiple purpose project, it is basically one for flood control. There is no indication that but for flood control it would have been projected. It originated as part of a comprehensive

³⁹ On functional aspects of multiple-purpose dams, see note 45, *infra*.

⁴⁰ P. 42. In this connection, it should be noted that the District Engineer recommended that a dam for flood control only would be at elevation 675, while the multiple purpose dam would be at elevation 695. Report, p. 42. The Division Engineer, however, stated that a restudy indicated "that in the case of the flood-control-only project greater economy would result from narrowing the spillway to 1500 feet and raising the crest of the dam to elevation 681 feet." *Id.*, p. 80.

program for flood control. And the recommendation in the Report that a dual purpose dam be constructed was based "on the assumption that the flood-control project is to be built in any event."⁴¹ See *United States v. Chandler-Dunbar Co.*, 229 U. S. 53, 73. Furthermore, it is plain from the Report that the construction of the project so as to accommodate power will increase or augment some of the flood control benefits, including river flow, which would accrue were the dam to be erected for flood control only. Thus, the District Engineer stated: "If it were constructed solely for flood control it would have beneficial effects in reducing floods, decreasing bank caving and silt carriage, and in substituting moderately high stages of long durations for high-flood stages of short duration. If the Denison Reservoir were constructed for the dual purposes of flood control and power development, these beneficent effects would be augmented by those resulting from the regulated power discharge which would increase low-water flows and furnish more dependable navigable stages especially in the upper portions of the navigation pools."⁴²

It is true that the power phase of this project in purpose and effect will carry some of the costs of flood control. The Division Engineer estimated that the annual deficit of \$287,000 from flood control would be offset by an annual profit of \$404,310 from power, leaving an annual net profit of \$117,000.⁴³ But the fact that Congress has introduced power development into this project as a paying partner⁴⁴ does not derogate from the authority of Congress

⁴¹ P. 94.

⁴² Report, p. 67.

⁴³ *Id.*, p. 94.

⁴⁴ As stated in Report of the Mississippi Valley Committee of the Public Works Administration (1934), p. 23:

"Navigation is particularly benefited by reduction of flood crests, and all of the possibilities of water use are improved by increases in flow at extreme low stages. Under certain favorable circumstances it may be possible to release water from flood control reservoirs to satisfy requirements for hydroelectric power development at the dam, or to regulate the flow down stream to the advantage of a variety of water uses. In such cases equitable distribution of costs among the several purposes served may even sufficiently reduce the costs chargeable to flood protection to warrant the construction of flood-control reservoirs which could not be justified for flood protection alone."

And see *Fly*, *The Role of the Federal Government in the Conservation and Utilization of Water Resources*, 86 U. Pa. L. Rev. 274, 286 *et seq.*; Message by President Taft, August 24, 1912, 48 Cong. Rec., pt. 11, 62d Cong., 2d Sess., p. 11796, vetoing a bill authorizing the building of a dam across Coosa River, Alabama, by a private company; S. Doc. No. 246, 64th Cong., 1st Sess.

to construct the dam for flood control, including river flow. The power project is not unrelated to those purposes.⁴⁵ The allocations of cost⁴⁶ and storage between power and flood control, however significant for some purposes, cannot conceal the flood control realities of this total project. Cost of the power project, roughly speaking, was determined by the cost of the multiple purpose dam less the cost of a dam for flood control only.⁴⁷ On that basis the Report points out that the cost of storage for flood control only (5,800,000 acre-feet) is about \$6.60 per acre-foot, while the cost of the 3,500,000 acre-feet in the so-called power pool is around \$2 per acre-foot, exclusive of the cost of the powerhouse and appurtenant construction.⁴⁸ In this connection, the Definite Project states that the "amount of storage which can be economically allocated to the production of power depends on the ability of the power market to absorb the power during the useful life of the project."⁴⁹ But the Division Engineer observed that "In actual operation of the dual-purpose project this cheap storage would be dedicated to flood control, whereas in the financial set-up it is credited to power."⁵⁰ It is clear from the Report⁵¹

⁴⁵ On the relationships between the multiple purposes of water control see Report of the Mississippi Valley Committee of the Public Works Administration (1934), pp. 20-24; Alvord & Burdick, *Relief from Floods* (1918), pp. 28-36; Clemens, *The Reservoir as a Flood-Control Structure* (1935), 100 Am. Soc. of Civ. Engs. 879; H. Doc. No. 1792, 64th Cong., 2d Sess., p. 5.

And see Nat. Res. Com., *Water Planning* (1938); Nat. Res. Com., *Energy Resources & National Policy* (1939), p. 306.

⁴⁶ Cf. Hamilton, *Cost as a Standard for Price*, 4 Law & Cont. Problems (1937), 321, 325.

⁴⁷ Report, pp. 60, 64.

⁴⁸ Report, p. 82.

⁴⁹ Definite Project, p. 11. The District Engineer stated in the Report, p. 32: "A hydroelectric development alone at the Denison Reservoir site could not absorb all of the reservoir costs and produce power in competition with that from fuel-consuming plants. However, the combination of flood control and power development in the Denison Reservoir presents certain promise of favorable economic feasibility. Although this reservoir would approach economic justification if constructed exclusively for flood control, the income from power developed in conjunction with flood control would in part absorb this deficiency since the value of the available power would be somewhat in excess of its cost. It is apparent that the relative amounts of annual return, flood benefits, or power revenues, from each of the two functions of a dual-purpose development are quantitatively dependent upon the manner in which storage potentialities of the site are apportioned between these two functions. It is believed, however, that an increased allocation of such storage to flood control at the expense of power would not materially alter the above conclusion except perhaps to show economic deficiencies for both phases of the development."

⁵⁰ Report, p. 82.

⁵¹ *Id.*, pp. 45-46.

and the Definite Project that the bottom pool of dead storage is designed to take care of the deposit of silt "which would otherwise reduce the efficiency and economic worth of the flood control storage."⁵² At the same time it will effectively provide waterpower head. And so far as the power storage is concerned, the Definite Project makes plain that it is functionally related to the broad objectives of flood control. The operation of the reservoir will involve a consideration of its multiple purposes.⁵³ Its operation in periods of drought so as to regularize the flow below the dam;⁵⁴ the reduction in reservoir outflow in case of floods down the valley; the increase of the outflow, in case of impending floods from above the dam, to the maximum "bank full capacity downstream of the dam, so that the maximum amount of flood control storage will be available when the peak of the flood reaches the reservoir, thereby reducing the peak outflow of the reservoir to a minimum"⁵⁵—these are ample evidence that the power features and the flood control features of the dam, including river flow, are not unrelated. They demonstrate that in operation of the dam the several functions will be interdependent and that the conflicts between the respective requirements of flood control and power development are here more apparent than real.⁵⁶ They show that this is nonetheless a flood control project which will "fully control the maximum flood of

⁵² Definite Project, pp. 10-11, App. F., p. 5. And see Hearings, H. Comm. on Flood Control, 75th Cong., 3d Sess., p. 641.

⁵³ Definite Project, p. 26.

⁵⁴ *Id.*, App. F., p. 7; Report, p. 67.

⁵⁵ Definite Project, pp. 26, 12.

⁵⁶ It was noted in Nat. Res. Com., Energy Resources & National Policy (1939), p. 276, that:

"The most obvious and most discussed conflict of purpose in use of water resources relates to flood control and power. Since flood control is of great urgency in so many basins, one may appear to demolish all concept of wisdom in production of water power by the pat observation that an empty reservoir will not run turbines and a full reservoir will not catch floods. With respect to a particular reservoir, the observation is in point, but it is not thereby conclusive. That one reservoir might be reserved for flood control and another on the same stream used for power probably stumps no one. Neither should it stump anyone that part of a single reservoir be reserved for flood and part be used for power. Indeed, it would often cost less to provide flood-control space in the same reservoir with power space than to build a separate reservoir. And it should not be forgotten that storage to prevent the ordinarily low flow of dry seasons is itself flood prevention in that better sustained ordinary flow tends to maintain clear channels. If the conflict really were irreconcilable, we should be forced to abolish private water-power plants on every stream system requiring flood control. If private power and public flood control may harmonize, one may believe the same of public power and public flood control."

And see The Norris Project (1940), ch. 8.

record",⁵⁷ though power, it is hoped, will pay the way. Whether the work of flood-control, including river flow, would be better done by a dam of one design or another is for Congress to determine. And, as we have said, the fact that ends other than flood control will also be served, or that flood control may be relatively of lesser importance does not invalidate the exercise of the authority conferred on Congress. *Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.*, 142 U. S. 254, 275, 276; see *In re Kollock*, 165 U. S. 526, 536; *Weber v. Freed*, 239 U. S. 325, 329-330; *Arizona v. California*, *supra*, p. 456.

The Tenth Amendment does not deprive "the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." *United States v. Darby*, *supra*, p. 124, and cases cited. Since the construction of this dam and reservoir is a valid exercise by Congress of its commerce power, there is no interference with the sovereignty of the state.⁵⁸ *United States v. Appalachian Power Co.*, *supra*, p. 428. The fact that land is owned by a state is no barrier to its condemnation by the United States. *Wayne County v. United States*, 53 Ct. Cls. 417, *aff'd* 252 U. S. 574. There is no complaint that any property owner will not receive just compensation for the land taken. The possible adverse effect on the tax revenues of Oklahoma as a result of the exercise by the federal government of its power of eminent domain is no barrier to the exercise of that power. "Whenever the constitutional powers of the federal government and those of the state come into conflict, the latter must yield." *Florida v. Mellon*, 273 U. S. 12, 17. Nor can a state call a halt to the exercise of the eminent domain power of the federal government because the subsequent flooding of the land taken will obliterate its boundary. And the suggestion that this project interferes with the state's own program for water development and conservation is likewise of no avail. That program must bow before the "superior power" of Congress. *United States v. Rio Grande Dam & Irrigation Co.*, *supra*, p. 703; *New Jersey v. Sargent*, 269 U. S. 328, 337; *Arizona v. California*, 298 U. S. 558, 569; *United States v. Appalachian Power Co.*, *supra*.

Affirmed.

⁵⁷ Report, p. 88.

⁵⁸ The government concedes that there will be no loss of political jurisdiction over the lands taken except with the consent of the state. Art. 1, § 8, clause 17 of the Constitution.

COPY

File Personal

PSF: Supreme Court Elder

June 16, 1941

Dear Mr. President:

Mildred and the kids and I were motoring through Texas last week en route to San Francisco. About 8:30 P. M. Friday we pulled into Big Spring (West Texas) and there at the Court House Square was Lyndon Johnson addressing a crowd of 3,000, a swell crowd for a town of 10,000 or so. He was pouring it on. Every time he mentioned your name the crowd cheered. Every time he mentioned Lindbergh the crowd booed. It was an enthusiastic Roosevelt crowd. After it was over I talked with Lyndon and his secretary. Here is the dope as of last Friday night:

The Texas poll first showed Lyndon with 5%. A week ago he had jumped to 19%. He had seen a preview of the latest poll - He was in front. If he can hold his lead he'll be in. Jimmie Allred (smart Texas politician) says he'll hold it. That's grand news. Lyndon apparently has hit a trend. It looks good. The enclosed column from the El Paso paper is in Jimmie's judgment the real McCoy.

I also enclose a circular which one of Lyndon's opponents is circulating at each of Lyndon's rallies. I thought it would amuse you. It certainly will not hurt Lyndon.

He's really putting on a real campaign, and he has an excellent chance.

O'Daniel is trying to jump onto your coat tails. But the boys in Texas say that it is fooling few people.

We are having a grand trip. We have been staying on a ranch the last few days with Jimmie Allred at Silver City.

As ever,

/s/ Bill (Douglas)

C
O
P
Y

6/16/41

Dear Mr. President:

The attached is my judgment also. The writer of the column is a member of the Texas Legislature, a man of sound judgment whose opinion I respect.

I had already told Bill Douglas the same thing before reading the column. In my opinion, Lyndon has an excellent chance to win.

Affectionately,

/s/ Jim Allred

EW. att.

June 16, 1941

Dear Mr. President:

Mildred + the kids
+ I were motoring through
Texas last week en
route to San Francisco.

About 8:30 P.M. Friday
we pulled into Big
Spring (west Texas) and
there at the Court

Horse square was
Lyndon Johnson addressing
a crowd of 3,000 -
a small crowd for a
town of 10,000 or so.

He was pouring it on.
Every time he mentioned
your name the crowd
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As ever,
Bill

6-16-41

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I had already told Bill Douglas the same thing before reading the Column.

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Affectionately
Jim Allred

Thinks Johnson Will Be Elected

By W. W. BRIDGERS.

ONCE or twice I have forecast in this column the almost certain election of W. Lee O'Daniel to the U. S. Senate, this upon the assumption that with the opposition to him being divided among Mann, Dies and Johnson he would be unbeatable. Later I repeated this assumption but with some reservation. The wind was shifting.

No election in many years has surprised me as much in its rapid shifting as the present free-for-all race for United States Senator. To say now that O'Daniel is anything like the sure shot candidate I had supposed that he was would be to ignore an undoubted heavy trend against him. Indeed indications are strong that W. Lee will run perhaps no better than third in the race.

This Legislature has been afraid to adjourn and go home, this because two years ago O'Daniel struck \$5,000,000 from the appropriation bills after the Legislature had adjourned. If the Legislature had been in session it could have overridden the Governor in his vetoes of certain items, for example his veto of more than \$1,000,000 in the appropriation bills for proper care of the insane. As matters were he gained considerable praise for having, as it was supposed, saved the State \$5,000,000. As a matter of fact he was only playing politics.

Of course it is a prerogative of the Governor to play politics, but one of his popular political effusions in his first campaign was his lambasting of "professional politicians." I fell for it myself even, little realizing that the Governor was himself a super-professional politician.

But when he, in his second campaign, denounced the Legislature of his first term for having failed to do the very thing which it had done but which he himself had undone when he struck from the eleemosynary appropriation bill more than \$1,000,000 which had been provided for the care of the insane, and he then had the superlative gall to shed oratorical tears as he related in his campaign that the county jails were crowded with insane persons for whom there were no accommodations in the State hospitals, he evidenced a sort of treachery that even playing politics does not excuse.

Having himself deprived the helpless insane of the comforts, attention and treatment for which the Legislature had made an adequate appropriation, can it be wondered that the present Legislature is afraid to go home lest he should, by a few strokes of his blue pencil, undo much of the work which this Legislature has done and then pose as having saved the taxpayers millions of dollars? So the Legislature has hesitated whether to leave the Governor to his devices.

It will be remembered that in his first campaign our Governor promised that if he was elected the old-agers would get \$30 a month and that this would be done without any new taxes, and that he then recommended the largest tax bill by far that had ever been proposed by any Governor in the history of Texas.

Having recommended to the present Legislature a tax bill of not less than \$50,000,000, he approved the omnibus bill of some \$23,000,000 then claimed that he had passed it and was now ready to go to the United States Senate, his job in Austin being completed.

All of which brings to the fore that peculiar art which is that people like to be humbugged. This Legislature has done nothing the way O'Daniel has wanted it done, but having done a generally satisfactory job despite his opposition, he claims credit for all of it.

The art of humbugging people is a peculiar talent reserved to the few and to an occasional artist in particular, of which P. T. Barnum was a shining example. People continued to believe—or at least some people did—that Barnum had a rare animal, though they never saw it, which had short legs on one side and long legs on the other because it lived on a hillside.

By the same token there must be some such animal as \$30 a month for everybody over 65 without any new taxes because O'Daniel said so, though nobody has ever seen it. But as Abraham Lincoln once said, you can fool all the people some of the time and a part of the people all the time, but you can't fool all the people all the time.

It was due entirely to the opposition of O'Daniel during the last Legislature that pensions during his administration have been less than at any time since the social security program was enacted. His stubbornness during the last session was directly, and I think intentionally on his part, responsible for the failure of the teacher retirement program and for the failure to make provision for the needy blind and dependent children.

Now that these things have been provided for, despite his obstructive activities, he has run out of anything to run on.

But now, says he, when I get to Wash-
ington I will be able to render a service to
our great President by branding these pussy-
footed politicians so that he can know
them. And again, the balding-whiskered
mummies in Congress know they are safe
from the draft (even as he himself is) all of
which is not going over so well.
He is overplaying his hand and people are
beginning to realize that there is no sincerity
in such bombast. People are acutely aware
that the Government has just discovered what
a great President Mr. Roosevelt is. Of course
all of this is a bunch of mummies
and people of their own dignity ought to
put up with such outrageous insults to
their intelligence. And signs are multiply-
ing that they will.

Men like Ewing Thomson, Sam Rayburn,
Speaker of the House and Senator Tom Con-
nelly are not mummies but are the subjects
of the O'Daniel insults. Senator Sheppard
was above reproach but his memory is in-
sulted by O'Daniel.

Lyndon Johnson has developed into a
sensational candidate. Within the past 10
days the political situation has shifted dra-
matically. Four out of five of the stickers
on cars coming into Austin are Johnson
stickers. I have not yet seen an O'Daniel
sticker on a single car. Cars are seen with
Johnson streamers. The sticker display co-
incides with various unbiased reports.

Beyond question the Johnson sentiment
is spreading. It is the Roosevelt loyalty of
the State that is rapidly leaving Dies and
O'Daniel out of the picture.

Having talked to numerous people from
various parts of the State I am convinced
that the Johnson candidacy has taken on a
momentum that nothing can stop. Gerald
Mang is not gaining ground and both O'Dan-
iel and Dies are slipping as Johnson forges
ahead.

Much as I have been opposed to O'Daniel
and all of his works I had up to a couple of
weeks ago thought that his election to the
Senate would be a mere formality. I have
changed my mind. I believe that Johnson
will be elected.

NAT CAMPBELL'S BROADCAST.
Nat Campbell's broadcast for the El Paso
Times this afternoon will be devoted en-
tirely to Father Radio station, KROD, Time
3 o'clock.

Lyndon Johnson gives his word of honor to
"YES" the President. . . .

A Vote For Lyndon Johnson, Is A Vote For
MADAM PERKINS. . . .

**Let's keep the Madam in. . . . She's
doing a fine job.** . . .



EL PASO TIMES—El Pa

Holliday Says Johnson Ahead In West Texas

Everywhere a Roosevelt picture is found, a supporter of Lyndon Johnson for Senator may be found, R. L. Holliday, sponsor of the Johnson movement in West Texas, said he had found.

Mr. Holliday, El Paso attorney, predicted Saturday after a swing through West Texas that Johnson was gaining momentum every day and would win the senatorial election June 28 to choose a successor to the late Morris Sheppard.

"People in West Texas have been hollering that you couldn't beat Governor O'Daniel," Mr. Holliday said. "Now they are all saying they don't see how he can win."

COUNTY CHAIRMEN ARE APPOINTED

Mr. Holliday visited most Texas counties of the Pecos River. He appointed county chairmen to handle the Johnson campaign.

Judge W. A. Hadden, of Firt Stockton, was appointed chairman of Pecos County; David Duke, of Sanderson, Terrell County; R. C. Brewster, of Pecos, Reeves County; Dr. C. J. McCormick, of Sierra Blanca, Hudspeth County; Carl Garner, of Van Horn, Culberson County; Norman Davis, of Marfa, Presidio County; L. B. Starnes, of Alpine, Brewster County, and Jack McDonald, of El Paso, El Paso County.

ELKHORN LODGE
ESTES PARK, COLO.
Estate of Howard P. James
Carl Rohr, Manager

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RECEIVED THE WHITE HOUSE
July 3-41

Dear Mr. President

Today I
have taken the oath of
office as Chief Justice
of the United States. I
thank you for the
confidence which you
have shown in me
by nominating me for
that great office.

It will be my high
endeavor, in the days to
come, to justify that
confidence by the
adequate performance
of the trust-reposed
in the Chief Justice

by the Constitution and
Law of the United States
with kind regards
and every good wish
I am

Sincerely yours
Harlan Stone

To the President of the
United States

file personal

PSF Supreme Court Folder

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

CHAMBERS OF
JUSTICE FRANK MURPHY

July 28, 1941

Dear Mr. President:

In our last talk together I gathered that you were not yet ready to act on the matter we have previously discussed. Thinking about it further, and especially in view of your cordial message to me at Harbor Beach, in which you expressed the hope that my decision would be favorable, it has seemed to me that I ought at least to have made known to you my attitude about it.

While I find the work of the Court entirely congenial, and while such a move might be construed unfavorably in some quarters, in a time of crisis like the present primary consideration should be given to the nation's interests rather than to one's personal interests. Viewing it therefore as a call to service in a post where my previous training and experience might be used to advantage, I had decided to make myself available for such duty. In case you should now decide otherwise, I want you to know how deeply grateful I am for the generous consideration and confidence shown me.

I am leaving Washington for a few days but will be where I can return within twelve hours after a call from you.

With affectionate regards,

The President
The White House
Washington, D. C.

Frank Murphy

PSF: Supreme Court

TELEGRAM

The White House

16WUC 8 TOUR 2:27PM *Washington*

LAGRANGE, OREGON, JULY 28, 1941.

THE PRESIDENT.

WILL ARRIVE WASHINGTON EARLY MONDAY MORNING AUGUST FOURTH.

WILLIAM O. DOUGLAS.

STANDARD FORM NO. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1925

*file
personal*

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

NIGHT LETTER

HONORABLE WILLIAM O. DOUGLAS
LA GRANGE
OREGON

AWFULLY SORRY BUT HAVE HAD TO MAKE ALTERATION IN MY PLANS
AND WILL BE AWAY FOR SOMETIME FROM NEXT SATURDAY ON STOP
WILL WIRE YOU AS SOON AS I KNOW WHEN I WILL GET BACK STOP
PLEASE KEEP THIS CONFIDENTIAL BEST REGARDS

FRANKLIN D. ROOSEVELT

FROM

PSF: Supreme Court
The White House folder
Washington

*** 10-6481

July 29, 1941.

Miss Barrows

PSF: *Supreme Court*
Aug 4

THE WHITE HOUSE
WASHINGTON

U.S.

10:45 P.M.
July 17, 1941.

Miss Tully:

Mrs. Wm. O. Douglas telephoned the following message for the President from La Grande, Oregon:

"Because of family matters Justice Douglas would like to change the date he is to see the President to August 4th if convenient to the President."

Mrs. Douglas said Justice Douglas was up in the mountains and could not be reached by telephone, but she could get a message to him if you care to telephone her at La Grande, Oregon, 370-M.

Tel. & Tel.

McMullin.

July 19, 1941.

MRS. WILLIAM O. DOUGLAS
LA GRANDE, OREGON

PRESIDENT SAYS O.K. FOR AUGUST 4TH

G. G. T.

file
personal
papers

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

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

THE WHITE HOUSE
SEP 11 9 04 AM '41
RECEIVED
Sept 11, 1941

Dear Mr. President.

I thought the enclosed
clippings from Texas papers
would interest and amuse
you.

I also understood
that if there had been a
runoff, Lyndon would have
carried 56%. That was
shown by the Belden poll
which has been accurate
to 1%.

As ever

Wm O Douglas

The President
Washington, D.C.

August 11, 1941

Public Opinion

BY JOE BELDEN

Editor, Texas Surveys of Public Opinion

While Texas men of draft age are divided on the advisability of extending the length of military service, state-wide public opinion is 71 per cent behind President Roosevelt.

Interviews taken in every part of the state by Texas Surveys of Public Opinion add up to the fact that people in Texas favor training for the draft army in substantially larger numbers than the nation as a whole. One of the largest national polls on the issue now before Congress indicated 53 per cent in favor. Texas, according to the state survey, is even more convinced that an extended draft is needed than are the southern states as a unit, which have shown 63 per cent on the affirmative, leading all sections of the country.

Senators Tom Connally and W. Lee O'Daniel in their votes against extension, therefore, are not in step with their state's trend of public will. O'Daniel's opposition, voiced in his maiden speech in the Senate this week, was based on the contention that to keep the men in the army longer than a year would be breaking faith with them. In this reasoning he agrees with those in the 29 per cent minority in Texas, most of whom object on the identical grounds.

Representatives of the people may, indeed, often act in complete opposition and still be exercising better judgment than the entire rank and file. Certainly they have been given the right to vote as they believe wisest, along with or against the current of public opinion.

The modern public opinion survey, conducted impartially and with reliable statistical method, however, does provide a far superior articulation of the people's mind than delegations of interested groups, deluges of telegrams, or Congressmen's mail, which does not represent those constituents who never bother to write. The new polls are not being guided toward destruction of the representative method; they are designed as a refinement of government by the people.

The only appreciable difference in the results derived from this canvassing was the discrepancy in for-or-against sentiment among people below the age of 28, which includes men 21 to 27, who are today eligible for the draft. Evenly split, five out of every ten approve of the administration's moves to keep the civilian army intact, while at least seven out of every ten among older persons approve. This differential is shown in the age breakdowns below.

"Do you believe," interviewers were asked, "that it is necessary at this time to hold drafted men in service longer than a year?" The state totals were:

YES _____ 71%
NO _____ 29

(Of those interviewed, and not included above, were nearly 6 per cent who had no opinion.)

Women were less in favor of the proposal than men, two-thirds (66 per cent) giving their approval, while nearly three-fourths (73 per cent) of the opposite sex assented.

The age tabulations follow:

	Draft Extension?	
	Yes	No
21 to 27 _____	50%	50%
28 to 34 _____	71	29
35 to 54 _____	72	28
55 and over _____	74	26

In searching further for some direct connection between Senator O'Daniel's stand and the voters who sent him to Washington in the June special election, the poll was tabulated as follows:

	Draft Extension?	
	Yes	No
Those who voted for O'Daniel for senator _____	62	38
Those who did not vote for him _____	74	26

There is no doubt that O'Daniel's supporters think more in line with him than does his opposition—at least on this question. Nevertheless, 62 per cent among his own voters is a considerable majority in dissidence.

THE HOUR

NO. 307

HO

RADIOS ASKED TO CUT REMARK IN O'DANIEL SPEECH

By Associated Press.

Dallas, Aug. 16.—Texas radio stations have been requested to eliminate from Senator W. Lee O'Daniel's transcription prepared for broadcast Sunday a passage suggesting that President Roosevelt's voyage was made to "hide out" before O'Daniel reached Washington, E. B. Germany has indicated.

Telegrams were sent to the stations that will broadcast the speech. Germany, who is chairman of the state Democratic executive committee and a friend of O'Daniel, revealed yesterday.

The remarks O'Daniel had planned to make were "just in jest," Germany explained, adding that the transcription had been made prior to the president's return from his Atlantic conference with Churchill.

An East Texas radio station received a telegram asking that the following be deleted from the O'Daniel address:

"Maybe he (the president) had read what some of the Texas political newspapers printed about me and got the idea that I had horns and thought it best to hide and take to the high seas before I arrived."

"The folks around here say it is the first time that any president ever got completely lost so the people did not know where he was."

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gas and sent to the White House, docket before going on to Houston.

Aides Seek to Block O'Daniel Charge of 'F. R. in Hiding'

By United Press

DALLAS, Aug. 16.—Texas political advisers of Gov. W. Lee O'Daniel sought today to keep off the air a portion of his transcribed radio address in which the new senator said "President Roosevelt thought it best to hide out and to take to the high seas" when he found O'Daniel was arriving in Washington.

The address, recorded in Washington and sent to Texas for broadcasting, was to be delivered tomorrow.

E. B. Germany, chairman of the state Democratic Executive Committee and friend of O'Daniel, said he

believed the senator had thought the President only to be on a fishing trip when the transcription was made.

Germany's telegram received by several stations quoted the part to be deleted as follows: "Maybe he (Mr. Roosevelt) had read what some of the Texas political newspapers printed about me and got the idea I had horns and thought it best to hide out and take to the high seas before I arrived. The folks around here say it is the first time any president ever got completely lost so the people did not know where he was."

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

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

Honorable William O. Douglas,
BAKER, OREGON.
Quite all right to defer matter until you
return to Washington. Best regards.

F.D.R.

FROM

PSF; Supreme Court
Folde
The White House
Washington

September 5, 1941

...

THE WHITE HOUSE
WASHINGTON

SEPT. 5, 1941

MEMO.

MRS. BRADY:

THE ATTACHED TELEGRAM WAS DELIVERED
TO MR. DOUGLAS, AT BAKER, OREGON, 5:25 P.M.

TELEGRAPH OFFICE,
KI.

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

R. B. WHITE
PRESIDENT

NEWCOMB GARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE-PRESIDENT

STOCKS

Western Union
Cablegrams
N.Y. - Cable Plate Letter
Other Features

The time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of arrival is STANDARD TIME at point of destination.

NB28 52 NT=RA LAGRANDE ORG 31

B41 SEP 1 AM 7 26

THE PRESIDENT=

HYDEPARK NY=

I HAVE RETURNED TO EASTERN OREGON AND TALKED THE MATTER OVER WITH MILDRED. AS YOU KNOW ITS A TOUGH DECISION TO MAKE ESPECIALLY WITHOUT AN OPPORTUNITY TO TALK THE WHOLE MATTER OVER WITH YOU. THEREFORE I WONDER IF I MIGHT DEFER DECISION UNTIL I RETURN TO WASHINGTON WELL BE BACK SEPTEMBER EIGHTEENTH=

WILLIAM O DOUGLAS=

DRAFT

WILLIAM O DOUGLAS

QUITE ALL RIGHT TO DEFER MATTER UNTIL YOU
RETURN TO WASHINGTON. BEST REGARDS.

F.D.R.

A handwritten signature in cursive script, appearing to be 'FDR', written in dark ink.

THE WHITE HOUSE
WASHINGTON

September 5, 1941

MEMORANDUM FOR MISS TULLY:

I HAVE DRAFTED A REPLY
TO DOUGLAS WHICH I SUGGEST
THE PRESIDENT SEND.

HARRY L. HOPKINS

(Jimmy Byrnes)

MEMORANDUM FOR MR. HOPKINS

file confidential
PSF: Supreme Court
7/1/42
4-42

My advice may be worthless, as well as unsolicited, because I do not know what you have in mind and I have had no opportunity to view the Production organization from the inside.

However, I think it important not to let hysterical demands for a change delay production. The theory of a Ministry of Supplies is splendid, but to be really effective, it would require you to transfer to that new organization the procurement organizations of the Army and Navy. This would cause confusion and conflicts and result in loss of time, which we cannot afford right now.

Much of the demand for a change is due to the fact that some gentlemen who participate in the conferences of OPM and SPAB advise friends that there is too much conferring and too little decision. We can remedy that without burning down the house. The President can name a man, -- for convenience call him Hopkins -- and charge Hopkins with the duty of supervising and expediting the procurement. When the President has decided upon an increased program, he should submit it to Hopkins instead of to a Committee. Hopkins should then submit it to his Committee. If, because of a deficiency in the supply of steel, there is a controversy between army and navy and civilian services as to the amount to be allotted for their respective needs, Hopkins should decide that controversy. Having decided it, he should keep behind each Service, requiring weekly reports from all and daily reports from some, so that the President can get from him at any moment the status of the program. There is no magic about this.

Page #2.

You say, "All right, -- find the man." If you demand perfection, you will never select a man. There are some things we do know. If you bring in an executive who has had experience only in a particular industry, he will have to be educated in the methods of government as well as to the needs of the various Services. If you will recall how much you knew about the machinery of government when you first came to Washington, you will appreciate how little the average executive knows about the methods that must be pursued by the representatives of the various agencies in the Production organization. If you now have in the organization a man who has served his apprenticeship, who has some appreciation of the problems of the Procurement Divisions of the Army, Navy and other Services, and who has the ability to make other men work, appoint him, instead of bringing in another new man.

In time of peace, for political purposes, to promote unity in the country, and to promote harmony in the organization, we needed a man with a big name, whose prestige was such that his decisions would be accepted by the prima donnas. That is no longer necessary. All you need now is a man who can do the job. If any one of the "Stars" becomes temperamental and wants to resign, -- let him go. He will find it uncomfortable at home. During the World War Wilson appointed Schwab. He knew Bethlehem but he never did know what it was all about down in

Page 3.

the Shipping Board. Pick the best man you now have on the team and let the heathen rage. I have never heard of your producing a damn thing, but you could do the job. You know how to listen, make decisions and demand compliance. Because you are needed elsewhere, you are not available, but with the opportunity you have had to observe those now at work, you can select a man possessing judgment and force enough to do the job.

There is no failure demanding revolutionary action. I would take the time necessary to select the man, rather than do it hurriedly and give the President the disagreeable job of removing him in a short time. Some change is probably necessary but let's keep our feet on the ground and not change the entire organization and personnel everytime a newspaper demands it.

JFB

*File
Bureau*

*PSF Supreme Court
Folder*

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

CHAMBERS OF
JUSTICE FRANK MURPHY

January 26, 1942

My dear Mr. President:

With regard to our conversation of last Thursday, I earnestly hope that the suggestion relative to a unified council of defense in the Far East has commended itself to you as worthy of consideration.

In collaborating in the establishment of a central military command in that sector, you have, I am convinced, acted very wisely. I believe, however, that this alone will not suffice. History clearly shows that the armed forces are no stronger than the civil governments from which their authority stems. If the latter are disorganized, irresolute, or lacking in moral fibre, the former most surely are lost. A central council which can not only insure concerted action but also sustain the integrity of all the governments concerned is therefore indispensable. Without delay such a council, representing all the allied nations now engaged in the Far Eastern theater, should be created with headquarters preferably in China or, if that is impracticable, in Calcutta or Australia.

In view of the vital contribution which the United States must make, this council should be headed by an American - necessarily someone typifying the most vigorous and virile kind of diplomatic ability and preferably an individual with a knowledge of the Far East and some experience in dealing with critical situations of magnitude. The council would not, of course, obtrude itself into the field of military strategy, but would concern itself with the broader questions of unified action among these governments, of appraising the common needs as to materials and equipment and insuring that these needs are fully and promptly met.

This measure is, in my opinion, of crucial importance to the cause of the United Nations.

With constant good wishes and my warmest regards,

Sincerely,

Frank Murphy

The President
The White House
Washington, D. C.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

PSF; Supreme Court
THE WHITE HOUSE
FEB 20 9 17 AM '42
RECEIVED
Folded

February 18, 1942

Dear Mr. President:

But was a wondrous
statement of yours on the
rumor mongers!

I enclose an excerpt
from the recent letter, written
by an ex-army man and a
friend of mine in Portland Ore,
which I mentioned the other
night and which deals with
the proposal for civilian
irregulars.

As ever,

Bill

OCS/20475-34

I think that the residents of the country districts in a zone of considerable depth - say at least 200 miles - should be organized under federal military supervision as recognized irregulars. The basic form should be very flexible such as tens, hundreds, etc. The purpose on the west coast at present is the protection of the timber - the danger of which you of course know. But this purpose could be expanded in case of need according to the patterns of Lawrence of Arabia or the Chinese or Russian models. Possibly, the development of offensive commandos of the British model might be possible if need came. Just now civilian defense is certainly ineffective in these fields.

005/20475-39

March 2, 1942.

~~██████████~~
Dear Mr. President:

I return to you herewith the letter from Justice Douglas and its enclosure, together with a memorandum I received from the Chief of Staff on the proposal.

Although I agree that the proposal has merit, I also agree with Marshall that at present all our strength and available material should be concentrated in organizing the expanded regular forces which we have planned for this year. The demands upon our material for Lease-Lend purposes have produced an acute shortage in this work. If the time ever comes when we have complied with those demands and when the task forces immediately facing us are raised and trained, we may be able to arm and supervise such a force of irregulars as Justice Douglas suggests. At present it would be in my opinion merely an unwarranted dispersion of our available strength.

The only way at present to get such a force would be through the States and even then we should be short of arms to equip them.

Faithfully yours,

HENRY L. STIMSON

Secretary of War.

The President,
The White House.

HL:BN

Franklin D. Roosevelt Library

DECLASSIFIED

DOD DIR. 5200.9 (9/27/58)

Date- 10-14-69

Signature: *RHP*

WAR DEPARTMENT
OFFICE OF THE CHIEF OF STAFF
OCS/20475-39 WASHINGTON

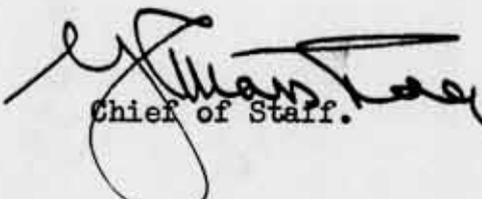
February 28, 1942.

MEMORANDUM FOR THE SECRETARY OF WAR:

Subject: Organization of Residents for
Civilian Defense.

The organization of local residents for Civilian Defense as suggested, under legal and competent authority, has merit. War Department opinion in this respect is that such local groups if organized by State authorities should become part of the State guard organization for which there is Congressional authority. This affiliation would carry with it legal rights and automatic recognition by the Federal Government. These local groups might be called "Local Defense Force - State Guard Reserve", or a similar appropriate title.

War Department equipment or personnel, are not now available for this purpose nor is there any prospect that the materiel situation will materially change in the near future.


Chief of Staff.

THE WHITE HOUSE
WASHINGTON

PSF
S.C.
'38-'44

February 21, 1942.

MEMORANDUM FOR
THE SECRETARY OF WAR

Will you speak to me about
this at your convenience?

F. D. R.

WAR DEPARTMENT
ADMINISTRATIVE ASSISTANT
1942 FEB 23 PM 1:58

① 205 383

(2-21-42)

ocs/20475-39

OFFICE OF THE CHIEF OF STAFF
WASHINGTON

PSF Supreme Court Folder

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

CHAMBERS OF
JUSTICE FRANK MURPHY

April 10, 1942

Dear Mr. President:

I am grateful more than I can easily say for your kindness in inviting me to lunch today and for the singularly attractive visit which I enjoyed with you. It cheered me greatly to see you looking so well and approaching your mighty problems with full vigor.

If needed, I will of course undertake the errand to the Far East which you mentioned during our conversation. To me it seems of vital importance that the Philippines not be slurred in view of other problems that may appear more urgent, for nothing will sustain the courage of the democratic world more readily than for us to keep alive the example of democratic integrity that we have started there.

While other plans may have commended themselves to you in regard to any possible mission to Ireland, I trust you will remember that I am available at a moment's notice for that errand or the other to the Far East, or both. In the event you will not need me during the next few months, however, I hope to undertake training at one of the military camps for possible service if I prove acceptable to the Army.

With warmest personal regards,

Sincerely,

The President
The White House
Washington
D. C.

Frank Murphy

*File
Personal*

*PSF: Supreme Court
Folder*

THE WHITE HOUSE
WASHINGTON

April 13, 1942.

MEMORANDUM FOR THE PRESIDENT:

Bill Douglas called and said he had been working on the manpower matter. You said you would clean the thing up on Wednesday but Bill completely forgot he was going to leave tomorrow evening for Columbus, Ohio, returning on Thursday. Also, he has a few other things he wants to finish up with you.

If for some reason you are completing the manpower thing on Wednesday, Bill could talk to you on the telephone just as well as seeing you.

Will you let me know your wishes?

G.

I will take this matter up on Thursday after Cabinet meeting with Bill Douglas, Sam Rosenman, Anna Rosenberg and the Director of the Budget.

file personal

CHAMBERS OF
JUSTICE JAMES F. BYRNES

PSF: Supreme Court Folder

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

April 14, 1942

THE WHITE HOUSE
APR 15 9 01 AM '42
RECEIVED

Dear Mr. President:

I talked to Senator Connolly about postponing consideration of his bill. He says he does not want to embarrass the administration by having made so many efforts to get the bill considered and the date having been set, it is impossible for him to ask for its postponement. I suggested to him that Barkley might ask him to agree to the postponement until after you had submitted to the Congress the proposals you have in mind.

I think he will agree to this. He said he would not today promise definitely to agree; that he is going off for a few days and when he returns will talk to one or two Senators who have been interested in the bill and will see if it is possible to reach such an agreement.

Sincerely yours,

James F. Byrnes
JAMES F. BYRNES.

Hon. Franklin D. Roosevelt,
The White House,

Supreme Court of the United States
Memorandum.

4/27, 1942

file
personal

Dear Mr. -

attached is a memo prepared by Judge Henneman of San Francisco which he wants to President to see. I mentioned the matter to the President briefly the other day. Today Henneman has discussed the matter with Patterson, Forester & Mr. Neff. I believe he will try to get an appointment with the President.

As ever -

[William O. Douglas]

Bill

For the President.

from William Denson

U.S. Circuit Court of Appeals
San Francisco

PSF . Supreme Court
Folder

COMMONWEALTH CLUB PLAN

Disjunction of Military Command in Total War
in the Pacific States

The Commonwealth Club of California presents a proposal concerning that part of total war in the Pacific Coast States which consists of fighting off raiding commandos, parachutists, and fifth columnists attacking means of communication and plants for war production, power, lighting, water supply, and the like.

We propose that the War Department, without further legislation, exercise its power to persuade or conscript the men of organizing ability to create and command an army for such internal warfare out of the rank and file already conscripted, who are outside the standards set for combat service.

It assumes that such an internal army in California or any Pacific State could be organized in coordination and without substantial interference with the training of combat troops-- certainly less than the states would cause in attempting a competitive organization at the same time.

We assume it to be axiomatic that if the federal government, with the power of conscription and commandeering, cannot organize such an army, it is a mere political evasion to attempt to place the responsibility on the states. They can neither effectively conscript nor commandeer (granting they could do so at all) around the edges of the federal exercise of those powers.

On behalf of Californians, it protests against the plan of the War Department of divided command of fighting men, as we understand it to be declared by General DeWitt on March 11, 1942, when he called on Twelfth District individuals, municipalities, and states to provide organizations to defend areas and plants vital to war efforts and stated: "If we yield to pressure to provide federal troops for guarding numerous important installations, we shall not be fulfilling obligation to build a mobile army prepared to carry our fight to the enemy."

The Shaming of the White Man to the Yellow and Brown. The California Coastal Fog Bank.

Our protest assumes that the twenty-five to forty mile wide coastal fog bank extending some 500 miles from below Cape Sur to above Cape Blanco will make its customary return for the period from late May to September.

It is willing to assume that the Navy knows as much about the varying drifts of a fleet or of plane carriers in the currents in that fog as do the Japanese naval men who have been studying it in their fishing boats for a couple of decades--or the bootleg skippers who used it as a screen.

It assumes the Army and Navy is doing its best to minimize the number of raiding planes or commandos which have broken through all defense heretofore.

We assume that all in authority know the propaganda value to Japan for the Chinese and East Indians of a successful

raid on the Pacific States, destroying our essential plants and in all likelihood including the burning of one or more of our coast cities. That is, the shaming of the white man beginning with the bombing of the "Panay" through the victories in the South Pacific and Indian Ocean which would culminate in striking him even across the Pacific on the American continent.

All our so-called "social gains" are embodied in our youth. A captive private just out of the high school shrieking in the torture of a slow public bayonetting to impress the Malay and Chinese of our inferiority is an incident of Japanese propaganda also impressive to Californians. Though some of our politicians ignore it, we knew what war in the Orient means before the weeks of the rape of Nanking. We know of the efficiency of an intelligent, determined and powerful people unified for a conquest of both shores of the Pacific by force in all its forms.

Incidentally we know, contrary to the impression of one high in authority, that the California sportsmen have several hundred thousand sporting rifles and shotguns available to federal commandeering for the purpose of arming such federal forces. The location of these arms is disclosed through the licensing system.

We also assume that no general officer will contend that what is immediately necessary for internal warfare in the Pacific Coast States must be provided for Illinois, Colorado and North Carolina. Even after Bataan there are academic political dreamers who are still thinking of equality in state rights-- that is, as if Vicksburg, Manassas, Bull Run, Seven Pines, and

the Monitor and Merrimac were all identical in strategy and tactics.

Analysis of Proposal of Divided
Federal and State Command in California

Legalistic Military Futilities

Our protest considers the War Department plan of disjunctive command, as it is in California, from two standpoints.

(1) Assuming the State had not been castrated by federal conscription (which holds apart even the combat rejects) and to have the power (which it has not) to conscript the best of its citizens and to commandeer rifles, shotguns and pistols to arm them to repel its raiding enemies, the disjunction from the federal command of scattered military units under various state commands would not work.

We are informed that it took two years to obtain unity of command of the British Army and Navy in the defense of the coast of the British Isles. If California now had an army or several small armies of its own, efficiently officered, we still could expect the destructive lack of unity shown in Britain.

(2) Legalistic futility. Our second consideration of the Army's proposed disjunctive command concerns what we regard as its legalistic futility. It assumes that the private owners, cities, water districts, counties, and the state will convert their peace-time obligation and function to maintain public order into military effectiveness for battling with raiders.

It is a condition the Japanese will seek to destroy

in California--not a thesis on constitutional obligations.

(a)* A California State army with a tragically pathetic commander in chief. California has a State guard, beginning to be organized, consisting of children and elderly men, persons necessarily outside the draft. This army has an upper limit of 7,000. But 5,000 of the limited eligibles have enlisted. It makes medical provision only for traumatic injuries. That is to say, if a Los Angeles boy contracts pneumonia in guarding the Golden Gate bridge, he may return home 400 miles away for nursing and treatment at his own expense.

This for repelling attacks on plants requiring somewhere in the neighborhood of 50,000 fighting men to defend them.

California has a governor, in a campaign for his re-election, whose warlike character and political capacity is evidenced by the following facts. In January last, he asked his legislature for an army of 25,000 but was unable to procure appropriations for more than 7,000. This was in a session after Pearl Harbor and the bombing and destruction of Repulse and the Prince of Wales. That legislature adjourned in January. Since then the Japanese have taken Malaya, Singapore, Batavia, the Dutch East Indies, the Philippines, Rangoon, and much of Burma, and they have driven the European as far toward the South Pole as suits their present convenience. The 500 mile long summer fog bank is but a month away. With this, the certitude of the bombing plane, the parachutists and the commandos.

The State and its legislators are shuddering under this

*- The statements in this subsection (a) concerning the governor have not been authorized by the Commonwealth Club. They are those of a member of his party who helped to elect him.

menace. Yet, within a fortnight, the governor has stated that he will not convene the legislature and ask for a State army adequate at least in number.

Our war (Sic) governor has publicly stated his reason. It is that if he calls a session, California will not create any larger force than was given in last January, and all that would happen would be political accusation and recrimination. This, obviously, before his campaign for re-election. The governor is right. There would be bitter comment on his delay from Batavia to the coastal fogs.

(b) Individuals plant soldiers to fight the Japanese troops or fifth columnists. Despite General DeWitt's call on the individual utility owners to provide their bodies of fighting men to repel attacks on their plants, they regard this as a federal or state function. They think of their rates, established by the State, which provide no funds to fight Japanese.

The example of one association of water supply plants is sufficient. In each is one deputy sheriff, presumably above the conscription age. As a Californian put it in his vernacular, "A swell time for that flabby dewlapped deputy outside the great power house, when he lifts his coat lapel and shows his sheriff's badge and says to half a dozen Jap parachutists with tommy guns, 'Come along, you fellows. You are under arrest.'"

(c) Cities and Counties discuss bond issues for soldiers and police for next year. San Francisco is fire conscious remembering its conflagration of 1906. It expects and dreads another, and after a laggard political year, has proceeded vigorously to

organize its fire wardens.

Despite this, the city is relying on part-time volunteers to fight parachutists or commandos seeking to throw bombs in their telephone substations. These substations are essential to communications to fight the not unlikely 500 simultaneous fires from the 10,000 incendiary bombs from one plane carrier dropped on its wooden buildings, into its daily northwest trade winds.

Maybe six months or a year from now we will vote a bond issue. Our politicians discuss it with an eye on the taxpayers vote. But whether for our starving evacuees from a burned city or for future additions to our police, we are not sure. To the low-grade politician what Sherman said about war is true. It so puzzles one about votes.

Conclusion

It is time to forget politics and conduct a total war. Babbling candidates should drop the old slogans. We cannot meet the weapons and tactics of the Japanese and Germans with part-time "home guards" and "embattled farmers". The blue lumps over their ampits from their first shot with military rifles are so painful!

It is a time for federal soldiers who will stand day and night around a great power plant waiting for the most dangerous of fighting--the surprise attack of determined soldiers. Discipline for that dreary and trying service must have the federal guardhouse for the recalcitrant and the federal army's esprit de corps for the high spirited.

William Deane

*File
Personal*

*PSF Supreme Court Folder
4-42*

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

CHAMBERS OF
JUSTICE FRANK MURPHY

May 13, 1942

Dear Mr. President:

I am very grateful for your prompt reply to my recent note.

As you doubtless know, the Court has virtually completed its work for the present term. In a few days I shall be free for other activity, and nothing could distress me more than idleness while so many sacrifices are being made and the country is in its present grave position. And, of course, you will understand how acutely the events in the Philippines have touched one who was the last to serve as Governor-General of those Islands.

Accordingly, if you continue to feel that I can be of service in the Far East, as you indicated in our last conversation, I would like very much to talk with you briefly, to make plans, confer with the appropriate officials, and leave at the earliest possible moment. As I see it, some of our setbacks in the political phase of the war need not have occurred had there been a vigorous and tenacious effort by the United Nations to hold the political lines. We should not wait for others to take the lead in this respect.

I trust that if you can find a moment you will send for me very soon. In the event you will not need me for this errand, I hope to undertake training in an Infantry training camp during the summer months.

Your note indicated the possibility that you may personally welcome President Quezon upon his arrival in Washington. May I encourage you in your inclination, for in view of President Quezon's staunch loyalty to the United States and the present tragic status of the Filipino people, it would be very desirable if you could do this. The significance of such a gesture would be a great importance among the Island people.

With my best wishes as always,

The President
The White House
Washington, D. C.

Sincerely,

Frank Murphy

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

*file
personal
Supreme Court
BF Folder*

CHAMBERS OF
JUSTICE FRANK MURPHY

June 1, 1942

Dear Mr. President:

Immediately after the conclusion of Court on Monday June 8, unless you have objection to my doing so, I will take my oath as a Commissioned Officer in the Reserve Corps. All arrangements have been made for me to enter the Infantry Officers Training School at Fort Benning, Georgia, on June 15, for intensive training for a period of four months - that is during the Court recess. At least two months of the time after the completion of the school program, I expect to spend with an armored division.

I want to learn modern warfare and witness the competency and the spirit of our fighting men. I have an idea that they are doing an excellent job at present and one that is taking on new vigor all the time.

I will not drop in to see you to say good-bye as I know how busily engaged you are; however, I did want you to know my plans, to leave my best wishes for your personal safety and welfare and to tell you that if you need me at any time, I can get back to Washington in three or four hours.

Sincerely,

The President
The White House
Washington
D. C.

Frank Murphy

BF Supreme Ct. folder
4-43
Supreme Court of the United States
Washington, D. C.

file personal
February 3, 1943

Dear Miss Tulley,

Justice Murphy's brother has just had his back broken and the Justice is flying to the coast tonight. He would appreciate it if you could arrange to get this note to the President.

Sincerely,
Eleanor Bumpgardner
Per. Secy.

PSF: Supreme Court

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

CHAMBERS OF
JUSTICE FRANK MURPHY

February 3, 1943

Dear Mr. President:

Sad news reached me tonight that my brother, George Murphy, has had two vertebra in his back broken and will be in a cast for at least seven months. He has been on duty at the U. S. Naval Air Base, Alameda, California.

I am taking the plane at once to see him as I want to be at his side for a few hours. I will return promptly and then I hope I can have a visit with you.

Sincerely,

Frank Murphy

The President
The White House
Washington
D. C.

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

CHAMBERS OF
JUSTICE FRANK MURPHY

February 3, 1943

Dear Miss Tulley:

I should have mentioned in my
earlier letter today that Miss Burrows
has been contacting us about an appointment
and we assume it was under your direction.

Sincerely,

Eleanor Bumgardner

Eleanor Bumgardner
Personal Secretary

Miss Grace Tulley
The White House
Washington
D. C.

PSF Supreme Court folder
4-43

THE WHITE HOUSE
WASHINGTON

February 4, 1943

MEMORANDUM FOR

GENERAL WATSON

The President said he would see Frank Murphy some afternoon next week at five o'clock at the office.

G. G. T.

507
Supreme Court of the United States
Washington, D. C.

CHAMBERS OF
JUSTICE FRANK MURPHY

February 2, 1943

Dear Miss Tulley:

The Justice does not want to press his engagement with the President. Also there are so many things he wants to go over with him it would be a mistake to jam the engagement into five or ten minutes.

The Court is in session this week and next and during the session the Justice would be free anytime from five in the afternoon on. After the fifteenth of February, he will be available anytime (day or night), however, there are so many happenings in Michigan regarding the war effort that if it is possible it would be best if it were not too long before he sees the Chief.

The Justice feels his conference is unimportant alongside the great events and personalities the President is obliged to see but he would appreciate it if you would give your usual kind attention to his desire to see his friend.

Sincerely,

Eleanor Bungardner
Personal Secretary

Miss Grace Tulley
The White House
Washington
D. C.

*PSF Supreme Court folder
File personal 4-43*

THE WHITE HOUSE
WASHINGTON

February 13, 1943

MEMORANDUM FOR

G. G. T.

Justice Murphy phoned this morning re his request to see the President. He is leaving to fly to the Pacific Coast on Monday night at 8:30 to spend a week with the brother whose back is broken and who is in a cast.

The Justice says he is particularly anxious to see the President before he leaves because he has some information about the Philippines. He says the little brown Japanese birds are holding mass meetings and parades concerning Philippine independence and he (Murphy) knows both sides of the story and it is all bunk. There are several other matters he wishes to discuss and he promises that he won't even sit down.

The Justice will be in conference all afternoon today but would be available tomorrow and Monday.

TOI

5:15 PM

*Mon.
Hamm*

PSF: *Supreme*
Miss Turner

THE WHITE HOUSE

WASHINGTON

March 29, 1943.

MEMORANDUM FOR

GENERAL WATSON

I want to see Frank
Murphy tomorrow or Wednesday.

F. D. R.

F. D.

H. Thomas ADDED STARTER: Assoc. Justice Frank Murphy 2:30

Supreme Ct folder
March 31

April 1

Lee

PRIVATE AND CONFIDENTIAL

March 29, 1943.

Dear Harry:-

I have told Frank Murphy to come in to see me tomorrow or Wednesday.

He insists on something for his four months vacation. Do you think it would be wise to send him to Australia to talk things over with MacArthur and others who were in the Philippines, or to send him to some kind of more active duty at one of the fronts?

Always sincerely,

The Honorable
The Secretary of War,
Washington, D. C.

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

CHAMBERS OF
JUSTICE FRANK MURPHY

March 25, 1943

PRIVATE

Dear Grace:

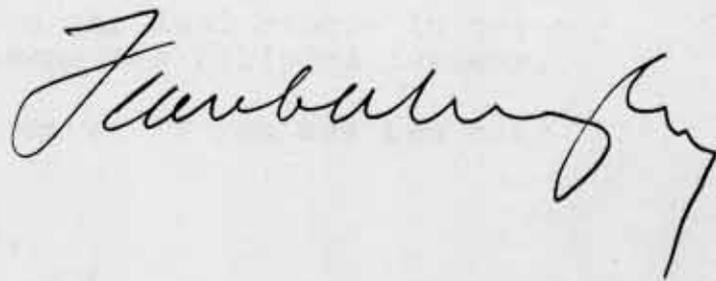
I have just written a note to the President suggesting that we discuss a serious matter that is brewing about the Philippines.

I appreciate I am not entitled to another conference with him having recently seen him. Perhaps a telephone conversation will enable us to clear the situation. However, if you can just arrange this one conference or conversation with the President, I assure you that I will not ask for another.

You have been awfully kind and thoughtful. Please hand the attached letter to the Chief.

Sincerely,

Miss Grace Tulley
The White House
Washington
D. C.



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

CHAMBERS OF
JUSTICE FRANK MURPHY

March 25, 1943

Dear Mr. President:

During our last visit you mentioned that you had plans for me for this summer. We are fast approaching the recess period.

I believe you know how anxious I am to give my four months recess to army service of some kind. Having been the last Governor-General, perhaps my presence in and around the Philippines would be of some significance and encouragement to the Filipino people. Will you give the idea consideration?

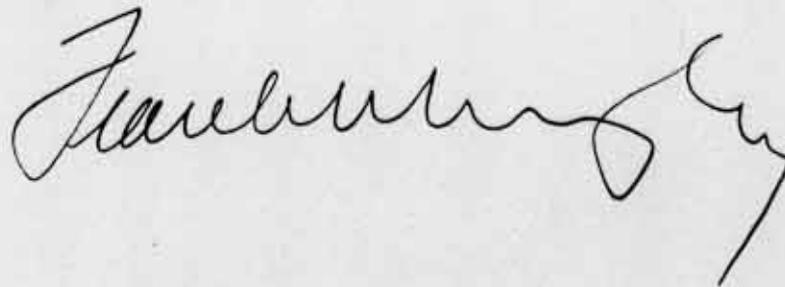
If I cannot be in or around the Philippines, I would like to be attached to the armored force somewhere where the fight is really on. And so I would like a moment to discuss this with you either personally or on the telephone.

Incidentally, there is a serious situation brewing here in regard to the functioning of the Philippines constitution. As a matter of fact, it is daily growing into a problem of no little importance. Our policy ought to be ironed out now rather than the last minute in order to avoid fractricidal strife among the Filipino leaders.

Won't you please see me soon or if you are too busy phone me?

With affectionate regards,

The President
The White House
Washington
D. C.



(1081)

Law

PSF Supreme Court folder
4-43

THE WHITE HOUSE
WASHINGTON

May 19, 1943.

MEMORANDUM FOR

THE SECRETARY OF WAR:

FOR PREPARATION OF REPLY FOR
MY SIGNATURE.

F.D.R.

Letter from Hon. Frank Murphy, Supreme Court of the U.S., 5/17/43, to the President, in reference to his letter "of a few days ago", in re his going to the Philippines (possibly Mindanao or somewhere near them). If this is impossible, he would like to help in India or Africa or Russia.

*Supreme Court folder
4-43*

THE WHITE HOUSE
WASHINGTON

May 11, 1943.

MEMORANDUM FOR

THE SECRETARY OF WAR

**FOR PREPARATION OF REPLY
FOR MY SIGNATURE -- DEAR FRANK.**

F. D. R.

Letter to the President from
Mr. Justice Murphy, dated May 10, 1943,
re his desire to serve during the
Summer months and preferably to
go out somewhere near the Philippine
Islands and do what he can to prevent
the pacification of the Filipinos
by the Japanese.

927
hm

Supreme Court folder

THE WHITE HOUSE
WASHINGTON

April 8, 1943.

SECRET ^{CLS}
10-7-66

MEMORANDUM FOR

MR. JUSTICE MURPHY:

Dear Frank:

What do you think of this
suggestion by Stimson? Please return
for my files.

F.D.R.

Secret memo to the Pres. from Stimson
4/1/43 re assignments suggested for
Mr. Justice Murphy this summer.

SECRET

WAR DEPARTMENT

WASHINGTON

Department of the Army
Washington, D. C.

April 1, 1943.

May 10, 1943

MEMORANDUM FOR THE PRESIDENT:

General Marshall has looked into a possible assignment for Justice Frank Murphy during the approaching recess of the Supreme Court and we have talked the matter over.

If we are to give him an assignment this summer the most practicable appears to be a trip to include Alaska, the Aleutians, and Hawaii, and thereafter possibly to some of our isolated bases in the Pacific. Justice Murphy might perform a beneficial role from the morale standpoint by visiting certain of these isolated garrisons, talking with the men, and upon his return reporting his observations to the War Department.

It is not believed advisable to have him extend his visit to Australia at this time in view of his feelings regarding MacArthur while he was High Commissioner in the Philippines. It is not desirable to authorize such visits for North Africa until HUSKY is an accomplished fact.

Since the stations in the Pacific are primarily a Navy responsibility, the Secretary of the Navy has been consulted and states that he has no objection to Justice Murphy's visit.

Henry L. Stimson

Secretary of War.

Franklin D. Roosevelt Library

DECLASSIFIED

DOD DIR. 5200.9 (9/27/58)

Date- 10-7-66

Signature- *Carl L. Spicer*

SECRET

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

CHAMBERS OF
JUSTICE FRANK MURPHY

May 10, 1943

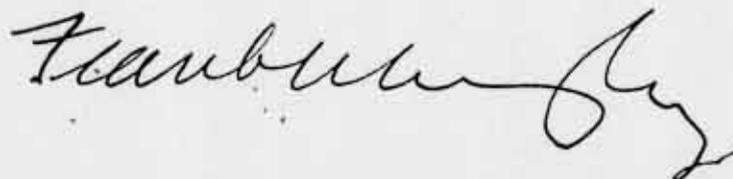
Dear Grace:

In my last request for an appointment I stated that I would not ask to see the President again and I shall not for I know he is too busy but it is of the utmost importance - at least to me - that he read the enclosed letter in reply to one that he sent me in Secret.

Please do this for me and see that the President reads the enclosed letter.

With every good wish,

Sincerely,



Miss Grace Tulley
The White House
Washington
D. C.

PST Supreme Court folder
4-43

May 20, 1943

Dear Frank:

Now that the time is approaching for the recess of the court, I can appreciate fully your desire to settle the question of your Army assignment for the summer months.

I have taken up with the Secretary of War and the Chief of Staff your letter of May 10 and the possibility of your performing some service which would have a beneficial effect upon conditions in the Philippines. Both Mr. Stimson and General Marshall feel that the present military situation in the Pacific is such as to preclude the effectiveness of a mission of the type you suggested in your letter.

For some time, however, I have been interested in the idea of sending a representative to Alaska, the Aleutians, Hawaii, and perhaps some of our bases in the Pacific for the purpose of looking into the general conditions under which our troops are living, training, and working. General Marshall tells me that he has already suggested such a mission for you, and I believe it was mentioned in a memorandum which the Secretary of War wrote me on April 1 and which I forwarded to you. You would perform a valuable service by submitting a report, with your recommendations, to me directly. Of course you would make the trip as an officer of the Army in uniform.

Inasmuch as you stated in your letter a willingness to undertake this mission, I hope you can work out the details satisfactorily with the War Department, and I look forward to receiving the report of your reactions upon your return.

Sincerely yours,

FRANKLIN D. ROOSEVELT

Justice Frank Murphy,

The Supreme Court.

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

CHAMBERS OF
JUSTICE FRANK MURPHY

May 10, 1943

Dear Mr. President:

Once again I am indebted to you for your unfailing thoughtfulness in giving personal attention to my desire to be of service during the summer months.

Please rest assured that I will gladly undertake the mission suggested by the Secretary of War or perform any other task he may wish to give me. I take the liberty of mentioning, however, that I have had the earnest hope of rendering some service in connection with the Philippines. While I have no illusions as to how much could be accomplished, the possibility has suggested itself that by speaking to the Filipinos by radio as their last Governor-General, from some station as near as possible to the Islands, I might make a small contribution to the immediate task of preventing the pacification of the Filipinos by the Japanese. I presume to offer the suggestion only because under your guidance I assisted in that exemplary democratic experiment of erecting the Commonwealth Government, and inevitably I cannot rest easy while our work is undone. I pray for the time when we may restore what has been lost and bring the experiment to an ending in accordance with the faith and high purpose of its beginning.

My work in government, which I have never left during my adult life, has frequently taken me into difficult and unusual situations. Three years of struggle with economic breakdown in Detroit, three years spent in interpreting our country to our sixteen million wards in the Philippines, the great labor upheaval in Michigan -- these have given me experience in dealing with emergencies. Now, in this greatest emergency of our time, when I am free to be of service, I cannot be happy unless I have brought to your attention my anxiety to be helpful. Especially because your own effort has been so unsparing, I wish you to know that such experience as I possess is at your disposal.

May I remind you that by taking part in the field maneuvers of last summer and by study during the winter, I have

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

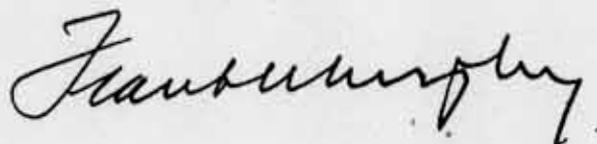
CHAMBERS OF
JUSTICE FRANK MURPHY

-2-

tried in a small way to fit myself for active duty. Most of all, however, I wish to impress upon you the fact that my request for an assignment is due solely to a desire to be genuinely useful. I have no interest in undertaking any task merely for personal gratification. I am aware how presumptuous it is of me to take up the time and attention of the Army with my request, and I would not accept any assignment unless it would be of substantial help to the Army. Accordingly, if no useful mission can be given me, I could of course do nothing else but remain at home.

With my warmest wishes for your well-being,

Sincerely,



The President
The White House
Washington
D. C.

THE WHITE HOUSE
WASHINGTON

May 11, 1943.

MEMORANDUM FOR

THE SECRETARY OF WAR

FOR PREPARATION OF REPLY
FOR MY SIGNATURE -- DEAR FRANK.

F. D. R.

1943 MAY 12 AM 9:28

WAR DEPARTMENT
ADMINISTRATIVE ASSISTANT

OW 201. Murphy, Frank (5-11-43)

WAR DEPARTMENT
WASHINGTON, D. C.

Emmy

May 19, 1943.

MEMORANDUM FOR GENERAL WATSON:

I enclose herewith a draft of a letter to Mr. Justice Frank Murphy for the signature of the President, as requested in the attached memorandum of May 11th.

Henry L. Stimson

Secretary of War.



File

THE WHITE HOUSE
WASHINGTON

May 19, 1943.

MEMORANDUM FOR

THE SECRETARY OF WAR:

FOR PREPARATION OF REPLY FOR
MY SIGNATURE.

F.D.R.

WAR DEPARTMENT
ADMINISTRATIVE ASSISTANT

1943 MAY 20 AM 10:45

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

CHAMBERS OF
JUSTICE FRANK MURPHY

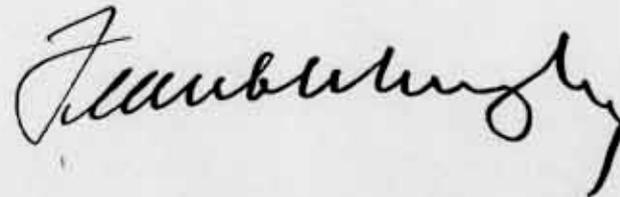
May 17, 1943

Dear Mr. President:

With regard to my letter of a few days ago, should the War Department find it impractical to send me to the Philippines (possibly Mindanao) or somewhere near them -- and I trust it will not -- I do hope that you will bear in mind my experience in colonial administration. If I can help you in any way in India or Africa or by any type of field duty in Russia, I am at your call. Let me assure you again that I am not disturbed by the possibility of personal danger and prepared as far as physical condition and training are concerned to undertake any assignment.

With my warmest regards and best wishes,
as always,

Sincerely,



The President
The White House
Washington
D. C.

PSF: Supreme Court folder
4-43

*file
personal*

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

CHAMBERS OF
JUSTICE FRANK MURPHY

~~SECRET~~

June 15, 1943

Dear Grace:

I have only a few days left. This is an imposition on you, I know, but I will be grateful to you eternally if you could put in a word for me to the end that I could be sent on a colonial or other kind of a mission that my position and long administrative experience warrants. I prefer to do it for the army. I don't want to do a vain thing. It would be folly for me just to take a pleasure trip. I really want to help the President and our country but I must know to do so soon because we leave here in eight or ten days.

It was grand seeing you yesterday.

Affectionate regards,

Sincerely,

Frank Murphy

Miss Grace Tulley
The White House
Washington
D. C.

PSF Supreme Court folder 4-43
file personal

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

CHAMBERS OF
JUSTICE FRANK MURPHY

June 28, 1943

VERY PRIVATE - RUSH

Dear Grace:

An attractive suggestion has been made to me by the War Department about a military mission to South America. My best judgment tells me that the information the Department desires me to seek could be readily obtained by means of confidential reports from missions and military attaches and that a policy could be formulated on the basis thereof by the officer in charge of schools.

However, I am inclined to accept the proposal and make the trip. I want to do something in a military way this summer. As we used to say in the other world war, a man wasn't a soldier unless he was "within sound of hostile bullets fired in wrath". I much prefer to visit the battlefronts. My training, as you know, has been of a sort that has prepared me for combat and at least to take care of myself in the presence of danger. I have never known anything else but danger in my lifetime. Nevertheless, for reasons that ought not to be questioned, the War Department has decided not to send me to the battlefronts. I will be sent in a few days to make the inspection trip to South America where, on account of background, culture and faith, I may be useful.

This letter is written to thank you. Without your help the offer would not have been made to me. I shall always be grateful to you.

If it is not too much trouble or if you can do it with propriety, please tell the President that I wish to be really useful. I want to help him and it seems to me that because of my background and experience, I am in a position to do so.

Would it not be possible, in addition to the military mission, for the President formally or informally to direct me to have conversations with the executive heads of the countries that I would visit in order to effect cordiality and learn about the status of political and economic conditions

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

CHAMBERS OF
JUSTICE FRANK MURPHY

-2-

among our good neighbors? The President could be confident that I would do it tactfully, that having been a Governor-General, I would carefully avoid impinging upon the authority or position of the various ambassadors and ministers.

Also, he could be confident that I would make no statement to the press such as some of his other world travelers have made. I simply want to gather information that will be carefully organized and reported to him while I am on the military mission. If he could give me a letter directing me to do this I am sure he would be glad about the result and it would be so helpful to me. I don't want to be entertained. I would decline all social efforts. I want to bring home to him facts that will help him shape his policy.

There are three other matters which I want to mention in this note. They are alien to the subject matter of this message, nevertheless they are important.

(1) Someone of tact, understanding and experience should be quietly watching the race situation in Detroit, Michigan.

(2) I do hope the President will stiffen up his labor policy in accordance with the letter which I recently left with him.

(3) It is most unfortunate that an ambassador has not been appointed to China. The absence of an effective ambassador in China has a significance that is anything but favorable to us in the oriental world.

All of the above is none of my business, but I shall be everlastingly his friend for that which he has done for me far above my just desserts. Accordingly, I want to get some of my thoughts to him in the hope they will be helpful.

Lincoln's stature grows each year for the many things

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

CHAMBERS OF
JUSTICE FRANK MURPHY

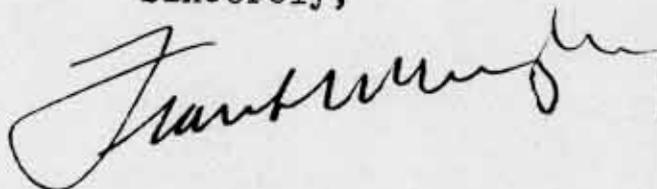
-3-

that he did. He had great spiritual qualities but not the least among the acts that made him a man of destiny were his many commutations of death sentences. Our benevolent President under the facts of the case would be acting wisely, as I see it, in commuting the death sentence of Max Stephan. He ought to be punished for what he did but not by hanging by the neck until dead.

It is futile for me to express my gratitude to you.

With every good wish,

Sincerely,



Miss Grace Tulley
The White House
Washington
D. C.

PSF, Supreme Court folder
4-43

August 4, 1943.

Dear Bill:-

It is grand to get that note of yours, and I am sorry not to have seen you before I left. Now I am getting six days fishing in the wilds of Canada, as I had not had a breath of air since Casablanca.

I am glad to get your thoughts on your part of the country. I think people everywhere are getting a better perspective, though I wish we had a little more sense of proportion in the newspapers.

Give my love to Mildred. If I had time a little later on I will try to see you both.

As ever yours,

FRANKLIN D. ROOSEVELT.

The signed original of this letter was sent to
Hon. Wm. O. Douglas at Lostine, Oregon, 8/6/43.
hm

Please check in our files and
see if this place is "Lostine, Oregon."
If so, please address and mail out.

G. G. T.

[1943]

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

Lostine, Ore
July 29th

Dear Mr. President -

I wanted to see you, before I left
I left for the west, to pay my respects. But
I hate to intrude on your busy schedule.
We are spending the summer mostly in
eastern Oregon, though I am going to the
Oregon Bar meeting in Portland Sept 3^d
& to the Federal Conference in Tucson Sept
9th + 10th. If there is anything I can do for
you while I am out here, do not hesitate to
call on me. Here are a few random observations:

- (1) Your talk the other night was grand. Lifting the ban on coffee had a wonderful effect on the people in the part of the country. It was like a bonus - an unexpected bonus.
- (2) Wheat + pea farmers + cattle + sheep men are going to need next year more new trucks + more new parts for trucks than are presently being allocated. This year they are just barely squeaking by with here.
- (3) I believe Hoyt who recently joined Elmer Davis seems to be doing a top job on the hill. I told Jimmie Byrnes that I believe Hoyt whom I know very well, would be a good man for his team.
- (4) Young Dawson I would of the I. E. C. seems to have done a grand job taking care

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

of the Commissioner's interests.

- (5) There is a lot more internationalism in the air out here than the average delegation seems to appreciate. And the people are pretty sensible about it & are practical & not merely sentimental.
- (6) The idea is still far too prevalent in these country districts that the army & navy fabricate news. For example, many of these folks think that

figures as to losses (e.g. Jay planes
versus u.s. planes) can't be trusted.
I told a prominent farmer down the valley
that news might be withheld but never
fabricated. His reply was "really?" I was
amazed.

(7) These folks out here are for you - and
for you for a fourth term. There can
be no doubt about it. There could be
no other choice. That's in their hearts.
They may throw out a Congressman
because of OPA or something else - but
not their commander in chief. Our cabin is a
mile high - not far from the main line of U.P.
on your next western swing I hope you can take it
over. as ever - Bill

PSF: Supreme Ct. Justice
file
Furness
4-44

THE WHITE HOUSE
WASHINGTON

March 14, 1944.

MEMORANDUM FOR

GENERAL GEORGE C. MARSHALL:

Mr. Justice Murphy sent word to me the other day that he was seeing a man who is on President Quezon's staff and who was asked to go back to Manila. He did this and has returned after having talked with Japanese generals from Mindanao to Manila.

Mr. Justice Murphy suggests that we send him to Mindanao or the lower part of the Philippines where he says he could easily get in by plane and where he feels he could get some encouragement and a good report to them.

F.D.R.

THE WHITE HOUSE
WASHINGTON

March 9, 1944.

MEMORANDUM FOR THE PRESIDENT:

Frank Murphy called me this morning and said a reporter from the Post asked to see him -- that it was very confidential and personal. When he came in to see him, he said he understood there was a deal between Barkley and Frank Murphy and one or two others about some new sort of a program. That it stems out to the fact that Barkley wanted to go on the Supreme Court and that at the same time Frank Murphy was to be made Secretary of War.

The reporter wanted to know what Frank Murphy knew about this. He said his people would like to know if Barkley's assault on the President was personal or whether it was something he felt deeply about and had convictions about and he asked Frank if there was anything to the story. Frank told him he could clarify it for him.

He told the reporter it was completely groundless; that he had not talked to Sen. Barkley and did not intend to and that no one could get him into any conversations which were not friendly to his great friend and benefactor -- meaning you.

Frank said he did ~~not~~ know that Barkley wanted to go on the Supreme Court, but that it had no connection with him. He did not tell the reporter this but he said he, himself, knew that Barkley was very much disappointed at the time Jimmy Byrnes went on the Supreme Court and felt that he deserved it. Frank seems to think he was piqued because he was not appointed. Barkley told friends at that time that he felt he had earned the Supreme Court appointment over and above Jimmy Byrnes. Frank says he does not know whether that was the cause of his explosion the other day or not.

THE WHITE HOUSE
WASHINGTON

- 2 -

Frank says there is to be a meeting of distinguished Catholics to be called here within the next two or three weeks. He has been asked to join. Msgr. Sheahan and others from the Midwest are to attend. No one has said that this was to be a meeting of any political significance. The meeting is presumably to talk about the prevention of destruction of religious and historic objects in the world and to prevent the atheistic movement abroad from coming into this country. Frank feels that they will probably find it has some first-class Republicans in back of it.

He feels that the Catholic press in this country is growing constantly hostile. He adds that you do not need him nor any other Catholics. He believes the majority of Catholics will be with you completely. He thinks this feeling is the natural irritability in wartime. He says it is the result of taxes, rationing, its certain personalities in Washington, etc. He feels it has very little to do with you and he is confident that you are stronger today than you ever have been before.

This afternoon he is seeing the man who is on President Quezon's staff and who was asked to go back to Manila. He did this and has returned after having talked with Japanese generals from Mindanao to Manila. Frank suggests you send him to Mindanao or the lower part of the Philippines where he could easily get in by plane and where he feels he could get some encouragement and a good report to them.

GGT

SECRET

WAR DEPARTMENT
THE CHIEF OF STAFF
WASHINGTON, D. C.

PSF: Supreme Court order 4-44

Grace
Break this to
Murphy

16 March 1944

file
Personal

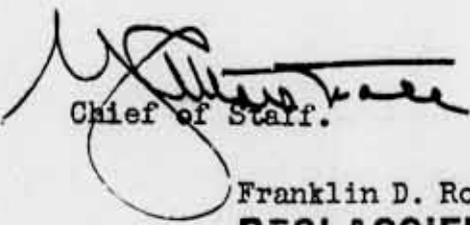
MEMORANDUM FOR THE PRESIDENT:

Your memorandum of March fourteenth presented Mr. Justice Murphy's suggestion that he enter Mindanao.

Due to our mounting successes in the Pacific the Japanese have become exceedingly sensitive regarding the security of the Philippines. They are engaged in a campaign to round up all leaders suspected of having anti-Japanese leanings and especially seek out Americans. The recent confinement of Roxas, Ozamiz and the Elizaldes are examples of this. As Mr. Justice Murphy is well known to most Filipinos, both loyal and traitor, we very probably could not prevent his presence in the Philippines from being known to the Japanese, which would result in a special effort to capture him.

We must at this time avoid focusing Japanese attention on the southern Philippines. Because of this as well as concern at placing Mr. Justice Murphy in undue jeopardy, I do not feel that the suggested visit would be wise.

However, in order to be sure that all possibilities are covered, I am taking the matter up with General MacArthur. Should advice from him indicate any change in the foregoing conclusion, I will so inform you.


Chief of Staff.

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DOD DIR. 5200.9 (9/27/58)

Date- 3-19-59

Signature- Carl L. Spicer

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(Sgd) G. C. MARSHALL

Chief of Staff.

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Return to originating office in War Dept.
showing action.