August 22, 1960

b7C [redacted]
Alhambra, California

Hon. Richard M. Nixon
c/o Mr. Charles K. McWhorter
Legislative Assistant
Office of the Vice President
Washington 25, D. C.

Dear Vice President Nixon:

Re: Connally Amendment — Loyalty Oath — SUPREME COURT

In regard to my letter of June 6, 1960, I am chagrined to have been fooled by Senator Johnson. I should have been cognizant of his voting record before making such a rash statement with regard to him. I have since learned his voting record is one point below Senator Kennedy's, which is very low. Also that he used his position as leader of the South to blackmail his way onto the ticket for Vice President (See signed AP article, publisher John S. Knight, of Knight Newspapers. Knight's statement is in regard to Johnson and the Vice Presidency, only.)

CONNALLY RESERVATION

The material you enclosed was helpful and interesting. However, I am not a politician and will not attempt to answer as such. I am concerned with the lack of leadership in our country. Leadership which would conserve and protect our country, not give it away inchmeal. I know you and I do not agree concerning the Connally Amendment, but surely you know that this sneak abandonment of the Connolly Reservation was instigated, in my opinion, by one or more persons in the State Department. "This whole back-door abandonment of the CONNALLY RESERVATION has been rushed through the Senate without debate and even without printed records for the Senators themselves." (Guardians Of Our American Heritage, July 1960, Vol. IX, No. 69). The vote on the protocol, the executive N of the Annex V, on compulsory settlement of disputes with regard to "The Law of the Sea" is still to be brought before the Senators. YOU SHOULD BE TAKING THE LEAD to inform the Senate the abandonment of the Connolly Reservation will mean the World Court could tell us, in effect, to vacate our Naval Base in Cuba; it could order the United States out of Panama; it could decide to whom the mineral deposits along our coast belong; it could control anything connected with the seas, including the territorial seas and contiguous zones. There cannot be a World Court in the true sense, until there is a common judicial denominator.

LOYALTY OATH

It seems to me the need of the Loyalty Oath has been very definitely

ENCLOSURE

proven by the events which occured in San Francisco. The RIOTS against the HCUA which were inspired and incited by communists, prefessors (300), and some students, AND IN WHICH MANY STUDENTS PARTICIPATED, were occurances which many Americans said could never happen here, BUT THEY HAVE HAPPENED. NO ONE CAN DENY IT. One of the participants was Evelyn Einstein, granddaughter of the late Albert Einstein. She was arrested the Friday of the rioting, and charged with disturbing the peace, rioting, and resisting arrest; she is a student at the University of California, and her father, Hans A. Einstein, is a California engineering professor. Was he one of the PROFESSORS inciting the students to riot? (Information regarding Einsteins, Los Angeles Times 5/16/60, Part I, p. 12). Linus Pauling is reported to have stepped out of the line of march to say to a reporter that he was there to lend his support to abolishment of the HCUA. It is believable since this same Linus Pauling, Professor at California Institute of Technology refused to tell the California Senate Investigating Committee on Education whether or not he was a Communist. Louis Budenz, former Communist and editor of The Daily Worker, testified under oath he was "officially advised" that Dr. Pauling "was a member of the Communist Party under discipline." He is still teaching at Caltech and says he believes Communists should be allowed to teach in our schools. (Information on Linus Pauling from FACTS IN EDUCATION, Inc., Vol. VIII, No. 3, May-June, 1960, p. 7). Now this OATH is a good and necessary provision (no need for me to repeat the OATH, as I am sure you know it) and it's only fault is the communists FEAR it because they can be convicted of perjury for making false statements, knowingly, while under oath. As for the cry the Oath is an invasion of intellectual freedom, that is ridiculous. That is part of the communist's TACTICS -- tell people their freedom is being invaded and the so called "intellectuals" immediately take up the hue and cry. ALL OF THE STUDENTS ARE NOT ASKED TO TAKE THE LOYALTY OATH, ONLY THOSE WHO DESIRE TO AVAIL THEMSELVES OF A SPECIAL PRIVILEGE PAID FOR BY THE AMERICAN TAXPAYERS. It seems to me it should be a privilege to swear allegiance to the United States of America and state one does not believe in or support any method for the overthrow of the Government of the United States. Are you going to turn our colleges over to the communists (21 prominent institutions, including Harvard, Yale, Princeton, the University of Chicago, Amherst College, the University of California, etc., have refused to participate in the student aid program because of the Oath). WHY? Participants are not asked to swear anything except allegiance to the U. S.; no one's belief is questioned, unless one is a member of an organization "which seeks to overthrow the government of the United States by illegal means." Perhaps the members of the House of Representatives will be more stalwart and keep the Amendments and Oaths that help protect our country.

DOCUMENTED Re CENSORING

SUPREME COURT

Another important consideration would be censoring the Supreme Court. In my opinion, beginning with, and since Roosevelt's time most decisions by the judges have been made in favor of communists or socializing our

country. When our Supreme Court approves teaching adultery, our country is not a "worn out and limping horse", (from your "Economic Growth Through Freedom") but a country being led and pushed along an ever more rapidly descending path to immorality, socialism, and oblivion. The path chosen for us by the Communists. This Supreme Court decision says it is proper and legal to teach adultery, the breaking of the marriage vows, because "It is an idea" and comes under the head of "Free Speech". The Court had previously ruled that it is legal to teach or advocate the overthrow of our Government because that also is just an "idea" and comes under the head of "Free Speech". (Information from Guardians of Our American Heritage, January 1960, Vol. IX, No. 63). Frank Wilkinson, cited for contempt of Congress, found guilty of contempt and sentenced to 12 months' imprisonment has appealed the conviction and the appeal is presently pending before the Supreme Court of the United States. (Read Communist Target - Youth, report by J. Edgar Hoover, published by the HCUA). If the Nine Justices follow their previous pattern they will hold him not guilty. When Earl Warren, the Chief Justice left Sacramento, he sealed all records from his office and ordered them to remain sealed for ten years after September, 1953. Such was the fear engendered by the man during his decade in the office as Governor of California, no one has dared countermand that order or to question its legality. (Human Events, Vol. XV, No. 1, January 6, 1958). Was there information as terrible and condemning to hide as that which the State Department of the United States has lent every effort to conceal from the public concerning Franklin D. Roosevelt's administration, and even Truman's? There are so many more subjects, but it would take a volume to list them all. However, be suspicious of every bill and study it carefully, and do NOT vote for party but for country. (If and when you have any time, read Skousen's THE NAKED COMMUNIST; Jordan's FROM MAJOR JORDAN'S DIARIES; McCarthy's AMERICA'S RETREAT FROM VICTORY; Barron's INSIDE THE STATE DEPARTMENT; Gordon's NINE MEN AGAINST AMERICA, as a starter.)

Sincerely,

b7C [redacted]

cc Hon. Barry Goldwater
Hon. Homer E. Capehart
Hon. August E. Johansen
Hon. E. W. Hiestand
Chief Justice, Earl Warren, copy of part re Supreme Court
Hon. Russell Long
Hon. Everett Dirksen
Mr. Dan Smoot
Hon. Strom Thurmond

September 9, 1960

REC-19 62-104401-374

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 9/23/94 BY [redacted]

[redacted]
Alhambra, California

Dear [redacted]

I have received your letter of August 29, 1960, with enclosure, and I want to take this opportunity to thank you for your kind remarks concerning this Bureau.

Enclosed is some material on the subject of communism which may be of interest to you.

Sincerely yours,

J. Edgar Hoover

MAILED 9
SEP - 9 1960
COMM-FBI

SEP 3 33 PM '60
FBI
READING ROOM

Enclosures (3)
Communist Illusion and Democratic Reality
March 1, 1960 LEB Intro and 17th Convention CP, USA
Expose of Soviet Espionage

NOTE: Bufiles contain no derogatory information regarding [redacted] and we have had no previous correspondence with her. Her enclosure consists of a rambling letter she sent to Vice President Nixon. It consists of her opinions concerning the Connally Reservation; her opinion as to why we should maintain the Loyalty Oath; and also her "documented" reasoning for censoring the Supreme Court.

She indicates that she is a member of the John Birch Society. Th John Birch Society was founded by Robert Welch in Indianapolis, Indiana

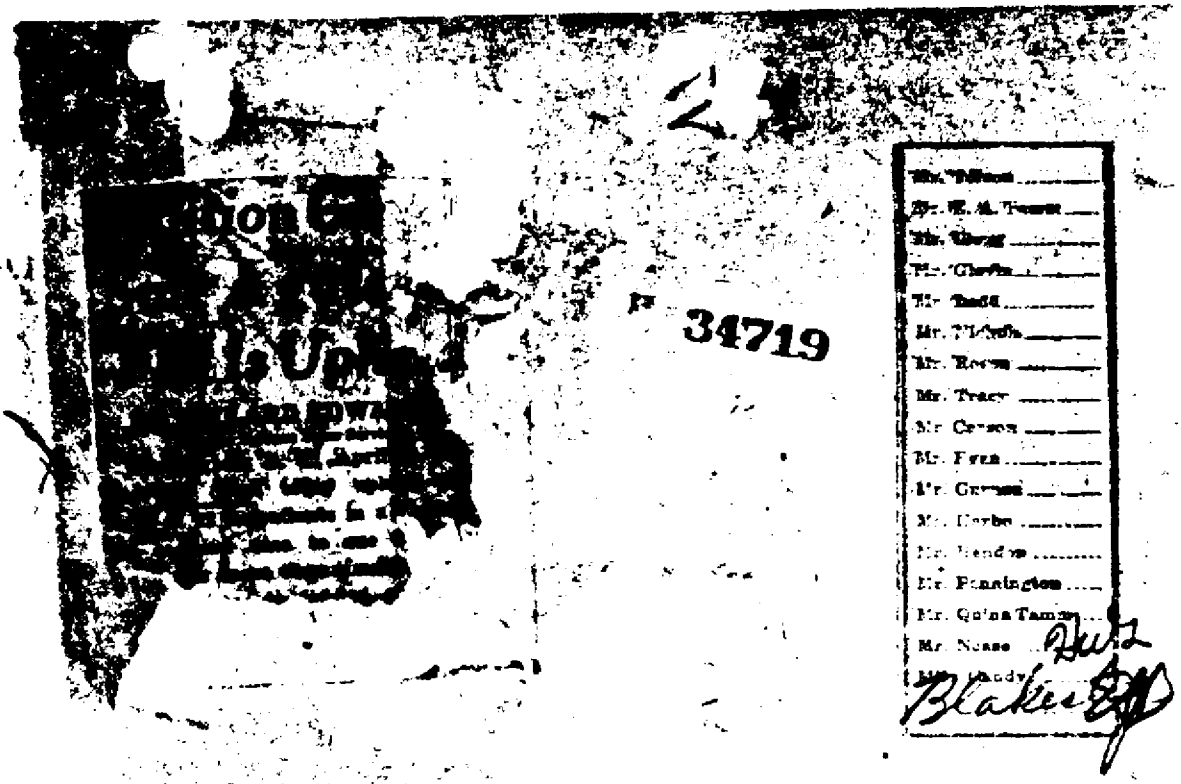
Note continued next page

Tolson
Mohr
Parsons
Belmont
Callahan
DeLoach
Malone
McGuire
Rosen
Tamm
Trotter
W.C. [illegible]
Tele. [illegible]
Ingram
Gandy

59 SEP 1 [redacted] (4)

MAIL ROOM ☐ TELETYPE UNIT ☐

in December, 1958. It is allegedly an anticommunist organization with branches over various parts of the country. Welch has been quite critical of President Eisenhower and his administration. SAC letter 60-5 calls this organization to the attention of the field and instructs them to forward any information regarding the society's activities to the Bureau. ~~We are now conducting an investigation of this organization.~~



P 34719

Mr. Tolson
Mr. E. A. Tamm
Mr. Glavin
Mr. Clegg
Mr. Todd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

Dec 2
Blake

INDEXED

65-2172

NOT RECORDED

87 MAY 15 1946

CHICAGO DAILY TRIBUNE

4/2/46

Best Copy Available

52 MAY 27 1946

Supreme Court Asked to Act In Kent Case

By the Associated Press

An effort to bring about the return to the United States of Tyler Kent, convicted in a British court of violating the British official war secrets act while a member of the American Embassy staff in London, was begun in the Supreme Court yesterday by Kent's mother, Mrs. Ann H. P. Kent of this city.

The effort was in the form of a motion for permission to file a petition for a writ of mandamus. Don M. Harlan of Detroit, attorney for Mrs. Kent, said the writ, if granted, would call on President Roosevelt to ascertain the causes for Kent's detention, and if he were wrongfully held, to demand his release. If the demand met with unreasonable delay, Harlan said, the President would be required to use "all acts short of acts of war" to effectuate the release.

Harlan said the petition questioned the right of the State Department to waive immunity for Kent. He contended that "the Constitution follows the flag," and that Kent was under the protection of the Constitution while employed as a clerk in the American Embassy.

In order to be released to the British, Harlan contended, Kent would have had to waive immunity in his own behalf with the consent of the United States Government.

Harlan also contended that Kent's imprisonment in Britain, in the light of the State Department's recent public announcement of the case, constituted a threat of double jeopardy for the same asserted offense.

Mrs. Kent said she was in frequent direct communication with her son. She said she had written him about "efforts to smear his character" in this country, and that he had replied that such actions demonstrated that United States authorities "fear the facts."

Mrs. Kent previously asserted the State Department's statement of the case left unanswered "the point on which the American people demand an investigation, i. e., the existence or nonexistence of secret prewar agreements made by the President without the advice and consent of the Senate." She stated her son was required to handle "secret agreements between Roosevelt and Prime Minister Churchill."

The Supreme Court will meet October 2 to open its new term.

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Baker
Mr. Carson
Mr. Hendon
Mr. Mumford
Mr. Jones
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

INDEXED 87-27[illegible]-A
NOT RECORDED
87 SEP 19 1944

This is a clipping from page 5 of the Washington Post of SEP 12 1944
Clipped at the Seat of Government.

U. S. Bureau of Investigation

Department of Justice

1206 Law & Finance Bldg.,
Pittsburgh, Pennsylvania.

RECEIVED
NOV 21 1932 AM

November 18, 1932

66-1134-4209
BUREAU OF INVESTIGATION
NOV 19 1932 A.M.
DIRECTOR Nolson TAMM

Director
United States Bureau of Investigation
Washington, D. C.

FEB 10 1933

Dear Sir:

With further reference to my letter dated October 31, 1932 in which I submitted suggestions for consideration with a view to improvement of the work of the Bureau, please consider, if possible, the following suggestions along the same line.

The writer recently read an opinion handed down by the United States Supreme Court on November 7, 1932 in the case entitled JACK GEBARDI and LOUISE ROLFE GEBARDI, Petitioners vs. the United States of America, in which it was held, in substance, that the Victim in that case was not guilty with JACK GEBARDI of conspicary to violate the White Slave Traffic Act, and it appeared that the opinion somewhat differed from the opinion expressed in the case of the United States vs. Holte, 236 U. S. 140, although Associate Supreme Court Justice Stone, in delivering the opinion in the Gebardi case, distinguished between the two cases.

Although this Agent did not make a brief of the opinion it is his recollection that in the GEBARDI case it was held that the Victim cannot be held guilty of conspiracy to violate the White Slave Traffic Act where she willingly accompanies the man from one state to another for immoral purposes, and it appeared to be the opinion of the Court that a female conspirator had to take an active and positive part in planning and causing the interstate transportation in order to be guilty of conspiracy to violate the act. The mere accompanying of a man from one state to another does not apparently constitute a violation of the law unless the woman takes an active part in causing the transportation, such as planning the trip or furnishing or assisting in furnishing the means of transportation.

a In view of the above opinion it is suggested that Section 9 of the Manual of Instructions be amended and that another paragraph be added to Paragraph 3 appearing on Page 5 of Section 9, to the effect that all possible evidence should be secured to corroborate the statements of the Subject and Victim and where it appears that the woman is equally guilty as the man, all evidence should be secured showing that the woman was also the active and moving spirit in causing the interstate transportation for immoral purposes.

b At the bottom of Page 5, it is suggested that the case of JACK GEBARDI and LOUISE ROLFE GEBARDI, Petitioners vs. the United States of America, be briefly cited.

c It is further suggested that following the first paragraph on Page 6 of Section 9 of the Manual of Instructions, that Sub-section E be added to the effect that all possible evidence should be secured to show whether the Victim entered into a conspiracy with the man to violate the White Slave Traffic Act and also whether she furnished or assisted in furnishing the means of transportation and took an active part in the violation of the act.

Very truly yours,

[redacted]

b1c [redacted]

Special Agent

JOHN EDGAR HOOVER
DIRECTOR

HHC:RG

Mr. Nathan
Mr. Tolson
Mr. Edwards
Mr. Clegg

U. S. Bureau of Investigation

Department of Justice

Washington, D. C.

Suggestion #90 January 16, 1933.

[redacted] Special Agent.

MEMORANDUM FOR THE DIRECTOR

(A) Employee suggests that since a recent decision of the Supreme Court in the case entitled JACK GEBARDI, et al, Vs. the United States has been handed down, that there should be a change in the manual, incorporating the gist of the holding in this case under the heading, "White Slave Traffic Act", in the Manual of Instructions.

The committee has already passed favorably upon a similar recommendation.

(B) Employee suggests that the GEBARDI case be cited at the bottom of page 5 of the White Slave Traffic Act Section of the Manual of Instructions.

The committee has recommended favorably with reference to a suggestion which would include this information in the manual.

(C) Employee suggests that the White Slave Traffic Act Section of the Manual of Instructions be amended to provide that all possible evidence should be secured to show whether the victim entered into a conspiracy with the man to violate the White Slave Traffic Act, and also whether she furnished or assisted in furnishing means of transportation, or took an active part in violation of the act.

Due to the fact that the Manual of Instructions is suggestive in its manner, the citation of the above case, together with the requirements of the case for investigative action, would appear to be sufficient.

RECORDED
FEB 10 1933

66-1934-42

BUREAU OF INVESTIGATION
FEB 7 1933

Respectfully,

C. A. TOLSON.

H. H. CLEGG.

J. M. KEITH

NATHAN TOLSON FILE

EDGAR HOOVER
DIRECTOR

CC-287

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Harbo
Mr. Hendon
Mr. McGuire
Mr. Mumford
Mr. Piper
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Beahm
Miss Gandy

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

JKM:BK

June 28, 1943

MEMORANDUM FOR MR. E. A. TAMM

The attached sheet covers a call June 28, 1943 from Assistant Director H. H. Clegg to Assistant Director A. Rosen concerning the handling by the Department of a memorandum from the Director relative to Federal Judge E. Y. Webb, Western District of North Carolina, who is decidedly out of line in comparison with other judges in imposing sentences, and Mr. Clegg's recommendations, first, that such matters should be sent to the Administrative Office of the Supreme Court rather than to the Department and, second, that if the Department is advised, suggestions be made to them as to what action they should take.

The memorandum to which Mr. Clegg referred was sent to the Attorney General on June 3, 1943, (66-8054-8-24) outlining Judge Webb's leniency, pointing out the results to the Bureau's operations, and concluded: "I thought I should bring the above situation to your attention for any action that you deem advisable."

I believe the action taken in this case was the proper one. It is certainly not the function of the FBI as an investigative and law enforcement agency to bring such a situation directly to the attention of the Supreme Court. Such action would be a complete contradiction to our long established policy of impartiality and divorcement from judicial or administrative decisions and recommendations. Furthermore, I do not believe it is the Director's responsibility to suggest or recommend to the Attorney General what action he should take in such a situation. A matter such as this is purely one of policy for which the responsibility is his, and the Bureau, I believe, would be more apt to be embarrassed by the improper execution of its suggestions with no opportunity for protest than to leave such matters in the hands of the Attorney General as they should be.

Respectfully,

D. M. Ladd

Attachment

JUL 8

RECORDED & INDEXED

EX

Mr. Clegg called and advised that U.S.A. Theron LaMarr Caudle, being considered as a possible successor to Judge Webb when he dies, was in receipt of a letter from Asst. A-G Wendell Berge. Attached to the letter from Berge was a memorandum to Mr. Berge signed by Mr. Hoover, pointing out that in some kinds of cases, for example, Selective Service, Judge Webb imposes sentences that are all out of keeping with the seriousness of the offense, he was too light, mild mannered, etc, and assumes a grandfatherly interest. Mr. Berge had sent it down with the request that Caudle make any observations and comment which appeared appropriate.

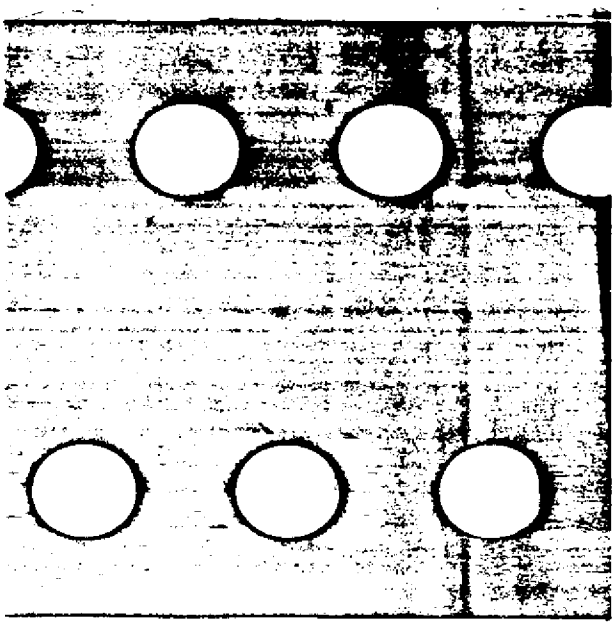
Mr. Clegg ran into Caudle when he, Caudle, was on his way over to see Judge Webb to show him the letter from Mr. Hoover. Mr. Clegg requested that he not do it inasmuch as it was Judge Webb's business to give out sentences in Selective Service cases and it would make any Agent who had to appear before Judge Webb in the future very unhappy as to what Judge Webb would probably say.

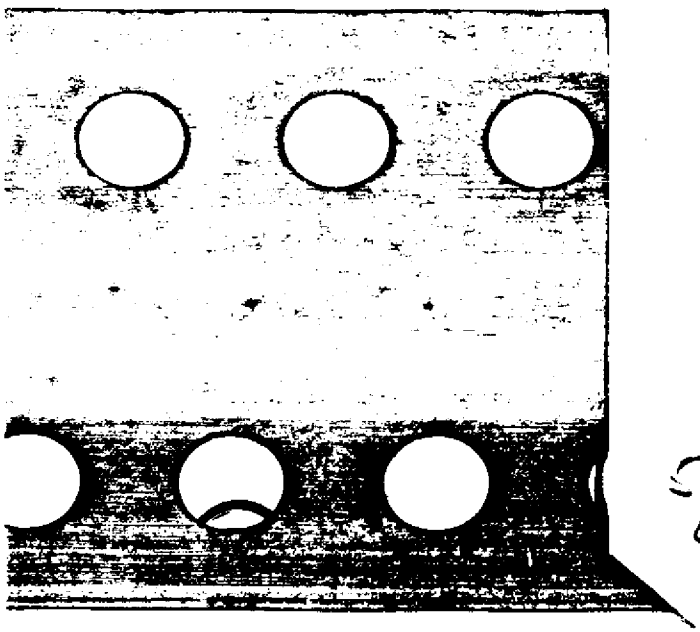
Mr. Clegg advised he felt the memorandum should have been sent to the Administrative Office of the Supreme Court where it could have been summarized and given to the Judge, and at the next conference of Judges in that territory the presiding Judge could have a general discourse upon the imposition of sentences, and not mention the FBI complaint.

Mr. Clegg suggested that probably we should not forego sending such matters to the Department but we should also include in the memorandum our suggestion for their guidance as to what they should do with it.

66-8054-342

ENCLOSURE





OFFICE OF DIRECTOR
DIVISION OF INVESTIGATION

EAT:HCB

June 11, 1934.

MEMORANDUM FOR THE DIRECTOR

I have reviewed the attached decisions handed down by the Supreme Court, and with one exception have noted therein nothing of interest to the Division. The one exception is the decision handed down in the case entitled Margaret Shea Lynch against the United States and Sam Wilner against the United States. In these cases the United States demurred to the petition filed in a War Risk Insurance case on the ground that the Court was without jurisdiction to entertain the suit because the consent of the United States to be sued had been withdrawn by the Act of March 20, 1933, Clause 3, 48, Statute 9, commonly called the Economy Act. The Lower Courts sustained the demurrers, their judgments being affirmed by the Circuit Court of Appeals. The Supreme Court reversed the decision. Supervisor Lott, handling War Risk Insurance cases, will prepare a bulletin or form letter to all field offices as soon as Mr. Beardslee has submitted information relative to the probable practical effect of this decision upon pending War Risk Insurance Litigation.

RECORDED & INDEXED

JUN 13 1934

Respectfully,

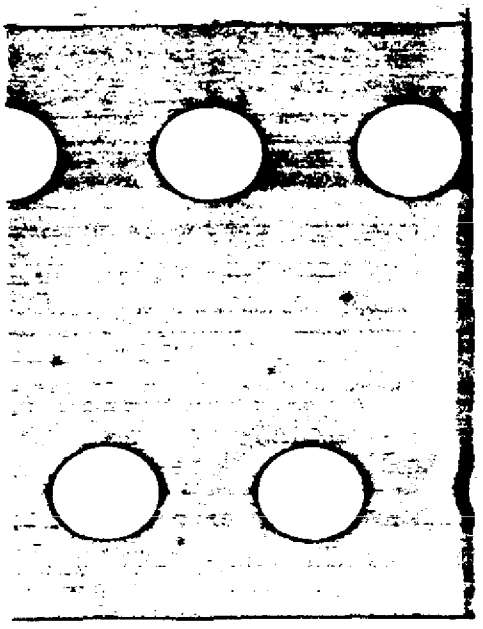
5 Incl.

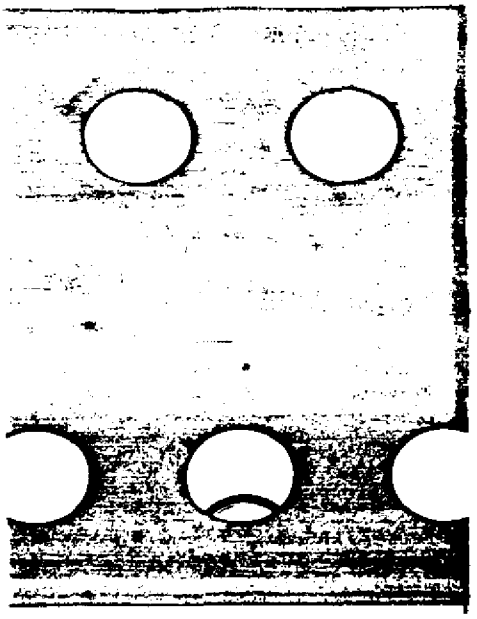
62-1-162

12 1934 P.M.

FILE

TAMM TOLSON





SUPREME COURT OF THE UNITED STATES.

Nos. 855 and 861.—October Term, 1933.

855 Margaret Shea Lynch, Petitioner, *vs.* United States of America. } On Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

861 Sam Wilner, Petitioner, *vs.* United States of America. } On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 4, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

These cases, which are here on certiorari, present for decision the same question. In each, the plaintiff is the beneficiary under a policy for yearly renewable term insurance[1] issued during the World War pursuant to the War Risk Insurance Act of October 6, 1917, c. 105, Article IV, §§ 400-405. The actions were brought in April, 1933, in federal district courts to recover amounts alleged to be due. In each case it is alleged that the insured had, before September 1, 1919 and while the policy was in force, been totally and permanently disabled; that he was entitled to compensation sufficient to pay the premiums on the policy until it matured by death; that no compensation had ever been paid; that the claim for payment was presented by the beneficiary after the death of the insured; that payment was refused; and that thereby the disagreement arose which the law makes a condition precedent to the right to bring suit. In No. 855, which comes here from the Fifth Circuit, the insured died November 27, 1924. In No. 861, which

[1]Section 404 provides: "That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two, and into other usual forms of insurance. . . ."

comes here from the Seventh Circuit, the insured died May 15, 1929.

In each case, the United States demurred to the petition on the ground that the court was without jurisdiction to entertain the suit, because the consent of the United States to be sued had been withdrawn by the Act of March 20, 1933, c. 3, 48 Stat. 9, commonly called the Economy Act.

The plaintiffs duly claimed that the Act deprived them of property without due process of law in violation of the Fifth Amendment. The district courts overruled the objection; sustained the demurrers and dismissed the complaints. Their judgments were affirmed by the circuit courts of appeals. 67 F. (2d) 490; 68 F. (2d) 442. The only question requiring serious consideration relates to the construction and effect to be given to the clause of § 17 of the Economy Act upon which the Government relies; for the character and incidents of War Risk Insurance and the applicable rules of constitutional law have been settled by decisions of this Court. The clause in question is:

". . . all laws granting or pertaining to yearly renewable term insurance are hereby repealed . . . ."

First. War Risk Insurance policies are contracts of the United States. As consideration for the Government's obligation, the insured paid prescribed monthly premiums. *White* v. *United States,* 270 U. S. 175, 180. True, these contracts, unlike others, were not entered into by the United States for a business purpose. The policies granted insurance against death or total disability without medical examination, at net premium rates based on the American Experience Table of Mortality, and three and one-half per cent interest, the United States bearing both the whole expense of administration and the excess mortality and disability cost resulting from the hazards of war. In order to effect a benevolent purpose heavy burdens were assumed by the Government.[2] But

[2]The disbursements to June 30, 1933, for term and automatic insurance (the latter provided for those who were permanently and totally disabled or who died within 120 days after entrance into the service and before making application for term insurance) exceeded the premium receipts by $1,166,939,057. Administrator of Veterans' Affairs, Report for Year 1933, p. 28. The annual cost of administration was estimated at $1,744,038.56. Report of United States Veterans' Bureau for 1922, p. 465. War Risk Insurance was devised in the hope that it would, in large measure, avoid the necessity of granting pensions. Term insurance was issued at a very low premium rate. Over 4,684,000 persons applied before the armistice to the amount of about $40,000,000,000 for War Risk term insurance; but over 75 per cent of the men who carried term insurance while in the service never paid a premium after the war. See Report of Bureau of War Risk Insurance for 1920, pp. 5, 7, 41; Report of United States Veterans' Bureau for 1922, p. 456; for 1925, p. 268.

the policies, although not entered into for gain, are legal obligations of the same dignity as other contracts of the United States and possess the same legal incidents.

War Risk Insurance, while resembling in benevolent purpose pensions, compensation allowances, hospital and other privileges accorded to former members of the army and navy or their dependents, differs from them fundamentally in legal incidents. Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *United States* v. *Teller,* 107 U. S. 64, 68; *Frisbie* v. *United States,* 157 U. S. 160, 166; *United States* v. *Cook,* 257 U. S. 523, 527. On the other hand War Risk policies, being contracts, are property and create vested rights. The terms of these contracts are to be found in part in the policy, in part in the statutes under which they are issued and the regulations promulgated thereunder.

In order to promote efficiency in administration and justice in the distribution of War Risk Insurance benefits, the Administration was given power to prescribe the form of policies and to make regulations. The form prescribed provided that the policy should be subject to all amendments to the original Act, to all regulations then in force or thereafter adopted. Within certain limits of application this form was deemed authorized by the Act, *United States* v. *White,* 270 U. S. 175, 180, and, as held in that case, one whose vested rights were not thereby disturbed could not complain of subsequent legislation affecting the terms of the policy. Such legislation has been frequent.[3] Moreover, from time to time, privileges

[3]Extension of class of beneficiaries: Acts of June 25, 1918, c. 104, § 2, 40 Stat. 609; Dec. 24, 1919, c. 16, §§ 2, 3, 4, 13, 41 Stat. 371, 375; Aug. 9, 1921, c. 57, § 23, 42 Stat. 147, 155; May 29, 1928, c. 875, § 13, 45 Stat. 964, 967. Upheld: White v. United States, 270 U. S. 175.

Payment where beneficiary dies before exhaustion of policy: e. g., Dec. 24, 1919, c. 16, §§ 15, 16, 41 Stat. 371, 376; Aug. 9, 1921, c. 57, § 26, 42 Stat. 147, 156; June 7, 1924, c. 320, § 26, 43 Stat. 607, 614.

Payment where beneficiary incompetent: e. g., Dec. 24, 1919, c. 16, § 5, 41 Stat. 371; Mar. 2, 1923, c. 173, § 1, 42 Stat. 1374; July 2, 1926, c. 723, § 2, 44 Stat. 790, 791.

granted were voluntarily enlarged and new ones were given by the Government.[4] But no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress; and none could be given by any regulation promulgated by the Administrator. Prior to the Economy Act, no attempt was made to lessen the obligation of the Government.[5] Then, Congress, by a clause of thirteen words included in a very long section dealing with gratuities, repealed "all laws granting or pertaining to yearly renewable term insurance". The repeal, if valid, abrogated outstanding contracts; and relieved the United States from liability on the contracts without making compensation to the beneficiaries.

Second. The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United

[4]Reinstatement of lapsed policies: Aug. 9, 1921, c. 57, § 27, 42 Stat. 147, 156; Mar. 4, 1923, c. 291, § 7, 42 Stat. 1521, 1525; July 2, 1926, c. 723, §§ 15, 17, 44 Stat. 790, 799, 800.

Liability undertaken on certain policies which have lapsed through failure of payment of premiums, been cancelled by surrender or estoppel of later contract: e. g., Dec. 24, 1919, c. 16, § 12, 41 Stat. 371, 374; Aug. 9, 1921, c. 57, § 27, 42 Stat. 147, 156; July 3, 1930, c. 849, § 24, 46 Stat. 991, 1001.

Incontestability in favor of insured: Aug. 9, 1921, c. 57, § 30, 42 Stat. 147, 157; July 3, 1930, c. 849, § 24, 46 Stat. 499, 1001.

Administration may waive time for premium payment, grant various tolerances: Aug. 9, 1921, c. 57, §§ 24, 28, 42 Stat. 147, 155, 157; Mar. 4, 1923, 291, § 8, 42 Stat. 1521, 1526.

Proceeds exempted from taxation: June 25, 1918, c. 104, § 2, 40 Stat. 609.

The War Risk Insurance Act provided for the conversion of yearly renewable term insurance into level premium insurance at any time within five years from the date of the termination of the war; and The World's War Veterans' Act of June 7, 1924, c. 320, § 304, 43 Stat. 607, 625, provided that all yearly renewable term insurance should cease on July 2, 1926. But provision for extending the period for conversion and for reinstatement were made by later statutes and by regulations issued thereunder; June 2, 1926, c. 449, 44 Stat. 686; May 29, 1928, c. 875, § 14, 45 Stat. 964, 968; July 3, 1930, c. 849, § 22, 46 Stat. 991, 1001; June 24, 1932, c. 276, 47 Stat. 334. See Reports of United States Veterans' Bureau for 1926, pp. 54-56; for 1927, pp. 23-25; Reports of Administrator of Veterans' Affairs for 1931, p. 32; for 1932, p. 42; for 1933, p. 28.

[5]But compare Acts of June 25, 1918, c. 104, § 2, 40 Stat. 609; Aug. 9, 1921, c. 57, § 15, 42 Stat. 147, 152; March 4, 1923, c. 291, § 1, 42 Stat. 1521; March 4, 1925, c. 553, § 3, 43 Stat. 1302, 1303.

States arising out of a contract with it are protected by the Fifth Amendment. *United States* v. *Central Pacific R. Co.*, 118 U. S. 235, 238; *United States* v. *Northern Pacific Ry. Co.*, 256 U. S. 51, 64, 67. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals.[6] That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power.[7]

The Solicitor General does not suggest either in brief or argument, that there were supervening conditions which authorized Congress to abrogate these contracts in the exercise of the police or any other power. The title of the Act of March 20, 1933, repels any such suggestion. Although popularly known as the Economy Act, it is entitled an "Act to maintain the credit of the United States". Punctilious fulfilment of contractual obligations is essention to the maintenance of the credit of public as well as private debtors. No doubt there was in March, 1933, great need of economy. In the administration of all government business economy had become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation,

[6]Compare United States *v.* Bank of the Metropolis, 15 Pet. 377, 392; The Floyd Acceptances, 7 Wall. 666, 675; Garrison *v.* United States, 7 Wall. 688, 690; Smoot's Case, 15 Wall. 36, 47; Vermilye *v.* Adams Express Co., 21 Wall. 138, 144; Cooke *v.* United States, 91 U. S. 389, 396; United States *v.* Smith, 94 U. S. 214, 217; Hollerbach *v.* United States, 233 U. S. 165, 171; Reading Steel Casting Co. *v.* United States, 268 U. S. 186, 188; United States *v.* National Exchange Bank, 270 U. S. 527, 534.

[7]Compare Lottery Case, 188 U. S. 321; Hipolite Egg Co. *v.* United States, 220 U. S. 45, 58; Hoke *v.* United States, 227 U. S. 308, 323; Hamilton *v.* Kentucky Distilling & Warehouse Co., 251 U. S. 146; Calhoun *v.* Massie, 253 U. S. 170, 175. Compare Home Building & Loan Association *v.* Blaisdell, 290 U. S. 398, 430.

with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." *The Sinking Fund Cases,* 99 U. S. 700, 719.

Third. Contracts between individuals or corporations are impaired within the meaning of the Constitution whenever the right to enforce them by legal process is taken away or materially lessened.[8] A different rule prevails in respect to contracts of sovereigns. Compare *Principality of Monaco* v. *Mississippi,* decided May 21, 1934. "The contracts between a Nation and an individual are only binding on the conscience of the sovereign and have no pretensions to compulsive force. They confer no right of action dependent of the sovereign will."[9] The rule that the United States may not be sued without its consent is all embracing.

In establishing the system of War Risk Insurance, Congress vested in its administrative agency broad power in making determinations of essential facts—power similar to that exercised in respect to pensions, compensation, allowances and other gratuitous privileges provided for veterans and their dependents. But while the statutes granting gratuities contain no specific provision for suits against the United States,[10] Congress, as if to emphasize the contractual obligation assumed by the United States when issuing War Risk policies, conferred upon beneficiaries substantially the same legal remedy which beneficiaries enjoy under policies issued by private corporations. The original Act provided in § 405:

"That in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides."[11]

Although consent to sue was thus given when the policy issued, Congress retained power to withdraw the consent at any

[8]See Worthen Co. *v.* Thomas, No. 856, decided May 28, 1934; and cases cited by Mr. Justice Sutherland in Home Building & Loan Association *v.* Blaisdell, 290 U. S. 398, —.

[9]Hamilton, The Federalist, No. 81.

[10]See Sixth, *infra,* p. 11.

[11]The provision for suit was later modified. See World War Veterans' Act 1924, § 19, as amended by Act of July 3, 1930, c. 849, 46 Stat. 991, 992, under which these suits were brought.

time. For consent to sue the United States is a privilege accorded; not the grant of a property right protected by the Fifth Amendment. The consent may be withdrawn, although given after much deliberation and for a pecuniary consideration. *DeGroot* v. *United States,* 5 Wall. 419, 432. Compare *Darrington* v. *State Bank,* 13 How. 12, 17; *Beers* v. *Arkansas,* 20 How. 527-529; *Gordon* v. *United States,* 7 Wall. 188, 195; *Railroad Company* v. *Tennessee,* 101 U. S. 337; *Railroad Commission* v. *Alabama,* 101 U. S. 832; *In re Ayers,* 123 U. S. 443, 505; *Hans* v. *Louisiana,* 134 U. S. 1, 17; *Baltzer* v. *North Carolina,* 161 U. S. 240; *Baltzer & Taaks* v. *North Carolina,* 161 U. S. 246.[12] The sovereign's immunity from suit exists whatever the character of the proceeding or the source of the right sought to be enforced. It applies alike to causes of action arising under acts of Congress, *DeGroot* v. *United States,* 5 Wall. 419, 431; *United States* v. *Babcock,* 250 U. S. 328, 331; and to those arising from some violation of rights conferred upon the citizen by the Constitution, *Schillinger* v. *United States,* 155 U. S. 163, 166, 168. The character of the cause of action—the fact that it is in contract as distinguished from tort—may be important in determining (as under the Tucker Act) whether consent to sue was given. Otherwise, it is of no significance. For immunity from suit is an attribute of sovereignty which may not be bartered away.

Mere withdrawal of consent to sue on policies for yearly renewable term insurance would not imply repudiation. When the United States creates rights in individuals against itself, it is under no obligation to provide a remedy through the courts. *United States* v. *Babcock,* 250 U. S. 328, 331. It may limit the individual to administrative remedies. *Tutun* v. *United States,* 270 U. S. 568, 576. And withdrawal of all remedy, administrative as well as legal, would not necessarily imply repudiation. So long as the contractual obligation is recognized, Congress may direct its fulfilment without the interposition of either a court or an administrative tribunal.

Fourth. The question requiring decision is, therefore, whether in repealing "all laws granting or pertaining to yearly renewable term insurance" Congress aimed at the right or merely at the remedy. It seems clear that it intended to take away the right;

[12]Compare also Imhoff-Berg Silk Dyeing Co. *v.* United States, 43 F. (2d) 836, 841; Synthetics Patent Co. *v.* Sutherland, 22 F. (2d) 491, 494; Kogler *v.* Miller, 288 Fed. 806.

and that Congress did not intend to preserve the right and merely withdraw consent to sue the United States.[13] As Congress took away the contractual right it had no occasion to provide for withdrawal of the remedy. Moreover, it appears both from the language of the repealing clause and from the context of § 17 that Congress did not aim at the remedy. The clause makes no mention of consent to sue. The consent to sue had been given originally by § 405 of the Act of 1917, which, like the later substituted sections, applied to all kinds of insurance, making no specific reference to yearly renewable term policies. Obviously, Congress did not intend to repeal generally the section providing for suits.[14] For in March 1933, most of the policies then outstanding were "converted" policies, in no way affected by the Economy Act.[15]

That Congress sought to take away the right of beneficiaries of yearly renewable term policies and not to withdraw their privilege to sue the United States, appears, also, from an examination of the other provisions of § 17. The section reads:

"All public laws granting medical or hospital treatment, domiciliary care, compensation and other allowances, pensions, disability allowance, or retirement pay to veterans and the dependents of veterans of the Spanish-American War, including the Boxer Rebellion and the Philippine Insurrection, and the World War, or to former members of the military and naval service for injury or disease incurred or aggravated in the line of duty in the military or naval service (except so far as they relate to persons who served prior to the Spanish-American War and to the dependents of such persons, and the retirement of officers and enlisted men of the Regular Army, Navy, Marine Corps, or Coast Guard) are hereby repealed, and all laws granting or pertaining to yearly renewable term insurance are hereby repealed, but payments in accordance with such laws shall continue to the last day of the third calendar month following the month during which this Act is enacted."[16]

[13] Veteran Regulation No. 8, promulgated March 31, 1933, pursuant to this Act provides: "V. Except as stated above [matter not here relevant] no payment may hereafter be made under contracts of yearly renewable term insurance (including automatic insurance) and all pending claims or claims hereafter filed for such benefits shall be disallowed."

[14] See Note 11.

[15] The number of "converted policies in force June 30, 1933, was 616,069. Administrator of Veterans' Affairs, Report for 1933, pp. 25, 27.

[16] The rest of the section is as follows:

"The Administration of Veterans' Affairs under the general direction of the President shall immediately cause to be reviewed all allowed claims under the above referred to laws and where a person is found entitled under this Act, authorize payment or allowance of benefits in accordance with the provisions of this Act commencing with first day of the fourth calendar month following the month during which this Act is enacted and notwithstanding the provisions of section 9 of this Act, no further claim in such cases shall be required. *Provided*, That nothing contained in this Section shall interfere with payments heretofore made or hereafter to be made under contracts of yearly renewable term insurance which have matured prior to the date of the enactment of this Act and under which payments have been commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending: *Provided further*, That subject to such regulations as the President may prescribe, allowances may be granted for burial and funeral expenses and transportation of bodies (including preparation of the bodies) of deceased veterans of any war to the places of burial thereof in a sum not to exceed $107 in any one case.

"The provisions of this title shall not apply to compensation or pension (except as to rates, time of entry into active service and special statutory allowances) being paid to veterans disabled, or dependents of veterans who died, as the result of disease or injury directly connected with active military or naval service (without benefit of statutory or regulatory presumption of service connection) pursuant to the provisions of the laws in effect on the date of enactment of this Act. The term 'compensation or pensions' as used in this paragraph shall not be construed to include emergency officer's retired pay referred to in section 10 of this title."

That section deals principally with the many grants of gratuities to veterans and dependents of veterans. Congress apparently assumed that there was no difference between the legal status of these gratuities and the outstanding contracts for yearly renewable term insurance. It used in respect to both classes of benevolences the substantially same phrase. It repealed "all public laws" relating to the several categories of gratuities; and it repealed "all laws granting or petraining to" such insurance. No right to sue the United States on any of these gratuities had been granted in the several statutes conferring them; and the right to the gratuity might be withdrawn at any time. The dominant intention was obviously to abolish rights, not remedies.

That Congress intended to take away the right under outstanding yearly renewable term policies, and was not concerned with the consent to sue the United States thereon, appears also from the saving clauses in § 17. These provide that "all allowed claims under the above referred to laws" are to be reviewed and the benefits are to be paid "where a person is found entitled under this Act"; and that "nothing contained in this section shall interfere

with payments to be made under contracts of yearly renewable term insurance under which payments have commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending." That is, the rights under certain yearly renewable term policies are excepted from the general repealing clause.[17]

Fifth. There is a suggestion that although, in repealing all laws "granting or pertaining to yearly renewable term insurance", Congress intended to take away the contractual right, it also intended to take away the remedy; that since it had power to take away the remedy, the statute should be given effect to that extent, even if void insofar as it purported to take away the contractual right. The suggestion is at war with settled rules of construction. It is true that a statute bad in part is not necessarily void in its entirety. A provision within the legislative power may be allowed to stand if it is separable from the bad. But no provision however unobjectionable in itself, can stand unless it appears both that, standing alone, the provision can be given legal effect and that the legislature intended the unobjectionable provision to stand in case other provisions held bad should fall. *Dorchy* v. *Kansas*, 264 U. S. 286, 288, 290. Here, both those essentials are absent. There is no separate provision in § 17 dealing with the remedy; and it does not appear that Congress wished to deny the remedy if the repeal of the contractual right was held void under the Fifth Amendment.

War Risk Insurance and the war gratuities were enjoyed, in the main, by the same classes of persons; and were administered by the same governmental agency. In respect of both, Congress had theretofore expressed its benevolent purpose perhaps more generously than would have been warranted in 1933 by the financial condition of the Nation. When it became advisable to reduce the Nation's existing expenditures, the two classes of benevolences were associated in the minds of the legislators; and it was natural that they should have wished to subject both to the same treatment. But it is not to be assumed that Congress would have resorted to the device of withdrawing the legal remedy from beneficiaries of outstanding yearly renewable term policies if it had realized that these had contractual rights. It is, at least, as probable that Congress overlooked the fundamental difference in legal

[17]Compare Veteran Regulation No. 8, March 31, 1933.

incidents between the two classes of benevolences dealt with in § 17 as that it wished to evade payment of the Nation's legal obligations.

Sixth. The judgments below appear to have been based, in the main, not on § 17 of the Economy Act, but on § 5 which provides:

"All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

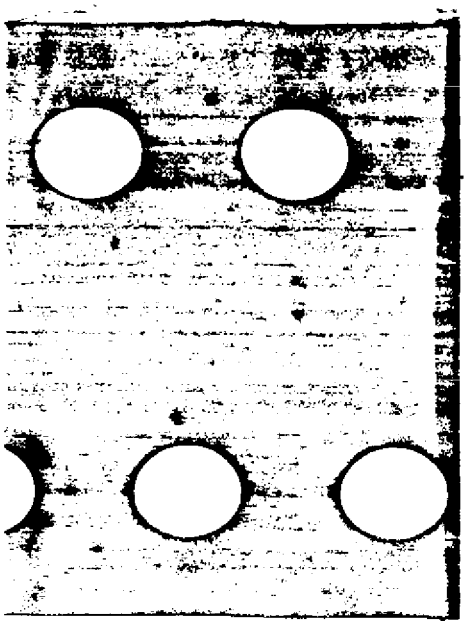
This section, as the Solicitor General concedes, does not relate to War Risk Insurance. It concerns only grants to veterans and their dependents—to pensions, compensation allowances and special privileges all of which are gratuities. The purpose of the section appears to have been to remove the possibility of judicial relief in that class of cases even under the special circumstances suggested in *Crouch* v. *United States*, 266 U. S. 180; *Silberschein* v. *United States*, 266 U. S. 221; *United States* v. *Williams*, 278 U. S. 255; *Smith* v. *United States*, 57 (2d) 998. Compare *United States* v. *Meadows*, 281 U. S. 271.

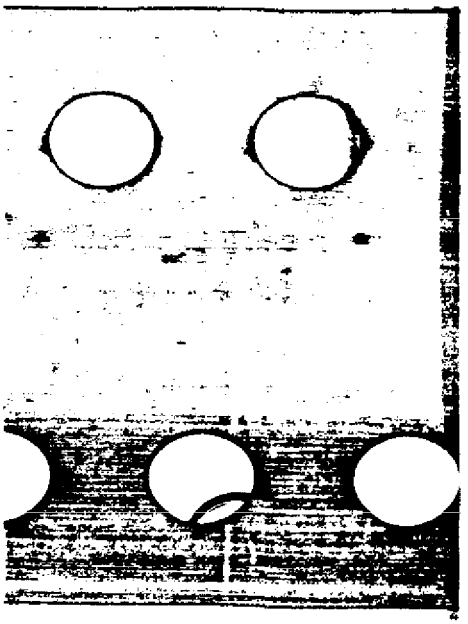
Seventh. The Solicitor General concedes that in No. 861 no question is presented except that of jurisdiction dependent upon the construction of the clause in § 17 of the Economy Act discussed above. He contends in No. 855, that if jurisdiction is entertained, the demurrer should be sustained on the ground that the complaint fails to set forth a good cause of action, since it fails to show that the suit was brought within the period allowed by law. This alleged defect was not pleaded or brought to the attention of either of the courts below. Nor was it brought by the Solicitor General to the attention of this Court when opposing the petition for a writ of certiorari. We do not pass upon that question, which like others relating to the merits, will be open for consideration by the lower courts upon the remand.

Eighth. Mention should be made of legislation by Congress enacted since the commencement of these suits.

1. Act of June 16, 1933, c. 101, § 20, 48 Stat. 309 provides:

"Notwithstanding the provisions of Section 17, title I, Public Numbered 2, Seventy-third Congress, any claim for yearly renewable term insurance on which premiums were paid to the date of the death of the insured . . . under the provisions of law repealed by said section 17 wherein claim was duly filed prior to





March 20, 1933, may be adjudicated by the Veterans' Administration on the proofs and evidence received by Veterans' Administration prior to March 20, 1933, and any person found entitled to the benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws. . . ."

2. Section 35 of the Independent Offices Appropriation Act of 1935, passed on March 27-28, 1934, over the President's veto, provides:

"That notwithstanding the provisions of Section 17 of title I, of an Act entitled "An Act to maintain the Credit of the United States Government" approved March 20, 1933 and Section 20 of an Act entitled "An Act making appropriations for the Executive offices, etc. . . ." approved June 16, 1933; any claim for renewable term insurance under the provisions of laws repealed by Section 17, wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws."[18]

The provision in the Act of June 16, 1933, which was enacted before the entry of judgments by the district courts, does not appear to have been considered by the lower courts. The provision in the Act of March 27-28, 1934, was enacted after the filing in this Court of the petitions for certiorari but before the writs were granted. As neither of these Acts was referred to by the Solicitor General or by counsel for the petitioners, we assume that there is nothing in them, or in any action taken thereunder, which should affect the disposition of the cases now before us. Any such matter also will be open for consideration by the lower courts upon the remand.

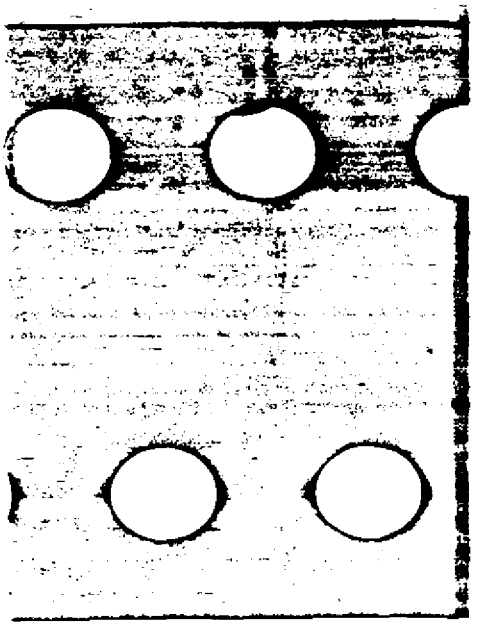
Reversed.

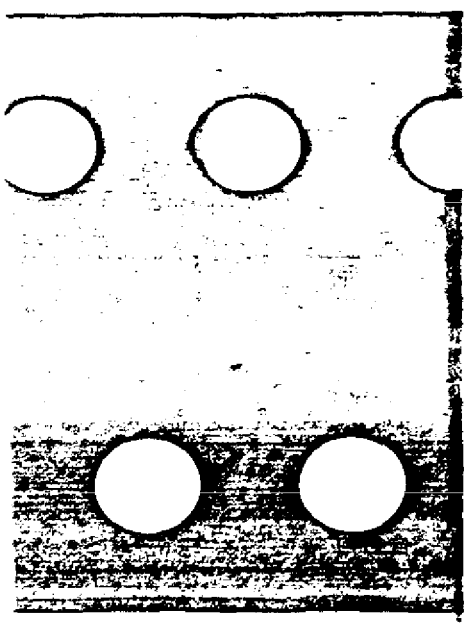
A true copy.

Test:

Clerk, Supreme Court, U. S.

[18]See instructions issued April 11, 1934, by the Administrator of Veterans' Affairs, pursuant to the Act of March 27-28.





SUPREME COURT OF THE UNITED STATES.

No. 802.—October Term, 1934.

John C. Lewis, as Receiver, etc., Petitioner, *vs.* Fidelity & Deposit Co. of Maryland.	On Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[June 4, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

Under statutes of Georgia, in force since 1879, a bank, state or national, may be appointed depository of state funds. To qualify it must give a bond for the faithful performance of its duty. A bond with surety creates a lien on all the bank's assets, both those held at the time of the execution of the bond and those subsequently acquired.[1]

In July, 1928, the Governor of Georgia appointed The Hancock National Bank of Sparta, Georgia, a state depository for the term of four years. It gave a bond with the Fidelity and Deposit Company of Maryland as surety in the sum of $10,000 for the faithful discharge of its duties. From time to time thereafter, until May 23, 1932, the tax collector of Hancock County deposited in the bank

[1] "The bond to be made by the State depositories may be a personal bond or may be made by a deposit with the State treasurer of United States bonds or Georgia State bonds, or either one or both of said methods." Sec. 1256, Code of Georgia (1910). Section 1252 provides that the depository bond shall have "the same binding force and effect as the bond required by law to be given by State treasurers, and, in case of default shall be enforced in like manner." Section 218 of the Code relating to the treasurer's bond provides that "a lien is hereby created in favor of the State upon the property of the treasurer to the amount of said bond, and upon the property of the securities upon his said bond to the amount for which they may be severally liable, from the date of the execution thereof." The Supreme Court of Georgia held, in cases involving state banks, that under these statutes the State acquires a lien on all the assets of a depository bank, both those at the time of the execution of the bond and those subsequently acquired. See Seay v. Bank of Rome, 60 Ga. 609; Colquitt, Governor v. Simpson, 72 Ga. 501; Simpson v. Ledbetter, 79 Ga. 159. Compare State v. Brobston, Receiver, 94 Ga. 95; Standard Accident Ins. Co. v. Luther Williams Bank & Trust Co., 45 Ga. App. 831.

moneys collected on account of state taxes. On that day the Comptroller of the Currency declared the bank insolvent and appointed a receiver for whom the petitioner, John C. Lewis, was later substituted. The amount of state funds then on deposit was $6,157.41. This sum, and the accrued interest, the company paid to the State and received an assignment of its rights arising out of the deposit. Then, the company brought in the federal court for the Middle District of Georgia this suit in equity against the receiver to enforce a lien for the amount upon all the assets in his hands, claiming priority according to the date of the bond.

The District Court, after denying a motion to dismiss, heard the cause substantially upon agreed facts. It ruled that the company was entitled to the rights of the State by subrogation and by transfer; held that neither the State nor the company was entitled to a lien or to preferential treatment; and allowed the claim as one enentitled merely to a *pro rata* dividend. The Circuit Court of Appeals for the Fifth Circuit reversed the judgment and remanded the cause for further proceedings, holding that the asserted lien was valid, subsisting in favor of the company, and entitled to the priority claimed. 67 F. (2d) 961. This Court granted certiorari. 291 U. S. —.

That court, following *Pottorff* v. *El Paso-Hudspeth Road District*, 62 F. (2d) 498, ruled, as matter of federal law, that national banks had under National Bank Act as enacted in 1864 power to pledge assets to secure public deposits. It ruled as matter of state law that the lien is a contractual one arising, not *proprio vigore* by reason of the statutes, but by contract of the bank as an incident of giving a personal bond; that these statutes apply to both state and national banks and the scope of the lien is the same in respect to both; declared, in describing its character, that from the date of the bond the lien attaches to all property real and personal then owned or thereafter acquired; that a grantee of real estate having constructive notice would take subject to the lien; that as to money, bonds, stocks, notes, drafts and other choses in action, the lien of the State is inferior to the rights of third persons who receive the property *bona fide* in the ordinary course of business prior to insolvency or sequestration; and that the lien is inferior even to the right of depositors to set-off against their own indebtedness that of the bank to them.

The court took judicial notice of the fact that throughout the fifty-three years since the enactment of the law both national and state banks had acted as state depositories; that the lien had been enforced against money and choses in action when captured by a receivership, but had never been asserted as to commercial assets transferred in due course of business; that the existence of the lien had presented no obstacle to the ordinary operations of the banking business or interfered in any way with the performance by national banks of their federal functions; and that a bank's appointment as state depository is customarily advertised and accepted as evidence of soundness and credit. Compare *In re Blalock*, 31 F. (2d) 612.

In *Texas & Pacific Ry. Co.* v. *L. O. Pottorff*, 291 U. S. 245, and *City of Marion* v. *Ben Sneeden*, 291 U. S. 262, decided after the entry of the judgment below, we held that a national bank had, prior to the Act of June 25, 1930, no power to make any pledge to secure deposits except the federal deposits specifically provided for by Acts of Congress. It follows that, in 1928, no lien arose when the bank was appointed depository; and that the judgment of the Circuit Court of Appeals must be reversed unless the Act of June 25, 1930, c. 604, 46 Stat. 809, authorizes a national bank to give as security a general lien of the character prescribed by the Georgia statutes.

That Act provides:

"Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safe-keeping and prompt payment of the money so deposited of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

First. The receiver contends that the Act of 1930 should be construed as authorizing merely a pledge of specific assets to secure public deposits; and that the giving of a general lien upon the bank's assets is still *ultra vires*. The language of the Act is broad enough to authorize giving a general lien on present and future assets, wherever banks organized under the laws of the State have such power; and it should be given that construction. For the main purpose of the 1930 Act was to equalize the position of national and state banks; and without such power national banks would not in Georgia be upon an equality with state banks in com-

peting for deposits. The policy of equalization was adopted in the National Bank Act of 1864, and has ever since been applied, in the provision concerning taxation.[2] In amendments to that Act and in the Federal Reserve Act and amendments thereto the policy is expressed in provisions conferring power to establish branches;[3] in those conferring power to act as fiduciary;[4] in those concerning interest on deposits;[5] and in those concerning capitalization.[6] It appears also to have been of some influence in securing the grant in 1913 of the power to loan on mortgage.[7] Compare *Fidelity & Deposit Co.* v. *Kokrda*, 66 F. (2d) 641, 642.

Second. The receiver insists that, even if the Act of 1930 authorizes the giving of a general lien, the lien here asserted must fail because there are provisions in the Georgia law inconsistent with the National Bank Act and because obligations are imposed upon state depositories with which no national bank may comply.

1. Attention is called specifically to the terms of the statutory bond which is conditioned "for the faithful performance of all such duties as shall be required" of the depository "by the General Assembly or the laws of this State." The argument is that a national bank is an instrumentality of the United States and cannot subject itself by contract to the laws of a State. But a national bank is subject to state law unless that law interferes with the

[2] Acts of June 3, 1864, c. 106, § 41, 13 Stat. 99, 111; Feb. 10, 1868, c. 7, 15 Stat. 34; R. S. § 5219; Mar. 25, 1926, c. 88, 44 Stat. 223. See Van Allen *v.* Assessors, 3 Wall. 573; Mercantile Bank *v.* New York, 121 U. S. 138; First National Bank *v.* Hartford, 273 U. S. 548.

[3] Acts of Feb. 25, 1927, c. 191, § 7, 44 Stat. 1224, 1228; June 16, 1933, c. 89, § 23, 48 Stat. 162, 189. See 36 Op. Atty. Gen. 116, 344.

[4] Acts of Dec. 23, 1913, c. 6, § 11(k), 38 Stat. 251, 262; Sept. 26, 1918, c. 177, § 2, 40 Stat. 967, 968; compare June 16, 1933, c. 89, § 24 (a, b), 48 Stat. 162, 190. See First National Bank *v.* Fellows, 244 U. S. 416; Burnes National Bank *v.* Duncan, 265 U. S. 17.

[5] Acts Feb. 25, 1927, c. 191, § 16, 44 Stat. 1224, 1232 (to pay no greater interest on time and savings deposits than state banks); and note in particular June 16, 1933, c. 89, § 11 (b), 48 Stat. 162, 181 in which national banks are forbidden to pay interest on demand deposits except on deposits of state, county, etc., where state law demands it.

[6] Act of Feb. 25, 1927, c. 191, § 4, 44 Stat. 1224, 1227.

[7] Acts of Dec. 23, 1913, c. 6, § 24, 38 Stat. 251 273 (see 50 Cong. Rec. 819; 51 Cong. Rec. 1189); Sept. 7, 1916, c. 461, 39 Stat. 752, 754 (64th Cong., 1st Sess., see Report No. 481, p. 14); Feb. 25, 1927, c. 191, § 16, 44 Stat. 1224, 1232. See First National Bank *v.* Anderson, 269 U. S. 341, 354; First National Bank *v.* Hartford, 273 U. S. 548, 558.

purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law. *National Bank* v. *Commonwealth*, 9 Wall. 353, 362; *McClellan* v. *Chipman*, 164 U. S. 347, 356; *First National Bank* v. *Missouri*, 263 U. S. 640, 656. What obligations to the State the bank assumes may be defined by the law of that State. It is quite possible that the legislature might attempt to impose, under the conditions of the bond, a duty which the bank would be without authority to undertake; and to that extent the contract would be unenforceable. But it is not shown that the obligations as now defined by the courts of Georgia are contrary to anything in the National Bank Act. Moreover, the state court, which would be the controlling authority on the question, might decide that the failure of part of the consideration to be given would not invalidate the appointment.

2. It is urged that acceptance of the appointment as state depository is incompatible with the functions of a national bank, because under § 224 of the Georgia Code it has been held that the Governor may issue a *fieri facias* against the depository bank for the amount due to the State, whereas, Revised Statutes, § 5242, provides that "no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action or proceeding, in any state, county or municipal court."[8] Assuming, without deciding, that there is such conflict, it is not material here. Section 224 of the Code provides merely a method of enforcing the bond which has not been used here, and hence against which there is at present no occasion for complaint.

3. It is contended that the lower court erred in its rulings on the Georgia law; that under the state statutes, properly construed, the lien attaches to all kinds of property from the date of the bond; that it applies to real estate and other tangible property, to money, bonds, stocks, notes, drafts and other choses in action then owned or thereafter acquired by the bank, and that it is not defeated even by a *bona fide* sale or other disposition of such property in the ordinary course of business; that, consequently, the general lien would present an insuperable obstacle to the bank's serving the public in its ordinary business operations; that the bank could not sell the property it was authorized to acquire, for no one would take it subject to the lien; that the general lien

[8] Act of March 3, 1873, c. 269, § 2, 17 Stat. 603; R. S. § 5242.

would prevent the pledge of specific bonds or other securities required in order to secure the deposits of the United States and federal agencies pursuant to provisions of the National Bank Act as amended;[9] and that it would prevent the pledge of specific security required to authorize the issue of circulating notes.[10] The lower court took judicial notice of the fact that for more than half a century the general lien described has been in force, and has not interfered with the performance by banks of their duties to the public; and that national banks while serving as depositories have not, so far as appears, ever been confronted with a conflict between their duties to the State and to the United States. The reasons given by that court for its conclusions as to the operation and effect of the lien under the law of Georgia are set forth fully and persuasively in the opinion of the Circuit Court of Appeals. We cannot say that it erred in the conclusions reached either as to the state law, or as to the facts. Compare *City of Marion* v. *Sneeden*, 291 U. S. 262, 270-271.

4. The receiver contends that the lien, if limited in its operation upon commercial assets to such moneys, stocks, bonds, notes, drafts and other choses in action as are captured by a receivership, is not a true security at all; that if so limited the alleged lien would, in the event of insolvency, be legally a preference; that to give it effect would conflict with the policy expressed in § 50 of the National Bank Act[11] which forbids preferences made in view of insolvency; and that Congress cannot be assumed to have sanctioned a transaction which though in form a security is in essence a preference.

Sections 50 and 52 do not prohibit liens given prior to insolvency and not in contemplation thereof, whether they arise from express agreements, or are implied from the nature of the dealings between parties, or arise by operation of law. *Scott* v. *Armstrong*, 146 U. S. 499, 510; *Earle* v. *Pennsylvania*, 178 U. S. 449, 454. The lien here asserted arises out of an agreement executed at a time when there was no question of insolvency; nor is it restricted in its operation to the event of insolvency. It may be exercised by execution or otherwise whenever the bank refuses to pay. It resembles the lien which is enforced when seizure is made by the creditor

[9]Act of June 3, 1864, c. 106, § 45, 13 Stat. 99, 113.

[10]Act of March 14, 1900, c. 41, § 12, 31 Stat. 45, 49.

[11]Act of June 3, 1864, c. 106, § 50, 13 Stat. 99, 114; R. S. § 5236.

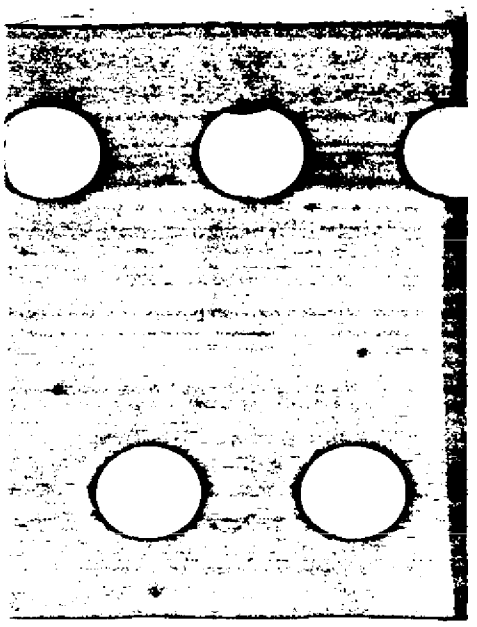
within four months of bankruptcy, of property claimed under an after-acquired property clause of a mortgage; *Thompson* v. *Fairbanks*, 196 U. S. 516; *Humphrey* v. *Tatmun*, 198 U. S. 91.[12] It resembles also those cases where, under the common law of distress or under a statutory lien, described by the courts as "inchoate" or "dormant", a landlord, within four months of bankruptcy, seizing or levying upon whatever property was on the tenant's premises, was held to have a valid lien. *Henderson* v. *Mayer*, 225 U. S. 631; *Richmond* v. *Bird*, 249 U. S. 174. Compare *Minnich* v. *Gardner*, No. 669, decided April 2, 1934. The case at bar is unlike *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, relied upon by the receiver, where a New York statute dealing with the administration of insolvent banks provided that in the event of insolvency the deposits of a savings bank would be entitled to a preference.

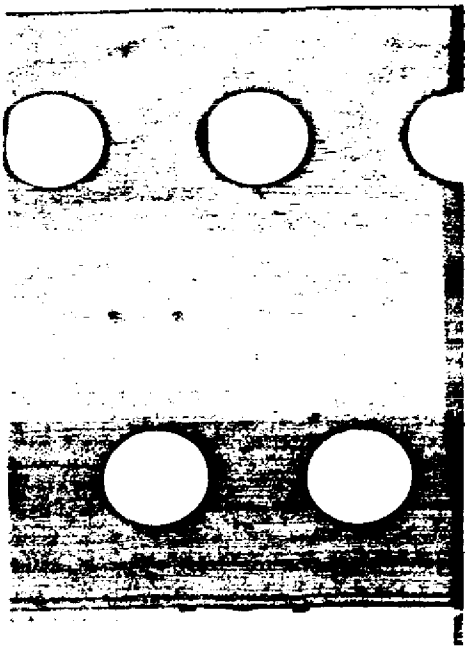
5. The receiver contends that, under a proper interpretation of the state depository statute, no lien whatever is intended or arises when a national bank gives a bond to secure state deposits, because the bond required of a national bank is more onerous than that required of a state bank.

The bond of the national bank must be double the amount of the deposit; of the state bank only equal to it. The lien is security for the bond, not the deposit; thus in the case of a national bank, if the provision were applicable, the lien would be twice the amount of the deposit. As the court below noted, the double bond may have been thought necessary because the State has not the power to examine national banks. But whatever the occasion for the difference, it does not appear to conflict with or cloud the clear statement of the statute attaching the lien to depository bonds as such and without qualifications. The ultimate decision of this question is for the Supreme Court of Georgia but until it decides otherwise we see no reason for not accepting the holding of the court below as correct.

Third. The receiver contends that even if national banks are authorized under the 1930 Act to give a general lien upon their assets of the character described by the Circuit Court of Appeals, the judgment should be reversed because the bond antedated the

[12]Compare In re Ball, 123 Fed. 164; In re Rogers, 132 Fed. 560; Wood *v.* United States Fidelity, etc. Co., 143 Fed. 424; In re Glover Specialities Co., 18 F. (2d) 314; In re Riggi Bros. Co., 42 F. (2d) 174.

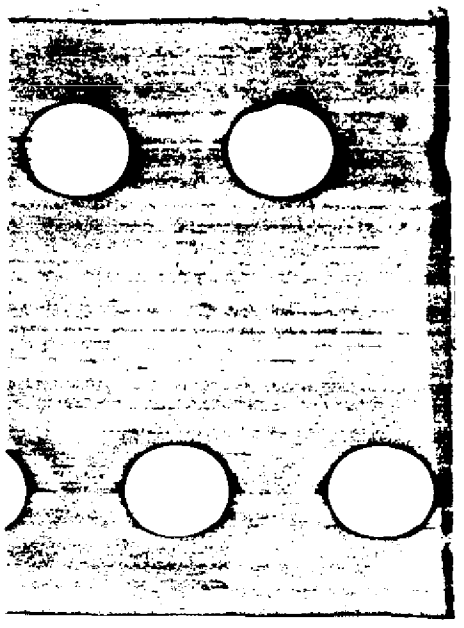


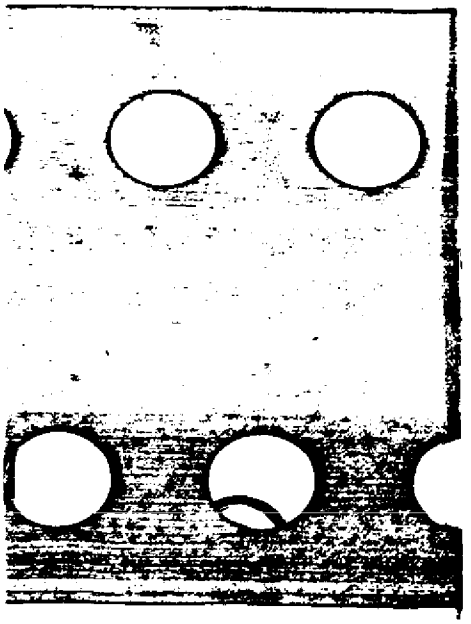


Act. It appears that the balance on hand June 25, 1930, was withdrawn soon thereafter; that between June 25, 1930 and the appointment of the receiver, May 23, 1932, deposits were regularly made aggregating a large sum; that from time to time checks were drawn against these deposits; and that all of the balance in bank when the receiver was appointed represented deposits made after the passage of the Act.[18] The appointment of the bank as depository in 1928 and the bond were to cover a period of four years. Though the lien was in form security for the bond, the extent of liability was to be measured by the unpaid balance. Thus, the transaction was not completed in 1928; it was contemplated that there would be continuous dealings between the parties for four years. In fact, the relation continued until the appointment of the receiver. Throughout the whole period the parties intended that the lien should be operative and supposed that it was. The appointment was within the power of the State to confer and of the bank to accept, but by reason of the paramount federal law one of the anticipated incidents of the relation, the lien, could not arise. When that obstacle was removed by the Act of June 25, 1930, the original agreement could as to the future be given the effect intended by the parties; and the lien became operative as to deposits thereafter made and is entitled to priority from the date of the Act. A statute is not retroactive merely because it draws upon antecedent facts for its operation. Compare *Cox* v. *Hart*, 260 U. S. 427, 435; *Ewell* v. *Daggs*, 108 U. S. 143; *Petterson* v. *Berry*, 125 Fed. 902; *Hartford Fire Insurance Co.* v. *Chicago, M. & St. P. Ry. Co.*, 62 Fed. 904, 910; *Rosenplanter* v. *Provident Savings etc. Soc.*, 96 Fed. 721. It was not necessary to go through the form of executing a new bond. Compare *Jones* v. *Guaranty and Indemnity Co.*, 101 U. S. 622, 627. We have no occasion to consider whether the Act of June 25, 1930, would have validated the lien also in respect to deposits made before that date. Compare *Gross* v. *United States Mortgage Co.*, 108 U. S. 477, 488; *West Side Belt R. R.* v. *Pittsburg Construction Co.*, 219 U. S. 92; *Charlotte Harbor & Northern Ry* v. *Welles*, 260 U. S. 8.

Affirmed.

[18]The facts concerning the dates of the deposits and the amounts were supplied by counsel for the Comptroller of the Currency who joined with counsel for petitioners in briefs and argument.





SUPREME COURT OF THE UNITED STATES.

No. 920.—October Term, 1933.

The State of Texas, Railroad Commission of the State of Texas, et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, et al.	Appeal from the District Court of the United States for the Western District of Missouri.

[June 4, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Interstate Commerce Commission, by its report and order of October 4, 1933, authorized the Kansas City Southern Railway Company, a corporation organized under the laws of Missouri, to acquire control by lease of the railroad and properties of the Texarkana & Fort Smith Railway Company, incorporated under the laws of Texas. 193 I. C. C. 521. In this suit, the State of Texas, and officers and municipalities of that State, assailed the order as transcending the authority granted to the Commission by the Congress. The order was sustained by the District Court (6 F. Supp. 63), three judges sitting as required by statute, and from its decree this appeal is taken.

The single point in controversy is with respect to the authority of the Commission to approve the acquisition of control by a lease which permits the lessee to abandon, or to remove from the State, the general offices, shops, etc., of the lessor. The provision of Section 5 of the lease, which has that effect, is set forth in the margin.[1] The provision is attacked as being in violation of the

[1] "But the Southern Company (applicant) does not assume the performance of any corporate obligations on the part of the Texarkana Company independent of its obligations as a common carrier. The Southern Company does not assume any obligation to maintain, during the term of this lease, any general offices, machine shops or roundhouses for or belonging to the Texarkana Company at any particular place or places, regardless of present or previous locations thereof; but shall have the right to change any existing location of general offices, machine shops, roundhouses and terminal facilities,

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laws of Texas, which confine to Texas corporations the right to "own or maintain any railways" within the State, which require every railroad company chartered by the State to "keep and maintain permanently its general offices within this State at the place named in its charter", and at that place also to maintain the offices of its principal officers, and which prohibit any railroad company from changing "the location of its general offices, machine shops, or roundhouses, save with the consent and approval of the Railroad Commission" of the State.[2]

belonging to the Texarkana Company, and to relocate the same, and, from time to time, to change the same, during the full term of this lease, and shall have the right to make all such locations, changes and alterations as in the judgment of the Southern Company will enable it to operate the demised premises in the public interest and with the greatest economy and efficiency; and the Southern Company shall not be obligated or bound to perform any contractual, statutory or other obligations with reference to such matters which may now or hereafter rest upon the Texarkana Company; and any and all such changes may be made, from time to time, by the Southern Company as may be approved by the judgment of its officers or Board of Directors".

[2]These provisions of the Revised Civil Statutes of Texas, 1925, are as follows:

Art. 6260. "No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State".

Art. 6275. "Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration".

Art. 6278. "Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the

The Interstate Commerce Commission was divided in opinion. Upon a prior hearing, the Commission approved the lease upon the condition that the paragraph in controversy should be eliminated. Report and order of December 27, 1932; 189 I. C. C. 253. Following the enactment of the Emergency Railroad Transportation Act, 1933 (Act of June 16, 1933, c. 91), the proceeding was reopened and, after hearing, the Commission modified its order by striking out the above-mentioned condition, thus approving and authorizing the lease with its provision, in Section 5, as to offices and shops.

The findings of fact set forth in the Commission's report are not contested. The lines which constitute what is called the Kansas City Southern Railway system (embracing the portions covered by the proposed lease) extend from Kansas City, Missouri, to Port Arthur, Texas (over 800 miles). The line of the Kansas City Southern Railway Company, the applicant, extends from Kansas City, Missouri, to Mena, Arkansas. The line of the Texarkana & Fort Smith Railway Company is in two segments. The northern segment extends from Mena in a southerly direction, crosses the Arkansas-Texas State line, and runs through Texarkana and thence southeasterly into Arkansas and to the Arkansas-Louisiana State line. The portions of this segment in Arkansas are operated by the applicant under a lease previously authorized by the Interstate Commerce Commission. 105 I. C. C. 523. The portion of the northern segment which lies in the State of Texas, is approximately 31 miles in length. The southern segment of the Texarkana & Fort Smith Railway extends from the Louisiana-Texas State line at the Sabine River to Port Arthur, Texas, and is approximately 50 miles in length. Thus, the total main line mileage of the Texarkana & Fort Smith Railway in Texas is 81 miles; there are about 18 miles of branch lines. The portion of the railroad system lying between the Arkansas-Louisiana State line and the Louisiana-Texas State line, approximately 228 miles, is owned by the Kansas City, Shreveport & Gulf Railroad Company, a subsidiary of the applicant.

place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. . . ."

Art. 6286. "No railroad company shall change the location of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns. . . ."

The Commission, on the first hearing, found that the consummation of the plan presented by the applicant would result in an annual saving, under normal conditions, of about $81,000. This finding was repeated in the final report. The estimated saving would result from the unification of operations, the discontinuance of general offices of the Texarkana & Fort Smith Railway Company at Texarkana, and the removal to Shreveport and Kansas City of many of the activities at Texarkana which caused duplication of work. Thus, under the proposed plan, the auditor's and treasurer's departments of the Texarkana & Fort Smith Railway Company would be transferred to the applicant's headquarters at Kansas City, with an estimated annual saving of over $57,000. The offices of the general freight agent, general passenger agent, superintendent, and division engineer, and of the master mechanic at Port Arthur, would be removed to Shreveport and consolidated with similar offices of the applicant, at an estimated annual saving of over $21,000. There would also be a decrease in expenses for various services in connection with the building at Texarkana. Shreveport, said the Commission, is considered to be more centrally located from an operating standpoint than Texarkana, and there are at that point the applicant's main terminal for the southern territory, shops for heavy repairs, more industry, greater population, and more railroad connections.

The Commission found that for the four years, 1928-1931, the Texarkana & Fort Smith Railway Company handled an average of 993,622 tons of intrastate traffic and 3,405,944 tons of interstate traffic. Of the average total of 4,399,566 tons, the applicant participated in the handling of 3,192,554 tons. The net income of the Texarkana & Fort Smith Railway Company amounted to $441,922 in 1926, $204,052 in 1927, $437,270 in 1928, $598,172 in 1929, and $95,655 in 1930. In 1931 there appears to have been no net income. The Commission concluded that "in view of the volume of interstate traffic handled by the T. & F. S. and the net income earned by that carrier, it is clear that the expenditure of approximately $81,000 a year, which will be unnecessary under the plan that the applicant proposes to put into effect under the lease, constitutes an undue burden upon interstate commerce."

The Commission further found "that the lease by the Kansas City Southern Railway Company of the railroad and properties of the Texarkana & Fort Smith Railway Company, located in

Texas and elsewhere not now under lease, in accordance with the proposed lease, will be in harmony with and in furtherance of the plan for the consolidation of railroad properties heretofore established by us and will promote the public interest."

The State of Texas raises no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the proposed lease with the stipulations under consideration. The question is simply as to the scope of the authority which has been conferred,—the construction of the applicable statutory provisions. These are found in Section 5 of the Interstate Commerce Act as amended by the Emergency Railroad Transportation Act, 1933 (Title II, secs. 201, 202). Paragraphs (4) (a) and (4) (b) of that section make it lawful, with the approval and authorization of the Commission, for two or more carriers to consolidate or merge their properties; "or for any carrier . . . to purchase, lease, or contract to operate the properties, or any part thereof, of another", or to acquire control of another through purchase of its stock. On application to the Commission for such approval, appropriate notice of public hearing must be given to the Governor of each State in which any part of the properties of the carriers involved is situated, as well as to the carriers themselves. If after hearing, "the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest", the Commission may give its approval and authorization accordingly.[3]

These broadening provisions of the Emergency Railroad Transportation Act, 1933, confirm and carry forward the purpose which

[3]The full text of paragraphs (4) (a) and (4) (b) is as follows:

"(4) (a). It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through purchase of its stock; or for a corporation which

led to the enactment of Transportation Act, 1920, (Title IV, 41 Stat. 474, *et seq.*). We found that Transportation Act, 1920, introduced into the federal legislation a new railroad policy, seeking to insure an adequate transportation service. To attain that end, new rights, new obligations, new machinery, were created. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585; *New England Divisions* case, 261 U. S. 184, 189, 190; *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U. S. 456, 478. It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public. *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 317; *Texas & Pacific Railway Co.* v. *Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266, 277. The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given in aid of that policy. *New York Central Securities Corporation* v. *United States*, 287 U. S. 12, 24, 25. The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act, 1933—is that of the controlling public interest. And that term

is not a carrier to acquire control of two or more carriers through ownership of their stock; or for a corporation which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock.

"(b). Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, of the time and place for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable".

as used in the statute is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities". *New York Central Securities Corporation* v. *United States, supra.*

It is in the light of this criterion that we must consider the scope of the Commission's authority in relation to provisions which are intended to relieve interstate carriers from burdensome outlays. The fact that burdensome expenditures may be required by state regulations is not a barrier to their removal by dominant federal authority in the protection of interstate commerce. As we said in *Colorado* v. *United States*, 271 U. S. 153, 163: "Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce". Even explicit charter provisions must yield to the paramount regulatory power of the Congress. *New York* v. *United States*, 257 U. S. 591, 601. Obligations assumed by the corporation under its charter of providing intrastate service are subordinate to the performance by it of its federal duty, also assumed, "efficiently to render transportation services in interstate commerce". *Colorado* v. *United States, supra*, p. 165. See *Transit Commission* v. *United States*, 284 U. S. 360, 367, 368; *Transit Commission* v. *United States*, 289 U. S. 121, 127; *Florida* v. *United States*, decided April 2, 1934. In the present case, the findings of the Commission, setting forth undisputed facts, leave no doubt that the provision of the lease permitting the abandonment, or removal from the State, of general offices and shops of the lessor has direct relation to economy and efficiency in interstate operations and to the achievement of the purpose which the Congress had in view in its grant of authority.

Counsel for the United States and for the Interstate Commerce Commission emphasize the limitations of the challenged provision. They point out that, in addition to the customary "general offices" of railroads, Section 3, of Article X, of the Constitution of Texas provides that railroad corporations must "maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for in-

spection by the stockholders of such corporations, books," in which shall be recorded the amount of capital stock subscribed, the names of stockholders, etc., and transfers, the amount of its assets and liabilities, and the names and places of residence of its officers. See, also, Art. 4115, Texas Revised Statutes, 1879; Laws of Texas, 1885, c. 68; Arts. 1358, 6281, Revised Civil Statutes of Texas, 1925. Counsel for the United States and for the Interstate Commerce Commission urge that the "Office-Shops Act", here involved, was acted independently of the above statutes. Laws of Texas, 1889, 106; Art. 6275, Revised Civil Statutes of Texas, 1925. Accordingly, they insist that the order of the Commission and the lease in question apply to the "general offices", shops, etc., and not to the "public office" of the domestic corporation. Counsel for the applicant, the Kansas City Southern Railway Company, submits that the lease by necessary implication requires the Texarkana & Fort Smith Railway Company to maintain its principal office in Texas as the Texas statute requires. See as to service of process, Art. 2029, Revised Civil Statutes of Texas, 1925. In view of the disclaimer on behalf of the United States and the Interstate Commerce Commission, and the interpretation placed upon the provision in the lease, we assume that the question before us merely relates to the abandonment or removal of "general offices", shops, etc., as distinguished from the "public office" required by the Texas statutes, that is, to those transportation facilities the continued maintenance of which, in the circumstances described by the findings of the Commission, would entail unnecessary and burdensome expenditures in operation. As thus construed, we find no ground for concluding that the approval of the provision in the lease was beyond the Commission's authority. There is no interference with the supervision of the State over the lessor in matters essentially of state concern, as distinguished from the operations which in their effect upon interstate commerce are of national concern.

The State invokes Section 11 of Title I of the Emergency Railroad Transportation Act, 1933, which provides that "Nothing in this title shall be construed to relieve any carrier from any contractual obligation which it may have assumed, prior to the enactment of this Act, with regard to the location or maintenance of

offices, shops, or roundhouses at any point". But that section refers explicitly to what is contained in Title I of the Act, with respect to "emergency powers", dealing with the authority of the Federal Coordinator of Transportation and kindred matters, and does not by its terms apply to the provisions of Title II of the Act, in which are found the amendments of Section 5 of the Interstate Commerce Act with respect to the approval and authorization by the Interstate Commerce Commission of consolidations, purchases and leases. And Section 11 of Title I relates to "contractual obligations" assumed by the carrier and does not aptly refer to obligations imposed by statute.[4] The insertion of the provision in Title I, with its restricted application, and the omission of a similar provision from Title II, indicate an intentional distinction.

Title II of the Emergency Railroad Transportation Act, 1933, in amending Section 5 of the Interstate Commerce Act, carries its own provision as to immunity from state requirements which would stand in the way of the execution of the policy of the Congress through the Commission's orders. Subdivision (15) of Section 5 as amended, reads:[5]

"The carriers and any corporation affected by any order under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order".

The view that, by reference to the context, this immunity should be regarded as limited to those "restraints or prohibitions by or imposed under authority of law" which fall within the general description of "anti-trust" legislation, is too narrow. The rule of "*ejusdem generis*" is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained. *Mid-Northern Oil Company* v. *Montana*, 268 U. S. 45, 49. The scope of the immunity must be measured by the purpose which

[4]See Cong. Rec., 73d Cong., 1st sess., Vol. 77, Pt. 5, p. 4439.

[5]Compare subdivision (8) of Section 5 of the Interstate Commerce Act as amended by Transportation Act, 1920.

Congress had in view and had constitutional power to accomplish. As that purpose involved the promotion of economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure, the removal of such burdens when imposed by state requirements was an essential part of the plan. The State urges that in the course of the passage of Transportation Act, 1920, a provision for federal incorporation of railroads was struck out. But while railroad corporations were left under state charters, they were still instrumentalities of interstate commerce, and, as such, were subjected to the paramount federal obligation to render the efficient and economical service required in the maintenance of an adequate system of interstate transportation. *Colorado* v. *United States, supra.*

The decision in *International & Great Northern Railway Co.* v. *Anderson County,* 246 U. S. 424, is not opposed. Apart from the fact that in that case the state court had found, upon the verdict of a jury, that the maintenance of the offices and shops at the place at which the predecessor of the plaintiff in error had contracted to maintain them, did not impose a burden upon interstate commerce—a finding which this Court found no reason to disturb (*Id.,* pp. 433, 434)—the case arose prior to the enactment of Transportation Act, 1920, and the question here presented was not involved.

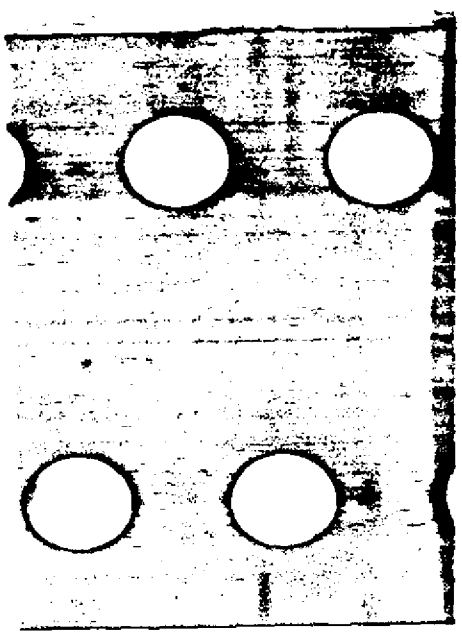
The decree dismissing the bill of complaint is affirmed.

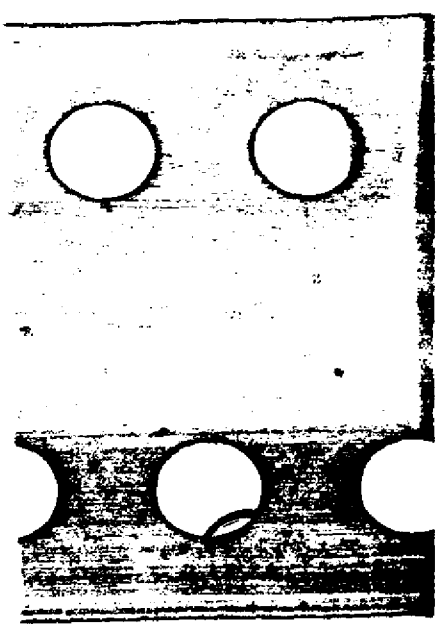
Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.





SUPREME COURT OF THE UNITED STATES.

No. 820.—October Term, 1933.

The Fairport, Painesville & Eastern Railroad Company, Petitioner, *vs.* Mayme F. Meredith.	On Writ of Certiorari to the Court of Appeals, Seventh Judicial District of the State of Ohio.

[June 4, 1934.]

Mr. Justice Sutherland delivered the opinion of the Court.

Respondent recovered judgment against petitioner upon the verdict of a jury in an Ohio state court of first instance for a personal injury resulting from a collision at a railroad-highway crossing between an automobile which she was driving and a train of cars operated by petitioner over its line of railroad. There is evidence that the train approached the crossing without sounding the whistle of the engine or ringing the bell so as to give warning of the train's approach. There is also evidence which fairly establishes that as respondent drew near the crossing the train was in plain view for a sufficient length of time to have enabled respondent, by the use of ordinary care, to see the train, stop and avoid the collision, and, therefore, that she was guilty of contributory negligence. *Miller* v. *Union Pacific R. Co.*, 290 U. S. 227, 231. The train was equipped with air brakes, in conformity with the federal Safety Appliance Act, as amended, U. S. C., Title 45, c. 1, §§ 1 and 9,[1] and the orders of the Interstate Commerce Commission made

[1]Section 1. It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Section 9. Whenever, as provided in this chapter, any train is operated with power or train brakes not less than 50 per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which

thereunder; but the air was disconnected between the cars and the engine, leaving the brakes of the engine and tender as the only means of stopping the train or checking its speed, thus constituting a clear violation of the act, since the requirement that a train shall be equipped with power brakes necessarily contemplates that they shall be maintained for use. See *United States* v. *Great Northern Ry. Co.*, 229 Fed. 927, 930.

The complaint alleges, as one ground of negligence, failure on the part of petitioner to make an air connection between the engine and cars, and to maintain and use the power brakes. In respect of that ground of negligence the trial court instructed the jury, in effect, that if the violation of the federal act resulted proximately or immediately in the injury complained of, the railroad company was liable. But the jury was also told that if respondent was guilty of contributory negligence she could not recover notwithstanding the negligence of petitioner. The trial court also instructed the jury in respect of the doctrine of the last clear chance —its view apparently being that, notwithstanding the contributory negligence of respondent, petitioner would be liable if, after the danger to respondent became apparent, it could have avoided the injury but for its antecedent failure to maintain and use an equipment of air brakes such as required by the federal act.

The appellate court, in sustaining the judgment of the trial court, held: (1) that the federal law violated by petitioner was enacted not only for the protection of railroad employes and passengers on railroad trains, but the public generally—that is to say, as applied to the present case, that the requirement of the federal Safety Appliance Act as to power controlled brakes and their use imposed a duty upon the railroad company in respect of travelers at railroad-highway crossings; and (2) that the instructions of the trial court in respect of the doctrine of the last clear chance correctly stated the law. — Ohio App. —.

are associated together with said 50 per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said chapter, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and a failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

These two rulings present the questions which the writ brings here for consideration.

First. The contention of petitioner is that the federal Safety Appliance Act was intended only for the protection of employes and travelers upon the railroads, and has no relation to the safety of travelers upon highways or of the public generally. Very likely, the primary purpose in the mind of Congress was to protect employes and passengers. So much is indicated by the title—"An act to promote the safety of employes and travelers upon railroads" etc. And this is borne out by the history of the legislation. President Harrison in his first annual message to Congress called attention to the need of legislation for the better protection of the lives and limbs of those engaged in operating the interstate freight lines of the country, and especially the yard men and brakemen, and expressed the view that Congress had power to require uniformity in the construction of cars used in interstate commerce and the use of approved safety appliances upon them.

But we are asked to hold that the title expresses the sole intent of the act, and this involves a question of statutory construction. The title of an act and the history leading up to its adoption, as aids to statutory construction, are to be resorted to only for the purpose of resolving doubts as to the meaning of the words used in the act in case of ambiguity. *Patterson* v. *Bark Eudora*, 190 U. S. 169, 172; *Cornell* v. *Coyne*, 192 U. S. 418, 430; *Lapina* v. *Williams*, 232 U. S. 78, 92. Compare *Russell Co.* v. *United States*, 261 U. S. 514, 519, 522. But here the words of §§ 1 and 9 of the act speak plainly and nothing in the nature or operation of the legislation requires, or suggests the necessity of, an appeal to extrinsic aids to determine their meaning. It may be that the protective operation of § 2 of the act requiring automatic couplers[2] was not meant to extend to persons other than employes. Compare *St. L. & San Fran. R. R.* v. *Conarty*, 238 U. S. 243; *Louisville & Nashville R. R. Co.* v. *Layton*, 243 U. S. 617, 620; *Lang* v. *New York Cent. R. R. Co.*, 255 U. S. 455; *Davis* v. *Wolfe*, 263 U. S. 239, 243; *Philadelphia & R. Ry. Co.* v. *Eisenhart*, 280 Fed. 271. But

[2]Section 2. It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

the installation and use of power brakes required by §§ 1 and 9 so obviously contribute to the safety of the traveler at crossings that it is hardly probable that Congress could have contemplated their inapplicability to that situation.

Section 9, *supra*, provides that when a train is operated with power or train brakes, not less than 50 per cent. (under regulation of the Interstate Commerce Commission now 85 per cent.) of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing the train. That a train so equipped and operated can be brought to a stop much more quickly than by the use of hand brakes is, of course, perfectly clear; and it is reasonable to conclude that a result so readily perceivable lies within the purview of the requirement. The most important purpose of a brake upon any vehicle is to enable its operator to check its speed or stop it more quickly than would otherwise be possible. The old railway hand brake was principally for that purpose, but it was undesirable for two reasons—first, because in setting it the brakeman was exposed to danger, and second, and especially in the case of long heavy trains, it did not meet the necessity of stopping the train quickly in emergencies. In this second aspect, the common law duty of the railway company to use ordinary care to provide and keep in reasonably safe condition adequate brakes for the control of its trains was one owing, among others, to travelers in the situation which the respondent here occupied. Sections 1 and 9 of the Safety Appliance Act converts this qualified duty imposed by the common law into an absolute duty, from the violation of which there arises a liability for an injury resulting therefrom to any person falling within the terms and intent of the act. Compare *Louisville & Nashville R. R. Co.* v. *Layton, supra*, 620; *St. Louis & Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295. To confine the beneficial effect of these provisions to employes and passengers would be to impute to Congress an intention to ignore the equally important element which their enactment actually contributes to the safety of travelers at highway crossings. Since all of these three classes of persons are within the mischief at which the provisions are aimed, it is quite reasonable to interpret the statute imposing the duty as including all of them.

It fairly may be said that the nature of the duty imposed by a statute and the benefits resulting from its performance usually determine what persons are entitled to invoke its protection. In

Atchison, T. & S. F. R. Co. v. *Reesman*, 60 Fed. 370, where the railroad company failed to erect and maintain sufficient fences, as required by a state statute, in consequence of which an animal got upon the track and derailed the train, it was held that an employe upon the train who was injured was entitled to recover under the statute. In the opinion, delivered by Mr. Justice Brewer (pp. 373-374), it is said:

"At any rate, it is clear that the fact that certain classes of persons were intended to be primarily protected by the discharge of a statutory duty will not necessarily prevent others, neither named nor intended as primary beneficiaries, from maintaining an action to recover for injuries caused by the violation of such legislative command. It may well be said that, though primarily intended for the benefit of one class, it was also intended for the protection of all who need such protection. . . . The purpose of fence laws, of this character, is not solely the protection of proprietors of adjoining fields. It is also to secure safety to trains. That there should be no obstruction on the track is a matter of the utmost importance to those who are called upon to ride on railroad trains. Whether that obstruction be a log placed by some wrongdoer, or an animal straying on the track, the danger to the trains, and those who are traveling thereon, is the same. To prevent such obstruction being one of the purposes of the statute, any one whose business calls him to be on a train has a right to complain of the company, if it fails to comply with this statutory duty."

See also *Hayes* v. *Michigan Central R. R. Co.*, 111 U. S. 228, 239-240, and other authorities cited in the *Reesman* case.

In the light of what has now been said, it follows that the duty imposed upon petitioner by the provisions of the act in respect of power controlled brakes extends to and includes travelers at railway-highway crossings.

Second. The holding of the court below as to the doctrine of the last clear chance is challenged as being contrary to the weight of American authority;[3] but we are precluded from considering the contention because it does not present a federal question. The federal Safety Appliance Act, as we already have said and this court repeatedly has ruled, imposes absolute duties upon inter-

[3]See, for example, Illinois Cent. R. Co. *v.* Nelson, 173 Fed. 915; St. Louis & S. F. R. Co. *v.* Summers, 173 Fed. 358; Smith *v.* Railroad, 114 N. C. 728, 734-735; Hays *v.* Railway, 70 Texas 602, 607. *Contra:* Thompson v. Salt Lake Rapid Transit Co., 16 Utah 281, 292.

state railway carriers and thereby creates correlative rights in favor of such injured persons as come within its purview; but the right to enforce the liability which arises from the breach of duty is derived from the principles of the common law. The act does not affect the defense of contributory negligence, and, since the case comes here from a state court, the validity of that defense must be determined in accordance with applicable state law. *Moore* v. *C. & O. Ry. Co.*, 291 U. S. 205, 214 *et seq.*, and cases cited; *Gilvary* v. *Cuyahoga Valley Ry. Co.*, — U. S. —, April 2, 1934. And see *Schlemmer* v. *Buffalo, Rochester, &c. Ry.*, 205 U. S. 1, upon second appeal, 220 U. S. 590, 598. The same is true of the doctrine of the last clear chance, which likewise is not affected by the act. If doubt might otherwise exist in respect of the specific application of the cases cited to that doctrine, regarded independently, the doubt would vanish when consideration is given to the relation which it bears to the rule of contributory negligence, namely, that it amounts in effect to a qualification of that rule, *Atchison, T. & S. F. Ry. Co.* v. *Taylor*, 196 Fed. 878, 880, having the result of relieving the injured person from the consequences of his violation of it.

Nothing we have said is to be understood as indicating our acceptance, as a substantive principle, of the ruling of the court below in respect of the point. That question is left open for consideration and determination when, if ever, it shall be so presented as to admit of its being dealt with upon its merits.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

JOHN EDGAR HOOVER
DIRECTOR

Division of Investigation
U. S. Department of Justice
Washington, D. C.

ydl-eg

June 6, 1934.

MEMORANDUM FOR THE DIRECTOR

For your information, I wish to advise that the Supreme Court rendered a decision in the cases of Lynch vs United States and Wilner vs United States on May 28, 1934 holding invalid Section 17 of the National Economy Act which provided that "all laws granting or pertaining to yearly renewable term insurance are hereby repealed" because it takes away from the insured the right to sue under the contract, in violation of provisions of the Fifth Amendment.

The full effect of this decision on the work of the Division in War Risk Insurance cases can not immediately be determined, but I have talked with Mr. Beardslee briefly and he tells me that this decision throws the gates open to over 20,000 persons for bringing suit on War Risk Insurance contracts. Mr. Beardslee is conferring today with officials of the Veterans Administration with a view to obtaining figures on cases affected by the decision and he will prepare an estimate so that the Division may be informed as to the amount of extra investigative work this will entail and he will forward same to you immediately.

If it is so desired, I will keep in touch with Mr. Beardslee and see that this estimate is in your hands at the earliest possible time.

Respectfully,

Y. D. Lott, Jr.

RECORDED

62-1-165

JUN 26 1934

JOHN EDGAR HOOVER
DIRECTOR

Division of Investigation

U. S. Department of Justice

Washington, D. C.

YDL:EC

June 21, 1934

MEMORANDUM FOR MR. TAMM

With further reference to my memorandum of June 6, 1934, concerning the additional number of War Risk Insurance cases which the Division will be required to handle because of the United States Supreme Court decision in the case of Lynch versus United States which held the National Economy Act of March 20, 1933, invalid, I called upon Mr. H. H. Milks, Chief of the Insurance Claims Council of the Veterans Administration and discussed the effect of this decision with him. He stated that on March 20, 1933, there were 23,000 claims for permanent and total disability benefits under War Risk Insurance policies pending in the Veterans Administration. From past experience he estimated that from fifteen to eighteen per cent of these claims would be allowed. To state it differently, letters of disagreement will probably be sent out in from eighty-two to eighty-five per cent of the cases. As to the rapidity with which the Insurance Council can consider these claims, Mr. Milks stated that from 1,000 to 1,200 per month will be disposed of. However, he called attention to the Veterans Administration regulation which prohibits the Insurance Claims Council from taking any action on the cases affected by the Supreme Court decision until such time as the President by proper order directs the Claims Council to begin consideration of the claims. He expected that this would be done in the near future.

In order to obtain an estimate of the number of cases arising out of the 23,000 claims mentioned above which will actually end in suit, I called Colonel Arnold who is the Chief of the Field Division of the Veterans Administration. He said that if the courts hold that with the passing by Congress of the Act of March 20, 1933, operation of the Statute of Limitations was suspended until the Supreme Court held the Act unconstitutional, then he would say that between 8,000 and 10,000 suits can be expected. On the other hand, if the National Economy Act is held not to affect

the running of the Statute, then he anticipates that less than 2,000 suits will be filed.

From the above it appears that whatever number of suits will actually be filed, they will not be filed all at once, but on the contrary, as letters of disagreement will emanate from the Veterans Administration at a rate of only 1,000 to 1,200 per month, the filing of the suits will be spread out over a long period.

Mr. Beardslee advised me by telephone that he had sent a letter to Mr. Stanley informing him of the necessity for more attorneys in the field to handle the large number of suits he expects to be filed throughout the country, of the necessity for more funds for traveling, the taking of depositions and other costs incidental to litigation, and that he feels that at least twenty-five more investigators should be assigned to this type of work.

If the information which was obtained from the Veterans Administration is accurate, it does not appear that the Division has any cause for changing the existing method of procedure in this type of cases at the present time or in the immediate future.

Respectfully,

J. D. Lott.

DEPARTMENT OF JUSTICE

WGB

WASHINGTON, D. C.

June 19, 1934

CIRCULAR NO. 2569

TO ALL UNITED STATES ATTORNEYS AND ATTORNEYS OF THIS BUREAU:

Re: Supreme Court Decision in the Lynch and Wilner Cases.

On June 4, 1934, the Supreme Court of the United States rendered an opinion in the cases of Margaret Shea Lynch, Petitioner, v. United States, and Sam Wilner, Petitioner, v. United States, holding that the Act of March 20, 1933, c. 3, 48 Stat. 9 (commonly called the Economy Act), was unconstitutional insofar as it attempted to repeal all laws granting or pertaining to Yearly Renewable Term Insurance.

As a result of this decision it is expected that the Veterans' Administration will resume consideration of the twenty odd thousand War Risk Insurance claims pending before it, and that suits will be filed in the various federal district courts as rapidly as disagreements occur.

It is the contention of this Bureau that all claimants who secured denials before March 20, 1933, must have brought their actions within the time fixed by the Act of July 3, 1930, just as if the Economy Act had not been passed.

This view is supported by reason and the well established principle that,

> "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it grants no office; it is, in legal contemplation, as inoperative as though it had never been passed."

Norton v. Shelby County (1886) 118 U. S. 425, 442; Hirsh v. Block (App. D. C. 1920) 267 Fed. 614, 618, reversed on another ground (1921) 256 U.S. 135; Chicago, Indianapolis & Louisville Rwy. Co. v. Hackett (1913) 228 U. S. 559,566; Ex parte Siebold (1879) 100 U. S. 371, 376.

NOT RECORDED

INDEXED 62-1-167X

Moreover, the courts have given unanimous recognition to the rule that a void act cannot repeal a valid existing statute and that the previous law remains in full force and operation as if the repeal had never been attempted. Frost v. Corporation Commission of Oklahoma et al, (1929) 278 U.S. 515, 526, 527; American Wood Products Co. v. City of Minneapolis et al, (C.C.A. 8th 1929) 35 F. (2d) 657, 659; People v. Schraeberg, (Ill. 1932) 179 N. E. 829, 830: North Bend Stage Line, Inc. v. Department of Public Works et al, (Wash. 1932) 16 P. (2d) 206, 210; and see American Digest, "Statutes", Key Numbers 63 and 168.

It would seem, furthermore, that those cases would be in point in which it has been held that provisions suspending the operation of statutes of limitation in favor of persons laboring under disabilities refer only to parties whose disabilities existed at the time their claim accrued and cannot be invoked by those whose disabilities subsequently arose. DeArnaud v. United States (1894) 151 U. S. 483, 496; Bauserman v. Blunt (1893) 147 U. S. 647, 657; Harris v. McGovern (1878) 99 U. S. 161, 167, and see American Digest, "Limitation of Actions", Key Number 76.

At least two courts have held explicitly that a statute of limitations continues to run against a party in spite of the existence of an unconstitutional law which apparently takes away his right to sue. Bigelow v. Bowers, (D.C. N. Y. 1933) 5 F. Sup. 346, 347; Harris v. Gray, (1873) 49 Ga. 585.

In order that all Government attorneys interested in War Risk Insurance law may be kept in close touch with new developments, you are urgently requested to notify this office immediately upon the filing of any new suits in your district or territory.

Very truly yours,

WILL G. BEARDSLEE

Director, Bureau of War Risk Litigation.

CHICAGO DAILY NEWS
RED STREAK Edition
Date FEB 23 1959
Page 4 Col. 1

Bar Group Gets Report Blasting Supreme Court

Decisions on Communists Before House of Delegates

A report charging that 24 U.S. Supreme Court decisions "weakened internal security and encouraged Communist activities," was presented Monday to the American Bar Association's House of Delegates here.

At the same time, the association's president was assuring newsmen that relationships between the association and Chief Justice Earl Warren, who resigned from the group, are "very friendly."

It had been reported that Warren dropped out of the association after 28 years because it had been critical of the court's handling of cases involving Communists.

The special report dealing with Communist tactics was moved up on the agenda of the business sessions of the association's midyear meeting in the Edgewater Beach hotel.

• • •

IT SAID: While members of this association view some of the decisions (of the U.S. Supreme Court) to be unsound and incorrect, they deem proposals for limiting its jurisdiction (the court) unwise and likely to create more problems than they will solve."

Delegates were to act on the report late Monday.

• • •

ROSS L. MALONE of Roswell, N.M., president of the ABA, said he had discussed Warren's withdrawal from the group with the chief justice.

"He assured me of his high regard for the association and of his intentions to continue to co-operate fully with it in the future as he always has in the past," Malone said.

Another touchy matter the body had tossed in its lap was a report urging Congress to adopt "remedial legislation" wherever "there are reasonable grounds to believe" that court decisions have weakened the security of the United States.

The report frowns on proposals to limit the jurisdiction of the U.S. Supreme Court.

But it "recognizes that sharp differences have been expressed as to the soundness of some of the recent decisions . . . affecting national and state security, with particular reference to activities of Communists."

COPIES OF an article titled "Let's Vote on Sundays!" from the Daily News supplement This Week Magazine was distributed Monday to members of the House of Delegates.

The article appeared last Nov. 2.

• • •

MORE THAN 1,000 members of the ABA are in Chicago for the mid-year meetings.

Sunday, they heard Chief Justice Raymond P. Drymalski of Chicago's Municipal Court describe a major revision in the city's traffic court setup scheduled for next year.

One of the main features will be the establishment of a night traffic court.

In addition, he said it no longer will be possible for a repeater to avoid appearance before a judge simply by paying fines for moving violations at the Violations Bureau.

The Decline Of the Lawyer

By Max Lerner

The lawyers of America, in convention assembled, have declared their strong suspicion that the U. S. Supreme Court is soft on Communists, and their conviction that the way to keep it from further serious mischief is for Congress to rewrite the laws so that any fool—including the Supreme Court fools—can understand their intent.

Doubtless the committee chairman, Peter Campbell Brown, and the other framers of the American Bar Assn. resolutions will regard my summary as too crude and brass-knuckled. To be sure, I have not reprinted any of their nice-nellyisms, such as hailing the judges as "the ultimate guardians of the Bill of Rights and the protectors of our freedom." But these silken words are woven into a mask, and our business as thinkers is to strike through the mask.

I have struggled through the "whereases" and the "therefores" and the "be it resolveds"—over a thousand tortured words of them—and I can only report that they add up to a slap in the face for the court.

* * *

Chief Justice Warren, who resigned from the Bar Assn. last fall and has rebuffed all pleas to reconsider, knew the temper and outlook of these lawyers. I care much more for his commentary on them than for their commentary on him.

He might have fobbed them off with hypocrisies, but the same forthright quality that he has shown in his great civil liberties and civil rights decisions, he shows in this particular gesture.

There are some who feel that the resolutions might have been much worse. They cite two scores on which the lawyers pulled their punches—first, in disapproving any proposals to strip the Supreme Court of its jurisdiction over certain cases; second, in striking out a clause about "technicalities" which are "invoked against the protection of our nation." It would have been curious indeed if a profession which has grown rich on technicalities should dismiss the procedural protections of due process and the Bill of Rights as "technicalities" to be swept away in the urgency to punish hated men.

This may have been in Chief Justice Warren's mind when, after the lawyers assigned as counsel for the Communist spy, Rudolph Abel, had completed their appeal argument based on a procedural "technicality," he thanked them for their public service in undertaking a case "which normally would be offensive" to them. Trust Justice Warren not to miss the revealing gesture.

* * *

Tolson
Belmont
DeLoach
McGuire
Mohr
Parsons
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Holloman
Gandy

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post 40
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date FEB 27 1959

EX-101

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Obviously not all American lawyers have turned into after dangerous thoughts. There seems to have been a sizable and even surprising minority at the Bar Assn. meeting that fought the resolutions.

But what has come over the rest of our American lawyers? Here is a profession which has played a great and creative role in American history. Almost half the signers of the Declaration of Independence, and more than half the members of the Constitutional convention, were lawyers. Jefferson was a self-trained lawyer, Andrew Jackson served a brief apprenticeship to the law, Abe Lincoln read law and rode circuit, Woodrow Wilson was a lawyer before he became a professor, and Franklin Roosevelt was one before he became a politician.

Even in colonial times—as Daniel Boorstin tells us in his new book, "The Americans: The Colonial Experience" (Random House)—lawyers were effective in the making of the new American society because most laymen knew law and most lawyers had not grown so specialized as to cease to be men. Politics and law were fused: lawyers had a sense of statecraft, and politicians had a feeling for logic and intellectual order.

* * *

What has caused the decline of the American lawyer, as witness the spectacle of a convention-ful of leaders of their profession who have been playing G-man in Chicago?

Partly, I think, the lawyers have identified themselves with the corporate managers from whom their lushest business and their biggest fees come. Partly also, and more recently, many lawyers have identified themselves with the prosecution phase of the law and have come to see themselves as stern inquisitors who are not to be swerved from the pursuit of politically-hated men. It is interesting that Mr. Brown, who headed the committee in Chicago, had served as counsel for one of the inquisitorial groups in Washington.

Thus while some lawyers have acquired a Wall Street mind, others have acquired a G-man mind, and some have combined the two. Is it heresy for me to suggest that neither of these mental frames will help the legal profession to fulfill its best role in our society?

* * *

Obviously I am speaking only about some lawyers, not all. I have no way of telling how representative the group in Chicago was of the profession as a whole, or what the vote would have been if each member had a chance to vote by secret ballot, rather than to "stand up and be counted" in open convention as one truculent delegate urged. For him, evidently, the vote was not a canvass of conviction but a testing of patriotism.

One thing that has happened to the profession is that a liberal elite—perhaps even a civil liberties elite—has been separated from the profession as a whole, leaving a big gap between the best lawyers and judges and the general run of them.

Someone at the convention argued for the resolutions, on the ground that lawyers must continue to criticize the Supreme Court's decisions. By all means.

But such criticism must be hammered out by men who study the law, as well as practice it. The law does not grow greater or richer by the taking of a voice vote at a gathering which resembles an American Legion convention more than it does a scholar's study of a judge's chambers.

THE MARCH OF TIME

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April 10, 1937

Mr. S. J. Tracy,
Inspector, Federal Bureau of Investigation,
Washington, D. C.

Dear Mr. Tracy:

I want to bring to your attention the new issue of The March of Time, No. 9, Vol. III, in which one of the principal episodes is devoted to an instructive picturization of the public's interest in crime detection, a commonplace hobby which in instances has produced top-notch, practical results.

This episode, entitled "Amateur Sleuths," will be released nationally on April 16 together with two other equally interesting sequences--"The Supreme Court", and "Britain's Food Defenses"--brief descriptions of which are included in the attached synopsis.

I hope you will pass this synopsis on to others who you believe would like to see the new March of Time. If you would care to have a list of the theatres in your community which regularly show The March of Time, please write to me as I shall be most happy to send you one.

Very truly yours,

Charles H. Findley

Charles H. Findley
Publicity Director

CHF:JM
ENC

ENCL W

94-3-4-11-11

RECORDED & INDEXED

APR 15 1937

DEPARTMENT OF JUSTICE

NELSON
RES. DIV.

THE MARCH OF TIME

Issue No. 9 — Volume III

SYNOPSES OF THE EPISODES

THE SUPREME COURT

Two weeks after his second inaugural, President Roosevelt proposed to Congress and to the nation that he appoint six new Justices to the Supreme Court if the present Justices, over the age of 70, refuse to retire. Immediately a great controversy swept across the country. The biggest mail in history flooded the Senate's private postoffice, daily revealing in letters of protest and endorsement the interest of U. S. citizens in the President's proposal.

In the Senate, a once-solid Democratic majority is split. Loud in protest against the President's proposal are seasoned Democrats like Clark of Missouri, Glass of Virginia, Montana's Burton K. Wheeler. The public, remembering those decisions of the Supreme Court in the last two years that had scrapped fundamental New Deal reforms, follows with new interest the progress through the Federal Courts of a current momentous Constitutional case—the Wagner National Labor Relations bill.

Today's conflict between the Executive and the Judiciary is the sixth in all U. S. history and perhaps the most significant. In the Court there are but three Justices pleasing to New Deal liberals. Chief Justice Charles Evans Hughes is puzzling to both liberals and conservatives. Those who agree with the President believe that the path of New Deal legislation can be cleared only by circumventing the die-hard conservatives among the balance of the Supreme Court's nine old members.

1937 may see the outcome of the struggle either by passage of the Roosevelt proposal, by compromise or by wholesale resignation. But whatever happens, the political history of the U. S. will feel its effects for years to come.

In this episode—*Newsworthy People*

President Franklin Delano Roosevelt
Chief Justice Charles Evans Hughes
Associate Justices: George Sutherland
Pierce Butler
Willis Van Devanter
James Clark McReynolds
Owen Josephus Roberts
Benjamin Nathan Cardoza
Harlan Fiske Stone
Louis Dembitz Brandeis
Senator Robert F. Wagner of New York
Senator Burton K. Wheeler of Montana
Senator Bennett Champ Clark of Missouri
Senator Carter Glass of Virginia
Attorney-General Homer S. Cummings
Solicitor-General Stanley Reed
J. Warren Madden, Chairman of National Labor Relations Board

—*Newsworthy Places*

New Supreme Court Building
Interior Supreme Court Chamber
Senate Postoffice
President's office

AMATEUR SLEUTHS

To the 10 million U. S. citizens that each month avidly read hundreds of pulp-paper magazines and thousands of detective novels, the detective's job is a highly romanticized one they envy. Ambitious amateurs who fancy themselves as master-mind detectives find live thrills in the innovation in pulp magazines—real rogues' gallery pictures of actual men wanted by the police. Newest slant for amateur sleuths are the Photocrime and the Crimefile, combinations of clues assembled in professional manner, enabling crime addicts to match their wits against the craftiest of criminals.

In New Jersey a group of business and professional men decided a few years ago to do something with this hobby. Pooling the resources of their professions they developed the first private Crime Detection Laboratory in America. Engineers, dentists, doctors, designers, they become experts in moulage, ballistics, fingerprint identification and other sciences of crime. Volunteering their services to the police without charge, they have assisted in the solving of more than 300 cases, have won the commendation of Chief G-Man John Edgar Hoover.

Honoring them, the University of Pennsylanvia's famed criminologist, Professor Thorston Sellin says: "I hope that other communities will find within their borders trained professional men willing to give their services in the same manner and for the same cause that you have. If they do crime will become much more difficult."

In this episode—*Newsworthy People*

Chief G-Man John Edgar Hoover
Individual members of the New Jersey Crime Detection Laboratory
Professor Thorsten Sellin, University of Pennsylvania's famed criminologist

BRITAIN'S FOOD DEFENSES

Famed is England for her rich solid food—her roast beef and plum pudding. But nearly half of this food that England eats must be imported and without that half 45 million Britons would starve within three months. Only stoppage of this supply is war and as the clouds gather over Europe, against war all England is preparing. Launching a recruiting drive to rebuild her army to war strength, she discovers an appalling fact—one half of the applicants are rejected as unfit for service, ironically, for lack of proper food.

Despite the knowledge that food had been scarce for a decade in England's distressed areas, the nation is shocked by a report of dietary experts. It reveals that 22,500,000 people in the United Kingdom lack proper food.

Forced to do something, an embarrassed government ducks the malnutrition issue, encourages a campaign for physical fitness, but, champion of the underprivileged he Archbishop of York warns that lack of food and ot lack of exercise is the fundamental problem.

The War Ministry decides to take immediate and practical action. It announces that henceforth every enlisted Britisher will get not three square meals a day, but four. Applicants too underfed to pass entrance tests may go to special reconditioning camps where, with body-building food for a basis, a program of physical training can build a fit and vigorous group of men, on which, in peace or in war, the future well-being of the Empire can depend.

In this episode—*Newsworthy People*

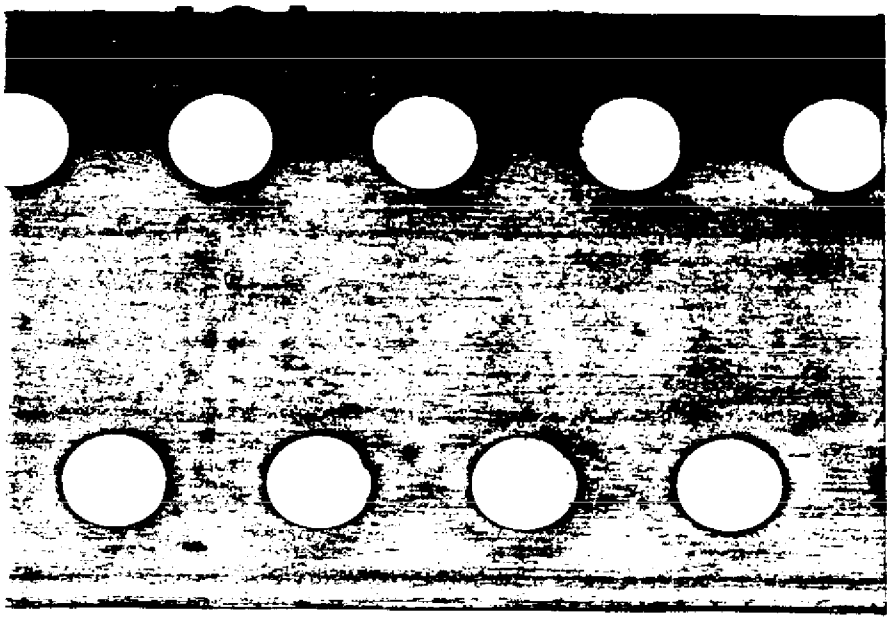
Sir Alfred Duff Cooper, Minister of Defense
Sir Kingsley Wood, Minister of Health
Julian Huxley, famed biologist, Secretary of London's Zoological Society
Archbishop of York, High Primate of the Church of England

—*Newswor Places*

Docks and wharfs o ndon
Health Co

FEDERAL BUREAU OF INVESTIGATION

Room 5744 3-18 1937.



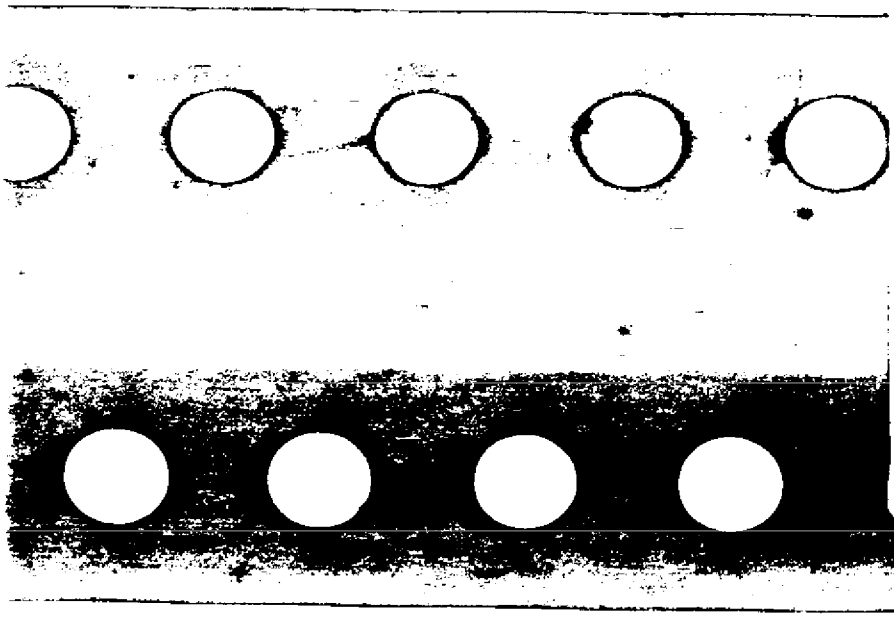
To:
- ___ Director
- ___ Mr. Nathan
- ___ Mr. Clegg
- ___ Mr. Tamm
- ___ Mr. Quinn
- ___ Mr. Glavin
- ___ Miss Gandy
- ___ Mr. Tracy
- ___ Mr. Schilder
- ___ Mr. Harbo
- ___ Mr. Foxworth
- ___ Mr. Donegan
- ___ Mr. Renneberger
- ✓ Mr. Joseph
- ___ Personnel Files Section
- ___ Files Section
- ___ Miss Sheaffer

See Me For Appropriate Action

Send File Note and Return

Please on our mailing list

Clyde Tolson



1406 S. West Ave.,
Jackson,Mich.
Maren 8, 1937

John Edgar Hoover, Director
F.B.I.
Washington,
D.C.

Dear Mr. Hoover:

Thank you most sincerely for your letter of Feb 6, 1937 and for your enclosure of materal regarding your department and its activity.

I have had this materal already in the hands of several of my friends, one of the executives of our company has it now; so you see what I think of it.

I would like to have you send me the cost of the list you sent to me, and at the same time send this same list of pamphlets sent to [redacted] Clarksville, Texas. I will be glad to send you the cost of these pamphlets because I will be using my copy and do not wish to send it to her.

May I comment here for the moment on how continualy cautious we hope will be to keep politics out of your department. I take every opportunity to talk this point to my friends and place emphasis on results rather than patronage.

It is so surprising that your superior, Mr. Cummings, would show such lack of propriety at the moment as to his apparent lobbying for the packing of the Supreme Court and in his pointless and illogical endeavors regarding same. If the supporters of the additional Supreme Court members knew how the man in the barbor shop, on the street car, and the str corner is talking against this move, they would forget their 'ballyho' and get to work and with the same amount of energy directed to logical reasonin find the way to legislate effectively within the constitution. If these same supporters wanted to show their sincerity they would have suggested this court's additions distributed onver say a ten year period; that would be statesmanship. No one doubts that more additions are needed in the lower courts, if logical members could be found. Logical persons free from politics are too busy with their personal affairs to take a job of doubtful returns. I think that careful thought on the statistics added to the Att' General's letter to the President, with due considerations for the fact that the 1913 figures, are misleading on account of congestion and startling inefficiencies and the fact that his departments efficiency should have increased hand in hand with that exhibited in the direction and administrat of modern science and industry should indicate that the personal is not as extremely short as Washington would indicate.

RECORDED & INDEXED N 94-4-595-

Relief is no doubt needed but popular opinion in many parts is that the Supreme Court is the wrong place to start. It is doubtful if the older members of the houses would be so interested in a law to eliminate

them from service.

I might mention that while your department operatives make much more than, say myself in industry, they should make a lot more. Their salaries are not, in my estimation, commensurate with the responsibilities and excel of their work.

It is a disappointment to some of us who are making a more determined effort to find time from our daily work to study more carefully our government activities to find that two of our departments like F.B.I and R.F.C which really bring us some definite results and profits receive so little attention and aid from our legislators. I for one will bring this to the attention of some of our representatives and senators.

Please be assured that I greatly appreciate the time which you and your department took to make available the information referred to.

Thank you.

Yours truly

b7C [redacted]

b7C [redacted]

94-4-595-1

March 19, 1937.

RECORDED & INDEXED

b7C [redacted]
Jackson, Michigan.

Dear [redacted]

Your letter of March 8, 1937, has been received and in compliance with your request I am sending copies of various publications dealing with the work and functions of the Federal Bureau of Investigation to [redacted] Clarksville, Texas. There is no charge for these publications.

b7C

In accordance with existing Departmental policies I am precluded from commenting upon that portion of your letter which deals with proposed legislation. However, please be assured of my deep appreciation for your commendation of the efforts of this Bureau in connection with the existing crime situation.

With best wishes and kind regards, I am

Sincerely yours,

[redacted]

MAR 18 1937

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

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☒ For your information: This is the same information previously released in 62-2765-on the Subject Supreme Court, 7/25/88.

☒ The following number is to be used for reference regarding these pages:
Cross reference #49 (94-8-24-33)

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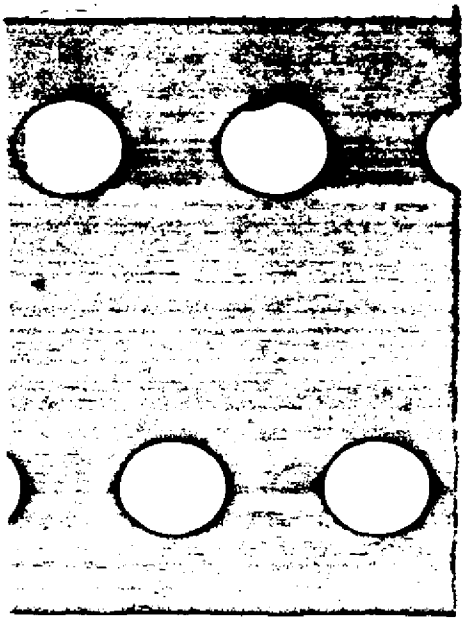
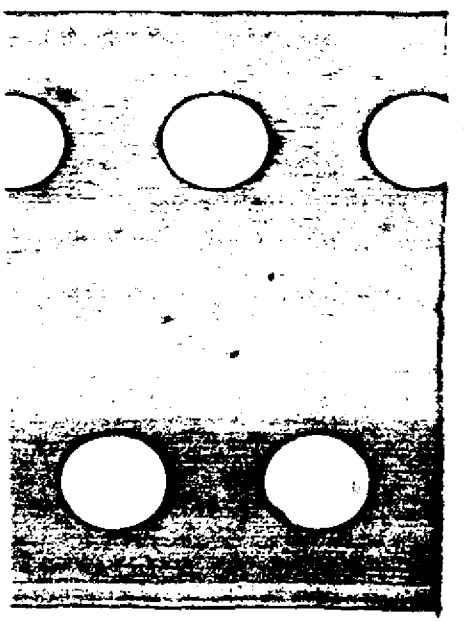




SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1942.

Mitchell Clifton Anderson, John Edward Simonds, Earl Hubbard, Felton Moore Woodward, Marion Luther Ellis, Robert Lee Ballew, John David Queen, Robert Lee Rhodes, Petitioners,

vs.

The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

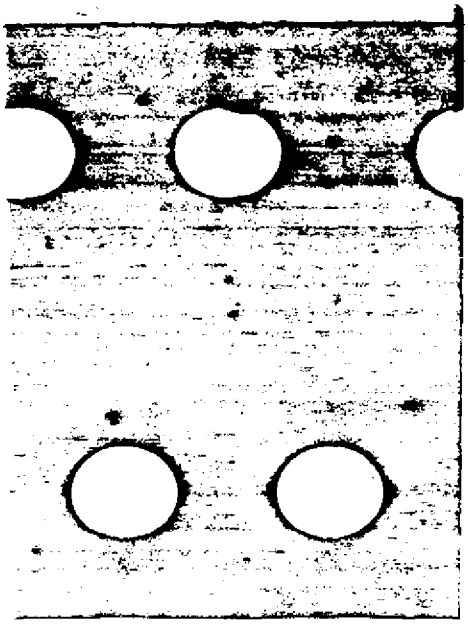
[March 1, 1943.]

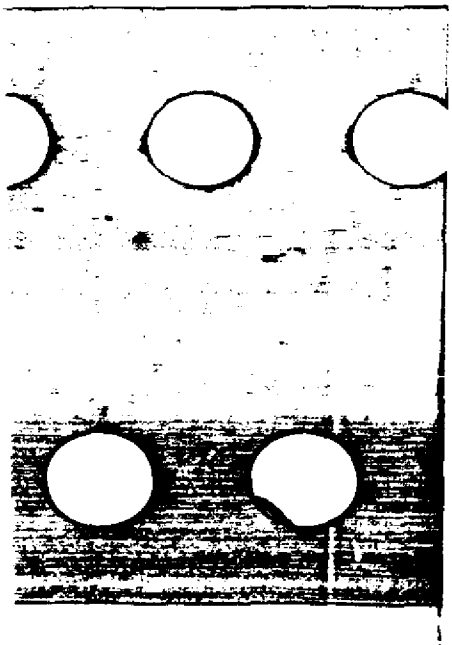
Mr. Justice Frankfurter delivered the opinion of the Court.

The petitioners were convicted, in the District Court for the Eastern District of Tennessee, of conspiring to damage property owned by the Tennessee Valley Authority, a corporation in which the United States is a stockholder, in violation of §§ 35(C) and 37 of the Criminal Code as amended (18 U. S. C. §§ 82, 88). The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions, 124 F. 2d 58, and we brought the case here because it presented serious questions in the administration of federal criminal justice, 316 U. S. 651. The questions are similar to those decided this day in No. 25, *McNabb* v. *United States*. The two cases were argued at the same time and, as will appear from a short summary of a long record, are governed by the same considerations.[1]

In July 1939, the International Union of Mine, Mill and Smelter Workers struck against the Tennessee Copper Company's mines

[1] As in the *McNabb* case, there are no specific findings here as to the circumstances in which the incriminating statements in controversy were admitted against the petitioners. When these statements (excepting the confessions of three petitioners) were offered in evidence, the petitioners objected, and the trial court held a hearing in the absence of the jury to determine whether the statements were "voluntary". At the conclusion of this preliminary examination, the court overruled objections to the admissibility of these statements. The jury was recalled and the same testimony was repeated. The evidence relating to the confessions of three of the petitioners was, by stipulation, heard only once and in the presence of the jury. Referring to all this evidence as "certain parts of the proof", the judge thus charged





at Copperhill, Polk County, Tennessee. The strike was followed by a shut-down, but the mines were reopened in August after the sheriff brought in a number of special deputies who were in the company's pay. It was one of those obdurate mining strikes, and it continued into April of 1940, when the violence which gave rise to this prosecution occurred. On April 1st the company's operations were interrupted by the dynamiting of two power lines, owned by the TVA, from which the company obtained the power necessary for its activities. On April 14th two steel towers were dynamited. Two days later two special agents of the Federal Bureau of Investigation arrived in Copperhill to investigate the explosions. On April 24th two more power lines were blown down.

Thereupon, on the same day, the sheriff on his own initiative began to take into custody strikers, including the eight petitioners, whom he suspected of participation in the dynamiting. These arrests were made without warrant. With commendable candor in regard to this and other misconduct of officers of the law, the Government does not defend the legality of the arrests.[2] The men were not taken before any magistrate or other committing officer, as required by Tennessee law. Michie's Code (1938) § 11515. Instead they were taken to the company-owned Y. M. C. A. building in Copperhill, which was being used by the sheriff and his special deputies as their headquarters. On April 24th and 25th six more special agents of the Federal Bureau of Investigation arrived in Copperhill to assist in the investigation.

While the petitioners, with at least thirteen others, were thus held in custody at the Y. M. C. A. by the state officers, they were questioned by the federal agents intermittently over a period of six days during which they saw neither friends, relatives, nor counsel. Incriminating statements from six of the petitioners were the fruit of this interrogation. To determine whether these state-

the jury regarding the admission of these incriminating statements: "There has been allowed for your consideration certain statements, confessions, or admissions alleged to have been made by some of the defendants. It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements." We shall assume as facts, therefore, only the testimony of Government witnesses and so much of the petitioners' evidence as is uncontradicted.

2 Under Tennessee law an officer may arrest without a warrant when a felony has in fact been committed, and he has reasonable grounds for believing that the person arrested has committed it. Michie's Code (1938) § 11536. But willful destruction of power lines is only a misdemeanor under state law. *Id.*, § 10863(8).

which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside.

Reversed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

Mr. Justice REED dissents.

ments were properly admitted in evidence, it is necessary to particularize the circumstances under which each confession was made.

Simonds. Simonds was arrested by two deputies on the afternoon of Wednesday, April 24th, and taken directly to the Y. M. C. A. After spending the night at the county jail, he was questioned by one of the federal agents for about an hour Thursday morning at the Y. M. C. A. The questioning was resumed at two o'clock in the afternoon by three agents who talked with him for about two hours; at seven o'clock that evening he was again questioned by two agents for another two hours. On Friday morning he was questioned for about an hour. And on Saturday he was questioned at three different periods throughout the afternoon and evening, each period lasting about half an hour. He was again questioned on Sunday afternoon for about an hour by two agents, one of whom described what occurred then as follows: "We went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi, and out of a clear sky he said 'well, I want to tell you I am guilty.'" One of the agents thereupon took Simonds' written statement.

Hubbard. Hubbard was arrested by two deputies on Wednesday evening, April 24th, and taken to the Y. M. C. A. He, too, spent the night in the county jail. He was questioned by four agents at the Y. M. C. A. on Thursday afternoon for about two hours. Two of the agents questioned him again that evening for about two hours. At two o'clock Friday afternoon he was questioned for about forty-five minutes; at five o'clock he was questioned for another hour and a half. At seven-thirty Friday evening two agents questioned him for two more hours. He was questioned intermittently all day Saturday. One agent questioned him for periods of fifteen minutes two or three times during the morning and afternoon. Another questioned him for half an hour in the morning. A third agent talked with him for another two hours sometime during the day. And he was questioned again for about twenty minutes at six o'clock in the evening. He was not questioned on Sunday, but he was present during the questioning of Simonds by the federal officers that morning. After hearing Simonds admit his guilt, Hubbard also confessed.

Woodward. Woodward was also arrested on Wednesday afternoon, April 24th, by two deputies who took him first to the

Y. M. C. A. and then to the county jail. He was questioned by four federal officers for about two hours Thursday afternoon, and questioned again for another two hours that night. The officers questioned him for about fifteen minutes on Saturday. On Sunday he was brought into the room where Simonds and Hubbard were, and upon being confronted with their confessions, also confessed. On Monday the officers spent about five hours, from 11 a. m. until 2 p. m. and from about 3:30 until 7 or 7:30 p. m., questioning him in order to reduce his confession to writing. The manner of Woodward in giving his statement was thus described by the agent who questioned him: "He had considerable difficulty in recalling the details, he said his mind was not exactly clear on all of it, it took a good while in order to get the details of it, of how it happened, everything in the chronological order of events, and he also complained on occasions that his mind was befuddled in making the statement, upon relating about what he had done, and that is the reason it took so long to do it. It took the morning and the greater part of the afternoon."

Rhodes. Rhodes was arrested Sunday night, April 28th, and spent that night in the jail, sharing a cell with Woodward, Hubbard, Simonds, and Queen. He was questioned for about two hours by two agents on Monday morning, and then confessed.

Queen. Queen was arrested by two deputies on Sunday afternoon, April 28th, and was taken to the Y. M. C. A. After spending the night in jail, he was questioned for about an hour the following night by three agents. Upon being confronted with the confessions of the others, he admitted his guilt.

Ballew. Ballew was arrested by three deputies on Tuesday afternoon, April 30th, and taken to the Y. M. C. A. He was questioned there for about an hour by two federal officers. After spending the night in jail, he confessed the following morning.

The question for decision is whether these confessions—repudiated when those who made them took the witness stand at the trial—were properly admitted in evidence against all the petitioners, including Anderson and Ellis who did not confess. In the *McNabb* case we have held, 317 U. S. —, that incriminating statements obtained under the circumstances set forth in that opinion cannot be made the basis of convictions in the federal

courts. The considerations which led to that decision also govern this case. The detention of the petitioners by state officers was, as the Government concedes, in violation of the Tennessee statute which provides that "No person can be committed to prison for any criminal matter, until examination thereof be first had before some magistrate." Michie's Code (1938) § 11515. The courts of Tennessee exact scrupulous observance of this prohibition by its law officers. See *Polk* v. *State,* 170 Tenn. 270; *State ex rel. Morris* v. *National Surety Co.,* 162 Tenn. 547.

Unaided by relatives, friends, or counsel, the men were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small company-dominated mining town. The men were not arrested by the federal officers until April 30th, and only then were they arraigned before a United States Commissioner, except for Ballew who was not arraigned until May 2nd or 3rd. There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers. *Gambino* v. *United States,* 275 U. S. 310, 314; *Byars* v. *United States,* 273 U. S. 28, 33-34.

The Government urges that, even if the confessions are held to be inadmissible, only the convictions of the six petitioners who confessed should be reversed. The prosecution rested principally on these confessions and the testimony of an informant, Freed Long, whose credibility was under severe attack. The incriminating statement of each petitioner implicated all the others, including those who did not confess. To be sure, the trial court devised a procedure under which the confessions were introduced without mention of the names of the other persons implicated. But their names were in fact revealed in the course of the cross-examination of the confessing petitioners. So also, while the trial judge appeared to admit the confessions "only to be used against the persons who made them", his charge bound the jury to no such restricted use of the confessions. On the contrary, from what the trial judge told them the jury had every right to assume that in ascertaining the guilt or innocence of each defendant they could consider the whole proof made at the trial. There is no reason to believe, therefore, that confessions

HIGH COURT WEIGHS FIRST TREASON CASE

Intent of Framers of Constitution Described in Arguments Appealing Cramer Conviction

SUIT TURNS ON 'OVERT ACT'

Defense Counsel Says Meeting With Nazi Saboteurs Was Not Actually Traitorous

By JAY WALZ

Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 6—The Supreme Court, taking up the first treason case in its history, heard arguments today that framers of the Constitution deliberately made convictions of alleged traitors extremely difficult in order to protect citizens of the new Republic from false charges and perjury.

This was done, it was pointed out by Harold R. Medina, counsel for Anthony Cramer who is appealing his conviction in lower courts of giving aid and comfort to two of the Nazi saboteurs who arrived by submarine in 1942, by limiting the meaning of the crime to acts in which aid and comfort was given to the enemy.

The founders of our Government, he declared, rejected the historic English view that mere attempts at helping the enemy was treason. He argued that his client should not have been convicted of treason since he never actually committed the treasonous act of giving aid and comfort to the enemy.

Charles Fahy, Solicitor General, in supporting the Government's case against Cramer, asserted that the writers of the Constitution had narrowed the meaning of treason, but he held that acts which might seem innocent in themselves might be proved to be an integral part of a treasonous act. He held that "the overt acts," on which Cramer was successfully prosecuted in two lower courts in New York, were deeds furthering Cramer's "intent" to help the enemy.

"Overt Acts" Are Considered

Two of these "overt acts" had to do with meetings between Cramer and two of the Nazi saboteurs who had been landed from a submarine near Jacksonville, Fla., and were executed following a military trial in Washington. Cramer was charged with meeting Werner Thiel and Edward John Kerling, the saboteurs, in June, 1942, in two New York restaurants, the Twin Oaks Inn on Lexington Avenue and Thompson's Cafeteria on Forty-second Street between Lexington and Vanderbilt Avenues.

Mr. Medina argued that the Government failed to show what transpired at these meetings and that the occasion could not constitute "an overt act" of treason. The testimony of the witnesses, he said, did not disclose the subject of conversation between Cramer and the Nazis and therefore it was not proved that actual aid and comfort to the enemy had been given.

Mr. Fahy argued that further testimony offered in Cramer's trial proved the traitorous design of the meetings and that they had been adequately shown to be "overt acts" of treason.

Issue of 2 Witnesses Is Raised

This led to a lively discussion of the constitutional requirement that two witnesses must testify to "the same overt act." Mr. Medina held that the Government had failed to produce the same two witnesses for each meeting, covered by the alleged "overt act." Mr. Fahy, insisting once more that "the overt act" must be considered as only a part of the act of treason, maintained it was not necessary for the same witness to bear testimony for all the parts.

The Solicitor General emphasized that only "the overt act" must be seen by two witnesses and whether it constituted an act of treason might be proved by the testimony of other witnesses.

This prompted a question from Justice Felix Frankfurtur whether such an interpretation of the latter might make it possible for a perjured witness to defeat the constitutional safeguard intended by the two-witness provision.

Arguments took frequent recourse to English law dating from 1351 when the first English criminal statute, the Statute of Treasons, was enacted. Mr. Medina declared that the English in the course of the history had tended to stretch the literal meaning of their law to make an attempt at treason a crime as well as the actual deed of treason.

Protective Device Is Cited

This idea, he said, had been "abhorrent" to the founders of the country and they had gone to great pains to protect the citizenry from promiscuous charges of treason.

Another "overt act" charged against Cramer had to do with false testimony which he gave to FBI agents. Mr. Medina held that this misinformation, which Cramer later admitted was false, was not treasonous, although it might have left the defendant open to other charges. Cramer, in giving false information about himself and the German agents, had not "given aid and comfort to the enemy," Mr. Medina declared, since the FBI men had already obtained the facts and were not fooled by the misstatements.

While the maximum penalty for treason is death, Cramer was sentenced to forty-five years and a $10,000 fine.

Following oral arguments, Chief Justice Harlan F. Stone held the case open to give Cramer's counsel the opportunity to file a reply to the Government's reargument. Mr. Medina said that he planned to have this done within a week.

Supreme Court 5 to 4, Upsets Conviction Of Cramer, Naturalized German, for Treason

By the Associated Press

The treason conviction of Anthony Cramer, naturalized German, who associated with Nazi saboteurs landed here by submarine, was overturned yesterday by the Supreme Court on the ground that proof of overt, treasonable conduct was lacking.

The decision was 5 to 4, with Justice Douglas reading a vigorous 10,000-word dissent which declared the majority's interpretation of the Constitution makes "neither good sense nor good law." He said it "makes justice truly blind."

Justice Jackson delivered the 15,000-word majority opinion in the case, the first treason conviction ever considered by the high tribunal. He said the constitutional safeguards were written by *founding fathers who felt* duty bound to guard against injustice even to their enemies.

Cramer, New York City boiler worker, drew a 45-year sentence on the charge that he aided two of eight spies who came ashore in 1942. All eight were caught. Six were executed and two imprisoned.

Cramer, who served with the German army in 1918 and came to this country in 1925, was naturalized in 1936. He had known one of the saboteurs, Werner Thiel, while Thiel lived in this country, and the spy looked him up. They met twice, once when the second saboteur, Edward Kerling, was present. Thiel turned over to Cramer his money belt with $3600 to keep for him.

Under the Constitution, conviction of treason requires two witnesses testifying to the same overt act, or a confession in court. The Government charged that each of the two meetings, at which the men drank and talked long and earnestly, constituted an overt act.

"No Two-Witness Proof"

But the majority opinion said: "There is no two-witness proof of what they said nor in what language they conversed.

"There is no showing that Cramer gave them any information whatever of value. . . . No effort at secrecy is shown, for they met in public places. . . . Cramer furnished them no shelter. . . . There is no evidence that he gave them encouragement or counsel."

The *whole purpose of the* constitutional provision, the court said, is to make sure that treason convictions shall rest on direct proof of two witnesses "and not on even a *little* imagination."

"And without the use of some imagination it is difficult to perceive any advantage which this meeting afforded to Thiel and Kerling."

Jackson was joined by Justices Frankfurter, Roberts, Rutledge and Murphy in the majority opinion.

Douglas, with Chief Justice Stone and Justices Black and Reed concurring, said that Cramer was shown "consciously and voluntarily" to have assisted the enemy propaganda program and "his traitorous intent was then and there sufficiently proved."

Douglas asserted that the majority opinion "is written on a hypothetical state of facts, not on the facts presented by the record."

Conferences with saboteurs here on a mission for the enemy, Douglas continued, "may be wholly adequate as overt acts under the treason clause. They were proved by two witnesses as required by the Constitution."

The majority opinion conceded that "it is not difficult to find grounds upon which to quarrel with this constitutional provision.

"Certainly the treason rule, whether wisely or not, is severely restrictive. . . ."

But, concluding, Jackson said: "The innovations made by the forefathers in the law of treason were conceived in a faith such as Paine put in the maxim that: 'He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach himself.'

"We still put trust in it."

In another decision yesterday the court declined to back down on its decision to review the Georgia rail rate case. It refused a plea by 20 defendant railroads for rehearing of its 5 to 4 ruling that Georgia may proceed with its suit charging discrimination against the South.

It upheld the National Labor Relations Board in ruling that a company could not prohibit employes from soliciting union membership on its premises during nonworking time, or prevent wearing of union buttons in a plant not yet unionized.

Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Penningt
Mr. Quinn Ta
Mr. Nease
Miss Gandy

b7C

INDEXED 172
NOT RECORDED
87 MAY 5 1945

WASHHINGTON POST
Page

Paper Names 'Honor Roll Of Democracy'

Chicago, [illegible]—The Chicago Defender, one of the country's leading Negro newspapers, has named [illegible] Negroes, [illegible] white persons and [illegible] organizations to its "Honor Roll of Democracy" for "their historic contributions to democracy and unity during the past year."

Individuals selected are:

President Harry S. Truman—For his forthright insistence on a strong civil rights program, and his refusal to yield to compromise of any character.

Representative William L. Dawson—For his leadership of the National Citizens Committee to elect Harry S. Truman President, and for raising more funds for the President's campaign than any other single individual.

Mrs. Eleanor Roosevelt—For her work in directing the United Nations Committee that drew up the International Charter of Human Rights.

J. E. Walker—For building the Tri-State Bank of Memphis, and directing its growth into a strong economic force in that area.

Judge J. Waites Waring—For upholding the right of Negroes to vote in the Democratic primaries of South Carolina, which results in Negroes taking an active voice in the government in that State in 1948.

Alice Coachman—Olympic high jump champion and only American woman to win a first place in track or field events in the international games.

Mrs. Harper Sibley—President of United Churchwomen, for her fight against segregation in the armed forces, all Federal establishments and in the Protestant churches.

Levi Jackson Honored

Levi Jackson—The first Negro to captain a varsity team at Yale University, and the Yale football team, for choosing him captain for 1949, and most valuable player for 1948.

Solicitor General Philip Perlman—For his arguments before the United States Supreme Court against racial restrictive covenants on behalf of the Department of Justice.

Dr. W. Montague Cobb—First Negro vice president of the American Association of Physical Anthropologists and the Anthropological Society of Washington for his research attacking myths of racial characteristics.

[illegible] ... of fair employment practices in American industry.

Dr. Ralph Bunche—for his efforts, singly and with Count Folke Bernadotte, in bringing about a truce between the Arabs and Israeli and in winning accord on an armistice among four of the warring states as United Nations mediator.

Oscar Ewing, Federal Security Administrator—for advocating positive measures to raise the level of national health and increase social security benefits for all Americans.

Columnist Drew Pearson—for his unrelenting exposes of the Ku Klux Klan, which has served as a deterrent to the expansion of that organization and similar intolerant groups.

Alderman Harold B. Hill—for his courage in entering politics in a Southern State, and his success in rallying Negro and white voters to elect him an alderman in Richmond, Va.

Organizations:

Amherst College chapter of PHI Kappa Psi fraternity for its decision to accept suspension from the national fraternity rather than oust Thomas Gibbs, a Negro brother.

United States Supreme Court—For its many decisions reaffirming the basic philosophy of democracy in all phases of American life.

California Supreme Court—For declaring unconstitutional the law banning marriage between whites and nonwhites in that State.

University of Arkansas—For admitting a Negro student to its medical school on a nonsegregated basis.

National Committee on Segregation in the Nation's Capital—For laying bare the facts, figures and techniques of systematic discrimination against Negroes in Washington, D. C.

Actor's Equity—For its efforts to insure that no actor perform anywhere in the United States where segregation is practiced on the stage or in the audience.

Legal defense committee of the National Association for the Advancement of Colored People—For preparing briefs and fighting cases in scores of suits involving basic civil, political and legal rights.

National Builders Association and W. H. Aiken of Atlanta, Ga.—For their advocacy and example of commercial and residential building among Negroes.

Cleveland Indians' baseball club—For proving through their all-time attendance records and their winning of the world championship that Negroes bring additional stature to the national sport.

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss G[redacted]

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63

100-122319-11

NOT RECORDED
44 MAR 11 1949

EX-118

WASHINGTON POST
Page 13 Sect. M

FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT WASHINGTON, D. C.

100-8878

REPORT MADE AT	DATE WHEN	PERIOD FROM	PERIOD TO	REPORT CHARGE OUT
WASHINGTON, D. C.	6-20-45	5-16, 19, 20-45		[redacted]

TITLE: FOREIGN INSPIRED AGITATION AMONG THE AMERICAN NEGROES IN THE WASHINGTON FIELD DIVISION

CHARACTER: INTERNAL SECURITY

SYNOPSIS OF FACTS:

7/28/87 Sp Ag Eff
CLASSIFIED BY: ADW
DECLASSIFY ON:
#354471
cc-ONI
EHW-1
7-14-45

Current developments set forth regarding foreign inspired agitation among American Negroes in the Washington Field Division.

- P -

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

REFERENCE: Bureau File 100-13554
Report of Special Agent [redacted] dated May 19, 1945, at Washington, D. C.

b7C

DETAILS:

AT WASHINGTON, D. C.

This report summarizes current developments in regard to foreign inspired agitation among American Negroes in the Washington Field Division for the period from May 20, 1945, to June 20, 1945.

Supreme Court not mention on this page

AGITATION BY ORGANIZATIONS

COMMUNIST POLITICAL ASSOCIATION

b7D [redacted]

APPROVED AND FORWARDED: [signature] SPECIAL AGENT IN CHARGE

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8 JUL 1945

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CONFIDENTIAL

RETURN TO INDEXING

U. S. GOVERNMENT PRINTING OFFICE 7—2034

[redacted]

Conferences

According to an article in the Washington Afro-American on May 26, 1945, the 82nd annual session of the Washington Methodist Conference was held during the previous week at the Ames Church in Washington, D. C. At that conference, a resolution was adopted which requested that Sibley Hospital in Washington abandon its policy of racial discrimination against patients. This resolution was adopted following the report of a conference committee on the incident which occurred on December 22, 1944, when a young colored mother was refused admittance to the hospital, and had given birth to a baby on the sidewalk within one-half a block of the hospital.

Consideration was given to the appointment of a committee to investigate treatment of colored people in all Methodist hospitals, including Union Memorial Hospital in Baltimore, where the staff does not accept colored bed patients.

CHARLEY CHEROKEE reported in the Chicago "Defender" on June 9, 1945, that the National Council of Negro Democrats gathered in the District of Columbia on June 8 and 9, 1945, that the members had for consideration a memorandum which they took up before the election in 1944, in which they asked for various things but had not received very many of them. Moreover, the Council was considering an inquiry to Representative DAWSON of Illinois to ask him why he had not taken a more active position in party leadership.

Courts

An editorial appeared in the Washington "Tribune" on June 2, 1945, entitled "Supreme Court Blunder," which stated in part as follows:

> "The United States Supreme Court struck a blow at democracy by refusing to review the case of Mrs. CLARA T. MAYES, 2313 First Street, N. W., who is seeking through the highest court permission to remain in her first street home, which she purchased last year. Counsel for Mrs. MAYES are planning on seeking a re-hearing before the highest tribunal. If that fails, Mrs. MAYES would have to move from and sell her home solely because she is a member of the negro race.
>
> "'Equal Justice Under Law' which is inscribed on the Supreme

Court will never be rendered until the minds of the men who preside in its chambers have been lifted above the mire and hate of racial bigotry."

CONFIDENTIAL

It was reported in the Chicago "Defender" on June 9, 1945, that on that date the Supreme Court upheld the right of the states to make deliberate token placement of negroes on jury panels and remain within the law. In a six to three decision the highest court refused to set aside the murder conviction of L. C. AIKENS, Dallas negro, on a plea that only one negro was permitted to serve on the grand jury which indicted him. AIKENS contended that this would deprive him of his constitutional rights.

MARJORIE McKENZIE wrote an article in the Pittsburgh "Courier" on June 9, 1945, in which, in referring to the MAYES case she stated in part as follows:

"A disgraceful chapter was added to the bad record which the Supreme Court has been piling up for itself of late by its refusal last week to review the District of Columbia Court of Appeals decision upholding a racial covenant. For almost thirty years negro lawyers have been fighting the injustice of the restricted covenant, and as far as the historical and social development of the problem is concerned never was orderly democratic progress as ready for favorable and final judicial determination as now."

McKENZIE pointed out that the Supreme Court did not risk in the MAYES case a written opinion but that the District Court of Appeals had dared to discuss the social aspects of housing restrictions based on race. This opinion was rendered by Chief Justice GRONER of the Appeals Court, and McKENZIE concluded as follows in commenting on GRONER'S decision:

"The highly tentative feeling the Chief Justice has concerning the ultimate ability of the races to live together in peace is a dangerous Fascist explanation for one with so great an obligation to the Constitution of the United States. It demonstrates how stern a battle still lies ahead for negro leadership."

Government Agencies

It was reported by CHARLEY CHEROKEE in the Chicago "Defender" on May 26, 1945, that UNRRA had changed its former attitude and was frankly looking for negro nurses for service overseas, and that European countries had all stated that they would be delighted to have negro nurses or any other kind. MABEL STAUPERS, head of the negro nurses, told UNRRA that negro nurses could do a more effective job taking care of the situation here at home.

VENICE T. SPRAGGS wrote an article in the Chicago "Defender" on

CONFIDENTIAL

FD-72

FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT NEW YORK

FILE NO. NY 100-1166

REPORT MADE AT	DATE WHEN MADE	PERIOD FOR WHICH MADE	REPORT MADE BY
NEW YORK	2/10/49	12/6-8,15,16, 21-23/48	[redacted] b7C

CONFIDENTIAL

TITLE

LAISVE INC.;
LITHUANIAN COOPERATIVE PUBLISHING SOCIETY, INC.

CHARACTER OF CASE: INTERNAL SECURITY - C

SYNOPSIS OF FACTS:

[redacted] b7D, b1

Excerpts from [redacted] from February, 1947 to November, 1948 to show trends of paper, set out.

APPROPRIATE AGENCIES AND FIELD OFFICES ADVISED BY ROUTING SLIP(S) OF DATE 7/18/85

doesn't pertain to the Supreme Court

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APPROVED AND FORWARDED: Edward Scheidt SPECIAL AGENT IN CHARGE

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3 New York

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RECORDED - 82
INDEXED - 23
EX-31

RETURN TO INDEXING DESK

[redacted]

CONFIDENTIAL

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CONFIDENTIAL

"October 22

"The murder of George Polk in Greece is supposed to have been committed by Communists. This is untrue. The monarchist Facists killed him and are just trying to put the blame on the Communists.

"October 26

"(Article by A. Bimba)

"The Supreme Court is supposed to be unbiased. But this is not so. We recall the difficulty President Roosevelt had with the Hoover-spirited Supreme Court, each time a New Deal measure came before it. The Supreme Court shows itself again to be on the side of the reactionaries. It has refused to allow Wallace's name to appear on the Illinois ballot.

"October 28

"IMPORTANT CONFERENCE

"On December 11 and 12 the American Committee for the Protection of the Foreign Born will have its 15 conference in Chicago. Among the important matters it will discuss is that of the 60 non-citizens who have been arrested and are being held for deportation for belonging to progressive organizations. Delegates for this conference should be chosen early."

CONFIDENTIAL

Two Negroes Heard in High Court On 'Job Bias' in Rail Union Pact

By LOUIS STARK
Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 14—Tom Tunstall and Bester William Steele, Negro locomotive firemen on two southern railroads, appeared through counsel before the Supreme Court today and argued that, while the Brotherhood of Locomotive Firemen and Enginemen represented all the firemen on the two systems as exclusive bargaining agents, it barred Negroes and even made agreements with the carriers that resulted in demotion and unemployment for Negro firemen.

Supporting this plea, the Federal Government, through Charles Fahy, Solicitor General, and Robert L. Stern, special assistant to the Attorney General and the National Labor Relations Board, intervened as "friends of the court." In a joint brief, Mr. Fahy and Mr. Stern argued that, since the union excluded Negroes from membership, it was "obviously not acting in good faith as the representative of the entire craft."

The two firemen requested a declaratory judgment that the union represent all employes fairly, that an injunction be issued against enforcement of the union agreement with the carriers and that petitioners be restored to their positions.

Attorneys for the brotherhood and for the two roads, the Louisville & Nashville and the Norfolk Southern, asserted that the Federal Court had no jurisdiction in the case, that the proper remedy was before the National Mediation Board or the adjustment board created under the Railway Labor Act and that, in the Tunstall action, the union had not been properly served.

Charles H. Houston, attorney for the two firemen, maintained that under the principle of majority rule the majority could not use the Government to exploit the minority.

However, he said, the union, acting for the entire class or craft of firemen under the provisions of the Railway Labor Act, had, on Feb. 28, 1941, made an agreement with a group of Southern roads that not more than 50 per cent of the firemen in any seniority district should be "non-promotable."

Negroes, he added, were designated as "non-promotable" and this meant that the places of the Negro firemen, despite long seniority, would be taken by white firemen of lesser seniority.

According to Mr. Houston, if a Negro fireman tried to bring a case of discrimination before the adjustment board he would have to appear before a body composed partly of employers and partly of unions which bar Negroes.

Therefore, he told the court, unless the firemen could go to the courts for relief they had been placed in "economic servitude" by Congress, which passed the Railway Labor Act.

The justices expressed a lively interest in the case and asked the attorneys many questions.

In reply to one question, Mr. Houston said that the issue was broader than race and that if the union could bar Negroes today it could "bar Catholics, Jews and six feet men tomorrow."

Harold O. Heiss, counsel for the brotherhood, asserted that Congress did not legislate on the relation of employes and their representatives under the Railway Labor Act and, therefore, the courts could not so legislate.

He declared that employes adversely affected had recourse to the National Mediation Board and the adjustment board as well as the courts.

"Can promotable men be black?" asked Justice Frankfurter.

"Not on the railroads of the railroads of the United States," replied Mr. Heiss. "That is the policy of the roads. We have nothing to do with it."

"Then the idea of the non-promotable men is based on races?" asked Justice Murphy.

"That's railroad policy," the brotherhood attorney answered.

He said that hundreds of "seniority" suits are being adjudicated in the State courts and that the only difference between these and the Tunstall case was that "the petitioner comes here and says he's black."

James G. Martin, counsel for the Norfolk & Southern, disagreeing with Mr. Heiss, expressing "serious doubts" about State jurisdiction in the Tunstall case, but argued also that neither was there any Federal issue involved.

More Bans [illegible] n in Congress (wash [illegible] – 11/23/43)

States' Union Restrictive Laws to Be Fought in Highest Court

By FRED W. PERKINS

Activity in union-restrictive legislation is sure this winter on Capitol Hill, even tho there is no certainty that Congress will follow thru on broad hints from the War Labor Board that further strike preventatives may become necessary.

Across the plaza from the Capitol is the marble home of the Supreme Court, and in that distinguished edifice will be staged one or more legal battles to knock out, on the ground of violation of the Federal Constitution, the union-regulatory laws recently placed on the books of Colorado, Kansas, Texas, Alabama, Florida, North Dakota and Idaho.

First action before the Supreme Court is expected to be a constitutional test of a Texas law under which R. J. Thomas, president of the United Automobile Workers (CIO), succeeded in having himself arrested thru challenging in a public speech that state's requirement of a license for solicitors of union memberships. An appeal from the Texas Supreme Court is now being perfected by Lee Pressman and Eugene [illegible], general counsel and assistant general counsel respectively of the CIO, and is to be filed within 10 days.

REPLY ON RECENT RULING

The CIO lawyers, according to Mr. Pressman, will base an important part of their case on the Supreme Court's refusal on Oct. 18 to review a lower court decision which had held that the National Labor Relations Act does not forbid an employer from using the constitutional right of free speech in giving his employes his views on whether they should vote for union representation.

The free speech issue, Mr. Pressman said, is also the basis of the Thomas case in Texas. The rule must work both ways, he asserted.

Litigation of the same sort is on also in Colorado, where some of the state law restricting union activity has been declared unconstitutional by a lower state court, and the question is now on appeal to the state Supreme Court. This case, like those involving all other state statutes which unionists assert are discriminatory against them, is thought likely to come to Washington before it is finally settled, unless the Supreme Court issues a blanket decision to settle the question on a nation-wide basis.

TO CARRY ON FIGHT

Union leaders are preparing to combat threatened attempts at anti-union legislation in other states where legislatures meet this winter. Mr. Pressman said that "the organization that sponsored these bills is not confining itself to these even states." He charged that the state laws were the result of a general campaign by the "Christian Americans," which he said was directed by Sen. Lee O'Daniel (D., Tex.), with "plenty of funds obtained from the National Association of Manufacturers and other organizations of that kind."

The Christian Americans, said Mr. Pressman, "is just a name for the same group of organizations and people that have been fighting us down thru the years. They have discovered in a state act the means of overcoming the united strength we can present against that kind of legislation before Congress . . . We are not so strong in some of the particular states, where they catch us napping."

Award for Missing Airman

—News-Acme

Gen. Uzal Ent, right, is shown as he presented the Congressional Medal of Honor to the family of Maj. Jack L. Jerstad, missing in action since he took part in the famous raid over Romania's Ploesti oil fields last summer. The father, Arthur Jerstad, receives the award as the mother and sister look on.

Christian-American Association

100-2894-A

[redacted]

1943

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Tolson
Nichols
Boardman
Belmont
Mohr
Parsons
Rosen
Tamm
Trotter
Nease
Tele. Room
Holloman
Gandy

Mrs. Roosevelt

I'm Glad Over Recent High Court Decisions

NEW YORK — Just at this time, when many of us have felt that the individual was losing many of his rights, it is encouraging to note the decisions of the Supreme Court upholding the constitutional freedoms.

The Court—at least the majority on it—seems to have redefined the ancient idea that its function is to guard the rights granted to our people in the Constitution and the Bill of Rights. This it has done in reversing the contempt conviction of John T. Watkins, labor leader, and the freeing of five California Communist leaders convicted under the Smith Act and the granting of a new trial for nine others.

I also am glad that, after his long fight, John Stewart Service, former Foreign Service officer, won a reversal of the judgment of the Court of Appeals which in June, 1956, held that Mr. Service had been rightfully dismissed as a security risk.

When you study the way the different Court justices acted in reversing the Communist leader's convictions, you find certain differences in their reasoning.

For instance, two of them, Justices William Black and William C. Douglas, felt that the Smith Act is unconstitutional. I have not the space to discuss the legal points, but I think it is well worth everyone's time to read the varied opinions.

I for one, am glad that the Court has handed down a decision which forever bars any Smith Act indictment under the "organize" section. The word "organize" was being construed in its narrow sense, meaning that simply bringing a Communist group into being was found to be cause for indictment. The Court held the Communist Party had been organized in its present form by 1954 at the latest and that, in 1954 when the indictment was brought against the leaders, the three year statute of limitations had run out.

Wash. Post and Times Herald
Wash. News 9
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JUN 22 1957

100-139614-A

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44 JUL 3 1957

INDEXED - 12

64 JUL 10 1957

EX-127

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Acers
Mr. Carson
Mr. Harbo
Mr. Hendon
Mr. Mumford
Mr. Starke
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

High Court Grants Review To 24 in Bund Convictions

The U. S. Supreme Court has agreed to review the conviction of 24 former leaders of the German-American Bund—including Wilhelm Kunze, former president, and Wilbur V. Keegan, former general counsel—who were convicted in New York of conspiring to instruct Bund members on how to evade the draft.

The group contended they had been denied a fair trial because of war hysteria and "prejudicial newspaper stories," also that incriminating statements were improperly admitted as evidence.

Keegan, in a separate petition, contended that his conviction deprived him of his constitutional right to practice his profession as an attorney.

The court also

¶ Upheld an Arkansas Supreme Court decision that Arkansas cannot levy a sales tax on merchandise sold within the State by out-of-State corporations.

¶ Upheld an Iowa law assessing a two per cent tax on personal property purchased for use within the State.

¶ Upheld the assessment, in Minnesota, of State personal property taxes on airline planes with a home base within the State.

¶ Upheld an Indiana law imposing a gross receipts tax on sales by out-of-State corporations to Indiana customers.

¶ Set for October hearing the Government's anti-trust case against the Hartford-Empire Glass Co. and the Glass Container Assn. of America.

INDEXED 12-1-35
87 MAY 20 1944

MAY 16 1944
DAILY

Mr. Tolson
Mr. E. A.
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Penning
Mr. Quinn T
Mr. Nease
Miss Gandy

High Court Frees 24 Bundsters

Ex-National Head Kunze Among Group

The Supreme Court directed yesterday the acquittal of 24 former leaders of the German-American Bund, including its one-time national president, Gerhard Wilhelm Kunze. They were convicted of advising bundists how to evade the draft laws.

The ex-bundists, sentenced to prison terms of five years each by the southern New York Federal District Court, appealed after the Second Circuit Court of Appeals affirmed their convictions in March, 1943.

The decision was 5 to 4. Justice Roberts said in the majority opinion:

"On the case made by the Government, the defendants were entitled to the direction of acquittal, for which they moved."

Chief Justice Stone wrote a long dissent asserting that the Bund leaders had not acted "innocently." Justices Reed, Douglas and Jackson shared his views.

Besides Kunze and Keegan, ex-Bund members named were August Klapprett, Gustav Elmer, Hermann Schwinn, Herman Agne, Joseph Bachmaier, Josef Belohlavek, Carl Frederick Berg, Walter Borchers, Otto Bregler, Ernest Martin Christoph, Otto Fentzke, John C. Fitting, Bruno Knupfer, William C. Kunze, William Ottersbach, Max Rapp, Louis Schatz, Walter Schneller jr., Hugo Weiss, Karl Richard Wendlandt, Otto Willumeit and Fritz Streuer.

Let me have a digest of this opinion.

149

RECORDED & INDEXED

162-1-34

57 JUN 21 1945

35 JUN 20 1945

JUN

WASHINGTON TIMES-HERALD
Page

Supreme Court Voids Conviction Of 24 Bundists

WASHINGTON, June 11 (AP). —The Supreme Court today reversed the convictions of 24 top officials of the German-American Bund on charges of conspiring to advise evasion and resistance to the Selective Service Act.

The officials, including Gerhard W. Kunze, former Bund national leader, were convicted in the Southern New York Federal District Court. Each was sentenced to five years' imprisonment.

Justice Roberts delivered the 5-4 opinion. Chief Justice Stone wrote a dissent in which Justices Reed, Douglas and Jackson concurred.

The majority held the evidence produced by the Government was insufficient to sustain the convictions.

All of those convicted questioned whether they had been given a fair trial "in view of the great mass of exhibits admitted in evidence having no relevancy to the issues before the court, but calculated only to inflame and prejudice a jury sitting in time of war."

Wilbur V. Keegan, former Bund's general counsel, in a separate appeal to the high tribunal, said his conviction had denied him the constitutional right to practice his profession. He contended that as an attorney he had merely advised the organization as to constitutional questions involved in the act.

In addition to Kunze and Keegan, others involved were: August Klapprott, Gustav Elmer, Hermann Schwinn, Herman Agne, Joseph Bachmaier, Josef Belohlavek, Carl Berg, Walter Borchers, Otto Bregler, Ernest Christoph, Otto Fentzke, John C. Fitting, Bruno Knupfer, William C. Kunz, William Ottersbach, Max Rapp, Louis Schatz, Walter Schneller, Jr., Hugo Weiss, Karl R. Wendlandt, Otto Willumeit and Fritz Streuer.

Confronted with a docket which it was unable to clear at today's scheduled final session before Summer vacation, the court announced another decision day would be held next Monday.

Mr. Tolson
Mr. E. A. Ta
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Penningt
Mr. Quinn Ta
Mr. Nease
Miss Gandy

JUN 12 194

New York Daily Mirror
Page

U. S. Japanese

6000 Removed From Coast Expected to Return Home During Next Three Months

Supreme Court Upholds Exclusion And Rules That Citizens Affected Are Again Entitled to Their Liberty

Approximately 6000 persons of Japanese ancestry, evacuated from the Pacific Coast in 1942 for reasons of military necessity, will return to their homes during the next three months, the War Relocation Authority predicted yesterday.

The estimate followed a Western Defense Command order establishing the question of individual loyalty rather than race as the reason for exclusion from California, Washington and Oregon. The order, effective January 2, was announced Sunday.

Developments in the wake of modification of the exclusion order were:

1—The United States Supreme Court upheld the constitutionality of the exclusion order, at the time it was issued, and in another opinion, ruled that loyal Japanese-American citizens should be liberated from the relocation camps where 61,000 have lived for 33 months. Forty thousand others have settled in unrestricted sections of the United States or are serving with the armed forces.

2—Secretary of the Interior Harold L. Ickes, Chief Administrator of the War Relocation Authority, promised there will be no "hasty mass movement" of the freed citizens and aliens to their former homes.

3—Assistant Director Robert B. Comzens of the War Relocation Authority said the agency "expects and hopes that relocation to the Middle West, the East and the South will be intensified in the months ahead."

4—Governor Earl Warren of California, whose pre-war Japanese American and alien Japanese population was 97,000, headed a list of State leaders urging the returning individuals be granted their constitutional rights. The Governor also instituted special programs, one concerning admission of the racial group student to public schools, to smooth the future possible

5—Mayor Fletcher Bowron of Los Angeles decried modification of the Army's exclusion order and says the re-migration might lead to a serious outbreak of race riots, and would complicate housing problems.

6—Washington dispatches predicted that the Department of Justice would assume control of the Tule Lake, Cal., segregation camp where 18,500 disloyal Japanese Americans and citizens are held by the War Relocation Authority. Military police security guards are provided at the segregation camp.

The segregation center may be moved from Tule lake if the eventual number of disloyal evacuees is reduced by military loyalty tests and examinations. One of the eight relocation centers probably would be used.

10 PER CENT BY APRIL

Attempting to chart the return of the Japanese Americans, the War Relocation Authority said 10 per cent were expected to return to their former homes by April 2. Fifty per cent of those moved from the larger Pacific Coast cities will return ultimately, the estimate states, and 40 per cent, or almost 40,-

SAN FRANCISCO CHRONICLE

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More About Return of Japanese

000, have settled permanently in other parts of the Nation.

According to this estimate, San Francisco would be required to assimilate 316 persons of Japanese ancestry during the next three months and ultimately 3168 of the citizens and aliens who lived within the geographical boundaries of the city in 1940, according to Census Bureau reports.

Mayor Lapham yesterday urged that all citizens of San Francisco aid in solving the re-migration problem. His formal statement, commenting on the Army's modification order, said:

"They are entitled to the same treatment and fair consideration as residents of any other extraction or color and I call upon our citizens and the city agencies to recognize that the military is allowing only those to return whom they consider to be loyal Americans.

MANY FIGHT HEROICALLY

"When the story of this war is told completely, I know that there will be many incidents releated where many of Japanese descent have fought as heroically in the armed forces as American citizens, as descendants of any other Nation."

As the news of the Army's modification order provoked varying comment, teams of officers and enlisted men began their work of investigating the cases of persons in the relocation camps. They will make recommendations concerning individual exclusion or freedom to a board of officers who then will present the case to Major General H. O. Pratt, Commanding General of the Western Defense Command.

The ranking military authority of the command, General Pratt will issue the final decision concerning exclusion. The individual exclusion orders are expected to be received by those barred from the area by January 2. Those who do not receive them may presume they are eligible to return if they have the means.

RULING IN TWO CASES

In echoing the Army's order, the Supreme Court yesterday ruled in two cases, involving Fred Toyosaburo Koremasu who refuse to report to the evacuation camp, and Mitsyue Endo, 22, of Sacramento, who contended her detention deprived her of her constitutional rights.

By a 6-3 decision the Court upheld the constitutionality of the exclusion order at the time it was put into effect. The second decision was unanimous and held that citizens must be permitted to return to their homes when their loyalty was established. The Army is the judge of loyalty in each case.

While Secretary Ickes said the evacuated individuals would be urged by the WRA to establish new homes outside the Coast region, it will aid "those who prefer to exercise their legal and moral right to return to the West Coast." The War Relocation Authority will pay travel allotments to those who accept approved plans for resettlement. The eight relocation centers are not expected to close for at least a year, after resettlement of the 61,000 residents.

"Movement of loyal evacuees will be conducted in an orderly manner and no mass exodus from the relocation centers to any part of the country is contemplated," said Assistant WRA Director Cozzens.

Governor Warren, in announcing a special school authority conference to consider the problem, said:

"A great many Japanese children may re-enter these schools after January 2, and the schoolyard is one place where a lot of friction might develop. The willingness of the people of California to comply with it (the miltary modification order) amounts to test of their patriotism."

A statement issued by the California Department of the American Legion to its members echoed the Governor's advice. It said:

"If there be any among you who would bring shame and disgrace on the American Legion by violating the principles of the legion, by denying to a citizen the rights which are his, then you forfeit your right to be considered a good legionnaire."

Senator Downey, Democrat of California, warned that Japan still holds thousands of United States war prisoners and might retaliate for any acts of violence against persons of Japanese ancestry in this country.

BOWRON'S FEARS

Mayor Bowron's comment that the Army's order might lead to race riots was based on his contention that the returning evacuees might attempt to oust Negro war workers from their former residential sections. The Negro population

of Los Angeles' former "Jap Town" is estimated at 80,000. The return of the evacuees will place a heavy burden on under-manned law enforcement officers, the Los Angeles Mayor said.

In the Pacific Northwest States of Washington and Oregon, some resentment was expressed at the Army's order permitting the return of the loyal persons of Japanese ancestry.

Governor Arthur B. Langlie of Washington said he believed the decision "prematurely made." He added, however, that he did not believe the return of the avacuees would precipitate disorder. He promised his administration to do all possible to avoid disorder.

Governor Earl Snell of Oregon discussed the problem with Governors Langlie and Warren in an effort to "understand attitudes up and down the coast and to act in unison."

Other Northwest officials agreed the Army's action was premature but all agreed to aid in protecting the Constitutional rights of the individuals concerned.

In Washington, Representative Sheppard, Democrat of California, chairman of an unofficial committee studying the problem, praised Secretary Ickes' promise no hasty migration would occur. Mrs. Eleanor Roosevelt said the new Army proclamation "seems to be a fair and conservative order."

[illegible] less than this [illegible] statement issued by the Council, "would be a perversion of the purpose for which we are fighting this war and certainly of the ideals and traditions of our Nation."

Seven San Francisco Bay Area Methodist ministers signed a statement declaring 'commendable," the Army's "action in restoring democratic rights to Japanese Americans." They were the Rev. Wendell B. Kramer, executive secretary, board of education, the California Conference of Methodist Churches; Rev. W. P. Rankin, conference treasurer; Rev. Jackson Burns, pastor First Methodist Church, San Francisco; Rev. D. D. Walker, Kennedy Methodist Church, San Francisco; Dr. Frank Toothaker, First Methodist Church, Oakland; Rev. Joyce W. Farr, Laurel Methodist Church, Oakland; Rev. L. [illegible] oofbourow, St. Luke's Methodist Church, Richmond.

[illegible] COMMENTS

Harry Bridges, president of the International Longshoremen and Warehousemen's Union, commented:

"The order of the War Department permitting Americans of Japanese ancestry to return to their homes on the West Coast is directly in line with the anti-Fascist purposes of the war. Our union has never believed that the test of loyalty should be the color of a man's skin. Our brother Americans of Japanese descent have shown their patriotism the hard way, as evidenced by our own members on the battlefront.

"It has been their unfortunate lot to have to prove themselves by doing an even better job on the home front and on the fighting front than anybody else. The order is to be welcomed as proof that America will not accept either the Nazi or the Japanese imperialistic theories of a superior race."

The San Francisco Council for Civic Unity last night, through its executive secretary, Robert E. Gibson, announced it had pledged itself to exert "its utmost effort to see that returning loyal Americans of Japanese ancestry and their law abiding parents are treated with decency and justice."

HUMAN EVENTS

Vol. XVI, No. 4 Wednesday, January 28, 1959 Washington, D. C.

News Section

Printed in Two Sections

Rockefeller's Speechwriters: New evidence that Governor Nelson Rockefeller of New York intends to follow the Modern Republican path has appeared in an obscure corner of *The New York Times*. But it is of such a nature that even the most hardened politicos in the Capital are visibly shocked.

In a story from its Albany bureau, the Times reports that the newly named assistant press secretary to New York's Governor is the very man who, last fall, was cranking out speeches attacking candidate Rockefeller. For Rockefeller gave this post to Robert L. McManus, a Democrat who served as assistant secretary to Democratic Governor Averell Harriman for the past two years, and who was Harriman's chief speechwriter in the gubernatorial campaign. It is considered certain that McManus will write at least some of Rockefeller's public addresses.

"News of the appointment," reports the *Times*, "surprised [Albany]. It could not be recalled when a Governor had given as rewarding a job to not only a member of the opposite party but [to] one also intimately associated with its high command."

Governor Rockefeller, the paper further reports, now has secured the services of four former newspapermen, all of whom have been enrolled Democrats: McManus; Richard Amper, press secretary; Harry J. O'Donnell, assistant secretary for reports; and Francis A. Jamieson, personal public relations counsel and special assistant.

Jamieson—HUMAN EVENTS learns—has an interesting history. Before going to Albany, he had served for several years as public relations counsel ("inside man") in the office of the Rockefeller Brothers firm. The "outside" public relations counsel of the Rockefeller Brothers has for many years been Mrs. Anna Rosenberg, left-wing Democrat and once an official in the Truman regime. In New York much credit is given Mrs. Rosenberg for Rockefeller's public relations build-up and for linking up left-wingers behind him in his bid for the Governorship.

This monolithic Democratic press and public relations entourage of Governor Rockefeller amazes Washington as much as it did Albany. One Member of Congress remarks: "In the last New York campaign, Rockefeller promised to give New York citizens an entirely different kind of administration from that furnished by Governor Harriman. If Rockefeller is sincere, how can he honestly employ the same speechwriter who in the last two years wrote addresses for the purpose of persuading New York citizens that Harriman's policies were best for the state?"

Some Republicans retort that Rockefeller was not sincere in the campaign and intends—with such an entourage—to give New York state much the same New Deal regime as did his predecessor. Midwestern Republicans perceive in this picture further confirmation of their belief that Nelson Rockefeller will seek to capture the Republican convention in 1960 in order to make the GOP into a New Deal organization.

How Mikoyan Was Stopped: Here follows the inside story of the State Department proceedings whereby Under Secretary C. Douglas Dillon rebuked Mikoyan's attempt to blackmail financial support from the U.S. The architect of this climactic scene was Secretary of State Dulles himself, who almost word for word coached Dillon beforehand on what to say.

When the Russian asked for long-term credits for delivery of American equipment, Dillon brought him up short. The Secretary told Mikoyan that America did not propose to give such credits to Soviet Russia, or to any other country that had been so long and flagrantly in default of its financial obligations. He reminded the visitor that there was a considerable sum of Czarist debts for which the US held the USSR accountable.

In addition, Dillon made use of the fact that Soviet Russia, through its emissary Maxim Litvinov in 1933, obtained diplomatic recognition by the United States on the promise (among other pledges) that American interests which had suffered confiscation and damage as a result of the Bolshevik revolution would be indemnified. This, together with the other promises, was not fulfilled. Finally, there was the matter of Lend Lease, $8 billion-worth of goods which enabled Stalin to repel the Nazi invaders in World War II, and on which not a cent has been paid.

Mikoyan was so angry, after Dillon dismissed him with these words, that he sallied forth to attack our Government in what one British writer (René McColl of the London *Daily Express*) called "unforgiveable remarks," delivered to Washington's National Press Club. The picture Mikoyan had created in two weeks of stumping the country—that of an affable super-salesman—abruptly changed into that of a snarling, insolent lackey of the Kremlin. The edifice built up by an apparently well-laid public relations plan—lunches with businessmen, window-shopping, walks in the park, *etc.*—crashed to earth in one of the biggest reversals witnessed and covered by the Washington press in many years.

Who built this edifice?—is a question debated in clubs

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and corridors of the Nation's Capital. Some press-conscious people attribute the work to Eric Johnston, agent of the motion picture industry, with a definite axe to grind for that business; others to Amtorg, the Soviet purchasing commission in this country. It is pointed out that the fiscal agent for Amtorg and the Soviet Government is the Chase-Manhattan Bank, where John J. McCloy—long a member of the White House kitchen cabinet—serves as Chairman of the Board. This is the Rockefeller bank. A considerable chain of business contacts and associations was therefore readily available, through which meetings, luncheons, dinners with groups of business and professional men could be arranged. The press in the Capital knows well that shows such as that which Mikoyan staged for a fortnight are not spontaneous; a public relations network is always involved.

Mikoyan's visible fury provided confirmation for the view, reported by HUMAN EVENTS in its issue of December 22, 1958, that he came here, not to "fix up" the Berlin affair, but to get a whopping loan from the US Government. When he failed in his objective, he let off steam. He did succeed, however, in projecting an image of a Soviet leader consorting amiably with American business figures, and the Soviet propaganda system has utilized this extensively to discourage rebellious elements behind the Iron Curtain, who have preserved hope that America is sympathetic with them in their efforts to throw off the Communist yoke.

Under the Dome: The dictatorial but clever parliamentary tactics of Senate Democratic Leader Lyndon Johnson blocked the attempts of the Douglas-Humphrey "liberals," seeking to erase filibusters and eliminate the 170-year old check on majority rule in the upper house. Johnson held up assignments of members to committees until he got a vote on his compromise bill (which was acceptable to most Southerners). The newly elected Democratic "liberals" found it prudent to restrain their leftish inclinations and permit the Senate Leader to have his way. Lyndon has Presidential ambitions and knows he has to keep the Southerners in the party.

● *"Liberals" in the House have also suffered setbacks. "Mr. Sam" Rayburn, Democratic Speaker of the House, is himself a "liberal," but above all he wants to run the show. He obviously feared the arrival of 53 new Democratic "liberals" would undermine his own dictatorial power. Hence, he allowed conservative Southern Democrats and conservative Northern Republicans to stack the three key committees of the House—Rules, Ways and Means, and Appropriations.*

Now the new "liberals" in his party have to come, hat in hand, to the Speaker to get help for their pet measures; otherwise their bills stand no show of getting through these committees to the floor. For only the Speaker has the power to force bills out of committee. "Mr. Sam" is still on top.

● *Long-standing supporters of the House Committee on Un-American Activities believe that they have decisively checked pro-Communist attempts to abolish the famous probe group; moreover, they want to bring an "abolition" measure proposed by leftist Congressman Jimmy Roosevelt (D.-Cal.) out on the floor at an early date. They feel sure they have such an overwhelming majority of the votes that they can kill the Roosevelt proposal decisively for this session.*

The unanimous decision of House Republicans to support the Committee offers a solid base of voting strength, and puts many middle-of-the-road Democrats on the spot; for the latter do not want to go on record as blocking the investigation and exposure of the Communist conspiracy.

Political Action: GOP Chairman Alcorn can find a prototype for the "year-around" campaign organization he demanded at the Des Moines Republican conclave last week. A blueprint for political action looking towards 1960 has appeared in the plans of "The Republican Associates" in Los Angeles County, California. Raymond Moley, in a recent column (The Associated Newspapers, 229 W. 43 St., New York 36, N. Y.), hails this organization as a very hopeful development and states that the Republican National Committee, if it "really wants to do something about bringing out the votes necessary to victory . . . should encourage something like this everywhere."

Republican Associates has been in operation for several years and has racked up a good record of achievement. It should be noted that in Los Angeles County, where it operates, the GOP did not do so badly as elsewhere in the November elections. Before the elections, eight of the 12 Congressional districts in this county had Republican Representatives; only one of these bit the dust in the November debacle.

Republican Associates, Moley reports, has for several years had its own organization for recruiting and training volunteers in the precincts, and also a research setup to prepare and publish material for the guidance of volunteer workers and voters. It works closely with the regular GOP County Committee.

Its new plan for 1960 involves reorganization of the party and establishment of a close liaison between the party and leaders in the business community. As described by Moley in his column, the plan projects employment of full-time professional managers, an executive for the entire county, a full-time finance director, full-time paid precinct directors and a public relations director. The Associates estimate that the entire annual cost of such an organization would run to no more than $300,000.

Labor Front: The labor bosses' representation on Capitol Hill continues to grow in strength. Outdoing even the office of Congressman Gerald Flynn (D.-Wis.)—who appointed a former UAW official as his administrative assistant (see HUMAN EVENTS for December 15, 1958)—is that of Congressman Joseph Karth (D.-Minn.). Karth, himself a former international representative for the Oil, Chemical and Atomic Workers union, last month announced the appointment of his administrative assistant: one Robert Schaller, former director of public relations for the Minnesota AFL-CIO.

The appointment of Schaller reinforces the dominance of the AFL-CIO in the Democratic party in St. Paul.

Karth's own nomination as [illegible]ratic candidate for the district was reputedly the result of the labor bosses' desire for complete mastery over the party. Karth won the nomination to Congress against the opposition of St. Paul's Mayor Joseph Dillon. "Mr. Dillon," the St. Paul *Pioneer-Press* noted last fall, "who had just been re-elected Mayor with labor support, aspired to go to Congress and filed for the nomination, as he had every right to do. But this time the labor leadership had decided it was not enough to be politically acceptable to themselves—the candidate must be no mere Democrat, but one from the ranks of labor leadership itself. They decided on . . . Mr. Karth, and Mr. Karth was nominated. Mr. Dillon and all who stood by him were given the stigma of disloyalty, and now are to be punished for their independence."

Budget: Conservatives on the Hill remark that there's plenty of fat to cut from the President's $77 billion Budget. For instance, the Department of Health, Education and Welfare gets $89 million more in the fiscal 1960 Budget than it got last year. Probing further, Members of Congress discover that the new Budget calls for HEW outlays of $3,139,719,000—which amounts to better than $1 billion more than the department got in 1954. The average conservative member wants to know why—if so much zeal is to be lavished in the fight against inflation and paring Federal spending to balance the Budget—HEW isn't cut back to the 1954 level. After all, it's a "civilian agency" and has no bearing on national defense.

One answer is that the Secretary of HEW is one Arthur Flemming, long a bureaucrat under the Truman regime. In its issue of December 10, 1952, HUMAN EVENTS, noting new appointments by President-elect Eisenhower, mentioned the naming of Dr. Arthur S. Flemming to Ike's "streamlining the bureaucracy" commission. Flemming had filled positions under the Roosevelt and Truman Administrations.

This publication relayed the warnings of old hands, who said that "Flemming is a New Dealer," and that he was the man "largely responsible for making more cumbersome and complicated the regulation of the whole bureaucracy." Flemming moved up to his Cabinet position at Health, Education and Welfare, last year—supposedly as a more "conservative" replacement for Marion Folsom.

High Court: Once more Congress will attempt to curb the left-wing antics of the Warren Court in the fields of states' rights and subversion. Senator Styles Bridges (R.-N.H.) has tossed into the hopper a bill to reverse the effect of the Court's *Nelson* decision of April, 1956, which voided the sedition laws of 42 states. A similar bill was narrowly defeated in the last session, by a vote of 41-40, as a result of some devious maneuvering by Majority Leader Lyndon Johnson (see HUMAN EVENTS for September 1, 1958).

Feeding the wrath of conservatives against the Court is the report that Chief Justice Earl Warren was responsible for throttling a firmly anti-Communist report prepared by a key committee of the American Bar Association. This report, hitting the Court's string of pro-Communist decisions, was prepared for presentation to the ABA convention last August. For reasons undisclosed at the time, it was never published (see HUMAN EVENTS for September 22, 1958).

Speculation that Warren was responsible for suppression of the report is tied in this week with the news that he has, somewhat mysteriously, resigned his membership in the ABA. The ABA revoked Warren's membership at the beginning of this year, because of non-payment of dues; but the Chief Justice protested that he had written a letter of resignation to the group in September of 1957—a letter which the ABA said it never received.

It is noteworthy that the 1957 date for the resignation would place it right after the ABA meeting in London that year, when Warren heard another committee report blasting the work of his Court, drawn up by former Senator Herbert O'Conor (D.-Md.).

Trade With Soviets: To conclude a trade deal with the Soviet Union would have disastrous economic effects—as well as a catastrophic political and moral impact on the enemies of communism. This is the conclusion of experts in foreign trade who survey US import requirements, and who know the political ins and outs of our trade program. Here is an analysis passed to HUMAN EVENTS by a trade expert in a Federal Government office:

"A review of the past trade relations between the US and the Soviet Union points out few if any advantages and definitely a long-run disadvantage. Shall we forget the unreliability of Soviet sources of supply, well demonstrated ten years ago when the Soviet Union cut off the supply of manganese ore? (More than 30 per cent of America's manganese requirement was covered by Soviet exports.) . . .

"To obtain new supply sources, America encouraged the development of manganese deposits in allied nations (*e.g.*, Brazil, India, Turkey). The economies of these countries were bolstered considerably by US investments, and exports of strategic raw materials became crucial to the continued health of their economies.

"The case of Turkey, a nation that is staunchly anti-Communist and strategically located, is particularly acute. Turkey has embarked on a bold industrialization program, which includes the development of her mineral resources, particularly chromites. Today Turkey is undergoing a grave economic crisis, marked by declining exports. Since chromium ore is one of her principal cash commodities up for sale abroad, a further decline caused by American purchase of chromites from the Soviet Union will only add to her economic plight. (An American firm recently concluded a deal for 80,000 tons of Soviet chromium ore.)"

Where, it is asked, are the vocal "liberals" who constantly demand "foreign aid" to shore up the "economies of the free world"? Why do they not now protest a movement which would do irreparable harm to the economy of one of our strongest allies, while at the same time helping to support the economy of our enemy?

NAACP: The controversial NAACP absorbed a stinging official condemnation last week from the State of Arkansas. A report issued by a committee of the Arkansas legislature declared: "The NAACP appears to have been heavily infiltrated with subversives and, wittingly or unwittingly, is now a captive of the Communist apparatus." The data on which the report was based were compiled in hearings which heard witnesses that included Dr. J. B. Matthews and Manning Johnson, a former leading Negro member of the Communist party. Arkansas Attorney General Bruce Bennett said that, to his knowledge, this was the first time that the NAACP had been cited as "subversive" by an official agency.

Pink Slip: California's Governor Edmund "Pat" Brown, who ran for election last fall as a "moderate" Democrat, has begun to show his real colors. Presenting his legislative program to the California legislature, Brown asked the creation of a new outlet for boondoggling, an office of "Consumer Counsel," who would draw $15,000 annually—an idea Brown picked up from Governor Averell Harriman of New York. (Apparently struck by the lack of material available in the California Democratic party, Brown appointed an ex-official of the Harriman Administration to serve as California's new Deputy Director of Public Works.) Other legislative proposals by Brown included a request for a "fair employment practices" law, a rise in the minimum wage to $1.25 an hour, and creation of a "State Economic Development Agency."

Additionally, Brown, who had tried to keep his "pink slip" covered up during the campaign, unfurled it to the breeze when Soviet official Anastas Mikoyan paid him a visit in San Francisco. Brown had the distinction of being the first American Governor to extend official greetings to the Red hatchetman, and wasted no time in apologizing to him for anti-Communist demonstrations at the San Francisco airport.

Such protests against the man who betrayed Hungary, Brown said, were "not typically Californian." Brown invited Mikoyan to come back to California for the 1960 Olympics, and told the Soviet boss that he would himself like to visit Russia.

The Associated Press reports that Brown further "proposed to Mikoyan that any Russian-American peace conference which might be held should take place in California 'under the great and ageless redwoods' where both sides would feel the grandeur of nature. . . . The Governor told the Russian leader that Russian suppression of the Hungarian revolution has been a great source of misunderstanding between the two countries."

MacArthur: January 26 marked the 79th birthday of General of the Army Douglas MacArthur. Dr. Edna Fluegel, a noted researcher on communism and foreign affairs, passed along these reflections upon the approach of the General's birthday:

"When MacArthur said he would rest his case with the historical future, did even he know how rapidly that case would be supported? According to his critics, Japan was supposed to go to pieces, Korea to be unified by diplomacy, free world unity to be strengthened. It didn't happen that way.

"Even to get an armistice in Korea, some of the MacArthur recommendations that were 'too risky' were adopted. Since then, 'going it alone' has become the fashion. War was risked over Lebanon, over Quemoy and the Matsus, and now over Berlin. And everyone, ex-President Truman included, admits the vitally strategic position of Formosa.

"The Democrats are challenging the 'gag' rule and asserting the right of military officers to answer Congress truthfully—the very right they attempted to deny MacArthur . . .

"MacArthur did, in fullest measure, what the times required of him, and his works as well as his warnings have met the test of the historical future."

Between Covers: The current (Winter) issue of *Modern Age*, Russell Kirk's quarterly conservative review, contains a timely survey of the issue of nuclear testing. An article by Arthur Kemp canvasses the main scientific and political questions involved and one by Sidney Tillim analyzes the arguments of the "National Committee for a Sane Nuclear Policy." Conclusion: the tests should go on.

This issue of *Modern Age* also contains articles by Richard Weaver, Ludwig Freund, Austin Warren, Ernest Van Den Haag and Willmoore Kendall. Subscriptions: $4 a year. Address: 64 E. Jackson Blvd., Chicago 4.

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5010-104-01

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (157-2279) DATE: 6/20/69

FROM : SAC, TAMPA (157-2004) (P)

SUBJECT: LET FREEDOM RING
RM - WHITE HATE GROUPS

Reference Tampa airtel to Bureau, 6/10/69.

Enclosed herewith for the Bureau are 11 copies of a self-explanatory LHM. Single copy of LHM being disseminated to MI and Secret Service, Tampa; USA, Tampa; NISO, Orlando and OSI, Robins Air Force Base, Georgia.

LEADS: Supreme Court not mentioned on this page

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b7C [redacted]

AT TAMPA, FLORIDA

b7D [redacted]

(2) - Bureau (Encls. 11) (RM)
3 - Tampa
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JUN 25 1969

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UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Tampa, Florida
June 20, 1969

LET FREEDOM RING

A recording of the message entitled "Let Freedom Ring" was obtained on June 11, 1969 by dialing St. Petersburg Telephone Number 896-1373.

"Let freedom ring. What man should be so callous or irresponsible or just plain un-American enough to encourage and protect by judicial law the staging of protest demonstrations in classrooms. One such man is William O. Douglas, Associate Justice of the Supreme Court. Although encouraging anarchy in the classroom is bad enough, this is moderate compared to some of the behavior, both judicial and non-judicial, of Supreme Court Justice Douglas. Justice Douglas has proved to be one of the most obnoxious exhibitionists in the history of our nation. America's left-wing press has puffed up Douglas over the years as a great outdoorsman and conservationist, but as American Opinion Magazine states, quote, 'His travels are merely a front for his advocacy of the straight communist line, which is unmistakably present in his judicial decisions, his writings, and his public speeches', unquote. Douglas has hewn to the communist line so closely that it is difficult to distinguish him from Gus Hall and The Communist Worker, now known as The Daily World. He has praised the kangaroo courts of Soviet Russia. When the Red Chinese were killing Americans in Korea, he called for the recognition of Red China, and the disarming of Nationalist China. Douglas has called for America to feed the Red Chinese, and he even participated in the communist-directed peace march in New York at which an American flag was burned. In succeeding reports, we will look into the highly questionable dealings and pro-communist career of Supreme Court Justice William O. Douglas. For more information on Douglas and our revolutionary Supreme Court, send thirty-five cents in coin to Supreme Court, Box 1775, Sarasota, Florida, 33578. Let freedom ring."

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~~157-9044-5~~

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