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W. P. MARSHALL, PRESIDENT

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HON CHARLES ELMORE CROPLEY, CLERK SUPREME COURT OF THE UNITED STATES=US SUPREME COURT BLDG=

1951 FEB 14 PM 12 25

STRONGLY SUPPORT LETTER OF FEBRUARY 13 TO THE CHIEF JUSTICE BY COUNSEL IN THE LABOR CASES SET FOR ARGUMENT FEBRUARY 26 AS TO ORDER OF ARGUMENT FOR THE FOUR CASES. I EARNESTLY URGE THAT THE REQUEST OF THE DEPARTMENT OF JUSTICE TO CHANGE THE ORDER ARTIFICIALLY BE REFUSED. WRITING=

CHARLES H TUTTLE COUNSEL IN NO 85=

RECEIVED
FEB 14 1951
OFFICE OF THE CLERK
SUPREME COURT, U. S.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

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W. P. MARSHALL, PRESIDENT

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WB026 LONG DL PD=PM LOS ANGELES CALIF 11 1050A=

HON FRED M VINSON CHIEF JUSTICE OF THE UNITED STATES :
=US SUPREME COURT BLDG 1 FIRST ST NORTHEAST WASHDC=

IN AN ORIGINAL ACTION BROUGHT IN THE SUPREME COURT OF THE STATE OF CALIFORNIA BY THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, CALIFORNIA, AGAINST THE CITY OF LOS ANGELES, THE STATE COURT ORDERED THE ISSUANCE OF A WRIT OF MANDAMUS DIRECTING THE CITY TO COMPLY WITH ITS CONTRACTUAL AND OTHER OBLIGATIONS TO COOPERATE WITH THE AUTHORITY IN THE DEVEOPMENT AND CONSTRUCTION OF VARIOUS EXTENSIVE HOUSING PROJECTS IN THE CITY OF LOS ANGELES. THERE IS A POSSIBILITY THAT THE CITY EITHER IN CONNECTION WITH A PETITION FOR CERTIORARI OR INDEPENDENTLY THEREOF MAY APPLY EX PARTE TO YOU FOR AN ORDER STAYING THE ISSUANCE OF THE WRIT OF MANDAMUS. IF SUCH AN APPLICATION SHOULD BE MADE THE UNDERSIGNED, AS ONE OF THE ATTORNEYS FOR THE HOUSING AUTHORITY, WOULD APPRECIATE BEING PROMPTLY ADVISED SO THAT DATA AND ARGUMENT IN OPPOSITION TO THAT REQUEST MAY BE PRESENTED. WE ARE PREPARED TO ACT PROMPTLY UPON ANY SUCH NOTIFCATION=

HERMAN F SELVIN 523 WEST SIXTH ST LOS ANGELES 14 CALIFORNIA=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

February 24, 1951.

MEMORANDUM FOR THE CONFERENCE

We probably agree that the order of arguments we had in the Wisconsin cases before recess was not the most helpful. We ought to avoid such unhelpful arguments in the Labor cases for next week. To that end, I asked my law clerk Hugh Calkins to prepare a memorandum for me as to the specific issues in each of the cases.

I hereby circulate the Calkins memo and suggest that the Clerk be directed to advise counsel that the cases will be heard in the order indicated in this memo.

F. F.

File

Office of the Solicitor General
Washington, D. C.

RECEIVED
FEB 10 10 14 AM '51
CHAMBERS OF THE
CHIEF JUSTICE

D.J.FILE NO.:
No. 85: 134-0
No.108: 156-0
No.313: 124-3
No.393: 156-0

February 9, 1951

The Honorable Fred M. Vinson
Chief Justice of the United States
Supreme Court of the United States
Washington 13, D. C.

Re: No. 85 - Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L., et al. v. N.L.R.B.
No.108 - International Brotherhood of Electrical Workers, Local 501, etc. v. N.L.R.B.
No.313 - N.L.R.B. v. International Rice Milling Company, Inc., et al.
No.393 - N.L.R.B. v. Denver Building and Construction Trades Council, et al.

Dear Mr. Chief Justice:

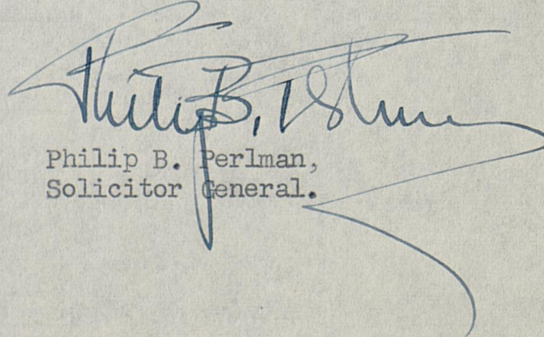
The above-captioned cases, each of which has been placed on the summary docket and will be argued on or about February 26, 1951, involve important questions of construction and application of various provisions of the National Labor Relations Act, particularly Section 8 (b) (4) (A). The order in which the cases have been set down for oral argument follows the docket number chronology, and because we believe that argument of the four cases in such fortuitous order will tend to confuse rather than clarify the nature and interrelationship of the issues presented, the Government respectfully requests that the order of argument be rearranged so as to reflect the logical interrelation of the cases, and that the time allotted for argument in the <u>Rice Milling</u> case, No. 313, be increased to one hour each side, because that case presents the pivotal issue upon which the other three depend. We are compelled to make this request of the Court because we have attempted, without success,

to obtain a unanimous agreement among the numerous counsel involved in all these cases as to the appropriate order in which they should be heard.

The threshold question in each of the four cases is the validity of the distinction drawn by the Board, in applying the "secondary boycott" provision of the Act, between primary and secondary labor action. However, this distinction is in issue between the parties only in No. 313, the Rice Milling case. In the other three cases, all the parties, on both sides, rely upon or assume its validity. Indeed, in the latter cases the unions are contending that the area of permissible primary action is broader than that recognized by the Board. If the distinction drawn by the Board should be invalidated by this Court in No. 313, the effect would be to knock out the basic premise on which the arguments on both sides in the other three cases are being made. Hence, we believe that, in the interests of orderly and logical presentation, No. 313 should be the first case called and that opportunity should be afforded counsel in that case to point out the various aspects of the primary-secondary problem which are before the Court, before turning to the narrower dependent questions presented by the other three cases. We believe that the one-half hour per side now alloted to No. 313 will not suffice to enable counsel to make a clear presentation of the basic problem.

The second major question presented by these cases is the propriety of the Board's application of the primary-secondary distinction in common-project cases involving the construction industry. This problem is common to all three of the remaining cases, and two of them, No. 85 and No. 108, present, in addition, questions as to interstate commerce, free speech, and substantial evidence. These cases should appropriately follow No. 313 because the significance of the particular factual differences upon which opposing counsel in these cases rely will stand out more clearly once the basic issues as to the correctness of the Board's application of the Act in this field have been illuminated by the preceding oral argument.

Sincerely yours,



Philip B. Perlman,
Solicitor General.

File

RECEIVED
FEB 14 1951
OFFICE OF THE CLERK
SUPREME COURT, U. S.

February 13, 1951

The Honorable Fred M. Vinson
Chief Justice of the United States
Supreme Court of the United States
Washington 13, D. C.

Re: No. 85 - Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L., et al. v. N.L.R.B.
No.108 - International Brotherhood of Electrical Workers, Local 501, etc. v. N.L.R.B.
No. 313- N.L.R.B. v. International Rice Milling Company, Inc., et al.
No. 393- N.L.R.B. v. Denver Building and Construction Trades Council, et al.

Dear Mr. Chief Justice:

As Counsel for petitioners and respondents, respectively, in Nos. 108 and 393 we became aware today of the Solicitor General's letter to you of February 9 last. We believe that we should advise you of the position we have taken in the discussions with the Board of the matter of the order of oral argument. The undersigned are of the unanimous view that a more logical order of presentation than the order proposed by the Board would be as follows:

No. 85 - Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L. et al v. N.L.R.B.
No. 393 - N.L.R.B. v. Denver Building and Construction Trades Council, et al
No. 313 - N.L.R.B. v. International Rice Milling Company, Inc. et al
No. 108 - International Brotherhood of Electrical Workers, Local 501, etc. v. N.L.R.B.

In suggesting this order, we are taking into account the procedure of the Board in discussing common issues for all cases in its briefs on particular cases. As we understand, the Board proposes to discuss the issue of commerce in No. 85 (Local 74, United Brotherhood of Carpenters and Joiners of America), the issue of statutory application of Section 8 (b) (4) (A) in No. 393 (Denver Building and Construction Trades Council) and No. 313 (International Rice Milling Company) and the free speech issue in No. 108 (International Brotherhood of Electrical Workers Local 501).

Accordingly, it is our view that within the scope of all of the issues in these cases it would be more appropriate to discuss the questions as far as each issue is concerned in the following order:

1. Jurisdiction or the question of the scope of the commerce clause in the Act.

2. The statutory application of Section 8 (b) (4) (A) and

3. The question of whether the constitutional protection of free speech or the statutory protection of free speech (Section 8 (c)) immunizes the conduct in certain of these cases.

Under this proposed order of argument there remains only the question of the respective positions of Nos. 313 and 393 in the oral argument. It is our view that the proper order of issues under Section 8 (b) (4) (A) should be as follows:

1. The scope of a primary labor dispute. (No. 393)

2. If there are secondary results, are they allowable? (No. 313)

We are of the view that the proposed listing of cases in the first paragraph of this letter would provide a more logical form of consideration of the issues than acceptance of the Board's final legal conclusions which call for the consideration of the <u>International Rice Milling</u> case before all the other cases.

If the order of argument which we have proposed is not considered acceptable in the light of the refusal of the Board to agree to it, we, of course, would be entirely agreeable to following the docket order of the cases.

With respect to the Board's application for additional time in the <u>International Rice Milling</u> case, we do not think this case merits any such special treatment.

Respectfully yours,

William J. Hughes, Jr.

William J. Hughes, Jr. (Counsel for Denver Building and Construction Trades Council in No. 393)

Martin F. O'Donoghue

Martin F. O'Donoghue (Counsel for United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 3)

Louis Sherman

Louis Sherman (Counsel for I.B.E.W. Local 501 in No. 108 and Counsel for I.B.E.W. Local 68 in No. 393)

CC: Solicitor General
General Counsel of the N.L.R.B.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON 1, D. C.

JOSEPH W. STEWART
CLERK

April 4, 1951

RECEIVED
APR 4 4 35 PM '51
CHAMBERS OF THE
CHIEF JUSTICE

No. 10,805- Allen v. United States

Honorable Fred M. Vinson,
Circuit Justice for the District
of Columbia Circuit,
Washington, D. C.

My dear Mr. Chief Justice:

I send you herewith a copy of a petition filed February 14, 1951, by appellant in the above entitled case, alleging that the judges of this court are disqualified therein because of bias and prejudice and requesting you to appoint judges from other circuits to act in the case.

I also enclose a copy of appellant's affidavit of bias and prejudice filed February 2, 1951, and a copy of a memorandum of the court filed in the case on April 3, 1951, in which all the judges of the court declined to disqualify themselves therein.

For your convenience I also send you a copy of a memorandum prepared by the motions clerk with respect to the above matters.

Respectfully yours,

Joseph W. Stewart

Clerk.

)Papers returned
)to Stewart 4/5/51
)with notation "In
)my opinion the
)petition should
)be denied as
)lacking power.
)/sgd/ Fred M Vinson
) Circuit Justice
) April 5, 1951.

File Memorandum:-

The original of this order signed and returned to the Clerk of the Court of Appeals for the District of Columbia -

k-

4/5/51.-

4/18/51

Sheridan Downey, the former Senator from Calif.,
would like an appointment with the Chief Justice
sometime this week for the purpose of discussing
the possibility of the city of Long Beach, California,
joining the Tidelands Case as amicus curiae.

McH

3238

Phoned Senator Downey to effect that in matters of this kind, which would eventually come before the Court for determination, the C.J feels he should not discuss them beforehand with interested individuals.

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DAVID LEVY
Vice President in charge of
Radio-Television Talent
and New Programing

NEW YORK 17 · *285 Madison Avenue*

April 16, 1951

Chief Justice Fred Vinson
Supreme Court
Washington
D. C.

Dear Mr. Chief Justice:

You may recall that at the time that you took office as Secretary of the Treasury, I had the privilege of serving you as Chief of the Radio Section of the then War Finance Division of the Treasury Department. Perhaps you recall that I was on special assignment to the Treasury from the Navy Department, where I was a Lieutenant. From time to time, I visited in your office with Ted Gamble and assisted you in radio broadcasts in behalf of the Treasury Bond operation.

As you can see from this letterhead, I have returned to private business to the same company with which I had been associated prior to service. As such, I naturally have a great interest in television.

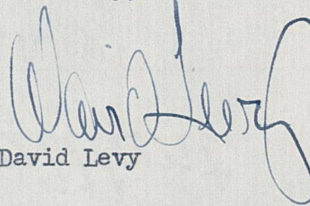
I know that there have been many overtures made to you in connection with televising a decision day of the Supreme Court. And I am familiar with the many obstacles that such a venture would have to overcome. Moreover, I would recognize that the televising of many Supreme Court decisions might not be as interesting to the public as one in particular and that is the decision to be handed down involving the dispute between the F. C. C. and the television industry, relative to color.

Obviously, millions of television set owners have a vital stake in the decision and will be very much interested in the outcome of the case. Added to this interest would be the special interest of viewing one of the great instruments of the American system in action, namely the Supreme Court. I believe that television viewers, having the opportunity to "sit in" and watch the members of the court and to observe the solemnity and dignity of its operations in connection with a decision which involves them realistically, would take away a greater appreciation of the court and its functions.

I would be happy to meet with you or a representative whom you would care to designate in Washington to discuss this matter, if there are grounds for discussion, to determine whether or not there is a justification for this particular telecast, which, while it would be unique, need not of itself set a precedent, but rather could be viewed as of a special nature because of the inherent relationship between the subject matter and the television viewers.

My kindest personal regards,

Sincerely,



David Levy

DL:as

Supreme Court of the United States

No. ~~, October Term, 19~~

OSWALD POHL, ERICH NAUMANN, PAUL BLOBEL, WERNER BRAUNE, OTTO OHLENDORF, Movants,
vs.
DEAN ACHESON, SECRETARY OF STATE, et al.

GEORGE SCHALLERMAIR, HANS TH. SCHMIDT, Movants,
vs.
GEORGE C. MARSHALL, SECRETARY OF DEFENSE, ET AL.

On application for stay of executions.

O R D E R

This matter came on for hearing on an application for stay of executions addressed to all and each of the Justices. The issues involved are those considered by the Court at the time of the denial of the petition for writ of certiorari by these movants in Pohl, et al. v. Acheson, et al., No. 643, October Term, 1950, April 23, 1951, and upon denial of the petition for rehearing in that case, May 14, 1951.

None of the qualified Justices consider that a stay should be granted and the application is denied.

The ground on which Mr. Justice Black denies is that the Court has previously denied certiorari over his dissent, and he feels bound by that action of the Court.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Dated this 6th day of June, 1951.

A true copy:
TEST:
CHARLES ELMORE CROPLEY, Clerk,
Supreme Court of the United States
By

Deputy.

June 6, 1951.

Supreme Court of the United States

OCTOBER TERM, 19

Term No...................

Filed.................................., 19......

R2977

U. S. GOVERNMENT PRINTING OFFICE 16—48654-3

#80-81-82 - Minton Dissent

To: The Chief Justice
Mr. Justice Black
Mr. Justice Reed
Mr. Justice Frankfurter
Mr. Justice Douglas
Mr. Justice Jackson
Mr. Justice Burton
Mr. Justice Clark

From: Minton, J.

Circulated: NOV 14 1951

Recirculated: ______

SUPREME COURT OF THE UNITED STATES

Nos. 80, 81 and 82.—October Term, 1951.

Edward J. Keenan, Petitioner, 80 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	
Walter Jankowski, Petitioner, 81 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	On Writs of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.
Orville Foulke, Petitioner, 82 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	

[November —, 1951.]

Mr. Justice Minton, dissenting.

These cases only illuminate the error of this Court in *Townsend* v. *Burke,* 334 U. S. 736. I would not compound the error. I would overrule *Townsend* rather than send these petitioners back to be proceeded against nicely. Their guilt is not questioned. They say, "If we had only had a lawyer, *maybe* we would not have received such long sentences." Yet, the sentencing judge gave two of the petitioners much shorter terms than the maximum provided by statute. They complain not so much of the sentences they received but the manner in which they received them.

Admit the sentencing judge was facetious, even that he bulldozed the petitioners—he sentenced them all within the limits authorized by law. Maybe the judge's con-

duct called for a curtain lecture. At most, that was a matter for the Pennsylvania Supreme Court, and that court did not even see an error of state law in the judge's conduct, let alone a federal constitutional question. We sit only to determine federal constitutional questions, not to scold state trial judges. It is utterly incomprehensible to me how a judge can commit a denial of federal due process by being facetious in the sentencing of defendants where the sentences he imposes are within the limits prescribed by statute. I would affirm.

#80-81-82.

No. 80. Edward J. Keenan, petitioner, v. C. J. Burke, Warden, New Eastern State Penitentiary;

No. 81. Walter Jankowski, petitioner, v. Cornelius J. Burke, Warden, New Eastern State Penitentiary, etc.; and

No. 82. Orville Foulke, petitioner, v. C. J. Burke, Warden, New Eastern State Penitentiary, etc.; On petitions for writs of certiorari to the Supreme Court of Pennsylvania. _Per Curiam_: The judgments are reversed, _Townsend_ v. _Burke_, 334 U.S. 736. Memorandum by Mr. Justice Minton dissenting.

3 Concord Avenue, Larchmont, N. Y.
November 23, 1951

The Honorable Fred M. Vinson,
Chief Justice, United States Supreme Court

My dear Mr. Chief Justice:

Your attention is called to two gross misstatements of fact in the brief submitted in Case No. 346 by the State of New York and the Public Service Commission of New York. These misstatements give an entirely false picture of the facts in this case, and are so fundamental that the Court might easily be misled into reaching a wrong decision on the strength of these two errors alone:

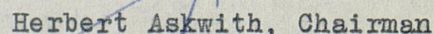
1. On page 3, line 4, the brief states: "although intrastate commutation rates are lower than interstate". The entire case of the commuter is unhinged by this grievous misstatement, for exactly the reverse is the truth. The 17,000 intrastate commuters to New York City (from points in Westchester County) now pay, and always have paid, <u>higher</u> rates per mile (from 24 % to 94 % higher) than the 7,000 interstate commuters from Connecticut to New York City. Before the recent Federal Court ruling, the intrastate rates (averaging all stations) were 21 to 24 % higher; <u>now they are 31 to 32 % higher!</u> This can be easily verified by checking the tariffs of the New Haven on file with the ICC.

2. On page 4, line 11, the brief states: "it is conceded that the railroad is operated at a substantial deficit." This is grossly untrue, and creates the totally false impression that the New York commuters want favors from a railroad operating in the red. The New Haven's <u>NET</u> railway operating income last year, as reported to the ICC, was $12,308,296; in 1949 it was $8,348,998; in 1948 it was $10,902,536. And after paying <u>all</u> fixed and contingent charges during these three years, the total NET PROFIT of the New Haven amounted to $16,041,783.

We consider it our right and our duty to correct these serious errors of fact, as they would undermine our entire case if given credence,--and it is we, the commuters, who will be most vitally affected by an adverse decision.

Respectfully submitted,

THE WESTCHESTER COMMUTERS' GROUP,

By 

Herbert Askwith, Chairman

3 Concord Avenue, Larchmont, N. Y.
November 23, 1951

The Honorable William O. Douglas,
Supreme Court of the United States

My dear Mr. Justice:

Your attention is called to two gross misstatements of fact in the brief submitted in Case No. 346 by the State of New York and the Public Service Commission of New York. These misstatements give an entirely false picture of the facts in this case, and are so fundamental that the Court might easily be misled into reaching a wrong decision on the strength of these two errors:

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2. On page 4, line 11, the brief states: "it is conceded that the railroad is operated at a substantial deficit." This is grossly untrue, and creates the totally false impression that the New York commuters want favors from a railroad operating in the red. The New Haven's NET railway operating income last year (reported to ICC) was ~~$10,902,811~~; in 1949 it was $7,528,998; in 1948, $10,902,536. And after paying all fixed and contingent charges during these three years, the total NET PROFIT of the New Haven amounted to $16,041,783.

CORRECTED IN LATER REPORT TO $12,308,296

We consider it our right and duty to correct these errors of fact, as they would undermine the entire case if given credence, and it is we, the commuters, who will be most vitally affected by an adverse decision.

Respectfully submitted,

THE WESTCHESTER COMMUTERS' GROUP,

By Herbert Askwith

Herbert Askwith, Chairman

Frank Carlson, Miriam Christine Stevenson, David Hyun, and Harry Carlisle, petioners, v. Herman R. Landon, District Director of Immigration and Naturalization Service. No. 35.
James W. Butterfield, Director of Immigration and Naturalixation Service, petitioner, v. John Zydok. No. 136.

Former decision, 342 U.S. 524.
~~Facts and opinion~~
June 9, 1952. The petition for rehearing is denied. The motion of Petitioner Carlson to stay issuance of the mandate, in so far as applicable to him, pending his trial in United States v. Schneiderman, et al, is granted to permit his attendance at his trial which is now in progess in the United States District Court for the Southern District of California. This stay will be automatically dissolved when Carlson's case is submitted to the jury or when it is finally decided by the trial court, whichever is the sooner.

Mr. Chief Justice Vinson
Mr. Justice Reed and
Mr. Justice Minton dissent
from the order granting
the stay.

BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
TELEPHONE ATLANTIC 1313
CABLE ADDRESS "LEXOPOLIS"

EARL B. BARNES
HUBERT HICKAM
KURT F. PANTZER
ALAN W. BOYD
CHARLES M. WELLS
JOHN H. GROVES
THOMAS M. SCANLON
FREDERIC D. ANDERSON
LESTER IRONS
JERRY P. BELKNAP
ROBERT S. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
GEORGE J. ZAZAS
ALAN C. BOYD

LESTER M. PONDER
TAX COUNSEL

June 12, 1952

The Honorable Fred M. Vinson,
Chief Justice of the Supreme
Court of the United States,
Washington 13, D. C.

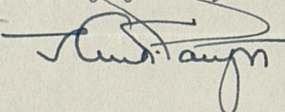
My dear Chief Justice Vinson:

I understand from Mr. Willey, the Deputy Clerk of the Supreme Court, that I am indebted to you for the great honor involved in my appointment as Special Master in the case of New Jersey v. New York.

I write in order to express my great appreciation and the hope my work shall be of service to the Court.

I am, with deep respect,

Sincerely yours,



KFP/TB

Your letter of the 12th received. I hasten to advise that your appointment as Special Master in the case of New Jersey v New York was made by the full Court. With kindest regards

BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
TELEPHONE ATLANTIC 1313
CABLE ADDRESS "LEXOPOLIS"

EARL B. BARNES
HUBERT HICKAM
KURT F. PANTZER
ALAN W. BOYD
CHARLES M. WELLS
JOHN H. GROVES
THOMAS M. SCANLON
FREDERIC D. ANDERSON
LESTER IRONS
JERRY P. BELKNAP
ROBERT S. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
GEORGE J. ZAZAS
ALAN C. BOYD
RAYMOND W. GRAY, JR.

LESTER M. PONDER
TAX COUNSEL

RECEIVED
OCT 7 4 49 PM '52
CHAMBERS OF THE
CHIEF JUSTICE

October 6, 1952

STATE OF NEW JERSEY,
Complainant,
vs.
STATE OF NEW YORK,
CITY OF NEW YORK,
Defendants

The Honorable Fred M. Vinson,
Chief Justice of the Supreme
Court of the United States,
Washington 13, D. C.

My dear Chief Justice Vinson:

I write to thank you for the conference last Thursday, in which you took the time to listen to my comments respecting the techniques and procedure to be adopted in the trial of the above-entitled matter. Needless to say, I took a great deal of inspiration from what you and Mr. Justice Minton had to say; and I accordingly accomplished a great deal more on Friday in the second organization meeting of the trial than would otherwise have been the case.

I was particularly interested in reading the pamphlet entitled Procedure in Anti-trust and Other Protracted Cases. This was produced at the hearing. It greatly buttressed the Agenda I had prepared on leaving Indianapolis, for presentation to counsel at the beginning of our meeting. I enclose a copy of the Agenda herewith, so that you may see for yourself how much the points in the booklet enabled me to make the points in the Agenda. Believe it or not, counsel have agreed to work out an "Outline of Issues," according to which the testimony of all the experts will be arranged. This will make it possible, by use of headings and section numbers, to index the evidence before it is presented, rather

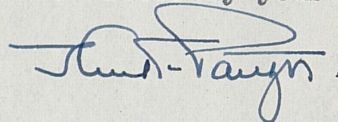
than <u>after</u> it is presented. So far as cross examination and redirect examination are concerned, the road may not be so easy. However, the bulk of each case will doubtless be direct presentation.

Because of the stimulation I received from our conference, I should like to propose that I send you, in the not too distant future, a file of the papers by which we began organizing our case, starting with our first meeting on July 29, 1952. The papers are, generally speaking, similar to the enclosed Agenda. To a certain extent, I had to go on record with these efforts; but it seems to me that criticism of them by you and the members of the Judicial Conference may result in stepping up techniques for use in pre-trial procedures by Special Masters.

I enjoyed my afternoon with you very much.

I remain, with deep respect,

Most sincerely yours,



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JUDGES' CHAMBERS
442 CITY HALL

COURT OF COMMON PLEAS NO. 4
PHILADELPHIA

October 23, 1952.

United States, ex rel. James Smith
v. Dr. Frederick S. Baldi,
October Term, 1951, No. 669

The Honorable, Fred M. Vinson,
The Chief Justice of the Supreme Court of the United States,
Washington, D. C.

My dear Mr. Chief Justice:

Several days following the argument in the Supreme Court in the above case, Mr. McBride, attorney for Smith, formally brought to my attention a statement made by a member of the Supreme Court during the argument, which he believed might fairly be interpreted as the wish of the Court to secure some additional information regarding the record from the Trial Court, consisting of Judges Sloane, Carroll and myself.

Because of this I asked all the attorneys who were present at the argument to meet with me and the other two Judges to ascertain if they were in agreement that the Supreme Court had some query which might be answered by the Trial Court. As a result of this meeting, held Friday, October 17, 1952, those of us who constituted the full Court have an impression that the Supreme Court would like to obtain from us a certification of any facts within the knowledge of the Court relating to certain dates which appear on the docket, and the exact date on which the determination of guilt and the imposition of punishment occurred. The Court is quite willing to respond to any inquiry from the Supreme Court which it considers might be of assistance in determining the questions before it but hesitates to volunteer any such information unless requested to do so.

If a certification of any facts within the knowledge of the Court is required, a request for same from the Supreme Court will have our prompt compliance.

Very respectfully,

Copy to Justices
10/30/52 –

Charles L. Guerin

THOMAS D. McBRIDE
HERBERT F. HOLMES, JR.

LAW OFFICES
1529 WALNUT STREET
PHILADELPHIA 2, PA.

LOcust 7-2083
LOcust 7-3440

October 27, 1952

Hon. Fred M. Vinson, Chief Justice
Supreme Court of the United States
Washington, D. C.

United States ex rel James Smith v. Baldi

Dear Sir:

I am in receipt of a copy of letter dated October 23, 1952 from Honorable Charles L. Guerin, one of the Judges who sat in the Pennsylvania trial court in the above entitled matter.

You may recall that at the oral argument I described the interlinear entry "2/14/49" on the indictment as a "crooked" entry. I also said that the Judges of the trial court had authorized and requested me to state to the Court that the entry was not on the indictment at the time they signed it.

The characterization "crooked" was mine, not that of the Judges. During the course of the argument Mr. Justice Frankfurter suggested, without dissent, that if the Judges wished to communicate with the Court it would be better to do it in a more formal way than an oral statement of counsel.

Upon my return to Philadelphia I reported the facts to Judge Guerin and he called the matter to the attention of his brother judges, who held the meeting referred to in his letter. I did not say to Judge Guerin and his brother judges that this Court would like to obtain from them a statement as to "the exact date on which the determination of guilt and the imposition of punishment occurred."

Copy to Justices - 10/30/52 -

I must take the position that no "certificate" now filed could contradict the record. That point is one of the basic issues in the case. My oral statement to Your Honorable Court was made solely at the request of the Judges of the trial court with the consent of my opponent and was intended to demonstrate that there was no contention on my part that the entry which I have characterized as being fraudulent was known to or countenanced by any of them.

Respectfully yours,
Thomas D McBride
Attorney for Petitioner.

cc. Judge Guerin
Judge Carroll
Judge Sloane
Mr. Ryder

Nov 25 10 31 AM '52

2306 East 2nd Street
Los Angeles 33, Calif
November 19, 1952

Chief Justice Fred M. Vinson
Office of the Supreme Court
Washington D. C.

Dear Mr. Chief Justice

A friend of mine, two, I should say, keep bringing up your statement to the effect that "there are no absolutes". This is supposed to prove that there is no God, or, if there is, that he doesn't give a damn about us and didn't set any laws (absolutes) for us to be governed or guided by.

Have you, Sir, made any statements expanding on this one phrase of yours ("there are no absolutes") and, for that matter, on your statement that "all concepts are relative?" If so, could you refer me to them? If not, dare I hope that you might venture to give me some "comfort" by assuring me that you did not mean there was no God and/or no God given laws?

I realize that it is highly improbable that you will be inclined, or have the time, to reply but I am getting so fed up with this reference to your statement (with which I of course do not agree) that am taking this chance of drawing a clarification (to my way of thinking) from you.

Sincerely,

Frank G. Rivera

Frank G. Rivera

LAW OFFICES
MORRIS LAVINE
619-620 A.G. BARTLETT BLDG.
215 WEST SEVENTH STREET
LOS ANGELES 14, CALIF., U. S. A.
TRINITY 3241

December 30th, 1952

Honorable Fred M. Vinson, Chief Justice
Supreme Court of the United States
Washington, D. C.

Dear Chief Justice:

As you know, my client Tomoya Kawakita is under sentence of death in connection with the treason case that I argued before your Court and in which you wrote the dissenting opinion, holding in your view that he was not guilty of treason, and in which Justices Burton and Black joined.

I have before the President an application for executive clemency for Mr. Kawakita for commutation of his sentence.

No person has ever yet suffered the death penalty for treason. I am informed that when the cases of Stephan v. United States was ultimately affirmed that the justices who dissented in that case, or at least one of the justices, suggested to the President that he commute the sentences, and that it was done forthwith.

I am very anxious to have President Truman act on this application for commutation and, as the time is very short before he leaves office, I would appreciate it very much if you would speak to the President regarding this Japanese boy. He is the only one of the colored races who has ever been condemned to death and whose life has not been spared.

The alleged acts involved in this case were all committed in a prison camp during wartime when the spirit of patriotism ran high. It must not be forgotten that Kawakita was Japanese and actually held a citizenship of that country, under the undisputed testimony, and did not think that he had any American citizenship at the time; nor did the United States have any opportunity to extend him any protection during this period of time, nor did it do so. The acts of which he was accused and found guilty -- making a man carry two buckets of paint when he was carrying one bucket and was required to carry two buckets under International law, and others similar -- are certainly not of such a nature as to have called for such a severe penalty.

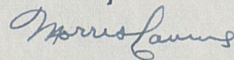
Early in the case, the trial was assigned to another judge who informally proposed to me that if my client would plead guilty he would impose a sentence of about 15-years upon him. That judge became ill with a heart attack and could not go on with the trial; hence it was assigned to the judge who did

ultimately try the case. Tokyo Rose, who broadcast propaganda, received ten years and Axis Sally, who broadcast propaganda from Germany, received fifteen years. Kawakita has now been in jail more than five years.

I have written these facts to your attention to refresh your memory for any discussion that you may have with the President.

Thanking you for anything you may do in this matter, I beg to remain

Most respectfully and sincerely,



Morris Lavine

ML/vt

Telephone FRanklin 2-0101

CHICAGO CRIME COMMISSION
79 West Monroe Street
CHICAGO 3, ILLINOIS

ORGANIZED AND ENDORSED BY THE CHICAGO ASSOCIATION OF COMMERCE

FEB 10 1953

REPORT OF THE COMMITTEE ON RESEARCH
ON THE OPERATION OF THE POST-CONVICTION HEARING ACT

The Illinois Post-Conviction Hearing Act (Smith-Hurd Ill. Ann. Stat., Chapter 38, Secs. 826-832) was enacted at the 1949 session of the General Assembly.

During the preceding ten or more years, the Supreme Court of the United States had been constantly expanding the concept of constitutional rights and guarantees as related to persons charged with crimes. Particular emphasis had been laid on post-conviction procedures and their adequacy and availability, tested by the due process requirments of the State and federal Constitutions.

So far as Illinois was concerned, the U. S. Supreme Court held that the remedies afforded, prior to the advent of the Post-Conviction Hearing Act, did not measure up to the constitutional minimum requirements. The net effect of the holdings in the various cases in the U. S. Supreme Court was that, because of the absence of any effective procedural remedy afforded by the state law, persons detained in penal institutions had a right to resort to the federal courts for relief via habeas corpus, without "exhausting first their remedy in the state courts."

From a geographical standpoint, most of the cases which served as vehicles for the expanding concept of the U. S. Supreme Court of the due process requirements of the

federal Constitution relating to the arrest, accusation, trial, and incarceration of persons, originated in the South. With each new decision of the U. S. Supreme Court making the concept of due process more ample, the pressures by incarcerated persons for a ventilation of their constitutional rights increased. The desire on the part of prisoners in Illinois penitentiaries to have their claims of a violation of their constitutional rights reviewed had been damned up by a prison rule imposed by the Warden. The Warden of the state penitentiary had promulgated and enforced a rule under which prisoners were denied the right to resort to the courts except through counsel. This rule, of course, denied accessibility of the courts to all of the indigent prisoners. This rule was exposed in 1945 in the case of Bongiorno v. Ragan, 54 F. Supp. 973 (N.D. Ill.).

The result of the two factors, the expanding concept of due process as announced by the U.S. Supreme Court and the abrogation of the rule just mentioned, was a flood of petitions addressed to the federal courts by indigent prisoners as well as others. In one year, 1946, 332 cases originating in Illinois penal institutions were filed in forma pauperis in the United States Supreme Court.

A series of cases reached the Supreme Court of the U. S. at the instance of prisoners incarcerated in Illinois penal institutions which, on examination by the Supreme Court,

revealed the fact that there was no adequate procedural remedy provided by the state law through the medium of which an incarcerated person could test out the legality of his incarceration in terms of his constitutional rights to due process of law.

Prior to the enactment of the Illinois Post-Conviction Hearing Act, as is still the case today, there were three separate remedies by which a person convicted of crime and at the time being incarcerated in an Illinois state penal institution might seek his freedom, basing his claim on the contention that his constitutional rights, before, during or after the trial, had been violated:

1. Statutory coram nobis
2. Habeas Corpus
3. Writ of error

The Supreme Court of Illinois, in People v. Loftus, 400 Ill. 432, 435 (1948), had the following to say about these three remedies:

> "We do not see any great complexity in the application of these various remedies to different states of facts which may occasion their use. A writ of error searches the record as it is made in court, without any aid of extrinsic circumstances. Thus, if there is but a common-law record, nothing but what is contained in the common-law record may be examined. If the common-law record is supplemented by a bill of exceptions, so that the entire trial proceeding is recorded, any error shown by the complete record may be reached by a writ of error. Habeas corpus is applicable to a situation, among

> others, where the judgment is void by reason of matters not appearing in the record. The claims of the petitioner must be presented to the court, whether the circuit or supreme, by a proper petition showing facts which, if true, would render the judgment void. The writ of error _coram nobis_ applies to the relief which would be afforded because of matters which, if known, would have changed the result, and hence is largely a matter for the trial court only.

The Supreme Court of the United States characterized these remedies as not affording "some clearly defined method by which they (the prisoners) may raise claims of denial of federal rights". That court held that the state must, by available process, give prisoners "an opportunity to open an inquiry into the intrinsic fairness of a criminal process even though it (the criminal process) appears proper on the surface".

The basis for the U.S. Supreme Court decisions in this behalf rests on the fact that in Illinois, if the review of a criminal judgment is by way of writ of error, the reviewing court sees only the common-law record unless a bill of exceptions is also included. The common-law record consists only of the mandatory record, viz., indictment, arraignment, plea, ~~trial~~ VERDICT, and judgment. If a bill of exceptions is included, the record will then consist of the common law record, plus all the motions, rulings of the trial court, evidence heard, instructions, and other matters which do not come within the clerk's mandatory record.

In Illinois, review by writ of error is allowed in all felony cases to the Supreme Court, However, it is only

in the capital cases that an indigent defendant is provided with a bill of exceptions. In all other felony cases, the defendant must provide his own bill of exceptions. If he happens not to have the money to pay for the bill of exceptions, then his chances of having a review by the state Supreme Court and/or by the U.S. Supreme Court of the evidence upon which he was convicted do not exist.

It was the absence of the bill of exceptions which constituted the basic defect in the procedural facilities offered by the State of Illinois prior to the advent of the Illinois Post-Conviction Hearing Act.

Stated another way, it can be said that Illinois could have met the requirements of the U.S. Supreme Court by providing AS TO ALL FUTURE CASES a transcript of proceedings in all felony cases. Whether the Post-Conviction Hearing Act was a more desirable solution of the problem than the answer provided by 32 states, the federal government, and England, which have elected the alternative of providing their indigents with a transcript of the testimony, will perhaps remain pretty much a matter of opinion.

With or without the Post-Conviction Hearing Act, a transcript of proceedings remains an almost indispensable tool in preserving the constitutional rights of the defendants, as well as protecting society from an avalanche of dangerous and incorrigible criminals spewed out of a crack in the post-procedural machinery.

Argument is not required to show that the review of a conviction for a serious crime years after the trial, without the benefit of a transcript of the proceedings, will always constitute a serious handicap to the reviewing court and a boon to the criminal. Recognition of the fact that a transcript of the proceedings is an indispensable factor in the review of criminal trials is found in the advent of Rule 27A of the Rules of the Supreme Court of the State of Illinois, which reads as follows:

> "In all criminal cases wherein the accused upon conviction shall, or may, be punished by imprisonment in the penitentiary, if, at the time of his arraignment, the accused is not represented by counsel, the court shall, before receiving, entering, or allowing the change of any plea to an indictment, advise the accused he has a right to be defended by counsel. If he desires counsel, and states under oath he is unable to employ such counsel, the court shall a ppoint competent counsel to represent him. The court shall not permit waiver of counsel, or a plea of guilty, by any person accused of a crime for which upon conviction, the punishment may be imprisonment in the penitentiary, unless the court finds from proceedings had in open court that the accused understands the nature of the charge against him, and the consequences thereof if found guilty, and understands he has a right to counsel, and understandingly waives such right. The inquiries of the court, and the answers of the defendant to determine whether the accused understands his rights to be represented by counsel, and comprehends the nature of the crime with which he is charged, and the punishment thereof fixed by law, shall be recited in, and become a part of, the common law record in the case; provided, in no case shall a plea of guilty be received or accepted from a minor under the age of eighteen years, unless represented by counsel."

Rule 27A was induced by the Joint Committee of the Chicago Bar Association and the Illinois State Bar Association, the same elements that are responsible for the Illinois Post-Conviction Hearing Act. If it is desirable to make a transcript of the proceedings on arraignment a part of the common law record, it is equally necessary to make a transcript of the entire proceedings a part of that record. It is a matter of expense only.

The purpose of this report is to examine and report on the practical workings of the Illinois Post-Conviction Hearing Act in terms of the public interest as served by our system of criminal justice.

Before examining individual cases in order to determine what the experience actually is, it is pertinent to draw attention to the fact that the Act provides that the petition must be filed within a period of five years after conviction or within three years from the adoption of the law. As is natural, a very large volume of such petitions have been filed. The three year limitation has expired. Hereafter, the prisoner will have to file his petition within five years after his conviction so that ultimately in the administration of this Act, we will not be faced with an adjudication of the rights of prisoners whose trial took place some 20 to 30 years ago, as has been the case in the past.

In preparing this report, we have been able to draw upon the experience in the Criminal Court of Cook County only. The following statistics prevail there, as of December 18, 1952:

Petitions denied....................................	177
Petitions denied but reviewed by Supreme Ct. and now pending..	15
Petitions pending (not including those reviewed)....	153
Petitions withdrawn (without prejudice)..............	14
Petitions stricken from call.........................	2
Petitions sustained - new trial granted.............	17
Petitions sustained - defendants totally and finally discharged from custody on the granting of the petition and without holding for a new trial on constitutional issues........	3
Petitions sustained in 1 indictment and denied in another (P.C. 151 & P.C. 208)..................	2
Total petitions filed.........	383

An examination of each individual case is required in order to support any fair appraisal of what is actually happening in our courts in the day-to-day workings of the law. Consequently, a brief is offered of each of the twenty cases in which the petition has been granted.

Post-Conviction Hearing No. 223 - RIVERS PICKETT - Judge Kluczynski

Prior Criminal Record:

November 13, 1929 - Plea guilty, burglary, 1 year probation.

January 23, 1930 - 180 days House of Correction, larceny.

August 14, 1930 - Pontiac 1 year to life, burglary

Case on which petition based:

On July 25, 1935 Rivers Pickett was indicted on a charge of burglary in Case 76200 in which it was charged that on July 14, 1935 he burglarized the tavern of Jack Bulich at 9142 Mackinaw Avenue and took 6 cases of whisky of the value of $80, a watch of the value of $24 and $5 in cash. The indictment contained an habitual criminal count.

On July 29, 1935 the defendant pleaded not guilty and went to trial by jury before Judge Grover C. Niemeyer. The jury returned a verdict of guilty of burglary and under the habitual criminal count and on the same date the defendant was sentenced to the penitentiary for life.

Allegations in petition, filed March 14, 1952:

1. The court appointed counsel stood mute and made no effort to protect the defendant's rights.

2. Counsel permitted perjured testimony to go to the jury.

Ruling on petition:

August 28, 1952 petition allowed and new trial granted.

Disposition of case:

On September 8, 1952 the case was stricken off with leave to reinstate. It appears that the defendant was not re-tried for the reason that Judge Kluczynski and the assistant state's attorney believed that the defendant had already served enough time.

Post-Conviction Hearing No. 292 - Lester A. Sammon - Judge Graber.

Prior Criminal Record:

May 24, 1924 - Received State Penitentiary, San Quentin, California No. 39475, 1 to 14 years, forgery.
September 10, 1926 paroled.
March 8, 1927 discharged.

June 18, 1931 - Adjudged insane Los Angeles County.

November 27, 1931 - Received Joliet, Ill. Penitentiary No.5744, armed robbery, 1 year to life, from Knox County, Illinois.
Paroled September 9, 1944.

Case on which petition based:

On December 8, 1944 (2 months after he was paroled as indicated above) he was indicted with others on a charge of armed robbery in Case 44-1611 wherein it was alleged that on November 24, 1944 they held up with a revolver Lucille Guertin in the gasoline station operated by her husband Gilbert at 5240 Broadway and took $1,000 in cash. In the course of the robbery Gilbert Guertin was shot.

On January 23, 1945 the defendant went to trial before a jury in the courtroom of Judge John Prystalski. On January 24, 1945 a mis-trial was declared and the defendant thereupon withdrew his plea of not guilty and entered a plea of guilty to armed robbery. He was found guilty and was sentenced to the penitentiary for a minimum of 20 years and a maximum of 30 years by Judge Prystalski.

Allegations in petition, filed July 22, 1952:

1. Although he called the attention of his counsel and the judge to the fact that he had been adjudged insane in 1931, the trial judge refused to empanel a jury to determine his mental condition.

Ruling on Petition:

October 16, 1952, petition allowed and new trial granted.

Disposition of case:

Set for trial for February 9, 1953 and the defendant in the meantime to be examined by the Behavior Clinic of the Criminal Court of Cook County.

Post-Conviction Hearing No. 177 - Bruno Pareliotis - Judge Kluczynski.

Prior criminal record: None

Case on which petition based:

The defendant had served the 10 year sentences imposed by Judge Desort in 1937 but was being held in the penitentiary to complete the 1 year to life sentence imposed in 1934. In that case it was charged in Indictment 72747 that the defendant burglarized the home of Bernice Berger at 10815 South Wabash Avenue on February 29, 1934 and took jewelry of the value of $15. The indictment contained an habitual criminal count.

On April 18, 1934 the habitual count was waived and upon his plea of guilty the defendant was sentenced to the penitentiary for a term of 1 year to life by Judge Grover C. Niemeyer.

Allegations in petition, filed June 15, 1951:

1. A confession was obtained from him on the promise by a police officer that he would be sentenced to the county jail for 1 year.

2. He had been assured by his counsel, the public defender, and by the state's attorney that he would be found guilty of petit larceny and would be sentenced to the county jail for 1 year.

3. His counsel refused to take any action on the failure of the police and the state's attorney to keep their promises.

Ruling on petition:

On December 20, 1951 the petition was sustained and new trial granted.

Disposition of case:

On January 24, 1952 nol prossed on motion of the assistant state's attorney who advised the nol pross was entered in view of the fact that the defendant had already served 18 years in the penitentiary for this offense.

After-conduct of defendant:

On May 23, 1952 (4 months after the Post-conviction petition had been allowed and the earlier case nol prossed), the defendant was indicted on the charge of armed robbery in Case 52-1278 wherein it was alleged that on May 5, 1952 he held up with a gun Walter Groebe, 9219 South

52nd Avenue, Oaklawn, Illinois and after kidnapping him took from him his automobile of the value of $2900. In the subsequent flight from the police defendant and his accomplice ran down a woman and her two young sons and crashed into a parked car. On June 24, 1952 the defendant pleaded guilty to armed robbery and was found guilty by Judge Frank R. Leonard who sentenced him to the penitentiary for a minimum of 2 years and a maximum of 5 years.

Post-Conviction Hearing No. 3 - Curtis Gee - Judge Padden.

Prior Criminal record: None

Case on which petition based:

On June 8, 1939 the defendant was indicted on a charge of murder in Case 39-857 wherein it was alleged that on May 26, 1939 he struck his son Curtis Gee,Jr., age 16 years, on the head with a club and then sprayed his body with gasoline and set it on fire.

On June 15, 1939 the defendant pleaded not guilty and waived jury trial before Judge Daniel P. Trude who found him guilty of murder and sentenced him to the penitentiary for a term of 199 years.

Allegations in Petition, filed July 26, 1949:

1. He was arrested without a warrant.

2. He was held incommunicado.

3. He was never taken before a magistrate.

4. Confession was forced from him by police brutality.

Ruling on petition:

May 25, 1951 petition sustained and new trial granted.

Disposition of case:

October 16, 1951 stricken off with leave to reinstate for the reason that the police officer in the case is dead and the confession is missing.

Post-Conviction Hearing No. 4 - Frank Dale - Judges Lynch and Padden

Prior criminal record:

February 25, 1909	- Not guilty, larceny.
April 12, 1909 -	- Burglary, stricken off with leave to reinstate.
April 19, 1909 0	- Fined $50 and costs, disorderly conduct.
December 6, 1909	- Sentenced to Pontiac for manslaughter. December 9,1909 new trial granted and nol prossed.
August 21, 1911	- Sentenced 1 year House of Correction, burglary.
April 17, 1914	- Sentenced Joliet Penitentiary for robbery. Two charges robbery. One charge assault to rob stricken off with leave to reinstate. Paroled July 8, 1918. Returned violation of parole August 17,1918 Re-paroled August 20, 1919.

Case on which petition based:

On August 4, 1933 the defendant was indicted with others on a charge of armed robbery in Case 70059 wherein it was alleged that on July 23, 1933 they held up with a shotgun and revolver Raymond Grant, 1608 Harrison Street, Broadview, Illinois and took from him an automobile of the value of $75, a watch of the value of $1 and $2.25 in cash.

On August 22, 1933 the defendant pleaded not guilty and was tried by jury before Judge Ross C. Hall. The jury returned a verdict of guilty of armed robbery and under the habitual criminal count. The defendant was thereupon sentenced to the penitentiary for a term of his natural life.

Allegations in petition, filed September 6, 1949:

1. The trial court appointed counsel prejudicial to the defendant and counsel was incompetent.

2. He was denied "due process of law" when not permitted to chose his own counsel.

3. He was compelled to stand trial immediately after counsel was appointed.

4. Trial court lost jurisdiction through its arbitrary manner.

5. He was not permitted to summon witnesses.

Ruling on petition:

On November 12, 1949 petition was dismissed by Judge Lynch upon the motion of the state which contended that the Post-Conviction Hearing Act was unconstitutional. On appeal taken by the defendant to the Illinois Supreme Court. The Supreme Court held in People vs. Dale, 406 Ill. 238 that the act was constitutional, and remanded the case for rehearing. The petition was subsequently sustained by Judge Padden.

Disposition of case:

On October 24, 1951 on motion of the State's Attorney the case was stricken off with leave to reinstate on the grounds that the witnesses could not be located.

Post-Conviction Hearing No. 42 - Jack Norval - Judge Kluczynski

Prior Criminal Record:

June 14, 1918 - June 14, 1918 sentenced Pontiac on burglary charge. (At that time proof was made by the state that the defendant was 17 years old. However, testimony of mother and record in family Bible was produced to show that the defendant was only 15 years of age.)

Case on which petition based:

In Indictment 67289 it was charged that on October 28, 1932 the defendant burglarized the premises of the Wolf Furniture Company, 4211 Archer Avenue and took $50 in cash. The indictment contained an habitual criminal count based on the 1918 conviction.

On February 6, 1933 the defendant pleaded not guilty and went to trial by jury before Judge Michael Feinberg. The jury returned a verdict of guilty of burglary and under the Habitual Criminal count and the defendant was thereupon sentenced to the penitentiary for life.

Allegations in petition, filed December 15, 1949:

1. The conviction under the habitual criminal count based on the 1918 conviction violated his constitutional rights in view of his age at the time.

Ruling on petition:

July 24, 1952 petition sustained and new trial granted.

Disposition of case:

July 24, 1952 case was stricken off with leave to reinstate after the State's Attorney commented: "It is an inequality of sentence and Norval is entitled to his discharge after serving 19 years, because the burglary was not a vicious crime."

Post-Conviction Hearing No. 201 - Frank Kallas - Judge Kluczynski

Prior Criminal Record:

November 4, 1920	- $5 and costs. Disorderly conduct. Judge McKinley.
April 13, 1923	- $100 and costs and 6 months probation. Disorderly conduct. Judge Burke.
June 25, 1924	- $10 and costs. Disorderly conduct. Judge Schwaba.
May 23, 1925	- Sentenced to Pontiac, assault to kill. Judge Hurley. Paroled July 27, 1928
August 2, 1929	- $10 and costs. Disorderly conduct. Judge Schwaba.

Case on which petition based:

On February 9, 1931 the defendant was indicted on a charge of burglary in Case 59850 wherein it was alleged that on December 25, 1930 he burglarized the home of Andrew Rudnick, 1444 Blackhawk Street and took $1.09 in cash.

On April 17, 1951 defendant pleaded not guilty and went to trial by jury before Judge Charles Williams. The jury returned a verdict of guilty and the defendant was thereupon sentenced to the penitentiary for a term of 1 year to life.

Allegations in petition, filed November 20, 1951:

1. He was never furnished with a copy of the indictment.
2. He was forced to trial and immediately after being brought from the House of Correction on a writ of habeas corpus.
3. He was denied a continuance to engage his own counsel and subpoena witnesses.
4. A public defender was appointed over his objections.

Ruling on petition, filed June 19, 1952:

June 19, 1952 petition sustained and new trial granted.

<u>Disposition of case</u>:

July 21, 1952 on motion of the state the case was stricken off with leave to reinstate for the reason that the witnesses cannot be located.

Post-Conviction Hearing No. 61 - Talbert Jennings - Judge Ashcraft

Prior Criminal Record:

October 7, 1938	- Arrested in Cedar Rapids, Iowa and held on an auto theft charge for Chicago Police.
April 12, 1939	- Escaped from Boys Home at Geneva, Illinois.
May 26, 1939	- Received Joliet Penitentiary No. 15122. Larceny. 1 to 10 years from Kane County, Ill. Paroled October 1, 1941. Returned violation parole February 18, 1942 Re-paroled January 18, 1943. Returned violation parole November 15, 1945 Discharged expiration of sentence Dec.27,1947
February 7, 1942	- Fined $10, disorderly conduct, Judge Edelman
January 8, 1944	- Sentenced Western State Penitentiary No.8914 from Pittsburgh, Pennsylvania, 1 to 2 years, burglary.

Case on which petition based:

On June 29, 1949 the defendant was indicted with others on a charge of armed robbery in Case 48-1247 wherein it was alleged that on May 24, 1948 they held up Sidney L. Barr in his jewelry store at 1031 Lake St. Oak Park, Illinois and took from him 100 watches of the value of $2500, 150 rings of the value of $750, 90 rings of the value of $540, and $165 in cash.

On December 23, 1948 the defendant pleaded not guilty and went to trial by jury before Judge Alan E. Ashcraft. On January 12, 1949 the jury returned a verdict of guilty of armed robbery and on January 28, 1949 the defendant Jennings was sentenced to the penitentiary for a minimum of 10 years and a maximum of 25 years.

Allegations in petition, filed March 29, 1950:

1. He was arrested without a warrant

2. Property taken from him without a search warrant

3. Confession was obtained from him by duress and police brutality

4. He was held for several days after his arrest without being taken before a magistrate

5. He was not given a fair and impartial trial.

Ruling on Petition:

Originally upon motion of the state the petition was dismissed without hearing. This ruling was affirmed by the Illinois Supreme Court but on appeal to the Supreme Court of the United States the case was remanded to the State Supreme Court with directions to review the decision of the trial court. On June 13, 1952 the petition was sustained and a new trial granted.

Disposition of case:

Case set for trial before Judge Wendell E. Green on February 2, 1953

Post-Conviction Hearing No. 166 - James Grant - Judge Miner

Prior Criminal Record:

January 11, 1921 - 4 months House of Correction, burglary. Plea guilty to petit larceny.

July 14, 1924 - Stricken off, burglary.

Case on which petition based:

On July 17, 1925 the defendant was indicted on a charge of rape in Case 37425, wherein it was alleged that on June 8, 1925, after forcing entry into her home, he raped Mrs. Frances Hackett, 6226 Prairie Avenue, age 26 years, and the mother of three children.

On August 12, 1925 a jury in the courtroom of Judge Jacob H. Hopkins returned a verdict of guilty of rape and fixed the punishment at imprisonment for life.

Allegations in petition:

1. He did not receive a fair and impartial trial

2. The trial was not conducted in an orderly manner in that the complaining witness started a commotion and spectators attacked the defense counsel and the defendant, perpetrating a near-riot in the presence of the jury.

3. The jury was influenced by these demonstrations

Ruling on petition:

On October 7, 1952 petition was sustained and a new trial was granted by Judge Julius H. Miner.

Disposition of case:

On January 9, 1953 a jury in the courtroom of Judge Frank R. Leonard returned a verdict of not guilty in the case.

Post-Conviction Hearing No. 244 - George Barker - Judge Kluczynski

Prior Criminal Record: None

Case on which petition based (2):

(1) In Case 52186 it was charged that the defendant George Barker and an accomplice burglarized the grocery of Florence G. Crowley, 1456 Wilson Avenue and took $15 in cash. On May 21, 1929 the defendant pleaded guilty to petit larceny and was placed on probation for 1 year. In November 1929, following the arrest of defendant as a burglary suspect, the probation previously granted was revoked by Judge Walter Steffen, who sentenced the defendant to the Pontiac Reformatory. The defendant was paroled on July 1, 1932.

(2) On December 12, 1933 the defendant was indicted with an accomplice on a charge of burglary in Case 71538 wherein it was alleged that on November 29, 1933 they burglarized the Great Atlantic and Pacific Tea Company store at 1424 Irving Park Boulevard and took a carton of cigarettes of the value of $2.50. This indictment contained an habitual criminal count based on the sentence imposed by Judge Steffen in 1929. The defendant pleaded not guilty and waived jury trial before Judge Grover C. Niemeyer, who found him guilty of burglary and under the habitual criminal count and sentenced him to the penitentiary for his natural life.

Allegations in petition, filed May 15, 1952:

1. Habitual criminal count in Indictment 71538 was improperly based on the illegal sentence imposed in Indictment 52186.

2. He was denied a request for continuance and was forced to trial after the public defender was appointed.

3. When the public defender left the courtroom for a while the judge arbitrarily forced him to trial, although his counsel was absent.

4. He signed no jury waiver and he was not properly advised as to his rights.

Ruling on petition:

On September 10, 1952 petition sustained in each case.

Disposition of cases:

On September 10, 1952 the defendant was discharged on both indictments. Judge Kluczynski commented that he had discharged the defendant because he felt that the 23 years served in prison was sufficient punishment.

Post-Conviction Hearing No. 210 - Samuel S. Reed - Judge Lindsay

Prior Criminal Record: None

Case on which petition based:

On April 23, 1947 Samuel S. Reed was indicted on a charge of assault with intent to commit murder in Case 470384, wherein it was alleged that on January 12, 1947, while resisting arrest, he shot Police Officer Isaac Coleman, 5914 South Park Avenue.

On May 19, 1947 the defendant pleaded not guilty and waived jury trial before Judge William J. Lindsay, who found him guilty and on May 23, 1947 sentenced him to the penitentiary for a minimum of 1 year and a maximum of 14 years.

Allegations in petition, filed December 27, 1951:

1. He was denied a fair and impartial trial

2. The public defender who represented him and the assistant state's attorney who prosecuted him conspired to suppress evidence beneficial to him.

3. He was not properly advised of his rights and jury trial was waived without authorization by him.

Ruling on petition:

On January 31, 1952 petition sustained.

Disposition of case:

January 13, 1952 defendant discharged from further custody.

Post-Conviction Hearing No. 65 - Paul Lopez - Judge Lindsay

Prior Criminal record: None

Case on which Petition based:

On June 18, 1947 Paul Lopez and others were jointly indicted on a charge of armed robbery in Case 47-1272 wherein it was alleged that on May 23, 1947 they held up with a revolver Larry Rothenbaum, 3948 West 14th St. and took from him a watch of the value of $100, a cigarette lighter of the value of $9, a wallet of the value of $10 and $29 in cash.

On August 18, 1947 defendant pleaded guilty before Judge William J. Lindsay who found him guilty and placed him on probation for 2 years on September 2, 1947. On October 5, 1947 when the court was informed that the defendant Lopez had become involved in an assault case while on probation, probation was terminated and Lopez was sentenced to the penitentiary for a minimum of 3 years and a maximum of 20 years.

Allegations in petition, filed May 22, 1950:

1. He was induced to plead guilty on the promise that he would be granted probation.

2. On the facts which were held to constitute a violation of probation he had been taken to the Juvenile Court and there the charges were dismissed against him.

3. On the hearing for violation of probation before Judge Lindsay no witnesses were called and he was not represented by counsel. In revoking probation the court acted solely upon the statement of the assistant state's attorney.

4. He was only 15 years old at the time he was sentenced.

5. He is not guilty in this case and his two co-defendants have each addressed letters to the defense counsel in which they allege that he (the defendant) is innocent.

Ruling on petition:

December 21, 1950 petition sustained.

Disposition of case:

December 21, 1950 defendant discharged.

Post-Conviction Hearing No. 222 - Ignacio Nunez - Judge Kluczynski

Prior Criminal Record: None

Case on which petition based: (2)

(1) On October 14, 1949 the defendant was indicted on a charge of rape in Case 49-2036 wherein it was alleged that he had sexual relations with Patricia Singleton, age 14 years. Upon the trial on October 27, 1949 before Judge Thomas J. Lynch, the defendant admitted he had relations with the prosecutrix with her consent, and that he wanted to marry her but that her parents objected. On November 10, 1949 the defendant was found guilty of statutory rape and was placed on probation for 5 years.

(2) On March 16, 1950 while on probation in the above case the defendant was indicted on a charge of rape in Case 50-611 wherein it was alleged that he had sexual relations with Dolores Miceikis, age 14 years. On the trial before Judge John L. Lupe on May 25, 1950 the prosecutrix in this case testified that she knew of his trouble with another girl but that she still loved him and wanted to marry him. The defendant testified that he had sexual relations with Dolores Miceikis with her consent and that he wanted to marry her. The defendant was found guilty of statutory rape by Judge Lupe who sentenced him to the penitentiary for a term of three years.

Following the conviction and sentence in Case 50-611 probation was terminated by Judge Lynch in the earlier case and he sentenced the defendant to the penitentiary for a term of 3 years, to run concurrently with a similar sentence imposed by Judge Lupe.

Allegations in petition, filed March 14, 1952:

1. He was illegally arrested in his own home by the father of the prosecutrix in Case 50-611 who forced his way into his home and took him to the police station, and that this constituted a deprivation of due process of law.

Ruling on petition:

May 28, 1952 petition sustained.

Disposition of cases:

June 3, 1952 defendant discharged in Case 50-611, and since it was the conviction in this case which constituted the violation of probation in Case 49-2036, the order terminating probation in the latter case and sentencing the defendant was vacated and set aside and the defendant was re-committed to probation.

Post-Conviction Hearing No. 208 - Reginald E. Thomas - Judge Lindsay

Prior Criminal Record: None

Case on which petition based: (2)

On June 7, 1950 Reginald E. Thomas was indicted on one charge of assault with intent to commit robbery and one charge of armed robbery, as follows:

(1) In Case 50-1089 it was charged that on May 24, 1950 he attempted to hold up with a revolver Phyllis Hines, 6210 Kimbark Avenue, a cashier employed by the Chicago Transit Authority in the elevated station at 63rd Street and Dorchester Avenue.

(2) In Case 50-1090 it was charged that on April 19, 1950 he held up with a revolver Mary Butler, 7120 LaFayette Avenue and took from her $295 belonging to the Illinois Bell Telephone Company.

On June 23, 1950 the defendant pleaded not guilty and waived jury trial in each case before Judge William J. Lindsay, who found him guilty as charged in the above indictments and sentenced him to the penitentiary for a term of 1 to 14 years in the assault case, to run concurrently with a 3 to 20 year sentence imposed in the robbery case.

Allegations in petition, filed December 27, 1951:

1. Although he is a Negro he was placed in a show-up line with white men.

2. A confession was obtained from him by threats and promises of probation in the case charging assault to rob.

3. He was represented by an inexperienced and incompetent counsel who entered a plea of guilty without his consent. (The record shows that the defendant entered a plea of not guilty in each case.)

4. He was not properly warned as to his plea and no formal plea was entered by him.

5. Judge Lindsay took charge of the prosecution and deprived him of a fair and impartial trial.

Ruling on Petition:

April 10, 1952 petition dismissed as to Indictment 50-1089 charging assault to rob. Petition sustained as to Indictment 50-1090 charging armed robbery.

Disposition of case: April 10, 1952 defendant discharged in Indictment 50-1090.

Post-Conviction Hearing No. 151 - Sam McGee - Judges Graber and Schwaba

Prior Criminal Record:

October 15, 1928 - Received State Penitentiary, Parchman, Miss. No. 3562. 2 years, assault to kill.

Cases on which petition based: (2)

On January 18, 1937 the defendant was indicted on 2 charges of armed robbery as follows:

(1) In Case 37-98 it was charged that on December 24, 1936 he held up with a revolver Jack Geman, 202 South State Street and took from him $12 in cash belonging to the Public Jewelry Company.

(2) In Case 37-99 it was charged that on December 23, 1936 he held up with a revolver Andrew Sychowski, 2220 North Menard Avenue and took from him $16 in cash belonging to the Washington National Insurance Company.

On January 22, 1937 the defendant pleaded not guilty and waived jury trial in Case 37-99 and pleaded guilty in Case 37-98 before Judge Peter H. Schwaba, who found him guilty of armed robbery in each case and sentenced him to the penitentiary for two concurrent terms of 1 year to life.

Allegations in petition:

1. He was arrested without a warrant.

2. The assistant public defender who was appointed to represent him told him he better plead guilty and throw himself on the mercy of the court.

Ruling on petition:

On January 23, 1952 the petition was dismissed by Judge Schwaba. Appeal was taken to the Illinois Supreme Court which on October 9, 1952 reversed the decision of Judge Schwaba and remanded the petition for hearing. On October 21, 1952 the petition was sustained with respect to Case 37-98 and denied with respect to Case 37-99, by Judge Joseph A. Graber. A transcript of the testimony disclosed in Case 37-98 that Judge Peter H. Schwaba who heard both cases, stated, "Let the defendant plead guilty in Case 37-98 and I'll give him the same sentence." No formal plea of guilty was entered. The transcript failed to show that he was warned with respect to a plea of guilty.

Disposition of case:

Discharged in Case 37-98 but presumably was remanded in Case 37-99.

Post-Conviction Hearing No. 57 - Allen Thomas Foster - Judge Kluczynski

Prior Criminal Record: None

Case on which petition based:

On October 3, 1941 the defendant was indicted on a charge of murder in Case 41-1543 wherein it was charged that in the course of a robbery on September 24, 1941 he fatally beat with a broken hatchet Albert M. Oliver, age 58 years, in Phoenix, Illinois.

On November 6, 1941 the defendant entered a plea of not guilty, waived jury trial and was found guilty of murder, by Judge Edgar A. Jonas, who sentenced him to the penitentiary for a term of 99 years.

Allegations in petition, filed March 10, 1950:

1. A confession and plea of guilty was obtained by promises of probation. (Record shows plea of not guilty and jury waived).

Ruling on Petition:

July 1, 1952 petition sustained and new trial granted. At the hearing on the petition two former deputy sheriffs testified that they had promised the defendant they would recommend probation if he confessed and pleaded guilty.

Disposition of case:

On July 1, 1952 upon the new trial the defendant pleaded guilty to murder before Judge Kluczynski, who found him guilty and sentenced him to the penitentiary for 14 years. At the original trial in 1941 when the defendant was 15 years old, he testified that he struck the deceased, although he did not intend to kill him.

Post-Conviction Hearing No. 134 - John Butcher - Judge Klarkowski

<u>Prior Criminal record</u>: None

<u>Case on which petition based</u>:

On June 23, 1949 the defendant was indicted with others on a charge of armed robbery in Case 49-1250, wherein it was alleged that on June 6, 1949 they held up with revolvers Anthony Ebinger, 2239 Winnemac Avenue and took from him a watch of the value of $25 and $14 in cash.

On October 21, 1949 the defendant pleaded guilty before Judge Stanley Klarkowski who found him guilty of armed robbery and sentenced him to the penitentiary for a minimum of 3 years and a maximum of 6 years.

<u>Allegations in petition, filed December 15, 1950</u>:

1. He was adjudged feebleminded on May 16, 1939 in the Circuit Court of Cook County in Case 3369-A and was so feebleminded at the time of the crime, trial, conviction and sentence.

<u>Ruling on petition</u>:

May 23, 1951 petition sustained and new trial granted.

<u>Disposition of case:</u>

On October 9, 1951 a jury was empaneled to determine the question of sanity and the jury returned a verdict finding the defendant sane. On October 11, 1951 the defendant entered a plea of guilty before Judge Wendell E. Green, who found him guilty and sentenced him to the penitentiary for a term of 1 to 3 years.

Post-Conviction Hearing No. 165 - Leonard Johns - Judge Kluczynski

Prior Criminal Record:

September 18, 1928 - Received Joliet Penitentiary, armed robbery verdict. 6 charges robbery stricken off with leave to reinstate. Paroled December 24, 1935.

Case on which petition based:

On November 18, 1937 Leonard Johns was jointly indicted with others on a charge of armed robbery in Case 37-1768, wherein it was alleged that on October 15, 1937 they held up with a revolver John William Johnson in his haberdashery store at 3501 Fullerton Avenue, and took property of the total value of $132 and $73 in cash. The indictment contained an habitual criminal count as to the defendant.

On December 13, 1937 the defendant pleaded not guilty and went to trial by jury before Judge Francis B. Allegretti. On December 14, 1937 the jury returned a verdict finding defendant guilty of armed robbery and under the habitual criminal count. Judge Allegretti thereupon sentenced the defendant to the penitentiary for a term of his natural life.

Allegations in petition, filed May 2, 1951:

1. Evidence in the form of a pair of gloves was taken from the defendant's home by an illegal search and seizure.

2. A confession was obtained from him by duress.

3. The confession was admitted in evidence without a hearing, outside the presence of the jury when it was tried before Judge Allegretti.

4. The remarks of the judge and prosecutors deprived him of a fair and impartial trial.

Ruling on petition:

Match 6, 1952 petition sustained and a new trial granted.

Disposition of case:

On March 11, 1952 the defendant pleaded guilty to armed robbery before Judge Thomas E. Kluczynski, who found him guilty and sentenced him to the penitentiary for a minimum of 1 year and a maximum of 3 years.

Post-Conviction Hearing No. 252 - James Curran - Judge Sbarbaro

Prior Criminal Record:

March 8, 1934 - Sentenced Joliet Penitentiary finding guilty armed robbery, by Judge Rush.
Paroled July 1, 1938.
Wanted for violation of parole June 15, 1940.

Case on which petition based:

On July 22, 1940 the defendant was indicted on a charge of armed robbery in Case 40-183, wherein it was alleged that on November 29, 1939 he held up with a revolver Anton Tysl in his drug store at 3534 West 26th Street and took from him $30 in cash. The indictment contained an habitual criminal count.

On September 19, 1940 the defendant pleaded not guilty and waived jury trial before Judge Sbarbaro, who found him guilty of armed robbery and under the habitual criminal count, and sentenced him to the penitentiary for his natural life.

Allegations in petition:

(No copy in file)

Ruling on petition:

May 29, 1952 petition sustained and new trial granted.

Disposition of case:

On September 29, 1952 the defendant pleaded guilty to armed robbery before Judge Sbarbaro, who found him guilty and released him on probation for 5 years.

Post-Conviction Hearing No. 259 - Jack W. Shaffer - Judge Kluczynski

Prior Criminal Record: None

Case on which Petition based:

On November 17, 1943 the defendant was indicted on a charge of murder in Case 43-1525, wherein it was alleged that on November 10, 1943 he caused the death of his stepdaughter Letty Joyce Weir, age 5 years, by beating, flogging and binding her.

On March 1, 1944, the question of sanity having been raised, a jury was empaneled to try that issue before Judge Benjamin P. Epstein. The jury found the defendant sane. On March 13, 1944 Judge Epstein granted a motion for a new trial on the sanity hearing and on March 28, 1944 the defendant withdrew his petition for such a hearing. On May 4, 1944 the defendant pleaded not guilty and waived jury trial before Judge Epstein, who found him guilty of murder and sentenced him to the penitentiary for a term of 45 years.

Allegations in Petition, filed June 11,1952:

1. His counsel did not properly represent him.

2. His counsel improperly withdrew the petition for sanity hearing.

3. The withdrawal of the petition left the question of sanity undetermined and therefore he could not properly plead,or waive a jury.

4. The issue of sanity being civil in nature, the court should have appointed a guardian Ad-Litem.

5. His counsel failed to call any witnesses in his behalf.

Ruling on Petition:

On September 10, 1952 petition was sustained and a new trial granted.

Disposition of Case:

On September 10, 1952 the defendant entered a plea of guilty to manslaughter before Judge Kluczynski, who found him guilty and placed him on probation for a period of 5 years.

Post-Conviction Hearing No. 194 - Patrick Joyce - Judge Kluczynski

Prior Criminal Record:

February 1, 1928 - Six months House of Correction, robbery. 1 charge robbery stricken off with leave to reinstate. Judge Eller.

Case on which petition based:

On June 18, 1929 Patrick Joyce was indicted with an accomplice on one charge of murder in Case 53-190, wherein it was alleged that on June 9, 1929 they shot and killed Police Officer Earl K. Leonard.

On August 5, 1929 the defendant pleaded not guilty and went to trial by jury before Judge Frank Comerford. On August 10, 1929 the jury returned a verdict of guilty of murder and fixed the punishment at imprisonment in the penitentiary for life. On the same date the defendant was sentenced to the penitentiary in accordance with the verdict of the jury.

Allegations in petition, filed October 16, 1951:

1. He was not permitted to attend the inquest or preliminary hearing in Felony Court.

2. The court appointed an attorney who was a former police officer and was incompetent to represent him.

3. During the selection of a jury Judge Comerford interrupted counsel and excused jurors for cause.

4. Prejudicial testimony was given by police officer.

5. Improper argument made by the prosecutor during the trial of the case.

6. Improper instructions were given.

7. Because of the many errors in the record the defendant was deprived of a fair and impartial trial.

Ruling on petition:

September 10, 1952 petition sustained and new trial granted.

Disposition of case:

On September 29, 1952 the case was stricken off with leave to reinstate

on motion of the state for the reason that the witnesses could not be located.

Following a protest by the Chicago Crime Commission, whose investigators had located most of the witnesses, the case was reinstated and is now pending on the call of Judge Daniel A. Covelli.

Post-Conviction Hearing No. 2 - Leslie G. Wakat - Judge Graber

Prior Criminal Record:

December 19, 1927 - San Jose, California, 60 days County Jail.

June 18, 1932 - Received Joliet, Ill. Penitentiary No. 5878, robbery, 1 year to life, from Kankakee, Illinois.
March 24, 1939 paroled.
May 11, 1942 discharged.

Case on which petition based:

On October 4, 1946 the defendant was indicted on a charge of burglary in Case 46-2091, wherein it was alleged that on September 15, 1946 he burglarized the premises of the Lakeview Tool and Manufacturing Company at 1127 Eddy Street and took tools of the value of $4000 and $15 in cash. On April 15, 1957 the defendant pleaded not guilty and went to trial by jury before Judge Daniel A. Roberts. On April 18, 1947 the jury returned a verdict of guilty of burglary and thereupon the defendant was sentenced to the penitentiary by Judge Roberts for a minimum of 10 years and a maximum of 20 years.

Allegations in petition, filed August 15, 1949:

1. Arrested without warrant after release on writ of habeas corpus.

2. Illegal search made of home and place of employment.

3. Illegally held for 64 hours before being taken before a magistrate.

4. Confession obtained by duress.

5. Unlawfully restrained by conviction obtained 7 months after illegal arrest.

6. Constitutional rights were litigated without his consent and knowledge and over his protests.

7. Inadequate, unfaithful and negligent conduct by his counsel.

8. Tools used as evidence against him were securely locked in a pawn shop vault three months prior to burglary.

9. Was not confronted by witnesses against him.

10. He was not furnished with list of witnesses.

11. He was refused process to compel witnesses to appear i his behalf.

12. The prosecution knowingly used false testimony.

13. He was denied effective and adequate representation on a motion for new trial and was denied copy of common law records and transcript.

14. He is now restrained because he was not accorded "due process of law."

<u>Ruling on petition:</u>

On November 7, 1952 the petition was sustained and a new trial was granted. The state indicated that it would appeal from this judgment and was allowed 100 days to file a bill of exceptions. The case is set for trial before Judge Marovitz for February 16, 1953.

Tentative Conclusions

1. It is concluded from the study so far made that the Post-Conviction Hearing Act is operating not primarily as a vehicle utilized by innocent men whose rights have been lacerated, but rather by dangerous, incorrigible men (those rights may have been violated) who are extremely poor security risks from the standpoint of the public interest and safety.

2. Post-Conviction Hearing Petitions are being granted in many cases where there is no issue of constitutional rights involved.

3. By the Post-Conviction Hearing Act, trial courts are cast in the role of courts of review, an orbit of activity foreign to our juridical tradition and for which they are not at all prepared.

4. A bill of exceptions is essential in any orderly and adequate process of review of a criminal conviction, quite regardless of what the issue is, whether it be constitutional or other rights. The failure of the law to provide a bill of exceptions and to confine a review thereof to the courts of appeal is almost certain to prejudice the public interest and benefit the guilty and politically powerful defendants.

5. Considering the fact that the more than 100 State's Attorneys of the State are subject in practice to no supervision

by some central authority (such as the law and the Constitution contemplate that the Attorney General should exercise) exaggerates the patent possibilities of the continued misuse of the law.

6. A defendant may waive his constitutional rights by not asserting them, except in those cases where he is prevented from so doing. The Constitution and Due Process of Law do not require that a man have two trials of his rights. Consequently, the failure of Rule 27A to go far enough to require that all of a man's constitutional rights be examined, tested, and passed upon at or before arraignment or even during the course of the trial, and the preservation of the record of the proceedings as a part of the common-law record is a serious and fundamental defect in present law and procedures and will so continue until remedied. A man is entitled to a fair trial on all issues and an adequate review, but not to two such resorts to the courts.

7. It is no doubt true that in numerous cases, the defendant's constitutional rights are violated in the law enforcement process. The basic and primordial responsibility for this violation of the law lies with the Executive Branch of the government, specifically, the police. The common sense thing to do is to punish the police for their law violation and for their dereliction of duty, but not to punish the public by turning the criminally dangerous loose on society. The

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post-conviction procedures are addressed to symptoms and not to the disease. The net effect of the present methods will be the constant release of dangerous criminals on the community, tragic examples of which are included in the cases reviewed in this report. Therefore, a proper question to ask is: What can be done and what is being done to prevent the law enforcement officials from fouling the whole juridical process by careless, if not wilful, violation of the very law they are sworn to enforce and uphold?

RUSSELL BAKER
CHAIRMAN

BARNES, HICKAM, PANTZER & BOYD
1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
TELEPHONE ATLANTIC 1313
CABLE ADDRESS "LEXOPOLIS"

EARL B. BARNES
HUBERT HICKAM
KURT F. PANTZER
ALAN W. BOYD
CHARLES M. WELLS
JOHN H. GROVES
THOMAS M. SCANLON
FREDERIC D. ANDERSON
LESTER IRONS
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ROBERT S. ASHBY
LOUIS A. HIGHMARK
JOHN W. HOUGHTON
GEORGE J. ZAZAS
ALAN C. BOYD
RAYMOND W. GRAY, JR.
HOWARD J. COFIELD

LESTER M. PONDER
TAX COUNSEL

File

April 21, 1953

NOTED
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F.M.V.

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CHAMBERS OF THE
CHIEF JUSTICE

The Honorable Fred M. Vinson,
Chief Justice of the United States,
Washington, D. C.

My dear Mr. Chief Justice:

As a further interim report, I send to you copies of a letter from the Honorable William A. Schnader, chief counsel for the Commonwealth of Pennsylvania, dated April 8, 1953, and of my letter of yesterday addressed to counsel in the case of New Jersey vs. New York. The letters are their own testimony of the extent to which scientific settlement negotiations have presently been proceeding. There is a very good prospect that as soon as the State of New Jersey has, through its Legislature, adopted the necessary laws, a complete solution of all matters referred to me as Special Master can be worked out. You will note from my letter that I have been making good use of the pamphlet entitled Procedure in Anti-Trust and Other Protracted Cases, which you gave me when I was in your office last October.

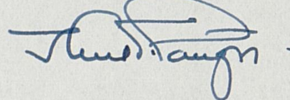
The chief purpose of this letter is to assure you that the delay, which the negotiations have caused, is in my opinion entirely justifiable. A settlement will work out a much better result, particularly as to future operations of the states and municipalities having an interest in the Delaware River, than any decision such as was rendered in 1931 possibly can. Furthermore, the water, which will be produced from reservoirs built pursuant to any new decree, cannot possibly be available for some fifteen to twenty years. The making of plans and the subsequent construction will take a long period of time. I therefore feel the pre-trial proceedings should

be continued for some two or three months, if necessary, in the hope that a more ideal and scientific solution can be arrived at by such techniques, rather than by the customary processes of trial and adjudication. If, at the end of a further three months, we are not at the threshold of such a solution, I propose to resort to more conventional techniques.

This report is made in order that you may express your disapproval of procedural matters at this time, if you entertain such disapproval. I do not, of course, feel I should at any time address you with respect to substantive matters of law, or procedural questions which will arise in the trial of such substantive matters.

I remain, with deep respect,

Sincerely yours,



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LAW OFFICES
SCHNADER, HARRISON, SEGAL & LEWIS
1719 PACKARD BUILDING
PHILADELPHIA 2

WILLIAM A. SCHNADER
EARL G. HARRISON
BERNARD G. SEGAL
FRANK B. MURDOCH
GILBERT W. OSWALD
ROBERT M. BLAIR-SMITH
HAROLD B. BORNEMANN
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FAIRFAX LEARY, JR.
GEORGE G. PARRY, JR.
J. B. MILLARD TYSON
ARLIN M. ADAMS
EDWARD W. MULLINIX
FRANK H. ABBOTT
BANCROFT D. HAVILAND
CHARLES C. HILEMAN, III

FRANCIS A. LEWIS
1935-1946

FRED L. ROSENBLOOM
THOMAS F. GLASSMOYER
BENJAMIN S. BASTIAN
TAX COUNSEL

April 8, 1953

Honorable Kurt F. Pantzer,
1313 Merchants Bank Building,
Indianapolis 4, Indiana.

Dear Mr. Master:

At a meeting today of all counsel and the engineers for New York City, New Jersey and Pennsylvania, it was agreed that I should write you this letter.

Enclosed you will find a confidential copy of the report made by the Pennsylvania Water Resources Committee to Governor Fine in which, beginning at the bottom of page 2, certain suggestions were made to which New York City and New Jersey were asked to consent in order to obtain agreement on a proposal to be submitted to you for report and recommendation to the Supreme Court of the United States.

This is a confidential report, no releases having been made to the newspapers or anyone else except parties to the litigation. If a mutual understanding is not worked out, this, of course, is not to be made a part of the record or to be considered by you in the future proceedings. It is merely being sent to you to show the progress which is being made toward a mutual understanding.

With two minor modifications, New Jersey agreed to every one of Pennsylvania's requests.

The New Jersey lawyers are proceeding to prepare the legislation which would be necessary to carry out New Jersey's part of the bargain and we are to have another meeting here on April 22nd (lawyers only) to consider the proposed legislation.

Meanwhile, the engineers are going to get together and try to prepare release formulae as per Pennsylvania's insistence. We hope to have the engineers' report not later than a month from today.

The New Jersey Legislature is taking a recess and will meet again on May 18th when the proposed legislation will be submitted to it.

Also in the meanwhile, Mr. McGrath has to consult New York State and we have to consult the City of Philadelphia for the purpose of learning whether there is any objection to the arrangement from either of these quarters. We do not expect to encounter any objection.

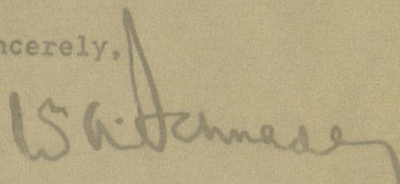
The purpose of this letter is merely to acquaint you with what is going on and to assure you that all of us now hope that we will arrive at an amicable arrangement. If we do, it should be possible to submit the entire matter to you in two or three days of testimony instead of the many weeks which all of us contemplated when the case began.

Should there be any change in the outlook, we shall, of course, let you know immediately.

Incidentally, I omitted to say that New York City also agreed in principal to item A at the bottom of page 2.

With best regards,

Sincerely,



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1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
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EARL B. BARNES
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RAYMOND W. GRAY, JR.
HOWARD J. COFIELD

LESTER M. PONDER
TAX COUNSEL

April 20, 1953

State of New Jersey, Complainant,
vs.
State of New York, et al, Defendants.

The Honorable Robert Peacock
Deputy Attorney General
Trenton, New Jersey

The Honorable Edward L. Ryan
Assistant Attorney General
Albany, New York

The Honorable John P. McGrath
20 Pine Street
New York 5, New York

The Honorable William A. Schnader
1719 Packard Building
Philadelphia 2, Pennsylvania

Gentlemen:

This letter will acknowledge receipt of the letter from General Schnader dated April 8, 1953, and acknowledge participation in the telephone conversation with Mr. Murray on Monday, April 13th, both of which gave me reports of the progress being made in the further pre-trial negotiations held on April 8th.

Inasmuch as both gentlemen told me a further meeting of counsel was to take place in Philadelphia on Wednesday, April 22nd, I should like to make further comments as follows:

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1. Progress Already Made. I am, of course, highly pleased with the progress which has already been made not merely at clarifying, but actually settling, some of the problems in the case. Refusal to consider the issues as limited by the initial pleadings filed April 9, 1952, indicates how far the original conception of the project has grown in the course of little more than a year.

2. Participation by Engineers. I am also delighted at the fact that counsel, in arriving at a scientific solution of the matters involved, have turned to the members of our brother profession - the engineers in the case. If the recommendation of the Special Committee appointed by the Judicial Conference of the United States in the pamphlet entitled Procedure in Anti-Trust and Other Protracted Cases, is correct in the following statement to be found at page 32:

> Your Committee submits as a procedure which may be helpful in the determination of disputed scientific or extremely technical facts of unusual complexity or difficulty, the submission of such questions, precisely stated and defined, to experts as special masters. An expert or a panel of experts in the field in which the disputed fact lies should be selected, either by agreement of the opposing parties or by the parties and the judge. The expert or experts thus selected should be designated as a special master or as special masters to act en banc. The disputed issue of fact should be submitted to him (including a panel as "him") in writing. He should be empowered to hold hearings, to receive such evidence presented by the parties as he may deem relevant and material to the issue, to permit cross examination, and

> otherwise to control the hearing so as to achieve the maximum expedition consistent with fair opportunity for the parties. The master or masters should make a written report, including basic findings and a conclusion upon the issue presented. This report should be received by the court as a special master's report under the Rules of Procedure, subject to exceptions, argument and the other established features of that procedure,

then the techniques which counsel have in part been following in the last month cannot be far wrong. We have, indeed, been fortunate to have engineers of such high scientific and professional standing assigned to help counsel serving the four parties in the instant case.

3. Dean Pound's Comment. When I was in Cambridge for the Council meeting on Thursday, April 9th, and Friday, April 10th, I had my first opportunity to discuss with Dean Pound the techniques which we are applying to the Water Case. It developed that the first course he ever taught as a law professor was one in the Law of Irrigation at Chicago University in 1909-1910. Prior to this time, he had engaged in the practice of Water Law in Nebraska, and also had sat on Water Law Cases as a Commissioner from the Supreme Court of that state. He was delighted at the approach and cooperation of both counsel and engineers in this case. He pointed out that the evolution of the Law of Water Rights in America really had three stages:

(a) The Adjudication of a Stream. It was originally the practice to file a Bill in Equity for "the adjudication of

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a stream." In such a proceeding, the Chancellor created "liens" upon the stream to protect the rights of the various parties.

(b) Commission Procedure. Thereafter, various states enacted statutes under which either state, district or county commissions were appointed to adjudicate water rights. This was perhaps a more flexible system, but, nevertheless, frequently resulted in "cutting the baby in two."

(c) The Delaware River Techniques. Dean Pound stated that we, in our present controversy, might well establish not merely new techniques, but a new order of Substantive Law, as well, with respect to the adjudication of water rights, particularly as between sovereign states. He felt the substitution of engineers for lawyers in the role of both Special Master and Counsel - at least to the extent which we are attempting to employ them - is one of the best new devices which has been used in the development of Water Law.

I transmit my little comments chiefly to assure you of my confidence that we are all on the right track, and that counsel in this case are going to work out one of the soundest results which has ever been achieved in interstate litigation.

Sincerely yours

Special Master

KFP/TB

BARNES, HICKAM, PANTZER & BOYD

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BARNES, HICKAM, PANTZER & BOYD

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1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
TELEPHONE ATLANTIC 1313
CABLE ADDRESS "LEXOPOLIS"

LESTER M. PONDER
TAX COUNSEL

March 5, 1953

The Honorable Fred M. Vinson,
Chief Justice of the Supreme Court
of the United States,
Washington 13, D.C.

State of New Jersey, Complainant, v.
State of New York, et al, Defendants.
October Term, 1950
No. 5, Original

My dear Mr. Chief Justice:

Since writing you on February 19th, respecting the Petition of the City of Philadelphia for leave of Court to intervene in the above proceeding, a further pre-trial hearing was held, with representatives of all existing parties present, in New York City on Monday, March 2, 1953. Several matters developed at this hearing, of which I think it my duty to apprise you, in light of the fact that argument upon the Petition for Leave to Intervene is presently set for Monday, March 9, 1953.

1. Confidential Nature of the New York-New Jersey Agreement. As reported in my former letter, the fact that the States of New York and New Jersey, and the City of New York, had worked out a settlement of the controversy agreeable to themselves has been kept confidential from the public and the press by agreement of all the parties. It was decided to continue this confidence until any one of the four parties should, by 72-hour notice given in advance, present its decision to terminate the confidence to a meeting of all parties before the Special Master in New

York. This conclusion was arrived at because all existing parties seemed to be of the opinion that the subject matter of the controversy lies in negotiation and, further, that a suitable settlement can be arrived at given the time in which to do so.

2. Attitude in Supreme Court Argument. It was decided by all the parties that on the occasion of the argument before the Supreme Court on Monday, March 9th, no one of the parties would mention the New York-New Jersey Agreement. It was felt the representatives of the Commonwealth of Pennsylvania might be so embarrassed at any public announcement of the New York-New Jersey Agreement that the chances of arriving at a pre-trial settlement would be very much lessened, if not entirely precluded.

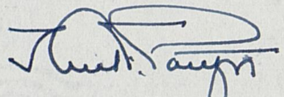
3. Order of Supreme Court. Upon re-reading my letter of February 19th, it occurs to me I should have made an additional comment. If the existing parties arrive at a settlement of the controversy, it will, of course, be necessary for all of them to amend their existing pleadings inasmuch as the pre-trial hearings have considerably clarified and straightened out the issues. If, therefore, the Supreme Court sees fit to deny the Petition of the City of Philadelphia for Leave to Intervene, it might be well to phrase any order making such denial in language which does not by implication prevent amendment of the pleadings of the existing parties.

The representatives of the Commonwealth of Pennsylvania indicated last Monday they had every hope of being able to work out a further formula of compromise with the representatives of New York and New Jersey, which would result in an engineering solution of the controversy, rather than a legal solution. It seems to me that the best interest of

the public can only be conserved if an engineering solution is arrived at. Some of the best hydrologic engineers of the country have been retained by the parties to represent them, and I therefore have high hope of a successful conclusion of the case - a conclusion, incidentally, which may avoid any controversies or arguments in the Supreme Court.

I remain, with my best good wishes,

Respectfully yours,



Special Master

KFP/TB

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1313 MERCHANTS BANK BUILDING
INDIANAPOLIS 4, INDIANA
TELEPHONE ATLANTIC 1313
CABLE ADDRESS "LEXOPOLIS"

LESTER M. PONDER
TAX COUNSEL

February 19, 1953

The Honorable Fred M. Vinson,
Chief Justice of the Supreme Court
of the United States,
Washington 13, D. C.

State of New Jersey, Complainant, v.
State of New York, et al, Defendants.
October Term, 1950
No. 5, Original

My dear Mr. Chief Justice:

I refer to the petition of the City of Philadelphia for leave of Court to intervene in the above proceeding and the answers of the various parties to such petition, all of which have been set for argument before the Court in early March.

I do not feel it lies within my province as Special Master, in the absence of a formal request from the Court, to make comments with respect to the law set forth in the briefs of counsel filed in support of the petition and answers. I should, however, like to comment with respect to the effect of any order granting leave to intervene upon the orderly and realistic administration of the hearings.

The proceeding was referred to me as Special Master by order entered June 9, 1952. It occurred to me at an early date that a controversy between sovereign states respecting water rights affected the integrity of each of those states - that the matter, therefore, related to a conflict of public interests, rather than one of individual, or social interests. Consequently neither the device of adjudication which is peculiarly adapted to the settlement of conflicting indi-

vidual interests (followed in the original Supreme Court decree, 283 U.S. 805), nor the device of legislation which is peculiarly adapted to the settlement of conflicting social interests (involving in this instance action by three State Legislatures and possibly the Federal Congress - an almost impossible accomplishment as is evidenced by the failure of the existing Incodel Pact), was adapted to a realistic and acceptable solution of this controversy. I concluded that negotiation, buttressed by the sanction of an adjudication of the Supreme Court, was the only practical device available to accomplish results which would be in pragmatic consonance with the rights, dignity and integrity of the parties involved.

I determined that the device of the pre-trial conference would be the best medium for initiating and stimulating negotiation. Fortified in this respect by the Report adopted by the Judicial Conference of the United States on September 26, 1951, entitled <u>Procedure in Anti-Trust and Other Protracted Cases</u>, and distributed by the Administrative Office of the United States Courts, a series of vigorous and helpful pre-trial meetings was instituted on July 29, 1952. These meetings included a five-day view of the Delaware River from August 5 to August 9, 1952, both inclusive, and certain new techniques suggested and developed in them which are not noticed in the above Report. If I am correct in my analysis that the mission assigned to me by the Court lies in the field of negotiation coupled with adjudication, we have been in the trial of this case since July 29, 1952.

I wish to report <u>in confidence</u> that the State of New York, the City of New York and the State of New Jersey, three of the parties, announced at the last pre-trial proceeding held on January 26, 1953, that they had arrived at a pragmatic solution of the controversy, and were willing to stipulate the same. The Commonwealth of Pennsylvania (which at the time believed itself to be in the course of successful negotiations with the State of New Jersey looking toward a solution satisfactory to the Commonwealth of Pennsylvania) was taken by surprise at this agreement between the three other parties. It will take some further time for the Commonwealth of Pennsylvania either to arrive at adherence

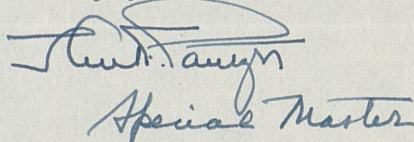
to this agreement or to work out a further compromise between the four parties. To permit the City of Philadelphia to intervene at this very late stage in the negotiations will completely upset the orderly development of the formula of settlement for which the present parties have been striving. The Commonwealth of Pennsylvania, incidentally, opposes the petition of the City of Philadelphia.

I consequently venture most respectfully to suggest that the fact hearings have now proceeded for over half a year and that such hearings have developed a momentum which augurs well for a mutually agreeable settlement, postulates denial of the petition of the City of Philadelphia.

The fact that the States of New York and New Jersey and the City of New York have finally worked out a solution agreeable to themselves is confidential and has been withheld from the public and the press. At this stage, any publicity on that point would make it impossible to obtain adherence of the Commonwealth of Pennsylvania to the proposed formula, even with justified deviations. I shall, therefore, appreciate it if you will clothe the fact with further confidence.

I remain, with deep respect and good wishes,

Sincerely yours



KFP/eb

LAW OFFICES
MELLIN, HANSCOM & HURSH
391 SUTTER STREET
SAN FRANCISCO 8
DOUGLAS 2-7765

LOS ANGELES OFFICE
411 W. FIFTH STREET
MADISON 6-0581

PATENT AND
TRADEMARK
COUNSEL

May 6, 1953

Ack

AIR MAIL

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

Re: Federal Rules of Civil Procedure
Findings of Fact Prepared by Counsel

Dear Mr. Chief Justice:

I call your attention to the following quotation from Process Engineers, Inc. v. Container Corporation of America, 70 F. 2d 487, page 489, C.C.A. 7th Circuit, March 19, 1934, with the hope that possibly the Federal Rules of Civil Procedure can sometime be amended to correct the defect pointed out therein by Judge Evans:

> "It is urged that the court's findings should be sustained because supported by some evidence. The weakness of this argument lies in the fact that the findings were not made by the court, but are the work of industrious counsel who combined his argument and a partisan and unfair statement of facts into one and called it, 'Findings of Fact.' It is difficult to distinguish these findings from the brief of counsel for appellee.
>
> "Such so-called findings do not help an appellate court. They reflect the views of counsel who submitted them and detract from the force and effect which are ordinarily given to findings made by the trial judge. When the abuse is aggravated (and the objectionable practice is growing), the assistance to the appellate court, which findings when carefully made by the trial court afford, is lost, and it becomes necessary for us to study the evidence as though no findings had been made by the District Court."

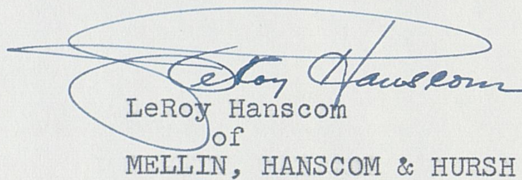
It seems to me that no case can be decided properly until findings of fact and conclusions of law have been made. However, as pointed out by Judge Evans, it is all too often that the above sequence is just reversed, the court first decides the case and then calls upon

the prevailing party to prepare findings and conclusions in support of its decision. The losing party of course has and usually exercises its right to object to such findings and conclusions, but it has been our experience that in most instances this is just a lot of lost motion.

I appreciate that many of our courts are overburdened with work and that a requirement that each court actually prepare its own findings and conclusions would subject them to a considerably greater burden. However, I am wondering whether in the long run it would not prove to be more satisfactory to everybody concerned.

It may well be that this point has already been thoroughly considered and disposed of but I submit it to your consideration for whatever it may be worth.

Respectfully submitted,



LeRoy Hanscom
of
MELLIN, HANSCOM & HURSH

LRH:ia

cc: Mr. Justice William O. Douglas
Supreme Court of the U. S.

HENRY L. ANDERTON
ATTORNEY-AT-LAW
917-918 FRANK NELSON BUILDING
BIRMINGHAM, ALABAMA

TELEPHONE 3-5377

File

June 26, 1953

Chief Justice Fred M. Vinson
United States Supreme Court
Washington, D. C.

Dear Chief Justice Vinson:

This is an imperative message and I do not believe you will cast aside this plea for justice. Since it is human to err and divine to forgive we should not permit rules to thwart justice and mercy.

A very high authority in Washington who knows me and my client suggested to me that if I could see you about procedure I would find you fairminded and very considerate. I made a special trip to Washington for this purpose and tried to see you. Your secretary talked with me and with you and it was thought best for me to file a petition with the Clerk which I did on June 8. In this petition I made corrections and prayed for further hearing. The end of the term was near and the Court was terribly crowded.

Before the Court adjourned I telegraphed you praying that the case, Goodman v. McMillan, 268 Misc., be held on docket for further consideration. You had the telegram sent to the Clerk's office, I trust this is sufficient to permit further consideration.

Chief Justice Vinson I do not believe you would consent to or allow an injustice. The petition for writ of certiorari was filed pro se. I then prepared papers for admission and was admitted. On the same day I was admitted the Court denied the writ. As an attorney admitted to practice before the Supreme Court I had no time after admission to prepare and present the case to the Court. I had no copy of the record, the one prepared for me having been certified to the United States Supreme Court.

While I was preparing the brief to support the petition referred to above the Clerk notified me on June 17th. that the petition was denied on June 15th. In despiration I sent you the telegram referred to above. To close the doors of the Court of last resort on the important and substantial claim of petitioner of Constitutional vested rights adjudicated to her by a former unmodified decree of a Federal Court which is res adjudicata of her claim would be the height of injustice as shown below;

The main and controlling question is whether petitioner, Florence McMillan, was the widow of D.W. McMillan at the time of his decease. If so she takes under the terms of the trust.

This question was decisively decided in her favor by the decree of the District Court of the United States for the Southern Division of the Northern District of Alabama on October 12, 1940, more than

ten years before the present suit was filed, which Federal decree was never in any way modified and stands today res adjudicata of question therein decided in these words: "D. W. McMillan and Florence McMillan were reconciled to each other and lived together as man and wife, and said settlement under the laws of the State of Alabama constituted a valid marriage and vested in Florence McMillan property and rights to property as such wife". D. W. McMillan died during the progress of the suit and his trustee, who was also interested in the trust, became the trustor's privy, and the Court in the decree itself stated that the Court retained jurisdiction.

That raised a federal question which was disregarded by both the trial court and the Supreme Court of Alabama after being duly presented to both of them, and according to Toucey v. N.Y. Life Ins. Co., 314 U.S. 118; 62 S. Ct. 139, "Pleading a federal judgment as res adjudicata in a state court action raised a 'federal question' reviewable in the United States Supreme Court under former Section 344 of this title". (Title 28).

In Stoll v. Gottlieb, 305 U.S. 165-177; 59 S. Ct. 134, the Court said that the jurisdiction to determine the effect to be given to decrees of a Court of the United States in state courts is conferred on the Supreme Court of the United States by provisions od the Federal Constitution declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective. Mr. Justice Reed in delivering the opinion of the Court said in part: "As the contention is that the ruling below disregarded decrees of a Court of the United States it raised a federal question reviewable under paragraph 237(b) of the Judicial Code, 28 U.S.C.A. paragraph 344(b)".

Respectfully we aver that the issue of legal widowhood of petitioner, Florence McMillan, was settled by said federal decree and that the decisions in trial and appellate court transgressed the law relative to her rights under the unmodified federal decree A federal question is involved. The lower courts absolutely overlooked the fact that said federal decree of 1940 was between petitioner and the privy of D. W. McMillan, deceased.

Chief Justice Vinson we most earnestly and respectfully say it would be a great injustice and a transgression of Constitutional law to allow this case to off docket under the above circumstances. A brief was being prepared and is now being prepared to prove the position taken by us is just to all parties. And we plead with you to so order the record that our case may be fully presented to the Court. For this we are compelled to pray. This Honorable Court will not do a plain injustice by ordering otherwise.

With the best wishes for you, I am,

Sincerely,

HLA/L

Henry Lafayette Anderton.

File

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BARRETT, WHEATLEY, SMITH & DEACON
McADAMS TRUST BUILDING
JONESBORO, ARKANSAS

JOE C. BARRETT
ARCHER WHEATLEY
BERL S. SMITH
J. C. DEACON

July 3, 1953

Honorable Fred M. Vinson, Chief Justice
Supreme Court of the United States
Washington, D. C.

My dear Mr. Chief Justice:

After reading the case of United States of America v. Harry Gray Nugent, No. 540, decided July 8, 1953, the thought occurs to the writer that any future case of this nature might be decided on a somewhat simpler basis, which we presume to suggest:

This case was apparently approached from the standpoint that the Selective Service registrant has to be proved to be subject to military duty. We think there is no constitutional right to evade military service by reason of religious activity or conscientious scruples of any kind, but that every citizen has a basic obligation to respond to the Nation's call for military service. Notwithstanding this, Congress in recognition of national religious sentiments has, as a matter of grace, provided certain machinery by which Selective Boards can ex parte defer those claiming to be conscientious objectors. The hearings afforded the registrant are a matter of favor rather than of inherent right.

A somewhat similar proposition is involved in the authority granted immigration officials in refusing re-admission to this country of one who, although not a citizen, has been a resident for many years and has raised a family now living here.

The dissenting opinion attempts to place upon the Government in determining a registrant's fitness for military duty the same judicial burden of proof as for conviction in a criminal case.

Yours very truly,

Archer Wheatley
ARCHER WHEATLEY

AW:rs

SOUTHERN FARMER
MONTGOMERY 1, ALABAMA

AUBREY WILLIAMS
PUBLISHER

341-507
508-

July 3, 1953

Dear Fred:

What on earth has happened to you people on the court?

For every finding in support of liberty and freedom, you hand down three or four that either quibble or are outright negations and denials. What has become of inviolable rights of the individual?

Your dictum that there are "no absolutes" is a negative way of saying that the state may appropriate the individual and usurp all of his rights. This is exactly what the totalitarians have said and done, all of them -- Nazis, Fascists, Communists.

I am sure you do not mean to do so. I refuse to believe that a single member would consciously so violate the obvious will and tradition of our people. However intentionally or not intentionally, in case after case the court has handed down decisions that legalize police state practices and court action violative of every safeguard historically provided for our people.

Very sincerely yours,

Aubrey Williams

Mr. Justice Fred Vinson
United States Supreme Court
Washington, D. C.

RAYMOND R. CAMERON
3275 BLAINE AVENUE
DETROIT 6, MICH.

August 16-1953

Hon Fred M Vinson
Chief Justice
U. S. Supreme Court

Dear Judge Vinson:

I regret my long delay in replying to your letter of August 7-1952, in the matter of the Dennis opinion.

I concede the writer of the editorial in the Michigan Catholic employed extreme language, but I realize as well that you may have been a bit hasty in your obiter dictum regarding no absolutes. If there are no absolutes we are faced with principles permitting all kinds of mischief. I am sure with your fundamental Christian background you do not subscribe to this philosophy.

Rather than bother you further, I present you with my own views in the matter in the enclosed article entitled "The Supreme Court and the Natural Law" - Page 216 De Paul Law Review. Do not trouble to acknowledge.

Sincerely yours
Ray R. Cameron

OVERALL & JUDSON-1877
HOUGH, OVERALL & JUDSON-1884
JUDSON & REYBURN-1890
JUDSON & TAUSSIG-1892
JUDSON & GREEN-1901
JUDSON, GREEN & HENRY-1911
JUDSON, GREEN, HENRY & REMMERS-1929
GREEN, HENRY & EVANS-1941

LAW OFFICES
GREEN, HENNINGS, HENRY & EVANS
BOATMEN'S BANK BUILDING
ST. LOUIS 2

J. PORTER HENRY
JOHN RAEBURN GREEN
THOMAS C. HENNINGS, JR.
ROBERT D. EVANS
DONALD J. MEYER
JOHN R. GREEN, II

THOMAS C. HENNINGS, SR.
OF COUNSEL

CABLE ADDRESS
JUDGREEN
TELEPHONE
CEntral 4181

February 4, 1953

The Honorable Fred M. Vinson,
Chief Justice of the United States,
Supreme Court,
Washington, D.C.

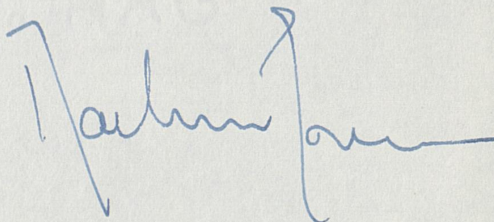
Dear Mr. Chief Justice:

You were kind enough last week to say that you would like to see the opinion on the steel seizure which we gave to the Post-Dispatch.

I send this herewith. Looking at it now, I am embarrassed by its inadequacies. All I can say in extenuation is that we had to do the job in a hurry, with only such research as was immediately possible. (The opinion was dictated April 19th, ten days before Judge Pine's decision.) But we did get the right answer, as I think your dissenting opinion conclusively demonstrates.

I have told Tom Van Sant that you may be coming to Missouri before long, and we look forward eagerly to your visit.

Sincerely yours,



JRG MH

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April 24,1952

Mr.R.S.Crowley,Managing Editor
St.Louis Post-Dispatch
12th & Olive Sts.
St.Louis 1,Mo.

Dear Mr.Crowley:

Supplementing our opinion regarding the steel seizure, please refer to the President's letter of April 21st to the President of the Senate, which has now become available in the Congressional Record of April 21st (page 4192).

The portion particularly to be noted is that commencing with "I have no wish to prevent action by the Congress" in the third paragraph and continuing through the sixth paragraph. The remainder of the letter is the restatement of the objections to the Taft-Hartley procedure.

Sincerely yours,

(Signed) John Raeburn Green
By John R.Green,II

John Raeburn Green

JRG:AB

February 12, 1953

Mr. John Raeburn Green,
Green, Hennings, Henry & Evans,
Boatmen's Bank Building,
St. Louis 2, Missouri.

Dear Mr. Green:

I have your letter of the 4th, enclosing copy of the opinion on the steel seizure which you gave to the Post-Dispatch. I read it with genuine pleasure.

I note you speak about the inadequacies of the opinion, but it seems to me that you covered a lot of territory in a short period of time. It gives me some satisfaction to know that we do not walk alone in the dissent in this case.

Professor Edward Corwin wrote quite an analysis of the decisions in the Columbia Law Review. He stopped short in my discussion of Taft-Hartley.

With kind regards,

Sincerely,

(Signed) Fred M. Vinson

FMV:McH

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ST. LOUIS 2, MO.

April 21, 1952

Mr.R.L.Crowley,Managing Editor
St.Louis Post-Dispatch
12th & Olive Sts.,
St.Louis,Mo.

Dear Mr.Crowley:

C O P Y

I hand you herewith the opinion requested regarding the seizure of the steel plants. I have signed this personally in order to protect Tom Hennings.

In my opinion the Executive Order was within the constitutional powers of the President and the Supreme Court would so hold. The steps to this conclusion are:

1. The six emergencies recited cannot be challenged in the courts.

2. The great danger of the cessation of steel production also is beyond challenge.

3. The Executive Order did in fact prevent the strike and continued the production of steel.

4. The President had inherent power under the Constitution to issue the Order to seize the plants, to meet the emergency.

5. There are at least eight precedents (one of Wilson, seven of Franklin D.Roosevelt) for the presidential seizure of a war defense plant, without any statutory authorization. Three of these were in time of peace.

6. The seizure is not much more than a nominal and legal taking of constructive possession. It is not comparable to a destruction or requisition of the property.

7. There is a possible argument, although I think probably not a valid one, that statutory authorization exists for the seizure.

8. The Taft-Hartley Act apparently did not afford an equally effective alternative.

9. Even if it had, the President's choice would not be reviewed by the courts.

10. The President promptly submitted the Executive Order to Congress for its review and asked for the enactment of legislation either approving it or taking some other course to meet the emergency.

Sincerely yours,

JRG MH
Enc

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GREEN, HENNINGS, HENRY & EVANS
BOATMEN'S BANK BUILDING
ST. LOUIS 2, MO.

April 21,1952

Mr.R.L.Crowley,Managing Editor
St.Louis Post-Dispatch
12th & Olive Sts.
St.Louis,Mo.

Dear Mr.Crowley:

C O P Y

The Executive Order of April 8, 1952 (No. 10340), directing the Secretary of Commerce to take possession of and operate certain steel plants and facilities, was made by the President "by virtue of the authority vested in me by the Constitution and laws of the United States, and as President of the United States and Commander-in-Chief of the Armed Forces of the United States." In successive preambles the President referred to:

1. His proclamation on December 16,1950, of a national emergency which required that the military, naval, air and civilian defenses of this country be strengthened as speedily as possible.

2. The present "deadly combat" in Korea.

3. The indispensability of American steel in the production of weapons and other materials needed by our Armed Forces and for the NATO defense effort.

4. The indispensability of steel to programs of the Atomic Energy Commission "of vital importance to our defense efforts."

5. The indispensability of a continuing and uninterrupted supply of steel to the maintenance of our national economy,"upon which our military strength depends."

6. The fact that the strike called for 12:01 a.m. April 9, 1952, "would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors and airmen engaged in combat in the field."

It was necessary, he concluded, for the United States to take possession of and operate the steel plants in order to assure the continued availability of steel and steel products during the existing emergency.

In my opinion the Executive Order was within the constitutional powers of the President, and the Supreme Court would so hold, if the matter should reach it.

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ST. LOUIS 2, MO.

C O P Y

I - The Defense Emergency and the Urgent Need for Steel Production

The six premises on which the Executive Order rests seem valid.

With the exception of No. 4, all of them seem to be matters of common knowledge, of which the Supreme Court would take judicial notice if that were necessary. Aside from that, it is probable that the Court would consider itself bound by the President's findings of fact and would decline to subject them to judicial review. And No. 4, the indispensability of steel to the defense programs of the Atomic Energy Commission, seems to be peculiarly a matter upon which the Court would feel bound to accept the Executive determination.

And finally, the Congress has given statutory recognition to many of the six premises. It has, of course, recognized the defense emergency many times by legislation directed specifically toward it. It has recognized the vital importance of American steel production to our Armed Forces (and those of NATO) many times - for example, (1) during World War I the Government expended vast sums of money toward the construction of steel plants for defense; and (2) the Selective Service Act of 1948 (Section 18) dealt equally with the drafting of soldiers and the drafting of steel products and steel materials for them to use, no other industry being thus specifically singled out as equally essential for the national defense.

Accordingly, it seems clear that none of the six bases for the Order could be successfully challenged in the courts.

The President did not consider it necessary to recite, as an additional basis, that on April 8th we were and until April 28th will continue to be legally at war with Japan. (This technicality seems to complement the fact that actually, although probably not legally, we are at war in Korea.) The Executive Order was, however, issued by the President as "Commander-in-Chief of the Armed Forces of the United States." The Supreme Court has held that "power to be exercised by the President * * * which begins when war is declared * * * is not exhausted when the shooting stops." Ludecke vs.Watkins, 335 U.S.160, 167.

II - The Threatened Danger

The Executive Order concluded that it was necessary for the United States to take possession of and operate the steel plants in order to assure the continued availability of steel and steel products during the existing emergency.

Implicit in this conclusion was the premise that the strike which was due to commence in an hour and a half's time would be averted by the Government's taking possession of and operation of the steel plants.

There can be no doubt:

1. That the strike would have occurred if Executive action had not been taken. The Supreme Court would unquestionably hold that the danger which the President acted to avoid was immediate. In fact, the President has been criticized for not acting earlier than he did. Because of the imminence of the strike, furnaces had already been cooled by the steel companies at the time when the Order was issued. The loss of steel production resulting from this pre-strike cooling is put by Steel Magazine at 826,000 tons, which would, of course, be a substantial amount to our NATO Allies.

2. That the Executive Order did in fact avert the strike and did in fact cause the immediate resumption of steel production.

3. That the effect of the Executive Order is to prevent a strike, whether wages are increased or not, so long as the Executive Order remains in force. When the coal mines were taken over by the Government under an Executive Order similar to this the Supreme Court held that a strike of the miners could be enjoined, since it was in effect a strike against the Government, and therefore not subject to the anti-injunction statutes. United States vs. United Mine Workers of America, 330 U.S. 258. In my opinion the same conclusion would be reached if a strike should be threatened in the steel plants now, regardless of the reasons for the strike. Cf. In re Debs, 158 U.S.564 (1895). It may be observed that on the day after the Executive Order, April 9th, the continuing efficacy of an Executive Order such as this to prevent a strike was demonstrated. The railroads were taken over under a similar Executive Order on August 27, 1950, in order to prevent a strike then threatened, and are still in the possession, nominally, of the Government. On April 9th a new strike which had been called by railroad employees was enjoined by the United States District Court at Cleveland on the ground that the strike would be against the Government.

It thus appears that the Court would be bound to find that the Executive Order did in fact prevent the strike which would otherwise have occurred and did in fact insure the continued production of steel for defense. It did in fact meet the emergency successfully.

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III - The President's Inherent Power to Meet the Emergency

The Constitution provides that the Executive power of the United States shall be vested in the President. The President is also made the Commander-in-Chief of the Army and Navy, he has the power "by and with the advice and consent of the Senate" to make treaties, and he is charged to "take care that the laws be faithfully executed."

A. Precedents for the Executive Order

C O P Y

Under these provisions Presidents, commencing with George Washington, have felt empowered to take action not previously authorized by Congress, when they considered that a national emergency required it. The emergency does not create the power, any more than war creates the President's war powers. But the emergency may give rise to the occasion for the exercise of power which would not be exercisable in normal times.

From what has been said above, it appears that the Court would recognize the existence of the emergency here and would conclude also that the action taken under the Executive Order did succeed in averting the danger threatened. The latter is more than could be said of some of the historical precedents.

I enumerate only a few of those in which the President acted without prior authority from the Congress:

1. In 1793 President Washington's proclamation of neutrality was attacked upon the ground that he had no power except that specifically given to him by the Constitution. Hamilton supported the President, saying that it was "unreasonable to suppose that his powers were confined to those powers specifically enumerated in the Constitution," and that "the general doctrine of our Constitution is that the Executive power of the nation is vested in the President, subject only to exceptions and qualifications which are expressed in the instrument." He considered that the President's power flowed "from the general grant of power, interpreted in conformity with the other parts of the Constitution and with the principles of free government."

2. In this controversy Jefferson took the opposite position, urging that the power to declare neutrality was one for Congress. Yet when Jefferson became President he did not hesitate to make the Louisiana Purchase without authority from Congress. When attacked as Washington was, he made no claim of constitutional authority for his action, but said candidly:

> "The executive in seizing the fugitive occurrence, which so much advances the good of their country, has done an act beyond the Constitution. * * * It is the case of the guardian,investing the money of its warder in purchasing an important adjacent territory;and saying to him when of age, I did this for your good; I pretend to no right to bind you; you may disavow me and I must get out of the scrape as I can; I thought it my duty to risk myself for you."

Here he was confronted with a very troubled international situation, but the only emergency requiring immediate action lay in the "fugitive" opportunity to purchase.

3. The emergency power was of course exercised far more broadly and destructively by President Lincoln than ever before or since. President Truman's Order, happily, falls far short of President Lincoln's exercises of power. The emergency which Lincoln met, or attempted to meet, of course was even more serious than the present one (although it may be noted that New York is militarily as near to Moscow today as it was to Richmond in 1861). President Lincoln, without prior authorization from Congress, in 1861 seized the railroad and telegraph lines between Washington and Annapolis; increased the size of the Regular Army and the Navy,although the Constitution expressly gives that power to Congress; gave $2,000,000 from unappropriated funds of the Treasury to private persons not authorized to receive it; suspended the right of habeas corpus; declared martial law, established military commissions throughout the nation; and refused to call a special session of Congress to deal with these matters until July 4, 1861. Addressing Congress then, he said:

> "These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity, trusting then, as now, Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress."

Subsequently, again without prior statutory authorization, under President Lincoln military censorship was imposed; the mails were closed to newspapers which were considered "dangerous from their disloyalty"; the Secretary of War ordered police to seize and hold editions of newspapers; military commanders suppressed editions and imprisoned editors; the New York Herald was seized in 1864 and publication suspended for three days; and many other newspapers were suppressed, among them two St.Louis papers, "The Missourian" and the "War Bulletin," publication of which was suspended by the military commander on August 14,1861, for publication of "false statements" about military movements.

President Lincoln also wholly lacked authority from Congress for the Emancipation Proclamation. This was a taking of private property on a vast scale, and moreover without compensation. President Lincoln designed it as a military measure, to aid the military situation in the enemy-controlled areas, to which it was confined. Neither at the time nor since has it been considered that the Proclamation produced the anticipated military result.

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4. President Theodore Roosevelt, as is well known, also took a broad view of the President's inherent power, with which his successor, President Taft, disagreed. Neither of these Presidents was confronted with any defense emergency.

5. When President Wilson was so confronted he acted promptly, without statutory authority when that was lacking or dubious. In 1914 he seized a radio station on the ground that the foreign relations of the country were endangered by actions which he considered inconsistent with strict neutrality. A statute permitted seizure of radio stations in time of public peril, but it was doubtful whether it applied to this situation; and Attorney General Gregory expressed a forthright opinion of the Presidential power in the absence of statute:

> "If the President is of the opinion that the relations of this country with foreign nations are, or are likely to be, endangered by actions deemed by him inconsistent with a due neutrality, it is his right and duty to protect such relations; and in doing so, in the absence of any statutory restriction, he may act through such executive officer or department as appears best adapted to effectuate the desired end * * * to secure obedience to hisproclamation of neutrality."

In 1918 President Wilson took over the Smith and Wesson Company when that company refused to accept the findings of the War Labor Board (which, like those of the present Wage Stabilization Board, for steel, were not legally binding) in a labor dispute. The legal position of this seizure seems the same as that of President Truman's Executive Order. The statutory authority for President Wilson's order, if any, was a statute substantially the same as Section 18 of the Selective Service Act of 1948, now in force, which is discussed below. If the earlier statute justified President Wilson, the latter statute justifies President Truman. If neither statute supports the taking, then the legal position of the two Executive Orders is also identical, except that President Truman was faced with a greater emergency than President Wilson.

6. President Franklin D. Roosevelt also issued Executive Orders, some of them more far reaching than President Truman's present order, without statutory authority. Among them were the bank moratorium in 1933 (which applied to all banks, not merely the banks of the Federal Reserve System); the gift of fifty destroyers to Great Britain (at a time when the United States was at peace); and a great number of seizures of war plants when production had stopped or was about to stop because of a strike. A table in the Congressional Record of April 16th, which appears incomplete, lists 72 instances of the taking possession of war industries by Executive Order (two by President Wilson, the remainder by Presidents Roosevelt and Truman). For President Roosevelt's later war plant seizures there was statutory authority. But for seven earlier ones, including three which were made while the country was still at peace, there was no statutory authority, or at least none which is not equally available to President Truman now.

C O P Y

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Mr.R.L.Crowley - #7 April 21,1952

These included the following:

North American Aviation,Inc.(June 9th to December 29,1941)
Federal Shipbuilding & Dry Dock Co. (August 23,1941 to January 5,1942)
Air Associates,Inc. (October 30,1941 to December 29,1941)
~~Toledo,P.&W.Railroad Co.(March 21,1942 to October 1,1945)~~
Brewster Aeronautical Corporations (on the ground of "inefficient management," August 1942)

These seizures seem to be on all fours with President Truman's Executive Order for the steel plants, except that the latter is a larger seizure taken to avert a vastly larger danger.

C O P Y

I have omitted from this list of precedents and from the Court decisions below a great number of military seizures or destructions of private property in time of war. As the Supreme Court said in Mitchell vs.Harmony,13 How.115,134 (1851), such seizure of private property is justified if "the danger [is] ... immediate and impending; or the necessity urgent for the public service such as will not admit of delay; and where the action of the civil authority would be too late in providing the means which the occasion calls for." In modern warfare the concept of what constitutes the theatre of war has been expanded to include non-combat areas. Ex parte Quirin, 317 U.S.1 (1942) (spy tried by military commission outside the combat zone); Alpirin vs.Huffman, 49 F.Supp. 337 (1943) (requisitioning of machinery for war effort); Ex parte Kania,46 F.Supp. 286 (1942) (presidential imposition of military control over area outside the combat zone); the Koromatsu case,323 U.S. 214 (1944) (the removal of 112,000 persons of Japanese ancestry,most of them American citizens, from their homes in six Western States.

These precedents are omitted because they go considerably farther than we need to go here. The Executive Order of April 8th is not a permanent taking of property nor, in many respects, even a temporary one. It provides that the managements of the plants, "possession of which is taken" shall continue operations as usual, paying dividends, principal, interest, sinking funds, etc., "except so far as the Secretary of Commerce shall otherwise provide from time to time." He is authorized to determine and prescribe terms and conditions of employment, and is directed to recognize "the rights of workers to bargain collectively," and "to engage in concerted activities for the purpose of collective bargaining, adjustment of grievances,or other mutual aid or protection, provided that such activities do not interfere with the operation of such plants, facilities and other properties." The proviso eliminates any recognition of the right to strike. The taking of the plants is in most respects purely nominal and legal, and far removed from the requisitioning or destruction of property.

B. Expressions of the Courts

The President's inherent power to act, without congressional authorization, in an emergency such as that now presented, although often exercised, has not been confirmed expressly by the Supreme Court, but (what is perhaps more significant) neither has it been denied. In the light of the authorities it appears probable that the Supreme Court will hold that under the circumstances set out above the Executive Order was within President Truman's inherent power.

It seems certain that the power of the Government (as distinguished from the power of the President acting alone) is fully broad enough to support the taking of the steel plants. It would indeed be difficult to conceive that the Government's emergency powers permitted the drafting of soldiers for combat in Korea, but at the same time did not permit the drafting of steel plants without whose products soldiers are helpless. And the invasion of private rights is, of course, much less in the drafting of steel than in the drafting of soldiers.

The question seriously presented is as to the power of the President to take this action without prior authorization by Congress. On the assumption that no such Congressional authorization can be found, the precedents above were limited to similar cases, and consideration here will be limited to the question of inherent power unsupported by statute. It is settled that the President in the execution of his constitutional duty to "take care that the laws be faithfully executed" may take measures not specifically authorized by statute. In re Neagle, 135 U.S. 1, 63-64,67 (1890). In time of war this duty is to carry into effect all laws passed by Congress for the national defense. Ex parte Quirin, supra. Such power is civil in its nature, is in addition to the President's military authority, and extends to every phase of the war effort, including the production of military supplies. Hirabayashi vs. United States, 320 U.S.81,93 (1943). The statutes presently in effect relating to the production of military supplies, such as the Selective Service Act and the Defense Production Act, are relevant in that the President has a duty to carry them into effect and to obtain the supplies. It is settled that if they can be obtained in no other way he can requisition them.

There is also authority for the proposition that the United States is a "body politic," possessing the incidents of sovereignty, not dependent on affirmative grants from the Constitution; and that the powers of sovereignty may be exercised by the Executive Department, without authority from Congress. United States vs.Curtis-Wright Export Corp., 299 U.S.304 (control over foreign affairs); United States vs.Tingey, 5 Pet.115 (1831) (right to enter into a contract without congressional authority); In re Debs, 158 U.S.564,599 (1895) (right to injunction to protect property right in the mails and to prevent unlawful interference in matters over which Congress has exercised its authority). If sovereignty is acknowledged the argument is that

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a sovereign State may take whatever steps are necessary for self preservation, and the Executive Department must act for the sovereign. It has been stated quite clearly that such power to act on behalf of the sovereign is not limited to time of war but is lawful in any time of grave national peril. See Moyer vs.Peabody, 212 U.S.78 (1909), where Mr.Justice Holmes, for the Court, said:

> "When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process."

C O P Y

There is also another constitutional power upon which President Truman apparently relied - the treaty making power and control over foreign relations. Cf. premises Nos.1,2, 3 and 4 of the Executive Order (particularly in No. 1, the efforts being made through the United Nations; and otherwise to obtain a lasting peace), with Commercial Cables Company vs. Burleson, 255 Fed.99, 105-106 (1919) and Attorney-General Gregory's opinion as to President Wilson's seizure of a radio station, quoted below.

The absence of square decisions by the Supreme Court is due to several circumstances:

1. The reluctance of the courts to invalidate presidential action until the circumstances which gave rise to it are no longer operative;

2. As a rule the plant seizures do not adversely affect the owners,who have in many instances welcomed them;

3. If the owners are injured financially they can recover their damages, whether the seizures were lawful or unlawful (as Judge Holtzoff remarked when denying a temporary restraining order to the steel companies on April 9th; and

4. Often the seizures have been for short periods and by the time litigation reached the Supreme Court the matter had become moot.

There are nevertheless some expressions from the Federal Courts on the inherent power of the President (without statutory authorization) to seize war or defense production plants to prevent their closing by a strike.

1. In Ken-Rad Tube & Lamp Corp. vs. Badeau, 55 F.Supp.193 (1944), the President had ordered seizure of plant production, radio tubes and incandescent lamps because of a "labor disturbance." The Court held that the President's order was within his powers, placing this upon Section 9 of the Selective Training and Service Act of 1940, but also upon the President's inherent power. At 197-198 the Court said:

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"I further conclude that without an act of the Congress there was sufficient authority by the terms of the Constitution itself to justify the action of the President in this case. The President has no power to declare war, that belongs exclusively to Congress. But when war has been declared and is actually existing, his functions as Commander in Chief become of the highest importance and his operations in that connection are entirely beyond the control of the legislature. There devolves upon him, by virtue of his office, a solemn responsibility to preserve the nation and it is my judgment that there is specifically granted to him authority to utilize all resources of the country to that end."

2. In Alpirn vs. Huffman, 49 F.Supp.337 (1943), where an injunction was sought against the requisitioning of plaintiff's scrap metal materials and all of its machinery and equipment, the Court held that the requisition was authorized by statute, but proceeded then to say (l.c.340):

"Indeed, quite independently of any congressional grant of authority, the power of requisition in emergencies incident to war has been held to rest in the President as a function of his military office. And the Act itself may be regarded in part at least as a recognition of that necessary power and the provision of a uniform and consistent pattern for its orderly administration."

3. In Employers Group,Etc. vs. National War Labor Board, 143 F.Supp.145 (1944), a case involving the validity of a War Labor Board order, the Court of Appeals for the District of Columbia said (l.c.151):

"Neither the broad constitutional power nor the broad statutory power of the President to take and use property in furtherance of the war effort depends upon any action of the War Labor Board."

4. In United States vs.McFarland, 15 F.Supp.823 (1926), the Court of Appeals for the Fourth Circuit, said (l.c.826):

"The President, as Commander-in-Chief of the Army and the Navy, doubtless had the constitutional power in war time, in cases of immediate and pressing exigency, to appropriate private property to public uses; the government being bound to make just compensation therefor."

C O P Y

5. In Commercial Cable Co. vs.Burleson,255 Fed.99 (1919), Judge Learned Hand found that the President had power under a joint resolution of Congress to seize marine cable lines, but proceeded to say (l.c.105):

> "There is, moreover, another constitutional power of the President, under which the seizure was justified, and which also depends upon the existence of war - his initiative in the making of treaties."

6. In the case of the Montgomery Ward seizure by President Roosevelt, the District Court (58 F.Supp.408) held that the seizure was not authorized by statute, nor by any inherent power of the President, but said (l.c.415):

> "In military crisis, when Congress is not in session, the President has power to do many things found necessary for the preservation of the Government. When Congress is in session, but when the emergency is so great that the national safety would be imperiled before Congress could act, the power resides in the President, as a function of his military office, to do the things necessary to preserve the Government, but which it would not be lawful for him to do except for the emergency."

The Court of Appeals reversed the District Court's decision, 2 to 1 (150 F.2d 369), holding that there was statutory authorization for the seizure, and that it was therefore unnecessary to rule upon the question of the President's inherent power, as to which it said (l.c. 381-382):

> "The Government seriously insists that irrespective of this Act of Congress which imposed this heavy duty on the President, he had the power arising from his position as Commander in Chief of the Armed Forces to seize plants like Ward's,whenever, for any reason,it became necessary, in his judgment, so to do. This urge is argued elaborately by counsel, even more elaborately than the point on which we rest our decision. The argument presents a most important question. Active participation in its decision is intriguing. A decision thereon involves the action of other Presidents, who, in the earlier history of our country, carried the burden of conducting a war, while President. One such action, discussed by both parties, was that of President Lincoln, whose Emancipation Proclamation and his power to issue the same, are considered. President Lincoln acted without Congressional authorization.

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"Other questions inseparably connected with the disposition of this issue, which are both factual and legal, may be stated thus: (a) What constitutes the 'theatre of actual war' in a modern war such as was the present world war in 1944 when the seizure of Ward's property occurred? (b) What are the tests and what are the facts by and from which the authorized official may find the existence of 'immediate imminent and impending danger' which would warrant seizure action in 1944? (c) Who determines the existence and extent of such danger to the United States? (d) Is the finding of the Commander in Chief, if he be the official to make the findings, reviewable by any judicial body?

"The Supreme Court has twice nearly answered these questions. In Home Bldg. & Loan Assn.v.Blaisdell, 290 U.S.398,426,54 S.Ct.231,235,78 L.Ed.413,88 A.L.R. 1481, Chief Justice Hughes, speaking for the Court,said:

"'While emergency does not create power,emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' * * *

"'The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions. <u>Thus, the war power of the federal government is not created by the emergency of war, but it is a power given to meet that emergency. It is a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme co-operative effort to preserve the nation.</u>"

The Supreme Court directed the District Court to dismiss the cause as moot, the plant having been returned to Montgomery Ward.

C. Opinions of the Attorneys-General

The opinion of Attorney-General Gregory regarding President Wilson's inherent power to seize a radio station has been quoted above.

The same view that the President's power to act in the emergency is inherent, and not dependent upon the existence of a statute, has been expressed in opinions of Attorney-General (later Mr. Justice) Murphy (39 OPS.A-G 343,347), Attorney-General (now Mr.Justice) Jackson, (39 OPS.A-G 484), and Attorney-General Biddle on a number of occasions.

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At the time of President Roosevelt's seizure of North American Aviation, Attorney-General Jackson supported the Executive Order by the "duty constitutionally and inherently resting upon the President to exert his civil and military as well as his moral authority to keep the defense efforts of the United States a going concern," as well as his duty "to obtain supplies for which Congress has appropriated money, and which it has directed the President to obtain." (N.Y.Times,June 10, 1941) At the time of the Montgomery Ward seizure, Attorney-General Biddle rendered his opinion, that aside from statute, the President had inherent power to act, arising from his duty to see that the laws were faithfully executed, and from his powers as Commander-in-Chief. "This aggregate of powers," he said, "includes authority to take reasonable steps to prevent nation-wide labor disturbances that threaten to interfere seriously with the conduct of the War." Even though "the initial impact" of a Montgomery Ward strike was on civilian goods, he said, in modern war the maintenance of a healthy, orderly, stable civilian economy is essential to successful military effort. (40 Ops. A-G 312)

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IV - Is There Statutory Authority for President Truman's Order?

The constitutionality of the Executive Order of April 8th has been considered above on the assumption that there was no statutory authority for it.

There is apparently, however, still available the same statute to which President Wilson, in the seizure of the Smith and Wesson Company, and President Roosevelt, in the seizure of seven war industries prior to 1943, were obliged to look for their sole statutory authority, if any, that is Section 80 of the National Defense Act of 1916, which apparently is operative now by reason of President Truman's proclamation of a national emergency on December 16,1950. In my opinion this statute does not afford Congressional authority for President Truman's Executive Order, nor did it for the earlier orders of Presidents Wilson and Roosevelt. It requires obligatory compliance with orders for products and seizure is permitted only upon the refusal to manufacture or furnish the arms, ammunition and materials ordered by the Secretary of War at a reasonable price.

A closer approach to statutory authorization for the Executive Order will be found in the Selective Service Act of June 24,1948. This contains a general section (Section 18(c)) applicable to all industry similar in its terms to the provisions of the National Defense Act of 1916, mentioned above, but including the failure as well as the refusal of the company "to produce" the materials or steel (a pre-requisite being the placing of orders under the terms of Subsection 18(a). The inclusion of the element of failure to produce brings this statute much closer to the present situation than the National Defense Act of 1916. It should be noted that a following sub-section (18(h)(1) contains

provisions for the percentage allocations of steel production by the Secretary of Defense, and authorizes the President to seize any steel plant which refuses to comply. The word "fails" is omitted here.

In my opinion there is a case, but not a very strong one, for the position that Section 18(c) of the Selective Service Act authorizes the present Order. Unquestionably orders must have been placed with most if not all of the steel companies by the Government, or, alternatively, by war contractors to whose orders the Government has directed that priority shall be given (Youngstown in its petition for an injunction alleges that it has no orders "from any Government agency for strategic materials that would warrant seizure"). Unquestionably on April 8th there was a failure to continue to produce the materials so ordered. The argument, however, rests upon the word "fail," and in my opinion the statute was probably not intended to apply to a case where the failure occurs because of a bona fide labor dispute in which the employer's position is not unreasonable. This is subject to the legislative history of this subsection and of the reasons for the Congressional inclusion of the new element of failure to produce, which history we have not had time to examine.

If the Supreme Court should rule that the President's inherent power did not extend to the Executive Order, it is possible that it might construe Section 18(c) so as to authorize the Order. But since in my opinion the Court would determine that the President had inherent power to issue the Order, resort to this statute is not likely to be required.

In connection with the construction of this statute it may be noted that Congress on April 8th and 9th last, immediately before and after the Executive Order, adopted a joint resolution continuing some sixty war powers of the President after the legal termination of the war with Japan, and until June 1,1952, and in so doing provided:

> "Nothing contained herein shall be construed to authorize seizure by the Government, under authority of any act herein extended, of any privately owned plants or facilities which are not public utilities."

The Executive Order was issued the day before this joint resolution was finally adopted, and in any case it does not become effective until the war with Japan terminates. The insertion of the provision mentioned above naturally creates an inference that Congress felt that some of the existing statutes gave the President authority to seize privately owned plants or facilities, else the proviso would not have been necessary. But the construction placed on statutes after their enactment, by a subsequent Congress, is not likely to be given great weight by the courts.

C O P Y

LAW OFFICES
GREEN, HENNINGS, HENRY & EVANS
BOATMEN'S BANK BUILDING
ST. LOUIS 2, MO.

Mr.R.L.Crowley - #15 April 21,1952

C O P Y

V - Was the Order Beyond the President's Powers Because Other Means of Avoiding the Steel Strike Existed?

Ithas been suggested, both in and out of Congress, that the President had available, in the Taft-Hartley Act, a means of preventing the loss of steel production, which had been authorized by Congress and which was also less drastic in its operation than the Executive Order.

The President answered this suggestion in advance, in his speech announcing the Executive Order. He said:

> "A lot of people have been saying I ought to rely on the procedure of the Taft-Hartley Act to deal with this emergency.
>
> "This has not been done because the so-called emergency provisions of the Taft-Hartley Act would be of no help in meeting the situation that confronts us tonight.
>
> "That act provides that before anything else is done, the President must first set up a board of inquiry to find the facts on the dispute and report to him as to what they are. We would have to sit around for a week or two for this board to report before we could take the next step. And meanwhile, the steel plants would be shut down.
>
> "Now there is another problem with the Taft-Hartley procedure. The law says that once a board of inquiry has reported, the Government can go to the courts for an injunction requiring the union to postpone a strike for eighty days. This is the only provision in the law to help us stop a strike.
>
> "But the fact is that in the present case, the steelworkers' union has already postponed its strike since last Dec.31 - ninety-nine days. In other words, the union has already done more, voluntarily, than it could be required to do under the Taft-Hartley Act. We do not need further delay and a prolonging of the crisis. We need a settlement and we need it fast.
>
> "Consequently, it is perfectly clear that the emergency provisions of the Taft-Hartley Act do not fit the needs of the present situation. We've already had the benefit of an investigation by one board.We've already had more delay than the Taft-Hartley Act provides.
>
> "But the overriding fact is that the Taft-Hartley procedure could not prevent a steel shutdown of at least a week or two."

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The points made were two:

1. That the "Taft-Hartley procedure could not prevent a steel shut down of at least a week or two"; and

2. That the Union had already postponed its strike voluntarily for ninety-nine days, for the Wage Stabilization Board's investigation and determination, whereas under the Taft-Hartley Act it could be required only(after the delay of "a week or two") to postpone a strike for only eighty days. The implication was that this would be unfair to the union and that possibly, in view of the 99-day delay already suffered, the Taft-Hartley 80-day injunction would be refused.

C

To these considerations may be added a third:

If the Taft-Hartley procedure had been resorted to a strike could have been called at the end of the 80-day cooling off period, or at any time thereafter, and no injunction could issue to stop it. As mentioned above, under the Executive Order setting up Government operation a threatened strike can be enjoined by the Government at any time. The Taft-Hartley procedure obviously does not afford the same assurance of continued steel production that Government seizure does.

O

P

Considering the mild provisions of the Executive Order, and the fact that if any damage is sustained by the owners of the steel plants they can recover compensation, it does not appear that the Executive Order was a much more drastic invasion of private rights than would have been an injunction against the strike for a further period of eighty days.

Y

It would seem that President Truman made a prudent choice of measures to avert a strike, but it is not necessary to determine that. If the choice had been the least wise of the two alternatives it would in my opinion still have been a constitutional exercise of his power (see the opinion of Attorney-General Jackson at the time of the North American Aviation seizure, supra). The power to act in an emergency includes the power to blunder. As Mr.Justice Holmes, speaking for a unanimous Supreme Court in Moyer vs.Peabody, 212 U.S. 77,84 (1909), said:

> "The facts that we are to assume that a state of insurrection existed and that the governor,without sufficient reason but in good faith, in the course of putting the insurrection down, held the plaintiff until he thought that he safely could release him." (emphasis supplied)

Certainly if the President selected a means reasonably calculated to avert the danger(and here it did in fact avert it),the courts will not undertake to review his choice. That is putting it at a minimum.

LAW OFFICES
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ST. LOUIS 2, MO.

Mr.A.L.Crowley - #17

April 21,1952

COPY

VI - The President's Submission of the Executive Order to Congress for Its Action

It has been observed that President Jefferson, President Lincoln (belatedly), and Attorney General Gregory, advising President Wilson, all indicated that Congress had power to review a presidential exercise of inherent power in an emergency and either to ratify it or to legislate in such fashion as to modify or annul it.

While nothing in the Constitution lends support to this procedure, it appears to be an effective means of permitting the President to act in an emergency, but nevertheless submitting his action to review by the legislative body. Senator Morse, describing this as Professor Corwin's theory, stated it in the Senate on April 9th:

> "I believe any President of the United States has the obligation of protecting the national interest of the United States in time of emergency by exercising what he honestly believes to be his executive power in the public interest, until such time as the Congress, acting under the Corwin theory, takes whatever legislative action it deems appropriate in the premises."

President Truman followed this procedure promptly and thoroughly. On the morning after the Executive Order his message to the Congress informed it that the Government had taken over "temporary operation" of the steel mills. He said that "the idea of Government operation of the steel mills is thoroughly distasteful to me and I want to see it ended as soon as possible;" but that he knew of no way to avoid a steel shut down and great and immediate damage to the support of our Armed Forces and the protection of our national security, except wrecking of the stabilization program, which he considered even more damaging to the country. In his judgment, he said, temporary Government operation of the steel mills was the least undesirable of the courses of action which lay open, and he therefore believed that it was his duty and within his powers to follow that course.

He then said that it might be that the Congress would deem some other course to be wiser, and suggested three possible courses, each of which he thought most unwise. On the other hand, he said, it might be that the Congress would wish to pass legislation establishing specific terms and conditions with reference to the operation of the steel mills by the Government. Sound legislation of this character might be very desirable, and he would be glad to cooperate in developing any legislative proposals which the Congress might wish to consider. He concluded that if the Congress did not deem it necessary to enact legislation at this time he would do everything in his power to keep the steel industry operating and to bring about a settlement of the labor dispute so that the mills could be returned to their private owners as soon as possible.

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ST. LOUIS 2, MO.

Mr.R.L.Crowley - #18

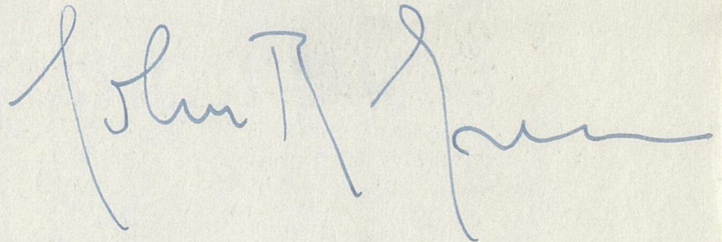
April 21,1952

It is difficult to conceive of a more complete submission of the Executive action to Congress for its review, or a more complete acceptance of the power of Congress either to approve the President's course or take some other course. Granting the emergency and the need for the Executive Order on April 8th, it would seem that the President has not usurped power, but has indeed endeavored to exercise his power to the bare minimum needed to avert the danger.

For these reasons I am of the opinion that the Executive Order was within the constitutional power of the President and that the Supreme Court will so hold if the matter reaches it.

COPY

Sincerely yours,



JRG MH

July 28, 1953

Personal

Dear Aubrey:

Your letter of July 3rd arrived while I was away getting a little rest. Ordinarily, I do not answer letters of this type, but knowing you back in the old days I am writing you relative to one phase of your letter, and in that regard I will not discuss the matter as I do not think that any judge should debate or attempt to clarify opinions which he has written except in another opinion.

I am simply going to ask you if you have read the opinion, particularly that portion of the opinion which deals with the question of "absolutes". If you have not read it, you will find it in 341 U.S. 507, 508. This citation gives you the pages immediately preceding and following the language which has been quoted, at times quoted without completing the full sentence.

I could send you editorials and statements which characterized the criticism as being unfair, erroneous, etc., but I think that by so doing, it would be a defense mechanism. I do not think that the language on the printed page in the context in which the critical words appear in any sense justifies the interpretation which you give it.

With every good wish,

Sincerely,

Mr. Aubrey Williams,
Publisher,
Southern Farmer,
Montgomery 1, Alabama.

FMV:McH

July 3, 1953

Justice Curtis Bok
Common Pleas Court
Philadelphia, Pennsylvania

Dear Judge Bok:

You did free men a great service when you spoke out against the United States Supreme Court's supine and abject surrender to the present hysteria. With men like yourself in positions of responsibility there is still hope for free men.

And I assure you, sir, I am no Communist nor a sympathizer with their totalitarian practices.

Very sincerely,

Aubrey Williams

AW:nwm

COPY

May 15, 1953

Mr. LeRoy Hanscom,
Mellin, Hanscom & Hursh,
391 Sutter Street,
San Francisco 8, California.

Dear Mr. Hanscom:

This is to acknowledge receipt of your letter of May 6th, in which you call my attention to a quotation from an opinion in the case of Process Engineers, Inc. v. Container Corporation by Judge Evans of the 7th Circuit.

Very truly yours,

(Signed) Fred M. Vinson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND 6, VIRGINIA

CHAMBERS OF
STERLING HUTCHESON
DISTRICT JUDGE

RECEIVED

April 27, 1953

NOTED
APR 29 1953
F.M.V.

J. L. Morewitz, Esquire
131 - 24th Street
Newport News, Virginia

Dear Sir:

Re: Application of Jose Beato for Writ of Habeas Corpus, etc. -

Copy of your letter of April 21, 1953, to the Chief Justice has come to my attention upon my return to my office at Richmond this morning. I have not seen the petition referred to nor the certificate of counsel you mentioned but I am at a loss to understand the statement contained in your letter concerning efforts being made to arrange to submit the matter to me. While I was out of Richmond last week I could have been reached without difficulty had my office been informed concerning a matter involving any degree of urgency.

Your attention is invited to the fact that neither Judge Bryan nor I need any designation to dispose of matters arising in the Newport News Division of this District.

It is true that when you called me by telephone at my home on last Saturday night requesting the postponement of a hearing in another matter set for tomorrow, you made some passing

reference to an application which you had filed before the Chief Justice but you did not even then make any suggestion concerning submitting it to me.

Very truly yours,

STERLING HUTCHESON

Sterling Hutcheson
United States District Judge

cc: Honorable Fred M. Vinson
Chief Justice of the United States Supreme Court
Washington 13, D. C.

Honorable John J. Parker
United States Circuit Judge
Charlotte, North Carolina

February 19, 1953

West Publishing Company,
Saint Paul 2, Minnesota.

Gentlemen:

Re: Colonial Village Apts. Inc. v. Henderson

In reply to your letter of February 16th in regard to the above case, please be advised that I did not appear in the case. Fred M. Vinson, Jr. is my son, and his address is Wardman Park Hotel, Washington, D.C.

Very truly yours,

(Signed) Fred M. Vinson

January 7, 1953

Mr. Morris Lavine,
215 West Seventh Street,
Los Angeles 14, California.

Dear Mr. Lavine:

I have your letter of December 30th asking me to speak to the President relative to the application for executive clemency of your client, Tomoya Kawakita, who is under sentence of death.

I do not feel that it is proper for me to intervene in a matter of this kind. Therefore, I must advise you that I can not accede to your request. In my view, it is solely a matter for the Executive Branch of the Government.

Very truly yours,

(Signed) Fred M. Vinson

January 23, 1953

Mr. Frank G. Rivera,
2306 East 2nd Street,
Los Angeles 33, California.

Dear Mr. Rivera:

I received your recent letter and note its contents.

It is an easy matter to take a part of a sentence out of context and draw a wholly erroneous inference. I do not feel that I should endeavor to interpret any language that appears in a written opinion of the Supreme Court, but if you care to read the opinion which I wrote in the case of Dennis v. United States, 341 U.S. 494, you will see what my statements really are.

No one who knows me and my life could properly draw the conclusion which you inform me some have done.

Very truly yours,

(Signed) Fred M. Vinson

FMV:McH

October 29, 1952

Honorable Charles L. Guerin,
Judge,
Court of Common Pleas No. 4,
442 City Hall,
Philadelphia, Pennsylvania.

Dear Judge Guerin:

Re: No. 31 - United States ex rel. Smith v. Baldi

I am in receipt of your letter of October 23rd relative to the above case. Copies of your letter have been circulated to each member of the Court.

Sincerely,

(Signed) Fred M. Vinson

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF NEW JERSEY, Complainant, vs. STATE OF NEW YORK, CITY OF NEW YORK, Defendants, COMMONWEALTH OF PENNSYLVANIA, Intervenor	)	NO. 5, ORIGINAL

AGENDA FOR DISCUSSION
AT MEETING TO BE HELD
FRIDAY, OCTOBER 3, 1952
FOR THE PURPOSE OF AGREEING ON TECHNIQUES AND PROCEDURES

1. Off-the-Record Meeting. This meeting is still off the record, except for conclusions agreed upon between Counsel and the Special Master, and dictated to Miss Foster.

2. Situs of Hearings. Further discussion.

(a) Situs of hearings set for December 2, 1952, and following days, on the issues of law and fact.

(b) Situs of the regular hearings beginning in January, 1953.

3. Schedule of Hearings. Does the schedule agreed upon July 29, 1952, still meet with the approval of the parties?

4. Choice of Reporter.

(a) Horne & Shell, Inc., New York City.

(b) Everett G. Rodebaugh, Philadelphia.

(c) Sills Reporting Service, Washington and New York.

(d) Philip Gassoun, New York City.

5. Stipulation as to Costs Submitted by the City of New York.

(a) The State of New York has indicated it has no objection.

(b) Check the Stipulation to find out how it will work.

6. Preparation for the Pre-trial on the Issues of Law and Fact to be held December 2, 1952, and following days, in New York City.

(a) Analysis of the issues heretofore made by Special Master.

(b) Comments on such Analysis heretofore submitted by the parties.

(c) Are the issues now in focus as result of the Analysis and Comments?

(d) Can the issues, as represented by the Analysis and Comments, be organized into an "Outline of Issues," which will be the basis of the trial of the case?

(e) Can the testimony, whether given verbally or by statements, be organized according to the Outline of Issues? Such organization would, of course, be subject to change or variation by any party as such party met the exigencies of proof.

(f) Amendments of pleadings, if any.

(g) Is any distinction as to techniques to be made between issues of law and issues of fact?

7. Types of Testimony.

(a) Excerpts from the old record.

(i) Can the amount be kept to a minimum?

(ii) Can such statements be shortened by restating them in summary form?

(iii) Can such statements be conformed to the Outline of Issues?

(iv) Consideration of Application of the State of New Jersey to use testimony of deceased witnesses.

(b) Testimony from new witnesses.

(i) Can the number of witnesses be kept to a minimum?

(ii) Can the testimony of not merely expert, but all, witnesses be written out in advance?

(iii) If written out in advance, what techniques should be adopted to purge statements of matter that is subject to exception?

(c) Stipulations of Testimony.

(i) Cannot whole fields in the Outline of Issues be stipulated?

(d) Judicial Knowledge.

(i) Should a rule be established that judicial knowledge may only be availed of where a request to take it has been made during the introduction of evidence?

(e) Visual Testimony.

(i) Maps, plans, photographs, charts, models.

(x) Size.

(y) Number.

(ii) Method of numbering visual exhibits.

8. Objections to Testimony.

(a) Are the regular rules of admissibility to apply?

(b) Objections to admissibility for any reason whatever must be taken at the time, and renewed by written motion at the conclusion of the testimony, so that the Special Master will have a reasonable time at such conclusion to consider his rulings.

9. Consider demand for Bill of Particulars served by the State of New Jersey.

10. Check the conclusions reached July 29, 1952, for accuracy and fullness.

October 29, 1952

Mr. Kurt F. Pantzer,
1313 Merchants Bank Building,
Indianapolis 4, Indiana.

Dear Mr. Pantzer:

Thank you for your letter of October 6th with which you enclosed copy of the Agenda for discussion at your meeting on October 3rd.

I enjoyed seeing you on October 2nd, and am happy that the Report of the Prettyman Committee on Procedure in Anti-trust and Other Protracted Cases may have been of some use to you.

With kind regards,

Sincerely,

(Signed) Fred M. Vinson

FMV:McH

June 13, 1952

Mr. Kurt F. Pantzer,
Barnes, Hickam, Pantzer & Boyd,
1313 Merchants Bank Building,
Indianapolis 4, Indiana.

Dear Mr. Pantzer:

I am in receipt of your letter of the 12th.

I hasten to advise you that your appointment as Special Master in the case of New Jersey v. New York was made by the full Court.

With kindest regards,

Sincerely,
(Signed) Fred M. Vinson

No. 35. Frank Carlson, Miriam Christine Stevenson, David Hyun, and Harry Carlisle, petitioners, v. Herman R. Landon, District Director of Immigration and Naturalization Service.

No. 136. James W. Butterfield, Director of Immigration and Naturalization Service, petitioner, v. John Zydok.

Former decision, 342 U.S. 524.

June 9, 1952. The petition for rehearing is denied.

The motion of Petitioner Carlson to stay issuance of the mandate, insofar as applicable to him, pending his trial in United States v. Schneiderman, et al., is granted to permit his attendance at his trial which is now in progress in the United States District Court for the Southern District of California. This stay will be automatically dissolved when Carlson's case is submitted to the jury or when it is finally decided by the trial court, whichever is the sooner.

Mr. Chief Justice Vinson, Mr. Justice Reed and Mr. Justice Minton dissent from the order granting the stay.

April 20, 1951

Dear Dave:

I have your letter of April 16th relative to the televising of the Supreme Court proceedings on the day the opinion is handed down in the case of Radio Corporation of America v. United States.

There are two good reasons why it is impossible for us to accede to your request. One is the attitude of the Court towards broadcasting or televising the proceedings of the Court. If you can hurdle that barrier, you would come to No. 2, and that is that the setting up of the television equipment would be essentially a tip-off on the date of the announcement of the opinion. It is a policy of the Court never to make known the date an opinion will be announced.

I was glad to hear from you, and I am sorry that I cannot send you a more favorable reply. I think back with pleasure to the old days with their associations.

With kind regards,

Sincerely,

(Signed) Fred M. Vinson

Mr. David Levy,
Vice-President,
Young & Rubicam, Inc.,
285 Madison Avenue,
New York 17, New York.

FMV:McH

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,805 APRIL Term, 1951

James R. Allen,

Appellant,

vs.

United States of America,

Appellee.

Before: Honorable Fred M. Vinson, Circuit Justice.

ORDER

On consideration of the petition of appellant requesting the Circuit Justice for the District of Columbia Circuit to designate three judges from other circuits to act in the above entitled case, on the alleged ground that all of the judges of the Court of Appeals for the District of Columbia Circuit are disqualified therein, the petition is hereby denied for lack of power.

/sgd/ - Fred M. Vinson
Circuit Justice for the District of Columbia Circuit.

Dated: April 5, 1951

February 24, 1951.

MEMORANDUM TO MR. JUSTICE FRANKFURTER.

The following is submitted in response to your inquiry on the logical sequence of issues raised by the Labor Cases to be argued Monday.

1. No. 313, Labor Board v. International Rice Milling Co., is the case in which the Sixth Circuit, reversing the Board, held that §§ 8 (b) (4) (A) and (B) prohibit all picketing literally falling within their terms, without regard to the traditional distinction between primary and secondary action. The issue here raised is fundamental and cuts below all others.

2. No. 393, Labor Board v. Denver Building & Construction Council. The charge in this case is that a Trades Council engaged in, and by picketing induced employees of union subcontractors to engage in, a strike to compel a contractor to dispense with the services of a nonunion subcontractor. The Court of Appeals for the District of Columbia agreed that §§ 8 (b) (4) (A) and (B) were applicable only to secondary action. But it disagreed with the Board's interpretation of "secondary," and found that the contractor was not neutral to the dispute. Since this case squarely raises the application of the "secondary boycott" sections to the construction industry, and since it is not complicated by questions of free speech, it would follow next in order.

3. No. 108, International Brotherhood of Electrical Workers v. Labor Board, involves peaceful picketing by an electrical workers' union to induce carpenters toleave a job on which nonunion electricians were employed. In addition to the issues involved in the Denver case, No. 393, supra, it raises the apparent conflict between §§ 8 (b) (4) and 8 (c) of the Act.

4. No. 85, Local 74 v. Labor Board, involves a strike by a carpenters' union against a building contractor to compel him to cease doing business with a store with which he had contracted for the installation of fixtures. It raises most clearly an issue involved in the other cases: the jurisdiction of the Board in view of the limited effect of these disputes on interstate commerce. It also raises the question of the applicability of the Act to strikes called prior to its effective date but in progress on the effective date. The petitioner's brief indicates that petitioner's argument cannot be expected to be of much help to the Court.

HC