PSF Justice Dept. 1933-37

Box 74

PSF Justice

Office of the Attorney General
Washington, D.C.

N.A.S.

Mr Howe
Speak to Mr Bates about this
FDR

September 26, 1933.

My dear Mr. President:

I recently asked Mr. Sanford Bates to prepare a memorandum informing me upon the subject of our present Federal prison labor policies.

In view of recurring questions concerning prison labor, some of which are brought to you, it occurred to me that you yourself would be interested in having dependable information on the subject, and I am, therefore, forwarding to you the original of Mr. Bates' memorandum.

I think you will find it a readable and clear statement of our problems and policies.

Respectfully,

Homer Cummings

Attorney General.

The President

The White House.

PSF Justice

FORD BATES
DIRECTOR

DEPARTMENT OF JUSTICE

BUREAU OF PRISONS

WASHINGTON

File #4-4-14 September 22, 1933.

MEMORANDUM FOR THE ATTORNEY GENERAL

PRISON LABOR POLICIES

Questions regarding the operation of the Federal Prison Labor System are being asked from time to time. In the following pages I will attempt to briefly outline the policy followed by this office, with a few remarks as to the operations of State prisons.

I. The Federal Prison Labor System

(1) The Federal Prison Labor Policy.

The Federal Prison Labor Policy is based on the "State-use" idea. Federal prisoners are allowed to work on the manufacture of articles which can be used only by other Federal Departments. Its main objective is to assist in maintaining discipline, reduce costs, and aid in the reformation of prisoners.

No goods are sold on the open market and their sale or use by private interests is not involved. Public charges are used to satisfy the needs of Federal Departments to the public benefit and diversification of industrial output is practiced so as to prevent undue burden on any one industry. The "State-use" idea has been accepted as a fair, humane and reasonable compromise by both labor and capital. The system is flexible and prison authorities may decline to manufacture products for their institutional market when outside industrial conditions are such that the use of prison-made goods may work a hardship on private industry.

(2) General Arguments in Favor of Prison Labor.

(a) It saves the taxpayers money. Last year, for example, $400,000.00 of the earned surplus in the Prison Industries Working Capital Fund was deposited in the Treasury to the credit of Miscellaneous Receipts and made available for general purposes.

(b) It aids in the maintenance of discipline and reduces

the likelihood of the occurrence of prison riots and property destruction.

(c) It trains men in industrial pursuits rather than corrupting them through idleness and helps prevent crime by releasing men more fit to hold a job, thus protecting society. Of the 60 men released from Leavenworth, after being employed in the shoe factory, not one has had his parole revoked after the lapse of more than a year from the date of discharge.

(d) To the extent that the men employed in prison industries send their small earnings home, the community is relieved of the burden of supporting their dependents.

(e) A "loafer" is an economic liability and a menace to society whether in or out of prison. Work is essential if men are to be turned out of prison better and not worse for their incarceration. Learning of a trade may go far in preventing their return to prison.

(3) Facts with reference to the Federal Prison Labor System.

(a) The system has been definitely authorized by law and officially endorsed by the American Federation of Labor and the United States Chamber of Commerce.

(b) The law has been conservatively administered by the Department of Justice. It is fair to labor, to industry and to the public and has been referred to as the most progressive prison labor statute anywhere in the country.

(c) Under the law competition of prison-made goods does not involve depressing of prices or flooding of markets.

(d) There are no contractors in Federal prisons.

(e) The output of our prisons is consumed only by the various Federal Departments. At the same time, the law prohibits the operation of the prison industries in such manner as will curtail the production of Government workshops existing at the time the law

was passed. Only as the requirements of the Government expand beyond the capacity of existing Government factories can similar work be allocated to the prison shops.

(f) Unemployment in Federal prisons is a serious problem, since never have over 20% of our prisoners been employed in industrial pursuits. In only 6 of the 21 Federal penal institutions and camps are there any industrial activities. Further, at the new Federal prison in Pennsylvania there is no industry of any kind whatsoever.

(g) Preference is given to industries which will give the maximum of employment with a minimum of expenditure for machinery.

(h) The Committee on Appropriations considers the establishment and financing of all prison industry projects annually and a revolving fund is maintained.

(i) Federal prison labor operations are conducted without profit to private individuals.

(j) Every attempt has been made to employ prisoners in non-competitive industry, on institutional farms, Federal road work, reclamation work for the Army and on salvage and maintenance projects.

(4) <u>The Extent of Competition.</u>

(a) The competition of Federal prisons with free labor is infinitesimal. The figures given below cover our two largest industries, where the competition is the most serious.

		By Free Labor	By Federal Prison Labor	Per Cent
A.	Textiles			
	Number of spindles in operation (1931)	28,979,646*	15,000	52/1000 of 1%
	Production, Sq. Yds. (1931)	7,140,653,000*	4,500,000	63/1000 of 1%
	Operatives employed (1931)	329,279*	604	18/100 of 1%
B.	Boots, Shoes & Slippers			
	Pairs produced (1931)	315,455,500*	250,000	8/100 of 1%
	Government shoe requirements	2,000,000 (Est.)	250,000	12.5%
	Operatives employed (1931)	185,900*	450	24/100 of 1%

In addition to manufacturing cotton textiles and shoes we manufacture in Federal prisons, clothing, brooms and brushes, brick, wood furniture, canvas baskets and mail bags, and do some institutional printing, laundry work and dry cleaning, as well as a considerable amount of farming, Federal road work and other types of manual labor.

(b) If a producer goes to prison he does not intensify competition when given a job, since he merely continues his normal capacity as a producer. In addition, when the prisoner is employed, he benefits the men he has wronged by lightening the latter's tax burden.

(c) The Federal prisons supply much more business to private industry than they take away by production of articles with prison labor. The prisons purchase annually about $4,500,000.00 worth of supplies and materials from private business; in the last three years new prisons to the value of approximately $10,000,000 have been constructed wholly by free labor, and more than 1,700 civilians are employed in the federal prison service.

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* Figures from Census of Manufactures, 1931, U. S. Department of Commerce.

(5) The Need for Further Diversification.

(a) The Act of 1930, under which we are working, was intended to provide wholesome employment for all prisoners by the establishment of a diversified industrial program.

(b) The only charge that may be made against Federal prison labor policies arises out of the fact that it is impossible fully to carry out diversification required by the Act, since it must be made gradually.

(c) The reason why further diversification has not been made is because our attempts to set up other industries in Federal prisons have been blocked by outside selfish interests.

(d) The Committee on the Judiciary, at a recent hearing on complaints of textile men, realized the importance of providing for further diversification and, at our suggestion, unanimously reported a bill providing that the President appoint a committee consisting of representatives of labor, industry and Government Departments, to prescribe the extent to which prison industries may be developed. It is our hope that this amendment will be adopted, as it will forestall any further charges of unfair competition and at the same time make possible the development of a well-rounded prison industrial program.

(6) The Relation of Prison Labor to the Depression.

(a) In view of the serious economic conditions now prevailing, this Bureau has proceeded cautiously in the development of its prison labor program. It has reduced its operation to five days a week and curtailed the hours of labor. None of our industries are operated more than 40 hours per week and most of them less than 35 hours per week. It has further resisted the introduction of labor-saving machinery and utilizes machinery only where necessary to manufacture a product acceptable to the Departments.

(b) The training of prisoners and the resulting protection to society is a problem collateral to the relief of unemployment. Neither can be abandoned, and it would be unthinkable if prisons were required to postpone their industrial activities until the difficult problems of unemployment were entirely solved. We must make an attempt to solve both problems, each with due regard to the other.

(c) It is natural for industrial employers to attempt to eliminate competitors, but, after all, the public interest is paramount to that of any group of private industry. The American Federation of Labor has sanctioned our prison labor legislation and as recently as October, 1932, Mr. William Green reaffirmed his sympathy with the problem. We have had practically no protests from organized labor. Most remonstrances have come from employers and manufacturing interests and generally in such a way as to indicate that they were more interested in profit than in the question of employment.

(7) Conclusion.

When properly explained to them the more enlightened leaders of labor, industry and public service are in sympathy with our attempt to carry on the work as outlined above. Recently the following press statement was attributed to Secretary of Labor Perkins:

"It is obvious prisoners cannot remain idle, but I see no reason why careful planning should not result in putting them to work on projects which will keep them busy enough and at the same time not put prison labor in competition with free labor. They should produce goods that may be used by local, county, city, state and Federal governments."

We are in one hundred per cent agreement with that statement and it appears that our Federal program is now in strict conformity with the principle laid down therein.

II. The Situation in State Prisons

Complaints are being made regarding the competition of prison labor, but in most cases they refer to State administration of prisons. In many States there are prison labor acts as fair as that enacted by the Federal Government. In many other States contract prison labor still prevails and the contractor sells the products indiscriminately to private buyers at prices which are alleged to be less than outside manufacturers can fairly meet and do justice to their employees. Attacks upon the chain gangs of the South and the contract prisons of the North have recently appeared in the magazines.

It is my belief that the solution of this age-old and vexing problem of prison labor is in the gradual adoption of the "State-use" theory by all States. The State, meaning the taxpayers, is charged with the support of a number of individuals and has the right to employ their labor for its own benefit and in satisfaction of its own wants. However, it should not permit any person or corporation to profit from the labor of public charges and it should not compete with private industry, using the resources of the State.

The question of the authority of the President to take action designed to correct these evils in the administration of State prisons is, of course, a serious question of policy.

The so-called Hawes-Cooper Bill, which becomes effective in January, 1934, is an attempt by the Federal Government to reach this situation. It divests goods made in State prisons of their interstate character and permits the several States to regulate the importation and sale of such merchandise. The constitutionality of this law is in doubt and the State of Alabama, which maintains a large contract prison, has already filed suit to test its validity. The sponsors of the bill hoped that it would force each State to adopt the "State-use" program by depriving State institutions of markets in other States.

The States of Massachusetts, New York and to some extent New Jersey, Pennsylvania and Indiana have made successful experiments in administering "State-use" prison labor laws. It is commonly believed that there is sufficient market in State departments and institutions to keep all the prisoners busy, provided no further artificial restrictions are placed upon that market.

Compliance by the States with the spirit of the Hawes-Cooper Bill, by the enactment of "State-use" prison labor laws, would be gratefully received by labor and industry generally. Unfortunately, the criticism of prison labor has been unjustly and unfairly directed against the Federal Government, which now maintains a prison labor policy clean and free from objection. If many of the critics of this system should turn their attention to the outworn, unfair and vicious systems in vogue in their own States they would find much more to criticize and remedy.

Sanford Bates

Director.

PSF Justice

Nov. 3, 1933.

File

THE WHITE HOUSE
WASHINGTON

Confidential

To the President:

I am working on the silver matter. It seems promising. I hope to be able to give an affirmative answer on Monday. Several aspects of the matter require further study & smoothing out. I report distinct progress.

H.S.C.

Homer Cummings

THE WHITE HOUSE
WASHINGTON

The President

PSF: Justice

5-18-34

The Attorney General said:

"The Congress has cooperated splendidly by enacting the greater part of the "twelve-point program" of the Department of Justice. There is every reason to believe that the remaining laws suggested by the Department will shortly receive favorable consideration.

"The enactment of these laws, closing many of the loopholes through which criminals have evaded Federal capture and punishment, comes at a crucial moment. Kidnapers, killers and racketeers are [redacted] a serious menace to life and property, as well as to the supremacy of the law.

"The Department of Justice, cooperating with local authorities, has already brought to bear its present facilities in such fashion that scores of desperadoes have been rounded up, shot down or convicted. It will continue, without abatement, its warfare on the underworld and upon those who aid or connive in harboring or hiding wanted gangsters and gunmen.

"With added facilities and the elimination of certain legal handicaps, the department will be able to prosecute even more vigorously its drive upon organized crime, as well as its wider program of vigorous and impartial enforcement of the law in all of its phases."

PSF Jan'l-c

IMMEDIATE RELEASE May 18, 1934.

FOR THE PRESS

307

In signing the crime bills, the President said:

"These laws are a renewed challenge on the part of the Federal government to interstate crime. They are also complimentary to the broader program designed to curb the evil-doer of whatever class.

"In enacting them, the Congress has provided additional equipment for the Department of Justice to aid local authorities. Lacking these new weapons, the Department already has tracked down many major outlaws and its vigilance has spread fear in the underworld. With additional resources, I am confident that it will make still greater inroads upon organized crime.

"I regard this action today as an event of the first importance. So far as the Federal Government is concerned, there will be no relenting. But there is one thing more. Law enforcement and gangster extermination cannot be made completely effective so long as a substantial part of the public looks with tolerance upon known criminals, permits public officers to be corrupted or intimidated by them or applauds efforts to romanticize crime.

"Federal men are constantly facing machine-gun fire in the pursuit of gangsters. I ask citizens, individually and as organized groups, to recognize the facts and meet them with courage and determination.

"I stand squarely behind the efforts of the Department of Justice to bring to book every law breaker, big and little."

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PSF Jolliet
10-3-34

Dear Missy—

Herewith something for the President—attached w'h will explain contents.

In case the article from the Herald Tribune escaped your eye, I enclose it for your information. Ann Callaghan sent it to me from Ely. The English are an admirable people!

Best to you.

Cecilia.

Please tell the President not to bother to acknowledge the "Elixer"—I shall note his color when next we meet.

PSF Justice

October 3, 1934.

Dear Mr. President -

Just before leaving for Hawaii we sent you a bottle of our Wonderful Elixer guaranteed to cure the sudden illness that attacks one just before dinner.

You were kind enough to write such a glowing testimonial of its virtues our institution has been thronged with patients doing an Oliver

Twist.

We feel the prescription ought to be refilled at this time so your stomach pains will not return, your deep breathing will remain unimpaired and you will always retain that school-boy complexion.

Homer Cummings, M. D.
Cecilia Cummings, M. D.

BY APPOINTMENT
TO
HIS EXCELLENCY
THE PRESIDENT

PSF Jul. '20

"Jie personal"

Mar. 5, 1935.

Dear Mr. President -

Dreadful Dodd - (according to Emily Post) - quite the wrong thing to you last evening. Dodd "Wasn't that a good dinner" - 7 courses, as a co-hostess I ought to have murmured:

"Our meagre efforts were not half fine enough for Your Worship".

Ah, me - sometimes I give up in despair of myself. Well, I can say -

and poof for Emily Post *
who is a Republican
anyway, I'm certain — you
are the grandest Republican
for whom any Cabinet ever gave a
dinner.

C.C.

P.S. It was a good dinner!

* P.P.S. I'll bet E.P. eats
peas with her knife
when she's at home.

PSF Justice

P.F.

OFFICE OF
THE ATTORNEY GENERAL

Apr 29/35

My dear Mr President:-

Your radio speech of last night "touched the button". It was perfect. Everyone with whom I came in contact was delighted - The more I think about it the better it seems. Great!!

Cummings

PSF Justice

THE ATTORNEY GENERAL
WASHINGTON

File Personal

May 17, 1935.

My dear Mr. President:

I do not know how to thank you for your kindness in sending a word of greeting with reference to my recent birthday celebration. It was characteristically generous and thoughtful of you.

The Birthday Party was a great success and your letter made it perfect.

Very sincerely yours,

Homer Cummings

The President,
The White House.

PSF Justice

File Personal

July 22, 1935.

Dear Mr. President-

Here is the eye-shade. I'm certain you will get a lot of comfort from it. It's a great invention.

I can not tell you what a delight the week-end was. I trust you were fully impressed with all my

honors as shown by the various badges pinned on my "buggie". You never suspected you were inviting royalty!

Am so full of vitamines from N to Z I could lick my weight in wild oats.

With love and keep devotion from us both. Dad

Cecilia.

ADMIRAL CUMMINGS
of
ROCK CASTLE RIVER,
SUH.

PRINCESS WAH-DO-HE
of
THE EASTERN TRIBE
of
CHEROKEES -
WHOOPEE

PSF Jubilee

Temple Bar 4343

Savoy Hotel,
London.

September 5, 1935.

Dear Mr. President—

The beautiful roses sent by you and Mrs. Roosevelt made our stateroom gay and cheerful for days. Thank you.

We had a passage so smooth that a real "skipper" like you would have sniffed. The "Washington" is a fine ship — the captain is named Cummings, but is even more

We visited Scotland Yard yesterday and had tea with Col. Drummond, second in command. We went through miles of musty corridors and into unnumerable stuffy rooms. Last year all England had 99 murders - about ½ of which were "not really murders, but came under that heading". We have that many a minute! But they have some real fancy ones - one chap stuffed a rag in a girls mouth and choked her - then he tied a rope around her neck so tight it strangled her - then he hit her over the head with a heavy rolling pin cracking her skull. You're a bad mom,

Scotch than Homer - he will use only one "m".

We go for the week-end to Lord Reading's and Lord Beaverbrook has asked to entertain us. From the former we shall get the high-up on politics - from the latter the low-down - so when we return we ought to have the up and downs and the inside-out.

Monday we take a motor and go to Oxford, Stonehenge, Lake Country, Shottford etc. etc. We shall be full of culture!

Gootch!

We enjoyed so much the few hours with you on the Sequoia – it was altogether delightful.

Please have a gorgeous time and rest and know that our affectionate greetings follow you wherever you go.

Again, with deep appreciation for all your kindnesses – and best wishes from Homer and very fr. Jane

Cecilia.

PSF Justice

Hyde Park, N. Y.,
November 1, 1935.

Dear Cecelia:-

She is lovely regardless of who or what she was! She sits on the mantel in my Study.

Thank you ever so much for thinking of me.

I was sorry not to see you when you were in the other afternoon, and I do want to see you and Homer very soon and hear all about the trip.

Affectionately,

Mrs. Cummings,
2700 Tilden Street,
Washington, D. C.

PSF Justice

Missy
Prepared
letter

Oct. 24, 1935.

Dear Mr. President -

Welcome home!

From the reports of hurricanes, tornadoes, cyclones and et cetera raging all around you a jolly time must have been had by all on board. Bill wager you sat through it all & fished.

Homer Cummings has been figuring how to win that $7 back from you - but I don't see how he's going to make it unless he stops Kibitzer-ing and takes

up fishing.

Do you have room for this copy of the portrait bust of a lovely lady who lived hundreds and hundreds of years ago? She is Nefert-iti and, I believe, mother-in-law of Tutankhamen, but Dr. never been able to get those Egyptians straightened out - just when I think they are aunts they turn up as wives or uncles. At any rate she is Queen Nefert-iti and it's forged her relatives. We brought it back as a little

remembrance of our delightful visit abroad.

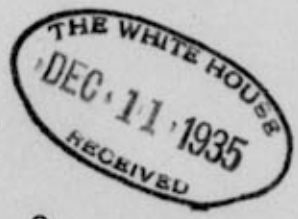
We had a fine time and an especially lovely visit with Ambassador and Mrs. Morris in Brussels who send kindest wishes to you & Mrs. Roosevelt.

Cecilia Cummings.

PSF Justice

file "personal"

OFFICE OF
THE ATTORNEY GENERAL



Dec 11/35

Dear Mr. President:-

Re Hargraves matter made quite a splash. Opposition papers in L.A. & thereabouts, are highly critical; and Coast Guard friends are a bit upset.

This is for information only - so no action or statement seems to be required.

Cummings

PSF Justice

THE WHITE HOUSE
WASHINGTON

Dear Tracy:

I have given Henry a thorough examination. I fear his condition is chronic + critical.

Sincerely,
M.D.

P.S. He is suffering intense + requires sedatives.

PSF Justice.

file
please
(57 11)

Office of the Attorney General
Washington, D.C.

December 11, 1935.

The President,
The White House.

My dear Mr. President:

Tomorrow at 1 o'clock in the afternoon, I expect to appear in person before Mr. Justice Bailey in the Supreme Court of the District of Columbia, to present arguments in behalf of a motion to stay the proceedings in the seven Holding Company cases now pending in that Court.

The matter is of pretty far reaching consequence and, in view of its high public importance, I thought I would argue the motion in person, especially in view of the illness of the Solicitor General. The primary purpose of the motion is to relieve the Government of the pressure brought upon it by the Holding Companies and to stay the proceedings until the Government has an opportunity to try the suit brought by the Securities and Exchange Commission in the Southern District of New York against the Electric Bond and Share Company, and its subsidiaries and affiliates.

The Government does not have at its disposal the personnel necessary to deal with the sixty odd cases already filed in various jurisdictions, and desires an opportunity to proceed speedily with the trial of a typical case and to secure a determination of the constitutional questions involved by the Supreme Court as soon as possible. The expense, delay, confusion, and embarrassment which would be involved in attempting to try simultaneously a substantial number of cases would, it seems to me, be well calculated to break down the processes of Justice. Moreover, most of these cases present substantially the same fundamental questions. For these reasons I believe that there are strong equities in favor of the motion I have made. I assume it will be resisted by one device or another.

Sincerely yours,

Attorney General.

PSF: Justice [1936]

President

"file confidential"

MEMORANDUM: ~~Confidential~~

On February 23, 1935, a post office inspector reported the following information concerning an organization known as the Black Legion, now being given considerable notoriety in Michigan.

The inspector reported he had reliable information, indirectly, from a young man who had been a member of the Legion and had severed his connection and whose life was more or less in constant jeopardy, that a person known as Dr. Shepard, Bellaire, Ohio, is the head of the Black Legion in the United States, and that they claim membership of one million five hundred thousand. It was related that the United States is divided into thirteen districts (patterning the thirteen original colonies) with a Major General in charge of each. The initials of Dr. Shepard are not known, but it is stated that this man either has a daughter or sister at Bellaire who is also a doctor. One Bert Effinger (former head of the Ku Klux Klan here) is said to be Major General of this district, and to have charge of all territory west of the Mississippi River. There is no initiation fee, but it was explained, each member is required to pay Effinger 10 cents each month. These persons are ordinarily referred to, among themselves, as "blacks". The character of dress is black with separate cape effect and black head covering ornamented by white skull and cross bones.

The Chief of Police, also the head of the plain clothes force, at Lima are said to be members. Neither of these persons were selected for their positions because of any qualification.

New members are referred to as privates, and the entire method of organization is along the lines of the army service. A company is represented by 99 men and one Captain.

The meeting places at Lima are the "Ford Dance Hall", rooms used by the Junior Order of American Mechanics Lodge, and Harry Tapscott's farm, about halfway between Lima and West Minster. Harry Tabscott is recognized as a Major. Other Majors are Russell Croft, North Pine St., John Frankhouser, 783 So. Broadway, Lima. Captains are named as follows: O. L. Boyd, 1513 St. Johns Ave. Fisher W. Kibby, and one "Rotaberger" who is employed as mechanic for Gibson Co., Lima. Guy Effinger, 114 Harrison Ave., is Lieutenant Colonel, as is also one John Hawk, whose address is given as F.E.R.A . (old Federal building).

It is stated that this organization is "hiding behind the old Ku Klux Klan and the Junior Order of American Mechanics, and it has recently been referred to in Lima as the "Bullet Club".

The method of obtaining members is by approaching a prospect, and asking whether he would like to join a good organization, and to leave the impression that its purpose is "protection" and aid in securing employment. The person approached is told that it is an "all American organization" and is asked to place his confidence in the solicitor. Approximately 80 per cent of the employees of the F.E.R.A. in Lima are said to be "Blacks", and they, without question, are under the control of "Major General Bert Effinger" whose son "Lieutenant Colonel Guy Effinger" is in the regular employ of the F.E.R.A. at Lima.

Initiates take the oath with a "Black" standing on each side of him with drawn revolvers pointed at him. They are asked concerning their views of "mob violence" also the lynch law, also whether they will vote as directed. They are asked if they are willing to accept one man (Bert Effinger) as their "judge, jury and advisor". Inquiry is made as to whether they own a horse or automobile, and whether they possess any fire arms. If they do not own a revolver, shot gun or rifle they are ordered to obtain a revolver and are instructed to carry it at all times. The maximum penalty for carrying concealed weapons in Ohio is three years imprisonment. They are supposed to take the witness stand and lie for a brother member, or, in the event of jury duty, "hang a jury" if a brother member's interests are involved, regardless of what the charge may be. It is related that Bert Effinger has at least ten men in Lima who will carry out his orders regardless of what they may be. I was told that men who refuse to take oath along these lines find themselves confronted from all sides by black robed individuals with drawn revolvers; that they are then forcibly removed and threatened with death (some times beaten) if they ever reveal any thing they have seen or heard. The only acceptable excuse for failure to attend a meeting is said to be "sickness or absence". "Once a member always a member". New members are given a loaded cartridge as a "token". They are directed to so conduct themselves that there may be no necessity of requesting its return. They are informed that if the cartridge is ever demanded it must be promptly surrendered, and that "half of it will be returned to them". Further that if they resign or abandon the organization their only escape from punishment is "suicide or leave the country".

I was told that that Dr. Shepard has been heard to say that when the time comes "to take the field" it is not his desire to act in the capacity of surgeon, or words to that effect.

It was related that a certain person (former Major in the Black Legion) at Lima, was directed by "Major General Bert Effinger" some time in the past "to take 15 men and put a certain moving picture theatre out of business" merely because of the showing of a moving picture that did not conform strictly with his views on religion. The Major refused. He demanded that Effinger explain, in the event of a riot or blood shed, who would go their bond, and was informed by Effinger that he (Effinger) would take care of them. The Major now "goes armed to the teeth" to protect himself against "outside members of the "Black Legion Mob". Other former members are harassed night and day by automobiles circling their homes. Wives are placed in mortal fear because of inquiries by strange men, in the absence of husbands.

I was informed that "Major General Effinger" is tireless in his denunciation of the administration in Washington, and that his trend is toward the views of Stalin in Russia. It does not seem that "privates" and others of lower rank than Major General in the "Black Legion" know what the real purpose of the organization is. As viewed by me it serves no good purpose, and should be thoroughly investigated by the proper Government Agency.

It is stated that Bert Effinger boasts that 62 members of the Department of Justice and other Bureaus of the Government are members of the Black Legion.

There is transmitted, under separate cover, a uniform of a Major of the "Black Legion".

This report and the uniform described were forwarded to the Department of Justice for necessary information.

file "personal"

PSF

PSF: Dept of Justice [1936]

MEMORANDUM

On April 15, 1935, the then Assistant to the Attorney General William Stanley requested the Federal Bureau of Investigation to conduct an inquiry into the activities of an organization in Lima, Ohio, known as the Black Legion, in view of the fact that representatives of the Department of Justice were reported to be members of this society.

Investigation disclosed that the Black Legion is reported to have been formed prior to the Revolutionary War, but following the winning of independence by the colonies the order was disbanded. Following the Civil War, it was revived and was active until post-war conditions again became normal. The current activity of the organization is allegedly for the purpose of protecting the country from being controlled by various forms of "isms"; however, it has been charged by some former members of the society that it was revolutionary in character, and the heads of the organization are attempting to gain control of various Governmental agencies.

Membership in the organization in which there are no dues is by invitation. Initiation into membership of the Black Legion is accompanied with many rituals, all members being at the time armed and masked. Under penalty of death, candidates for membership pledge loyalty to their cause; all Jews, Catholics and foreign subjects are declared enemies of the organization. Each recruit, who must be willing to bear arms, is furnished with a bullet and is instructed to conduct himself properly so that it will not be necessary for the Legion to ask for its return, for if this is found necessary, one half of the bullet, that is, the lead, will be returned. Death or departure from the country are the only means of severing connection with the society.

The organization of the Black Legion is basically military, that is, it is composed of regiments made up of battalions, which are, in turn, made up of companies, et cetera. The officers designated by military rank are headed by a general. After the fashion of the original thirteen colonies, the country is allegedly divided into thirteen districts by the Black Legion.

Members of the organization are divided into various degrees, known as the Foot Legion, Night Riders, Black Knights, Armed Guards, and Bullet Club, the latter being composed of only selected Black Knights. It is said that various squads are organized within the Legion whose function it is to carry out certain activities, for instance, there is a Flogging Squad and a Killing Squad. At the time of the investigation, eight individuals were reported to have been marked for death by the Black Legion.

In March, 1936, the total membership of the Black Legion in Allen County, Ohio, was reported to be 3400. Former members of the organization have advised that approximately 80% of the Federal Emergency Relief Administration in Lima holds membership in this society. It was rumored that 60 or 70 employees of the Department of Justice are members of the organization; however, investigation has not substantiated this allegation. A Detroit, Michigan, unit of the Black Legion is alleged to have a company of men fully equipped with machine guns and one battalion equipped with Army rifles.

Membership in the Black Legion being secret, it has been difficult to identify individuals as being definitely associated with the organization; however, several former members have advised that a Dr. Shepard of Bellaire, Ohio, is presently the head of the Black Legion. Shepard was actively associated with the Ku-Klux Klan a few years ago and has on occasions professed his hatred for Catholics and foreigners; because of his reputation as a loose talker, however, he is not taken seriously by his fellow townsmen. Dr. Shepard who was City Health Officer in Bellaire in 1935 is not regarded as a leader of men. Several years ago a band of gypsies was frightened away from Bellaire after several bombs had been fired near their camp, and it was rumored that Dr. Shepard was the instigator of this affair.

Claude Sauter, of Bellaire, Ohio, is alleged to be Dr. Shepard's assistant as head of the Black Legion; however, investigation failed to reveal the identity of an individual in that town under this name.

It is reported that V. H. (Bert) Effinger, of Lima, Ohio, is the head of this society in that district. Former members advised in his capacity as general he gives orders to the society in Lima

and that he is alleged to be responsible for the following incidents:

Some time in 1935 a roadhouse known as "Twin Oaks" near Lima, Ohio, was burned. Effinger has boasted that the Legion was responsible for this, as well as, for the destruction of the "Imperial" roadhouse near Wapakoneta, Ohio. Effinger is alleged to have stated that all Federal men coming to Lima report to him and to have instructed the members of the Black Legion that if they know of any such officers being in town, they should report the matter to him at once.

On one occasion, two Ohio State prohibition enforcement officers were in Lima, and a member of the Legion reported to Effinger that they were Federal Agents.

On numerous occasions, Effinger has boasted that approximately 60 or 70 members of the Department of Justice are members of the Black Legion. He is said to have concealed a large yellow map depicting the location of all secret fortifications in the country and has stated that the map was obtained by him through the Department of Justice. Effinger has encouraged members of the Black Legion to join the National Guard, advising that when the time arrives to take over the armories and capture the rifles and ammunition the Black Legion members would overcome certain guardsmen assigned to them.

One former member has advised that he was ordered by General Effinger to "bash in the head" of a man who refused to attend the society's meetings.

Those individuals who have dropped out of the order have been approached on numerous occasions and warned that they should not talk. On occasions numerous carloads of men have collected around the homes of former members; however, no trouble is known to have resulted from these activities.

As General, Effinger is said to have ordered a former member of the Black Legion to destroy a moving picture film entitled "White Angel" at the time it was showing at the Sigma Theatre in Lima, Ohio on the grounds that the film upheld the Catholic faith.

In November, 1934 it was rumored that the Bullet Club of the Black Legion was going to blow up the old post office at Lima, Ohio, following which a Department of Justice Agent from Cincinnati, Ohio is alleged to have conducted an investigation. However, the files of this Bureau do not indicate such an investigation was made.

Following this rumor an investigator for the Federal Emergency Relief Administration, John B. Martin, of Sandusky, Ohio, ascertained that about 80% of the Federal Emergency Relief Administration employees was members of the Black Legion, and Guy Effinger, son of V. H. Effinger, was a Lieutenant Colonel of the organization and the timekeeper for the Federal Emergency Relief Administration.

V. H. Effinger was interviewed by a Special Agent and vigorously denied that he was associated with the Black Legion in any way, in addition each specific allegation attributed to him was specifically denied. He is an electrician by trade and did admit that he was a member of the Ku-Klux Klan, and freely expressed an opinion that the citizens of the country should take the law into their own hands to cope with the situation where local law enforcement officials have failed. In this connection the investigation disclosed that the Lima Police Department refused to do anything concerning the terrorist methods of the Black Legion in view of the fact that both the Chief of Police, Ward Taylor, and the head of the detective force were members of this society.

In addition to the above named individuals, who are said to be active participants in this society, the names of approximately 45 persons residing in Lima and vicinity were obtained. Among these are General Sloan of Sidney, Ohio, an employee of the State Highway Department. This person is said to sign the death warrants for those who the Black Legion singles out for punishment.

Ike White, a former policeman from Detroit, Michigan, who was alleged to have lost his leg in a gun battle with the Purple Gang, appeared at target practice of the Black Legion held at Bowling Green, Ohio. White is supposed to be an active member of the Legion.

Colonel Lupps of Detroit, Michigan, employed at the City Hall, is alleged to be a source through which firearms are secured for the Black Legion. However, inquiry in Detroit has failed to reveal the identity of an individual of this name.

The Michigan State Police were aware that the Black Legion was holding regular meetings in the vicinity of Adrian, Michigan during the summer of 1935, and following a meeting held on August 19, 1935, they stopped a car containing three men and a search revealed a .38 calibre revolver, an automatic pistol and three black gowns with hoods, bearing a skull and cross bones. The three occupants of the car, giving the names of Elsworth S. Shinabery, Andrew Martin, Jr. and Roy L. Hepner, were taken into custody. The men admitted carrying concealed weapons, but alleged that they did not own them; that they had been furnished by individuals whose identity they did not know, and that they were used for the purpose of the Black Legion meeting. Questioning of these persons did not result in obtaining any additional information relative to the organization or membership of the Black Legion. On August 28, 1935, the case against the above named persons was discharged by the Justice of the Peace at Adrian, Michigan on the grounds that the State Police exceeded their authority in searching the defendants' car.

In the investigation conducted no evidence of a violation of a Federal law was disclosed.

Examination of the records in the Identification Division of the Bureau disclosed no record of V. H. or Guy Effinger.

No arrests other than that referred to is indicated by the criminal records of Elsworth S. Shinabery, Andrew Martin, Jr. and Roy L. Hepner.

The investigation conducted in this matter failed to disclose that any employees of the Department of Justice are members of this organization.

PSF Justice

OFFICE OF
THE ATTORNEY GENERAL

Jan 18/66

Dear Mr President! —

The attached - for your confidential information.

Ramsey
AG.

BSF Justice J

(COPY)

Jan. 8/36

Dear Stone:

Your dissenting opinion is on a high plane -- sound, constructive and human.

It may not be the law now - but it will be the law later, unless governmental functions are to be permanently frozen in an unescapable mold.

You spoke at a great moment and in a great way. Congratulations!

Faithfully yours,

Cummings.

PSF Justice

Confidential

2340 Wyoming Ave.
Jan. 9 - 36.

My dear Cummings:

Thank you for your generous note. When one finds himself outvoted two to one he should be humble and perhaps skeptical of his own judgment. But I have a sincere faith that history and long time perspective will see the function of our court in a different light from that in which it is viewed at the moment.

With kind regards

Harlan F. Stone

PSF Justice

file

February 27, 1936.

Dear Mr. President.

It was characteristically gracious of you to send that lovely letter with the enclosures. I am especially delighted to have them from you.

Mr. Hansen "isn't a day older now than in 1920." Since then he has been made your Attorney General and

married me - either job would be enough to keep his mind off birthdays. (Ssh, Ssh! Off the record he enjoys both jobs.)

There is one blot on the 'scutcheon. He looking over the list of speakers at the dinner my eye lit on Alfred E. Smith. "Was he there?" "No," said Homer, "he didn't attend - he never did enjoy the other fellow's party."

I think you might like
to know of this little incident.
We have a very nice old
gentleman to do our upholstering.
Today he was here and said
so fervently: "President Roosevelt
is the most wonderful man
who has ever been in the
White House. My only regret
is I cannot vote for him
as I am a native Washingtonian
When he speaks over the
radio it seems as though
he were talking right to you."
I assured him you were.
He really was a very

touching episode. He was so
in earnest, and there are
millions like him who so
have native wisdom and
appreciate your great work.

Our affectionate greetings,

Cecilia Cummings.

PSF Justice

Cummings

April 15, 1936.

Dear Dr. Homer and Dr. Cecilia:-

Thank you for your very nice letter and for the medicine which I am taking as you prescribe.

My cruise was a grand success. I am so glad you enjoyed your trip and I look forward to seeing you both very soon.

As ever yours,

Doctors Homer and Cecilia Cummings,
2700 Tilden Street,
Washington, D. C.

PSP Justice

April 9, 1926.

Dear Mr. President-

I can not tell you how grieved my colleague, Dr. Homer Cummings, and I were because we had none of your favorite cruise medicine with us when you left on the "Monaghan." We were too far away from our laboratories to distill any, so we just hoped you would get through the vacation and upon your return would have a fresh supply.

We send it herewith and would suggest you take double doses before meals for at least two weeks to make up for the lack.

The papers have been reporting your going from Cat Cay to the South Sea Islands trying to "pull a boner" - this is so unlike you that your physicians attribute it to lack of their medicine.

We enjoyed Boca Raton - no reporters, no photographers - Deo gratias! But

you couldn't throw a pebble
3 feet in any direction without
hitting a Vanderbilt or a McCormick-
it's nice to see how the submerged
one-tenth lives.

As always-

affectionate greetings.

Homer Cummings M.D.
Cecilia Cummings M.D.

PSF: Justice

Resistor

Private file
Field Dept of Justice
Drawer 1-36

DEPARTMENT OF JUSTICE
322 Post-office Building,
Knoxville, Tennessee,
April 17, 1936.

Honorable Karl Crowley, Solicitor,
Post-office Department,
Washington, D. C.

Dear Karl:

The term of Lilienthal on the Board of the Tennessee Valley Authority expires about May 18. This fellow should not be reappointed. He is one of his own kind of the very lowest type and there is nothing that he wouldn't do.

All the trouble that has come up over the TVA and its activities is on account of this crook. He has an idea that he can run over everybody rough-shod, because he thinks he is the Government.

He told me once that if the Tennessee Power Company wouldn't sell out to the Government, he would have them taxed out of existence. He also told me that if he could get five years here with the TVA that he would control the politics of this country, and that is the scheme that he has got in his mind.

Our friend, Bill Taylor, has got all the Republicans agreeing to endorse the TVA. This is the first time I ever knew Bill being for anything that the Democrats were for, and I am satisfied that he knows, or thinks he knows, that if by any chance the President should be defeated he can take this lying Lilienthal and republicanize this whole section. I feel like that it is to the interest of the Democratic Party and the President to get rid of a thief like him.

He has a contempt for every man in Congress and everybody else that doesn't agree with him.

I wish you would take this matter up with General Farley and anybody else that you can who is close to the President, and let him know what kind of a low-down crooked mess this is.

If the Republicans ever get started on this thing in the right sort of a way with an investigation, they will put more slime on this administration than Tom Walsh ever put on the Harding administration over Teapot Dome.

I have kept up with this thing closer than anybody else that I know of, and I know the inside of it and I know what sort of a bunch this is.

Let me know at once what you think can be done.

With very best wishes, I am

Your friend,

J. W. Cooper

PSF Justice

file personal

Justice

Office of the Attorney General
Washington, D.C.

June 20, 1936.

The President,
The White House.

My dear Mr. President:

There seems to be a growing conviction amongst our friends that the Democratic Platform should contain some affirmative statement dealing with a Constitutional Amendment. No doubt, it is true, that the way has been opened up for such a course, by the recent decision in the minimum wage case and the action of the Republican Party and Governor Landon with reference thereto. The primary difficulty, however, seems to be that if we attempt to deal specifically with this problem we must go so much further than the Republican Platform, or its candidate, that an entirely new situation is apt to be created which may shift the emphasis of the campaign.

The more I think of what you read at the last Cabinet Meeting, the more I am pursuaded that it presents the best possible way of dealing with the whole subject and would avoid many of the perils in the formulation of a platform along traditional lines with specific planks on this or that. I have no doubt, however, that many groups, including labor groups, may desire to be heard by the Resolutions Committee at Philadelphia on this very subject and they may have some drastic suggestions to make, which will be strenuously urged.

Should it be necessary to have a specific plank, it seems to me that the matter of approach is fully as important as the subject. With that contingency in view, and for what it may be worth, I enclose a rough draft which you may possibly find interesting. An amendment to the Constitution of the type suggested would, I think, assure us of success in any litigation involving any essential New Deal Legislation.

Please note the question mark opposite one of the passages. This passage is open to the suggestion that it might be interpreted as too apparent a criticism of the Supreme Court. Please note also the underlined words. Should it be necessary to have such a plank there would have to be, I take it, certain words which would afford a transition from the thought expressed in the first portion to the specific recommendation in the concluding portion. The words underlined have the advantage of not closing the door to the thought that perhaps, after all, an amendment may not be necessary. They also convey the thought that what we are seeking to obtain is judicial sanction and that all that is needed is a clarifying amendment. The clause, you will observe, uses the word "favor" instead of pledge.

Sincerely yours,

Homer Cummings

THE CONSTITUTION

We reaffirm our devotion to the Constitution of the United States and pledge the Democratic Party to uphold, protect, and defend it as the charter of our liberties and of our national welfare.

We believe that the Constitution made us a nation and is a declaration of principles designed to meet the constantly changing conditions of our social order. We believe that the spirit, philosophy, intent, and purpose of the Constitution give to the States, and to the national government, the power to legislate within their respective spheres with regard to the social and economic problems confronting our people.

(2) Furthermore, we believe that the Constitution as it now stands, when correctly interpreted, affords adequate authority for the attainment of these legitimate ends.

Should a clarifying amendment be necessary to assure judicial approval of these essential purposes, we favor the adoption of an amendment which would protect the rights of the States to enact legislation with respect to maximum hours, minimum wages, employment of minors, sweatshops, collective bargaining, retirement or pension systems, adjudication of controversies between employers and employees, and the regulation of the industry of coal mining; and likewise assure to the Congress the right to enact legislation on these subjects in the case of any business enterprise, or associated business enterprises, with common ownership or control, engaged in business in more than one State.

There should not indefinitely be permitted to exist a lawless "NO MAN'S LAND" which neither the States nor the Federal government may enter.

P3 F Justice

"file personal"

THE ATTORNEY GENERAL
WASHINGTON

August 17, 1936.

My dear Mr. President:

I was deeply stirred by your Chautauqua speech. It is one of your finest utterances, and that just about exhausts the vocabulary of praise. I shall be keen to know of the reaction abroad. As to the helpful effect at home, there can be no sort of doubt.

Too bad that the League has been so wretchedly man-handled. Some day a tired world will get back to its central thought and attempt once more to make it work.

Tomorrow, I leave for Springfield to speak at the Governor's Day Celebration on the 20th. Governor Horner promises a great meeting. I am sure he will be delighted with your personal message.

I do not think much of my speech, especially after re-reading yours, but perhaps I can throw in enough by way of aside and what not to keep the audience interested.

As always,

Faithfully yours,

Homer Cummings

The President,
The White House.

President's personal file
PSF Jus Hugo

THE ATTORNEY GENERAL
WASHINGTON

August 23, 1936.

My dear Mr. President:

I thought you might be interested in a brief word relative to my recent trip to Illinois.

The meeting on Governor's Day was a great success, and your letter which I read to the audience was enthusiastically applauded. The gathering was the largest political meeting, so I was told, in the history of Illinois.

I am glad that I made the trip, because I really think it did a good deal of good, not only in stimulating interest in the meeting itself but in affording an opportunity for certain of the factions to get together. This they did wholeheartedly. Differences created by the recent primary were forgotten, and I think from now on there will be little or no friction, although perhaps some attention should be given to the Chicago situation later on. All the Democrats with whom I talked were enthusiastic about the prospects. They feel they have the situation well in hand and are looking forward with confidence to winning by a large majority in November. This seems to be the settled judgment of the best Democratic observers who have given serious study to the subject.

I am leaving tomorrow for Boston to attend the American Bar Association meeting and to deliver some addresses there.

Respectfully yours,

Homer Cummings

The President, The White House.

PSF Justice

Sept. 11, 1936.

P. F.

Dear Mr. President -

Just by the papers we are now first, second, Third or fourth cousins — but not fifth, because I have never met a fifth cousin of yours that didn't bring out all my latent homicidal instincts.

Perhaps you may remember Dan a Princess of the same tribe

of Cherokees that recently made you a Chief.

I am Princess Wa-do-lee which they told me meant "Beautiful and Gracious Princess of the Oconaluftee" (the river on the reservation). Personally, I think that's just Southern-Indian blarney. To doubt it means: "Princess Rain-in-the-Face and Flat-in-the Feet." You know what those Southerners are - if you're eighty and have a face

like a meat-axe they'll murmur
in your ear "You certainly
are beautiful, Honey Child".

Although I have been
to Cape Cod visiting the
Dalton Dunsters and visiting
other friends in Connecticut
and New York, I have
followed your tour and
read and listened with
great interest to your
speeches. They were swell—
I mean, Mrs. President, they
were excellent. (Patina-tish!)

One can always

gauge your effectiveness by the rage shown by the Republicans. According to this you registered 1987.

I am sending to you some ammunition for your next speech that has been gathering T.N.T. for 70 years.

As always, with deep affection.

Cecilia Cummings.

PSF Justice

OFFICE OF
THE ATTORNEY GENERAL

Diary file

Nov 17/36

Dear Missy:-

Please hand the enclosed to The President at your convenient opportunity.

Cecilia & I hope you will have a Grand vacation.

Sincerely yrs.

Homer Cummings

To Miss Marguerite LeHand

P3F Justice

THE ATTORNEY GENERAL
WASHINGTON

November 17, 1936.

My dear Mr. President:

I am deeply grateful for the photograph. It is, I think, one of your best likenesses - and the dedication warmed the cockles of my heart.

Your trip to South America, with all its implications, is a great adventure and stirs the imagination of those who know what is afoot in the world. May success crown it and may every moment be to your liking.

Cecilia joins me in affectionate remembrances and best wishes.

Faithfully yours,

Homer Cummings

The President,
The White House.


IOU
1 Christmas Present

PSF Justi

Dec. 24, 1926.

P.F.

Dear Mrs. President -

Enclosed you will find an doll for this years Christmas present from Jimmie and Cecilia Cummings.

I have asked Missy. Grace, Paula, The Secret Service men, The door Guards, The Valets, The Cook, The

Butler & even "The" Janitor-
but nary a one knew what
The President wanted and
we did not want to
give you the forty-fifth
pen-lined inkwell or some-
thing equally useful.

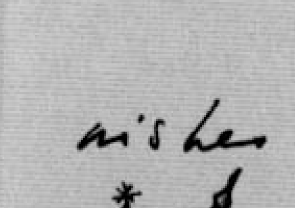
Will you please
mark "Cummings Christmas
Present" before some
item you particularly
want even those it is
after Christmas and
we shall make it

retroactive.

Then just as you are beginning to say: "There ain't any more Santa Claus" down he will pop.

The attached is not a Christmas present — it is just a pick-me-up which we all need before Christmas is over.

Our love and best wishes go to you.



Homer and Cecilia Cummings.

[1937?]

THE WHITE HOUSE
WASHINGTON

BF Justice
file personal
1

The Atty Gen:

"I wanted the President to know the discussion I had with Sen. Ellender about Louisiana judgeships, so the President could talk accordingly.

"I told Sen. Ellender the President had in mind there would be no appt in La. until the present atmosphere cleared up and until Sen. Ellender and his colleague returned and they could discuss it in the regular session after the present scandals had cleared up.

"I told him we were not going to submit any names and had no one in mind."

PSF Justice

file personal

THE ATTORNEY GENERAL
WASHINGTON

January 21, 1937.

My dear Mr. President:

You may be interested to know that we submitted to Senator Wagner a copy of the proposed briefs in the cases of Associated Press and Jones and McLaughlin, affecting the Labor Relations Act. He writes as follows:

"I find them admirable expositions of a viewpoint which I share and which I earnestly hope will be accepted in full by the Supreme Court."

Sincerely yours,

Homer Cummings

The President,
The White House.

File Justice

February 3, 1937

From Justice
Memorandum
In re-

Summary of a Bill "To Prevent Unfair Methods Of Competition In commerce, To Amend The Federal Trade Commission Act, And For Other Purposes."

SEE--Fair Trade Practices-(S) Drawer 2--1937

file personal

THE WHITE HOUSE
WASHINGTON

Dept of Justice - 37

2-9-37

MEMORANDUM FOR MR. MCINTYRE:

Mr. Suydam of the Department of Justice 'phoned to say that they have been having a number of calls from the press this afternoon regarding statement that Senator Robinson has issued about the President's recent message on the Court. He further said it occurred to them that someone might ask the President about it at the press conference.

Senator Robin's statement to the Baltimore Sun is as follows:

> "Any increase above nine in the membership of the Court can exist only so long as there are judges eligible to retire. When judges retire the number is reduced to that extent."

Mr. Suydam says the Senator is entirely incorrect.

RB

Miss LeHand

For the President

MEMO FOR P. T. L.

MAKE SPECIAL FOLDER

"ANTI-LYNCHING BILL"

PSF Justice

THE WHITE HOUSE
FEB 12 1937
RECEIVED

DEPARTMENT OF JUSTICE

Office of the Attorney General
Washington, D.C.

February 11, 1937.

The President,
The White House.

My dear Mr. President:

Assistant Attorney General Brien McMahon and his staff have been giving careful consideration to the anti-lynching bill proposed by Mr. Spingarn and his associates. Distinct progress is being made and the prospect of formulating a bill that will meet constitutional tests is encouraging. I am today writing to Mr. Charles H. Houston, Special Counsel for the proponents of this measure, suggesting that he get in touch with Mr. McMahon and arrange for an interview at which Mr. Spingarn can be present. At that time, and of course informally, Mr. McMahon will be able to make some suggestions which are calculated to strengthen the proposed bill.

Knowing of your deep interest in this matter, I enclose herewith [illegible] port of the studies thus far made in this matter, with appendices attached. It is quite an interesting discussion and parts of it at least are worthy of consideration.

[illegible] regarded as strictly confidential. [illegible] our approach

PSF Justice

Office of the Attorney General
Washington, D.C.

THE WHITE HOUSE
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The President,
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Knowing of your deep interest in this matter, I enclose herewith the report of the studies thus far made in this matter, with appendices attached thereto. It is quite an interesting discussion and parts of it at least you will find well worthy of consideration.

I would suggest that these papers be regarded as strictly confidential. It would seem to me altogether best that we should limit our approach to this matter to oral discussions. We can give all the necessary help in this way without putting the Department in the position of having given advice to any private group. No doubt, after the bill is introduced and referred to some appropriate committee, the Department will be asked by that Committee to express some sort of an opinion and it would be best if we were not in the position of having prejudged the matter. I shall, of course, keep you advised as to the progress in the matter.

Sincerely yours,

Attorney General.

PSF Justice

ADDRESS REPLY TO "THE ATTORNEY GENERAL" AND REFER TO INITIALS AND NUMBER

DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

February 8, 1937.

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Proposed Anti-Lynching Bill

Reference is made to your memorandum of January 29, 1937, stating that the President is very much interested in the anti-lynching bill drafted by the National Association for the Advancement of Colored People, and requesting that I study the bill with a view to determining whether it will survive the constitutional test. This I have done, and this memorandum points out in brief the objects of the bill, the extent to which it differs from the Dyer Act of 1922 and the Costigan-Wagner Bill of 1935, and considers the constitutional objections that may possibly be raised.

I.

The bill provides for:

(A). A criminal prosecution in the federal courts against an officer of a state or sub-division of a state who, having a duty, fails to (1) prevent the lynching, (2) protect a prisoner in his custody from a lynch mob, or (3) use due diligence in apprehending the members of the lynch mob. (Sec. 3)

(B). A civil liability enforceable in the federal courts against a sub-division of a state having police functions in which a lynching occurs or in which a person is seized who is subsequently lynched. If the lynching results in death, the suit is brought for the benefit of the next of kin. (Sec. 5)

(C). An extension of the Federal Kidnapping Statute to include the transportation in interstate commerce by the lynch mob. (Sec. 6)

(D). The investigation and prosecution of cases arising under A, B, and C, above, is to be conducted by the Attorney General of the United States upon a complaint to him.

II.

Chief Distinctions between the present Bill and Previous Anti-Lynching Bills

(A). The term "lynching" is here defined, and the term "mob" more clearly defined.

(B). Violence occurring during the course of labor disputes and violence occurring between [illegible] law-breakers (gangster and racketeer situations) are excluded.

(C). Actions against private citizens (such as the members of the lynch mob) are excluded, excepting of course such liability as may arise under the proposed amendment to the Lindbergh Law.

(D). The crime of conspiracy included in the Costigan-Wagner Bill is eliminated entirely.

(E). The civil action may be instituted by private counsel at the option of the person in whose behalf the action is brought.

(F). The Costigan-Wagner Bill made no provision for investigation of lynchings. This bill provides for investigation under the direction of the Attorney General.

(G). Previous bills have not covered the interstate transportation of the lynch victim .

(H). The elborate provisions for execution of the judgments provided in the previous bills and which, because of their "nuisance" character raised much protest in the Congress, have been simplified considerably in the present bill. (See the comparative table)

(I). The Costigan-Wagner Bill had attempted to give to the federal court jurisdiction upon a prima facie showing of a certain type that an unprejudiced jury would not be available in the state courts. This basis of federal jurisdiction is eliminated entirely in the present bill.

(J). There are other minor differences in the statute, all of which will appear in a comparative table which has been prepared and which is attached hereto, marked Exhibit "A".

III.

The Constitutional Basis for the Statute

The present bill rests for its authority on the due process and equal protection provisions of the 14th Amendment. That Amendment provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is thus apparent that the 14th Amendment is a prohibition upon action by the state denying the above-named rights. Section 5 of Article 14, however, provides:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The 14th Amendment is therefore more than a prohibition upon state action. It is a grant of power to the Federal Government to take affirmative action to prevent a denial of these rights by the states.

> "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."
>
> Ex parte Virginia, 100 U. S. 339, at 344.

See also to the same effect Strauder v. West Virginia, 100 U. S. 305, and United States v. Reese, 92 U. S. 214. In the former case the court said, at page 309:

> "The 14th Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms and those are as comprehensive as possible. This language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, whether for life, liberty, or property. Any state action that denies this immunity to a colored man is in conflict with the Constitution."

Congress took affirmative action in the enactment of Section 19 of the Criminal Code, punishing conspiracies to injure persons in the exercise of civil rights (18 U.S.C.A., Sec. 51). This statute has been upheld in numerous cases as an appropriate exercise of the power given by the 14th Amendment to the Congress. See the cases collected in Annotations to Section 51 of Title 18.

Another example of affirmative Congressional action pursuant to Section 5 of the 14th Amendment is found in Section 31 of the Judicial Code (Title 28 U.S.C., Sec. 74), which provides for the removal to the federal courts of causes commenced in the state courts in cases where persons have been denied civil rights. The validity of this section was upheld in Va. v. Rives, 100 U.S. 338, and Strauder v. West Virginia, supra.

Another illustration of action on the part of Congress of the type mentioned is found in Section 453 of Title 28, which, although written in negative terms, impliedly authorizes the federal courts to issue writs of habeas corpus where a person "is in custody in violation of the Constitution or of a law or treaty of the United States". This section was involved in the case of Moore V. Dempsey, 261 U. S. 86.

Another example of affirmative action by the Congress is found in the enactment of certain of the Civil Rights Statutes, notably Section 44 of Title 8, U.S.C., which punishes the exclusion of jurors on account of race or color from service in a state court. This was the statute involved in Ex parte Virginia, supra.

The Act Constituting a Denial of Equal Protection of the Law or Due Process of the Law By the State May Be An Unauthorized Act of a Subdivision or Officer

In the case of Home Telephone and Telegraph Co. v. United States, 227 U. S. 278, the United States Supreme Court held that the Federal District Court had jurisdiction of an injunction suit brought by a California corporation against the City of Los Angeles to prevent the putting into effect of a city ordinance establishing telephone rates, which rates the plaintiff alleged deprived him of his property without due process of the law. It was argued in the case that the 14th Amendment is directed against action by the states themselves, and that since the State of California had taken no action and since the City of Los Angeles was an agent of the state with but limited powers and that its powers did not include authority to pass a confiscatory rate ordinance, the action taken by the City of Los Angeles was not state action; in other words, that an unauthorized act by a subdivision of the state was not state action within the meaning of the 14th Amendment. The court said (page 288):

> "... In other words, the Amendment, looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, proceeds not merely upon the assumption that States acting in their governmental capacity in a complete sense may do acts which conflict with its provisions, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them and as a result might be used as the instrument for doing wrongs, provided against all and every such possible contingency. ... A state officer cannot on the one hand as a means of doing a wrong forbidden by the Amendment proceed upon the assumption of the possession of state power and at the same time for the purpose of avoiding the application of the Amendment, deny the power and thus accomplish the wrong. To repeat, for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer in virtue of state power is doing an act which if permitted to be done prima facie would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority."

In Yick Wo v. Hopkins, 118 U. S. 356, the plaintiff petitioned the Supreme Court of California for a writ of habeas corpus alleging that he was illegally confined following his conviction for violation of an ordinance relating to the licensing of laundries in the City of San Francisco, which ordinance, while fair on its face, was administered by the local officials in a discriminatory fashion. The case came to the Supreme Court of the United States upon writ of error to the Supreme Court of the State of California. It became necessary to determine whether the plaintiff had been deprived of his right of equal protection of the laws under the 14th Amendment by the action of the local officials in the enforcement of the statute. The court said (page 373):

> "For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by the court in Henderson v. Mayor of New York, 92 U. S. 275; Ex parte Virginia, 100 U. S. 339; Neal v. Delaware, 103 U. S. 370; and Soon Hing v. Crowley, 113 U. S. 703."

The administration of the licensing provisions in the ordinance was admittedly discriminatory. The court said (page 474):

> "No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except

> hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged."

Under the proposed bill (excepting, of course, the amendments to the Lindbergh Law), the civil liability of the subdivision and the criminal liability of the official does not arise until there has been a showing that the state, through its subdivision or official, has actually denied equal protection or due process by failure to perform a duty imposed upon the subdivision or official by state law. It would seem clear that one may be deprived of rights of equal protection and due process by non-action or neglect, as well as by affirmative acts of misfeasance resulting in such deprivation. In Home Telephone and Telegraph Co. v. Los Angeles, supra, the court said (page 286):

> ".... The provisions of the Amendment ... are generic in their terms, are addressed, of course, to the States, but also to every person whether natural or juridical who is the repository of state power."

And at page 287, the court continues:

> "The proposition (propounded by the District Court) is that the Amendment deals only with the acts of state officers within the strict scope of the public powers possessed by them and does not include an abuse of power by an officer ... ... inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer...".

The case of Tarrance v. Florida, 188 U. S. 519, is an illustration of an act by a state administrative officer resulting in denial of equal protection. In this case no state statute justified such denial. The defendant was prosecuted in the state court for murder. A motion to quash was entered on the ground that the county commissioners, in making up the jury panel, discriminated against colored men and allowed no

colored men on the panel. No complaint was made of the Florida law. The complaint was that the county commissioners, in executing the state laws, denied equal protection. The conviction was sustained in the state court and affirmed by the Supreme Court, but on the ground that the motion to quash did not lie by Florida authority and that the denial could be reached only by a plea in abatement. In discussing the acts of the state agents, the court said:

> "The law of the state is not challenged, but its administration is the complaint. Such an actual discrimination is as potential in creating a denial of equality of rights as a discrimination made by law."

See also to the same effect Neal v. Delaware, 103 U. S. 370. This point is even made clear in the Slaughterhouse Cases (frequently cited in the Senate debates on the Costigan-Wagner Bill as indicating the unconstitutionality of the bill), 83 U. S. at 346:

> "A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision (14th Amendment) therefore must mean that no agency of the state or of the officers or agents by whom its powers are exerted shall deny to any person within its jurisdiction the equal protection of the laws. Whoever by virtue of position under a state government deprives another of property, life, or liberty without due process of the law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition, and if he acts in the name of and for the state, and is clothed with the state's power, his act is that of the state."

Cases Which were Relied upon in the Debates on Previous Anti-Lynching Bills to Show the Unconstitutionality of Such Proposals

The four cases principally relied upon to show the Anti-Lynching measures unconstitutional were:

The Slaughterhouse Cases, 16 Wall. 36
The Civil Rights Cases, 109 U. S. 3
Barbier v. Connolly, 113 U. S. 27
United States v. Cruikshank, 92 U. S. 542.

The Slaughterhouse and Barbier cases involved alleged violations of the 14th Amendment on the part of the states. The Civil Rights cases and the Cruikshank case involved federal statutes.

It is submitted that none of the four cases which were cited as showing the unconstitutionality of the Costigan-Wagner Bill are applicable to the bill now under discussion. The distinction between the present bill and the Costigan-Wagner Bill which renders these cases inapplicable is that, where the Costigan-Wagner Bill imposed a criminal liability upon individual members of the mob, the present bill imposes no liability upon such private citizens but reaches only officials of the state and governmental subdivisions--agencies of the state.

(A). Civil Rights Cases

These cases involved Sections 1 and 2 of the Civil Rights Act of 1875, which made it a federal offense to deny equal accommodations in public conveyances, inns, theaters, etc., to persons on account of their race or color. The court held that the 13th and 14th Amendments did not give to Congress the power to substitute its acts for the laws of the states acting directly on individual citizens. The court said (page 11):

> "It is State action of a particular character that is prohibited [by the Amendment]. Individual invasion of individual rights is not the subject matter. ... It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment."

At page 14, the court continues:

> "Inspection of the law (Sections 1 and 2 of the Civil Rights Act) shows that it makes no reference whatever to any supposed or apprehended violation of the Fourteenth Amendment on the part of the States. It is not predicated on any such view. ... In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authorities."

The case, therefore, is no authority for the invalidity of the present bill. In fact, the language of the court indicates that the present bill would be upheld.

(b). United States v. Cruikshank

This case involved an indictment under Section 51, Title 18, U.S.C., which created the offense of conspiring to prevent the exercise of rights guaranteed by the constitution. The court treated the section as an implement of the clause of Section 1 of the 14th Amendment which provides that no state may abridge the rights and immunities of any citizen of the United States. It held that common protection of life and property against acts of private individuals remains within the rights of state citizenship, and was not included in the rights of United States citizenship.

(c). The Slaughterhouse Cases

These cases also involved violation of Clause 1 of Article 14, relating to the privileges or immunities of citizens. The court held that a monopoly in slaughtering which had been granted by the State and the City of New Orleans was within the police power of the state and did not violate any privilege or immunity of federal citizenship. The case is devoted to a distinction between the rights involved in state citizenship and the rights involved in federal citizenship. The proposed bill does not depend upon any theory of United States citizenship as distinguished from state citizenship. The Slaughterhouse cases are, therefore, not in point and in this connection it should be pointed out that the language of Section 1 of the 14th Amendment relating to privileges and immunities is worded quite differently than the language in the other sections of the 14th Amendment. Where Section 1 provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens", Clauses 2 and 3 of Section 1 provide "nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Whereas the word "abridge" connotes action, the word "deny" connotes inaction. Whereas the first clause says "No state shall make or enforce any law...", the second clause says "No state shall deprive ... or deny". The difference in phraseology of the three clauses of Section 1 is significant.

(d). Barbier v. Connolly

The familiar rule is announced that the 14th Amendment does not prohibit states from the exercise of their police functions and the imposing of special restrictions, (In this case an ordinance relating to the hours during which laundries shall operate) when such exercise is not discriminatory. This familiar rule has no bearing on the constitutionality of the proposed Anti-Lynching bill.

Hodges v. United States, 203 U. S. 1, involved an indictment against a private citizen under Section 51 of Title 18 for conspiring to prevent negroes from working. The court held that an indictment against a private individual for private wrong could not stand in a federal court where the constitutional basis of the statute was the 13th Amendment. The court said, in referring to the 13th, 14th, and 15th Amendments:

> "They are restrictions upon state actions, and no action on the part of the state is complained of."

Powell v. United States, 151 F. 648, cited by opponents of the Costigan-Wagner Bill, and United States v. Wheeler, 254 U. S. 281, both were indictments against private individuals.

The Bill is not Objectionable as Infringing on the Powers of the States Reserved by the 10th Amendment

Granting the power of the Federal Government to enact the bill as a measure designed to enforce the provisions of the 14th Amendment, it follows that no objection could be made to the measure upon the ground that the statute deals with a matter customarily reserved to state sovereignty prior to the adoption of the 14th Amendment. The 14th Amendment, like other provisions of the Constitution, was a delegation to the Federal Government of powers. To the extent that powers were delegated by that amendment, sovereignty was to an extent surrendered by the states. As is said in Hamilton v. Kent Distilleries Co., 251 U. S. 146, at page 156:

> "That the United States lacks the police power and this was reserved to the states by the Tenth Amendment is true, but it is none the less true that when the United

States exerts any of the powers conferred upon it by the Constitution a valid objection cannot be based on the fact that such exercise may be attended by the same methods which attend the exercise by a state of its police powers or that it may attend a similar purpose."

Likewise, in Ex parte Virginia, 100 U. S. 339, at 346, the same doctrine is announced:

"Nor does it make any difference that such legislation is restrictive of what the State might have done before the constitutional amendment was adopted. The prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. Such enforcement is no invasion of State sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact. ... Indeed, every addition of power to the general government involves a corresponding diminution of the governmental powers of the States. It is carved out of them."

There Is No Constitutional Objection to a Provision That The U. S. May Sue in the Federal Courts

In United States v. Texas, 143 U. S. 621, the State of Texas challenged the right of the United States to sue it in a United States Court. The entire subject is there discussed fully by the court, and the right of the United States to sue in its own court is vindicated. Other instances of suits by the United States in Federal courts against States are United States v. North Carolina, 136 U. S. 211; United States v. Michigan, 190 U. S. 379.

A subdivision of a State may be sued in the Federal Courts. See Lincoln County v. Luning, 133 U. S. 529. And the 11th Amendment, which divests Federal Courts of jurisdiction over the suits of citizens of one state against another state, does not apply to a subdivision of a state. See Lincoln County v. Luning, supra; Port of Seattle v. Oregon and W.R.R., 255 U. S. 56; Chicot v. Sherwood, 148 U. S. 529; Pearl River County v. Wyatt Lumber Co., 270 F. 26; and Mercer County v. Cowles, 74 U. S. (7Wall) 118.

The Provision for Civil Liability of a Governmental Subdivision for Mob Violence is not Unreasonable nor Arbitrary

The imposition of liability to the victims of mob violence on the subdivision of the state in which mob violence occurs is a type of remedy of long standing, and has been upheld by the Supreme Court of the United States and by the Supreme Courts of a number of the States. Such liability may be absolute, and there is nothing in the Constitution to require that it be dependent upon proof of negligence on the part of the officers of the subdivision. The leading case on the subject is City of Chicago v. Sturges, 222 U. S. 313. The following state cases have also upheld such legislation:

Dale County v. Gunter, 46 Ala. 111
DeKalb v. Smith, 47 Ala. 407
Cantey v. Clarendon County, 101 S. C. 141
Atchison v. Twine, 9 Kan. 350
Cherryvale v. Hawman, 80 Kan. 170
St. Louis Railway v. Chicago, 242 Ill. 178
Darlington v. Mayor of New York, 31 N. Y. 189
Commonwealth v. Church, 62 Ohio State 318
Allegheny County v. Gibson, 90 Pa. State 397.

See also on this general subject 44 L. R. A. 358, and Ann. Cas. 1913(b) page 1351.

Objections to the Costigan-Wagner Bill which are Inapplicable to the Proposed Bill

(1). It was objected that the bill was an infringement of the sovereignty of the states. This objection has been adequately dealt with in this memorandum. It has been shown that the bill is a proper exercise of the power granted to Congress to enact legislation to prevent denials of the rights guaranteed by the first Section of the 14th Amendment.

(2). Senator Black, of Alabama, and others, objected to the Costigan-Wagner Bill on the ground that it would be applicable to labor disputes. This objection is inapplicable to the present statute, which specifically exempts violence growing out of labor disputes.

(3). Senator Borah, and others, objected to the Costigan-Wagner Bill on the ground that if the Federal Government was to be given power to punish lynching, why should it not be given the power to prosecute all murders, whether by a mob or by a single individual. The answer to this objection is that the present bill does not punish members of the mob, and further, that there is a legitimate distinction between mob murder and individual crimes of violence. The argument is predicated upon the false assumption that the states have as effective laws against lynching as they have against other crimes.

Appendix "B", attached hereto, shows that only 9 states make lynching itself a crime. In a 30-year period only 8/10 of one per cent of the lynchings were followed by convictions, according to Chadbourn in his recent book entitled "Lynching and the Law". This figure may be contrasted with those compiled by Brearley in "Homicide in the United States", in which it is shown that homicide is punished in 44% of the cases where it occurs. In other words, there is a breakdown in the local law so far as the prosecutions of lynchers are concerned. In only 8 states have there been any convictions for lynching, and in these 8 states the percentage is as follows: Alabama 4%; Georgia 8%; Oklahoma 3%; Virginia 4%; Minnesota 33%; Texas 7%; Illinois 7%; and Missouri 3%. These figures are taken from Chadbourn's book, page 13, and were taken from the files of the Tuskegee Institute.

That there has been in practice a denial of equal protection in the case of lynching is clear from the figures of the Southern Commission on the Study of Lynching in its 1931 Report, page 14. A study was made of 254 lynchings covering a period from 1921 through 1929. Of these 74, or 29.1%, were taken from peace officers outside of jails. 68, or 26.8% were taken from the jail. This indicates the denial of equal protection. That officers can prevent lynchings when they are of a will to do so is indicated by the following table from Raper, "The Tragedy of Lynching", page 484, showing the number of lynchings prevented, by the year, from 1914 to 1932.

YEAR	NO. PERSONS LYNCHED	NO. LYNCHINGS PREVENTED
1914	52	16
1915	67	19
1916	54	18
1917	38	18
1918	64	13
1919	83	37
1920	61	56

YEAR	NO. PERSONS LYNCHED	NO. LYNCHINGS PREVENTED
1921	64	72
1922	57	58
1923	33	52
1924	16	45
1925	17	39
1926	30	33
1927	16	42
1928	11	24
1929	10	27
1930	21	40
1931	13	62
1932	8	33
TOTAL	715	704

(4). It was argued by some of the Southern Senators that the Costigan-Wagner Bill was directed against the Southern States. The answer to that is that the problem is national in character, as indicated by a list of the lynchings from 1900 to 1931, as reported by the Tuskegee Institute:

STATE	TOTAL	STATE	TOTAL
Alabama	132	Michigan	1
Arizona	4	Minnesota	3
Arkansas	127	Mississippi	285
California	12	Missouri	41
Colorado	7	Montana	9
Connecticut	-	Nebraska	3
Delaware	1	Nevada	3
D. C.	-	New Hampshire	-
Florida	170	New Jersey	-
Georgia	302	New Mexico	6
Idaho	2	New York	-
Illinois	13	North Carolina	35
Indiana	8	North Dakota	5
Iowa	5	Ohio	5
Kansas	8	Oklahoma	48
Kentucky	68	Oregon	4
Louisiana	172	Pennsylvania	1
Maine	-	Rhode Island	-
Maryland	6	South Carolina	71
Massachusetts	-	South Dakota	2

STATE	TOTAL	STATE	TOTAL
Tennessee	76	Washington	2
Texas	201	West Virginia	13
Utah	1	Wisconsin	1
Vermont	-	Wyoming	9
Virginia	26	TOTAL	1886

(5). Other minor objections were made to the act, virtually all of which are corrected in the present bill.

Suggested Changes in the Proposed Bill

(1). Section 6 of the proposed act makes reference to the Federal Kidnapping Statute (18 U.S.C.A., Sec. 408), and provides that the crime there defined shall include "the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation".

It is felt that this is an unfortunate method of amending the Kidnapping Statute—that is, by simply referring to it without indicating at what place in the Kidnapping Statute the suggested words are to be inserted. Furthermore, it is felt that the Kidnapping Statute should not be made so broad as to cover transportation for purposes of punishment, correction, or intimidation. For example, if the statute were worded in such manner, it would become a capital crime for a police officer to take a suspect across the state line for the purpose of bringing him to justice on a state charge. Other examples might readily be cited.

It is therefore suggested that, so far as the amendment to the Lindbergh Law is concerned, a separate bill be drafted, amendatory of the statute, inserting after the phrase "a parent thereof" the following:

> " ... and whoever shall knowingly transport or cause to be transported, or aid or abet in transporting in interstate or foreign commerce, any person or persons for the purpose of lynching ..."

The Kidnapping Statute with the suggested amendment inserted is set forth as Appendix "C" of this memorandum.

(2). The remaining suggestions are not of primary importance. They are merely suggested improvements in the wording of the bill.

(a). It is suggested that lines 6, 7, 8, and 9, of page 1, be amended to read as follows:

> "For the purpose of better assuring under said amendment equal protection to the lives and persons of citizens and due process of law to all persons charged with or suspected or convicted of any offense within the jurisdiction of the several states."

The reason for this suggested change is that any reference to the rights of "citizens of the United States" is unfortunate, in view of the decisions of the courts which have held those rights to be decidedly limited in character. The constitutionality of this statute does not rest upon the first phrase of Section 1 of the 14th Amendment, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(b). At line 19 of page 1, strike out the phrase "of the United States", for the reason above indicated.

(c). At line 21 of page 1, strike out the word "criminal", in view of the fact that persons are sometimes lynched without having committed any criminal offense against the state law or without having been charged with the commission of a criminal offense.

(d). On page 2, line 10, strike out the word "incidental" and insert the phrase "or any incident".

(e). At line 16, page 2, insert the word "wilfully" before the word "neglected", and at line 17 delete the word "wilfully", so as to make the word "wilfully" applicable to "neglected, refused, or failed".

(f). The same change should be made at lines 20 and 21 and at lines 24 and 25.

(g). At line 25, page 2, strike the phrase "in violation of his" and insert in place thereof the words "having the".

(h). At page 5, line 9, insert at the end thereof the word "wilfully", and strike the word "wilfully" from line 10.

(i). The same change should be made with reference to lines 13 and 14.

(j). Insert at line 17, after the word "United States" the phrase "or his duly appointed representative".

(k). On page 5, change the lines 11, 12, and 13 to read as follows:

> "Tried in any division of the District as he may designate in such order."

The proviso contained in lines 12 and 13 would be stricken. This change would permit the judge to direct that the trial be had in the division of the District in which the least prejudice prevailed.

(l). Change lines 20, 21, and 22, page 5, to read as follows:

> "Furtherance of protection of lives and persons of citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice and equal protection of due process of law."

The suggested changes in the wording have been made in the copy of the Act, which is attached hereto and marked Exhibit "D".

While none of the above-indicated changes in wording are essential to render the Act valid or constitutional, it is nevertheless believed that they do improve the wording of the bill.

Gordon Dean.

Bates Booth.

William T. Connor.

APPROVED:

BRIEN McMAHON,
Assistant Attorney General.

APPENDIX "A"

COMPARISON OF THE PROPOSED BILL WITH THE COSTIGAN-WAGNER AND DYER BILLS

Proposed Bill (1937)	Costigan-Wagner Bill (1935)	Dyer Act (1921)
1. Enacted to enforce 14th Amendment. State deemed to have denied victim of lynching equal protection and due process when it or its subdivision fails to employ lawful means to protect against lynching or unlawful abduction followed by lynching.	2. When state or subdivision fails to protect life or person against mob, whether by preventing its acts or punishing its members, it has denied due process and equal protection.	2. State or subdivision which fails to protect life against mob is deemed to have denied equal protection of law.
2. When 3 or more exercise physical violence without authority to correct or punish any person in custody or suspected, charged with or convicted of any offense, with purpose of preventing apprehension, trial or punishment by law, it constitutes a "mob". Such mob violence causing death or serious injury shall constitute "lynching". Provided, "lynching" not to include gangster or labor violence.	1. "Mob or riotous assemblage": when 5 or more acting in concert kill or injure any person for purpose of preventing apprehension, trial or punishment by law.	1. "Mob or riotous assemblage": when 5 or more deprive person of life without authority, as punishment for offense.
3. When lynching occurs, officer with duty or authority to protect, who willfully fails and officer having custody who willfully fails to protect person from lynching and officer who having duty fails to make all diligent effort to apprehend, keep and prosecute members of mob, guilty of felony: up to 5 years and/or $5,000.	3. (a) Officer having duty to protect, or having suspect in custody fails to protect from death or injury, or having duty to apprehend members of mob, fails to: felony, up to 5 years and/or $5,000. (b) Officer having prisoner in custody and members of mob conspiring together to take from custody to injure or kill: felony, 5 to 25 years.	3. Officer who having duty fails or refuses to make all diligent efforts to prevent death, or fails duty of apprehending members of mob: felony, up to 5 years and/or $5000. Any person who participates in mob taking prisoner from custody of officer, or prevents apprehension suspect & puts such person to death: felony, 5 years to life.

Proposed Bill (1937)	Costigan-Wagner Bill (1935)	Dyer Act (1921)
	4. U.S. District Court where person injured or killed shall have jurisdiction to try & punish <u>according to state law</u> any person participating in mob. Provided: it appears to court: (1) state officers have failed to apprehend, prosecute or punish offenders, or (2) jurors obtainable for state court are so prejudiced that there is probability that such persons will go unpunished. Failure for 30 days to apprehend or indict, or failure to diligently prosecute, shall constitute prima facie evidence of such failure.	4. Any person participating in mob putting person to death: felony, 5 years to life.
4. When lynching occurs and information on oath is submitted to the Attorney General of the U. S. that officers have failed as above, Sec. 3, the Attorney General shall cause investigation to be made.		
5. (1) State subdivision <u>having police functions</u> is responsible for lynching in its jurisdiction & for lynching outside jurisdiction following abduction within; is liable to victim injured, or if he is dead, to next of kin, determined by intestate laws of decedent's domicile. Compensation $2000 to $10000. Provided: governmental subdivision may by affirmative defense & preponderence of evidence prove due diligence by its officers. And provided: satisfaction of judgment against one subdivision is bar as to any other. (2) Liability enforceable by U. S. District Court in district where governmental subdivision is. Action brought by Attorney General of U.S. for use of party in interest, or by counsel of victim's choosing, without prepayment of costs.	5. County where injury or death by mob occurs by reason of failure of state officers, is liable to the person injured, or his estate or legal representative if dead, for $2000 to $10000 distributed according to the laws of the state where death occurs. D.C. where injury or death oddurs has jurisdiction; action to be brought by U.S. District Attorney. Officer failing to comply with order of court guilty of contempt.	5. County in which person put to death by mob subject to forfeit of $10000 action therefor in name of U.S. for use of family. If no family forfeit goes to U.S. Action in U. S. District Court by U.S. District Attorney.

Proposed Bill (1937)	Costigan-Wagner Bill (1935)	Dyer Act (1921)
Payment enforceable by processes available under state law, or by use of contempt proceedings against officer failing to execute order of court. Cause of action survives death. Judgment exempt from creditors. (3) Judge may try suit any place in district, but not within defendant governmental subdivision.	Court may levy on county's property. Judgment exempt from creditors.	Court may levy on county property, compel levy and collection of tax or issue mandamus to collect judgment. Officers failing to execute order liable for contempt.
6. Lindbergh Law amended to include interstate transportation of persons abducted for punishment, correction or intimidation.		
	6. County where seized and county where injured or killed jointly and severally liable. Judge may designate any place in district for trial.	Each county through which victim transported liable jointly and severally. District of Columbia and Louisiana parishes deemed to be counties.
7. Purpose of Act: protection of lives and persons of U.S. citizens against violent interference with orderly processes of justice and against dereliction of duty by states, their subdivisions and officers.		
Separability clause	7. Separability clause	7. Separability clause.

APPENDIX B

COMPILED BY INTERSTATE REFERENCE BUREAU FROM SUMMARY OF STATUTES APPEARING IN "LYNCHING AND THE LAW", BY J. H. CHADBOURN, UNIVERSITY OF NORTH CAROLINA PRESS, 1933

	Punishment prescribed for			Maximum liability of city or county for mob violence causing		Peace officer who permits lynching removed by	Prisoner may be sent to another Co. on order of
	Lynching	Aiding A Lynching	Mob Violence	Personal Injury	Property Damage		
Alabama	5 yrs.-death	1-21 yrs				Impeachment	
Arkansas *					(2)		
California				(2)	(2)		
Connecticut							Governor
Florida							Court
Georgia	1 yr.-death						Court
Idaho			30 days-5 yrs (1)	$5000	$5000	Governor	Sheriff
Illinois						Conviction	Court
Indiana	life-death	2-21 yrs		(2)	(2)	Coroner	Sheriff
Kansas	5 yrs-life	5 yrs-life			(2)(3)	Governor	Court
Kentucky	life-death	life-death	1-15 yrs				Court
Louisiana					(4)		Court
Maine					(2)(3)		
Maryland					(4)		
Massachusetts							Court
Michigan				$7500		Governor	
Minnesota							Court
Mississippi					(2)		Sheriff
Missouri					(2)		Court
Montana				$7500			
Nebraska							Governor
Nevada					(2)		Court
New Hampshire			30 days-5 yrs (1)	$5000		Governor	Court
New Jersey							Court
New Mexico					(2)		
New York				(2)			
North Carolina	2-15 yrs.(1)			$5000			
Ohio				$10,000			
Pennsylvania	death	death	death				

Rhode Island				(4)			Court
South Carolina				$2000(5)		Conviction	
Tennessee						Conviction (6)	Sheriff
Vermont							Governor
Virginia	death	death	1 yr-death				
West Virginia	death	death	30 days-5 yrs (1)	$5000			
Wisconsin					(2)		

(1) Also a fine
(2) Amount of damage done
(3) If preventable
(4) Three-fourts of damage done
(5) Minimum liability
(6) Applies only to sheriff

* Special terms of court for inflamatory offenses (Arkansas)

APPENDIX "C"

Suggested Amendment of the Kidnapping Statute to Cover Lynching in Interstate Commerce

Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, and whoever shall knowingly transport or cause to be transported, or aid or abet in transporting in interstate or foreign commerce, any person or persons for the purpose of lynching, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: Provided, That the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

PsF Justice

GOLDEN W. BELL
ASSISTANT SOLICITOR GENERAL

Department of Justice

Washington

March 12, 1937.

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Veto Power of the President.

Reference is made to your memorandum of March 10, 1937, relative to the veto power of the President.

The veto power is conferred upon the President by Article I, Section 7, Clause 2 of the Constitution, which reads:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

It is stated in Black on Constitutional Law, 2d Edition (1897), p. 98:

"* * * At present, the chief magistrate must act upon the 'bill' as a whole. An appropriation bill or a revenue measure may consist of a great number of separable items, some of which, in the judgment of the executive, may be unconstitutional or inexpedient. Yet he must either approve or reject the entire act. He has no power to veto any individual item."

Many State Constitutions authorize the executive to veto items in appropriation bills, and in some states he may veto items in any bill. In other states the constitutional power of veto is similar to that contained in the Federal Constitution. In a few states the executive has no veto power.

The President's power of veto does not seem to have been passed upon by the courts. Similar powers vested in Governors by State Constitutions, however, have been passed upon by the courts; and so far as I have been able to find it has been universally held that where the power granted by the State Constitution, like that granted in the Federal Constitution, refers to the bill as a whole and does not go further and grant the power to veto separate items of the bill, the executive must either approve or disapprove the bill as a whole. There is some conflict in these decisions as to the legal effect of an attempt upon the part of the executive to qualify his approval. Some cases hold that where the executive attempts to approve the bill with certain exceptions, and to disapprove the items excepted to, the whole bill becomes law, since the only thing required of the executive was to sign the bill, and, having signed it, he cannot qualify his signature or approval. Other cases hold that under such circumstances the whole bill fails, since it is only the bill as enacted by the legislature that the executive is authorized to approve or disapprove, and by qualifying his approval he has not approved the bill as so enacted. The latter view is the one more generally accepted by the courts. (See 41 Am. Law Review, pp. 384-386.)

I have been unable to find any direct authorities on the question whether the Congress by declaring each item in a bill a separate act or bill, or by some other legislative device, may provide a legal way for the President to veto an item in the bill without vetoing the entire bill. I am of the opinion, however, that the Congress may not thus provide a legal way for the President to veto an item in a bill. The President's power to veto is a constitutional power. That power is to veto the

"bill", and not a part thereof. Any effort to extend this constitutional power by statute would be open to serious objection. A declaration by the Congress that each item in a bill should be deemed a separate act or a separate bill would not necessarily make it such in a constitutional sense. Therefore, any attempt to exercise the veto power in connection with such an act, by vetoing some items thereof and approving others, might well be held to be an exercise of the veto power as granted by the Constitution and might result, under the rule more generally adopted by the court, in rendering the entire legislation involved a nullity.

Moreover, often the most objectionable items in general appropriation and revenue bills are inserted into such bills as "riders" for the purpose of preventing the President from vetoing the items, as he well might do if they were presented in separate bills. In cases where this is not true, the objectionable items have received the approval of the majority in both houses. Aside from the constitutional question, therefore, it is unlikely that the Congress would include in such a bill any provision which was intended to authorize the President to exercise his veto power in connection with such items.

Respectfully,

Golden W. Bell

GOLDEN W. BELL,
Assistant Solicitor General.

PSF Justice.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

AH:eb

March 23, 1937

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Veto of individual items in Appropriation Bills.

This is in response to your memorandum of March 13, relative to the question as to whether it is feasible to work out some way by which it would be possible to enable the President to veto individual items of Appropriation Bills.

Many State Constitutions contain express provisions permitting the Governor of the State to disapprove individual items. While the power can, of course, be conferred upon the President of the United States by a Constitutional Amendment, I think the same end can be accomplished by a change in Congressional rules of procedure, in the manner which will be hereinafter discussed in this memorandum.

The problem was not presented in the early years of the Republic, because originally it was not customary for the Congress to pass long itemized Appropriation Bills, but to adopt measures containing a few general

blanket lump sum grants, which could be allocated or apportioned by the Executive in the manner that appeared desirable to him. Neither was it customary to insert legislative provisions or "riders" into Appropriation Bills. Long itemized appropriations and legislative riders are later developments.

President Grant in his Annual Message to the Congress, of December 1, 1873, recommended a Constitutional Amendment to authorize the President to approve so much of any measure passing the two Houses of Congress as his judgment might dictate, without approving the whole. His recommendation reads as follows (Richardson, Messages and Papers of the Presidents, Vol. 7, p. 242):-

> To authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be subjected to the same rules as now, to wit, to be referred back to the House in which the measure or measures originated, and, if passed by a two-thirds vote of the two Houses, then to become a law without the approval of the President.

President Hayes, in a Veto Message of May 4, 1882, deplored "the dangerous practice of tacking upon appropriations bills general and permanent legislation." He observed that this practice did not prevail until forty years after the adoption of the Constitution. (Richardson, Messages and Papers of the Presidents, Vol. 7, pp. 591-2.)

In his Annual Message of December 4, 1882, President Arthur suggested that grants of money for diverse and independent schemes of internal improvement should be made the subjects of separate and distinct legislative enactments. He deprecated the practice of grouping them in one bill, as it was customary to do in the River and Harbor Bills. (Richardson, Messages and Papers of the Presidents, Vol. 8, p. 138.)

Numerous Constitutional Amendments have been introduced from time to time seeking to confer upon the President the power to veto individual items or legislative riders in Appropriation Bills, but none of these amendments appears to have reached the stage of being submitted to the States. (Herman V. Ames, The Proposed Amendments to the Constitution of the United States During the First Century of its History, pp. 132-133.)

Two amendments have been recently introduced on this subject, one by Senator McCarran (S.J. Res. 4), and one by Senator Vandenberg (S.J. Res. 6).

I venture to suggest, however, that the object can be accomplished without a Constitutional Amendment, provided, of course, the cooperation of the House of Representatives can be secured.

It seems to me that a rule analogous to that adopted by the House two years ago in connection with omnibus claims bills might be adopted for appropriation bills, and thereby the President could separately consider individual appropriations and legislative provisions now contained in appropriation bills.

Rule XXIV, Par. 6, of the House of Representatives, which deals with omnibus bills, provides for the following procedure. Individual private bills are combined by the Committee to which they have been referred into a single omnibus bill, each of the constituent bills constituting a separate paragraph in the omnibus bill. The omnibus bill is voted upon as a whole, opportunity, of course, being given for amendments to the various paragraphs. After the bill is passed as a whole, it is separated into the several bills of which it was composed, and such original bills are then treated and handled as separate bills. Such items as originated in the House then go to the Senate as separate bills, and such items as originated in the Senate, and thus have received the approval of both Houses, are submitted to the President as separate bills. Eventually, each of the

individual items of which the omnibus bill is composed is submitted to the President in the form of a separate bill.

The pertinent provision of the above-mentioned House Rule reads as follows:

> Upon passage of any such omnibus bill, said bill shall be resolved into the several bills and resolutions of which it is composed, and such original bills and resolutions, with any amendments adopted by the House, shall be engrossed, where necessary, and proceedings thereon had as if said bills and resolutions had been passed in the House severally.

I suggest that a somewhat similar rule could be adopted by the House in connection with appropriation bills. Such a rule could provide that upon the passage of an appropriation bill each paragraph or item thereof shall be engrossed as a separate bill and go to the Senate as a separate bill.

If this rule were adopted, the cooperation of the Bureau of the Budget and the Appropriations Committee would be necessary, so as to paragraph the various items separately.

Two possible objections occur to me to this plan. First, it may be difficult to induce the House of Representatives to adopt such a rule, as thereby it would lose much of its control over appropriations. Second, it would entail a considerable amount of additional clerical work on the part of the staff of the two Appropriations Committees and

the engrossing and enrolling clerks of the two Houses. This clearly is not an insuperable objection, for the aim to be achieved is obviously worth the extra labor.

There would still be the problem that frequently recurs resulting from legislative riders tacked on in the form of provisos to items of appropriations. Such so-called riders can be stricken from an appropriation bill on a point of order made on the floor, by a single member, because they violate the Rules of the House which prohibit legislation in appropriation bills. It is only through acquiescence and failure on the part of anyone to object that legislative riders find their way into appropriation bills. This can be avoided by securing the cooperation of some member or group of members of the House in sympathy with the Administration, who would take upon themselves the task of raising points of order against any objectionable legislative riders in appropriation bills.

Respectfully,

Alexander Holtzoff

Alexander Holtzoff.

PSF Justice

/

Office of the Attorney General
Washington, D.C.

File

March 27, 1937.

My dear Mr. President:

Upon receipt of the papers which Governor Graves had left with you in connection with the decision of the Supreme Court of Alabama sustaining the constitutionality of the Alabama Unemployment Compensation Law and Title IX of the Federal Social Security Act, I wrote a letter to the Governor, a copy of which is inclosed.

In addition, Honorable Lawrence H. Lee, Legal Adviser to the Governor, wrote to me in connection with the same subject, and the Solicitor General replied to him. I also inclose for your information copies of this correspondence.

Respectfully yours,

Attorney General.

The President,
The White House.

PSF Justice

COPY

March 26, 1937.

Honorable Bibb Graves,
Governor of Alabama,
Montgomery, Alabama.

Dear Governor:

The President has told me of the conversation that he has had with you regarding the recent decision of the Supreme Court of Alabama in the case of Beeland Wholesale Company v. Jacob L. Kaufman et al., sustaining the constitutionality both of the Alabama Unemployment Compensation Law and Title IX of the Federal Social Security Act.

It is extremely gratifying to have this favorable decision, and of course the reasoning will be of assistance to the Government in presenting its cases under the Social Security Act to the Supreme Court of the United States. However, I doubt whether it will serve any useful purpose to encourage any private litigants to take this case on appeal to the Supreme Court of the United States. It is my understanding that every issue in the Alabama state court case which could be presented to the Supreme Court of the United States on appeal is already raised either in Carmichael v. Southern Coal & Coke Company, United States Supreme Court, October Term, 1936, No. 724, or Charles C. Steward Machine Company v. Davis (to be docketed in the Supreme Court of the United States some time this week). If this understanding is correct, an appeal in the Beeland case would merely duplicate issues already before the Court. Moreover, even if the appeal in the Beeland case were taken at once, it seems unlikely that it will be heard in advance of the two other cases to which I have already referred.

Nonetheless, I deeply appreciate, as I know the President does, the cooperation which the State of Alabama is giving to the Federal Government in this most important litigation.

Sincerely yours,

Attorney General.

March 24, 1937

Honorable Lawrence H. Lee
Legal Adviser to the Governor
Executive Department
Montgomery, Alabama

Dear Sir:

The Attorney General has referred to me your letter of March 22, 1937, relating to and enclosing a copy of an opinion rendered by the Supreme Court of Alabama on March 18, 1937, in the case of Beeland Wholesale Company v. Jacob L. Kaufman, et al.

It is my understanding that every Federal issue and every issue arising under the Constitution of the United States which were presented in that case are raised either in Carmichael v. Southern Coal & Coke Company, United States Supreme Court, October Term, 1936, No. 724, or Charles C. Steward Machine Company v. Davis (to be docketed in the Supreme Court of the United States some time this week). If this understanding is correct, I can see no advantage to the Government of the United States in encouraging those private persons whose contentions were rejected in the Beeland case (and to whom you refer) to take an appeal to the Supreme Court of the United States. Their appeal, even if it were taken at once, could not be heard in advance of the two cases to which I have just referred and, moreover, would not raise any issue not already before the Court.

Nonetheless, the Department of Justice appreciates the suggestion that you were good enough to make, and we know that in the handling of this social security and other problems, cooperation between state and national governments is valuable and, indeed, almost indispensable for effective presentation of legal issues.

Very truly yours,

Solicitor General.

C O P Y

STATE OF ALABAMA
EXECUTIVE DEPARTMENT
MONTGOMERY

March 22, 1937.

Hon. Homer S. Cummings,
Attorney General,
Washington, D. C.

My dear Sir:

At the suggestion of the President of the United States, the Governor of Alabama has requested that I enclose you a copy of the opinion of our Supreme Court holding the Unemployment Compensation Law of Alabama constitutional, both from the standpoint of the Alabama Constitution as well as the Constitution of the United States, and I am doing so.

The Givernor thinks that he can secure an appeal to the United States Supreme Court by some of the parties interested at such time and under such circumstances as may be deemed advisable by your Department.

If you will give this matter such consideration as you deem proper and communicate with the Governor's office your views as to an appeal, we will endeavor to arrange it according to the wishes and at such time as deemed advisable by you.

Very respectfully,

Lawrence H. Lee

Legal Adviser to the Governor.

PSF Justice

—1

THE ATTORNEY GENERAL
WASHINGTON

March 29, 1937.

File

My dear Mr. President:

Sometime ago you discussed the question of whether the President should have power to veto an item in an appropriation bill. I caused an inquiry to be made into this subject and enclose you herewith a memorandum from the Assistant Solicitor General relative to the general scope of the veto power in such matters.

I also enclose a memorandum suggesting a possible solution of the problem. Although the plan indicated is cumbersome and very likely not practically feasible, it is perhaps worth thinking about.

Sincerely yours,

Homer Cummings

The President,
The White House.

BF Justices

July 29, 1937.

The President,
The White House.

My dear Mr. President:

Enclosed herewith you will find a memorandum of law prepared by Judge Townsend with reference to the Presidential power to make a recess appointment of a Justice of the Supreme Court.

You will note that his conclusion confirms the oral opinion I gave to you a few days ago. Unless you desire it, there would seem to be no necessity for preparing a formal opinion as the overwhelming weight of authority and the unbroken practice are to the same effect. You will also note that the Congress, by retaining on the Statute books the Act of February 9, 1863, now Revised Statute 1761, has, in effect, given a Congressional interpretation confirmatory of the power. I think you will find the Townsend memorandum exceedingly interesting, especially the historical references in the addenda.

You will observe that there have been nine instances in which Justices of the Supreme Court have been commissioned "during the recess of the Senate." I have marked with a minus sign the instances in which such Justices have received such commissions but refrained from taking a seat upon the bench until after actual Senatorial confirmation. I have marked with a plus sign those instances in which Justices receiving a recess commission have taken their places upon the bench prior to Senatorial confirmation. There are six instances of the kind first mentioned and three instances that fall in the other class. Amongst the three instances last mentioned was that of John Rutledge who subsequently failed of Senatorial confirmation. Why six Justices, who received recess commissions, refrained from taking advantage of them, but preferred to await Senatorial confirmation in due course, I can only surmise.

Sincerely yours,

Signed
HOMER CUMMINGS

Attorney General.

Encl.

PSF Justice
file
personal

Office of the Attorney General
Washington, D.C.

August 14, 1937.

The President,

The White House.

My dear Mr. President:

The enclosed letter from Judge Groner will interest you, I am sure. It deals with the jurisdiction and type of work performed by the United States Court of Appeals for the District of Columbia. It is more or less along the lines of the memorandum about the Court that I sent you some days ago.

Sincerely yours,

Encl.

P&F Justice

THE GREENBRIER AND COTTAGES
WHITE SULPHUR SPRINGS
WEST VIRGINIA

THE PLAZA
NEW YORK
HOTEL CLEVELAND
CLEVELAND, OHIO

August 13th, 1937

P.F.

Dear Mr. Attorney-General:

The death of Judge VanOrsdel creates a vacancy on my Court which I assume the President will desire to fill before the commencement of the October term. While I am assured you appreciate the importance of this appointment, it may be that some of the facts I am about to mention will be of interest to you in reaching a conclusion on the subject of your recommendation to the President.

The jurisdiction as well as the actual work of the Court make it the most important court - - after the Supreme Court -- in the Federal system. This was the opinion of your predecessor and I have reason to believe also of Justice Stone when he was the Attorney General. It is also the opinion of a number of the justices of the Supreme Court and this opinion is sustained by the record. As you know, the Court has all the jurisdiction of a Circuit Court of Appeals but in addition, by reason of its location at the seat of government, it has other important jurisdiction not possessed by any other Federal Court. It has also the jurisdiction re the District of Columbia of a State Court of Appeals. Its dockets reflect this wide flung jurisdiction. Cases involving Indian treaty rights, western land irrigation projects, nation-wide appeals in tax cases, cases from the Interstate Commerce Commission, Federal Trade Commission, S.E.C., National Labor Board and all the great independent agencies of government are constantly before the Court. Alien property custodian cases and cases involving the Comptroller of the Currency, and the Comptroller General and mandamus and injunction cases against the executive heads of government involving often matters of great importance, are exclusively brought to this Court. The number of cases and the importance of the litigation is increasing and the Court needs in this vacancy an outstanding judge or lawyer of national standing reputation and experience. Certainly the selection on any lesser basis would be a great mistake.

Yours respectfully,

The Attorney General.

Judge (Coroner)

FBF Justice

File
Personal

THE ATTORNEY GENERAL
WASHINGTON
December 9, 1937.

Dear Missy:

You may recall the talk I had with the President about a hat. I communicated the details to Mr. Papish and I have just received the enclosed letter, which is rather characteristic. He is a fine old man. No doubt the hat will be coming along in due course.

Sincerely yours,

Homer Cummings

Miss Marguerite LeHand,
The White House.

Ps F Justice

A. Papish, Inc.

Manufacturer of
HATTERS' FURS

Cable Address
Feltfur Danbury—
A B C Code 5th Ed.

Telephone 77

Factory 11-21 East Franklin Street

Danbury, Conn.

December 7th.
1937.

Honorable Homer S. Cummings,
Washington, D. C.

My dear Mr. Cummings,

Thank you very very much for your letter of December third.

I am having the hat made as you suggested, and it will be of one hundred percent United States products.

With kindest regards.

Sincerely,

A. Papish

PSF Justice

file
Personal.

THE ATTORNEY GENERAL
WASHINGTON
December 22, 1937.

My dear Mr. President:

Enclosed is a copy of the letter I addressed to Chairman Sumners with reference to Judge Geiger.

Sincerely yours,

Homer Cummings

The President,
The White House.

P&F Justice

Release for
Morning Papers
Monday, Dec. 20, 1937.

December 18, 1937.

Honorable Hatton W. Sumners,
Chairman, Judiciary Committee,
House of Representatives,
Washington, D. C.

My dear Congressman Sumners:

I feel it my duty to call to your attention the conduct of United States District Judge Ferdinand A. Geiger of the Eastern District of Wisconsin, who yesterday at Milwaukee discharged a grand jury without permitting it to report after a three months' investigation of the automobile finance industry. Before discharging the grand jury and thus preventing criminal proceedings Judge Geiger had taken an attitude which made it impossible for this Department to obtain a civil decree which would have given immediate relief to consumers from the payment of excessive reserve charges, relief to dealers from coercion by automobile companies, and relief to independent finance companies from unfair competition and restraint of trade.

Many months ago upon complaints this Department instituted an investigation of the automobile finance industry, chiefly centered in three large companies which were identified in interest with General Motors Corporation, Ford Motor Company and Chrysler Corporation.

Complaints of violation of the law were as follows:

1. That the automobile companies were discriminating against the independent finance companies, and dealers who patronize them, by offering to their associated finance companies and dealers who patronize such companies services and the facilities for the wholesale financing of automobile purchases while at the same time denying such facilities and services to the other finance companies and dealers.

2. That the automobile companies and their associated finance companies were compelling dealers to do their retail financing with the associated finance company by various coercive devices, including the termination or threatened termination of the franchises of recalcitrant dealers.

3. That the associated finance companies were requiring the inclusion of excessive reserves concealed from the purchaser in the time sales price of automobiles which reserves were paid over to their dealers as a secret profit upon the payment in full of the paper.

4. That in the case of one of the automobile manufacturers, these coercive and discriminatory practices were aggravated by the ownership of all of the stock of its associated finance company, and in the case of a second manufacturer through a contract under the terms of which the manufacturer agreed to recommend the use of the associated finance company in consideration of a substantial percentage of the profits of the associated finance company.

After the grand jury began its investigation this Department was approached by representatives of some of the companies involved who extended assurance that the abuses of which the government complained could be remedied by civil decree; that the automobile companies had engaged in such practices under more or less compulsion from competition and from economic conditions; and that criminal proceedings at this time would be detrimental to the automobile industry. It was therefore strenuously urged by these representatives that conferences be held to determine whether a civil decree could be agreed upon. The Department did not feel warranted in declining to hear such representations and to hold conferences for such purpose.

From the outset, this Department took the position that it would not enter into a compromise decree but would consider only a decree which corrected all of the above abuses. It also took the position that it would not consent to any decree unless the representatives of the independent finance companies, who had filed the original complaints, agreed that it was adequate to prevent further abuses, and unless these companies themselves agreed to be bound by the terms thereof. The Department also took the position that it would not approve any decree which favored any one competitor over any other.

In these conferences the companies' representatives were advised that the government could give no assurances as to what action the grand jury might take, and that the government was undertaking only to discuss a civil decree, which, if agreed upon, would be presented to the grand

jury for its consideration along with the evidence already before it. It was, however, anticipated that if satisfactory consent decrees could be agreed upon which eliminated the foregoing abuses, it might not be necessary to go through the prolonged ordeal of criminal trials.

No agreement was reached. But a tentative proposal for a decree was drawn up which the attorneys for two of the groups represented at the conference agreed to submit to their clients for consideration. The proposed decree would have enjoined both the automobile and finance companies from discriminating against independent finance companies and dealers who patronize them, and from coercing dealers. It would have abolished the system of excessive reserves and relieved the consumer from that burden. It would have eliminated control by the automobile companies of their associated finance companies through stock ownership or otherwise. In short, it would have given all of the relief that could have been anticipated as a result of successful litigation.

While the tentative draft of the decree was under consideration by the companies the Department was advised by Mr. Russell Hardy, the special assistant in charge of the grand jury presentation, that Judge Geiger had called him in and commented unfavorably on the fact that conferences were being held, taking the position that there should be no conferences between the Department and the companies affected, even though the terms of the decree might grant essential relief to an important American industry and avoid a great deal of litigation.

This Department deferred to Judge Geiger's wish and canceled all conferences.

Having accomplished this much, Judge Geiger was not satisfied. He had prevented the government from obtaining a satisfactory and far-reaching civil decree. Arbitrarily and against the protests of government counsel he recessed the grand jury and summoned the companies' attorneys to advise him about the conferences held with the Department. He then proceeded to absolve the companies from prosecution by discharging the grand jury although advised that the grand jury had voted to return indictments.

The net results of Judge Geiger's unwarranted interference with this Department and with the grand jury have been:

First, to free the companies from any present necessity for correcting the objectionable practices; second, to save them from indictment for past violations of the antitrust laws; and third, to discredit the efforts of the government to correct abuses in the industry.

This is not an isolated instance of arbitrary, unjust and unfair conduct on the part of Judge Geiger. Your attention is directed to certain criminal tax cases which came before Judge Geiger in April, 1935. The cases were United States v. Volland; United States v. West; United States v. Branigan; United States v. Lubar; United States v. Turnof; United States v. Pokrass. All six of these cases were dismissed by Judge Geiger because in one of them an agreement had been made pursuant to Section 3229, Revised Statutes, by the Commissioner of

of Internal Revenue, approved by the Secretary of the Treasury, and sanctioned by the Attorney General, whereby the defendant was to pay the full amount of taxes, penalties and interest, and enter a plea of guilty to one count of an indictment. In the Volland case, in which the compromise agreement had been accepted, Judge Geiger completely repudiated and disregarded Section 3229 of the statute. In the other five cases no compromise had been accepted and in four no offer had even been made. Judge Geiger nevertheless dismissed these indictments also.

This course of conduct is so obstructive to the administration of justice that I could not justify a failure to bring it to your knowledge.

This Department stands ready to submit to your Committee all of its pertinent documents, and its staff will appear at any time to answer any questions concerning the foregoing matters.

Respectfully submitted,

HOMER CUMMINGS

Attorney General.