

Notes of F.F.'s [Felix Frankfurter's] record of Friday, July 8 [1934] conversation with James Landis

- 1) Jim's message to F.F.
  - a) Whole Commission wants Ben [Cohen, as SEC General Counsel]
  - b) F.F.'s question of Jim as to the General Counselship – Jim's reply – no General Counsel contemplated but two counsel at least, one interpretive or legislative and one prosecutorial – Ben to be former.
- 2) Wholly apart from Ben, F.F. thinks suggested division of legal work practically impossible and fatal to effective work of Commission.
  - a) Dichotomy unreal – interpretive work determines prosecution in part. Conversely prosecution – choice of case, nature of the record, timing etc etc – affects interpretation.
  - b) Almost inevitable clash as to policies and personalities between persons of coordinate rank. A controlling legal authority therefore essential.
  - c) The necessary controlling legal authority cannot be one of the Commission.
    - i) Responsibilities of both Commissionership and counsel too heavy a burden administratively.
    - ii) The client ought not be his own counsel (a lawyer-receiver always has separate counsel) and no Commissioner should be partisan of any legal view as to which he must take a quasi-judicial view with his colleagues.
    - iii) There are three lawyers on the Commission. For various reasons, even if they are not charged with the responsibilities for the work of the counsel, they will inevitably exercise professional judgment on counsel's work. If counsel is a Commissioner, this will add a further element of conflict within the Commission.
  - d) The coordinating legal authority should therefore be someone other than a Commissioner, a General Counsel in fact whatever his actual title. Varieties of legal problems are certainly no bar to such a functionary. If they make the problem difficult for any single lawyer, that is an additional

reason not to add the responsibility for them to the responsibilities of a member of the Commission.

A General Counsel of course would not be charged with details but with general oversight, and questions of legal strategy and tactics. A far greater variety of problems is entrusted to the U.S. Attorney's office for S.D.N.Y. but it would be funny and fatal to have the coordinate division chiefs handling different branches of the law in the U.S. Attorney's office without the supervision of the single District Attorney himself under the general direction of the Attorney General.

- 3) From Jim's personal point of view it would be most unfortunate to try to act as a Commissioner and as General Counsel to the Commission at the same time. It would be too much of a burden. Additionally it would entail inevitable personal friction, jealousies and conflicts not only from the other two lawyer members but also from the Chairman who will feel that through this legal work Jim is aggrandizing his position as Commissioner. And these considerations will become more and more important as the honeymoon period of The Commission and Jim's relation to it ends.
- 4) These represent F.F.'s convictions after back and forth discussion with me and after sleeping on the matter overnight – wholly regardless of Ben or John Burns or any other personality.
- 5) As to Ben:

He ought not to be asked to work with the Commission – nor should John Burns or anyone else for that matter – except under conditions which will allow effectiveness of service, which means that he ought not to be asked to work with the Commission except as counsel in charge entrusted with the duty of organizing the legal work and with responsibility for it – the usual powers and responsibilities of a General Counsel. If the Commission wants Ben in this capacity, then Jim ought to speak to Ben about it as one friend to another forgetting all self-consciousness about “inevitable rivalries.” Ben as a matter of fact on the side of feeling is a simple affectionate creature who responds to a simple affectionate mode of approach. If he's wanted, in addition to a formal offer from the Chairman, Jim ought to tell him as a friend how hellishly Jim wants him personally.