

May 9, 1935.

My dear Frankfurter:

Thank you for your letters.

In fact, I was invited by the American Bar Association to make the address but, after thinking it over, I decided, for a number of what seemed to me very good reasons, not to do it. I am not too enthusiastic about the Bar Association, [as you know, and there are special reasons now why I do not wish to encourage any publicity or seem to do so.]

The Railroad Retirement Act decision was, I think, about the worst performance of the Court since the *Bake Shop* case. The bill, it is true, was a bad one, and if I had been a member of Congress I am certain I should have voted against it, but to say that it is beyond the range of constitutional power puts us back at least thirty years. A bad matter was made worse by the cocksure assumption that we could determine judicially that there was nothing for the congressional judgment to act upon. How arrogant it must well seem to those unaccustomed to judicial omniscience in the interpretation of the Constitution.

Sorry you and Mrs. Frankfurter couldn't come to our dinner. I am not a Restater either, but I am always glad to see some of the brethren who drift in here when the Restaters come.

By the time you receive this, you will get the announcement from the Chief Justice that the new rules will be prepared both for law and equity under the direction of the Court, and with the aid of a specially constituted committee headed by former Attorney General Mitchell. Some change in program, is it not? I think that now we will really get the assistance of the men who are competent to do this kind of a job.

With best regards, I am,

Yours sincerely,

Professor Felix Frankfurter,
Harvard University Law School,
Cambridge, Massachusetts.