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Washington, D. C.
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Justice Robert H. Jackson

Supreme Court of the United States.

Dear Bob:

Your opinion in the Chenery case interested me very much, both because it represents an important milestone in judicial history and because I happen to have unusual personal knowledge of the situation involved.

The Securities & Exchange Commission in 1944 ruled that profits made by my client, W. Alton Jones, Chairman of the Board of Cities Service Company, should be held in a special fund pending the Commission's determination as to whether the principles of the Chenery case should be applied to deny Jones a profit which he had made from a large investment that he had carried for years. I think you will be interested in the opinion of the Commission rendered last Thursday in favor of Mr. Jones. Had the decision been against Mr. Jones, the Supreme Court would have had a very unusual case before it because I doubt that any one would consider it fair to apply the doctrine of the majority opinion in the Chenery case to Mr. Jones' situation. Yet the language of Justice Murphy's opinion was so broadly stated that if applied, it would have precluded a determination by the Supreme Court of the rights of Mr. Jones. Apparently the Commission is about to attempt to formulate a rule and in its opinion in favor of Mr. Jones made it very clear that, except under the most unusual circumstances negativing any possibility of overreaching that were present in Mr. Jones' case, the Commission would rule against any officials who purchased corporate securities prior to a reorganization, even though the corporations involved were completely solvent and had to be reorganized only to comply with the Public Utilities Holding Company Act.

Also the same principle of judicial review of the action of administrative agencies was involved in the Keystone Steel labor case, which I had expected to argue before the Supreme Court next week, but which we have been able to settle with the National Labor Relations Board largely because of the clear legislative intent expressed by the Congress in considering the Taft-Hartley Act and the changes which the Congress made in the manner of taking evidence and the weight to be assigned to it and to the alleged experience of the Board.

Like yourself, I have always been a believer in liberal government and in the government performing increasingly important and more numerous functions because the increasing complexity of world and domestic affairs require it. But like yourself, I believe that this makes it all the more necessary that there be some reasonably effective method of checking and reviewing inefficient or improper action by administrators.

I think that one of the most important accomplishments of the Truman Committee, although one of the least publicized, was its action in reviewing literally thousands of administrative acts relating to the war program. The Committee did not attempt to substitute its judgment for that of the administrative agencies, but merely required the agencies to give the Committee the facts showing that their action had been reasonably expeditious and reasonably justified. The very necessity for explaining, and even the ever-present possibility that the Committee might at some date indicate an interest in a particular action which the Committee at the time had never heard of, frequently prevented injustice.

In my opinion such an investigative function by the Congress and a judicial review by the courts together would be very beneficial.

For these reasons, I think that your opinion in the Chenery case is one of the most important that has been rendered in recent times.

Sincerely yours,

Hugh Fulton

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