

March 3, 1936

My dear Mr. Belmont:

It is a little strange, after our several boat visits about the Pensacola case which you argued before the United States Supreme Court for the successful party in 1877, that immediately upon returning to the United States I should be assigned to go over the same legal ground in testing the constitutionality of the Public Utilities Holding Company Act of 1935.

Your argument in 1877, as briefed by the official reporter was that "telegraphing as practiced by the respondent (Western Union Telegraph Company) is a part of that intercourse which constitutes interstate commerce". It is our argument in 1936 that the control of corporations engaged in distributing electric energy in interstate commerce is also a part of that intercourse which constitutes interstate commerce. The difference is that your argument led to the conclusion that Florida could not regulate the telegraph, while our argument leads to the conclusion that the Federal Government can regulate the utility holding company.

After sixty years we are arguing the same question of conflict between State and Federal power. The ground is now littered with precedents which are strangely lacking in helpfulness. I was interested to see that while your adversaries cited some thirty authorities, you cited none, apparently relying upon argument from first principles rather than upon argument from authority.

It is also interesting that a minority of the court feared that your new conception of interstate commerce would destroy the Union. The dissenting opinion speaks of "the exercise of ungranted powers" and says "indeed, it is easy to see that there will remain little of value in the reserved rights of the States, if the doctrine announced in this case be accepted as the law of the land." Your doctrine was accepted, and the nation seems to survive, which may indicate that some of the present prophesies of disaster are overdrawn.

Our system of two sovereignties and the assignment of interstate commerce to the control of one and intrastate commerce to the control of the other invites constant litigation over each new form of commerce, since it may find its advantage in being regulated from one side or the other of the shadowy dividing line. Each new form of commercial intercourse stirs the old conflict. It was a great pleasure to learn the story of the earlier struggle from you.

I hope we may use your argument in 1936 as successfully as you did in 1877.

With high regards and good wishes, I am

Sincerely yours,

Robert H. Jackson.

Hon. Perry Belmont,

New Port, Rhode Island.