

*Supreme Court of the United States*  
*Washington, D.C.*

CHAMBERS OF  
JUSTICE FELIX FRANKFURTER

November 21, 1944

Dear Stanley:

May I put to you three questions regarding the Otis case:

1. Would precisely the same corporate rearrangement which the S.E.C. has sanctioned be sustained under the Los Angeles and Consolidated Rock cases if it came before us as a plan for reorganization under 77 B?

If the answer is yes, there is an end of the matter and everything is hunky dory.

2. If not, is there any legislative indication from which to conclude that while Congress on June 7th, 1934, when dealing with corporate reorganizations, used the phrase "fair and equitable" with a technical meaning carrying with it the "full and absolute priority rule", yet a year later in August, 1935, using the same phrase "fair and equitable" in connection with the reorganization of utility corporations, it did not mean to use it with a technical connotation and therefore not subject to the limitations that the Los Angeles and Consolidated Rock cases derived from the earlier statute?

3. If there is no justification in legislative history for concluding that the phrase "fair and equitable" was used with different implications in the 1935 Act from the 1934 Act, what constitutional ground is there for suggesting that as to the 1934 Act Congress had greater power in cutting out the common stock holder where there was no worth behind the common stock, than under similar circumstances in the 1935 Act situation, which would call for a different construction of the 1935 Act than the 1934 Act?

I trust you will not think these are “smarty” questions. The answers to these questions raise for me the decisive issues in the Otis case, and having spent most of my professional life before I came on the Court with concern for adjudications by this Court in the light of reason, I do not think I should have less concern that the decisions of the Court be rooted in reason now that I am a member of the Court.

Ever yours,

F.F.

Mr. Justice Reed