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4 President's reliance on Federal judges for
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To Land
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This will refer to your inquiry as to whether the assistance of Federal judges may be enlisted by the President in the discharge of nonjudicial functions.

As is shown by the copy of the attached memorandum in a related matter and the authorities cited therein, I would conclude as follows:

(See memo)
2/13/62 To
Exec Asst.

1. Except for the matter of dual compensation statutes such as 5 U.S.C. 62 (1958) which I understand are not involved here, there is no express prohibition against Federal judges performing, at the request of the President, other services of a general character for the Federal Government. 40 Op. A.G. 423 (1945). On the contrary, there are ample precedents to support a decision by the President to enlist the services of Federal judges in connection with various nonjudicial matters. Id. 424.

2. Whether the President should call upon Federal judges to engage in nonjudicial functions for the Federal Government is basically a matter of policy. The general policy considerations relating to this issue were discussed by the Senate Committee on the Judiciary (S. Executive Rept. No. 7, 80th Cong. 1st Sess; reprinted in 33 A.B.A.J. 792-796 (1947)). The general thrust of this report is that considerations relating to the independence of the judiciary and its separation from partisan politics militate strongly

against the use of Federal judges for nonjudicial functions. In this connection the report states as follows (pp. 6-7 of Report, and 33 A.B.A.J. at 795-796): 1/

7 ¹⁰ "In cases where federal judges accept the responsibility of extrajudicial duties or functions in the executive branch of the Government, several undesirable results may follow:

7 ¹⁰ "1. Reward may be conferred or expected in the form of elevation to a higher judicial post.

7 ¹⁰ "2. The judicial and Executive functions may be improperly merged.

7 ¹⁰ "3. The absence of the judge from his regular duties increases the work load of the other judges of the Court, if any, and may result in an impairment of judicial efficiency in the disposition of cases.

7 ¹⁰ "4. Nonjudicial activities may produce dissension or criticism and may be destructive of the prestige and respect of the federal judiciary.

7 ¹⁰ "5. A judge, upon resumption of his regular duties, may be called upon to justify or defend his activities under an Executive commission.

44/ ## FN1
1/ Among other instances cited in the report was the case of District Judge John C. Collett who acted as Chairman of Economic Stabilization, and later undertook further duties as "over-all associate" of Director John R. Steelman in the office of war mobilization and reconversion. Id. 33 A.B.A.J. at 795. See too, 32 A.B.A.J. 279 (1946); 32 A.B.A.J. 682 (1946). It may be noted, of course, that these duties were performed in a time of war.

"Conclusion

7 10 "The Committee on the Judiciary of the United States Senate declares that the practice of using Federal judges for nonjudicial activities is undesirable. The practice holds great danger of working a diminution of the prestige of the judiciary. It is a deterrent [sic] to the proper functioning of the judicial branch of the Government.

7 10 "The Committee is not now disposed to recommend legislative action. It believes the remedy lies, in the first instance, in the good sense and discretion of the Chief Executive. His is the prime initiative in the matter of these appointments and that is the point where the independence of the judges and the prestige of the judiciary may best be preserved."