

## ONE SUPREME JUDGE ALTERS UTILITY VIEWS

Reversal of Position Seen Further Evidence of Compromise Trend.

By HERBERT LITTLE

WASHINGTON, Jan. 4.—The turnaround of one Supreme Court Justice and the bold insouciance of another served today to dramatize the Court's two latest rulings on utility rate-fixing.

In the 6-2 decision of the Pacific Gas & Electric case, it was apparent that either Chief Justice Hughes or Justice Roberts reversed himself. For last June 1, in this same case, a 4-4 ruling by the Court repudiated the original-cost theory of rate-making. Yesterday's decision, written by the Chief Justice, in effect authorizes the California Commission to use its own judgment in basing gas rates on original cost, rather than on reproduction of the company's plant.

While the roll call on last June's vote was kept secret, as is customary in its votes, it was apparent that the four of the winning side were Justices Butler, McReynolds, Van Devanter (since retired), and either Hughes or Roberts. Yesterday Justices Butler and McReynolds dissented. Justice Sutherland did not take part in either case. Thus either the Chief Justice or Justice Roberts changed his mind.

In yesterday's other decision, involving Indianapolis water rates, the Court ordered a U. S. District Court to conduct a new trial and admit evidence of price changes from 1933 to 1934.

To this decision Justice Black dissented, thereby taking a position to the left even of the Court's traditionally "liberal" trio, Brandeis, Cardozo and Stone.

Some, mindful of reputed compromises within the Court in the past, speculated that the "liberals" might have yielded in this case in order to clinch the co-operation of Justices Hughes and Roberts in the California case.

In any event, the orders for retrials in both cases defer for a long time the final showdown on reproduction cost vs. original cost.

### 61 Power Projects Get Ickes 'Go Ahead'

**BULLETIN**  
WASHINGTON, Jan. 4 (U. P.)—Attorney General Cummings announced today the Government will seek immediate dissolution of injunctions blocking Public Works Administration plans to give industry a \$146,917,808 "shot in the arm" through construction of 61 public power projects.

WASHINGTON, Jan. 4 (U. P.)—Public Works Administrator Harold L. Ickes gave a "go ahead" signal to 61 public power projects today as a result of a Supreme Court decision upholding the validity of municipal power plants constructed with PWA funds.

The projects will provide a 100 million-man-hour "shot in the arm" for industry and will have a construction cost of \$146,917,808. They are located in 23 states.

Secretary Ickes promised the construction work would be speeded so that the projects could exert a maximum of influence on unemployment.

The unanimous court decision in the PWA case was delivered yesterday by Justice George Sutherland. It rejected two attacks on the validity of PWA loans and grants to municipalities for construction of power systems. All the justices agreed that public utilities were barred from challenging the PWA program because municipal power systems constituted fully authorized and legal competition.

## IN INDIANAPOLIS

Here's County Traffic Record

Deaths (To Date)	
1938 .....	4
1937 .....	0
Deaths in City	
1938 .....	2
1937 .....	0
Accidents	
Jan. 3)	1
Accidents .....	3
Injured .....	1
Dead .....	1
Arrests	
Jan. 3)	1
Speeding .....	14
Reckless Driving .....	3
Running Preferential Street .....	4
Running Red Light .....	4
Drunken Driving .....	1
Others .....	62

**MEETINGS TODAY**  
Rotary Club, luncheon, Claypool Hotel, noon.  
Alpha Tau Omega, luncheon, Board of Trade, noon.  
Indiana State Association of County and Township High School Superintendents, luncheon, Hotel Washington, 6:30 p. m.  
Knights of Columbus, luncheon, Hotel Washington, noon.  
Sigma Club, luncheon, Spinke Arms Hotel, noon.  
Columbus Club, luncheon, Columbia Club, noon.  
University Club, luncheon, Columbia Club, noon.  
Beta Gamma Delta, dinner, Athenaeum, 6 p. m.

**MEETINGS TOMORROW**  
Indiana State Association of County and Township High School Superintendents, state meeting, Claypool Hotel, all day.  
Indiana Club, luncheon, Hotel Washington, noon.  
Alpha Tau Omega, luncheon, Hotel Washington, noon.  
Indianapolis Council P. T. A., meeting, Hotel Washington, 10 a. m.  
Alumni Club, luncheon, Columbia Club, noon.  
Young Men's Discussion Club, dinner, Pioneers Alumni Association, luncheon, Hotel Sevier, noon.  
Indiana State Association of Legion Posts, luncheon, Board of Trade, noon.

## As President Delivered Message



President Roosevelt is shown on the rostrum in the House of Representatives as he delivered his annual message to Congress. Behind him are Vice President Garner (left), and Speaker William B. Bankhead. At the right is his son and assistant, James Roosevelt.

### Black Sees Rise in Water Rates For City in High Court's Action

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"reproduction cost" theory and involved the same company. Justice Black produced figures to show they may have been invented in the property.

The record in the McCarron case, he wrote, "showed that the property was bought at a judicial sale in 1881 by the present company at a cost of not more than \$535,000, the purchase being financed by a sale of bonds.

"That apparently no cash was paid for the \$500,000 face value of stock issued at that time.

"That the maximum book value of the company's assets on Dec. 31, 1929, was \$9,195,000, but a witness called by the commission testified that the company's records disclosed the actual book value of the property used for the public convenience to be only \$7,967,648.

"That from 1881 to Dec. 31, 1923, stockholders' average annual profits were \$189,555.

"That practically all of the added book value was the result of additional investments financed by borrowing and not by investment of stockholders.

"That no other investment was made by the stockholders in the company since 1881, but in 1909 a writup of \$5,056,071.85 was made on the books by virtue of which a common stock dividend of \$4,500,000 was declared in 1910, making the total common stock \$5,000,000.

"That the \$5,000,000 stock was thereafter carried in the books of the company.

"That the stockholders not only paid no additional money for stock, but that the profits made by the company between 1881 and 1932 were not reinvested in the company but were substantially all drawn out in dividends."

19 Million Value Set

In the McCarron case, a \$19,000,000 value for rate making was set, but the Seventh District Court of Appeals reversed the District Court's finding in the present case of \$21,922,821 and suggested a 25 per cent increase because of "price trends" between 1933 and 1935, Justice Black pointed out.

The District Court is now reversed, however, because the Court of Appeals found that rates based on an obviously inflated value of \$21,922,821 fixed by the District Court would confiscate the property of the company's stockholders, he wrote.

The opinion then comments upon the marked disparity between actual cost of the company's property and "its' imaginary reproduction value."

"So-called water rights, involving

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White River, "estimated from nothing," were \$20,000,000 and ridiculed and testimony cited to show they may possibly be based on providing navigation for "imaginary sailors."

"It is difficult to believe that such concepts of property can establish clear proof that the Constitution of the United States has been violated.

"Nor do I believe that, even if the people of Indianapolis and the surrounding community have permitted the Water Co. to use this stream for a public service, there has been a grant of a prescriptive property right which can be capitalized by the company in order to exact higher water rates from the very people who granted the privilege.

"If the company had made actual investment in its property between 1881 and 1935, resort to illusory property concepts would not be necessary. Clearly, it would be entitled to a reasonable return upon such actual investment. Such is not the case. The order for a new trial is not based on a claim that the company has invested even one additional dollar. It is not claimed that the company bought additional land; added an inch to any of its dams; extended its distribution pipes, improved its filtration system, or purchased one additional piece of property.

Therefore no judge should be held to the fluctuating price trends and expected to anticipate the future, Justice Black holds.

"I believe the record affirmatively shows that the company's water

in Indianapolis are already considerable for their water on account of previous judicial overvaluation of this property," the opinion concludes.

"I believe the State of Indiana has the right to regulate the price of water in Indianapolis free from interference by Federal courts.

"The courts did not deny this right to the states for the first 100 years after the adoption of the Constitution."

### SHOOTING OF LOCAL MAN INVESTIGATED

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EVANSVILLE, Jan. 4 (U. P.)—Police today investigated the mysterious shooting of Clarence Leach, 21, soldier on leave from the U. S. Marine Corps, at 111 W. 34th St.

He was shot in the head at 11:30 p. m. Saturday.

The courts did not deny this

right to the states for the first 100 years after the adoption of the Constitution."

### Arabs Tune Out British for Italian

(Continued from Page One)

LONDON, Jan. 4 (U. P.)—British officials waited eagerly today for reaction from Palestine on the first of their special Arab broadcasts, intended as a counter-measure to Italian broadcasts which are held to be anti-British.

Arabs, after listening to the program last night began to tune it out in favor of one from Italy which included songs by Abdul Wahab, favorite crooner of the Near East.

### OFFICIAL WEATHER

United States Weather Bureau

INDIANAPOLIS FORECAST: Fair to night with lowest temperature about 30° tomorrow fair and somewhat colder.

Sunrise ..... 7:07 | Sunset ..... 4:38

TEMPERATURE

Jan. 4, 1938

7 a. m. ..... 32 | 12 p. m. ..... 40

8 p. m. ..... 32

Precipitation 24 hrs, ending 7 a. m. ..... 00

Total precipitation ..... 00

Excess ..... 38

### MIDWEST WEATHER

Indiana State Weather Forecast

ILLINOIS: General fair tonight and

tomorrow, except light snow in north-

east tonight; somewhat colder central and

southern. Lower Michigan—Snow, somewhat

extreme north portion tonight; tomorrow

fair, except light snow extreme northeast.

Ohio—Mostly cloudy and colder with

moderate snowfall tonight; tomorrow generally

fair and colder.

Kentucky—Fair and slight cold to-

night and tomorrow.

### WEATHER IN OTHER CITIES AT 7 A. M.

Station ..... Weather ..... Temp. (F.)

Amarillo, Tex. ..... Cloudy ..... 30

Bismarck, N. D. ..... Clear ..... 20

Boise, Idaho ..... Cloudy ..... 30

Chicago ..... Cloudy ..... 30

Cleveland, O. ..... Clear ..... 25

Denver ..... Clear ..... 30

Fort Collins, Colo. ..... Rain ..... 44

Helena, Mont. ..... Clear ..... 35

Jacksonville, Fla. ..... Rain ..... 55

Jackson, Miss. ..... Rain ..... 55

Little Rock, Ark. ..... Clear ..... 40

Madison, Wis. ..... Clear ..... 30

Minneapolis ..... Cloudy ..... 30

New Orleans ..... Clear ..... 46

New York City ..... Cloudy ..... 32

Omaha, Neb. ..... Clear ..... 35

Pittsburgh ..... Snow ..... 35

Reno, Nev. ..... Clear ..... 35

San Antonio, Tex. ..... Cloudy ..... 55

Seattle ..... Rain ..... 45

St. Paul ..... Rain ..... 45

Tampa, Fla. ..... Cloudy ..... 38

Washington, D. C. ..... Cloudy ..... 35

## NEWSPAPERS OF NATION SPLIT ON F. D. R. MESSAGE

Attacked for Evasiveness on One Hand, Praised for Good Sense on Other.

By United Press

Reaction to President Roosevelt's message to Congress became quickly articulate today, in which opinions were fairly divided. Following is a cross-section of editorial comment from some of the nation's largest newspapers:

WASHINGTON POST—Yesterday he (Mr. Roosevelt) sought to muffle the reverberations of the onslaughts against "big business" indulged in last week by Secretary Ickes and Assistant Attorney General.

BALTIMORE SUN—Whether the President is able to adjust himself to a definitely formulated program in support of the system of competitive capitalism (with eradication of the evils of monopolism to which he and his Republican predecessors alike contributed heavily) that remains to be answered.

NEW YORK NEWS—On March 4, 1933, the people listened to Roosevelt as a Messiah. Now, we believe, most of them listen to him as to a man of vast experience and much common sense. The rest hate his guts.

NEW YORK HERALD-TRIBUNE—The President is hardly at his best in discussing basic economic problems. In this field the superficiality of his knowledge is matched by the evasiveness of his thinking.

NEW YORK TIMES—By and large, the message is reasonable in its tone and fair in its treatment of those who disagree with specific points in the Administration's program.

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