opinions, seem to have been purposely as well as expressly united to the Executive departments."[506] Although the Court has generally adhered to its refusal, Justice Jackson was not quite correct when he termed the policy a "firm and unvarying practice. . . ."[507] The Justices in response to a letter calling for suggestions on improvements in the operation of the courts drafted a letter suggesting that circuit duty for the Justices was unconstitutional, but they apparently never sent it;[508] Justice Johnson communicated to President Monroe, apparently with the knowledge and approval of the other Justices, the views of the Justices on the constitutionality of internal improvements legislation;[509] and Chief Justice Hughes in a letter to Senator Wheeler on President Roosevelt's Court Plan questioned the constitutionality of a proposal to increase the membership and have the Court sit in divisions.[510] Other Justices have individually served as advisers and confidants of Presidents in one degree or another.[511]

Nonetheless, the Court has generally adhered to the early precedent and would no doubt have developed the rule in any event, as a logical application of the case and controversy doctrine. As Justice Jackson wrote when the Court refused to review an order of the Civil Aeronautics Board, which in effect was a mere recommendation to the President for his final action: "To revise or review an administrative decision which has only the force of a recommendation to the President would be to render an advisory opinion in its most obnoxious form—advice that the President has not asked, tendered at the demand of a private litigant, on a subject concededly within the President's exclusive, ultimate control. This Court early and wisely determined that it would not give advisory opinions even when asked by the Chief Executive. It has also been the firm and unvarying practice of Constitutional Courts to render no judgments not binding and conclusive on the parties and none that are

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[506] Jay Papers at 488.

[507] Chicago & S. Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 113 (1948).

[508] *See* supra.

[509] 1 C. Warren, supra at 595–597.

[510] *Reorganization of the Judiciary: Hearings on S. 1392 Before the Senate Judiciary Committee*, 75th Congress, 1st Sess. (1937), pt. 3, 491. *See also* Chief Justice Taney's private advisory opinion to the Secretary of the Treasury that a tax levied on the salaries of federal judges violated the Constitution. S. TYLER, MEMOIRS OF ROGER B. TANEY 432–435 (1876).

[511] *E.g.*, Acheson, *Removing the Shadow Cast on the Courts*, 55 A.B.A.J. 919 (1969); Jaffe, *Professors and Judges as Advisors to Government: Reflections on the Roosevelt-Frankfurter Relationship*, 83 HARV. L. REV. 366 (1969). The issue earned the attention of the Supreme Court, Mistretta v. United States, 488 U.S. 361, 397–408 (1989) (citing examples and detailed secondary sources), when it upheld the congressionally authorized service of federal judges on the Sentencing Commission.