

Book 364

Bank of America

September 21 - November 20, 1939

Bank of America

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TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

September 21, 1939

TO Secretary Morgenthau

FROM E. H. Foley, Jr.

Attached is a copy of the telegram of September 14 from Judy to Chester Lane. I believe you have a copy of the later telegram.

E. H. F.

Attachment

C
O
P
YSeptember 14, 1939
San Francisco, CaliforniaChester T. Lane
General Counsel
Securities & Exchange Commission

You no doubt have observed unusual market activity of Transamerica for first three days this week. Matter is subject of considerable comment here and we have reports from Piper of Daily News and one or two others that rumor is persistent San Francisco financial district that Transamerica has settled or is about to settle its controversy with Commission. On inquiring among local houses, Tolman finds such rumor but it does not seem to him to be of sufficient strength to justify increased market activity. Tolman also finds feeling in brokerage houses that Transamerica is a good buy at this time because of its extensive ownership of lands, thus constituting hedge against inflation. We have not been greatly concerned about above rumor as such rumor is constantly recurring and has been during almost entire course of controversy. It may be significant however that in the past few days several responsible people have inquired of us if there was any truth to the rumor that the controversy had been settled and in this connection we have reliable information that Ferrari has stated that the 19(a)(2) proceedings would never be resumed and we have information from a confidential source that presumably Giannini has stated that arrangements have been made to settle the entire controversy. Realizing the interest of persons interested in the Transamerica market to raise prices we feel serious consideration should be given to whether the recent rise was attributable to this rumor or any improper activities. As you know Bank of America yesterday declared a regular dividend with usual publicity. This may mean some arrangement was made with the banking authorities. Since the public was unaware of the fact the banking authorities might have required a reduction in the dividend this declaration would not ordinarily have caused a stock rise. However if the dividend had been cut such reduction would obviously have acted as a brake upon any attempt to raise the price. If therefore the rise in price followed close upon the making of a nonpublic arrangement with the banking authorities that fact might be an additional circumstance tending to show the rise inspired by insiders. In view of the size of the rise plus these rumors which apparently came from responsible sources I feel serious con-

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sideration should be given to making investigation of trading first three days this week which would be carried as far as interviewing purchasers. Pending further advices from you we shall continue to keep in close contact with situation.

Howard A. Judy
Regional Administrator

Schwabacher & Co.

INVESTMENT SECURITIES
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AT MONTGOMERY
TELEPHONE BUTTER 5600
SAN FRANCISCO

NEW YORK
LOS ANGELES
OAKLAND
FRESNO
SANTA BARBARA
DEL MONTE

MEMBERS
NEW YORK STOCK EXCHANGE
CHICAGO BOARD OF TRADE
NEW YORK CURB EXCHANGE
ASSOCIATE

September 22, 1939

Dear Henry:

I am not at all impartial about Vic Rossetti because I have known him all my life, and because he has run the bank in which my family is interested in Los Angeles. I have the highest regard and respect for him.

He was born in Virginia City, Nevada, is sixty two years old, and has two children, and owns his own home. He entered the Wells Fargo Bank in 1893 as an Italian kid without money or influence. When the Wells Fargo Bank merged with the Nevada Bank of which my grandfather, I. W. Hellman, was president, he became chief clerk and then assistant cashier of the merged bank, and a great protege of my grandfather's. When the fire occurred in 1906 I remember him working day and night at my father's house trying to bring the files and records of the bank into some sort of order.

In 1911 he was sent to Los Angeles to become vice president and cashier of the Farmers and Merchants Bank of which J. A. Graves was president. Having arrived in Los Angeles in 1911, he is now a pioneer citizen of that community and I think that any check will confirm my opinion that he is probably its most distinguished and respected banker.

September 22, 1939

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It is a proof of his conservatism and the confidence of the public in him that during the period between 1929 and the bank holiday the Farmers and Merchants Bank practically doubled its deposits.

He has always devoted practically all of his time to the Bank's business, though in recent years he has taken some positions of a more or less public nature, such as treasurership of the Los Angeles Community Chest, directorship in the Metropolitan Water District of Southern California, and directorship in the Los Angeles Branch of the Federal Reserve Bank of San Francisco. He has recently been made a director and member of the Executive Committee of the Southern Pacific Company; also director of the Southern California Telephone Co., and the Los Angeles Soap Co., etc. He is the president of the Los Angeles Clearing House Association. He became president of the Farmers and Merchants Bank in April, 1931.

Personally Rossetti is small, blonde, blue-eyed, gay and affable in manner. He is exceedingly popular in Southern California business circles. I believe that he is Catholic in religion. My impression is that he is not extremely religious. Although he is of Italian descent, as is his wife, I think he associates mainly with other Los Angeles groups and he is not particularly prominent in Italian circles. He is loyal to a fault.

September 22, 1939

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J. A. Graves, who was president of the Farmers and Merchants Bank during the years that Rossetti was vice president, was an extremely tough task master, and Rossetti even at that time was believed to be the best banker in Southern California. He received many offers from other banks to leave the Farmers and Merchants. He was offered the presidency of several other large institutions. Due to his loyalty to the Hellman family and his gratitude to I. W. Hellman for the chance that he had given him, he turned down all of these offers despite the fact that his position was rather unpleasant with Mr. Graves who displayed a remarkable vitality and unwillingness to die, and that the salaries offered him were considerably in excess of that which he received from the Farmers and Merchants.

He is not particularly ambitious in a monetary way but he is a terrific worker. Several times since he became president of the Bank he has refused increases in salary, and while the clerical workers of the Bank receive a higher rate of pay and a larger Christmas bonus than those of any other Los Angeles bank, there are extremely few executives, and none who receive very substantial salaries.

Being a good friend, he is also a very dangerous enemy, and he has had numerous battles with all sorts of people and for all sorts of reasons, and he retains most of his grudges. One of his pet hatreds is A. P. Giannini and the whole Bank of America organization which he has claimed for years is unsound.

September 22, 1939

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At one Bankers' convention Rossetti, who is a small man, and Giannini, who is a large one, practically came to blows - one calling the other "You big Wop such and such" and the other shouting "You little Wop such and such". Rossetti's honesty and integrity are, of course, without question.

To sum up, Rossetti has many major virtues and some minor defects. One of the latter is that he loves to talk. He is not indiscreet, but he adores to dwell on his Bank and how *well* he runs it, and on Mr. Giannini's bank and how badly he runs it. He has a liking for long words and is not always clear as to their meaning. However, his conversation is a screen behind which operates a shrewd, keen, analytical mind. His bank is unquestionably the most conservatively managed on the Pacific Coast and has been extremely profitable for its shareholders. It has no loan outstanding at the present time on which interest is not being currently paid. It has reserves for every conceivable contingency, as well as for contingencies which are not even conceivable. Its success mainly comes from Rossetti's honest, loyal and intelligent management and is a reflection of the man.

I hope this information is about what you want.

With kindest regards to Elinor and yourself, I am

Sincerely yours,

John W. Miller

MHH B *Mr Rossetti is a Republican in politics but comparatively sane*

Handwritten signature

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

SEP 22 1939

TO Secretary Morgenthau

FROM E. H. Foley, Jr.

Re: Bank of America N. T. & S. A.

Should it be deemed advisable to proceed against the Bank of America by a double procedure, namely, by a proceeding to remove directors or officers before the Board of Governors of the Federal Reserve System under Section 30 of the Banking Act of 1933, as amended (U.S.C. title 12, sec. 77), and by a proceeding to terminate the insurance of the Bank by the Board of Directors of the Federal Deposit Insurance Corporation, under Section 12B (i) of the Federal Reserve Act (U.S.C. title 12, sec. 264 (i)), steps in the concurrent proceedings would be approximately as follows:

1. The Board of Directors of the Federal Deposit Insurance Corporation, after finding that the Bank or its directors had continued unsafe or unsound practices or had knowingly or negligently permitted violations of law, would give to the Comptroller of the Currency a statement with respect to such practices or violations.

2. The Comptroller would immediately notify the directors of the Bank, advising that such practices or violations would have to be corrected within 120 days, or such shorter time as the Comptroller might require.

3. The above notification to the Bank, based upon the statement from Federal Deposit Insurance Corporation, could be transmitted to the Bank concurrently with, or at a date different from, the transmission of the long letter of warning to the Bank for the purpose of initiating the proceeding for the removal of officers by the Board of Governors of the Federal Reserve System. However, there would appear to be no significant advantage in delaying the long letter of warning to the Bank until the Board of Directors of the Federal Deposit Insurance Corporation had acted. Accordingly, the letter of warning should be transmitted to the Bank as soon as possible.

4. A special examination of the Bank would have to be made to determine whether the unsafe or unsound practices and violations of Law had been discontinued. There would appear to be no purpose in making two examinations, one for the removal of directors proceeding and the other for the termination of insurance proceeding. Accordingly, the examination should begin within a reasonable time, not more than 120 days, and possibly even 60 days, after the transmission to the Bank by the Comptroller of the Currency of his advice that unsafe or unsound practices and violations of Law found to exist by the Board of Directors of the Federal Deposit Insurance Corporation would have to be corrected or a proceeding to terminate insurance would be initiated.

5. After the examination was completed, if it disclosed a failure to discontinue the unsafe or unsound practices and violations of Law, a certification of those facts with the request for removal of directors should be made immediately to the Board of Governors of the Federal Reserve System. At the same time the Federal Deposit Insurance Corporation should be advised that the Bank had failed to correct the practices and violations, and the Federal Deposit Insurance Corporation should immediately begin a hearing on the matter of terminating the insurance.

6. During the two proceedings, in order to protect the Bank against runs and to assure that its management would not continue in the hands of the present directors during the proceedings, it might be deemed advisable for the Comptroller of the Currency to appoint a conservator under section 203 of the Bank Conservation Act (U.S.C. title 12, sec. 203). The conservator would protect the assets of the Bank until the two proceedings had been terminated and for such longer period as might be deemed necessary.

7. If the Federal Deposit Insurance Corporation should terminate the insurance of the Bank, the law provides that the Comptroller of the Currency shall then appoint a receiver for the Bank. The appointment of such a receiver would appear to contemplate the liquidation of the Bank as a national bank, and it seems clear that the Bank could not continue as a national bank after the termination of insurance.

8. After the termination of insurance and the removal of the board of directors, it would be possible to have a board of directors, satisfactory to the Government, elected and the insurance of the Bank reinstated. Of course, it might also be possible for the Bank to reorganize and to reopen as a State bank.

EWFL.



Office of the Attorney General
Washington, D.C.

September 22, 1939

My dear Mr. Secretary:

Returning the proposed letter of warning to the Board of Directors of the Bank of America National Trust and Savings Association, submitted to me with yours of September 19, the following addition at the close of the letter has been suggested by Mr. Rogge:

Failure to discontinue the unsafe and unsound practices and violations of law referred to in this letter and in the several reports of examination of this bank will result in a certification of the facts by this office to the Board of Governors of the Federal Reserve System under Section 30 of the Banking Act of 1933, as amended.

Consideration might perhaps be given also to the following:

Whether the language of the warning on page 25 should in form be directed more specifically to the unsafe or unsound practices themselves, rather than to the purpose or result of those practices, namely, unduly favoring Transamerica Corporation.

Whether any legal action could be taken or ought to be taken in advance to prevent payment of the dividend.

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I presume the question of having Mr. Rogge present the case to the Federal Reserve Board may be decided later on, when and if occasion should arise.

With kind regards,

Sincerely,

Franklin D. Roosevelt

Honorable Henry Morgenthau, Jr.
The Secretary of the Treasury
Washington, D. C.

1938 FEB 25 AM 5 58

RECEIVED
SECRETARY OF THE TREASURY OFFICE

September 25, 1939

For the Secretary

I hope you can find time to read the attached memorandum from McLean, the examiner who examines the Bank of America N.T. & S.A. It should be noted particularly that Transamerica Corporation proposes to use all of the dividend which it receives on its holdings of Bank of America stock to reduce its obligation to the Bank.

Mr. Folger and I are impressed by the seeming intention of the Bank to try to meet the main asset criticisms of the Comptroller's Office. They are certainly going further in their endeavor to comply than they have ever done before, if the assurances of Mr. Russell Smith are to be given full faith and credit. They are apparently doing as many things as they can, short of increasing the capital or cutting the dividend, to make it more difficult to prove that they are guilty of unsafe and unsound banking.

Upm
Upm

Enclosure

September 28th, 1939

Memo for Chief Examiner Irwin D. Wright:

I met with Russel G. Smith this A.M., at his request, to discuss matters criticized in my last report of examination that have not, as yet, been corrected.

First on the list was the doubtful classification of part of The Capital Company and California Lands, Inc. contract covering the sale of other real estate by the bank. Mr. Smith was quite insistent that credit should be given for the sound value of other assets owned by the two concerns, and the fact that actual loss on the sale of properties is being absorbed by the companies. I pointed out that it was impossible to arrive at a sound value of the corporate picture, in that we never have had a detailed statement, properly supported by appraised value, of the various real estate owned and not covered by the contracts; and, further, the financial strength of the concerns would not justify any such open credit as is represented by the deficiency set up in my report as of questionable value. I also pointed out that former contracts between the bank and Inter-America Corporation and Transamerica Corporation were more or less abrogated and the majority of loss absorbed by the bank or returned to the bank's assets, as is the case in the Future and Former premises carried by the Merchants National Realty Corp. I advised Mr. Smith that, in order to have the present classification retarded, it would be necessary for Capital Company and California Lands Inc. to fully secure the apparent deficit in the contracts with marketable security, and that such collateral could be supplied either by the borrowers or by Transamerica Corp. He stated that he would present my suggestion to Messrs. A.P. and L.M., and let me know the reaction.

In reference to the classified Excess Loan, he states that the bank has never been definitely informed by the Comptroller that this extension of credit is excessive. The Bank's attorneys have given an opinion that the Guaranteed Loans are not a direct obligation of Transamerica Corp. and that, therefore, no violation exists. If the legal department in Washington has ruled that the Guaranteed Loans represent an extension of credit to Transamerica Corp., I believe that the bank should be officially notified. The direct loans to Transamerica Service Corp., and Inter-Continental Corp., totalling Twelve Million as of March 31st, 1939, were reduced to \$9,700,000.00 as of August 31st, 1939, and Mr. Smith advises me that \$300,000.00 additional has been paid since that date, which reduces these loans to 10% of the present Capital and Surplus of the Bank - or \$9,400,000.00.

Other items included in the Excess Line, or under the Large Line, are claimed to be having attention, and \$20,000.00 is said to have been paid on the Western Furniture Exchange Illegal Loan since the start of my present examination - August 31st. Smith advised me that this loan would be taken up in full by Trans-america Corp. from the dividend on B. of A. stock, and that approximately another \$500,000.00 would be applied to reduce the carrying figure of the National City Bank stock. He further stated that all dividends received by T.A.C. on its holding of B. of A. stock would be used to reduce the Corporation's debts to the bank, thus improving the asset, - but not the Capital position of the bank. I suggested that Transamerica Corp. give the bank its direct note adequately secured, to eliminate in full the Guaranteed Loans, the balance of the Option to Purchase covering the National City Bank stock, and the Illegal Loan to the Furniture Exchange; but Smith is "leary" of this, as he feels that it would be an admission on the bank's part that an Excess Loan exists. I pointed out that, as far as the report is concerned, it would make no difference, as the line is considered as a violation of Section 5200 and would be set up that way until reduced to the legal limit.

Some other corrections have been obtained, such as a \$600,000.00 reduction of the Pacific Coast Mortgage Loan, and approximately \$500,000.00 on the A. O. Stewart credit. I am advised that the other real estate illegally acquired in the Hellman Deal has been sold, and is now in escrow. This is a small item, representing approximately \$85,000.00.

The principal point at issue will be Banking Premises, and I am willing to venture a guess that the estimates given in my last report will not be greatly out of line. It may be that the net apparent loss will be somewhat reduced, and maybe the doubtful classification more or less eliminated; but, for the purposes of appraisal, I am not ashamed of the figures as set up in the last report - considering the lack of proper appraisals and past history records. Mr. Smith hopes to be able to talk us into viewing the investment as a group and only taking into consideration the net deficiency; but I advised him that each parcel would have to stand on its own feet, and that any apparent profit on one parcel would not be allowed as an off-set against another on which a loss was determined.

It is clearly indicated that the gentleman is weakening in his stand that Premises are worth Ten Million more than at which carried, but I feel that we will have quite a fight on our hands to get any large charge-off on this asset. I believe that if we can obtain correction on the bulk of the other major criticisms, some satisfactory

compromise can be worked out on the bank premises whereby a semi-annual charge-off will be made, or the depreciation rate increased to a point assuring elimination over a period of not more than five years, (say until December 1943), the same date as was given on the contracts, etc.

I did not discuss the German Credits, but I feel sure they will claim that the former verbal agreement is still in effect and that \$1,000,000.00 each examination is all that should be required. We can counteract that argument by stating that the agreement was only in effect while there was an exchange loss, whereas now we have a definite and determined loss on the total line.

Definite understanding should be reached as to the Affiliate relationship with T.A.C.; Handling of the Self-Insurance Fund with Transamerica General Corp.; continued criticism relative to charges on Dormant Accounts; and a ruling as to the legality of the sales notes taken back into the bank on the sale of properties under the contracts to Capital Company and California Lands, Inc.

I feel more hopeful that some real improvement can be obtained over the next six months, but am not counting too strongly on it for the present.

10/14/43

September 26, 1939

At 4:15 p.m. I called Mr. Delano in Seattle.

He told me that he had received the revised last page of the letter of warning to the board of directors of the Bank of America N.T. & S.A. for signature only yesterday and that he had turned it over to Mr. Tom K. Smith, Mr. Mulroney and Mr. Wright for study. He said that Mr. Mulroney and Mr. Wright had taken it with them on an all-day trip to Vancouver but that as soon as they return tonight, he will sign it and send it to me air mail special delivery.

Mr. Delano said that he did not realize that the sending of the letters to the board was a pressing matter and that he had been somewhat disturbed by the decisive character of the paragraph added by the Attorney General. He was of the opinion that it commits the Comptroller to a citation to the Federal Reserve Board under Section 30 even if the continued practices and violations are minor in character. I told him that Mr. Foley and I had talked that over and that Mr. Foley is of the opinion that the

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paragraph does not add to the Comptroller's commitment to proceed under Section 30. I explained to him the feeling that Mr. Foley and I both have that it is important to include the paragraph as a gesture of friendliness to the Attorney General, whom we are glad to welcome to our side. The Comptroller said to check again with Mr. Foley and that if he and I were of the opinion that the paragraph did not commit us irrevocably to go to the Federal Reserve Board, he would not raise any objection to the paragraph.

The Comptroller said that he did not want to be left in a position where we went to the Federal Reserve under Section 30 on minor matters. He added that Mr. Wright tells him that the bank has apparently cleaned up a lot of criticised items since the last examination and that they have done "lots of complying." He added that Mr. Wright has hopes that the bank will charge off the losses which have been listed and that they will reduce their dividend when the next dividend date arrives.

Upm
Upm



TREASURY DEPARTMENT

WASHINGTON

September 26, 1939.

OFFICE OF
CHIEF, INTELLIGENCE UNIT
BUREAU OF INTERNAL REVENUE

MEMORANDUM FOR THE SECRETARY.

Special Agent in Charge Read at Los Angeles wires me to-day that he is sending by air mail a written report relative to Victor H. Rosetti. In his telegram Mr. Read states that Mr. Rosetti is 62 years of age, is in excellent health, physically active, a hard worker, bears an excellent reputation, and that inquiry has disclosed nothing to his detriment. He states that his personal integrity is high; that he is conservative in business matters, which is reflected in the solidity of the Farmers Merchants Bank whose surplus and undivided profits are nearly quadruple its invested capital; that he is an active dominant controlling force in his bank, and has been engaged in the banking business since boyhood; that he is native born of poor Italian parentage, and has apparently risen to his present position through his own efforts. He states further that Mr. Rosetti is a director of the Federal Reserve Bank, Los Angeles Metropolitan Water District, Southern California Telephone Company, Southern Pacific Railway, and other financial institutions; that he appears entirely qualified in matters of finance, but has a limited education, and training and experience in any other field; that he is temperate in his personal habits, is actively interested in charitable works, is a Catholic, mildly Republican, apparently taking no active interest in politics.

Without having been informed what may be in your mind, Mr. Read states that he believes Mr. Rosetti well qualified for an administrative position in any matters relating to banking and finance.

As soon as the written report is received, it will be forwarded to you.

September 27, 1939

For the Secretary:

In justice to Mr. Folger, at least, may I supplement my memorandum of September 25th by recounting that when he and I discussed the memorandum from Examiner McLean, Mr. Folger said substantially as follows:

"We must be very careful that McLean and Wright do not get taken in by the claims of Russell Smith that the bank intends to really clean up. There is nothing new in that. We have gone through it before. I wouldn't believe them under oath without checking to verify their statements."

The wording of my memorandum, I can appreciate, would not clearly reveal the above as the attitude of either Mr. Folger or myself. He and I have been, and I think will continue to be, the most skeptical of all concerned that any reliance can be placed on their claims that they have got religion.

I should have recalled this this morning if I had not been so stunned.



RE INVESTIGATION OF
TRANSAMERICA CORPORATION

September 27, 1939.
10:45 a.m.

Present: Mr. Foley
Mr. Duffield
Mr. Upham

H.M.Jr: I have this memorandum from Upham about Mr. Delano, and so on. I don't know whether you fellows have seen it.

Upham: Ed has. I don't believe Gene has.

H.M.Jr: This is my immediate thought on this thing. The Comptroller and the First Assistant Comptroller seem to have ideas that the Bank of America are getting good and doing all they can.

Upham: No, I have no such ideas.

H.M.Jr: You wrote me that. You wrote me that in the memorandum.

Upham: I said Mr. Folger and I were impressed with the seeming....

H.M.Jr: All right. Now, I don't want to find myself - listen to this, Ed, closely.

Foley: I am listening.

H.M.Jr:in the position that I have issued an ultimatum, see, that I am going to present this thing, and then find that the Comptroller's office says, "Well, he is doing everything he can," and that I have to recede from that position, see? Then Giannini would say, "I made Morgenthau back down." Therefore, I am going to send the letter the way it was originally written and when I make up my mind and the President gives me his approval, I am going to act that day, but I am not going to say to Mr. Giannini, "I am going to put this thing before the Board," and then have to back away from Giannini or anybody else. I think I am right. What do you think?

Foley: I don't think it makes any difference, Mr. Secretary, whether you leave the last paragraph on or off.

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- H.M.Jr: I don't want to have it said to this fellow, "I am going to bring action under Section 30," and then have the Comptroller's office tell me, "Well, this fellow is doing all he can and give him time until the next examination."
- Upham: I didn't mean to convey to you the impression that you apparently have gotten.
- H.M.Jr: I don't have to be hit over the head. You people seem to think that this fellow is going to do it. In this memorandum it hints - the Comptrollers of the Currency hint - that we wait until we have another examination.
- Upham: That is a reporting job. I have no hesitation in saying here, for the record, that I have no faith in Russell Smith's representations, that they are really doing anything.
- H.M.Jr: But you didn't say that, Mr. Upham. You didn't say that in the memorandum you sent to me.
- Upham: Perhaps I didn't say enough in that memorandum.
- H.M.Jr: Well, those things, when you read them in cold type on top of this thing - now, if my attorney tells me that I am not going to weaken his case any by not putting on that last paragraph, then I don't want - I said I am going to do this thing and I don't want to back out. Believe me, when I go to bat on this thing, if I go to bat, this is going to be ironclad as far as the Treasury and Upham are concerned, and they are going to write me that they think we had better wait until we have another bank examination.
- Upham: I don't think that and if I said anything that would give you that impression, I didn't mean to do that.
- H.M.Jr: You surely did.
- Upham: I wanted you to have all of the facts, know all of the developments.

H.M.Jr: The Comptroller said he did not want to be left in the position where he went to the Federal Reserve on Section 30 on minor matters. He added that the Bank had apparently cleaned up a lot of positions. Do you think I am going to go out on the end of a limb while the Comptroller of the Currency talks like that?

Upham: That is a job of reporting to you what he said.

H.M.Jr: I know.

Upham: I said to Ed yesterday in furtherance of the comments about the Bank's paying - Transamerica using its dividend to repay the Bank, that in my opinion that didn't improve the condition of the Bank at all. That was improving the condition of the corporation.

H.M.Jr: Now listen, this is the most important thing you will ever be in and it is one of the most important things - you said one thing yesterday and another thing here today. You said here on the record that you had no faith.

Upham: That is right.

H.M.Jr: That is what you said yesterday. "Mr. Folger and I are impressed by the seeming intention of the Bank to try," et cetera. Now, my God, if anything is diametrically opposite, that is.

Now, Cy, this is the opportunity of your lifetime to hit and hit hard. You say one thing here and you say another thing right in front of me. It makes me sick and tired. What is the matter with you?

Upham: Mr. Secretary, Mr. Folger and I were impressed, for you, with the seeming compliance of this Bank, and we wanted to express to you that there was a seeming compliance. I am sure that neither Mr. Folger nor I meant to convey to you - and if we did, it is my fault in using that language.

H.M.Jr: My God, I understand English. "We are impressed with the seeming compliance and we think you ought to know about it."

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"It is the seeming intention of the Bank to try to meet the main asset. They are certainly going further in their endeavor to comply than they ever have before."

Upham: That second sentence is perfectly true.

H.M.Jr: But you don't say anywhere in this that you have no faith in Mr. Russell Smith. That is what you said here now.

Upham: I will be very glad to say that in writing over my own signature.

H.M.Jr: What is the sense in it? The time to say it is when you say it the first time, not when you are in my presence.

Upham: Well, Mr. Secretary, I have wanted the rest of this. I didn't like even the delay of this additional letter. I am not holding back a bit.

H.M.Jr: Get me straight. I am going to say this again. Mr. Giannini doesn't mean one blankety-blank thing to me, but what does mean something to me, if your reports aren't correct and what you have been feeding me, you of all people, for two years, that this is one of the most dangerous things in the banking structure in the whole United States, and you have been on this for two years. Now, when we are right up to the break, you tell me, "Well, I guess everything is O. K."

Upham: I didn't mean to tell you that.

H.M.Jr: Well, that is English. I mean I am just reading what you wrote me and I am reading this report that you sent me, leaving Delano out of the picture. He is not here. I am reading what you sent me on the 25th.

Now, if this doesn't hurt your law case, send it as is, because I am not going to throw my weight around. The day I make up my mind, I act that day. I am not asking anybody to change his opinion or I am not trying to influence anybody or anything else, but believe me, after all this time to suddenly find out that you people are going to

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do everything and answer all the criticisms, well, if they are, fine. Then there is nothing for the Secretary of the Treasury to do. But make up your mind, Cy, whether it is black or white and not gray. I mean this is terribly important, you know. As I say, it is one of the most important things I have ever handled and it is the most important thing you have ever handled in your life and it will make or break you, don't forget it. If you think the Bank is going to straighten itself out, say so and stick by it. That is what you say there, that is what you are telling me. Stick by your guns and don't flop here. Stick by your guns, be a man. I would ten times rather you would walk in here and say, "Mr. Morgenthau, now everything is all right." Stick by your guns.

Now, the other thing that I want to say is this: I want to know how the next time Mr. Folger personally - and keep this to as few people as possible - how can I find out whether Mr. Eccles, when he sold the stock to his brother, did his brother borrow the money from the Bank of America? Do you know about this?

Upham: I had heard that rumor, yes sir.

H.M.Jr: I want to know whether it is a rumor or a fact.

Upham: I should think that would be pretty difficult to find out.

H.M.Jr: Can't you examine the loan? We know the amount, we know the date, we have got everything.

Upham: I didn't know you had anything except the....

H.M.Jr: No, we have got the date and everything.

Upham: I don't have it.

H.M.Jr: Can't you ask to see the collateral on that loan?

Upham: Surely.

H.M.Jr: Because I don't want to have Mr. Eccles sitting as Chairman of the Board - in view of that, just let the letter go.

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- Foley: Sure, we have the letter signed. Everything is ready. It can go immediately.
- H.M.Jr: Let it go.
- Upham: Ready to go.
- Foley: I was satisfied with the letter in the first place.
- H.M.Jr: Let it go.
- Upham: It was all ready to go last Friday.
- Foley: If the additional paragraph makes any difference at all, I think it is a gesture of the Attorney General, having submitted the letter to him, that it was preferable to include it.
- H.M.Jr: Let me ask you this: You and I are just two human beings. You put yourself in my shape. Would you add that in view of these memoranda, this doubt on the part of the office of the Comptroller?
- Foley: Well, as I understand it, the Comptroller said to check again with Foley and if Upham and Foley were satisfied that it didn't commit us irrevocably to go into the thing in case they made improvements in the banking structure and in the situation, it was all right to add the paragraph. Now, in so far as going to the Federal is concerned, whether you add the paragraph or don't add the paragraph doesn't make any difference. If they include the Bank....
- H.M.Jr: That isn't what I am asking.
- Foley: The examination reveals that.
- H.M.Jr: I don't want to throw any bluffs. Now, I don't want to say - I don't want to say I am going to make charges before Section 30 until I do it, see? The day we make up our mind I will say it in writing, but not until that day. In other words, I don't want to back down.
- Foley: Well, Mr. Secretary, I think when you send out the letter whether you have the last paragraph on it

- 6 -

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- Foley: Well, Mr. Secretary, I think when you send out the letter whether you have the last paragraph on it

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or not you were saying that you were going to bring charges under Section 30 unless they improve the Bank and they meet the charges set forth in the letter of criticism, because the letter of criticism is the first step in the Section 30 proceeding.

Duffield: I remember that now, Mr. Secretary (referring to document on Secretary's desk).

H.M.Jr: Well, with this before you, you can read it.

Duffield: I remember now that what Sam Klaus found was a payment of interest by George Eccles to the Bank of America on a loan made to him by the Bank of America at about the time that Mr. Eccles says he sold the stock to his brother.

"There is some evidence that this stock," some of Mr. Eccles' stock in the First Security Corporation, "or most of it was purchased by his brother, George, who is president of the First Security Bank of Utah. It appears that in 1934 George paid approximately \$2500 to the First Security Bank of Utah and to the Bank of America, San Francisco, as interest on the purchase of First Security stock. This stock, together with the investment company stock, was reported as being held by the Bank as security for the loan while later returns indicate no substantial interest payment by George, and therefore may indicate that the loans had been repaid. There seems to be justification for assuming that George, the president of the First Security Bank, must have gone to the Bank of America for about \$18,000, more or less. This would make the total amount borrowed about \$37,000, the sum which Mr. Eccles claims to have received for the block of First Security stock, of which he disposed in 1934."

H.M.Jr: Only \$37,000?

Duffield: That is what he claims to have gotten for it.

H.M.Jr: I thought it was about three or four hundred thousand.

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- Duffield: He sold for \$37,000 in 1934, First Security stock acquired in 1928. He paid \$128,700 for it in 1928 and sold it for \$37,000.
- H.M.Jr: \$37,000 to his brother.
- Now, is there any way of looking...
- Upham: I think so, yes, as I gathered that. I think we can check that. It would be, of course, very noticeable in the Bank.
- H.M.Jr: Why?
- Upham: Going back and checking on the loan at that time.
- Foley: Sure, they would know and they would probably tell Eccles, but you wouldn't mind that, as I understand it.
- H.M.Jr: Well, I wouldn't like it, but on the other hand, I don't want to go on with these charges before a man who is sitting as Chairman and who borrowed \$37,000.
- Foley: That is right, but what I was pointing out is that Eccles will know that probably from the Gianninis if we go to the Bank and we ask for the collateral in connection with that loan, but as I understand it, you don't care whether he knows it or not. It would be better from your point of view if he did know it, wouldn't it?
- H.M.Jr: No, I would much rather he didn't. If he is going to know it, then I wouldn't make this examination until we know we are going to bring charges under Section 30. I would wait until we know definitely.
- Upham: You mean you wouldn't investigate this particular loan?
- H.M.Jr: No. I wouldn't start anything until we know we are going to do the Section 30.
- Foley: Well, that could be....
- H.M.Jr: Maybe the way to do it, rather than to do it this way, would be simply to ask Eccles, say

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that intimation has been made that when he sold the stock to his brother he borrowed from the Bank of America. We could just do it that way. I wouldn't do anything on it until we know definitely. I want to satisfy myself that if he did sell it to his brother - whether his brother borrowed from the Bank of America and whether his brother still owns the Bank. Wouldn't you?

Upham: Yes.

Foley: You can do it that way, make an examination to determine whether or not these improvements have been made. If he finds there haven't been material improvements, and he feels that we should certify the Federal, then he can ask one of these men to check the collateral as far as that loan is concerned.

H.M.Jr: Did you want to see me about something?

Upham: You told Mr. Thompson to have me bring this appointment in, myself.

H.M.Jr: As I understand, the fellow is already working.

Upham: Yes, but he is not on the payroll.

H.M.Jr: You want him?

Upham: It is a temporary appointment for six months.

H.M.Jr: Do I have to sign it?

Upham: Mr. Thompson wanted you to.

H.M.Jr: No, I don't want to sign it.

Upham: He is in no sense a columnist. He is an editor.

H.M.Jr: As to this letter, everybody is agreed, everybody has initialed it and it will go out by airmail today?

Upham: The only thing left is that it has not been dated. We planned to date it the 15th, which was a week ago Saturday, but that is something which you probably have no interest in.

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H.M.Jr: Why date it the 15th?

Upham: That is the day it was signed and you recall that a week ago Monday we received another letter from them and we felt, or we would have felt, a little better about it if this was dated before that letter came in.

H.M.Jr: Well, I don't know what you do in your office. I date it the day it left my office.

Foley: I think in view of the abnormal delay, Cy, which wasn't contemplated, I think we had better date it the day it leaves the office.

H.M.Jr: Any time that you feel that the Bank of America is answering the criticisms which your office has made, getting themselves in shape, I want to be the first one to know it. That will be one less worry we can forget about. This thing is a great source of worry. If they get themselves in shape, do their banking business ethically and honestly, swell.

Foley: Mr. Secretary, may I say one thing so you and I understand each other. Whether we add this paragraph or we don't add the paragraph, if the letter goes out today as it was or as it would be with the additional paragraph and if the Bank doesn't make improvements to your satisfaction and the Comptroller's satisfaction, I think we have got to go through with it and present the case to the Federal Reserve Board. I think the question of backing down has to be faced now. I think if we send the letter out we have got to go through with it, or the Comptroller's office, in so far as its prestige and standing with the national banks are concerned, would be materially shaken.

Now, I don't think that the paragraph the Attorney General suggests makes any difference. I was satisfied with the letter as a letter of warning, which is the first step in the proceeding before the charges are made.

H.M.Jr: I tell you what you do. You and Cy call up Mr. Delano and tell him just what you told me and tell him you have got a stenographer on the

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telephone taking it down and tell him just what you told me and then have him say yes or no.

Foley: O. K.

H.M.Jr: But I want it for the record, this memorandum from Upham with the attached memorandum from Smith plus the one from Delano. I am not saying that I am going to go through with it, but I don't know today where the Comptroller's office stands, so I am saying to you that I am not saying I am going to go through with the thing, but I don't go through with it unless I get 100 percent recommendation from the Comptroller's office. That is necessary.

Foley: That is a very important factor. We have got to rely on the Comptroller's people to present this case and if they have no confidence in the case and if they are not going to stand behind the charges that we make in the letter, we might just as well not send the letter.

H.M.Jr: I don't get excited very often. What do you suppose I am excited about?

Foley: We have got to rely on Folger and the Examiners.

H.M.Jr: All right, what do you suppose I am excited about? Why do you suppose instead of having Cy in here alone I am doing it in the presence of all of you? You stated that - I am saying to you that I don't want to be in the position, in view of this correspondence, that I have got to go through with the thing, because I don't know today where the Comptroller's office is.

Foley: Well, rather than wait to determine where the Comptroller's office is later on, I think we ought to decide right now if we are going to send the letter out today.

Duffield: That implies where the Comptroller's office is.

H.M.Jr: I tell you where I am, I am not committed. Just read that out loud (handing document to Mr. Foley).

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I am not excited.

Foley: "I hope you can find time to read the attached memorandum from the Examiner who examined the Bank of America in T. & S. A. It should be noted particularly that Transamerica Corporation proposes to use all the dividend which it receives on its holdings of Bank of America stock to reduce its obligation to the Bank. Mr. Folger and I are impressed by the seeming intention of the Bank to try to meet the main asset criticisms of the Comptroller's office. They are certainly going further in this endeavor to comply than they have ever done before, if the assurances of Mr. Russell Smith are to be given full faith and credit. They are apparently doing as many things as they can short of increasing the capital or cutting the dividend to make it more difficult to prove that they are guilty of unsafe and unsound banking."

H.M.Jr: There is nothing in there that would implicate the opinion of Mr. Smith.

Foley: He said, "...if the opinion..." I mean, "...if the statements of Mr. Smith are to be given full faith and credit."

H.M.Jr: It doesn't say, "Don't give them full faith and credit." It doesn't say what you said here, that you have no faith.

Upham: I said, "...make it more difficult to prove." I thought, knowing me as you did, that I was conveying to you my feeling that they were the same smart people, that they were doing everything they could to make it just as they had in their recent letters, building a record to make it more difficult to prove unsafe and unsound banking, and that is difficult enough anyway. Now, I have nothing to say. As you read it, as it sounds now, I don't blame you a bit for getting the impression you did. I had no such intention.

H.M.Jr: Cy, I don't know how long you take to write a thing like this, but I take it you realize the importance of the written word going in the written record. Talk about your reputation, what about making a monkey out of Foley? He has got to try

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this thing and I haven't even read that letter. I am taking Foley's recommendation and he had better find out where he stands.

You (Foley) had better find out where you stand, because I am holding you responsible. You are advising me on this thing.

Foley:

And that is the only reason I should like to leave the last paragraph in, because the Attorney General says that this is Mr. Rogge's suggestion. We want Mr. Rogge to try this case. Our only purpose in submitting the letter to the Attorney General was to see whether or not they had any suggestions to make in so far as the first step in the proceeding is concerned before the letter goes out, since they are going to have to carry the ball for us.

Now, if Mr. Rogge thinks that the letter is a little better with that paragraph in there, my inclination is that if we are going to use Mr. Rogge, to leave the paragraph there. So far as I am concerned, I don't think it adds or detracts from the letter. The letter is still a letter of warning. My position is if we send it out and they don't make material improvement in the Bank, the Comptroller's office will have no weight in so far as disciplining national banks go, unless we go through with this case and present it to the Federal Reserve Board. We have to rely on the Comptroller's people to present this case.

Now, if they feel that the letter shouldn't go out or if they feel the first step in this proceeding before the Federal Reserve should be taken, now is the time to talk, not after the letter goes out.

H.M. Jr:

I will go a bit further, that unless they are successful in making this Bank an honest Bank, they can't regain - they have lost their standing; they have no standing.

Upham:

That means, Mr. Secretary, that if we do take it to the Federal and lose, we have no standing.

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- H.M.Jr: I think you have no standing now. I put you people in there in order to give the Comptroller's office standing and backbone, and you fellows have yet to make good, in my eyes, and certainly the eyes of these three advisory banks. You heard what the fellow from Atlanta said. He said, after seeing the way you fellows handled this Bank of America, he said, "As far as I am concerned, the Comptroller's office is just a joke." He said, "I won't be afraid of the Comptroller's office."
- You have been playing fast and loose with this thing for I don't know how long. Here we are right at the point of sending out the letter and on the eve of that, I get that kind of a memorandum. I haven't got the energy to call up the Comptroller's office, but I think you and Cy had better.
- Upham: He is calling at 3:00 o'clock.
- H.M.Jr: You had better talk and have it out with him and tell him there is a stenographer on the wire listening and have it out with him. Before the letter goes out, find out where he stands.
- Foley: I would like to do that.
- H.M.Jr: Whether the paragraph is in or out, that is unimportant.
- Foley: That is my feeling. The main question is, do we or do we not send out the letter. Once we send out the letter and we find that they have not complied to our satisfaction with the suggestions we make in that letter, then they have got to go to the Federal Reserve Board. We can't stop.
- H.M.Jr: That isn't the only thing. After all, the Comptroller's office, when a bank is unsound and unsafe, has got to make recommendations to the FDIC, don't you?
- Upham: No, they can ask us to do something.
- H.M.Jr: Well, they have.
- Upham: Well, not formally.

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H.M.Jr: But they have informally.
Who is this fellow Smith?

Upham: Russell Smith?

H.M.Jr: Yes.

Upham: He is the Executive Vice President of the Bank.

H.M.Jr: No, but in that memorandum.

Upham: Oh, McLean. Mr. McLean is the Examiner.

H.M.Jr: I am talking about McLean's memorandum and McLean seems to be impressed.

Upham: "I feel more hopeful that some improvement can be obtained during the next six months, but I am not counting too strongly on it."

H.M.Jr: There is a distinct change in the Comptroller's office.

Upham: I thought we had agreed before this letter that we would go to the Federal and that this letter was being sent only to strengthen the case.

H.M.Jr: I have never told Foley that I have made up my mind to go to the Federal because I couldn't tell him that until I got the President's O. K., and I have never broached it to the President.

Upham: We were told by the legal division that they would have to have this letter to strengthen their case.

Foley: That is right, if we are going to the Federal Reserve Board. I say we have got to make up our minds before we send the letter out, whether we intend to go through with it.

Upham: I am still for it.

H.M.Jr: Do you want to say something, Gene?

Duffield: The only thought that occurs to me is that before that letter goes out, that is the time you ought to talk to the President, before the letter goes out, if this letter commits us to go ahead.

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- H.M.Jr: No, it would commit the Comptroller without committing me. The General Counsel ought to know where the Comptroller stands, if he stands where he did stand or if he has changed. Therefore, Foley ought to know, but as I understand it, after they pay the dividend then we send the Examiner in to see what changes they have made, if any, since the first of July, and if the Examiner reports to me what changes have been made since the first of July, then the Examiner recommends what we should do, isn't that right?
- Upham: The Examiner began the examination the 31st of August, so I think it won't be very long until we have it.
- H.M.Jr: Isn't that your understanding?
- Upham: Yes.
- H.M.Jr: So when he comes to me with a formal report that they have or have not corrected the criticism of July 1st - when they send that, I go to the President. Ed just wants to satisfy himself, I take it, where he stands with the Comptroller's office.
- Foley: That is a bridge we have got to cross before we send out the letter. While we are all here together, I have a memorandum here that I would like to read if you are well enough to listen.
- H.M.Jr: How long is it?
- Foley: It would take about five minutes to read it.
- H.M.Jr: What is it about?
- Foley: It is about these steps. It is the memorandum that you and I talked about on Monday. I would like to leave it if you would rather I wouldn't read it.
- H.M.Jr: Well, I don't think - I mean is it necessary? I want to read it, but is it necessary to go into that now?

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- Foley: No.
- H.M.Jr: Then let me read it.
Gene, do you want to say something?
- Duffield: No.
- H.M.Jr: Do you want to say something?
- Upham: I want to add one thing, that when Mr. Foley showed me the paragraph as written by the Attorney General I told him that in my opinion the language was very severe and did definitely commit us to go to the Federal even though there were continued only minor violations of law. We later talked about that and we agreed that it didn't make much difference one way or the other whether that paragraph is added, except that it would be a gesture to the Attorney General.
- In view of this discussion this morning, I lean pretty strongly to the view that the letter should go without that paragraph in.
- H.M.Jr: I, personally, in view of what Foley - I don't think it is important. I think it is much more important to know where you people stand. That is based on factual information.
- Upham: If there is substantial improvement in the Bank, I suppose it becomes a question of just how much improvement it will require before you go through with the Section 30 proceedings.
- Foley: It is a matter of judgment at that time as to the good faith of the Bank and the progress the Bank has made.
- H.M.Jr: Sure.
- Foley: To meet the criticisms set forth in the letter.
- H.M.Jr: Which letter are you talking about?
- Foley: The letter of warning.

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H.M.Jr: That is the one....

Foley: It is under consideration right here.

H.M.Jr: O. K.

THE AMERICAN BANKER
September 28, 1939

H. E. WHITE RESIGNS FROM TRANSAMERICA BOARD

Sacramento, Calif., Sept. 27. - Attorney Herbert E. White has announced his resignation from the board of directors of the Transamerica Corp. Confirming rumors of his resignation, Mr. White has issued the following statement:

"For years I have been an enthusiastic supporter of A. P. Giannini. Recently, over the radio, I expressed my regard for him. He is a financial genius, an outstanding man, and I admire him greatly.

"During the Giannini-Walker proxy campaign a few years ago, I supported the Giannini forces, both financially and otherwise. In fact, I was in charge of the campaign in this section of the State.

"However, I do not agree with some of the policies of the administration of the corporation and, such being the case, decided to hand in my resignation."

Mr. White has been on the board of the holding corporation since 1932. He has been the only Sacramento representative.

RE TRANSAMERICA CORPORATION
INVESTIGATIONSeptember 30, 1939.
10:45 a.m.

Present: Mr. Foley
Mr. Duffield
Mr. Upham

H.M.Jr: Just one thing. I have another memorandum from you, Cy, which I don't think the other people have seen.

"In justice to Mr. Folger, at least, may I supplement my memorandum of September 25th, by recounting that when he and I discussed the memorandum from Examiner McLean, Mr. Folger said substantially as follows:

"We must be very careful that McLean and Wright..."

Who is Wright?

Upham: He is the District Chief.

H.M.Jr: "...do not get taken in by the claims of Russell Smith that the Bank intends to really clean up. There is nothing new in that. We have gone through it before. I wouldn't believe them under oath without checking to verify their statements."

I just got this.

Upham: Yes.

H.M.Jr: As I said the other day, this is terrifically important. If you and Mr. Folger and the Comptroller have the slightest doubts about Mr. Wright - he is the fellow that is doing the examining?

Upham: No, he is the District Chief. McLean does the examining.

H.M.Jr: If you have the faintest suspicion, for God's sake get somebody you have no doubts about.

Upham: I haven't any.

H.M.Jr: Haven't you got some doubts about his being taken in by Russell Smith?

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- Upham: Not if we are aware of the possibilities. There are new men there that don't know Smith as well as Folger does - no, we don't have any doubts there.
- H.M.Jr: You haven't got the wording of that last paragraph, have you?
- Upham: Yes (handing document to Secretary).
This is the new letter, which adds that last paragraph.
- H.M.Jr: Boys, I don't think I want the last paragraph. I don't like the tone of it and I just don't want to be in the position of making the threat and then backing down. These other things are pretty strong.
"Furthermore, each director of the Bank is hereby warned to discontinue the unsafe or unsound practice of delegating, or permitting others to exercise, dictatorial duties."
- Foley: Read this other paragraph on Section 30.
"Failure to discontinue the unsafe and unsound practices and violations of law...." et cetera.
- H.M.Jr: Now, the way I feel, if we are saying all of this, as I understand it, we are going to take a look and see whether they have or have not made....
- Upham: Yes.
- H.M.Jr: If they haven't, then we don't do any more warning, we just act, and that is my next move. We have done too much warning and then done nothing. Now, this is all the warning that they need. The next time they do something, we act. On the other hand, if we don't act, I don't want to be in a position of having backed down.
- Upham: It is more definite and direct, see, than the other letter, which personally I can't see where it makes much difference.
- Foley: As I said before, Cy, it doesn't make any difference.

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The only difference, as I see it, is a psychological difference in so far as our relations with Justice go. As far as the effect of the letter is concerned, whether it is in or it isn't in, it is still a warning letter.

H.M.Jr: Will you boys excuse me a minute?

(Secretary leaves the conference)

Upham: If he feels very strongly about that, why I don't care particularly.

This I made no copies of (handing document to Foley), not because I didn't want you to see it but I thought that was for him to say.

Foley: Sure.

Duffield: Ed, I think you are the only person who has talked to Justice. It depends, it seems to me, on whether it is important in our cooperation with Justice. I am in no position to judge.

Foley: That is the only thing. The Attorney General made two suggestions in his letter.

H.M.Jr: (Returning) Does anybody want to argue with me?

Foley: I think it is my argument.

Duffield: I think Ed is the only one in a position to argue. It seems to me, if I may state my position first, that it turns primarily on whether inclusion of this paragraph is necessary for our full and friendly relations with Justice. Nobody here has talked to Justice except Ed.

H.M.Jr: Listen, they are tickled to death to get this case. I am not worrying about Mr. Rogge. This thing sews up all the other stuff. If he is successful, it is only due to the Treasury, so the shoe is on the other foot and I am not going to worry about Mr. Rogge. Mr. Rogge, I don't believe, could make his SEC case without this. I know damn well he can't.

Foley: This is a much better case from Rogge's standpoint.

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- H.M.Jr: I have thought about this thing a lot. You know, there is such a thing as calling, "Wolf, wolf," too often. I don't want to do that any more. I don't want to do anything else now until and when we find that we are going to act. Then we act. No more warnings. Do you mind if I play my hunch on this?
- Foley: No, I think that is all it is. My only argument, Mr. Secretary, is the effect that the failure to include the suggested paragraph will have on the Department of Justice.
- H.M.Jr: (On phone) Hello. (Telephone conversation with Ambassador Bullitt follows:)

Carbon copy sent to Mr. Cochran
and carbon copy sent to Mr. Foley
by Mr. McHugh 9/30/39 - as per the
Secretary's instructions.

September 30, 1939
10:45 a.m.

mas

HMJr: Hello.

Operator: Ambassador Bullitt. Go ahead.

HMJr: Hello.

Ambassador Bullitt: Hello, Henry. How are you?

HMJr: I'm just fair, Bill. I've been a little under the weather.

B: Well I'm awfully sorry. Look here, Henry, what I want to tell you is this. I'm sending you a telegram on this subject right away but I wanted to tell you over the phone at once.

HMJr: Go ahead.

B: The President and the Managers of the Bank Polski, that's the Polish National Bank.....

HMJr: Yes.

B:delegated Director Zygmunt Karpinski - K-a-r-p-i-n-s-k-i.....

HMJr: Yes.

B:with full powers, which I have here - had the original of and of which I have a copy - which I just sent to you by telegram - he disposed on his own account of the stocks of gold which are now or will in the future be deposited to the account of the Bank Polski in foreign banks.

HMJr: Yes.

B: And he is authorized also to dispose of the balances of the accounts of the Bank Polski with his foreign correspondents.

HMJr: Can you talk a little louder, Bill?

B: He is also authorized to dispose of the balances of the accounts of the Bank Polski with his foreign correspondents.

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HMJr: Yes.

B: And should he for legal reason on his own authority find it difficult to dispose of the said drops in balances the president and managers of the Bank Polski authorize the Polish Ambassador in London, or any person designated by the latter, to sign for the Bank Polski together with Director Karpinski.

HMJr: Yes.

B: Now, in other words, Karpinski holds full powers from the National Bank of Poland. You understand?

HMJr: I - I hear you.

B: And he - he called on me today at the request of the Polish Ambassador and submitted these full powers to us, which appeared to be in full and legal form. And he asked me if I would communicate that to you....

HMJr: Yes.

B:and if - and also to the Secretary of State, of course....

HMJr: Yes.

B:and if I could ask that that be communicated to the Federal Reserve Bank and to the correspondents in the United States of the Polish National Bank.

HMJr: Yes.

B: Those correspondents are the National City Bank, the Guaranty Trust Company, the Bankers Trust Company, the Chase National Bank and the Irving Trust Company.

HMJr: Yes.

B: You understand the reason for that?

HMJr: Ah - I - I think so.

B: Yes.

HMJr: Ah - (Laughs) - should I read Charlie Ross?

B: (Laughs)

-3-

HMJr: (Laughs heartily)

B: Yeah.

HMJr: What?

B: Yeah, that listens all right.

HMJr: (Laughs)

B:amuse you?

HMJr: What?

B: Did that amuse you?

HMJr: Did it?

B: I say, did that amuse you?

HMJr: Of course it did.

B: (Laughs) Good enough.

HMJr: Oh - it - that was wonderful!

B: (Laughs)

HMJr: I hope they make a record of this one.

B: They'll try. Well, Henry.....

HMJr: Yeah.

B: There it is. Now I will telegraph all of that....

HMJr: Yes.

B:at once to let you know that immediately....

HMJr: Yes.

B: ...in case there should be any attempts at action from other quarters today.

HMJr: Well, you get it to us and I'll put our attorneys right on it.

B: That's fine. Much obliged, boy. How - you've still got that jaundice, have you?

-4-

HMJr: Still got - no, I just came from the doctor's and he said it's over but it's left me kind of shaky, see?

B: That's too bad.

HMJr: I shook it off, I had that much vitality.

B: Uh huh. Good for you, Henry.

HMJr: Ah - the - they think now it looks as though they might come to a vote in the Senate in about two weeks.

B: Two weeks?

HMJr: Yes.

B: Well, that's swell. I'm perfectly delighted.

HMJr: Right.

B: I'll not expect to see the vote because we expect to be blown up here in about one week.

HMJr: Really?

B: I hope it's the proper vote anyhow. (Laughs)

HMJr: Well.

B:anyway.

HMJr: In about a week? What?

B: Yeah.

HMJr: That's nice.

B: Yes. Well, God bless you, boy. Take care of yourself.

HMJr: All right.

B: Goodbye.

HMJr: Goodbye.

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H.M.Jr: Now, I am not going to worry about Mr. Rogge. Do you mind if I play my hunch on this thing? Do you feel very strongly?

Upham: No, sir.

H.M.Jr: You don't?

Upham: No, sir.

H.M.Jr: Either way?

Upham: Either way.

H.M.Jr: All right. I don't want to say, "I warn, I warn, I warn."

Ed?

Foley: O. K. with me.

H.M.Jr: Now, another thing. As long as we have waited this long, why don't we wait until Monday, when the dividends will actually have been paid?

Foley: They pay today.

Upham: The 30th, I guess.

H.M.Jr: Why don't we let it go out as of Monday, after the dividends have been paid? They might say, "Why did they do it on the dividend day?" It looks to me as though it would gain a little bit of weight by waiting one day more.

Upham: And send it without the added paragraph.

H.M.Jr: Yes. Don't you think there is something in that, as long as you have waited that long?

Upham: I believe I would wait.

Foley: I believe that is a good thought.

H.M.Jr: I mean, as long as we have waited this long they might think, "Well, there is some significance in

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doing it on the day the dividend is being paid." As long as we have waited this long, let's wait one day longer and do it Monday. Don't you think so?

Upham: Yes.

H.M.Jr: I can't see anything gained by doing it on the 30th and you might gain something by doing it after the crime has been committed.

Upham: I think that is a good idea.

H.M.Jr: And just as a matter of form - who tells Hanes it is going to be mailed Monday?

Upham: My last instructions from him are not to send the letter until he has told me that he has presented his views to you and cleared them.

H.M.Jr: He initialed the original?

Upham: Yes, and he initialed the copy with the paragraph added also, so he knows all about that.

H.M.Jr: Then would you just tell him that we expect to mail it Monday and if he wants to say something to me about it, he had better see me Monday.

Upham: All right.

H.M.Jr: Tell him I have been talking to you about it and that my instructions are to mail it Monday, but I would be glad to hear if he has in any way changed his mind.

Upham: Sure.

Foley: I thought you would be interested....

H.M.Jr: See?

Upham: Yes.

Foley:in what the Comptroller said when I called up. I said, "I want to say that if you feel that sufficient improvements have been made as represented

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to you by your people between the time you signed your first letter and the time you signed the last page with the paragraph added as to the Section 30 proceeding, then I don't think the letter ought to go if you are satisfied now." He said, "I am not satisfied and I think the letter ought to go." I said, "The addition of the paragraph doesn't change a single bit the situation before." He said, "That is fine, tell Cy about it."

H.M.Jr: My instructions are, this is to go in the mail Monday noon. Tell that to Mr. Hanes.

Foley: Dated the 2nd of October.

H.M.Jr: Don't you think it is good?

Foley: Yes.

Upham: Yes, I think it is.

H.M.Jr: When is the Comptroller coming back?

Upham: I don't know definitely.

H.M.Jr: Will you get him a wire?

Upham: He is going down to San Francisco tomorrow, I think, and he may want to go down to the Investment Bankers' Convention.

H.M.Jr: Please send him a wire, because I would like to know when he will be back in Washington. I would like you to get off a wire today.

Upham: Sure.

OCT 2 1939

My dear Mr. Attorney General:

Thank you for your letter of September 22, 1939, returning the proposed letter of warning to the Board of Directors of the Bank of America National Trust and Savings Association, and giving us your suggestions.

I appreciate the attention which you have given this matter, and shall take the opportunity in the future to avail myself of your further advice. Should we proceed, as planned, to present the case for the removal of directors or officers of the Bank to the Board of Governors of the Federal Reserve System, I shall ask you to make Mr. Regge available to us for this purpose.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

The Honorable

The Attorney General of the United States.

DWS/NOT/MSFz/s/ta
Retyped 9/30'39

E. D. H.

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(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

The Honorable

The Attorney General of the United States.

HRG/HRG/HRG/c/tn
Retyped 2/20/50



TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY

WASHINGTON

OCT 2 1939

ADDRESS REPLY TO
COMPTROLLER OF THE CURRENCY"

Board of Directors,
Bank of America National Trust
and Savings Association,
San Francisco, California.

Gentlemen:

In my letter to you, dated July 31, 1939, which reviewed some of the more important phases of your bank's problems as revealed by the report of examination, completed July 21, 1939, I advised you that until losses set up by the examiner in that report were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice. I further warned each director and officer of the Bank, pursuant to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77), to discontinue such unsafe and unsound banking practice, as well as other unsafe or unsound practices and violations of law referred to in that letter and in the reports of examination of the Bank.

On September 12, 1939, in direct violation of my warning you declared a dividend at the rate of 19.2 per cent, without writing off all losses set up by the examiner in the report of examination, completed July 21, 1939, and without establishing adequate re-

- 2 -

serves. The declaration of that dividend constituted the continuance of an unsafe and unsound practice after you had been duly warned pursuant to section 30 of the Banking Act of 1933 to discontinue such practice.

In view of the apparent futility of the measures employed by this office in our efforts to bring about a real and adequate correction of serious unsafe or unsound banking practices and violations of law engaged in by your bank, we are constrained again to direct the attention of each member of your Board of Directors and of each officer of your bank to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77) and to warn again against the continuation of violations of law and the continuation of practices which are unsafe or unsound.

It is unnecessary, for the purposes of this letter, to describe at length each transaction or practice discussed because previous correspondence between you and this office indicates that you are familiar with the matters referred to in this letter. Likewise, several successive reports of examination which have been furnished to your bank contain criticisms of these matters, and it is assumed that each director has familiarized himself with the contents of these reports.

Transactions described in this letter, taken by themselves,

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constitute unsafe or unsound banking practices. Furthermore, the several transactions, considered together evidence a scheme, inimical to sound banking, to use the facilities of the Bank for the benefit of Transamerica Corporation, its subsidiaries and allied interests without adequate protection for the bank, its depositors and other creditors. A study of these transactions indicates that expansion, rather than safe and sound banking, has been the dominant factor in the formulation of the policies of the bank.

Dividend Policy and Undercapitalization

Since 1933 the dividend rate has increased steadily from 6 per cent to 19.2 per cent. It is manifestly an unsafe or unsound practice to disburse in the form of dividends a major portion of the Bank's earnings, while the Bank carries a dangerous accumulation of real estate and other fixed assets, a large and unwarranted concentration in the obligations of Transamerica and its subsidiaries, and has total criticized assets, as shown by the report of examination, completed on July 21, 1939, of more than \$130,000,000, an amount considerably in excess of the total capital structure of the Bank as shown by its books. It is noted from the same report of examination that during the year 1938 the Bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and other securities, were \$5,389,975, while during that year \$9,600,000 was paid out in dividends. Thus, a large part of the

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dividends were paid from non-recurring profits from sales of bonds and other securities.

The ratio of the capital structure of the Bank to deposits is out of proportion to the ratio required for safe and sound banking. The report of examination, dated October 21, 1927, revealed \$1.00 of net sound capital to each \$10.76 of deposits, whereas the report of examination, completed on July 21, 1939, shows \$1.00 of adjusted capital structure to each \$14.73 of deposits. The adjusted capital structure as shown in the report of examination, completed on July 21, 1939, is more than \$9,000,000 less than that shown in the immediately preceding report, completed on February 28, 1939. In view of the enormous concentration in real estate and other fixed and criticized assets, failure of the directors to remedy the under-capitalized condition of the Bank is an unsafe and unsound banking practice.

Before any dividends were paid, earnings should have been used (1) to eliminate all losses and a reasonable portion of the other criticized assets, (2) to establish an adequate reserve against possible future losses, and (3) to establish a proper ratio between net sound capital and deposits. It is obvious that the Bank's dividend policy has been at variance with these principles and constitutes an unsafe and unsound banking practice. This becomes even more apparent when consideration is given to the fact

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that during most of the period since 1933 approximately 99 per cent of the Bank's stock was owned by the Transamerica Corporation which was the chief beneficiary of the Bank's unwarranted dividend policy. Even today this Corporation, as the owner of approximately 42 per cent of the Bank's stock, stands to receive the largest single benefit from a continuation of this unsound dividend policy. These facts, as well as others, make the conclusion inescapable that Transamerica Corporation and its subsidiaries have been unduly favored without due regard for the interests of the Bank, its depositors and other creditors.

At the meeting of the board of directors of the Bank, on September 13, 1938, a telegram from the Acting Comptroller of the Currency was read to the board by National Bank Examiner R.E.A. Palmer, in which the board of directors were advised that the declaration of any dividend at that time would, unless proper provision for criticized assets were made, be and continue an unsafe and unsound practice and, pursuant to section 30 of the Banking Act of 1933, the Bank, its officers and the board of directors and members thereof were warned to discontinue such unsafe and unsound practice. In direct violation of that warning, a dividend at the rate of 19.2 per cent was declared by the board of directors without making proper provision for criticized assets. The declaration of the dividend on

- 6 -

September 13, 1938 was the continuance of an unsafe and unsound practice, in direct violation of the warning of the Acting Comptroller of the Currency.

In the last report of examination, completed on July 21, 1939, book assets classified by the examiner as loss totaled \$13,517,598.69. By letter, dated July 31, 1939, I advised you that until those losses were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice, and the directors and officers of the Bank were warned, pursuant to section 30 of the Banking Act of 1933, to discontinue such unsafe and unsound banking practice. In direct violation of that warning the board of directors, on September 12, 1939, declared a dividend at the rate of 19.2 per cent without writing off all losses set up by the examiner and establishing adequate reserves. The declaration of the dividend on September 12, 1939, was the continuance of an unsafe and unsound practice, in direct violation of my warning.

The failure or refusal of the Bank or its directors to charge off or make adequate provision for the book assets classified as loss by the examiner in the last report of examination, completed on July 21, 1939, is, and continues to be, an unsafe and unsound banking practice and a violation of law. Likewise the declaration or payment of any dividend in the future without making proper pro-

- 6 -

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vision for criticized assets will be and continue an unsafe and unsound banking practice, and the failure or refusal of the Bank or its directors to charge off or make adequate provision for book assets classified as loss by the examiner in future reports of examination will be and continue an unsafe and unsound banking practice and a violation of law. You are further advised that representing in published reports of condition of the Bank assets to be good, which the Comptroller of the Currency has directed be charged off, is and continues to be an unsafe and unsound practice and a violation of law.

Real Estate Concentration

The report of examination of the Bank, completed on July 21, 1939, discloses an unwarranted concentration of the Bank's assets in real estate, aggregating \$94,001,556.41, a sum in excess of the adjusted capital structure of the Bank. This concentration includes real estate shown on the Bank's books as "banking premises" in the amount of \$26,786,498.80 of which, properties having a book value of \$1,196,295.20 are not used as banking premises and have been carried by the Bank in excess of eleven years. The real estate concentration also includes contracts with California Lands, Inc., and Capital Company in the amount of \$34,934,723.80, since the only collateral pledged as security for the fulfillment of these contracts is the real estate which is purported to be sold thereunder;

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and \$4,641,991.79 of the investment of the Bank in Merchants National Realty Corporation stock.

Contracts with California Lands Inc. and Capital Company

Apparently, in order to circumvent the five-year limitation upon the holding of real estate by a national bank, prescribed by section 5137 of Revised Statutes, as amended, real estate, formerly securing distressed loans and acquired through foreclosure or otherwise, has been made the subject of several successive contracts with California Lands Inc. and Capital Company, the terms of which have been varied from time to time to meet the needs of those corporations (subsidiaries of Transamerica Corporation) rather than to protect and benefit the Bank.

The original contracts under which the Bank purported to dispose of its "other real estate" were contracts made with National Bankitaly Corporation, which was wholly owned by shareholders of the Bank. Subsequently, those contracts were canceled and new contracts were entered into between the Bank and Capital Company and California Lands Inc. (each of which is wholly owned by Transamerica Corporation). A brief chronology of the changes made in the successive so-called resales of foreclosed properties will disclose how the alterations in the contracts have benefited Transamerica Corporation and its subsidiaries, and prejudiced the interests and rights

- 9 -

of the Bank and its depositors.

The original contracts provided for initial payments of 25 per cent of the book value of the real estate sold, with interest at 6 per cent per annum on unpaid balances, payment in full to be made within a period of five years, the purchasers to pay the taxes. These contracts were canceled and new ones entered into with Capital Company and California Lands Inc. The last mentioned contracts provided for initial payments of 10 per cent of the purchase price of the properties (determined by actual cost to the Bank, rather than estimated value) and 10 per cent each year thereafter with interest at the rate of 1 per cent per annum on unpaid balances, but taxes to be paid by the Bank. In April, 1934, those contracts were canceled and new contracts entered into between the Bank and the same subsidiaries of Transamerica Corporation whereby further benefits were given to those subsidiaries, in that no initial or down payment was required and 10 per cent per annum was to be paid from and after two years from the date of acquisition. The annual 10 per cent payments have no relationship to each property sold under the contracts but rather relate to the aggregate of the purchase price of all properties sold to each corporation. The new contracts provide for the acceptance by the Bank at face value of any notes or sales contracts received by these corporations in payment for the

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real estate sold by them.

Formal approval was not given by the board of directors of the Bank either to the original contracts with Capital Company and California Lands Inc., or to their successive revisions. It is an unsafe or unsound practice for the board of directors to delegate, or permit the officers to assume and exercise, its duties and discretion, particularly where the transactions involve assets and rights of such importance as the real estate contracts with Capital Company and California Lands Inc.

The patent benefits to Transamerica Corporation or its subsidiaries from each successive change in the contracts clearly evidence the unsafe or unsound practice of unduly favoring Transamerica Corporation and its subsidiaries without due regard for the interest of the Bank, its depositors and other creditors.

The assuming by the Bank of the obligation under the present contracts to take at face value, notes or other obligations accepted by Capital Company and California Lands Inc., in payment of the obligations of those corporations to the Bank, constitutes an unsafe or unsound practice since it prevents the board of directors of the Bank from performing its duty by exercising its sound discretion in selecting desirable purchasers or procuring adequate prices for the respective properties.

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Any trades of real estate under the provisions in the contracts authorizing California Lands, Inc., and Capital Company to make "trades, with the right of substitution", of real estate owned by the Bank, not only constitute an unsafe and unsound banking practice, but the acquisition of any new real estate by the Bank as a result of such trades constitutes a violation of section 5137 of the Revised Statutes, as amended (U.S.C. title 12, sec. 29). The purported sale of real estate to the two companies for the apparent purpose of circumventing the five-year limitation upon the holding of real estate by a national bank, prescribed by section 5137 of the Revised Statutes, as amended, constitutes an unsafe and unsound practice, unless the companies pledge satisfactory collateral as security for the contracts, in addition to the real estate purported to be sold thereunder, to protect the Bank against losses on sales of real estate not finally disposed of by the companies within five years after acquisition by the Bank. Unless the companies pledge such additional collateral as security for the contracts, the Bank must set up adequate reserves to cover possible losses on sales of real estate not finally disposed of by the companies within five years after acquisition by the Bank. Failure to do so is and continues to be an unsafe and unsound practice.

Merchants National Realty Corporation. On October 1, 1931, the Bank sold to Transamerica Corporation for a consideration of

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\$9,155,786.56 certain real estate carried on the books of the Bank as "banking premises", but which were not being used for banking purposes. The contract provided for a down payment with the balance payable on or before October 1, 1936. Subsequently, Transamerica Corporation sold to Capital Company the properties acquired by it under the contract. On July 14, 1937, more than nine months after the date on which the balance due to the Bank under the contract of October 1, 1931 was to have been paid to it, the Bank contributed \$5,875,000 to the surplus of Merchants National Realty Corporation (wholly owned by it) and increased the book value of the Bank's investment in the stock of this Corporation by the same amount. Merchants National Realty Corporation in turn purchased from Capital Company for the sum of \$5,874,457.70, the ex-banking premises then held by Capital Company, such sum representing the balance remaining due to the Bank from Transamerica Corporation under the contract of October 1, 1931. Capital Company then paid to Transamerica Corporation the proceeds of this sale to eliminate the Capital Company's liability on its contract with Transamerica Corporation. Transamerica Corporation in turn used the same funds to eliminate its liability to the Bank under the October 1, 1931 contract.

The result of these transactions is that the Bank increased by the sum of \$5,875,000, its investment in the stock of Merchants

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National Realty Corporation carried in its "other bonds, stocks and securities" account and eliminated the direct obligation of the Transamerica Corporation to the Bank. Essentially, the transactions resulted in a re-acquisition by the Bank of other real estate which it had formerly sold to Transamerica Corporation. According to the report of examination, completed on July 21, 1939, there remain on the books of Merchants National Realty Corporation 23 parcels of this illegally purchased real estate, having a book value of \$4,578,309.34, all but one of which parcels were originally acquired by the Bank more than ten years ago, and, accordingly, are now being carried by the Bank beyond five years, in violation of section 5137 of the Revised Statutes, as amended.

The acquisition of the ex-banking premises by Merchants National Realty Corporation relieved Transamerica Corporation or its wholly owned subsidiary from any risk or hazard of loss through depreciation in value of the real estate, while the Merchants National Realty Corporation, wholly owned by the Bank, assumed that risk. This transaction evidences again the unsafe or unsound practice of favoring Transamerica Corporation or its subsidiaries.

This use of Bank funds for the purpose of indirectly purchasing real estate not necessary for the Bank's accommodation in the transaction of its business is an unsafe or unsound practice and a violation of section 5137 of Revised Statutes, as amended. In addition, the carrying of this illegally purchased real estate in the bond account of the Bank as an investment in the stock of

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Merchants National Realty Corporation, rather than as "Other Real Estate Owned", and so reporting it, is misleading and constitutes an unsafe or unsound practice.

Transamerica Corporation Large Line

The last report of examination discloses that obligations totaling \$76,684,859.96 (of which more than \$53,000,000 are adversely classified), and representing about 67 per cent of the Bank's capital as shown by its books are substantially dependent upon the future prosperity, earning power and success of Transamerica Corporation, its subsidiaries and allied interests. This overconcentration has been the subject of repeated criticisms in reports of examination of the Bank, and in correspondence and conferences between your office and the Bank. By letter, dated July 31, 1939, I advised you that failure to take the action necessary to bring this line within conservative limitations constituted an unsafe and unsound banking practice, and you were warned, pursuant to section 30 of the Banking Act of 1933, to discontinue such unsafe and unsound practice.

The major portion of the securities pledged as collateral for this line is reported to be permanent investments of the Transamerica Corporation and its subsidiaries, and therefore, no substantial liquidation reasonably can be anticipated from that source. The report of examination, completed on July 21, 1939, points out that, although there has been little improvement in the aggregate total

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of the Transamerica large line for the past several years, Transamerica Corporation, since January, 1937, has disbursed in the form of dividends and in the retirement of its own stock almost \$90,000,000.

This overconcentration in obligations of Transamerica Corporation and its subsidiaries is an unsafe and unsound practice which must be discontinued by immediate steps to eliminate the concentration along constructive lines of actual asset improvement and cash liquidation rather than by mere change of obligor or form of obligation or by re-acquisition by the Bank of unsatisfactory or illegal assets, which to a marked degree has been the procedure followed in the past, as disclosed by the various reports of examination.

Inter-America Corporation Contracts.

Certain assets were classified as "nonbankable and loss" in the reports of examination made in 1931 and 1932. These assets to the extent of more than \$35,000,000 were made the subject of three contracts (referred to later as Inter-America Corporation contracts) entered into between the Bank and Inter-America Corporation which was a wholly owned subsidiary of Transamerica Corporation.

In causing the contracts to be executed and to be collateral-

ised by securities of substantial value, Transamerica Corporation (which then owned 99.65 per cent of the stock of the bank and was, therefore, responsible directly or indirectly for the threatened impairment of the Bank's capital) outwardly manifested a purpose to strengthen the capital position of the Bank. These contracts purported to represent not only to the public, but also to the national bank examiners and the Comptroller of the Currency, binding obligations of the Inter-America Corporation as well as legal holdings and liquid assets of the Bank.

Each of the original Inter-America Corporation contracts provided for payment of the balance of the purchase price of the non-bankable and loss items covered by them at the expiration of one year from the date of the respective contracts with interest at the rate of 6 per cent per annum on unpaid balances. From time to time the dates for performance of the contracts (and the consequent accrual of interest thereon) were extended. These extensions were in reality for the benefit of Transamerica Corporation or its subsidiaries. By virtue of these extensions the bank was deprived of income contemplated by the original contracts. The extensions removed the contract obligations from the category of "bad debts" as defined in section 5204 of the Revised Statutes (U.S.C. title 12, sec. 56), thereby making possible the payment of large dividends to Transamerica Corporation or its subsidiaries. Finally, Trans-

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america Corporation or its subsidiaries were enabled to avoid actual payment of the binding obligations created by the contracts. The extensions were clearly unsafe or unsound banking practices.

The methods used in the alleged elimination of the major portion of the obligations created by the so-called Inter-America Corporation contracts constitute unsafe or unsound practices in and of themselves and also evidence the ultimate unsafe or unsound practice which has been followed by the Bank in unduly favoring Transamerica Corporation or its subsidiaries. The methods are disclosed in recent reports of examination under the heading "Large Line". Attention is called to some of the methods used, not one of which was formally approved by the Board of Directors and which are as follows:

First. In 1935 and 1936, certain Government and municipal bonds were written up to the extent of approximately \$14,000,000 and a like amount was applied on the obligations represented by the Inter-America Corporation contracts. Those obligations could have been collected at their respective maturities by resort, if necessary, to the collateral pledged as security for them and, therefore, those applications of credits constitute the making of gifts or the forgiving of debts, neither of which can be justified.

The writing up of appreciation in securities without giving consideration to depreciation and losses in other assets is not in ac-

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cord with sound banking principles and is an unsafe and unsound practice. The various "write-ups" were criticized in the reports of examination covering the respective periods in which they occurred.

Second. On February 1, 1933, and January 2, 1934, the Bank entered into contracts with wholly owned subsidiaries of Transamerica Corporation, whereby the Bank sold all of its charged off assets, including those to be charged off up to July 1, 1937, for a total consideration of \$300,000. Subsequent to those sales, some of the charged off assets were liquidated and the proceeds thereof in the amount of \$1,486,185 were credited upon the Inter-America Corporation contracts. On July 14, 1937, the Bank repurchased from the Capital Company and California Lands, Inc. (successors to the original contracting subsidiaries) the residue of such charged off assets for a consideration of \$6,500,000, under a so-called guaranty by Transamerica Corporation that the Bank would obtain through liquidation of these assets the amount of the purchase price. In addition, the contract provided that Transamerica Corporation would share equally with the Bank in all recoveries over and above \$6,500,000 until the year 1947. Of the purchase price paid by the Bank, \$5,844,287 was made available to Transamerica Corporation through a series of inter-company book entries and eventually was credited upon the obligations of Trans-

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america Corporation on the Inter-America Corporation contracts. The remaining portion of the purchase price, approximately \$657,000, was used by California Lands, Inc. to reduce its liability to the Bank under the real estate contracts already discussed.

The repurchase of charged off assets evidences either the taking of a grossly inadequate consideration at the time of the original sale or the payment of an unconscionable price when these assets were repurchased as well as an illegal and unwarranted investment of bank funds. In addition, the transaction evidences undue favoritism to Transamerica Corporation and its subsidiaries in that there was substituted for a valid and well-secured obligation of Transamerica Corporation a group of previously charged off assets of very questionable value purporting to be secured by a long term guaranty of the Transamerica Corporation, thus further extending the time for payment for its original obligation. All of the recoveries, past as well as future, on the charged off assets should have been and should be used to take care of other losses and to strengthen the capital structure of the Bank, rather than be made the subject of direct or indirect gifts to the Transamerica Corporation and allied interests.

Third. An additional portion of the obligation of Transamerica Corporation under the Inter-America Corporation contracts allegedly was eliminated by a so-called sale of 56,600 shares of stock of

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National City Bank of New York by Transamerica Corporation to the Bank for a consideration of \$2,716,800, which sum was applied as a credit upon the Inter-America Corporation contract obligations. In the course of the transaction the Bank gave to Transamerica Corporation a so-called "Option to Purchase" the National City Bank stock at the rate of 11,320 shares per year over a five-year period for the price at which the securities were purchased by the Bank.

Among the objectionable features of the so-called "Option to Purchase" National City Bank stock transaction are:

- (a) In exercising the first option for the purchase of 11,320 shares of the stock at \$48 a share, a second mortgage on real estate, due in approximately 15 years, was offered and accepted in lieu of cash.
- (b) The Bank took the stock under an arrangement whereby Transamerica Corporation rather than the Bank would enjoy the benefits of any increase in the market price.
- (c) The additional 18,400 shares of National City Bank stock, allegedly pledged to the Bank by Transamerica Corporation, is inadequate to protect the Bank against any appreciable drop

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in the market price of the stock, as is disclosed by the estimated loss of \$724,720 shown in the last report of examination.

- (d) The Bank is deprived of the right to dispose of the stock except to the extent that Transamerica Corporation fails to exercise its option in any particular year.

The purchase of the National City Bank stock constitutes an illegal investment of bank funds and a substitution of securities which the Bank could not legally acquire for a binding and well-secured obligation of Transamerica Corporation.

Fourth. From time to time certain notes sold under the Inter-America Corporation contracts were reinstated as assets of the Bank and credit was given to Transamerica Corporation on the contracts. These restorations were occasioned by the increases in the market value of collateral securing the respective notes and appear to have been based solely upon the favorable market price of the collateral without regard to the financial worth of the makers of the notes or the future stability of the market. The writing up of loans, which were considered to be of such nonbankable character as to be charged off, solely on the strength of an unrealized appreciation in value as

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a result of an increase in the market price of the collateral securing them, is purely speculative, inconsistent with well-established sound banking principles, and wholly unjustified.

"Self Insurance"

On page 18, insert 16, of the report of examination, completed on July 21, 1939, the examiner discusses the so-called "self insurance" plan of the Bank, under which the Bank purports to carry its own fidelity insurance for the first \$100,000, by depositing premiums which would otherwise be paid to an insurance company, with Transamerica General Corporation. This plan will not be discussed in detail, since your letter of August 8, 1939, and enclosures, indicates that you are fully acquainted with the plan.

Transamerica General Corporation is a wholly-owned subsidiary of Transamerica Corporation, and it does not appear that the Corporation has any authority to do an insurance business. This practice of depositing with or paying insurance premiums to Transamerica General Corporation constitutes an unsafe and unsound banking practice. If it has not already been done, the practice should be discontinued and the remaining balance of the premiums paid to Transamerica General Corporation, which, according to the examiner, totalled \$2,272,659.55 as of March 31, 1939, should be returned to the Bank. Failure of the Bank to discontinue making such payments to Transamerica General Corporation or failure to take immediate

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steps to obtain the return to the Bank of the balance of the premiums remaining with Transamerica General Corporation, will be and continue an unsafe and unsound practice.

Violations of Law.

In discussing the unsafe or unsound banking practices in the preceding pages certain transactions under consideration were designated as violations of law. Under the present heading are included additional violations of law (this summary contains several of the violations referred to in preceding pages) which the Bank or its directors have knowingly or negligently permitted its officers or agents to commit. The transactions which constitute violations of law will be very briefly identified, since details with reference to such transactions are set forth in the last report of examination of the Bank, completed on July 21, 1939.

Section 5200 of the Revised Statutes, as amended (U.S.C. title 12, sec. 84). This section has been violated by excessive "obligations" of Transamerica Corporation, and its subsidiaries, to the Bank. (Report of examination, completed July 21, 1939, page 8, inserts 1 seq.)

Section 5136 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24). This section has been violated by the acquisition by the Bank of 56,600 shares of stock of the National City Bank of New York from Transamerica Corporation, on July 14, 1937, 45,280 shares

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of which were held illegally by the Bank at the time of the last examination. (Ibid., page 8, inserts 4 to 6.)

Section 5137 of the Revised Statutes, as amended (U.S.C. title 12, sec. 29). This section has been violated in the following transactions:

(a) On or about July 14, 1937, the Bank illegally repurchased certain properties at one time owned by the Bank and carried as "Future and Former Bank Premises" but sold to Transamerica Corporation, on or about October 1, 1931. This illegal acquisition was affected by the Bank increasing in the amount of \$5,875,000 its investment in the stock of Merchants National Realty Corporation, a wholly owned subsidiary of the Bank. (Ibid., page 14, inserts 32 to 66.)

(b) The report of examination, completed on July 21, 1939, at page 14, insert 72 and 73, lists a number of properties acquired in violation of this section.

(c) The report of examination, completed on July 21, 1939, at page 14, insert 71, lists parcels of real estate which have been held by the Bank beyond the five-year statutory period prescribed by this section.

(d) The report of examination, completed on July 21, 1939, at page 14, insert 8, lists three properties which should be carried by the Bank as "Other Real Estate Owned", rather than "Banking Premises." These properties have not been used as banking premises and have been

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held by the Bank in excess of eleven years in violation of the five-year statutory period prescribed by this section.

Section 24 of the Federal Reserve Act, as amended (U.S.C. title 12, sec. 371). The report of examination, completed on July 21, 1939, at page 9, insert 13, contains a recapitulation showing a total of \$16,255,229.66 real estate loans which are in violation of the requirements of this section. You are further advised that the loan to Capital Company for the construction of a department store (Ibid., page 8, insert 10) which, according to your letter of August 8, 1939, has been increased to \$1,400,000, is a violation of this section.

* * * * *

In the course of this letter certain practices indulged in by the Bank have been characterized as unsafe or unsound, such as the practice of unduly favoring Transamerica Corporation or its subsidiaries or allied interests, without due regard for the interests of the Bank and its depositors and other creditors. In this connection each director and each officer of the Bank is hereby warned, pursuant to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77), to discontinue all practices which may unduly favor Transamerica Corporation or its subsidiaries or allied interest, whether by way of paying unjustifiable dividends before having made appropriate provisions for the elimination of criticized assets and the establishment of an adequate sound capital position, or by way of

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unwarranted extensions of credit, either directly or indirectly, to Transamerica Corporation or its subsidiaries or affiliates, or by way of making gifts to or forgiving the debts of Transamerica Corporation or its subsidiaries or affiliates, or in any other manner or by any other means.

In addition, each director and each officer of the Bank is hereby warned, pursuant to the provisions of such statute, to discontinue each and all of such unsafe or unsound practices referred to in this letter and to discontinue the violations of law referred to in this letter, as well as all other unsafe or unsound practices or violations of law which have been disclosed by the reports of examination.

Furthermore, each director of the Bank is hereby warned to discontinue the unsafe or unsound practice of delegating, or permitting others to exercise, directorial duties.

Very truly yours,

Preston Delano

Preston Delano
Comptroller of the Currency

October 2, 1939

I called Upham at ten minutes of one and asked him if he had mailed the letter to the Bank of America. He said he had spoken to Hanes who said that he wanted to speak to me because he, Hanes, felt that the letter might get me into a lot of trouble, but Upham told Hanes that if he did not hear from me by noon the letter would go. I told Upham that I had seen Hanes around noon in his office about the Government bond market and that Hanes had ample opportunity to talk to me about anything, but had not brought up the question of the Bank of America. Therefore, I told Upham to mail the letter. Upham said he would.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

October 4, 1939

TO Secretary Morgenthau
FROM E. H. Foley, Jr.

I am attaching the correspondence between Congressman Ford of Los Angeles and Commissioner Healy of the SEC in regard to the proceeding against Transamerica Corporation before the SEC. As the Treasury Department is also mentioned in this correspondence, I thought it might be of interest to you.

E. H. Foley, Jr.

Attachments

C O P YSECURITIES AND EXCHANGE COMMISSION
WASHINGTON

September 30, 1939

Edward H. Foley, Esq.
General Counsel
Treasury Department
Washington, D. C.

Dear Ed:

The Honorable Thomas Francis Ford, M. C. has interested himself in the proceedings instituted by the Commission under Section 19(a)(2) of the Securities Exchange Act against Transamerica Corporation, and in the general problem of the attitude not only of this Commission but also of the Treasury Department toward Transamerica Corporation. His interest has resulted in an interchange of letters, of which, since they involve to some extent the policy of the Treasury Department, I am enclosing copies for your files. I have not enclosed a copy of Judge Healy's letter of June 19, since that letter constituted merely an historical resume of the proceedings, and dealt with matters with which you are already thoroughly familiar.

In view of the fact that Representative Ford's letter was addressed to Judge Healy, it may be inappropriate for your Department to take official cognizance thereof. Without in any way attempting to control your discretion in this matter, I should much appreciate your discussing the question with me before undertaking to write any letter to Representative Ford regarding his charges against your Department.

Yours sincerely,

(Signed) Chester T. Lane

Chester T. Lane
General Counsel

Enclosures.

C O P Y

SEP 27 1939

Hon. Thomas Francis Ford
House of Representatives
Washington, D. C.

Dear Mr. Ford:

The delay in answering your letter of July 20, 1939, has been occasioned by my absence from Washington and my desire on returning to make a thorough examination of your letter and a complete reply to such of the points raised therein which I, as a member of this Commission, can appropriately discuss.

I find five principal subjects discussed in your letter:

- (1) The relations between the Bank of America National Trust & Savings Association (hereinafter sometimes referred to as the Bank) and the Department of the Treasury, particularly with the Comptroller of the Currency;
- (2) The Commission's procedure in instituting the proceeding to determine whether the registration of Transamerica Corporation's Capital Stock should be suspended or withdrawn from the national securities exchanges on which the stock is listed;
- (3) The Commission's request in connection with this proceeding for certain reports of the national bank examiners and the granting of this request by the Secretary of the Treasury;
- (4) Certain subpoenas issued by the Commission in the course of the hearing ordered; and
- (5) The proceedings in United States v. Mahoney, Securities and Exchange Commission v. Smith, et al, Securities and Exchange Commission v. Timetrust, Incorporated, and Matter of Walston & Co.

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I propose to take up each of these subjects in turn.

(1) For the most part, your discussion of the relations between the Bank of America and the Department of the Treasury and of the internal affairs of the Treasury Department has, in my judgment, no relevancy to any matter which is the proper business of the Commission. For this reason, I see no point in commenting on such of the matters raised in your letter as the re-allocation of the Comptroller's legal staff, the qualifications of various of the personnel in the Comptroller's office and the Treasury Department, or the power of the Comptroller of the Currency to protest the declaration of a dividend by a National Bank. And I think you appreciate that I cannot, at this time, appropriately discuss that portion of your letter commenting on the controversy between the Bank and the Treasury Department as to the proper banking practices to be followed by the Bank, and on certain agreements made by the Bank with respect to the subjects of the controversy, which might conceivably tend to prove or disprove the charges in the Commission's order, a matter upon which I will be called upon to pass judgment after the hearing is completed.

However, I wish to emphasize again a point which may be the source of a fundamental misunderstanding, underlying this portion of your letter. The Comptroller's office, as I understand it, has the power to require a national bank to follow certain banking practices, and I assume the various conferences between the Comptroller and representatives of the Bank to which you have referred were directed to that end; this Commission's function in the circumstances of the present case is restricted to requiring that the financial statements of the Bank included by Transamerica Corporation in its registration statement, just as those of every other Transamerica subsidiary, be an accurate and complete reflection of the Bank's financial condition. Thus, the Comptroller's office may require a national bank to charge off certain assets; this Commission has no such power and has never attempted to exercise such power, but if financial statements of a bank are filed with us as a part of a public record, we are under a duty to require that those financial statements present a true and complete picture. It seems to me that you completely overlook this difference in the functions of the Comptroller and the Commission when you state that in December 1936 the Bank reached certain agreements with the Comptroller as to 17 points under discussion relating

to "capital structure, real estate loans, foreign credits, dividend and other operating policies" (covering, I assume, a period of years prior to the conference) and argue that those "agreements" prescribe any action by the Commission. Even assuming the existence of the "agreements" to which you refer, as to which I have no information, the Commission is still required to examine into the accuracy of the financial statements of the Bank filed with it as part of a public record.

(2) At the risk of repeating certain observations made in my letter of June 19, I should like to point out, in general terms, the nature of the proceeding instituted by the Commission to determine whether the registration of Transamerica Corporation's Capital Stock should be suspended or withdrawn. Under the Securities Exchange Act of 1934, any company wishing to take advantage of the trading market afforded to its securities by listing on a national securities exchange is required to file with the exchange and with this Commission a detailed statement of its financial structure and condition. These statements are not filed just for the information of the exchanges and the Commission; they are part of the public record, available to and used by financial services, securities dealers, and the general investing public. They are designed to afford to investors generally a basis for an intelligent evaluation of the worth of securities traded on our national securities markets, and their completeness and accuracy are therefore matters of vital public concern.

Under the Act, the privileges of an exchange trading market can be secured or retained only by companies willing to give full and honest information as to their financial condition; it is the responsibility of the Commission to move to suspend these privileges as to any company which it believes is failing to comply with the duties which, in the public interest, are imposed upon it by the Act. This responsibility is placed on the Commission by Section 19(a)(2) of the Act.

The Capital Stock of Transamerica Corporation is listed and registered on three of our national securities exchanges - the New York, Los Angeles and San Francisco Stock Exchanges. The text of the Commission's order indicates that the Corporation is charged with having failed in material respects to meet the standards of full

and accurate disclosure which the Act has sought to establish for the protection of investors. The questions at issue are not mere matters of accounting theory, but go to the essential facts of the financial condition of the Corporation and its subsidiaries. Under these circumstances, the Commission has no alternative but to hold a hearing to ascertain whether the Corporation is entitled to continued enjoyment of the privileges of a national exchange market for its securities.

The registration statement filed by Transamerica Corporation contains certain financial statements relating to the financial condition of Bank of America. It is obvious that the value of Transamerica stock is in large part dependent upon the value of Bank of America, its largest single asset. The accuracy of the financial statements of the Bank is therefore a matter of vital importance to any present or potential investor who wishes to make a decision as to whether to buy, sell or retain Transamerica stock. It seems clear to me, therefore, that the Commission not only has jurisdiction, but is under a duty to inquire into the accuracy and completeness of the financial statements of the Bank included by Transamerica in its registration statement. Judge Groner, in his opinion in Bank of America v. Douglas, had this to say about the Commission's jurisdiction in the matter:

"The Commission's order alleged that Transamerica had failed to comply with the provisions of Sec. 12(b) and the Commission's regulations, in that it had filed false and misleading statements of material facts, that is to say, a large amount of losses and doubtful accounts had been written off the books of the Bank by pretended sales to other subsidiaries of Transamerica and by write-ups of the value of investment securities; the figures for "loans and discounts" included a large number of worthless and doubtful accounts; the valuation of certain bonds included arbitrary write-ups; the depreciation figures for real estate were inadequate; the "reserve for contingencies" was misleading since there was no indication that it represented not only a self-insurance fund but a reserve for all the losses and doubtful accounts, and was therefore inadequate; the profit and loss statements included the write-ups but made no provision for the losses; as a consequence the Bank had paid out in dividends a large sum in excess of its actual current earnings.

"The Act, being primarily for the protection of investors, imposes civil liability 2/ and criminal

penalties 3/ upon any person who knowingly makes false and misleading statements in an application for the registration of a security for sale on a national exchange. The purpose is to require complete and truthful exposure of all matters in relation to the registrant's financial condition. We do not doubt, therefore, that the Commission, in the exercise of its power to enforce the Act, may inquire into the affairs of a company controlled by a registrant. And on the record in this case we are of the opinion that Transamerica's interest in the Bank, past and present, brings the latter within the scope of that power.

2 / Sec. 18
3 / Sec. 32(a)."

You have raised a further question with respect to the public nature of the Commission's order instituting the hearing, as well as of the hearing itself. You are correct in stating that Judge Grouse criticized the publication of the Commission's order as a "pretrial publication of evidence" which was improper in a case such as that under discussion, where, as the Court stated, "the specifications of alleged misconduct are so serious in their implications as to warrant the Commission in characterizing them as having, potentially, criminal aspects 'which may yet lead to criminal prosecutions'." This is not the appropriate place in which to argue the validity of this portion of the Judge's opinion, but, in view of your comments, I believe that I should point out to you the legal analysis and the precedents which guided the Commission in adopting the procedure followed.

As I have tried to indicate, the Securities Exchange Act is designed to make the files of the Commission a central and public repository of accurate and complete information regarding the business and financial affairs of the issuers of securities registered and traded on national securities exchanges. When the Commission, after careful investigation, has reasonable grounds to believe that a public record in its files contains statements which are inaccurate or incomplete, it has always seemed to me that the protection of investors requires that an order instituting a proceeding in the case be brought to their attention. The Commission itself has in its requirements as to registration statements, which become matters of public record, provided that a registrant shall set forth pending legal actions of any considerable importance. There would be a strange inconsistency indeed in the Commission's taking the position that although it was authorized to impose such a requirement, it might not make public disclosure of its own proceedings and the charges to be considered therein. A proceeding to determine whether or not the listing of a particular stock should be suspended or withdrawn from the national securities exchanges on which

the stock is listed is clearly a matter which is of vital concern not only to the management of the issuer but also to its stockholders.

You have stated that the procedure of the Commission in promulgating and issuing its Order in the form followed in the present case is "unprecedented". That is not the fact. Not only is this procedure the usual and well-settled practice of this Commission, but it has been over a period of years and is presently followed by numerous other comparable agencies. */

Moreover, at the time the Securities Exchange Act was enacted creating the Securities and Exchange Commission and transferring from the Federal Trade Commission the administration of the Securities Act, Congress must have had before it the practice of the Federal Trade Commission in

*/ The following is a partial list of law-enforcing agencies which, without any express statutory authorization, make their complaints specifying charges against named individuals or enterprises available to the public prior to hearing:

Federal Trade Commission - See for example, Release, April 6, 1939, File No. 3752, summarizing charges of misrepresentation of a drug as a cure for alcoholism; Release, July 2, 1939, File No. 3834, summarizing complaints charging acceptance of brokerage fees illegal under the Robinson Patman Act, summarized in New York Times, July 2, 1939, F-7, Col. 6-7;

Federal Power Commission - See for example, Release No. 803 (G-99), May 1, 1939, summarizing charges that rates "are excessive, unreasonable and unlawful within the meaning of the Natural Gas Act."

National Labor Relations Board - the Board makes its complaints a matter of public record prior to hearing;

Department of Agriculture - See Release 1450, March 16, 1939, summarizing charges that named brokers had, in violation of the Commodity Exchange Act, "cheated and defrauded persons";

Department of Justice - See Release, August 1, 1939, giving a detailed summary of facts alleged to constitute violations of anti-trust laws by Medical Society of the District of Columbia and by the American Medical Association, prior to the submission of these facts to a grand jury.

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this regard. From its very inception the Federal Trade Commission has not only made its complaints, which are analogous to this Commission's Orders to Show Cause, freely available to the public, but it has also issued public statements in explanation thereof. And in its annual reports to the Congress, the Federal Trade Commission repeatedly called attention to these practices. (See Federal Trade Commission Ann. Rep. 1921, pp. 12-13; Ann. Rep. 1922, p. 10; Ann. Rep. 1923, p. 20; Ann. Rep. 1927, p. 3; Ann. Rep. 1928, p. 118; compare Securities and Exchange Commission Ann. Rep. 1936, p. 37; Ann. Rep. 1936, p. 60; Ann. Rep. 1937, pp. 81-82; Ann. Rep. 1938, pp. 94-96). It seemed to the Commission that the Congress, legislating against such a background, must be taken to have ratified and authorized the continuance of this procedure.

In addition to the foregoing, I wonder if you are aware that the provisions of the Federal Register Act (49 Stat. 500-503, 44 U.S.C. Sec. 301 et seq.) enacted by the Congress in 1936 specifically require publication, at least in the Federal Register, of any order specifying the charges to be made the basis of a hearing instituted pursuant to Section 19(a)(2) of the Securities Exchange Act (See 3 Fed. Reg. 1014, 1025 (1938)).

It is true that the order instituting the Transamerica proceeding specifies in some detail the charges which are to be the subject matter of the hearing. The degree of specification necessary in orders of this type had been the subject of serious consideration by the Commission over a long period of time prior to the institution of the Transamerica proceeding. It seemed to the Commission that the specification set out in the Transamerica order was not only permissible, but that it was expressly required by recent decisions of the Supreme Court which have held that the "appropriate notice" and "opportunity for hearing" required by provisions similar to Section 19(a)(2) of the Securities Exchange Act presupposes that one charged with statutory violations be clearly apprised of the nature of his offense. See Morgan v. United States, 304 U.S. 1, 18; Labor Board v. Mackay, 304 U.S. 353, 360. It seems apparent that when a registrant has filed a detailed and lengthy registration statement, portions of which are charged to be false and misleading, specification of the questionable statements and of the bases of the charges is necessary to afford such notice and opportunity for hearing.

To summarize, the order in the Transamerica case is drafted in the form which has always been used by the Commission. This form is modelled on that used by the Federal Trade Commission in all of its complaints since 1914. It has been before the courts including the United

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States Supreme Court and prior to the Bank of America case, in no case of which I am aware had the form ever been challenged. The Commission thought it well adapted to emphasizing the tentative character of the charges. You will observe that the order states that "The Commission, having reasonable grounds to believe" that certain facts are true, "it therefore appears to the Commission" that the registrant's response in a particular item of the registration statement constitutes a misstatement of a material fact. Thus, the order itself makes it plain that the Commission has made no final determination with respect to any of the charges. If the order had omitted a detailed specification of the charges, undoubtedly the respondent would have raised the objection - and I think it would have been justified - that it had inadequate notice of the matters to be considered at the hearing.

For the reasons I have stated, I consider your references to the order as "irresponsible charges" and "propaganda fathered by the Commission" wholly unwarranted and I emphatically deny the implications of these statements.

Finally, I deny your statement that the Commission's order of July 10th was in "apparent contempt of private right and even of the law of the land." The notice of July 10th which you will find does no more than set a date for hearing and describe the matters to be heard, is in my opinion, fully in accord with the applicable statutes and decisions, including the decision in Bank of America v. Douglas.

I wholly agree with you that it is most unfortunate that the mere announcement of the Commission's order should have had the effect of depressing the market value of the securities of Transamerica Corporation and its subsidiaries. But the stability of our markets generally, and the welfare of existing and potential investors throughout the country, are dependent upon a scrupulous maintenance of the standards of full and honest disclosure which the Securities Exchange Act has sought to express. The market value of securities is in no way fixed or determined by the Commission; it represents the collective judgment of buyers and sellers as to the true value of the securities they are buying and selling. The function of the Commission in enforcing the disclosure provisions of the Act is to afford to the investing

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public the information which is essential in order that that collective judgment may be a sound one. If it is established that Transamerica Corporation's financial statements spread on the public record accurately reflect its true condition, the Commission's action will in the long run have no detrimental effect upon the market value of the Corporation's securities.

(3) You have devoted a considerable portion of your letter to an expression of your views as to the legality and propriety of the Commission's request for certain reports of the national bank examiners and the granting of this request by the Secretary of the Treasury.

As indicated in your letter, after an exchange of correspondence, the Secretary of the Treasury on November 23, 1938, consented in writing to the public official use in the Transamerica proceeding of such of the information obtained from certain examiners' reports previously furnished to the Commission as might bear on the allegations of the order instituting the proceeding.

The reports themselves have never been made public, and I may say, that the Commission has never intended that they be made public. Moreover, in so far as certain information in the reports forms a basis for portions of the order instituting the Transamerica proceeding, I should point out to you that contrary to the implications of your letter the order was not made public until after the receipt of the Secretary's written consent to such publication.

I do not believe that any other answer is necessary to your attack on the legality of the procedure followed by the Commission in this matter than a reference to the opinions of the two courts in the case of Bank of America v. Douglas where the issue was directly presented. In the District Court Justice O'Donoghue had this to say:

"The Commission applied to the Secretary of the Treasury and finally obtained from the Secretary of the Treasury the reports of the plaintiff bank made through the Office of the Comptroller of the Currency. In the opinion of the Court, they had the right to do that, it was their duty to do that, and the Secretary of the Treasury had the right to give them that information."

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Judge Groner in the opinion of the Court of Appeals for the District of Columbia in considering this question stated:

"And this brings us back to the question with which we began this inquiry - the authority of the Secretary of the Treasury to furnish the information in question and, assuming that, whether it should be published by the Commission. The first part of the question was answered in the affirmative by Attorney General Wickersham on an inquiry from the President relative to the Money Trust or Pujos Committee Investigation in Congress. After a comprehensive review of the duties and powers of the Comptroller, he said:

'Thus the banking laws clothe the Comptroller with authority to examine into the affairs of national banks for three main purposes: First, to ascertain the financial condition and soundness of management of national banks; second, to determine whether or not such banks are operating in conformity with the banking laws; third, to enable him to recommend amendments to the existing law. Nowhere in the law is there any express provision that the information thus acquired by the Comptroller shall be confidential. While, if in your opinion, the interests of the Government require that this information shall be so treated, you have the right to refuse to divulge it (Boske v. Comingore, 177 U.S. 459, 469), yet, I am clearly of the view that if, in your opinion, it is proper to give this information to the House Committee you have the lawful power to do so. 29 O.A.G. 555, 560.'

"The Commission insists that equal power is lodged in the Secretary by R.S. 161, which authorizes the head of each Department to prescribe regulations not inconsistent with law for the custody, use, and preservation of its records and papers. We think this is correct, and that the power includes the right to determine whether records may be withdrawn and used by other departments. In this view and since the Comptroller's records are within the Treasury Department and the Comptroller, by statute, is under the general direction of the Secretary, it fol-

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lows that no distinction can be made between the two classes of records. See, generally, 25 O.A.G. 326; 35 O.A.G. 5. Without more, therefore, we hold that the act of the Secretary in furnishing the Commission with the reports of the bank examiners in the present case 'was not inconsistent with law'."

In the light of the portions of the opinions quoted, and in the light of many other authorities cited in our briefs in this case, I do not believe there is any possible basis for your views in questioning the legality of the procedure adopted by the Commission and by the Secretary of the Treasury with respect to the examiners' reports.

But I wish also to examine the further question raised by you - the propriety of this procedure. Frankly, I am unable to understand your criticism of what you term "secret cooperation" between two government agencies in the enforcement of the laws of the United States. I have always assumed it to be one of my principal functions as a member of the Securities and Exchange Commission, to enforce the provisions of the statutes entrusted by the Congress to the administration of the Commission. I have always assumed, not only that it is proper, but that it is my duty to require that every avenue be explored and that every legal means be used, including active cooperation with other government agencies, which might bring to light violations of these statutes. Conversely, if in the course of business, information comes to the Commission which reveals a violation of some other provision of law, I have always assumed it to be the Commission's duty to transmit that information to the proper authorities. I cannot believe that the Congress intended that information in the possession of one department of the government bearing on possible violations of statutes administered by another department be kept from the latter. This precise point was made by Mr. Justice O'Donoghue in his opinion in the Bank of America case. He said:

"Again, the Supreme Court has laid down the suggestion that both the courts and various departments of the executive, administrative, and legislative branches should all work for the common good. Likewise, the different commissions and departments of the Government should cease to regard themselves, each one, as a water-tight compartment and as working out its own salvation that help from other departments should not be asked for or sought.

"The various departments of the Government, generally speaking, should be like the various parts of the human being's brain. Each one of them should help the other. Each one of them should lend aid and give information to the other and, just as in nature, you cannot separate one compartment of the brain from the other, so it should be, generally speaking, with the Government of the United States."

In my judgment, therefore, under the circumstances of the instant case there can be no question as to the propriety of the Commission's request for the examiner's reports and the granting of this request by the Secretary of the Treasury.

Your letter states that the Commission intends to make a public exhibition of the bank examiner's reports for a particular year. That statement is not true. Apparently you have overlooked that portion of Judge Groner's opinion in the Bank of America case which reads:

"And so, as we think, while it must be decided that the Secretary was authorized to deliver the reports, their use should be confined to an investigation of the charges in proper proceedings by the Commission in the discharge of its duties under the Act. And this the Commission now assures us is the length and breadth of the purpose it has in mind. It says that it does not desire or intend to introduce the reports in evidence and that it will not make them public by any other means. This assurance we accept as conclusive of this branch of the case, and relying upon it we hold that the Commission may use the information at hand in preparation for the hearing and to aid it in obtaining the evidence believed by it to be necessary and proper in the hearing on its notice to Transamerica to show cause why its registration statement should not be suspended. * * *"

The statement quoted represents the attitude consistently expressed by the Commission's counsel to the Court's to representatives of Bank of America.

(4) Your letter discusses two subpoenas issued by the Commission in the course of the Transamerica proceeding

calling for certain records of Bank of America and directing attention to portions of Judge Grover's opinion referring to these subpoenas as unreasonable. In this connection, I should like to bring to your notice certain relevant facts of which I believe you are unaware.

During the period of time covered by Transamerica's registration statement, Bank of America was substantially a wholly-owned subsidiary of Transamerica and the registration statement therefore contains financial information relating to the Bank. One of the issues in the Transamerica proceeding is the alleged incompleteness and inaccuracy of these financial statements of the Bank included by Transamerica in its application.

Very shortly after the Transamerica proceeding was instituted, counsel for the Bank, who incidentally are also counsel for Transamerica, in discussions with counsel for the Commission, stated that they proposed to take the position that the Commission, whatever its jurisdiction with respect to Transamerica Corporation itself, had no jurisdiction to investigate the truth of the financial statements of a national bank. Although the Commission was convinced that this was not a correct view of the law, it was recognized that the question was one which the Bank had the right to litigate.

An understanding was therefore reached with counsel for the Bank whereby the issues could be fully presented to a court for determination. The plan was for the Commission to issue subpoenas sufficiently broad to call for documents regarding all phases of the Bank's activities which it was proposed to investigate. The witnesses subpoenaed were to appear but were to refuse to produce the documents called for. The Commission was then to apply to the District Court, in accordance with the provisions of the Securities Exchange Act, for an order directing compliance with the subpoenas. In the proceedings on that application, all issues with respect to the Commission's right to investigate the Bank's financial statements would be presented to the Court. It is important to note that under the Securities Exchange Act subpoenas are not self-executing, but the Commission must apply to a District Court for their enforcement. That fact alone provides a sufficient safeguard against possible abuse of the subpoena power.

Subpoenas were drafted, submitted to counsel for the Bank, revised in accordance with their suggestions, and served upon the prospective witnesses. After the subpoenas were served, the Bank varied the original plan by institut-

ing a proceeding to enjoin the continuance of the hearing on the ground that the Commission had no jurisdiction to investigate the Bank.

It is particularly important to note that the Bank's complaint raised no question as to the breadth or reasonableness of the subpoenas. No testimony or argument thereon was presented to the District Court, for the subpoenas had been drafted with a view to raising issues of jurisdiction only, and had been served pursuant to an understanding that they would not be complied with. It was contemplated at the time that if the fundamental issue of jurisdiction were determined in the Commission's favor, the Commission would, after preliminary examination of the material in question, indicate what specific documents were desired, and that consideration would then be given to the question of adjourning the hearing to California.

If the issue of reasonableness had been raised in the District Court, the Commission's counsel would have presented evidence to show the reasonableness of the subpoenas, and would doubtless have directed the attention of the court to the circumstances outlined above. If it had been understood that the question was one with which the Court of Appeals would concern itself, the same considerations would have been presented to the Court of Appeals. If this had been done, it seems quite unlikely that the Court would have rendered the opinion it did with regard to the subpoenas; but since, upon the argument, neither counsel nor the Court referred to the question of their validity, there appeared to be no occasion for making any such presentation.

However, I may say that, despite the fact that the Court's opinion was issued without consideration of the circumstances outlined, it is still the Commission's intention in the issuance of future subpoenas to follow in every respect the directions and suggestions contained in the opinion, and I may advise you that the subpoenas issued in connection with the hearing ordered for July 10th, were drafted in accordance with this policy.

(5) My letter of June 19th contains a statement of the facts involved in the cases of Securities and Exchange Commission v. Trusts: Securities and Exchange Commission v. Smith et al., and Matter of Helston & Co. since these cases are all presently pending, either in the Federal Courts or before the Commission, I cannot appropriately enlarge on those statements.

However, you have made particular mention of the case of United States v. Mahoney in which all defendants have recently consented to a permanent injunction. Since

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the case is no longer pending, I think I may properly comment on your remark that the institution of this proceeding was "particularly futile". Judge St. Sure in his opinion in the Mahoney case quotes certain fundamental canons of the legal profession. He states:

"The Canons of Professional Ethics of the American Bar Association are addressed to the conscience of every lawyer.

'It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. * * *

'The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interests of the client with respect to which confidence has been reposed.' Canon 6, Vol. 62 Reports of American Bar Association, 1937, p. 1107.

'A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.' Canon 36, *ib.*, p. 1118.

'No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, * * * or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. * * * But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.' Canon 32, *ib.*, pp. 1116-1117."

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If these canons ever have any meaning, I submit that it is in a case such as that presented in United States v. Mahaney, in which the attorney was also an officer of the Federal Government. In that case, on the Commission's application for a preliminary injunction, after the filing of affidavits and a full argument and after Mahaney and his employers had been afforded every opportunity for explanation, the Court found that the attorney had betrayed his trust. Thereafter, all parties consented to a permanent injunction. That portion of your letter which attempts to condone the activities of this attorney and of the persons who induced him to betray the trust of the United States is simply not understandable to me.

This Commission welcomes suggestions and criticisms with respect to its work. In so far as your letter criticizes policies and procedures which I, as a member of the Commission, have followed, I appreciate your frankness and the opportunity to re-examine the positions I have taken, even though I have not been able, upon such re-examination, to agree with your views.

Very truly yours,

Robert E. Healy
Commissioner

HBCohn/vs
9/21/39

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OFFICE OF THE MAJORITY WHIP
House of Representatives
Washington, D. C.

July 20, 1939.

Hon. Robert E. Healy, Commissioner
Securities and Exchange Commission,
Washington, D. C.

My dear Mr. Healy:

I have your letter of June 19 in reply to my inquiry over the telephone on May 8 with respect to your proceedings against the Giannini interests in California. During the six weeks which elapsed between my inquiry and your reply, and up to the present time, I undertook for my own information to make a survey of some of the records, particularly as they have a bearing upon Bank of America, National Trust & Savings Association.

As a member of the Banking and Currency Committee of the House, I must confess that I was amazed at the attempt by the Commission to make a public investigation of the Bank, which is a national bank, already under Federal supervision. In addition, this particular bank happens to carry on operations in my own District and the welfare of many of my constituents who are its stockholders and customers is involved.

I observe on page 2 of your letter that you set forth in a paragraph what you apparently intend to be the historical background of the proceedings against Transamerica Corporation and the Bank, but although you speak of Treasury cooperation, you omit the history of Treasury procedure in the matter.

Bank of America, as you know, is a national bank which has operated, since its conversion into a national bank in 1927, under the national banking laws and under the close supervision and regulation of the Comptroller of the Currency. Bank of America operates a state-wide branch system in California and is, in effect, a grouping of a large number of small banks under one management, the majority of the business of which is that of a savings bank, and consequently in its portfolio are found a correspondingly larger proportion of real estate mortgage loans than would be found in a strictly commercial bank of similar size. As a result of the great depression — when all banks were pushed to the wall — Bank of America found itself likewise with situations which required skillful and patient management to work out. The record clearly shows that the Bank made remarkable progress in this respect. All of these

matters have been under constant discussion with the Comptroller of the Currency for the past eight years, he being required by law to make at least two complete examinations of the Bank per year and in addition, the Bank is required by law to respond under oath to his "Oath" from time to time with complete reports of its financial condition.

You mentioned the fact that the Treasury made available to the Commission information relating to Bank of America which led the Commission to believe that Transamerica Corporation had made "false and misleading" statements when it filed in 1937 its application for registration on the national securities exchanges. This "information", as shown by the record, was none other than the reports of examination of the Bank made by the national bank examiners to the Comptroller of the Currency. The record shows, however, that Transamerica Corporation in fact had filed with the Commission a verbatim copy of the Bank's own report of condition as made by it to the Comptroller of the Currency as prescribed by law. It seems, therefore, that the Commission used the examiners' reports as a basis for an attack on the Report of Condition of the Bank as filed with the Commission by Transamerica, thereby accusing Transamerica of having made "false and misleading" statements.

Bank of America being a national bank, under the complete jurisdiction of the Comptroller of the Currency prior to the creation of the Commission, naturally has its background and complete financial history in the archives of the Comptroller of the Currency; and although you did not discuss this phase of the matter, it is necessary, for any intelligent appreciation of what has been going on with respect to the Bank, to trace some of the events which preceded the public announcement of the proposed hearings by the Commission.

This bank, like all national banks, has had from time to time questions under discussion with the Comptroller of the Currency and the national bank examiners appointed by him. As a matter of fact, on account of the size and territorial extent of the operations of the Bank, the examining force conducts practically a continuous examination of the Bank. I assume that the Commission must know that the report of a national bank examiner to the Comptroller is not a finding of fact or law but is a confidential communication from the examiner to his superior giving the opinion of the examiner as to the condition of the bank in general, accompanied by discussions of particular questions relating to the bank's affairs. The report is in no sense authoritative.

There are no limitations upon the subject matter which the examiner may bring to the attention of the Comptroller if he thinks it has a bearing upon the condition of the bank, and he is free to express his personal opinion on all such matters. Examiners are not chosen from the banking business and as a rule have had no banking experience; neither are

they chosen from the legal profession. Nevertheless, the examiner is free to express his views on intricate questions of banking policy and banking law, and often does so, well knowing that his views are only suggestive, will not be divulged outside of the Comptroller's office, are subject to review by his superiors and will be taken for what they may be worth. In the administration of the Comptroller's office such that he may say is disregarded and he is frequently over-ruled on questions of law and banking upon representations by the bank to the Comptroller and voluntarily by the Comptroller without any such representations.

As bearing on this query,¹⁰¹ it is pertinent to quote from the Statement made by Chairman Jones of the Reconstruction Finance Corporation before the Senate Committee on Banking and Currency on June 29, 1939, with respect to the so-called Head Bill for the insurance of loans to small business (S. 2343), in which he said: "Undoubtedly most banks want to lend and are trying to lend. Many of them are willing to make loans on different kinds of security and for such longer periods than has been their custom or tradition, but they are frequently subject to outwaded, unintelligent and officious examiner criticism We are now trying to get business started again A little more cooperation from bank supervising authorities would help."

In the summer of 1938, some of these differences with an examiner — although not involving the fundamental position of the Bank — because the subject of correspondence between the Bank and the Comptroller's office. In the late summer or early fall, the Secretary of the Treasury apparently began to take an unprecedented interest in and personal charge and direction of the situation. Having had no previous experience in the detailed and exact administration of the national banking laws, he appears to have regarded the statements in the examiner's reports as authoritative findings of fact and law to be enforced upon the Bank without any prior communications or conference with the Bank's officials.

On September 13, 1938, the Secretary issued a Departmental Circular which transferred the entire legal staff of the Comptroller of the Currency to the office of General Counsel of the Treasury Department. This had the effect of stripping the Comptroller of the Currency of direct access to his own counsel, a privilege he had enjoyed from time immemorial. At this time, the office of the Comptroller of the Currency was vacant and the First Deputy was Acting Comptroller.

On the same day an extraordinary telegram was sent by the Acting Comptroller, at the direction of the Secretary of the Treasury, to the national bank examiner in San Francisco instructing him to appear in person at the meeting of the

Board of Directors of the Bank in Los Angeles on that day and in the name of the Comptroller of the Currency, to protest the declaration of the dividend which had been announced. The examiner, however, did not appear before the Board until the dividend had been declared in the ordinary course. This was the regular semiannual dividend which had been more than earned and under the banking laws, was subject to payment to the stockholders at the discretion of the Board. The proposed payment of the dividend had been advertised throughout the State of California prior to the meeting and it would have been an astounding performance in the face of these circumstances, for the Board to cancel the proposed declaration. However, this question did not actually arise because the examiner arrived after the dividend had been legally declared. (I know of no provision of law which authorizes the Comptroller of the Currency to prohibit a bank from paying a dividend which had been lawfully earned.)

On September 23, 1938, the Secretary caused to be written a letter to the Bank which, as appears on its face, resolved, without any opportunity for the Bank to present its views, all questions under discussion in favor of the views expressed by the examiner and demanded compliance therewith.

The Board of Directors thereupon appointed a special committee of nine, none of whom was an officer of the Bank, to consider this situation and to report to the Board at the next meeting. In the meantime, on October 1, 1938, the Secretary of the Treasury summarily removed from office the Acting Comptroller and the Second Deputy Comptroller and appointed a new First Deputy and Acting Comptroller (Mr. Upben) from the staff of his own office.

At the meeting of the Board of October 11, 1938, the Directors, signed a letter addressed to the Comptroller of the Currency, which contained the Board's views on all of the items in the above-mentioned letter of September 23 and requested the Comptroller of the Currency for a conference on them with the management. This letter is one of the important documents of the Bank and in the opinion of the Board, the data therein set forth amply justified the management of the affairs of the Bank in all respects.

On September 23, 1938, the President had named a new Comptroller of the Currency in the person of Mr. Preston Delano who, however, did not take office until the following October 24. On November 23, 1938, Comptroller Delano, in response to the above suggestion of the Board of Directors of the Bank, invited the management of the Bank to meet with him in Washington at their convenience for a conference.

So much for the preliminary background of the procedure of the Treasury Department with respect to the Bank, none of which appears in your letter but which, as I shall indicate, appears to have been directly tied up to the pro-

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ceedings adopted and publicly announced by the Securities and Exchange Commission.

The management of the Bank in the person of President L. M. Giannini, Vice-Chairman William E. Blauer, and Vice President and Cashier Russell G. Smith, responded in good faith to the invitation of the Comptroller, with the purpose of reaching an adjustment of whatever differences there might be found to exist between the Bank and Comptroller. However, they had not been informed as to certain conversations which had been going on for a considerable period of time between the Comptroller of the Currency, under the direction of the Secretary of the Treasury, and the Commission. The transcript of the record, page 161, in Bank of America v. Douglas et al., contains the text of four letters which passed between the Secretary of the Treasury and Chairman Douglas. The first, of November 17, 1938, requested the Secretary to furnish the Commission with the reports of the national bank examiners on Bank of America for the period 1931-1938, inclusive, together with any other information with respect to the Bank which the Comptroller of the Currency may have in his files. This is a period of nine years in which, as the record shows, there were twenty reports of examinations.

On November 19, Mr. Morgenthau replied to Mr. Douglas and furnished the information and the reports in question. In this letter Mr. Morgenthau said that the reports were furnished upon the condition "that none of the material in them will be used in any public hearings without first obtaining my approval in writing."

On November 22, 1938, the Commission met and adopted the Order for a public hearing of charges against Transamerica and the Bank.

On November 23, Chairman Douglas by letter requested the Secretary of the Treasury to give his consent to make public official use of information from the twenty reports made by the national bank examiners of Bank of America, and on the same day Mr. Morgenthau gave his consent in writing. It should be observed that this consent was given one day after the Commission had met at a regular session and approved the text of the Order to be made public which contained material from the bank examiners' reports. This is shown on the face of the Order.

On November 25, 1938, the Commission made public this Order for hearing and designated an officer to take testimony in Washington (File No. 1-2964) in proceedings against Transamerica Corporation to determine whether its stock should be delisted.

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In the meantime, the above-named officers of the Bank proceeded to prepare for the conference with the Comptroller and arrived in Washington on December 5, 1938, where they were compelled to wait three whole days before the conference could begin. Naturally under these circumstances, the Treasury conference started off under a cloud at which the Bank had been put to a disadvantage through the tremendous amount of adverse publicity and propagandizing fathered by the Commission, and further that the management was sitting around the table with officials who had secretly been cooperating with the Commission in a most drastic procedure against the Bank with respect to many matters which were to be the subject of the Treasury conference.

However, the conference was held under the auspices of the Treasury Department from December 8 to December 15. The Comptroller of the Currency invited to sit with him the Under Secretary of the Treasury, the Chairman of the Federal Deposit Insurance Corporation, and the Chairman of the Reconstruction Finance Corporation in addition to his own staff of technicians. Comptroller Delano's health at the time was not good and, since he was new in his position, he requested the Chairman of the Reconstruction Finance Corporation, Mr. Jesse Jones, to manage the conference. At the first meeting the Comptroller presented a written agenda containing the points desired to be discussed and dealt with. None of these involved the fundamental position of the Bank. At the close of the conference, agreement was reached on the seventeen points under discussion. These related to capital structure, real estate loans, foreign credits, dividend and other operating policies.

Coming back to the procedure by the Commission, the date for its hearing was set to begin on January 16, 1939. The same bank with which the Treasury Department had been dealing with such apparent concentration for several months was now to be re-examined by the Commission upon the same type of questions -- with this notable exception, that the Treasury was dealing with the Bank confidentially and privately as of its condition and operations in 1938 whereas the Commission had based its complaints upon the condition of the Bank as it existed in the year 1936 because the Bank's Report of Condition of that year was the one filed by Transamerica with the Commission in 1937 and now intended to make a public exhibition of the bank examiner's report to the Comptroller for that year.

In view of the close cooperation between the Treasury and the Commission as you expressed in your letter, and as the records show more fully, it appears to me rather remarkable that no representative of the Commission sat at any time in the Bank conference in the Treasury Department. After months of study of the twenty voluminous reports of examination of the fourth largest bank in the United States and having in mind itself to proceed against the Bank in the most ruthless fashion, the Commission, it would appear, would

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have had a greater interest in this conference than that of the Federal Deposit Insurance Corporation or the Reconstruction Finance Corporation which kept in touch with it.

Since the Order was made public on November 25, 1938, and shows evidence of intensive study of the reports of examination above referred to, it is quite evident that at the time, namely November 19, 1938, Mr. Douglas requested Mr. Morgenthau for these reports, the Commission already had possession of them and the exchange of letters was simply for the purpose of giving the semblance of regularity to the proceedings.

I may say that I am somewhat familiar with the general purposes of the Securities Exchange Act of 1934 and I voted for it, but I feel sure that you will not find any member of Congress who supported that measure who had the remotest thought that the Commission would, without further authority from Congress, gain possession of the reports of examination of national banks and broadcast their remarks to the public as the Commission has done in the matter of Bank of America. No responsible public official has ever questioned the confidential and private nature of a bank examiner's report, not only because of the delicate nature of banking operations but also because of the nature of these reports themselves as I have pointed out. Chairman Douglas himself, at the hearings before the Senate Committee on Banking and Currency on the Trust Indenture Bill in 1937, repeatedly stated that the reports of national bank examiners, if made available to the Commission, should never be made public. He said, "And we all know that such information at times, if made public, may cause great damage. There are evidences in the banking statutes of a meticulous attempt made not to release that information too freely..... So I think there is a sound policy there, not to make public the information that the Federal Reserve Board or the Comptroller of the Currency otherwise would not make public." (Hearings S. 2544, 75th Congress, 1st Session, page 71.) Furthermore, Mr. Douglas expressed the view at these hearings that the Commission would be justified in basing its findings upon the published report, that is to say the Report of Condition of the bank as required by law to be made to the Comptroller of the Currency. Yet in the case of Bank of America, the Commission appears to have attempted to use the examiners' reports to upset the Bank's Report of Condition.

I wish to call your attention to the unprecedented procedure adopted by the Commission. The pending Order against Transamerica Corporation and the Bank took the form of a press release under date of November 25, 1938. It was given to the press on a nation-wide basis. I have been told that the mailing list of the Commission, which includes the names of brokers and dealers throughout the country, was used also to broadcast this Order. The Order contained irresponsible charges against a great national bank, based upon gratuitous remarks in the reports of examination which were never intended to be made

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public when examiner made them and which were in fact two or three years out of date at the time they were used by the Commission. They did not even relate to the current condition of the Bank. The record shows that never before in the seventy-five year's history of the administration of the national banking laws has information from the reports of a national bank examiner been made public in a civil proceeding. The Commission has the distinction of being the first and the only offender in this respect.

I observe that you say that all of this was done for the protection of the public and the investors. The investors in the case of Transamerica Corporation and Bank of America are the stockholders in those two institutions, most of whom reside in the State of California. They number some 225,000 individuals, nearly all of whom are persons of moderate means and their holdings in these institutions are small. So far as the public is concerned, the Bank's public is the State of California and among its people the Bank has some 2,500,000 customers. The affect of the publication of the Commission's charges in the manner in which it was done, for reasons which it is unnecessary for me to mention to you, immediately drove the market value of those securities down in the aggregate sum of more than \$100,000,000.

I cannot refrain from saying that I consider the publication by the Commission of the private and outdated remarks of the national bank examiner as an outrage against public decency and an intolerable abuse of authority by a governmental agency. Surely no one could blame the Bank for bringing injunction proceedings against the Commission to prevent it from further publicity of this vicious character.

But I observe that you say that on appeal by the Bank, the case was decided favorably to the Commission, on May 8, 1939. I have no desire to retry this case by correspondence but I wish to direct your attention to certain fundamental rulings made by the Court of Appeals which make me wonder how you can say the case was decided favorably to the Commission.

The Court condemned the Commission for giving pre-trial publicity of evidence "labeled as believed to be true," especially since the Commission was the Tribunal charged with the judicial responsibility of weighing the evidence and giving assurance of a fair hearing. In this connection the Court said that the unproven charges made public by the Commission and "set out in such meticulous detail as, backed by the great power of the Commission, to cause serious prejudice to the Bank and bring it, in advance of any hearing, into public disrepute." The Court found that there was nothing in the Securities Exchange Act which authorized the Commission to make any such publicity in advance of hearing; and that where, as in this case, the evidentiary facts "are obtained from confidential sources, neither the purpose nor intent of the

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Act contemplates their broadcast to the public. It is not difficult to see that such power might easily be made an instrument of oppression." The court went on to say that the Bank was not a party to these proceedings "and certainly until findings are made, the Bank is entitled to have judgment, public and official, suspended." In other words the Court rebuked the Commission for presuming to sit as an impartial tribunal when on the face of the record it had already taken sides against the Bank, having publicly stated in detail the charges which it had formulated and which it "believed to be true."

The Court further condemned the Commission for giving publicity to material from the reports of the national bank examiners and held that the Secretary of the Treasury had no authority to authorize their publication. That these reports had always been held to be confidential and private, and that Congress had provided only one condition upon which they can be made public and that is a penalty which may be imposed by the Comptroller of the Currency if he deems it necessary. The Court further held that the Commission had no visitatorial powers over national banks and could not concern itself with the national banking laws. The Court further held that the Comptroller of the Currency had plenary jurisdiction over the business and affairs of national banks, including their accounting practices and methods of appraisal, and that national banks are compelled to obey the orders of the Comptroller.

The Court further held that the Commission could not substitute its opinion for that of the Comptroller of the Currency upon any matter with respect to the affairs of the Bank upon which the Comptroller has expressed an opinion.

The Court further held that the nature of banking is such that, by universal recognition, public confidence is essential. "The plenary power of the Comptroller over the conduct of the business and affairs of banks always has been considered ample to assure reasonable protection to depositors and the public."

The Court further invalidated the burdensome and unreasonable subpoenas which the Commission had issued to the officers of the Bank to compel them to come to Washington from San Francisco with their books and records.

It appears to me extremely regrettable that the Commission saw fit to pursue such a headstrong and unwarranted procedure with respect to the Bank, an institution which was already under the most minute and constant examination by the Comptroller of the Currency, without having made any attempt to reach an amicable solution of whatever difficulties there may have been by the more rational method of conference around the table. Instead of protecting the

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investors in these institutions and maintaining public confidence in them and in their securities, as the law intends the Commission to do, the inevitable effect of the actions of the Commission has been, and still is, entirely destructive and calculated to destroy public confidence in them. It seems an amazing thing to me that the Bank has been able, in the face of such an attack, to continue to make progress in its business. Certainly this is a tribute to its inherent strength and the tenacity of the good will which it has developed in the communities in which it operates.

As to the proceedings of the Commission against organizations and persons which the Commission thinks are associated with Mr. A. P. Giannini in some improper manner, namely Pacific Coast Mortgage Company, Smith and Mallory, Walston & Company, Timetrust, Inc., and William J. Mahaney, I have had no opportunity to look into the records but on the face of the situation it seems to me, as I believe it does to a great many people in California, that the Commission through its tactics of publicity and innuendo, and through the tactics of its counsel before the trial examiner, upon unproven charges "labeled as believed to be true," appears to be engaged in a studied campaign to smear and belittle A. P. Giannini whose outstanding genius created and built up without outside support the great financial institution which bears the name of Bank of America.

Particularly futile, it seems to me, was the proceeding of the Commission against the young lawyer, William J. Mahaney, who was employed by the Bank in January, 1939, a considerable time after the publication of the Commission's Order against Transamerica and the Bank and after the adverse publicity attendant thereon had done its damage to the market value of the securities affected. He was only a minor employee of the Commission before his employment by the Bank and he could not have been in the councils of the Commission and the Treasury Department when these proceedings were initiated. So far as I have been able to discover, he imparted no important information to the Bank but was employed because he had some knowledge of procedure before the Commission which might aid the Bank in its defense. Certainly if he had had any such information, it would have been imparted to the Bank prior to the injunction sought by the Commission to prevent it. I mention this case because it seems to me to be an illustration of the temper of the Commission in the whole situation.

In conclusion I wish to call your attention to the latest public move by the Commission in these matters. I understand that under a voluntary arrangement a private examination was being made by the Commission of certain records, which the Commission desired to examine of Transamerica Corporation. Without any prior warning, or conference, the Commission on June 30, 1939, gave out a press release to the effect that the public hearing would be resumed in San

- 11 -

Francisco on July 10th, relating to the affairs of Transamerica and the Bank, at which the Commission proposed to present evidence relating to the Bank with respect to charges of "false and misleading statements" which include the Bank or in which the Bank is alleged to have participated. Under the decision of the Court of Appeals, it seems to me that the Commission had no lawful right again to use the term "false and misleading" with respect to alleged statements of the Bank. Coming at a time when in local banking practice savings deposits may be moved from one bank to another without interest penalty, such a statement from the Commission might easily have had a great adverse effect upon the bank. At the very time this public statement was made, the Commission had under consideration a voluntary arrangement under which a private examination might be made by it of those transactions between the bank and Transamerica Corporation, which the Commission desired to examine. I am at a loss to understand the apparent contempt of private rights -- and even of the law of the land -- in such proceedings as these by the Commission.

Yours very truly,

(Signed) Thomas F. Ford

DIVISION OF
PRESS INTELLIGENCE
304 COMMERCIAL BLDG.

NO.

SYMBOL

DATE

It's News to Me **HERB CAEN'S COLUMN**

Saturday Scrapbook:

Whenever Jimmy Roosevelt comes to town, the rumor is immediately revived that his mission here has a connection with the SEC investigation of the Gianninis; the SEC has steadfastly denied the tale . . . Thursday, Jimmy again came to San Francisco, this time to meet his mother, and again the rumor was revived . . . That's because when Jimmy and Mrs. Roosevelt lunched at the Mark Hopkins that noon, they did not lunch alone . . . The two other members of their party were—A. P. Giannini and Mario Giannini!

1939

Bank of America

NATIONAL FRANKS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

L. M. GIANNINI
PRESIDENT

SAN FRANCISCO, CALIFORNIA

October 10, 1939.

Honorable Preston Delano,
Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Comptroller Delano:

As a Director of Bank of America I have received a multilithed copy of a twenty-six page letter from Washington bearing your facsimile signature and dated October 2, 1939. This letter is not responsive to either of the letters addressed to the Comptroller by the Board of Directors of Bank of America on August 8 and September 12, 1939.

After careful reading and re-reading of the letter its purpose is still obscure to me. Why the Comptroller's office should write such a letter in view of the specific agreement entered into last December with that office and the Treasury Department, the F.D.I.C., and others, is difficult for me to understand.

Personally, I should appreciate learning from you, if you feel that you can consistently tell me, on what theory the Comptroller's office and the Treasury Department choose to disregard the December agreement, which was specifically concurred in by you for the Comptroller's office, Mr. Hanes, Under-Secretary of the Treasury, for the Treasury Department, Mr. Crowley for the F.D.I.C., Mr. Jones of the R.F.C., Mr. Folger, Chief National Bank Examiner, and others who attended the December conferences for the Government, in which conferences the Bank was represented by myself, as President, Mr. Blauer, Vice Chairman of the Board, and Mr. Smith, Cashier.

The correspondence that accompanied the final drafting of the agreement clearly indicates the unanimous approval of it by all concerned, including approval of the established programs in effect with regard to the major items listed in Item 15 of the December agreement. Why, then, must this Bank be constantly harassed regarding these matters when it is faithfully observing its obligations with regard to them and making progress exceeding that contemplated at the time of the discussions?

Honorable Preston Delano

- 2 -

October 10, 1939.

I realize that the Secretary of the Treasury has personally interested himself in these matters and that independent judgment has not been exercised in respect to our problems. But I feel that we are not exceeding the bounds of propriety when we ask that this Bank be accorded the same treatment as any other bank and that it be not discriminated against, and, further, that the Comptroller's Office keep its agreements with it.

In view of the apparent misinterpretation of numerous facts pertaining to various matters referred to in your letter and which have been the subject of discussion between your office and this bank over the past year, certain data previously furnished the Comptroller in connection with such matters will be reassembled and forwarded to you as soon as possible. At the same time we shall send you a current progress report, which will indicate clearly the substantial progress made towards carrying out the provisions of the agreement of December 15, 1938, which we are carefully observing.

I am sorry that you did not have an opportunity to call on us when you were in San Francisco on October 2, so that we could have discussed these matters in person, as a personal discussion is always more satisfactory than correspondence.

Yours very sincerely,



RE BANK OF AMERICA INVESTIGATION

October 19, 1939.
9:20 a.m.

Present: Mr. Delano
Mr. Upham
Mr. Folger
Mr. Hanes
Mr. Smith
Mr. Foley

H.M.Jr: I am sorry, but on account of Cabinet I am in a jam.

Smith: A crisis?

H.M.Jr: No, not a crisis.

Smith: I haven't heard anybody use the word "crisis" around here lately.

H.M.Jr: That is good. We have got the refunding out of the way successfully.

What, if anything, is there to be done, we will say between now and the first of November, as far as the Bank of America is concerned?

Delano: Speaking for the Comptroller, I don't believe anything, Mr. Secretary. We have a letter that is purely part of the procedure that we are drafting now, but it has no purpose except to complete the record, that is all.

H.M.Jr: But you feel that there is nothing?

Delano: I don't think we could do anything prior to November 1st.

H.M.Jr: Is there anything going on out there that I don't know about?

Delano: We are in the Bank with an Examiner now, which is part of our auditing procedure toward developing our case. We won't be out of there by the first of November.

H.M.Jr: You will not be?

Delano: No.

- 2 -

H.M.Jr: Now, how often do you examine any bank?

Delano: Twice a year. We can examine more.

H.M.Jr: Was this the second examination?

Delano: This was the second examination this year.

H.M.Jr: When, normally, would this one be finished?

Delano: Well, we will have to ask the Chief Examiner to tell us about that.

Folger: What was that?

Delano: The Secretary wants to know when the examination will be finished.

Folger: The Examiner, Chief Examiner out there, talks as though it will not be through.

H.M.Jr: What is his name?

Folger: Wright is Chief and McLean is examining.

H.M.Jr: How long will it take to examine those particular items that you criticize in this letter of - what was the date of it?

Delano: July 31st.

H.M.Jr: No, the last one.

Upham: October 2nd.

H.M.Jr: How long will it take to find out whether the criticisms you make in your letter of October 2nd have been partially or wholly corrected?

Upham: I think it is the letter of July 31st in which the criticisms were made. The October 2nd letter was just a general summary of all the years.

H.M.Jr: How long will it take to find out - does it necessitate a complete examination of the Bank to find out what, if anything, they have done as far as the July letter is concerned?

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- Folger: No, sir, he would not have to - he certainly wouldn't have to wait for the report to be typed. He could probably tell us that now.
- H.M.Jr: Has he gone far enough to tell us now?
- Folger: I think so.
- Foley: Gus, we are talking about the October 2nd letter, the letter of warning and the examination after the warning.
- Folger: That is the long letter.
- Foley: That is right.
- Folger: That letter covers performances over a period of years.
- H.M.Jr: Let me state it again. As I understood it, we felt that - talking with Upham during your (Delano) absence, that the normal thing would be to give them about a month after the October 2nd letter was written to see what, if anything, the fellow did. Wasn't that what we were talking about?
- Upham: That is correct. There was no point in checking up to see whether they had corrected the items criticized in the July 31st letter based on the last examination report until about a month after the warning letter of October 2nd.
- H.M.Jr: Now, this examination in progress, which is in progress now, is that the same examination which - if I begin to ask somewhere around November 1st, what, if anything, he has done, or do you have to do something special in regard to the October 2nd letter? Do I make myself clear?
- Folger: Yes, sir. Ordinarily we don't know when anything has been corrected except through our Examiner. We know after they have made an examination.
- H.M.Jr: Well, November 1st is a Wednesday. Are there any other bank matters which would come up, as far as you can tell, between now and the first of November?

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Delano: No, sir.

H.M.Jr: Well, do you know of anything, John?

Hanes: You mean Bank of America?

H.M.Jr: Or any other bank.

Hanes: I don't know of a thing, no.

H.M.Jr: Then, would it be convenient for you (Smith) to be back about the first of November?

Smith: Any time you want me.

H.M.Jr: That is a Wednesday.

Smith: Sure.

H.M.Jr: I mean that will be just a month and....

Delano: That would be certainly the earliest date that we could have this information.

Smith: They won't have it then.

Hanes: He can give you some indication, can't he? Does he have to examine the whole Bank to find out if they have made a correction in six items?

Smith: No, but I mean, are the plans set so as to get the information?

Delano: How about that, Gus?

Folger: The plan is what?

Smith: The plan to have the information on November 1st. I am just wondering if the machinery is going and we understand how it is working.

H.M.Jr: We will only begin to look for it after the 1st. Are you looking for it now or are you going to begin to look for it after the 1st of November?

Hanes: Well, they are making an examination now, aren't they?

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Upham:

That examination that is now in progress is as of the date we go into the Bank, August 31st, that is when they began the examination.

Now, isn't this true, Mr. Folger, that at any time those Examiners can take a look and see, as of that date, whether it is November 1st or December 1st, whether the corrections have been made?

Folger:

Sure, if you tell them what you want they will go back and check it while they are in the Bank.

H.M.Jr:

How long would it take them to do that after the first of November?

Folger:

It wouldn't take a very long time.

H.M.Jr:

Let's leave it this way. There is a telephone to St. Louis. Beginning with the first of November, you will take a look to see if they have done the things and anything is changed and just as soon as you know, I will ask not only Mr. Smith but Mr. Spencer from Boston and Mr. Ottley from Atlanta to come in and we will all look at it together. Does that sound right, John?

Hanes:

Yes.

H.M.Jr:

Is that agreeable to you?

Delano:

Entirely agreeable.

H.M.Jr:

Wouldn't that be the way to do it?

Delano:

Yes.

H.M.Jr:

What do you think, Gus?

Folger:

That is all right, yes, sir.

Foley:

I would like to make a suggestion, Mr. Secretary. Between now and the time we meet again, I think we ought to be considering whether or not we would want to publish the report of the examination of that Bank. That is the suggestion that John Rogge made before he went out to the Coast.

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H.M.Jr: Look, old man, it is all right, but don't expect me to give you an answer now.

Foley: Oh, no, I said between now and the next time we meet. I think we ought to be thinking about it.

Delano: I think that is one of the things we should discuss when we have this general meeting after November 1st, don't you, Ed?

Foley: At that meeting we ought to discuss that.

Hanes: You don't mean our letter that we wrote them October 2nd?

Upham: The report of the examination.

Foley: The big thick report, John. That is one of the remedies that the Comptroller has.

H.M.Jr: I would have no opinion today. That is something quite new.

Foley: That is why I brought it up now, so we could be thinking about it between now and the next meeting.

H.M.Jr: Any other suggestions?

(No response)

All right, what time do you (Smith) leave today?

Smith: 5:00 o'clock.

H.M.Jr: Sometime today I will try to see you, but I have a hell of a day.

Smith: I will see Mrs. Klotz.

H.M.Jr: I will be glad to have you see me.

very confidential. Mr. P.

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TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE 10-25-39

TO Secretary Morgenthau
FROM E. H. Foley, Jr.

Re: Bank of America N. T. & S. A.

The following is an outline of the procedure to be followed in the Bank of America case to remove directors and officers under section 30 of the Banking Act of 1933 and to terminate the Bank's FDIC insurance under section 12B(1) of the Federal Reserve Act.

Steps to remove directors and officers:

1. The letter of warning which has been prepared and submitted to the Attorney General for suggestions should be sent to the Bank.
2. About 60 days thereafter an examination should be made of the Bank to determine whether it has corrected the practices complained of in the warning letter. This examination might require at least two weeks' time.
3. If it is found from the examination that the Bank has not corrected the practices, a certificate to that effect would be presented as soon as possible to the Federal Reserve Board.
4. Upon receipt of the certification the Board would serve notice on the directors or officers of the Bank to appear at a hearing to show cause why they should not be removed from office. The hearing could probably be started thirty days after service of the notice upon the directors or officers.

-2-

Steps to terminate insurance:

1. The FDIC must find that the Bank has continued unsafe and unsound practices or violations of law and make a statement of this finding to the Comptroller of the Currency for the purpose of securing a correction. This finding could be based upon reports of examination of the Bank made available to the FDIC by the Comptroller.
2. Unless an examination by national bank examiners reveals that the practices have been corrected within 120 days, or such shorter time as the Comptroller may require, the FDIC (if it determines to proceed) must give the Bank 30 days' notice of intention to terminate its insurance.
3. In the 30 day notice the FDIC would fix a time and place for the hearing on the termination of insurance.
4. If the FDIC found that any violation specified in the notice has been established, it might order the insured status of the Bank to be terminated. (It should be noted that insured deposits on the date of termination of insurance, less withdrawals, will remain insured for two years. It should also be noted that upon termination of insurance, the Comptroller is required to appoint a receiver for the Bank. This would contemplate the liquidation of the Bank. It seems clear that the Bank under no circumstances could continue to operate as a national bank without FDIC insurance. In case the directors were removed by the Reserve

-3-

Board, it would be possible to have a Board of Directors satisfactory to the Government elected and the Bank's insurance reinstated. Another possibility is that the Bank might reorganise and reopen as a state bank without insurance.)

Coordination of steps to remove officers and to terminate insurance:

If it is desired to coordinate the two procedures the most practical method would be as follows:

1. The FDIC should find that the Bank has continued unsafe and unsound practices or violations of law and make a statement to this effect to the Comptroller of the Currency as soon as possible.
2. After the statement has been received from the FDIC by the Comptroller, the Comptroller should send to the Bank the letter of warning which has been prepared in connection with the procedure for the removal of directors and officers. This letter should include a notice of the finding made by the FDIC and a request by the Comptroller that the practices complained of by the FDIC be corrected within 60 days.
3. At the end of the 60-day period an examination should be made of the Bank by National Bank examiners to determine whether the practices complained of in the letter of warning have been corrected.
4. If it is found that the Bank has not corrected the practices a certificate to that effect should be presented as soon as possible to the Federal Reserve Board and the results of the examination should also be forwarded to the FDIC.
5. Hearings before the FRB and the FDIC would then proceed as indicated.

+

Conclusion and Recommendation:

It should be borne in mind that the proceeding to terminate insurance, involving as it does the liquidation of Bank of America as a going national bank is a much more drastic step than the proceeding for the removal of the officers and directors. If we are successful in our efforts to remove the officers and directors, and our chances of being able to do so will be materially enhanced if we are able to secure the services of a man of John Rogge's caliber to handle the case, it may never become necessary for us to consider closing the Bank. On the other hand, if we are not able to secure the removal of the officers and directors, there is little reason to believe that we would be successful in terminating the Bank's insurance.

Accordingly, I recommend that we concentrate on the Section 30 proceeding and forget for the time being the initiation of an action on the part of FDIC for the termination of the Bank's insurance.

E. N. F. H.

13044

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 31, 1939.

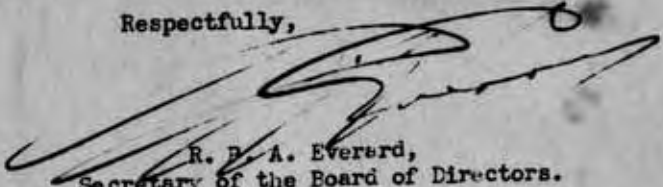
Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Sir:

I am forwarding to you herewith a communication addressed to you by the Board of Directors of the Bank of America National Trust and Savings Association under date of October 11, 1939.

The delayed mailing of this letter has had the approval of the Directors.

Respectfully,



R. P. A. Everard,
Secretary of the Board of Directors.

Enclosure

13044

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 11, 1939.

Comptroller of the Currency,
Washington, D. C.

Sir:


This will acknowledge your letter, without date, addressed to the Board of Directors of Bank of America N. T. & S. A. at San Francisco, California, received by the Board on October 10, 1939.

You still fail to answer our several letters.

We again take the liberty of calling your attention to the fact that on December 15, 1938, we entered into an agreement with you providing for the gradual consummation of an agreed program. While we have observed the agreement you have overlooked it.

In consequence, we still await the detailed response to our communications to which we are justly entitled.

By Order of the Board of Directors
of Bank of America N. T. & S. A.


Secretary.

November 1, 1939

FOR THE SECRETARY:

Barney Kilgore was in today checking on a story to the effect that the Gianninis had arranged a settlement of their troubles with the Government. He said the tip comes from New York and evidently is being spread by the Gianninis. I told him that I had not been keeping track of the case.

ESD

November 1, 1939

4:15 p.m.

Present:

Mr. Hanes
Mr. Delano
Mr. Foley
Mr. Upham
Mrs. Klotz

HM,Jr: I had this man (Delano) come in to do a little gossiping and I forgot about this meeting.

Mr. Delano: I inadvertently added that you (Foley) and I had just been over to the Attorney General.

Mr. Upham: A pardonable inadvertence.

Mr. Foley: It certainly is.

HM,Jr: I guess I was just a big innocent.

Mr. Foley: You knew I was going over.

HM,Jr: Sure! Sure! But I did not know that they -- I did know they were going, but I forgot it. That's my privilege as Secretary of the Treasury! I'm the only one who has that privilege!

Who wants to tell the story of what you fellows did over there, listened, heard, saw, acted?

Mr. Delano: I would rather have Ed tell it, if you don't mind.

HM,Jr: You (Foley) tell is with interruptions and promptings.

Mr. Foley: We got over there. Mennen Williams, he is the Assistant who sits outside the Attorney General's door

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HM,Jr: You are starting right there.

Mr. Foley: at the threshold

HM,Jr: What was the elevator man's name?

Mr. Upham: Don't let him kid you, Ed. This is important.

Mr. Foley: said that SEC had sent word over that it was the wish of the Commission that it see the Attorney General alone and not in conjunction with the Treasury so they were coming over at half past three to see the Attorney General on the Trans-America matter independently of the meeting with the Treasury on the Bank of America. We got inside. The Attorney General had John Rogge with him and he said that it was his purpose to put all the cards on the table, to talk frankly with the agencies interested in matters that concerned him, and to act only in the public interest.

HM,Jr: He used the Latin word though.

Mr. Delano: Pro bono publico.

Mr. Upham: No

Mr. Foley: ... he said "pro publico".

He said that they had been through the various references that we had made; that we had asked them to consider as to whether or not violations of criminal law had occurred. It was the opinion of John Rogge, his Division, that there was nothing there that would warrant them proceeding before the Grand Jury.

HM,Jr: In regard to what?

Mr. Foley: In regard to, specifically, self-insurance; some false entries in connection with -- what transactions were they?

Mr. Upham: Purchase of stock in the Merchants National Realty Corporation.

Mr. Foley: Purchase of stock in the Merchants

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National Realty Corporation. I don't remember the third one.

Mr. Upham: It wasn't brought up definitely.

Mr. Delano: Everything that had gone over there. A ruling that there was nothing in it.

Mr. Foley: He asked us if we had anything we wanted to argue about as to that and I told him that I did not have anything to argue about; that these matters were referred over there by us for them to determine and if they felt it did not warrant presentation, it was up to them.

HM, Jr: That's right.

Mr. Foley: Then he passed to the Bank matter and said that John Rogge had been out on the Coast and had just come back. While he was out there he saw Louis Ferrari and Dahlquist.

HM, Jr: Who are these men?

Mr. Foley: Lawyers.

Mr. Ferrari is counsel for the Bank and Vice President of the Bank of America. Dahlquist (T. W.) is of the firm of Orrick, Dahlquist, Neff and Herrington, of San Francisco and I think they are all counsel for the Bank. And the third fellow's name was Garey. I have never heard of Garey.

Mr. Delano: I think Garey is a San Francisco lawyer associated with the same interests. That's just a guess.

Mr. Foley: That's probably so.

He said that these three gentlemen put up a five-point proposition to John Rogge which he wanted to lay before us -- didn't want us to comment on it, wanted us to go back and report to you and if we had any suggestions or criticisms for you to get in touch with him or for me to get in touch with him and let him know. The five

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five points are these: first, kick the Gianninis out of Trans-America; second, Trans-America dispose of -- no, Bank of America dispose of all Trans-America stock...

Mr. Upham: ... no, the other way.

Mr. Foley: You're right. Trans-America dispose of all Bank of America stock

HM, Jr: Let me interrupt you. Mr. Rogge in a report had point one: kick the Gianninis out. Whose suggestion is that?

Mr. Foley: This is Ferrari's suggestion -- Ferrari, Dahlquist and

HM, Jr: It's their suggestion?

Mr. Foley: It's their plan.

HM, Jr: O. K. That was not clear.

Mr. Hanes: They represent the Bank?

Mr. Foley: They represent the Bank, the Gianinis, etc. This is what they proposed. The Attorney General pointed out he wasn't pressing it and would not take any position; that it was up to SEC and Treasury to do what they wanted about it.

Mr. Upham: Yes, except he did definitely want us to report back.

HM, Jr: But this is the plan of this group of lawyers.

Mr. Foley: That's right.

Mr. Delano: I understood him to say he was stepping out of character to make the proposal. Did you understand it was part of his negotiation?

Mr. Upham: When he got down to the dividend to be paid by the Bank, he said that was outside of his province, but I don't think as to SEC matters

Mr. Delano: Then I misunderstood.

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HM, Jr: I wanted to know who was going to kick who and how?

Mr. Foley: ... and where. You have seen the play this week at the National, "Leave it to Me."

HM, Jr: I saw it in New York.

Mr. Foley: Talking about kicking where and how reminds me of Victor Moore.

Kick the Gianninis out of Trans-America. (2) Trans-America to dispose of all of its holdings of Bank of America stock except 10%. (3) Simplify the corporate structure by liquidation of some of the holding companies. (4) File a new registration statement with S.E.C., which I suppose, this time, will contain the truth. (5) Work out with the Treasury suitable and acceptable dividend policy for Bank of America.

HM, Jr: Is this the whole thing?

Mr. Foley: That's the whole thing.

HM, Jr: Do you gentlemen want my horseback opinion?

Mr. Foley: Sure!

HM, Jr: Because I would like to lay down a thing and you fellows can knock it down. As to dividend policy of the Bank of America, that's got nothing to do with anything else he has mentioned. That's part and parcel of what you (Delano) are doing. Delano, is that right?

Mr. Delano: Yes.

HM, Jr: Johnnie, check?

Mr. Hanes: I agree.

HM, Jr: That's got nothing to do with the other thing.

Mr. Hanes: That's right.

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HM, Jr: That's the Comptroller's business and certainly Mr. Rogge was not out there negotiating for you (Delano).

Mr. Delano: Well, we did not think so.

HM, JR: We have eliminated some other negotiators and got it down to where I thought you were the front man.

Mr. Delano: So did I.

HM, Jr: All right so far?

Mr. Hanes: Yes.

HM, Jr: As to the other thing, again for you people to knock down, I would tell the Attorney General I don't care to comment because this is an SEC matter. "After all, you are acting for the S.E.C. and we have no comment to make."

Mr. Foley: That's right.

HM, JR: I am just putting these things up for somebody to knock down or say you would like to sleep on it, but that's the way I feel.

Mr. Delano: That's exactly my feeling.

Mr. Hanes: Only one thing that could be connected with the Comptroller's Office would be No. 2. That's removal of the Gianninis which, of course, if we went to the Federal Reserve and won a case we would have some chance of

HM, Jr: John, wait a minute! Removal of the Gianninis from Trans-America?

Mr. Foley: Where would you kick them? Back to the bank?

Mr. Hanes: Oh! They are talking about the Bank of America?

Mr. Foley: The first four deal with Trans-America and the fifth deals with the Bank of America.

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Mr. Hanes: You are right.

Mr. Delano: I said what they are doing, they are getting rid of their own headache with S.E.C. and kicking it over to us. They are presuming to dictate on dividend policy matters that we should discuss with Giannini. If they want to discuss dividends, they ought to come here.

Mr. Foley: Didn't I say, Mr. Delano, that since September 1938 we had criticized the dividend policy and we had never had from Giannini any faithful effort on their part to find out what we thought about a proper dividend policy?

Mr. Delano: Never came in to talk to us about that policy except to reiterate they would pay it, but I don't like the idea of Bank of America or any of its representatives talking to anybody else except the Comptroller's Office about dividends. It's our job.

HM,Jr: I don't want anything final, but it does not take me very long to react to a thing like this. I think it's ridiculous to put up a proposal like that to us and I am tickled to death I did not go over there. My good common sense was right once more and I am going to suggest that everybody sleep on this thing, but I say again, dividend policy is part and parcel of your (Delano) business and the other thing I would not care to make any comment on it. It's purely a matter between the Attorney General and

Mr. Foley: Jerry Frank.

HM,Jr: No. The S.E.C. Commissioners.

As of this moment

Mr. Hanes: I am not at a bit of difference with you. You are absolutely right.

HM,Jr: Darndest thing I ever heard of!

Mr. Hanes: None of our business.

HM,Jr: Cy?

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Mr. Upham: Well, do you mind, Ed, if I fill in a few chinks?

Mr. Foley: No; go ahead.

Mr. Upham: As I listened to the conversations today?

HM, Jr: Handsome as you are, I did not invite you for your looks!

Mr. Upham: The Attorney General began by indulging in, to me, some fairly vague comments about the fact that while there was the S.E.C. and the Department of Justice and the Treasury, we were all the Government. Federal Government. And he thought we all ought to get together and see alike and there should not be these conflicts and working at cross purposes. Now, I did not know what he referred to, because I did not know there had been anything like that, but I listened and he then sort of intimated that he wanted -- that he was more or less taking charge for the Government of all of these agencies and their relationships to the Trans-America group and that he wanted the whole thing fixed up some way, ended some way, promptly so that this would not be dragged out, and the enemies of the Attorney General's and the enemies of the Secretary would not just go on forever and ever with this acrimonious conflict and so he suggested that whatever be done be done quickly.

HM, Jr: Enemies of the Secretary of the Treasury?

Mr. Upham: Yes.

Mr. Foley: He added the Attorney General.

Mr. Upham: Yes, that's right. So that whatever be done be done quickly. And then he referred to Rogge's idea that we have two weapons over here: one, the publication of the report of examination and, two, the Section 30 proceeding before the Federal Reserve and I got the idea that if we were not willing -- well, a 6% dividend will fix this up -- we then ought very promptly

HM, Jr: Excuse me, did they say 6%?

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Mr. Upham: No; whatever rate we fixed. It seemed to be our responsibility to fix a definite rate. If that could not be worked out, that then we ought promptly to go ahead with one of these other procedures and finish this up, win or lose, pretty quickly and he asked how soon we could institute a Section 30 proceeding.

HM, Jr.: Well

Mr. Upham: And he wanted us to mull this over and report back to him, either you or Ed, what our decision is.

HM, Jr.: Well, this is terribly important. I talked first. I set it up for you to knock down. You can all sleep on it. Somebody may get another angle on it, but I certainly am not going to tell the Attorney General -- I want an awfully good reason why I should tell the Attorney General what the head of the Criminal Section should do in regard to an S.E.C. case. That's what it gets down to.

Mr. Hanes: Was he referring -- when he said he could not find any basis for criminal action, was he referring to our part in the matter or ours and S.E.C.?

Mr. Foley: I think he was referring to both. He the reference S.E.C. had made of possible criminal violations presented a little more of a plausible case and one a little more difficult to dispose of than ours and it was in that connection that John Rogge had contacted these lawyers to fill in the gaps and John said they had made their books available to him and he had gotten whatever information he wanted from them.

Mr. Hanes: He had determined there was no basis for criminal liability?

Mr. Foley: That's right. And it was while he was in contact with the lawyers for that purpose that they presented this plan to him.

HM, Jr.: Well, we have got it. We can sleep on it.
What?

Mr. Hanes: Yes, sir.

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HM, Jr: (To Delano) It does not bother me. Fortunately, in the Treasury when we have our differences and when we act, we act as one. The Comptroller is part of the Treasury. The Bank of America case, what we do we decide it by these people in this room so whatever he does on the Trans-America case he's accountable to the President and not to me and I am not going to lose any sleep about it. I am not so dumb but if they go through this thing and kick the Gianinis out and sort of refer to this as what I wanted then it makes our case that much more difficult, but, after all, I have got some voice. I have access to the press and I would not take a thing like that lying down. I am not going to do it. That's all.

Mr. Hanes: I think they are putting the cart before the horse. The place to do any kicking is out of the Bank.

Mr. Foley: Out of the Bank into Trans-America?

HM, Jr: You put your finger on it.

Mr. Hanes: The public is more concerned about the Bank.

HM, Jr: The other thing we have is to wait until we hear from the S.E.C. S.E.C. will undoubtedly give me a ring.

Mr. Foley: I am sure of that. This whole proposal concerns them much more than it does us. I think he was put out that S.E.C. was not there.

HM, Jr: It was they who said it would not sit with the Treasury?

Mr. Foley: Oh, yes! Sure! He said to me, "I hope when you go out, I hope you will snub the S.E.C."

Mr. Hanes: It's none of our business.

Mr. Delano: But leaves the major problem there -- the Bank.

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HM,Jr: Don't lose any sleep over this. I knew when I got in this thing a few years ago we were fighting an empire and I never fooled myself and my position is just the same in this as it is in any other. When I see what is fair and right and in the public interest, and it's the stockholders in this case, I am going to do it no matter what anybody says about me, as soon as the thing is clear and I can only do it if the President is back of the Treasury and he is back of the Treasury. What any other agency does I can't help, but I have to do what I see is right and I am not going to be forced into a false position. In our own mind everybody is convinced that this is the thing that has to be done in the interest of -- how many stockholders of Bank of America?

Mr. Hanes: 200,000.

Mr. Foley: Trans-America 13,000,000.

HM,Jr: That's something else.

Mr. Delano: Don't you think we take the proper position when we do not desire to negotiate a dividend settlement with Bank of America through the Attorney General?

HM,Jr: I would criticize you severely if you did.

Mr. Delano: That's the thing I just don't want to do. I think it's silly.

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13004

Bank of America

NATIONAL TRUST AND SAVINGS ASSOCIATION

San Francisco, California,
November 2, 1939.

A. P. GIANNINI
MEMBER OF THE BOARD OF DIRECTORS

Honorable Preston Delano,
Comptroller of the Currency,
Treasury Department,
Washington, D. C.

PERSONAL

Dear Comptroller Delano:

This refers to your letter of October 27 addressed to the Board of Directors of Bank of America National Trust and Savings Association. It is not my present intention to respond officially to your communication, but I feel constrained to take the liberty of making the following personal observations in regard thereto.

Your letter clearly indicates that in presenting the situation as it relates to the bank's earnings and dividend payments, your office is using a different yardstick from that applying to other banks, which we have used in gauging the situation, and which conforms with the treatment of securities profits established by the revision of procedure as agreed to by the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. (See Comptroller's release of 7-14-38).

With respect to the building at Seventh and Olive Streets, the current examination report of the Seventh and Olive Branch, which we have on hand, indicates that the Examiner has given a value to these premises of \$1,500,000. I do not understand what purpose is served in your reference to the sale of these premises to the Stockholders Auxiliary Corporation in 1923, sixteen years ago. It was a perfectly regular transaction. The carrying value of this property, which was acquired on October 1, 1925, by our predecessor state bank, had the approval of the Comptroller of the Currency when he considered the bank's assets and approved the condition of the bank at the time of its nationalization, March 1, 1927. The transfer to the Merchants National Realty Corporation was made at the bank's then carrying value. I notice particularly that your letter makes no reference to the value of the banking premises at Seventh and Spring Streets, although in their letter to you of September 12, and in the same paragraph, the Board of Directors drew your attention to the wide discrepancy between the values of this property as estimated by the Examiner and as established by authentic appraisal, as well as the values of the Seventh and Olive property.

In view of the circumstances and especially of the fact that it appears impossible to reconcile viewpoints on these subjects through correspondence, it would seem logical to submit the issues, as well as other controversial issues,

Honorable Preston Delano

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November 2, 1939.


to the Federal Reserve Board for proper adjudication, in line with the suggestion contained in my letter addressed to the Acting Comptroller of the Currency under date of September 15, 1938.

My son, Mario, President of the bank, and I will be in Washington on November 12, and we would appreciate the opportunity of appearing before the Federal Reserve Board or the Federal Deposit Insurance Corporation, or a committee of either body, either formally or informally, for the purpose of presenting our views on the questions at issue.

Might I suggest that in the meantime, and for comparative purposes, you review the earnings and dividends of other large national banks, say for the past ten years, and particularly the banks in San Francisco. I venture to say that the comparison of earnings and dividends of Bank of America National Trust and Savings Association with those of other large national banks would impress you with the fact that the dividend policy of our bank is a conservative one.

I expect to remain in Washington several days, and would appreciate your good offices in arranging, if possible, for a review of our entire situation by the Federal Reserve Board or the Federal Deposit Insurance Corporation, as above suggested. You may reach me at the Mayflower Hotel.

Yours sincerely,



P. S. Before leaving for Washington we expect to have appraisals by the American Appraisal Company of approximately 123 banking premises, in which will be included all of those properties which were questioned as to value by your local Examiner, Mr. McLean. We shall take a record of these appraisals along with us for discussion while in Washington. It is sufficient to say at this time that appraisals to date, of banking premises, furniture and fixtures, show a value in excess of book carrying value.

RE BANK OF AMERICA INVESTIGATION

November 3, 1939.
12:00 Noon.

Present: Mr. Hanes
Mr. Foley
Mr. Upham
Mr. Delano
Mr. Gaston
Mr. Duffield
Mrs Klutz

H.M.Jr: Now, I talked to all you folks about the Attorney General and this conference that you (Delano) went to, and I asked you all to sleep over it. Your meeting was followed by the SEC and at that meeting the Attorney General took the attitude that that came within the jurisdiction of the SEC and I gathered that they made no recommendations. The result of that conversation was that the SEC have told the Attorney General that they are going to continue their investigation, which would take another couple of weeks, and that then they will hear witnesses.

It seems that some place or other they said they would accept stipulations. In view of what has happened and in view of the outside pressure and everything else and in view of some of the Republican members being very much excited over this thing and feeling that they have to be extra tough, they are not going to let them stipulate, is that correct?

Foley: Right.

H.M.Jr: They are going to hear the witnesses and they feel their investigation will be through in about two weeks. The Attorney General said that Mr. Rogge was so busy that he felt he should be excused, and they said they would be very.... That suited the SEC O. K., so the SEC is looking for a new attorney. Of course they made no comment on the dividend thing. They said that was purely a Treasury matter, and I had told Foley some time ago to sound out whether we could have Rogge try our case if we wanted to, figuring that one man having the whole picture would be to advantage and in view of what has happened, I told him that I thought that as long as the Attorney General felt that Mr. Rogge was so busy on Attorney General matters, why, we had better not encroach on his time. Right?

- 2 -

Foley: Right.

H.M.Jr: Now, what I am proposing to do is this, if it meets with your approval, to call up the Attorney General before you people and tell him I appreciate his giving you gentlemen an opportunity to come over there and hear what Mr. Rogge has to say, but that we feel that this is a matter between the Attorney General and the SEC and we have no comment to make on four of the points. On the fifth point, I feel the question of the dividend of the Bank of America is one that comes fully within the Treasury jurisdiction and that therefore - I am groping for some word which will not be rude. If I say there is nothing to discuss, that sounds rude. How about this, "I feel that it comes fully within the jurisdiction of the Treasury"?

Foley: It is a matter between us and Mr. Giannini, so far as the dividend policy is concerned.

H.M.Jr: Between us and the Bank of America?

Foley: Between us and the Bank of America.

H.M.Jr: Is that all right with you?

Delano: Yes.

H.M.Jr: Mr. Hanes?

Hanes: Yes.

H.M.Jr: Ed?

Foley: Yes.

H.M.Jr: Cyril?

Upham: Yes, sir.

H.M.Jr: You, Gene?

Duffield: Yes.

H.M.Jr: Herbert?

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Gaston: Yes, in order to keep ourselves straight, as a matter of law, we have to retain such matters solely under the jurisdiction of the Comptroller.

H.M.Jr: Listen, Herbert, I don't mind your going militaristic on me, but if you are going legal on me, that is too much; I can't take it, "Admiral."

Gaston: This is my legal day.

H.M.Jr: Can you take a little kidding, Herbert?

Gaston: Yes, sure.

H.M.Jr: Everybody happy? I will see if I can get the Attorney General and you can all listen.

Is it all right to go ahead and talk about the other matter?

Foley: Oh, sure.

H.M.Jr: The other matter which is going through my head and which I have discussed with Mr. Foley and Mr. Hanes is this: I am thinking of who we are going to get to try this case and Ed is thinking of who we are going to get to try it. The responsibility is Ed's, but he has got to get himself a trial lawyer and if we could get somebody between now and Wednesday morning who would be acceptable to everybody and who could come down and give this thing a sort of trial run to make sure that we have a case of which we are 90 percent sure in our own minds, I think all of us would feel very happy. Lacking that getting the man who is going to take the case, I may want to invite some outside attorneys to come in and act as informal advisers, in addition to the three bankers, to make sure that we have a good case. I had an idea during the night, just a possibility. I don't know whether anybody at any University who teaches banking law could come down. I thought you might give that your consideration, whether at Harvard, Yale, Chicago, there is an outstanding person.

H.M.Jr: (On phone) Hello. (Telephone conversation with Attorney General Murphy follows:)

November 3, 1939
12:08 p.m.

HMJr: Hello.

Operator: The Attorney General.

HMJr: Hello.

Frank
Murphy: Hello, Henry.

HMJr: How are you?

M: Fine, thanks.

HMJr: Frank, I'm calling you up in regard to the meeting where you invited Mr. Delano, Upham and Foley to come to your office in regard -- to hear the report of Rogge.

M: Yes.

HMJr: Now, we appreciate the opportunity of having been there and as I understand it there were five points, that Rogge brought back.

M: Yes.

HMJr: And I understand from Foley that you wanted to hear from -- an answer from either Foley or myself, and if you're willing to take it over the phone I'd just like to tell you how we feel over here.

M: Yes.

HMJr: In regard to the four points affecting the Trans-america SEC, we simply feel here in the Treasury that we have no comment to make. That that's a matter that rests between the SEC, your office and the Transamerica.

The fifth point - the one on the dividend policy of the Bank of America, why we here feel that that's a matter which is between the office of the Comptroller of the Currency and the Bank of America. Now, I don't know if that's what you expect in the way of an answer, but we've talked it over here very carefully and I felt that it was up to me to call you up.

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- M: Yes, I'm glad to have your views. I wish that -- that Ed Foley would talk with Rogge and say substantially the same thing to him.
- HMJr: I'll be glad to tell him that.
- M: Tell him to and any -- in that conference the other day I made it plain to all who were here that I wanted to get these things before them for consideration; that if the Treasury was not in agreement or had other suggestions or recommendations to make, that the matter would be left open here.
- HMJr: No, we have no suggestions to make on the four points affecting Transamerica.
- M: Yeah.
- HMJr: The fifth point, the dividend policy -- well that, as I say, we feel is a matter between the Comptroller of the Currency and the Bank of America.
- M: Yes.
- HMJr: So.....
- M: I think it is.
- HMJr: You agree with me?
- M: Yes, I do.
- HMJr: Fine. Well I will send for Foley and tell him and ask him to get in touch with Rogge at once.
- M: All right, thank you.
- HMJr: Thank you.
- M: Thank you.

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H.M.Jr: The reason I turned Jim Landis down in my mind was that I thought he was on this West Coast case. Has he handed down a decision on that?

Foley: Is he still considering it?

Duffield: Yes.

Foley: I know he has finished hearing the evidence. I thought he finished his report.

H.M.Jr: I would be tickled to death with Jim Landis.

Delano: He would be perfect.

H.M.Jr: Wouldn't you, John?

Hanes: Sure. Is Jim Landis a lawyer familiar with banking practice? I don't know that he is.

Foley: Well, financial matters.

Hanes: This is a little bit different than financial matters.

Delano: I think, John, that he would have more insight than any other man I can think of because of his SEC experience.

H.M.Jr: What did he teach? I thought he did teach banking before he went into this....

Hanes: He is a Dean now; he isn't teaching anything, is he?

Foley: He is like experienced teachers, he has covered many subjects.

H.M.Jr: I know he taught taxes.

Foley: And finance, I think, and corporations and negotiable instruments.

H.M.Jr: Well, we don't have to confine it to one. He could be one of several. Now, in order to keep the lawyers safe, if you (Foley) will go out and call up the Dean - or would you rather that I did? I am giving you the opportunity if you would like to.

- 5 -

Foley: I should think it would carry more weight if you did it, Mr. Secretary.

H.M.Jr: You are least 20 pounds heavier than I am.

Foley: I challenge you. I think you are probably right.

Delano: There are two kinds of weight, Mr. Secretary. There is the physical weight and the other kind. I think he refers to the other kind.

H.M.Jr: Well, we are on the same team, so we won't compete. I can't do it now. I will call him up either this afternoon, or I will call him up tonight and I will ask him.

Foley: To come down Wednesday?

H.M.Jr: Wednesday.

Delano: If he could be here Tuesday, it would give him a chance to confer with these bankers before they all come about and bother you, Mr. Secretary.

H.M.Jr: Well, that is true. I will call him.

Delano: Or if he could come early Wednesday. What time Wednesday are we meeting here?

H.M.Jr: Wednesday is going to be a wonderful day. Well, Mr. Hanes and I go to the White House at 11:00. My thought is, so there won't be any conflict, let's say 2:30.

Delano: But then, if that is the case....

H.M.Jr: I tell you what we will do, we will have this at 2:30 and Tom Smith at 10:00 o'clock. Now, the reason I asked you to answer this business is - the heading is "Murphy Suggests Government Settlement Transamerica Suit." You still don't know anything about it.

Duffield: That is right.

H.M.Jr: You still don't know anything about it.

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Delano: Where did that come from?

Hanes: Barney Kilgore - I told the Secretary he came in to see me and he had the story about our being over at the Department of Justice.

Duffield: Oh, did he? He didn't have that when he was in my office.

Hanes: They got a definite tip on the fact that Frank Murphy was trying to settle the discussion between all of the agencies, us and the SEC, and so forth.

H.M.Jr: From New York.

Delano: From where?

Duffield: He told me he had the tip from New York, which he suspected was being circulated by the Gianninis. Some over-all settlement was being discussed, but when he was in my office he either didn't know or didn't mention anything about Frank Murphy.

Hanes: I told the Secretary I thought I came pretty close to lying.

H.M.Jr: And I told you you didn't.

Hanes: He says I didn't, but he is trying to make me feel better.

H.M.Jr: Well, how do you feel now?

Hanes: Well, I feel pretty good, just pretty good.

H.M.Jr: I was looking in the paper for Transamerica to see whether it went up on the tip. It didn't.

I would like to talk for a minute to Hanes, Duffield and Gaston about an entirely different matter.

H.M.Jr: Are you perfectly happy?

Delano: Yes. There is just one point I want to make about getting Landis down here. If you can get him here Tuesday noon, it would be that much better for us because it would give him a chance to go over this.

12044

Bank of America

NATIONAL FRANCHISE ASSOCIATION

SAN FRANCISCO HEADQUARTERS

RUSSELL G. SMITH
EXECUTIVE VICE PRESIDENT

SAN FRANCISCO, CALIFORNIA

November 6, 1939.

Honorable Preston Delano,
Comptroller of the Currency,
Washington, D. C.

My dear Mr. Delano:

From time to time we have provided you with a report of the progress being made in connection with the various criticized items which were the subject of our conference last December. The last of these reports was made to you in President Giannini's letter of August 5, 1939. I am pleased now to give you a report of the improvement accomplished to October 31, 1939.

Reduction Through Liquidation

	Reduction 4-28-38 to 10-31-39
Guaranteed Loans	\$ 1,745,364.69
Real Estate Contracts	10,225,267.59*
California Lands, Inc.- Notes Discounted	351,016.19
Capital Company - Real Estate Loans	294,000.00
Advances - for alter- ations - Bank Premises	497,040.65
A. O. Stewart Line	664,802.23
Pacific Coast Mortgage Company	775,000.00
Former Banking Premises - Merchants National Realty Corporation	1,524,656.23

*Capital Company October payment received November 6, 1939.

Mr. Preston Delano

November 6, 1938.

	Reduction 4-28-38 to <u>10-31-39</u>
Bonds & Securities Clas- sified as Unlawfully Acquired other than National City Bank Stock	\$ 1,384,358.04
National City Bank Stock	1,085,920.00
Loans to Transamerica Subsidiaries - First National Corp. Portland	1,000,000.00
Transamerica Service Corporation	2,900,000.00
Inter-Continental Corp.	<u>2,450,000.00</u>
Total Liquidation	\$24,897,425.62

Improvement by Correction or Reserves

German Credits	\$ 4,035,596.91
Bond Write Up	2,825,597.55
Properties in Bank Prem. Acct. Classified as Other Real Estate	389,362.20
Defaulted Bonds	<u>1,180,881.85</u>
Total	\$ 8,431,438.51

The 16 loans listed as violations of Section 5201 have all been corrected.

Subsequent to the December conferences, the Examiner listed certain other items for criticism. The liquidation and improvement of these items is enumerated as follows:

	Reduction to <u>10-31-39</u>
Western Furniture Ex- change Note	\$ 560,000.00
Advance to Capital Company for Con- struction Magnin Building	1,100,000.00
Downtown Properties	301,025.00*

*Reserve

Mr. Preston Delano

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November 6, 1939.

From the foregoing you will observe that there has been a total improvement of \$35,289,889.13 in the items discussed in the December conferences and those subsequently listed. This represents an actual liquidation of \$26,557,425.62.

In addition, there is available in a special account the sum of \$830,000.00, representing Transamerica's portion of the dividends received from the Bank on September 30, 1939. Pursuant to its offer by letter of September 11, 1939 Transamerica Corporation has agreed to set aside its dividends from the bank to be used either to reduce its commitments to the bank or to subscribe to additional stock in the bank.

Very truly yours,



Executive Vice President.

CABLE ADDRESS - BAKERICAL

12044

Bank of America
NATIONAL TRUST ASSOCIATION

A. P. GIANNINI

CHAIRMAN OF THE BOARD OF DIRECTORS

San Francisco, California
November 6, 1939.

Honorable Preston Delano,
Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Comptroller Delano:

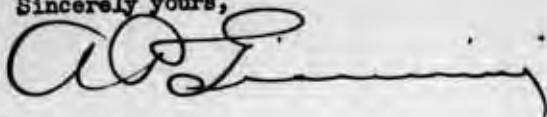
We have just received completed appraisals from the American Appraisal Company of the 123 properties occupied as banking premises by Bank of America, on which the Bank Examiner arbitrarily estimated a huge loss in his report of examination commenced March 31, 1939, and the values of which had not been previously questioned.

These appraisals show a total plant value, after full allowance for depreciation, of \$37,829,092, which is over \$1,600,000 in excess of the amount at which the properties were carried on the books of the Bank on December 31, 1938, namely \$36,209,282.

You might be interested in knowing that the report shows the reproduction value of this plant as \$45,084,544., the land being valued at present low market. Since these appraisals cover only properties which were criticized by the Examiner, we confidently expect that when the appraisals are completed for the remainder of the plant the excess of value of the total plant over carry value will be proportionately greater.

A full tabulation of the appraisals now on hand is being made, and I contemplate taking it with me when I leave for Washington shortly.

Sincerely yours,



Chairman of the Board.

RE BANK OF AMERICA INVESTIGATION

November 8, 1939.
10:15 a.m.

Present: Mr. Hanes ✓
Mr. Foley ✓
Mr. Delano ✓
Mr. Smith ✓
Mr. Wright ✓
Mr. Ottley ✓
Mr. Spencer ✓
Mr. Upham ✓
Mr. Folger ✓
Mr. Tietjens ✓
Mr. Sherbondy ✓

H.M.Jr: Well, Mr. Comptroller?

Delano: Mr. Secretary, the last day and a half we have been taking stock of this Bank of America situation. These three bankers have been conferring with us as our advisory committee and we have had a check-up made on the Bank out on the Coast as to performance in accordance with our second letter. We have had extended discussions with your own legal department and with our Examiner on the Coast. There has been a variety of opinions discussed.

To my mind, the clearest thing at this moment is that we are not in a position to make a definite determination of a Section 30 citation now. The legal department is of the opinion that there should be a further check-up in the Bank along in the middle of December. At that time, we can decide upon the sanctions. But I would like to have the bankers give you their impression of what has been done up to this point and the progress made and the situation as it is now. I think that they have thoroughly gone over the problem and I think they understand what we have done in the interim. I believe that they can give you a report on that.

Spencer: Tom?

Smith: Well, the advice is, as late as this morning - we have gotten a letter in this morning which indicates that the capital structure has been improved 24 million dollars since April, 1938. Isn't that correct?

- 2 -

- Upham: Do you call that an improvement of the capital structure?
- Wright: It is not an improvement of the capital structure. It is a reduction of the criticized assets.
- Smith: To the extent of 24 million. That is correct; I agree with you.
- Hanes: Does that release that much capital which you had subtracted before?
- Wright: Not necessarily.
- Folger: If those assets had all been losses, Mr. Smith's statement would have been correct, but they were not all losses.
- Hanes: You didn't make any subtractions from capital to care for that?
- Folger: For the last - rather doubtful - yes.
- Hanes: Then it would be an improvement in the capital?
- Folger: But not 24 million dollars.
- Wright: I would say that there is approximately two to three million dollars actual improvement in the capital structure.
- Smith: Plus any potential losses that they have avoided by - because of this 24 million change. That is the correct statement. The 24 million dollars of objectionable assets have been removed from the Bank - the worst of the objectionable assets. For instance, they have set up a reserve against all their German credits. That is correct, isn't it?
- Wright: Well, there is three million five yet to be removed at this examination. That reserve covers former....
- Smith: This only came just a few minutes ago. They have taken 10 million out of the land contracts. In other words, there is substantial improvement.

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H.M.Jr: It is just as clear as mud to me.

Smith: Well then, it is sufficient to say that they indicate by their actions - the Gianninis - the Management indicates an intention to comply.

H.M.Jr: Well, is this letter from the Gianninis?

Upham: Russell Smith.

H.M.Jr: You don't know whether they have or haven't done it?

Smith: Mr. Wright tells us that they have made a very substantial compliance.

Foley: Does the Secretary know about Giannini's letters saying he will be here on Monday?

Hanes: Yes, I told him.

H.M.Jr: What have they done since the first of July?

Smith: This covers the full period from April of last year.

H.M.Jr: April of 1939?

Smith: April of 1938. They have taken out 10 million dollars of their land contracts.

H.M.Jr: What have they done with them?

Smith: Put in cash.

H.M.Jr: 10 million cash?

Smith: Yes. You see that removes 10 million dollars of this hundred million potential real estate. They have taken out this piece of property in Los Angeles, a million one. They have taken out the second mortgage, 800 - what was it?

Wright: 500,000.

Smith: 500 and something. They have made good the deficiency in the National City Bank stock.

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- Spencer: Partly by new stock and partially by the increased value.
- Wright: However, they bought some stock at the agreed price.
- Smith: They are coming here Monday for a meeting. The lawyers tell us that in spite of all this that they think from the legal standpoint there shouldn't be any notice of a Section - any citation under Section 30 until around the first of January; that is the legal proposition.
- H.M.Jr: Let me ask - there is a hundred million dollars which you people called what, questionable?
- Smith: Criticized.
- H.M.Jr: Now how much is there left?
- Smith: About 24 million less than that.
- Wright: I would hate to say definitely without reviewing the report, Mr. Secretary, but I would say on the basis of the last report it would be between 60 and 70 million left.
- H.M.Jr: Between 60 and 70 million less?
- Wright: No, left. Of course, something may develop between examinations that would prompt us to list other assets in the report of examination that we have not recognized before. However, now, Mr. Smith, there is one thing I wanted to call to your attention. Mr. Smith has not mentioned that there is still nine million estimated loss in the last report of examination that has not been charged off and approximately three million dollars in stock, making a total of 12 million dollars.
- Smith: Which they say they will not charge off. That is the reason we must continue preparing for the....
- Wright: They have never said they wouldn't. They have always debated it. They have never flat-footedly refused to charge it off, but they want to argue on the big question. That is the one involving the appraisals of the American Appraisal Company which they propose

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to bring down here and lay in your lap to look at.

Smith: When we came here, we found a letter saying that Mr. Giannini would be here Sunday and bring the appraisals of this property so as to offset the request for a charge-off. We have been reviewing the thing and talking to the lawyers and then this morning the other letter comes in, summarizing their improvement of position, and whatever you want to say about it, it shows a material improvement. That is correct, isn't it, Irving?

Wright: Yes, sir.

Smith: And surprisingly substantial, but that doesn't mean that you should stop the proceedings, we don't think. We think you should go on with the proceedings; prepare for Section 30 as fast as your legal staff thinks you can proceed.

H.M.Jr: Are you three gentlemen unanimous?

Smith: That is correct, isn't it?

Spencer: I don't think there is any question but what there has been an improvement and I think you have got this Management turned around.

H.M.Jr: Which way?

Spencer: I think they are going to follow through with the Comptroller's request just as far as they can. The dividend that has been a big bone of contention - I think their own earnings figures are going to take care of that and they will have the wherewithal to do it. A large percentage of their earning was made up of Government bond trading and appreciating the market book carrying figures and that is more or less - and they are going to get down where I think the dividends that they will declare, with the pressure that the Comptroller's office put on in their portfolio, will be much less. It has got to be.

Ottley: I would just like to make one observation; that is that this letter that reached here this morning is the first encouraging sign that I have really seen since I have been coming up here on this matter.

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- H.M.Jr: One thing I would like to have you people tell me a little later - in these letters from Giannini to the Comptroller, he is referring to this letter of November 15th as though there was an obligation entered into by the Comptroller with the other people present. Have you ever satisfied yourselves as to whether there is any obligation on the part of the Comptroller or the people who attended that meeting?
- Spencer: I wouldn't say that was a binding contract in any sense of the word.
- H.M.Jr: You are satisfied that it is not?
- Spencer: It is the same as the Comptroller would do for any bank if they had an argument.
- H.M.Jr: You have seen this constant reference that there was an agreement and you don't feel there was any agreement?
- Spencer: I don't think there was any contract there, do you, Tom?
- Smith: There wasn't any contract. There was a certain....
- Hanes: Moral obligation?
- Smith:moral obligation on the part of the Comptroller's office to go through with that agreement, with that proceeding. It was a proceeding and it was entered into by the department, but it was not a contract and that was very clearly covered in Oliphant's letter.
- H.M.Jr: You feel that that was the cut-off?
- Smith: Yes.
- Foley: That wasn't Oliphant's letter, that was Mr. Delano's letter.
- H.M.Jr: It was written by Oliphant.
- Foley: We all initialed it in your room, John.
- Hanes: I said it was Oliphant who wrote it and I think, correctly, and stated that the Comptroller had no

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right to contract for any agreement at all, and I think the....

- Foley: Any contract would be clearly ultra vires on the part of the Comptroller. He had no power to enter into any contract.
- Smith: And when they declined to take the loan that was offered to them because of conditions, that terminated that procedure. I don't think the record is very clear in that termination, because it was a verbal termination.
- Foley: It was only a proceeding on their part. It never was binding on us, Tom, and that letter of the Comptroller so stated.
- Delano: I don't see, Mr. Secretary, how there can be the slightest doubt about that point. That was an undertaking on the part of the Bank to do certain things and in our letter back, which would constitute the come-back if there was any, we said, specifically, there was not a contract, that the Comptroller could not bind himself to any performance which he might have to later break in order to fulfill his obligation to the law.
- H.M.Jr: Are you satisfied that when they keep referring to this thing that you didn't enter into any obligation of any kind?
- Delano: I am satisfied, yes.
- H.M.Jr: I mean, if it gets to a point where you have to say so, will you say it?
- Delano: Oh yes, definitely.
- H.M.Jr: Because they keep referring to it.
- Delano: I think the covering letter was very explicit on it.
- Smith: As a matter of fact, you intend to remind them again in this meeting that there isn't any contract.
- Delano: There would be no question about it; that's my attitude about it.

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- H.M.Jr: As I understand it - I mean due to this letter, certain of you people feel that the Bank of America made certain improvements. Our people haven't had a chance to examine to see just how much the improvements are, is that right?
- Wright: We can check fairly well, Mr. Secretary, because we have been making periodical checks during the progress of the examination and my field examiner will be here in a day or two and he can practically, I think, check up to date on this letter that Mr. Smith sends in.
- H.M.Jr: But the feeling is, I take it, that these gentlemen are advising the Comptroller and me to continue the preparation of proceedings under Section 30, is that right?
- Spencer: I would. I think you have to keep the pressure right on.
- H.M.Jr: Is that right?
- Smith: Yes, sir. The reason you can't - regardless of this letter, you wouldn't proceed today because the legal department feels that more time must elapse.
- Foley: Well, we never thought that we could have the certificate over to the Federal Reserve Board before the first of January. We have got to have an examination after the letter of warning which went out on the second of October. That is the first real letter of warning that ever has been sent. That is the first step in the initiation of a Section 30 proceeding. Now, it is necessary to have an examination on the Bank a reasonable time after that letter went out, within which time they would have an opportunity to correct the matters complained of in the letter of warning. Now, I think that 60 days, at least, should elapse before that examination is made and then, depending on how long it takes to complete that examination and depending upon what is shown by that examination, would depend the date when the certificate got over to the Federal Reserve Board and whether we would send the certificate to the Federal Reserve Board, and I think the time schedule on that has always been around the first of January.

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Now, if we go ahead with this case, it is absolutely necessary for us to get into the picture as soon as possible a competent trial lawyer who will handle the proceeding for us. It was Jim Landis' understanding last night when he left that that was the thing that had to be done next.

H.M.Jr: Do you make any recommendations?

Foley: We talked about that at dinner last night and we went over a list of names and he was going to think about it last night and that is one of the things that he will be prepared to talk to you about when you call him at your convenience today.

H.M.Jr: Well, you have changed, haven't you?

H.M.Jr: As I understood, you said we should let 30 days elapse; now, you say 60.

Foley: I don't think I have changed, Mr. Secretary. I think that I have always had in mind the first of January as the earliest....

H.M.Jr: This is the first time I have heard it.

Foley: We could get the certificate actually over to the Federal Reserve Board, and it may be when we get this man in here, Mr. Secretary, who is going to handle this proceeding, that he will think that that is going too fast.

H.M.Jr: What do you lawyers think about this improvement, this apparent improvement in the position of the Bank of America?

Foley: I haven't seen the letter that came in this morning. I heard about it here for the first time. As I understand it, that would go merely to the banking practices that they have been following and wouldn't affect at all the violations of law.

Smith: It would remove some of the violations, correct them.

Foley: But the actual violations of law are still there - I mean they were committed - violations of the banking law.

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Smith: That is correct.

Foley: And it is upon those violations which are included in the letter of October 2nd that I think we would rely principally in our case. Those are the matters that are easy to prove. The matters of what is sound and safe banking practices are matters of judgment where reasonable men can differ, but it is easier to prove a violation of law because there is the statute and here is what they did and the facts show that the statute was violated.

Now, as I understand it from Jim Landis, it was his opinion last night that even though there were substantial improvements, in view of these flagrant violations of law which have been committed in the past, it raises a very, very serious question in his mind as to whether this Management could ever be permitted to continue in the operation of this institution.

H.M.Jr: Johnny, do you want to ask any questions?

Hanes: No, I am pretty clear on it.

Spencer: We made the suggestion yesterday from the standpoint of what you really wanted to do if you want to bring this Bank along. On the supposition that you can, by turning around the procedure that they have practiced in the past, which is going back a long way, it looked to us as if the Comptroller's office was considerably at fault. The examining end had made all these criticisms and nothing was done about it, even to the extent in some years back of allowing them to open up 50 new branches. They mentioned that. "Well, if the Comptroller's office is so upset about this, why did they let us open up 50 new banks?"

H.M.Jr: They say that in their letter?

Spencer: Not today's letter.

Now then, we made this suggestion - if you want to set this case up under Section 30 with the idea of attempting to pull the Bank out, why not put the criminal end on the last end of it and my guess is that you would crack Giannini or the Management before you got half way through that case.

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- Foley: Charlie, there are no criminal violations. These are civil violations for which there are no criminal sanctions and we have satisfied ourselves by referring to Justice and taking the judgment of the Department of Justice that there are no criminal violations that may be prosecuted at the present time.
- Spencer: It seemed to me that if you could get this case up, if you think it advisable, on attempting to straighten around the banking practice and made that the first half of your case....
- Foley: And then the violations of national banking laws....
- Spencer:the next half, my own guess would be you would only get about halfway through that case and you would find Mr. Giannini out. That is only a supposition on my part. In that way, you could undoubtedly pull that along where it would not hurt the standing of the Bank in the public's mind as much as it would put the case around the other way.
- Smith: We give the Comptroller's office credit for doing more than it really gives itself credit for. That is about the situation. We think they are accomplishing something.
- H.M.Jr: You gentlemen must realize that I am doing my homework with your help.
- Smith: Certainly.
- H.M.Jr: I can't be up to the minute, especially when these letters come in the way they do, but I take it from what you people say that certainly in the next ten days or two weeks there is no decision I have to make.
- Spencer: I think this meeting with Giannini coming to Washington is going to uncover quite a lot, not only as to his attitude but what you can do from now on. You have got to keep the pressure on them; the Comptroller's office has got to keep the pressure on, and that is the same procedure that you apply to any small bank.
- Delano: That is right.

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Foley: May I make a suggestion, Mr. Secretary? I think that the sooner you get a lawyer appointed to handle this, the better. I think if we could do that today, it would be very helpful. I think he should be here next week when the Gianninis are here talking with the Comptroller's office, because those conversations are going to have a very direct bearing on the way he will handle this case and the way he will proceed. I think the sooner we get him in here, the better.

H.M.Jr: I am waiting for a name.

Smith: That is correct. You are sound in that, Ed.

H.M.Jr: When did Landis say he would be in?

Foley: He said he would be in his office all day except from 4:00 to 5:00. He has one hour of teaching and instead of calling you....

H.M.Jr: I will call him right after this meeting.

Foley: He would like to have you call him at your convenience.

H.M.Jr: Righto.

Foley: I have a little memorandum of the meeting in Mr. Delano's office yesterday that you might want to read.

H.M.Jr: O. K.

Foley: Here are the things to be initialed.

Smith: Did you correct the carbon, Ed?

Foley: No, I didn't. As a result, Tom asked me to add that this morning and I will put it on the carbon.

H.M.Jr: Well, if you three bankers aren't occupied at lunch, I would like to have lunch with you at 1:00 o'clock - Mr. Delano and Mr. Foley and Mr. Hanes at 1:00 o'clock. We can talk a little shop, not too seriously.

TREASURY DEPARTMENT
INTER OFFICE COMMUNICATION



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DATE

Nov. 8. 1939

TO Secretary Morgenthau
FROM E. H. Foley, Jr.

For your information
Re: Bank of America N. T. & S. A.

The following persons conferred this afternoon in Mr. DeLano's office with reference to the Bank of America.

Dean Landis, Messrs. DeLano, Upham, Hanes, Crowley, Tom Smith, Spencer, Otley, Foley, Tietjens, and Sherbondy. (Mr. Hanes left early).

In opening the discussion Dean Landis asked the private bankers present whether they would have considered the dividend policy of the Bank to have been bad banking if the Bank had charged off losses set up by the examiners before paying dividends. Mr. Spencer stated that the charge-off of losses would not be sufficient, but that a substantial part of the earnings should have been used to increase the capital structure, or additional stock have been issued by the Bank for this purpose.

Dean Landis stated that he was very doubtful that merely remedying the existing conditions in the Bank would be a sufficient fulfillment by the Comptroller of his duty. He said that there was considerable question in his mind whether a management that had flagrantly violated the law, as had the present management, should be permitted to continue to operate any national bank. Mr. Spencer apparently was of the opinion that if the conditions criticized by the Comptroller were remedied to the Comptroller's satisfaction, the Comptroller would not be justified in continuing to insist that the present management of

the bank be changed. However, Mr. Spencer seemed to be more inclined to the view taken by Dean Landis as the meeting proceeded. Mr. Otteley was definitely of the impression that A. P. Glanville was more of a promoter than a banker and that the institution never could be run on a sound conservative basis while Glanville had a voice in its management. Mr. Smith said that he had not gone that far in his consideration of the problem, but that he was inclined to sympathize considerably with the point of view expressed by Dean Landis. However, Mr. Smith did state in reply to a question by Dean Landis that he would not serve for one minute as a director of the Bank of America while Glanville was in control.

The unanimous sentiment of the meeting, including especially Dean Landis who expressed himself very positively on the matter, was that the existing conditions in the Bank must be remedied. Considerable time was given to a discussion of the available sanctions for remedying the criticized conditions. It was generally agreed that revocation of the charter or the termination of insurance should be used only as final alternatives. With reference to the publication of the report of examination, the general sentiment was that such a sanction should be used only after extended consideration, and Mr. Crowley and Mr. Otteley stated that it would undoubtedly close the Bank.

Mr. Crowley said that he would go down the line the full way with the Comptroller's office and that if the Section 30 proceeding was not successful he would go along in any other proceeding, including a proceeding to terminate the insurance.

It was the unanimous sentiment of the group that the sanction which should be used was the proceeding under Section 30 to remove the directors

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of the Bank. It was also the general sentiment that, if the lawyer's handling that proceeding were of the opinion that the transmission to the Bank of a 90-days' notice that the Comptroller intended to publish the report of examination unless the necessary corrections were made in the Bank, would be helpful in the strategy for the handling of the proceeding, such a notice should be sent at about the time that the certificate under Section 30 was prepared. Mr. Crowley pointed out that if in the midst of the Section 30 proceeding the Glanville should use unfair publicity methods in an attempt to mislead the public and besmirch the Government, it might be necessary to publish the report of examination. Dean Landis expressed the opinion that transmission of a notice of intention to publish the report of examination was a serious step and should only be done after mature consideration.

With reference to the current letter from A. P. Glanville, Mr. Crowley stated that the Comptroller should advise Mr. Glanville that he should confer with the Comptroller, and that he had no business taking up the issues with the Board of Governors of the Federal Reserve System or with the Federal Deposit Insurance Corporation. Mr. Crowley pointed out, however, that the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System should assist the Comptroller in so far as possible.

Mr. Delano closed the meeting by stating that he understood the conclusion to be that a Section 30 proceeding was the sanction which should be used, that a certificate under that section should be prepared after the check up of the Bank early in December, and that the certificate should be sent to the Board of Governors about January 1.

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November 14, 1939

For the Secretary

Examiner McLean, who is here from San Francisco, speaking from memory, says that there is a loan in the Bank of America of \$20,000 to George Eccles, secured by stock of the First Security Bank of Utah N.A. and the Utah-Idaho Sugar Company.

When he returns to San Francisco, he is going to ascertain the date the loan was originally made. It has been there for four or five years he thinks.

Upm
Upm

November 16, 1939 9:40 A.M.

Present: J. W. Hanes, Under Secretary of the Treasury
 Preston Delano, Comptroller of the Currency
 E.H. Foley, Jr., General Counsel
 W.P. Folger, Chief National Bank Examiner
 A.J. Mulroney, Deputy Comptroller
 N.O. Tietjens, Associate General Counsel

A.P. Giannini }
 L.M. Giannini } Representing Bank of America
 C.W. Collins } N.T. & S.A.

Mr. Delano: Gentlemen, we are at your service.

Mr. L.M. Giannini: As you know, Mr. Comptroller, we have been in constant communication with your department. Our Board has been disturbed over the fact that they haven't been able to learn from the Comptroller his attitude in response to their questions. We think that in the interest of the general situation, and particularly in the interest of our institution, that if the department feels as strongly in regard to any of the matters that have been the subject of correspondence between us as is indicated, increasingly as time goes on, by the tone and tenor of the letters, that the department should crystallize the thing by taking some appropriate action, whatever that might be. We don't think it is doing the situation any good to have this constant harrassment of it go on. We have some letters here from branch managers and from correspondents of ours who have

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accounts with us which indicate that this proceeding is having an adverse effect in certain quarters. We have lost a considerable volume of business that I think we might otherwise have gained. We have gained new business, and the net result is, for the first nine months, a gain of 50 millions. Our deposits haven't suffered any net loss, but if you are convinced that there is something wrong in the management of our bank, if you want us out, then I think you should bring the necessary action to have the thing heard and that was why we asked you to arrange for the hearing before the FRB and the FDIC so that the thing would crystallize. I should think, from your point of view, certainly from ours, it would be desirable to have an outside opinion of the condition of the assets of the bank and of the efficiency or lack of efficiency of the management. We feel that the Federal Reserve Board has an obligation as one of the supervising authorities. We have a membership there. We carry large reserves with them and we would like to have them make an independent examination of our bank to satisfy our directors as to its condition, to satisfy you as to

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its condition, and in addition to give you a view on your examinations which we think do not reflect a fair and unbiased analysis on a basis comparable to that you give other banks who are members of the national association.

Delano: Have you discussed this with the FRB and FDIC?

L.M.Giannini: Yes, I have. We have discussed our assets with them. We have gone over that. They do not want to discuss the question of a Section 30 procedure until you initiate it but if you have in mind doing that or if there is any formality to be observed or waived, we shall be perfectly willing to waive any steps.

Delano: In other words, your position, I understand, is that you would like to have a Section 30 proceeding rather promptly.

L.M.Giannini: Yes, I think so.

Delano: Of course, the Comptroller's office must use its own discretion, and it reserves to itself always the right to exercise its judgment in the matter of a Section 30 citation. If we think a Section 30 citation is necessary or desirable, then we will initiate such a proceeding but we don't agree that if you ask for one we should grant it, that is something that seems to rest solely in our discretion.

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F.L.M. Giannini:

I think that is true. We haven't done anything more than ask that it be moved along but if that is the ultimate desire of the Comptroller's office then we will cooperate fully to bring it about soon. If, on the other hand, you want something less formal, we would be willing to cooperate if you would ask the Federal Reserve to make an examination of our assets just for the purpose of getting another point of view, we would be happy to see that done. We felt when we came here last December and entered into an understanding with the Comptroller's office, with the Treasury, with the FDIC and with the RFC, that we had a program that would in the course of time adjust all items that you considered were subject to criticism. From that time forward we haven't been able to get an expression of whether or not you were working to the program. Apparently in the examination the examiners have treated the situation as though there were no program on these various items. In our discussions you instructed Mr. Folger in my presence to put an unbiased examiner on the job of examining our bank. That was not done. Mr. McLean is anything but an unbiased examiner. We sent you an excerpt of

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his remarks in Spokane. I realize Mr. McLean's name should not be brought in this way but I think we ought to lay all the cards on the table and discuss the thing frankly. I think you ought to know he is indebted to us in a substantial sum that came to us through the Merchants National Bank of Los Angeles, that there is unpaid on that indebtedness something over \$10,000. We have had to press him on it quite considerable. He is making small monthly payments. I did not know that.

Mr. Delano:

Mr. A.F. Giannini:

I might say that this indebtedness is among the \$3,900,000 which you tell us is to be charged off. Mr. Williams owed us \$45,000 - charged off. I know Mr. Williams was the Chief Examiner at Los Angeles. There was \$45,000 of that charged off. We bought that bank based on the report of the examiner and we did not discover the false notes in the trust accounts. I am satisfied that the Comptroller's department is the department responsible for the condition of that bank, not ourselves. We took the bank over and in six months found \$35 millions of bad assets.

Mr. Delano:

Mr. Folger, will you make a note of that. This is the first time I have had any knowledge of such a transaction.

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- L.M.Giannini: We haven't wanted to mention it but we are apparently getting to the point where such things will have to be brought out in the open.
- Folger: Do you recall what year you took over the Merchants National?
- A.P.Giannini: It was in 1928. Williams, I guess, was Chief Deputy under the District Examiner and he was no doubt in charge of the examination of that bank. They hired him and he was made an officer of the bank--he was an officer when we took it over. McLean must have been an examiner at that time. The Clearing House owed \$150,000 to the bank; they bought the Clearing House Examiner and then they bought the national bank examiner. That money is still owing us today.
- L.M.Giannini: We have the very distinct feeling that your office is not telling us the condition of our bank. We don't feel that we are getting the same supervision that is given other banks of the same description, and as I said in our letter we feel that is so because the Secretary has taken such a direct interest in our particular situation. We are involved in a situation with strong personalities which I think is bad for the institution, and for that reason I should like to

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see something definite done to clear the atmosphere. We can't go on. This could drag on for four or five years and we could keep on maligning one another but it doesn't seem to get us anywhere.

F. Delano:

Is there any doubt in your mind as to the things we are criticising in your bank?

L.M. Giannini:

Yes, there is considerable doubt, Mr. Comptroller, because we discussed those things very extensively last December. We agreed upon a program. We have observed the program fully, even to the extent of making application for the loan on preferred stock. We haven't had any word from the department or from the Secretary in regard to what the outcome was in that regard. As far as I know the application is somewhere in the Treasury.

F. Delano:

I think you and I had an oral discussion on that point. It was very clear that the conditions which would be imposed for the granting of that request for preferred stock were not acceptable to you.

L.M. GIANNINI:

I wrote you from Chicago saying just what we would do and said that anything you wanted I would present to the Board. The President had requested certain conditions be imposed --

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- r. Delano: My understanding of that discussion of ours was that there was no point in any further consideration because there was no chance that the condition imposed would be met.
- r. L.M.Giannini: The only condition I recall was something about your wanting us to get a clearance from the FRB, the FDIC and the Comptroller of the Currency before declaring any dividends. That was finally boiled down to a clearance from the Comptroller's department before declaring a dividend. In my opinion that was an unfair condition to place upon us after the agreement was made whereby we made the necessary application.
- r. Delano: Am I to understand that you said you would agree to such a condition?
- r. L.M.Giannini: I said I would submit it to the Board. I did not think it would be fair to the bank with regard to the payment of dividends. I think that is a function which belongs to the Board. I have no objection to submitting anything to the Board.
- r. Delano: Well, we might think about that but I certainly received the impression at the time that there was no purpose in discussing a proposal which you regarded as entirely untenable from your standpoint.
- r. L.M.Giannini: I expressed it as my personal opinion.

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- Delano: I would like to clear up your statement about our not answering your questions. Of course, the attitude of the Comptroller's office is that if we have failed to make clear our purpose in regard to the things we are criticizing we will try to do it. We are here for that purpose. We will be glad to discuss any criticisms made by the department. I would be very critical of our own efforts if we had failed to make clear to you in our correspondence all the things we want done.
- L.M.Giarmini: (interrupted with reference to program) real estate losses
- Delano: I don't think there is any great obscurity on that.
- L.M.Giarmini: The question is one of method of proceeding to do it and whether we have an agreement with the department in regard to the doing of it. We think that the Comptroller, the Secretary, the Under Secretary, Mr. Jones and Mr. Crowley, all of you as an inter-departmental committee agreed definitely on a program and we have observed that program since that time.
- Delano: Let me comment as to that. Our covering letter explained our position. I think we are all agreed that the Comptroller cannot bind himself or his department to limit his future action. We had a program in which your Board agreed to do certain things and in which

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we acquiesced to the extent we could acquiesce under the law but it could not and did not bind our hands. We could not bind ourselves to find losses and not ask that they be written off.

Mr. Giannini:

In that agreement you did. Now the attitude has been that it was our program. It was a program of the agenda submitted to the conference and the memorandum was prepared in the Treasury. I didn't write it and I didn't type it. It was not agreeable. It was acceptable but not agreeable.

Belano:

We will have to say, whatever the genesis of the matter, that it was definitely a program which the bank agreed to carry out and which the Comptroller agreed to watch and consider in the light of developments. Certainly we can't regard it as a program that binds our hands. I would like to have the General Counsel elaborate on that, please.

Olson:

I think we made our position clear in the letter which you signed and sent to Mr. Giannini. Certainly the Comptroller had no right and if he did so agree it would be entirely ultra vires. Seems to me you indicated a course of procedure you desired to follow. The Comptroller said if you wanted to do those things it would be entirely acceptable to him but he did not agree to do anything.

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- r. A.P. Giannini: Ask L.M. whose memorandum, ask Hanes, ask Morgenthau.
- r. L.M. Giannini: I think Mr. Foley knows what was in the memorandum.
- r. Foley: Do you have a copy of the letter Mr. Delano sent to you which accompanied the memorandum? I think if you read that it will clear our position.
- r. L.M. Giannini: I don't know that it will change our position because Mr. Delano said - he naturally agreed to reserve the prerogative - the Comptroller said that under the conditions the program seemed to be a satisfactory program or plan and it ought to work out.
- r. Delano: I think this. It is the very general consensus of opinion here that the Comptroller cannot bind himself or the department as to his future course of action. He might sit here and deal with you gentlemen and agree on a course of procedure correcting practices X, Y and Z. Now the situation might very easily change within a week, Mr. Giannini, or the developments might be such that on the next examination --
- r. L.M. Giannini: I think that is true as regards new items. Now we have followed every requirement of that memorandum and that agreement to the extent that we were permitted to do so. I don't know what further we can gain by just keeping up a rehash of those items and each time we get a letter that is more vindictive, more bitter than the last.

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- Delano: Mr. Giannini, I would withdraw "vindictive."
- Collins: It seems to me that the Comptroller calls national bankers in here and tells them what they ought to do. Of course, he doesn't bind himself but he tells the bank what to do because the bank can't make any agreement with the United States or the Comptroller but that memorandum was a binding proposition. Of course, new things, that is something different.
- Delano: I don't think we are very far apart as to new items. The Comptroller can never give up or abrogate his right to criticize a bank's bad assets or go after their correction when he thinks he should do it. That is all we are trying to do. I think that is something that is inherent in the job.
- L.M.Giannini: I concede that, but we are cooperating to the fullest extent and as I said when we started, if you wish to kick out the management, then let's start the process to accomplish that end. If it becomes necessary for A. P. and me to make a living outside the bank, I think we can manage. Certainly A. P. hasn't made anything on his job--only seven years of very effective work. He has taken the bank from 650 millions to 1435 millions, cleaned up over 70 millions of bad assets, added 20 millions to the net capital structure

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and paid 43 millions in dividends, and I think he has done a superhuman task. He has reestablished the confidence of the people, he has done a rehabilitation job. You, Mr. Comptroller, were not in office at the time but a very good job has been done. Now personalities entered into it beginning with examinations early in 1938. Up to that time we had a perfectly normal examination but after that --

Mr. Delano:

Let me clarify the position of this office. We haven't anything punitive in the back of our minds. What we are attempting to accomplish is the correction of the things which we think should be corrected in your bank. We are pressing on those points. We are sensible of our obligation under the law to press on those points, the same as we do with any other bank.

Mr. L.M. Giannini:

But why is it necessary to continue referring to them as unsafe or unsound practices.

Mr. Delano:

I don't think we can ever avoid criticising unsafe or unsound practices so long as we see them. Further, the office has to use its judgment when it is necessary to impose certain sanctions.

Mr. L.M. Giannini:

Yes, but we have agreed to work out those things.

Mr. Delano:

I

Mr. L. M. Giannini: (interrupting) Well, we might as well go on but

what's the use.

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r. Hanes entered the meeting

r. Delano:

Bringing Mr. Hanes to date, said: These gentlemen have made the point that the so-called December agreement provided for a certain course of action which was acceptable all around and that they have carried it out. In our view it was a program outlined which we hoped would contribute to the correction of certain practices, and we have said in regard to it that the Comptroller reserves the right to press on any discoveries of examiners -- on any matters developed during the course of examination. I think Mr. A.P. Giannini hit the nail on the head when he said, "Let's drop argument and find out what the Comptroller wants." I think we would be very glad, certainly we would be negligent if we did not tell these gentlemen what we want. Now I don't know that we want to go into the minute details here, the broader issue is the thing in which we are interested. We will gladly tell them just exactly what we think and if it isn't clear we will make it clear. Mr. Folger will explain the details. There is one other point on which Mr. Hanes should be informed. The Bank of America would like a section 30 citation to clear the air. They

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have serious doubts as to the quality of our examination and they would like to have the matter reviewed. They would ask that the Federal Reserve Board make an examination of their bank to check our examinations and as a review by dispassionate authority. I said that in regard to a section 30 citation the Comptroller's office reserved to itself the decision as to whether such a citation should be made and when it should be made--that we can't make a commitment as to that, and we certainly don't admit--

- L.M.Giannini: (interrupting) In other words, you're trying to put the bank out of business.
- Delano: I deny that.
- A.P. Giannini: For 15 months now they are writing letters about charging off millions. Talk about Russia. Who's ever been told to charge off 13 millions. What we get is a preemptory demand to do it.
- L.M. Giannini: Mr. Folger told us when we were here they were free to classify any asset.
- A.P.Giannini: This isn't America after all.
- Folger: Well, we don't want to be arbitrary.
- A.P.Giannini: You tell us we've got to charge off half a million a month.
- Delano: I think one thing you mention--

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- A.P. Giannini: (Interrupting) But the point I am referring to is as to the examiners who are going to have the say.
- Belamo: Let's leave out of the discussion the question of our internal organization. We are willing to listen to protests against our findings but we are unwilling to listen to the criticism of the fairness and justness of our Chief Examiner.
- A.P. Giannini: Mr. McLean is not a fair examiner to our bank. (Here he referred to Spokane again, the fact that they had to press Mr. McLean for payment, the clearing house matter, etc. Referred to the two loans to examiners included in the \$3,900,000 to be charged off, said he made a demand to send the officers of the Merchants National to jail in 1932).
- Folger: At the time you took over the Merchants National in 1928, this man Williams you spoke of was then an officer of the bank.
- A.P. Giannini: His loan has been charged off. The loan came to us with the bank. His loan and McLean's loan have been charged off in this \$3,900,000 item. This loan is in the bloodhound department. I think McLean pays \$20 every month on it but it has been running since 1928. You understand these loans were not made by our bank. They were in the bank when we took it over. Logan was the chief and Williams was under him. He became an officer and no doubt he had to do with the favorable

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examination report but of course along with Williams came Thompson and his was favorable to the clearing house. We bought the bank and months later discovered 35 millions of bad stuff, dummy notes, false trusts, etc. I wrote the Comptroller and the clearing house.

L.M.Giannini: Mr. Comptroller, would it be appropriate for us to request a copy of the transcript? We just want to know what you have in the file.

Delano: Yes, of course. There seems to be one real question and that is the question of clarifying your minds as to what we want.

L.M.Giannini: What you want and why you have disregarded the agreement made in 1933.

Delano: We don't consider we have disregarded it. I think if you gentlemen are informed as to what we think should be done, that will meet the issue, will it not?

L.M.Giannini: Will that check the flow of correspondence?

Delano: This office must reserve--

L.M.Giannini: (interrupting) We have written 325 pages of documents, and I have done nothing else for the last year and a quarter.

A.P.Giannini: We are here to find out just what you want. If we can't get together then it is up to me to tell the people of the country what is behind the whole thing. This thing can't continue. Whether we go out or stay in, we just won't be hounded. The public can read the

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whole story. We want to know whether Morgenthau or whether Upham is going to run our bank. The only reason is that I want to protect these boys from having the bank taken away from them.

Mr. Delano:

This office here has certain obligations under the law. If we can't get proper correction, it has to go to the sanctions the law provides. We are, of course, under obligation to do it and will do it if necessary.

Mr. A.P. Giannini:

We will do everything fair and within reason. Now, for instance, the 10 to 1 requirement. You just had the Continental people repay 25 million. They have a ratio of about 12 to 1.

Mr. Delano:

I don't think that should go without an answer. Mr. Folger, will you answer? I think you have figures there.

Mr. Folger:

I don't think we should discuss the affairs of the Continental Bank here.

Mr. Delano:

I don't think we should discuss the Continental or any other bank but I think we can discuss the question of ratio.

Mr. A.P. Giannini:

We'd like to see that other banks have to do the same thing.

Mr. Delano:

The question of ratio is governed by the nature of the assets. I think it would be very pertinent to have in the record of this meeting a proper answer from

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the technical department on this question of ratio. I don't want to let that particular thing get away. For Mr. Giannini's information, he mentioned in his letter --

(interrupting) I mentioned a comparison of Chase and National City.

You are a director of the National City.

I know about the Anglo. They never had a capital structure.

Let me give you figures on "A" bank. One of the large banks with resources not far from yours. This bank has charged off plenty of assets since 1933. Banking house \$5,000,000, furniture and fixtures charged off, total fixed assets \$8,000,000. That includes potential real estate. Your bank has 107 millions in banking houses, furniture and fixtures, other real estate and potential other real estate.

Is that a branch bank?

I want to tell you this isn't a branch bank but let me compare the criticised assets. That bank is cleaned out to where its doubtful and losses are negligible. Its total criticised assets are 17 million. The total in your bank is 130 million.

Why, a different approach. I'd like to call Mr. Folger's attention to our letter of September 15, 1933. We were 100% clear at that time except \$22,000 of prospective foreclosures.

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- Folger I talked to you in January of 1938, Mr. Giannini. I reviewed the asset condition of your bank. I went over the fixed assets with you and then I went over your dividend record. We talked for about an hour. That was January, 1938.
- A.P.Giannini: Well, we were 100% clear at the time, nothing except--
- Folger: (interrupting) I told you your dividend policy was far from correct.
- A.P.Giannini: There is no use in arguing the question any further. Mr. Folger I wanted you to give us a fair comparison and you can't compare us with a bank that lost 600 millions. We had a rehabilitation job to do. We were licensed by the United States Government in 1933 to reopen.
- Folger: Isn't that all the more reason why you should conserve your earnings?
- A.P.Giannini: Everything has been charged off except banking premises. That is what happens at every examination. Everything is charged off at every examination by the administration.
- Folger: Let me take your normal--
- Collins: (interrupting) A theoretical bank that doesn't exist.
- Folger: This bank had normal net earnings January 1, 1933 to June 30, 1939 exclusive of bond profits.--

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- Mr. A.P.Giannini: (interrupting) Do you mean to tell me we get no credit for making money on bond purchases?
- Mr. Folger: There isn't a large bank in the country that has taken the bond profits and applied them as you did. This bank had 37 million normal net earnings during that period, the dividends paid amounted to 6 million, that is, 17.66%. During the very same period, made from the same type of report, sworn to by the bank, your bank had normal net earnings of \$64,986,000 and you paid dividends during the period of 43 millions, or 66%.
- Mr. L.M. Giannini: That isn't a true statement. That's a false statement. That's exactly what you have been doing all the way along, and your examiner's own reports shows it.
- Mr. Delano: (addressing Mr. A.P.Giannini) I don't think it is necessary to raise our voices, and Mr. Giannini, we have every confidence in Mr. Folger.
- Mr. A.P.Giannini: I apologize if I am a little too rough. It's just my manner. After you slept with this thing the way I have, you've got to feel it.
- Mr. Delano: Did you finish, Mr Folger? If not, I--
- Mr. Folger: These figures are not mine. They are statements made by the bank and sworn to by the bank.
- Mr. A.P.Giannini: Mr. L.M. will have his figures when he talks with Mr. Folger.

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Mr. Delano: I will reserve the right to exercise the discretion of the office.

Mr. Folger: The only thing I want to clear up, Mr. Giannini, is your statement that I was sent to California by the direction of the Secretary. That, Mr. Giannini, is a misstatement.

Mr. A.P. Giannini: Let's concede that that was a misstatement. Perhaps he did not send you but perhaps someone else did. When Chambers of Commerce get letters from Upham, first of all, he turns down the branch application. Then he writes Chambers of Commerce saying it was because of conditions in the bank. That's tearing down the bank, destroying it inch by inch. We got a letter from Sherman Oaks about it. Is that fair? The Comptroller never did that before. They never let the outside world in on those things. Something wrong somewhere. Someone is doing their darndest to tear it down. Let's say I am wrong but it looks that way.

Mr. Delano: I think one question remains - what the requirements of the Comptroller really are.

Mr. A.P. Giannini: We will do our best to meet them.

Mr. Delano: The thing to be done, I think, by your leave, is to have Mr. Mario Giannini sit down with Mr. Folger and Mr. Wright, who is here, and discuss this thing and then make very clear what the requirements of the Comptroller are. If that raises a basis for further

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discussions, we will have them.

Mr. L. S. Giannini: I don't think we will get very far. I think that primary consideration now should be given to the loss classification, doubtful classification and banking premises. Mr. Folger uses in his comparison the classified assets. It is very easy to follow the rule he recited to us when we were last here, taking any asset and writing off, say, 13 millions and then have that go in the record as part of the classified assets. At the expense of about \$100,000 we are having a physical check made of our plant for the Board. We have the report on that here. It is something we want to present.

Mr. Delano: We aren't taking the position we will not consider-

Mr. A. P. Giannini: Why, it's arbitrary to ask us to charge off 13 millions all at one time.

Mr. Delano: That is an accumulated figure and Mr. Folger was trying to catch up on what should have been done over a period of five or six or more years. Now let's get at this by having Mr. Mario Giannini discuss the details with Mr. Folger.

Mr. A. P. Giannini: The President said we should have Foley sit in on that. At any rate he asked us to see Foley.

Mr. Delano: The President of the United States?

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F. A.P. Giannini: Yes, he suggested we should go to Foley, that's why I sent you the wire asking--

F. Foley: I haven't had any conferences with the President with respect to such a meeting. However, I would like to be represented at these conferences and inasmuch as I am very busy right now, Mr. Tietjens, Assistant General Counsel, will represent me at these conferences.

ooOoo

November 17, 1939

For the Comptroller

The transcript of the conference in your office yesterday morning with the Messrs. Giannini shows that Mr. A. F. Giannini said, "When Chambers of Commerce get letters from Upham -- first of all he turns down the branch application. Then he writes Chambers of Commerce saying it was because of conditions in the bank. That's tearing down the bank, destroying it inch by inch. I got a letter from Sherman Oaks about it. Is that fair? The Comptroller never did that before. They never let the outside world in on those things. Something wrong somewhere. Someone is doing their darndest to tear it down. Let's say I am wrong but it looks that way."

So far as the office records are concerned, we cannot find that there was ever any application by the Bank of America for a branch at Sherman Oaks. We did receive in October of this year the following telegram:

"October 24, 1939 PM 12 45

VANNUYS CALIF

"COMPTROLLER OF THE CURRENCY
WASHINGTON D C

"WE HAVE UNCONFIRMED REPORT BANK OF AMERICA BRANCH BANK CHARTER FOR SHERMANOAKS REJECTED BY YOUR DEPARTMENT BECAUSE OF UNFAVORABLE RESULTS OF GOVERNMENT SURVEY. WILL APPRECIATE IMMEDIATE CONFIRMATION AND INFORMATION FOR PUBLICATION WEDNESDAY. NIGHT PRESS RATE COLLECT THANKS.

JOE F MARTIN
PUBLISHER SHERMANOAKS CITIZEN"

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To which we replied:

"October 24, 1939

"Joe F. Martin,
Publisher, Shermans Oaks Citizen,
Yannuys, California.

"Regret say information requested your telegram not available because contrary policies this office state whether or not national bank has business pending or if pending to discuss it with anyone but board of directors or board's representatives.

(Signed) E. H. Gough

Deputy Comptroller"

Perhaps Mr. Giannini refers to the following letter which was prepared by Mr. Gough and signed by me and sent to a committee of the Chamber of Commerce in Campbell, California, a year ago:

"November 5, 1938

"Mr. G. E. Farley, Chairman,
Campbell Chamber of Commerce Banking Committee,
Campbell, California.

"Dear Sir:

"Receipt is acknowledged of your letter dated October 12, discussing the needs of Campbell for banking facilities.

"Please be advised in reply that the records of this office do not show that during recent years, at least, an application to organize a national bank in Campbell has been received. Should such an application be received, it will be given careful consideration after the usual investigation has been made and the reports of investigators are available.

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"It is contrary to the policies of this office to discuss the affairs of a national bank with anyone but the board of directors, or representatives of the board, so it will not be possible to write you regarding the application you understand has been made by another national bank to establish a branch in Campbell.

Very truly yours,

(Signed) C. B. Upham
Acting Comptroller"

We also wrote to another inquiry from Campbell as follows:

"November 5, 1938

"Mr. W. N. Lloyd, President,
The Ainsley Corporation,
Campbell, California.

Dear Sir:

"Receipt is acknowledged of your letter of October 27, referring to an application you understand a national bank has made to establish a branch in Campbell and asking what you may expect in the way of help from this office.

"Please be advised in reply that the policies of the Comptroller's office do not permit it to discuss the affairs of a national bank with anyone but the board of directors of the bank, or the board's representatives. It will not be possible, therefore, to comply with your request.

Very truly yours,

(Signed) C. B. Upham
Acting Comptroller."

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Incidentally, the file shows no record of a rejection by me of the application for a branch at Campbell.

It is standard practice in this office, with which I agree and to which I conform, that we do not discuss the affairs of a national bank with anyone other than the board of directors of the bank. You will note that in the telegram to the publisher in Vannuys we even refuse to say whether or not an application for a branch had been submitted.

I suggest that a copy of this memorandum be made available to Mr. A.P. Giannini.

Upm

November 17, 1939 10:30 A. M.

Present:	Preston Delano	Comptroller of the Currency
	W. P. Folger	Chief National Bank Examiner
	A. J. Mulronev	Deputy Comptroller
	Irwin D. Wright	District Chief National Bank Examiner
	N. O. Tietjens	Assistant General Counsel
	D. J. Sherbondy	Attorney
	A. P. Giannini)	Representing the
	L. M. Giannini)	Bank of America
	C. W. Collins)	N. T. & S. A.

Mr. Delano How did you gentlemen get along at your meeting?

Mr. L.M. Giannini I don't know. We were going to say that what has been evolved - we don't seem to have made much, if any, progress.

Mr. Delano Didn't we clear up the situation? What I am anxious about is did we make clear the position of the Comptroller's office? That point has been very much in my mind since the initiation of these discussions. Did the staff make clear what the Comptroller has in mind?

Mr. L.M. Giannini Well, I don't say it was made quite clear. We discussed some phases, some of the reasons with your technical staff. However, we did not go over all phases of your criticisms.

Mr. Delano You didn't cover the entire subject then.

Mr. L.M. Giannini We could have talked for weeks about your long and various communications, that is, those exchanged between this office and our

officers and Board of Directors. .

Mr. Delano

I rather had the impression that all of the main points which Mr. Folger had in mind were explained yesterday.

Mr. Folger

I took the last report of examination. I don't know whether Mr. Giannini means we did not discuss the letters themselves or the criticised items. Of course, we didn't take each particular line of credit or go over each and every item. We discussed the criticisms which are covered in the July letter.

Mr. Delano

I am concerned that there should not be any ambiguity as to the things we have been requesting the bank to do. I understand from you gentlemen that you did go over those, at least those of major importance.

Mr. Folger

We went over all criticised items in the report.

Mr. L. M. Giannini

I don't think we discussed very fully, at least not from my point of view, the reasons that prompt the Comptroller's office to take the position it does. In other words, I don't think we discussed the fundamental point of view of the Comptroller's office. We discussed more our point of view with regard to the various items. I don't think we got very fully the Comptroller's views about these things.

Mr. Delano

You did get, I assume, a review of the things the Comptroller wants, that he is asking for, such things were discussed and presented.

Mr. L. M. Giannini

Yes, the items themselves.

Mr. Delano

What you did not get, I understand, were the reasons why we want them.

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L.M. Giannini We did not go into your legal reasoning on some of the points that are in dispute - the so-called violations of law. I think we gave our point of view but we did not get very much of your point of view. Isn't that right, Mr. Sherbondy?

Sherbondy Mr. Collins and I disagreed on some of the legal phases, with particular reference to National City bank stock and guaranteed loans.

L.M. Giannini We did not discuss your theory in regarding them as violations.

Folger That is why they were listed as illegal?

Delano I had this point in mind. I wanted to be sure, and I wasn't quite sure as a result of our first conference, that you understood all the points we list. You are now clear on that I am sure.

L.M. Giannini I don't know why, for example, the classification of the loss on the banking premises was made. Was it just arbitrary or why was it so classified?

Delano You are clear as to what all the points are. You may not be clear as to what are the reasons behind them, but they have been reviewed and you understand them.

L.M. Giannini I know what the items are.

Delano I was afraid you did not at the previous conference. You said you were not entirely clear.

L.M. Giannini What we meant to say we were not clear about, is that we had

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L.V. Giannini
(continuing)

expressed our views and our opinion and we presented the opinion of counsel, and we haven't had any reference or response, in connection with those particular things, from the Comptroller's office so that we don't know wherein our reasoning in regard to these matters is faulty if it is.

Beland

In other words, we presented the position but not the argument.

L.V. Giannini

You haven't answered the position the bank has taken with regard to these various major issues wherein we gave legal opinions, and we haven't heard anyone say that the opinion is wrong or that we don't agree with it because it is X, Y or Z.

Beland

That seems to be a legal question. What about that, Mr. Tietjens?

Tietjens

We haven't presented any brief on questions of law pertaining to the bank. I think the argument has been presented to the bank - they know what statutes have been violated. We haven't attempted to debate with them as to why their position is wrong or why ours is right because I don't see that that is going to get us any place.

Folger

For instance, you take the position, and have most of the time, that certain loans of Transamerica should not be considered a violation of section 5200, taking the position that Transamerica is not an affiliate of the bank. We have taken the position that it is.

Sherbondy

Under Section 23 of the Federal Reserve Act.

- L.M. Giannini I don't think that question was raised or discussed in the October 11th letter or in subsequent letters. There was some question raised on that three or four years ago. The ownership was in Transamerica.
- Sherbondy I think the letter of October 2 or July 31 would refer to that point, about section 23A. It's one or the other of those and the report of examination.
- L.M. Giannini The alternative reference was 5200 or 23A.
- Sherbondy Do you recall what that was, Mr. Folger?
- L.M. Giannini I think the examiner suggested that if it wasn't 5200, it was 23A.
- Wright That was the 1938 report.
- L.M. Giannini That was my recollection. Your letter says there was a violation of 5200. We presented argument and opinion of counsel that it wasn't and we haven't had any reply on that.
- Sherbondy The letter of July 31 from the Comptroller's office gives our views on that.
- L.M. Giannini I have a copy of that letter along if you want to go into that.
- Sherbondy I don't doubt but what the legal department did say they considered that a violation of the law.
- Falano If they want clarification on that point, would we have any objection to giving it to them?
- Wright No objection but it would be useless.

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- Collins I don't think we would get anywhere in oral discussion of such technicalities. It would have to be reduced to writing to get anywhere, being a technical matter, marshal the facts and then get a legal conclusion.
- Sherbondy Who is going to reach the conclusion? In other words, who is going to make the decision, and what is to be gained by having two briefs?
- L.W. Giannini I think we should sit down, informally and off the record, and discuss the opposing points of view and see if you can't find a common ground or common factor.
- Delano I don't believe the legal department has any objection to that.
- Tietjens We will be glad to do it at any time.
- Delano There is no objection to engaging in open discussion. I assume Mr. Tietjens would be glad to arrange such a conference or meeting as you have in mind. What we are aiming to do is to clarify any points remaining in doubt in your mind.
- L.W. Giannini That is what I would like to clarify in my own mind.
- Delano We have no objection to any sort of informal discussion that you wish.
- L.W. Giannini Could we do that this afternoon?
- Sherbondy Are you not going to be here over the weekend?

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L.M. Giannini I doubt if it will get us any place, and I did plan to leave tomorrow afternoon but would, of course, want to stay on if there is any possibility that the atmosphere might be cleared.

Tietjens Well, I think this is a matter for the lawyers, and I don't want to argue with you about it, Mr. Giannini.

L.M. Giannini I think Mr. Collins should sit in with us because after all a report must be made to our Board.

Tietjens I don't know that anything very satisfactory could come of a conference like that.

A. P. Giannini entered the meeting at this point.

Delano I think that the matter should be threshed out.

Tietjens Well, these are points that I would want to be fully prepared on before ~~I am forced~~ ^{we went} into such a conference.

L.M. Giannini I don't intend to force the issue.

Delano We understand you have no such intention, Mr. Giannini.

L.M. Giannini But if we could have a conference -

Tietjens I thought we talked a good deal about the legal point of view yesterday.

L.M. Giannini I'd like to have the meeting at your convenience, Mr. Tietjens.

Tietjens We could not do it before the first of the week.

L.M. Giannini Do you think Monday?

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Mr. Folger They would probably require some time to prepare themselves on the points at issue.

Mr. Tietjens That is not only my guess, but it is my judgment.

Mr. Folger We say the National City Bank stock was a violation. You take the position it wasn't. The same thing is true about the real estate held by you.

Mr. L.M. Giannini I am not trying to press those matters. If you have any objection to further clarifying the issues -

Mr. Delano We will leave that conference to Mr. Tietjens to arrange.

Just as a matter of bringing Mr. A. P. Giannini up to date - Mr. L. M. Giannini stated that there was some doubt in his mind as to the legal reasoning behind some of the positions the Comptroller's office has taken in regard to the so-called violations of the law. He wished to discuss the matter informally with our legal representatives and I have asked Mr. Tietjens if he had any objection to doing that and he said "No" and we are now leaving it to these two gentlemen to arrange for such a discussion.

Mr. A.P. Giannini What's the status of the other things?

Mr. Delano That is the only point discussed thus far.

Mr. A. P. Giannini I thought we were here to have a program submitted to us.

Mr. L.M. Giannini I thought Mr. Folger and Mr. Tietjens were going to prepare a memorandum.

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- A.P. Giannini My understanding is that you reached conclusions yesterday and that you were to settle that this morning. If that's been changed and there isn't any program -
- Delano I did not understand from those gentlemen that a program was to be submitted by the Comptroller's staff.
- L.M. Giannini That was exactly what Mr. Folger said, that it was something the Comptroller's staff had to prepare. They were supposed to work on it yesterday afternoon. I think Mr. Wright and Mr. Sharbondy were going to do it.
- Folger I never referred to it as a program.
- A.P. Giannini Then there's only one thing to do. We are going to
- Collins (interrupting) Well, I think it was a summary of what we discussed.
- Folger Yes, stating your views.
- L.M. Giannini Didn't you have the impression they were going to prepare a memorandum along those lines?
C. W. Collins
- Delano Well, the Comptroller has a memorandum but he could not refer to it as a program.
- A.P. Giannini Well, call it a memorandum, call it anything you please.
- Delano It is a memorandum reporting the conversations which took place. It doesn't represent any program, nor does it represent any agreement. It simply recites things as they were discussed.
- A.P. Giannini Let Mr. L. M. have a copy. I don't want to see it.

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- Mr. Collins It is to form a basis of action.
- Mr. Delano I don't want to be too technical about it, whether it's a memorandum, a program or whatever it may be. We would be glad to engage in discussions on any of these items. The Comptroller would like to have suggestions from you as to what you think is the proper procedure on these items.
- Mr. A.P. Giannini There's no use of meeting any more unless we can get together right here. It's got to be right now and if it isn't agreeable then there is only one thing left for us to do, tell the people of the country, etc. Let Mr. Collins and L.M. go through the memorandum and if they can't seem to get together we will give you notice of just what is going to happen.
- Mr. Delano All right, let's take up the first item, and give us your view.
- Mr. A.P. Giannini See if there is any possibility. If there isn't, there's no use wasting our time. Have been here over a week, spent months here last year and we are not going to stay here very much longer. Come here and find people away, the Secretary is out of town now, last time he was in Finland.
- Mr. Tietjens I don't think your being in town had anything to do with the Secretary's going away.
- Mr. Delano I think we might get back to the memorandum.
- Mr. L.M. Giannini I think for A.P.'s benefit it would be well to read the whole memorandum.

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(Here Mr. L. M. Giannini read the memorandum in entirety. As he read he took exception to the 1 to 14.63 and the 1 to 15.86 ratio, saying neither was correct. Mr. A. P. Giannini interrupted at one point with reference to legal loaning limit for one concern. Then said, referring to the National City Bank stock, that Mr. Sedlacek had approved that before it was done. He, Sedlacek, said he would rather have the National City Bank stock. He was the examiner who handled it before Mr. Morgenthau took charge. Also made reference to Mr. O'Connor.)

- Delano The first thing I would like to do here would be to determine if this memorandum misrepresents in any way your position.
- A.P. Giannini Let me say, Mr. Delano, you were very nice to sit with us on Saturday morning. That's rather unusual for people in Washington to give their time like you have and I appreciate it. It's commendable.
- Delano One thing I would like to make clear is that we will put ourselves out at any time to receive national bank officers. We will be glad to have you make any comment if the memorandum misstates your position.
- L.M. Giannini On the ratios, I don't know where they get those figures at all. I never heard any such figures as these - 14.63 and 15.86.

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- t. Folger Those are calculations made from your last report.
- t. L.N. Giannini They are entirely new and foreign to me. My understanding is that it is 12 to 1.
- t. Sherbondy We are not stating your position. We are stating -
- t. Delano Why not go over the memo point by point or rather under the subjects. I understand Mr. L. M. would like to discuss one and two at the same time.
- t. A.P. Giannini Let's each side see what they want. That's a good suggestion. You get things cleared up that way.
- t. L.N. Giannini Item 3 (reads it) Of course, we did not refer to any particular properties when we discussed accelerating the depreciation rate. We didn't admit there was a loss and specifically stated there was not a loss. We mentioned, too, the fact and displayed to the conference the tabulation of the figures covering the appraisals made by the American Appraisal Company which showed our cost of land, buildings and equipment separately, our present carrying value of land and buildings and equipment separately, the examiner's appraisal, the reproduction cost, etc., made by the American Appraisal Company, and reproduction value less depreciation by the American Appraisal Company covering all of the items, land, buildings and equipment. The figures demonstrated that there was a discrepancy in regard to the 125 properties of

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- L.M. Giannini 11 million between the present -
(continuing)
- A.P. Giannini (interrupting) 5 to 10 millions of our properties, land
values at today's prices and today's costs.
- Delano Have you turned over a schedule of those?
- A.P. Giannini We've been told they don't want them. The American Appraisal
Company doesn't seem to mean anything to them at all. I
mean Mr. Folger.
- Folger I never said anything like that.
- A.P. Giannini We wrote you a letter and told you what those appraisals were.
We were told you sent a letter out to the bank on the fifteenth.
It reached there yesterday. What did you ask for? It's
under your signature but we think you didn't sign it.
- Delano I would like to correct that. It is my letter and I did sign
it. In regard to these appraisals which we asked you to turn
to
over/the examiner at San Francisco. Have you done that?
- L.M. Giannini My understanding is that they have been.
- A.P. Giannini You wrote a letter asking us to republish the statement and
charge the 9 million off. That's the best evidence I know of,
and that's the issue we plan to take up with the people of
the country. You have asked it and we are giving you notice

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r. A.P. Giannini
(continuing) now that we don't intend to do it. Go ahead and take any action you want. We serve notice now that we are not going to charge that 9 million off. We don't admit the loss and we won't re-publish the statement. We are willing to take our medicine. Go ahead.

r. L.M. Giannini I was saying there was a difference between the examiner's appraisal on the land and buildings of 11 millions, the examiner' giving a figure of \$22,053,000 and some odd dollars and the Appraisal Company giving a value of \$33,067,000. The reproduction value of those properties was \$38,499,000 and the cost value of them was \$38,960,000. We give them now at \$32,849,000.

r. Delano I understand these have all been turned over to our examiners.

r. A.P. Giannini That's the 123 million they criticize.
showing about 33 1/3% more.

r. Delano We will give those consideration.

r. A.P. Giannini (interrupting) I hope you will because -

r. Delano We will always consider anything in the way of new evidence.
It is a technical matter.

- A.P.Giannini That's all right, then.
- Delano Can't we run down through the other items?
- A.P.Giannini (interrupting) Yes, make any suggestions. Don't be afraid of me. You just talk back at me any time.
- Delano I assure you I am not afraid.
- A.P.Giannini I get pretty rough, you know. I've got to be as I am. Can't change me, you know.
- Delano What I particularly wanted to do was to have Mr. L.M.Giannini take each item, have him state the bank's position and what he thinks should be done. Our people here make certain requests and you are here to discuss--
- A.P.Giannini (interrupting) give years
- Delano You give me what you think should be done and your program will be considered. Take the dividend policy. Just tell me frankly. Do you think there is anything that can be done about the dividend. If so, what, and how?
- L.M.Giannini In regard to the dividend policy. Prior to voting the last dividend Transamerica Corporation through its president, Mr. Grant, had agreed to impound with the bank in a special deposit account, dividends that Transamerica Corp., and its subsidiaries received from the bank excluding Pacific National Fire Insurance and the Occidental which are under separate supervisory authorities that require they must keep their own assets segregated. As a result, he has deposited

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in that account something over \$830,000. Those funds which would amount to something over \$3,200,000 in a year, are to be used at the discretion of the bank to accelerate the liquidation of Transamerica commitments to the bank or to purchase new stock in the bank.

r. Delano

You will leave that to the discretion of the bank, that disposal.

r. L.M.Giannini

Now the understanding is that that disposal of it will be made by the officers of the bank in conference with the Comptroller's representatives. In acknowledging his letter the bank stated they would confer among the officers of the bank and consult the Comptroller's office as to where it should be applied.

r. Delano

I am asking a hypothetical question. If we should say, then, that in our judgment it would be advisable for those funds to be used for the purchase of new stock, would the proper machinery be set in motion --

r. L.M.Giannini

Mr. Folger raised the question yesterday that Transamerica might sell its stock in the bank. I said we felt we had to agree to deposit the minimum of this amount for that purpose, an annual minimum of \$3,200,000.

r. Delano

That would be added to the capital of the bank. You could assure us that it would be done through the next year.

r. A.P.Giannini

We would guarantee it.

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- Delano It is my understanding that that's as far as you would be willing to go but how about reduction in the rate.
- L.M.Giannini We don't think it advisable to reduce the rate.
- Delano (mentioned the coming March dividend)
- A.P.Giannini You remove the SEC ^{deal} ~~issue~~ and we'll take care of it.
- Delano Your position and Mr. A.P. Giannini's is that if you should cut this dividend it would indicate weakness in the bank; you feel you would have a run.
- A.P.Giannini Think of the adverse newspaper publicity. We have 2 1/2 million customers, we have probably 250,000 stockholders in California. We are paying about two million to employees in bonuses, and the first thing our stockholders would say if we cut the dividend would be to cut the employees benefiting under the bonus.
- Delano You feel this way about the dividend — that if you cut it it would have a serious effect on the deposits in your bank.
- LM Giannini I think our bank is differently situated than the average bank in that we have about 2 1/2 millions people doing business with us, many very small accounts, people who ordinarily would not have an account in a bank. Reference is made to the Bank of California which cut its dividend recently. There is a bank that doesn't accept deposits of less than \$1000. They probably have all told under 1000 accounts in San Francisco, and of course their situation is different. Our business depends upon the good will of the people who are stockholders in the

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institution. They are our ambassadors of goodwill. There are 250,000 people bringing business to the institution. If you do anything to get them disgruntled it would have a bad effect, not one perhaps that would be drastically bad or would put the bank out of business but it would set it back.

E. Delano

I wanted to get your opinion on why you felt you couldn't do anything in the matter of dividend policy.

E. L.M. Giannini

We felt it wasn't the necessary thing to do, in our judgment or in that of the Board of Directors, that as we stated in one of our letters to you, if conditions changed and our earnings changed and there was a special occasion for a change in the rate of dividend it could very easily be done. The Board is always there and has the authority to reduce the dividend and certainly we would not advocate with the Board anything but what we considered was, in view of all the circumstances, sound policy.

E. Delano

In other words, your position is that at the March meeting you will approach that dividend with an open mind.

E. A.P. Giannini

I think if you will remove the SEC ^{rule} ~~sense~~ -

E. Folger

For what period would the dividends received from the bank by Transamerica be impounded?

E. L.M. Giannini

I think something more ties in with that. They would either be impounded to be used for accelerating the liquidation of the commitments of Transamerica or for the purpose of subscribing to new

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stock. Now if we put out an issue of 20 to 25 millions and we require Transamerica to take 8 or 10 millions, then obviously the funds from the dividends to the extent they were received by Transamerica would be used for that purpose.

A.P.Giannini We have no —

Delano This is information. You contemplate sale of stock.

A.P.Giannini I think we could sell 20 to 25 millions within the next six months.

Delano Let's discuss this question of increase of capital. You are through with dividends. It is my understanding that this impounding of Transamerica will go through the next year or the year beyond or as is consistent with the developments which take place. If you purchase stock with it, it amounts to the same thing. I think there is agreement as to that.

Folger That is using it to strengthen the bank's capital.

L.M.Giannini I think Mr. Folger is pretty good natured.

A.P.Giannini Only he's in the wrong company. I don't mean you, Mr. Delano.

Delano Let's confine ourselves to stock. Do you have a definite idea or plan of increasing your stock? Could you do that?

L.M.Giannini Yes

Delano How soon

L.M.Giannini I would say we could increase it by 10 million by April and 10 million by August.

- Folger Would you want to increase it twice?
- A.P.Giannini Serially. Some of it would be held in the Treasury.
- Folger The money would be there but you would only make one increase.
- A.P.Giannini You remove this cloud and we would sell 25 millions like nothing, no doubt about that, but you can't have all this newspaper publicity.
- Delano We were discussing stock. You thought you could put in a minimum of 15 to 20 millions during the next year.
- A.P.Giannini I think we can promise 20 to 25 millions. We will probably aim to keep it on an even basis. Yes, I can commit the bank to not less than 20 millions by the end of next year. This is the way to get together - first sign of co-operation I've seen.
- Delano I would like to make clear that I am only asking your present position. I can't give you any ruling at this time but I want to get what is in your mind and what is your program.
- A.P.Giannini We will make it 25 million —
- Delano Let's come to the question of losses. Give me your opinion on that, Mr. Giannini.
- L.M.Giannini I think I have given you substantially the reasons why we contend there isn't a loss in property when I recited the figures of the American Appraisal Company. That appraisal covered only 125 properties in connection with which there was classified a loss and doubtful amount.

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The appraisal men justify the carrying value of those properties. We have depreciated the properties something more than 10 millions, that is, including the fixtures and safe deposit vaults, and we expect when the appraisal of our plant is completed that the excess of appraised value of our banking premises, furniture and equipment, safe deposit vaults over book value will be in excess of 5 to 10 millions, so that we don't think there is any logical basis for classification of the loss there. It seems arbitrary but I withdraw the word arbitrary. This memorandum says the bank's representatives refused to admit the losses or charge them off, but would consider acceleration of depreciation. I did not intend certainly to make that apply to these particular properties.

E.M. Giannini

It would depend on the age of the building and its type of construction. Certain buildings you depreciate in 20 years, others in 50. The acceleration rate should be applied according to the group. We would be guided by what the Chief Examiner would want.

A.P. Giannini

We would be charging off more than the government allows.

Delano

What about this accelerating business. What could you go to, the most you could do on that acceleration of depreciation?

- L.N.Giannini Well, we discussed the figure of depreciating \$150,000 per month.
- Sherbondy What is it now?
- L.M.Giannini It is now about \$100,000. All repairs are charged off. Then, too, the important thing to have in mind in connection with these properties, and the American Appraisal Company makes reference to that, we are spending \$500,000 a year to maintain the upkeep. All buildings are in very good shape. All of that is charged off.
- A.P.Giannini We will take more if the government will allow.
- L.M.Giannini We ought to have an excess over so that there would not be any conflict between income tax and book value. I think the excess depreciation should go into a specific reserve, so that we would have our income tax schedules and our book value reconciled.
- Delano Would you like to comment on that, Mr. Wright?
- Wright I would like to see the program a little heavier — to reduce the preponderance of that depreciation of assets which, from a banking standpoint, is that they eventually should get it all written down.
- L.M.Giannini We are a new bank, aren't like the Midland of London, nor like an old eastern bank, organized for a great many years and which has written its premises off. Given another ten to fifteen years we will have ours written off.

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- A.P.Giannini Up to this time we have had a lot of charge-offs but since 1932 our recurring losses have been negligible, some .007%. We did not do like the New York banks, charge off three or four hundred millions. We had all the charge-offs of 1929 to take care of. The New York and Chicago banks charged that off in 1933 when they took all that Reconstruction Finance Corporation money.
- L.M.Giannini I am trying to point out that the dividends were part of what we thought was necessary to re-establish good will and public confidence in the people who are responsible to the Board and to the bank from which it makes profits. I think I can understand Mr. Folger.
- Wright (interrupting) My viewpoint is that I would like to have you raise the ante on that particular item.
- Folger Your program was almost opposite to that of a number of the other larger banks. Some of them discontinued payment of any dividends in 1933, others reduced theirs. You resumed yours in '33 and increased it each year thereafter until 1938, I believe.
- L.M.Giannini No — '37 was the last, I believe. I tried to explain our situation. We have an average deposit of \$700; we have a great number of stockholders, and to the extent we can get them boosting for the bank they bring the business which makes for success and profits.

- Mr. Delano: That \$150,000 isn't final?
- Mr. L.M. Giannini: Well, I would like to make it as a general statement. I think if we attempt the reserve plan of working it out at the end of each period, depending on the progress of the business, I would be willing to increase additional monthly reserves. What would you think would be --
- Mr. Delano: I don't know that I have an opinion. I would like to give this thing a little study. These gentlemen who have been investigating this thing have ideas about it, and I naturally want to explore the matter. This office has taken the position that the losses should be charged off and I understand you are here now in protest against that action and submit to us new appraisals in the nature of new evidence bearing on the point. The position of the Comptroller is that he is going to consider this new evidence.
- Mr. A.P. Giannini: Doesn't the increased capital take care of that situation? You are going to have 20 to 25 millions additional capital within the next year.
- Mr. Delano: We have to consider this thing in all its phases, each one as to what we might consider as acceptable to progress. That is why I am trying to make clear the points I would like to study. I don't believe that Mr. Giannini will raise the ante on that \$150,000.

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- L.M.Giannini I would not like to make a definite commitment on that -- would like to keep an open mind.
- A.P.Giannini That's fine.
- L.M.Giannini I think while you are on this question of losses -- we have a letter with regard to republication of the bank statement.
- Delano We've got a decision on that.
- L.M.Giannini That is my decision. We are only two directors of the bank and when the board of directors meets they have to read that letter and we have to raise an issue that I don't think should be raised, or should be analyzed and crystallized into an open issue where we have to challenge the department. I would like to get along harmoniously instead of having to carry on the fight and this just makes fighting imperative.
- Delano Let's put that over for a minute.
- L.M.Giannini You couldn't sustain this in a court of law and of that I am thoroughly convinced. You could not sustain this classification. While the Comptroller's office is given great discretion in the affairs of the bank, he can't be arbitrary and capricious about it. Property carried at less than present day value, if you were to go into court and produce that evidence, there would be no question regarding the 9 millions. I would hate to see it develop into a proceeding of that kind. It's really an issue we could go to

the public with and I think it would be a strong issue and want to avoid it. I would not like to have you force our hand.

r. Delano

In what way are we forcing your hand?

r. L.M.Giannini

We have a letter on file demanding republication of the report of condition. We will have to challenge that and take the position that A.P. has taken here, which immediately raises an issue that we probably have to follow through on.

r. Tietjens

It's a condition all the same.

r. L.M.Giannini

Do you think the position of the department could be sustained in the courts?

r. Tietjens

We can't discuss that here.

r. A.P.Giannini

— indicted for perjury —

r. L.M.Giannini

You could raise the issue but not sustain it on the evidence.

r. Delano

I think these gentlemen are asking us whether we having sent them the letter, desire an answer at once. Mr. A.P.Giannini has stated his position. I am now looking to the legal end of this thing.

r. A.P.Giannini

Well, that was all said before I thought you were getting together. You seem to be making better progress and it looks as though we could get places.

r. Tietjens

I'm not very belligerent.

r. Delano

The point we are asking the legal department is is there any objection to leaving that particular question in the air.

Do we have to reenforce your position by stating that we want an answer immediately?

Mr. L.M.Giannini

Do you want an answer that crystallizes the issue?

Mr. Delano

Haven't we an answer?

Mr. Tietjens

Leave the record as it is.

Mr. A.P.Giannini

Why do we want to discuss premises?

Mr. L.M.Giannini

I hope you gentlemen get my point of view. I am certainly not pleading with you. I am trying to work the thing out in good faith and work it out harmoniously. I am satisfied you can convince yourselves that if the thing came to an issue to be tried in the courts there would be very little likelihood of a decision against the bank in the matter or the individuals who signed the statement. If that is so, why should we indulge in further bitter correspondence on the subject? In the light of additional evidence as presented you might suggest they analyze the appraisals.

Mr. Collins

The examiner didn't have the additional appraisals; Mr. Delano didn't have the additional appraisals. It would seem certainly to be common sense.

Mr. Delano

Let's pass that particular question for the moment.

Mr. L.M.Giannini

The Self-Insurance Fund.

Mr. Delano

Yes, what about this self-insurance fund?

Mr. L.M.Giannini

That represents part of an accumulation of insurance reserves that were set up on the books of one of the Transamerica wholly

owned subsidiaries as a result of a plan of self-insurance provided by Transamerica for herself and her wholly owned or practically wholly owned subsidiaries. At the time that was set up Transamerica Corporation owned 99.7% of the stock of Bank of America. In the conference these gentlemen said they thought I was taking a peculiar position as an officer of the bank in making this argument, that I ought to want that money back in the bank. I assured them I would be very happy to see it in the bank but again I don't like to get involved in a long process that is not going to get anywhere, if we started action against the Corporation to recover these funds which represent only the amount of premiums that would have been paid to commercial bonding companies. As a matter of fact, the premium was all paid into Transamerica General Corporation in one lump sum and from the premium that was paid Transamerica General Corporation bought the excess over \$100,000. They did not pay \$100,000 in one item. They paid the whole thing and then the —

Delano I think your position is that in response to our demand or our criticism that this should not have been done your answer is that it was a perfectly proper transaction, that the premium was properly paid, that it doesn't belong to the bank and that you can't do anything about it.

Giannini Yes, if we paid it to the Fidelity the bank would not have any claim on

the premiums.

Delano I think both Mr. Folger and Mr. Wright have commented on the recent reduction in the Transamerica large line.

Folger The March examination figure is 76 million, and since that time the reports show a reduction of approximately 12 million.

J.M. Giannini I should like to re-emphasize, though, that the figures we have in mind and that the figures we are discussing are the figures we discussed last December. They related to the examination completed April 28, 1938 and there has been, as we reported to you, a reduction in the items listed through liquidation of 25 millions, and 8 millions through liquidation by correction of criticism of certain items through other means, and then there was a correction of 2 or 3 millions on new items raised subsequent to our discussion last December so that altogether the adjustment is about 36 millions.

Wright That is on the basis of the April examination which was the basis of the December discussions.

Delano I understand there is not a great difference of opinion there.

J.M. Giannini We give you assurance of continued pounding. As to the A.O. Stewart line, I think the department has accepted a plan where the bank agrees to pay off \$500,000 exclusive of sale of government bonds held by the bank as collateral.

Delano That is my understanding. I am not too clear.

J.M. Giannini Mr. Wright says the program is short by about \$250,000 but it will be made up by the end of the year.

J.P. Giannini Referring to the A.O. Stewart line. He is trying to sell the Kansas City bank, has an offer

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from an insurance firm. If he sells it he will probably clean up the whole thing.

L.M.Giannini

Pursuant to the December 15 document it was agreed that we would work out a program with the Chief Examiner and I think you and Russell have agreed upon that.

Wright

Russell has submitted the program. I think it wasn't quite complete but that it is substantially so.

L.M.Giannini

I just wanted to clear in your mind, if you did not have this reference, that the bank's representatives stated that by December -

Wright

I think we are agreed upon that.

L.M.Giannini

I take only one exception -

Delano

But you will reduce the whole line and I understand that progress made with that is satisfactory to our examining division. About the National City Bank stock -

Wright

No loss on that at this time.

Delano

May I interrupt for a second. What is the feeling over there about those land contracts?

Wright

We take the position that they should be secured. I guess it is in the memorandum that the Capital Company has made up all deficits in cash for losses. They have ceased that practice and the losses are sustained by the company as they develop.

Delano: Your position then is specifically that you will continue to follow the program of last December.

L.M.Giannini: We will follow the program of December. I would like to point out that since 1932 those companies in spite of losses have shown a net gain of Capital Company \$1,500,000 and California Lands \$800,000. I mean they are not going back. On the property that remained under these contracts there have been applied substantial amounts; 6 1/2 million of the guaranteed loans were applied to property remaining on the contracts so that the loss might be expected to be less than that amount that has been shown so far as the bank is concerned.

Wright: Our position on the Merchants Realty —

L.M.Giannini: Our discussions involved the change in the status of the agreement between the Bank and Transamerica. In 1931 I think the Corporation bought under purchase money obligations \$9,152,000 worth of book value of former bank premises. There was an adjustment and that purchase price of \$1,000,000 reduced it to \$8,152,000 and when we decided to separate the ownership of the Bank and Transamerica, Transamerica decided to distribute the controlling interest in the bank to Transamerica stockholders. That in July, 1937 we in the bank felt that the obligation should be more definite. There

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L.M.Giannini:
(continuing)

was a question whether Transamerica Corporation could turn the property back to the bank and relieve itself of any further obligation. I believe there was a question. We had varying opinions on just what the legal status of that thing would be but when that was done we decided we had to put the property in the Merchants National Realty Corporation and entered into an agency arrangement with Capital Company whereby they made a definite commitment to take \$5,090,000 of properties each year either through sale to others or by purchase themselves. On December 15, 1938 we discussed an acceleration of that program, which was a ten year program, to make it a five year program. That program is being carried out. There will be a rather substantial payment on December 15 to bring it up to date. It is more than current on the ten year plan but a little behind on the five year. The Capital Company has a definite obligation to take those properties over. I don't think there is a loss in them as far as we are concerned. They really have been sold.

F. Sherbondy:

Where is the beneficial title and the legal title?

F. L.M.Giannini:

The beneficial title is in the Merchants Realty and the legal title is in the bank.

F. Delano:

You expect them to clean it up in three years.

F. Folger:

It would be corrected in three years.

L.M.Giannini Three years from July 15.

Folger You understand the bank owns the stock.

Delano It's a question of where it should be reported.

L.M.Giannini The Merchants National shows as real estate in the Bank's published statements.

Sherbondy What about the Capital and California Land contracts?

L.M.Giannini Still in loans and discounts. We think we have improved the Bank's position. They improved their income by over \$200,000.

Delano What about these real estate loans?

L.M.Giannini Well, there is only one thing I would like to say in connection with that part of the memorandum. (Here he quoted "The Bank's representatives".) I assume technically that is a correct statement, but actually what happened is that the Bank of Italy was a state bank and at the time it nationalized many of the loans where they are subjected to this classification were in that bank and after consideration and as a part of the discussions that took place at the time they wanted us to nationalize and join the Federal Reserve System. The loans were legally made in the state bank at the time and then, of course, the state law permits loans on vacant property and the national law does not. They were in the Bank. It was 12 million in the last examination. I understand it is expected to be around 8 million. We have delegated one of the vice presidents

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L.M.Giannini
(continuing)

to be in active charge of correcting these things. He just follows through on them and devotes his entire time to this work.

Delano

We have covered the other matters pretty thoroughly.

A.P.Giannini

Mr. Delano, may I say that you certainly have shown the right spirit here. At the time I came in here it looked very much like an impasse but I feel there is a possibility of our getting together.

Delano

I would like to study these matters over. What are your plans as to leaving or remaining here?

L.M.Giannini

Well, we planned to leave tomorrow but I would like to stay over Monday if the meeting with Mr. Tietjens can be arranged.

Tietjens

What about Tuesday morning? We should be ready by then.

L.M.Giannini

That is O.K. But where do we go from here and what do we do? What do you expect or want us to do, wait to hear from you?

Delano

I will communicate with you. My understanding of this thing now is that we have pretty well clarified in your minds the things we require and at the conference on Tuesday discussion will be had concerning some of the legal reasoning back of our legal position.

L.M.Giannini

I would rather have you say if you think it would be better not to or if nothing would be gained by such discussion, if you would rather forego that.

Delano

I would like to be sure that this office has clarified everything to your satisfaction. I want this office to extend every courtesy,

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Delano
(continuing)

and I want to be sure we have made every issue clear. I prefer to have the meeting take place. We are here to extend every opportunity for discussion of all the points that are at issue.

A.P.Giannini

Well, just what is left and what does it concern? Charges of violation of law?

L.M.Giannini

All I wanted is to have their reasoning on those points.

A.P.Giannini

If what we talked about is satisfactory, let them have their own point of view.

Delano

I will have to make this very clear, Mr. Giannini, that we cannot consider we have entered into any arrangement, contract or deal this morning.

A.P.Giannini

That's right, I understand that.

Delano

I appreciate the courtesy. I am in this position. I want to take all these matters under advisement. I want to consult with our own people and will communicate with you further and if you would like to discuss with Mr. Tietjens this legal reasoning we shall be glad to arrange that. We are not shutting off any debate.

A.P. Giannini

Refers to Attorney General's statement, etc?

L.M.Giannini

There is this one other point that I think ought to be cleared up and that is what I was trying to learn from you, just what we should do next. As you know, we have been over to see the Federal Reserve Board and had an informal and off the record discussion with Mr.

L.B.Giannini
(continuing)

McKee. We have written a letter that we proposed to send to the Board. Now I don't know just what to do about it.

A.P.Giannini

Would you be interested in reading the letter which we prepared?

Delano

I don't believe so. I don't want to give anybody the impression that something has been accomplished in the way of an understanding. I wouldn't want you, for a minute, to withhold any steps or plans you had contemplated. You understand the situation remains the same as it has been up to this moment and that if you have other things to do or other people to see Monday, well I think you should go ahead.

A.P.Giannini

Well, we can tell the Federal Reserve what happened here this morning.

Delano

We have no objection to that.

L.M.Giannini

What we were asking the Federal Reserve in our letter was to make an independent investigation. We are reciting some of the controversial questions.

Delano

I think with the various memoranda I will be able to make a very careful examination of the whole situation as it exists and I think after that I should talk to you.

A.P.Giannini

When will that be?

Delano

I rather hesitate to commit myself because of weekend engagements. You are going to be here, I understand. I wouldn't give you anything in the nature of snap judgment. I think one of the things I want to thoroughly explore is the question of the appraisals. I think that bears on the whole picture. I would be very loath to rush a decision of such magnitude.

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E.L.M. Giannini

I suppose you have in mind whether I should return to the Coast or go to New York. If it's a question of a couple of months before we hear I would go home; if it's a couple of weeks I would go to New York.

E. Delano

Suppose I communicate with you about Monday evening or Tuesday morning and that would only be an interim communication. I think I would be able then to give you an idea of time.

E.L.M. Giannini

The only thing I have in mind is that I sincerely don't want to start anything new if we are going to be able to get together. In other words, I don't want to start writing more letters in connection with the last one about republication or start something with the Federal Reserve if we are going to be able to work it out here. I'm not trying to put pressure or force a decision. I'm simply in a quandary.

E. Delano

Nothing that has taken place here has changed anything up to the present moment. Of course, you understand I cannot make a commitment.

E.L.M. Giannini

Our plans here depended on what occurred in this conference. You say or seem to say we have made no progress.

E. Delano

I did not say we made no progress.

E.A.P. Giannini

Well, don't you think we have made some. I do.

E.L.M. Giannini

I don't want to go ahead —

E.A.P. Giannini

I say it looks like a possibility of getting together and so long as there is a possibility. —

E. Delano

There is always a possibility, Mr. Giannini, always a possibility.

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Note: Mr. Delano called Mr. L.M.Giannini Tuesday morning, November 21, and informed him that Mr. Crowley was out of the city and would not return until next Monday, November 27. Further, that Mr. Wright was on his way to San Francisco to make an examination of the appraisals submitted on the bank premises. In view of these developments it would be at least the middle of next week before there could be further discussions. Mr. L. M. Giannini advised that he was going to New York and would call this office on the phone Tuesday or Wednesday of next week.

Messrs. Folger, Wright, Tietjens, and Sherbondy conferred in Mr. Folger's office with Messrs. L.M. Giannini and Mr. Charles W. Collins on Thursday afternoon, November 16, and Friday morning, November 17, 1939. The following briefly summarizes the positions of the representatives of the Comptroller of the Currency and the representatives of the Bank with respect to problems other than those which may arise during the present and future examinations of the Bank:

1. Dividend Policy. The position of the Comptroller's representatives was that the earnings of the Bank should be used first to charge off losses, to establish adequate reserves and increase the capital structure, before any part of the earnings are disbursed in the form of dividends. The present dividend policy is clearly in conflict with such a program for conserving earnings. The Bank's representatives stated that the Bank's dividend policy was, in their opinion, entirely justifiable and that they were not prepared to agree at this time to any change in the policy. However, they did state that Transamerica Corporation was holding in a reserve, all dividends paid to it on Bank of America stock and that the Corporation was willing to use such reserves either to purchase new stock in the Bank of

- 2 -

America, or to reduce any of the obligations of Transamerica or its subsidiaries to the Bank, whichever the Comptroller should prefer. They advised that at present there was approximately \$850,000 in this reserve.

2. Increase of Capital. The ratio of adjusted capital structure to deposits as of March 31, 1939 was 1 to 14.63 and the ratio of net sound capital structure to deposits as of the same date was 1 to 15.86. The Comptroller's representatives indicated that it would be desirable for the Bank to raise new capital through the issuance of new stock. Should this be done, however, they were not prepared to say that a continuation of the present dividend policy would be justified. The Bank's representatives indicated a willingness to obtain new capital funds either from the Reconstruction Finance Corporation or from other sources, and advised that they could obtain such funds from sources outside the Government.

3. Charge off of Losses. Approximately \$3,500,000 of the estimated losses in the last report of examination have been charged off and the estimated loss on National City Bank stock is now covered through market appreciation and the purchase by Transamerica Corporation of 11,320 shares of such stock. This leaves estimated losses not

- 3 -

charged off of \$9,292,878.69. The position of the Comptroller's representatives was that all of these losses should be immediately charged off by the Bank. The Bank's representatives refused either to admit those losses or to charge them off, although Mr. Giannini stated that, since the items classified as loss concerned primarily the banking premises, the Bank would be willing to give consideration to accelerating the depreciation rate on such properties and thus accelerate the write down of such properties.

4. Self Insurance Fund. Although the plan of paying insurance premiums to cover fidelity losses up to \$100,000 into a deposit carried with Transamerica General Corporation has been discontinued, a balance of \$2,272,659.55 remains in the Fund. The position of the Comptroller's representatives was that the Bank should take the necessary steps to have this balance returned to it. The Bank's representatives stated that the Bank was of the opinion that there was no legal basis upon which it could insist that the balance be returned. It was stated, however, that Transamerica General Corporation, in addition to paying all losses until June 30, 1940, had agreed to a discovery period of five years after June 30, 1940.

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5. Transamerica Large Line. The Comptroller's representatives pointed out that although the reduction of approximately \$12,000,000 in the Transamerica Large Line since March 31, 1939 was encouraging, the present size of the line, in excess of \$64,000,000, constitutes one of the most serious problems of the Bank and strenuous efforts should be made to continue the reduction of this line. The Bank's representatives indicated that they contemplated continued reduction of this line and pointed out that the progress made thus far was in accordance with the December 1938 program.

6. A. O. Stewart Large Line. At the beginning of the last examination on March 31, 1939 this line amounted to \$7,623,239.31. It has been reduced only \$200,000 since that date. The position of the Comptroller's representatives was that this reduction was wholly unsatisfactory, while the Bank's representatives contended that by December the reduction made in the line would be consistent with the program of December 1938.

7. Transamerica Corporation Excessive Line. The Bank's representatives contended that the excessive line to Transamerica Corporation, which has now been reduced to approximately \$17,900,000, did not constitute a violation of law

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because, they contended, the so-called "Guaranteed Loans" are not an obligation within the meaning of section 5200 of the Revised Statutes. However, the Bank's representatives indicated that they would continue to reduce this line of credit to the legal loaning limit by July, 1942, as contemplated in the program of December, 1938. The excessive line at present is \$8,500,000 in excess of the legal loaning limit.

8. National City Bank Stock. The position of the Comptroller's representatives was that this purchase of stock constituted a violation of section 5136 of the Revised Statutes, and that the stock should be taken out of the Bank for cash. Although the Bank's representatives did not admit that the purchase of this stock constituted a violation of law, they indicated that the item was being reduced consistent with the program of December, 1938.

9. Capital Company and California Lands, Inc. Contracts. The Comptroller's representatives states that the two companies should pledge adequate security back of these contracts to cover the estimated loss in the real estate, which would be the difference between the estimated or appraised value of such real estate and the amount at which it is

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carried in the contracts. The Bank's representatives contended that this should not be insisted upon because the two companies were solvent and to date had covered all losses on sales under the contracts.

10. Merchants National Realty Company. The Comptroller's representatives stated that the acquisition of the future and former banking premises by the Merchants National Realty Company in 1937 constituted a violation of section 5137 of the Revised Statutes and furthermore that this real estate should be carried on the Bank's books as "Other Real Estate" rather than in the bond and securities account. The Bank's representatives did not admit that the acquisition constituted a violation of law or that the Bank should carry such real estate in its other real estate account.

11. Real Estate Loans. The Comptroller's representatives stated that, as set up by the examiner, there were numerous real estate loans which violated the requirements of section 24 of the Federal Reserve Act, and that these loans would have to be liquidated as rapidly as possible. The Bank's representatives stated that practically all of these illegal real estate loans came into the Bank as a result of take-over of other banks, and that the Bank was engaged in strenuous efforts to liquidate them.



TREASURY DEPARTMENT
 COMPTROLLER OF THE CURRENCY
 WASHINGTON

ADDRESS REPLY TO
 "COMPTROLLER OF THE CURRENCY"

November 17, 1939.

Mr. C. B. Upham,
 Deputy Comptroller of the Currency,
 Washington, D. C.

Dear Mr. Upham:

I understand that Mr. A. P. Giannini has seen fit to notify Comptroller Delano that I am indebted to his bank in an amount of approximately \$10,000. It may be that the impression has been given that the above loan was granted to me by the Bank of America N. T. & S. A. in violation of law.

In order that the Comptroller's office is correctly informed in the matter I wish to submit the following:

The extension of credit mention was granted to me by the Hellman Bank & Trust Company of Los Angeles the early part of 1928. Subsequently the Hellman Bank was taken over by the Bank of America State Bank and in 1930 the Bank of Italy N. T. & S. A. was consolidated with the Bank of America State Bank under the present title of Bank of America N. T. & S. A.

At the time the loan was granted it was adequately secured by listed securities consisting of the following:

200 shares Union Oil Co. of California
 100 shares Richfield Oil Co.
 100 shares Rio Grande Oil Co.
 20 shares Standard Oil Co. of California.

The above mentioned securities cost me approximately \$20,000- and now have a current market value of about \$5,000-. While the reduction program on my obligation has been slow the note has been maintained in current condition and payments have been and are being made on the principal.

If I find that I am in error in any of the above information I will write you in full detail upon my return to San Francisco.

Respectfully yours,

(Signed) C. H. McLean

National Bank Examiner.

November 17, 1939
5:31 p.m.

Henrietta
Klotz:

.....for calling you.

HMJr:

Yes.

K:

(Aside: Would you close that door?)

HMJr:

I haven't yet.

K:

(Laughs) Well, I -- I hated to call you today but Jerome Frank insisted that we do it.

HMJr:

Uh-huh.

K:

And we've had conferences about it all day. Mr. Foley is in the office.

Mr. Foley will talk to you now.

HMJr:

I see. All right.

Ed
Foley:

Hello, Mr. -- Hello, Mr. Secretary.

HMJr:

You better come clean now. Did you get that money for Self-Help?

F:

Well, I got the case resubmitted.....

HMJr:

Did you?

F:

.....by Carmody to the Comptroller General. I've been over there this afternoon with Dan Bell and Allan Johnson talking to the Comptroller's lawyer. I don't know whether we got any place or not.

HMJr:

Uh-huh.

F:

We got it resubmitted, however, and we're going back and talk to him again next week.

HMJr:

Now what else do you know?

F:

Well, the Gianninis have been in town as you know.

HMJr:

Wonderful!

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F: A. P. and Mario.

HMJr: Yeah.

F: And they've seen the Comptroller, and conferences have been held between Mario and Gus Folger and Reich the examiner -- the chief examiner from the west coast.

HMJr: Yeah.

F: Now the -- A. P. and Mario went over to see the Attorney General and the newspaper men knew that they had been over there.

HMJr: What's that?

F: The newspaper men knew that they had been over to see the Attorney General.

HMJr: Good.

F: And that the -- at the -- A.G.'s press conference today he was asked what they were doing over there and what they had talked about.

HMJr: Yeah.

F: And this is what the A. G. said, and this got Jerry Frank quite excited. The A. G. -- "Attorney General Murphy today revealed that he has been conferring with Treasury and S.E.C. officials with regard to the Trans-America case brought by the S.E.C."

HMJr: Yeah.

F: "Attorney General stated that he had conferred yesterday with Mr. Giannini and his son with respect to the situation. The purpose of the conferences, Mr. Murphy said, was to obtain an understanding between the different departments interested in the case and to determine the best kind of program for bringing the case to its ultimate conclusion."

HMJr: Yeah.

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F: "The Attorney General said that the Department of Justice did have something to do with some phases of the case in which Trans-America is involved. He stated that suggestions were made at the conferences for clearing up the cases, some of which could be done outside of the courts, but that in the settlement of any phases of the issues involved the basis of law would be used as is insisted by the Treasury and the S.E.C. The Attorney General pointed out that the Giannini case involved a great many stockholders and depositors and that the only thing the S.E.C. and the Treasury had in mind was the protection of the public interest."

HMJr: Yeah.

F: Now, when that appeared on the ticker, of course the newspaper men got in touch with Jerry Frank.

HMJr: Yeah.

F: And they asked him about it, and he became quite excited and he called Mrs. Klotz and wanted to get in touch with you.

HMJr: Yeah.

F: So I was over at the Comptroller General's office and Mrs. Klotz said that she'd talk to me and we'd get in touch with -- with him when I got back. So I called Jerry and Jerry had calmed down a little by then, and he was going to make a statement, and this is what he proposes to say.

HMJr: Who is in the room with you besides Mrs. Klotz?

F: Gene Duffield.

HMJr: Who?

F: Gene Duffield.

HMJr: Oh, Gene Duffield and Mr. Loudspeaker, huh?

F: That's right. The three of us are in your room.

HMJr: I mean, when I say 'Loudspeaker' I don't mean Gene Duffield.

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F: I know. (Hearty laughter) He says he resents that. (More laughter)

HMJr: He resents that?

F: Yeah.

HMJr: All right.

F: Here's what the -- Jerry has given me over the telephone, and this is what he proposes to give out.

HMJr: Yeah.

F: "The statement of the Attorney General as reported today, dealing with conferences relating to Trans-America Corporation, has apparently been misunderstood as indicating that the commission has conferred with the Department of Justice and the Department of the Treasury relating to a possible settlement of the following three cases:"

And then he enumerates the three cases before the Commission involving Trans-America Corporation, Wallston Company, and Timetrust.

HMJr: Yeah.

F: And then he says, "The Commission at no time had any conference with the Treasury Department and the Department of Justice or either of them concerning the settlement of these cases. Furthermore, the Commission intends to proceed with the conduct of these cases in regular order."

Now, he has read that to the A.G. over the telephone and the A.G. didn't like it. He said that the public would think that there was a difference between the A.G. and the S.E.C. as to how these cases should be conducted and he didn't think that was a wise thing.

HMJr: Yeah.

F: So Jerry said, "Well, that can be easily corrected. You join with us in the statement. Let's say S.E.C. and the Attorney General today made this

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statement." And -- and the A.G. didn't want to do that either, but he wanted to have Jerry make a much shorter statement, but Jerry told him that this is what he proposed to say and.....

HMJr: Here's the thing - to go back a minute - you know, Cy Upham said that the Attorney General was talking as though he was talking for the Administration, do you remember?

F: Yeah.

HMJr: And you differed a little bit and said you thought -- you didn't remember it so, I think that's what you said.

F: Yeah.

HMJr: Well, this statement that Frank Murphy gave out sounds just about the way our friend Cy Upham described what he said.

F: Well, Jerry tells me that this is the A.G.'s explanation. The A.G. saw the President and the President said, "A.P. Giannini is in town and he wants to see me."

HMJr: Yeah.

F: And A.G. said to the President, "Don't see him. I don't think it's necessary. I'll talk to him for you." And the President said, "All right, you see him and take him off my neck."

HMJr: Yeah.

F: That's the A.G.'s statement to Jerry.

HMJr: Well, this is -- I take it that you people are calling me for my opinion.

F: Well, we -- we are informing you as to what has happened and we're going to suggest that the Treasury say nothing. I don't think there's anything for us to do. Now, Jerry would like to have us make some kind of a statement to support what he has said insofar as settlement of these cases

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are concerned. I've told Jerry there was nothing for us to say because we haven't started anything. The public -- there has been no public announcement of any controversy between Bank of America and the Comptroller. It has been entirely under cover between the Comptroller and the Bank, and we haven't -- we haven't started any public proceeding. And he said, "Well, you're not settling anything, are you?" And I said, "Why certainly not, but there isn't anything for us to -- to settle so far. We haven't started anything, insofar as the public is concerned."

HMJr:Secretary of the Treasury?

F: What's that?

HMJr: Where is the Acting Secretary of the Treasury?

F: He's over on the eastern shore.

HMJr: Well, it's too bad we don't have television.

F: (Laughs)

HMJr: Ah -- my thought is this.

F: Yeah.

HMJr: This is for you and for Mrs. Klotz and Gene.

F: Yeah.

HMJr: I would make absolutely no comments on the record, off the record, or by innuendo.

F: Yeah.

HMJr: It's not our baby.

F: Right.

HMJr: And the easiest thing in the world is to say that there's nobody in the Treasury who can make any comment.

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Henrietta Klotz: Well, Mr. Morgenthau, Mr. Frank got very disagreeable today.

HMJr: Who?

K: Mr. Frank -- Jerome Frank got very disagreeable today.

HMJr: Yes.

K: He called about two o'clock and he wanted your telephone number and I wouldn't give it to him.

HMJr: That's right.

K: So I said to him, "Give me a few minutes. I want to get in touch with our people."

HMJr: Yes.

K: "And if we're going to make a statement I think we ought to have it prepared before we call the Secretary."

HMJr: Right.

K: So he said, "Well, if we miss him it's just going to be too bad." He was afraid you'd go out, you see, and it was around two o'clock.

HMJr: Yeah.

K: So that was why I said, "Put in the call," you see and asked when we could talk to you.

HMJr: That's right.

K: So then I got Mr. Foley and Mr. Duffield and they talked about it and they felt immediately that we should make no statement.

HMJr: Yes.

K: But in view of the fact that Jerome Frank has been working along with you, I felt that we ought to get your advice before we definitely turned him down.

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HMJr: Well, I'm perfectly willing, if you people think so, to say, "Hello" to Jerome Frank.

K: Well, I think that would make him very happy because that's what he wanted to do.

HMJr: Well, why don't I do it and you people listen in?

K: Well, that would be grand. I'll tell the operator to get him.

HMJr: Sure.

K: And then can I talk to you afterwards?

HMJr: Yes, I want to ask you about some things.

K: O. K. All day I've had this.

Operator: Yes.

K: Miss Carr, would you get Jerome Frank for the Secretary right away?

O: All right.

K: And then put him on here -- on this line.

O: Yes, you want it on the conference.

HMJr: Yeah.

K: Yeah.

O: All right.

K: Hello.

HMJr: Hello.

K: And then -- then Mr. Foley and I talked it over and we thought you might read something about it in the newspapers and that it would -- I mean, you'd get excited about it.

HMJr: I'm glad you called me. I'm -- saw
that I had my nap.

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K: Well -- yeah, well, we -- we waited until you did get your nap.

HMJr: Yes.

K: And we -- we just hoped that you wouldn't be annoyed.

HMJr: I'm not -- it doesn't -- I don't think that at this distance.....

K: Well, I didn't think.....

HMJr: If it was the Bank of America instead of Trans-America, I'd be excited.

K: Yeah. Yeah.

Ed
Foley: You're entirely right about that. I think it's -- it's a tempest in the teapot and I think that Jerry is unduly concerned.

HMJr: Yeah.

F: But I -- I think.....

HMJr: And if I was in his place also.....

F: Right.

K: Yes.

HMJr:I'd be just as concerned.

F: Yeah. Well, his statement to me was that he bet -- he said, "I'll bet your boss will froth at the mouth when he hears what the Attorney General said."

HMJr: Too chapped.

F: (Laughs) Yes, too chapped.

HMJr: Hello.

K: Yeah.

F: Yeah.

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HMJr: With the altitude I can't froth at the mouth.

F: (Hearty laughter.)

K: Well, I feel better about it now, because from two until a quarter of six our time.....

HMJr: What is it?

K: I say, from two o'clock to a quarter to six I've been frothing at the mouth.

HMJr: Oh, dear, dear.

K: (Laughs) Well, I feel better about it now.

HMJr: I'm going to move the whole office out here. I think it's good for everybody.

K: We've been thinking about that. We can't complain though, it's been wonderful. The weather has been perfectly delightful here.

HMJr: Ah.....

K: Of course, if the Acting Secretary of the Treasury were here.....

HMJr: Oh, yes.

K:we wouldn't have bothered you.

HMJr: Now I know why he went duck shooting.

K: (Laughs) I don't know -- yes.

Ed
Foley: Mr. Secretary?

HMJr: Yes.

F: I spoke to Preston Delano.....

HMJr: Yes.

F:and he didn't think we ought to say anything.

HMJr: Well, when we get through you can tell him that I agree with him.

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F: Fine. (Mrs. Klotz and Foley laugh)

HMJr: Am I good or am I good?

F: You're awful good.

HMJr: Where's Jerome Frank?

F: They're getting him on the other wire.

Operator: Hello.

Klotz: What's the matter?

O: He's coming to the phone.

HMJr: Yes?

O: He'll be here in just a second.

K: Your father called.

HMJr: Yes.

K: And he said to have you call him collect Monday morning.

HMJr: O. K. I'll be awfully busy Monday morning, but I'll find time.

K: Uh-huh.

Operator: We're ready now, Mrs. Klotz.

K: All right.

HMJr: Hello.

O: Go ahead.

Jerome Frank: Hello.

HMJr: Hello.

F: Hello, Henry.

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HMJr: Hello, Jerome.

F: Yes.

HMJr: Can you hear me?

F: Yes, indeed. Can you hear me?

HMJr: Ed Foley is on the wire also.

F: Yes.

HMJr: They read me your statement.....

F: Yes.

HMJr:and I think it's all right. I have -- I have no suggestions to make.

F: You don't think -- hello?

HMJr: I say, I have no suggestions to make.

F: Well, don't you think it was right for us to do it?

HMJr: Well, I think it was terribly unfortunate that Murphy should choose to talk, so to speak, for the Administration on this matter when it really is not his responsibility.

F: Well, I -- I have spoken to him about three times this afternoon.

HMJr: Yes.

F: And he said -- told me what happened was this - that these chaps came out here and I don't know whether an arrangement had been made or they originally thought they were going to see the President.

HMJr: Yes.

F: Murphy urged the President not to see them and said he'd take them on.

HMJr: Yes.

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F: And he did and that gave out this statement which Ed has read you, and of course it put us terribly on the spot.

HMJr: Well, I -- I can see that.

F: And I don't know
(Some of conversation not recorded while record was being changed.)

HMJr:anything at this time.

F: No, I don't suppose you can.

HMJr: And -- I mean, what I thought was this, that if you give out your statement and our boys will say, "Well, no comment."

F: Yeah.

HMJr: And let it ride.

F: Well now, I think I -- I urged Murphy to join with us in this statement.....

HMJr: Yeah.

F:and he didn't want to do it, but I think he's satisfied, at least partly, and the fact is that if the Commission hadn't made the statement, several of the Commissioners individually would have made statements.

HMJr: Well, if I was in his place, I would have read the statement to you and to the Treasury before I had given it out.

F: Yes. Well, I gathered that he didn't give out a release - he just talked at a press conference.

HMJr: Well anyway, he should have first done you the courtesy and read it to you first.

F: I think so.

HMJr: But inasmuch as he didn't, why.....

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F: I don't think there was anything else for us to do, do you?

HMJr: No, I don't. I -- if I was in your place, I would do it unhesitatingly.

F: In fact, we might have a political difficulty here. I think my two Republican colleagues would have sounded off.

HMJr: Yeah. But my thought was to tell our boys, and they agree with me - just no comment of any kind, on or off the record.

F: I see. All right. How are you feeling?

HMJr:

F: How are you feeling?

HMJr: Oh, I feel grand.

F: That's good. Sorry to have bothered you.

HMJr: Oh, that's all right. I just -- this is -- this is one of the most difficult cases we've got.

F: Oh, it's terrible.

HMJr: And the only thought I have is -- I mean, and if -- is this suggestion to make, that if Murphy feels sore say let's the three of us see the President Monday or Tuesday.

F: You'll be back then?

HMJr: I'll be back Monday morning.

F: I see. I think the President will be here Monday, won't he?

HMJr: Yes.

F: All right. Fine.

HMJr: And then -- and let's the three of us see him.

F: O. K. Swell.

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HMJr: Inasmuch as it's Trans-America -- I mean, if -- if it was -- if he had mentioned Bank of America I'd be doing just what you're doing.

F: Yeah. All right, thank you.

HMJr: Thank you.

Klotz: That's that.

HMJr: Hello.

Klotz: That's that.

HMJr: That's that.

K: Uh-huh.

HMJr: And I feel just that way, but you notice he didn't say that I should say anything.

K: No. Well, you see, he waited -- he got our opinion. He knew we had talked to you, you see.

HMJr: Right.

K: So he just waited for you to offer it if you.....

HMJr: Is everybody happy?

K: They're shaking their heads yes. (Laughs)

HMJr: All right. Could I talk a minute as long as I have you now, Mrs. Klotz?

K: Yes, sir. Yes, sir.

HMJr: All right.

K: Wait a minute. Is that all you want of the boys?

HMJr: Yes. Tell them I'm -- I'm pleased to have taken their advice.

K: Mr. Morgenthau, you're still on the loudspeaker. Mr. Foley would like to know whether he could go down to the shore tonight.

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- HMJr: Absolutely. He bribed me with a couple of ducks.
How can I say no?
- K: Oh! He said, "I'll bring you two more." You've
got four now. (Laughs)
- HMJr: If he brings two more he's got to give them to you.
- K: (Laughs) Goodbye. Good night.

The statement of the Attorney General as reported today dealing with conferences relating to Transamerica Corporation has apparently been misunderstood as indicating that the Commission has conferred with Department of Justice and the Department of the Treasury relating to a possible settlement of the following three cases:

Proceeding before the Commission to determine whether the stock of Transamerica Corporation should be suspended and withdrawn from listing and registration on ~~the~~ certain national securities exchanges.

Proceeding before the Commission to determine whether to revoke and suspend the registration of Valston and Company as a broker and dealer and/or to determine whether to revoke and suspend that company's membership in certain national securities exchanges.

Court proceeding instituted against Firsttrust, Incorporated, et al., seeking injunction ^{alleged} violation of Section 17 of the Securities Act of 1933.

The Commission at no time had any conference with the Treasury Department and the Department of Justice or either of ~~them~~ ^{them} concerning the settlement of these proceedings. Furthermore, the Commission intends to proceed with the conduct of these cases in regular order.

THE SEC TODAY SAID THAT IT WILL PROCEED "IN REGULAR ORDER" WITH CASES CONCERNING THE TRANSAMERICA CORPORATION.

ATTORNEY GENERAL MURPHY EARLIER TODAY HAD REPORTED THAT THE JUSTICE, TREASURY AND SEC HAD CONFERRED CONCERNING PROCEDURES.

11/17--GE552F

ADD TRANSAMERICA

"THE STATEMENT OF THE ATTORNEY GENERAL, DEALING WITH CONFERENCES RELATIVE TO MATTERS CONCERNING TRANSAMERICA CORP., HAS APPARENTLY BEEN MISUNDERSTOOD AS INDICATING THAT THE COMMISSION HAS CONFERRED WITH THE DEPARTMENT OF JUSTICE AND THE TREASURY DEPARTMENT RELATIVE TO A POSSIBLE SETTLEMENT OF THE FOLLOWING THREE CASES INSTITUTED BY THE COMMISSION," A STATEMENT OF THE SEC SAID.

"PROCEEDING BEFORE THE COMMISSION TO DETERMINE WHETHER THE STOCK OF TRANSAMERICA CORP. SHOULD BE SUSPENDED OR WITHDRAWN FROM LISTING AND REGISTRATION ON CERTAIN NATIONAL EXCHANGES.

"PROCEEDING BEFORE THE COMMISSION TO DETERMINE WHETHER TO REVOKE OR SUSPEND THE REGISTRATION OF WALLSTON & CO., AS A BROKER OR DEALER AND/OR TO DETERMINE WHETHER TO REVOKE OR SUSPEND THAT COMPANY'S MEMBERSHIP IN CERTAIN NATIONAL SECURITIES EXCHANGES.

"COURT PROCEEDINGS INSTITUTED AGAINST TIMETURST, INC., SEEKING INJUNCTION AGAINST ALLEGED VIOLATIONS OF SECTION 17 OF THE SECURITIES ACT OF 1933.

"THE COMMISSION HAS AT NO TIME HAD ANY CONFERENCE WITH THE TREASURY DEPARTMENT AND THE DEPARTMENT OF JUSTICE OR EITHER OF THEM CONCERNING THE SETTLEMENT OF ANY OF THESE THREE PROCEEDINGS. FURTHERMORE, THE COMMISSION INTENDS TO PROCEED WITH THE CONDUCT OF THESE CASES IN REGULAR ORDER."

11/17--GE556F