

BANK OF AMERICA

September 13, 1938

Present:

Mr. Cliphant
Mr. Hanes
Mr. Gaston
Mr. Upham

HM, Jr.: (To Mr. Upham) These gentlemen said that I should have my own personal representative on the Coast tomorrow morning in case this thing breaks, in order to keep me informed. The only fellow I have confidence in is you. You see, you have done the ground work

Mr. Upham: I am perfectly willing to go if you think I can be helpful.

HM, Jr.: Yes, I do. And I think you ought to take a plane that gets to San Francisco the first thing in the morning. Make reservations on the plane and we will talk about it again right after lunch.

Mr. Upham: You can have perfect confidence in Sedlacek, who is in San Francisco, but of course I am willing to go.

HM, Jr.: You might be thinking about whom you want to take along with you.

Mr. Upham: If I have this same man, Sedlacek, I will need no one from here.

HM, Jr.: There is a young fellow on the Pacific Coast, a newspaper man, who is a peach. He's about 35 years old and is a New Dealer. I can't remember his name, but you ask Graves. He will know who I mean. You can also be thinking what letters of authorization you want.

* * * *

Mr. Upham took the 4:45 p. m. plane to San Francisco.

RE BANK OF AMERICA SITUATION

September 13, 1938.
11:00 a.m.

Present: Mr. Hanes
Mr. Oliphant
Mrs Klotz
Mr. Gaston
Mr. Upham
Mr. Diggs
Mr. Folger
Mr. Ransom
Mr. Crowley

H.M.Jr: As a matter of fact - I'm letting it go through my brain - I think it would be foolish to recommend somebody and have it go sour. Be much better to let them recommend a fellow.

(Crowley and Ransom come in)

Hello, Leo. Hello, Ronald.

Ransom: Hello, Mr. Secretary.

Crowley: Hello.

H.M.Jr: I tell you - the others are coming in, and I can sort of sketch the reason I asked you gentlemen to come over here, and I'll do it as well as I know how. And I've never handled anything which is more confidential than this.

(Oliphant comes in)

Here's Oliphant now.

Some time last February, I think, or March - the dates I don't quite remember - I started having brought to my attention the condition of the Bank of America in California, and I was very much worried about it. And it was because of that condition and the way Mr. Giannini conducts his affairs that I was asked on the Hill, "Is everything all right in the banking condition?" and I said, "No." "What's wrong?" "The holding company situation." I was hoping they'd do something about the holding company and that way at least freeze his activities. Well, as you gentlemen know, it didn't happen.

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Well, I come back here now, and Thursday or Friday, through the Acting Comptroller, through Mr. Upham, it was brought to my attention that the most recent report of the Bank of America - and to say the least, it's shocking. And I asked the Acting Comptroller and the Chief Bank Examiner in writing to make recommendations to me as to what steps we can take in the interests of the depositors. And amongst those three or four recommendations are the limiting of their dividends.

And at six o'clock last night the Acting Comptroller finds that they're going to meet at noon today in Los Angeles in order to take up their dividend policy for the subsequent six months. Therefore - well, this thing - normally we'd like to take weeks to discuss it; we actually have a couple of hours.

And I spoke to the President last night and told him that we had under consideration recommending this reduced dividend to the Bank. His first reaction was, "Why any dividends, if the situation is like that?" That was my first reaction. I mean they've paid already for the first half of the year over nine percent to their stockholders, and we take the position.....

Ransom: The first six months of the year?

H.M.Jr: Yes. They're paying at the rate of 19 percent on their par value. And if we take the position that their capital is impaired and the bank is in unsound condition and say, "Now go on a six percent basis from now on," I think we put ourselves in a position - "Well, if the situation is so bad that you have to order them to do something, why any dividend?"

Crowley: That's right.

H.M.Jr: That was the reaction of the President. Now to give you people the whole story - and I'm going to be very frank, and as I say, I can't ask for anything to be more confidential - the thing that has bothered the Comptroller's office is the fact that Mr. Stewart, who is Chairman of the Federal Reserve Board - Bank of the San Francisco district, and we'll show you, owes to the Giannini interests about eight million dollars.

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And we'll give you those exact figures now. And if under the statute we take this positive action, it would - the matter then flows to the Federal Reserve of San Francisco, doesn't it?

- Oliphant: No, on the dividend it flows to the Governors of the Federal Reserve Board, the Board of Governors.
- H.M.Jr: Yes, but I mean if we want cooperation from the Federal Reserve, we have to get it from the San Francisco district, because the biggest bank in the district is in trouble.
- Oliphant: It's our only - almost our only source of information. They're right on the ground. We're thousands of miles away, you're thousands of miles away.
- H.M.Jr: And the Chairman of that Board owes Giannini interests eight million dollars. Now, I'll give you the exact figure. And I'm told - I don't know - that this is not news to the Federal Reserve; I may or may not be right.
- Ransom: I don't know the exact figure; that he is indebted to the Bank of America we do know.
- H.M.Jr: Yes. Well, I'm going to give you the exact figure. And if we decide here after consultation with you people that we're going to send this telegram on the dividend - that's Step Number One - if we decide to do that, then I'm going to put today in your lap the information about Mr. Stewart's position, and I'm going to ask you if you people today will call a meeting and consider whether a man who owes eight million dollars to Giannini is fit to be Chairman of a Federal Reserve Bank, and I'm going to ask for an answer "Yes" or "No" today. Because I can't - we can talk all about bank examination; here it is, gentlemen, right on the surface. Now, we want to act; now, we've got to rely on you people, your Bank. Here's the Chairman of a Bank, let's say, who owes millions to the biggest bank in the district. How can I lean on the Federal Reserve under such conditions? I can't.
- Oliphant: You can't enter this sort of fight with that man out on the Coast.
- H.M.Jr: No, I can't do it.

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Ransom: May I say in that connection that the only information I have, of course, comes through our reports and through such information as the Federal Reserve Bank of San Francisco gave me when I was out there just about a year ago, some time in the latter part of November or the first part of Decem- - November. At that time some of the officials of the Federal Reserve Bank of San Francisco did state to me that Mr. Stewart was substantially indebted to the Giannini interests, or, to express it a little differently, the Stewart interests. I made a superficial examination of that from sources which I believe to be thoroughly reliable, and in the reply obtained the information that that indebtedness was thoroughly justifiable; that he was a man who operated on a large scale and was therefore amply able to take care of his own indebtedness and the indebtedness of his various interests. The exact accuracy of that I, of course, cannot vouch for, because I do not know it of my own knowledge and I have not seen the financial statements. But that that situation - that that relationship exists, is correct.

H.M.Jr: Well

Ransom: It may be, of course, possible that Mr. Stewart or anyone else who is indebted to banks which were members of the System might have a very desirable line or lines of credit. That would be a question for determination on the financial statements which could be rendered, such other information as we can gather.

H.M.Jr: Well, I'm going to ask the Comptroller to place at your disposal before you leave here this morning just what the status of Mr. Stewart's financial position is.

Ransom: Fine. That will be very helpful indeed.

H.M.Jr: See?

Ransom: Yes.

H.M.Jr: Now, are you ready for the Comptroller?

Diphant: Yes.

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- Ransom: Now I might ask one question that Mr. Oliphant suggested to my mind by saying that from this point on it flows from us. Just exactly what do you mean? Responsibility for enforcing any direction which the Comptroller might give the Bank of America as to dividend policy? Is that it, Mr. Oliphant?
- Oliphant: Yes. I might take just a minute on that. This statute provides that "whenever the Comptroller finds that"
- Ransom: Will you give me the citation, please?
- Oliphant: Section 30.
- Ransom: Section 30.
- Oliphant: "... that any director or officer of the bank is violating a law relating to banks and/or are continuing unsafe or unsound practices in conducting the business of the bank...."
- Ransom: Yes, I'm thoroughly familiar with that.
- Oliphant: "...then"
- Ransom: Yes, I'm familiar
- Oliphant: Excuse me, let me finish. Then after - then the statute provides for a "warning by the Comptroller of the Currency to discontinue such violations of law or such unsafe or unsound practices, and the Comptroller of the Currency may certify the facts to the Board of Governors of the Federal Reserve System." And in case the Board of Governors of the Federal Reserve System - in that case the Board of Governors of the Federal Reserve System would give notice of a hearing and may remove the officer.
- H.M.Jr: I haven't gone into this thing lightly. I've been living and hearing about this thing for six months.
- (Diggs and Folger come in)
- Ransom: Well now, the Federal Reserve Bank of San Francisco would have nothing to do with that. That's a matter for the Board in Washington to handle.

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H.M.Jr:

Well, I believe so. The first thing that I'd like - and I'm doing this informally; see, we haven't even decided on the text of the telegram - but I felt that this thing was so important, that your interest was so vital, Mr. Crowley's interests were so vital, that I didn't want to be a party to a notice on dividends like this without consulting you people in this manner and having your acquiescence, or at least your advice and say, "Well now, wait a minute, under our responsibility we think you're doing the right thing or the wrong thing." See? That's what I want, and that's what the Acting Comptroller wants. Is that right?

Diggs:

That's right, sir.

H.M.Jr:

Let's see this text.

Oliphant:

Just a minute. I'd like to respond to what he (Ransom) just suggested. He suggested that the Federal Reserve Bank of San Francisco wouldn't have anything to do with this removal proceedings we're talking about. Well now, when we're talking about an action as drastic as the proposed telegram, you're entering into a very serious fight or struggle, and there is every reason why the man in command at the Federal Reserve Bank in San Francisco should be a man about whose hundred percent loyalty to you and to the Government there isn't any doubt at all. That's in general. Otherwise you're just letting yourself in for a lot of punishment, if not a beating.

Now, specifically, when the Board comes to hear this complaint on the part of the Comptroller, there are all sorts of reasons why the Board will want that picture in the Federal Reserve Bank in San Francisco clean and clear. For instance, if this action is taken I'd want to be perfectly sure what was happening to the files of the Federal Reserve Bank of San Francisco. Hence, I'd want to know about the undivided allegiance, emotional allegiance, of the man in charge of the San Francisco bank.

Ransom:

Well, of course, Mr. Oliphant, that raises a question which is so broad and goes so far that it is extremely difficult to make an answer in a few words. You refer to the man in charge. Under the organization of the Federal Reserve System as at present constituted, some question might arise as to who was the man in charge, whether he is the President of the Bank, whether he is

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the Chairman of the Board. All of you gentlemen are thoroughly familiar with the complex organization of our existing Federal Reserve Banks. I don't have to go into that at all. So that as far as that is concerned, it would appear to me that if the Comptroller intended to take an action along these lines and Mr. Stewart was occupying a position for the time being where his own interests might seem to be involved, I would assume that Mr. Stewart would most gladly step out of that picture and that the Deputy Comptroller of the Bank - the Deputy Chairman of the Bank would assume the position of acting Chairman for the time being.

I know Mr. Stewart, I should say, only slightly, but from all I have heard of him I do not anticipate that he is a man who would want to put himself in anything of a position which might be construed as doubtful at all, in any respect. I just - I'm going to assume that until I'm satisfied that the other is true. So that I don't think, so far as anything that the Comptroller wants to do and any responsibility that the Comptroller's office wants to put on the Federal Reserve System - I'm speaking now of the System and not of the San Francisco Bank or the Board - whatever responsibility he puts on will be discharged wholly without regard to what might be Mr. Stewart's own personal relationship to the interests involved in the Comptroller's action.

- H.M.Jr: Well now, if we could let that rest for a moment. And I have not seen this amended draft, have you (Diggs)?
- Diggs: No, I have not, sir.
- H.M.Jr: Have you got a copy for Mr. Diggs?
- Olyphant: Yes.
- H.M.Jr: I'll read very slowly. This is to R. E. Palmer of Los Angeles, who is the
- Folger: Examiner - National Examiner in charge.
- H.M.Jr: Have you seen this?
- Folger: No, sir.
- H.M.Jr: "You are instructed to personally advise the Board of

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Directors of the Bank of America National Trust and Savings Association, San Francisco, California, who are meeting there today, Tuesday, the following: 'In view of the unsatisfactory asset condition of the bank, other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses, it is imperative that the earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticized, the dividend rate has been repeatedly increased from 4.5 percent to the present rate of 19.2. This condition was discussed at length by the Chief Examiner in Washington with the Chairman of your Board in January, and again with the Vice President and Cashier in August of this year. In the opinion of the Comptroller of the Currency...'"

Oliphant: Now this is the important part.

H.M.Jr: "'the declaration of any dividend at this time would be and continue an unsound and unsafe practice.'" - "'In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would be and continue.....'"

Oliphant: I'm following the language of the statute there.

H.M.Jr: "' unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the board of directors, and the members thereof, to discontinue such unsafe and unsound practices.'"

You people can take a look at it.

Crowley: How much are their earnings going to be for the first six months, Gus?

Folger: Huh?

Crowley: Do you know anything about their earnings for the first six months?

Folger: I don't recall just what it is.

Upham: Here it is.

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Folger: Net after losses and recovery, \$7,900,000.

H.M.Jr: What's that?

Folger: First six months of this year.

H.M.Jr: Is how much?

Folger: 7,987,000.

H.M.Jr: Roughly eight million.

Folger: Yes.

H.M.Jr: And how much cash dividends did they pay out?

Folger: They paid out four million 800 thousand.

H.M.Jr: Four million ...

Upham: ... eight.

Ransom: That was the first six months.

Folger: First six months of this year.

Crowley: Well, Mr. Secretary, let me give you our position on this thing. You know what a difficult man Giannini is to deal with. He has a problem in that bank that we all recognize. He's always paid too large a dividend because he - John, he wanted to keep the stock up. He's always supported that stock by a liberal dividend policy. It's always been the policy of those fellows - they never showed the real true earning position of the Bank; it was always padded to a great extent. I don't think you'll get anywhere with Giannini in a reduction of dividends, because if you say to him you want him to reduce, he'll come back and jockey with you as to the reduction, and as a matter of fact, if you're going to take the step the thing to do is to discontinue all dividends for a while. He'll get just as great a shock on the market with his stock by disregarding dividends as he will if he pays a nominal dividend, and with the seven million or 10 or 15 million dollars earning capacity, if for three or four years he would go without dividends, he would improve his position.

I think we - we've got other problems there. He's dealing with Spokane, to buy the national banks in

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in Spokane. And I think that whatever we do, it would be wise for all the three agencies to concur in an agreement as to policy and sign that agreement, so that when the Comptroller does send the telegram he is backed up by the agencies here in Washington; so that if Mr. Giannini comes he deals with all of us, he doesn't go around dealing with individuals.

H.M.Jr: That's why you're invited here.

Crowley: That's very frankly my position in the thing, and I'm ready to do anything to bring all that about.

H.M.Jr: Well, what do you think we should do?

Crowley: I think he should be asked immediately today to discontinue any consideration of a dividend until he has received from us a letter that is being forwarded. Then I think we should very definitely draft a letter in which the Federal Reserve or the Federal Deposit Insurance and the Comptroller's office all concur, so it's a round-robin, so that if we have to have a row we have all the vehicles of the three Federal agencies at hand to support ourselves. Now, we're perfectly willing - we've got the insured liability - I appreciate that there is no immediate danger, but it is wrong in principle to have this fellow carrying on and disregarding supervisors entirely. That's really what he's been doing. And as the insurer of the bank we're glad to go along in that policy.

Now, I - I don't - I think it would be wise just to ask for them to defer action, or demand that they defer, until we can get our whole program all set up and send it to them; then let Mr. Giannini come on here, which he will, and if he goes to see you or the President, make him meet with the three agencies and let us all take him on and tell him right where we're going, without giving him a chance to bargain or trade.

Diggs: How else do you think you can stop him from acting today on it, Leo, outside of this wire?

Oliphant: Leo, the statute doesn't provide for any warning of condition. Now, what the effect of this wire will be if it goes on in this form, is that he will come on

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and at that same time we're advising him

- Crowley: The only reason I used the word "defer" - I would hate to have him get the impression in California that we think the bank is in an insolvent condition, that the depositors may take a loss.
- Ransom: Do you think that?
- Crowley: No, I think by curtailing his dividends that he can work this thing out and build his capital to where it ought to be. Now, personally, I think he ought to have some preferred stock. But personally if you stop his dividends and stop his expansion, you'll bring it to where you want it.
- Ransom: Might I ask, Mr. Secretary, if that is the Comptroller's view too?
- Diggs: Our view has been that he should conserve his earnings, as we set out in the first place. We had not known whether this was the time to send such a telegram as this or not, but being unable to devise any other way of stopping him from doing it, we decided this was the way.
- Ransom: The reason I asked that question was to try to get clear in my own thinking the depositors' position in this situation, and see if any of you gentlemen felt that at the present time the depositors' position was in danger, or whether it is a matter of policy looking to a long-range operation of that institution.
- Diggs: We don't feel the depositors are in any danger.
- Crowley: I think it's like anything, Ronald; that that situation, if it keeps on growing in place of correcting itself and you were to have some reaction in this country, he'd be the big problem we'd have to contend with here.
- Ransom: If we had a reaction, he'd be the big problem anyway, I think.
- Crowley: I think that's true, but if we build him up and nourish him so he can lean on himself a little bit....
- H.M.Jr: There are more ways than one. This is the way I feel, gentlemen, and I have responsibilities. I don't

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know any other way of stopping him from declaring the dividend that we think he's going to do at the rate of 19 percent plus, than to send him this kind of a telegram. And if there is any other way, I'd like to know it. But for the moment let's say there isn't any other way. I don't see what we gain by Mr. Crowley's suggestion of sending a telegram postponing it. Then he comes down and we sit around and thrash this thing over, which we've been doing since last January. And what we want to do - and I don't need anything in writing. All I want is you people to say, if you do after plenty of discussion here this morning, "Mr. Morgenthau, we think that this is right and we'll see you through; we go along with you on this." Now, that's all that I want. And there's no use saying, "Hold this until ..." I mean, in other words, I've come to this point after listening to this thing for months. I either want to act and put everything that the law gives us behind it, or I don't want to do anything. I don't want to play poker with Mr. Giannini and I don't want to see Mr. Giannini. Mr. Giannini has asked to see me before, and people have asked that I see him, and I say that I have nothing that I want to discuss with Mr. Giannini. I don't want to see Mr. Giannini, I've got nothing to talk to Mr. Giannini about. I've never seen him except when I was in Farm Credit - that's the only time - and I turned him down then. He demanded that he have a director on the Land Bank of California and I turned him down, and that's the only time I've ever seen him.

And why not save ourselves all this pounding and bellowing and yelling, gesticulating and going all through it again? Either this action is justified or it isn't, and the decision ought to be made this morning.

Crowley: Well, let me say this. I think maybe you misunderstand. I don't mean there shouldn't be a decision reached. I don't want to have - Giannini's coming on irregardless of this telegram; he'll be on to see us anyway, that's all; but I'm perfectly willing to abide by this telegram and concur.

H.W.Jr: That's all I want to know, all I want you to say to me. "Morgenthau, if I was Secretary of the Treasury and had your responsibilities, I would or would not send that telegram."

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Crowley: Well, I assume that we're taking the responsibility, because I think it would affect the stock very materially and he will use a lot of pressure; but I think you've got to take that responsibility some time and it might just as well be now as to wait six months from now or a year from now and then have the situation maybe worse than it is today.

H.M.Jr: It won't get worse.

Crowley: I don't think it will get much better as long as he keeps on passing out his earnings in dividends.

H.M.Jr: That's the whole point. But if you don't mind, my position, my responsibility - would you recommend to the Comptroller that he should or should not send

Crowley: I'd recommend that he should.

H.M.Jr: Now, from your standpoint as the Chairman of F.D.I.C.

Crowley: I want the dividends stopped.

H.M.Jr: Thank you. And you'll be with us.

Crowley: A hundred percent.

H.M.Jr: That's all I want to know. Now Mr. Ransom. And I appreciate your (Crowley) clean-cut answer.

Ransom: It seems to me perfectly obvious, Mr. Secretary, that you yourself have a very grave responsibility in this matter or any similar matter. If I were - may I say if I were in your place and the Comptroller brought in a recommendation that action of this kind be taken, and I think it is quite drastic action, knowing what I do about the organization of that particular institution, as far-flung as it is and as temperamental as some of its people are and certainly as many of its stockholders are, I think it is a decision of the utmost importance that could only be taken on the very strong recommendation of the Comptroller's office, which has the initial responsibility in the matter. If I sat in your place and the Comptroller came in and said this was necessary in the

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public interest to be done, and you weighed his reasons for doing that and your conclusion was that his reasons were sound, I do not see that you'd have very much choice in the matter.

Now let me say that so far as the Federal Reserve Board is concerned

H.M.Jr: Excuse me.

Ransom: Sure.

H.M.Jr: You would or wouldn't do it?

Ransom: I would do what the Comptroller had recommended after I had analyzed his reasons and thought he was right. I don't see that you can go beyond that record.

All right, sir. Now, so far as the Board of Governors of the Federal Reserve System is concerned, it seems to me in this instance we occupy a rather unique position. I know of nothing that I regard as a more uncomfortable responsibility than those responsibilities which are given to us under Section 30. It is an extremely hard matter to get these cases in order, as all of you gentlemen know who have worked on some of them with us. They come up to us and then we occupy a sort of quasi-judicial role. We become in effect....

H.M.Jr: Quasi-judicial

Ransom: Role.

H.M.Jr: What?

Ransom: Role.

H.M.Jr: How do you spell that?

Ransom: R-o-l-e. Here we sit as judges to determine the correctness of the charge which is made. As an ex-lawyer I have had some very painful moments in connection with some of the cases which the Comptroller's office has been compelled to bring up to us. I have had numerous conferences with them trying to determine proper procedure.

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It seems to me in principle this is the situation. The Board sits as a group of men judging the correctness of charges which are made. Now, the question isn't yet determined, Mr. Oliphant - and I'm addressing this to you because I know you have had some trouble with it too - the question isn't fully determined as to whether we then become both prosecutor and judge or whether the Comptroller's office becomes in effect the prosecutor presenting a case to us for consideration. But be that as it may, whether at the point that the Comptroller gives notice we then step in and assume the responsibility for proving a case and then judging the case which is proved, I am not prepared this morning to say. But in any event it seems to me that we should not properly pass on the advisability of one of the other supervisory agencies taking action of this kind, because we finally may become the judge of the merits of the case, and I think our position would be greatly weakened, Mr. Secretary, if any one member of the Board, and I am only one of six, should express a view that action should be taken.

Now, we do have a different responsibility in the case of state member banks, as you know, where we do have to step out and initiate a proceeding which we then in turn judge. And because I think that it is vitally important that this section should remain in the law and be wisely administered, I have tried to be very careful in those cases which have come to us to preserve something of a judicial attitude, so that we can judge it on the merits as the case is presented to us when it is heard.

H.W.Jr: Well, without wanting to press you

Ransom: May I say one other thing, that in principle, Mr. Secretary, I am very much opposed to the banks of this country paying excessive dividends. I think that is one cause of future trouble. And personally, without any regard whatever to the Bank of America case or to any other case, I am not myself unsympathetic with the thought that the supervisory agencies must exercise some influence in directing the thought of these people who have the responsibility for the declaration of these dividends. I can see, as Mr. Crowley has said, that that is where trouble may well come.

Now, as to the merits of this particular case, I know nothing more than you have told me this morning.

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- H.M.Jr: But as to the principle involved of excessive dividends, you're opposed to that.
- Witness: Yes, I'm opposed to excessive dividends. Now, whether they are excessive in this case may be a very difficult question which I may have to be one of six men passing on at some future time, and I would be very hesitant to say anything which might indicate a belief one way or the other on that until I have to in effect put on a judicial robe and go through the painful process of trying to decide. Now, is that a fair answer?
- H.M.Jr: Well, if the facts are as you state them, and I'm sure they are, I can appreciate the position that you're in.
- Witness: May I also just as a side remark say that if this is the situation, and I listened very carefully, I should think that in order to uphold the judicial attitude of the Federal Reserve Board in Washington, you would fight every effort to bring the examining authorities directly under your supervision. Now, I don't expect any answer, I just want ...
- Witness: May I say that I may differ with you completely in that respect, just for the sake of the record.
- H.M.Jr: I don't see how - if you want to be a hundred percent judicial, I would fight every effort, just as you are this morning, to prejudge any action of the examining authorities. I'd just like - as I said, it's a side remark and has nothing to do - I'm just introducing it - what's the legal thing?
- Opponent: Just to lighten the conversation.
- Witness: May I have the privilege of making a side remark on your account?
- H.M.Jr: You certainly may, Mr. Judge.
- Witness: That personally I hold no brief - that wherever the examining authority may be vested, if we can vest it somewhere so we can untangle the very confused situation which now exists.... And my mind is certainly open and I'm not dogmatic about that.
- H.M.Jr: Fine. All right, now, Mr. Comptroller, have you had time or do you want additional time to look that over?

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Diggs: No, the only change is that last sentence there, I think it is.

H.M.Jr: And that's what?

Diggs: That's giving them a notice under Section 30.

Oliphant: He says that's the only change that's been made.

H.M.Jr: I don't want to rush you. If you want to go back to your own office and - or do you want to decide here? You tell me what your pleasure is.

Diggs: Have you seen it, Gus?

Folger: (Nods no)

Oliphant: I worked with Kelly on it. Kelly has had an hour to think about it. If there's time to take ten minutes and go in a separate room and go over the text

H.M.Jr: No, but I want the Acting Comptroller

Diggs: May I do that for about ten minutes?

H.M.Jr: Yes.

Oliphant: Like to do it with him.

H.M.Jr: Do you need Mr. Folger?

Diggs: No, I don't think so.

H.M.Jr: Could I use him on the Stewart matter?

Diggs: Certainly.

Ransom: Cy, that doesn't seem to be the copy of what the Secretary read. Seem to be some changes in it.

Oliphant: No, that's the carbon.

Ransom: Is it?

Upham: The carbon I got.

H.M.Jr: What's going on?

-18-

Ransom: I was trying to find out if what Cy gave me was a carbon of the last draft.

Oliphant: It was. There's the original.

Diggs: He read one sentence over twice.

Ransom: That's what confused me.

H.M.Jr: Take your time.

Ransom: (Reads over draft) I see.
(Diggs and Oliphant leave)

Upham: I have all that Stewart stuff.

H.M.Jr: I think we'll let Folger present it.
Now Mr. Folger, would you mind telling these gentlemen what the financial status of Mr. Stewart and his interests is in relation with Mr. Giannini and his interests?

Folger: Mr. Stewart is indebted to the bank, as shown by the last report of examination,

H.M.Jr: What's that, Folger?

Folger: Mr. Stewart is indebted to the bank, as shown by the last report of examination,

Ransom: May I ask the date?

Upham: April 20.

Folger: It was completed April 20.

Ransom: Of this year.

Folger: Of this year, yes.

Ransom: All right, sir.

H.M.Jr: Is this Mr. Stewart personally?

Folger: Yes, sir.

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H.M.Jr: How much is he indebted to the bank?

Folger: Directly, \$5,339,957.

Ransom: That's direct.

Folger: The total of his indebtedness, direct and indirect, 8 million, 299.

Ransom: 8 million - please.

Folger: \$8,299,685. The amount added to his direct indebtedness in making that 8 million, 299 thousand, consists of obligations of seven companies, of paper endorsed by Mr. Stewart.

H.M.Jr: That's the - that's the three million.

Folger: Yes, sir.

H.M.Jr: That's the three million.

Folger: Now, in addition to that, he owns - controls a mortgage company, Pacific Coast Mortgage Company, that owes the bank \$2,500,000.

H.M.Jr: He owns the controlling interest in that?

Folger: Yes, sir. The report does not show that Mr. Stewart's indebtedness includes that.

Ransom: What's the amount there, please?

Folger: \$2,500,000.

H.M.Jr: That's to the bank?

Folger: Yes, sir. Is that clear, Governor?

Ransom: That's perfectly clear, Gus. Now, may I ask for your classifications?

Folger: He's criticized it in this report as a large line. He lists it as a large line and criticizes - he suggests additional collateral. That's additional collateral on the Pacific Coast Mortgage Company - \$2,500,000.

H.M.Jr: Now, how much does Mr. Stewart owe, if any, to, say,

-20-

Trans-America or some of the companies that Trans-America controls?

- Folger: We don't have any record that he owes them anything, Mr. Secretary.
- Hanes: Do you have a record of his collateral in his personal loan, five million?
- H.M.Jr: What's a good question. What's his collateral on the five million?
- Folger: Well, the collateral there is very largely the defaulted bonds of Joint Stock Land Banks.
- H.M.Jr: It's what?
- Folger: Defaulted bonds of Joint Stock Land Banks.
- H.M.Jr: Do you mind reading it over? What have you got on the five million? That may be
- Folger: He didn't segregate or separate the collateral between his endorsed paper - the five million and the three million.
- H.M.Jr: Well, let's have it.
- Folger: That consists of 29,091 shares of Trans-America.
- Ransom: 29,000 - what?
- Folger: And 91 shares. 5,813 shares Bank of America.
- H.M.Jr: How much?
- Folger: 5,813. 573,500
- Ransom: Please give me that figure again.
- Upham: We can give Mr. Ransom - this to Mr. Ransom. He doesn't have to take it all down.
- H.M.Jr: May I see that, Gus. Just come around behind me.
- Ransom: Is it all right for me to look over your shoulder?
- H.M.Jr: You certainly can. I'm going to give you a certified copy.

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"A. O. Stewart and endorsed lines. Carried in San Francisco main office. A. O. Stewart - Anglo-American Mining Company. Carried (words trail off indistinctly)

"29,000 Trans-America, 5,000 Bank of America, 573,000 P.V. Federal" P.V. - what's P. V.? Federal Farm Mortgage bonds. What's that mean - P.V.?

"Other listed bonds not reported, total market value, one million, four. Nine million of defaulted bonds, market value two million, seven.

"Chicago Joint Stock Land Bank certificates, 155,000. San Antonio Joint Stock Land Bank, 13,000. Pacific Coast Joint Stock Land Bank, San Francisco....."

"Farm Mortgage Holding Corporation, Kansas City."

I'd hate to have to sell that stuff.

- Ransom: Is there any evidence in the files, Gus, of a financial statement from him about his own condition?
- Folger: No, I don't think - don't find that in the report, no.
- Ransom: Have you any outside information on that?
- Folger: I have nothing more than the - than some statements from the Examiners that they thought - they understood he had substantial worth.
- Ransom: I mean outside of that, what his outside things are, because on that subject you can get a fight any day you want to in San Francisco.
- H.M.Jr: A fight as to what?
- Ransom: As to whether he's a very wealthy man or whether he isn't.
- H.M.Jr: Well, the point that I'm raising is not whether he is a very wealthy man or whether he isn't a very wealthy man; but a man who has that financial structure and that indebtedness - I'm raising the question, is that the kind of man to be Chairman of the Board of the Federal Reserve of the Pacific Coast?

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Ransom: Wouldn't that question depend on whether or not this line was one which he could easily remove at any time he wanted to remove it?

H.M.Jr: Sure, sure.

Ransom: Isn't that the question?

H.M.Jr: Oh sure, but I

Ransom: Now, that's the issue, about which I say you could easily get a fight any day you want to.

H.M.Jr: Well, I personally would go much farther in my judicial capacity, my standard of ethics and my bringing up. My bringing up and my background would say that if I knew that the Chairman of the Federal Reserve Board of New York, where I live and happen to do business, had that position, the thing which would immediately come to my mind is, "How much better is he than Mr. Whitney?"

Ransom: I'm afraid I don't follow your analogy there.

H.M.Jr: "How much better is he, this fellow, than Mr. Whitney?" That's what I'd want to know. Now, I know this fellow Stewart and his record and his reputation. I know the gossip which is going around about his being there, and it's always frightened me; but I never knew it was as bad as that. And I never saw that thing until today. But I'm going to ask Mr. Folger to make a photostatic copy. If you'll take those sheets out, we can make one in five minutes, downstairs.

Ransom: That will be very helpful.

H.M.Jr: As a matter of fact, if you will take it out now, Mr. - I'll have Mr. Kieley take it downstairs and have one photostat made and bring it up. Would you ask Kieley personally to take it down? That's perfectly legal if I ask it, isn't it?

Folger: Yes, sir.

H.M.Jr: What?

Folger: Oh yes.

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- H.M.Jr: One copy and only one copy, and that to go to the Acting Chairman of the Federal Reserve Board. That's legal, isn't it?
- Folger: Yes, sir.
- H.M.Jr: Yes.
- Ransom: Might I say that I think you and I would have no difference whatsoever on one important point; namely, that the Chairman of no Federal Reserve Bank should be so indebted to any institution which was a member of the Federal Reserve System that he could not promptly and conveniently liquidate it whenever he wanted to do. Now, if he's a man of affairs who is carrying large lines of credit at an institution, why, it's utterly unreasonable to assume that you're going to cut him off from that merely because he's Chairman of the Board. The question seems to me to be one, first, is he a man fitted by temperament and history to occupy the position; secondly, is he a man whose finances are in such condition as to make him independent of the banks over which he does exercise a certain jurisdiction? You and I have no difference whatever on that.
- H.M.Jr: Well, you and I have a difference in what you have said.
- Ransom: You have?
- H.M.Jr: Yes, fundamentally.
- Ransom: What's that?
- H.M.Jr: I say if a man in the conduct of his business has to have a large line of credit from a national bank, that's his business, but that man should not be Chairman of the Federal Reserve Bank for the district. Now, I don't - you say the other way - I say - I'm not saying now he should run his business, I'm not saying how much he should or shouldn't borrow; but if he has to borrow in that quantity and with that kind of collateral, then I say that man is not fitted, in my humble opinion, to be Chairman of the Federal Reserve of any district.
- Ransom: I think you and I come out at the same point. It's a question of what we think about the particular collateral about any particular line of someone occupying that

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position. If this collateral is, first, frozen, as Mr. Hanes suggests, and secondly, is inadequate and he hasn't outside resources to meet it, it might become a serious problem. Now, if he has outside resources with which to meet it, he might use some of those outside resources as additional collateral to make the line one which would not be subject to any criticism at all. And I do believe that a man who occupies a position of Chairman of one of these Boards ought not to be subject to criticism.

- H.W.Jr: Well, I still feel that we ought to be able to find twelve Chairmen of twelve Federal Reserve Boards who are not indebted to banks in their district. Now, I don't know what the other Chairmen are, but I hope for your sake they are not in similar positions.
- Ransom: Well, I think this is perhaps an outstanding example of the problem with which you are dealing.
- H.W.Jr: But I - no use going over it again, but I - he's there, and we're going to present the evidence to you. I'm not going to add any to my view that I have already stated. Mr. Hanes put his finger on one of the sore spots when he pointed out that a large proportion of these holdings are Trans-America, whose life-blood is the dividends of the Bank of America; and this fellow has to sit and participate in an action where a large proportion of his collateral - the price of it depends on what we're talking about here this morning. Now, if there can be anything more unhealthy than that, I'd like to see it. And certainly these Joint Stock Land Banks and all of those things - I don't know anything slower.
- Upham: There is one additional fact, Mr. Secretary, that in many of his business enterprises he is in partnership with officers and directors of the Bank of America.
- Hanes: He's in partnership on that Pacific Coast Mortgage Company.
- Ransom: May I ask, Cy, who they are?
- Upham: I beg your pardon?
- Ransom: Who are his partners in that enterprise? Who are the directors of the Federal Reserve Bank of San

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Upham: No, of the Bank of America.

Ransom: I beg your pardon.

H.M.Jr: This mortgage company - name that again.

Folger: Pacific Coast.

H.M.Jr: Isn't that hooked up - now, how is that hooked up with the Giannini interests?

Upham: Well, the other officers and directors of that company are officers and directors of the Bank of America.

H.M.Jr: Is that the company where they have - if they have a loan which is questioned in the bank they sell it to that company? Is that the one?

Folger: No, that's not the one.

H.M.Jr: Which one is that?

Folger: There are two of them: Capitol Company and California Lands, Inc.

H.M.Jr: But that isn't the one.

Folger: One of those companies handles city real estate, and the other farm lands.

H.M.Jr: Well, there it is, Mr. Chairman, and as Secretary of the Treasury I officially transmit it to you today.

Ransom: Thanks for the information.

H.M.Jr: And I prayerfully ask that the Board take cognizance of that just as rapidly as is possible.

Ransom: You may be sure they will, because I have just asked your secretary to ask the other Board members who are in town to remain available on call during the morning.

H.M.Jr: I prayerfully ask, and if it is proper I would like to be informed what action they do take.

Ransom: (Nods yes)

Of course, as you probably know, the banking

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situation on the Pacific Coast presents one difficulty always to anyone who is trying to appraise that situation. The feeling between the people who are competitors in the banking field there is very bitter and very hard to handle at all times.

H.M.Jr: (On phone) Hello. - Yes, Herman. - Yes. - Yes. - Yes. - Well, I would - first place, I'd tell him to put in a phone call so that his man is there to tell them that the.... - Well, yes, and then he can phone it to him besides. But I would come in and tell the Federal Reserve and F.D.I.C. how it stands now, see? - What? - Please.

They've made a few textual changes; but I don't want anything textually or otherwise.

Upham: Can we let Mr. Folger go?

H.M.Jr: Well, he's going to hear the textual changes, and I'd like his advice. Why, has he got something?

Folger: I was just thinking we should call Palmer, the Examiner, on the telephone and tell him to - we're afraid they'll declare a dividend before the telegram gets there.

H.M.Jr: I'd read it to him. They can't meet before ten, can they?

Folger: No, sir, it's only 9 o'clock out there.

H.M.Jr: Well, you'll be out of here in ten minutes. Then I'd call Palmer and tell him. Do you mind - why don't you call him from here and tell him to find out what time the dividend meeting is. Then you can call him back and read the thing over the wire here. What's his name? I'll have you talk to him.

Folger: R. E. Palmer.

H.M.Jr: (On phone) Put in a call for R. E. Palmer.

Where is he?

Folger: H. W. Hellman Building. I don't have his telephone number. Los Angeles.

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H.M. Jr: (On phone) The Hellman Building at Los Angeles. And Mr. Folger will talk to him from here. Will you do that? And Mr. Folger will talk to him from here.

What I would suggest is if you would tell him - first place, find out what time the dividend meeting is, you see, and then I would read this over the telephone and put it on the wire besides. Maybe he can tell you right now what time the meeting is.

Ransom: I suppose, Mr. Secretary, that these gentlemen who have this responsibility are giving some consideration to what may be the reaction on the Pacific Coast of such action as this telegram demands be taken. I do not myself know what it would be. I don't mean to state that in an alarmist sense at all, because I haven't any background for that. But that whole situation out there, as I was saying a moment ago when the Secretary answered the phone, is a strange and peculiar one, and competition among the San Fran- - among the Pacific Coast banks is something the like of which I have never encountered anywhere, unless perhaps in New Orleans - might be included. It's beyond my comprehension. I was in the banking business a long time and I never saw anything like the way these gentlemen out there go after one another. And I think you've got to realize the fact that the repercussions may run pretty far afield, and I assume, of course, that this has been considered in your action you are proposing to take.

Folger: Well, I don't think anyone knows, Governor, what the reaction to the telegram might be, but we are certainly not getting anywhere as we are now, with what we've been doing.

(Oliphant and Diggs return)

Oliphant: All the changes were made and it is now being retyped. "e're suggesting, in aid of clarity, putting in the word "of" in a number of places.

"You are instructed personally to advise the Board of Directors of the Bank of America National Trust and Savings Association, San Francisco, California, who are meeting there today, Tuesday, the following: 'In view of the unsatisfactory asset condition of the bank, of other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities

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account, of German credits of \$6,000,000, of other items carried in assets of questionable value and of aggregate of assets classified as doubtful and losses, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticized, the dividend rate has been repeatedly increased from 4.5 percent in 1933 to present rate of 19.2 percent. This situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier of the bank in August of this year. In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would, unless proper provision for such criticized assets were first made, be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the Board of Directors, and the members thereof, to discontinue such unsafe and unsound practice."

- Ransom: May I ask, do you think this last paragraph couples in with this so that it might be construed to mean that if they did this, then the unsafe practice might be
- Oliphant: Well, this is all implied up here, and Kelly merely wants to put it in there for the purpose of further clarity. It's all to clarify it.
- Are you ready to have him telephone it?
- H.M.Jr: He just put a call in here over my phone to Palmer to find out when the meeting is.
- Klotz: She says there is no telephone listed for him.
- H.M.Jr: Mr. Comptroller, is it agreeable to you that your Bank Examiner has given me - just take a look at this, photostat of this, of Mr. Stewart's position, to give to the Federal Reserve for their information.
- Diggs: Well, it's taken from our report.
- Folger: Yes.

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Diggs: Well, they have copies of it. They get copies from San Francisco of all our reports.

Folger: Yes, they have a copy of that.

H.M.Jr: You mean Mr. Stewart as Chairman has a copy. I mean I've asked the Chief Examiner. He says that ...

Diggs: There's no reason not to. Certainly not.

H.M.Jr: But they wouldn't have one here.

Upham: No, they borrowed this one. They borrow this one any time.

Folger: We send them the reports as they call for them here.

Diggs: We furnish a copy to the bank in San Francisco, which is the San Francisco bank's.

Ransom: I understand you would furnish this to us on request anyway, and you do furnish it to the San Francisco bank.

Diggs: Yes, automatically it goes there, after every examination.

Ransom: May be here, but it isn't on my desk.

H.M.Jr: It is now, Mr. Judge. Judge, it's on your desk.

Ransom: Yes, sir, it is indeed.

H.M.Jr: From now on he's going to be Judge Ransom.

Gaston: Mr. Ransom, it would be interesting to have the history of those loans, when they were made and for what purpose - whether they were made to buy those securities.

Upham: You'll find a statement there that he refused to disclose the purpose of the borrowing.

H.M.Jr: Big borrowing?

Upham: Well, that mortgage company.

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- H.M.Jr: Well, maybe - would you (Folger) rather go back to your room and do it there?
- Folger: The telegram, Mr. Secretary, will have to be sent in code. We're not through with it when we get through here.
- H.M.Jr: Yes, but you - there's no reason why you can't read it - send it over the wire and read it to him on the phone.
- Let me find out. Wait a second. Let's find out.
- (On phone) Hello? How about it? - -
- She's getting him.
- Ransom: Are we entitled to have a copy of this telegram?
- H.M.Jr: How about it, counsel?
- Oliphant: I don't
- H.M.Jr: What?
- Oliphant: I should think so.
- H.M.Jr: I assume so. We're asking them to play ball.
- Oliphant: Of course, the thing hasn't yet been formally presented to the court.
- Gaston: Might be prejudicial error, Herman.
- Ransom: As I gather the procedure under Section 30, technicalities are never in order, Mr. Oliphant. We've had some pretty harassing experiences with it, but so far we have survived all technicalities. The last gentleman happened to land in jail before we reached a decision, which somewhat simplified it.
- Oliphant: Well, since somebody's chickens are coming home to roost, I don't want to make any inquiry about a poker racket here.
- H.M.Jr: Well, unless the Comptroller (Phone rings)
Do you (Folger) want to take this? Your man.
- I wouldn't read it to him now. Find out when the bank thing is coming. (Conversation follows:)

September 13, 1938.
12:12 p.m.

Gus
Folger:
R.E.A.
Palmer:

Folger in Washington.

Fine, how are you?

F: All right. Do you know - listen, do you know when the Board meets there - Board of Directors of the bank - Bank of America?

P: Down here?

F: Yes, they're meeting there today?

P: I see.

F: You don't know the hour?

P: No, I don't.

F: Well, we're sending you an important telegram.

P: I see.

F: And I'll call you a few minutes later. Stay in your office, I'll call you in a few minutes and read it to you.

P: All right.

F: You - in the meantime, you find out what hour, what time the meeting is to be held.

P: All right.

F: Have you got that?

P: Yes. All right. Mr. Prentiss was - called something about this anonymous letters have gone back there.

F: Oh, no, that's - we can't talk about that now. Can you find out, while I hold the phone, can you call the Bank or call someone and find - let me know when the meeting is?

P: I think - we can't do it from the office Mr. Folger.

F: Why?

P: We'd have to hang up.

- 2 -

F: Oh, I see.

P: We just have one phone, see?

F: Can you - can you try that?

P: Yes, we can try it.

F: Call from another phone right away.

P: All right, fine.

F: (aside. They certainly wouldn't be meeting for another hour. - He's phoning. He's trying to learn just when the meeting is to be held.)

P:

F: Four p.m.

P: Yes.

F: Well, you have plenty of time, and we're sending you an important telegram and it'll be a code message, of course.

P: I see. All right, fine.

F: And you're to meet with that Board and advise them of the contents of the telegram.

P: All right. Fine. All right, sir.

F: (aside. Better not read it to him now Henry.) Well, I won't read it to you Palmer, but you'll have plenty of time to get the telegram and decode it -

P: Yes.

F: And be prepared.

P: All right. Fine.

F: You understand that you're not to deliver it to anyone.

P: Yes, that's right. All right.

F: You're to read the telegram to the Board.

- 3 -

P: I see. All right. Fine
F: All right.
P: Fine.

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H.M.Jr: Is that the way they do?

Diggs: That's right.

H.M.Jr: All right, gentlemen. Now let's just see who has a copy of Mr. Diggs's telegram. We get one and the Chairman of the Board has asked for one.

Diggs: I think Crowley should have one and the Federal Reserve should have one. Mr. Kelly has one. It's being coded now.

H.M.Jr: Any afterthoughts, Mr. Crowley?

Crowley: No, sir.

H.M.Jr: Mr. Ransom?

Ransom: Not a thing. May I discuss another matter after this meeting with you, not relating to this.

H.M.Jr: May I say I want to thank everybody for their very cooperative attitude and I appreciate more than anybody else the seriousness of the move that we're taking, but after having known about this situation now for months I can't see that in the interests of the depositors or the stockholders anything is to be gained by delay, and I think that there is every reason why we should carry out the recommendation of the Comptroller and ask this institution to discontinue declaring any more dividends for the balance of this year anyway.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

9-13-38

TO Secretary Morgenthau
FROM Mr. Oliphant

Reference is made to the request of Mr. Upham that you be advised on the question whether you have authority to call in an officer of a national bank or some other appropriate person and divulge to him certain "confidential" information in the office of the Comptroller of the Currency for the purpose of asking his advice on what procedure should be followed. I am of the opinion that you have authority to take such steps.

The question was covered sufficiently by the opinion of Attorney General Wickersham to the President. (1912) 29 Op. Atty. Gen. 555. In that opinion, directed to the President, the Attorney General considered the power of the President to give certain information ascertained through the Comptroller of the Currency to a committee of the House of Representatives. The Attorney General stated that there were two questions:

"1. Whether you have the power to direct the comptroller to furnish to the House committee such information as is now in his possession?

"2. Whether you may direct the comptroller to obtain other data and thereafter to furnish it to the committee?"

Both questions were answered in the affirmative, with some qualifications not important for present purposes. The following statements in the opinion are pertinent:

"gives the banking laws cloths 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 (*Boake v. Comptroller*, 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.

* * *

"Since the comptroller exercises his functions under the general direction of the Secretary of the Treasury, and therefore of yourself, it follows that if either you or the Secretary think that the comptroller should have before him in the performance of his duties any of the information mentioned in Mr. Untermeyer's letter, you have the lawful power of directing him to acquire it.

"It is true that while the comptroller is performing quasi-judicial functions his discretion can not be controlled by you (*Butterworth v. Hoag*, 112 U.S. 50), yet this is not so of all his duties, otherwise the provision in the statute that he perform his duties under the general direction of the Secretary of the Treasury would amount to nothing.

* * *

"I express no opinion as to the propriety of furnishing to the House committee any information gathered by the comptroller. I am informed that it has been the custom of his office to consider a great part of such information as confidential. But as to the wisdom of applying this rule in the present instance, the Secretary of the Treasury and the comptroller can best advise you."

- 3 -

With regard to the general authority to invite persons to the City of Washington for conference and advice, I direct your attention to a provision in the current Treasury Appropriation Act (Public, No. 453, 75th Congress):

* * * not exceeding \$5,000 for traveling expenses, including the payment of actual transportation and subsistence expenses to any person whom the Secretary of the Treasury may from time to time invite to the city of Washington or elsewhere for conference and advisory purposes in furthering the work of the Department;
* * *"

Herbert C. O'Connell

Treasury Department

W E 44 COL GOV

TELEGRAPH OFFICE

DUPE OF PHONED MSG CHG GOV

ED CHICAGO ILLS 955P SEPT 13 1938

1938 SEP 14 AM 7 51

MRS HENRIETTA S KLOTZ

WASHDC

UNABLE TO GET PLANE DIRECT CHICAGO SANFRANCISCO SO GOING TWA TO
LOSANGELES ARRIVING THERE SEVEN FIFTY SIX AM PACIFIC COAST TIME
UNLESS WIRE AT LOSANGELES AIRPORT INSTRUCTING REMAIN THERE SHALL
CONTINUE IMMEDIATELY SANFRANCISCO ARRIVING TEN TWENTY AM

CY

737A

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON



RONALD RANSON
MEMBER OF THE BOARD

September 15, 1938

My dear Mr. Secretary:

After you discussed the matter with me today, I asked our own Division of Examinations if they had been furnished with a copy of the April 28th examination of the Bank of America, National Trust & Savings Association, San Francisco, California. Finding that they had not, I telephoned the President of the Federal Reserve Bank of California for the purpose of asking him to send me by air mail the copy customarily furnished them. He informs me that a copy has not yet been received. On advising you to this effect during the afternoon, you kindly offered to let us have a copy of this examination, and it will be appreciated if you will do so.

Sincerely,

Ronald Ranson
Ronald Ranson,
Vice Chairman.

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

Started 8/31-1937.
Completed 4/20-1938.

U
O
F
Y

September 13, 1938

R E A Palmer
835 H. W. Hellman Bldg.
Los Angeles, California

You are instructed personally to advise the board of directors of the Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday, the following —

"In view of the unsatisfactory asset condition of the bank, of other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, of German credits of \$6,000,000, of other items carried in assets of questionable value and of the aggregate of assets classified as doubtful and losses, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticised, the dividend rate has been repeatedly increased from 4.5% in 1933 to present rate of 19.2%. This situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier of the bank in August of this year. In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would, unless proper provision for such criticised assets were first made, be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the board of directors, and the members thereof, to discontinue such unsafe and unsound practice."

(Signed) Marshall R. Diggs
Acting Comptroller

Fourth and final draft

(Taken to Secretary's office shortly after 12:00 noon by Herman Oliphant and Marshall R. Diggs. Huntington Cairns, Edward H. Foley, Jr., Bernard Bernstein, D. J. Sherbondy and L.A. Kelly present when drafted. Sent in code by office of Acting Comptroller.)

cc: Mr. Ronald Ranson
Mr. Leo T. Crowley
Mr. C. B. Upham
Mr. Marshall R. Diggs
Mr. L. A. Kelly
Mr. Herman Oliphant

C
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September 13, 1933

R E A Palmer
635 E. W. Hallman Bldg.
Los Angeles, California

You are instructed personally to advise the board of directors of the Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday, the following —

"In view of the unsatisfactory asset condition of the bank, of other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, of German credits of \$6,000,000, of other items carried in assets of questionable value and of the aggregate of assets classified as doubtful and losses, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticized, the dividend rate has been repeatedly increased from 4.5% in 1933 to present rate of 19.8%. This situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier of the bank in August of this year. In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would, unless proper provision for such criticized assets were first made, be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the board of directors, and the members thereof, to discontinue such unsafe and unsound practice."

(Signed) Marshall E. Diggs
Acting Comptroller

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Sent in code by office of Acting Comptroller.)

cc: Mr. Ronald Ranson
Mr. Leo F. Crowley
Mr. C. B. Upham
Mr. Marshall E. Diggs
Mr. L. A. Kelly
Mr. Herman Cliphant

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September 13, 1938.

R E A Palmer
835 H. W. Hellman Bldg.
Los Angeles, California

You are instructed to personally advise the board of directors of the Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday the following —

"In view of the unsatisfactory asset condition of the bank, other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses it is imperative that the earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticised the rate of 19.2% has been repeatedly increased from 4.5% to present rate of 19.2%. This condition was discussed at length by the Chief Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier in August of this year. In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the board of directors, and the members thereof, to discontinue such unsafe and unsound practices.

Marshall R. Diggs
Acting Comptroller

Third draft

(Taken to the Secretary's office at 11:00 A.M. by Herman Oliphant; Huntington Cairns, Bernard Bernstein, Edward H. Foley, Jr., D. J. Sherbondy and L. A. Kelly present during the drafting.)

September 13, 1936.

W. B. Palmer
 205 N. W. Selman Bldg.
 Los Angeles, California

You are instructed to personally advise the Board of Directors of the Bank of America, National Trust and Savings Association, San Francisco, California, and are writing them today Tuesday the following --

"In view of the unsatisfactory asset condition of the bank, other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, Garnes owed to \$8,000,000, other items carried in assets of doubtful value and doubtful and losses it is imperative that the earnings be used to write off and reduce book value of such assets, notwithstanding the position as outlined above and the fact that the dividend policy has been repeatedly criticized the dividend rate has been repeatedly increased from 4.5% to present rate of 19.25%. This condition as discussed at length by the Chief Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier in August of this year. In the opinion of the Comptroller of the Currency, the declaration of any dividend at this time would be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly, the Comptroller of the Currency, pursuant to Section 30 of the Banking Act of 1933, hereby warns the bank, its officers, the Board of Directors, and the members thereof, to discontinue such unsafe and unsound practices.

Marshall H. Diggs
 Acting Comptroller

Third draft

(Taken to the Secretary's office at 11:00 A.M. by Herman Ollivant; Huntington Cairns, Bernard Bernstein, Edward H. Foley, Jr., D. J. Sherbaddy and L. A. Kelly present during the drafting.)

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September 12, 1938.

R.E.A. Palmer
835 E. W. Hellman Building
Los Angeles California

You are instructed to advise Board of Directors Bank of America National Trust & Savings Association, San Francisco, California, who are meeting there tomorrow Tuesday the following -

In view of unsatisfactory asset condition of bank other real estate in excess of \$40,000,000 carried in loans and discounts and in securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses, it is important that major portion of earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that dividend policy has been repeatedly criticised dividend rate has been repeatedly increased from 4.5% to present rate of 19.2%. The directors are requested to limit the next dividend declared to a rate not to exceed 6% annually.

First draft

(Taken to the Secretary's house at 8:30 by
C.B. Upham. Drafted by Marshall R. Diggs,
William P. Folger and L. A. Kelly.)

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September 18, 1938.

R.E.A. Palmer
835 N. W. Hellman Building
Los Angeles California

You are instructed to advise Board of Directors Bank of America National Trust & Savings Association, San Francisco, California, who are meeting there tomorrow Tuesday the following -

In view of unsatisfactory asset condition of bank other real estate in excess of \$40,000,000 carried in loans and discounts and in securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses, it is important that major portion of earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that dividend policy has been repeatedly criticized dividend rate has been repeatedly increased from 4.2% to present rate of 19.2%. The directors are requested to limit the next dividend declared to a rate not to exceed 8% annually.

First draft

(Taken to the Secretary's house at 8:30 by
C.E. Upham. Drafted by Marshall R. Diggs,
William P. Falger and L. A. Kelly.)

C
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September 13, 1938.

R E A Palmer
835 H. W. Hellman Bldg.
Los Angeles California

You are instructed to personally advise the board of directors of the Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday the following --

"In view of the unsatisfactory asset condition of the bank, other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses it is imperative that the earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticised the dividend rate has been repeatedly increased from 4.5% to present rate of 19.2%. This condition was discussed at length by the Chief Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier in August of this year. It is the opinion of this office that sound banking practices would not permit the declaration of any dividend until proper provision has been made for criticised assets but in no event should a dividend be declared at this time at a rate in excess of 6% annually

Marshall R. Diggs
Acting Comptroller

Second draft

(This was brought into Herman Oliphant's office by L.A. Kelly at 10:30 A.M. 9/13'38; Huntington Cairns, E. H. Foley, Jr., Bernard Bernstein and D. J. Sherbondy were present.)

C
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September 13, 1938.

R E A Palmer
638 H. W. Hellman Bldg.
Los Angeles California

You are instructed to personally advise the board of directors of the Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday the following --

"In view of the unsatisfactory asset condition of the bank, other real estate in excess of \$40,000,000 carried in loans and discounts and in the securities account, German credits \$6,000,000, other items carried in assets of questionable value and doubtful and losses it is imperative that the earnings be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticized the dividend rate has been repeatedly increased from 4.5% to present rate of 19.5%. This condition was discussed at length by the Chief Examiner in Washington with the Chairman of your Board in January and again with the Vice President and Cashier in August of this year. It is the opinion of this office that sound banking practices would not permit the declaration of any dividend until proper provision has been made for criticized assets but in no event should a dividend be declared at this time at a rate in excess of 6% annually

Marshall E. Diggs
Acting Comptroller

Second draft

(This was brought into Herman Oliphant's office by L.A. Kelly at 10:30 A.M. 9/13/38; Huntington Cairns, E. H. Foley, Jr., Bernard Bernstein and D. J. Sherbondy were present.)

September 14, 1938

To: The Secretary
From: Mr. Hanes

At your suggestion I asked for a conference today with the members of the Securities and Exchange Commission to discuss with them the Bank of America and the Transamerica Corporation situation. Present at the meeting were the following: Commissioners George Mathews, Robert Healy, Jerome Frank, and Mr. David Schenker of counsel to the Commission, who was instrumental in drawing up the preliminary report on the Transamerica Corporation which was the result of the Investment Trust investigation.

I advised them that the Comptroller of the Currency had submitted to the Board of Directors of the Bank of America his objections to the payment of any further dividends. I also advised them that it was the opinion of the Secretary of the Treasury, as well as my own opinion, that the Securities and Exchange Commission should proceed further with their investigation into the affairs of the Transamerica Corporation. The Commissioners agreed and, in order to get all the information which was available for the determination of whether false and misleading statements regarding Transamerica Corporation stock have been made by the Corporation, asked that we furnish them with a copy of the last examination report on the affairs of the Bank of America. I stated to the Commissioners that I would make such request to the Secretary and, if he agreed, would furnish them with such report promptly.

I am now advised by Mr. Herman Oliphant that it is quite proper for the Secretary to give this report to the Commission. The report is being photostated, and will be ready for delivery tomorrow, and letter of transmittal has been prepared by Mr. Oliphant.

T. W. H.

RE BANK OF AMERICA SITUATION

September 14, 1938.
11:30 a.m.

Present: Mr. Hanes
Mr. Oliphant
Mrs. Klotz
Mr. Gaston
Mr. Tom K. Smith
Mr. Diggs
Mr. Folger

H.A.Jr: Well, you saw what the ticker had to say, didn't you?

Oliphant: What is it?

H.A.Jr: Well, they said that in honor of Tom Smith advising the Secretary of the Treasury Mr. Giannini went ahead and declared his regular dividend. He just wanted to see how tough Tom Smith was.

Smith: First, the

H.A.Jr: This is very important.

Smith: In order to get the background: the examination of the Bank of America and its 500 branches is a permanent thing. They're in there all the time. So they stop and say, "Now we start a new examination."

The last examination on which the report was written started in August '37 and was finished the 20th day of April '38. That's this report.

H.A.Jr: They have that.

Folger: They have that report. The next one started on the 28th of April, and it isn't finished, hasn't been completed.

H.A.Jr: (On phone) Ask Miss Cavanaugh to come in with pencil and paper.

Smith: There's the dates. So they're talking about the one now in process.

H.A.Jr: I'll send this over. Now, in view of what happened, I'll get this whole new thing, see?

Smith: Oh yes.

-2-

Oliphant: How does that compare with the previous dividend?
 Smith: Is that new one for the old rate?
 Folger: Same rate.

(Chauncey comes in)

H.M.Jr: Miss Chauncey, will you take this?

"Mr. Ronald Ransom. My dear Mr. Ransom: Your letter dated September 13 was received in my office on September 14 at 10:34 a.m., and I hasten to answer the same. Mr. Folger"

(Diggs comes in)

Diggs: Trying to run Mr. Folger down and he was already here.

H.M.Jr: "Mr. Folger, the Chief Bank Examiner, advises me that on 8-31-37 they started the bank examination of the Bank of America.." - whole title is in this letter, see - "...and completed this examination on 4-20-38. This is the last complete report that the Bank Examiners have made on this institution."

Smith: Should use the word "completed."

H.M.Jr: "Completed."

Folger: Yes. They're completing one right now, Mr. Secretary.

H.M.Jr: "This is the last completed report that the National Bank Examiners have made of this institution."

Folger: That's correct, yes.

H.M.Jr: "Mr. Folger informs me that a copy of this report has been furnished to"

Folger: "...the Federal Reserve Bank"

H.M.Jr: "... at San Francisco." And here also in Washington?

Folger: Well ...

Diggs: No, sir.

-3-

H.M.Jr: What?

Diggs: (Nods no)

H.M.Jr: "...that a copy of this report was furnished to the Federal Reserve Bank of San Francisco." When?

Folger: Well, they sent it out there from my office there. I wouldn't have that date.

H.M.Jr: You - well, are you sure that they did?

Folger: Sir?

H.M.Jr: Are you sure that they did? He says that they didn't. How do you know they did?

Folger: Well, the only way I'd know that was that they had never failed to send it out.

H.M.Jr: Well, before that letter is completed, you better call up and make sure that they did, and the date they furnished it. We'll suspend this. I don't want to write a letter and find I'm wrong at this stage.

(Chauncey goes out)

Now, gentlemen, on the ticker we are advised that the bank went ahead and declared the usual dividend. Now what's the next step?

Excuse me - as soon as you (Folger) get out of here, would you find out if you did deliver that report and the date it was delivered and let Mrs. Klotz know.

Folger: And may I give her a statement as to whether or not this report has been furnished to the Board. Now the one that goes to the Bank is a report for them; we don't get it back. That's their copy that they kept.

H.M.Jr: Put it this way. You write me a memorandum and simply say, "In reply to your verbal request in regard to the most recent completed report of this bank, I beg to advise you that on such and such a date we furnished the Bank in San Francisco with a copy and on such and such a date we furnished the Federal Reserve here." See?

-4-

- Folger: The Federal Reserve borrows here. I can verify that quickly.
- H.M.Jr: Well, give it to me all very, very carefully. It's terribly important. You've got to be a hundred percent right, Folger, see?
- Folger: Yes, sir.
- H.M.Jr: Now what are we going to do, Mr. Comptroller?
- Diggs: Well, we have a report of examination, the last one, which will be in here within the next two weeks. It seems to me that it's going to be rather difficult for us to move under Section 30 until we get that report in here. We've got to have the last figures to show just where we can move. They're paying the dividend at the end of the month. Now, that's my - whether we can move before we get it in here or not - do you think we can, Mr. Folger? I haven't had a chance to talk to Mr. Folger since I saw you.
- Folger: I would think it would be much better to have the report, but I think we could have the report before two weeks.
- Diggs: Well, I don't know when you can get it.
- Folger: Mr. Prentiss wrote and said it would be here the tenth - a couple of weeks ago; but I called on the telephone and Mr. Sedlacek, the Examiner in charge of the examination, said that he could have that report here in a very few days - bring it in with him.
- H.M.Jr: Well look, in discussing this matter, in the first place Mr. Oliphant advised me that I have a legal right to have Mr. Tom Smith as my consultant and I have a legal right to show him anything. He's acting in the capacity of adviser to the Secretary of the Treasury.
- Now look - just one item alone - Tom Smith says that they wrote up their bonds \$14,000,000. Huh?
- Folger: They did, yes, sir.

-5-

- H.M.Jr: Now, I don't see what you want to sit around here and wait for another one for. It looks to me as though that last report - we acted on the last report; that was bad enough, and if you - why have you got to wait for a report yet to come? We didn't tell them not to pay a dividend on the coming report. We told them not to pay the dividend on the information we have in hand; that's what I acted on: on the information and advice that you people gave me, what was already in the Treasury. Now why should I sit back and wait until something else - did you advise me wrong?
- Folger: No, sir.
- Diggs: I think that 14 million has since been charged back. I mean they sold those securities.
- Folger: They sold them. They wrote the securities up.
- H.M.Jr: Excuse me, I just want to stick to these premises. The office of the Comptroller of the Currency advised me in writing that they should pay no more dividends, based on information that was on hand as of yesterday. Now, based on information that was on hand yesterday, I want to know what should we do, what can we do to stop them from paying this dividend?
- Folger: Well, we can proceed under Section 30, but I think Mr. Diggs has in mind that we don't do the deciding, that the Federal Reserve Board has that responsibility.
- Oliphant: We don't do what?
- Folger: They have that responsibility.
- Oliphant: The deciding. Who has the responsibility of presenting the case?
- Folger: That's our job, to prepare the evidence.
- Oliphant: It's our job.
- Folger: That's right. The Comptroller's office. And that with the new report we could probably make it stronger and furnish some additional evidence.
- Oliphant: Well now, the question of timing here, I might point out

-6-

- Diggs: That was supposed - the man was supposed to leave there with it on Saturday, supposed to be here with it the first of the week - the Examiner who made the examination.
- Oliphant: It's a question of timing here, if I might point this out. When you want to institute the action before the Board would be when you'll be called on to have all your evidence ready to present to the Board; that is, when the hearing will be held.
- Folger: We have had some experience with that, and to get the evidence in - written evidence as they require or like to have it, it will take a good deal of work. Can't do that in a few minutes.
- Oliphant: But you could, if you wanted, institute the proceeding immediately on the advice that the
- Folger: We can start preparing the evidence, yes, sir.
- H.M.Jr: Well, let me put it this way.
- Folger: Excuse me - he's leaving there Saturday with the new report.
- H.M.Jr: Who?
- Folger: The Examiner.
- H.M.Jr: He's leaving there Saturday.
- Folger: Leaving Saturday. That's what he told me on the phone, that he could leave there Saturday with the report.
- H.M.Jr: And would be here Monday morning.
- Folger: He didn't intend to fly, so he won't be here Monday morning.
- H.M.Jr: Well, he better fly; he better fly. You can't give it to an Examiner who doesn't want to fly. Give it to an Examiner who will fly.
- Folger: He'll fly.
- H.M.Jr: What?

-7-

Folger: He'll fly.

Diggs: The only thing that interferes with that would be that Mr. Upham was going to see him. I'd want to clear that with Mr. Upham.

H.M.Jr: Well, we can clear that.

Diggs: Yes.

H.M.Jr: We can clear that.

Well, what, Herman - Herman, sketch to me, if you're familiar with it, what is the procedure that we would follow now if we want to give a cease and desist order. How do you go about this?

Oliphant: See, the procedure finally winds up in the removal of the officers, not a cease and desist order. I'd want to look into the question whether it would be possible to enjoin the action. I'd have to look into that. I doubt that. And this proceeding is going to wind up in an order either removing or not removing the officers. That pretty nearly answers the question. Or doesn't it?

H.M.Jr: Say it again.

Oliphant: Since this proceeding - I mean I don't now know of any possibility of getting an injunction restraining the payment - paying out of the dividends. I'm not hopeless about that; I've never looked at that, never considered it, don't know. But my offhand guess is that we couldn't. So our procedure is under Section 30. Now, under Section 30, on complaint made by the Comptroller's office, there is a hearing in the Federal Reserve Board, and that hearing finally eventuates to remove the officers.

H.M.Jr: And that hearing is before the Federal Reserve Board.

Oliphant: The Governors of the Federal Reserve Board.

Smith: Usually have it in the Bank in which - in the district in which the bank is located. Have it in San Francisco, isn't that right, isn't that correct?

Folger: Yes.

-8-

- Smith: Of course, they had one in St. Louis.
- H.M.Jr: When did they have the last one? When did the Federal Reserve Board have the last one?
- Folger: Well, we've given them one about six months - I don't suppose they've ever had any except the ones that we gave them.
- H.M.Jr: Let me put it a different way.
- Folger: The last one was in St. Louis.
- Smith: On that Kentucky case. He was sent to the penitentiary.
- H.M.Jr: What's your batting average when you have brought Section 30 to the attention
- Folger: We've won. We haven't lost any. But there's only been one - in the history of the Act, there's only been two.
- Diggs: That's right.
- Folger: Yes, sir.
- H.M.Jr: And this Act was passed in '33. Since then you have brought two actions. You have won both times.
- Folger: Yes, sir.
- Oliphant: Now, another point on timing I want to make. This has a very vital bearing on what we're talking about. What we said in the telegram was that it was the determination of the Comptroller of the Currency that a payment of any dividend at this time would be an unsound banking practice. He didn't say that the declaration of a dividend at this time would be an unsound banking practice. See?
- H.M.Jr: Well, let's put it this way.
- Oliphant: Now, it's possible that they have in mind, if I might interrupt, that "we'll go ahead and declare the dividend and if we find those fellows really mean business down there, we won't pay it."

-9-

Folger: Rescind the action.

Oliphant: What?

Folger: Rescind the action.

Oliphant: Rescind the action.

H.M.Jr: Herman, would it be crowding you too much if I asked you, say, at 10 o'clock tomorrow morning to advise me the best legal way to proceed on this?

Oliphant: No, plenty of time.

H.M.Jr: Would that be a reasonable time?

Oliphant: The boys will go to work on it.

H.M.Jr: Give me

Oliphant:what the legal picture is, possibilities of it.

H.M.Jr: 10 o'clock tomorrow morning.

Oliphant: 10 o'clock tomorrow morning. You (Diggs) will have some time, won't you?

Diggs: Oh yes.

H.M.Jr: Now the first thing - press conference 10:30; have half an hour, then go out this way - I want to answer Ronald Ransom's letter just as fast as I can.

Diggs: Well, sir, I'll give you that.

H.M.Jr: Could you have an answer for me back here by, say, two o'clock?

Diggs: Just as soon as I can get a telephone call through.

H.M.Jr: Say I can see you at two o'clock.

Oliphant: What was it?

H.M.Jr: They haven't got the report.

Folger: They've had this very report at the Board on March 5.

-10-

H.M.Jr: See, this is very important.

Diggs: He just got the note that they've had it over here on March 5.

H.M.Jr: Well, I don't want to do any telephoning.

Folger: I'll do the telephoning.

H.M.Jr: No, I mean to Ronald Ransom. When I heard this, it seemed extraordinary that he said he didn't have a copy of the report in his Washington office. Telephoned to San Francisco for a copy of the report. Said they didn't have one there.

Smith: When did they have that over there?

Folger: March 5.

Smith: March 5? It wasn't completed until April.

Oliphant: April 28.

Smith: That's the second next report. See, they finished one, then they started in on the next one.

Folger: Wait a minute. You're right.

Diggs: It's probably the other one.

H.M.Jr: Look, Gus, don't get rattled on this thing. Give me a written statement at two o'clock based on which I can write to Ronald Ransom.

Folger: Yes, sir, I'll do that.

H.M.Jr: What? Will you do that?

Folger: Yes, sir.

H.M.Jr: What? I think if you fellows will come back at two o'clock, it won't take very long, we'll draft a letter together, the kind of letter that should go. Not to crowd you, we'll say 2:15. Be back here at 2:15.

Oliphant: And 10 o'clock tomorrow.

-11-

- H.M.Jr: What?
- Oliphant: And 10 o'clock tomorrow.
- H.M.Jr: Be back here at 2:15. Gus Folger will have a memorandum, and what I want to do is simply inform him
Wait a minute before you go. Tom, don't you think we better get our legal ground?
- Smith: Oh, absolutely.
- H.M.Jr: What?
- Smith: Oh, absolutely.
- H.M.Jr: Yesterday I signed the Executive Order making all this one legal shop now, see? So Herman has that responsibility. We've got to have a united front around here.
- Smith: Mr. Secretary, I don't know how much the Acting Comptroller has, how far he's gone into this report, but I've seen enough this morning to know that they've paid absolutely no attention to any suggestions and they've violated every rule of sound banking, absolutely every rule. We can't think of anything they could do that they haven't done - in large amounts. They've transferred their real estate to a holding company and made loans to the holding company, in that way getting the other real estate out of their financial statement to mislead the public.
- H.M.Jr: Which holding company is that?
- Folger: California Lands, Incorporated, and Capitol Company.
- Smith: Sold \$40,000,000 worth of other real estate to those companies; nothing but other real estate; whereas they only show in the statement two million other real estate.
- Oliphant: Well now, Tom, are any of those things I was thinking about last night - are any of those practices which you mention now sort of a continued thing so that we now can get out a supplemental telegram saying that "the following practices...." - then get a whole list of them out and say they are unsound banking practices?

-12-

Smith: Oh yes.

Oliphant: And that we're giving a warning under Section 30.

Smith: Well, I think under Section 30 - yes, plenty of room; you could get 20 or 25 of them.

Oliphant: That's what I mean.

Smith: I think you'll find under Section 30 that you must confine yourself to violations of the law. But there are plenty of violations of the law.

Oliphant: No, that isn't true. You don't have to confine yourself to violations. Violations of the law or unsafe or unsound banking practices.

Smith: They're carrying - well, it's - I just - we can't think of anything that they shouldn't do that they haven't done.

Oliphant: Do you get that clear: that in addition to violating the law we can proceed under Section 30, as it provides that if they continue unsound and unsafe banking practices we can proceed. Now, I was just thinking of the desirability of just listing about 25 or 30 of these things, and give them sort of a supplemental telegram.

Smith: We can write them up this afternoon.

H.M.Jr: Give this thing - make it - we won't have a staff meeting at 9:30; then we have an hour before my press conference - 9:30 tomorrow morning.

Smith: Is that the only answer you had to your letter, was the ticker?

Diggs: Yes.

Smith: Didn't answer your telegram.

Oliphant: Haven't heard from Upham?

Diggs: He's not out there yet.

H.M.Jr: No. Hanes, any suggestions as to procedure?

Hanes: No, this is over my head, that legal side of it.

H.M.Jr: No, but common sense.

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Hanes: No, I don't have any other suggestions. I think Herman's suggestion is good, to get all these things in one, get them down in one - get them out as fast as we can.

H.M.Jr: Well, I'll be ready at 9:30 tomorrow morning.

Oliphant: Well, would you think well of the idea of Tom helping these people, going to work on it, getting these 25 or 30....

H.M.Jr: What do you think, Tom?

Smith: We'll prepare them, yes, this afternoon.

H.A.Jr: With Folger.

Smith: Yes.

H.M.Jr: Is Prentiss any help in this situation, any use?

Folger: No, sir, I don't think Mr. Prentiss is familiar enough with the work yet, this work. He may be. I don't think so.

H.M.Jr: Are you (Diggs) satisfied?

Diggs: Yes, sir.

H.M.Jr: You're satisfied.

Diggs: Quite.

Oliphant: I spoke just before I came in here - this is the idea I wanted to discuss with him before I sprang it on you.

H.M.Jr: That's all right.

Folger: That Examiner, Sedlacek, is the man we need.

H.M.Jr: Who?

Folger: The Examiner who's been examining these banks and wrote these reports.

H.M.Jr: Isn't he the man who will fly Saturday and get here Monday?

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Folger: Yes, sir.

H.M.Jr: Or come earlier if he can.

Oliphant: I wondered about that possibility. Question of typing - typing can be done here, and that sort of thing.

H.M.Jr: I wonder if he couldn't get here sooner. Supposing you go now and call him. I want to keep my regular Treasury people here just a minute. Supposing you get started. If this particular Bank Examiner could come at once, I think he would be useful in picking out these 15 or 20 things.

Folger: Well, should he come before he can complete his report and bring it along?

H.M.Jr: Well, is he writing it or is it being typed?

Folger: He's having it typed.

H.M.Jr: Oh.

Diggs: Could he bring on his material and have it typed here?

Folger: I don't think so, Mr. Diggs. It's too big a job.

H.M.Jr: Well, I mean if he's finished writing it and it's just a mechanical thing, let him come on and I'll have a Secret Service operative bring it on by air.

Folger: Well, we could do something like that.

H.M.Jr: See what I mean? If it's a question - if it's in the typewriting, question of mechanical - I'll have the fellow who is captain - whatever his name is, head of Secret Service, give him a man and he'll put him on an airplane and bring the thing on.

I want you people to stay. That's all for the minute, Diggs.

Smith: Gus, can I have - may I have these too?

Folger: Yes.

(Diggs and Folger leave)

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- Smith: This is the darnedest thing I ever saw.
- Hanes: Did you look at the loans to Stewart? That damn thing is rotten. Is there any chance of getting that hearing outside of the San Francisco district? We can't hold the hearing in the San Francisco district.
- Smith: They can hold it here, but they usually hold it there for convenience.
- Hanes: Can't in this case with Stewart there.
- Smith: You won't have any hearing on this, I don't think. The minute you cite them, you'll accomplish the
- H.M.Jr: "hat will he do?
- Smith: I think he'll act down when he realizes that you mean business, because he can't afford to have this brought out on the table.
- H.M.Jr: Well, and I just wanted to take - I didn't want these fellows here - now, I wonder, John, if this isn't the time now for you to move in on S.E.C. and say that the Treasury wants to know what is the status of their investigation on Trans-America. I want to talk that over, see? See, they've had two men out there making an investigation, and which - the report which I read - I haven't read that, but the Trans-America thing is all dovetails in, and it's the dirtiest thing we ever saw. That's what got me so excited. Now, if we want to do everything possible to make this man behave, protect the interests of the depositors and the stockholders, oughtn't we to ask S.E.C. officially, "Where is this thing?" and raise the point and tell them we want that investigation pressed to a conclusion? I mean we want to know what S.E.C. is going to do and we want to know right away. Now, just discuss if that isn't a move. I mean we've got Federal Reserve, we've got F.D.I.C., we've got the Comptroller. Now here's another agency that has half the story. Because they have half the story.
- Hanes: Of course, if they're doing what Tom Smith says they're doing, it seems to me perfectly apparent that it's the case and they're issuing false statements to the public right straight along.

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- Smith: I don't think there's any question about it, John.
- Hanes: The S.E.C. in that case, if that is the case, why, they'd have to move, wouldn't have any choice in the matter, and I think it's quite apparent that it's time for them to move. Should move - time was three months ago.
- Smith: Isn't the loaning bill in effect?
- Hanes: Yes.
- Smith: See, they've hired brokers; I know there's a young man in St. Louis selling Bank of America stock.
- H.M.Jr: Bank of America or Trans-America?
- Hanes: Trans-America, I guess.
- Smith: No, Bank of America. See, they declared this dividend; Trans-America declared a liquidating dividend of Bank of America stock and they're making a market for that stock by hiring brokers over the country to merchandise it.
- H.M.Jr: Bank of America.
- Smith: Yes, it's Bank of America stock.
- Hanes: Hasn't been registered, either.
- Smith: I don't know about that, but that's going on, and the statements they're making - that's the reason they're so anxious about this dividend; and they show their earnings increasing; they've increased their dividends and you think you're going into something where a situation is improving.
- Oliphant: I think they're unloading.
- H.M.Jr: Well, I can't put it too strongly to Bill Douglas that they ought to move just as rapidly as possible, and that they just are subject to criticism for not taking any action. And Mr. Jefty O'Connor is - that he's let this thing go on during the last five years and has done nothing.
- Smith: Mr. Secretary, for instance, one thing in the bank statement....

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Oliphant: I agree with you, they ought to move over there at once.

Hanes: Just by way of asking a question, by way of procedure, do you want me to go over there and present it in person to those people, or should we notify them what we're doing, tell them what's happening here in the last 24 hours, state it is the opinion of the Secretary of the Treasury that, having seen the report - you've seen the report which they gave you a copy of or sent a copy here about three months ago - having seen a copy of the report and having come to a conclusion that the things Tom Smith says are true, we want the S.E.C. to move in?

H.M.Jr: I think - I'm just thinking out loud - my thought was this: that if you call up Douglas and simply say that the Secretary of the Treasury is very much disturbed - I think you really ought to go see him - over the Bank of America situation. S.E.C. was kind enough to let me read several months ago the report which they had on Trans-America; now this is a matter which is so highly interlaced that you can't - you don't know, one minute you're talking Bank of America, the next minute it's Trans-America; it's all Giannini. The further we go in, the worse it looks. Now, I think it is always better to put your cards on the table in view of what we did yesterday and in view of the effect that that may or may not have.

Oliphant: Further action we have under consideration.

H.M.Jr: The protection of the reputation of the S.E.C. as a regulatory body. We believe that they better stop fooling around and make up their minds what they're going to do about it; that they've had this thing long enough, they ought to act.

Hanes: Tom, did you say that Trans-America declared a dividend of all the Bank of America stock they owned?

Smith: No, but a substantial part of it.

Hanes: Still a substantial holder.

H.M.Jr: Didn't they declare 49

Smith: 48 - either declared 48 or kept 48, I

Gaston: I think it was that - kept 48.

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Smith: Kept 48.

H.M.Jr: They declared enough so just not to come under the Federal Reserve. There's some Act - just declared enough.

Smith: Cut their holdings down to 48 percent.

Gaston: Minority interest.

Smith: Which is a control, just as good as 53.

H.M.Jr: Now do you agree with me as to what Hanes - and I'd tell Douglas everything.

Oliphant: Perfectly. Yes, I would just get Douglas right in on it.

Hanes: Douglas is away on his vacation. All right to talk with Healy, Frank and Matthews?

H.M.Jr: None of them are Californians, are they?

Hanes: No.

H.M.Jr: Yes, I'd tell them. I feel that I don't want to hold anything back. Now let me ask you, is that clear?

Hanes: Yes.

H.M.Jr: And you check.

Hanes: I'll do that as soon as I can get them on the phone.

H.M.Jr: Anybody disagree on that as the next move?

Now Herman, let me ask you - as you go through this thing and study it, I want you to be prepared, if possible, for somebody making charges as to criminal neglect on the part of the Comptroller's office; not that we would, but supposing somebody else raises that. Just have that in the back of your mind, see? Has there been criminal neglect, undue influence?

Oliphant: I'll get that.

H.M.Jr: What?

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Oliphant: I know what you mean.

H.M.Jr: Well, I just want to be ready, to know how to answer that, if such a charge should be made. What?

Oliphant: (Nods yes)

H.M.Jr: And then one other thing. What, if any, responsibility has F.D.I.C.?

Oliphant: My impression is they have none; but their banks - they do examine them.

Smith: No connection with it at all. I think under the law they have certain rights. I don't know what they are.

H.M.Jr: Now another thing. Jones is lunching with me today. Is there any reason why I should inform him of this? He has no preferred stock interest. He is not in any way interested.

Oliphant: I'd like to know what he knows.

H.M.Jr: What?

Oliphant: I'd just like to know what he knows.

H.M.Jr: What did you (Klotz) say? Did you say something.

Klotz: I just said "No."

H.M.Jr: Everybody I've asked has said "No" so far.

Oliphant: Well, I'd say "No" but I'd like to know what he knows.

Smith: You mean about Bank of America?

Oliphant: About that whole situation.

H.M.Jr: Well now, my hunch is to tell him, but I

Gaston: I agree with you.

H.M.Jr: What?

Gaston: I agree with you.

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- H.M.Jr: My hunch is to tell him.
- Gaston: Particularly in view of the fact that something is going to get noised around. Mike Flynn is a pretty good snooper. He came in this morning and asked me if this change in regard to the lawyers in the Comptroller's office was caused by the situation with respect to the Bank of America.
- H.M.Jr: My hunch is - I've found Jesse Jones
- Oliphant: And Diggs himself didn't know it until one minute after I talked to you this morning.
- H.M.Jr: Pardon me?
- Oliphant: Diggs himself didn't know it until one minute after I talked to you this morning.
- H.M.Jr: Well, my hunch is - I've found when you let Jesse be on the inside, he knows he's in on the inside from the beginning, he'll be your friend.
- Smith: Well, his practical - his conclusions and his reactions from a practical standpoint are always good too.
- Oliphant: Well, there's another reason. The situation might turn out - develop very badly so that a whole - it might develop into an emergency situation.
- H.M.Jr: And you might have to ask Jesse over night to put in 50 million dollars cash.
- Oliphant: And to put a tip-top man in charge out there.
- H.M.Jr: And as Secretary of the Treasury I'd have to ask Mr. Jesse Jones to subscribe to that stock.
- Oliphant: And he'd have to put a man out there.
- H.M.Jr: Now, two things. I've asked Tom Smith and asked everybody else in the room to think of a very strong fellow that I can recommend for the office of the Comptroller. You (Hanes) be thinking about that too, see? And the other thing, who could we put in to take charge of Bank of America?
- Smith: The man you recommend for Comptroller will have to be

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a lawyer. You can't get a good banker. See, there's a two-year limitation on it after they get out of the office.

H.M.Jr: Can you get a good lawyer?

Smith: You can.

Hanes: Is that a two-year limitation by law?

Smith: Yes.

H.M.Jr: What about this young fellow that Eddie's boosting all the time over at Maryland Casualty?

Oliphant: Very much worth considering.

Smith: Who's that?

Oliphant: Used to be in the Treasury.

H.M.Jr: And handled R.F.C. stock here for Jesse Jones.

Oliphant: And he helped organize the Alcohol Administration.

H.M.Jr: You (Klotz) know him; he's such a nice-looking fellow.

Gaston: Father's an old newspaperman with the Baltimore Sun.

H.M.Jr: His wife has a baby.

Gaston: In the Who's Who telescope.

Hanes: His name is Eddie, you say?

Oliphant: No.

H.M.Jr: Well, that fellow for Comptroller? What?

Oliphant: Awful good man.

H.M.Jr: Now, you think - think of some fellow - can you put a National Bank President from one bank over into San Francisco for a little while?

Oliphant: (Returning after brief absence) I knew his name all the time.

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H.M.Jr: What's his name?

Oliphant: Edward Lowery.

Gaston: Ed Lowery.

Smith: This thing is the biggest proposition in America. It's larger, much larger than the Continental job was in Chicago, and it's no temporary matter at all; it's a proposition of years.

Oliphant: Financial statesmen.

Smith: There's \$50,000,000 worth of real estate in their structure in there.....

H.M.Jr: Well, think about it.

Smith:that must be gotten rid of, and it's a permanent organization. I think undoubtedly you'll face the situation of putting more money in; they'll need it now.

Oliphant: It's a wonderful idea.

H.M.Jr: Ed Lowery for Comptroller of the Currency. It's wonderful the way Mrs. Klotz thought of that.

Klotz: I don't know if I agree with you.

H.M.Jr: All right, gents, I'll see you at 2:15.
God bless you, Tom; stick around.

September 14, 1938

My dear Mr. Ransom:

I beg to acknowledge receipt of your letter of September 13th, which was received in my office on September 14th at 10:34 a.m. I hasten to reply to the same.

There evidently is some confusion in your office and in the office of the Federal Reserve Bank of San Francisco as to this matter. The exact situation is fully set out in a letter which I have just had from Mr. Folger, a photostatic copy of which is attached hereto.

If the Board of Governors of the Federal Reserve System in Washington are desirous of seeing a copy of the most recent report on the Bank of America, I am sure that the Comptroller of the Currency would be glad to loan you his own copy.

Sincerely yours,

Hon. Ransald Ransom,
Board of Governors,
Federal Reserve System,
Washington, D. C.

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TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY

WASHINGTON

ADDRESS REPLY TO
COMPTROLLER OF THE CURRENCY"

September 14, 1938

Dear Mr. Secretary:

With respect to the attached letter from Mr. Ranson, Vice Chairman of the Board of Governors of the Federal Reserve System, addressed to you under date of September 13, upon investigation I find that a copy of the last report of examination of the Bank of America, National Trust and Savings Association, San Francisco, California, on file in this office, was furnished to the Federal Reserve Bank of San Francisco and received by the bank on April 25, 1938.

The above statement was confirmed by National Bank Examiner L. H. Sedlacek by reference to his office files and a telephone conversation with Mr. Clerk, First Vice President of the Federal Reserve Bank of San Francisco.

The last report of examination in this office and the one in question was started August 31, 1937 and completed April 20, 1938.

The Federal Reserve Bank in San Francisco advised the examiner today that they thought Mr. Ranson was referring to the new report now in process of completion.

The reports of examination of all national banks are available to the Board of Governors here in Washington and are loaned to them upon their request. I find that the report of the preceding examination of the Bank of America, National Trust and Savings Association, begun April 20, 1937 and completed August 17, 1937, containing a criticism of the A. O. Stewart indebtedness, was called for by the Federal Reserve staff in Washington and loaned to them on March 5, 1938.

Respectfully,

W. P. Folger
W. P. Folger
Chief National Bank Examiner

Honorable Henry Morgenthau, Jr.
Secretary of the Treasury



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First draft
dictated by WSH

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I think that Mr. Folger's letter makes it perfectly plain that the Federal Reserve Bank of San Francisco has been furnished promptly with the most recent information available.

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Federal Reserve System,
Washington, D. C.

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Board of Governors,
Federal Reserve System,
Washington, D. C.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 14, 1958



My dear Mr. Secretary:

I am just in receipt of yours of the 14th, replying to mine of the 13th, regarding the last report of examination of the Bank of America National Trust and Savings Association, San Francisco, California, with which is enclosed a photostatic copy of a letter from Mr. Folger, Chief National Bank Examiner, under the same date.

You are correct in thinking that some confusion arose in the conversations I had on yesterday afternoon and again today before receipt of your letter with President Day of the Federal Reserve Bank of San Francisco. I had understood the date of April 20, 1958 mentioned on yesterday to indicate the date the examination started, rather than the date on which it was completed. They do have that examination report in their files and so advised me, but as the President of the Bank had been informed by the examiner for the Comptroller of the Currency that an examination was just being completed, which he understood would have an April, 1958 date, both of us thought that this examination was the latest one available to the Treasury Department, and a copy of that has not yet been furnished the Bank.

I have this afternoon by telephone requested the Bank to send me all portions of the August 31, 1957-April 20, 1958 report necessary to disclose the condition of the Association.

Sincerely,

Ronald Hanson
Ronald Hanson,
Vice Chairman.

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

By Hand

September 14, 1938.

M E M O R A N D U M

Re: Bank of America situation.

I had lunch with Mr. Farley and told him about the situation in the Bank of America in the greatest of confidence and asked him if he would act as a buffer against any political pressure on me. He assured me that he would, that this is too big; he assured me he would take care of any political pressure.

H.M.Jr.

RE BANK OF AMERICA SITUATION

September 14, 1938.
2:20 p.m.

Present: Mr. Hanes
Mr. Oliphant
Mrs Klotz
Mr. Gaston
Mr. Tom K. Smith
Mr. Diggs
Mr. Folger

H.M.Jr: While we're waiting, just make a record of this: that I had lunch with Mr. Farley and told him about the situation in the Bank of America in the greatest of confidence and asked him if he would act as a buffer against any political pressure on me. He assured me that he would, that this is too big; he assured me he would take care of any political pressure.

Hanes: I went over and had a meeting with S.E.C.

H.M.Jr: Do you mind just a second, until we finish? Do you mind?

Hanes: No.

H.M.Jr: (On phone) Miss Chauncey with pencil and paper, please.

Folger: This is the letter in reply to Mr. Ransom's.

H.M.Jr: Now, have you all seen Mr. Ransom's letter to me?

Oliphant: I have.

H.M.Jr: "With respect to the attached letter from Mr. Ransom, Vice Chairman of the Board of Governors of the Federal Reserve System, addressed to you under date of September 13, upon investigation I find that a copy of the last report of examination of the Bank of America, National Trust and Savings Association, San Francisco, California, on file in this office, was furnished to the Federal Reserve Bank of San Francisco and received by the bank on April 25, 1938.

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-2-

"The last report of examination in this office and the one in question was started August 31, 1937 and completed April 20, 1938.

"The Federal Reserve Bank in San Francisco advised the examiner today that they thought Mr. Ransom was referring to the new report now in process of completion."

Folger: Of which, of course, we hadn't received a copy.

W. J. Jr: I see. (Miss Chauncey comes in)

"The reports of examination of all national banks are available to the Board of Governors here in Washington and are loaned to them upon their request. I find that the report of the preceding examination of the Bank of America, National Trust and Savings Association, begun April 20, 1937 and completed August 17, 1937, containing a criticism of the A. O. Stewart indebtedness, was called for by the Federal Reserve staff in Washington and loaned to them on March 5, 1938."

You (Chauncey) write this letter to Mr. Ronald Ransom:

"My dear Mr. Ransom:

"I beg to acknowledge receipt of your letter of September 13, which was received in my office on September 14 at 10:34. I hasten to reply to the same.

"There evidently is some confusion in your office and in the office of the Federal Reserve Bank of San Francisco as to just what the most recent report of the Office of the Comptroller of the Currency is in regard to the Bank of America. For your information, the most recent report was started on 8-31-37 and was completed on 4-29-38. You will note on the photostatic copy of the letter from Mr. Folger attached herewith that the Federal Reserve Bank in San Francisco was furnished with the most recent report of the Comptroller on April 25, 1938. I think that Mr. Folger's letter makes it perfectly plain that the Federal Reserve Bank

-3-

of San Francisco has been furnished promptly with the most recent information available.

"If the Board of Governors of the Federal Reserve Bank of Washington are desirous of seeing a copy of the most recent report of the Bank of America, I am sure that the Comptroller of the Currency will be glad to loan you his own copy." All right?

Well, she'll write it all up and you (Oliphant) and Tom can smooth it up. But I'd like to have it done right away.

- Oliphant: I'd like to make a suggestion, and merely write your first sentence and say, "I think you will find this whole matter is covered by the attached memorandum."
- H.M.Jr: O.K., she'll type it and take it back to Mr. Smith and Mr. Oliphant. And before it goes let the Comptroller take a look at it also, see, and I'll sign it. But that clears our skirts on that matter.
- Folger: I find that they called for this report this morning that we've been using.
- H.M.Jr: Who called for it?
- Smith: Federal Reserve Bank did - Board.
- Folger: No, the Federal Reserve Board.
- H.M.Jr: Have you got only one copy?
- Folger: Only one copy here.
- Smith: Well, we can give it to them in a couple hours.
- Oliphant: How long would it take to photostat it?
- Folger: Long time.
- Smith: Until we can get ours, we can't do it.
- Oliphant: We're going to need more than one copy of that before we're through with it. Just as well....
- H.M.Jr: Got a big machine downstairs. Well, you fellows work out those details.

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Folger: You'll have another copy, Mr. Oliphant, tomorrow.

Oliphant: Of this one?

Smith: No, the later report.

Oliphant: I mean we'll want this too.

H.M.Jr: See, when he gets this letter and he wants to call up and he wants a copy, why, tell him that - "Send somebody over here and"

Oliphant: If you don't mind, I'd like to suggest that you have this photostated and respond to that request for that copy the earliest moment you can; have that photostated at once.

H.M.Jr: We got a big photostat room downstairs.

Gaston: It's a big job but they can finish it before morning.

H.M.Jr: Anything new, have you heard anything from San Francisco?

Diggs: No word as yet.

Smith: Except that the Examiner is en route.

Diggs: I talked to Mr. Palmer. He was going to see some of the Bank of America people there this morning and as soon as he saw them he was going to call me.

H.M.Jr: But he hasn't done it.

Diggs: But he hasn't called as yet.

H.M.Jr: All right. Well, if you hear, will you let us know?

Diggs: I will.

H.M.Jr: Thanks.

Smith: Gus, I'll be up to your office in just a minute. I want to ask you one or two things before I give this back to you.

Folger: Excuse me just a minute. Do you want to keep this copy?

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Smita: I think it would be a good idea, yes.

Hanes: If it is about that report, I want to talk for a minute too, because the S.E.C. - the only way they've got any ground for procedure here at all is to attack the Trans-America on the basis of giving false information, and the S.E.C. have asked me to ask you if you would let them have a look at that bank statement, which would provide them with the necessary information about falsifying their own balance sheet in Form 10-K, 11 and 11-K.

H.M.Jr: Mr. Counsel?

Oliphant: Yes.

H.M.Jr: What?

Oliphant: I'll tell him pretty soon. I just want to reread the statute pretty soon.

H.M.Jr: All right, Mr. Counsel will inform you pretty soon.

Hanes: They can proceed and want to proceed.

H.M.Jr: Why the hell haven't they? Excuse me.

Klotz: Perfectly all right.

Hanes: They haven't had this information. Done everything they - stopped them every way they can.

H.M.Jr: Don't let's kid - why haven't they asked us?

Hanes: That is another thing. I can't answer that. They haven't asked, and they haven't had any of this information that's available in this report on which to proceed, and their statute doesn't permit them to proceed against the bank in any case, but against the Trans-America Company, which owns stock in the bank.

H.M.Jr: But haven't they got enough information exclusive of this?

Hanes: Not enough to do anything with at all - I mean insofar as that statute is concerned. They think the thing is

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bad. And it all came about through their investigation of the investment trust study, you know.

- H.M.Jr: But how about if they're selling - how about listing of Trans-America on the New York Stock Exchange?
- Hanes: Well, that's where they can attack them now. If they've got false information, been supplying the New York Stock Exchange with false information, they can proceed with the delisting of Trans-America on the New York Stock Exchange.
- H.M.Jr: I'm reasonably confident that after Mr. Oliphant has looked at the crystal he's going to rule that a photostatic copy will be furnished them. See?
- Oliphant: There was something else you were confident of the other morning. It didn't turn out that way. When you called me
- H.M.Jr: What's that? When I called you about what?
- Oliphant: Let's skip it.
- Hanes: If you can stretch your imagination enough to give them a copy of this report, it will be very helpful.
- H.M.Jr: Just goes back, turns on a soft light, looks at the crystal.
- Oliphant: Sort of a blank look comes over my face - dumb look.
- H.M.Jr: And then suddenly a smile over that countenance, and he says "Yes."
- Oliphant: And he doesn't say "No."
- H.M.Jr: Yes.
- Oliphant: I'd like to see - I don't think I saw at the time that report that came over from the S.E.C. Do you have it?
- H.M.Jr: No, they have it.
- Hanes: They are under the impression - I'll tell you this, that they are under the impression that you've got that report and they are also under the impression

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that it was somebody in the Treasury office somewhere, either in the Comptroller or the Treasury, that didn't want that thing to go any further and stopped it.

- H.A.Jr: Don't they keep any minutes?
- Hanes: They said - were you present at a meeting that they had over here at which Bill Douglas and Jesse Jones ...
- Oliphant: Jeffy O'Connor, Leo Crowley
- Hanes: Leo Crowley.
- Oliphant: Around that table. And Leo went over there and shed a tear. That didn't have to do with this.
- H.A.Jr: Well, fortunately, we always have a meeting.
- Hanes: They had a meeting there, and the opinion of those Commissioners over there was that somebody... And I said, "It was not the Secretary." They said they were not sure whether it was the Secretary's office or whether it was the Comptroller of the Currency, but somebody - they got the distinct impression that somebody here said, "Let it alone."
- H.A.Jr: I tell you (Klotz) what you do. Get the report on the Trans-America - Upham might have it - and then look up the minutes on any meeting that I sat in on with Mr. Douglas.
- Klotz: On Trans-America.
- H.A.Jr: Very few that he was here.
- Klotz: Very few that he was here, altogether.
- H.A.Jr: Read through it and see if there was anything. As I remember - thank heavens we have these minutes and not have to trust to memory - I was very keen.
- Oliphant: You were, and that was the whole atmosphere of the meeting.
- Hanes: They weren't sure whether it was the Comptroller's office.
- H.A.Jr: My recollection is that they said they had to wait

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for some additional information, so forth and so on. I called them over here to press this thing.

Klotz: We'll get the minutes.

H.M.Jr: But it would be interesting if it was the Comptroller's office. We'll get what we have.

Klotz: I've got everything. We keep all these things separate.

Hanes: Another thing I found out is that they sent Jesse a copy of this same report which they sent to you; they sent also one to Marriner, of Federal Reserve.

H.M.Jr: Well, my recollection is that - we'll check it against the stenographic notes - that I was pressing very, very hard.

Oliphant: There's just no question about that. The reference - they're referring to something that happened after that.

H.M.Jr: Don't they keep any records?

Hanes: They keep records, but they wouldn't have a stenographic report of this if Bill Douglas was at the meeting. And I think Dave Schenker - was Dave Schenker ever here with you? Did he ever come in to one of these meetings?

Oliphant: Once somebody - somebody was with Bill that day.

Hanes: Somebody came with him from Dave Schenker's office.

Oliphant: Where is Bill at the moment?

Hanes: Bill is on vacation. He's on his vacation.

H.M.Jr: Well now, if Mr. Oliphant decides that they can have it, then when we have this photostat the next move on our part is to give them a copy of the Comptroller's report.

Hanes: Right. And they have assigned already two men to go to work, and they'll keep at it with the two men that have already worked on the Trans-America situation.

H.M.Jr: Well, I'd like you to read this report. I think you'll

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find that they told us they'd have to have additional information, so forth and so on, and they would let us hear. We never heard.

Debes: I think we ought to run that down.

B.M.Jr: I think so too.

Oliphant: You get a copy of that report; I want a chance to read it. I want to sketch in the rest of my background on it. Is that all right?

B.M.Jr: That's all right, sure.

Now, you (Smith) may or may not want to answer this. Be very frank. Jeff Coolidge is coming to town tomorrow on some business, I don't know what, and he wants to see me. He's got an appointment at 11 o'clock that he made last week. Would it be helpful to you or would it not be if I asked him to stay and sit in on this thing? Be very frank. I mean I don't want to do anything that's going to cramp your style.

Smith: well, I'd rather have a man - if you're going to have somebody, I'd rather have a man with broader banking experience. Jeff's experience runs toward the trust work.

B.M.Jr: All right, well then, he's out. Do you need anybody else? I don't - I'm satisfied. Do you want anybody else to divide this responsibility with?

Smith: I haven't thought so yet.

B.M.Jr: All right, that's all that's necessary.

Smith: If I do I'll speak. I want to ask you this while you're on the subject. Does Crowley know what's going on - Mr. Crowley know what's going on?

Oliphant: I want to report this.

B.M.Jr: He did up till last night.

Oliphant: Crowley called me when I was out to lunch. When I got back I took the call. He said he'd seen this

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on the ticker, again spoke about cooperation and the necessity of our all standing together, and pointing out that a couple of the people in his research department had some material on it. And I told him that my guess was that you'd want that; if he had any material, to send it over to my office.

H.M.Jr: All right.

Smith: Does he know I'm here?

H.M.Jr: Does he?

Oliphant: I told him.

Smith: Is it all right for me to talk to Leo about it?

H.M.Jr: Sure.

Smith: I think it's much better. That's why I brought it up.

Oliphant: That's what I told him.

H.M.Jr: And you'd be surprised how broad that is.

Smith: Well, I think there's a great deal in cooperation, and I want to

H.M.Jr: I started that way yesterday, but the reason I didn't call Leo today - I didn't know what I had to tell him, and I thought that I would wait until my General Counsel brought me in a report tomorrow as to what the next move would be, and then after we decided this was my program I would then send for Mr. Crowley and "Judge" Ransom and tell them what we were going to do. But I was going to wait until tomorrow.

Oliphant: Well, I may have spoken out of turn.

H.M.Jr: No, it's all right, it's all right. After you fellows do this thing, then I thought if you came to a decision and we all agreed what we were going to do, tomorrow - I thought tomorrow afternoon I'd ask these two boys to come over here - "Now gentlemen, this is what we're going to do. We want your cooperation."

Oliphant: If he has any stuff, I want Tom to have it.

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H.M.Jr: That's all right.

Smith: We were going to start right away to prepare these additional warnings.

H.M.Jr: Fine.

Smith: But we'll have to hold that up. But Sedlacek will be here in the morning and he can help us a great deal on it.

H.M.Jr: Well, you handle it as promptly as you can under the circumstances.

Smith: All right, we'll do that. Did you tell Jones about it?

H.M.Jr: No, he's coming at four.

Smith: If I could see him I'd be free

H.M.Jr: You want one copy for the Federal Reserve, you want an extra copy for ourselves, one copy for S.E.C.

Oliphant: (Shakes head)

H.M.Jr: Say listen, if I can show it to him (Smith), I can show it to Bill Douglas.

Oliphant: I'm confident you can, but I

H.M.Jr: You just want to be a little "uppety-up."

Oliphant: I want to create the appearance of earning my salary.

RE BANK OF AMERICA SITUATION

September 15, 1938.
4:00 p.m.

Present: Mr. Hanes
Mr. Tom K. Smith
Mrs. Klotz
Mr. Gaston
Mr. Oliphant
Mr. Foley
Mr. Diggs
Mr. Folger
Mr. Jesse Jones
Mr. Husbands (RFC)
Mr. Ransom
Mr. Crowley
Mr. Robert E. Healy, SEC

H.M.Jr: Well, the reason that I asked you gentlemen to come over - first place, I don't know anything more confidential or more difficult that I've had to deal with since I've been here, as far as the domestic situation goes. And I think you're all familiar more or less with the facts: that on the 13th the Comptroller sent a telegram to the Bank of America asking them not to pay a dividend, and they disregarded it and declared one.

Now, the reason that I'm asking you people here: as Secretary of the Treasury, I intend to keep you advised of what the Treasury is doing and, as far as I know, what the Comptroller of the Currency is doing. And inasmuch as all of you have some responsibility in this, I'm asking for your cooperation and your advice and your backing, because I realize that I'm taking on a very difficult fight and one which is aggravated because it's been permitted to grow during the last five years. Should have been handled long ago. And this examination of the bank, Folger, was completed last June, wasn't it? There was one completed last June; was that the one - June?

Folger: Last April.

H.M.Jr: Last April.

Folger: April 20, yes, sir.

H.M.Jr: And copies of that are or will be in the hands of the Federal Reserve

(Robert E. Healy, S.E.C., comes in)

Healy: I'm sorry to be late.

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H.W.Jr: That's all right. Do you know everybody?

Dealy: I think so, thank you.

H.W.Jr: Well, I'll just go over briefly - I was saying that everybody in this room either has or will have some responsibility in connection with both the Bank of America and the Anglo-California Bank. I want the help and advice and assistance of everybody in one of the most difficult situations I have ever had to cope with. And I say it's aggravated because it's been permitted to grow during the last five years.

The report of the Comptroller of the Currency which was completed April ...

Folger: The last one of the Comptroller, the one which we are just getting in now

H.W.Jr: There was one.

Folger: That's April 20.

H.W.Jr: April 20. And the Federal Reserve has been furnished - has a copy of that.

Wansom: We were furnished with a copy of the one which was completed on April 28 of this year; that is, the San Francisco bank was and at my request they have sent it to me by air mail. The confusion was, as I explained to you by letter, due to my own thought that April meant the beginning date, not the ending date.

H.W.Jr: And you've (Crowley) got a copy of that report.

Crowley: That's right.

H.W.Jr: Yes. And after talking it over with my counsel, we're ready to make that report available to S.E.C. in Mr. Hanes' office, if you will send somebody over.

Dealy: All right, thank you.

H.W.Jr: We figure that that's a better way to do it possibly, see?

Now last night the first part of the most recent report on the Bank of America was flown in here. It's being

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photostated today or tonight.

Folger: Today.

H.M.Jr: Today. And that also will be made available to the Federal Reserve Board in Washington and to the Chairman of the S.E.C. - and that report will also be available in Hanes' office to a representative of the S.E.C.

Now the report on the most recent examination of the Anglo-California Bank was signed last night, I believe.

Diggs: (Nods yes)

H.M.Jr: And it's being photostated.

Folger: It will be photostated tonight.

H.M.Jr: Tonight. And will be made available in the same way.

Now, the most unfortunate information that I have received, information which has disturbed me the most - I've been asking two or three times in the last few days, when would the Anglo-California Bank have a directors' meeting, and I've been unable to find out from the Acting Comptroller when they would have one; and, talking on the phone to Mr. Upham a few minutes ago, Mr. Upham advised me that they had one on the 13th of this month, the same time that the Bank of America did, and that they declared a dividend.

Folger: I didn't know they were meeting, Mr. Secretary, but may I say that that dividend is three-fourths of one percent.

H.M.Jr: I don't care whether it's three-fourths of a thousand percent; we could have sent exactly the same telegram on the same day to both institutions and kept all of us from being subject to criticism that both of these institutions held directors' meetings on the same day, and one we sent a telegram to telling them not to declare, and the other one we do nothing about. And you've got Mr. Prentiss here, your Chief Bank Examiner, and I should think that somebody would know when a bank that's in as bad shape as the Anglo-California is - when they're going to have a directors' meeting. I can't understand, Mr. Comptroller, why you didn't know

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it. I've asked now at least two or three times in the last few days. So - I don't know what we're going to do.

Diggs: Mr. Secretary, I don't recall your having asked me about when the Anglo was going to have it except on the morning of the 13th.

H.M.Jr: Well, I can look up my records. Well, if I asked on the morning of the 13th, this is the afternoon of the 15th and I haven't got an answer yet. I get it from Mr. Upham. If I had had any answer up till three o'clock or four o'clock on the 13th, we could have still sent a telegram.

Now Mr. Oliphant, would you sketch to these gentlemen the procedure that we're taking now in regard to the Bank of America, what we're doing?

Oliphant: Well, what we did do, as you know, was, acting under Section 30, we served by means of a telegram read to the Board of the Bank of America, the warning specified in Section 30 that payment of any dividend, in view of the condition briefly described in that telegram, would be an unsound or unsafe banking practice.

Jones: Have you got that Section 30 handy? As I remember, it's rather short.

Oliphant: I can send for it. I'll just ask Kieley to.

H.M.Jr: Wait a minute, I'll have Kieley come in.

Ransom: Might I ask, Mr. Secretary - Mr. Oliphant said the "payment" of a dividend. I don't recall the exact language of that telegram. Did it refer to a declaration of a dividend or the payment of a dividend?

Oliphant: "The payment of any dividend."

Ransom: Yes.

Oliphant: Now the plan under consideration is to go over the current and past reports on the bank and take out all of those acts and practices on the part of the bank management which have been subject to criticism on the part of the Comptroller's office, and supplement

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that wire sent on the 13th with further warning that each - that the continuation of each of these practices, whatever they are - 10, 20, 30, 40 - would be an unsafe and unsound banking practice, and that unless they were discontinued we would proceed as provided under Section 30 for laying the matter before the Governors of the Federal System for their consideration looking to an ouster of the officers.

Ransom: Looking to what, Mr. Oliphant?

Oliphant: Ouster of the officers.

Jones: What do you proceed - have you said so far what your procedure is if you wanted to get rid of the fellow?

Oliphant: Well ...

Jones: First ask for his resignation?

Oliphant: There's been two cases under that Section. As was pointed out the other day, there is still some doubt about the respective responsibilities of the office of the Comptroller on the one hand and the Board of Governors of the Federal Reserve System on the other hand. Those ambiguities, I take it, could be eliminated by mutual agreement between the departments. It would be the ordinary procedure, Jesse, of taking these 20 or 30 things, whatever they were, that they didn't quit doing, and make them the subject of complaint and lay it before the Governors of the Federal Reserve System for examination, hearing and decision.

Jones: Then you'll act through the Federal Reserve - Board of Governors.

Ransom: In effect, Mr. Jones, it, as I see it, resolves itself into a trial of the issues which are made by the complaint.

H.M.Jr: And inasmuch as that Federal Reserve

(Foley comes in)

... - inasmuch as the Federal Reserve of San Francisco

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have a great deal of responsibility, I've brought to the Federal Reserve Board's attention through Mr. Ransom the fact that Mr. A. O. Stewart owes a great deal of money to the Bank of America, roughly - personally he owes some five million dollars, and he's guaranteed notes to about the extent of three million dollars. And this most recent report, Judge Healy, it shows that his collateral has increased from 28,000 shares of Trans-America to some 32,000 shares of Trans-America.

- Ransom: Might I be permitted, Mr. Secretary, again for the benefit of those gentlemen who were not at our previous meeting, to call their attention to the fact that, so far as the Chairman of the Board of the Federal Reserve Bank of San Francisco is concerned, I do not know what connection he would have with a proceeding under Section 30, that being the direct responsibility of the Board of Governors of the Federal Reserve System. And outside of the question of his relationship to the bank as a large debtor, I do not see the connection between Mr. Stewart and the proceeding which is proposed.
- H.M.Jr: Well, let's put it another way. I don't want a Federal Reserve Bank to be my fiscal agent where the Chairman of the Board owes over eight million dollars.
- Ransom: That's a collateral question and one which, of course, merits the most serious consideration.
- H.M.Jr: Well, I'll just put it entirely on that basis. I don't want a Federal Reserve Bank to act as fiscal agent for the United States Treasury where the Chairman of that Board - bank owes over eight million dollars. I'll put it on that basis.
- Ransom: That's a different basis, and that's a different question.
- H.M.Jr: All right. And every day that he is Chairman and every day that they are our fiscal agents makes me that much more uncomfortable. And of course, as you know, I don't have to use any Federal Reserve Bank as my fiscal agent. But I want to say that this is all most confidential; but I don't know anything more disturbing domestically than this situation, and to

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have a man like A. O. Stewart, owing what he does, as President of that bank - well, I just - I don't want to set any time limit, but certainly I expect the Board here to act within - as promptly as reasonable. And I don't know whether I should formally bring this to your attention or not, or that I am - but I for a moment - we did talk about it the other day and I am talking about it again. And the reason I am talking about it again - that when this report came in, the first things I asked for: Has A. O. Stewart changed his position any? - and his position is practically the same with the exception that he's increased his Trans-America holdings.

Now, to get back to the other situation, the normal thing would be that if you people held a so-called trial it would be held in San Francisco.

WILSON: Yes, but, Mr. Secretary, it would not be held by the Federal Reserve Bank of San Francisco, but by the Board of Governors of the Federal Reserve System. I just want to disassociate those two issues. They're two, as I see it, entirely separate issues, and I am fully aware of the importance of the Stewart issue which you have raised. I am not trying to minimize the importance of that at all.

OLIPHANT: Well, are they separate if Stewart is involved in one of the unsound banking practices that's going to be the subject of trial? I'm trying to clear my own mind. Suppose he is the principal unsound banking practice that is going to be on trial.

WILSON: Let's say, Mr. Oliphant, that one of the charges made of unsound banking was the extension of this line of credit to Mr. Stewart. That would be heard by the Board on its merits. Now, as to what would be the proper procedure, both on Mr. Stewart's part and ours, if such a charge was made, that again I admit presents a difficult problem which the Board would certainly consider. But I think that this issue could be tried and would have to be tried if the Comptroller's office makes that as part of the issue for our consideration. But I do not see that Mr. Stewart has any part or parcel whatever in the procedure which we would have to conduct under a complaint filed by the Comptroller's office.

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- Oliphant: Well, would we be competent to call him as a witness, as the other end of the deal?
- Ransom: I think we would have to call him for a witness, and whether there would be any embarrassment to the System or Mr. Stewart to call him as a witness under those circumstances is a matter which certainly would have board consideration at the proper time.
- Jones: I don't see where Stewart comes into it much. He's a borrower. Of course, he certainly is occupying a peculiar position when he is Chairman of this Federal Reserve Bank and an enormous borrower of this big bank. The fellows you've got to try are the managers of the Bank of America. They're the ones that you've got to try. You've got to file your bill of complaint against them and then you've got to give them a hearing. You've got to say, "Mr. President, Mr. Director, Mr. Officer, come in and show cause why you shouldn't be removed." Isn't that it?
- Ransom: That's correct.
- Jones: Then if they can clear their skirts, if they can trump up a cause, they stay, and if they don't you've got the power of removal.
- Ransom: Mr. Jones, the only point I want to reserve in my discussion of this matter is, I do not know at this time whether Mr. Stewart is able to liquidate his line immediately or transfer it to some other place, or what his credit rating is. I have never had occasion to make any examination as to Mr. Stewart's financial resources. The line is large, but it does not necessarily follow that it cannot be liquidated. If it can't be liquidated, then that raises other collateral questions which are very important for consideration.
- Jones: Yes, I understand; but as a matter of fact, Stewart isn't on trial, it's the bank officers that are on trial.
- Ransom: Not at all.
- Jones: If he borrowed the whole bank, that's just the hard luck of the bank.

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Ransom: The Secretary has turned his comment on Stewart into a different channel of thought which is a very important one.

Jones: Morally it is just as bad as it can be for Stewart to be Chairman of that Board and borrow ten million or five million or three million or one million from that bank unless it is secured by liquid collateral, something that can be paid on a day's notice.

Ransom: Or unless his outside resources are such as to enable him to pay it off. That I do not know. But of course, if the Secretary raises the question that he is not - does not want the Federal Reserve Bank of San Francisco to be acting as his fiscal agent with some particular gentleman as Chairman of the Board, that is a wholly different question from the problem of the Bank of America.

Jones: I think it is very important to ask for him to get out. No doubt about that.

H.M.Jr: Well, I go further. This report has been with the Federal Reserve Bank of San Francisco now for months, and as far as we know the Board of Directors or the President of the Bank or the Chairman of the Bank haven't done anything about Mr. Stewart's indebtedness. And so the whole thing makes me feel just that much more uncertain about the West Coast situation. But - and as I say, it wasn't quite clear in my mind, after these facts are presented to the Federal Reserve Board, how much would fall upon the Federal Reserve Bank of San Francisco.

Ransom: I would answer that by saying nothing whatever would fall upon them in the way of responsibility for procedure or final determination of any of the questions. It couldn't, as I view the law.

H.M.Jr: Well, I didn't realize that.

Now I want to ask you gentlemen's advice. Mr. Bell, will you tell these people how much money the United States Treasury has on deposit with these two banks, and whether we should ask for a breakdown as to the collateral back of it. I don't want to do anything to frighten anybody. And then explain, if we do ask,

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who we ask, all the information, see? Just put it

Bell:

The Bank of America has deposits of public funds that we have a record of in the Treasury of \$37,783,000. This almost agrees with what they had on their statement as of June 30, plus a withdrawal of about \$6,000,000 in Postal Savings. And whether they have any deposits of the semi-governmental organizations such as the Federal Land Banks and Home Loan Banks, why, we have no way of telling without going to those institutions. These are just Treasury records.

Of that 87 million dollars, 72 million 500 thousand represented deposits created as a result of purchase of Government securities on credit; in other words, the War Loan account. And that may increase a little by their purchase of the issue being put out today, but not more than 2½ million, because they are only qualified to receive deposits up to 75 million on that account.

It has \$596,000 to the credit of the Treasurer of the United States and \$880,000 to the credit of other Government officers such as Postmasters and Clerks of Courts.

Now, I haven't the collateral for the 72 million 500 thousand, and if we want that we'd have to get that from the Federal Reserve Bank of San Francisco.

H.M. Jr:

From whom?

Bell:

They keep the records. Federal Reserve Bank of San Francisco.

They do have up as collateral for the 880 thousand and 596 thousand, various issues of Home Owners Loan, Federal Farm Mortgage Corporation, and certain Treasury bonds, amounting to about one million eight. For Postal Savings deposits they have up as security seven million of 2-3/4 percent Treasury bonds of '56-'59, and six million seven of 3 percent Federal Farm Mortgage Corporations bonds, '44-'49. That completes the picture of the Bank of America. And these deposits

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are scattered in the parent bank and some 168 branches, so that they're not all in the main office.

H.M.Jr: But Dan, didn't you tell me that they could put up commercial paper?

Bell: Oh yes; now as to the collateral for the War Loan account - \$72,000,000 deposit. They can put up United States Government securities, Federal Farm Loan and territorial government securities, state bonds, state notes, certain certificates of indebtedness and warrants, municipal securities, railroad, public utility, and industrial securities, National Credit Corporation - those are all out - commercial paper and bankers' acceptances, customers' notes, drafts and bills of exchange, notes, bills payable of a correspondent incorporated bank or trust company, plus the guaranteed obligations that are now issued under recent laws.

H.M.Jr: Now the point that I want to ask advice on: after all, our objective is to do a constructive job; we don't want to frighten anybody unduly. On the other hand, I do want to look after the Treasury's interests. And I realize, according to Mr. Bell, that these deposits are first lien, aren't they?

Bell: Yes, sir.

H.M.Jr: On everything.

Bell: Yes, sir.

H.M.Jr: Should I have Bell send out a telegram asking for a breakdown of this collateral, or shouldn't I?

Jones: I wouldn't do it at this time.

H.M.Jr: You wouldn't. Well, let's go around.

Jones: You have your security, with first lien.

H.M.Jr: First lien.

Olyphant: First lien on what, Dan?

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- Bell: We're a preferred creditor under the old revised statute.
- H.M.Jr: That's first lien on everything.
- Jones: You have security and in addition to that
- H.M.Jr: Let's go around, put it - does anybody think I should? Tom?
- Smith: No, you shouldn't.
- Crowley: I think it would be a great mistake, Mr. Secretary.
- H.M.Jr: Ronald?
- Ransom: I don't see why you should, Mr. Secretary.
- H.M.Jr: You don't think so? Anybody think we should? I just don't - what I said I was going to do - before we make any important move like this I'm going to advise you people, and then in return I want you to extend me the same courtesy and advise me. In other words, I don't want to do anything half-cocked, don't want to do anything to tip our hand. Nobody thinks so. Mr. Oliphant?
- Oliphant: That's - I have to depend upon the judgment of the others - ratio of deposits - our deposits to the total assets.
- Crowley: Mr. Secretary, you're in the preferred position. Now, all of us men sitting around this room have a responsibility to the depositors. Now, the Treasury is in a preferred position. If the Treasury, after moving their preferred position - think of the position that the supervisors are in who are representing the depositors. Now I think to do anything here that would bring this house of cards down on us too rapidly would be a great mistake for the whole country.
- I don't think there is any loss immediately to the depositors of this bank. I think the difficulty is that the trend - and there's something been permitted to continue here for a great many years that should be stopped. But it certainly would be a great mistake for the secured creditor to do anything here that would

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bring down a loss to the unsecured creditor.

- H.M.Jr: I just wanted to know - we've got 87 million dollars, which is a lot of money, which belongs to the people of the country - I just wanted to know whether anybody thinks we should.
- Jones: I don't think it is in any danger.
- H.M.Jr: I'm in a nice position. And if I do ask, I've got to ask Mr. A. O. Stewart, that's who I've got to ask.
- Ransom: No, Mr. Secretary, let me remind you again, you have to ask the President of the Bank, Mr. Day.
- Jones: Is the Chairman the executive officer?
- Ransom: No, he is not.
- Jones: Is he an active officer, or is he an honorary officer?
- Ransom: He's an honorary officer.
- Jones: He presides at the meetings?
- Ransom: That is correct.
- Jones: How long has he been in that Bank?
- Ransom: I think his term expires in December of this year and that he's probably occupied that position for some two years, possibly three. I'm not sure whether he was appointed to fill an unexpired term, or for a full term.
- Jones: Does the Board appoint him?
- Ransom: The Board appoints him. He's a Class C Director, and out of the Class C Directors we designate one as Chairman.
- Jones: You designate him?
- Ransom: Yes, we designate him.
- Olyphant: If the Secretary had any reason at all to believe that

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any of the specifically pledged collateral was improper, he would have no right under his oath to leave his depositors - the deposit of the Government merely to the security of his position as a preferred creditor, because, as I understand it, without having much opportunity to look into it, Congress has specifically provided for double security for Government deposits in the form of this collateral and also in the form of preferred creditor position. So if he has any reason to believe that there is some worthless industrial securities pledged...

Jones: You mean pledged.

Blighant: ...pledged, it would be his duty to see that proper securities are substituted for them, so that those deposits would continue to have the double security provided for in the statute.

Crowley: Well, what do you get, Mr. Bell? Do you get a certified statement from the Federal Reserve Board as trustees for this collateral?

Bell: No.

Ransom: Are you referring to the Bank, Mr. Crowley?

Jones: Well now, do you

Ransom: Pardon me, just a minute. He said you'll get a certified statement from the Federal Reserve Board. Do you mean the Federal Reserve Bank?

Crowley: The Federal Reserve Bank as the trustee.

Ransom: The Bank or the Board? I'm trying to get that.

Crowley: Bank, I mean.

Ransom: O.K.

Crowley: They give you a statement as to the security, is that it?

Bell: Only whenever we call for it.

Jones: Haven't you (Folger) got this thing we're talking about in your last report?

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Folger: I haven't had time to read it.

Jones: I'm sure it's in there. It ought to be in there.

Crowley: Doesn't your report show the collateral and for what purpose? Don't you check that when you've made the examination?

Folger: I expect it's in the report, but I haven't read it.

H.M.Jr: Mr. Bell, will you take a look at that with Mr. Folger and see whether it's there, and would you mind taking the responsibility of satisfying this inquiry, with Mr. Folger's assistance, as to the adequacy of that collateral?

Bell: Well, if John Smith went to the Bank of America and borrowed \$10,000 on a personal note, and if that personal note was endorsed by the Bank of America and pledged as collateral, I could not tell if it were adequate security.

H.M.Jr: Suppose you take a look at it.

Bell: Glad to take a look at it.

H.M.Jr: I'll share the responsibility with you.

Bell: I'll tell you the face value of it.

Jones: You'll probably find it's all Government securities or Government-guaranteed.

Smith: And a big margin.

Jones: And a big margin.

Bell: We rely entirely on the word of the Federal Reserve Banks.

Smith: You see, they've just withdrawn six million dollars. Now the practice is to put up a bunch of securities. Probably they secured the full deposit. They've withdrawn six million. They probably didn't draw down any securities.

Bell: Oh yes, they did-- Postal Savings.

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- Smith: Postal Savings - of course they would on that. But the Federal Reserve as a rule requires a lump sum of securities, practically all Governments, and the chance is very remote that there is any occasion to be concerned about this.
- H.M.Jr: Now Tom, have we had in our shop the report of the Anglo-California Bank long enough to know what we're going to do about that?
- Smith: We were just talking about it when four o'clock arrived.
- H.M.Jr: But we're not ready to say anything.
- Smith: No.
- H.M.Jr: Is the Anglo-California Bank - is that stock dealt in on any listed stock exchange that the S.E.C. would be interested in?
- Healy: I don't - I can't answer definitely. I don't think it is. There's only a very few bank stocks that are listed anywhere in the United States.
- H.M.Jr: So you - S.E.C. wouldn't be interested then, would they?
- Healy: We might have an indirect interest in it because the Trans-America Corporation is a listed security.
- H.M.Jr: No, Anglo-California.
- AMES: Another bank.
- Wagner: This bank has no connection with Trans-America.
- Healy: Yes, I see.
- H.M.Jr: Getting back to the Bank of America and Trans-America, Judge Healy, will you keep the S.E.C. Commission advised as we go ahead, and then I'd appreciate if in turn the S.E.C. would keep me advised what they propose to do in regard to Trans-America.
- Healy: Yes. May I just refer to something that happened in the past?

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H.M. Jr: Please.

Healy: In the first place, we have the Securities and Exchange Act, the one that relates to the exchanges, and the Trans-America is registered under that and files a listing application which is supposed to contain complete financial information; and then they file an annual report. We have found reason to believe that there is some - some manipulation was going on in the market in connection with Bank of America, and we stepped in and we think that we put an end to it, although we're not sure.

At about the same time they decided to register under the Securities Act of 1933, and that registration statement is in the works over there and has not been cleared as yet and is not as yet effective.

Now, under the direction of Congress, we undertook a study of investment trusts and investment companies. We weren't quite sure as to what Trans-America was. We discovered that if we made a complete study of it that we wouldn't complete our investment trust study for several years more, because it was as big a job as the whole investment trust field. And in addition to that we concluded quite early that it wasn't adequate to study the Trans-America Company unless at the same time you could make a study of the banks, and we didn't have authority to study the banks.

But we did send a couple of men out to see what they could find out in two or three months, and they came back and made us a sort of a preliminary report, and without endorsing what the men said, because we didn't know, we made that report available to various Government people in official positions who had an interest in it. It was to us a very disturbing report, and we have had some talk with the men that went out there and they are alarmed about the situation because of these things that reference has been made to; that is, about practices continued for many years.

Now, my guess about it is that if you find that an outfit has done five things that violate the law

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and violate good practice, that when you really get into the very guts of the thing you'll find a good many times five. And the view of the men that I have talked with that are in our place, the fellows who went out there, is that nobody will ever know the real truth about the standing of this system unless there is an examination made whereby all of these companies are examined at approximately the same time.

That is, I think if the time comes - and maybe it's come now; I don't know - when you want to really find out what this outfit has got and what it owes, we could put our investment trust people in on the Trans-America at the same time the Bank Examiners went in on these other companies.

It is entirely possible that it may turn out here as it's turned out in so many cases where people have done things that are actually wrong, that the situation is worse than anybody can discover from a mere examination of reports.

And I don't know when the time comes to consider that, but if it does come, I think the position of the S.E.C. will be that that's the only kind of an examination that could be made here that's worthwhile. Now, you take this Stewart matter. I don't know the full detail of it. But if too large a loan was made to Mr. Stewart, that's one thing. Even if it's too large you can condemn it. But if you get a situation where the Bank of America loaned Mr. Stewart so that Mr. Stewart could buy certain semi-worthless securities from the bank and pledge them back, so that the bank could count a profit that wasn't an honest profit, then you've got quite a different kind of a situation. Now, how many profits of that kind are shown in the surplus and P. and L. statements of these companies, I wouldn't hazard any guess.

Ransom: Mr. Secretary, I might ask Judge Healy if there was anything in their investigation that indicated that the Stewart transaction was of that nature.

Healy: Not in our investigation, no.

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- H.M.Jr: Well, Judge Healy, as I say, I would appreciate it on account of the seriousness of this situation that when the S.E.C. does make up its mind how to proceed we could discuss it together.
- Healy: Yes, sir.
- H.M.Jr: On account of the seriousness of it all.
- Healy: Yes.
- H.M.Jr: I might just add that I'm giving this precedence over anything - everything else. If S.E.C. could put it amongst its more important things, why, I would appreciate it.
- Healy: All right.
- H.M.Jr: Let's go around, see if anybody Tom, you got any suggestions?
- Smith: None except that I think Mr. Oliphant - you didn't quite finish, did you?
- Oliphant: I finished.
- H.M.Jr: Huh?
- Oliphant: I finished.
- H.M.Jr: What did you want Oliphant to say?
- (Laughter)
- Smith: I didn't know if it was clear how you're going to prepare this record.
- Oliphant: Well, I said that we'd go over these reports, Tom - I mean the Comptroller's office, and so forth, and go over these reports and make out what - pick out what had been criticized, and if the practices apparently are continuing, treat them as unsound.
- Smith: Get the record from the very beginning, start over.
- Jones: How's that?

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- Smith: Start a new record under Section 30.
- Jones: I see. Follow up this telegram, you mean.
- Smith: Yes.
- Jones: In other words, that's the next step. You've already started with the telegram.
- Oliphant: The telegram is sufficient so far as that one practice, namely, the continuance of the payment of dividends; that's sufficient for that. Now, these other practices that have been considered would be the subject of further formal warnings as provided in Section 30.
- Jones: When you've got to come in and have their trial and so on.
- Ransom: Mr. Secretary, might I at that point ask Mr. Oliphant if he has given due consideration to the time lag involved in a proceeding under Section 30 as we have to conduct it at the present time, both in the preparation of your records, in the presentation of the matter to the Board, and in the resulting hearings which the Board would have to conduct in a situation of this kind. Before answering that I'd like to say that my purpose in asking it is to suggest to the Secretary's mind the thought that there must inevitably be a very considerable time lag involved. Now, as to what these practices are, as I made clear, I think, in our last conference, I don't know anything about that. But assuming them to be of major importance, I think it is easy to assume that the resulting hearing would take a great deal of time. And if the situation was a dangerous one or a pressing one, then the question as to whether that is the wiser course to pursue or whether you should follow some other line open to you might be a matter of serious consideration.
- Oliphant: Well, I say the amount of time required to initiate and bring the proceedings to a conclusion would be substantial. Now, whether or not it would be - how substantial it would be would depend on many factors. We might be very technical in the matter of the preparation of the charges, and the Board of Governors might be very technical in the matter of the consideration - in the hearing in consideration of the charges. But in any

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event the amount of time required would be substantial. If, however, on the other hand, it was apparent that all branches of the Government were going about industriously and seriously preparing this multitude of charges and intending to press them to a conclusion, the immediate effect of that knowledge might very well be substantial.

Ransom: Then if the practices are such as the Secretary has indicated and have extended over a long period of time, if the Treasury or the Comptroller's office should at once require this institution to charge off such items as are bad or to proceed to an immediate discontinuance of those practices which are disapproved by the Comptroller and the Treasury, it seems to me some consideration would be given to the question whether under those facts the appointment of a conservator would not be the means to preserve all the various and complex interests which would be involved. I merely throw that out as a suggestion because I am well aware of the time lag that is going to be necessarily involved in a proceeding under Section 30.

Jones: That's right, you've got a good many months' procedure in this matter.

Oliphant: Three months.

Jones: Can't be hurried. Of course, you get up your - must be careful; the Comptroller must be careful about the preparation of his case and you've (Ransom) got to be careful over there, watch your step. And those fellows are going to come in - they're accused and they're going to require time and be entitled to time to defend and explain and all that; and it's going to be a good many months before you can ever come to a conclusion.

Ransom: Before you can stop the practices which would be complained of.

Oliphant: Now, that's a different question. I think you have to carefully distinguish between the amount of time required to complete the process and the immediate effect of knowledge of the fact that we were beginning the proceedings and meant business. So it's a separate issue and has to be kept separate from the immediate practical situation.

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- Jones: Each of your steps should have in mind that when this gentleman reads it he knows you mean business and you intend to go on through and do it under the law, and courteously.
- H.M.Jr: That's why I asked you all to come here, and before - after we've gotten these lists of bad practices together, before we decide what we will do we'll have another meeting.
- Jones: Have another meeting.
- H.M.Jr: Yes.
- Jones: Meantime, we can exchange views with the others who are interested and be conferring around. And nobody said a truer word than that it's absolutely necessary to convince the Bank of America management that we mean business.
- Smith: And the only way to convince them is to prepare the charges, John, and do it right down the line, and....
- Hines: Sure, in as few words as you can say it in.
- Smith: And when you start this procedure, it may produce a conservatorship, because if he determines to go right on through with this trial, then you probably will find that somewhere in this procedure that takes months something will happen in his local community
- Jones: That won't happen.
- H.M.Jr: "hy?
- Jones: Because you can't frighten the depositor. You can't frighten the depositor.
- Crowley: This bank is about 55 percent insured.
- Jones: We've had three banks running along busted for months and nobody got frightened.
- H.M.Jr: You mean under F.D.I.C. insurance.
- Jones: Before that. We're still cleaning up - ourselves and Leo - cleaning up such situations.
- Bell: You mean it shouldn't happen. You said the depositors

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won't be frightened.

Jones: It won't happen.

Bell: It shouldn't happen.

Jones: I know I'm right.

H. A. Jr.: You may have to (words not understood) That's why you're here.

Ransom: May I say I think that's a very optimistic view.

H. A. Jr.: I agree with you.

Ransom: Now please, may I for the benefit of Mr. Jones and Mr. Smith, who were not here the other day, explain in just a few words, the position of the Board in a matter of this kind. We in effect sit as judges when these matters are presented to us, and in that capacity I think it is of the utmost importance that no member of the Board should express any view whatsoever as to the merits or demerits of the issues which will be involved in the resulting controversy. I want everyone to understand as well as I can make them understand my own feeling that the Board occupies a very responsible and very difficult position which it can only discharge by assuming that - for the time being, a judicial attitude towards the questions involved.

H. A. Jr.: But that doesn't mean you wouldn't like to sit here when we're discussing it here.

Ransom: Mr. Secretary, I'm at your command, sir.

Smith: You have the feeling that this procedure might produce a conservatorship?

Ransom: May I express it as my personal view that it would inevitably.

Jones: "Aint" a chance. "Aint" a chance. Conservatorship means the end of the bank.

Smith: That's correct. That's the reason I wouldn't be in favor of it - resorting to that.

Crowley: This is purely a practical question. You're using Sub-section 30, assuming that there's been no illegal

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transactions, you're using your Sub-Section 30 to make this man make corrections from a practical standpoint to put his bank in a proper position.

Jones: to quit his meanness.

Crowley: That's right. This fellow is a smart fellow, he's an aggressive fellow. All he needs to have done to him is to be batted in the head and let him know that we're going to keep on batting him if he doesn't behave himself. If we prepare our case and serve notice on him and let him know that all the agencies in Washington are united to make him behave himself - he'll conserve his earnings, he'll take R.F.C. aid, if he knows we mean business. But all the time he's been able to run around and spread himself out and get away with it.

Now, if we get to the point, Jesse, of Sub-Section 30, you've got trouble on your hands, a mean trial, because your other real estate has got to be appraised and everything else in order to determine solvency. Now, don't think you can hold up getting the charges to this man, and until you get all your other real estate appraised and things of that nature, I think you've got three or four things to make this fellow do. First, he's got to discontinue his dividends. Secondly, he's got to stop his promotions. And secondly (thirdly), he's got to put some more capital in that bank. And he's got to have some kind of a cutback to take some of these assets out. Now, that's practically what you want to accomplish. And he's got to have management in there other than a lot of fellows that are "yes men" to him because he raises their salaries. Now, that's what you're trying to accomplish, as I see it.

H.M.Jr: Leo, how we going to get him to stop paying this on the first of October?

Crowley: That fellow will be here in the next two or three days, and if I don't miss my guess he'll come around to see some of us. And let's go into a room with him and let him rant and rave as he pleases, but every fellow just stand his ground very firmly and stick to our guns, and he'll be a good boy.

Jones: I think he's got to. Of course, what he's got to do,

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in my opinion - I haven't looked at the Examiner's report in a long time; in fact, I don't remember when I ever saw it, if I ever saw it - but I know about that fellow, I know the kind of a shop he's got. He's got a kind of mean mess. He's got to pay this dividend, in my opinion, and maybe the next one a little bit.

Oliphant: Why do you say he has to pay it?

Jones: Well, he's declared it.

Oliphant: That wouldn't follow: he'd have to pay it.

Jones: I mean as a matter of policy, not procedure. Be very bad on the bank to declare a dividend and not pay it.

Oliphant: If it injures the position of any of the depositors, then he shouldn't pay it, and he shouldn't pay it in this instance.

Jones: Those depositors aren't going to lose a dime, not a chance to lose a dime.

H.M.Jr: I wouldn't say that, Mr. Jones.

Jones: I'm expressing my opinion about this thing, sort of forecasting the program.

H.M.Jr: Well, I think that before you make a statement like that - I think you'll find it worth while to talk to Mr. Folger and Mr. Smith. I don't know how Mr. Folger feels, but Mr. Smith doesn't agree with you that the depositors won't lose a dime.

Jones: Well, all right, I hope he's right. No, I know he's wrong.

Smith: Well, he's talking about the liquidating value.

Jones: You're not going to liquidate.

Smith: You're talking about two different things. You (Jones) say they aren't going to lose anything because the bank isn't going to go into liquidation.

Jones: We've saved six thousand of them and we're not going to let this one go down. But it's time to turn on the screws and make this

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- H.M.Jr: This is the time to do it.
- Oliphant: The legality of the payment, even though the dividend has been declared, would be determined by the liquidating value, and if the payment would jeopardize the interests of the creditors, including depositors, it would be an unlawful payment, a conveyance in defraud of creditors. Not only could you stop the dividend; he has no right to pay the dividend.
- Jones: I think legally you are right.
- Oliphant: Not only technically and legally; I'm right as a matter of substance.
- Jones: What I mean to say is, how you going to determine what is the liquid value of a hundred million dollars worth of real estate? That's a question of opinion. He can come in here and clear himself on it; he can get plenty of evidence and bring it in here - evidence that you can't break down - that his real estate is worth the money. What you going to do about it?
- H.M.Jr: Well, if you don't mind, I don't - I think if you would follow that - the afternoon isn't long enough, and I'm sure Mr. Jones and Mr. Oliphant are available to continue the discussion.
- Jones: For each other.
- Oliphant: That's right, but I want it clear that the fact he's declared it doesn't mean that it has to be paid.
- Jones: Well, I meant as a matter of policy.
- H.M.Jr: Are you willing if I go on?
- Jones: Perfectly.
- H.M.Jr: Mr. Oliphant?
- Oliphant: Yes.
- H.M.Jr: Mr. Crowley, you through?
- Crowley: Just want to say this: that we've never been in a better position to teach this baby where to go.
- Jones: Right now.

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Crowley: Yes, sir. If we have to, we can make the bank sound by F.D.I.C., and so we don't have to worry about any unfairness to depositors, do we?

Jones: That's right.

Crowley: So now's the time. Now, the only objection I have - I'm willing to trade when the trade comes. But if we get planted in our minds that we're going to trade now, we may be a little weaker when we talk to him.

Jones: We may be weak? Well, we'll take a drink. Take a drink.

H.M.Jr: All right, anything else, Leo?

Crowley: That's all.

H.M.Jr: Herbert? Healy?

Healy: No, sir.

H.M.Jr: Hanes?

Hanes: Not a thing.

Diggs: I wish to say, Mr. Secretary, that we're preparing to send out sufficient Examiners on this examination that we're in now, men from other branches - other districts - competent, capable men to go into this whole thing as thoroughly as we possibly can, having in mind the action that will come up under Section 30.

H.M.Jr: To examine what?

Diggs: The Bank of America and its affiliates.

H.M.Jr: You're sending additional Examiners? You're having another examination?

Diggs: There's one going on - one now.

Smith: They start one as soon as they finish one.

Jones: How long does it take you to examine those banks?

Diggs: You're in there all the time, somewhere in its branches.

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Ransom: Do you have a zero hour in which you go into all the branches at the same time?

Diggs: Haven't enough men. Take more Examiners than we have in the entire service.

Jones: Get Harry Hopkins; he can furnish them.

Diggs: There are five hundred branches.

Jones: That would be duck soup for Harry.

Diggs: \$30 a week, we might do it.

H.M.Jr: Anything else?

Diggs: No, sir.

H.M.Jr: Has Prentiss signed his report on the Anglo?

Folger: He has, yes, sir.

H.M.Jr: California. Has he signed his report on recommendations as to his personnel in the district?

Folger: He gave me most all those today.

H.M.Jr: Well, when is he going to go back and go to work?

Diggs: We had in mind - I was just discussing with Mr. Folger today that he should go back the end of this week, with Mr. Sedlacek coming on here; he's been the Acting Chief out there. He being here, Mr. Prentiss should be out there.

H.M.Jr: Anything else you want to say?

Folger: I want to say that in my opinion I thoroughly agree with you (Jones) that it won't - that this action will not excite the creditors to any great extent.

H.M.Jr: Well

Diggs: May I give you this one instance that happened about three weeks ago, Mr. Secretary, in Montana. The Cashier of the bank was not there for the opening, and everybody in town knew it, and the directors met

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and closed the bank. They telephoned us. Mr. Folger had an Examiner in there that night that worked all night and found a shortage of some ten thousand dollars. We opened the next morning, and the bank has been going ahead, with more depositors than it had. So the depositors were not disturbed there. Whether they will be here or - but that's an indication of how they feel out there.

H.M.Jr: Dan?

Bell: No.

H.M.Jr: Husbands?

Husbands: Nothing, sir.

Jones: (Nods nothing) I got a little matter to discuss here when the young lady (Mrs Klotz) leaves. When you finish with the business I've got a matter to take up.

H.M.Jr: I'll keep her here as my guardian.

How about you two (Oliphant and Foley)?

Well, thank you all, and I needn't say again, the utmost secrecy, please, on all of this, because even though Mr. Jones is so sure about the depositors, I'd like to have as much secrecy as possible.



HOTEL ST. FRANCIS
 ONE OF THE WORLD'S GREAT HOTELS
 SAN FRANCISCO - CALIFORNIA

Sept. 15, 1936

Dear Mr. Secretary:

The new examination report for Bank of America, N. J. + S. A. will show the line to Stewart interests of over eleven million. In addition, Transamerica is loaning to Stewart interests two and a half million.

Curiously enough, a Transamerica loan to Stewart personally is secured by stock of the Bank of America. It can't be his own stock, surely,

because Class C directors
of reserve banks can't own
stock in member banks.

So it must be an accommodation
loan for someone else (or
else he illegally owns bank
stock).

Giannini claims that Tealer
and Bennett are stock holders
in the Pacific Coast Mortgage
Co - the Stewart company
that borrows from Bank of
America.

Anglo-California declared a
dividend (semi-annual) of
30¢ a share, payable Oct.
and Dec. on Sept. 13th.

Cy

(3044)

Bank of America

NATIONAL FRANCHISE ASSOCIATION

A CONSOLIDATION OF
BANK OF CALIFORNIA & BANK OF AMERICA OF CALIFORNIALOS ANGELES
CALIFORNIA

CURRENCY

100 SOUTH SPRING STREET

A. P. DIARRINI
CHAIRMAN OF THE BOARD OF DIRECTORS

September 15, 1938.

LOS ANGELES MAIN OFFICE
100 SOUTH SPRING STREETHon. Marshall R. Diggs,
Acting Comptroller of the Currency,
Washington, D. C.

Dear Sir:

I am enclosing an excerpt from the record of proceedings of the Board of Directors of this Bank held on September 13, 1938, which is self-explanatory.

We were very much surprised to hear the contents of your telegram referred to in the excerpt, which Mr. Palmer read to the meeting, particularly in view of the fact that at the time Mr. R. G. Smith, our Vice President and Cashier, recently discussed with you and Mr. Folger, at a meeting requested by you in regard to certain applications for branches, the last report of examination of the Bank, you had an opportunity to inform him of any important matters which you felt should be brought to our attention.

Instead of following this procedure, without any warning you sent Mr. Palmer, your Los Angeles representative, to call on me at 1:30 P. M., on the day our meeting was to be held at 4:00 P. M., with a mysterious message to the effect that he had been advised by Mr. Folger that he would receive a code message that he was directed to read to the Board of Directors.

In the circumstances, it appears to us that the method employed of getting your message to our Board of Directors was entirely unwarranted. As you are well aware, banks are dependent upon the confidence of the public for their existence, and it is therefore regrettable that your message and the method of its delivery were calculated to disturb this confidence.

As you will observe from the enclosed excerpt, our Board has directed me to request a reply to the comments made in my letter to you of May 6, 1938, regarding the last report of examination of the Bank. Complying with this direction, I therefore request such a reply, in order that our Board of Directors may be fully informed as to the exceptions, if any, which your office takes to my comments on the various matters referred to in that letter.

In your telegram to Mr. Palmer, you made the following statement:

"In view of the unsatisfactory asset condition of the bank, of other real estate in excess of forty million dollars carried in loans and discounts

Hon. Marshall R. Diggs

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September 16, 1938.

and in the securities account, of German credits of six million dollars, of other items carried in assets of questionable value and of the aggregate of assets classified as doubtful and loss, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets."

This is an astounding statement in view of the fact of the recent discussions regarding the write off of losses classified in the last report. We understood such write offs had been made to the satisfaction of you and your Chief Examiner. No intimation has heretofore been given us that any charge off was expected in connection with assets not adversely criticized in the report.

Your reference to the other real estate in loans and discounts undoubtedly applies to real estate sold under contract to Capital Company and California Lands, Inc. These contracts represent the obligations of financially sound companies and provide for a specific schedule of payments. They therefore are sound loans and cannot be classified as "Other Real Estate." The contracts are secured not only by the underlying real estate, but also by the substantial net worth of the obligors, which, according to the financial statements of the companies, amounted on August 31, 1938 to \$22,768,000 in the case of the Capital Company, and \$17,008,000 in the case of California Lands, Inc.

Since April 4, 1934 and up to June 30, 1938, the two companies mentioned have bought real estate from the Bank aggregating a purchase price of \$31,456,000, and have paid to the Bank the sum of \$34,550,000 on account of the principal of the contracts. This total payment represents more than twice the amount of payments called for by the terms of the contracts.

Referring to the German credits; the requirements of the Department have been fully complied with.

Referring to your statement that "it is imperative that the earnings of the bank be used to write off and reduce value of such assets"; since January 1, 1938 we have applied \$55,000,000 to the writing off of losses and the reduction of book value of assets. During the same period surplus and undivided profits have been increased by \$12,300,000. This improvement of \$67,300,000 in net capital position is conclusive evidence that we have adequately provided for losses and that we have consistently followed a sound dividend policy.

You state in your telegram that the dividend policy has been repeatedly criticized, that the situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of the Board in January and again with the Vice President and Cashier of the Bank in August of this year, and that the declaration of any dividends at this time would, in the opinion of the Comptroller of the Currency, be unsafe and unsound unless proper provision is made for criticized assets.

Hon. Marshall R. Diggs

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September 15, 1938.

The discussions referred to in your wire were in no respect formal, and your references to dividend policy were incidental to discussions of branch permits. Our records fail to disclose any formal protest by the Comptroller regarding our dividend policy, which at no time have we considered as unsound or unsafe, and which, on the contrary, has been an important factor contributing to the success of this institution, in which more than 150,000 Californians have a stockholder's interest.

The record does disclose the fact that proper provision has been made to care for assets adversely classified, including such assets referred to in the last examination report, and the further fact that for the period from January 1, 1933 to June 30, 1938, only 36% of the earnings has been paid in dividends. It is true that the rate of dividend on the total par value of the capital stock has been increased from 6% in 1933 to 19.2% in 1938, but a logical comparison of dividend rates would be based on the relation of dividends to earnings. Dividends paid in the year 1933 amounted to 31% of the earnings, while in 1938 the percentage of dividends paid to earnings was only increased to approximately 40%. In the first eight months of the year 1938, net actual income amounted to \$15,910,882, while current dividend requirements amount to \$800,000 per month.

This is the first time to our knowledge that the assets of this Bank have been characterized as "unsatisfactory" by anyone. Why has this question not been raised previously in the past six years during which improvement of \$87,300,000 in net capital position has been made? When our Vice President and Cashier talked with you two weeks ago, he reported a friendly attitude in your office and telegraphed me that he confidently expected to have favorable action taken without further delay on at least three of the pending branch applications. What has happened in the short time since then to so completely change the attitude of your office?

Another recent change in the attitude of your office caused us considerable embarrassment and inconvenience, from which we are still suffering. I refer to the withholding of a charter on our Gonzales application after approval had been given and the time for opening the branch extended. As a consequence, bank premises, ready for our occupancy, stand idle in Gonzales, to the wonderment of the community.

We believe the successful accomplishments of the management of this Bank are without parallel, and we therefore resent the reference in your telegram to "unsafe and unsound practice" and to the provisions of Section 50 of the Bank Act of 1933. Having made every required provision for the protection of our assets, we are entitled to have you withdraw your statement that the assets are in an unsatisfactory condition. If you feel otherwise, I request that the management of this Bank be summoned before the Federal Reserve Board for a hearing on this issue.

Yours very truly,


 Chairman,
 Board of Directors.

At the opening of the meeting, the Chairman reported that Mr. Palmer, a representative from the National Banking Department, had informed him that day at 1:30 P. M. of his instructions from the Comptroller's office to deliver a message to the directors.

The Chairman stated that upon receipt of this information, he had requested Mr. R. S. Smith, Vice President and Cashier of the Bank, to come to Los Angeles by plane and bring with him a copy of the last report of examination of the Bank and data relating thereto. He further stated that he had informed Mr. Palmer that he would be called to appear before the Board upon the arrival of Mr. Smith.

At the conclusion of the order of business of the Board, the Chairman announced the fact that Mr. R. S. Smith, Vice President and Cashier of the Bank, had not yet arrived from San Francisco for an appearance before the Board as arranged, and that he deemed it desirable that Mr. Palmer not be kept waiting. Whereupon, with the consent of the Board, Mr. Palmer was introduced to the meeting and extended the courtesy of the floor.

Thereupon Mr. Palmer read to the meeting the contents of a private wire addressed to him by Mr. Marshall R. Diggs, Acting Comptroller of the Currency, and shortly afterwards withdrew from the meeting.

The contents of the telegram were discussed at length by the board members present, and, at the Chairman's suggestion, on motion duly made, seconded, and unanimously carried, the Chairman of the Board was directed to address a response to the Acting Comptroller of the Currency and authorized to request a hearing for the managing officers of the Bank before the Federal Reserve Board in view of the Acting Comptroller's reference to Section 30 of the Bank Act of 1933.

The Chairman directed that a copy of the telegram read to the Board by Mr. Palmer be filed with the records of the meeting.

The Secretary then reported that Mr. Smith had arrived from San Francisco and was waiting to be called into the meeting. Mr. Smith was then called into the meeting.

The President obtained from Mr. Smith and read to the meeting a copy of a letter addressed by Mr. A. P. Giannini, Chairman of the Board, to Mr. Marshall R. Diggs, Acting Comptroller of the Currency, under date of May 6, 1936, referring to the last report of the examination of the Bank, made as of August 31, 1937, and received in April, 1936.

The Chairman reported that no reply to the comments made in said letter had been received, and the Board thereupon directed the Chairman of the Board to respectfully request a reply.

The Chairman commented on his reported discussion referred to in the telegram and invited Mr. Smith to report to the Board in detail his recent discussions in Washington, D. C. with Mr. Folger, Chief National Bank Examiner, and with Mr. Marshall R. Diggs, Acting Comptroller of the Currency.

Mr. Smith reported to the Board as requested, and the Board, by motion regularly made, seconded and carried, expressed its inability to reconcile the information conveyed to it by the Chairman of the Board and the Cashier and the information furnished in the letter of the Chairman of the Board addressed to the Acting Comptroller of the Currency under date of May 6, 1938, with the contents of the aforementioned telegram from the Acting Comptroller of the Currency to Mr. Palmer.

Before adjournment, the Board, by motion regularly made, seconded, and unanimously carried, expressed its complete confidence in the management of the Bank and its appreciation of the management's outstanding record of achievement.

RE BANK OF AMERICA SITUATION

September 15, 1938.
9:35 a.m.

Present: Mr. Hanes
Mr. Oliphant
Mr. Tom K. Smith
Mrs Klotz
Mr. Gaston
Mr. Diggs
Mr. Folger

H.M.Jr: Now before we start I want to know how is my record with S.E.C. on asking them to continue to investigate Trans-America. Has anybody had a chance to read that record?

Oliphant: Well, I haven't had a chance to read the record, but I've refreshed my recollection to the extent that the meeting we had here over the table was on the bank holding company, and it was in the course of the discussion of that that the S.E.C. report - that the Trans-America report came up incidentally, with some heat between Crowley and O'Connor. Now, the S.E.C. report came over and they came out - went out to your house for a conference while I was in Florida, and Oppen handled that, and he was out at the conference at your house, and he made a report. And we talked to Oppen last night, had him over here. Oppen said that there was just nobody that he knew of in the Treasury, never anybody that he knew of in your office or ours that ever intimated to S.E.C.... But there's a record.

H.M.Jr: Could you dig that out and just give me that, show it to Hanes? So I could put my finger right on the thing. Not now, but some time in the next 48 hours.

Oliphant: Well, I just - how about Hanes going through the material?

H.M.Jr: Fine. But I'd like to have my memory refreshed - a little timetable.

Oliphant: I'll just give you a little timetable.

H.M.Jr: Of what I did. Suppose you do it first. Give me a copy; give the whole record to Hanes.

Oliphant: I'll give you the little timetable with this whole record, and then

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H.M.Jr: In order to save time, have two copies of the timetable, one for me and one with the record, and let the record go to Mr. Hanes.

Smith: I have something for you in that connection.

H.M.Jr: Yes.

Smith: I spent about four hours with Crowley last night. - had dinner together - and he told me in the course of discussing this case about that conversation. I didn't disclose to him that the thing was under discussion here. But he said, "And it was stopped because some of us thought it wasn't advisable to go along with it." So I think you'll find in the conference, that meeting, a request on the part of somebody not to go on with it.

H.M.Jr: But not this person.

Smith: I think he said he did it.

H.M.Jr: Well, Herman, let's get my record.

Oliphant: May I get your (Klotz) record of this table meeting where it came up incidentally?

Klotz: The only thing I have is what I gave you yesterday.

Oliphant: You mean that bank holding meeting.

H.M.Jr: I thought she turned that over to you. You see, Upham took those meetings

Oliphant: I have that.

Klotz: Yes, you have everything.

Smith: Well, there was a

H.M.Jr: Well, I'm willing, after thinking during the night, to bet anyone a hundred to one that my attitude was pressing.

Smith: I got the impression last night - I didn't ask any questions, but I got the impression that he and possibly Mr. Jones thought it wasn't advisable to go on.

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Klotz: That's what I thought.

H.M.Jr: But Hanes is representing me, and I want him to have the record of what I did. I'm sure when we find it that I was pressing all the time. But I want you to have it in black and white.

Klotz: Did you see that report?

H.M.Jr: No, he's got it. But have some bright lawyer go through that, will you? And Mrs. Klotz will see if there is anything else.

Klotz: Well, if we can start - you see, we got that by index roughly, but we can begin reading - so many times we talked about it.

H.M.Jr: All right.

Oliphant: May I read one paragraph?

H.M.Jr: Please.

Oliphant: Just to loaf a minute, read a paragraph. "The conference was concluded at your house" - this is Oppen's report - "by a request from the Secretary acceded to by the Commission's representatives, that any final action determined upon by the Commission should be referred to the Treasury; yet it was made clear by the Secretary that he was not suggesting any influence upon the Commission's decision and that he merely desired to be kept advised."

H.M.Jr: That's Clarence Oppen wrote that?

Oliphant: That's right.

Klotz: That was at your house.

H.M.Jr: You get it, so that - and I don't

Hanes: The statements over there, of which they don't have a record, have to be verified too.

H.M.Jr: Well, I just don't want anybody over there having any doubts. And we may smoke out some fellow who did, because when this was on there were an awful lot of

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Giannini people in town seeing different people.

Olipphant: Well, I think Tom has the beginning of the smoking out of who did it.

Smith: There was no intent, no desire on his part - he just came right out with it, said, "We didn't think it was advisable at the time."

H.M.Jr: O.K. But when you have it sort of briefed, then you'll give it to him.

Now I'm at your service. Where are we now? We're waiting for legal advice.

Smith: That's the next step.

Olipphant: Legal advice on what we can do now that he's turned the thing down.

H.M.Jr: Yes, sir.

Olipphant: Well, I have a list of the outside possibilities, and we can take time to go over them. I think the way to proceed is the way we have already started; that of the nine things that we could do, the nine tools that we have in our hands - the Federal Government has in its hands, I think the tool to use is the one we have started to use, namely, proceed under Section 30 to build up a case for the removal of the officers. And I think if we'll follow this warning about the payment of the dividend almost immediately, or as soon as possible, with a warning on twenty or thirty other practices which have already been criticized and which are unsound, and we send those out in a formal way, the same sort of formal way, my guess is that that probably will be about what you want.

Now the other things you can do - do you want to list the outside possibilities, want to know what your weapons are?

H.M.Jr: Very, very much.

Olipphant: Well, the situation being what it is, certainly any depositor could bring an action to enjoin the payment of that dividend, and it is possible that a stockholder

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could. Stockholder might have more difficulty showing that he was injured. It is possible he could recover.

Smith: He couldn't develop his case unless he had possession of these reports which we have here, and the stockholder doesn't have that.

Oliphant: There would have to be some cooperation.

Smith: That's the trouble on that point.

Oliphant: Well then, first, the removal of the officers; second, a suit by depositor to enjoin the payment of the dividend.

Third, there is a provision that if a given practice has been criticized and 120 days have elapsed without its being corrected, then on 90 days' notice the Examiner's report can be published.

H.M.Jr: On how many days' notice?

Oliphant: 90. So you go back and find a number of things that have been criticized during the past years, on which they have already had criticism. You could pick those things up and say now that "We serve notice on you now that in 90 days we're going to publish the report," and then when the 90 days elapse you could or could not publish the report, as you decide.

Gaston: That would fit in well with the depositor's suit, wouldn't it? Make the record available to him.

Smith: Of course, the objection to that is it would close your bank. That isn't what you want.

H.M.Jr: Well, this is new. I don't want to answer, but I'll just let it soak; I want to let it soak. I agree with you I don't want to close the bank. But I also feel that the secrecy which surrounds all these examinations may not be in the public interest; to wit, that in the case of the Anglo-California matter the President of it can go to our Examiner and say, "Before you sign that I want to come to Washington and have a chance to discuss it with the people in Washington." See? I mean I've never sat in on these things before and I just question all - the very secrecy surrounding the examination makes it possible for a Bank of America and an Anglo-California

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to get away with practices which they couldn't if the public was acquainted with it.

- Smith: Well, that isn't what makes it possible. It is the policy controlling it. I'd like to discuss that with you in detail.
- H.M.Jr: Well, that's all right, but I'm - I've spent three days on bank examination, and the more I go into it the more I'm amazed at the way it is conducted.
- Smith: Well, that's something these
- H.M.Jr: And this is very good for me. I'm going to school every day. And it is intensely interesting and I hope that we'll all profit by what I'm learning.
- Smith: I'd like to - at the proper time in this discussion I'd like to discuss with you the policy of the Comptroller's office, with that particular point in view, because there has been a change of policy in that office in the last five years, and that is something that you should be informed about and carry in your mind with these other things.
- H.M.Jr: All right. O.K., you'll have a chance.
Go ahead.
- Oliphant: Now - now, the next weapon. Whenever the Board of Directors of the Federal Deposit Insurance Corporation finds that an insured bank is continuing an unsafe or unsound banking practice, they can give notice of such fact to the Comptroller, and then unless they are corrected in the time prescribed by the Comptroller, the Board can take steps to terminate the insured status of the bank.
- H.M.Jr: Now on that, there's another thing. In handing out copies of these reports - one to the Federal Reserve - has that gone?
- Smith: It's being copied now, being photostated. As soon as it's finished - we'll finish it this morning - it will go right over.
- H.M.Jr: That will go today, and a copy goes to S.E.C. Why shouldn't a copy go to the F.D.I.C.?

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Smith: It should.

H.M.Jr: "hy shouldn't it go to the Federal Deposit?

Smith: It should. •

H.M.Jr: Will you (Oliphant) prepare a letter from me to Crowley? I work while I sleep.

Oliphant: That's too bad.

H.M.Jr: Well, I have this week.

Smith: Another thing, he should have a copy of this new report that's coming.

H.M.Jr: Well, they all will as soon as that new report comes in.

Didn't the photostat room work last night?

Klotz: There's a letter here from Mr. Ransom.

Gaston: I don't know.

Oliphant: I'd like to report to you that the boys in my shop worked until two o'clock, and were so anxious not to miss anything that they didn't rely on the indexes but thumbed all through the volumes; and they allowed me to sleep. That was in Ed's shop.

H.M.Jr: Fine. I imagine that the photostat room ought to be open tonight so that they could photostat this new report tonight. You fellows will want to read it today.

Smith: I told Gus yesterday to go right on with it. I'm sure you'll find they did work last night.

H.M.Jr: Well, we'll send for them in a few minutes.

Oliphant: Next weapon - getting up into the "Big Bertha" class now. "The Comptroller of the Currency has authority, whenever he deems it necessary in order to conserve a bank's assets for the benefit of depositors or other creditors, to appoint a conservator at the bank, and then the conservator is authorized to take steps either to reorganize the bank or to turn its management back

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to the directors and the officers when he considers the bank is in a sound condition." So a conservator could be appointed to take charge of the bank between now and the first of October, and turn it back to the officers after the day for the dividend has passed.

- Smith: I'm not discussing that, because that's just out of the question.
- H.M.Jr: No, no - for the moment.
- Smith: Yes.
- H.M.Jr: I want a copy of what you're reading, Herman.
- Wright: Then, this bank and its branches are public depositories. You could revoke their designation as public depositories.
- H.M.Jr: (To Mrs Klotz) Ask Danny Bell to let me know how much money the United States Government or its subsidiaries - wait a minute - how much the Government of the United States or its subsidiaries have on deposit with the Bank of America and the Anglo-California Bank. What I mean by subsidiaries - I mean like Farm Credit.
- Smith: Postal Savings had twenty million - Postal Savings - in this bank.
- H.M.Jr: Postal Savings, H.O.L.C. - those two things.
- Klotz: Shall I do it right now?
- H.M.Jr: Yes, yes. Make a record that we're doing it. Tell him I want it fast. (Mrs Klotz leaves)
- Smith: Had 20 million Postal Savings. Oh, I think it's 25 million Federal funds.
- Hanes: In addition to the Postal Savings?
- Smith: Yes.
- H.M.Jr: Am I not correct that all Federal funds have a first lien, so to speak?
- Smith: They are secured by Government bonds.

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- Gaston: That would prevent you, Herman thinks, from suing as a depositor, because your deposit is secured.
- Oliphant: You couldn't sue as a depositor.
- H.M.Jr: It would be easy enough to get a depositor to sue.
- Oliphant: Shall we have another one?
- H.M.Jr: Please.
- Oliphant: Let me get this language exactly. "Whenever in the judgment of the Board of Governors of the Federal Reserve System" - Eccles and his board - "any member bank is making undue use of bank credit for speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions, the Board may after reasonable notice and an opportunity for hearing, suspend the bank from the use of the credit facilities of the Federal Reserve System."
- H.M.Jr: Now, that isn't under Section 30.
- Oliphant: No, no.
- Smith: This is to prevent speculation with their - undue speculation in the New York market. That's what that section is passed for. It's Glass's pet.
- H.M.Jr: Don't have to look very far to find that they're doing that with Trans-America.
- Gaston: And all those deals with Stewart.
- H.M.Jr: Yes. And what else?
- Oliphant: Now, assuming an impairment of capital, which I understand you've got here - I understood you (Smith) to say if they had to liquidate now they'd pay 70 or 80, something like that.... -
- Smith: That's right.
- Oliphant: ... then you can liquidate the bank as a result of this impairment of capital.

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H. A. Jr: You think they've only got 70 or 80 percent.

Smith: I think if you put this bank in liquidation today that they'd do well to pay 80 percent of their depositors, because of the large amount - see, they've got a hundred million dollars tied up in sub-standard real estate, and it isn't unheard of to lose 50 percent on it. The conversations in the report, the confidential sections of the report, indicate a discussion of how much loss there might be in this real estate; representatives of the bank said they figured they'd lose about as much as 25 percent. Examiners think they might lose 50. So that there is no question in my mind but that a liquidation of the bank in its present condition would result in a loss to the depositors. I think that the examining force of Mr. Crowley would agree with me on that.

(Mrs Klotz returns)

Klotz: He said the Treasury end of it he could get you very quickly, and that would be the major part of it; but the other part he's not - he's a little afraid....

H. M. Jr: Tell him not to go outside of the Treasury.

Smith: Well, there's 20 million Postal Savings.

H. M. Jr: Well, tell him not to go outside the Treasury.
(Mrs Klotz goes out)

Now, I don't want - are you (Oliphant) through?

Oliphant: No, I'm not through, but I do want to stop to clear ...

H. M. Jr: What?

Oliphant: I don't think it's been clear - I think Tom's statement puts this case in a very different light. I know I've always thought of it hitherto as a case where the capital is - I mean the depositors would be paid out if you had to liquidate. Since it doesn't - since the deposit liability amounts to over twice the total capital of F.D.I.C., I think it's

H. M. Jr: What are you saying?

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- Oliphant: Since the Bank of America's deposit liability is over twice the total capital of F.D.I.C., which is insuring for - responsible for insuring all our banks
- H.M.Jr: Well, the capital of F.D.I.C. is 400 million.
- Smith: 400 million, and they've got between eight and nine hundred million insured depositors. So if they lose 25 percent of their deposits, it would take half of the capital funds of F.D.I.C. We're not trying to frighten you, Mr. Secretary, but we're giving you this
- H.M.Jr: Mr. Smith, you can't frighten me.
- Smith: We're giving you ...
- H.M.Jr: You can't frighten me. This thing was brought to my attention - I don't know, last Thursday or Friday for the first time, and I did not let the sun set on it. I can't act any faster than that. I can't move any faster than this. I mean I did not let the sun set on the first report I got.
- Gaston: So they haven't any capital. They're not merely impaired, but they haven't any capital.
- Smith: Any reasonable liquidation value on these real estate assets
- H.M.Jr: I may point out to you, the work I'm doing - I'm doing the work of the Comptroller of the Currency.
- Smith: He should have done it long time ago.
- H.M.Jr: I'm Comptroller of the Currency, taking his responsibility, doing his work. I shouldn't have to do this.
- Smith: That's correct. Darn good thing you are doing it.
- H.M.Jr: Well, sure.

(Mrs Klotz returns)

- Oliphant: Weapon Number Nine. Forfeiture of the franchise because of the illegal payment of dividends. If the

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statement is right and capital is impaired, then the payment of the dividend on the first of October will be an illegal payment of dividend, and the charter of the bank can be forfeited.

H.M.Jr: May I have a copy of that?

Olyphant: Surely.

Saika: You haven't got that Section 30 yet.

Olyphant: I mentioned that first; remember, Tom, I mentioned that first, then I mentioned stockholders' liability suit second.

H.M.Jr: This came in 4:48 yesterday afternoon from Ronald Hanson.

"My dear Mr. Secretary:

"I am just in receipt of yours of the 14th, replying to mine of the 13th, regarding the last report of examination of the Bank of America National Trust and Savings Association, San Francisco, California, with which is enclosed a photostatic copy of a letter from Mr. Folger, Chief National Bank Examiner, under the same date.

"You are correct in thinking that some confusion arose in the conversations I had on yesterday afternoon and again today before receipt of your letter with President Day of the Federal Reserve Bank of San Francisco. I had understood the date of April 20, 1938 mentioned on yesterday to indicate the date the examination started, rather than the date on which it was completed. They do have that examination report in their files and so advised me, but as the President of the Bank had been informed by the examiner for the Comptroller of the Currency that an examination was just being completed, which he understood would have an April, 1938 date, both of us thought that this examination was the latest one available to the Treasury Department, and a copy of that has not yet been furnished the Bank.

"I have this afternoon by telephone

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requested the Bank to send me all portions of the August 31, 1937-April 20, 1938 report necessary to disclose the condition of the Association."

He isn't asking, you see, for this report. He's getting it himself, so I don't have to send it.

Smith: They've already asked the Comptroller.

H.M.Jr: I mean, in other words, he's doing what I wouldn't do for a million dollars.

(To Kieley) Personally take this down and have, oh, three photostats made, please. And would you ask when you're down there whether the photostat room worked last night. Will you please?

Kieley: Worked last night.

H.M.Jr: Yes, and if not will you arrange with Mr. Thompson - that I want the photostat room open all night tonight. I want a force put on to work tonight.

But - I mean Ronald Ransom must feel awful stupid to write me a letter that he hasn't got all this stuff.

Now let me just see - I think we ought to send now for Mr. Diggs and Mr. Folger. This is what I propose to say to them: that we would like to be furnished as soon as possible with the new report. It's coming in by air today.

Smith: I think it got here yesterday afternoon.

H.M.Jr: It couldn't have.

Smith: It was sent before he started.

H.M.Jr: That we want that photostated and just as soon as possible you - Mr. Oliphant's office will help the Comptroller begin to prepare - you call them charges, under Section 30? Is that what you call them?

Oliphant: (Nods yes)

H.M.Jr: That right? Charges.

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Smith: Prepare the case.

H.M.Jr: And then I think that we should also, without waiting for Ronald Ransom, simply tell Mr. Ransom that this latest report has arrived and we are sending him a copy of this and one to Mr. Crowley.

Smith: I'd like to say a few words, if you don't mind, first as to our objectives, in view of what I said about the condition of the bank. I think we ought to agree on the objective. The objective is to correct the situation and continue the institution. That's the best thing for the depositors.

H.M.Jr: That's right.

Smith: Now, as to the procedure, Mr. Oliphant has

H.M.Jr: May I add to that: with the least possible disturbance to the whole country.

Smith: That's right. Absolutely. And the two are correlated.

Mr. Oliphant has suggested procedure under Section 30, which you approve of. Now, I had this time with Mr. Crowley last night, went over the thing from A to Z. He is thoroughly familiar with it and he said he'd be glad to cooperate in any way to the full extent. Now, under that section where they can file their request with the Comptroller, he can get into the case and support you.

H.M.Jr: Well now, what I want to be very careful - I want Crowley's cooperation where we deem it wise, but I don't want Crowley jumping in on this thing and doing something because he thinks he, Mr. Crowley, personally gets a (word not understood) out of this thing, and gum the works up.

Smith: He can't, because this is in the hands of the Comptroller.

H.M.Jr: Yes, but supposing he asks - he wants to do this thing which gives him the right to terminate the insurance.

Smith: He won't do that, he mustn't do that.

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- H.M.Jr: That's the point.
- Smith: Because that isn't in line with your objective.
- H.M.Jr: Now, what I thought - now, don't brush aside so easily that Mr. Crowley will or won't, because Mr. Crowley is very unstable, and he told you last night he wouldn't, but somebody else gets hold of him today and maybe he will. Now I want to put you on notice that Crowley will not stay put.
- Smith: You've got to in this thing.
- H.M.Jr: Now let's have - my thought was that I'd have - first place, I'm having lunch with Jones and I'm going to tell him about this thing.
- Oliphant: That's today.
- H.M.Jr: Today. He didn't come yesterday. Then I thought I would invite Mr. Ransom and Mr. Crowley to come here at four o'clock and that we would informally tell them what we're doing - plus the Comptroller. And that I'd ask them if they have any suggestions and tell them that in return for keeping them advised we certainly don't expect them to take some unexpected action without returning the courtesy to us.
- Smith: That's right.
- H.M.Jr: So they can't say - we say, "Gentlemen, we're going to keep you constantly advised what we're doing. If there is any change in our program, we'll let you know at once. Now I'm asking you as Secretary of the Treasury that you do me the same courtesy."
- Smith: It will be very helpful when your case is prepared to have it checked by Crowley's office, because they have their own information over there; and I'm sure - I'm quite sure that Mr. Jones can be helpful.
- Oliphant: Well, I'd like to have all of Crowley's information, or Jones' - and Jones' too before the boys as they work up these twenty or thirty charges.
- H.M.Jr: Oh, I'm going to have Jones here at four o'clock.

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Smith: I think it is very advisable. And I was wondering, Herman, whether it wouldn't be a good idea to ask Leo to send his man Jones, who's already analyzed this situation, over to talk to your man.

Oliphant: My man and Diggs' man.

Smith: What did you say?

Oliphant: My man and Diggs' man.

Smith: Yes, yes.

H.M.Jr: (On phone) I want Acting Comptroller Diggs and Mr. Folger here right away, please.

Smith: Now, there's two ways this situation can be cleared, corrected. First is by putting new capital into the business, and probably those people out there can do that. Of course, if they can't the R.F.C. might be persuaded to do it. You can't suggest that, because that might be "persecution." Second, they can slice their earnings into the picture for a period of years. They can put in between ten and fifteen million dollars a year earnings.

Oliphant: Five years will clean it up.

Smith: Five years will clean it up.

H.M.Jr: Well, I'm not prepared to say - I mean this thing is coming very fast - what you told me this morning makes the picture much worse, that they're under water.

Smith: They are on a liquidation basis, no question about it.

H.M.Jr: No question but what five years will do it. At seven minutes past ten, I think that's too slow. I think - I mean I think they ought to have new capital.

Smith: That's what they ought to have, and that's what ultimately may happen.

H.M.Jr: Well, we'll get new management in.

Smith: Probably the management will come in connection with the capital.

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H.M.Jr: Yes. Now

Smith: But that's the thing to be shooting at, is additional capital, either through sluicing in earnings or providing a lump sum.

Oliphant: Or both.

Smith: Or both. I think both should be done.

H.M.Jr: But you mean to say out of their billion dollars deposits eight to nine hundred million is insured?

Smith: 55 percent. A billion two hundred, three or four, and 55 percent is insured.

Oliphant: In dollar amount, you mean.

Smith: Yes. A billion four - 770. 770 million.

H.M.Jr: Roughly twice.

Smith: Yes. It's probably ...

H.M.Jr: What percentage was insured?

Smith: 55 percent.

H.M.Jr: John, ...

Hanes: You say the total deposits of all this whole institution is a billion four?

Smith: Yes.

Hanes: And what's the capital, total capital?

H.M.Jr: About a hundred million.

Hanes: Tom, did they ever take any of the R.F.C. preferred?

Smith: No, they never would do it. They've been criticized. They hesitated very much about reopening them in March, 1933, and they reopened them thinking they would conserve their assets and not pay dividends. They weren't on a dividend basis then. Then they started paying dividends.

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H.M.Jr: And that's when the first mistake was made.

Smith: That's correct. And from that day on it just accumulated and got worse every day.

H.M.Jr: And they've gotten bolder.

John, as far as we've gone, have you any suggestions or anything

Hanes: No, I haven't. I go right along with you.

H.M.Jr: Are you satisfied? Anything you want to add?

Hanes: No.

Oliphant: Do you want Ed (Foley) to sit in?

H.M.Jr: Fine.

(Folger comes in)

"here's the Comptroller?

Folger: I didn't know he was to come. I didn't see him.

H.M.Jr: (On phone) Where's Comptroller Diggs?

They're using my photostat room to

Folger: They used it last night; they're through with the photostating.

H.M.Jr: I told them they'd have to be on the job tonight again, because I want the new one photostated too.

Smith: Is that in yet?

Folger: It's in, but the Examiner hasn't completed it yet. The part that I have is completed, but he held out his comment and criticism.

Oliphant: Well, the part you have we can start photostating now.

Folger: Yes.

H.M.Jr: (On phone) Mr. Leo Crowley.

But how about the new one?

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Folger: The new one can be photostated.

H.M.Jr: Have you taken a look at the new one as to Mr. Stewart's line?

Folger: No, sir, I read it about three minutes

H.M.Jr: When did it come into your shop?

Folger: Supposed to have gotten in yesterday afternoon, but I didn't get it until this morning.

H.M.Jr: Could you and Mr. Smith take a look at it?

Smith: Bring it back here and we can sit back here and look at it in a minute.

H.M.Jr: Take a look at Stewart's position.

Smith: Only take a minute.

H.M.Jr: While we're waiting let's see what I got in the Government bond market here.

Smith: It wouldn't be any help to you to find out about when that February meeting was held.

H.M.Jr: (On phone) Hello. (Conversation with Crowley follows:)

September 15, 1938.
10:11 a.m.

H.M.Jr: Hello.

Operator: Mr. Crowley. Go ahead.

H.M.Jr: Hello.

Leo
Crowley: Hello.

H.M.Jr: Leo?

C: Yes, Mr. Secretary.

H.M.Jr: Henry Morgenthau. Good morning.

C: Good morning.

H.M.Jr: First place, Leo, could you come at four o'clock this afternoon for a little meeting on what we've been talking about?

C: You bet.

H.M.Jr: And I think, before that, we'll have a copy of the - the report.

C: I get you.

H.M.Jr: And I'm asking the Comptroller to send you over - well the April one, see?

C: I see.

H.M.Jr: Which was photostated during the night.

C: That's fine.

H.M.Jr: Which will be assembled in order to get over to you by noon.

C: We'll get our fellows right on it.

H.M.Jr: And then the other one was flown in here and Folger just got it this morning although I understood it got in last night, but he hadn't - just got in this morning, as far as he's concerned. We're going to have that photostated tonight.

C: That's good.

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H.M.Jr: And we'll get that to you tomorrow.

C: Well, I think everything's going along all right.

H.M.Jr: And if you'll be over at four.

C: I'll be there.

H.M.Jr: Thank you.

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H.M.Jr: Would you (Mrs Klotz) invite Mr. Ransom at four o'clock, and Mr. Jones. Both cases, tell them it's important.

(Folger and Smith retire to round table to look at new report)

Hanes: Is that the new report?

H.M.Jr: What to look at it a minute?

(Diggs comes in)

Diggs: Good morning, Mr. Secretary.

H.M.Jr: Good morning.

Smith: Looking for Stewart. Here it is - \$8,088,000.

H.M.Jr: What was it before?

Folger: Ten something, the total was. This was eight, and we had the other loans secured. Pacific Coast Mortgage Company was not endorsed. This is his direct indebtedness - \$4,841,000.

Smith: Then the Pacific Coast Mortgage Company.

Folger: That's in the same small amount. That was in the old - two million and a half.

H.M.Jr: What's the situation?

Smith: Over eight million dollars.

Folger: Practically the same as it was.

H.M.Jr: How much Trans-America is there in it?

Smith: 32,000 shares.

Hanes: Gone up from 29,000 to 32.

H.M.Jr: Well, there's more.

Hanes: More, yes. More of Trans-America. And personally - last time it was about five million three.

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Folger: Five million three.

H.M.Jr: Direct indebtedness was five million three.

Smith: Four million eight. And the indirect brings it up to eight million, 88 thousand.

Folger: Which is the same total it shows in the old report.

H.M.Jr: But he's got 32,000 shares of Trans-America. Right?

Smith: That's correct.

H.M.Jr: If you - now gentlemen, if you'll come over here a little bit further, please.

Now Mr. Diggs, to keep you up to date, here's a photostat of a letter which I got from Mr. Ransom which I am giving you - for you, and it clears up Gus Folger's thing.

Diggs: This is in answer to the one you sent him yesterday.

H.M.Jr: Yes. I want Folger to see that. Folger, this keeps - this clears our skirts.

Now I'd like to officially ask you to send the Chairman of the Federal Deposit Insurance Corporation the most recent report on the Bank of America, and that's the one which was finished June - that's so-called the June '38 report.

Smith: April 20 report.

H.M.Jr: The April 20 report.

Diggs: That the one that we've just had this morning?

H.M.Jr: No, no, the April 20 report which was photostated last night. I'd like you to have that one by noon today.

Folger: Federal Reserve Board.

H.M.Jr: No, F.D.I.C.

Folger: You said F.D.I.C.

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- H.M.Jr: No, I said the Chairman of the Federal Deposit Insurance Corporation. I have no request from Mr. Ransom for a copy.
- Smith: He asked you for a copy.
- H.M.Jr: No, he said he's getting it from San Francisco
- Folger: we had a request from some of the staff - wanted the report.
- H.M.Jr: well, let it come from the Acting Chairman of the Board. In other words, here's Ronald Ransom, says to me he doesn't need any. I wrote him, "Do you need a copy of the report? I'll send it to you." and he writes back to me, "I've sent to San Francisco for it." So that takes care of that. So that takes care of the Federal Reserve Board.
- Folger: I understand.
- H.M.Jr: But I'm saying to you that I want Mr. Crowley, Chairman of the F.D.I.C., by noon today to have a copy of the April 20, 1938, report.
- Olliphant: That is, over the signature of the Comptroller, is that right?
- H.M.Jr: Yes, yes. And then I'd furthermore like to ask you that as soon as the most recent report, by which - I don't know what it's called - let's say the September '38 report, is it - I'd like you to send that to the Chairman of the Federal Reserve board and the Chairman of F.D.I.C. And I'd like them to have that not later than by noon tomorrow, the 16th.
- Wiggs: That means we'll have to photograph it. That's right.
- H.M.Jr: Yes, and I've kept the photostat - I'll say not later - let's say not later than five o'clock September 16.
- Folger: Don't know how to handle that.
- H.M.Jr: Why?
- Folger: This report is completed, what we have of it, but it isn't a completed report; he has a part of it that

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he's bringing on with him, and I've had him to come in and send this report before he actually completed it and signed it.

Smith: The way you want it done is as expeditiously as possible.

H.M.Jr: Well, is it necessary for them to have the full report?

Oliphant: Well, I would let them have - everything is there now except the Examiner's comments and criticism. Is that right?

Folger: And the recapitulation.

Oliphant: And the recapitulation. I would let them have the first - photostat of the first part right now, and then as soon as you get the recapitulation and so forth, let them have that.

Folger: Well, the part that's to be added to this when he arrives here is a very small part, a few pages.

H.M.Jr: Well, I'd like to say - put it this way. Let's call this report the September '38 report, and as rapidly as this comes in here and you can get it photostated, I would furnish the Chairman of the F.D.I.C. and Chairman of the Federal Reserve with copies. I wouldn't wait until the report is finished, but just as rapidly as you photostated it - I wouldn't wait one minute. Is that clear?

Diggs: That's right.

H.M.Jr: Now Mr. Oliphant and Mr. Smith and you people, I want you to go ahead and develop this evidence under Section 30, prepare it and - to present it to the Federal Reserve Board in Washington. I'm having lunch with Mr. Jones at one o'clock, and I feel that he should be acquainted with what is going on, so that in case we find it necessary to put in additional capital Mr. Jones would be acquainted. Then I'm going to ask you two gentlemen (Folger, Diggs) to come in here at sharp four o'clock, at which time I'll have Mr. Crowley, Mr. Ransom, and Mr. Jones, and the Treasury - office of the Secretary of the Treasury; want to advise them what we're doing. And then put

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them on notice that if they do anything that they extend the same courtesy to us. See? But in the meantime I want you to concentrate all of your efforts in getting the evidence ready under Section 30 which is necessary to present to the Federal Reserve Board. Any additions?

Oliphant: No. That's all.

H.M.Jr: Tom? John? Herbert?

Gaston: O.K. Only thing I have to suggest is that they go out the back door. It's getting close to 10:30.

H.M.Jr: That's right.

Period, paragraph, new page.

I am now asking you to use every possible effort to get us a report on the Anglo-California Bank. Now, when may I have a report on that?

Folger: Report on its condition? We have the last report here. Prentiss has signed it.

H.M.Jr: When did he sign it?

Folger: He signed it yesterday afternoon.

H.M.Jr: Well, that's news to me. I've been waiting. All right, now, will you let Mr. Smith and Mr. Oliphant see the report on Anglo-California Bank?

Folger: Yes, sir.

H.M.Jr: Which was signed yesterday, the 14th. What?

Folger: Yes, sir.

H.M.Jr: All right. And then I would say that we follow the same procedure in that case; that that report be photostated and copies be given to the Chairman of Federal Deposit and the Chairman of the Federal Reserve.

Folger: Yes, sir.

H.M.Jr: Just as rapidly as possible. I want to pursue that one just as rapidly as possible.

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- Folger: The Federal Reserve staff called for that report yesterday.
- H.M.Jr: Well, what I would suggest to you is this, in view of the difficulty and the circumstances: that you ask the staff that any report or any request of information, until further notice, come from the Chairman in writing.
- Oliphant: Acting Chairman.
- H.M.Jr: To the Acting Comptroller of the Currency.
- Oliphant: Acting Chairman.
- H.M.Jr: Well, whoever is Chairman. Until further notice, that the staff should not communicate directly with you; if they want any information, ask Mr. Ransom to write a letter to the Acting Comptroller of the Currency for any information that he wants.
- Gaston: You need that for the record.
- Diggs: We have some indication that officials of that bank would like to confer here.
- H.M.Jr: . What, Herbert?
- Gaston: I said I think you need that for the record.
- H.M.Jr: I don't want Tom Jones calling up and saying, "Give me this, that and the other thing."
- Oliphant: Have they hitherto, the staff, been in the habit of asking by telephone?
- Folger: They send a written request.
- Oliphant: If they request that in writing, I wouldn't change that. I wouldn't indicate that you're any less liberal in giving out information by changing that flow.
- H.M.Jr: Now, Mr. Oliphant, the reason I'm doing this is that the Acting Chairman of the Board doesn't seem to be familiar with what his staff is doing. Now, if he was familiar with what his staff was doing, he

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wouldn't have written me this letter saying that the Comptroller hadn't furnished this information.

Smith: Who signs those requests?

Folger: Oh, it's just a card that they have. We refuse, of course, to send it on - a messenger would come in, some boy from there; we knew he was from the Federal Reserve, but we wouldn't send them out on that kind of request.

H.M.Jr: Have you made a practice of sending out

Folger: Yes, sir, on the card.

Diggs: Written card from their staff.

Smith: Signed by a staff member.

Oliphant: That's a routine operation.

H.M.Jr: Well, I don't - I would have it countersigned by a member of the Board.

Oliphant: The other possibility - keep in mind what you have in mind, also what I have in mind; that is, when they respond to these requests - let them come in the regular way, but send your response to the Acting Chairman of the Board. But don't seem to be tightening up.

H.M.Jr: That's all right. I'll go half way. Request comes in from the staff but the information goes to the Acting Chairman of the Board.

Gaston: I wonder if it would be a good idea to call up Ronald Ransom and ask whether he wouldn't like to initial those requests hereafter.

H.M.Jr: You do that.

Folger: They send their messenger, of course. We don't send them; they send for them.

H.M.Jr: Mr. Gaston says we have the press outside. What I would suggest is that you go into Mrs. Klotz's room, and I'll ring the bell twice, which means that the

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press is in here. When you hear the gongring, it will be 10:30, H.M.Jr's time.

Diggs: On the Anglo Bank we have some indication, Mr. Secretary, that two of the officers of the bank want to discuss that case here the first of the week, and they have indicated that they are in a position to put in some new capital in the bank - in the Anglo Bank.

H.M.Jr: Well

Diggs: That is, they know the situation and they are coming here, trying to do something.

H.M.Jr: I still ask you please to see that those reports go just as rapidly to those other two institutions.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

TO Secretary Morgenthau
 FROM Herman Oliphant

Sept 15, 1938

In view of the fact that the Board of Directors of the Bank of America National Trust and Savings Association has declared a dividend of approximately 1%, payable on October 1, 1938, in disregard of the warning contained in the Comptroller of the Currency's telegram of September 13, 1938, the following courses of action should be considered:

- (1) Creditor's or stockholder's action to enjoin payment of the Dividend.

It would seem that depositors or other creditors of the Bank could bring such a suit based on the fact that the declaration of a dividend in an unwarranted amount would result in a dissipation of the assets of the Bank and a consequent damage to depositors and other creditors. The basis for a suit by a stockholder is not so clear since it would be more difficult for a stockholder to show that he was damaged by the declaration of the dividend. If either of these courses is utilized, it would be necessary to have the action brought by a depositor or stockholder who would be friendly to the Government's interest because pressure undoubtedly would be brought to bear to cause him to discontinue the proceeding. While the Treasurer of the United States may have funds on deposit with the branches of the Bank which have been designated as public depositories, undoubtedly these deposits are secured, as required by law, and accordingly it would appear that these deposits could not be employed as a basis for a creditor's action since it would be difficult to establish the necessary showing of damage.

- (2) Removal of officers and directors responsible for declaration of the dividend.

The Banking Act of 1933, as amended, provides that wherever, in the opinion of the Comptroller of the Currency, any directors or officers of a national bank shall have continued unsafe or unsound practices in conducting the business of the Bank after having been warned by the Comptroller to discontinue such practices, the Comptroller may certify the facts to the Board of Governors of the Federal Reserve System. After such certification, the Board of Governors may cause notice to be served upon the directors or officers to appear before the Board and show cause why they should not be removed from office. After a hearing, the Board, in its discretion, may order that such officers or directors be removed from office.

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(3) Publication of examiners' report.

If a national bank fails, within 120 days after notification of recommendations or suggestions of the Comptroller of the Currency based on an examination of the bank, to comply to the satisfaction of the Comptroller with such recommendations or suggestions, the Comptroller is authorized to publish the report of the examination after 90 days from the time notice of such contemplated action is given to the bank.

(4) Appointment of a conservator.

The Comptroller of the Currency has authority, whenever he deems it necessary in order to conserve a bank's assets for the benefit of the depositors or other creditors, to appoint a conservator for the bank. The conservator would be authorized either (1) to take steps to reorganize the bank or (2) to turn its management back to its directors and officers when he considers the bank to be in a sound condition.

(5) Removal of designation of bank as public depository.

Since the Secretary of the Treasury has designated a number of branches of the Bank of America as public depositories, it would seem that he has authority to revoke such designations.

(6) Termination of Insured status of bank.

Whenever the Board of Directors of the Federal Deposit Insurance Corporation finds that an insured bank has continued unsafe or unsound practices in conducting its business, the Board shall give notice of such practices to the Comptroller of the Currency. Unless the practices are corrected within the time prescribed by the Comptroller, the Board of Directors may take steps to terminate the insured status of the bank.

(7) Suspension of bank from use of credit facilities of Federal Reserve System.

The Board of Governors of the Federal Reserve System, whenever in its judgment any member bank is making undue use of bank credit for the speculative carrying of, or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions, may, after reasonable notice and an opportunity for a hearing, suspend the bank from the use of the credit facilities of the Federal Reserve System.

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(8) Liquidation as a result of failure to restore impairment in capital stock.

If any national bank whose capital stock shall have become impaired by losses or otherwise (such as by the payment of dividends from capital) shall fail to make good the deficiency and shall refuse to go into liquidation as provided by law for 3 months after receiving notice from the Comptroller of the Currency, a receiver may be appointed by the Comptroller to close up the bank.

(9) Forfeiture of franchise for illegal payment of dividends.

It is a violation of law for a national bank to withdraw in the form of dividends, any portion of its capital, or to pay a dividend if losses have been sustained by the bank, equal to or exceeding its undivided profits then on hand, or to pay a dividend in an amount greater than its net profits then on hand, after deducting its losses and bad debts. Before the declaration of a dividend on its common stock, a national bank must carry not less than 1/10th part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common capital. The penalty for violating these provisions appears to be an action by the Comptroller of the Currency in a Federal Court for the forfeiture of the bank's franchise.

Before any of these courses of action is undertaken, it will be necessary to study thoroughly the Comptroller's reports of the examinations of the bank which have not been made available to us.

Herman Oliphant

*P. Foley and
his men.*



TREASURY DEPARTMENT

Washington,

ASSISTANT SECRETARY

September 16, 1938

Dear Mr. Secretary:

I hate to bother you but will you give some thought to this suggestion, i.e., that we send to each director, along with the notice which you suggested today, a complete copy of the examiner's report. I will give you my reasons for this when I see you Monday.

Best regards, and hope you have a nice weekend.

Sincerely yours,

John Hanes

Assistant Secretary

The Honorable
The Secretary of the Treasury
Washington, D. C.

RE BANK OF AMERICA SITUATION

September 16, 1938.
12:15 p.m.

Present: Mr. Oliphant
Mr. Foley
Mr. Gaston

Oliphant: Do you want that alternative suggestion?

H.M.Jr: Yes.

Oliphant: The alternative to the stockholder's suit, which accomplishes our objective, namely, to remedy previous neglect on the part of the Comptroller's office as well as keeping the heat on the Federal Reserve - those are separate ends - and that is to appoint a conservator and simultaneously Jesse announces that he will prepare to advance whatever is necessary to the bank. That gives the whole idea.

H.M.Jr: Say that again.

Oliphant: You appoint a conservator; that is, the Comptroller does, as they are authorized to do when a bank is engaged in unsound banking practices. And they simultaneously announce it. Now, the objection Tom raises is that that means the bank is closing and destroys confidence. Well, simultaneously Jesse would announce and say something like that.

H.M.Jr: I don't like it.

Oliphant: What?

H.M.Jr: I don't like it. I don't like it. First place, I've got to have a Comptroller of the Currency that I can trust, a new one. Number two, I've got to have somebody to put in as conservator.

Oliphant: Well, I didn't say when to do this, but

H.M.Jr: Yes.

Oliphant: I agree with you that those are necessary for doing this.

H.M.Jr: And I'm not sure that putting a conservator in the situation is justified and that that's the way to do

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it. I think the disturbance it would cause is too great. First blush, I don't like it. But that doesn't say it isn't

- Oliphant: Well, I think it's a very serious thing when an organization can defy the Federal Government. It destroys confidence in the whole power of the Federal Government to regulate banks.
- H.M.Jr: All right.
- Oliphant: Serious thing if they're able to do it.
- H.M.Jr: What about the President's suggestion to bring suit in the district?
- Oliphant: Couldn't get jurisdiction in the district, and besides, there isn't power.
- H.M.Jr: Otherwise it's a good idea.
Well, has anybody heard from Giannini?
- Oliphant: Just one of his lawyers is in town - Zack Cobb - I know that - but none of his direct associates.
- H.M.Jr: Well, in the meantime, I take it, the Comptroller's office, plus the assistance that we can give them, is preparing - what do you call them, charges? What's the word?
- Oliphant: Warnings.
- H.M.Jr: warnings. That's being done?
- Oliphant: Tom has that in hand.
- H.M.Jr: Oh, Tom has that in hand.
- Oliphant: Diggs called me whether or not they should go up and finish their comments on that second report before they began to prepare the warnings, and I told them I wish they'd check that with Tom.
- H.M.Jr: Oh, Tom has that in hand.
- Oliphant: That's the way I understand it.

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- H.M.Jr: I tell you what I - what we'll do. I'd like to see him before I go.
- (To Kieley) I would like to see these gentlemen, plus Tom Smith, plus Hanes and Upham if he arrives, say, a quarter of two. See?
- And then at that time we can check where we're at.
- Oliphant: I think when Tom has a chance to sit down and go over that report with you, you'll find that the situation is - this remedy is not as drastic as the situation.
- H.M.Jr: Well, I'm not saying - no, I'm simply saying at first blush I haven't got the men to carry it out.
- Oliphant: Well, I agree with you, you first have to pick those two men.
- H.M.Jr: And furthermore, as I say, I'm not sure that the situation calls for this. And this is what Ransom suggested. And I - I want some awful good reason why we shouldn't go ahead, draw up these charges, and just present them to the Federal Reserve Board in Washington.
- Oliphant: Well, I think there's one very good reason. They'll go ahead and disobey this warning and every other warning and it'll take months to do the thing.
- H.M.Jr: I know, but this is a matter that's been growing up over five years, and they've been doing it for five years. But the President said he wanted to conserve the cash involved in this one dividend.
- Oliphant: That's all right, but that's only a small part of the picture.
- H.M.Jr: Well, let's come back a quarter of two.
- Oliphant: This does really boil down to the two men. I agree with you.
- H.M.Jr: Well, I haven't got them, Herman. I haven't got them. I need lots of time.
- You anything to say for yourself, Mr. Foley?

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Foley: No, thank you.

H.M.Jr: "hat?

Foley: No, thank you.

Oliphant: Well, this would be better than stockholder's suit.

H.M.Jr: I don't like stockholders.

Oliphant: This is better. This is all in our own shop.

H.M.Jr: O.K. If you people come back at a quarter of two, we'll talk some more. Will you?

RE: BANK OF AMERICA SITUATION

September 16, 1938.
1:45 P. M.

Present: Mr. Hanes
Mr. Smith
Mr. Gaston
Mr. Oliphant
Mr. Foley
Mrs. Klotz

Smith: I had a very interesting morning.

H.M.Jr: Do you want to tell me, first?

Smith: Yes, if you would like. Ransom informally told me that he would cooperate in every way that he can, and I told him the thing which you (Foley) were talking about - that you wanted to come over and see him - and would be very glad to discuss the procedure with you - what we were talking about yesterday. And he thinks - he can't think of anything further, or any other plan that we could follow.

Jesse Jones - I spent an hour and a half with Jesse this morning, and with him yesterday afternoon after our meeting here. He hasn't anything to suggest except that he thinks that every possible effort will be made to bring political pressure to stop this.

H.M.Jr: He does think so?

Smith: Yes. Of course, I didn't tell him what had been done.

H.M.Jr: Yes.

Smith: Now, Mr. Crowley - I checked it over with him again this morning. He hasn't any suggestions to make, other than what is being done.

H.M.Jr: Well, what is Jesse doing? Anything, one way or the other, about this?

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Smith: He can't do a thing about this.

H.M.Jr: What?

Smith: No, he can't do anything - nothing he can do.

H.M.Jr: He's awful busy on this, though, isn't he?
I mean he seems to be kind of going around.

Smith: Well, he's talking to you and he's talking to Leo and he's talking to Ronald. It's a terribly serious thing, and he is interested because it is serious.

H.M.Jr: Well now, as of a quarter of two today, I am leaving this afternoon - be back Monday morning - have you got any idea other than that we should prepare these lists of - what do you call them?

Smith: Preparation of your records - the case

Oliphant: Charges.

Smith: The indictment is what it is.

H.M.Jr: Oliphant says he's letting you do it.

Smith: He's letting me do it?

H.M.Jr: He's relying on you to do it.

Smith: Well, Mr. Foley and Mr. Folger are preparing it.

Oliphant: As between Tom and me, Tom was contacting, and sort of had that thing in hand.

Smith: It's all set.

Oliphant: I didn't want to cross wires with Tom, so when Tom - Diggs called me, I asked him to take it up with Tom. I am glad to do anything you want me to do.

Foley: We haven't seen the report.

H.M.Jr: Haven't seen what report?

Foley: The Examiner's report - the second one; the last one.

H.M.Jr: Where is it?

Smith: It is being photostated.

Foley: Well, it isn't finished; they are writing the comments - take a couple days to do it. See, those two men are here, and they're writing their comments; that is the yellow synopsis.

Oliphant: He hasn't even

Foley: Haven't the first one either.

Smith: And the first one is being assembled; photostated, and the photostatic room got the two reports mixed and they had six men on it all morning sorting them out.

Klotz: Can't give them more than one at a time.

Smith: Shouldn't give them more than one at a time. Take them two days to finish the report. Then the legal department and the Comptroller's office will prepare the indictment. That's the proper term for it, isn't it?

Oliphant: It is the warning.

Smith: And until that's done, there isn't anything more we can do.

H.M.Jr: So what's Mr. Smith going to do?

Smith: I'm going home.

H.M.Jr: Tonight?

Smith: I think so.

H.M.Jr: Why not? Be back here when?

Smith: Whenever you want me.

Oliphant: Well, we could keep in touch with him and give him another warning as to when we want him.

Smith: I think it will take a week or ten days more to get this stuff together.

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- H.M.Jr: I want - don't want to keep you here a minute more than I have to, so I can have you back when I want you.
- Smith: I'll go home tonight.
- H.M.Jr: I don't see why you couldn't take that fast train home tonight, and when I come back I'll let you know.
- Smith: I'll come back whenever you want me to. They won't have the report until Wednesday, and I've been into it, and you can't get it.
- H.M.Jr: You mean that's the last report?
- Smith: Yes, the last report; but they can start working on the other one.
- Foley: As soon as it comes from the photostating room.
- Smith: Yes. You'll get it today.
- Hanes: Tom, have you been far enough on this last report to know whether there's been any change?
- Smith: About the same - little worse.
- Hanes: Little worse.
- H.M.Jr: Well, my feeling, as of this afternoon, is simply this: There have been several suggestions made, none of which have rung the bell with me, that we should change our procedure. The President suggested we bring suit in the district to enjoin these fellows from declaring a dividend, and the lawyers say that can't be done. Oliphant made a suggestion that we immediately proceed to appoint a receiver. I don't like that.
- Smith: That's the reason that I started out after the meeting yesterday, and I guess I spent three hours with Mr. Jones; went over it thoroughly with Mr. Crowley, and Mr. Ransom, and after doing that I am firmly convinced that you are doing the thing you should do.

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- H.M.Jr: Well, that's what I meant - I told him - now that always - that doesn't mean that I don't reserve the right to change my mind.
- Smith: Well, it's always subject to change.
- H.M.Jr: But as I feel today, having less than no Comptroller, and not having in mind a man who I could put in as Receiver, I wouldn't want to take that step. If I had a Comptroller and I had a man that I knew was up to the mark, why I might be considering it.
- Smith: And there is just one other thing. I think that it is more dangerous than Mr. Jones says; I think he is minimizing it, and for that reason I think it would be very dangerous to talk about appointing a conservator; I don't think it is important to try to stop the payment of the dividend. It is two million dollars that you'd save, to the company, but when they pay that dividend, then you make your case stronger.
- H.M.Jr: That's what I told the President. When they pay the dividend, if it is subsequently found that they are impairing their capital by doing so, the payment of the dividend is a criminal act. Right? It is stealing.
- Now, I've just got one thought, and that is this - if my terminology is not quite correct - but whatever law you break - when they act to pay the dividend - now get this; I think this may be an idea - aren't all the Directors liable?
- Foley: (Nods "Yes.")
- Oliphant: Everybody that's responsible for participating in it would be liable.
- H.M.Jr: Well, twenty-four or twenty-five were present when that notice was served.
- Well, let me just say for the moment that they are liable; then, what I am suggesting
- Oliphant: That is, if Tom is right, that they are under water.
- H.M.Jr: Now what I am suggesting to you is, a letter, something like this to the Comptroller - to each

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individual Director: "We wish to point out, pursuant to serving notice on the Board of Directors, of the above notice, that if you people proceed to pay out the dividend, we want to point out to you what your individual responsibility is in this case. Comptroller of the Currency."

Smith: That would be a smart thing to do.

H.M.Jr: See?

Smith: I think that's a nifty

H.M.Jr: See? "We feel it is our duty to you to point out to you what your individual responsibility ..."

Smith: I think that's a smart thing to do.

H.M.Jr: What? I admit I think it's smart. But if you think well of it - see? How does it hit you?

Hanes: Sounds good to me.

H.M.Jr: I mean, I would take this attitude; I mean, this tone: That "We want to be helpful; we don't want you, Mr. Director, to put yourself in a place where so and so - and therefore, we are writing you that in this spirit" - or something like that. And then send them a registered letter.

If, after you people think well of it - I don't think we need to confer with the others outside.

Smith: No, I don't think so.

H.M.Jr: And you've got - well, we can talk about it when we get back Monday. That will be time.....

Oliphant: That will be time.

H.M.Jr: Do you like it, Ed?

Foley: Well, I'd like to think about it a bit, and like to look at the law, and see what the responsibility is.

H.M.Jr: Well, Oliphant likes it. All right; that's my only contribution.

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Smith: Do you want to talk about the other bank a minute?

H.M.Jr: Just a moment.

Oliphant: Before we get on this other.....

H.M.Jr: But Herman, you give that careful consideration; you do too, John.

Oliphant: And I'll have an answer for you on it by Monday. That will give us a little time. Now, before we get out on the other thing.....

H.M.Jr: Got three minutes until Cabinet.

Oliphant: This will take half a minute. This job of preparing these twenty or thirty warnings is a joint job between the Comptroller's Office and my shop. Now, when Tom goes away, who do you want to be responsible for carrying it and pressing it?

H.M.Jr: Cyril Upham. Let him press.....

Smith: Will he be here today?

H.M.Jr: Should be.

Smith: Well now, about the Anglo-London

H.M.Jr: Yes.

Smith: As soon as you get your procedure set up for this, I think you should follow the same procedure for that, and in the meantime, they have asked for a conference.

H.M.Jr: We follow this same procedure?

Smith: Well, they have been; they have been.

H.M.Jr: I mean, don't the - the dividend action has nothing to do with it?

Smith: No, we can't do that. We haven't given any notice on dividends, because they already declared - which they only declared three-fourths of one per cent - seventy-eight thousand dollars, but they have asked

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for a conference. I have talked to Mr. Prentiss about it; they have asked for a conference, and want to talk about putting some capital in it. They are in a different position - want to come here and talk about it.

Klotz: They asked for it last week.

Smith: Yes.

H.M.Jr: If the same procedure could be followed, I'd say fine.

Smith: Well, it can - same thing, except you can't serve notice on them about the dividend. There's plenty there to - they've got more violations of the law, I think, than there is in the Bank of America. They have absolutely violated it.

Foley: Well, have those been called to their attention, from time to time, by the Comptroller's Office?

Smith: Yes.

H.M.Jr: Mrs. Klotz, will you find out if Upham's office - and let him get what Tom Smith has done, as soon as he can, so he can pick up where Tom leaves off. Keep Tom advised, and me, and let him.....

Smith: Well, I'll get hold of Cy and tell him everything I know, and tell him about my conversations with these other people.

H.M.Jr: Well, Tom, I can't tell you what a comfort it is to have you here.

Smith: Well, I am very glad to be in the party - in the family again, and I think that you are rendering a real service to the country in this case.

H.M.Jr: And so are you, and I've got only one worry; that is, when you going to pass the sixty million mark - Boatmen's Bank?

Sah

Sept. 17, 1938

Dear Henry!

Just called to
keep in touch with you.
Have not tried to see the
President on account of the
foreign situation enjoying
his attention. Probably you
would like to go over matter
first with him. Will
contact you Monday.
Jeff

Cyril B. Upham

- 1915 -- A. B. Morningside College, Sioux City, Iowa.
- 1915 -- Summer months in the law office of Carter, Brackney and Carter, Sioux City, in charge of commercial department.
- 1915-18 -- Graduate student in Government at the State University of Iowa; and during summers, research assistant for the State Historical Society of Iowa. Several monographs published.
- 1917 -- M. A. State University of Iowa.
- 1918 -- Ph.D. State University of Iowa.
- 1918 -- April-November -- In the United States Army, being discharged with rank of 2nd Lieutenant, Reserve Corps.
- 1918-19 -- Research Assistant, State Historical Society of Iowa.
- 1919-20 -- Instructor in Political Science, State University of Iowa.
- 1920-24 -- National City Bank of New York, New York City, in various departments in training for service with their foreign branches; later in the Commercial Credit Department of the Foreign

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Banking Division, becoming a section chief; later assistant to an Assistant Vice President in the development of the bankers acceptance business of the bank, both foreign and domestic, including syndicate credits to cotton cooperative associations, and other cooperatives. During this period I took special courses in banking at Columbia University and the American Institute of Banking, New York Chapter, and did some writing in the banking field.

1924-29 -- On the staff of the Finance Department of the Chamber of Commerce of the United States, engaged in banking and financial research and writing; the analysis of financial legislation; and working with the Chamber Committees on banking, on Federal expenditures and revenues, and fiscal matters generally. During this period I served as Secretary for the National Conference on the Prevention of Fraudulent Transactions in Securities, in cooperation with the Investment Bankers

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Association of America, the Better Business Bureaus, and the Securities Commissioners of the States. Also assisted in organization and financing of Flood Credits Corporation for relief and rehabilitation of flooded areas of the South.

- 1927 -- LL.B. George Washington University Law School.
- 1928 -- Member of the District of Columbia Bar.
- 1929-33 -- Chief of the Banking Division, United States Daily. Supervision of the financial news of the Federal and State Governments for the paper.
- 1929-30 -- November-April -- Member of the Advisory Board of Shields and Company, New York Stock Exchange firm.
- 1929-31 -- Lecturer on Commercial Law, George Washington University.
- 1930-32 -- Staff of Committee of Federal Reserve Board on Branch, Group and Chain Banking, specializing on group or holding company banking.

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- 1931-33 -- Special writer on finance for the Consolidated Press Association.
- 1932-33 -- Editor of The Banking Week.
- 1932 -- Columbia University School of Law -- Adolf Berle's course in Law of Corporations.
- 1933 -- March-September; Research Department of United States Chamber of Commerce.
- 1933 -- September-December -- Staff of Brookings Institution, writing book on Closed and Distressed Banks, and special financial articles for their news service under the direction of Felix Morley.
- 1934 -- January-November -- Assistant to Herbert Gaston, Treasury Department.
- 1934 -- Gave course on "Banking and the New Deal" at American University School of Public Affairs Summer School.
- 1935-37 -- Lecturer on Banking, American University Graduate School.

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- 1937-38 -- Adjunct Professor of Banking, American University Graduate School.
- 1937-38 -- Lecturer on Money and Banking, American Institute of Banking, Washington Chapter.
- 1938 -- Ll.D. Morningside College.
- 1934-38 -- Special Assistant to the Secretary of the Treasury.

September 19, 1938

GOODWIN J. OPPEGARDDeputy Comptroller of the Currency.

Mr. Oppgard was born in Erakine, Minnesota, May 30, 1891. After finishing country grade school, he attended high school at Erakine, finishing at the Model High School at the North Dakota State University. He graduated from the law department of the state university in 1917. Earned his way through school by acting as salesman during vacation periods. He entered the first officers' training camp at Fort Snelling in May, 1917, and secured a commission as second lieutenant of infantry at the end of the term, and was assigned to the 88th Division then being formed at Camp Dodge, Iowa. Thereafter he was promoted to first lieutenant of infantry, and subsequently to captain, serving overseas about one year. Upon his return from service, he began the practice of law at Beach, North Dakota, and was there until the spring of 1928. While at Beach, he served two terms as state's attorney of Golden Valley County. In the spring of 1928, he moved to Los Angeles, California, where he was in the general practice of law until November, 1935, when he came to Washington as Assistant Counsel for the Federal Deposit Insurance Corporation, serving in that capacity until he was appointed Deputy Comptroller of the Currency in January, 1938. His work with the Federal Deposit Insurance Corporation was chiefly confined to the handling of proceedings against insured banks for unsafe and unsound banking practices and violations of law, including the violation of regulations, particularly Regulation 4, which corresponds to Regulation Q of the Board of Governors of the Federal Reserve System.

E. H. GOUGH,
Deputy Comptroller of the Currency

Mr. Gough was born July 6, 1874, at Boonville, Indiana. He had the education afforded by the schools of the place and graduated from high school in the spring of 1893. In March 1893, he began work in the Boonville National Bank, performing the duties which were usually those of a beginner in a small bank. He remained in the bank until September 1894, when he entered Indiana University at Bloomington, where he was a student at the University for about three years. While there he took six months in law and later studied law with a view to entering the practice.

In November 1898, he accepted the cashiership in the Boonville National Bank and retained the position until he was appointed a National Bank Examiner in the spring of 1910. He remained in the service for a little over a year and then became Vice President of the German National Bank of Vincennes, Indiana. The connection was not pleasant, however, so in a few months he resigned and later, on April 13, 1912, was reappointed a National Bank Examiner. His service with the Comptroller's office since the last named date has been continuous.

In January 1924, Mr. Gough came to Washington as an Assistant Chief National Bank Examiner in the Comptroller's office. He has been a Deputy Comptroller since July 6, 1927.

MARSHALL R. DIGGS, DEPUTY AND ACTING COMPTROLLER OF THE CURRENCY.

Mr. Diggs was born in Paris, Tennessee. His youth was spent in Texas and Oklahoma. He graduated from Epworth University (now Oklahoma City University), afterwards attending Yale Law School. He practiced law for a number of years in Chicago prior to the World War.

When America entered the War, Mr. Diggs entered the Officers' Training Camp at Leon Springs, Texas, was commissioned a First Lieutenant of Infantry, and served as instructor in subsequent camps; and he was promoted to Captain before the end of the War.

After his discharge from the Army and up until 1921, he was engaged in the oil and automobile business in Dallas, Texas. He then accepted a position as Vice President and General Manager of the Walraven Book Cover Company, and in 1923 he moved to Chicago, where he developed a national sales and advertising business, dealing largely with financial institutions. He returned to Dallas in 1928 and with others, organized the Southwestern Sewer Company, of which concern he became Vice President and General Manager. He held both positions when, in January 1934, he accepted an appointment as Executive Assistant to J. F. T. O'Connor (then Comptroller of the Currency), in his capacity as ex-officio member of the Board of Directors of the Federal Deposit Insurance Corporation. He served in this capacity until January 15, 1938, when he was appointed Deputy Comptroller of the Currency. Since Mr. O'Connor's resignation in April, Mr. Diggs has served as Acting Comptroller.

September 15th
1 9 3 8

The person about whom you spoke yesterday is, in my opinion, exceptionally well suited to serve the Secretary in the position to which you refer.

In the first place, he is truly, enthusiastically and sincerely in the utmost sympathy with this administration.

I should think that for the particular position to which you refer there would be several requisites about as follows:

1. Ability and Training. This man is a graduate of Harvard University and Columbia Law and he was a Rhodes scholar. He distinguished himself in both universities because of his marked aptitude for economic and financial subjects. Since he left the university, he has successfully practiced law with a private firm and has variously and successfully served with distinction: a) in the Legal Department of the R.F.C., but in such a position as to virtually have authority and the exercise of judgment in loans; b) as General Counsel for the Federal Alcohol Administration, in which he had an important part in setting up the present operation, and c) as Vice President and General Counsel of the Company with which he is now associated.

In each of these three responsibilities, he has at all times discharged his duties in convincing fashion. Particularly is this true in the work in which he is now engaged. It has been notable and has attracted wide attention among people in the business. His undertaking was probably as intricate and as difficult a legal and administrative job as could be imagined, and his very great ability has been proven in the fine way in which he has carried on his work.

2. Character. I think and speak what everyone who knows him would say that his character is of the best. He is trustworthy at all times and can be relied upon as to discretion and judgment, and his sense of loyalty is of the best.

3. Background. I think his experience and work in the past thoroughly justifies and would justify in the public mind his appointment. He is cooperative and diligent in his efforts always to discharge his duties.

4. Socially he is acceptable in any circle. His wife is a charming woman and he has a lovely family. His private life is thoroughly good and commendable.

This man, while young, has dignity and conducts himself in such a way as to command the respect of the public, and anyone with whom he might have business.

RE BANK OF AMERICA SITUATION

September 19, 1938.
10:00 a.m.

Present: Mr. Hanes
Mr. Oliphant
Mrs Klotz
Mr. Upham
Mr. Gaston

H.M.Jr: Now look, Cy, this is what I want to tentatively suggest to you; I don't know whether you can make it. I would like the Comptroller's office to go back ten years and give me a report on how the bank examination report, when it was finished, was handled as between the office of the Comptroller and the Bank Examiner, and I want that for the ten biggest banks in the United States.

Upham: Between the office and the Examiner.

H.M.Jr: Well, between the office - the Examiner (Comptroller?) and the Bank Examiner who examined it. I want to go back the last ten years, take the ten biggest banks, and what's the practice which has been followed for the last ten years?

Upham: Fine.

H.M.Jr: See? In detail. That will - just ten biggest banks will cover the field, wouldn't it?

Hanes: (Nods yes)

H.M.Jr: And that would also cover the bank - closing period, everything else. What?

Oliphant: Excellent.

H.M.Jr: Now, the thing which was developed here, which Mr. Oliphant says he thinks well of, is that just as promptly as possible I would take the - we would take the most recent report, wouldn't we....

Oliphant: That's right.

H.M.Jr: ...the one which is in process of being completed, for the Bank of America, and the Anglo-California,

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and that a letter be prepared to send to every director - plus the officers?

Oliphant: (Nods yes)

H.M.Jr: Plus the officers.

Upham: Well, you wouldn't mean all the officers.

Oliphant: The ranking officers.

Upham: You mean the ranking officers.

Oliphant: I mean the President, Vice President,

H.M.Jr: ... and Treasurer of the bank.

Oliphant: Cashier.

H.M.Jr: Yes. Plus the directors. And that they be sent a registered letter pointing out the salient criticism in this report plus the liability involved

Oliphant: Personal liability.

H.M.Jr:the personal liability if, in both cases, the dividend be paid on the first of October.

Oliphant: That ought to be done fairly promptly.

H.M.Jr: Anybody disagree on that? And that letter and report should be prepared in the Comptroller's office, and then for criticism and suggestions given to the General Counsel of the Treasury. Right?

Upham: They're working together on it.

Oliphant: I have a draft of the letter pointing out the liability.

H.M.Jr: All right.

Oliphant: Now I'd like to point out it would probably be necessary to put some pressure on them to admit that can be done well in advance of the first.

H.M.Jr: Oh, I insist.

-3-

- Upham: Ought to be done this week, if possible.
- H.M.Jr: It must be done this week. It ought to be in the mail the very latest by the night of the 23d. That's Friday. Ought to go out here not later than the night of the 23d, which would mean they all would have it by the morning of the 26th.
- Upham: Those two Examiners from San Francisco are working night and day.
- H.M.Jr: That's all right. Let them continue. Then they can go on a binge Saturday and Sunday.
- Go ahead. I got some stuff to tell you fellows which you don't know about. Go on.
- Upham: Well, these are not in very good order, but I'll take them the way I jotted them down.
- I reported to Mr. Diggs that it was your opinion that nothing unusual or out of the ordinary or that didn't have to be done now should be done, so that he didn't have
- H.M.Jr: Meaning what? I didn't - don't get that.
- Upham: This call report. He was thinking of having an extra call report this fall. Well, Saturday he asked me if I wouldn't take it up with you again; that unless you had some other reasons he'd kind of like to do it. Now, he didn't tell me, but I discovered that they sent out the forms on the 12th to the banks. They sent them out in advance, saying, "This is not a call, but use this when and if there is a call." I told him that I didn't want to bother you with it again.
- H.M.Jr: Well, it's unimportant.
- Upham: Didn't see any sense to doing it.
- H.M.Jr: I didn't want to be in a position - if the Comptroller wants to do something, I don't want to be in the position of saying "No." It's unimportant as far as I'm concerned. What? I don't care; I mean I don't

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want him ever to say, "Well, if I had done this, sent out so and so, we would have developed so and so." It's unimportant; let it go.

Upham: I think he ought to check with the Federal Reserve and F.D.I.C. before he does that ever. If you leave it to me, all right.

H.M.Jr: I'll leave it to you.

Upham: Leave it to him.

H.M.Jr: Leave it to both of you. I don't care. Does anybody care? What?

Upham: Mr. Crowley and Mr. Ransom, I think, would prefer to have no call at this time.

H.M.Jr: Well, as far as I'm concerned, it's immaterial.

Upham: You asked Mr. Hanes to ask me whether the Bank of America and Anglo-California have received the same kind of treatment in so far as letters to the - to directors are concerned. The answer is that they have received the same kind of treatment, sometimes a letter and sometimes not.

I don't know whether you know or not that the Fleishackers will be here Tuesday evening.

H.M.Jr: I heard they were coming.

Upham: I don't know whether you know Mr. Cobb, the counsel for Giennini, is here. He called Mr. Diggs yesterday at home. Mr. Diggs said he is not going to talk to him about Bank of America affairs, but will refer Mr. Cobb to Mr. Oliphant.

Oliphant: Well, he ought to refer him to Barse.

Upham: Barse.

Oliphant: Yes. I don't - I want to handle everything in a routine way.

Hanes: Is that Zack Lamar Cobb who came in to see me?

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Oliphant: Zack Cobb.

Upham: There is a letter from Mr. Giannini commenting on the telegram. I should like to give photostats to these people. And he ends up - well, he protests all the things and said he took the last report before the board and read it to them and they are satisfied that the bank is all right and he's all right, and he'd be very glad at any time to come and tell the Federal Reserve Board all about it, appear before the Federal Reserve Board.

H.M.Jr: I think that wish is going to be satisfied.

Upham: He complained - well, he said when his people were here they reported to him that the Comptroller's office was very friendly, and he can't understand this - why this sudden action should be taken. And he asks why he hasn't had a reply to his letter of criticism of the last examination report. And the reason he hadn't was because they're very slow and didn't think it was important down there. But they finally did answer it on the 13th, after having pins stuck in them every day.

H.M.Jr: Go ahead.

Upham: My recollection is - and I'd want to check this with your diary if possible - that one time in here you told Mr. Diggs rather positively that you didn't want any branches to be given to Giannini until he did something we've been asking him to do.

H.M.Jr: Been so many - I made so many statements on that, I think, but Mrs. Klotz will have it looked up for you.

Upham: Well, they've given one four-day branch for the State Fair in California. I suppose that's relatively unimportant.

H.M.Jr: It is.

Upham: Except that ...

H.M.Jr: It is. I wouldn't make an issue of it.

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Upham: They're advertising out there that they're going to have a couple branches at the World's Fair.

H.M.Jr: Well, for the moment I wouldn't bother with that.

Upham: You recall that Mr. Prentiss was going to give me for you a copy of his program.

H.M.Jr: Yes.

Upham: He gave one - he turned it all in, but he didn't give any for me. I don't know whether he gave any for you or not.

H.M.Jr: No, I didn't get it.

Upham: If you want that, I can get it from Mr. Folger.

H.M.Jr: I want it for you. What else?

Upham: That's all.

H.M.Jr: All right. Now, in this letter which you wrote me and in which you said that Mr. A. O. Stewart has loans from Trans-America?

Upham: That's right, about three and a half million - he and his interests.

H.M.Jr: How did you get that?

Upham: It's in this last report which they're finishing up now. I read that report in San Francisco.

H.M.Jr: Oh, it's in that.

Upham: Yes, they included there an examination of Trans-America.

H.M.Jr: Oh, there's an examination of Trans-America?

Upham: Well, they went in to find out what loans Trans-America is making to the Bank of America interests, and that includes the A. O. Stewart interests.

H.M.Jr: A. O. Stewart, on top of his eight million.

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- Upham: That's right. On top of his 11 million. In this examination it's grown from 8 to 11.
- H.M.Jr: And - 8 to 11 - and on top of that....
- Upham: ...three and a half million to his interests from Trans-America.
- H.M.Jr: So that makes how much?
- Gaston: Fourteen and a half.
- H.M.Jr: But he now owes - how much does he owe individually to the Bank of America?
- Upham: About five million, I believe.
- Hanes: Five million three.
- H.M.Jr: And the rest of it is his interests.
- Upham: That's right, and his interests have another three and a half which they borrowed from Trans-America.
- H.M.Jr: Now, in all these borrowings, as I understand it, with the Bank of America, he has roughly 32,000 shares of Trans-America up as collateral.
- Upham: I think that's right.
- H.M.Jr: But when he borrowed from Trans-America three and a half million, what's his collateral?
- Upham: Well, it includes, as I recall, some 300 shares of Bank of America.
- H.M.Jr: Well, would you just get out the A. O. Stewart stuff?
- Upham: Fine.
- H.M.Jr: Now, here's the reason why. Mr. Ronald Ransom called me up at the farm Saturday and, roughly, he said he'd talked to Mr. Eccles about this situation and that Mr. Eccles would be in San Francisco on Tuesday or Wednesday of this week, and - at which time he's sending for Mr. A. O. Stewart and showing him what the situation is and giving A. O. Stewart a chance to explain. I gather

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that if he can't explain satisfactorily that Eccles will move on the spot to get rid of Stewart.

Now, does Ransom know of the things that we have been talking about?

Upham: I think not.

H.M.Jr: Well, then, in view of the fact that Eccles is going to be there Tuesday and Wednesday, dig this stuff out on A. O. Stewart and personally call on Mr. Ransom and lay the whole thing before him, see, and make a record of your visit and of your conversation, see? So that he in turn can - because if I - so much has happened. But I think what Ransom told me was that he mailed everything air mail to Eccles; so if he hasn't got all this stuff, why, he ought to get it to Eccles so he can lay it all on the table before A. O. Stewart, see?

Upham: We can have the San Francisco office give it to Eccles, too, if there isn't time to

H.M.Jr: Will you handle that today? And when S.E.C. comes over to find out about Trans-America, - why, evidently this is in this report.

Hanes: They've been here.

H.M.Jr: Have they seen this?

Hanes: They've been here. They were here all day Friday and all day Saturday.

H.M.Jr: And looked at the most recent report?

Hanes: Yes, sir, got copies of both reports.

H.M.Jr: Fine.

Now, does that clear you (Upham)?

Upham: Yes, sir.

H.M.Jr: Now, are you (Hanes) cleared?

Hanes: Yes, sir.

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H.M.Jr: Herbert?

Gaston: No, I haven't anything.

H.M.Jr: Herman?

Oliphant: That's all.

H.M.Jr: Now listen to this, people, closely, all of you. I am, as far as I know, having lunch with the President at one o'clock, unless he's cancelled it. I have had no word to the contrary.

This is a question of strategy. When, in your opinion, people, first, would be a good time for the President to put in a new Comptroller? And what would be a good time for him to do it, in view of this situation? What I am thinking is, should he move, say, within the next couple days, or should he develop this thing and see what happens and let this thing come along until, say, after the first of October, or should he do it before the first of October?

Hanes: My opinion is he ought to do it today. I think we need a Comptroller in there right away looking after the thing from the standpoint of the welfare of the bank.

H.M.Jr: Herbert?

Gaston: That's my impression. I think he ought to do it right away, as soon as possible.

H.M.Jr: Herman?

Oliphant: At once.

H.M.Jr: Mrs. Klotz?

Klotz: I feel just that way.

H.M.Jr: Right away.

Klotz: I sure do.

Upham: Of course, there is one difficulty, Mr. Secretary. It is now a recess appointment, and a man appointed

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now could not draw salary until he was confirmed, and if he wasn't confirmed wouldn't draw any at all, I believe.

- H.M.Jr: But that's quite common. I mean Congress has practically never refused to make up the salary.
- Upham: I don't think they often refuse confirmation.
- H.M.Jr: I mean they'd have to refuse confirmation.
- Upham: Yes, and he'd get no salary in the meantime.
- Gaston: There have been many cases where they refused confirmation but have voted salary for the entire time.
- H.M.Jr: In other words - Congress doesn't pay that salary anyway.
- Upham: Well, I suppose they appropriate the money for it.
- H.M.Jr: Do they?
- Oliphant: I'd have to check into that. I'll give you a note on that.
- H.M.Jr: Do they?
- Upham: I'm not sure about the Comptroller himself. I'm not sure about the Comptroller himself. Perhaps not.
- H.M.Jr: Well, the reason I asked - you know, we don't - Congress doesn't vote this money. We assess the banks, you see. The banks pay for the running expenses of the Comptroller. The whole thing is quite unique. Between now and January I'm going to clean up this whole mess.
- Upham: A part of their money comes from Congress, but I'm not sure about the
- Gaston: They are, however, all employees of the United States.
- H.M.Jr: Pardon me?
- Gaston: They are all employees of the United States, regardless

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of where their money comes from.

- H.M.Jr: Well, you're all against me.
- Upham: It's not a fatal defect.
- H.M.Jr: I'm not sure but that I'd like to give this fellow Diggs a couple weeks' more rope. I'm not sure. If Diggs's - what's the fellow's name, his assistant?
- Upham: Well, Mr. Gough would be the next man unless ...
- H.M.Jr: What is there - there's a Comptroller.....?
- Upham: ...and three Deputies.
- H.M.Jr: And three Deputies. But Diggs is Acting Comptroller. Who's first Comptroller?
- Upham: Well, he isn't the first Comptroller.
- H.M.Jr: Who becomes Acting Comptroller when he ...
- Gaston: First Deputy.
- H.M.Jr: Who is the second one?
- Upham: Either Gough or Oppegard. Gough is the oldest in point of service.
- H.M.Jr: (To Kieley) Give me the what-you-call-it - showing the various Government departments.
- Klotz: Congressional Directory.
- Upham: We can appoint either one of the other two.
- H.M.Jr: Supposing the President or I wanted to remove Diggs and Oppegard. How would we do it?
- Upham: Well, they're appointed with your - under your authority, I believe.
- H.M.Jr: Should I just write them a letter and say, "You're out"?
- Oliphant: That's what I assume. You ordinarily act under the recommendation of the Comptroller.

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- H.M.Jr: Yes, but there is no Comptroller. Might look that up, Herman.
- Upham: President would have nothing to do with it, I think, unless you ask him.
- H.M.Jr: That would please him.
- (Kieley brings in Congressional Directory)
- "Marshall Diggs, Deputy Comptroller of the Currency" - 303. "Comptroller - Vacant. Deputy - Marshall Diggs. E. H. Gough."
- Upham: Gough (pronounced Goff).
- H.M.Jr: Gough, and Oppegard.
- Well then, the fellows we want to get rid of, if we do, are Diggs and Oppegard, huh? Who is Oppegard anyway?
- Upham: Well, he came over at the same time Mr. Diggs did. He was an attorney in F.D.I.C.
- H.M.Jr: Mrs. Klotz, ask our friend Thompson, see, to give me a one-page history - and get it out of the - can you (Upham) get this or can he? - well, he can get it anyway - out of the files, who Diggs is, who is Mr. Gough - E. H. Gough - G-o-u-g-h, and who is Mr. G. J. Oppegard - O-p-p-e-g-a-r-d. They're all Deputy Comptrollers. And I want it at one o'clock today.
- Gaston: Oppegard is an O'Connor man who came from North Dakota and Minnesota.
- H.M.Jr: One of those Non-Partisan Leaguers?
- Gaston: No.
- H.M.Jr: Ha! Ha! Ha!
- Gaston: Jefty was always an opponent of the Non-Partisan League.
- H.M.Jr: I know.
- Upham: I think it is fair to say, Mr. Secretary, that Mr. Diggs stepped into a very bad situation, and of course, not being Comptroller, perhaps couldn't do

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as well as he otherwise could.

H.M.Jr: Uh-huh. Well - well, maybe so.

Gaston: I was thinking of this: if you let the situation

Oliphant: I don't know to what extent he's playing a game, because he sent Barse out to talk over with Jefty the question of my taking over the lawyers; also he sent him over to talk with the attorney in F.D.I.C.

Gaston: Birdzell.

Oliphant: Birdzell.

H.M.Jr: That's why I say I want a little more time, because with his knowledge - with the knowledge of Mr. Diggs I'm having Elmer Ireys organization make an investigation of his political activities, see? And as far as we've gone, he was working for the position of Comptroller while Jefty was still holding office, and using the National Bank Examiners for the machinery to get the job for himself. And so - I mean if I had Elmer Ireys report - (to Klotz) tell Elmer to hurry it up - then I could move on this, say, "Well, in view of this report and Mr. Diggs's activities, I don't think he's fit to be Comptroller." I mean that's what I had in my mind, see? I mean much better to say, "Well, here's the report and anybody who engages in this kind of activity isn't fit to hold office." But I'd kind of like to wait until I had Elmer's report.

Oliphant: If you happened to move on the Comptroller, it is perfectly natural that the new man would surround himself with his own Deputies; you wouldn't need to justify his removal and everybody would be friendly and there would be no recriminations.

Gaston: Do you want to make it a removal for cause? If you just appoint a Comptroller in due course and he appoints new Deputies, that's a normal thing. The longer this thing goes it looks like a removal for cause, and I don't know whether you want to make it that or not.

H.M.Jr: And in the meantime Jefty O'Connor has asked to come in to see me. I think I'll postpone that 24 hours.

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- Oliphant: Do you want a line on him?
- H.M.Jr: Yes.
- Oliphant: What he told Barse was that he thought the idea of my taking over the lawyers was a perfectly wonderful idea.
- H.M.Jr: Well, I'll be awful honest; I always am. I'll say that remarks like that and pretty speeches about me - that O'Connor pulled the wool over my eyes. So I had his number the first couple of years that he was here and - but fortunately I have no commitments as far as Mr. O'Connor goes, as far as the President of the United States goes. I mean my hands are untied. I've only made one recommendation to the President as far as the Comptroller goes, and that was Preston Delano. I made that before I left, before I went to Europe. I have recommended Preston Delano for the position. Since then I have wobbled a little bit, but as far as the President goes the only recommendation I gave him was Preston Delano. Of course that's all in the family.
- But O'Connor's a smart boy and I'll say that I wasn't as smart as I like to think I am. (Laughs)
- Klotz: Did you (reporter) get it?
- H.M.Jr: Sure he got it.
- But I'm free to make any kind of recommendation to the President. Is this Preston Delano still your (Upham) Number One candidate?
- Upham: Oh, I don't know that he'd be Number One, no. I've usually held John Peyton as Number One, but he is unavailable, I think.
- H.M.Jr: You said that before.
- Upham: Most of the Number One candidates are unavailable, I think. I have very high regard for Preston Delano. I don't know whether - very much about the
- H.M.Jr: Would you - how would you weigh Preston Delano on the one hand, Bill Myers on the other?

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Upham: Well, I think about equally.

H.M.Jr: About equally. Which do you think is the most aggressive?

Upham: Myers.

H.M.Jr: Aggressive.

Upham: Yes, I think he would be a little more aggressive.

H.M.Jr: Do you (Hanes) know either man?

Hanes: No, I don't know either man.

H.M.Jr: Herbert?

Gaston: I don't know too much about Preston Delano except that he is a very pleasant fellow and I understand pretty competent. I would think Bill Myers is a better man for the job than Delano.

H.M.Jr: Herman?

Oliphant: I can duplicate just what Herbert said. I don't know enough - talked a good deal to Preston Delano; but as a member of this team I think Bill Myers.....

H.M.Jr: Who?

Oliphant: As a member of our team, with the work we have to do, I think Bill Myers would be much better than Delano, because in the matter of getting acquainted - I mean you can begin to work with Bill at once.

H.M.Jr: Has anybody heard from Bill Myers in this connection?

Oliphant: Nobody's - has anybody spoken to him?

H.M.Jr: No. Well, I mean

Oliphant: Tom, discussing Bill with me - Tom Smith, when we went out the other day

H.M.Jr: Well, where did Tom get the suggestion?

Oliphant: You mentioned it.

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H.M.Jr: Did I?

Oliphant: No, I'll take it back. Jones had told him - Tom of his handling

H.M.Jr: Well, who is Jones's man?

Oliphant: Before you mentioned it - well, he mentioned ...

H.M.Jr: What?

Oliphant: John Hanes, Bill Myers, Taylor,

Hanes: Herman Oliphant.

(Laughter)

Oliphant: I'm sorry, I

Gaston: How about me? Did he mention me, Herman?

H.M.Jr: Well, what I'm trying to get at, where did Tom Smith get the name Bill Myers?

Oliphant: From Jesse Jones. And Tom spoke very enthusiastically about it, both from the standpoint of the Treasury and also from the standpoint of Bill Myers.

H.M.Jr: All right, gentlemen. Now, you've got your work cut out. Until this thing is settled I want - I'm going to do this once a day, so that everybody knows.

And then I want to say this, that I got a sort of - the wind has changed a little bit with Ronald Ransom since he talked to Marriner Eccles, and I gather that Marriner Eccles is going to go to town on this thing. And Mr. Ransom seemed to take it perfectly for granted that the first thing to do, or the most important thing to do, was to promptly clean up the A. O. Stewart matter, which is something that he had not said. And all I could do was to bite my tongue and not say, "Well, that's what I've been trying to tell you for a week." He said, "We've just got to take - clean up the A. O. Stewart thing at once."

Klotz: Well, he thinks he's got enough money to clear it.

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- H.M.Jr: Well, he's welcome to take his loan to some bank out of the district, and I'm willing to
- Hanes: Can't borrow outside of the district on the kind of collateral he's got there, I'll tell you that.
- H.M.Jr: But Ransom suddenly awoke to the fact it's important to get rid of Mr. Stewart as Chairman of that Bank, and that's as a result of talking to Eccles. And I think the fact that Eccles is going there - I'm very glad, and I'm glad particularly for Eccles' sake. If Eccles is the fellow to get rid of Stewart, that puts an end to a lot of nonsense. I think if Eccles is personally responsible for getting Stewart to resign, I'm delighted for Eccles' sake.
- Oliphant: Ed Lowery was his fourth man.
- H.M.Jr: Wasn't Oliphant on the list?

September 19, 1938.

The Secretary

For your information -

The Secretary of the Treasury appoints the three Deputy Comptrollers, and he may remove them from office.

The first and second Deputy Comptrollers, but not the third Deputy Comptroller, can perform the duties of the Comptroller during a vacancy in the office or in the absence of the Comptroller.

Since the vacancy occurred while Congress was in session, and the Comptroller's salary is paid out of the regular appropriation, a person appointed now could not draw any salary prior to confirmation.

H.C.

September 19, 1938

For the Secretary:

At 12:30 p.m. I called on Ronald Ransom at the Federal Reserve Board building and delivered to him photostatic copies of Page B-1, Insert #3 and Page B-1, Insert #13 of the examiner's report of the condition of the Bank of America, N.T. & S.A., which was completed on September 15, 1938. These covered the loans of Transamerica Corporation to A. O. Stewart and his interests.

Mr. Ransom told me that he had been accumulating all of the material they had on the relationship of A.O. Stewart to the Bank of America and its affiliates over the week-end and that he had been going through a great volume of such material since Friday.

Mr. Ransom told me that the Board feels there might be some value to having a call report of condition of banks this fall and that they would like to see one. He agreed with me that there should be consultations between the Office of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation prior to each call.

Upm

RE: BANK OF AMERICA SITUATION

September 20, 1938.
9:50 A. M.

Present: Mr. Upham
Mr. Oliphant
Mr. Gaston
Mr. Hanes
Mrs. Klotz

H.M.Jr: Good morning. Mr. .. ah .. came in at nine fifteen.

Klotz: Ransom.

H.M.Jr: Ransom was in, and he says in their report - will you (Upham) make a note of this, please. See if I can remember. A. O. Stewart owns two hundred thirty shares - Bank of America. That's on page B-1, insert 13.

Upham: That's what I gave him yesterday. That's what I wrote you about.

H.M.Jr: Now, under their rules, no Class C Director can own any bank stock.

Upham: That's right.

H.M.Jr: And they are anxious to have that information - I mean whether this stock belongs - that he's pledged - whether it belongs to A. O. Stewart.

Upham: They want us to find that out?

H.M.Jr: Yes, promptly. Where would the collateral be?

Upham: Well, Sedlacek inspected that collateral, and he can't tell from the collateral whether it belongs to Stewart or not, and I am under the impression that he asked Mr. Stewart, and he wouldn't tell him. On the Coast they do a lot of accommodation borrowing, and they have stock - they assign it from one to another. Now this stock has been assigned to Mr. Stewart, and put up by him as collateral, but it is impossible to tell - Sedlacek says, from the stock - whether it belongs to

Stewart or not, so the only way you can find out is ask Mr. Stewart himself.

- Hanes: The report is in Mr. A. O. Stewart's name.
- Upham: It is a loan directly to Stewart, collateraled by these two hundred thirty shares, but the only way to find out whether it belongs to him is to ask Mr. Stewart.
- H.M.Jr: Well, don't argue with me.
- Upham: No.
- H.M.Jr: They also want to know whether he owns any other bank stock, because it is against his rules. If that is correct, that he owns this, as far as they are concerned - he says he goes out.
- Upham: It would be my impression that they ought to bear the responsibility of finding out.
- H.M.Jr: Look, I've got to work fast; you're carrying the ball, and the people around here, you consult with, but they want this thing; they want it fast. Now, Mr. - don't know what - Mr. Eccles' Assistant
- Upham: Clayton.
- H.M.Jr: Clayton has just returned from a trip around the country, and he saw A. O. Stewart, and Stewart says, "I understand that bank examiners are worried about my line. Well," he says, "there's nothing that they need be worried about, because I fixed it all up, and my collateral is one hundred per cent United States Government bonds." So I said, "Do you believe it?" I said, "I don't." Well, anyway, that's what he told Clayton - it is one hundred per cent United States Government bonds.

Then, Mr. Ransom wanted to tell me that on Sunday Mr. Cobb called him up - got a regular confessional here this morning - and that he is distantly related to his wife, and that after much talk they said, "What do you know about this situation?" And Giannini sent him here, so what should they do about this telegram? And Ransom said, "Why, I've got just one piece of advice to give you; you ought

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to get together with the examining people; find out what they want, and carry out their wishes." So Cobb said, "I think that's good advice, but I doubt whether Mr. Giannini will take it."

Then Mr. Ransom also wanted to tell me that, oh, some months ago Mr. Smith, the Cashier, was in and he had a similar conversation with him, and gave him the same advice.

Upham:

Ransom did?

H.M.Jr:

Yes, and that/ought to get in touch with the people here. He said, "If I had as big a monster as you people have on the coast, my best friends would be the United States Treasury; I'd see that they were my friends." He says that - I then said to him, "Now, look," I said, "is there any reason why this matter of A. O. Stewart shouldn't be promptly dealt with - be a matter of months, of weeks?"

He said, "No, it's a matter that should be promptly dealt with." Then he started on something which I backed off from, and he said, "You know, when we get down to handling of Section 30," he said, "it's very difficult, and," he said, "we don't want a repetition of the Dewey case in New York when the case was thrown out, and the two staffs ought to work very closely together, and even before we get started, we ought to compare notes so that the case shouldn't be badly handled." So I said, "Well now; Mr. Ransom, all I'll tell you is this, that after the case is prepared and before we do it, we'll talk to you, but how much further we can go, I don't know; I don't know."

I didn't want to again say, "Well, how can you be judge, jury, prosecuting attorney, and everything else?" I didn't want to rub it in, because he was here this morning, he wanted to let me know everything that he had on his chest, and I simply said, "All I'll say to you is when the case is prepared and before we do anything,..." so he said again, "Well, don't you think our staffs should be in consultation?" I said, "I don't want to make any commitments."

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Oliphant: I have a suggestion - meet him half way. Would be very useful. We are preparing a letter from the Comptroller to them, suggesting setting up the procedure under which all Section 30 cases will hereafter be handled. Now, it might be desirable for me to informally consult with their general counsel before the letter went over.

H.M.Jr: That's all right.

Oliphant: But that

H.M.Jr: But I just question the propriety of consulting them in the preparation of a particular case.

Oliphant: That's right; you're right on that.

H.M.Jr: What?

Oliphant: You're right.

H.M.Jr: Now, have you got this letter? I was right on that, wasn't I?

Oliphant: Uh huh. But if it's agreeable to you, I'll call Ran- - Ransom speaks for the Board now, doesn't he?

H.M.Jr: Yes. And Cy, will you be here at eleven, please?

Upham: Surely.

H.M.Jr: The "advisory Federal Reserve council" is coming over at eleven. Ransom is ... (words not understood) because he said they should be over there at eleven.

Upham: Dr. Lichtenstein called me this morning.

H.M.Jr: "Dear Mr. X: It has been brought to my attention that the Board of Directors of the Bank of America at its meeting held in Los Angeles on September 13, 1938, declared a dividend payable October 1, 1938, despite the warning contained in my telegram dated September 13 and communicated to the meeting by R. E. Palmer, Assistant National Bank Examiner.

"This warning was prompted by my duty to protect the depositors and other creditors of the Bank. It is my desire in this matter to be fair to all concerned. Accordingly, your personal attention, as director of the Bank, is called to the provisions of U.S.C. "

United States?

Upham: United States Code.

H.M.Jr:" title 12, section 93, which provides as follows:

"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district, or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

"There is enclosed for your information in this connection, a copy of the letter of criticism based on the report of the latest examination of your bank."

I'd say it was perfect. I'd say it was perfect. Have you seen it, John?

Hanes: Yes.

H.M.Jr: Like it?

Hanes: Yes sir. We all initialed it there.

Upham: It is initialed by Mr. Oliphant, Mr. Hanes, and Mr. Gaston.

H.M.Jr: Swell. Want me to initial it?

Upham: Do you?

Oliphant: (Nods "No.")

H.M.Jr: Now, that goes to both the banks out there.

Upham: Well, the Anglo-California, I understand, is coming in today to talk over the possibility of fixing their bank up and putting some money in it, so that I understand nothing has been done. No telegram has gone to them - no nothing. Been waiting for them to come in.

H.M.Jr: Well, before - well don't - keep this in your mind; they are paying on the first of October; that we may want to send that kind of a letter.

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- Oliphant: Is anybody getting the letter of criticism ready so it could go to that bank?
- Upham: Well, before I left, you remember, you had two things for Mr. Diggs and Mr. Folger to do. One was a time schedule on Bank of America, and the other was a recommendation and time table on
- H.M.Jr: I've received neither of them.
- Upham: You haven't got those?
- H.M.Jr: No. I'd like to have them. I've received neither of them, but Mr. Oliphant brought out a point that a letter - the thing should be in the works, in case we want to send it. I don't have any hopes that they are going to get anywhere in this court, and if they don't I think the letter can just be changed, with no reference to the telegram; that's all. I am very anxious that the Directors of the Anglo-California Bank be put on exactly the same notice as the other Directors.
- Oliphant: Well then, somebody ought to go to work on that summary statement that's to accompany the letter - the statement of criticism.
- H.M.Jr: Hear that, Cy?
- Upham: Well, yes; I'll have to do the same.....
- H.M.Jr: I think it's a mistake to let those fellows pay out the dividend, and the other fellows Yes sir, the fact they didn't send a telegram is a tragedy; let's try to correct it.
- Upham: They ought to have that all worked up; you told them to a few days ago.
- H.M.Jr: Well, will you crowd them on it?
- Gaston: Couldn't they be warned not to pay the dividend they have declared, under Section 30?
- Oliphant: Only if they are under water on their capital. If they are under water on their capital then they could be warned not to pay the dividend.
- H.M.Jr: Well, please, when we meet again tomorrow morning, this time, have something, will you, Cy?
- Upham: Yes sir.
- H.M.Jr: Herbert?

Gaston: No, I have nothing.

H.M.Jr: Herman?

Oliphant: Nothing.

H.M.Jr: Anybody got any gossip on this thing?

Hanes: I'd like to say, I have been thinking a good deal about this suggestion yesterday; I said a curbstone opinion of whether we ought to get a Comptroller in there as soon as we could. My mind has changed a little bit, by the fact that Cy is going in there as Deputy. I am not sure that you want to get a Comptroller in there right away, immediately, until you get this particular situation cleared up. As long as you have undertaken the responsibility, and the fact that a man in whom you have perfect confidence is working over there, I am not so sure it is important to get a Comptroller quickly, unless you can get the right - exactly the right man you want.

H.M.Jr: Well, does Cy want to go in there under Diggs? That's the question.

Upham: No, I would not be interested in going in under Diggs. You spoke yesterday of the possibility of making me the Acting Comptroller, First Deputy, I understood.

H.M.Jr: Yes, but I meant with a Comptroller. I mean, that's what I had in mind; I may not have expressed myself very well. I don't - it wouldn't be fair to you to put you in there, and this thing

Upham: I think it would.

H.M.Jr: What?

Upham: I think it would.

H.M.Jr: Well, let me

Hanes: The only reason I am bringing it up is because my first impulse was to say to you, we ought to have some fellow in immediately who was loyal to you and in whom you could have perfect confidence.

Upham: If I have to do this any way

Hanes: My situation is changed a little bit by the fact that you've got a First Deputy in there in whom you've got perfect confidence, and you've taken hold of this ball and put your hand to the pile and gone right through, and as long as you've got

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a man there in whom you've got perfect confidence, I am not sure it is important to get a Comptroller.

- Gaston: They have a full roster of deputies in there. A First Deputy could not be appointed without creating a vacancy.
- H.M.Jr: How would you do this.
- Oliphant: Have to remove one of the three men.
- Gaston: You have three deputies there now; one is Acting Comptroller.
- H.M.Jr: How would you do this? Which one would you remove?
- Upham: It would have to be Mr. Diggs, I suppose.
- Oliphant: I think, speaking very frankly, that your statutory relation to the office is - it operates under your supervision, and the Comptroller - I think you could get a little too far in operating it, if you know what I mean, in an interim period. That is, it is one thing if Cy went in there with the Comptroller, and quite a different thing if Cy is put in there - you are running it right from your desk.
- Upham: Take Mr. Diggs in there - what's the difference?
- H.M.Jr: I talked it over with Tom Smith and Tom said, to put you in, at this time at Diggs' place - it would be wholly unfair. That was Tom Smith's reaction.
- Upham: Unfair to me?
- H.M.Jr: Unfair to you.
- Upham: I think it is more unfair to me to expect me to work with him in there; it is just that much more difficult.
- H.M.Jr: I wouldn't - what I have in mind, you might as well know - somebody - I may have expressed myself badly - I was going to look - we are all talking frankly here - here for a Comptroller; when I found a Comptroller, I was going to clean out that whole nest and put in a Comptroller, and

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Upham as First Deputy, and clean out the whole nest there, and until I could find a Comptroller, I was just going to let the thing ride as it is; but that's what I had in mind. I talked to Tom Smith about it before he left, and - just about putting you in there with Diggs, and he said, "Well, you just can't do that." So, barring that, I want to wait until I can find a Comptroller, and I am not very much disturbed the way the thing is now, in having Cy watch this thing hourly for me, to leave Diggs in there for another week or ten days.

- Oliphant: Cy probably thinks it isn't much fun.
- H.M.Jr: Well, it isn't much fun being Secretary of the Treasury either.
- Upham: I am perfectly willing to do it; I misunderstood you.
- H.M.Jr: No, it isn't much fun being Secretary of the Treasury either.
- Gaston: Cy is in a position now, as Assistant to you, where he can make all sorts of investigations and report directly to you. If he were in there as Deputy, with Diggs, it would be impossible for him to do that, ethically.
- H.M.Jr: I'll give you a good example. When he gets this information, if he was First Deputy, Cy would question his running over to see Ransom, and doing this A. O. Stewart; I mean, as Assistant to me you can do it.
- Upham: No, I wouldn't question that; with full consultation with you, I would be
- H.M.Jr: Well, I am more than willing to think it over, but I've told you exactly how I am feeling, and how I am thinking. We are meeting at least once a day, or twice a day if something happens, and my mind is flexible; in fact my only complaint is that it's been too flexible on this thing - but it is very difficult, and it is very - and I want to be a little bit more frank in this room; - In the mind of the banking fraternity, the office of Comptroller of the Currency is more or less of a separate identity.

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Upham: That's true.

H.M.Jr: They don't think of me as having anything to do with bank examinations.

Upham: Until something goes wrong.

H.M.Jr: Until something goes wrong. So I'd just as leave continue as it is for another week or ten days, until I - or a day or two days - until I have the man who the President is satisfied with and I am satisfied with. Then I am willing to come out in the open; but to put my Assistant in there now - I don't think it would be effective or fair to anybody. And I really think that right for the moment, until we can get a Comptroller you are more effective as my Assistant than you would be as First Deputy. But I am more than delighted to discuss it again.

Anything else, John?

Upham: One thing I want to tell you. Mr. Diggs told me this morning that he - he asked me if you were looking for a Comptroller, and I didn't know anything about it, and he told me that he knew you were not considering him because he saw a cable from you to the President when you were in France, and the President's reply - in which you told the President that until the California primaries were over, or something like that, or when they were over, you wanted to submit some names to him, and the President replied to you that he had not found any candidate for Comptroller in the South Sea Islands, or wherever he was.

Klotz: Where did he see it?

Gaston: The Pres- - did the President show that to Diggs?

H.M.Jr: I don't know.

Klotz: (Laughs)

Oliphant: Let's get up and sing, "Now Honey You Stay in Your Own Backyard."

Klotz: What's that?

H.M.Jr: You can't tell?

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Klotz: I can't tell whether you're agreeing or disagreeing, or whether you've got a perfect poker face.

Gaston: I know a man who has the technical qualifications for Comptroller and who would be dead anxious to have the job, and I think you know one probable disqualification. The man I am thinking of is George Brennan.

Klotz: You know him?

H.M.Jr: Very well. He once sat on a trash basket.

Gaston: Political end.

H.M.Jr: On the

Klotz: (Laughs)

H.M.Jr: He once sat on a trash basket; am I right?

Klotz: (Laughs heartily.)

Oliphant: And once in R. F. C.

Gaston: He would be perfectly capable, but he has that tendency.

H.M.Jr: But that story that you tell me amazes me.

Upham: Nothing amazes me.

H.M.Jr: What?

Upham: Nothing amazes me.

Klotz: It worries me.

Gaston: Nothing else.

Oliphant: (Nods "Nothing.")

H.M.Jr: Herbert, you want to stay a minute?

Draft of a proposed letter to be addressed to the Directors of the Bank of America National Trust and Savings Association by the Comptroller of the Currency.

My dear Mr. _____:

It has been brought to my attention that the Board of Directors of the Bank of America National Trust and Savings Association at its meeting held in Los Angeles on September 13, 1938, declared a dividend payable October 1, 1938, despite the warning contained in my telegram dated September 13 and communicated to the meeting by T. E. A. Palmer, Assistant National Bank Examiner.

This warning was prompted by my duty to protect the depositors and other creditors of the Bank. It is my desire in this matter to be fair to all concerned. Accordingly, your personal attention, as director of the Bank, is called to the provisions of U.S.C., title 12, section 93, which provides as follows:

"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district, or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

There is enclosed for your information in this connection a copy of the letter of criticism based on the report of the latest examination of your bank.

Very truly yours,

Comptroller of the Currency.

NOT RECORDED/mst
9-19-38



TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

WASHINGTON

DIVISION OF DEPOSITS

September 20, 1938.

MEMORANDUM FOR THE SECRETARY'S FILES:

The following statements relating to Government deposits with the Bank of America National Trust & Savings Association and the Anglo California National Bank, both of San Francisco, and the collateral security pledged against such deposits are based upon the latest authenticated records now available in the Treasury. The source of information is indicated in each instance.

1. Bank of America National Trust & Savings Association

GOVERNMENT DEPOSITS:

As per statement of condition, June 30, 1938: (On file in office of the Comptroller of the Currency)

Demand deposits - United States Government	\$74,220,000
Time deposits - Postal Savings	19,196,000
Total	\$93,416,000*

Break-down of deposits, as of July 2, 1938:
(Records of Division of Deposits and
Treasurer of the United States):

War Loan deposits.....	\$72,577,000
Treasurer's General Account.....	596,000
Court and Post Office deposits.....	880,000
Postal Savings deposits.....	19,196,000
Total	\$93,249,000*

*Difference of \$167,000 result of fluctuation in court and post office deposits which are active checking accounts.

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COLLATERAL SECURITY

(Data supplied by W. P. Folger, Chief National Bank Examiner, from Examiner's Report on file in that office, as of April 28, 1938.)

War Loan and other Government deposits (exclusive of Postal Savings Deposits)

	<u>Book Value</u>	<u>Market Value</u>
United States bonds	\$67,395,456.06	\$67,820,406.24
High grade municipal bonds	6,358,920.30	6,531,038.70
<u>Postal Savings deposits</u>		
United States Government bonds	20,219,701.29	20,759,265.31
Total	\$93,974,077.65	\$95,110,710.25

2. Anglo California National Bank of San FranciscoGOVERNMENT DEPOSITS:

Statement of condition, June 30, 1938:

Demand deposits - United States Government.....	\$1,835,000.00
Time deposits - Postal Savings	-----
Total	\$1,835,000.00*

Break-down of deposits, July 2, 1938:

War Loan deposits.....	\$1,835,000.00
Post Office & Court Accounts	29,000.00
Total.....	\$1,864,000.00*

COLLATERAL SECURITY:

(Data supplied by W. P. Folger, Chief National Bank Examiner, from Examiner's Report on file in that office, as of January 17, 1938.)

United States Government deposits

	<u>Book Value</u>	<u>Market Value</u>
United States Government Bonds	\$1,975,274.17	\$2,020,793.75

*Please note that there was, according to our records, \$29,000 on deposit with the bank in excess of the figure reported by the bank in its June 30 Statement of Condition. This probably was due to a misunderstanding on the part of the bank in entering figures on its report of condition and that an examination would indicate that this amount was included with other demand deposits reported by the bank.

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Note re. liquidation of an insolvent national banking association.

Section 3466 R. S. (Title 31-Section 191 United States Code), which gives the United States a priority for all claims it has against insolvent debtors, does not apply to the case of an insolvent national banking association. The United States, however, being a secured creditor, has what amounts to a preference in that a creditor of an insolvent national bank is entitled to prove the whole amount of the claims against it held by him without reference to the collateral held to secure such claims and to receive dividends on the claims until the market value of the collateral is sufficient to pay the balance of the amount due.

For practical purposes, the following is the procedure in liquidating a Government account in an insolvent national bank:

1. If the market value of the collateral at the time of settlement is sufficient to cover all claims, the receiver (a) may redeem such collateral by payment of the total amount due from trust out of other assets and secure release of collateral or (b) Treasury may sell collateral on market, apply proceeds to account, and return surplus, if any, to receiver.

2. If the market value of the collateral is not sufficient at time of closing to liquidate claims in full, Treasury files its claim for full amount and awaits payment of dividends. At the same time, plans for sale of collateral are worked out with the receiver. Sale may be effected immediately and proceeds applied or the sale may be deferred for a more favorable market if such action is considered desirable. The average of total dividends paid by all trusts handled to date by the Comptroller of the Currency is between 40% and 50%. Our experience in the liquidation of hundreds of Government accounts in closed depositories is that dividends of from 10% to 20% upon general claims are ample to offset deficiencies resulting from market fluctuations of collateral pledged or other causes. A concrete example follows:

In September 1931 a special depository closed holding funds in its War Loan Deposit account in the amount of \$10,250,000, secured by collateral having a face value of the same amount. This collateral was sold on the market, with the approval of the Receiver

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and the Comptroller of the Currency, for \$9,471,192.74, net, leaving a deficiency of \$778,807.26. In the meantime a general claim was filed by the Treasury in the full amount of the War Loan deposit. In December 1931 a dividend of 50% was declared, and out of this dividend the Comptroller of the Currency reimbursed the Treasury for the deficiency involved. In this case it will be noted that a dividend of less than 10% would have paid the Treasury in full.

dcwB

September 20, 1938

I left Washington by plane at 4:35 P.M. on Tuesday, September 13th for San Francisco.

En route I remembered that I had failed to transmit to Mr. Diggs a message from the Secretary to the effect that letters were to be sent registered, special delivery, to each director of the Bank of America, N.T. & S.A. confirmatory of and quoting the telegram sent on September 13th to Examiner Palmer in Los Angeles for reading to the Board of Directors. I wired the information to Mr. Diggs from the Los Angeles airport.

I arrived in San Francisco at 10:20 A.M., September 14th, and went at once to the office of the Chief National Bank Examiner for the Twelfth District where I talked to Examiner Sedlacek. While I was there he talked on the telephone to Examiner Palmer in Los Angeles who told him that he had met Mr. Giannini on the street at 1:30 and informed him that a telegram was coming which he was supposed to read at the board meeting. The board meeting began at 4:00 P.M. but Mr. Palmer was not admitted until 4:35 P.M. Mr. Palmer read the telegram to the 24 members of the board who were present and then was excused. After some time one of the directors came out and told Mr. Palmer that he needn't wait any longer and intimated to him that in the opinion of the director Mr. Palmer had rendered a service by making the appearance that he did.

I talked on the telephone to the Secretary in Washington and informed him that Mr. Palmer did not know whether the declaration of the dividend by the board had preceded or followed his appearance before them.

The following day, on Thursday at 11:45, I called the Secretary on the telephone and informed him that Anglo California National Bank had declared a dividend on the same day as Bank of America.

As I was leaving the airport building Thursday evening at 6:45 to take the plane back to Washington, I encountered Russell T. Smith, Cashier of the Bank of America N.T. & S.A., who had just arrived by plane from Los Angeles. He greeted me and asked me how long I had been in town and said he would have been glad to see me at the bank.

Upm

September 20, 1938
San Francisco, California

HONORABLE MARSHALL R DIGGS

WE HAVE RECEIVED FROM YOUR OFFICE LETTER DATED SEPTEMBER THIRTEENTH MAILED SEPTEMBER FIFTEENTH WHICH WE SHALL READ TO OUR BOARD AS REQUESTED. WE ARE PREPARING DATA WHICH WHEN COMPLETED WILL WE BELIEVE CONCLUSIVELY DEMONSTRATE THE LACK OF JUSTIFICATION FOR THE PROCEDURE BEING FOLLOWED BY YOUR OFFICE. IN THE HOPE OF ACCELERATING THE FINAL DETERMINATION OF THE ISSUES RAISED BY YOU I HAVE THIS DATE COMMUNICATED WITH THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM BY TELEGRAM AS FOLLOWS QUOTE SINCE SENDING YOU A COPY OF OUR LETTER DATED SEPTEMBER FIFTEENTH ADDRESSED TO ACTING COMPTROLLER OF THE CURRENCY WE HAVE RECEIVED PARTIAL RESPONSE TO OUR LETTER OF MAY SIXTH TO THE ACTING COMPTROLLER. EACH OF OUR DIRECTORS RECEIVED FROM COMPTROLLER'S OFFICE BY LETTER DATED SEPTEMBER SIXTEENTH THE DATE ON WHICH PRESUMABLY OUR LETTER OF SEPTEMBER FIFTEENTH WAS RECEIVED BY COMPTROLLER'S OFFICE A COPY OF THE TELEGRAM READ TO OUR BOARD SEPTEMBER THIRTEENTH BY EXAMINER. THE COURSE OF PROCEDURE BEING FOLLOWED BY COMPTROLLER'S OFFICE IS HIGHLY DETRIMENTAL TO THE WELFARE OF THIS INSTITUTION AND THE TONE AND CONTENTS

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OF THE REPLY TO OUR LETTER OF MAY SIXTH REVIVING AS IT DOES IN PART ISSUES LONG SINCE DISPOSED OF ARE SUCH THAT WE DESIRE TO PLACE THE ENTIRE MATTER IN THE HANDS OF YOUR BOARD FOR PROMPT AND PROPER ADJUDICATION. THEREFORE PURSUANT TO AUTHORIZATION OF OUR BOARD OF DIRECTORS WE RESPECTFULLY REQUEST THAT YOU SET AN EARLY DATE FOR A HEARING BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ON THE ISSUES RAISED AS REQUESTED IN THE LAST PARAGRAPH OF OUR LETTER OF SEPTEMBER FIFTEENTH TO ACTING COMPTROLLER. I AM PREPARED TO ATTEND SUCH HEARING AND TO LEAVE HERE AT A MOMENTS NOTICE. UNQUOTE.

L M GIANNINI PRESIDENT BANK OF AMERICA NT & SA