

Book 358

Bank of America

September 21 - October 20, 1938

Bank of America

	Book	Page
Resume' of examinations of Bank of America National Trust and Savings Association and Bank of Italy Trust and Savings Association - 9/21/38.....	358	1
Barse (General Counsel, Comptroller of Currency) memorandum on Charles W. Collins, now attorney for Bank of America and formerly Deputy Comptroller of Currency - 9/21/38.....		6,8
a) Oliphant chides Barse for establishing "independent line of communication".....		34
b) Collins tells Upham conference between present personnel of Comptroller of Currency's office, Mario Giannini, and Russell G. Smith "would produce results" - 10/23/38.....		339
A.O. Stewart-Transamerica Corporation connection as revealed by files of Securities and Exchange Commission - 9/21/38.....		9,38
a) If Federal Reserve Board does not take action within ten days, HMJr will seriously consider discontinuing their franchise as Treasury fiscal agents - 9/21/38.....		19
1) Day (President, Federal Reserve Bank of San Francisco) in Washington and Ransom suggests that HMJr see him - 9/22/38.....		22
a) Conversation discussed with Treasury group - 9/22/38.....		50
2) Possibility of Federal Reserve Board acting if Treasury had not taken initiative discussed by HMJr, Hanes, Oliphant, Upham, and Gaston - 9/22/38.....		25
O'Connor conference with HMJr on possible reappointment as Comptroller of Currency described to Hanes, Oliphant, Upham, and Gaston - 9/21/38.....		15
HMJr's talk with FDR during which Preston Delano is recommended by HMJr - 9/22/38.....		25
a) Upham to be Deputy Comptroller		
b) HMJr disapproves Gaston's request to Early that Delano be identified with Massachusetts rather than California on commission - 9/22/38.....		54
c) Eccles' letter of congratulation to HMJr - 9/24/38..		65
d) Legality reported on by Upham - 9/26/38.....		77
Assistant Secretary of Treasury in charge of banks discussed by FDR and HMJr - 9/22/38.....		26
a) HMJr will not oppose independent agency known as Commissioner of Bank Examinations but he will oppose having it under Federal Reserve.....		29
Conference between Treasury group and Securities and Exchange Commission - 9/22/38.....		38
a) Stewart-Transamerica Corporation connection discussed		
Comptroller of Currency letter of criticism on report of examination of Bank of America - 9/23/38.....		58
a) Copies sent to Ransom, Crowley, Jones, and Douglas..		66

Bank of America - 3

	Book	Page
A.O. Stewart: Resume' of examinations.....	358	88
a) Eccles urged to clean up situation immediately - 9/27/38.....		112,140
1) Stewart resignation in hands of Federal Reserve Board - 9/29/38.....		141
Anglo-California National Bank: Conference on talks between Acting Comptroller of Currency, Chief National Bank Examiner, Mortimer Fleishacker, and Paul Hoover.....		84,87,93,94, 96,99,106,117, 130,133,139
a) Upham urges that letter go out before October 1 since dividend will be declared on that date - 9/28/38.....		125
Giannini and Federal Reserve Board exchange telegrams - 9/27/38.....		116
Diggs' letter of resignation ready - 9/29/38.....		141
a) Resignation discussed with Early - 9/30/38.....		198
Oppegard "will give consideration" to request for resignation - 9/29/38.....		141
Anglo-California National Bank: Conference; present: Treasury group, Tom K. Smith, Delano, Jesse Jones, Sedlacek, Crowley, Ransom, Husbands (Reconstruction Finance Corporation), and Folger - 9/30/38.....		142
a) Items of criticism listed.....		189
Bank of America reply to Comptroller of Currency letter addressed to Board of Directors under date of September 23, 1938 - 10/1/38.....		224,301
Anglo-California National Bank: Upham, as Acting Comptroller of Currency, sends letter of criticism based upon report of latest examination to Mortimer Fleishacker (Chairman, Board of Directors) - 10/3/38..		229
a) Conference to discuss selection of Committee by slate to confer with Treasury discussed by Treasury group - 10/6/38.....		253
b) Answer from W. E. Buck (member of Board of Directors) promising cooperation - 10/12/38.....		297
c) Sedlacek reports on reclassification of criticized assets - 10/12/38.....		298,300
Bank of America National Trust and Savings Association: Opinions of Louis Ferrari (Vice President and Counsel) on purchase and sale of real estate and on loans listed by Comptroller as exceeding limits on capital requirements for national banks, etc. - 10/10/38.....		271
Anglo-California National Bank: Foley reports on trip to investigate - 10/10/38.....		278

September 21, 1938

## MEMORANDUM:

In re: Bank of Italy National Trust and Savings Association,  
San Francisco, California.

Examined June 30, 1928 to August 11, 1928. No letter of criticism was written on this report and no board meeting was held by examiner but matters of criticism were discussed by him with President Bacigalupi and Vice-Presidents Mount, Blauer and Gock during examination.

Examined December 14, 1928 to February 15, 1929. No board meeting held. Correspondence file for 1929 shows that Vice-President A.W. Hendrick called at this office in January or February and discussed with the Comptroller the matter of the bank's granting second mortgage loans in critical cases.

Examined again April 8, 1929 to August 1, 1929. No board meeting but assets criticized by examiner were reviewed with Vice-President Gock and his subordinates. Subjects of examination discussed with administrative officers.

Examined December 31, 1929 to April 11, 1930. No letter written to the bank but Chief Examiner Harris in a letter dated June 17, 1930 was given express permission to discuss the bank's affairs with Mr. Elisha Walker, Chairman of the Board of Transamerica Corporation and in doing so to disclose the names of borrowers and the collateral for its loans.

Examined June 30, 1930 to October 28, 1930. Consolidated with Bank of America of California, San Francisco, November 1, 1930 and title changed to Bank of America National Trust and Savings Association. Examination was made of the State bank from September 24, 1930 to October 31, 1930 and details of the consolidation required a great deal of work by the Chief Examiner, the field examiners and this office.

No letter was written to the bank but the examiner stated in his report that a meeting was to be held with the executive committee on November 13, 1930.

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

Examined February 28, 1931 to May 5, 1931. Conference held by Comptroller in New York with Transamerica officials on May 28, 1931 relative to matter of providing for losses in Bank of America. Report thereof made to Chief Examiner on May 30, 1931 and he was instructed to discuss matter further with Mr. Monet of Transamerica.

Letter of criticism dated June 5, 1931 addressed to Board of Directors in connection with this report, supplemented by a letter dated June 8, 1931 signed by the Comptroller in which a change in management in the Los Angeles

Branch was urged. Chairman of the Board, Mr. Jas. A. Bacigalupi conferred with the Comptroller, Mr. Pola, about subject matter of office letters and assurance given in letters from President Mount dated June 10, 1931 and June 12, 1931 that elimination of loss items would be effected and the management of the Los Angeles office "re-vamped".

Examined August 31, 1931 to January 12, 1932. No letter of criticism based on this report. Examiner in confidential section stated "All criticisms of major importance will be closely followed by this office in an endeavor to effect correction". Air mail report of Acting Chief Examiner September 29, 1931 advises of daily discussions with Governor Calkins of the Federal Reserve Bank re bank's borrowings.

Examined March 31, 1932 to July 23, 1932. Following letters have to do with taking care of losses in Bank of America:

Letter dated January 27, 1932 from Comptroller to President of Transamerica Corporation referring to recent examination of Bank of America and requesting that the Corporation protect the bank against losses shown.

Another letter to Transamerica Corporation February 8, 1932 dealing with same subject - (from Comptroller).

Letter from Mr. Harris to Bank of America February 8, 1932 requesting that losses shown in last report (August 31, 1931 to January 12, 1932) be removed.

Letter from Mr. Harris February 19, 1932 to Bank of America regarding prompt liquidation of Corporation of America obligations.

Letter March 29, 1932 from Mr. Harris to Board of Directors, Bank of America requesting information regarding obligations of the Corporation of America to the Bank of America.

August 13, 1932 memorandum of conference which Examiner had with Mr. Giannini. Regarded as a supplemental report of examination completed July 23, 1932. Request made that losses be charged off. Mr. Giannini exceedingly arbitrary and practically refused to carry out examiner's suggestions except so far as they suit him.

Letter of criticism dated September 27, 1932 on report of examination (March 31, 1932 to July 23, 1932) asking bank to advise progress in correcting examiner's criticisms.

On November 14, 1932 reply to letter of September 27, 1932 requested. Apology from bank on October 20, 1932 for failure to reply.

November 21, 1932 memorandum for Mr. Harris from Examiner Price regarding Mr. Giannini's arbitrary attitude re charging down to appraised values real estate loans and re Mr. Russel Smith's call at his (Price's) office to discuss a revaluation of notes purchased by and included in Corporation of America contracts.

Examined November 9, 1932 to April 12, 1933. Letter of criticism was addressed to the Board of Directors on July 19, 1933, and request was made that a reply be furnished over their individual signatures. However, Mr. Giannini replied thereto under date of August 5, 1933.

Examined April 10, 1933 to October 4, 1933. Chief National Bank Examiner Madland in forwarding report on November 14, 1933, recommended that no action be taken inasmuch as another examination was then in process and the new report would be ready for mailing early in December.

Examined September 18, 1933 to January 12, 1934. This report was reviewed by Chief National Bank Examiner Madland with President Morrish and other officers following the examination, Mr. Giannini not being available.

Conferences held in this office with Mr. O'Connor, Comptroller; Mr. Giannini, Mr. Collins and Mr. Clary, Vice-President of the bank on January 26, 1934.

Another conference was held in this office February 9 with Mr. Folger and Mr. Clary.

Examined June 22, 1934 to October 13, 1934. No letter of criticism based on this report. Exception taken by bank to certain of examiner's classifications in letters dated November 9, 1934 addressed to Examiner Beise. Copies were forwarded to this office by the Chief Examiner. Mr. Beise was later employed by the bank in the capacity of Vice-President and still occupies the same position with the bank.

Examined February 11, 1935 to May 15, 1935. Matters discussed with Finance Committee.

Copy of letter from Mr. Giannini to Mr. Beise January 9, 1935 submitting information about bank's condition.

Record of Mr. Giannini's conference in April, 1935 with Mr. Gough re purchase by Bank of America of American Trust Company of San Francisco and incidentally about capital structure.

Examined October 7, 1935 to December 4, 1935. Report discussed with General Finance Committee.

Examined April 27, 1936 to November 24, 1936. Report discussed with General Finance Committee.

Letter of criticism addressed to Mr. Giannini as Chairman of the Board, Bank of America, under date of December 15, 1936, taking up conditions reflected by report of examination completed November 24, 1936 and disapproving further expansion until unsatisfactory conditions have been corrected. Reference is made in this letter to a call by Vice-President Clary.

Mr. Giannini replied under date of December 24, 1936, strenuously objecting to the policy of requiring a deposit-capital ratio of 10 to 1.

Examined October 14, 1936 to March 23, 1937. Report discussed with General Finance Committee.

Telegram December 30, 1936 between Mr. O'Connor and Mr. Giannini arranging for a conference first week in January.

- 4 -

Examined April 20, 1937 to August 17, 1937. No board meeting held by examiner, but all matters of criticism were reviewed by him with Executive Finance Committee responsible for all credits of entire system.  
No letter written on report.

Examined August 31, 1937 to April 20, 1938. No letter of criticism based on this report. Examiner reviewed all matters with Executive Finance Committee responsible for all credits of the entire system.

Mr. Folger discussed situation with Examiner Sedlacek during his visit to San Francisco the latter part of 1937.

Conference held by Examiner Sedlacek with Mr. Giannini and detailed report thereof dated December 31, 1937 together with a letter dated December 23, 1937 furnished this office for use in connection with Mr. Giannini's contemplated visit here early in 1938.

The Secy:

Nothing in L. M. Gammis  
wire of Sept 20 to change  
our plans. Federal  
Reserve cannot act  
until Comptroller  
makes the charges  
now in preparation.

Sept 21 '38

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TREASURY DEPARTMENT

Inter Office Communication

September 21, 1938

TO: Mr. Olyphant (through Mr. Foley)

FROM: Mr. Barse

Memorandum of conference with Mr. Charles W. Collins, Attorney for Bank of America National Savings and Trust Company.

Mr. Charles W. Collins, formerly Deputy Comptroller of the Currency (about ten years back) and now an attorney in private practice, called to see Mr. Cough, Deputy Comptroller, this morning with reference to the Bank of America matters and Mr. Cough sent him up to see me.

I knew Mr. Collins when he was here as Deputy Comptroller and I have been in touch with him from time to time since then and he indicated that he felt that he could talk rather frankly. I believe it will be fortunate if Mr. Collins is retained in this matter inasmuch as I think that we can always deal with him satisfactorily upon an understanding basis.

He stated that Giannini has a sort of "persecution complex" and believes that he is being persecuted by the office, either for personal or political reasons, or both. He stated that he knew from his past connections with the office and from his knowledge of and acquaintance with the people in the office that this was not so and that any action we were taking or contemplating was solely from the standpoint of performance of our customary functions incident to the supervision of the affairs of the bank, and that the criticisms, etc., that we might have were routine in the sense that it is the practice of the office to make criticisms of what we consider unsatisfactory conditions. In other words, he starts off with a frame of mind indicating that he understands we are merely trying to do our duty as we see it.

He further stated that he recognized clearly that the Federal Reserve Board has no jurisdiction at this time in view of the present state of the record and that there could be no hearing before the Board by Mr. Giannini concerning the matters about which this office has complained or raised question, and that until we file a certificate under Section 30 there is nothing before the Board. He stated most emphatically and positively that he was going to advise Mr. Giannini by long distance telephone when he returned to his office strongly to that effect.

He further stated that he thought it was very foolish on the part of the bank to get into a controversy with this office concerning its affairs and that undoubtedly the best thing to do would be to work out a mutually satisfactory solution of the situation and the various questions which have been raised.

Page 2.

He inquired as to what course of action we contemplated taking and I advised him that that remained for the future to develop and that a great deal depended upon the attitude taken by the bank in response to the criticisms and suggestions which our examiners and the office might make.

It was my understanding that he would contact me later after he has talked to Mr. Giannini.

(Initialed) G.P.B.

TREASURY DEPARTMENT  
INTER OFFICE COMMUNICATION

September 21, 1938

TO Mr. Oliphant (through Mr. Foley)  
FROM Mr. BarseMemorandum of further conferences  
(subsequent to the one of this morning)  
with Mr. Charles W. Collins, Attorney  
for Bank of America National Savings  
& Trust Company

Mr. Charles W. Collins, Attorney for Bank of America National Savings & Trust Company, called upon me again this afternoon (my former conference was covered by a memorandum this morning) and stated that he had talked on long distance phone with the son of Mr. Giannini and with Mr. Russell G. Smith, and that they had authorized him to ascertain whether arrangements could be made whereby instead of procedure being taken under Section 30, the bank would be furnished in writing with the specific criticisms of the affairs of the bank, and a definite enumeration of the steps which the office deemed necessary to be taken by the bank to meet the requirements of the office.

He said that he had assured them that there was not the slightest vestige of personal persecution or of political motives back of the criticisms by this office of the affairs of the bank and that this office was merely trying to take such steps as seemed to be necessary to insure that the bank would be put into proper condition according to good banking standards. I told him that while I would have to take the matter up with the proper officials in the office, I had no doubt that an adjustment of the whole matter could be reached if the bank was willing to meet the requirements of the office, and that I thought surely the office would be willing to submit in writing the requirements to be met in line with the criticisms by the examiners and as a result of the examinations made.

He said he wanted to go back to his office and telephone them again, which apparently he did, in that he has just now phoned me (approximately 4:10 p.m.) that he bank, acting through Mr. Giannini's son and through Mr. Russell G. Smith, would be glad to get in writing a specification of the criticisms as a basis for trying to meet the requirements of the office.

He also stated that he had been authorized by the bank to contact the Federal Reserve Board and advise them that the telegram which they had heretofore received from Mr. Giannini, requesting a hearing before the Board, could be ignored. Mr. Collins said that he had fully explained to them that there was nothing before the Board for action and that there was no occasion for action at this time by the Board.

(Signed) G.P.B.

September 21, 1938

Shortly after 10:00 a.m. Mr. Hanes called me and asked me to go to Judge Healy's office in the SEC to look over some material they had pulled out of their files with respect to Transamerica and A.O. Stewart, et al.

Judge Healy gave me the attached copy of excerpts from stockholders meetings and special board meetings and organization meetings of Transamerica Corporation.

He gave me access to a file which included

(1) An August 12, 1930 plan of reorganization of the properties and affairs of the Kansas City Joint Stock Land Bank of Kansas City, Missouri. In this plan the Deposit Agreement Committee, consisting of W. S. McLucas, et al, entered into an agreement with A.O. Stewart for the reorganization of this bank. Jo Zach Miller served as secretary of this Committee.

(2) A January 29, 1931 excerpt from Transamerica minutes, Volume I, Page 165, in which A.O. Stewart agreed with the bondholders committee of the Kansas City Joint Stock Land Bank

- 2 -

to buy bonds of the reorganized institution-- payment to be made upon presentation at Transamerica Corporation, 44 Wall Street; and a guarantee by Transamerica Corporation of due performance by A.O. Stewart.

(3) A January 31, 1931 plan for reorganization of the Bankers Joint Stock Land Bank of Milwaukee.

(4) A February 11, 1931 excerpt from Transamerica minutes, Volume I, Page 167, guaranteeing due performance by A.O. Stewart.

Upm

April 12, 1933      Organization Meeting

No quorum.

April 13, 1933      Organization Meeting

(Directors: Belgrano, Grant, Blauer, L. M. Giannini,  
Bocqueras, Morrish, A. P. Giannini)

Elected officers: A. P. Giannini, Chairman  
 Grant                      President  
 Cavagnaro                Vice-president  
 Gock                        "  
 Rizzo                      Treasurer  
 Everard                    Secretary  
 Andrews                  Asst. Treasurer  
 Andrews                  Asst. Secretary  
 Fischer                    "            "  
 Marshall                   "            "  
 J. A. Smith                "            "

June 23, 1933      Special Board Meeting

Resolved to dissolve, and call off indebtedness due to Transamerica General Holding Company from Transamerica Corporation, and distribute assets.

Aug. 30, 1933      Special Board Meeting

Blauer resigned as director, as did Belgrano.

Rizzo elected                "  
 Andrews                    "            "

"The Chairman stated that Transamerica Corporation had credited Transamerica General Holding Company through current account as of June 30, 1933, with the sum of \$18,666,639.13, and charged this sum to the investment of Transamerica Corp. in Transamerica General Holding Company for the purpose of building up the surplus of Transamerica General Holding Co. He further stated that Transamerica General Holding Company had responded to these entries and had charged Transamerica Corporation through inter-company account under date of June 30, 1933, with the said sum of \$18,666,639.13, and had credited the same amount to paid-in surplus." (Okehed covering journal entries.)

"The Chairman stated that under date of March 1, 1932, this Corporation had purchased from Transamerica Service Corporation for a total consideration of \$3,834,691.13, the following property at values indicated:

1. a. Rights and interest of Transamerica Service Corp. in that certain agreement made on 12/15/31, by and between National Commercial Properties, Ltd. (now Transamerica Service Corp.) and A. O. Stewart, relating to the sale and purchase of 201, 423.90 shares of stock in Farm Mortgage Holding Co. of Kansas City Mo. and to other matters therein specifically set forth.  
Value \$2,500,000 \$2,500,000.00
- b. Interest receivable under said agreement 5,833.36
2. a. Notes executed by A. O. Stewart 1,325,764.26
- b. Interest receivable on said notes 3,093.49

"He further stated that settlement for this purchase had been made through inter-company account with Transamerica Corporation and that it was advisable for this Board of Directors to approve the transaction."

May 19, 1932                      Special Board Meeting

"The Chairman stated that under date of May 18, 1932, this corporation had sold to Inter-Continental Corporation for a total consideration of \$3,895,426.45, the following items at values indicated:

1. a. Rights and interest of Transamerica General Holding Co. in that certain agreement made on 12/15/31, by and between National Commercial Properties, Ltd. (now Transamerica Service Corp.) and A. O. Stewart, relating to the sale and purchase of 201,423.90 shares of stock in Farm Mortgage Holding Co. of Kansas City, Mo. and to other matters therein specifically set forth.  
Value \$2,500,000.00 \$2,500,000.00
- b. Interest receivable under said agreements 38,333.64
2. a. Notes executed by A. O. Stewart 1,326,764.26
- b. Interest receivable on said notes 20,328.55

Jan. 15, 1932      Special Stockholders Meeting

(Transamerica Corporation holder of all 10,000 shares).

Changed name from Transamerica Insurance Holding Co. to

TRANSAMERICA GENERAL HOLDING COMPANY

April 15, 1932      Organization Meeting of Board

Directors reduced from 9 to 7 by amending by-laws.

(Belgrano, Blauer, Bocqueraz, A. P. Giannini, L. M. Giannini, Grant, and Morrish)

Officers elected:	A. P. Giannini,	Chairman of Board
	Grant	President
	Cavagnaro	Vice-president
	Gock	"
	Zerga	Treasurer
	Everard	Secretary
	Andrews	Asst. Treas. & Asst. Sec.
	Fischer	Asst. Sec.
	Marshall	" "
	J. A. Smith	" "

Insurance Commission of California requested that Board Okeh action of officers in contributing \$501,411.53 to Occidental Life Insurance Company. Okehed. (Transamerica General Holding Co. owns all shares of Occidental Life)

Amount charged to investment in Occidental and credited to Occidental's surplus as of Dec. 31, 1931.

"The Chairman stated that the books of Transamerica General Holding Co. had for some time reflected a deficit surplus account and that for the purpose of restoring said surplus to a credit balance of \$1,000,000, Transamerica Corporation had forgiven a portion of the indebtedness, amounting to \$2,447,577.19, due it from Transamerica General Holding Co. He further stated it was desirable that this Board of Directors approve entries on the books of Transamerica General Holding Co. relating to the transaction referred to." Okehed. Done by charging to Transamerica Corporation through current account.

"He further stated that settlement for this purchase had been made through inter-company account with Transamerica Corporation, and that it was advisable for this Board of Directors to approve the transaction."

Dec. 30, 1932                      Special Board Meeting

Zerga resigned as treasurer.  
Risso elected                      "

\$269,846.24 cash dividend declared as of Dec. 31, 1932.

Resolution authorizing loans of securities to Inter-Continental Corporation repealed. Substitute resolution authorizing loans of securities to Inter-Continental Corporation  
Capital Company  
Corporation of America  
Transamerica Bank Holding Company  
with right to pledge for security on loans.

RE BANK OF AMERICA SITUATION

September 21, 1938.  
4:15 p.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mrs Klotz  
Mr. Upham  
Mr. Gaston

H.M.Jr: What I thought I'd tell you people, to keep you up to date - I've had about as unpleasant an hour as I've had since I've been here. Mr. Jefty O'Connor has been here for one hour. He comes over here - I don't know whether he's correct or not - and tells me that the President is willing to appoint him if I am willing to recommend him.

Well, I put it this way. At the beginning I told him that I thought he was making a mistake to take this job. The public had a good impression of his record; why come in now while this thing was all going to blow up and be a part of it? Well, we battled back and forth and he wanted more and more information, and I told him I've been trying to find out now whether Giannini was running the West Coast Banks or whether the Comptroller's office was, and I hadn't been able to find out but what Giannini was. And then he wanted to tell me - said that in January he gave Giannini his criticism - Giannini was going down to Florida - and Giannini wrote back to California and they answered him. Well, I had Gus Folger in and Gus Folger said he hadn't answered him.

Well, we went back and forth, back and forth. Finally he said, "Are you willing to accept the President's recommendation that I again be Comptroller?" I said, "I am not." So - and he wants to talk with me, that this is going to destroy him. I said, "I don't see why it's going to destroy you. Am I correct that the President never made you any promises when you left here?"

He said, "That's correct, he never made me any promises."

"I think - you tell me you're independently wealthy, got a good practice; why not go back to it?"

So he said, "Well, I can help you with this more than any other person in the United States."

-2-

I said, "I'm sorry, I don't agree with you."

I mean I'm not trying to sound as though I'm building myself up or anything like that, because I don't know when I've had a more unhappy hour. The President's left it to me to tell him that I wouldn't go along. And I said, "You know how I felt when I saw you a day after Labor Day, but," I said, "this thing broke a few days afterwards and," I said, "I've never been in any of these bank things before, but the thing is so bad I had to get in on it. And," I said, "as long as it's bad as it is, we've got to clean it up, and up to now there's been nobody in Washington willing to go up against this Giannini."

I never raised my voice, and he seemed very much upset, very white. "It's going to destroy him." I don't see why it's going to destroy him. Personally, I think if he's smart and keeps his mouth shut - I told him, "I'd keep my mouth shut." If he was smart and went home, said he had his law practice to attend to, I don't see why it's going to destroy him.

But I told you people I'd keep you advised, let you know, and there she is. And that's an hour's conversation. I don't know what I'm going to do tomorrow; I don't want to go through this thing again.

When it got down to brass tacks, he asked me would I accept the President's recommendation and I said I would not. So now that he knows that, I suppose the dirty work will begin. The way he stated it, it was hardly a recommendation of the President's. He said, "The President was willing if you were." That's what he said.

Upham: That's not quite a recommendation.

H.M. Jr: Said the President was willing to go along if I would recommend him. He said, "Are you willing to go along with the President?" That's what he said. "Are you willing to go along with the President?"

I said, "No, I am not."

Upham: That was pretty tough for you.

-3-

H.M.Jr: He said, "Are you willing to go along with the President?" I had to say, "No."

I'm going at five o'clock to see the President and tell him. Of course, I've told him already. He knows it. I've told the President already that I couldn't go along, so it's nothing new to the President.

Oliphant: I'd like to say that, first, it's likely that Jefty's report of what the President said is exaggerated. Second, since you talked to him honestly and courageously, he may very well decide that he does want to go back and resume his law business, take care of his business interests, which is the thing that he's been saying to the newspapermen.

H.M.Jr: Well now, if he's smart and keeps his mouth shut, he could say, "I was here on legal business, looking after some oil well rights," which he's been doing. "I never wanted this job, I've never asked for it. I've cleaned up my business. I'm going back to tend to it."

Oliphant: And I say the fact you talked to him both honestly and courageously, to me, ... (words not understood), ... so it might not be so bad.

H.M.Jr: I said, "I told you, Jefty, that I was for you when you came in. But," I said, "this thing was brought to my attention forcibly after I saw you; I've just had a change, that's all."

So he kept saying what they did on the 31st, all that, and what he told Folger to tell Giannini. But I said, "This thing has grown up for the last five years."

The only thing I didn't like was when he came in he said I told the President he needn't worry that he'd opened up the Bank of America in '33, that he had nothing to worry about.

Klotz: Dirty guy.

H.M.Jr: See? Do you get it? That I told the President he had nothing to worry about.

Gaston: (Laughs)

-4-

Klotz: Terrible man.

Gaston: He's been pulling the President's chestnuts out of the fire.

H.M.Jr: He kept telling me about the Continental Bank. I said I didn't know anything about that.

But nothing ever brought to my attention equals this one. So there you are.

And Ronald Ransom called me up and wanted to know about that 230 shares. And I told you (Upham) to get busy. Did you do anything?

Upham: Yes, sir, I told him. He said that was all that they needed to know.

H.M.Jr: What? They belonged to ....

Upham: That the certificates were issued to - in the name of Riser & Company, and who Riser's were.

H.M.Jr: Now, what else you got? Got anything pleasant?

Upham: Oh yes, Mr. Prentiss's program.

H.M.Jr: Better keep that until tomorrow.

Upham: All right.

H.M.Jr: What I want you to keep thinking about is this. This is what I want: the idea of letting Harold Graves go through Mr. Prentiss's organization with Mr. Prentiss's recommendations, and then to tell me whether they're good or bad; and let Harold Graves see the right things are put into effect. In other words, have Harold Graves clean house out there.

Upham: He's out there.

H.M.Jr: He's out there and will be out there for a month. The thought I had - Harold could drop this thing, and take that and go through the Prentiss thing in a week, say, "This is good," or "Bad," and then put that organization in shape.

-5-

- Upham: If he could do that all the way through, it would be a splendid thing.
- H.M.Jr: He can't; he's too valuable a man. But he could do it on the Coast. And he's got a whole organization to do just that sort of thing: start in with the files and work up.
- You (Hanes) got any light to shed?
- Hanes: Not a bit.
- Upham: The President of the San Francisco Bank is here; you know that. The President of the Federal Reserve Bank of San Francisco is in town. They're having a Presidents' meeting.
- H.M.Jr: Day?
- Upham: Day.
- H.M.Jr: No, I did not know that. No, I didn't know that. What shall I do about that?
- Upham: I just thought you might want to know that. Didn't know whether you wanted to see him. Maybe not.
- H.M.Jr: Well, I had this in mind - but I thought I'd like Eccles to handle this thing - and I want Oliphant and the rest of you to think about it: if within a reasonable time - by that I mean a week or ten days - the Federal Reserve Board didn't handle Mr. A. O. Stewart, I want you people to think over the advisability of my putting Mr. Day on notice that unless something was done about Mr. A. O. Stewart I would seriously consider discontinuing their franchise as our fiscal agents. See? I mean couldn't Mr. Day, as President of the bank, do something about it?
- Upham: He's the chief executive officer. I don't ...
- H.M.Jr: Well, how about his Board of Directors? Who elects the Chairman?
- Upham: Oh, he's appointed by the Federal Reserve Board here.
- H.M.Jr: Well, who elects the Chairman?

-6-

Upham: And he's designated as Chairman.

H.M.Jr: Who?

Upham: The Federal Reserve Board here names three Class C directors and designates one of them as Chairman of the Board.

H.M.Jr: I didn't know that.

Gaston: He is wholly a creature of the Federal Reserve, the Board of Governors.

H.M.Jr: I didn't know that. They nominate three Class C directors.

Upham: They name the three directors and designate one of them as Chairman.

H.M.Jr: And they made A. O. Stewart Chairman.

Upham: That's right.

Oliphant: That's the reason I thought of Ransom's early talk over here as in line with their general policy over there at the Federal Reserve of not admitting having made any mistakes.

H.M.Jr: Did they say that?

Oliphant: No, but you know that was the general attitude on increased reserve requirements.

H.M.Jr: Is there anything new you (Hanes) know?

Hanes: Sir?

H.M.Jr: You know anything new on this?

Hanes: No.

H.M.Jr: Cy?

Upham: No, I think not.

H.M.Jr: Herbert?

-7-

Gaston: I don't know anything new on it.

H.M.Jr: Mr. Oliphant?

Oliphant: Nothing. Two general things I want to report to you. I'm getting splendid cooperation from the lawyers down there in the shop, Barse and so on; and they'd been sort of running around all over the place, they didn't really have any - each lawyer was more or less a ....

H.M.Jr: ...lawyer...

Oliphant: ...a lawyer to himself - I mean a law to himself. But now they're cooperating, clearing through Barse, and so forth.

And the other thing is, I have had from time to time a number of complaints about the situation with reference to the lawyers out in the field hired to handle these receiverships, and I have just begun, by process of talking with Upham and other people, to acquaint myself with what that situation is, with the idea that later on we'll have to take a look at it.

Gaston: You notice that several letters came through praising your action in putting the legal shop under the General Counsel, and each one of them, I think, mentioned that lawyers in receivership as having been an abuse, a scandal.

Upham: Did you say letters or editorials?

Gaston: Letters to the Secretary.

H.M.Jr: All right, gents, I've got nothing else.

September 22, 1938

For the Secretary:

Ronald Ransom left word with my office this morning that he would like to have me call him between ten-thirty and eleven. I did so, but was unable to reach him, and along in the middle of the afternoon he called me again. He said that he had held Mr. Day, president of the Federal Reserve Bank of San Francisco, over for a day or two and that if the Secretary cared to talk to him, he would ask Mr. Day to come over. He referred to Mr. Day as a thoroughly honest and capable man, who was not friendly to the interests allied with Giannini, and since as president of the bank he would not be a party to the proceedings, if any, under section 30 before the Federal Reserve Board, he saw no impropriety in such a talk. Mr. Ransom suggested delicately that perhaps no one other than the Secretary, Mr. Day and Mr. Upham should be present, although he said that if the Secretary wanted him (Mr. Ransom) he would sit in. He thought perhaps he ought not since he is to be a "judge" later on.

Mr. Ransom related that Marriner Eccles is in San Francisco today, just happens to be there on his vacation, and that the Giannini people, finding out that he is in town, had asked to see him. Mr. Ransom said that he had talked with Mr. Eccles and understood that Mr. Eccles would probably tell them that if they wanted to settle the matter without action under section 30, they better take it up with the Treasury. I told him that I hoped, for Marriner's sake, that he would not try to negotiate with Giannini

on behalf of the Treasury.

I remarked to Mr. Ransom that we had received a copy of a telegram that had been sent to them by Mr. Giannini. He said, "Oh, yes, requesting a hearing. Well, we have nothing before us to conduct a hearing about." Then I remarked that we had been informed later that the request had been withdrawn. He then said that there had been an exchange of telegrams and they were considering laying before the Secretary the entire correspondence. He said that the Board was meeting on that matter in a few minutes and that he would call me back later.

When I returned from the Secretary's office about 5:30, I called Mr. Ransom to tell him that the Secretary would be unable to see him this afternoon, but that if he wanted to show me the exchange of telegrams, I would come to his office. He replied that the Board was still in session, but he would call me back a little later. At six o'clock he called me and suggested that I come to the Board building, which I did, and he gave me the copies of the telegrams. I pointed out to him that his covering letter was inaccurate in saying that I said anything about Mr. Collins, as I had not mentioned his name to Mr. Ransom at all. He recalled then that my remark had been general to the effect that "we had been informed", and said that he just assumed I knew it was Mr. Collins.

Mr. Ransom said that he did not believe the people on the Coast think the Office of the Comptroller is in earnest and means business. He said that he is keeping Mr. Day here because of the possibility that the Giannini's will come to Washington soon.

Upm

September 22, 1938

For the Secretary:

Mr. Diggs exhibited to me tonight about six o'clock a letter written in long hand by A. P. Giannini to Marvin McIntyre. I understand McIntyre is merely going to tell Giannini that he has passed <sup>it</sup> ~~it~~ along to the Controller of the Currency.

Attached to the letter was a small card addressed to Kannee to the effect that the Counsel for the bank, at the AIB convention in Louisville had overheard Harold Stonier say that the Treasury was just persecuting Giannini. Harold Stonier is the Executive Manager of the American Bankers Association.

Upm

## RE BANK OF AMERICA SITUATION

September 22, 1938.  
9:45 a.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mrs Klotz  
Mr. Upham  
Mr. Gaston

H.M.Jr: If the Treasury hadn't brought the attention of Mr. Ronald Ransom to the financial condition of A. O. Stewart, would they have done anything?

Upham: No, they would not have done anything, and the Board probably would not have known anything about it. The staff - Paulger's examining division sometimes borrows from the Comptroller the Comptroller's copy.

H.M.Jr: Let me put it another way. The Federal Reserve Board in Washington, talking as - in its entirety, plus the building - people in there - were they familiar with A. O. Stewart's financial condition?

Upham: Oh, I'm sure some of the staff were.

H.M.Jr: They must have been.

Upham: Yes.

H.M.Jr: Now, I had a very satisfactory talk with the President yesterday on this situation about O'Connor, and he was - well, he let me know in a very jocular way that he sent O'Connor over here to let me give him the works. But he had not told O'Connor that he was ready to appoint him subject to my approval; that was absolutely not so. And where the President might have twitted me and didn't was that I spoke to him on Labor Day to have O'Connor and I suddenly changed my mind. And the President didn't let me say anything; he said, "Of course, you only got this information later, which has changed the whole situation."

I said I wanted Preston Delano. President said, "Do you want him right away, or want to wait a while?"

I said, "I want him right away." So his name will go over this morning.

Now, the President said, "I want you to have just one talk with Delano. Tell him this." He said, "I'm

-2-

going to get all bank examination together in some one place, and if I do, it may mean that Delano will be without a job. If he doesn't believe in what we're doing, I don't want him to fight it; I want him to get out. But I want him to know what we're going to do before he starts."

So I asked the President what he had in mind. So he said, "Well, I want to continue the office of Comptroller of the Currency. We'll call it Comptroller of Banks. And then," he said, "we ought to have a board of Comptroller of the Currency, Chairman of the F.D.I.C., Under Secretary of the Treasury, and Federal Reserve Board, supervising this thing."

So I said, "Well, let me give you Gaston's suggestion."

So he said, "What's that?"

And I said, "Well, Gaston suggested that you give us a new Assistant Secretary of the Treasury for Banks and that under him will be the Comptroller of Banks and the Commissioner of F.D.I.C. and ...." Then I told him the story about how Ransom said being in the judiciary capacity, they couldn't advise me on any Bank Examiner's report.

The President said, "I think that sounds all right. I think that sounds all right."

Then coming down with Bell today I got an idea which I think is a knockout. Bell's crazy about it. If we go through with this thing, this Comptroller of Banks, in addition to being Bank Examiner for the National Banks, should be Bank Examiner for the Land Banks, Intermediate Credit Banks, and the Home Owners Loan Banks. In other words, the bank examining of all of these banks ....

Upham: Financial institutions.

H.M.Jr: .... should be in one spot, under the Comptroller. And Bell says ....

Gaston: Make a big shop, but I think it's worth while.

-3-

H.M.Jr: He said, "We just don't know - we don't know, for instance..." - oh yes, and - I never - what's the other thing over at Home Owners Loan?

Upham: Federal Savings and Loan Association.

H.M.Jr: Federal Savings and Loan Association.

Upham: And their insurance company.

H.M.Jr: Well, their insurance company would come over under F.D.I.C. insurance, you see. So that Treasury, which is the fiscal agency, would have all examination of banking institutions. And these farm banks and home banks are big things and we just don't know whether it's being done well or not.

And I think with Delano and Upham over there, that that will give the banking and financial community confidence. And then if we propose that sort of thing, people say, well, why haven't we thought of that thing before? It's a natural. Examination of all Federal institutions should be in one place, just the way the auditing is. I mean you have an auditor; he should be in one place. All bank examinations should be in one place and all insurance should be in one place. And that's a Treasury responsibility.

And I'd like you people to - Bell's crazy about it - and I'd like you people to think about it. And as I say, with the banking fraternity feeling the way they do - lack of confidence towards Crowley and lack of confidence in the Federal Reserve - with a strong place here and with this just wanting for bank examination and nothing else, I don't think - anybody, I should think, would be for it.

But this thing would have to be put up to Congress and then a new Assistant Secretary would have that as his responsibility, have this all - all of this under a new Assistant Secretary.

Hanes: Do I understand that the Federal Reserve Board wants to take over the Comptroller's function of the examination of National Banks?

H.M.Jr: Yes, and bank chartering. There's a big underground

-4-

movement for that. As a matter of fact - I mean we got time to make - take a minute to give you a little background - Eccles said in the hall - you (Upham) don't mind my saying this .....

Upham: No.

H.M.Jr: .... - and I think I got it right - to Upham that he didn't want this work which I was doing for the President, having a uniform bank examination, to go through, he wanted to see it fail, because he felt it was more important to get - what - how did he put it?

Upham: Well, to do the big job of consolidating bank examination in one place, and preferably ....

H.M.Jr: ....the Federal Reserve.

Upham: ....the Federal Reserve.

H.M.Jr: and then when we faced him with this and when I made that public statement and all that about - gave him 48 hours' notice and faced him with this thing, he was very rude to Upham and then Upham stuck by his guns and Ransom said yes, he heard Eccles say that. And then I told Eccles, "Well now, you're man enough and big enough person to apologize to Upham," which he did. He said it was a lie. It was some columnist ran it; somebody ran it. But I'm just telling the story to show....

And then to answer you why he wants it, and that's why I'm opposed to it.... I don't give a whoop; this is a big organization; set up a separate commission as far as I'm concerned. I don't care whether it's in the Treasury; I think it's the logical place for it. ....but the reason I don't want the Federal Reserve to have it is because Eccles wants it as part of his monetary management. He quite frankly says that bank examination should be easier in bad times and tougher in good times, and that you can't get credit out unless your Bank Examiners are easier on the thing. Now that sounds terrible, but that's right, isn't it?

Upham: Yes.

-5-

H.M.Jr: And that's why I'm opposed to it. I say that bank examination should be a job 365 days in the year, year in and year out the same. But the policy whether they should lend or not lend it belongs to the officers and the board of directors, and bank examinations shouldn't have any influence on the lending policy; and that's a terribly fundamental thing. I mean the officers and the board of directors - it's their responsibility whether they should make loans or shouldn't. And Jesse Jones can yell his head off telling people to lend, but it's none of his business. It's the business of the officers and board of directors; it's their responsibility. All we should do for them as an independent agency, just the same as Ernst and Ernst, is to let those people know whether the books are honestly run and honestly kept. Now, that's where I stand, and that's the cleavage between, I think - I think my own people are with me - between myself and Eccles. And I think I'm right.

Hanes: There isn't any question about it.

H.M.Jr: Well, it's a very fundamental difference. And he said he can't control the money markets unless he has the control of bank examination. And that just scares me to death.

Oliphant: I'd put it in another way: that the control of the money market ought to be an operation on top of sound portfolios.

H.M.Jr: But I want you (Hanes) to get that, because - have I overstated it?

Upham: No, I think you stated it very accurately and correctly.

H.M.Jr: What?

Upham: Yes.

H.M.Jr: And that's the fundamental difference. Now what I am talking about is - if this is too big, I'm just as willing the President set up a Commissioner of Bank Examinations and make it an independent agency. But I don't want it in the Federal Reserve and I'll

-6-

fight to the last ditch, because I think that the last two years, with the authority they've got, they've demonstrated they don't know how to use it, and I think they've used it badly. And I'm opposed to giving them any more. I don't think they have any right to take other people's money, bank deposits, and manage it for the purpose of inflation or deflation.

I want you (Hanes) to get this. If you want more - I've given it to you in a thumbnail sketch, but if you want more you can get it from Cy. But that's the big fight.

So Delano's coming in at 10:10. I'm going to ask him this question. What the President wants really boils down - is that the President wanted me to say that if it's an Administration policy to do certain things, he wants Delano to say that he either goes along or else resign. That's all I'm going to tell him. I mean whatever the decision is ....

- Gaston: I think there will be some obligation, whether expressed to Delano or not, to take care of him if possible in any reorganization of this whole field, if he goes into this.
- H.M.Jr: Oh yes, the President said he'd do that.
- Gaston: Yes.
- H.M.Jr: Now, has anybody got any doubts about Delano?
- Gaston: No.
- Oliphant: (Nods no)
- Klotz: (Nods no)
- H.M.Jr: Incidentally, one of his chief backers is Danny Bell. Danny Bell regards him very highly.
- You (Hanes) said your brother ....
- Hanes: (Nods approvingly) Very, very ... (words indistinct).
- H.M.Jr: But Danny Bell regards him very highly

-7-

Oliphant: We had one thing.

H.M.Jr: What?

Oliphant: We had one thing to bring up.

H.M.Jr: All right. But I'm glad to have a chance to explain to Hanes how I feel about bank examination. And then after you've digested it and talked to Cy, if you've got any doubts and we're not in the same boat, please tell me.

Hanes: I haven't any doubts about the soundness of your position now about examination. Most silly thing I ever heard in my life: Eccles talking about making examinations loose when times are bad. I don't see any sense to it - no sound ground.

H.M.Jr: Well, I haven't overstated it, have I?

Upham: No, I think not.

H.M.Jr: What?

Upham: You might be interested to know that Mr. Clark, the Vice President of the Federal Reserve Bank of San Francisco, said that the excuse that some of the bankers on the Coast give for not lending more, not being a little more generous in making loans, is that they're afraid of the banks that have done that crashing in their face and they'll be in a very illiquid position; that if all the banks were good, some of the good banks could do a little more about lending than they do.

H.M.Jr: And may I also say to you, in view of some of the gossip that you wrote me about that, when the President of the United States has to decide what is good banking practice and what is politics, he unhesitatingly decides what is good banking practice.

Upham: I had every confidence that he would.

H.M.Jr: Well, I'm delighted - it's a pleasure. All right - I mean ....

Gaston: Senator Pope of Idaho - that was<sup>a</sup> characteristic F.D.R. joke.

-8-

H.M.Jr: I never said a word. I mean it's such an advantage having lived with this man so long. Instead of going in - "Now, Mr. President, I don't want Senator Pope," I never mentioned Pope's name. Instead of saying, "I don't want Pope and I won't have Pope and I can't have Pope" and so on, we never mentioned it; he never mentioned it.

Hanes: Just forgot that one.

H.M.Jr: Out the window. Never was mentioned.

Oliphant: Seemed like a good idea at the time.

H.M.Jr: Yes. Well, I haven't got - I've - I'm not going to believe that Delano is appointed until I see the President's signature on it; not on account of the President, but there's several little hurdles over there.

And the other thing - I'll give you a time; I don't - after Delano's appointed I want to talk to him and you (Upham) and the rest of you on how I'll handle Diggs, because I think Diggs should be given enough notice that he can turn himself around, that he isn't dropped off the payroll - I don't know just how to do it.

Upham: It might be that Mr. Delano could keep him on for a while.

H.M.Jr: No, no, we've got to get him in there. But we ought to find some way that he can get 90 days' pay to look around.

Upham: I'm not eager to leave you.

H.M.Jr: Thanks, sweetheart. I'm not eager to have you go.

Hanes: Are you leaving?

Upham: Well, I'll be once removed anyway.

Klotz: Reminded me of that "sugar" story.

H.M.Jr: What?

-9-

Klotz: Reminded me of the "sugar" story.

H.M.Jr: All right. Wait, we'll cross that bridge after Delano's got his shingle, signed.

Oliphant: Well, I saw "Alexander's Ragtime Band" last night.

Klotz: Did you like it?

Oliphant: It was a lot of fun.

Klotz: Wasn't it?

Oliphant: Oh your recommendation, Mrs. Klotz.

H.M.Jr: Did you (Klotz) see it?

Klotz: Yes. I loved the music.

H.M.Jr: Yes, it's grand.

Oliphant: Well, the General Counsel over there is Mr. Barse. He's an old career man. And he made a mistake yesterday, I think, and I told him so very emphatically. He probably didn't sleep last night. Early yesterday morning Mr. Collins, a local lawyer who Cy tells me has been handling Giannini's business for some time, and used to be a Deputy Comptroller of the Currency, is that right? - ....

Upham: Right.

Oliphant: .... came in to see Mr. Barse, and there's a memorandum from Barse telling of his talk, which was largely in terms of Giannini's state of mind, his nervousness and all that sort of thing, and his feeling that this action was vindictive and so on. And Barse apparently talked to him at some length to the effect that it wasn't vindictive, that it was just handling the thing in a regular way. And then Collins went out and called the Coast and talked, apparently, to Giannini's son, and what's the name of the other man? - ...

Upham: Smith. Russell Smith, Cashier.

Oliphant: Russell Smith - ...and came back with the proposition

-10-

to Barse that they wanted to clean this whole thing up without the necessity of going through the Section 30 machinery, and Barse noddingly told him that he thought that could be arranged, "although," he said, "I haven't any power." I did point out to Barse that it was bad judgment, because he had in fact established an independent line of communication and was carrying on negotiations. Of course, he was terribly upset about it. I talked to Hanes and Cy last night about it, and it seemed to us probably the wise thing to do would be to just have Barse call in Mr. Collins and say he found when he reported his conversations he wasn't advised as to the way the Department was handling the matter and he should disregard all he had said.

Now, the other possibility and the one that Ed favors is to not do that, just ....

- H.M.Jr: Well, I think in view of what may happen today I'd sit tight.
- Oliphant: Not say anything at all.
- H.M.Jr: I think so. I think so.
- Oliphant: Of course, they now have, I want to point out - I suppose on the Coast they now have the feeling they have established this contact and that we are considering the possibility of cleaning it up without resort to Section 30.
- H.M.Jr: Well, let's - give me - let's see what happens today and if the President today signs this Delano thing. Let's just see. What? What I'm saying - I'd like to give Mr. - just a little more rope, huh?
- Oliphant: Uh-huh, all right.
- H.M.Jr: It doesn't hurt. I mean there's no way - we're in no way committed.
- Oliphant: No.
- H.M.Jr: What?
- Oliphant: No, we're not committed at all.

-11-

- H.M.Jr: I mean it couldn't be that Giannini could say that "Barse promised me this."
- Gaston: He didn't give him any terms, and our terms could be that they don't pay the dividend they've declared and then don't do all these other things.
- H.M.Jr: Herman, before I go home tonight we'll talk about this again, have another banking session before I go home tonight, and let's just see how we get along, huh?
- Oliphant: All right.
- Upham: Do you want to tell him that additional fact, Herman, about their withdrawing their telegram?
- Oliphant: Oh yes. When this fellow - when Collins telephoned to the Coast the second time he came back and told Barse that he'd been instructed to go over and tell the Federal Reserve Board to disregard that telegram that we had yesterday morning, where they wanted a special hearing.
- H.M.Jr: Well, I still say I need a day to operate, between now and five o'clock. Right after the Chinese leave we will begin on this thing again. Let's just see what - I hope we can get the President to sign this this morning.
- Oliphant: Do you want to see his reports to me? I've given you the substance of them.
- H.M.Jr: I don't think so.
- Oliphant: He won't make the mistake again. I hope he shows better judgment.
- H.M.Jr: The other people have seen this, haven't they?
- Oliphant: Yes. Cy just said in the outer room there that he thought the banking world had most confidence in the ....
- Upham: Barse and Folger.
- Oliphant: ....Barse and Folger. So I'm anxious to - it's going to take time to know how to operate the way you want.

-12-

- H.M.Jr: Well, I got - I may want to let this thing run - this happened yesterday?
- Upham: (Nods yes)
- H.M.Jr: Well, let's just see; give me till between four and five on it, as long as you say that your case isn't jeopardized.
- Oliphant: It isn't. The only - the only damage done is, as I see it, they are under the impression that we have under consideration handling the case without going through Section 30, and as I said to ...
- H.M.Jr: Well, when is this letter going to go out to the directors?
- Oliphant: It's going to go out - your deadline was tonight, wasn't it?
- Upham: No, the night of the 23d, I think he said. Be tomorrow night. I'd like a minute on that before ...
- H.M.Jr: Well, make it fast, because Preston Delano is outside.
- Upham: Well, the group who have been working, Mr. Diggs and Mr. Folger and all the rest of them, had a little mutiny last night about sending out this letter to each individual director, and I've talked to Mr. Ames and Mr. Foley about it. They have some suggestions that they're afraid some one director will give it out to the press, and I supposed you went all over that in the three days I was away and decided that definitely, to send something to the individual directors.
- H.M.Jr: We only decided since you were back.
- Upham: They're raising that point and suggested that we send the comments rather than a letter digesting the comments, and there are two or three plans.
- H.M.Jr: Well, look, you people get together yourselves and make a recommendation to me on that when I see you some time after four o'clock. I haven't got time now, but I - think about it between now and four; but my deadline was Friday night, and the reason I raised

-13-

about the letter was that if the letter goes out,  
that ....

Oliphant: That's the answer.

H.M.Jr: That's the answer to Barse and Collins.

Oliphant: Yes.

Upham: Unless there is something - some change, it will go  
out.

H.M.Jr: And the reason I have - I'd just as leave give all  
these fellows a little more rope.

## RE BANK OF AMERICA SITUATION

September 22, 1938.  
11:15 a.m.

Present: Mr. Oliphant  
Mr. Hanes  
Mr. Foley  
Mr. Upham  
Mr. Douglas  
Mr. Healy

H.M.Jr: Well, Trans-America? - Bank of America?

Douglas: Everything west of the Mississippi.

H.M.Jr: Pretty near. West of the Rockies anyway. And have they brought you up to date on what we're doing?

Douglas: Judge Healy talked to me.

Healy: I brought him up to the time of our meeting here the other day. Since then I haven't been very much in touch with it.

H.M.Jr: Well, what we're doing in the Comptroller's office is, we're going ahead and having them prepare as rapidly as possible, in conjunction with Mr. Oliphant's office - I call them charges - the record which - to prepare a case to place before the Federal Reserve Board in Washington under Section 30. And they're doing that just as rapidly as they can, and as soon as they get a breathing spell they're going to do the same thing on the Anglo-California Bank, although the Fleishackers are in town now seeing Jesse about some new capital.

The other issue which is going along at the same time - and it's important - is the question of A. O. Stewart, who is Chairman of the Bank - Federal Reserve in San Francisco, and he and his companies owe the Bank of America in the neighborhood of \$14,000,000; it's up now, in the last report it's from eight up to fourteen. And roughly, as part of that collateral, it's gone from 28,000 shares of Trans-America to 32,000 now.

Now, Marriner is in San Francisco today presenting these facts to Mr. Stewart and asking him to try to justify them or, I take it, resign.

Oliphant: Particularly his ownership of 230 shares of the Bank of America stock.

-2-

H.M.Jr: Yes, which - under the rules of the Federal Reserve, no Class C directors can own any National Bank stock. Now, we're - our interests in having Mr. Stewart out if he can't explain - been a little bit more keen about it than the Federal Reserve have been up to now, because we feel that when we get into this Section 30 business, the Chairman of the Board over this Bank out there in debt to the tune of \$14,000,000 - it hardly makes him impartial. And then also, the Federal Reserve Bank of San Francisco are our fiscal agents, and I don't like the Chairman of the Board of an institution that's acting as our fiscal agents in that situation.

Now, he's made the statement to - is it Clayton, what's the fellow's name, Eccles' assistant?

Hanes: Clayton is right.

H.M.Jr: Clayton was out there very recently. Stewart told Clayton he could substitute this collateral with a hundred percent Government bonds. If he can, it's lovely, but I don't think he can any more than I could. And I simply feel this way - and I've told this to the President - that during the past five years Mr. Giannini and his financial institutions have grown on the West Coast until I don't know who's bigger, Mr. Giannini or the Treasury, and I'd like to find out, because he's thumbed his nose at every recommendation that the Comptroller has made, and he hasn't carried out a single recommendation, and he rides high, wide and handsome. And 800 million dollars of his deposits are insured, which is twice the capital of F.D.I.C. And I think it's just about time we found out.

What I'd like to do is, as rapidly as possible, in conjunction with S.E.C., run down both the Bank of America and Trans-America, because it's all like that (fingers interlocked); in as competent a manner put those financial institutions on their feet and not, after the President's magnificent record for five years, have a thing like this blow up in his face. And go back to five years ago - they talked about driving the moneychangers out of the temple. I think you've got to also include this group, which has grown up during the last five years. And I'm

-3-

not - I don't want to make any soapbox speeches, but I think it's the most dangerous financial combination we have to deal with. And so far nobody's been able - no Federal agency has dealt with them, and that's the whole thing. And I'm just going to go down the limit, and I've kept the President posted as to what we're doing, and he unhesitatingly is backing me a hundred percent - unhesitatingly.

Now, that's - isn't that, John, very ....

- Hanes: I think one point in which Bill will be particularly interested is the fact that we came across a loan from Trans-America - one of the subsidiaries of Trans-America to this same man, to one of Stewart's companies, Pacific Coast Mortgage Company, of two and a half million dollars, secured by approximately 267,000 shares of Trans-America, in addition to the 32,000 which the Secretary spoke about.
- Healy: What's the name of that subsidiary company?
- Hanes: It's either the Trans-America General or the Trans-America Service, and I'm not sure that it isn't both of them, Judge. We haven't been able to differentiate between the two.
- Healy: And the number of shares that were placed?
- Hanes: 267,000, roughly - 244,000 in one loan and 20-odd thousand in the other.
- Healy: Of Trans-America.
- Hanes: Yes. That loan is secured also - in addition to that, it is secured by 4,400 shares of Bank of America stock, and some odds and ends in there, consisting of a hundred shares of National City Bank of New York and several small banks in Arizona and around that immediate vicinity, in which the Giannini interests are controlling interests in those banks. So the loan is practically made up entirely of the - stockholders' money of Trans-America is being loaned to one of Stewart's companies; in turn the Bank of America is lending to Trans-America about seven million dollars, so in effect it's the bank lending to its subsidiary for the purchase of the subsidiary's own shares.

-4-

- Healy: What's the name of Stewart's company you mentioned?
- Hanes: Pacific Coast Mortgage Company.
- Douglas: Well, I think it's important that we at our end synchronize our job with this real major job that you have. Our official job, I think, comes down to making investigations of the registration statement and so on, but in terms of a working program I think it is very important that we synchronize everything we do with what you do, and feed your men the stuff that we get.
- H.M.Jr: Well, your particular responsibility is, in this question, listing on the Stock Exchange.
- Douglas: Disclosure whether or not all these various facts have been disclosed.
- Oliphant: This is an example of the desirability of that synchronization. Now, these 230 shares of Bank of America stock which Stewart is not supposed to own are in the Street name.
- Hanes: In the name of a nominee of the Bank of America.
- Oliphant: Now, we want to know, is that Stewart's stock? Well, if the Examiner goes to him and asks him, the inclination is to say, "Well, no, it's not." But the people from your side come to him and ask him - say this is pledged, see - well, the tendency would be to say, "Well, sure it is." Otherwise, it's an invalid pledge, you see. It's one of those facts which you could get which we can't,....
- Douglas: Yes.
- Oliphant: ....probably.
- H.M.Jr: Tell Mr. Upham he ought to be in on this meeting (to Kieley).
- Healy: We've checked over the registration statements that are on file under the Stock Exchange Act; also the registration that they recently filed under the Securities Act, which has never become effective

-5-

because of deficiencies in it. We can't find anything there that indicates any ownership of Trans-America stock by Stewart.

H.M.Jr: But - now what did Cy report to Ransom yesterday? Wait a minute, we'll ask Upham; he has that at his fingertips.

Hanes: Any ownership of Trans-America stock - we're looking for ownership of bank stock.

H.M.Jr: Oh, what we're looking for for Ransom is ownership of Bank of America stock. And it's - as part of his collateral he has got up 230 shares of Bank of America, as part of his collateral for one of his companies, on whose note ....

Oliphant: On a loan from Trans-America.

Hanes: Let me tell you more in detail about that, Mr. Secretary.

H.M.Jr: Yes, I wish you would. I don't understand it.

Hanes: There is a \$111,000 loan to A. O. Stewart, and so far as I can discover from that report, that's a loan to Stewart direct from ....

Oliphant: From Trans-America, not the bank.

Hanes: ... from Trans-America's subsidiaries. Now, just above that loan, included in the loan of two and a half million dollars, is all the other collateral I enumerated; that includes 4,400 shares of Bank of America.

(Upham comes in)

H.M.Jr: I don't know, Cy, I must have forgot - you're so bashful, why the hell don't you ask to get in these meetings on this?

Say that again, will you (Hanes)?

Hanes: I was just - we're talking about A. O. Stewart's - this 230 shares of Bank of America stock, and in it, according to the report, there is a loan to A. O. Stewart, which I

-6-

judge is to A. O. Stewart personally, for \$111,000; that's separated from the other loan. And that - as collateral for that loan is 230 shares of Bank of America stock, whereas in the two and a half million dollar loan there are 4,400 shares of Bank of America stock in addition to all of this Trans-America stock, which in rough figures is about 267,000 shares, as I recall. Is that right?

Upham: Yes, Trans-America stock.

Hanes: That's right.

Upham: That's right.

H.M.Jr: Well, let me ask you a question, because I never sat in on one of these before, thank heaven; I hope I never have to sit in on another one. You check the information that we have on Trans-America against his published report, is that what you do?

Douglas: That's the statement that's filed.

Healy: We've taken his registration statement that's filed with us; we've checked it against all public records that are available. In addition, someone from our place has been over in Mr. Hanes's office looking at these various reports, and I don't know whether they have finished or not.

Hanes: No, they have not.

Upham: They're still in there.

Hanes: They're still in there.

Healy: Whenever it's possible to do it, they'll put that information up against the registration statement to see if there's any defects in the registration statement.

H.M.Jr: But I thought you said - do I understand Trans-America is not registered?

Healy: Trans-America is registered under the New York Stock Exchange. It has recently filed a registration under the Securities Act of '33 which hasn't become

-7-

effective.

H.M.Jr: But they are registered under the Stock Exchange?

Healy: That's right.

H.M.Jr: Well, supposing you find that the statement - was it a statement they filed with the Stock Exchange or with you or with both?

Douglas: Both. Filed under our Act.

H.M.Jr: Oh, on the Stock Exchange.

Douglas: And if it contains misleading false information, we could delist that stock. That's our power.

Healy: And there might be a criminal violation by the fellow who signs the misstatement.

H.M.Jr: Who signs that statement?

Douglas: Well, the officers of the - President and usually the Secretary of the corporation.

H.M.Jr: Now - well then, that's going forward now?

Healy: Yes.

Douglas: I suspect that on that, in order to get down to the real facts on that, we'd probably have to send men out into the field. It comes down to the question of who actually is the beneficial owner of that stock held in the name of its - character name of Smith or Jones. Probably have to get into the books of Stewart and books of his companies and really trace that thing.

H.M.Jr: In order to find out whether they made an honest statement.

Douglas: We might very well have to do that.

Healy: That would only be so, Bill, wouldn't it, if there were some statement in the registration statement on which that information was found to be at variance....

-8-

- Douglas: My only guess is that the thing is so complicated and so messy that we probably will not be able to arrive at an informed judgment of whether or not that statement filed with us is complete, unless we follow down these various little leads and what not and make inquiries; and that probably will entail some field investigation either in connection with - maybe we'd have enough evidence to be a prima facie case for delisting proceedings, but certainly in the hearing and in the trial of the delisting proceedings we probably would have to look into the books and records.
- H.M.Jr: Well, haven't we given you two men? Hasn't the Comptroller's office - somebody said we'd just given them two men.
- Upham: No, two of their men are over here.
- H.M.Jr: Oh. Now let me ask you, let's say you should decide to go ahead, that you had enough evidence to hear that. Who hears that, who sits?
- Douglas: We. It's an administrative proceeding.
- H.M.Jr: You sit as a board.
- Douglas: Yes.
- Olyphant: And you have access to the stuff they file with the Stock Exchange.
- Douglas: Oh yes. And we have, pursuant to our powers of investigation, the power to subpoena all relevant documents and summon witnesses. Be a formal hearing.
- H.M.Jr: Isn't that a public hearing?
- Douglas: Yes, be a public hearing.
- H.M.Jr: Well, are we doing everything to give you every assistance that you want now?
- Healy: I gather so.
- H.M.Jr: Anything else you can think of that you need?

-9-

- Healy: I don't think of anything that you've got over here that we need, as far as I'm aware.
- Upnam: Your men have some questions, and our Examiners who are here from California go in and talk to them and have conferences straightening things out.
- Healy: One of these men over here, Breslin, is the man we sent out to California; spent two or three months in that preliminary study we attempted of the Trans-America Company under our investment trust power. You know, we've had an investment trust investigation under way, under an Act of Congress.
- H.W.Jr: So I see by the papers.
- Healy: This morning. I'm not sure whether we've exhausted our powers under that or not, because we've made an announcement publicly - I don't know whether we sent it to Congress in any formal fashion or not - that all of our field work and all of our public examinations were at an end. But this Trans-America problem has been hanging over us all the time, and the tentative thought that I had of recommending to the Commission was that we should say to Congress something like this: that within the time and the money that we had we couldn't make a complete study of Trans-America; that is, the study of that company alone is equal to all the rest of the investment trust study put together; and call Congress's attention to it and suggest that this subject ought to be gone into. Now, that would just lay it on their lap. Of course, there is a possible alternative to that, and I think if we haven't exhausted our powers under the Investment Trust Act and can get the money, it's possible that we could get farther in that type of investigation than we can under an investigation or proceedings that ends up in delisting.
- H.W.Jr: Well, this thing I have is very volatile and the picture changes every day. I mean yesterday or the day before they sent a telegram to the Federal Reserve Board here in Washington demanding a hearing under Section 30; last night they send a lawyer in, or - is that correct, they want to withdraw that telegram?
- Oliphant: (Nods yes)

-10-

- Douglas: Another possibility would be for us, in connection with the monopoly study, to take on Trans-America. We could do it; it would take us a little out of the field that we had carved out, but it would fit into that mosaic of the financial field.
- Healy: That reminds me, I understand that LaFollette's Civil Liberties Committee is going to ask a lot of questions about Trans-America.
- H.M.Jr: You (Oliphant) know that.
- Oliphant: (Nods yes)
- H.M.Jr: Well, this thing, I think, is certainly moving very rapidly now, and ....
- Oliphant: The advantage of Bill's last suggestion might be the immediate availability of funds.
- Douglas: Yes.
- H.M.Jr: Oh. That's important.
- Douglas: Well, there are funds in the monopoly study for that immediately available.
- H.M.Jr: Well, I just want to say this, and I'm sure it's unnecessary: that if you people could push this thing, that I - I figure a united front between all of us - maybe we can get this fellow under control, but it needs the united front.
- Douglas: Yes, and I think that one of the most important things is decisions on particular points of data and facts, who should get them and how they should be obtained, and when, so that the two staffs working together can synchronize their activities and feed each other; because I'm convinced that some field study, perhaps our men going out to San Francisco, is necessary - will be necessary at some stage of this before we get through with it.
- H.M.Jr: John, you got anything you want to say?
- Hanes: Nothing, Mr. Secretary.
- Upham: (Nods nothing)

-11-

- Oliphant: (Nods nothing)
- Douglas: Well, those - we can give those instructions to our boys, those two men, and we can put on more men if that seems to be desirable.
- Hanes: They told me yesterday afternoon they were going to be through, they thought, by the end of this week, were going to try to get you an informal outline report by Monday or Tuesday.
- H.M.Jr: What we're thinking of doing - thinking about it today, is that either tonight or tomorrow night a letter is going out from here to every director of the Bank of America, putting him personally on notice and pointing out his responsibility under the law if they pay the dividend on the first of October. Somebody raised the question of - a little fearful that if we sent this to 25 directors, it might leak out. Well, I don't know how you people think; think about it today. I think that's maybe a chance we have to take. But it's - it's a nice device.
- Oliphant: Be the best way for a director to bring personal liability down on his head, wouldn't it?
- H.M.Jr: What, to talk?
- Oliphant: To let it out.
- H.M.Jr: What would that be?
- Oliphant: I mean he could create any sort of run and if you had to immediately liquidate, he'd probably find that ....
- Dealy: I suppose that the depositors of the bank will be taken care of all right, but if the bank goes sour the effect on Trans-America is apt to be quite serious, and there are so many people out there that have money in Trans-America, and then Trans-America controls so many enterprises that probably it will be almost another earthquake. But if that's the way the facts develop, I don't see that there is any responsibility here for it; that the responsibility is on the people who did it.
- H.M.Jr: Well, I tried to hit Trans-America by asking for bank

-12-

holding company legislation, and you see how far I got, and I didn't get anywhere on it. They asked me up there whether I was worrying here about anything in the banks. I said, "Yes."

Bankhead said, "What?"

I said, "I'm worrying about the bank holding situation."

"When we got up there - I think this, that with Senator McAdoo out, that on this situation things will be much easier for us, I think, politically on the Hill. But I couldn't get anywhere on this bank holding thing.

And I'm not fooling myself about the seriousness of what we're taking on here, but I - I just say to my own crowd, "I want to know whether Giannini is running the Treasury or whether we're supervising his enterprises," and I don't know; I don't know who's boss. It's a terrible thing to say, but it's that serious.

And with your (Douglas) former West Coast connections, you must have some conception of the hold that that man has got on the whole Pacific Coast.

Douglas: Simply terrific.

H.M.Jr: And for the New Deal to permit something like that to grow up, a cancer in society - we just can't stand for it.

Douglas: See, they've declared it but they haven't paid it.

H.M.Jr: That's right. But that's the purpose of this letter.

Douglas: Well, we'll put the steam on our boys.

H.M.Jr: Fine.

Douglas: Add to them if necessary, synchronize the program.

H.M.Jr: Well now, we'd like to push you people a little bit and you push us.

Douglas: O.K.

Healy: All right.

H.M.Jr: I appreciate your coming over. Glad you're back in town.

-12-

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## RE BANK OF AMERICA SITUATION

September 22, 1938.  
4:45 p.m.

Present: Mr. Oliphant  
Mr. Upham  
Mr. Gaston  
Mrs Klotz  
Mr. Hanes

H.M.Jr: Let's go, let's go. Come on.

Upham: The only thing I had, I talked to Mr. Ransom on the phone, and first he suggested that he had held Mr. Day over - the President of the San Francisco Bank, and thought that there might be some value to your talking to him. He says that Mr. Day is a thoroughly competent person, knows the situation thoroughly, and is not friendly to the Giannini interests, and he thought that a conversation might have some value.

Oliphant: What's the difference between him and Stewart?

Upham: Day is the President of the Bank

Oliphant: What's their personal relation, attitude toward one another? Does he like Stewart?

(Hanes comes in)

Upham: He didn't say anything about that. I gather from my own conversation with Day that he's not too friendly with Stewart.

H.M.Jr: well, my curbstome opinion is that I don't want to snare the responsibility with the Federal Reserve Board in connection with Mr. Stewart until they have acted.

Upham: well, of course, the President of the Bank has nothing to do with this hearing.

H.M.Jr: well now, all right, they - this is their job. They select the Class C directors and they select the Chairman. And I would be delighted to meet Mr. Day after they've decided what they're going to do in regard to Mr. Stewart; that's just the way I feel.

Oliphant: I agree with you.

H.M.Jr: What? Check?

Hanes: Yes.

-2-

Upham: You don't want to talk to anybody else, do you?

H.M.Jr: He's come here for the last four years and he's never been in the Treasury. Why should he come now?

Upham: And then Mr. Ransom said after this meeting he thought he would like to come over and show you the exchange of telegrams between Giannini and the Board. Apparently there have been two from them to Giannini and one from the Board to him.

H.M.Jr: You call up Mr. Ronald Ransom and say that Mr. Morgenthau is exhausted,....

Upham: All right.

H.M.Jr: ...that he's going home; that you'll be glad to come over to see him and that you'll get those things to me the first thing tomorrow morning. I am exhausted; I'm not going on my imagination.

Upham: Fine.

Third, he said that Marriner is seeing the Giannini people in San Francisco today.

H.M.Jr: Which is all the more reason why I shouldn't see Mr. Day.

Upham: And probably what Marriner will tell them is, "Well, if you want to clear this up, the people for you to talk to is the Treasury, not me," because - that's about all he'll say.

Oliphant: That's Giannini. That's all right.

Upham: That's Giannini.

H.M.Jr: Who forecasts what Marriner will do?

Upham: Ronald.

H.M.Jr: All the more reason why - the less people that I talk to and know how I feel, the better.

Upham: All right.

-3-

H.M.Jr: Now, very, very confidentially, two minutes ago I got the following message - but this is very confidential - from the President via McIntyre: that he had postponed for several days signing Mr. Delano's commission because it was too much like spitting in the eye of Mr. O'Connor, and the President thought we ought to wait until Mr. O'Connor got back to the Pacific Coast. Period.

So under my new philosophy, dated September 22, I'm not going to call up the President, I'm not going to argue with him. I've done everything that a human being can do. When I see the President for luncheon Monday - and across the table I'll try to get him to sign it. But I understand that Mr. O'Connor is going home tonight. I can't do anything more.

The President isn't well. Miss LeHand said his cold is worse, he's feeling worse. I think to call him up or - and the President - McIntyre particularly told me that he got this message in the President's own handwriting. So I just thought, let it go, and maybe he's right, I don't know. But he did ask me "How soon?" and I got it over there. If you get it Monday it's time enough. You (Upham) can, as the State Department says, paraphrase that message to Mr. Delano for me, will you?

Upham: Except that he's disappeared for two or three days and I don't know where to find him.

H.M.Jr: Well, Miss Spangler can find him.

Upham: Said he's going to be unavailable for the next couple days to avoid the press.

H.M.Jr: When did he say that?

Upham: After he talked with you. His secretary undoubtedly knows where he is. I can try to reach him.

H.M.Jr: Say you've got a message for him from me.

Upham: Yes.

H.M.Jr: Now, the most important thing nobody has told me. First place, have you people decided, should this

-4-

registered letter go to the directors of the bank?

Upham: Yes.

Oliphant: All agreed.

Hanes: All agreed on ....

H.M.Jr: "hat?

Oliphant: All agreed, no change in plans.

H.M.Jr: Is Thingumabob going to sign it?

Upham: He won't know until he sees the letter.

H.M.Jr: When is he going to see the letter?

Upham: Late tonight.

H.M.Jr: Why late?

Upham: Because they're still working on the letter.

H.M.Jr: When will he see it?

Upham: He'll either see it perhaps by 10 or 10:30 tonight or the first thing in the morning.

H.M.Jr: The reason I'd like to have him see it tonight, even if it is midnight - I mean I don't often talk about being tired, or the rest, but I've carried more than my share of responsibility and I want to leave here 10 o'clock tomorrow morning by air, go up to the farm, just forget everything until Monday morning. I need it badly, so I'll be able to tackle something more. And therefore, unless there is something very important, I'm just going to quit working after ten tomorrow morning, and then go to the farm and be back Monday.

Upham: If he signs it, everything's fine. If he doesn't, we have a problem.

H.M.Jr: That's why I want the letter signed tonight, even if it's midnight.

If I do go tomorrow - I sent the message to the President I was going to go at ten, and you (Hanes) would go to Cabinet.

-5-

Hanes: (Nods yes)

H.M.Jr: So you can take a cushion with you.

Oliphant: Head rest.

Gaston: I did something that I should tell you. Preston Delano was very much afraid that an announcement might come out from the White House which would identify him as being from California rather than from Massachusetts, so I called up Steve Early, said that a commission might come through for Preston Delano,...

H.M.Jr: Oh, Herbert, don't - you shouldn't have done that.

Gaston: ...and make it in Massachusetts.

H.M.Jr: You shouldn't have done that. That's a bad pull. When did you do that, Herbert?

Gaston: When Preston Delano came in to see me around noon today.

H.M.Jr: Oh, that's a terrible mistake. You don't know how bad a mistake ....

Gaston: I'm awfully sorry.

H.M.Jr: Yes. Well ...

Oliphant: Now one other thing before we go home.

H.M.Jr: Yes.

Oliphant: I'm about ready to go home. You decided that S.E.C. could look at that report in Hanes' office.

H.M.Jr: Yes.

Oliphant: Remember, the bank report.

H.M.Jr: Uh-huh.

Oliphant: In the process of looking at it they have to draw off parts of it. I see no objection to that, because otherwise they just as well not look at it at all.

-6-

H.M.Jr: Personally, as far as I'm concerned, they could take the report over to S.E.C.

You (Gaston) don't mind my telling you ...

Gaston: No indeed.

H.M.Jr: And may I say, as far as I'm saying - period, page, paragraph, new month. I'm through.

Gaston: I understand.

Oliphant: All clear?

H.M.Jr: The policy we have around here: tell - come and tell papa; then when I'm told, I never can get angry. The only time I get angry is if I find it out from somebody else. So they always rush and tell me themselves, knowing if you get to papa first then I can't get angry. The only time I get angry is if I hear it from somebody else.

Oliphant: Shall we all go home?



TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY  
WASHINGTON

ADDRESS REPLY TO  
"COMPTROLLER OF THE CURRENCY"

September 23, 1938

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 half of which is payable October 1, 1938, despite the warning contained in my telegram dated September 13 and communicated to the meeting by R. E. A. Palmer, National Bank Examiner. This warning was prompted by my duty to protect the depositors as well as the shareholders of your 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

- 2 -

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." (Underscoring supplied)

There is enclosed, for your information in this connection, a copy of my letter of criticism based upon the report of the latest examination of your bank. A complete copy of this report of examination has been sent to, and is open for your inspection at, the main office of the Bank of America National Trust and Savings Association, No. 1 Powell Street, San Francisco, and at the office of the Chief National Bank Examiner, Room 1103, 155 Montgomery Street, San Francisco, and at the sub-district office of the Chief National Bank Examiner, 835 H. W. Hellman Building, Los Angeles. Your attention is directed to the comments, criticisms and conclusions of the examiner contained in the report, and particularly to the last two pages thereof.

Very truly yours,

MARSHALL R. DIGGS  
Acting Comptroller of the Currency.



TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY

WASHINGTON

September 23, 1938

ADDRESS REPLY TO  
"COMPTROLLER OF THE CURRENCY"

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

Gentlemen:

The report of examination of your bank, completed September 15, has been received and reveals practically the same criticisms as shown in previous reports. The purpose of those criticisms and of the criticisms set forth in this letter is to assist the Board of Directors in a constructive manner to protect the interests of the depositors as well as of the shareholders of your bank.

Your attention is directed to the examiner's comments under the heading of "Historical Resume of Assets in General" starting on page 2 of the consolidated report. A comparative survey over the past five years reveals that the primary purpose of the management appears to be that of publishing large earnings statements and the payment of ever-increasing ill-advised dividends rather than a frank recognition of the asset problems of the bank and a desire to allocate the bank's earnings toward the amortization of frozen and unbankable assets, the creation of adequate reserves and the correction of the bank's under-capitalized condition. The management of the bank has persistently contested the examiner's classification of assets, has defended unbankable assets, and has rarely admitted losses and charged them off voluntarily.

On page 8, insert 2, there is shown under "Large Lines" the extension of credit to Transamerica Corporation and its subsidiaries, which has been criticized for years, aggregating approximately \$76,000,000, or in excess of one and one-half times the capital stock of the bank. It is noted that the so-called "Guaranteed Loans" amount to \$5,500,000 in round numbers. This amount should be fully collateralized by readily marketable securities, particularly in view of the method used to eliminate the contracts of the Inter-America Corporation by writing up United States and municipal securities approximately \$14,000,000 and applying that amount as a credit on such contracts, which were then indicated to have been adequately secured by marketable collateral. It is the position of the Office of the Comptroller of the Currency that these contracts should have been eliminated, not by a weakening of the asset condition of the bank through writing up certain assets as indicated above, but by actual collection, with any deficiency taken care of out of the securities pledged.

Since the early part of 1932 it has been the bank's policy to sell properties acquired by the bank to the California Lends, Incorporated, and the Capital Company under contracts. At the time of the examination of the bank, the amounts which these corporations owed the bank by reason of these contracts

-2-

and which amounts were carried in the assets of the bank, were as follows:

California Lands, Inc.	\$12,051,526.09
Capital Company	<u>27,687,820.37</u>
	\$39,739,346.46

The California Lands, Incorporated was further indebted to the bank in amount of \$351,016.19 and the Capital Company owed the bank a further sum of \$1,443,040.65, making, with the above, the total indebtedness of these two companies to the bank \$41,533,403.30.

With reference to the contracts of the California Lands, Incorporated and Capital Company, the bank maintains that real estate owned by the bank is sold under continuing contracts with the two foregoing companies. As a result of the terms and conditions of those contracts the bank is enabled to carry parcels of land, which are either unsaleable or can only be liquidated at a substantial loss, for an unlimited period of years, through the device of crediting the proceeds of the sale of a given parcel as a payment on the balance of the total contracts instead of treating each transaction as an individual item.

It appears that no payments were required on those continuing contracts for a period of two years, namely, through 1934 and 1935, following which one-tenth of the purchase price became payable in 1936 and a like amount each year thereafter for ten years. Taxes on such land are paid by the bank. Presumably title does not pass with the execution of the contract. All of these contracts are carried in your loans and discounts, but in reality they appear to represent "Other Real Estate Owned". The lenient terms and conditions of the contracts are such that this arrangement constitutes in fact merely an agency agreement and not a bona fide sale. In the opinion of the Comptroller of the Currency this real estate should be shown as such on the books of the bank and so shown in future published reports of the bank.

A recapitulation of the amount invested in banking houses, furniture and fixtures and other real estate owned is shown on page 14, insert 1, and aggregates \$97,660,265.39, including contracts of the California Lands, Inc., and Capital Company, totaling \$39,739,346.46, previously referred to. These are included in this schedule to show properly the bank's entire real estate investments. Of the aggregate of \$97,660,265.39 the amount of \$47,685,166.67 represents banking houses and equipment, and \$49,975,098.72 represents other real estate owned. When \$14,004,116.02 of actual and probable foreclosures on real estate loans carried in loans and discounts, are added to the aggregate of \$97,660,265.39 referred to, the total is \$111,664,381.41 or approximately the entire amount of the bank's capital structure as shown by its books. It is self-evident that an asset concentration of this magnitude constitutes a problem demanding immediate corrective steps.

-3-

Attention is also directed to the concentration of credit in the direct and endorsed lines of A. O. Stewart aggregating \$8,088,003.96 as set out on page 8, inserts 16-17 and 18; and the Pacific Coast Mortgage Company in amount of \$2,925,000.00, as shown on page 8, insert 19, of which company, Mr. A. O. Stewart is president and a director in addition to being a major stockholder. Particular attention is directed to the nature of the collateral securing these lines and to the comments in connection therewith, as set forth on the inserts above referred to.

There are now carried in the International Banking Department, San Francisco, extensions under German Credits, largely under the "German Standstill Agreement", aggregating \$7,964,961.76 of which \$7,820,660.78, are classified as follows:

Slow	\$3,723,441.32
Doubtful	2,097,219.46
Loss	<u>2,000,000.00</u>
	\$7,820,660.78

At the time of the October 14, 1936 examination a loss of \$1,000,000.00 was estimated and subsequently charged off on these items. By verbal agreement a like amount was to have been charged off at each succeeding examination until the amount classified as doubtful, which represented the exchange loss, was completely eliminated. At the time of the April 20, 1937 examination the management refused to charge off the second estimated loss of \$1,000,000.00 and it is included in the present classified loss of \$2,000,000.00. However, a recent communication from the bank states that on August 18, 1938 an additional reserve of \$1,000,000.00 representing the loss estimated in the April 20, 1937 report, has been transferred to the International Banking Department, making an aggregate of \$2,000,000.00, which has been applied to reduce the carrying value of these assets. Consequently there remains an additional loss of \$1,000,000.00 yet to be charged off in order to comply with the verbal agreement above referred to. Both the agreement and classifications are believed to be liberal and the exchange loss should continue to be charged off at the rate of \$1,000,000.00 at each succeeding examination. This arrangement is considerably more lenient than the charge offs voluntarily made by other large national banks holding these obligations.

On page 8, insert 1, under the schedule "Loans exceeding the limits prescribed by Section 5200 of the Revised Statutes", there are listed obligations of Transamerica Corporation and obligations of certain subsidiaries thereof in which the Corporation owns or controls a majority interest, aggregating \$23,118,152.87, resulting in a \$14,118,152.87 excessive extension of credit. This violation of Section 5200, U.S.R.S. must be reduced to the bank's legal loaning limit of \$9,000,000.00.

Your attention is directed to the examiner's comments under the heading of "Bonds and Securities" relating to certain substandard bonds carried and the option to purchase granted to the Transamerica Corporation covering 56,600 shares of National City Bank of New York at \$48.00 a share; also his statements

-4-

under the caption "Bond Write Up". During the years 1935 and 1936, the management wrote up certain government and municipal securities in amount of approximately \$14,000,000.00 by various book entries and applied that amount as a reduction on the former fully secured Inter-America contracts, reference to which was briefly made elsewhere in this letter. The loss as shown in this report in connection with this write-up should be charged off, and in addition thereto, the remaining unliquidated portion of the original write-up should be reversed in its entirety. In the future investment securities must be carried not in excess of actual cost to the bank, less the required amortization.

A depositor is entitled to the protection of an adequate sound capital structure. According to the analysis of capital position as shown on page 3, insert 1, the net sound capital of your bank at the time of examination amounted to \$96,447,599.77 after deducting estimated losses, doubtful items and liabilities not shown on the books, with deposits totaling \$1,385,494,280.80, or a ratio of 1 to 14.36. The bank is under-capitalized to the extent of at least \$42,000,000.00 without taking into consideration its asset condition. The need for such additional capital should be apparent and sound banking policy dictates that steps should be taken to provide it.

An important criticism will be found under the caption "Management and Supervision by Directors". The reports of the various committees appointed by the Board to supervise the operating functions of the bank should be incorporated in the minutes of the meeting of the Board in sufficient detail to be of value to the individual members thereof. The members of the Board have an important duty to perform in formulating the policies of operation of the bank and seeing that such policies are carried out by the active management. The minutes should clearly show the action, if any, taken by the Board with reference to such committee reports, and also which of the members approve or disapprove a given loan or transaction.

On page 16, insert 1, there is a schedule showing service charges on dormant accounts in the amount of \$520,732.94 since April 10, 1933. The confiscation of dormant balances through such service charges is contrary to the rulings of the Comptroller of the Currency. All charges heretofore assessed contrary to such rulings should be restored to accounts charged. Unauthorized charges against dormant accounts remain deposit liabilities of the bank and must be so reported in statements of condition rendered to this office and in published reports.

On page 5, insert 5, are shown certain loans made upon the security of the bank's own stock in violation of Section 5201, U.S.R.S. These violations must be corrected and the law strictly observed.

Your particular attention is directed to the recapitulation of criticized and fixed assets, showing the major problems of the bank and their relation to its total capital structure, set forth in the conclusions of the examiner. The

-5-

criticised and fixed assets of the bank aggregate \$226,002,313.26 book value, of which \$137,818,327.86 is subject to adverse classification. The serious nature of the problems involved is evident when it is realized that the adversely classified assets exceed the total capital structure of the bank by more than \$25,000,000.

The management has persistently refused to either recognize or admit that the unsatisfactory condition of the bank must be corrected. The past practice of capitalizing uncollected profits is pernicious. A sound policy would necessitate the proper charging off of depreciated and unbankable assets instead of deferring such charge-offs until all hope of any recovery has been abandoned.

The management appears to be dominated by the desire to publish ever-increasing earnings statements. The bank's earnings have been utilized to enhance dividend payments to the shareholders of Transamerica Corporation instead of being used to charge off the bank's losses and make adequate provision for other criticized assets. The amount of dividends paid by the bank has been the subject of repeated criticism by various examiners. Despite these repeated criticisms, the dividend rate has been constantly increased. During the year 1937 the dividend paid represented 70% of the net operating profits of the bank.

In a telegram to National Bank Examiner Palmer, which was read by Mr. Palmer to the Board of Directors of the bank at its meeting in Los Angeles on September 13, the position of the Comptroller of the Currency with reference to the declaration of any dividend was clearly stated, and the Board was advised that, in his opinion, the declaration of any dividend at this time would, unless proper provision for the criticized assets of the bank were first made, be and continue an unsafe and unsound practice in conducting the business of the bank, and, the Comptroller, pursuant to the provisions of Section 30 of the Banking Act of 1933, further warned the bank, its officers, the Board of Directors and the members thereof to discontinue such unsafe and unsound practice. The Office of the Comptroller of the Currency is informed that, despite this warning, the Board of Directors of the bank declared a dividend without first having made proper provision for the criticized assets of the bank. No further comment in connection with the declaration of this dividend is being made at this time except to state that nothing contained in Mr. A. P. Giannini's letter of September 15, 1938, alters in any way the comments set forth in our telegram of September 13 in respect of the declaration of the current dividend.

You are requested to consider the present letter at a special meeting of the Board called for this specific purpose and to reply in detail over the signatures of the attending members, setting out the corrections effected in each of the criticized matters and your plans for the complete elimination of

- 6 -

the same. Copies of your reply to this letter should be forwarded to Chief National Bank Examiner William Prentiss, Jr., and National Bank Examiner L. E. Sedlacek, 155 Montgomery Street, Room 1103, San Francisco, California.

Very truly yours,

*Marshall E. Diggs*  
MARSHALL E. DIGGS  
Acting Comptroller of the Currency

September 23, 1938

For the Secretary:

At 4:25 p.m. Mr. Oliphant called me on the telephone to say that he had had a conversation with Mr. Barse, in the course of which he asked Mr. Barse what Jefty O'Connor's plans were. Mr. Oliphant said that Mr. Barse replied that he did not know, that he had not seen Jefty since last Sunday. Mr. Oliphant said that Mr. Barse reported to him that in the course of that conversation Mr. O'Connor referred to the Bank of America, NT. & SA. of San Francisco, California, and told Mr. Barse that if he were asked concerning the relationships of the Office of the Comptroller under Mr. O'Connor with that institution, to say that Mr. O'Connor had instructed the Chief National Bank Examiner in December, 1937, to check up on all of the things he wanted corrected in that bank and press Mr. Giannini for action.

Mr. Oliphant suggested that I make a note of his telephone conversation with me and bring it to the attention of the Secretary.

Upm

Treasury Department

TELEGRAPH OFFICE

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HENRY MORGENTHAU JR

WANT TO CONGRATULATE YOU ON YOUR SELECTION OF PRESTON DELAND AS  
COMPTROLLER OF CURRENCY I HAVE KNOWN HIM EVER SINCE I HAVE BEEN  
IN WASHINGTON AND HAVE VERY HIGHEST REGARD FOR HIM. FEEL SURE  
THERE WILL BE THE FULLEST COOPERATION BETWEEN OUR RESPECTIVE  
DEPARTMENTS

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BOARD OF GOVERNORS  
of the  
FEDERAL RESERVE SYSTEM

Washington

September 24, 1938

CONFIDENTIAL

Mr. Cyril B. Upham,  
Assistant to the Secretary,  
Treasury Department,  
Washington, D. C.

My dear Mr. Upham:

This will acknowledge your letter of the 24th, delivered to me by hand this morning at 12:05 P.M., with its enclosures--one a letter addressed to Mr. A. P. Giannini, which you state is identical with letters sent by registered mail, special delivery, last night to each of the directors of the Bank of America National Trust and Savings Association, San Francisco, California, and its second enclosure, a copy of a letter addressed to the Board of Directors of that bank.

I have today called your letter and its enclosures to the attention of the other three Board members who are today in Washington and it will be called to the attention of the two absent members as soon as this can be done.

Sincerely yours,

(Signed)  
Ronald Ransom.  
Vice Chairman.

RR/ac

September 24, 1938.

Mr. Ronald Ramson,  
Vice Chairman,  
Board of Governors of the  
Federal Reserve System,  
Washington, D. C.

Dear Mr. Chairman:

Secretary Morgenthau has asked me to transmit to you, for your information, the enclosed two letters.

A letter, identical with the one addressed to Mr. A. P. Giannini, was sent by registered mail, special delivery, last night to each of the directors of the Bank of America, National Trust and Savings Association, San Francisco, California. With each letter was enclosed a copy of the enclosed letter addressed to the board of directors of that bank.

Very truly yours,

Cyril B. Upham,  
Assistant to the Secretary.

Enclosures:  
Two letters.

Identical letters-sent to: Leo Crowley  
Jesse Jones  
Wm. C. Douglas

Upm:FM

SUMMARY

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- (1) Report of examination in 1934 criticizes A.O. Stewart line and says it had been subject to criticism "for some time past."
  - (2) Subsequent examinations have shown increases in line and repeated criticisms.
  - (3) Stewart appointed Class C director, Federal Reserve Bank, San Francisco in July, 1936, and chairman, January, 1937, for the year 1938.
  - (4) San Francisco Reserve Bank gets copy of each report of examination and Federal Reserve Board, Washington, borrows each report. The files of the Comptroller do not show the details of the borrowings of these reports.

September 26, 1938

For the Secretary:

On July 7, 1936 A.O. Stewart was appointed a Class C Director of the Federal Reserve Bank of San Francisco for the unexpired portion of the term ending December 31, 1938, and as Deputy Chairman of the Board of Directors of the Bank for the remainder of the current year.

In the February, 1937, Federal Reserve Bulletin, it was announced that the Board of Governors of the Federal Reserve System had designated A.O. Stewart as Federal Reserve Agent and Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco, for the year 1937.

In the January, 1938, Federal Reserve Bulletin, the Board of Governors announced that A.O. Stewart had been redesignated as Federal Reserve Agent and Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco for the year 1938.

On September 13, 1938 the Secretary of the Treasury brought to the attention of Ronald Ransom, Vice Chairman

- 2 -

of the Board of Governors of the Federal Reserve System, the relationship between A.O. Stewart, Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco, and the Bank of America, N.T. & S.A. of San Francisco, a member bank, and its affiliates, as shown by the current report of examination of that Bank made by national bank examiners examining for the Office of the Comptroller of the Currency.

September 26, 1938

REFERENCES TO THE A.O. STEWART LINE IN REPORTS OF  
EXAMINATION OF THE BANK OF AMERICA, N.T. & S.A.

1. Examination completed October, 1934.

Special attention is called to the line of A.O. Stewart, . . . . since the last examination, increases of substantial proportions are noted. These arose through purchase from Bank of America (state bank) and Inter Continental Corporation. Inasmuch as this line has been under criticism for some time past, the merit of allowing any increase is questioned.

(No previous criticism is found in the consolidated reports, but the reference here to the line having been under criticism for some time past, undoubtedly refers to criticisms in the report of examination of the administration department.)

2. Examination completed May, 1935.

No specific criticism of the A.O. Stewart line, as such, is included but there is reference in the confidential section to the note of A.O. Stewart for \$1,700,000 secured by 10,000 shares of Pacific Coast Mortgage Company as a part of the collateral securing Transamerica Bank Holding Company for \$28 million.

In the general section of this report, in commenting on excessive loans to corporations wholly or partially owned by Transamerica Corporation, reference is made to the fact that \$2,800,000, representing an A.O. Stewart obligation, is now carried unendorsed, whereas it was formerly carried with the endorsement of Transamerica Service Corporation.

- 2 -

3. Examination completed December, 1935.

The total indebtedness of A.O. Stewart was shown as \$5,300,000.

4. Examination completed November, 1936.

The total line of A.O. Stewart amounting to \$8,200,000 is set up as an excessive loan. The excessive feature was eliminated during the examination by reduction of loans.

5. Examination completed March, 1937

The A.O. Stewart line reflects a large concentration of credit improperly supported and margined by largely unsalable collateral. Listed as an excessive loan in the last examination. See No. 1 Powell or San Francisco Main Office Branch Report for detailed comments on this highly unsatisfactory line.

5. Examination completed August, 1937.

The "Stewart large line" reflects a large and highly unsatisfactory concentration improperly supported and secured by largely unsalable collateral. For details see the report of the San Francisco Main Office.

7. Examination completed April, 1938.

Included among the large lines is a \$10,700,000 item to A.O. Stewart and affiliated lines.

"In view of the foregoing, it would appear that credit extended is very liberal with liquidation primarily dependent upon the sale of defaulted bonds with a limited market and declining market and the liquidation or sale of the stock in the Joint Stock Land Banks ... it would appear that a continued carrying of the line, the bank should require additional high-grade collateral." With respect to the loan to Pacific Coast Mortgage Company (of which A.O. Stewart is President) it was said "the line would appear to represent a liberal line of credit based upon the type of collateral pledged and in view of the fact that the purpose of the borrowings was not disclosed.

- 3 -

8. Examination completed September, 1938.

The large line to A.O. Stewart and affiliated lines had grown to \$11,000,000 and substantially the same criticisms were included.

September 26, 1938

During the 9:30 meeting the Secretary asked me to go into Mrs. Klotz's room and call Ronald Ransom to see if he had heard anything from Mr. Eccles in respect to his conversation with A.O. Stewart.

Mr. Ransom said, and I reported to the Secretary, that he had heard nothing from Mr. Eccles since six o'clock our time Friday evening. The Secretary had been informed by me as to the developments heretofore.

The Secretary asked me to inform Mr. Ransom that he is getting "slightly impatient" over the delays incident to the decision with respect to Mr. Stewart's chairmanship of the San Francisco Bank. I did this.

Mr. Ransom asked me to suggest to the Secretary that it takes a little time to handle a matter of this consequence which is brought to their attention by such sudden notice. He stated that he is very sure the Board is not more interested in anything than in the qualifications of the Class C directors who are appointed by the Board. He

- 2 -

stated, however, that there is such a mass of material on this case which is being carefully read and digested, that it takes a little time. They are endeavoring to approach this with a thoroughly judicial attitude and a thorough exploration of the facts, and he hopes the Secretary will not become impatient. He stated his belief that the Secretary wants to see no injustice done, while at the same time, the Board wants to act with as much alacrity as it possibly can. He would appreciate it personally if the Secretary does not become too impatient with them.

Mr. Ransom said that the Board must be very careful not to prejudge this matter because, while it is a collateral matter, it is, nevertheless, bound up with the difficult and dangerous procedure which may devolve upon the Board if there is an action under Section 30 of the Banking Act of 1933. He says the Board is attempting to maintain a calm and judicial attitude so that when an appellate court reviews the whole procedure, as is certain to happen in his opinion, they will find no collateral evidence of prejudice to enable them to say that the Federal Reserve Board, having shown evident prejudice in the collateral matter of the chairmanship of the Federal Reserve Bank of

- 3 -

San Francisco, its findings with respect to unsafe and unsound banking practices are equally open to the allegation of prejudice.

Upm

## TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE SEP 26 1938

TO Secretary Morgenthau  
FROM Herman Oliphant

In connection with the recent appointment of Preston Delano as Comptroller of the Currency, the following questions have been raised:

- (1) Has the President power to make the appointment, and
- (2) Upon confirmation by the Senate, will the appointee be entitled to compensation from the date he took the oath of office?

The answer to both questions is in the affirmative.

As to the first question, the President has the power to make the appointment. U.S.C., title 12, sec. 2, provides that the Comptroller of the Currency shall be appointed by the President by and with the advice and consent of the Senate. The attached opinion contains authorities to the effect that there is no question as to the power of the President to fill vacancies in offices the appointments to which require the advice and consent of the Senate even though such vacancies occur during a session of Congress and even though the payment of compensation to persons so appointed is prohibited by Section 1761 of the Revised Statutes until confirmation of such appointment by the Senate.

As to the second question, the Comptroller General has ruled that recess appointees to vacancies which occurred during a session of the Senate become entitled to compensation for all services rendered under the recess appointments from the date such appointments were accepted by the taking of the oath of office (9 Dec. Comp. Gen. 190; 21 Comp. Dec. 722).



COPY

June 6, 1934.

General Counsel to the Secretary.

Chief, Division of Appointments, Treasury Department.

Reference is made to your letter of May 31, 1934, advising that during the recess of the Senate following the first session of the Seventy-Third Congress, adjourned June 16, 1933, the President issued temporary commissions to two Collectors of Internal Revenue and to one Collector of Customs, which positions were not vacant during the session of Congress. You advise further that on January 4, 1934, the President sent to the Senate nominations of the officers in question but that up to the present time the appointments have not been confirmed.

With respect to the above-mentioned appointments the following questions are submitted:

1. In the event they are not confirmed during the present session of Congress and the President should give them further temporary appointments after Congress adjourns, could they be paid their salaries before they are confirmed by the Senate?
2. Also in the case of the above named officers, should the Senate reject their nominations, would they continue to serve until the end of the present session of Congress or would they relinquish office immediately upon receipt of notice of rejection?

With respect to your first question, it is my opinion that should the persons involved be given further temporary appointments after Congress adjourns, they could not be paid their salaries before they are confirmed by the Senate.

The law prohibiting the payment of salary to persons appointed during the recess of the Senate to fill vacancies which existed while the

-2-

Senate was in session is contained in section 1761 of the Revised Statutes, which reads as follows:

"No money shall be paid from the Treasury, as salary to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate."

The Attorney General in an opinion rendered to the Secretary of the Treasury under date of June 18, 1890 (16 Op. Atty. Gen. 522), after quoting the above section of the Revised Statutes, continued (p. 531):

"This legislation, in assuming to act upon the salary of officers appointed during the recess of the Senate when the vacancies actually existed while the Senate was in session, must be deemed a recognition by Congress of the invariable construction given by the Presidents to the power of appointment conferred upon them by the Constitution. In postponing the payment of the salary of the appointee until the Senate has given its assent to the appointment, it concedes the right of the President to appoint, although it undoubtedly embarrasses the exercise of that right by subjecting the appointee to conditions which are somewhat onerous."

In an opinion to the President, dated February 21, 1883 (17 Op. Atty. Gen. 521), Attorney General Brewster considered the case of a Mr. Hartranft whose nomination was sent by the President to the Senate which adjourned without acting on the nomination, whereupon the President, during the recess immediately following, appointed Mr. Hartranft to fill the vacancy by granting him a commission to expire at the end of the next ensuing session of the Senate. After holding that the President was authorized to thus fill the vacancy by a temporary appointment, the Attorney General added:

"It is, however, to be observed in this connection that payment of the salary of the appointee, in such case, is by section 1761, Revised Statutes, postponed until he has been confirmed by the Senate."

-3-

In a later opinion to the Postmaster General dealing with the same type of question (30 Op. Atty. Gen. 314), the Attorney General said, *inter alia* (p. 316):

"The question as to whether the appointee can be paid the salary of the office before confirmation by the Senate should be referred to the Comptroller of the Treasury for determination, as it is a matter which would naturally come before him and as to which my opinion would only in any event be advisory."

By section 304 of the Budget and Accounting Act (42 Stat. 24), the General Accounting Office (at the head of which is the Comptroller General of the United States) succeeded to the functions and duties of the Comptroller of the Treasury. In a decision rendered to the Disbursing Officer of the United States Tariff Commission on August 21, 1926 (6 Comp. Gen. 147), the Comptroller General held that where a vacancy in the office of a member of the United States Tariff Commission, requiring appointment by and with the advice and consent of the Senate, occurred during a recess of the Senate or was filled by a recess appointment terminating with the adjournment of the next session of the Senate, during which session the person involved was nominated to the office but the nomination not acted upon, compensation under a second recess appointment of the same or a different person to the same office made subsequent to the adjournment of the Senate is prohibited by section 1761, Revised Statutes, for the reason that a vacancy existed while the Senate was in session, the recess appointment not being considered as causing the vacancy to cease to exist. The above decision of the Comptroller General was followed in another rendered to the Chairman, Federal Radio Commission, on November 9, 1927 (7 Comp. Gen. 329), in a case involving an analogous set of facts. See also 26 Op. Atty. Gen. 234.

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With respect to your second question as to whether officers holding recess appointments would, in the event of the rejection of their nominations by the Senate, continue to serve until the end of the present session of the Congress or would relinquish office immediately upon receipt of notice of rejection, it is my opinion that such officers may legally continue to serve under their present commissions until the end of the present session of Congress, unless their appointments are sooner terminated by the President.

Recess appointments are made by the President pursuant to the authority conferred upon him by Article 2, Section 2, Clause 3, of the Constitution, which reads:

"The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

The authority most frequently relied upon with respect to the duration of recess appointments appears to be an opinion rendered to the President under date of April 16, 1830, by Attorney General Berrien (2 Op. Atty. Gen. 336). In that opinion there was considered the case of a Mr. Isaac Hill who had been given a recess appointment to the office of Second Comptroller of the Treasury. While holding such recess appointment the President sent Mr. Hill's nomination to the Senate for consideration. The Senate rejected the nomination and in his above-mentioned opinion the Attorney General held that a commission issued by the President during a recess of the Senate continued until the end of the next session of Congress, unless sooner terminated by the President, even though the individual commissioned should have been meanwhile nominated to the Senate and the nomination rejected. To the same effect is 4 Op. Atty. Gen. 30; 12 ib 32; 26 ib 234; 21 Comp. Dec. 789.

-5-

In the case entitled "In re Marshalship for the Southern and Middle Districts of Alabama" (20 Fed. 379), the Court (United States District Court for the Middle District of Alabama) considered, inter alia, the term of office of one Mathias C. Osborn who had been given a temporary appointment as United States Marshal, and who had been subsequently nominated for the office, but whose nomination had been rejected. In that case the Court said (p. 382):

"The authorities on this subject - that is, the nature and duration of a temporary appointment made by the president to fill a vacancy - are that a commission issued by the president during a recess of the senate continues until the end of the next session of congress, unless sooner determined by the president, even though the person commissioned shall have been in the mean time nominated by the president to the office and his nomination rejected."

The following authorities were cited in support of the decision: U.S. v. Kirkpatrick, 9 Wheat. 721; Case of Isaac Hill, 2 Op. Atty. Gen. 336; Gilpin v. O'Neil, 8 Int. Rev. Rec. 137; Ex parte Hennen, 13 Pet. 230.

(Signed) Herman Oliphant

Herman Oliphant,  
General Counsel to the Secretary.

Copied:  
Oct. 24, 1934 (aj)

Compared:  
aj/pw

September 26, 1938.

Memorandum for the Secretary:

A copy of each report of examination of the Bank of America, N.T. and S.A., San Francisco, is given to the Federal Reserve Bank in San Francisco, to be kept by them.

The copy of the report of examination which is sent to the Comptroller of the Currency in Washington is available for use by the Federal Reserve Board and its staff in Washington, and is regularly borrowed by them.

RE ANGLO-CALIFORNIA BANK

September 27, 1938.  
9:55 a.m.

Present: Mr. Hanes  
Mr. Upham  
Mrs Klotz  
Mr. Oliphant  
Mr. Gaston

Upham: The ....

H.M.Jr: Mr. Upham.

Upham: The Acting Comptroller and the Chief National Bank Examiner, and perhaps one or two others, have been conducting a conference yesterday with Mr. Mortimer Fleishhacker and Mr. Paul Hoover, of the Anglo-California National Bank.

H.M.Jr: What are their respective positions in the bank?

Upham: Mr. Fleishhacker is Chairman of the Board and Mr. Hoover Vice President. And they report to me that, with the help of the R.F.C. in putting in about 12 million dollars new capital, the losses that are now in the bank can be eliminated and the bank can go forward. They also contemplate getting rid of a number of directors of the bank and about five officers of the bank, including the President, Herbert Fleishhacker. They have requested Mr. Diggs to take care of ....

H.M.Jr: Who's "they"?

Upham: The Chairman of the Board and the Vice President of the Anglo-California have requested the Acting Comptroller to take care of the one item of inducing Herbert Fleishhacker to get out of the bank; and he last night was prepared to send a wire to Herbert Fleishhacker asking him to come in here. And the whole procedure has been postponed and held up until you and the others can have a look at the program for the bank. And my idea was that you might also want to have a - express an opinion as to whether getting rid of Herbert Fleishhacker was a job for the Comptroller's office or for the directors of the bank.

H.M.Jr: Or up to the Federal Reserve Board.

-2-

- Oliphant: Do you know that Herbert Fleishhacker, Mr. Secretary, owes the bank \$3,470,000?
- H.M.Jr: I don't know.
- Oliphant: A million 600 thousand in excess of what the law allows him to owe..
- H.M.Jr: No.
- Now, the other thing which I also know, which they seem to forget, is that the purchase of preferred stock in any bank can only be done over the request and signature of the Secretary of the Treasury.
- Upham: That's right, that's right.
- H.M.Jr: I mean ....
- Upham: But the negotiations ....
- H.M.Jr: The R.F.C. can not buy preferred stock in any bank unless I ask them to, and over my signature; and I - and I don't know what this thing is.
- Upham: But the negotiations usually go on with the R.F.C. prior to that request.
- H.M.Jr: Then I'm advised.
- Upham: Yes.
- H.M.Jr: I've had no advice from Jones of any kind, other than that he was going to see them.
- Upham: Well, these negotiations are still in process, and their plan was to finish them all up and get everything through before they came to you.
- H.M.Jr: Well, I think it's - I think you used your good judgment and I think we'll listen to them a quarter of eleven, see what they've got to say.
- Upham: Now in addition there is this document of violations of the law, which they are not apparently taking into account at all; they're just going to clean up the bank and do nothing about - do nothing about those, as I get it.

-3-

H.M.Jr: Well, I think the thing to do this morning, unless you people think otherwise: let's listen to what Diggs has to say. After we listen, you fellows do what you always do, get together and talk it over; then after you've talked it over, meet with me and advise me what you think I ought to do.

And in this case Preston Delano will be here and he'll listen, and I'll include him in our group. Then the rest of you go somewhere and talk it over, come back and say, "Mr. Morgenthau, you ought to do this, that or the other."

Oliphant: Will Delano be here at 10:45?

H.M.Jr: Quarter of eleven.

Oliphant: Good.

H.M.Jr: He'll be here quarter of eleven.

Oliphant: Good.

H.M.Jr: I thought we might as well break him in on this thing. We'll listen; I won't make any decision. Then you people go into a huddle. When I come back from Cabinet, you can have what's left of me. All right?

Upham: I think so.

H.M.Jr: All right, John? Herbert?

Gaston: Yes, indeed.

RE ANGLO-CALIFORNIA BANK

September 27, 1938.  
10:45 a.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mr. Upham  
Mr. Gaston  
Mr. Folger  
Mr. Diggs  
Mr. Sedlacek  
Mr. Delano

Upham: Mr. Morgenthau, I think you know everyone except Mr. Sedlacek.

H.M.Jr: How do you do.

Sedlacek: How do you do, Mr. Secretary.

H.M.Jr: Glad to meet you.

The reason that I asked you gentlemen to come here was that Mr. Upham advised me of certain proposed action on the part of the Acting Comptroller, and I sent Mr. Diggs a message through Mr. Upham that before any such action was taken, why, I'd like to be advised, and therefore, if Mr. Diggs would tell us this morning what you propose to do in regard to the Anglo-California Bank.....

Diggs: Mr. Secretary, we had - first of last week Mr. Mortimer Fleishacker and Mr. Hoover came to Washington and we told them that we couldn't talk to them until the first of this week. They came back on yesterday and we had a long conference with them. They're entirely in accord with what we're trying to do: to get the bank in better shape and to remove some of the officers of the bank. They suggested that - and we felt in accord with it - that it would be better for us to ask Mr. Herbert Fleishacker, the President of the bank, to come here to discuss the matter, than it would be for them to go out there and discuss his removal as the President of the bank and as a member of the Board of Directors. A removal as a member of the Board can only be done by the stockholders, or his resignation, or under Section 30 of the Federal Reserve Act. If we get his resignation, it would be much easier to handle it that way than it would be to proceed under Section

-2-

30, which is rather long and drawn out. And we'd like to ask him in here to discuss the matter with him.

H.M.Jr: Well now, I'm not familiar in any way with what the Comptroller's office has developed since the report has come in - the last report of the Anglo-California Bank examination - and inasmuch as the final responsibility is mine I'd like to get a written report of what you've done up to date and what you're thinking of doing.

(Diggs hands H.M.Jr. attached report)

Diggs: It's from a conference we had, Mr. Secretary - it's underneath there.

H.M.Jr: I'll read it.

Diggs: I think we've advised Mr. Upham of what we've been doing, and we've had there Mr. Foley - rather, Mr. Sherbondy, in the conference with the Federal Reserve. I think they've known pretty well ....

Folger: R.F.C.

Diggs: R.F.C. has been over for a conference; they've known about it there.

H.M.Jr: Well, Mr. Upham talked quite excitedly last night....

Upham: No, I haven't sat in on any conferences. He told me last - yesterday afternoon what the program was that he had worked out with Mr. Fleishacker and Mr. Hoover, and I have this morning a memorandum summarizing it. I knew that the conferences with the R.F.C. were going on. I'd been advised that they were working out a program with the bank.

H.M.Jr: Well, I mean what you advised me last night was that you didn't know and therefore you wanted me to have a written statement so that I would know.

Upham: Yes, I thought you ought to know the details of that program before it was continued with.

H.M.Jr: Well, let me read it.

-3-

"A conference was held today..." - this is dated the 26th - ".... beginning at 2:00 P.M. with Mortimer Fleishhacker, Chairman of the Board, and Paul Hoover, Vice President, of the above named bank. Mr. Wiggs, Acting Comptroller, and Examiner L. H. Sedlacek were present.

"Messrs. Hoover and Fleishhacker were informed that the bank would not be permitted to continue in its present unsatisfactory condition and that certain definite requirements would have to be met. After considerable discussion with respect to unsatisfactory large lines, and particularly the so-called fleishhacker concentration of credit, a program was outlined as follows:

"First - Mr. Herbert Fleishhacker would sever his connection as President and Director of the bank. Also Vice Presidents Coe, Friedlander, Klinker and Tilden would be eliminated from the management; further, that the directorate would be materially strengthened, which may be accomplished in part by reducing the board from twenty-five to fifteen directors.

"Second - With respect to the large lines of the Fleishhacker brothers, Mr. Mortimer Fleishhacker stated that he would liquidate for cash all his direct and indirect indebtedness to the bank, which is included in large lines in the report and amounts to approximately \$2,500,000. He further agreed to a program for the liquidation and handling of the remainder of the so-called Fleishhacker line and that this program would be set up with the assistance of the examiner and should be satisfactory to this office.

"Third - That additional capital of \$12,000,000 to \$14,500,000 be put into the bank with the aid of the Reconstruction Finance Corporation. This will provide for the elimination of losses and doubtful as shown by the report and the creation of sufficient reserves to provide for losses that will develop in the large lines and other unsatisfactory assets, leaving a sound capital structure equal to not less than 10 percent of the deposit liability."

Of course, you know, entirely separate from my authority in connection with the Comptroller's

-4-

office, not one dollar of preferred stock can be bought by the R.F.C. unless I personally sign it, so if for no other reason than that, before any steps are taken I've got to be fully advised as to the situation, because only on my written request can the R.F.C. put in a dollar; and I'm not fully advised.

"Messrs. Fleishhacker and Hoover agreed to the entire program as outlined above except that Mr. Mortimer Fleishhacker stated that while he knew it would be for the best interests of the bank for his brother to resign, he considered it a difficult undertaking for him to accomplish and clearly indicated that the action would have to be taken by the Comptroller's office and expressed the opinion that it could be accomplished if he were called to this office for a conference.

"In addition to the foregoing, Messrs. Fleishhacker and Hoover further agreed that immediate steps would be taken to liquidate the Anglo National Corporation, which is a bank holding corporation, and all other affiliates of the bank.

"On Saturday morning, September 24, Messrs. Folger and Sedlacek of the Comptroller's office conferred with Mr. Sam Husbands of the Reconstruction Finance Corporation and his assistant, Mr. Coombs, at which conference Attorneys Kelly and Sherbondy were present. The condition of the bank was discussed in an effort to arrive at the approximate amount of additional capital that would be necessary for the bank."

Well now, have you had time, Mr. Oliphant, to go into this?

Oliphant: No.

H.M.Jr: I mean have you had time - as to whether the Comptroller's office should or should not take this action, in view of possible breaking of the law on the part of these officers? What?

Oliphant: No, I haven't. No, I haven't.

H.M.Jr: Don't you want time?

-5-

Oliphant: Yes. Yes, I do.

H.M.Jr: What?

Oliphant: I'd thought I'd want to have time to go over it, to see now those items we have there are going to be dealt with and also how other items of illegality are to be dealt with.

H.M.Jr: What I'd suggest is - and I would like, even if Mr. Delano - even if he hasn't taken the oath, after Mr. Oliphant and Mr. Hanes and Mr. Upham have studied the thing, if, for the time being, so to speak, you'd (Delano) sit on my side of the table; and when they come back and report to me, I'd like you to hear it and like the benefit of your advice, if that's agreeable. I mean while I'm studying this, if you're studying it with me - in other words, we'll go forward or backward on this thing together. But I would like my own people to have a chance to study this - in other words, the office of the Secretary - because leaving out entirely the Comptroller's office, I've got to know and have my people know so I can or cannot decide whether we want to write a letter to the R.F.C. recommending the purchase of preferred stock.

And I don't know whether it's wise or not. Maybe we should have Herbert Fleishhacker here; I don't know. But I want time.

Diggs: We completed the conference about 4:30 yesterday afternoon, Mr. Secretary. It was the recommendation of Mr. Folger that we ask him in. Before I did it, I called Mr. Upham and we prepared the memorandum on it so that ...

H.M.Jr: Well, I'm just saying that Upham came in here just before I went home and felt that we should get into this thing at this stage, before Mr. Fleishhacker was invited. Now, all I'm asking is that the office of the Secretary of the Treasury have time to study this, and - say Mr. Upham and Mr. Hanes and Mr. Oliphant - and whatever you people have, and then talk to the R.F.C., and then when they've made up their mind as to how we should proceed they'll talk to me. Then we'd like to confer with you people again.

-6-

Oliphant: And we may decide we want the Department of Justice in.

H.M.Jr: Well ....

Oliphant: Don't want to get into the position of compounding any crimes.

H.M.Jr: Let's just stop, look and listen at this point, and then when you people are ready - whenever they come in, Mr. Delano, I'll let you know, and you and I will sit and listen, how's that?

Delano: I think that's fine.

H.M.Jr: Huh?

Delano: That's right.

H.M.Jr: Well, I don't know - I don't know what's in this report. Is the report finished?

Sedlacek: Yes.

H.M.Jr: How long has it been finished?

Sedlacek: About two weeks.

H.M.Jr: Signed and everything?

Sedlacek: Yes, sir.

H.M.Jr: Well ....

Diggs: Mr. Smith is preparing the letter to go out to the Board, but we should advise that that letter not go out until after we have had this conference with the officers, and possibly we can work it out without sending out that kind of a letter.

H.M.Jr: Well, I'm just - I'm just asking that the office of the Secretary of the Treasury have a chance to take a look at this thing. That's all. Thank you.

September 27, 1938

MEMORANDUM - To Mr. Upham  
From Mr. Diggs

Referring to your memorandum of September 20 regarding letter of criticism to the board of directors of the Anglo California National Bank of San Francisco, California, please be advised that a letter is being prepared and will be completed as expeditiously as possible.

A program for this bank has been prepared, a copy of which is attached hereto. This office has no reason to feel that the requirements contained therein will not be complied with but, on the other hand, it is the opinion of this office that the entire program will be completed as expeditiously as is possible under the statute. It will be understood that a part of the program requires action on the part of the Reconstruction Finance Corporation and a meeting of the stockholders of the bank.

September 26, 1938

MEMORANDUM -

In re: Anglo California National Bank of  
San Francisco, California.

A conference was held today beginning at 2:00 P.M. with Mortimer Fleishhacker, Chairman of the Board, and Paul Hoover, Vice President, of the above named bank. Mr. Diggs, Acting Comptroller, and Examiner L. H. Sedlacek were present.

Messrs. Hoover and Fleishhacker were informed that the bank would not be permitted to continue in its present unsatisfactory condition and that certain definite requirements would have to be met. After considerable discussion with respect to unsatisfactory large lines, and particularly the so-called Fleishhacker concentration of credit, a program was outlined as follows:

First - Mr. Herbert Fleishhacker would sever his connection as President and Director of the bank. Also Vice Presidents Coe, Friedlander, Klinker and Tilden would be eliminated from the management; further, that the directorate would be materially strengthened, which may be accomplished in part by reducing the board from twenty-five to fifteen directors.

Second - With respect to the large lines of the Fleishhacker brothers, Mr. Mortimer Fleishhacker stated that he would liquidate for cash all his direct and indirect indebtedness to the bank, which is included in large lines in the report and amounts to approximately \$2,500,000. He further agreed to a program for the liquidation and handling of the remainder of the so-called Fleishhacker line and that this program would be set up with the assistance of the examiner and should be satisfactory to this office.

Third - That additional capital of \$12,000,000 to \$14,500,000 be put into the bank with the aid of the Reconstruction Finance Corporation. This will provide for the elimination of losses and doubtful as shown by the report and the creation of sufficient reserves to provide for losses that will develop in the large lines and other unsatisfactory assets, leaving a sound capital structure equal to not less than 10 percent of the deposit liability.

Messrs. Fleishhacker and Hoover agreed to the entire program as outlined above except that Mr. Mortimer Fleishhacker stated that while he knew it would be for the best interests of the bank for his brother to resign, he considered it a difficult undertaking for him to accomplish and clearly indicated that the action would have to be taken by the Comptroller's office and expressed the opinion that it could be accomplished if he were called to this office for a conference.

- 2 -

In addition to the foregoing, Messrs. Fleishhacker and Hoover further agreed that immediate steps would be taken to liquidate the Anglo National Corporation, which is a bank holding corporation, and all other affiliates of the bank.

On Saturday morning, September 24, Messrs. Folger and Sedlacek of the Comptroller's office conferred with Mr. Sam Husbands of the Reconstruction Finance Corporation and his assistant, Mr. Coombs, at which conference Attorneys Kelly and Sherbondy were present. The condition of the bank was discussed in an effort to arrive at the approximate amount of additional capital that would be necessary for the bank.

September 27, 1938

For the Secretary:

At 2:30 p.m. Mr. Hanes, Mr. Gaston, Mr. Foley, Mr. Sherbondy and Mr. Upham met with Mr. Oliphant in his office.

The proposed program for the Anglo California National Bank, as suggested in the memorandum of September 26th submitted earlier in the day to the Secretary by the Acting Comptroller of the Currency, was under consideration.

Three things were agreed upon to recommend to the Secretary:

(1) That the letter now in preparation summarizing the criticisms in the last report of examination of the bank be sent to each director of the bank.

(2) That the matter of getting Herbert Fleishhacker to resign as president and director be left to Mortimer Fleishhacker and Paul Hoover as one of the requirements to be met before Government money is put into preferred stock of the institution.

(3) That it be definitely understood that criminal violations of law, if any, will be referred to the Department of Justice.

- 2 -

During the course of the conference Mr. Upham talked by telephone to Mr. Folger who related, while both Mr. Upham and Mr. Oliphant listened, the transactions involving the Western American Realty Company's dealings in the stock of the bank.

Also during the course of the conference Mr. Upham and Mr. Oliphant talked on the telephone to Preston Delano and to Norman Thompson, and Mr. Delano was informed

(a) That the letter from the Secretary to him notifying him of his appointment as Comptroller of the Currency will constitute the notice referred to in the statute as that which must be followed within fifteen days by his taking of the oath; and

(b) That there is no objection to the Home Owners Loan Board announcing that Mr. Delano will remain with the Board until after the conference of Presidents of the Federal Home Owners Loan banks on October 17th.

Mr. Upham told the group that there is a possibility that Mr. Jones secured an undated resignation from Herbert Fleishhacker at the time the RFC purchased preferred stock

- 3 -

originally and that since all Herbert Fleishhacker's stock in the Anglo California National Bank is subject to a lien in connection with a judgment standing against him, it may be that he doesn't satisfy the requirement for director of the bank that he have ten shares free and unhypothecated.

Upm

RE ANGLO-CALIFORNIA BANK

September 27, 1938.  
4:30 p.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mr. Upham  
Mrs Klotz  
Mr. Gaston

H.M.Jr: Anglo-California Bank.

Upham: The memorandum is in the machinery giving you what happened this afternoon. It is roughly this: We agreed on three things to recommend to you. First, that the regular letter summarizing the last report of examination of the Anglo Bank be sent to each director of the bank, just as was done in the case of the Bank of America; this regardless of the present negotiations.

H.M.Jr: You (Klotz) know his new initials, don't you?

Klotz: No.

H.M.Jr: "H. B." Upham.

Klotz: "H. B."

Upham: "Hold Back"?

H.M.Jr: No, "Hard Boiled."

Klotz: Oh. (Laughs)

H.M.Jr: Come on, "H. B."

Upham: Second, that the matter of removing Herbert Fleishhacker as President and as a Director be left to Mortimer Fleishhacker and Paul Hoover and the Board of the bank, as one of the requirements which must be satisfied if the Federal Government goes in and subscribes preferred stock to clean up the bank.

Oliphant: Specifically, that Jesse Jones tell them that. Is that what they mean?

Upham: Yes. And third, that it be definitely understood that if there are discovered any criminal violations of law, that they be referred to the Department of

-2-

Justice.

H.M.Jr: And what do I do?

Oliphant: And fourth - may I add one?

Upham: Purely.

Oliphant: Folger over the telephone told me while Upham was listening an incident which I think is so serious that I would like at this stage to have the man from the Department of Justice who handles those things sit in, because they might say that something we did jeopardized their case or they may say there isn't any case. Brien McMahon.....

H.M.Jr: What's the incident?

Oliphant: Well, you (Upham) tell him. He's the expert on finance.

H.M.Jr: What?

Oliphant: The two Fleishhacker brothers - there was a realty company corporation, and they borrowed \$150,000 each from that company and took the money to support the Bank of America stock - the bank stock.

Upham: Anglo-California stock.

Oliphant: Anglo-California stock. And pledged the stock as they bought it as security for these notes. So far they've bought \$300,000 worth of stock.

H.M.Jr: Who is "they"?

Oliphant: The two Fleishhacker brothers.

Upham: Well, these are two directors of the bank, one of whom is now dead.

Oliphant: Were they? Just a couple other fellows.

H.M.Jr: Just ....

Klotz: Just what? A couple of what?

H.M.Jr: Just a couple of other fellows.

-3-

Upham: They were dummies.

Oliphant: They transferred these notes with the stock as security to the bank; so the bank, you see, now has a loan to these two men secured by its own stock. Then they have the bank take this collateral, its own stock, and absorb it into the assets of the bank and they tear up the notes. Now, the chances are - I don't know, but the chances are the tearing up of the note is grand larceny, and I'd like to have Brien McMahon, who handles those things over there - he's a good man - to share the responsibility.

H.M.Jr: O.K. What else?

Oliphant: That's all.

H.M.Jr: Now, what do I do as of tonight?

(Gaston comes in)

Upham: Well, I would say nothing.

H.M.Jr: Good. Sold. Let it go.

Oliphant: (Laughs)

Upham: Isn't that correct?

Oliphant: Well, now ....

Hanes: Unless you want to notify Jesse Jones, if he's in process of making this loan.

H.M.Jr: It's his (Upham) job to keep him informed and he's supposed to have seen Jesse today.

Upham: Well, yes - well, I talked to him on the phone twice and he preferred to do it on the telephone rather than my coming over. And I thought that as soon as you knew this I would let him know.

Oliphant: There's one other thing I would like you to know - just a minute - on his Number One. Downstairs they strenuously object to this letter notifying the directors out there of their possible personal

-4-

liability going out while these negotiations are pending for fear it will upset the negotiations. Now, my position is that any one of a dozen things could happen that would upset the negotiations, and then if it turned out that we knew of these circumstances and hadn't told the directors, I think we would be in a pretty bad position.

H.M.Jr: Well, unless my banking advisory committee advises otherwise, I'm for the letter; because, just as somebody said today - I don't know who it was; oh, I do know but I won't say - the whole trouble with all of this stuff in the Comptroller's office is that there is no written record on any of this stuff.

Upham: That's one very serious difficulty.

H.M.Jr: There's no written record on any of this stuff. I'm for making a written record; the only way is doing it by notifying the directors. You fellows - I want you to think it over; if you think I'm wrong, tell me. But I'm for a written record.

Upham: You want to check that point with Jesse Jones?

Oliphant: Which?

Upham: As to whether ....

Oliphant: ....the letter should go out? That's his (H.M.Jr) responsibility.

H.M.Jr: No, no.

Upham: I just want to know how much to tell Jesse.

H.M.Jr: Don't forget, actually Jesse is simply my negotiator. I've got to assume the responsibility of asking for that capital - any more than I ask Jesse for the other thing. But I think it's high time, particularly in the case of the Anglo-California Bank, we have something in writing. We have nothing. This thing's been going on since the 13th of September and we haven't done anything.

Upham: I gave Miss Chauncey two memoranda with respect to

-5-

this bank which I hope you'll find time to read.

H.M.Jr: Why not?

Upham: You've been busy.

Two things. Mr. Delano asked us, and we thought it would be all right - they want to put out down there a little release that he'll be there until after a conference of Presidents of Home Loan Bank Boards, which is scheduled for ....

H.M.Jr: No, no.

Upham: .... - and leave ....

H.M.Jr: No, don't, because the emergency may come and he may have to step in.

Upham: We told him that would be all right.

Oliphant: That was on the 17th.

H.M.Jr: No, no, don't ....

Upham: I'll cancel it at once.

H.M.Jr: Tell him not to, because something might happen tomorrow that I would say he go in as Comptroller, and I don't want him - I don't want any - just take my - without too much explanation.

Upham: I'll cancel that at once.

H.M.Jr: All right.

Upham: And the other thing I want you to know is that Mr. Giannini knows that at a meeting in your office in February Mr. Eccles defended his bank and said that it had made splendid progress since 1933 and that all this business about criticism of it was unnecessary and unfounded. He knows everything that went on in your office that day.

H.M.Jr: Well, didn't that go on ....

Upham: That went on - you have a record of it.

-6-

- Oliphant: Well, as Cy and I went out of the meeting that day, he and I said, "Giannini will know all about this in an hour."
- H.M.Jr: Well, that disturbs me, but not for the Treasury's sake.
- Oliphant: No.
- Upham: Well, we're bringing him before people when he knows that they've previously expressed the view that he's O.K. That disturbs me for this Section 30 proceeding.
- H.M.Jr: How about this "judicial" business?
- Upham: Oh, they're not very judicial on this particular proposition.
- H.M.Jr: Did Mr. Eccles say that?
- Upham: Oh yes. Yes, you have a record of it. In this room.
- H.M.Jr: Do you mind telling us how you know Giannini knows this?
- Upham: Sedlacek told me that Giannini told him.
- H.M.Jr: Well, it's unfortunate.
- Upham: That's one of the things we're up against.
- H.M.Jr: It's unfortunate - for the Federal Reserve Board. Listen, Cy, from the time I've been in this thing, since after Labor Day, I've never kidded myself. I'm doing just one thing; I want to clean up the whole question of bank supervision - when I say bank supervision I mean bank supervision and bank insurance - for the President of the United States. I want to do it for him. These are all presidential appointees, and I'm worried sick over the magnificent reputation which he has made for five years and I don't want it spoiled, and that's why I'm spending so much time on this thing. I mean he's had - he's got a magnificent record on banks and I want to do everything that I can as his Secretary of the Treasury to keep that record clean. And I'm not kidding myself one bit that the Treasury is making a lone fight on this. I know.

-7-

Upham: Every day we find new things.

H.M.Jr: And if we as a little team play together, I'm not afraid about winning.

Oliphant: Now, can you (Upham) prepare that letter to go out to the directors?

Upham: Well, it's started, and I shall get them to press it.

Oliphant: Will they do it?

Upham: Yes. I'll see that they do.

H.M.Jr: And remember this: that there are two people I've got backing from completely on this. One is the President of the United States, the other is James A. Farley. I got his complete backing. So I don't see what we've got to worry about. All we've got to worry about is, are we smart enough? That's all: Are we smart enough?

September 27, 1938

Mr. Oliphant

Mr. Upham

I want you to have the two attached documents. One is copied from the June, 1937 report of the Anglo California National Bank; the other is some notes I made hastily the afternoon I left for San Francisco by plane--gleaned from the correspondence files with the Anglo California National Bank.

Enclosures

September 12, 1938

CORRESPONDENCE FILE WITH THE ANGLO CALIFORNIA NATIONAL BANK

On December 21, 1937 Mr. Gough addressed a letter to the Board of Directors of the Anglo California National Bank expressing disappointment with the lack of progress during the last eighteen months in improving its condition, referring to broken promises and general unsatisfactory conduct of the bank, asking them to formulate some plan for the increase of the capital structure and a reduction in the dividend rate on preferred stock, commenting on the fact that four directors, all of whom have large and severely criticised lines, have not attended any meetings of the board since the previous examination and asking for a reply in detail over the signatures of the attending members at the next meeting of the board and a monthly report on large lines and other criticised matters.

On December 23, 1937 Mr. Shanley, Chief National Bank Examiner for the Twelfth District, asked permission to skip the second examination of the Anglo California National Bank in 1937. Only one examination of the bank was conducted in 1937 although the statute stipulates that every member bank must be examined twice each year. It appears that Mr. Shanley was contemplating substituting Examiner MacLean for Examiner Sedlacek for this examination but because of the suits against the president of the bank which had been decided against him, he wondered if it was "advisable to take the next examination out of Examiner Sedlacek's hands."

On January 22, 1938 Mr. Gough addressed a letter to the Board of Directors of the Anglo California National Bank suggesting "that active efforts be put forth to effect reduction on or before June 16, 1938 of loans to executive officers in excess of that permitted by law." I find no follow-up of that letter.

- 3 -

Each time the bank is asked to inform the Office of the Comptroller with respect to changes, corrections or improvements made in response to criticisms, the reply is that already the new examination has begun and can't they wait until that examination has been completed.

A memorandum from Mr. Sedlacek to Mr. Prentiss on March 26th refers to active and persistent speculation in the bond account of the bank. The vice president in charge of the bond trading account gets a bonus based upon the profits he makes. Apparently this stimulated a letter to Mr. Prentiss from Mr. Gough in which he stated "It would appear that the bond trading account is being operated in many instances without due regard to the law and regulations of the Comptroller. If such is the case, steps should be taken to have the proper corrections made immediately."

COPY

CONSOLIDATED REPORTNo. of Bank 3174Date of Report June 21, 1937.GENERAL REMARKS

The major problems of the bank have been isolated and commented upon at great length under "Large Lines" on Page 7, Insert 2 to 64, to which attention is directed, and the highly unsatisfactory condition of the bank has been further emphasized by the detailed criticisms on Page 17, Inserts 1 to 15. Little remains to be added in this section of the report other than to point out the basic reason for the existing condition and to prescribe a remedy that would be effective if its application could be enforced.

The lack of progress made during the past eighteen months, as revealed by the recapitulation of classified assets by examinations on Page 17, Insert 2, is most discouraging. An unusual amount of time and sympathetic cooperation has been given this bank, more especially during and since 1933, which has been justified up until recently by the corrections obtained. The point has now been reached, however, where the large concentration of loans to certain directors and their interests constitute 26% of the slow, and 64% of the doubtful classifications, and virtually nothing has been nor is being done about it by the management.

The condition is not a new one, but as ancient as the advent of the present management. It is apparent that neither past nor present local examiners can bring about its correction without your office taking the initiative by making insistent demands upon those personally responsible for the deplorable condition existing as portrayed throughout the first nine criticisms on Page 17, which are inter-related. Local examiners have labored and criticised for years without compensating results and it is obvious that drastic requirements must be prescribed by the highest authority if correction of this insidious condition is ever to be obtained.

A review of the "Fleishhacker Large Line" will reveal that they are interested in over thirty widely varied types of business with as many more appearing among their personal holdings of local stocks. A further review of all the large lines listed in this report will reveal that they tie into the majority of them. They apparently are in partnership in some manner or other with practically every large borrower in the bank.

Where the enterprises are successful, as in the case of Rainier Brewing Company, they personally retain the profit without repaying the initial purchase price advanced by the bank, but where the reverse is true, the bank suffers the loss as shown by the borrowings of the Sitka Spruce Pulp and Paper Company, the Silvanus Company, Mission Baseball Association and Planatol Company, together with numerous others.

This condition can only breed the suspicion, that cannot be proven by the conveniently empty credit files, that in the past, as a condition precedent to the financing of many enterprises, bank money was loaned but a participating interest in the venture was personally obtained.

- 2 -

The thorough manner in which they have exploited this bank in the past borders on the criminal, and they should now be forced to make restitution in so far as they can. The least that should be required is the immediate reduction of their large excessive loan to within legal limitations, as well as the removal of the illegal and defaulted bonds and real estate mortgages of their corporations. This can be accomplished by the sale of presently pledged collateral, if in no other manner, but they will not do so unless they are forced. Inherently, they are speculators and accumulators rather than liquidators. For years they have used unlimited amounts of bank funds in far flung operations, keeping the profit and letting the bank absorb the losses, and are now endeavoring to rehabilitate a lost mythical personal fortune by the continued use of bank funds at such ridiculously low interest rates that common stockholders are unknowingly being deprived of approximately \$500,000.00 of normal income annually.

By virtue of spending weeks and months following each examination in refusing to close same until correction had been obtained, collateral, mostly unlisted since they will not pledge their marketable securities, valued by them at \$10,000,000.00, which is not believed to have a sound liquidating value in excess of \$5,000,000.00, has been pledged to secure their borrowings.

At the time of the previous examination an absolute promise was made to reduce their borrowings by \$300,000.00 monthly cash reductions. Of this amount, \$240,000.00 was paid during the course of the negotiations but the moment the pressure was relieved, not another dollar has been paid. Other than obtaining an assignment equivalent to a third lien on collateral now pledged to the Chase National Bank and the Continental National Bank and Trust Company by Herbert Fleishhacker, the equity in which will consist almost entirely of unlisted securities having an estimated value of 1,300,000.00, nothing else was actually accomplished at this time. Further promises were made of substantial reductions contingent, however, upon liquidation under favorable stock market conditions and until the peaks of 1929 have been surpassed, no voluntary liquidation from this source was expected.

In addition to their refusal to satisfactorily collateralize their borrowings and submit to a reasonable program of liquidation they are further hampering the liquidation of this concentration by refusing to press the criticized borrowings of corporations in which and individuals with whom they are interested, nor will they permit the other bank officials to do so. Since the general condition of the remaining assets does not present a problem of serious magnitude, it is evident therefore that little further progress can be expected until definite requirements are made in connection with the Fleishhacker borrowings.

In view of the foregoing, it is recommended that office letter contains the requirements that the Fleishhackers immediately remove all violations of the law for which they are responsible, submit to a definite liquidation program in the future and that the bank be required to report monthly on all items appearing under "Large Lines" as well as the criticisms on Page 17.

- 3 -

The matter of undercapitalization should also be dealt with inasmuch as the present plans only contemplate the sale of sufficient common stock to enable the retirement of the preferred stock which would in no way increase the capital structure other than a small premium that might be received. This sum would be negligible, however, since the current local market value of same is approximately par.

The primary reason for continued refusal to submit reports of examination to the directors for consideration is the fear of disclosing the extent and nature of the Fleishhacker borrowings, the losses the bank has been forced to absorb for them, and the annual loss of normal income by virtue of the low interest rates paid to enhance their personal gains.

It necessarily follows, therefore, that until this cause is removed at the expense of those who created it instead of that of the unsuspecting common shareholders, they will continue to be sacrificed for the personal gains of the favored few and in the interim the present condition of this bank will be allowed to become permanent.

The recent refusal of Herbert Fleishhacker to sell the Rainier Brewing Company for \$3,000,000.00 cash is an indication of his attitude; he will sell nothing from which he derives a good income and he further flatly refuses to pledge his stock therein to secure his borrowings. Therefore, he should be forced to liquidate and pay, and he will have to be forced.

---

September 27, 1938

I sent for Lawrence Clayton, Assistant to Eccles, and he came over at 12 o'clock.

I told him that I, as a friend of Eccles, was very anxious that Eccles personally clean up the A. O. Stewart matter. I had been waiting 15 days and while I do not want to give him any ultimatum, I would want him to clean it up this week. Clayton said he would get that message to Eccles right away.

C  
o  
p  
y

September 27, 1938

For the Secretary:

At 2:30 p.m. Mr. Hanes, Mr. Gaston, Mr. Foley, Mr. Sherbondy and Mr. Upham met with Mr. Olphant in his office.

The proposed program for the Anglo California National Bank, as suggested in the memorandum of September 26th submitted earlier in the day to the Secretary by the Acting Comptroller of the Currency, was under consideration.

Three things were agreed upon to recommend to the Secretary:

(1) That the letter now in preparation summarizing the criticisms in the last report of examination of the bank be sent to each director of the bank.

(2) That the matter of getting Herbert Fleishhacker to resign as president and director be left to Mortimer Fleishhacker and Paul Hoover as one of the requirements to be met before Government money is put into preferred stock of the institution.

(3) That it be definitely understood that criminal violations of law, if any, will be referred to the Department of Justice.

- 2 -

During the course of the conference Mr. Upham talked by telephone to Mr. Folger who related, while both Mr. Upham and Mr. Oliphant listened, the transactions involving the Western American Realty Company's dealings in the stock of the bank.

Also during the course of the conference Mr. Upham and Mr. Oliphant talked on the telephone to Preston Delano and to Norman Thompson, and Mr. Delano was informed

(a) That the letter from the Secretary to him notifying him of his appointment as Comptroller of the Currency will constitute the notice referred to in the statute as that which must be followed within fifteen days by his taking of the oath; and

(b) That there is no objection to the Home Owners Loan Board announcing that Mr. Delano will remain with the Board until after the conference of Presidents of the Federal Home Owners Loan banks on October 17th.

Mr. Upham told the group that there is a possibility that Mr. Jones secured an undated resignation from Herbert Fleishhacker at the time the RFC purchased preferred stock

- 3 -

originally and that since all Herbert Fleishhacker's stock in the Anglo California National Bank is subject to a lien in connection with a judgment standing against him, it may be that he doesn't satisfy the requirement for director of the bank that he have ten shares free and unhypothecated.

*(Signed) Upm*

Upm

September 27, 1938

My dear Governor:

This will acknowledge receipt of your letter of September 22nd, which was handed to Mr. Upham in person for me, and the accompanying exchange of telegrams between Mr. L. M. Giannini and the Board of Governors.

I appreciate your courtesy in making these documents available to me.

Cordially yours,

*(Signed) J. P. Morgan, Jr.*

Secretary of the Treasury

Ronald Ransom, Vice Chairman,  
Board of Governors of the  
Federal Reserve System,  
Washington, D. C.

September 27, 1938

My dear Governor:

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Cordially yours,

*Signed* H. Morgenthau, Jr.

Secretary of the Treasury

Ronald Ransom, Vice Chairman,  
Board of Governors of the  
Federal Reserve System,  
Washington, D. C.

CBU:pm

September 27, 1938

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Cordially yours,

*Signed) H. Morgenthau, Jr.*  
Secretary of the Treasury

Ronald Ransom, Vice Chairman,  
Board of Governors of the  
Federal Reserve System,  
Washington, D. C.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON



ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

September 22, 1938

Confidential

My dear Mr. Secretary:

This afternoon Mr. Upham advised me that you had a copy of a night letter under date of the 20th from Mr. L. M. Giannini, President, Bank of America N.T. & S.A., to Honorable Marriner S. Eccles, Chairman of this Board. He further stated that your office understood that Mr. Collins had subsequent to the receipt of this telegram in our office asked that the request therein made be deferred. I informed Mr. Upham that we had replied to the night letter, and that the Board had decided that it would be glad to lay before you these two telegrams, as well as a night letter from Mr. L. M. Giannini to the Board dated September 21 and our reply thereto of this date; this, so that you may have before you the entire telegraphic communication and not merely the first of the four telegrams involved.

I am therefore, as suggested by Mr. Upham, handing them to you herewith and am delivering them by hand to Mr. Upham this afternoon.

Sincerely,

*Ronald Fanson*  
Ronald Fanson,  
Vice Chairman.

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

Kindness of Mr. Upham  
4 Encls.

COPY OF TELEGRAMWESTERN UNION

WP46 205 NL 1/159- SANFRANCISCO CALIF SEP 20 1938

HON MARRIWER S ECCLES- CHAIRMAN OF THE BOARD OF GOVERNORS  
FEDERAL RESERVE SYSTEM WASHINGTON DC

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 OF THE REPLY TO OUR LETTER OF MAY SIXTEENTH 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 MOMENT'S NOTICE-

(SGD.) L M GIANNINI PRESIDENT BANK OF AMERICA N T & S A.  
825A

XXXXXXXXXXXXXXXXXX

September 21, 1938.

L. M. Giannini, President  
Bank of America N T & S. A.,  
San Francisco, California.

Your telegram of September 20 addressed to Chairman Eccles was received in his absence and has been brought to the attention of the Board of Governors. Charles W. Collins as your attorney today asked that Board defer action upon your telegram. Board has requested me to advise you that no proceeding calling for a hearing of the kind referred to by you has been instituted before the Board and consequently under the provisions of law governing such proceedings the Board is not in position to set a date for a hearing.

Chester Morrill, Secretary  
Board of Governors of the Federal Reserve System.

Send Commercial Wire  
Prepaid - Government Rate  
Charge Federal Reserve

(COPY)

WESTERN UNION

~~1966 SEP 22 AM 9 54~~

WY 13 89 NL = SANFRANCISCO CALIF SEP 21 1938

BOARD OF GOVERNORS = ATTN C HESTER MORRIL SECRETARY  
FEDERAL RESERVE SYSTEM =

THANK YOU FOR YOUR PROMPT REPLY TO MY TELEGRAM OF SEPTEMBER TWENTIETH STOP MR COLLINS WAS NOT AUTHORIZED BY ME OR ANY OF MY ASSOCIATES TO ASK THAT THE BOARD DEFER ACTION ON MY TELEGRAM STOP IN VIEW OF THE IMPORTANCE OF THE MATTERS REFERRED TO IN THE CORRESPONDENCE FORWARDED TO YOU ON SEPTEMBER FIFTEENTH AND IN OUR TELEGRAM OF SEPTEMBER TWENTIETH WE SHALL APPRECIATE ANY CONSTRUCTIVE ACTION ON THE PART OF THE BOARD THAT I CAN TAKE CONSISTENTLY TO BRING ABOUT AN EARLY ADJUDICATION OF THE ISSUES INVOLVED. =

L M GIANNINI.  
816A.

September 22, 1938

Mr. L. M. Ciannini, President,  
Bank of America N Y and S. A.,  
San Francisco, California.

In reply to your night letter of September 21, the Board has instructed me to advise you that, as stated in its telegram of September 21, there is no action which the Board can take at this time with respect to the subject referred to in your previous letter and telegram; but the Board will give prompt attention to any matter within its jurisdiction which may come before it for action.

L. F. HENNA,  
Assistant Secretary,  
Board of Governors of  
the Federal Reserve System.

W:ahn

September 28, 1936

Mr. Oliphant

Mr. Upham

Shouldn't the covering letter to Anglo California National Bank call attention to personal liability of directors under Section 508 as well as Section 93 of Title 12 of U.S.C.? The report of examination refers to violations of this section.

Moreover, do you not think the Comptroller should specifically call to the attention of the Federal Reserve Board violations of the Federal Reserve Act instead of letting them discover them for themselves?

September 28, 1938

Mr. Oliphant

Mr. Upham

If I read this memo rightly, and the letter of warning does not go out before October 1st, the payment of the dividend on that date does not constitute "unsafe and unsound practice" justifying certification to the Federal Reserve Board. The "violation" or "practice" must follow the letter of warning.

Enclosure

September 27, 1933

## MEMORANDUM:

RE: Procedure in the cases of Bank of America National Trust and Savings Association and Ancla California National Bank.

On September 8, 1933, a program as to the action to be taken in the case of Bank of America was outlined in a memorandum to the Secretary of the Treasury. That program became inadequate by reason of the determination, on the morning of September 15, to include in a telegram to Bank of America a warning as to the unsound practice involved in connection with the declaration and payment of a dividend by that bank.

With the examiners in charge of the examination of the Bank of America called to Washington prior to the completion of the report of examination, the first matter taken up by them was the completion of their comments and criticisms. The report of examination was completed and transmitted to the bank, and copies thereof filed with the Chief National Bank Examiner at San Francisco and at the sub-district office in Los Angeles.

Under date of September 25, a letter of criticism, based upon the examiner's report of condition of the bank, was addressed to the Board of Directors of the Bank of America. A copy of this letter, together with a cover letter (copies of both of which letters are attached to this memorandum), calling attention to the fact that despite the warn-

ing contained in the telegram of September 15, the Board of Directors of the bank had declared a dividend, and calling attention to the personal liabilities of directors of national banks, was addressed to each member of the Board of Directors of Bank of America and transmitted to them by registered mail, special delivery.

Using the current report of examination of the subject bank as a base, and supplementing it by prior reports of examination, a letter will be prepared, addressed to the officers and directors of the subject bank, warning them to discontinue violations of law and unsafe or unsound practices disclosed by such reports of examination, as set forth in said letter of warning.

Upon evidence of a repetition of any violation of law or unsafe or unsound practice subsequent to the issuance by the Comptroller of his warning, a certificate as to such facts will be prepared by the Comptroller's office and transmitted to the Board of Governors of the Federal Reserve System in accordance with the provisions of Section 30 of the Banking Act of 1933. From the date of receipt by the Board of Governors of such certificate the procedure is entirely in the hands of the Board. The usual practice has been for the Board to issue, within a week or 10 days subsequent to the receipt by it of the Comptroller's certificate, its rule upon the accused to show cause why he should not be removed from office. Hereafter, the Board has given the accused at least 30 days' notice of the time and place of the hearing to be held upon the matters complained of in the Comptroller's certificate.

In the first case submitted by the Comptroller, the hearing was held in Washington before the Board of Governors. In the second case submitted by the Comptroller to the Board, the Board designated one of the members of its legal staff to act as an examiner to take testimony at a hearing which was held at the Federal Reserve bank in St. Louis. In this latter case, 30 days were allowed to the accused after the receipt by him of the transcript of the testimony taken at the hearing within which he might file a brief with the Board or might personally argue his case before the Board. Heretofore the Board has rendered its decision in about two weeks subsequent to the conclusion of the taking of testimony before it, or subsequent to the time limit within which the accused might file a brief or personally appear before it.

A memorandum as to the procedure in the case of Anglo California National Bank, setting forth the outcome of a conference held on September 26, has been prepared and submitted under separate cover. In this case the procedure would appear to contemplate the completion of negotiations looking toward the resignation of Mr. Herbert Fleischaker as President and director of Anglo California National Bank, and the completion of satisfactory negotiations with the Standard Oil Company of California, the owners of \$8,500,000 of preferred stock of the Anglo California National Bank, looking toward the concurrence in the recapitalization program of the bank included in the program outlined in the memorandum of September 26, 1933. If such negotiations are not satisfactorily concluded, the procedure in the case of Anglo California National Bank in connection with the issuance of a warning under Section 30 of the Banking Act of 1933 would be similar

to the procedure set forth hereinabove in connection with such procedure  
in the case of Bank of America.

(Signed) L. A. E.  
L. A. KELLY

September 28, 1938

For the Secretary:

During the course of the morning Mr. Folger told me that Mr. Mortimer Fleishhacker had requested that I join the conference in Mr. Folger's office on the Anglo California National Bank.

After consulting the Secretary I sat with them for about one hour, beginning shortly after eleven o'clock on.

Mr. Fleishhacker told me the story of the bank and the result of the conferences to date, most of which I was familiar with in a general way already. His main plea to me was for a reasonable period of time in which to secure the resignation of Herbert Fleishhacker as president and director. He thinks that will have to be done very carefully and a little time taken to it, and he is fearful that if a letter goes to each individual director prior to that time, the bank will be ruined. I tried to impress upon Mr. Fleishhacker the seriousness of the situation, the necessity for them to secure Herbert's resignation promptly, and the fact that this office has responsibilities and duties which are taken very seriously and cannot be neglected.

- 2 -

The conference ended with Mr. Fleishhacker agreeing to come back in the afternoon and give me some definite idea of what he means by "reasonable time."

Upm

~~Hm Jr~~  
Montimer Fleishacker

has asked that I sit  
in the conference now  
under way in Folger's  
office. (I suspect

Jesse Jones told him to.)

I think it makes little  
difference one way or the  
other, so am asking  
if you have any hunch  
either way.

Cy

September 28, 1938

Mr. Jesse Jones called me at the University Club at six o'clock and I went to his office for a talk.

He spoke of the necessity of taking time to fix up the Anglo California National Bank in the proper fashion and not to act so hastily as to ruin Herbert Fleishhacker personally or the bank. He said the important thing is cleaning up the back. He said that Mortimer Fleishhacker had been in his office and had been pretty agitated and that someone had scared him pretty badly. Mr. Jones reminded me that Mr. Mortimer Fleishhacker is seventy-two years old and ought to be handled gently.

I told Mr. Jones that I was not too sorry if Mr. Mortimer Fleishhacker was badly scared. I told him that while I thought the most important thing was cleaning up the bank, that I had sat up nights with the examination reports of that bank back over several years and that the delays and negligence was little short of shocking. I said there were others in the Treasury who placed main emphasis on the duties and responsibilities of the Office

- 2 -

of the Comptroller and the Secretary of the Treasury, and with their views I had sympathy. I also expressed the view that a continuation of the present situation was, in my opinion, probably worse than any alternative. I told Mr. Jones that because I realized the conflicting ideas--on the one side a desire to straighten out the affairs of the bank without disaster to the bank, and on the other hand the desire to discharge the duties and responsibilities of the Office of the Comptroller with respect to the directors of the bank--that I had asked the Secretary not to take my opinion or the opinion of anyone else in the Treasury without checking with a banker in whom he has great confidence--Tom K. Smith of St. Louis. I told Mr. Jones that Mr. Smith would be at the conference on this bank in the Secretary's Office on Friday.

Upm

September 29, 1938

During the course of the morning, Mr. Gough told me that Charles W. Collins was trying to reach him on the telephone. I advised Mr. Gough to listen to anything Mr. Collins had to say but to make no commitment. Later, Mr. Gough told me that Mr. Collins had asked for any information that could be given him about the status of the Bank of America, N.T. & S.A. negotiations, and if he could be given a copy of the letter that went to the directors. Mr. Gough told him that he would do neither.

Mr. Collins informed Mr. Gough that there is a meeting of the board of directors in San Francisco tomorrow and that Mr. Collins is flying out to attend it.

Mr. Collins said he supposed a conference could be arranged if desired; to which Mr. Gough made a non-committal reply. Mr. Collins expressed the opinion that there should be a conference and that matters ought to be adjusted in that way.

Upm

September 29, 1938

At twelve o'clock I joined Messrs. Mortimer Fleishhacker and Paul Hoover in Mr. Folger's office for a short talk.

I summed up the situation for Mr. Mortimer Fleishhacker by saying that there are two things going on side by side. On the one hand, there are negotiations and conferences, to which he is a party, attempting to devise a plan for cleaning up the bank and meeting the demands of the examining division; on the other hand, there is going forward the regular function of the Comptroller's Office in the preparation of a letter to the board of directors summarizing the criticisms in the last report of examination of the bank. I stated that Mr. Fleishhacker's request to us is not to send the letter of criticism to the individual members of his board until the negotiations for cleaning up the bank have been completed.

I told him that I could give him no assurances on that point, that we had duties and responsibilities to his board of directors, and that we had not so far been influenced to meet his request.

Upm

September 29, 1938

During the course of the afternoon Mr. Folger called me to say that he had heard from Mr. Prentiss in San Francisco, who informed him that Mr. Russell Smith, cashier of the Bank of America, N.T. & S.A., had called on him and suggested that everything could be arranged satisfactorily if Prentiss would go to see A. P. Giannini. Mr. Folger told Mr. Prentiss that the matter was now in the hands of Washington and he was not to seek out Mr. Giannini.

Upm

September 28, 1938

For the Secretary:

At 3:30 p.m. I went back to Mr. Folger's office, at which time Mr. Mortimer Fleishhacker indicated that he would need thirty days in which to secure his brother's resignation.

I told him that his suggestion of that long a period of time was little short of shocking to me and would be, I felt, to my associates as well. I told him we were thinking in terms of over the week-end. I was then called to the Secretary's office.

Mr. Fleishhacker indicated that he would be in again tomorrow.

*Upm*  
Upm

September 29, 1938

1. There has been neglect upon the part of the directors and officers of the Anglo California National Bank.

2. There has been neglect upon the part of the Comptroller of the Currency in dealing with this bank.

3. The situation having been brought to the attention of the Secretary of the Treasury, it is suggested that he has a responsibility.

4. The suggestion is made that as a protection to the Secretary, a letter setting forth the facts be sent at once to the individual directors of the bank, that there be insistence upon cleaning up the bank and securing the resignation of the president (Herbert Fleishhacker) and certain other directors and officers.

5. The opposed suggestion is advanced that nothing should be done to upset negotiations for cleaning up the bank. To insist upon the speedy removal of the president, or to submit the facts to the directors, it is argued, would bring ruin to the bank.

*lyon*

## MEMORANDUM

September 29, 1938.

12:00 Noon

For the Secretary:

Mr. Ransom said just now over the telephone that Mr. Eccles said yesterday that the letter he had expected from Mr. Stewart had not been received, but he was sure it would arrive in Ogden today and he would telephone Mr. Ransom as soon as it was in his hands.

It seems that Mr. Stewart first wrote a long, involved letter of explanation which he read over the telephone to Marriner and which, at Marriner's request, was discarded for a brief, simple letter stating technical disqualification as the reason.

Mr. Ransom said that Mr. Szymczak and Mr. McKee are in New York but would be back for a Board meeting tomorrow morning at which time he hopes to have been advised by Marriner that the letter is in his hands, whereupon the Board can act and issue the press release which has already been prepared and approved by Mr. Eccles.

Upm.

September 29, 1938

For the Secretary:

Ronald Ransom telephoned me at 4:15 p.m. to say that Mr. Stewart's resignation is in hand and will be acted upon at the Board meeting tomorrow afternoon. He said that it is triple confidential because some of the members of the Board do not even know it yet. Accordingly, I am mentioning it to no one but you.

Mr. Diggs has agreed to submit to you a letter of resignation tomorrow. He feels that he is being treated a little unfairly.

Mr. Oppergard said that he would give consideration to the request but could not give me an affirmative answer before tomorrow.

Upm

RE ANGLO-CALIFORNIA BANK

September 30, 1938.  
11:00 a.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mr. Foley  
Mr. Upham  
Mr. Gaston  
Mrs. Klotz  
Mr. Smith  
Mr. Delano  
Mr. Jones  
Mr. Sedlacek  
Mr. Crowley  
Mr. Ransom  
Mr. Husbands (R.F.C.)  
Mr. Folger

H.M.Jr: Now, Cy, is everybody here?

Jones: Everybody except Husbands. But you go ahead.

Upham: Mr. husbands and Mr. Folger.

H.M.Jr: Well, let's start so as not to keep these people any longer than necessary.

What I asked you gentlemen to meet with me for and advise with the Treasury was in connection with the Anglo-California Bank.

(Folger comes in)

Hello, Folger. Sit down.

And we've got a very serious situation there, not a recent development but something that's been developing for some time. And the question is how the Treasury can best handle this situation. Now, it has been suggested that the Board of Directors of the Anglo-California Bank be acquainted with the condition of the bank. If I'm correctly informed - and Mr. Folger stop me if I'm not correctly informed - all the members of the Board of Directors have not been informed as to the status of the bank. Is that right?

Folger: That's correct. We have sent them the report and have written them letters - the Board letters based on the report, but we don't think they're familiar with either or have seen the letters.

-2-

H. W. Jr: So therefore the suggestion has been made that the Treasury send each member a registered letter informing him of the condition. If I'm correct, such a letter has been prepared?

Upham: Yes, sir.

H. W. Jr: Do you want to read it?

Upham: I - there's been prepared a digest of it which is a little shorter than the letter itself.

H. W. Jr: I wouldn't pass out any.

Upham: All right.

H. W. Jr: If you want to afterwards, we can.

Upham: We can read either the digest or the letter itself.

H. W. Jr: I suggest you read the digest and then Mr. Folger can answer questions. How's that?

Upham: Surely.

H. W. Jr: Or you.

Upham: Sedlacek is most familiar with it. Shall I ask him to read it, or shall I read it?

H. W. Jr: You decide.

Upham: "The following items of criticism were referred to in the letter which is being prepared for the Board of Directors of this bank."

Jones: Is this the excerpt? This is the digest?

Upham: This is the digest.

"(1) CLASSIFIED ASSETS: Approximately \$47,000,000 of total resources are under criticism, which is approximately three and one-half times the amount of the sound capital structure.

"(2) LOANS AND DISCOUNTS: Approximately 35% of the total loans is classified slow; ..."

-3-

H.M.Jr: Can I have another copy? Why don't you give the people copies?

(Upham passes out copies)

Go ahead. Everybody got a copy?

Upham: "Approximately 35% of the total loans is classified slow; 6% doubtful, and .69% loss, making a total of approximately 41% subject to adverse classification.

"Loans to affiliates, officers, directors and their corporations are shown as follows: Slow \$10,825,508.80; doubtful \$3,728,430.27; loss \$392,539.30. Losses aggregating \$5,576,235.62 have previously been charged off on these lines.

"(3) LARGE LINES: The examiner has set up twenty large and wholly unwarranted lines of credit aggregating \$40,131,833.68. \$10,016,402.49 has previously been charged off on these lines."

(Husband comes in)

H.M.Jr: excuse me - I'm sorry. (To messenger) Bring in another chair, will you please.

Upham: "(4) BORROWINGS OF DIRECTORS AND THEIR CORPORATIONS: These borrowings aggregate \$16,018,518.50, of which \$377,951.49 have been previously charged off, leaving a total of \$15,640,567.01 in the active assets. These borrowings are of long standing and the lack of progress made in improving and reducing this large concentration is disappointing.

"(5) EXCESSIVE LOANS: Included in this schedule are: the Dollar Steamship Line, Incorporated, Limited, in the amount of \$2,800,021.56, and the Herbert Fleishacker line aggregating \$3,473,442.26. Both of these lines are of long duration and the Board was advised that immediate and decisive steps should be taken toward the elimination of these fixed violations.

"(6) LOANS TO BANK'S AFFILIATES: These loans on the date of the examination aggregated \$15,874,436.01. As a result of unwarranted extensions of credit to the affiliates the bank has suffered a present total loss of \$5,331,784.13 without taking into consideration the

-4-

income loss suffered by virtue of the compromised interest rates on the affiliate loans which averages less than 1%. This loss represents approximately 50% of the bank's capital.

"(7) BANK'S OWN STOCK HELD AS INVESTMENTS BY ITS OWN AFFILIATES, HELD AS COLLATERAL TO LOANS AND ILLEGALLY OWNED BY THE BANK: Of the 520,000 shares of outstanding common capital stock, 195,965 shares are held as investments by the bank's own affiliates, carried on their books at \$9,748,336.73 and having a market value of \$3,723,535.00, or a loss of \$6,025,501.73; 30,618 shares are owned by a director's corporation heavily indebted to the bank; 5,040 shares are pledged by others as collateral to loans, and 1,414 shares are illegally owned by the bank and are being carried in the investment account beyond the limitations fixed by law. The total of the foregoing is 233,037 shares, or approximately 45% of the entire common stock issues. The market for this stock has fluctuated from \$3.00 to \$33.00 a share, and is now quoted at \$15.00 with no trading activity.

"(8) STOCK OF THE AFFILIATED ANGLO NATIONAL CORPORATION HELD AS INVESTMENTS BY OTHER AFFILIATES, OWNED DIRECTLY BY THE BANK AND HELD AS COLLATERAL TO OTHER LOANS: Of the 204,132 shares of outstanding Class 'A' capital stock, 41,028 shares are held as investments by bank's own affiliates, carried on their books at \$1,566,933.30 and having a market value of \$675,539.00 or a loss of \$891,394.30; 25,891 shares are owned outright by the bank at a book value of \$518,522.00 and having a market value of \$414,256.00 or a loss of \$104,266.00; and 9,968 shares are held as collateral to loans of others.

"The total of the foregoing is 76,887 shares or 37.66% of the entire Class 'A' stock outstanding, in addition to 100,000 shares of Class 'B' stock outstanding owned by the affiliated Consolidated Securities Company and pledged to secure its indebtedness to the bank. It is carried on the books of the affiliate at \$901,135.66 and is classified therein as having no value, which is not included in the above mentioned losses.

"As of the date of the examination, the various affiliates of the bank have suffered a loss of

-5-

\$7,021,162.03 on their holdings of bank stock and the Class 'A' stock of the Anglo National Corporation, the major portion of which has been charged off against the undivided profits account of the bank by losses taken on the indebtedness of the affiliates to the bank."

H.M.Jr: Pardon me - has Mr. Diggs been invited here?

Upham: Yes, and he has a conference on a bank in Louisiana which he thought was more pressing, and said he would prefer to take care of that.

H.M.Jr: But he was invited?

Upham: Yes, sir.

H.M.Jr: All right.

Upham: "(9) REAL ESTATE LOANS INCLUDING ILLEGAL AND NON-CONFORMING LOANS: Of the total loans \$21,155,473.00 or 20.75% is secured by liens on real estate in various forms. Of this amount 30.56% has been taken for debts previously contracted; 31.57% is illegal; .27% is non-conforming; .98% is collateralized by real estate mortgages of others; 35.14% is conforming, and 1.48% is insured under Title II of the "National Housing Act." ..... And that next phrase is left out. ....

"It is imperative that this department be given closer attention and supervision by the management with the end in view of inaugurating a more aggressive correction and collection policy on classified and non-conforming loans while conditions remain favorable in order that they may be reduced to a minimum.

"During the examination the personnel of this department was completely reorganized and systematized, and the management reports that outstanding progress is being made in both the collection of criticised loans and restoration of non-conforming loans to a conforming basis.

"(10) OTHER REAL ESTATE PROBLEM OF THE AFFILIATED PROGRESS MORTGAGE COMPANY: All of the 'Other Real Estate' of the bank has been sold to the affiliated

-6-

Progress Mortgage Company without any down payment, and no future payments have been provided for other than application of the proceeds as parcels are sold. Of its total assets, \$6,082,712.81 is represented by actual real estate owned, and an additional \$683,188.10 is represented by real estate loans which, for practical purposes, are other real estate owned. A definite and acceptable program of liquidation must be consented to or the other real estate must be transferred to that account on the books of the bank, since the present method of handling the same cannot be construed as a bona fide sale.

"(11) BOND ACCOUNT IN GENERAL: It appears that there has been an underlying tendency toward speculation for profit rather than investment for safety throughout the entire history of the bank. This statement is substantiated by the \$9,418,524.00 of substandard investments still present in the investment account and the remaining assets of the affiliates.

"(12) BONDS AND STOCKS UNLAWFULLY ACQUIRED: There have been 21 blocks of stocks and bonds having a book value of \$3,813,487.54 which have been illegally acquired. Of this amount \$1,983,167.00 is represented by 16 large blocks of stock among which are included 1,414 shares of the bank's own stock and 24,086 shares of Class 'A' common stock of the affiliated Anglo National Corporation carried at a combined book value of \$554,561.00. Stocks of corporations in which directors are interested are carried at \$243,622.00, of which \$135,186.00 is classified as slow and \$108,036.00 as loss.

"(13) BONDS OF DEBATABLE LEGALITY: There are 32 issues of bonds having a par value of \$4,167,500.00, a book value of \$3,816,727.86, and a market value of \$3,559,821.36, revealing a loss of \$256,906.50. The past and present practice of dealing in low grade securities should be discontinued and the tremendous loss taken in the past is again referred to in support of this criticism. Immediate steps should be taken toward the early liquidation of all investments of this nature.

"(14) ILLEGAL DIVIDENDS PAID: A chronic criticism and the attention of the directors is again called

-7-

to the provision of Section 5204, U.S.R.S., in connection with the declaration and payment of illegal dividends. The combined profit accounts available for this purpose aggregated \$2,988,473.41 while statutory bad debts alone aggregated \$7,300,-806.83.

"(15) IMPROPER AND ILLEGAL CHARGES AGAINST BANK'S EXPENSE ACCOUNT: For record purposes and specially for the information of the directors, a complete itemization of all charges to the expense account of the bank is insisted upon which should again be submitted to the directors for a specific approval to be recorded in the minutes.

"(16) WESTERN AMERICAN REALTY CORPORATION: It appears that at the time of the stock market crash ... "

H.M. Jr: Which one?

Sealacek: 1929.

Upham: This, as a matter of fact, has - this has been changed and is pretty much left out of the letter, and is still in the summary.

"....an endeavor was made by President Herbert Fleishacker to support the market for this bank's stock. In order to provide funds for this purpose, there were placed in the assets of the Western American Realty Corporation, whose indebtedness to the bank was increased a like amount, two notes of bank employees having no financial responsibility as follows: Harry Coe \$150,000.00 secured by 3200 shares of this bank's stock, and a note of E. Alexander for \$150,000.00 secured by 3200 shares of this bank's stock. On September 24, 1935 the obligation of the Western American Realty Corporation to the bank was reduced \$300,000.00 by transferring the Coe and Alexander notes totaling \$300,000.00 to the Progress Mortgage Company, the obligation of which company was increased a similar amount. These notes were later cancelled and the 6,400 shares of the bank's own stock were placed in the bond account at \$300,000.00 when its market value was less than one-half the amount. On December 31, 1936 the Progress Mortgage Company resold this block of stock to the affiliated Anglo National Corporation at market and suffered a loss of \$146,515.20 on the transaction,

-8-

which loss was included in the \$1,000,000.00 charge off on the line of the Progress Mortgage Company on December 28, 1936.

"(17) UNDERCAPITALIZATION: The present ratio of net capital structure to deposit liabilities is \$1.00 to \$14.75. According to the report the sound capital structure is approximately \$6,500,000.00 below requirements, but from the fact that approximately \$39,000,000.00 of assets are classified 'Slow', it is believed that at least \$5,000,000.00 additional should be provided as a protection against possible losses in this classification.

"(18) BORROWINGS OF EXECUTIVE OFFICERS FROM OTHER BANKS: A report of these borrowings should be made to the Board of Directors and record of the receipt of same noted in the minutes.

"(19) REPORTS OF EXAMINATION: Apparently reports of examination have not been submitted to the directors for consideration at a regular meeting as required, nor mention made in the minutes of their receipt. The management has been repeatedly instructed and advised of the personal responsibility it is assuming by refusal to comply with this requirement.

"(20) OFFICE LETTERS: Important letters from the Comptroller to the Board of Directors relative to the condition of the bank based upon reports of examination are still not being considered by the Board nor being noted in the minutes as required. Prompt steps should be taken to correct this criticism in order that it may be unnecessary for the examiner to refer to it in subsequent reports.

"(21) EXAMINING COMMITTEE: The examiner states that reports of this committee are both brief and meaningless, consisting primarily of the verification of assets with the assistance of the Auditing Department. An appraisal should be made of the loans and discounts which is of utmost importance since so large an aggregate is subject to adverse criticism. The directors should keep themselves fully advised of all conditions in connection with each individual asset now under criticism.

"(22) LOANS TO DIRECTORS AND THEIR CORPORATIONS TOGETHER WITH INTEREST RATES THEREON: Apparently

-9-

these loans are not being specially approved by the Board of Directors as required. Inasmuch as this type of asset comprises so large a portion of the total volume criticised, the major portion of which carry compromised interest rates, both the loans and the compromised interest rates should be specially approved by the Board and such action noted upon the minutes.

"(23) BOARD OF DIRECTORS AND SUPERVISION: It is noted that three of your directors, two of whom have severely criticised loans in the bank, seldom attend the meetings of the Board. If these directors are unable or unwilling to assume their duties and responsibilities as directors, they should be replaced by those who will.

"(24) LIABILITIES NOT SHOWN ON THE BOOKS: No provision has been made on the books of the bank for a contingent liability resulting from a judgment in the amount of approximately \$750,000 obtained by the heirs of the Lazard estate."

- H.M.Jr: Now, Mr. Folger, as Chief Examiner, inasmuch as the Acting Comptroller is otherwise occupied, what do you recommend to me as a procedure which should be followed in this case? What do you think the Treasury should do?
- Folger: I recommended a program for the bank, Mr. Secretary, that - I don't know that these gentlemen are familiar with it; I don't suppose they are.
- H.M.Jr: With what?
- Folger: With the program of reorganization and recapitalization of the bank.
- H.M.Jr: No, but I mean before - I thought that you had in mind that we should first advise the directors, is that correct?
- Folger: No, sir, I hadn't said that.
- H.M.Jr: Oh, I see. Well, what have you in mind? I won't try to lead the witness.

-10-

Folger: Well, I really had in mind putting through this program and at the same time advise the directors too. But I don't know that we - I don't think we should advise the directors - should stop this program just to advise the directors. I think the program should be followed and a letter advising the directors can go possibly a little later after we get this plan - I don't mean to hold the letter, but to work on the plan; it wouldn't take but a few days, I think, to arrive at a definite agreement.

H.M.Jr: Well ....

Folger: Only a plan for recapitalization and reorganization of the bank.

H.M.Jr: Well, this is the way I feel. I think if I was a director in this bank and the office of the Comptroller of the Currency hadn't taken the necessary means to see that I was advised, then subsequently under the law I as a director was held responsible for action of the management of which I was unaware, I would say that the office of the Comptroller hadn't fulfilled its obligation to me as a director of this bank. Now, I feel that we ought to follow the same procedure in the case of this bank that we did in the case of the Bank of America, and I'm encouraged for two reasons to do this. One: when we had up this question of Bank of America, we were told that if we sent a letter to 25 directors they couldn't keep it a secret. Well, they have kept it a secret; as far as I know, there's been nothing has come out. And second: we get a letter this morning from the Bank of America complying with the request of the Comptroller, and they have called a special meeting to consider the contents of our letter to them. So for the first time at least the Bank of America is carrying out the instructions of the Comptroller to the letter. Now, what they'll do at this meeting I don't know, but at least they've called a meeting and they're going to consider what we've told the directors.

So this technique of giving the directors all of the information that we have up to this moment has been effective, as far as that bank is concerned, and inasmuch as this other bank is in the same town and, from what I have heard this morning, what they have done is - seems to be much more serious, I - I'd like

-11-

a - to very carefully consider that we get off a registered letter to each director informing them what the condition is and then tell them to hold the meeting, instead of dealing with a part of the board with the hope that they'll correct this thing.

Now, as I say, we've been successful so far, and this thing in the Anglo-California Bank isn't something that's sprung up overnight; it's been going on for years, and I just try to put myself in the place of a director of that bank and I say, "Well, how can you hold me liable and responsible if you don't let me know what's going on, especially where you knew that I as a director was not getting this information; and wasn't it your job to see that I got it as quickly as possible?"

Now, that's the way I feel. Now I'll go around the room and ask our guests to talk. You want to add anything as to the legal responsibility, Mr. Oliphant? Do you want to add anything?

Oliphant: Well, I think, to state your thought just the other way around, that in view of your duty and the whole bank supervision program, it is your legal duty, now that you're in possession of the information summarized here and now that you've been advised that the directors are not in possession of it - it would be a pretty serious responsibility for you to keep that information even for a day, because nobody can tell what will happen to any program for the rehabilitation of the bank, in view of the personal liability of the directors.

Jones: What have we - what information have we that the directors have not been advised? Have you got - Mr. Folger, have you got that? Do you send your reports of examination to the officers of the bank?

Folger: Send a copy. We address it to the directors at the bank, Mr. Jones - to the board.

Jones: Yes.

Folger: At the same time the Chief Examiner of the district sends a copy to Washington, he mails the directors a copy addressed to the directors.

-12-

Jones: I just wondered about the advice ...

Folger: we write letters to the directors based upon the report of the criticisms. - There is no mention - notation in the minutes of ever having received the letters or read the reports.

Jones: That's the point I'm getting at. You've done your part in notifying - you've notified the directors, but you've got nothing in the minutes of the meeting to indicate they got the notes. Is that it?

Folger: That's right.

Jones: I just wanted to get that.

H.M.Jr: Before we go ....

Oliphant: There's a little ambiguity in that. One copy is sent to the Board of Directors as such. I'm talking about the individual, the private personal liability of directors.

Jones: I understand, but I'm just getting at the - I want to know what information they had as to whether some director had said it.

Folger: That, of course, isn't all the information we have. That's the record. We know from talking to Mr. Fleishacker himself that ....

Jones: That he has not given this information to the ....

Folger: He hasn't - he doesn't want them to have the report or the letter.

Jones: He doesn't actually exhibit this at a board meeting and discuss it according - as required by law.

Folger: Yes, sir.

H.M.Jr: Has he said that?

Folger: He's never said that he didn't give them the letter, but he talks about a letter that we may send from here on this report; he knows he gets a letter, and he doesn't want us to send one.

-13-

- Jones: I'm getting at the legal side here.
- Oliphant: I should think you can say that technically these individual directors had instructive notice, but I was talking to a human proposition, based upon fairness in dealing between man and man.
- Jones: Well, I didn't want the Secretary to act under a misapprehension, because I think when a bank gets the notice - he has a board meeting and he has his report there; he's supposed to submit to his directors and read these letters and read the answer. Is that it?
- Folger: Yes, sir.
- Jones: Go ahead now, Mr. Secretary.
- H.M.Jr: Well, this most recent one, this most recent report which has just been finished on the Anglo-California - has that gone forward to the Board of Directors?
- Folger: Yes, sir.
- H.M.Jr: What? That has?
- Folger: It has, yes.
- H.M.Jr: Well, do you know whether criticisms in that report have been read to the Board of Directors or discussed at a meeting?
- Folger: No, I do not know.
- Jones: Now, are they - another thing, may I ask this: are the criticisms in here conveyed in the - included in the criticism of your last examination?
- Folger: Yes, sir.
- Jones: So if he did take that report, call his board, and discuss it item by item, then they would have the notice.
- Folger: That's correct.
- H.M.Jr: Yes, but he's never done that. That's what I understand.

-14-

- Jones: Well, I was just trying to get it clear.
- H.W.Jr: well, that's the point. It's important.
- Jones: I don't think we've got evidence that he hasn't done it. That's what I'm trying to get at.
- Feiger: well, I've got - from the field examinations, they tell me he hasn't done it.
- H.W.Jr: well, the Field Examiner is right here. I'd like a clean-cut answer. Have they or haven't they discussed the criticism at a board meeting?
- Sedlacek: they have not, by their own admission
- Jones: You mean the Fleishhackers.
- Sedlacek: The Fleishhackers have admitted that they have never shown a report of examination to the board, nor have they read the letter of criticism based on the report. they freely admit that.
- H.W.Jr: That's what I was advised. That's what disturbs me.
- Jones: Does that include - is that Herbert and Mortimer or just Herbert?
- Sedlacek: Herbert and Mortimer.
- Jones: Mortimer has admitted that the report had not gone to the directors.
- Sedlacek: Yes. And they give as a reason for that, that because of the condition of the bank it would so scare their directors, that inasmuch as Herbert's old practice was never to show the report for possibly the past twenty years, and that since the consolidation in 1932 - and to present the board - or present the report to the board, with the condition the report shows, why, they were scared to death that it might cause a run on the bank and destroy the bank; so they have purposely refrained from showing the directors the report of examination or reading the letter of criticism to the board.
- Jones: I wonder if they submit loans when they have their board meetings. Have you any information as to

-15-

procedure?

Sedlacek: Yes, their procedure is - well, at the time of the consolidation of the two banks June 30, 1932, there was a special - a special set of articles of the association were set up whereby they were endeavoring to tie Herbert Fleishacker's hands to keep him away from the credits, big credits. In that particular set-up they created a Loan Committee comprised of five officers: Herbert Fleishacker and Mortimer Fleishacker, Paul Hoover, Harry Machen and Louis Sutter comprised that committee. If there was one adverse vote in the committee, why, the loan was not made. Then those committee reports are passed upon by the General Finance Committee, which is comprised of Herbert and Mortimer Fleishacker and Swinnerton, Swinnerton being more or less of a dummy director. And the loans themselves are not submitted to the board for approval.

Jones: For approval.

Sedlacek: They merely approve the committee reports to the board that there were so many loans made by total during the month and so many loans collected during the month by total, not names and amount; and the Board of Directors approve the actions of the committee, and the Board of Directors have also vested that authority in these committees.

Jones: That's contrary to their banking law, isn't it?

Sedlacek: It's contrary to good banking, but I don't think it's contrary to any law.

Jones: Folger, is that a violation?

Folger: Not a violation, no.

Jones: I thought the directors had to approve the loans. They approve it, of course, but they do it blind.

Folger: Not as a matter - it's a matter of policy, not in the law.

Jones: Not in the law? It's in the law they must approve it.

-16-

- Folger: Of course, the law charges them with responsibility generally for the operation of the bank.
- Jones: They can determine their own method of approving it.
- Folger: There is no specific method there as to approval of loans.
- Jones: Well, I think the directors have had pretty good notice, under the circumstances - I mean from the Department standpoint. They haven't got it, but the Department seems to have complied with the law. But these directors that you (H.M.Jr) speak of have not, as a matter of fact, had this notice, and that's the point you make.
- H.M.Jr: That's the point I make.
- Jones: Yes.
- H.M.Jr: That's the point that I make. The point that I make, Mr. Jones, is this: knowing that these reports have been withheld from the directors, then if we expect to help the directors to put the bank in good shape and under the law they are held responsible, I feel that we should take steps to get this information directly from the Comptroller's office into the hands of the directors. That's the whole point. So that they cannot say that, knowing these things, I didn't take the necessary means.... Having undoubtedly, by the time that - if this does come up, say, before the Federal Reserve Board or before the courts, they could very well say, "Well, we - the week previous you took pains to notify the directors of the Board of the Bank of America; why didn't you do us the same courtesy?"
- Sedlacek: Mr. Secretary, could I take just a few moments' time to outline the present plan of recapitalization and reorganization?
- H.M.Jr: Yes. You gentlemen know Mr. Sedlacek is the man who actually has examined this bank.
- Jones: Yes, that's what I understand.
- H.M.Jr: You can have all the time you want.

-17-

- Sedlacek: The plan we have, Mr. Secretary, is to obtain the resignation of Herbert Fleishhacker as President and director of the bank. That will be the first condition. The second condition is to obtain the resignation of four Vice Presidents that at present have no duties in the bank and are holding their positions by virtue of blackmail.
- Jones: Now wait a minute - using such a word ....
- (Laughter)
- Jones: That's four Vice Presidents?
- Sedlacek: Four Vice Presidents.
- H.M.Jr: And they're holding their positions ....
- Sedlacek: ... by virtue of blackmail.
- Jones: Will you elaborate on that?
- Sedlacek: Well, they have no duties whatever. They have a desk to which they come in the morning to read their newspaper, and that takes them about a half hour. Then they pick up and leave the bank. There are no duties assigned to them, and they draw salaries of from twelve to fifteen thousand dollars a year.
- Jones: I'd like to say that your kind of diplomacy and mine are about the same, so go right along.
- H.M.Jr: I'd like to ask a question: Who's blackmailing who?
- Jones: Yes.
- Sedlacek: Well ....
- H.M.Jr: I mean, are these four Vice Presidents doing the blackmailing or are they being blackmailed?
- Sedlacek: They're holding their jobs by virtue of the fact that those at the head of the bank are afraid to discharge them....
- Smith: I suppose they might talk in this litigation.
- Sedlacek: ... for reasons of their own.

-18-

Smith: Fleishhacker is being sued in another connection.

Jones: Can't talk.

Smith: Can't talk.

Sedlacek: This was even true before the suit came up, Mr. Smith. This has been going on for ten years. In other words, they have had no - they have had no place in the bank for ten years, but they're still there.

H.M.Jr: This is the first time I've heard this. This is very interesting to me.

Jones: Proceed with your plan. I just want to ... - Fleishhacker and four Vice Presidents to go?

Sedlacek: The present by-laws are ....

Jones: Are they directors also? Those Vice Presidents, are they directors?

Sedlacek: All but one of them are.

Jones: Uh-huh. All right.

Sedlacek: The next step will be to amend our by-laws to provide for fifteen directors rather than the present twenty-five; and in that method we are going to get rid of fifteen worthless directors, most of whom are insolvent and aid the bank in no way whatever. And of the fifteen, why, we can possibly retain five of the present directors and we'll have to obtain ten new directors.

Jones: All right, sir, go ahead.

Sedlacek: Then the next step we'll take is to make application to the R.F.C. for at least 12 million dollars of additional preferred stock.

Jones: At least, you say?

Sedlacek: At least.

Smith: That shock you?

Jones: No, it don't shock me. I'm beyond the state where I can be shocked.

-19-

- Sedlacek: And that 12 million dollars will provide for the elimination of all the assets classified as loss and doubtful in this present report and will leave us about five million dollars additional to take out losses that have developed since this examination by virtue of the manner in which the Dollar Steamship Line was reorganized.
- Jones: How did you treat the Dollar line?
- Sedlacek: It's classified as slow, but ....
- Jones: Slow but good. Two million eight, is that it?
- Sedlacek: Two million eight.
- H.M.Jr: What happened to that two million eight as far as the bank is concerned?
- Sedlacek: Well, the company has been reorganized and the bank was forced to compromise that two million eight by taking a new note for a million eight, payable over a period of eight or nine years, and to take a million dollars worth of non-cumulative preferred stock, which at the moment has no value.
- Jones: This 12 million would be enough to take care of that also?
- Sedlacek: That's right. And then in addition to that, all of the "A" stock of the Dollar Steamship Lines, of which we hold a tremendous amount as collateral for loans in the bank - largely the Dollar interests and the Fleishhacker interests - during this examination that was accorded a value of either three or four dollars a share, I forget which, but now it is valueless since this reorganization has been completed; so that's the reason we're asking for an additional five million, to take care of these losses that have developed in our slow classification by reason of this reorganization.
- Jones: But the twelve includes the five.
- Sedlacek: That's right. Then the next step will be to - the bank has approximately twelve affiliates, and all of these affiliates, with the exception of one, are filled with dynamite, and there are certain things that have gone on in there so that they've been afraid to liquidate

-20-

them. They voted them into voluntary liquidation in 1933, but have taken no steps whatever to liquidate them. But they did that because the law said they should liquidate them; they took one step and never followed through. And it's the fear of telling the stockholders of these affiliates that they haven't got anything coming, which is true in all of them - the stockholders have lost their complete investment - ...

Jones: The stockholders of the affiliates; that is, where the bank owns part of the stock. The bank owns a part of the stock in those?

Bedlack: They have certain affiliates there where one affiliate is owned by directors and outside people. That affiliate in turn has a sub-affiliate, and another subsidiary, and another subsidiary - just a mushroom growth. Well, the stock of all these affiliates is worthless, with the exception of one, the Anglo-National Corporation, which is the bank stock holding company affiliate - is the only one of the group that's solvent.

Jones: You mean the stockholders in those affiliates do not know they're worthless?

Bedlack: That's right. They're expecting to get something out of it. Now, I might add that the two parent affiliates - that at the time of the consolidation the trust company had a hundred percent owned affiliate; that is, the shareholders of the state bank owned the stock of this affiliate on a pro rata basis; at the time of the consolidation, the rejected assets were thrown into this affiliate to be liquidated for the benefit of the old stockholders of the trust company. The same was true with the national bank. They had an identical affiliate, and at the time of the consolidation they were led to believe that they would receive a tremendous recovery from these residual assets. But time has proven that those affiliates are more than insolvent. In fact, we have charged off about a nine million dollar loss - the bank has taken about a nine million dollar loss. So there will be no recovery.

Jones: What you going to do with your affiliates?

Bedlack: We're going to proceed to liquidate every affiliate, foreclose the collateral - formal foreclosure; the bank takes over the collateral, completely liquidates them by taking over the assets. And the bank will have to

-21-

liquidate the assets and we're going to get that big "bogyman" behind us that they're all afraid of. Following the liquidation of the affiliates, we then propose to have the Anglo-National Corporation, which is the bank stock holding affiliate, purchase all of this bank stock and all of this corporation Class "A" stock that is being presently owned by the bank - by the affiliates and held as collateral to distress loans. We'll sell it all to the holding company affiliate.

Jones: Does the bank own the holding company?

Sedlacek: No, there are outside stockholders. We own - we own 37 percent of it. But the remaining 63 percent is held by outside stockholders. And so this affiliate will purchase all of the bank's stock - all of its own Class "A" stock that we have in the bank in every form, whether it's owned directly or owned by these affiliates that were liquidated or held as collateral to these distress loans. We'll sell them both classes of stock.

Jones: Well, who's going to represent this 63 percent of outside stockholders? I mean you're going to trade with them?

Sedlacek: No, it's going to be an outright sale. We're going to sell them the stock at market. In other words, the affiliate will purchase from the bank all of the stock the bank holds, all the bank stock and the affiliate stock that the bank owns.

Wright: Where will it get the money to pay for it?

Sedlacek: It will be necessary to - that particular affiliate owes us \$300,000 at this time. It has the controlling interest in six outlying banks which we propose to take over as branches in this rehabilitation program, and from that source they'll obtain a liquidation of \$525,000 in cash, which will retire their present indebtedness of \$300,000 and leave them \$225,000 in cash.

Crowley: Mr. Sedlacek, let me ask you a question. Aren't we in setting up this program getting into a field which does not properly belong to the supervisory authorities?

-22-

Now, it seems to me that this whole program is a matter of the bank's responsibility. We're not supposed to go in and tell them they shall liquidate this affiliate and consolidate this one and wash out these stockholders. That's not the purpose of bank supervision, as I understand the thing. That's the responsibility of the directors.

Folger: When he says "we," Mr. Crowley - Sedlacek has indicated "we" are going to do all this, but really the two directors that are here agreed to the plan and they're going to do it.

Crowley: I know, but nevertheless, the responsibility of this bank rests upon the directors. Now, as I view this thing, the deeper you get into this thing here, the worse mess you're in, washing out minority stockholders and everything else.

Now, if Mr. Jones is going to put in 12 or 14 million dollars, Mr. Jones is going to put it in on a basis that those things will be brought about by management and elimination and boiling down and what not, which they do in all their set-ups.

Now, it seems to me that the first thing we ought to do is to let the directors know what your situation is, and then make them come back to us with an application. For the R.F.C. or the Federal Deposit or any of us to be running around with a silver platter and say, "Boys, we're ready to put 12 or 14 million in. We don't want to embarrass you, now; we won't tell anyone about it," then have the whispering start and all these minority stockholders point a finger on the R.F.C. and on the Administration that we forced this thing, they didn't understand it. It seems to me the directors should know the thing, then let them come to Mr. Jones with a program. And if you want - as far as capitalization is concerned, I have no objection if the Treasury want to have someone appear before the board, with a full board. I have no objection if Mr. Jones wants that his man should be there. But for us to set up a program and not let the board know the full knowledge, and these minority stockholders feeling that there's something been hidden from them - aren't we going to be a partner to the same thing we accuse the other fellow of being a partner to?

-23-

- H.M.Jr: Mr. Crowley - just a second, Mr. Sedlacek, if you don't mind - Mr. Crowley, I think Sedlacek was - how shall I say? - he's so full of this thing, and for the first time I think he sees a ray of hope, he's going to get a little backing.
- Jones: I'd like to hear the rest of the story.
- H.M.Jr: Well, if you - may I make ....
- Jones: Go ahead.
- H.M.Jr: I don't know whether you want to do it now, because this ought to be a matter of days.
- Jones: Got to be. We can't act this morning.
- H.M.Jr: All I'd like to do this morning - all I'd like to do this morning, and I'm not - if after I get through you still want to go ahead, all right - is, I wanted you people to hear - two things: first, what was the condition we found, and second, to satisfy myself and you people that this has been withheld from the directors.

Now, the people in the Treasury who are advising me unanimously recommend that the Treasury forward a letter to each director, and I wanted to give you people this thing. I didn't want to get into the question of how you're going to reorganize it. And after you heard that, I wanted to ask your advice whether you did or didn't think we ought to go ahead with the letter as promptly as it could be prepared. Now, that was the big bridge to cross. And after that, why, then I'd like to have another meeting. What Mr. Sedlacek tells me - I haven't got it yet, and what I'd like to do - I don't know that I'm going to go into this myself, but if we do, I need a couple of days, see? I'm not prepared.

So I would like to cross this one bridge and just ask as to the responsibility of the Treasury in regard to a letter going to the directors. Then if Mr. Jones wants to go further into details, why, my time is at his disposal. But I would like to do that, Mr. Jones.

- Jones: What you want to consider is whether to send the letter.

-24-

- H.M.Jr: That's all, and after we decide, if you want to continue, Mr. Sedlacek is going to stay here, Mr. Jones, in New York - in Washington until you or everybody else feels that they've got everything he's got, you see; he's available to you and your organization.
- Jones: So we address our attention now to the question of the letter.
- H.M.Jr: If you don't mind.
- Sedlacek: Mr. Secretary, could I just have one moment ...
- H.M.Jr: You said that before. It was a big moment.
- Sedlacek: I'll mean it this time.
- H.M.Jr: All right. A moment is 60 seconds.
- Sedlacek: The difference between these two cases is that the Anglo-National people are here and they're down on their hands and knees and begging us for a ticket. They're drawing up a program to correct every criticism that is made in this letter that's going out. They've agreed to submit a program that would correct every condition cited in the letter. They're asking a - or rather, it's not a question of the letter not going out to the directors, because I firmly believe the letter should go out to all these directors; but it should be properly timed. They're asking that the letter be held up until this plan could be developed, so that when the directors get the letter they could say, "Well, gentlemen, the letter is right, but here are the answers. Here is what we propose to do to correct it."
- H.M.Jr: I couldn't; I'd feel that I'd been just as weak-kneed as some other people have been. What they're saying is, "We want to continue the policy of the last twenty years" - you've got to fight - "and we'll go in and clean this up, and then we'll tell the directors." I couldn't be a party to it; I just couldn't.
- Sedlacek: But they'd be told simultaneously.
- H.M.Jr: Well, what I'm interested in - unless somebody here is

-25-

going to say, "Morgenthau, you're making a tremendous mistake," then I'd like to discuss it - I feel that - this is the first time since I've been Secretary of the Treasury that I've had to get into any bank matters; the reason I'm in them now is because these things have been permitted to slide for five years. Now, what I'm trying to do for the President and the whole Administration is to make up by prompt, straightforward, courageous action, what should have been done long ago.

Now, I don't even know who these two men are. I haven't seen them and I don't want to see them; but they're simply going through the same motions that they have for the last twenty years, and I don't want to be a party to it. Now, I just don't want to be a party to it.

I say, unless somebody around this room says, "Now you're making a tremendous mistake, that letter shouldn't go" - and I'm going to ask anybody if they think it's a major mistake.

Smith: Mr. Secretary.

H.M.Jr: Please.

Smith: I want to ask just a question. Then I have a suggestion to make. When was this report handed - this last report handed to the bank?

Sedlacek: It was handed to the bank approximately two weeks ago.

Smith: Two weeks ago.

Sedlacek: Yes.

Smith: It occurs to me that the directors should be informed immediately in the regular way, and as I understand it the regular way of informing the directors is to pass the report to the bank with the request - it is addressed to the bank and - to the Board of Directors and delivered care of the bank; and it is presumed that the report is exhibited for the inspection of the directors. It seems to me that the thing to do in this case is to treat it as regular - as routine; ask the officers of the bank in writing

-26-

whether - remind them that they're supposed to deliver it to the board, ask them whether they have. Then, if they answer in the negative - if they answer in the affirmative, that's what you want, because all of these criticisms are in the report. If they answer in the negative, then ask for a meeting of the board, have your man go there, put the report on the table, and have with him this synopsis or the letter, and say, "Now gentlemen, I want to talk to you about the report. For your convenience here is a synopsis of the report" - and send each member a synopsis of the report, then discuss the report.

- H.M.Jr: Before I decide, I'm going to ask two questions. When was this report delivered? It's already been delivered to the Board of Directors, has it? When was it delivered?
- Folger: Two weeks ago.
- Oliphant: How many copies?
- Sedlacek: One copy.
- H.H.Jr: And how often does the Board of Directors meet?
- Sedlacek: Once a month.
- H.M.Jr: When will be their next meeting?
- Smith: Well, right away, because they had a meeting when I was here before. Next few days.
- Upnam: They met the 13th of September.
- Folger: About the 13th of this next month. Around the 13th of next month.
- H.M.Jr: Would you take this as a compromise suggestion, ...
- Smith: Yes, that's all right.
- H.M.Jr: .... that a letter along the lines that Mr. Smith suggested go forward, but that we send a copy of that letter to every director?
- Oliphant: May I ask a question?

-27-

- H.M.Jr: See?
- Smith: I think that's the way to handle it.
- H.M.Jr: Take your suggestion, but send a copy of that letter to every director, registered mail. See, Tom?
- Smith: That's all right - reminding the bank that the directors are supposed to have this report exhibited to them and asking whether it has been.
- Whiphant: I'd like to ask Tom a question. As I remember, we very carefully considered this question in the case of another bank where the situation was not so bad, and we sent the letter to each of the directors of the other bank. How would you distinguish the situation, Tom?
- Smith: Because that was an old - that was an old case where they had refused to do what you had asked them to do. If you take any arbitrary action in this case, the managing officers of this bank will say, "Well, we wanted to do what you wanted us to, but you wouldn't let us."
- Sedlacek: That's right.
- Smith: And I wouldn't change the routine a bit. This report is supposed to go to the directors at their next meeting, which will be approximately on the 13th of October. When you're in a bank and you get the Examiner's report, it is presumed that the next time the directors meet you put it on the table and say, "Gentlemen, here's the report, glad to have anybody read it," and if they ask you any questions you answer them. And that's true, isn't it, Jesse?
- Jones: (Nods yes)
- H.M.Jr: Well, Tom, let me again for myself - is Mr. Smith's statement correct, as far as his knowledge goes, that we have never before made criticisms of the bank - this bank? He said this is different than the other because this is the first time we're making these particular criticisms.
- Smith: No, no, I didn't say that. This is the first time ... No, the difference is this. Maybe I didn't state it

-28-

correctly.

H.M.Jr: That's what you said.

Smith: Well, in the Bank of America case the management declined to consider your suggestions and stated they were unfounded and everything like that. In this case they don't deny that they are sound suggestions and they are willing to negotiate, whereas the others weren't. The criticisms have been made repeatedly in reports.

H.M.Jr: To the management; but it's never been brought to the attention of the directors.

Smith: That's correct.

H.M.Jr: But it has been made repeatedly.

Smith: There's another thing, that if you say it hasn't been brought to the attention of the Board of Directors, they'll produce some of these directors and they'll say they did know it.

H.M.Jr: I don't know, Tom, I would say this, that if this were something - well, where maybe fifty or a hundred thousand dollars, a single item, was involved, I'd think that you're right; but I think that this is so flagrant and has all the earmarks of being so crooked that I just feel that this thing should go to each director.

Smith: You can accomplish the same thing in a routine way. If anything comes up, it's routine. This is the first time since the change in management of the Comptroller's office that an examination has been made, and this is the first opportunity for it to go to the board - will be at their next meeting.

Oliphant: Tom, I see all sorts of dangers in the course you suggest, because let's think not in terms of the form but in terms of the practical realities. Under the system you suggest, there will be quite a period of time when presumably these people downtown would know that they had an effective commitment from the Government, the rest of the Board of Directors wouldn't know it and wouldn't know the criticisms

-29-

and there's all sorts of things they might be able to do in rearranging their own affairs - putting the minority of that group in the know.

Smith: Well, everybody in the whole country knows Herbert Fleishhacker has been under very severe attacks. The papers have been full of this, and the court decision was printed in full.

Oligant: I'm not talking about the court case. The board wouldn't know of the direct details of criticism and they wouldn't know of this plan that you've got with a little group having inside information, as against the rest of the Board of Directors. Now, the purpose of the law in setting up the Board of Directors - and it goes just as far as it can so far as the letter is concerned and leaves it to us to carry out its spirit - is to keep these men informed - a body of responsible men informed in enabling them to protect not only the bank but to protect their own interests. Now, I wouldn't want to put a limited group whom I don't know in a special position with inside information and advance knowledge. It seems to me very dangerous.

Crowley: I think you could discuss the details of this thing for a week around here. The first thing is, if Mr. Jones and the R.F.C. have agreed to a commitment, then you have no fear.

H.M.Jr: Excuse me, they haven't agreed to any commitment.

Crowley: I mean if he will.

H.M.Jr: Well, he can't until I ask him.

Crowley: Well, assuming that would be arranged, there would be no fear of anything happening to your depositors. Now, in giving the directors the knowledge you're protecting yourself from any charges that may come back later that they didn't understand this, or anything of that sort. Now, as I see it, if you've got a program ...

H.M.Jr: If you have what?

Crowley: If you have a program of rehabilitating that bank that you're pretty well agreed on, you can have your

-30-

man go from here with this memorandum, call a meeting of the officers - call a meeting of the directors, lay this thing before them so that they shall have full knowledge, and let them discuss this thing with a man that's familiar with that bank examination; have Mr. Jones's man present and say that, providing that certain things are done, it will be suitable to Mr. Jones - that we stand ready to rehabilitate the bank. Now, there can't be any shock to the community on that kind of a situation, Tom.

Smith: That's all right.

Crowley: As far as your change of management .....

Smith: You mean instead of waiting for a meeting call a meeting.

Crowley: As far as your change of management is concerned, and all of your liquidation, the R.F.C. is going to take care of that anyhow if they put 12 or 14 million dollars ...

H.M.Jr: well, let's see if I .... What we did in this other case - we sent a letter to each director and asked them to call a special meeting, which they're doing.

Crowley: That's right.

H.M.Jr: Now, what you're suggesting is that we send a letter to each director giving them the facts, asking them to call a special meeting, at which they will consider this.

Crowley: I would call a special meeting of the Board of Directors, and I would give each director this...

Smith: ... at the meeting.

H.M.Jr: Wouldn't do it in a letter?

Crowley: In letter form, yes. I wouldn't mail it to their residence. I would give it to them at the meeting. I would have their Examiner present, so that they could ask him anything they wished; and have the Examiner - I would have the R.F.C. man there, so if they, after they got through thrashing it out - to give them a program of rehabilitation.

-31-

- H.M.Jr: What's your objection to sending the facts by registered mail to each director?
- Crowley: I don't think there's any objection, only I think you've got to get your directors in a meeting together with your Chief Examiner, because some of these men are going to be shocked when they get this and some of them are going to accuse the Comptroller's office and different ones of withholding facts and things like that. So I think you should have a directors' meeting to consider this whole procedure.
- H.M.Jr: Well, I think that the quickest way to remove any criticism of the Comptroller's office is to discontinue this practice and make an exception and get this thing in the hands of the directors just as fast as we can.
- Crowley: The only thing I was thinking of was not to have men running around two or three days to their lawyers and so on; if you had them in a room and presented it to them intelligently and read it to them, then they would be able to ask the facts, and what you want to do is give them the information.
- H.M.Jr: That's right.
- Smith: And at the same time save the bank. If you send them a letter and say, "We're going to have a meeting day after tomorrow in which we will consider the condition of the bank," some of the men will go to their attorneys and they won't know the facts. And it isn't customary to do it that way. The way they did it in Los Angeles - the Examiner calls the board together - that's the way they did in Los Angeles - and it is presented there. That way you'd be following the regular custom.
- Crowley: I think, Tom, on account of your minority stockholders and a lot of these subsidiaries, you've got to be sure that your facts are made known to the directors.
- Smith: I do too. I see no objection to calling a special meeting.
- H.M.Jr: And having our man there.

-32-

- Smith: Having your man there. Present them this letter. "Here's the thing I propose to discuss. This is what you've done here." Then they've got the information, they'll hear the whole story, they'll also know a plan of reorganization is under way.
- H.M.Jr: But send a letter to each director telling them that our man is going to be there to present it.
- Smith: You can do that.
- Banes: That would take care of those fellows that haven't been at any of those meetings.
- H.M.Jr: I mean send a letter.
- Smith: Tell them a meeting will be held and a representative will be there to discuss the condition of the bank with them. That's all right, isn't it, Leo?
- Crowley: I think you've got to get them to the meeting.
- Jones: I don't think - don't/<sup>KNOW</sup>whether it's - I think if you give us 24 hours to consider - I think you can destroy this bank very easily by making the wrong move. I'd like to - it isn't the first one that we've done, but ...
- H.M.Jr: No, but it's the second one that I've had to deal with where there's been as much delay involved.
- Jones: But we've had them run on here for years and years.
- H.M.Jr: Well - but when this happens, I mean, the Treasury has got a definite responsibility, and I'm sorry to say that I don't think that they've lived up to their responsibility.
- Jones: Well, this letter here would destroy the bank.
- H.M.Jr: I don't see it.
- Jones: I'm thinking along the line ...
- H.M.Jr: I don't see it.

-33-

- Jones: ... of asking - of your writing - the Comptroller does this thing you do in the Comptroller's office?
- H.M.Jr: Yes.
- Jones: - ... sending a letter - I had this thought - I'm not - send a letter to this bank, these directors, and say that - try to remind them, to tell them in proper language that he is requested to examine this last report and advise that he has examined it. Now that way you get direct information to him, get direct notice to him - something of that kind. Now, you don't necessarily frighten him until he goes there, but he's got to write the Comptroller then that he's got his letter, he's examined the report and considered it for the board. I think something like that wouldn't frighten them necessarily. I do feel that this letter here, starting out with 47 million dollars of criticized items and all these other items - I think it's very dangerous. What we want to do is save the bank and get rid of these - Mr. Fleishacker and these four ...
- Smith: blackmailers.
- Jones: ... blackmailers. I think we're all of one mind.
- H.M.Jr: Well, they've been proceeding with the thought, if I've been correctly informed, that they're going to get rid of one Fleishacker. Maybe when we're through we'll want to get rid of all Fleishackers.
- Jones: That's a matter to be determined also. And then getting rid of them - the manner of getting rid of them. Now, the Standard Oil have got two and a half million stock in the bank and they've got to be considered.
- Whipant: Under your plan, would your suggestion be that we suspend all this consideration of dickering about the rehabilitation and that sort of thing?
- Jones: No, I think we should proceed with that.
- Whipant: Without the other directors' knowing we're doing it?
- Jones: What?

-34-

- Oliphant: Without the other directors' knowing we're doing it?
- Jones: We can do nothing. The bank's going to do it. We can meet and discuss and plan, but we can do nothing. The bank's got to do it - the stockholders.
- Folger: It requires the action of the board and also a action of the stockholders.
- Oliphant: Well, we know how those things work out. Actually the thing is done when the deal is struck.
- Jones: We can proceed with the plan, but the stockholders have got to do it.
- H.M.Jr: Well, I think the first thing the Comptroller of the Currency has got to do is, just as fast as possible, either - there's one of two things: either he can send this letter with the facts to each director or he can send a letter to the officers asking them to call a special meeting at which the most recent report will be considered, and then send a registered letter to each director advising him that we have suggested that such a meeting be called. Now, it's one or the other.
- Jones: That's all right.
- H.M.Jr: And there is no reason why that can't be settled right now. We don't have to let that go until tomorrow - I mean because that thing can be settled right now.
- Oliphant: Well, I want to ask, would we in the meantime, if we adopt the latter course, go ahead and work out this plan...
- H.M.Jr: You can't work out any plan.
- Oliphant: ... before the other directors know?
- H.M.Jr: You can't work out any plan when you're doing business until the other directors know.
- Jones: Well, I think that this procedure is being worked

-35-

around Mortimer Fleishhacker, isn't it?

Sedlacek: Yes.

Folger: He's doing the negotiating.

Jones: I think that he ought to be considered in the matter and advised with. He thinks that a letter - I think if we prepare a letter, if you send a letter, that Mortimer Fleishhacker ought to be in the know and ought to concur in it, know that you're going to do it, and indicate the kind of a letter that would not thwart his purposes or his efforts in trying to do this.

H.M.Jr: No, I'm sorry, Jesse, but I disagree with you. I'm willing to take the advice of anybody who is connected with the United States Government on banking matters, but I am not going to take the advice of an officer who is under grave suspicion as to how the Comptroller of the Currency should carry out his responsibility.

Jones: I'm not talking about his advice. He's the fellow that, let's assume, would be the head of the bank.

H.M.Jr: Well, I'm not going to assume it.

Jones: Well, that's the plan.

H.M.Jr: Well, the plan - I mean today's the first time I've heard about it. The little I have heard about it, if I had to make a curbstone opinion, I should say no Fleishhacker should be connected with the bank.

Smith: All you mean is that you (Jones) think he should see the letter and see if he has any suggestions.

Jones: I want his cooperation. If we're going to do this thing, you should have the cooperation of the Fleishhackers; otherwise, you can hurt the bank very badly.

Gaston: Of course, he's the man that has - Mortimer has to call the meeting and he's the man you have to ask to call the meeting.

Jones: He ought to be there before the letter gets there.

H.M.Jr: Is he the President?

-36-

Upnam: He's Chairman.

H.S.Jr: Who's President of the bank?

Upnam: Herbert Fleishhacker.

Smith: This man is the active head of the bank - Mortimer Fleishhacker.

Jones: Mortimer ought to be there when the directors get this letter, so they won't be frightened and call up their lawyers and ....

Upnam: We can address his letter to him here rather than in San Francisco, since he's here.

Jones: How's that?

Upnam: You can send his letter to him here, give it to him.

Jones: You can prepare your letter and give it to Mortimer Fleishhacker, but he ought to be home when this man ...

H.S.Jr: Let me ask Mr. Delano whether he wants to express an opinion.

Delano: I'm kind of appalled by this thing, Mr. Secretary, being new in the job. But I certainly think that the Comptroller's office ought to clear itself here from the responsibility which it has had for five years and apparently has not exercised. I would like to see a letter go forward immediately to these directors asking for a special session of the board, and I'd like to see an officer go forward from here to present the facts of this examination to that special session of the board.

H.S.Jr: And would you go a step further, that you'd send notice to each director that there had been such a meeting called?

Delano: Yes, I would do that.

Ellis: Would you in the meantime suspend negotiations for a plan until the Board of Directors there could decide

-37-

whether or not they wanted these men to represent them in Washington?

- Delano: Yes, I believe I'd do that.
- Jones: Suspend the procedure about the plan?
- Delano: I would do that, Mr. Jones. I think the reason for that is that we are dealing with a little group here on a very serious matter, and it seems to me the whole facts ought to be laid before the full directorate before we discuss rehabilitation with them.
- Jones: How many substantial directors have you?
- Folger: About five, possibly six.
- Sedlacek: Yes, very few - about six directors, I guess. Of course, in practice the directors do not assist in reorganizing a bank. Ordinarily they're not bankers, they don't know. So one has to work up the plan and present it to them for their consideration and for their approval. So even though you notify ....
- Crowley: Isn't that more the question of the new management doing that anyhow?
- Sedlacek: That's right, it's something that the management ....
- Crowley: In other words - again I get back - if the R.F.C. agrees to the preferred stock and they're going to see about the management, then they're going to work out the elimination of losses and the cut-back, things like that, with the Comptroller's office.
- Sedlacek: That's right.
- Crowley: That's a matter the new board will have to be familiar with and work with anyhow.
- Sedlacek: And after you develop the plan it will be presented to them for their consideration and their approval, because after all they're the ones that will have to adopt it.
- Smith: Well, you've got your plan ready, haven't you?
- Sedlacek: I have the outline of the plan, but we're going through

-38-

the report now, showing the eliminations that we're going to effect in order to give Mr. Jones something on which he can base his judgment as to whether he wants to - whether you people will put in 12 million dollars of preferred stock.

Smith: Suppose they go ahead with this plan as suggested by the Comptroller-elect and Mr. Fleishhacker goes back to California, they have their meeting and they decide to reorganize. You're there with a representative of the Comptroller's office; you'd be in a position to sit down with them then and arrive at a plan with a duly authorized agent. You could arrive at a plan without any delay at all, couldn't you?

Sedlacek: I think so, yes.

Delano: Tom, the reason why I think we should drop these negotiations until the thing has been talked over with the full directorate is that I think this is an unusual case of great gravity. Do you see my point?

Smith: Yes.

Delano: I don't like to have us dealing with a small coterie of people here while the rest of the directorate do not know the facts. They may have some different plan.

Smith: I can't see that delaying it - I can't see that stopping the negotiations and transferring them would delay the culmination of this in any way.

Delano: I think we can act very promptly. We can send this letter out, send - tell Mr. Fleishhacker to get back there immediately. We can lay our plans then to have this meeting promptly - have a special meeting, have this Examiner there and a very responsible officer of the Comptroller's office there. Then the cards can be laid on the table. We've discharged our obligation of informing these gentlemen at last. Then the negotiations can be picked up from there. It isn't as if we were breaking them off for any length of time. I fully appreciate the practicabilities of the situation; but you'll deal with them after everybody knows about it, which I think is very important.

H.M. Jr: Well, this letter could leave tomorrow, couldn't it, so it gets there Monday? - I mean just calling the meeting.

-39-

- Upham: Oh yes. Yes, surely.
- H.M.Jr: Just calling the meeting.
- Upham: Surely.
- H.M.Jr: Asking them to call the meeting.
- Upham: Of course, the Chairman of the Board is here and there's no use in writing to someone out in California.
- Oliphant: Unless you want to avoid the charge that you're giving him advance notice or an advance tip-off. I certainly wouldn't give any member of the board advance notice.
- Crowley: I think you want to give this man a chance to get back to California.
- H.M.Jr: Tell him to go back tonight, there's going to be a letter there when he gets back there.
- Delano: I have great respect for Mr. Jones's opinion in these matters. He's handled so many. Do you object to that procedure, Mr. Jones? Do you think that that's in any way imperilling the structure out there, the financial structure?
- Jones: Well, I don't know. This is a very ticklish situation. The Fleishhackers are prominent; they've been prominent there for a lifetime. This man Mortimer is 72 years old and Herbert's about - just a few years younger. Herbert has been more prominent in the life of San Francisco than Mortimer. He's been the driving force.
- Now, when we saved the bank in '33 through a loan through a mortgage company of \$35,000,000, and loaned two and a half million dollars to Mortimer and Herbert on preferred stock - at the time we put in the two and a half million we required that Mortimer come into the bank as head of the bank because he stands well in California. I don't think we'll do ourselves any good if we try - if we blacken or destroy Mortimer Fleishhacker. That's the thing that's uppermost in my mind, is to bring all these corrections about with the least possible damage to the bank.
- Delano: What I'm trying to balance against that - and of course that's a major consideration, that we don't

-40-

tear down any financial structures - I'm trying to balance the importance of discharging the full obligation of the Comptroller's office here in a matter which seems to me to be of utmost importance.

Jones: That must be done, of course.

Delano: It looks to me, Mr. Jones, as if there's been three or four years here of major passing over of things that should have been done; and I think the first thing we have to think of, Mr. Secretary, in your Department, is to remove that possible stigma and as promptly as possible.

H.M.Jr: That's what I want to do and that's what I'm going to do.

Delano: I'm trying to weigh that against Mr. Jones, you see.

H.M.Jr: "Well, I'm listening to everybody and - but it isn't only - I think it's a little bit deeper than that. Mr. Roosevelt and his Administration stand for honest finances, honest dealing. Why have we got an S.E.C.? We're trying to regulate the Stock Exchange so that people will have confidence in them, that that's a place where they can buy and sell and do so to their advantage; it's a market - make it a market of the world. I once was asked, "What is confidence?" Well, as I said, it's something that's very difficult to get, but once you lose it it's equally hard to get it back. And in this financing of this program of Mr. Roosevelt's, all of these things go into the making of confidence in his Administration so that we can finance his program, and people believe that everything that we do that touches money is just as clean as a whistle.

Now, even though in this case somebody might get hurt, the fact that this sore has been permitted to exist for years - I'm willing to take some risk as far as the patient goes if through the experiment we learn something which may save all the other patients. Now, that's the way I feel. I'm willing to take some risk personally, as far as this one patient goes, if through this operation we learn how to do it so it won't happen again.

And this is so serious and it's such a reflection on

-41-

the Comptroller's office that I am personally willing to take that risk; and we've just got to operate on this person knowing the risk that we're taking, because we cannot permit an agency, a financial agency of this Government to have any doubt cast on it as to its honesty or its effectiveness.

Now, that's the way I feel.

Delano: I do too, Mr. Secretary.

H.M.Jr: That's the way I feel. It isn't a question - I don't know these people, I don't want to know them, and they mean nothing to me. And I just feel that it's - that after five years of honest financial administration for the whole Administration, that we should be faced with something like this is something terrible.

Delano: It's appalling.

H.M.Jr: It's something terrible. And it's - well, I can't add anything, but that's the way I feel.

Now, I just want to ask a minute - "Judge," do you want to get in on this here or ....

Ransom: well, if I might speak purely ....

H.M.Jr: ... or are you kind of going to cramp your style? how about it?

Ransom: If I might speak purely to procedure and not to facts, so our position might be clear ....

H.M.Jr: wait a minute, let's get this.

Ransom: That is, without expressing any view at all as to the merits of the case, because I take it from what you said that one line of procedure might produce a Section 30 case, in which event I again have to say what I have said so often, that we have to maintain an attitude where I don't think we can possibly express an opinion on the merits.

The whole thing is news to me, as you know, because other than what I have heard here today I have only heard the briefest references to this situation. If I may borrow your comparison: You say that although

-42-

the operation may be dangerous, it may be well to perform it; I'm wondering if the operation might not be one of those where the doctor says it was successful but the patient unfortunately dies.

H.M.Jr: It might.

Ransom: Now, I take it that your objective is a simple one, to produce results in the interests of, first, the depositors of this institution, secondly, its stockholders and the public generally.

Now, I was a little puzzled - I was thinking I thought reasonably clear about it until your last remark about operations; that left me a little puzzled. If the objective is to do a constructive job - and I take it from what the Examiner says and from the references to a plan, which is news to me, that someone in the Comptroller's office and someone representing this institution seem to be on the eve of some understanding as to a plan which would work out this program and save this institution - if that were the case and I were placed in your very difficult situation, it would seem to me that a question of days wouldn't weigh so much as to be sure that the procedure you follow does get the constructive results that I know you want.

Therefore, I am very favorably impressed with the combination of ideas which Mr. Smith and Mr. Crowley have expressed. As I understand them, it comes out to a point where your office would be sure that this last examination is called to the attention of the members of this board in person, the criticisms laid before them, and then I take it that could be followed immediately by whoever presents it for the Comptroller's office with an outline of the constructive plan which seems to be in the works. And if that was done it would seem to me you could do both things: clear your Department of any possible criticisms for not bringing this now to the attention of these people, and in the second place, having a situation develop which would take care of it just at that point, not in details, not in specifics necessarily, but in fundamentals. I think both of those things can be produced in the same way.

H.M.Jr: Just redescribe the so-called Smith-Crowley plan.

-43-

- Ransom: Let's see if I can. And I hope they'll correct me if ....
- Jones: What was that request, Mr. Secretary?
- E.S. Jr: I asked him to restate the Smith-Crowley plan.
- Ransom: I said I hoped to do so, standing to be corrected by the two authors if I misstate it. It would be that you give as prompt notice as possible to every director of this bank that a special meeting had been called; seeing that that special meeting was called; that at that meeting some gentleman like the field examiner here or someone else representing the Comptroller's office who is thoroughly conversant with this situation, would discuss this examination and the criticisms, but following that promptly with at least the outline of a salvage plan. Now, that's what I understand to be that plan.
- As to the very difficult question which Mr. Oliphant raises, as to whether you should, pending that meeting, cut off negotiations with those people, I am unable to express my opinion because I know so little about those negotiations or the people you are dealing with. We have in Mr. Jones and Mr. Crowley two gentlemen who have operated on many sick patients, and I would myself, if I were in your place, be influenced by their thinking as to whether this preliminary treatment was advisable or not.
- Gaston: May I make one little comment on this statement of Mr. Ransom's? There is one phase there which I think would be a serious mistake, and that is to have Mr. Sedlacek or any representative of the Comptroller's office state the reorganization plan immediately following his criticisms. If there is to be a statement of the reorganization plan, I think it should be made by Mr. Fleishacker - Mr. Mortimer Fleishacker. He could then tell the directors that he has already been negotiating and see whether they want to give their approval to his acting in their behalf. The next step - I don't think it should come from the Comptroller's office.
- Ransom: I agree fully with Mr. Gaston. I wasn't thinking of

-44-

who would do that, but I meant that some ...

- H.W.Jr: I think that Gaston's right. And I would just like to make another statement in addition to the Smith-Crowley plan, and that is that when a representative of the Comptroller goes there he should be accompanied by a representative of the R.F.C. I think a representative of the R.F.C. should be present.
- Ransom: That would certainly seem advisable, that the surgeon should be at hand.
- H.W.Jr: Right on the ground, ready to act.
- Jones: Are you getting pretty near through with this?
- H.W.Jr: No, I want to ask a couple fellows if you don't mind. Cy?
- Upnam: Well, may I ask a question first?
- H.W.Jr: Yes.
- Upnam: Can we call a special meeting of the Board of Directors of that bank?
- Folger: We can ask the Chairman of the Board to do that.
- Upnam: If he knows what we're going to do, will he call it?
- Sedlacek: (Nods yes)
- Upnam: He will.
- Sedlacek: Well, I can't answer for him, but there is no question in my mind but what he will.
- Jones: I think he will.
- Upnam: I'd very much prefer, personally, following exactly the same procedure that we did with the Bank of America, sending a letter summarizing the criticisms to each director. It seems to me that if we go out there and.....

(Lochhead comes in with  
market information)

-45-

H.M.Jr: Just a minute.

Upham: Surely.

Ransom: If you'll just excuse me a moment, Mr. Secretary.

Upham: Surely.

H.M.Jr: Do you mind if we go ahead, Ronald?

Ransom: No, I'm coming right back.

H.M.Jr: All right, we'll wait for you.

(Ransom goes out)

Put them up, put them up, that's what I say.

Smith: Still going up?

H.M.Jr: Ronald's worried they're off a little bit.

Smith: "hat are the 2 $\frac{1}{2}$ s?

(H.M.Jr hands Smith chart)

Oliphant: As far as we know, we've been negotiating - this office has been negotiating with competent representatives of the bank; but they are the representatives of a clique in the bank.

H.M.Jr: You're right.

Upham: I rather object on principle, Mr. Secretary, to doing what so frequently happens, dealing with the people who have wrecked the bank in reorganizing the bank, rather than with the entire Board of Directors. I think if we go out there and if the R.F.C. goes with us, that we're going to them. As Mr. Sedlacek says, we have them on their hands and knees here, where I think they ought to be.

H.M.Jr: Where?

Upham: Here in Washington. Mr. Mortimer Fleishhacker and Mr. Paul Hoover are here, and if we go out there it seems

-46-

to me we're at a disadvantage. But I would not - I would not object to the second procedure that's been outlined, but I would very much prefer doing it the way we did with the Bank of America.

Crowley: well, Cy, may I say this.

(Ransom returns)

H.M.Jr: Please.

Crowley: Now, as far as their changing their mind or as far as their not going through with what the Comptroller's office wants, and the A.F.C., I have no doubt in my mind but what any man who was in this position, at least a director or a major stockholder, would cooperate a hundred percent for to get the bank in a better position. I don't think that, no matter where you meet them, Cy, that in particular hurts you; I think they're in a position that they have to have help.

H.M.Jr: John Hanes?

Hanes: I'd like to - I feel a good deal like Cy does. I'd like to follow the same procedure we followed in the case of the other bank. However, it seems to me that this plan pretty nearly follows that procedure. If you're sure that each one of these directors has adequate notice that this meeting is going to be held and at that meeting these criticisms are going to be submitted, then he's - you're doing to him just exactly what you did to the other directors, notifying them in advance of this criticism.

H.M.Jr: Now, if this isn't fair, you (Delano) say so, see, but I'd like to ask you as Comptroller-to-be if you'd care to make a recommendation to me as Secretary of the Treasury as to what you think I ought to do.

Delano: Well, I will under duress, Mr. Secretary. I'm pretty young at this job.

H.M.Jr: well, you might as well begin. The only way to learn how to swim is to throw them in the water.

Delano: If you insist on it ....

H.M.Jr: I'm not going to insist.

-47-

- DeLano: Well, I'll make it anyhow. My recommendation would be ...
- H.M.Jr: Will you talk a little louder?
- DeLano: My recommendation would be that we'd send a letter to the - to each director of that bank under registered cover, with return receipt, stating that we have asked the Chairman of the bank to call a special meeting. I would then ask the Chairman of the bank, with the proper formalities, to call that special meeting for the consideration of the last report of examination. When that meeting was called, I would have the Field Examiner and a representative of the Comptroller's office there. I would distribute that - a copy of this letter, or one similar to it, in which all of the criticisms are outlined. I would discuss it with all the members of the board, put them fully on notice. Then I believe I would follow Mr. Ransom's idea of having Mr. Fleishacker at that time state that they've been cognizant of this - of these criticisms and that they have evolved a plan, the plan which we have discussed, and I'd take up the negotiations from that point. I don't think we can overlook two or three days in getting this thing in operation. I think we do make a concession to the damage that might be done by sending these letters immediately of criticism to the directors.
- H.M.Jr: Well, gentlemen, you have heard the recommendation of the Comptroller-to-be. Does anybody object?
- Jones: I concur.
- H.M.Jr: If anybody - does anybody object? We'll put it that way. All those in favor.... (Chorus of "Ayes")
- Your suggestion is accepted. And I again thank you all. I think if we will continue on this way, why, we'll have less patients to operate on.

**AMERICO CALIFORNIA NATIONAL BANK,  
SAN FRANCISCO, CALIFORNIA.**

The following items of criticism were referred to in the letter which is being prepared for the Board of Directors of this bank:

**(1) CLASSIFIED ASSETS:**

Approximately \$47,000,000.00 of total resources are under criticism, which is approximately three and one-half times the amount of the sound capital structure.

**(2) LOANS AND DISCOUNTS:**

Approximately 89% of the total loans is classified slow; 6% doubtful, and .05% loss, making a total of approximately 41% subject to adverse classification.

Loans to affiliates, officers, directors and their corporations are shown as follows: Slow \$16,826,808.80; doubtful \$2,726,480.27; loss \$22,828.80. Losses aggregating \$8,876,238.42 have previously been charged off on these lines.

**(3) LARGE LINES:**

The examiner has set up twenty large and wholly unwarranted lines of credit aggregating \$40,151,823.68. \$10,016,428.48 has previously been charged off on these lines.

**(4) BORROWINGS OF DIRECTORS AND THEIR CORPORATIONS:**

These borrowings aggregate \$16,012,812.80, of which \$877,861.48 have been previously charged off, leaving a total of \$15,134,951.32 in the

- 2 -

active assets. These borrowings are of long standing and the lack of progress made in improving and reducing this large concentration is disappointing.

(5) AGGRESSIVE LOANS:

Included in this schedule are: the Dollar Steamship Line, Incorporated, Limited, in the amount of \$2,800,021.86, and the Herbert Fleischhacker line aggregating \$3,473,462.26. Both of these lines are of long duration and the Board was advised that immediate and decisive steps should be taken toward the elimination of these fixed violations.

(6) LOANS TO BANK'S AFFILIATES:

These loans on the date of the examination aggregated \$18,874,426.01. As a result of unwarranted extensions of credit to the affiliates the bank has suffered a present total loss of \$5,231,764.15 without taking into consideration the income loss suffered by virtue of the compromised interest rates on the affiliate loans which averages less than 1%. This loss represents approximately 30% of the bank's capital.

(7) BANK'S OWN STOCK HELD AS INVESTMENTS BY ITS OWN AFFILIATES, HELD AS COLLATERAL TO LOANS AND ILLEGALLY OWNED BY THE BANK:

Of the 200,000 shares of outstanding common capital stock, 135,000 shares are held as investments by the bank's own affiliates, carried on their books at \$9,742,226.73 and having a market value of \$3,722,226.00, or a loss of \$6,020,001.73; 20,618 shares are owned by a director's corporation heavily indebted to the bank; 5,000 shares are

- 3 -

pledged by others as collateral to loans, and 1,414 shares are illegally owned by the bank and are being carried in the investment account beyond the limitations fixed by law. The total of the foregoing is 233,097 shares, or approximately 46% of the entire common stock issues. The market for this stock has fluctuated from \$8.00 to \$33.00 a share, and is now quoted at \$18.00 with no trading activity.

(8) STOCK OF THE AFFILIATED ANGLO NATIONAL CORPORATION HELD AS INVESTMENTS BY OTHER AFFILIATES, OWNED DIRECTLY BY THE BANK AND HELD AS COLLATERAL TO OTHER LOANS:

Of the 204,132 shares of outstanding Class "A" capital stock, 41,028 shares are held as investments by bank's own affiliates, carried on their books at \$1,868,933.30 and having a market value of \$879,629.00 or a loss of \$989,304.30; 28,891 shares are owned outright by the bank at a book value of \$818,822.00 and having a market value of \$414,284.00 or a loss of \$404,538.00; and 9,968 shares are held as collateral to loans of others.

The total of the foregoing is 79,887 shares or 37.66% of the entire Class "A" stock outstanding, in addition to 100,000 shares of Class "B" stock outstanding owned by the affiliated Consolidated Securities Company and pledged to secure its indebtedness to the bank. It is carried on the books of the affiliate at \$901,135.66 and is classified therein as having no value, which is not included in the above mentioned losses.

As of the date of the examination, the various affiliates of the bank have suffered a loss of \$7,021,182.03 on their holdings of bank stock and the Class "A" stock of the Anglo National Corporation, the major

- 4 -

portion of which has been charged off against the undivided profits account of the bank by losses taken on the indebtedness of the affiliates to the bank.

**(9) REAL ESTATE LOANS INCLUDING  
ILLEGAL AND NON-CONFORMING LOANS:**

Of the total loans \$21,188,478.00 or 20.78% is secured by liens on real estate in various forms. Of this amount 20.55% has been taken for debts previously contracted; 21.57% is illegal; .37% is non-conforming; .10% is collateralized by real estate mortgages of others; 28.14% is conforming, and 1.48% is insured under Title II of the National Housing Act.

With approximately one-third of the total real estate loans, both in number and dollar amount, still subject to criticism following the liberalization, by recent amendment of the laws governing same, and the use of generous financing by Federal Loan Agencies, it is imperative that this department be given closer attention and supervision by the management with the end in view of inaugurating a more aggressive collection and collection policy on classified and non-conforming loans while conditions remain favorable in order that they may be reduced to a minimum.

During the examination the personnel of this department was completely reorganized and systematized, and the management reports that outstanding progress is being made in both the collection of criticized loans and reclassification of non-conforming loans to a conforming basis.

- 2 -

(10) OTHER REAL ESTATE PROBLEMS OF THE  
AFFILIATED PROGRESS MORTGAGE COMPANY:

All of the "Other Real Estate" of the bank has been sold to the affiliated Progress Mortgage Company without any down payment, and no future payments have been provided for other than application of the proceeds as parcels are sold. Of its total assets, \$6,082,712.81 is represented by actual real estate owned, and an additional \$683,188.10 is represented by real estate loans which, for practical purposes, are other real estate owned. A definite and acceptable program of liquidation must be consented to or the other real estate must be transferred to that account on the books of the bank, since the present method of handling the same cannot be construed as a bona fide sale.

(11) BOND ACCOUNT IN GENERAL:

It appears that there has been an underlying tendency toward speculation for profit rather than investment for safety throughout the entire history of the bank. This statement is substantiated by the \$9,416,524.00 of substandard investments still present in the investment account and the remaining assets of the affiliates.

(12) BONDS AND STOCKS UNLAWFULLY ACQUIRED:

There have been 21 blocks of stocks and bonds having a book value of \$3,813,457.84 which have been illegally acquired. Of this amount \$1,883,167.00 is represented by 18 large blocks of stock among which are included 1,414 shares of the bank's own stock and 24,628 shares of Class "A" common stock of the affiliated Anglo National Corporation

- 2 -

carried at a combined book value of \$254,561.00. Stocks of corporations in which directors are interested are carried at \$243,622.00, of which \$128,194.00 is classified as slow and \$108,034.00 as loss.

(13) BOARDS OF DEBATABLE LEGALITY:

There are 32 issues of bonds having a par value of \$4,167,500.00, a book value of \$3,816,727.88, and a market value of \$3,559,821.36, revealing a loss of \$286,906.80. The past and present practice of dealing in low grade securities should be discontinued and the tremendous loss taken in the past is again referred to in support of this criticism. Immediate steps should be taken toward the early liquidation of all investments of this nature.

(14) ILLEGAL DIVIDENDS PAID:

A chronic criticism and the attention of the directors is again called to the provision of Section 5204, U.S.R.S., in connection with the declaration and payment of illegal dividends. The combined profit accounts available for this purpose aggregated \$2,988,473.41 while statutory bad debts alone aggregated \$7,300,806.83.

(15) IMPROPER AND ILLEGAL CHARGES AGAINST BANK'S EXPENSE ACCOUNT:

For record purposes and especially for the information of the directors, a complete itemization of all charges to the expense account of the bank is insisted upon which should again be submitted to the directors for a specific approval to be recorded in the minutes.

- 7 -

**(16) WESTERN AMERICAN REALTY CORPORATION:**

It appears that at the time of the stock market crash an endeavor was made by President Herbert Fleischacker to support the market for this bank's stock. In order to provide funds for this purpose, there were placed in the assets of the Western American Realty Corporation, whose indebtedness to the bank was increased a like amount, two notes of bank employees having no financial responsibility as follows: Harry Gee \$180,000.00 secured by 3200 shares of this bank's stock, and a note of E. Alexander for \$180,000.00 secured by 3200 shares of this bank's stock. On September 24, 1928 the obligation of the Western American Realty Corporation to the bank was reduced \$300,000.00 by transferring the Gee and Alexander notes totaling \$300,000.00 to the Progress Mortgage Company, the obligation of which company was increased a similar amount. These notes were later cancelled and the 6,400 shares of the bank's own stock were placed in the bond account at \$300,000.00 when its market value was less than one-half the amount. On December 31, 1934 the Progress Mortgage Company resold this block of stock to the affiliated Angle National Corporation at market and suffered a loss of \$146,815.20 on the transaction, which loss was included in the \$1,000,000.00 charge off on the line of the Progress Mortgage Company on December 28, 1936.

**(17) UNDERCAPITALIZATION:**

The present ratio of net capital structure to deposit liabilities is \$1.00 to \$14.78. According to the report the sound capital structure is approximately \$6,800,000.00 below requirements, but from the fact that approximately \$39,000,000.00 of assets are classified "Slow", it is believed that at least \$8,000,000.00 additional should be provided as a protection against possible losses in this classification.

- 6 -

(18) BORROWINGS OF EXECUTIVE OFFICERS FROM OTHER BANKS:

A report of these borrowings should be made to the Board of Directors and record of the receipt of same noted in the minutes.

(19) REPORTS OF EXAMINATION:

Apparently reports of examination have not been submitted to the directors for consideration at a regular meeting as required, nor mention made in the minutes of their receipt. The management has been repeatedly instructed and advised of the personal responsibility it is assuming by refusal to comply with this requirement.

(20) OFFICE LETTERS:

Important letters from the Comptroller to the Board of Directors relative to the condition of the bank based upon reports of examination are still not being considered by the Board nor being noted in the minutes as required. Prompt steps should be taken to correct this criticism in order that it may be unnecessary for the examiner to refer to it in subsequent reports.

(21) EXAMINING COMMITTEE:

The examiner states that reports of this committee are both brief and meaningless, consisting primarily of the verification of assets with the assistance of the Auditing Department. An appraisal should be made of the loans and discounts which is of utmost importance since so large an aggregate is subject to adverse criticism. The directors should keep themselves fully advised of all conditions in connection with each individual asset now under criticism.

- 9 -

(22) LOANS TO DIRECTORS AND THEIR CORPORATIONS  
TOGETHER WITH INTEREST RATES THEREON:

Apparently these loans are not being specially approved by the Board of Directors as required. Inasmuch as this type of asset comprises so large a portion of the total volume criticized, the major portion of which carry compromised interest rates, both the loans and the compromised interest rates should be specially approved by the Board and such action noted upon the minutes.

(23) BOARD OF DIRECTORS AND SUPERVISION:

It is noted that three of your directors, two of whom have severely criticized loans in the bank, seldom attend the meetings of the Board. If these directors are unable or unwilling to assume their duties and responsibilities as directors, they should be replaced by those who will.

(24) LIABILITIES NOT SHOWN ON THE BOOKS:

No provision has been made on the books of the bank for a contingent liability resulting from a judgment in the amount of approximately \$750,000 obtained by the heirs of the Lazard estate.

September 30, 1938

5:40 p. m.

Present:

Mr. Hanes  
Mr. Oliphant  
Mr. Delano  
Mr. Gaston  
Mr. Upham  
Mr. Tom K. Smith

HM, Jr.: This is what happened. Of course, this is White House business, so it is triple confidential.

Mr. Early phoned and argued with me about how badly we treated Mr. Diggs; that he got 36 hours' notice and this fellow Upham goes in and demands his resignation and the President said we just couldn't do it, and the President was going to see me at 11 tomorrow.

So I said, Well, the President knows all about it. Early said, He says he has never heard of it. And I said, Well, I guess I had better come over. Can I see the President right away?

I am telling you just what happened and it's triple confidential.

He said, Come on over. So while I was en route, he phoned Mrs. Klotz to tell me not to come, but I was over there.

When I got there, Early said, Oh, the President remembering your coming, (I saw him at 5:20 on Wednesday) but he does not remember all of it, but he can't see you tonight. So I said, Well, that's all right.

I said, I just want to tell you that I saw the President; very carefully checked the whole thing with him, and after getting his entire approval we took it up with F. D. I. C. on Thursday and they voted to give Diggs and Oppgaard a job. I think they are pretty luck. I said, Furthermore, I am doing it at Mr. Delano's request

-2-

because he can't afford to take the risk of leaving that job unprotected.

Then I went ahead and tried to tell Early some of the troubles we were up against. Well, he said, it's the darndest thing he had ever heard. And I said the President had not had any bank troubles in five years and what I am trying to do is keep him from having them and I checked this very, very carefully with him and he approved it and, I said, I even mentioned it at Cabinet today. He said, Fine.

Well, then, I showed Early this ticker, which is 3:38 p. m. and said Marshall Diggs had resigned. I said, What are you doing to do about that? He says, Don't do anything. Let it ride. Tell Herbert Gaston not to talk to any newspapermen; that he has gone for the day.

So then I let him read the copy of the press release which I said had Mr. Diggs' approval. And that amazed him still more! So I let him see the two resignations. And I let him see the A. O. Stewart resignation and told him a little bit about that. And I again impressed on him that what I was trying to do here with the help of you gentlemen was to keep the Pacific Coast from going to hell. I repeated the fact that you (Mr. Delano) simply did not want to have that office unprotected during your absence.

So he did not say much. But guessing a little bit -- and too, I think what happened, Diggs got to Steve Early and poured this all into his ear, what a terrible person I was, etc., turn him out on the streets. I said, I think Diggs is very lucky. He has three months to turn around in at the same salary.

So I have been thinking about it. What I thought was this -- I don't think I will have any trouble, and I thought I would send the President tonight a copy of the summary on the Anglo-California, so that he could see something of the situation.

Then Early said, Well, maybe the thing for the President to do tomorrow is just to shake hands with Diggs and congratulate him that he has a job with F.D.I.C. So I said, Well it is unfortunate the President has to do this.

-3-

Then the reason I sent for you people was this: what I thought was, if I am blocked and what he told me was he had to keep Diggs until you (Delano) went in, then what I want you to sleep in is: O. K., I will swear Preston Delano in Saturday morning. And let the President square it with Fahey. You can sleep on it. I don't want you to answer tonight, but I do tomorrow morning. But the more I hear, when I read this thing today, the more I see and hear, the more shocked I am. I don't know how it affects you.

Mr. Smith: It's terrible. You are justified in the position you have taken.

HM, Jr: Now if, in order to take care of a fellow who used to be a salesman earning \$2,000 or \$3,000 a year down in Texas, by the name of Diggs, just because he happened to be a classmate of O'Connor, if he throws enough weight around town that he is to be offset by the terrific situation of these two banks, then I am going to say, 'All right, Mr. President. If you don't -- I don't want to say it's your responsibility and I shift it to you -- I don't want to do that. The man looks terribly tired tonight, big black rings under his eyes; he has just had a let down. He looks so terrible, and I don't feel so hot myself! But he looks something awful and I don't want to say to him, All right, it's your responsibility; you handle the banking situation. All right, Mr. President, if you don't want to take Delano's and my advice on this thing, although I urge it most emphatically, then I go back and swear in Preston Delano. I don't want you to have an answer tonight, but I would like to have you here at ten o'clock.

Mr. Delano: I can give you my answer. I think if this thing is of such great public importance, it seems to me there is nothing I can do but be sworn in, but the thing I would request is that you explain it to Mr. Fahey.

HM, Jr: You are a man after my own heart, but I am not going to explain to Mr. Fahey. I will go down the line and across the way and take all the dirty work that goes and will as long as I am here, but if I have to swear you in, I am swearing you in to protect the depositors of these two banks and the reputation of the President.

-4-

Mr. Delano: No hesitation on my part and, if necessary, I will take all the trouble that goes with it, but I would like to have someone ....

HM, Jr: I will do all I can. I am not going to ask you to go with me to see the President. I will do that alone, but before we do it I am perfectly willing for you to go to the phone and explain it to the White House and let them take care of Fahey, but I want to be in the position that if this fellow is so important that they say to me, You can't swear in Upham until Delano is in, I say, 'All right, I will go back and swear in Delano, but I want to move like that (snaps fingers), but this, I think it won't be necessary. I think when the President is rested and after he gets this report which I am going to send over to him now ...

Mr. Oliphant: And sees those papers.

HM, Jr: But what's his name took great time to read this stuff -- Early. He read all this. And the fact that he said, Let this (ticker) ride -- it says "Marshall R. Diggs, Acting Comptroller of Currency since April, has resigned to return to private law practice, it was learned today." And Steve Early said, Let it ride.

I am tired and I may not be thinking straight. It always hits me below the belt, but am I thinking straight?

Mr. Oliphant: The first thing is we have a long time to go to work with Early and I think we ought to work out a solution.

HM, Jr: That's neither here nor there. I just mean that if, tomorrow, the President should take the position that he can't let Diggs resign and put Upham in until Delano comes in, should I say, 'All right, Delano goes in today.' John?

Mr. Hanes: I agree with you. I think you are right.

HM, Jr: Tom?

-5-

Mr. Smith: You can handle the conversation so it isn't forcing it on the President.

HM, Jr: Oh, no; the President when he is with me -- all week I have seen him at least once a day and talked with him two or three times a day on the phone and nobody could be sweeter than the President has been when you consider the strain he has been under.

He did not originate this thing. This was originated by Early. Diggs goes to see Early. Early is his pal, so I understand. He tells him what a so-and-so that fellow Morgenthau is; how he is kicking him out on the street -- this is all conjecture -- and the President said 'Terrible, I never heard of this' and then suddenly remembered, 'My God! Henry told me all of this.' Just like the other day, 'he wouldn't spit in O'Connor's eye' and the next morning he spits! So I figure by tomorrow morning he will spit. Most likely ran out of spit! Am I thinking straight?

Mr. Smith: I think you are right in what you are doing. I think you are thinking straight.

HM, Jr: But I wanted to be sure of you (Delano).

Mr. Delano: I am willing to be laid on the cross.

HM, Jr: Well, you aren't being laid on the cross. You are only going in two or three weeks early. The cross is no more, how shall I say it? -- it won't be any heavier to bear tomorrow than on the 23rd.

Mr. Delano: I have certain respect for my people.

HM, Jr: Oh, well! If I swear you in, you are the Comptroller. You go back and spend your mornings over there and your afternoons here.

Mr. Delano: I can explain it to them.

HM, Jr: You accomplish the same thing, except you have to come over here in the afternoon to sign your mail. That's the only thing. Let Cy be your cross bearer. Diggs has painted a terrible picture. And, as I say, I got through and I said to Early, 'I think I have been darn nice to that fellow.'

-6-

Mr. Delano: Didn't Steve agree with you on that?

HM, Jr.: When I got through he said yes, but you see what he told the President -- I could tell he was, how stunned he was with all of this and what I was telling him was new.

Let me ask you a question. Were you helpful in getting that O'Connor thing released to Early?

Mr. Delano: No, sir, absolutely no.

HM, Jr.: Then, if that was released without any pressure .....

Mr. Delano: As a matter of fact, the only thing I ever did, I asked Frederick Delano to ask the President to explain to Mr. Fahey the reason why this was being done.

HM, Jr.: Then I should say the chances are four to one I will get a call at nine o'clock tomorrow morning to release the thing.

oOo-oOo

*Diggs Reported Resigned*

MARSHALL R. DIGGS, ACTING COMPTROLLER OF CURRENCY SINCE APRIL, HAS RESIGNED TO RETURN TO PRIVATE LAW PRACTICE, IT WAS LEARNED TODAY.

9/30-8335P

LEAD DIGGS

IT WAS LEARNED THAT C. B. UPHAM, ASSISTANT TO SECRETARY MORGENTHAU, WILL SUCCEED DIGGS AS FIRST DEPUTY COMPTROLLER OF THE CURRENCY.

PRESIDENT ROOSEVELT HAS APPOINTED PRESTON DELANO, A DISTANT RELATIVE, TO THE POST OF COMPTROLLER BUT DELANO HAS NOT YET TAKEN THE OATH. DELANO SUCCEEDS J. F. T. O'CONNOR WHO RESIGNED LAST APRIL.

9/30-8335P

September 30, 1938

My dear Mr. President:

I am sending you herewith a confidential memorandum of a digest of the most recent report on the Anglo-California Bank.

Needless to say, I am terrifically disturbed at the condition of the Bank as shown by this report.

We are proceeding as rapidly as possible in order to protect the depositors.

Yours sincerely,

The President,  
The White House.

September 30, 1938

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We are proceeding as rapidly as possible in order to protect the depositors.

Yours sincerely,

The President,  
The White House.

RE ANGLO-CALIFORNIA BANK

October 1, 1938.  
10:00 a.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mr. Smith  
Mr. Delano  
Mrs Klotz  
Mr. Foley  
Mr. Upham  
Mr. Gaston

H.M.Jr: what do you say, boys?

Oliphant: I've asked - I'd like to make a speech.

H.M.Jr: Go ahead.

Oliphant: I feel one coming on.

H.M.Jr: Pardon?

Oliphant: I feel one coming on.

H.M.Jr: For God's sake make it.

Smith: Speech or crisis?

Oliphant: What?

Smith: Speech or crisis?

Oliphant: No, seriously, I thought a good deal last night about our talk here when we were all together, and there are some phases of it, just here in the family, that disturb me ....

H.M.Jr: No.

Oliphant: ... after I thought about it.

H.M.Jr: Is that so?

Oliphant: That's right. There was a general ....

(Upham comes in)

H.M.Jr: Come in, H. B.

Upham: Sorry.

-2-

Oliphant: Seemed to be an assumption among some that - well, when a bank is in difficulty the whole thing sort of ought to be handled so that the - oh, the directors - well, they ought to be handled - I'll exaggerate now - sort of like children, and the management and so on ought to handle this thing, have it all cleaned up, before they get into it too deeply.

And then two or three references were made to the fact - "Well now, if you do so and so, these directors will go right to their lawyers." Well, they ought to go right to their lawyers if they're following the spirit not only of the law but of the whole mechanism for bank supervision, because what the law contemplates is that the responsibility for the - ultimate responsibility for the management of the bank shall be cast upon a group of reputable and responsible citizens in the community who are the type of man who can have legal counsel, and we ought to work with rather than against those people. And we've had a striking demonstration of how wholesome that law is which represents - it's not an idea spun out of somebody's head, it's the accumulation of a hundred years of experience.

Now, take Joe Schenck in connection with Bank of America. He takes the advice of his lawyer and moves in our direction, becomes our ally.

H.M.Jr: You through?

Oliphant: No.

H.M.Jr: I'm crazy to answer you.

Oliphant: More specifically, it gets down to a question as to how that meeting is to be handled that you're going to have out there. If you go out there and paint the picture of this bad condition of the bank, which will be news to some of the directors, you'll extinguish the - and if at the same time Fleishhacker brings on a plan that instantly removes him from the danger, the tendency will be to swallow it whole without really considering whether these people ought to go ahead and run the bank, and so on, and I just didn't like that in general.

H.M.Jr: Now let's see if I got it straight. The point that you're making is ....

-3-

Oliphant: You're not serious this morning. I made my speech at the wrong time.

H.M.Jr: ... that somebody hinted that you mustn't consult your lawyer, and you can't let that pass.

(Hearty laughter)

Oliphant: I can't - it does us out of business.

H.M.Jr: I get the idea. And if we let it grow, first thing you know we won't consult our lawyers, and here's an example, and somebody was daring enough to say,...

Oliphant: ..."Don't consult the lawyers."

H.M.Jr: Yes. "If we did this, the directors might consult the lawyers." Therefore, you got out a list of the American Bar.

Oliphant: Figured on how you're going to buy shoes for the baby.

H.M.Jr: Yes, sir.

Oliphant: And if you're going to do the lawyer out of business.

H.M.Jr: My man looks after his old guild first.

Oliphant: Got to stand together.

H.M.Jr: Absolutely.

Well, I think there's something to it, but I don't think it's anything to get worried about. I mean it hasn't grown so that - I mean we ought to get a presidential proclamation.

Oliphant: It must be Saturday.

H.M.Jr: It is.

Oliphant: I refuse to ....

H.M.Jr: The fellow consulted his lawyer and Herman gets worried.

Well now, listen, gentlemen, while Mr. Oliphant is in such a good humor, Mr. Mortimer Fleishacker is

-4-

outside, and why not ask him to come in while you people are here? He said he just wants to see me. I think it might be a very - I didn't know he was coming, and here I am, and it might be a very nice demonstration. He's going to go back, and we'd say we were just discussing bank matters and we'd be very glad to have him drop in and shake hands if he's here, and go out.

Delano: (Nods yes)

H.M.Jr: Huh? What do you think?

Smith: Probably the best thing that ever happened to you, because he can't - he won't say anything ....

Delano: Of course, I think that's the idea, isn't it?

H.M.Jr: Oh yes. But also we're considering bank matters.

Hanes: I think it's a good idea. Let him come in.

H.M.Jr: Don't you think so? Why not? Simply say that I'll interrupt my meeting; it so happens we're having a meeting on bank matters right now, and we're glad to have him come in for a minute, even if he hasn't got his lawyer.

Oliphant: Well, I think you're probably right. The other side of it is, if you want to look at it for a moment, it puts him in a position to go back and represent to the directors that he is in direct contact with the Secretary and so and so.

H.M.Jr: And the alternative is that "I went to see the Secretary of the Treasury and he refused to see me," which I think is worse.

Oliphant: Right.

H.M.Jr: I think it's very fortunate.

Kieley, you tell Mr. Fleishhacker that I'm having a meeting on bank matters, but I'll be glad to interrupt it and let him come in for a few minutes. I'm having a meeting on bank matters and I'll be glad to have him come in and shake hands. I'm glad to interrupt the meeting for him.

-5-

This is very funny. You know, lots of funny things this morning - God, that lawyer thing, that's wonderful.

Foley: (Laughs)

(Fleishhacker comes in)

Fleishhacker: Good morning.

H.M.Jr: Good morning.

F'hacker: I don't want to detain you. I know you're busy.

H.M.Jr: Do you know these gentlemen? Mr. Upham - Delano - Hanes - Mr. Foley, Mr. Oliphant.

F'hacker: Good morning, gentlemen.

H.M.Jr: Mrs. Klotz.

F'hacker: How do you do.

Klotz: How do you do.

F'hacker: I didn't want to take up too much of your time, Mr. Morgenthau, but I'm leaving for the Coast this evening and I wanted to pay my respects and tell you this matter we've been talking about - we're going to get right at it. I don't know if there's anything in regard to my matter that we could discuss here.

H.M.Jr: I don't think so.

F'hacker: I think you have that in hand.

H.M.Jr: I don't know, but I think we'll wait until you get back.

F'hacker: Well, I'll be out there tomorrow morning at 11 o'clock according to the program and go right into matters and keep your men posted.

H.M.Jr: All right.

F'hacker: I just came in to shake hands. I haven't met you since we met in San Francisco.

-6-

H.M.Jr: When was that?

F'nacker: That was some years ago before you were in this position, and you had a luncheon at the Union Pacific Club.

H.M.Jr: Oh yes, when I was in Farm Credit.

F'nacker: You gave a talk then. Since then your father was out there; I met him.

Well, I just wanted to pay my respects. Very kind of you to see me. Sorry to have disturbed this meeting, gentlemen. Goodbye.

H.M.Jr: Goodbye.

(Fleishhacker leaves)

That's what you call in the dry goods trade "window dressing."

Smith: What do you know about the dry goods trade?

Klots: I feel sorry for him. I do.

H.M.Jr: I feel sorry for his children. Wasn't his boy one of the great halfbacks at California?

Hanes: Quarterback at Beland Stanford.

Foley: Yes, All-American too.

H.M.Jr: It was his son.

Smith: He's been a good citizen, this man.

H.M.Jr: Oh, has he?

Smith: He's been a good citizen.

H.M.Jr: But his son.

I suppose you all - where's Gaston? - saw the blurb this morning that they have out.

(On phone) Ask Mr. Gaston to come in.

-7-

I'll read it.

"9.22. Secretary Morgenthau, United Press learned, has forced the resignation of two top-ranking officials to effect a personnel shake-up in the office of the Comptroller of the Currency.

"Through his Special Assistant, 'Hard Boiled' Upham, Morgenthau demanded the resignations of Acting Comptroller Marshall Diggs and Deputy Comptroller G. J. Uppegard. It was understood that he would name Upham as First Deputy Comptroller, Diggs' regular position.

"Treasury officials declined to discuss the changes, but in the background there are differences in banking ideology between ...."

Delano: What's that last?

H.M.Jr: "...there are differences in banking..." - I pronounce it "i-de-ol-o-gy."

Oliphant: That's right.

Delano: I didn't catch the word.

H.M.Jr: I didn't either. "...there are differences in banking ...."

Smith: Maybe Herbert can answer that.

(Gaston comes in)

H.M.Jr: Hello, Herbert.

H.M.Jr: "Treasury officials declined to discuss the changes, but in the background there are differences in banking ideology..." "Qu'est-ce que c'est que ça?"

Oliphant: Policies.

Gaston: That's too difficult a word. Different ideas about policy in regulating banks.

H.M.Jr: "... between the offices of the Secretary and the Comptroller.

-8-

"The two retiring officials, whose original appointments were recommended by former Comptroller J. F. T. O'Connor, were given 24 hours to quit their posts. The demand was made verbally by Upham." Boy! Old H. B. himself!

- Upham: Just so you keep it "H. B."
- Gaston: Sandy Klein called me up last night and I gathered from what he said he got the idea from somebody that Mr. Upham was being forced on Mr. Delano and was not Mr. Delano's choice.
- Delano: I think the attitude that I collect from some of the newspapers - rather indiscreet - ...
- H.M.Jr: Discreet or indiscreet?
- Delano: I guess they'd be indiscreet. .... that hereafter the Comptroller is to be a very small adjunct of the Secretary's office and that you would - you had swallowed the whole thing. I just ....
- H.M.Jr: Well, you might tell them that they've got the story of Jonah and the whale mixed up.
- Delano: I think you can rely on my discretion.
- H.M.Jr: If it's true I think Jonah was spit out, wasn't he?
- Delano: I think he was.
- H.M.Jr: Well, I'm not going to get in the position where you can spit me out.
- Delano: I was more amused than anything else by it.
- H.M.Jr: No, no, I've had indigestion and I'm very rapidly getting over it.

RE ANGLO-CALIFORNIA BANK

October 1, 1938.  
11:45 a.m.

Present: Mr. Hanes  
Mr. Taylor  
Mr. Oliphant  
Mr. Smith  
Mrs Klotz  
Mr. Upham  
Mr. Foley  
Mr. Delano

H.M.Jr: All right, everybody.

Mr. Early just phoned. President sent me a message proceeding along the lines that I wanted. That finishes it.

So first I congratulate you (Upham).

Upham: Thank you.

H.M.Jr: God help you.

Where's that letter? Isn't it ridiculous?

Gaston: Yes, it is ridiculous.

H.M.Jr: Here I could have been up on the farm.

Smith: The price of democracy, though.

H.M.Jr: Also the letter I sent over last night helped a little.

Gaston: Still gives us an opportunity to breathe a sigh of relief.

H.M.Jr: The President propositioned me, gave me his word. He never yet broke his word; I'm sure he never will.

Let's have what's-his-name. (On phone) Tell Thompson to come right in, please.

We'll just keep a record. Here's your commission. (Signs it)

Gaston: There's a letter to Biggs. General Counsel hasn't seen it.

-2-

H.M.Jr: "I thank you for your letter of September 30 tendering your resignation as First Deputy Comptroller of the Currency. I appreciate your courtesy in taking this action, so that the newly-appointed Comptroller of the Currency will be free to approve his own Chief Deputy."

Oliphant: How does that start - first word?

H.M.Jr: "I thank you for your letter of September 30."

Oliphant: That's extraordinary.

H.M.Jr: What?

Oliphant: That's extraordinary.

H.M.Jr: Why?

Oliphant: Thank a man for resigning?

H.M.Jr: How would you say it?

Oliphant: Why, "I have your letter of September 30."

Klotz: That's right.

Oliphant: Small matter, but ...

Taylor: Yes, sir.

Klotz: I think so.

H.M.Jr: What?

Klotz: There's something to that.

H.M.Jr: Which way?

(Thompson comes in)

Klotz: His way.

H.M.Jr: All right. Well, I had another suggestion, as long as we're going to change it.

-3-

Sit down, Thompson, you make me nervous. I mean you've got to keep track of all these things. Did you shake hands with the Acting Comptroller?

(Thompson shakes hands with Upham)

Now, he's just born. Look at the top of his head. See that nice yellow fuzz?

Upham: Is there a soft spot there?

H.M.Jr: You know how they all have them at that age. Right color, too. (Hearty laughter)

Klotz: I think you're a bunch of beasts.

H.M.Jr: Well, this is all ....

Upham: No wonder you said God help me.

H.M.Jr: Listen, Herbert, what I was going to say - you can say this thing and save me time before you show it to my lawyer - paragraph: "I am glad to be able to inform you that at my suggestion the Federal Deposit Insurance Corporation will offer you a position at the same salary for the next three months."

Olyphant: That's right, you make a record of your being reasonable.

H.M.Jr: You think about it.

Taylor: (Nods no)

H.M.Jr: Come on, Wayne.

Taylor: No.

H.M.Jr: No?

Taylor: No, I don't think that belongs in that letter.

H.M.Jr: Well, anyway - I'm not terribly serious - I'll take it at sharp 12:30; I'll sign it.

Gaston: Right.

H.M.Jr: Please. Now what else?

-4-

But you fellows can go back - I throw out these suggestions, Wayne, and they go in, emasculate it, come back and tell me what it is - perfectly - and I've agreed every time.

And you should go ahead with the press release, give out our press release. There's been no official notice of it.

Gaston: No, we should give out our press release.

H.M.Jr: Early said we should give out our press release.

Gaston: It's all right in the form it is. And you're not going to swear in Mr. Delano today.

H.M.Jr: No, no, this fellow (Upham). Thompson, does he have to be sworn in?

Thompson: Yes.

H.M.Jr: Get a Bible quick, and not the lawyers'.

Upham: Do you have to have that bond over here?

Thompson: Yes.

Upham: He said he could be over here in five minutes.

H.M.Jr: I've ordered lunch at 12:30. I'll be up here a quarter to one. I'll sign that resignation. We'll do this thing. And call up the Coast Guard and get the band over here. Quarter of one. How's that?

Upham: That's all right, I'm sure.

H.M.Jr: Now, is that all on the machinery, Thompson?

Thompson: Yes, sir.

H.M.Jr: To keep you fellows informed, at seven minutes past 11 Mr. Jesse Jones came in to see me and said that we couldn't be so rough and precipitous with this thing, and he spent all afternoon with Mr. Mortimer Fleishhacker - I'll try to give you the figures; they're new to me - that he, Jones, had two and a

-5-

half million dollars of preferred stock in this bank and he thought that he could get - let's see if I got this right - the Standard Oil Company to loan the Fleishhackers another two and a half million, and then he would take that two and a half and buy the other two and a half preferred that the Standard Oil now has. In other words, he'd end up with five million of preferred. The details aren't important. But what he wanted was to give them time to work it out.

And I said, "Jesse, I'm very sorry. In the meeting yesterday we all agreed. You were the first man to agree to this."

He said, "Well, how you going to do it?" He told me now he thought we were going to do it - somebody's been talking to Jesse - and I said, "No, that's not right." I sketched it to him. I said, "I remember..." - the point that he was making then was that this should be called in the regular way, and after thinking it over yesterday at the meeting we said we'd send a notice and we'd let the Chairman of the bank call that meeting. That was said here yesterday: that the notice would go to the Chairman of the Board and he would have a chance to call the meeting. Now the way you people were talking today was not that way, was it?

Delano: No.

Gliphant: I thought I raised the point, if I recollect: "Well, do you want to give anybody advance notice like that?" and I thought it was agreed to we didn't want to give anybody advance notice.

a.r.Jr: No, the final thing was - listen, if it isn't terribly important - Jesse comes over with a program, he wants me to stall on the whole thing. I said, "We'll send a letter to the Chairman, simultaneously sending a letter to all the other people, the directors, just the same, except that the call of the meeting will be by the Chairman." And that tickles him, and instead of stalling the whole thing he gets a little something. Is it important?

Delano: + don't think so.

-6-

- H.M.Jr: It's not important. And my honest recollection was of yesterday, and I told him that - was that we would direct the Chairman of the bank to call it, because Tom Smith said, "Let's do it in the regular way."
- Smith: Herman took - didn't think that should be done.
- H.M.Jr: Well, I told Jesse that that was my recollection. Now, unless it's terribly important - I started with Jesse that he wanted us to postpone practically the whole thing and give him time.
- Delano: Right.
- H.M.Jr: And he ended up by my telling him what I thought we'd agreed to, that a letter would go to the Chairman of the bank, he'd get it Monday morning, but in the same mail will go a copy... Now, is it very important?
- Oliphant: No, that takes care of everything, if it goes on to all the rest of them. If they get it in the same mail, there's no advance notice.
- H.M.Jr: We started with that, end with that. Seems awfully unimportant, and it really was my recollection. Does it make a hell of a lot of difference?
- Delano: It's close enough.
- H.M.Jr: What?
- Delano: It's close enough.
- Smith: You're going to send a letter to Mortimer Fleishhacker ...
- H.M.Jr: ... directing him to call a meeting.
- Smith: And you're going to send each director a copy of that letter. It's ...
- Oliphant: It's close enough. It does the same thing, because what we wanted to avoid was tipping anybody off in advance.
- H.M.Jr: In fact, I don't think - understand who was going to call the meeting the way you had it.

-7-

Delano: Meeting was called by the Comptroller. It doesn't make any difference.

Upham: It was suggested that the meeting take place.

H.M.Jr: Well, if it's not important ....

Delano: It's not.

H.M.Jr: It's a big town, it's a democracy, and if it's unimportant I'd do that, because Jesse had it all fixed and - that he wanted to go ahead, and in fact he practically made a deal on this thing, and so forth. And you see, what's happened to Jesse - in the middle of his negotiations with Fleishhacker for the first time the Treasury family said "Halt," you see? So ....

Delano: Said the same thing out there talking to me.

H.M.Jr: What'd he say?

Delano: Same thing.

H.M.Jr: What?

Delano: Didn't want us to rush this thing.

H.M.Jr: Didn't want us to do anything. Well, he's ended up by making a suggestion which I think is following the lead that Smith, as I remember, gave him: that this is doing it in the regular way. Now, the only thing that isn't regular is that the call to the Chairman - that every director gets a copy of it.

Smith: That's right.

Oliphant: That takes care of all I have.

Delano: Is this a request or instruction to call this meeting?

Taylor: Doesn't make any difference, does it, really?

Delano: I don't know.

Oliphant: No, I should think the request - it's an instruction, but of course I'd put it in the form of a request.

-8-

- Delano: That's right.
- Smith: You request it and say that your representatives will be there at that time for the purpose of attending the meeting.
- H.M.Jr: Now, so there can be no possible question, the letter should be written, Mr. Upham will be sworn in at sharp quarter of one. I'd notify the Comptroller's office, notify the photographers and the press, and we'll give out the statement. And then after - Mr. Delano will be here, stand at my side - and then after the ceremony then you sign, but make sure you're sworn and everything before you sign, because - see what I mean?
- Upham: Do we have to have the press and the photographers?
- H.M.Jr: Oh, they want to see that.
- Gaston: We'll give out the release at a quarter to one.
- H.M.Jr: You see, I can't - Delano and I are in the same shape (baldness), so I've got to see somebody .... Incidentally, I want you (Delano) to watch it; if you see something growing, let us know.
- Delano: I understand he's working on it, but I have no faith in the matter.
- H.M.Jr: Well, I'm tickled to death. I just want to say, seriously, as I told you once - the President had a chance to sleep on the thing and recollect what he had told me - there was no reason to worry; it was just a ... And Mr. Farley called me up a few minutes ago: why hadn't I congratulated him on New York State? And I took the time to congratulate him. I then used the opportunity to explain this whole thing - whole big episode to him, and I thought I was saving him and myself a little possible embarrassment, and his answer was, "Well, anything that's as serious as that" - he said, "We mustn't let anything reflect on Henry Morgenthau, Jr." He said the only thing to do was just go ahead. That was Farley's reaction.
- Delano: I have a note from Mr. Farley.
- H.M.Jr: Well - but if you gentlemen don't mind being back a quarter of one, we'll launch Upham.

CABLE ADDRESS - BAMEICAL

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# Bank of America

NATIONAL TRUST & SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 1, 1938.

Hon. Comptroller of the Currency,  
Washington, D. C.

Dear Sir:

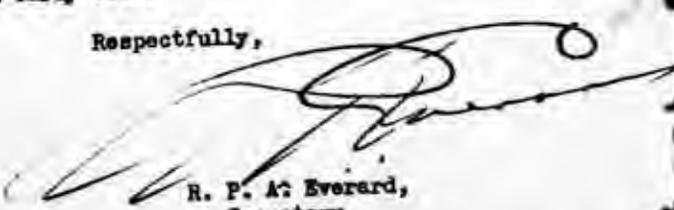
Please be advised that, pursuant to the request of Mr. Marshall R. Diggs, Acting Comptroller of the Currency, a Special Meeting of the Board of Directors of Bank of America N. T. & S. A. was held on September 30, 1938, for the purpose of considering and taking action upon a communication addressed to the Board of Directors of this Association by Mr. Diggs under date of September 23, 1938.

All the Directors were present with the exception of one who is now in Europe and two who are in the eastern part of the United States.

The communication referred to was considered at length and in detail, and a special committee consisting of nine members of the Board was appointed by resolution, a copy of which is enclosed.

The Committee was instructed to act promptly in order that the Board might respond specifically to said communication at an early date.

Respectfully,



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

Enclosure

WHEREAS, Marshall H. Diggs, Acting Comptroller of the Currency, has sent to each member of the Board of Directors of Bank of America National Trust and Savings Association a communication under date of September 23, 1938, directing the attention of the members of the Board to the report of examination of the Bank of America, completed September 15, 1938, and to the examiner's comments under various specific headings; and

WHEREAS, Mr. Diggs has requested the Board of Directors to consider his letter at a special meeting of the Board called for the specific purpose and to reply in detail to the matters contained therein;

NOW, THEREFORE, BE IT

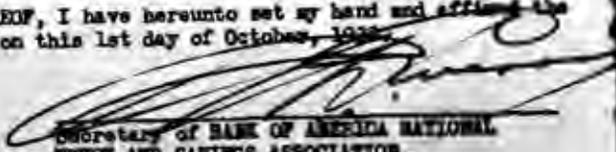
RESOLVED, by the Board of Directors of Bank of America National Trust and Savings Association at a special meeting of said Board called for the 30th day of September, 1938, in compliance with the request of Mr. Diggs, Acting Comptroller of the Currency, and in accordance with the By-laws, a quorum being present and voting affirmatively hereon, that the following members of the Board of Directors

Marshal Hale  
C. H. Baker  
Dr. G. E. Cagliari  
F. W. Flint, Jr.  
Dr. A. H. Giannini  
C. H. Hawkins  
H. A. Messera  
Wm. Wallace Main  
Dr. C. J. Sullivan

are hereby appointed, authorized and directed to analyze all of the items contained in the report of the examination of this Association completed September 15, 1938, and the letter of the Acting Comptroller of the Currency of September 23, 1938, and submit a written report of facts found by such analysis for the information, review and consideration of the Board of Directors so that the Board, with the complete statement of facts before them, may reply in detail to the letter of the Acting Comptroller of the Currency and take all necessary and constructive steps required by the facts.

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said bank at a special meeting thereof held on the 30th day of September, 1938, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted unanimously in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 1st day of October, 1938.

  
Secretary of BANK OF AMERICA NATIONAL  
TRUST AND SAVINGS ASSOCIATION.



REGISTERED	NO
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Comptroller of the Currency  
Washington, D. C.

226

IF NOT DELIVERED IN FIVE DAYS RETURN TO  
**Bank of America**  
 NATIONAL TRUST ASSOCIATION  
 P. O. BOX 3152  
 SAN FRANCISCO, CALIFORNIA

**REGISTERED MAIL**  
 AIR MAIL  
 TODAY

REGISTERED AIRMAIL

13044

# Bank of America

NATIONAL BANKERS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 4, 1938.

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

Dear Sir:

On behalf of the Board of Directors of Bank of America N. T. & S. A., I respectfully request that any communications from your office hereafter addressed to the Directors of said Association be addressed to such Directors in care of the Secretary of the Board of Directors of said Association, No. 1 Powell Street, San Francisco, California; provided such communications require the personal attention of a Director of said Association, and are confidential and of a nature similar to communications recently forwarded by your office to each Director of said Association.

The Secretary has been directed by the Board of Directors to effect the delivery to each Director personally of any such communication addressed in care of the Secretary and received by him.

In support of this request, and at the direction of the Board, I am forwarding to you herewith a certified copy of a resolution adopted at a Special Meeting of the Board of Directors held on September 30, 1938.

Respectfully,



R. P. A. Everard  
Secretary  
Board of Directors

Enclosure

228

WHEREAS, Mr. Marshall R. Diggs, Acting Comptroller of the Currency recently sent to each Director of this Association certain communications commenting upon reports of examination of this Association and upon other matters relating to the affairs of this Association; and

WHEREAS, it has come to our attention that in some instances said communications have been opened and read by individuals who customarily handle mail for certain Directors; and

WHEREAS, in view of the confidential nature of said communications this Board of Directors considers the circumstance of such communications having been read by someone other than a Director of this Association extremely unfortunate and one that may result in injury to the welfare of this Association;

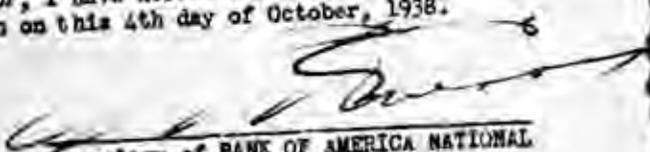
NOW, THEREFORE, BE IT

RESOLVED, that for the purpose of protecting the interests of this Association, its depositors and stockholders, the Comptroller of the Currency be respectfully requested to hereafter address any confidential communication requiring the personal attention of a Director of this Association, and of a nature similar to the communications referred to in the foregoing preambles, to such Director in care of the Secretary of the Board of Directors of this Association at No. 1 Powell Street, San Francisco, California; and said Secretary is hereby directed to effect the delivery to each Director personally of any such communication addressed in care of the Secretary and received by him; and

FURTHER RESOLVED, that the Secretary of the Board of Directors of this Association be, and he hereby is, authorized and directed to make such a request to the Comptroller of the Currency on behalf of the Directors of this Association and to forward to said Comptroller a certified copy of this resolution.

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said bank at a special meeting thereof held on the 30th day of September, 1938, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted unanimously in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 4th day of October, 1938.

  
Secretary of BANK OF AMERICA NATIONAL  
TRUST AND SAVINGS ASSOCIATION.



TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY

WASHINGTON

October 3, 1938

ADDRESS REPLY TO  
COMPTROLLER OF THE CURRENCY"

Mr. Mortimer Fleishhacker,  
Chairman of the Board of Directors,  
Anglo California National Bank,  
San Francisco, California.

My dear Mr. Fleishhacker:

A copy of my letter of criticism based upon the report of the latest examination of your Bank is attached.

It is my desire 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:

"Sec. 93. Violation of provisions of chapter;  
forfeiture of franchise; personal  
liability of directors

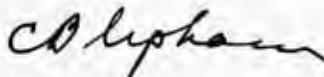
"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such 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

- 2 -

shareholders, or any other person, shall have sustained in consequence of such violation. (R.S. sec. 5239; Mar. 3, 1911, c. 231, sec. 291, 36 Stat. 1167.)" (U.S.C. title 12, sec. 93.) (Underscoring supplied)

A complete copy of the report referred to in the first paragraph of this letter has been sent to, and is open for your inspection at, the main office of the Anglo California National Bank, San Francisco, and at the office of the Chief National Bank Examiner, Room 1103, 155 Montgomery Street, San Francisco. Your attention is directed to the comments, criticisms and conclusions of the examiner contained on page two and inserts (1) to (17) of the report.

Very truly yours,



C. B. Upham  
Acting Comptroller of the Currency



TREASURY DEPARTMENT  
 COMPTROLLER OF THE CURRENCY

WASHINGTON

ADDRESS REPLY TO  
 COMPTROLLER OF THE CURRENCY"

October 3, 1938

Board of Directors  
 Anglo California National Bank  
 San Francisco, California

Gentlemen:

The current report of examination of your bank has been received and given careful consideration. A copy of the report of examination has been transmitted to the Board of Directors. The report reveals the continuation of a previously criticised highly unsatisfactory condition in the bank as well as new violations of law since the previous examination. You should study carefully the examiner's criticisms as to matters requiring attention, as set forth on page 2 and inserts 1 to 17 of this report. Over \$47,000,000 of the total resources of the bank are under criticism. This sum is approximately three and one-half times the amount of the bank's sound capital structure. The purpose of the criticisms in the report and of the criticisms set forth in this letter is to assist the Board of Directors in a constructive manner to protect the interests of the depositors as well as of the shareholders of your bank.

From the schedule under "Loans and Discounts" on page 2 of the report, it is noted that approximately 35% of total loans is classified slow; approximately 6% doubtful and .69% loss, making a total of approximately 41% of the total loans subject to adverse classification. Loans to affiliates, officers, directors and corporations in which they have a substantial interest are scheduled as follows: slow \$16,825,508.80; doubtful \$3,728,430.27; loss \$393,539.30, and previously charged off \$5,576,235.62. The large amount of doubtful included in this classification, which contains substantial potential losses, makes it apparent that those responsible for the safe management of the bank are responsible for this serious problem. Therefore too much importance cannot be placed upon the necessity of immediate action and enforced correction of this long criticised condition.

On page 2, insert 1, the examiner has reported twenty large and wholly unwarranted lines of credit aggregating, after the elimination of duplications, a net amount of \$40,131,833.68, which is about 16% of

- 2 -

the total resources and approximately four times the common capital of the bank. In addition thereto, an aggregate of \$10,016,402.49 has been previously charged off on these concentrations. The highly undesirable nature of these concentrations is further emphasized by the recalculation of interest rates which shows an income loss of \$1,125,921.05 on the present interest basis as opposed to a 5% basis. This loss on these assets alone is approximately twice the amount of the annual dividend rate being paid on both the common and preferred stock issues in the amount of \$612,000.00. In this connection, attention is directed to the illegality of certain dividends heretofore paid, as herein later discussed.

There is scheduled on page 3, insert 3, of the report, borrowings of directors and corporations in which they have a substantial interest totaling \$16,018,518.50. Examiners and this office have given your problems considerable time and sympathetic cooperation during and since 1933, but the point has been reached when these large borrowings, which are 54.08% in excess of the common capital of the bank, must show immediate substantial improvement. The lack of progress made in improving and reducing this large concentration is indicative of the negligence of the bank's management. It is apparent that very little has been or is being accomplished by the management to relieve this situation and until such time as the active officers place their own borrowings in acceptable condition they will not be in position to enforce the same action on the part of the other offending directors.

On page 8, insert 1, there are scheduled two flagrant violations of Section 5200 of the Revised Statutes (U.S.C. title 12, sec. 84), prohibiting excessive loans, namely; the Dollar Steamship Lines, Incorporated, Limited, in amount of \$2,800,021.56 and the Herbert Fleishacker line aggregating \$3,473,442.26. The excessive loan to the Dollar Steamship lines had its origin in 1930 at approximately four times the legal loaning limit of the bank and it has not only been without reduction since June 1936, but no interest has been paid thereon since December 31, 1936. It is still \$905,021.56 in excess of the legal loaning limit and a new loan of \$250,000.00, not reflected by the report, was made during the examination to finance current operations.

The constantly excessive line to President Herbert Fleishacker reveals a net reduction of only \$89,936.81 since the preceding examination, and is still \$1,578,442.26 in excess of the legal loaning limit of \$1,895,000.00. It is wholly without a program of reduction other than from the proceeds of the supporting collateral in the event any should be sold, notwithstanding that during the examination of June 16, 1936 promise was made definitely to program this loan for reduction at the rate of \$50,000.00 monthly, and the M & H Fleishacker line, which is a component part of the excessive line, \$100,000.00 monthly.

- 3 -

The attention of the Directors and Executive Officers is called to the provisions of Section 5200 of the Revised Statutes, which prescribe the limits upon the amounts which a bank may loan to any person, co-partnership, association or corporation; the provisions of Section 5239 of the Revised Statutes (U.S.C. title 12, sec. 93), which provides in effect that the Directors knowingly approving any violation of the foregoing section will be held personally and individually liable for all damages which the bank, its shareholders or any other person shall have sustained in consequence of such violation; and the provisions of section 22(f) of the Federal Reserve Act (U.S.C. title 12, sec. 503) which provides in effect that if the directors or officers of any member bank knowingly violate or permit any of the agents, officers, or directors of the bank to violate section 22, or regulations made under authority thereof, every director and officer participating in or assenting to such violation shall be personally and individually liable for all damages which the bank, its shareholders, or any other person sustains in consequence of such violation; and the provisions of Section 22(g) of the Federal Reserve Act (U.S.C. title 12, sec. 375a) which prohibits loans of the type herein criticised by a member bank of the Federal Reserve System to any of its executive officers, and provides that any executive officer violating the provisions of same shall be subject to removal from office in the manner prescribed in Section 30 of the Banking Act of 1933.

On page 8, insert 2, there is a comparative schedule of "Loans to Bank's Affiliates," which shows that such loans at the date of examination aggregated \$15,874,436.01. The examiner states that the primary purpose of the major portion of the affiliates and their subsidiaries was to enable the management to speculate in stocks and bonds and loan money under broader corporate powers than those provided by the national and state banking laws. As a result, through the medium of unwarranted extensions of credit to the affiliates, the bank has suffered a present total loss of \$5,331,784.13, which is in excess of 50% of the common capital of the bank, without taking into consideration the income loss suffered by virtue of the compromised interest rates on the affiliate loans which average less than 1%. Arrangements should be made without delay for the liquidation of all the bank's affiliates.

Of the 520,000 shares of outstanding common capital stock of the bank, 195,965 shares are held as investments by the bank's own affiliates, carried on their books at \$9,748,836.73 and having a market value of \$3,723,335.00, or a loss of \$6,025,501.73; 30,618 shares are owned by a directors' corporation heavily indebted to the bank; 5,040 shares, taken D.P.C., are pledged by others as collateral to loans; and 1,414 shares are illegally held by the bank by reason of being carried in the investment account beyond the limitations prescribed by Section 5201 of the Revised Statutes (U.S.C. title 12, sec. 83). This block of stock is carried on the books at \$36,039.00 and at the time of examination had a market value of \$26,266.00 or a loss of \$9,173.00. It must be disposed of immediately.

- 4 -

The total of the foregoing is 233,037 shares or approximately 45% of the entire common stock issue. This represents an increase of 21,363 shares since the examination of November 10, 1934. Of this amount, 39,650 shares are pledged to the bank as collateral, and the loans secured thereby are entirely dependent thereon. The affiliated Anglo National Corporation is indebted to the bank in the amount of \$375,000.00 on an unsecured basis, and is the holder of 179,527 shares of the bank's stock. The net increase in total shares has been occasioned by its purchase of distressed stock on the open market. During the period covered the market has fluctuated from \$8.00 to \$33.00 a share, and as of the date of examination it was quoted at \$15.00 a share with low trading activity. Instead of endeavoring to relieve this unsatisfactory condition by disposing of the stock on the former rising market and thereby obtaining some highly desirable liquidation from the stagnant low interest affiliate lines, this condition has been aggravated.

Out of 204,132 shares of outstanding Class "A" capital stock of the affiliated Anglo National Corporation, 41,028 shares are held as investments by the bank's own affiliates carried on their books at \$1,566,933.30, and having a market value of \$675,539, or a loss of \$891,394.30; 25,891 shares of such Class "A" stock are owned outright by the bank at a book value of \$518,522, and have a market value of \$414,256, or a loss of \$104,266; and 9,968 shares are held as collateral to loans of others. The total of the foregoing is 76,887 shares or 37.66% of the entire Class "A" stock outstanding.

In addition, the entire 100,000 shares of Class "B" capital stock of the Anglo National Corporation outstanding are owned by the affiliated Consolidated Securities Company, and are pledged to secure its indebtedness to the bank. They are carried on the books of the affiliate at \$901,135.66, and are classified therein as having no market value, and the loss therein is not included in the above mentioned losses.

There has been an increase of 591 shares in the holdings since the previous examination. The market value of Class "A" stock has also fluctuated from \$7.00 to \$30.00 a share, and at the time of examination had a market value of \$14.00 a share. It is evident, therefore, that this unsatisfactory condition has been aggravated since the preceding examination.

As of the date of this examination the various affiliates of the bank have suffered a loss of \$7,021,162.03 on their holdings of the stock of the bank and of the Anglo National Corporation, a large portion of which has been charged off against the undivided profits account of the bank, by losses taken on the indebtedness of the affiliates of the bank.

- 5 -

On April 27, 1932 an entry appeared on the general ledger of the affiliated Consolidated Securities Company entitled "Syndicate participation - Herbert Fleishhacker" in the amount of \$590,550. This account was partially secured by 7,560 shares of bank stock and 3,334 of Anglo National Corporation Class "A" stock. The examiner states that a copy of the syndicate agreement cannot be located. The increased borrowings of the affiliate to enable it to carry this asset were not specifically approved by the directors, nor did they have knowledge of the transaction, as near as can be determined. The liability was shown in previous reports as a direct liability of Herbert Fleishhacker. On September 30, 1935 this general ledger entry was eliminated and the above mentioned stock, having a market value of \$213,155 at that time, was placed in the bond account of the affiliate at \$590,550, or \$377,395 in excess of the market value of same. The bank later absorbed this loss by charging off on the line of that affiliate, and the total charged off on this line aggregates \$1,327,743.56.

Of the total loans, approximately \$21,000,000 or 20.76% is secured by liens on real estate in various forms. Some of these are held and carried illegally. With approximately one-third of the real estate loans, in dollar amount, still subject to criticism following the liberalization of the laws governing real estate loans, it is imperative that these loans be given closer attention and supervision by the management with the end in view of insuring a more aggressive correction and collection policy on classified and non-conforming loans while conditions remain favorable, in order that they may be reduced to a minimum.

The "Other Real Estate" of the bank is carried in the loans and discounts of the bank through the medium of so-called sales of such real estate to the affiliated Progress Mortgage Company. No down payments are made by the Progress Mortgage Company and no obligation exists for future payments by that company other than payments resulting from proceeds of sales of parcels of the real estate. The terms and conditions under which this real estate is transferred to Progress Mortgage Company are such that this arrangement does not constitute a bona fide sale. This real estate should be shown as such on the books of the bank and so shown in future published reports of the bank.

Of the foregoing real estate, \$1,634,635.03 was acquired in violation of law, and a large portion of this has been carried far beyond the five-year limitation set forth in Section 5137 of the Revised Statutes (U.S.C. title 12, sec. 29). It appears from the examiner's comments that the only real estate disposed of during the past two years has been the more desirable and moderately priced residential properties. A review of the real estate now owned reveals that there is little of this type remaining and that future liquidation depends almost entirely on the sale of apartment houses, canneries, commercial and office buildings, hotels, summer

- 6 -

resorts, unimproved industrial sites, entire blocks of poorer located city lots, grain farms and large acreages of range land. It should be noted that 15 of the remaining 256 parcels are carried on the books at over 50% of the total investment in real estate. Too much emphasis cannot be placed upon the necessity for the management to review this account, revise sales prices to current type valuations and eliminate excess prices on the less desirable and non-productive holdings in order to stop the carrying charge losses thereon. Furthermore, a definite and acceptable program of liquidation must be consented to and the real estate carried in the name of the Progress Mortgage Company must be transferred back to the "Other Real Estate" account on the books of the bank since the present method of handling the same cannot be construed as a bona fide sale.

There has been a tendency in the bond account in general toward speculation for profit rather than investment for safety. Substandard investments in the approximate amount of \$9,000,000 are still present in the investment account. The character of the remaining assets of the affiliates is an additional indication of such policy. A bond trading account, which has been unusually active during the past years with substantially changing prices in the same grade issues, is maintained by the bank.

There have been 21 blocks of stocks and bonds having a book value of \$3,813,467.54 which have been illegally acquired. Of this amount \$1,983,167.00 is represented by 15 large blocks of stocks among which are included 1,414 shares of the bank's own stock and 24,688 shares of Class "A" common stock of the affiliated Anglo National Corporation carried at a combined book value of \$554,561. Although both stocks are listed on the local exchange a ready market has all but disappeared, the only real purchaser for either of the issues being the affiliate itself. The foregoing stocks and bonds were acquired in violation of either Section 5136 of the Revised Statutes (U.S.C. title 12, sec. 24) or Section 5201 of the Revised Statutes (U.S.C. title 12, sec. 83).

Stocks of corporations in which directors are interested are carried at \$343,622.00, of which \$135,186.00 is classified as slow and \$108,036.00 as loss. The six issues of bonds illegally acquired have a par value of \$2,352,500 and a book value of \$1,830,382.81, which is classified as \$1,796,931.81 slow and \$12,150.00 loss. With the exception of one defaulted issue, these bonds are entirely without a market and are thoroughly frozen and undesirable in nature.

- 7 -

Included in the stocks illegally acquired are four large blocks having a book value of \$776,464.45 and a market value of \$306,167.50, upon which a loss of \$470,296.95 has been estimated. This loss should not be charged off against the undivided profit account of the bank, but rather should be removed by the directors originally approving these illegal purchases.

Reference is made to page 2, insert 10, of the report in connection with the cancellation of 4 certain notes and taking of the supporting stock collateral into the assets of the bank at the face amount of the notes. There seems to have been no endeavor to collect any of these obligations from the makers. At the time they were taken over there was a market loss of \$2,072,422.20 in same, which the bank absorbed.

From time to time these stocks have been carried in the Trusteed Assets, in the bank proper, in the various affiliates, in the affiliated Progress Mortgage Company and they now appear in the bank again. Considerable liquidation has taken place in the interim and heavy losses have been sustained. Regardless of whether they were taken by the affiliates, they have been charged against the undivided profit account of the bank in the final analysis, by virtue of the heavy losses charged off on the lines of the affiliates. The entire group of illegal investments is classified as \$2,391,178.94 slow, \$53,560.00 doubtful and \$655,815.67 loss, which is equivalent to 65.12%, 13.06% and 22.06%, respectively, of the total assets so classified in the bond account. The attention of the directors is again called to their individual liability for any and all losses suffered by the bank on this transaction as provided by Section 5239 of the Revised Statutes (U.S.C. title 12, sec. 93).

There are 32 issues of bonds of debatable legality having a par value of \$4,167,500.00, a book value of \$3,816,727.86, and a market value of \$3,559,821.36, revealing a loss of \$256,906.50. The major portion was purchased since February 15, 1936, is rated as substandard, and the legality of same is seriously questioned. Constant criticism of the bank's investment policies has availed nothing. The extreme activity in the bond trading account further indicates the tendency toward speculation for quick profits rather than investment of surplus funds in seasoned and sound securities. The past and present practice of dealing in low grade securities in violation of the provisions of Section 5136 of the Revised Statutes (U.S.C. title 12, sec. 24) and of the Investment Securities Regulation prescribed by the Comptroller of the Currency in pursuance thereof, must be discontinued. All investments of this nature must be liquidated in an orderly manner.

- 8 -

The attention of the directors is again directed to the provisions of Section 5204 of the Revised Statutes in connection with the declaration and payment of dividends. The illegal declaration of dividends by the Board of Directors of the bank is and has been a matter of chronic criticism. The combined profit accounts for dividend purposes at the time of examination aggregated \$2,988,473.41, while statutory bad debts alone aggregated \$7,300,806.83. The \$178,900.00 set aside as a reserve for dividends should be returned to the undivided profit account by proper Board action. It is significant to note that of the total statutory bad debts, \$4,508,013.30 represents loans to officers, directors and their corporations, the major portion of the loans being on a compromised interest rate basis.

Your attention is directed to the examiner's comments in connection with "Improper and Illegal Charges Against Bank Expense Account" as set out on page 2, inserts 12 and 13, of the report.

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On September 24, 1935 the obligation of the Western American Realty Corporation to the bank was reduced \$300,000 by transferring the two notes totaling \$300,000 to the Progress Mortgage Company, the obligation of which company to the bank was increased in a similar amount. These notes were later cancelled and the 6,400 shares of the bank's own stock were placed in the bond account of Progress Mortgage Company at \$300,000, when its market value was less than one-half the amount. On December 21, 1936 the Progress Mortgage Company resold this block of stock to the affiliated Anglo National Corporation at the market and suffered a loss of \$146,515.20 on the transaction, which loss was included in the \$1,000,000 charge off made on the line of the Progress Mortgage Company on December 28, 1936.

The present ratio of net capital structure to deposit liabilities is \$1.00 to \$14.75. The ratio has been out of line for the past many years and is becoming progressively more so as time goes on. In view of the fact that the sound capital structure is approximately \$12,500,000

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below requirements on account of the unsatisfactory asset status, some steps must be taken toward the early correction of this condition. Earnings alone cannot be looked to for this purpose since such earnings would be absorbed by the losses developing in the large aggregate of doubtful assets and the frozen affiliated Progress Mortgage Company line for many years to come. It is imperative that immediate action be taken by the Board of Directors to provide the required and necessary additional capital funds.

As pointed out in previous office letters to the Board of Directors, Section 5 of Regulation "O" provides that a report of executive officers' outside borrowings shall be made to the Board of Directors, and that each report shall state the name of the bank to which he is indebted, the date such indebtedness was incurred and the maturity thereof, the amount and form of such indebtedness, the security therefor, if any, and the purpose for which the proceeds were used. It also provides that a record of the receipt of each such report shall be made in the minute book of the bank, and that all such reports shall be retained by the bank and made available upon request for inspection by duly authorized examiners. You are therefore directed to obtain complete reports of each executive officer's outside borrowings and record the receipt of same in the minutes.

Apparently reports of examination have not been submitted to the directors for consideration at a regular meeting as required nor has mention been made in the minutes of their receipt, although the management has been repeatedly instructed and advised of the personal responsibility it is assuming by refusal to comply with this requirement.

Your attention is also called to the fact that the minutes of the Board do not reveal that important letters from this office to the Board of Directors relative to the condition of the bank based upon reports of examination have ever been considered by the Board of Directors.

The examiner states that reports of your Examining Committee are both brief and meaningless, consisting primarily of the verification of assets with the assistance of the Auditing Department. It is of utmost importance that the loans and discounts be accurately appraised since so large an aggregate thereof is adversely criticised. It is the duty of directors to keep themselves fully advised of the condition of criticised assets.

It is noted that three of your directors seldom attend the meetings of the Board. The loans of two of these directors are among those adversely criticised. If directors are unable or unwilling to assume their duties and responsibilities as directors, they should be replaced by others who will. The reports of the various committees appointed by the Board to supervise the operating functions of the bank should be incorporated in the minutes of the meeting of the Board in sufficient detail to

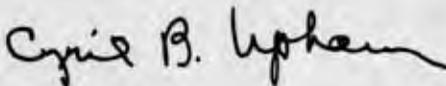
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No provision has been made on the books of the bank for a contingent liability resulting from a judgment in the amount of approximately \$750,000 obtained by the heirs of the Lazard estate.

You are requested to consider the report of examination and this letter at a special meeting of the Board called for this specific purpose and to report in detail over the signatures of the attending members, setting out the corrections effected in each of the criticised matters and your plans for the complete elimination of the same. Copies of your reply to this letter should be forwarded to Chief National Bank Examiner William Prentiss, Jr., and National Bank Examiner L. H. Sedlacek, 155 Montgomery Street, Room 1103, San Francisco, California.

Very truly yours,



Cyril B. Upham  
Acting Comptroller of the Currency



TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY  
WASHINGTON

ADDRESS REPLY TO  
COMPTROLLER OF THE CURRENCY"

October 3, 1938

Board of Directors  
Anglo California National Bank  
San Francisco, California

Gentlemen:

The current report of examination of your bank has been received and given careful consideration. A copy of the report of examination has been transmitted to the Board of Directors. The report reveals the continuation of a previously criticized highly unsatisfactory condition in the bank as well as new violations of law since the previous examination. You should study carefully the examiner's criticisms as to matters requiring attention, as set forth on page 2 and inserts 1 to 17 of this report. Over \$47,000,000 of the total resources of the bank are under criticism. This sum is approximately three and one-half times the amount of the bank's sound capital structure. The purpose of the criticisms in the report and of the criticisms set forth in this letter is to assist the Board of Directors in a constructive manner to protect the interests of the depositors as well as of the shareholders of your bank.

From the schedule under "Loans and Discounts" on page 2 of the report, it is noted that approximately 35% of total loans is classified slow; approximately 6% doubtful and .69% loss, making a total of approximately 41% of the total loans subject to adverse classification. Loans to affiliates, officers, directors and corporations in which they have a substantial interest are scheduled as follows: slow \$16,825,508.80; doubtful \$3,728,430.27; loss \$393,539.30, and previously charged off \$5,576,235.62. The large amount of doubtful included in this classification, which contains substantial potential losses, makes it apparent that those responsible for the safe management of the bank are responsible for this serious problem. Therefore too much importance cannot be placed upon the necessity of immediate action and enforced correction of this long criticized condition.

On page 2, insert 1, the examiner has reported twenty large and wholly unwarranted lines of credit aggregating, after the elimination of duplications, a net amount of \$40,131,833.68, which is about 18% of

- 2 -

the total resources and approximately four times the common capital of the bank. In addition thereto, an aggregate of \$10,016,402.49 has been previously charged off on these concentrations. The highly undesirable nature of these concentrations is further emphasized by the recapitulation of interest rates which shows an income loss of \$1,125,921.05 on the present interest basis as opposed to a 5% basis. This loss on these assets alone is approximately twice the amount of the annual dividend rate being paid on both the common and preferred stock issues in the amount of \$612,000.00. In this connection, attention is directed to the illegality of certain dividends heretofore paid, as herein later discussed.

There is scheduled on page 2, insert 3, of the report, borrowings of directors and corporations in which they have a substantial interest totaling \$16,018,518.50. Examiners and this office have given your problems considerable time and sympathetic cooperation during and since 1933, but the point has been reached when these large borrowings, which are 54.08% in excess of the common capital of the bank, must show immediate substantial improvement. The lack of progress made in improving and reducing this large concentration is indicative of the negligence of the bank's management. It is apparent that very little has been or is being accomplished by the management to relieve this situation and until such time as the active officers place their own borrowings in acceptable condition they will not be in position to enforce the same action on the part of the other offending directors.

On page 8, insert 1, there are scheduled two flagrant violations of Section 5200 of the Revised Statutes (U.S.C. title 12, sec. 84), prohibiting excessive loans, namely; the Dollar Steamship Lines, Incorporated, Limited, in amount of \$2,800,021.56 and the Herbert Fleishhacker line aggregating \$3,473,442.26. The excessive loan to the Dollar Steamship lines had its origin in 1930 at approximately four times the legal loaning limit of the bank and it has not only been without reduction since June 1936, but no interest has been paid thereon since December 31, 1936. It is still \$905,021.56 in excess of the legal loaning limit and a new loan of \$250,000.00, not reflected by the report, was made during the examination to finance current operations.

The constantly excessive line to President Herbert Fleishhacker reveals a net reduction of only \$89,936.81 since the preceding examination, and is still \$1,578,442.26 in excess of the legal loaning limit of \$1,895,000.00. It is wholly without a program of reduction other than from the proceeds of the supporting collateral in the event any should be sold, notwithstanding that during the examination of June 16, 1936 promise was made definitely to program this loan for reduction at the rate of \$50,000.00 monthly, and the M & H Fleishhacker line, which is a component part of the excessive line, \$100,000.00 monthly.

- 3 -

The attention of the Directors and Executive Officers is called to the provisions of Section 5200 of the Revised Statutes, which prescribe the limits upon the amounts which a bank may loan to any person, co-partnership, association or corporation; the provisions of Section 5239 of the Revised Statutes (U.S.C. title 12, sec. 93), which provides in effect that the Directors knowingly approving any violation of the foregoing section will be held personally and individually liable for all damages which the bank, its shareholders or any other person shall have sustained in consequence of such violation; and the provisions of section 22(f) of the Federal Reserve Act (U.S.C. title 12, sec. 503) which provides in effect that if the directors or officers of any member bank knowingly violate or permit any of the agents, officers, or directors of the bank to violate section 22, or regulations made under authority thereof, every director and officer participating in or assenting to such violation shall be personally and individually liable for all damages which the bank, its shareholders, or any other person sustains in consequence of such violation; and the provisions of Section 22(g) of the Federal Reserve Act (U.S.C. title 12, sec. 375a) which prohibits loans of the type herein criticised by a member bank of the Federal Reserve System to any of its executive officers, and provides that any executive officer violating the provisions of same shall be subject to removal from office in the manner prescribed in Section 30 of the Banking Act of 1933.

On page 8, insert 2, there is a comparative schedule of "Loans to Bank's Affiliates," which shows that such loans at the date of examination aggregated \$16,874,436.01. The examiner states that the primary purpose of the major portion of the affiliates and their subsidiaries was to enable the management to speculate in stocks and bonds and loan money under broader corporate powers than those provided by the national and state banking laws. As a result, through the medium of unwarranted extensions of credit to the affiliates, the bank has suffered a present total loss of \$5,331,784.13, which is in excess of 50% of the common capital of the bank, without taking into consideration the income loss suffered by virtue of the compromised interest rates on the affiliate loans which average less than 1%. Arrangements should be made without delay for the liquidation of all the bank's affiliates.

Of the 530,000 shares of outstanding common capital stock of the bank, 195,965 shares are held as investments by the bank's own affiliates, carried on their books at \$9,748,836.73 and having a market value of \$3,723,335.00, or a loss of \$6,025,501.73; 30,618 shares are owned by a directors' corporation heavily indebted to the bank; 5,040 shares, taken D.P.C., are pledged by others as collateral to loans; and 1,414 shares are illegally held by the bank by reason of being carried in the investment account beyond the limitations prescribed by Section 5201 of the Revised Statutes (U.S.C. title 12, sec. 83). This block of stock is carried on the books at \$36,039.00 and at the time of examination had a market value of \$26,866.00 or a loss of \$9,173.00. It must be disposed of immediately.

- 4 -

The total of the foregoing is 233,037 shares or approximately 45% of the entire common stock issue. This represents an increase of 21,363 shares since the examination of November 10, 1934. Of this amount, 39,650 shares are pledged to the bank as collateral, and the loans secured thereby are entirely dependent thereon. The affiliated Anglo National Corporation is indebted to the bank in the amount of \$375,000.00 on an unsecured basis, and is the holder of 179,527 shares of the bank's stock. The net increase in total shares has been occasioned by its purchase of distressed stock on the open market. During the period covered the market has fluctuated from \$8.00 to \$33.00 a share, and as of the date of examination it was quoted at \$15.00 a share with low trading activity. Instead of endeavoring to relieve this unsatisfactory condition by disposing of the stock on the former rising market and thereby obtaining some highly desirable liquidation from the stagnant low interest affiliate lines, this condition has been aggravated.

Out of 204,132 shares of outstanding Class "A" capital stock of the affiliated Anglo National Corporation, 41,028 shares are held as investments by the bank's own affiliates carried on their books at \$1,566,933.30, and having a market value of \$675,539, or a loss of \$891,394.30; 25,891 shares of such Class "A" stock are owned outright by the bank at a book value of \$518,522, and have a market value of \$414,256, or a loss of \$104,266; and 9,968 shares are held as collateral to loans of others. The total of the foregoing is 76,887 shares or 37.66% of the entire Class "A" stock outstanding.

In addition, the entire 100,000 shares of Class "B" capital stock of the Anglo National Corporation, outstanding are owned by the affiliated Consolidated Securities Company, and are pledged to secure its indebtedness to the bank. They are carried on the books of the affiliate at \$901,135.56, and are classified therein as having no market value, and the loss therein is not included in the above mentioned losses.

There has been an increase of 591 shares in the holdings since the previous examination. The market value of Class "A" stock has also fluctuated from \$7.00 to \$30.00 a share, and at the time of examination had a market value of \$14.00 a share. It is evident, therefore, that this unsatisfactory condition has been aggravated since the preceding examination.

As of the date of this examination the various affiliates of the bank have suffered a loss of \$7,021,162.03 on their holdings of the stock of the bank and of the Anglo National Corporation, a large portion of which has been charged off against the undivided profits account of the bank, by losses taken on the indebtedness of the affiliates of the bank.

- 5 -

On April 27, 1932 an entry appeared on the general ledger of the affiliated Consolidated Securities Company entitled "Syndicate participation - Herbert Fleishacker" in the amount of \$590,550. This account was partially secured by 7,560 shares of bank stock and 3,334 of Anglo National Corporation Class "A" stock. The examiner states that a copy of the syndicate agreement cannot be located. The increased borrowings of the affiliate to enable it to carry this asset were not specifically approved by the directors, nor did they have knowledge of the transaction, as near as can be determined. The liability was shown in previous reports as a direct liability of Herbert Fleishacker. On September 30, 1935 this general ledger entry was eliminated and the above mentioned stock, having a market value of \$213,155 at that time, was placed in the bond account of the affiliate at \$590,550, or \$377,395 in excess of the market value of same. The bank later absorbed this loss by charging off on the line of that affiliate, and the total charged off on this line aggregates \$1,327,743.56.

Of the total loans, approximately \$21,000,000 or 20.76% is secured by liens on real estate in various forms. Some of these are held and carried illegally. With approximately one-third of the real estate loans, in dollar amount, still subject to criticism following the liberalization of the laws governing real estate loans, it is imperative that these loans be given closer attention and supervision by the management with the end in view of inaugurating a more aggressive correction and collection policy on classified and non-conforming loans while conditions remain favorable, in order that they may be reduced to a minimum.

The "Other Real Estate" of the bank is carried in the loans and discounts of the bank through the medium of so-called sales of such real estate to the affiliated Progress Mortgage Company. No down payments are made by the Progress Mortgage Company and no obligation exists for future payments by that company other than payments resulting from proceeds of sales of parcels of the real estate. The terms and conditions under which this real estate is transferred to Progress Mortgage Company are such that this arrangement does not constitute a bona fide sale. This real estate should be shown as such on the books of the bank and so shown in future published reports of the bank.

Of the foregoing real estate, \$1,634,635.03 was acquired in violation of law, and a large portion of this has been carried far beyond the five-year limitation set forth in Section 5137 of the Revised Statutes (U.S.C. title 12, sec. 29). It appears from the examiner's comments that the only real estate disposed of during the past two years has been the more desirable and moderately priced residential properties. A review of the real estate now owned reveals that there is little of this type remaining and that future liquidation depends almost entirely on the sale of apartment houses, canneries, commercial and office buildings, hotels, summer

- 6 -

resorts, unimproved industrial sites, entire blocks of poorer located city lots, grain farms and large acreages of range land. It should be noted that 15 of the remaining 256 parcels are carried on the books at over 50% of the total investment in real estate. Too much emphasis cannot be placed upon the necessity for the management to review this account, revise sales prices to current type valuations and eliminate excess prices on the less desirable and non-productive holdings in order to stop the carrying charge losses thereon. Furthermore, a definite and acceptable program of liquidation must be consented to and the real estate carried in the name of the Progress Mortgage Company must be transferred back to the "Other Real Estate" account on the books of the bank since the present method of handling the same cannot be construed as a bona fide sale.

There has been a tendency in the bond account in general toward speculation for profit rather than investment for safety. Substandard investments in the approximate amount of \$9,000,000 are still present in the investment account. The character of the remaining assets of the affiliates is an additional indication of such policy. A bond trading account, which has been unusually active during the past years with substantially changing prices in the same grade issues, is maintained by the bank.

There have been 21 blocks of stocks and bonds having a book value of \$3,813,467.54 which have been illegally acquired. Of this amount \$1,983,167.00 is represented by 15 large blocks of stocks among which are included 1,414 shares of the bank's own stock and 24,688 shares of Class "A" common stock of the affiliated Anglo National Corporation carried at a combined book value of \$554,561. Although both stocks are listed on the local exchange a ready market has all but disappeared, the only real purchaser for either of the issues being the affiliate itself. The foregoing stocks and bonds were acquired in violation of either Section 5136 of the Revised Statutes (U.S.C. title 12, sec. 24) or Section 5201 of the Revised Statutes (U.S.C. title 12, sec. 83).

Stocks of corporations in which directors are interested are carried at \$243,622.00, of which \$135,186.00 is classified as slow and \$108,036.00 as loss. The six issues of bonds illegally acquired have a par value of \$2,352,500 and a book value of \$1,830,382.81, which is classified as \$1,796,931.81 slow and \$12,150.00 loss. With the exception of one defaulted issue, these bonds are entirely without a market and are thoroughly frozen and undesirable in nature.

- 7 -

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The present ratio of net capital structure to deposit liabilities is \$1.00 to \$14.75. The ratio has been out of line for the past many years and is becoming progressively more so as time goes on. In view of the fact that the sound capital structure is approximately \$12,500,000

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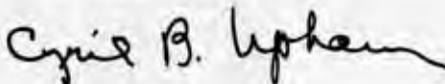
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Very truly yours,



Cyril B. Upham  
Acting Comptroller of the Currency



TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY

WASHINGTON

October 3, 1938

ADDRESS REPLY TO  
COMPTROLLER OF THE CURRENCY"

Mr. Mortimer Fleishhacker,  
Chairman of the Board of Directors,  
Anglo California National Bank,  
San Francisco, California.

My dear Mr. Fleishhacker:

A copy of my letter of criticism based upon the report of the latest examination of your Bank is attached.

It is my desire 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:

"Sec. 93. Violation of provisions of chapter;  
forfeiture of franchise; personal  
liability of directors

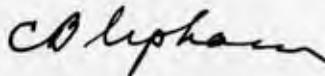
"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such 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

- 2 -

shareholders, or any other person, shall have sustained in consequence of such violation. (R. S. sec. 5239; Mar. 3, 1911, c. 231, sec. 291, 36 Stat. 1167.)" (U.S.C. title 12, sec. 93.) (Underscoring supplied)

A complete copy of the report referred to in the first paragraph of this letter has been sent to, and is open for your inspection at, the main office of the Anglo California National Bank, San Francisco, and at the office of the Chief National Bank Examiner, Room 1103, 155 Montgomery Street, San Francisco. Your attention is directed to the comments, criticisms and conclusions of the examiner contained on page two and inserts (1) to (17) of the report.

Very truly yours,



C. B. Upham  
Acting Comptroller of the Currency

RE ANGLO-CALIFORNIA BANK

October 6, 1938.  
12:05 p.m.

Present: Mr. Hanes  
Mr. Oliphant  
Mr. Gaston  
Mrs Klotz  
Mr. Upham  
Mr. McReynolds  
Mr. Taylor

H.M.Jr: All right, H. B.

Upham: Well, just one word of background, for your information, to bring you up to date. Mr. Jones's man, Mr. Husbands, who is in San Francisco, talked to Mr. Foley yesterday about the possibility of the Examiner, Sedlacek, planting a slate with the Board of Directors of Anglo-California, a slate of directors to be named as a committee to negotiate with the office of the Comptroller. Mr. Foley said he would not do that, and it was then suggested to him that would we - the question was then asked him if we would object if Mr. Husbands planted a slate with the Board of Directors, and after consulting with us here in Washington it was agreed that we would object to that being done.

Now this matter has arisen: Suppose the Board of Directors appoints a committee which is unacceptable to us. Specifically, suppose they include Herbert Fleishacker as a member of the committee to negotiate. And Mr. Oliphant and Mr. Taylor, I believe, have some doubts about the advisability of having him and one or two others on the committee and raised the point as to whether we should object to the personnel of the committee after it has been appointed.

H.M.Jr: Has everybody expressed a view?

Upham: No, I think not.

H.M.Jr: John?

Hanes: Well, I think if you're going to be consistent that you're not going to appoint the slate, if you don't insist that they appoint a certain slate but let them appoint their own slate, it puts you in a very embarrassing position to say, "We wouldn't appoint the slate for

-2-

you, won't give you a slate of people. But we're not going to deal with Mr. A, B, or C." I think from that standpoint you're in a pretty weak position if you refuse to deal with the committee. After all, this is the committee appointed by the Board of Directors. I think you've really either got to plant a slate or not, one or the other. I can't see the difference between planting a slate and then refusing to abide by the judgment of the Board of Directors.

H.M.Jr: Or - go back a step - very much difference if you have first Mortimer Fleishhacker here and try to make a deal with him here, have him take it back, or have Herbert Fleishhacker here?

I think - if you'd like to know how I feel about it, I feel much more deeply on this thing than just this particular thing, and you've (Upham) heard me, the rest haven't. I think the function of the Comptroller of the Currency is to examine banks and let the directors of the bank know what the condition of that bank is. I don't think it is their job to manage it. And I feel that way very strongly. I don't know how you people feel. But they're Bank Examiners, and I don't think the office of the Comptroller of the Currency should offer bank management. That's the function of the Board of Directors.

And, applying this particular case to that theory, if anybody else subscribes to it, we're sending people there to point out where the bank is weak to the Board of Directors, and as long as that Board of Directors is functioning I think it's up to the Board of Directors to take what action they see fit.

Now if the time comes that they won't listen to where we point out the various weaknesses of the bank, then our avenue, as I understand it, is Section 30 and we prefer charges. But until that time comes I think it's up to us to let the Board of Directors run the bank. And I do hope that Delano and you (Upham) will give me a chance to argue with you if you don't agree with me as to the broad principle of examinations. I think there is entirely too much of a tendency in the Comptroller's office to get into bank management.

That's the way I feel. I don't know, maybe you people

-3-

disagree with me.

Oliphant: There are other factors we haven't brought out yet.

Upham: Yes. When we get around to them ....

H.M.Jr: But I'm talking about the principle - whether you deal here with a member of the Board of Directors or not - but as to the broad principle of the function of the Comptroller's office. As I see it, they're auditors. It's up to Ernst & Ernst to audit a company and bring it to the attention of the Board of Directors whether the books are kept honestly and properly and so forth and so on. I don't think it's up to Ernst & Ernst to tell them how to manage it. Now of course, if they want to employ management, that's something else. That's the way I feel.

Upham: Mr. Secretary, I think Mr. Delano and I will want to talk to you about a middle step in between examination and management which we call supervision. That is, after you examine you must insist upon some corrections. Now, that is supervision rather than management, I think.

H.M.Jr: Well, I'd be glad to talk about it. But I don't know whether my giving this little talk helps this particular situation or not.

Upham: Well, it doesn't do any harm.

Oliphant: Well, I agree with that principle.

H.M.Jr: Huh?

Oliphant: I agree with that principle.

Taylor: I don't think there is any argument about the principle.

Oliphant: It will turn on your statement: "if the Board of Directors is functioning." Now, I've been insisting upon having this meeting out there to be sure that whoever - that someone wasn't designated by the clique; but I think all along I was proceeding on the assumption that there were on the board something other than stool- - what do you call them?

H.M.Jr: Stooges.

-4-

Upham: Stooges.

Gaston: Charlie McCarthy is the modern name.

Oliphant: Now, if it turns out that there is nobody on the board, since Berg from Standard Oil is not going to be there, excepting these Charlie McCarthys, and it also turns out that a member or two of the committee is headed for the penitentiary, we're going to be in a pretty embarrassing position if we went ahead and dealt with those people; because, assuming that the thing that - that after you do your first job, namely, save the institution, and in the regular course a grand jury investigation, both Federal and state, comes along and these people that we have dealt with are involved in that grand jury investigation, it's going to be very embarrassing.

H.M.Jr: Yes, but you don't - evidently, at least to me, you don't give an answer to the question that's up here. As I understand it, somebody suggested that we name a slate for a committee.

Upham: We have said we won't do that.

H.M.Jr: Yes. What you going to do about Husbands suggesting a slate?

Upham: He's not going to do that. We objected to that.

H.M.Jr: All right. Well then, .....

Upham: The only question is, after the committee has been named, .....

Oliphant: Here's the question we're discussing now. Should Foley at one o'clock create the impression that, regardless of whom they name, whether they name Herbert on this committee or not, that we're satisfied to go ahead and deal with them and continue negotiations? I think it'd be pretty dangerous.

H.M.Jr: Well, I think you should have crossed that bridge before you sent him out there.

Gaston: I don't think we're incurring any great danger there. From common sense Mortimer Fleishhacker should know

-5-

enough to know that Herbert Fleishhacker should not be named on that. And what if he is named? This committee is only to prepare a plan and submit it as to what they're going to do; and we either would like the plan or we don't like the plan, and if they don't provide in that plan to eliminate Herbert Fleishhacker we can still say, "You've got to eliminate Herbert Fleishhacker from the active management of the bank." I don't think we're incurring any risk at all.

Oliphant: If it went through that way and the bank was rehabilitated on that basis, it would have the same effect on a criminal prosecution here that E. M. Smith's civil liability would have had on his criminal prosecution.

H.M.Jr: Well, I don't know, but you - if you didn't want to deal with the Board of Directors we never should have sent these two men out there.

Upham: If you get a good plan, a sound plan, does it matter if Herbert helped make up the plan?

Hanes: He's not indicted for anything yet. I mean, after all, he's President of the bank and if he's appointed on that committee I can't see where we would be contaminated by dealing with him, because we won't have to accept the plan if we don't like it.

H.M.Jr: Well, why did we send these two fellows out there to deal with the Board of Directors if we didn't want to deal with them? . .

Oliphant: Well, I was proceeding on the assumption that there were something else beside Charlie McCarthys on the Board of Directors.

H.M.Jr: You mean to say we didn't have all the information when we sent these two fellows out?

Oliphant: I don't think anything else is lost.

H.M.Jr: Wait a minute. On Saturday everybody agreed that these two fellows should go out. It was agreed in this office. Has anything happened since Saturday?

Oliphant: Well, as far as I'm concerned, up to date it's news to me, if it's true; maybe it isn't true. That the whole board are Charlie McCarthys.

-6-

H.M.Jr: But since when is it news?

Oliphant: Cy, answer that.

H.M.Jr: I mean here you've sent these two fellows out, you've written a letter that these people are going to come out. Now, if the board is of such a nature it shouldn't have been dealt with, then we should never have sent these fellows out.

Gaston: I recall Sedlacek saying there were five people - men on there - responsible men who are not dummies.

Upham: There are four at least, or five.

Hanes: That's about the maximum you get out of any bank board that knows anything about the bank: about five out of 20 or 30 directors that know anything about the bank.

H.M.Jr: Well, if I was - no matter what my status is, if I'm a director of that board and I get a letter from the Comptroller's office, I take it on Saturday he knows what he's talking about if he's called this meeting and said two men from the Treasury will be there to present this thing.

Now, if we've made a mistake it's just too bad.

Oliphant: The primary purpose of the meeting is to present this thing.

H.M.Jr: Why not go through with it?

Taylor: I don't think there's any reason for not going through with it.

Oliphant: The primary purpose of the meeting is to read that letter.

H.M.Jr: Well, what are you worrying about, Herman?

Oliphant: Well, the thing I'm worrying about, the thing Taylor and I were talking about - now, the main purpose of Ed's going out there is to get these facts personally to the attention of the - all the directors. Now, should Ed go further and in effect say, "Regardless of whom you designate to deal with this office, we'll be satisfied"? Or should he say nothing and leave ourselves free to decide, in case they did designate

-7-

Herbert, whether or not we wanted to ....

H.M.Jr: I should think he'd say nothing.

Oliphant: Well, that'll take care of it.

H.M.Jr: I should think he'd say nothing.

Oliphant: That takes care of my worry.

H.M.Jr: I don't think he should say "I will" or "won't be satisfied," because the point I'm making is, unless he was satisfied, or rather the Treasury was satisfied, to deal with the people out there, then we should have said, "We won't deal with any" and we invoke Section 30. But, having gone through this point and said we're going to do it, then I think he should present this thing and see who they give us. Now, if that's ....

Oliphant: And then say nothing.

H.M.Jr: Foley should say nothing.

Taylor: But we must be in a position, if we feel that it's necessary, for one reason or another, to say, "All right, we won't do business with this fellow."

H.M.Jr: Well, personally, I wasn't in when the Assistant General Counsel was sent out there, and I don't know why he was.

Oliphant: Well, that was Delano's request. He personally requested it.

H.M.Jr: Well, I have great doubts about sending an Assistant General Counsel of the Treasury anywhere. I mean it brings us in at this time where I don't see why we should have been brought in. But you got a committee and you fellows all decided on it, so I says, "O.K."

Oliphant: Delano felt very strongly about it, and I acquiesced.

H.M.Jr: Unless somebody tells me very differently, I think the less Mr. Ed Foley says the better. And our strength is now that we've cleaned this shop out so we can talk and there are no leaks. We put this thing up; let them move, come back and talk it over.

-8-

Then we can consult. I'll consult as often....  
But I would lay this thing - just hold my cards just as close to my chest as possible. Foley should keep his mouth shut. Let the - Sedlacek, or whatever his name is, present it and do the talking, and then let's see what happens. Now, does that protect you?

- Oliphant: Well, I'd like that better, but I was perfectly glad to have him go since Delano put so much store by it and appealed to me personally.
- H.M.Jr: But in view of the present thing, O.K.?
- Oliphant: I'm perfectly satisfied.
- H.M.Jr: All right.
- Oliphant: I'm perfectly satisfied.
- H.M.Jr: Herbert?
- Gaston: Perfectly satisfied. I should think that Foley might appear out there as a special counsel to the Comptroller.
- H.M.Jr: He's named in the letter.
- Upham: As a representative of the Comptroller.
- Gaston: . As representative of the Comptroller.
- H.M.Jr: Whatever it is, don't change it. The main thing I think we have done so far - every step we have made, we have stuck to our guns; don't let's wobble, don't let send telegrams one minute that it's one thing, and the next minute another. I'd rather be a little bit wrong and stick by my guns, show a united front. If I made a major mistake, I'm willing to admit it, but just a little mistake ....
- Upham: There hasn't been any mistake.
- Oliphant: No, no. Don't forget that 95 percent of the purpose of this meeting was to get those facts presented. So it would be agreeable if after the meeting Cy and I called Ed up and made sure he understands we must leave our hands free.

-9-

H.M.Jr: Well, we haven't gone around the room.

Oliphant: Well, when we go around ....

H.M.Jr: Herbert?

Gaston: I'd say in addition I feel certain that Mortimer Fleishhacker will go right to bat with his statement that they have already entered into negotiations, which will take care of that end, initiating something for the board. The other thing: I think these dummy directors are not so likely to be dummies any more after they've read and digested that letter.

H.M.Jr: All right, Herbert?

Gaston: (Noas yes)

H.M.Jr: Wayne?

Taylor: As long as we are protected so that we don't have to do business with the group that they designate - and I understand that we are protected. In other words, we say nothing and don't say, "All right, we'll start negotiating with you immediately."

H.M.Jr: Well, as I understand it, they present this thing and then Sedlacek calls up and reports what happens. Isn't that what's done?

Upham: Yes, sir.

H.M.Jr: What?

Upham: Yes, sir.

H.M.Jr: Isn't that what happens?

Upham: Yes, sir. Yes, sir.

H.M.Jr: Sedlacek is there as a representative of the Comptroller and after the meeting he calls up Delano or you and says, "This is what's happened. What's the next move?"

Hanes: I don't understand, though, that we can just refuse to negotiate with these people that have been

-10-

appointed by the board. We're asking, at least tacitly, that they appoint a committee to represent that bank.

Taylor: That's right.

Upham: That's right.

Hanes: I don't think we can turn around and say, "Well, we don't like the face of Mr. XYZ. Therefore, we're going to tell you/can appoint that we're going to deal with." who you

Oliphant: That isn't a bridge we're going to have to cross this morning.

Upham: That's the only point raised by anyone, and the only point that I have to have settled - they're being told - the directors are being asked to appoint a committee and they're being told that a representative of the R.F.C. is on the Coast; now presumably, as soon as that committee is appointed negotiations will begin. And if this suggestion that we say, "No, we won't deal with that committee" is a valid one and is upheld, why, that was the only thing I wanted to find out at this meeting.

H.M.Jr: Well, let me put it this way. Does it say in the letter to - ask them to form a committee?

Upham: No, sir.

H.M.Jr: Would this satisfy you and everybody else - I still don't think I have the whole story, but I'm doing the best I can - if you took this action: the Comptroller's representative presents this thing and then simply says, "Now gentlemen, what are you going to do about it?" Just "Now what are you going to do about it? What are you going to do about it?"

Upham: I think that's correct. Pass the burden to them.

H.M.Jr: Now you don't say anything about a committee or anything. You do say there's a representative of the R.F.C. on the Coast. "But gentlemen, what are you going - the officers who hold the legal responsibility, what are you going to do about it?"

-11-

Well, if they say, "We want to appoint a committee," so forth and so on, then you say, "All right, but we'll take a look at it." If you just go in and say, "Here's the thing, what you going to do about it?" and that's all, then your hands aren't tied. But if you say, "Do this" and they do it, then you've got to take it. Wouldn't that take care of it?

Oliphant: Yes, present the facts and then listen.

H.M.Jr: Just say, "Gentlemen, what you going to do about it?" And then they say, "Well, we want to do this." Your man says, "All right, now before I can give you an answer I've got to consult my boss."

What's the matter with that?

Upham: That's all right. Then I'll have to come back and find out if that slate - that committee is ....

H.M.Jr: They may not appoint - you don't know what they're going to do. That takes care of your (Taylor) objection.

Taylor: As long as our hands are free.

H.M.Jr: They're free.

Taylor: That's fine, put it absolutely up to them.

H.M.Jr: "ay, "Gentlemen, here it is. What you going to do about it?"

Taylor: I don't want the Comptroller's office and the Treasury in a position of having to do business with a couple of people we don't want to do business with.

H.M.Jr: I think it's a good point. Does that take care of it?

Taylor: Fine.

H.M.Jr: This take care of what you (Upham) want?

Upham: Yes, sir.

H.M.Jr: You (Oliphant)?

Oliphant: (Nods yes)

-12-

Gaston: (Nods yes)

H.M.Jr: Wait a second. Poor John Hanes is sitting there; give him a chance.

Hanes: I'm satisfied with that. My understanding, however, was that Mortimer Fleishhacker had been told either by the Comptroller's office or by Jesse Jones - somebody in the R.F.C., that the move for them to make out there was to get this committee appointed, was to enter into negotiations immediately. Now, I think that sub rosa - I think that's understood pretty well, and I think this meeting is pretty well - it's going to be ironed out in the meeting as to what's going to happen. And practically what would happen ordinarily, and in this case I'm sure will, will be that the Chairman of the Board will appoint a committee and will say, "We've got to go to work and clean this bank up immediately, and for that purpose I'm going to appoint the following committee."

Oliphant: Then our man says, "Thank you" and reports back.

Hanes: Then we're through, so far as I can see; the Treasury or the Comptroller's office are through, and the next thing they've got to determine is, who is this committee? If Herbert Fleishhacker is on this committee - they'd all be imbecilic fools, having heard what they have heard in Washington about the situation as far as Herbert Fleishhacker is concerned, if they put him on the committee. So I should think that anybody could tip Mortimer Fleishhacker off to the fact that we're not going to deal with Herbert Fleishhacker. So I think practically you're in good shape. I don't think this question will come up.

H.M.Jr: But the suggestion that I have made?

Hanes: Perfect for it, because it doesn't ....

H.M.Jr: Which is a little different than what it was.

Upham: Yes, sir.

H.M.Jr: Instead of saying - you suggest nothing. What?

Upham: That's right.

-13-

- H.M.Jr: Mac? Are you on top of this or is this too new for you?
- McR: I don't know the facts well enough. Of course, the principle that you take, that's perfectly sound. If you consent to their appointing a committee, you can't tell them who to put on the committee. Having refused ahead of time to tell them who to put on it, I think you've got to stick on that. But if you hold yourself, as you say, in a position where the question of appointing a committee is the next move and that's open, why, I don't think you'll have any trouble at all.
- H.M.Jr: All right, then we're all in agreement that Upham will call up with Oliphant and that they will tell their people to present the thing and say, "Now gentlemen, the next move is up to you. What you going to do about it?" Right?
- Upham: That's satisfactory to me.
- H.M.Jr: Now just for my own information, who, John, informed Herbert Fleishhacker about the thing? You say that after what he heard - you mean what he heard or what Mortimer heard?
- Hanes: What Mortimer heard when he was here. My understanding from Folger and Sedlacek was that he had been given definitely to understand that this R.F.C. loan would not be forthcoming with Herbert Fleishhacker in the picture as an officer. Am I correct in that?
- Gaston: Yes, yes. That's what I understood from one of the meetings.
- H.M.Jr: But that information came out of the Comptroller's office or R.F.C.?
- Hanes: I heard it in this room. Who told it, whether it was Sedlacek or the R.F.C. man, I don't remember.
- Gaston: Sedlacek told it.
- H.M.Jr: All right.
- Klotz: Well, is Herbert Fleishhacker back?

-14-

Upham: I'm seeing Herbert Fleishhacker at three o'clock.

H.M.Jr: When is he going to leave?

Upham: He was here - he has no plan to leave; he's been here. He spent - must be four hours, with Mr. Folger yesterday, and he has been in constant conference with Jesse Jones. No, he won't be at the meeting.

Oliphant: Berg, the New York man - Standard Oil director, is not going to be there; he's in New York.

H.M.Jr: Are you all right now?

Upham: I have one other thing, if you don't mind. The Board of Directors of the Bank of America have appointed a committee of nine men. Now, shall we deal with that committee or do you want to object to that committee?

H.M.Jr: Well, I - you'll have to let me - it isn't ..... You held a pistol to my head and said at one o'clock you've got this. Have to give me a breathing spell; you'll have to just give me a breathing spell.

RE BANK OF AMERICA

October 6, 1938.  
2:30 p.m.Present: Mr. Hanes  
Mr. Oliphant  
Mr. Taylor

- Hanes: Bill (Douglas) says he does not want to do anything without first taking it up with you, to let you know, because he started out working with the Treasury; and he's got to accede to this request but he's now asking whether or not he should confine the information to the Trans-America or should he supply them with any information which they'd come about through examination of reports in our office over here.
- Oliphant: Well, if he'd show the report, would he show what he got from our records?
- H.M.Jr: My horseback opinion is he should give him everything that S.E.C. originated in their own shop; that he should give them everything that they originated in their own shop. That's what I'd say.
- Taylor: That all is Trans-America, isn't it?
- H.M.Jr: That's all.
- Hanes: Trans-America and subsidiaries; that would include the bank information, if he had any information on the bank.
- H.M.Jr: Well, he could honestly say - he could honestly say that, and then if he wants to, in order to keep our record clear, I'd be very glad to see LaFollette with Bill Douglas and tell LaFollette in confidence what we're doing. You (Hanes), Bill Douglas and I can see LaFollette, and I'll explain to LaFollette what we're doing and why I need a little time.
- Oliphant: LaFollette's not in town.
- H.M.Jr: Well, we could say - leave word at LaFollette's that the three of us want to see him. When he comes we'll explain and say we need a little time. "Be delighted to give you this in time, but we don't want to start a run on the bank."

-2-

- Oliphant: LaFollette's been out of town for two months and will be out until after election. Some of his lieutenants are going after that.
- H.M.Jr: Well, he can't - Douglas can't refuse to give the committee anything that they want.
- Hanes: No, it's by Senate resolution; he's got to give it to them.
- H.M.Jr: But he can withhold Treasury information and then file the request to see LaFollette the first time he comes to town, and the three of us will see him. Does that sound all right?
- Hanes: That sounds all right.
- H.M.Jr: Tell Douglas I appreciate his cooperation.

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October 8, 1938

Tom Smith called me early in the morning at the University Club and reported that he had had an opportunity the day before at the administrative committee meeting of the AEA to spread the good word among bankers who were there from all over the country that Mr. Delano's appointment was a splendid one, that it was necessary, and that all the newspaper talk about Treasury domination was just so much apple sauce. He told me that he was going to have breakfast with Russell Smith, Cashier of the Bank of America, N.T. & S.A.

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Later in the day Mr. Smith called me and told me that Mr. Russell Smith expressed genuine disappointment that the Comptroller of the Currency had not made the bank realize the seriousness of the situation. He said that Mr. O'Connor had never said anything to any of them except to praise the bank. Tom said that Russell expressed the opinion that the Chief Examiner in San Francisco is perfectly terrible but that Examiner Sedlacek is O.K.

- 2 -

Mr. Russell Smith asked Tom what the motive is for the present action by the Comptroller's Office and Tom told him that it is a desire to properly supervise banks and nothing else. Mr. Russell Smith expressed the opinion that the matters criticised could be adjusted 50-50 if the Treasury was willing to go half way. He suggested that they ask permission to come to Washington and negotiate, and Tom assured him that the Treasury would do the right thing but they must realize that we mean business and that there is no politics involved and political approaches will not help.

Tom said that Russell Smith brought up the matter of possible action under Section 30 and wondered if the "Jew story" had gotten to Washington. Tom told him that it had. Russell Smith suggested that Mr. Prentiss come to see Giannini and talk the matters over which would give an out to the officers of the bank. Tom told him that the best thing for them to do was to do whatever the Treasury wanted and it would be useless to fight. Tom reported that Russell Smith had said that someone had told A.P. Giannini that this was all a scheme of Henry Morgenthau Jr. to get control of the National City Bank of New York.

Upm

## EXHIBIT "2"

OPINION OF LOUIS FERRARI  
WITH REFERENCE TO THE LEGALITY OF CONTRACTS OF PURCHASE AND SALE  
OF REAL ESTATE MADE BY BANK OF AMERICA NATIONAL TRUST AND SAVINGS  
ASSOCIATION WITH CALIFORNIA LANDS, INC. AND CAPITAL COMPANY.

Board of Directors,  
 Bank of America N. T. & S. A.

Gentlemen:

You have asked my opinion with regard to the legality of a contract dated the 4th day of April, 1934, between Bank of America National Trust and Savings Association and California Lands, Inc., a corporation; also with reference to six contracts dated, respectively, April 4, 1934, June 26, 1934, October 16, 1934, December 14, 1934, March 9, 1935, and March 27, 1935, between Bank of America National Trust and Savings Association and Capital Company. All of these contracts provided that the Bank agreed to sell, and California Lands, Inc., and Capital Company, respectively, agreed to purchase, certain lands in said contracts described or referred to.

I am entirely familiar with the contracts, and with the circumstances surrounding their execution. All of said contracts were executed by the officers of the respective corporations involved, pursuant to resolutions of their respective boards of directors authorizing the execution of said contracts. The contracts are made upon a valid consideration, and deal with an entirely lawful subject matter, namely, the purchase and sale of real property.

It is my opinion that the said contracts are legally enforceable by the parties thereto, and that said contracts can only be terminated and cancelled by the mutual agreement of the parties.

It is also my opinion that to carry the contracts on the books of the bank as "Other Real Estate," and so to show them in the published reports of the bank, would constitute a misrepresentation of the facts.

Dated: October 10, 1935.

*Louis Ferrari*  
 \_\_\_\_\_  
 LOUIS FERRARI  
 Vice President and Counsel

372

EXHIBIT "3"

OPINION OF LOUIS FERRARI ON LOANS  
LISTED BY COMPTROLLER OF THE  
CURRENCY AS EXCEEDING LIMITS  
PRESCRIBED BY SECTION 5200 U.S.R.S.

Board of Directors,  
Bank of America N. T. & S. A.

Gentlemen:

My opinion has been asked with regard to the criticisms of the Bank Examiner, found on page 8, insert 1, of his last report under the schedule "Loans Exceeding the Limits Prescribed by Section 5200 U. S. R. S.," in which he lists alleged extensions of credit to Transamerica Corporation, including therein extensions of credit to its subsidiaries.

The provision of Sec. 5200 U. S. R. S. under which the Examiner classifies this item reads as follows:

"The term 'obligations' \* \* \* \* \* shall include in the case of obligations of a corporation, all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest."

The Bank has made extensions of credit to certain wholly owned subsidiaries of Transamerica Corporation. The Examiner has taken the position that the Bank has also made an extension of credit to Transamerica Corporation itself in the sum of \$5,525,000. If the Examiner is correct, the above limitation of Sec. 5200 U. S. R. S. would apply, thus limiting all of these transactions to an amount not exceeding 10% of the capital and surplus of the Bank.

I am of the opinion that under the facts there has been no extension of credit to Transamerica Corporation, and that, therefore, the provision of law above quoted does not apply.

The item in question, namely, \$5,525,000, is what remains of a voluntary contract obligation under which Corporation of America, a wholly owned subsidiary of Transamerica Corporation, undertook to guarantee certain criticized assets of the Bank in an amount of \$35,000,000. This transaction was, in effect, the act of Transamerica Corporation, which at that time owned practically all of the stock of the Bank. The purpose of this contract was to lend

Opinion of Louis Ferrari - Loans Listed as Exceeding  
Limits Prescribed by Section 5200 U.S.R.S.

to these assets the support of the credit and worth of Transamerica Corporation, the principal shareholder of the Bank, it being, at the time, substantially a wholly owned subsidiary. This support was in the form of a guarantee, supported by collateral, that the assets in question would be realized upon.

Since the original contract in 1931, there have been subsequent contracts of a similar nature relating to these assets. These transactions throughout, in my opinion, regardless of the form in which they have manifested themselves, have remained in essence the same, and cannot be properly construed to involve an extension of credit by the Bank. The contrary is true.

I have in preparation a detailed brief of the facts, in which I shall set forth a complete historical resume of these transactions, in order that the motives and circumstances surrounding them may be more clearly seen.

I am, therefore, of the opinion that the criticism of the Examiner in listing the extension of credit by the Bank to the subsidiaries of Transamerica Corporation, as in violation of Section 5200 U. S. R. S., is not warranted.

Dated: October 10, 1938.

*Louis Ferrari*  
\_\_\_\_\_  
LOUIS FERRARI,  
Counsel and Vice President.

EXHIBIT "4"

OPINION OF LOUIS FERRARI  
ON THE CAPITAL REQUIREMENTS FOR NATIONAL BANKS

Board of Directors,  
Bank of America N. T. & S. A.

Gentlemen:

My opinion has been asked on the question of the legal requirements for the capital of national banks, and I give it herewith.

The requirements for the capital of national banks under the national banking laws as amended up to the present time, are based solely on the population of the places where the banking offices are situated. They are not in any manner based upon a ratio of capital to deposits.

The original National Bank Act of June, 1864 (Sec. 5138 U.S.R.S.) grounded the capital requirements solely upon the number of inhabitants in the place where the bank is organized. It fixed a minimum scale of capital requirements with which the bank must begin business.

The Act did not make any provision for requiring an increase of capital after the bank had been in operation. The initiative with respect to increases in capital was left solely to the bank. The Act (Sec. 5142 U.S.R.S.) provided that an increase might be made by a vote of two-thirds of the shareholders "with the approval of the Comptroller of the Currency."

During the seventy-five years of the life of the national banking system there have been discussions, official and unofficial, of the capital requirements of national banks. Committees of Congress have heard various views, and bills have from time to time been introduced on the subject, but Congress has never changed the rule that the capital must be determined upon the basis of the population.

Section 5138 U.S.R.S. was amended in 1900, in 1927, in 1933 and in 1935. Although Congress had upon these occasions ample opportunities to change the principle of national bank capitalization, it did not see fit to do so. During the period 1930-1935 the question of establishing a ratio of capital to deposits was actively discussed, but Congress failed to adopt it.

Opinion of Louis Ferrari on  
the Capital Requirements for National Banks - 2

In the Banking Act of 1933 Congress made one other amendment which has a direct bearing on Bank of America N. T. & S. A. It provided that in the case of a state-wide branch banking institution the capital should be, in a state with the population of California, not less than \$500,000, and that the aggregate capital should not be less than the aggregate minimum required by law for the establishment of an equal number of national banking associations situated in the various places where the bank and its branches are situated.

Applying this formula to Bank of America N. T. & S. A., we find that the sum of \$39,900,000 meets all legal requirements for capital. While it is not required by law, we add to this, \$600,000, which is the maximum amount of securities required by the laws of the State of California to be deposited with the State Treasurer for the guaranty of performance of court and private trusts, thus making a total capital requirement of \$40,500,000. To this there should be added the surplus of 20% of the capital required by the law (Sec. 5138 U. S. C.), in addition to 10% from annual earnings for the period from January, 1936, to January, 1939, as required by Section 5199 U. S. C. (Banking Act of 1935). Twenty per cent of the capital is \$8,100,000, and 10% of the earnings for the period since the Banking Act of 1935 became effective, is \$3,813,000, making a total surplus required of \$11,913,000. The total capital required for the bank, therefore, is \$52,413,000. In other words, the bank is capitalized beyond the legal requirements to the extent of approximately \$50,000,000.

It is my opinion that the Comptroller of the Currency has no authority by rule or regulation to establish any requirement for the capital of national banks, at variance with the formulas laid down by Congress. There is no legal support for the demand that the ratio of capital to deposits should be 1 to 10.

The law leaves the question of increase of capital to the discretion of the bank, the Comptroller being authorized only to approve or disapprove the increase.

Dated: October 10, 1938.

*Louis Ferrari*

LOUIS FERRARI  
Vice President and Counsel.

EXHIBIT "6"

OPINION OF LOUIS FERRARI  
WITH REFERENCE TO THE LEGALITY OF SERVICE CHARGES MADE  
BY BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

Board of Directors,  
Bank of America N. T. & S. A.

Gentlemen:

In a letter dated September 23, 1938, on page 4, the Comptroller of the Currency criticises a schedule showing service charges on dormant accounts in the amount of \$520,732.94. You have requested my opinion as to the legality of these service charges.

It is my opinion that the service charges made by the Bank and criticised by the Comptroller are perfectly legal, and that the Bank acquired a good legal title to the money resulting from said charges.

Your attention is called to two forms of depositor's agreement which are used in the Bank of America: Form Tel-112 and Form Tel 2(100). In these deposit agreements the depositor agrees to be bound by the by-laws of the Bank relating to deposits, and specifically includes the matter of service charges. In short, the depositor agrees that a service charge may be made by the Bank. The service charges which have been criticised were, in my opinion, in all respects reasonable, and were designed only to compensate the Bank for the cost to it of carrying the account.

It is my opinion that the contract of the depositor contained in the aforementioned depositor's agreements was valid and enforceable. There is no legal reason, in my opinion, which would render the contract unenforceable.

The provisions in the deposit agreements with reference to the subject are as follows:

(Commercial accounts)

"You are further authorized, in accordance with the rules of the bank, to deduct from the account of the undersigned a monthly service charge for each month, and a charge for checks returned because of insufficient funds."

(Savings accounts)

"Depositor agrees to be governed by the by-laws, all future amendments thereof, and all regulations passed or hereafter to be passed by its Board of Directors pursuant to said by-laws relating thereto, including interest, service charges, etc."

It is my opinion, therefore, that the Comptroller's criticism with regard to this item is not warranted by law.

Dated: October 10, 1938.

  
\_\_\_\_\_  
LOUIS FERRARI  
Vice President and Counsel.

ADDRESS \_\_\_\_\_

**Bank of America**

Phone \_\_\_\_\_

You are hereby requested to make disposition of statements and cancelled vouchers of the account of the undersigned as indicated by check mark below.

The undersigned will call for his statements and cancelled vouchers within three days after delivery to him by messenger, or by mail, not registered, to the undersigned at the above address.

You are hereby requested to deliver by messenger or by mail, not registered, all statements and cancelled vouchers of the account of the undersigned at the above address.

It is agreed that all responsibilities for loss or damage of statements and cancelled vouchers delivered by messenger or by mail is assumed by the undersigned, and the undersigned agrees to notify the bank of any error and to make any claim for credit or refund within 30 days from the date of delivery or forwarding by the bank of statements and cancelled vouchers.

You are authorized, without any responsibility on your part for loss in transit, to return any and all checks which the undersigned may demand for cash, with you and which you are unable to promptly collect to the undersigned at the above address, by messenger or by mail, not registered.

You are further authorized, in accordance with the rules of the bank, to deduct from the account of the undersigned a monthly service charge for each month, and a charge for checks returned because of insufficient funds.

\_\_\_\_\_  
(Signature)

TEL. 112-52-97

\_\_\_\_\_  
(Signature)

The undersigned depositor agrees with

**Bank of America**

that this

COMMERCIAL

SAVINGS

account is to be carried by said bank as a \_\_\_\_\_ account and all funds which the undersigned deposits hereon may have on deposit with said bank shall be governed by its By-Laws, all future amendments thereto, and all regulations, present or hereafter to be passed by its Board of Directors pursuant to such By-Laws relating thereto, including interest, service charges, etc.

Name \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Business or \_\_\_\_\_

Residence \_\_\_\_\_

Father's Name \_\_\_\_\_

Mother's Maiden Name \_\_\_\_\_

Refer to \_\_\_\_\_  
introduced by \_\_\_\_\_

Opened by \_\_\_\_\_

Date \_\_\_\_\_

Amount \_\_\_\_\_

Account \_\_\_\_\_

Aver \_\_\_\_\_

Closed \_\_\_\_\_

Bal. \$ \_\_\_\_\_

Reason \_\_\_\_\_

REGISTRATION SIGNATURE CARD - INDIVIDUAL OR INDIVIDUAL TRUSTEE

November 21, 1932.

Mr. T. E. Harris,  
Chief Examiner,  
National Banking Department,  
Alexander Building,  
San Francisco, California.

My dear Mr. Harris:

Mr. Ferrari informs me that in a conversation with you several months ago you advised him that the Comptroller had requested that criminal prosecutions against Bell, Nolan and the Hellmans be commenced, but that by reason of the uncertain banking conditions then existing, it was deemed advisable to postpone the commencement of such prosecution.

Since this investigation was made by the Comptroller, many new and flagrant instances of the violation of the Bank Act by these persons have been brought to light, and your records will show that this bank has suffered great loss by reason thereof.

I feel that the atmosphere has now cleared, and that these prosecutions should be commenced without delay. I should be pleased to hear from you concerning the steps which are now being taken with regard to this matter.

Cordial regards.

Very truly yours,

(signed) A. P. Giannini

Chairman.

"EXHIBIT 5"

November 26, 1932.

Los Angeles Clearing House Association,  
Los Angeles, California.

Gentlemen:

For your information and files, there is attached copy of a letter which was addressed by this institution to Mr. T. E. Harris, Chief Examiner, National Banking Department, San Francisco, with reference to Messrs. Bell, Nolan and the Hellmans.

Very truly yours,

(Signed) A. P. Giannini  
Chairman.

Enclosure.

REGISTERED.

c.c. Dr. A. H. Giannini

LOS ANGELES CLEARING HOUSE ASSOCIATION

Los Angeles

A. M. Chaffey  
President

November 29, 1932.

Mr. A. P. Giannini,  
Chairman of the Board of Directors,  
Bank of America National Trust &  
Savings Association,  
San Francisco, California.

My dear Mr. Giannini:

This will acknowledge receipt today of your letter of November 26th, with which was enclosed the copy of a letter dated November 21, 1932, to Mr. T. E. Harris. I very much regret to have to inform you that notwithstanding the fact that the envelope covering your letter was clearly addressed to the Los Angeles Clearing House Association and registered, it was delivered by the Post Office authorities to the Los Angeles Stock Exchange and reached the office of the Clearing House Association after being opened by the Los Angeles Stock Exchange and with the notation "Opened in error by Los Angeles Stock Exchange Clearing House. K. I. B." Whether the contents of the envelope were read by anyone in the Stock Exchange or not we have no means of knowing. We will endeavor to inspect and make a copy of the receipt accepted by the Post Office authorities so that our file will be complete in the event of any trouble arising through the mistake.

When I was in San Francisco last month I called upon you but found that you were absent from the city. I will hope to be more fortunate on the next occasion.

With kindest personal regards,

Yours sincerely,

(Signed) W. H. Chaffey.

June 10, 1933.

Mr. Lee I. Madland, Chief Examiner,  
National Banking Department,  
Alexander Building,  
San Francisco, California.

Dear Mr. Madland:

Several months ago we wrote to Mr. T. E. Harris in reference to the advisability of taking action against the officers who were responsible for the condition of the Merchants National Bank of Los Angeles at the time it was taken over by this bank. We have not as yet received a reply to this letter and should appreciate your letting us know if the Comptroller and your department have arrived at any decision in regard to the matter.

In our opinion, the time has surely arrived when some action should be taken. As your department doubtless knows, there were flagrant violations of the law on the part of those officers and it is our feeling that they should be prosecuted to the full extent of the law.

It is difficult to imagine a situation where an institution taken over with a purported invested capital of twelve million dollars should turn out to be absolutely insolvent. In fact, the losses sustained by the institution have exceeded, I am informed, twenty-five million dollars or over twice the amount of the purported capital.

It may interest you to know that the Los Angeles Clearing House Examiner, the National Examiner and our own examiner passed the bank as in satisfactory condition at the time it was taken over by this institution. Doubtless, Mr. Thompson, the Los Angeles Clearing House Examiner, was a rather good friend of the bank at the time for he was then indebted to it for quite a substantial amount, and is still indebted to us at this time. Our examiner may have been influenced or otherwise was remiss in the performance of his duties. As to the National Examiner, it is difficult to understand why such a condition as existed in the bank was not discovered by him.

Very truly yours,

(Signed) A. P. Giannini  
C h a i r m a n.

RE ANGLO-CALIFORNIA BANK

October 10, 1938.  
3:35 p.m.

Present: Mr. Hanes  
Mr. Taylor  
Mr. Oliphant  
Mrs Klotz  
Mr. Upham  
Mr. Delano  
Mr. Gaston  
Mr. Foley

H.M.Jr: All right, Mr. Delano. It's a nice day.

Delano: Very plessant, sir. We're here to, I believe, hear Mr. Foley's report.

Foley: I got out there Wednesday morning, Mr. Secretary, about nine o'clock, and I went over to .....

H.M.Jr: What's this going to be, "My Day"?

Foley: Well, I'll tell you as much or as little as you like.

H.M.Jr: I'll take what you think is discreet.

Taylor: Never mind about the climate.

H.M.Jr: I don't know how Hanes is. I haven't had a chance to come up for air yet. Had two hours with the President and half an hour with Sumner Welles.

Go ahead - "I arrived there at nine o'clock. The birds were singing."

Foley: Sedlacek and I went over to see Prentiss, who is the Chief Examiner in the San Francisco office. We talked the thing over. Then I got in touch with Sam Husbands, Jesse Jones's man, over at the R.F.C. office. The three of us went over there to talk over with him how we were going to handle the matter.

He didn't want - first he indicated that he wanted to go to the meeting, and I told him I thought that was a little bit like the undertaker being at the operation, and I told him I thought he ought to wait until we made ....

H.M.Jr: .... the corpse had cooled.

-2-

Boley: Yes, before he claimed it. He didn't feel very strongly about that, but he did feel very strongly that a slate should be planted with the Board of Directors, a select list of directors that would represent the board.

H.S.Jr: Yes.

Boley: And I told him that I didn't think that that was proper, that I thought we should deal with anybody that the board designated. He said he felt so strongly about it that if we wouldn't do it he would do it himself. And I asked him to hold up on that until I had a chance to call here. So I called Cy and told Cy and he said he felt very strongly that that should not be done, but he would talk over the matter with the people here. So he called me back in a little while and said that not only should we not suggest a slate, but we should oppose their doing it.

So I called Sam back, told him what I had learned, and he said he had just talked to Mr. Jones, and they weren't - they didn't agree that that was the way it ought to be handled, but we should go ahead and run it. So I - I thought that that was the wrong attitude for him to take, that we were out there to do a job and we hoped - we both had particular parts of the job to do and we could get along without fighting about it. So he - he gave me every reason to think that he thought we were intruding out there and that R.F.C. knew much more about these matters than the Secretary's office, and that they'd handled these big matters before and we'd got a lot to learn.

But we appeared before the board, Prentiss and Sedlacek and I, the next morning at 10 o'clock, and they had a full meeting of the board except for four directors, all of whom were not available. One was in San Salvador; Berg was in New York - the Standard Oil man; Herbert Fleishacker was here; one man, I think, was ill, wasn't able to attend. Other than that, they had a full meeting.

Mortimer Fleishacker started off by telling the board what fine shape the bank was in, how its earning capacity had never been so good, how its liquidity was

-3-

greater than it ever had been; that there were certain lines that had been questioned, but he had been in Washington and talked with Mr. Jesse Jones and had arranged with Mr. Jones to take out those questioned assets by having new capital put in. He thought that all of those questioned loans eventually would be paid out a hundred cents on the dollar, that it was nothing to be alarmed at, and that this arrangement that he worked out with Mr. Jones was just to bring forward something that eventually would result if nature took its course.

And then he asked me if I wanted to say anything and I said that we were appearing there solely as representatives of the Comptroller of the Currency and in no other capacity; that our determination from the Comptroller's examination of the bank disclosed things of such a serious nature, as would appear when the letter of criticism was read, involving matters of illegality, unsound and unsafe banking practices, that the Acting Comptroller thought that things should be brought to the personal attention of the members of the board just as soon as possible, and it was for that purpose I was there.

I told them that in so far as any arrangements having been made with the Chairman - with Mr. Jesse Jones, that nothing could be done in that direction until a plan had been approved by the Comptroller of the Currency and the purchase of preferred stock had been recommended by the Secretary of the Treasury, and nothing would be done until the board had given consideration to the letter of criticism and to the report. I said if it was agreeable to the Chairman I would ask Mr. Sedlacek to pass out the letters of criticism to each member of the board present, and he would read the letter aloud.

And I asked them to refrain from any comment until he finished reading. So he said that was all right and Sedlacek read both letters, and while he read I observed how the thing was going over, and I thought that they were all very much impressed with the seriousness of the situation, and a number of them certainly were learning things that they had never suspected existed.

-4-

When he finished, Mr. Mortimer Fleishhacker started all over again with his efforts to minimize the situation, and he indicated that it was unfair to throw this bombshell out. And I told him that - he said he didn't have any opportunity to know about these things, and I told him that the report of examination had been in the bank since the 21st of September; so far as I knew, nothing - the bank hadn't taken issue with any of the things in the report, so far as I knew they hadn't done anything to correct the matters that were criticized.

I pointed out that Mr. Husbands was in town and was available at the Federal Reserve Bank, the office of the R.F.C., and if any of them wanted to get in touch with Mr. Husbands, or if they wanted to get in touch with us, we'd be available during the day.

One of the members of the board asked me if the matter wasn't confidential; he said he feared a leak. I told him that our appearance there and the matters contained in the letter of criticism were of the utmost confidence and he need fear no leak from us.

Then another director asked me how long they had to work this thing out. I told him that we wanted to be entirely fair and reasonable in the matter and were running on no time schedule whatsoever; so long as they acted in good faith and showed an earnestness to work the thing out, we'd be satisfied.

H.M.Jr: Excuse me. (On phone) Hello.. (Has conversation with Jesse Jones)

(There follows few minutes' discussion re R.F.C. financing, not included in this transcript)

Foley: Mortimer Fleishhacker began to get a little nasty, and I thought that it was best for me to get out. He began to question the letter and some of the things in the report, and so forth, and Sedlacek said that we were prepared to stand behind every statement that was in the letter and in the report. I told the board that we'd ask for a reply to the letter in writing, and I thought that was the place to raise anything that they had to say in their defense, and if it pleased the board

-5-

I'd like to withdraw so they'd have an opportunity to consider the matter in executive session; whereupon I left and I went back and waited.

I heard from Sam Husbands then in the afternoon that Mortimer had sent for him. He said he'd let me know what happened. The next thing I knew, about half an hour later Mortimer called me and said that the board had adjourned and ....

H.M.Jr: Excuse me?

Foley: ... the board had adjourned and appointed a committee, and he was sending a letter air mail to Mr. Upham, giving the names of the committee, and he told me who they were. He asked me if I would drop in to see him in the morning. I told him I would if I wasn't called back to Washington.

H.M.Jr: That's Fleishhacker.

Foley: Mortimer Fleishhacker.

So we looked over the names and we decided ....

H.M.Jr: You skipped from five o'clock to nine o'clock next morning.

Foley: That's right. I can go into that. I saw a bridge and I saw the Exposition.

Taylor: That's part of the climate.

H.M.Jr: All right.

Foley: Had dinner - with one of my friends.

And I talked to Mr. Upham and he told me to get the first plane out, and I called Mr. Fleishhacker's office and told his secretary that I'd been called to Washington, it would be impossible for me to see him, and I got out of town.

H.M.Jr: The only thing that I want to question - I get the feeling from the way you tell it that Mr. Husbands wasn't too pleasant.

-6-

- Foley: I felt that he was reflecting an attitude of Mr. Jones. I thought - I may be entirely wrong about this - but that Mr. Jones, having lost his battle here in the front office, had sent Husbands out there to accomplish the same thing on the West Coast, and they resented very much my being there, resented very much my standing up against them and insisting upon doing it the way I had been instructed to carry it out.
- H.M.Jr: Was there a battle there?
- Foley: (Smiles) Well, I think he found out who was boss.
- Delano: I might supplement that slightly, Mr. Secretary. Mr. Jones called me up - I think it was the night that you ...
- H.M.Jr: Little louder.
- Delano: ... the night that Mr. Foley arrived there, and said that he had been in discussion with Mr. Husbands concerning Mr. Husbands' presence at this meeting, and he said that his impression was that Mr. Husbands was going to be there, and I said my understanding was contrary and my understanding was the decision made here was that the Comptroller's office would be solely represented and that any negotiations would come naturally from our presentation. And Mr. Jones said that if we wanted it that way, it was all right with him.
- H.M.Jr: Well, I think Taylor summed it up the other night going home. I hadn't just thought of it in those terms, but - maybe he can do his own talking - but the impression it left on me - the people who have been in national banking business, when they come down here and start supervising other banks, seem to have bred in their bone the feeling that we just mustn't do anything to hurt anybody's feelings, and that policy of "We'll just try - we'll try and smooth this thing over and fix up this crowd so they can just go right on and keep on doing business." And I think that's been more or less the policy.
- And Jones has told me - in the room here, he's told me, "Why, if you pursued this policy, you'd have most of the bankers in jail." He said, "Most of the bankers

-7-

would be in jail." I mean words to that effect. He said, "Most of the bankers would be in jail."

Delano: Well, I sense that.

H.M.Jr: I think Crowley's told me the same thing, and men in this room - the Federal Reserve's whole attitude more or less is the same thing - I mean "Let's fix this thing up." I mean Eccles the other evening gave me a long talk, and why we should go slow with Bank of America, since he's back - I mean - and how Mr. Giannini was going to put on a campaign and how he's always won and how the newspapers would all be with him. Could I stand it?

"Well," I said, "Marriner, that's what he's got away with for five years, and the answer is that I think it's time to find out who is Comptroller of the Currency, I'd like to know."

So that's the whole thing, and when this thing suddenly comes in this way - naturally there's been a lot of shocks around here. But from the account you've (Foley) given of yourself, what you've told me, + think you've conducted yourself very well.

Delano: Of course, the emphasis on that, too, Mr. Secretary, is that they - you must be careful here or you will tear down financial structure.

H.M.Jr: Well, we can do an honest job and a legal job and a constructive job and not have to do - be in cahoots with crooked management, that's all.

Delano: That's right. I think that particular aspect of the situation is overdone, because I think there's a lot of honest bankers in spite of the statement that they would all be in jail, and I think they'd welcome a bit of strength here for those sections of the economy that are not honest.

H.M.Jr: Well now, Tom Smith is entirely on our side as far as the ethics goes, and he realizes the banking profession is at stake - I mean now they conduct themselves. There is no doubt in Tom Smith's mind. And there are - I think that the most - there are a thousand other Tom Smiths in this country who feel the same way. But there's grown up an attitude here for five years which

-8-

just has to be changed and will be changed with you and Upham in there.

So if there's nothing else I have a press conference ....

- Foley: I think the trip had a very salutary effect also on the morale of the Comptroller's office in San Francisco, because it was about at the lowest possible ebb.
- H.M.Jr: Well, I'm sorry.
- Foley: And the people that had been making these examinations, you see, had been threatened with removal by Jefty O'Connor.
- H.M.Jr: Really?
- Foley: And so forth. Sure. And the idea was that nothing ever should be said about these two situations.
- H.M.Jr: Well, I want some more gossip today or tomorrow or next day. I'd like you to walk home with me and give me some of the gossip.
- Something you (Delano) wanted?
- Delano: No.
- H.M.Jr: You're satisfied?
- Delano: Perfectly. I think it's a very good start, Mr. Secretary.
- H.M.Jr: Thank you for coming over.

*never sent*

Detailed reply to the letter of October 11, signed by individual directors of your bank, has been delayed so that we could give very careful consideration to the various matters discussed in it.

Toward the close of that letter it is stated that through your special committee of nine directors, which has been directed by you to "submit a written report of facts," you will give further consideration to the matters under discussion. You ask that this office, in the meantime, afford the management an opportunity to clarify some of the issues raised.

We have every disposition to give the management, and more especially the committee of nine directors, or representatives of both, an opportunity for an office conference with us. May we say, however, in all friendliness, that your letter indicates to us that such a conference seems destined to be as futile as have past office conferences with the management. You have so many "honest differences of opinion" with us. The criticisms made by our examiners and the positions taken by this office are in most instances contested and refuted. Legal opinions of your own counsel are advanced in support of your contentions. Copies of some of these are attached to your letter of October 11. They do not appear to us to be very closely reasoned, or amply supported.

-2-

May we refer to just one of these, because it concerns a matter which we feel to be a major difference between us. Exhibit "4" is an "Opinion of Louis Ferrari on the Capital Requirements of National Banks," dated October 10, 1938. Mr. Ferrari must be well aware that by his tests a national bank organized in any one of our largest cities with a capital of \$200,000 could accept deposits of hundreds of millions of dollars without any increase in its capital. He knows that by his tests your own institution could, if it confined its branches to San Francisco, satisfy the legal requirements for capital by providing \$500,000. Does either he or you seriously contend that Congress when it provided for a "minimum" capital intended that the Comptroller of the Currency should be powerless, in supervising banks for the protection of depositors, to require increases in capital as deposit liabilities increased? If Mr. Ferrari is familiar with the discussion of this matter in the banking committees of the Congress, to which he refers, he knows that they have no such idea.

It is characteristic of the "shadow-boxing" of your management that after developing at some length this untenable position based upon a fallacious legal argument that it should with a grand gesture wave aside this "technical position" and agree, not that capital should bear a relationship to total deposits, but to the nature of its deposits and its loans. The point is then made

-3-

that your deposits are in great bulk time deposits and your loans property real estate loans. Time deposits, in periods of stress, all too often become demand deposits through necessity. Sound banking opinion as well as supervisory opinion is that national banks with the very highest grade of assets should have a minimum of one dollar of capital for every ten dollars of deposits, of whatever classification. Surely a bank with the volume of criticised assets which are in your institution should have an even better ratio than this. Many other considerations in addition to character and condition of assets are involved. This office continues to insist on more capital for your bank.

Before we take up a discussion of the detailed replies to our letter of September 23, let us look at some of the general matters to which you refer.

You state that Examiner Palmer "appeared suddenly" in a "startling performance" at your meeting on September 13, and "delivered criticisms on items never theretofore communicated formally to the management....or the Board." We understand his "sudden appearance" was delayed by some half hour during which time the dividend was declared, and that with ample time after his appearance for reconsideration of that action, such was not done. Regardless of what may be the "practice of corporations" to send out press notices in advance of dividend

-4-

action by their boards of directors, we do not regard with favor that practice by national banks. In this case we regard it as an indication of the dominance of the management and as bearing out the contentions of the examiners that the board does not exercise independent judgment, but approves any decision or policy determined upon by the management.

Certainly the attitude of this office with respect to dividends has been brought formally to the attention of the management and the board of directors in several of the reports of examination which are sent to the board and with which they are expected to familiarize themselves. In office conferences, also, we have expressed the opinion that dividends are excessive and that earnings should be channeled into capital account. Analysis of the examination reports of your bank since it came under the supervision of this office show that the Comptroller has "subjected himself to the most deliberate restraint" in exercising the grave responsibilities imposed upon him by Congress, and that procedure "in the ordinary manner by conferences from time to time" between this office and the management has been unproductive. If the directors had followed these reports of examination, they would have known of the repeated demonstrations by this office of the weak condition of the bank and the hazard of the dividend policy.

- 5 -

It was only as a last resort that we adopted the extreme measure of issuing a warning in accord with Section 30 of the Banking Act of 1933.

You greatly simplify the situation when you express the view that the chief difficulty between the bank and this office involves attitudes toward real estate as security for loans, and the further view that your bank is in a large measure a savings bank and should be judged by the standards of savings bank practice. Much more than that is involved.

We note that you do not understand why we considered it necessary to send our letter of September 23. It is customary for this office to review examination reports and address letters summarizing the major criticisms made by examiners for the benefit and guidance of directorates. It is more cause for remark when that is not done than when it is.

Just one more item before we proceed to a consideration of your detailed comments on our specific criticisms. If the confirmations of our telegram of September 13 were mailed to you in such a manner as to cause them to be seen by persons not connected with the bank, we have genuine regret for that circumstance. Our letters of September 23 were sealed in an envelope with the name of the addressee and the words "Personal and Confidential" on it. This sealed envelope was enclosed

- 6 -

in a second envelope, addressed to the board members, and bearing the words "Special delivery" and "Registered - Return Receipt Required." If that precaution was not taken in the communication of the 16th, we can only express our regret.

The analysis of your comments on our specific criticisms is probably superfluous and pointless, since only a brief study of the reports of examination for the past ten years is necessary to demonstrate the superficiality of the positions taken in your letter. If the directors are willing to face and solve the major problems of the bank, some of the matters discussed become of much less significance. But this office is unwilling to permit a bank with such a volume of criticised assets, with such a weak capital position, with such a tremendous amount of insured deposits, with so many and so widely dispersed branches, with so many interrelated affiliates, with such a concentration in real estate, with numerous violations of law repeated year after year, with continued acts of unsafe and unsound and negligent banking to go unchallenged by us. The record of the past ten years shows the same criticisms repeated again and again, the same defences made, the same tactics of argument and delay. We would like to feel the directors mean it when they assure us their desire to co-operate with us "in every effort to further the progress of the bank," but if the

- 7 -

replies which are made in the letter of October 11 represent the considered and informed opinions of the directors whose names are signed to it, we feel that we are far from that degree of co-operation which is necessary.

October 11, 1938

For the Secretary:

Here is a copy of a letter which represents what I refer to as "supervision" as being a middle ground between management on the one hand and audit on the other.

If you have time to read it, O.K. If not, also O.K.

Upm

TREASURY DEPARTMENT  
COMPTROLLER OF THE CURRENCY

294

Washington

October 7, 1938.

Board of Directors,  
Union National Bank in  
Mt. Wolf, Pennsylvania.

Gentlemen:

Reference is made to the report of examination of your bank, completed September 2, a copy of which was furnished you.

Notwithstanding the criticism previously directed at the large line of R. E. Bear, both as an unwarranted concentration of credit and as a violation of Section 5200, U.S.R.S., it is observed that the indebtedness has increased and now amounts to 28% of the bank's loans. As you were advised in the office letter of May 11, the conditional sales contracts or "leases" are not negotiable and, therefore, do not come within Exception Two of Section 5200 so as to exclude the obligations from the limits imposed by that Section. Therefore, these obligations in their present form increase the amount by which the aforesaid statute has been violated.

You have repeatedly expressed the opinion in correspondence relative to the matter that the discounted obligations of R. E. Bear constitute commercial or business paper and, consequently, are not subject to any limitations based on the bank's capital and surplus. At inception, provided they are negotiable, bear the endorsement of R. E. Bear as the actual owner, and arise out of the sale of commodities, as they presumably do, we agree that such is a proper construction. It has been pointed out, however, that the so-called "leases" or conditional sales contracts are not negotiable, and you are advised that for a number of years this office has consistently taken the position that with renewal commercial or business paper loses its character as such and becomes a debt chargeable to the line of the person accommodated, usually the endorser or discounter. The provisions of Exception Four of Section 5200 were set out in the office letter of April 14 as being applicable to such renewals, provided, of course, that maturity of the notes does not exceed six months. Such being the case, the bank could lawfully hold notes of this type in an aggregate equal to 15% of its unimpaired capital and unimpaired surplus in addition to the basic 10% limitation imposed by the statute and any obligations held in excess thereof constitute violations of law.

Your attention is directed to the admonitions contained in the office letter of April 14 regarding practical objections to concentrated lines, and you are advised that any loss incurred in loans or other assets

3/137

Bd. Dirs.,  
Union N. B. in  
Mt. Wolf, Pa. - 2.

required in violation of law is not a proper charge against the bank's profits but is one for which the directors authorizing or approving the same assume personal liability. The loans making up the R. E. Bear line should, therefore, promptly be reduced to conforming limits and you are cautioned that this office will not condone repeated or continued infractions of the law.

The foregoing is also applicable to the excessive investment which continues to be held notwithstanding the matter has been repeatedly brought to attention and you have been advised that it should promptly be reduced to conforming limits.

The condition of the bond account is less favorable, highly unsatisfactory, and apparently the principal problem now confronting the bank. Depreciation remains unduly heavy, and increased and excessive investment in low-grade issues being shown, and while the "marginal" grade bonds are reduced, the reduction being reflected in the increase in low-grade issues, holdings continue to far exceed conservative proportions.

We have read with interest the reference in your letter of August 11 to the fact that due to criticism on the part of this office in the past you disposed of holdings in Joint Stock Land Bank bonds, re-investing the proceeds in railroad issues, which as a class are now selling at greatly depreciated prices, in contrast to the better market position enjoyed by the former. Investigation of the correspondence files of this office for the past three years discloses that in none of the letters addressed to you with reference to reports of examination is specific criticism made of the Joint Stock Land Bank bonds. Exception was taken to the lack of diversification in the bank's investments and to an unduly large accumulation of those rated as being of substandard quality. Exception has more recently been taken to the acquisition of large holdings in railroad issues. This office does not attempt to advise or formulate the investment policies of banks under its supervision. That is the duty of the management and it may not escape responsibility therefor. We would, however, be unmindful of our duty as a supervisory agency if we failed to point out the existence of conditions incompatible with sound banking practices. We submit that the investment policies pursued by the management are largely responsible for the unsatisfactory condition of the bond account. In the president's letter of September 2, 1936, while admitting that all of the bank's bonds were not of high-grade, he expressed the belief that it was necessary to consider the advantage in yield inherent in those which failed to qualify as desirable bank investments. As we subsequently pointed out, the directors found the bank's earnings sufficient to justify the payment of a 4% common dividend at the close of the same year. Investment policies too greatly influenced by a desire for high yields or for speculative profits can be relied upon to work to the ultimate detriment of the bank.

Bd. Dirs.,  
Union N. B. in  
Mt. Wolf, Pa. - 3.

Following your next regular meeting, you are requested to acknowledge receipt of this communication, over your individual signatures, and advise in the premises. Your reply should also state the amount of depreciation then existing, the amount of overdue paper held, advise of any improvements which have taken place in the investment account, and the extent to which the missing financial statements as scheduled on Page 6 have been supplied, sending copies to District Chief Examiner S. L. Newnham and National Bank Examiner E. M. Needham, both at 2140 Lincoln-Liberty Building, Philadelphia, Pennsylvania.

Very truly yours,

(Signed) C. B. Upham

Deputy Comptroller.

WALTER E. BUCK  
666 PINE STREET  
SAN FRANCISCO

October 12, 1938.

Mr. Cyril B. Upham  
Acting Comptroller of the Currency  
Treasury Department,  
Washington, D. C.

My dear Mr. Upham:

I wish to acknowledge receipt of your letter of Oct. 1st, 1938 in which you enclose copy of letter addressed to Mr. Mortimer Fleischhacker, requesting him to call a meeting of the Board of Directors of the Anglo California National Bank of San Francisco. I attended the meeting called for the 21st of September, pursuant to your request, and have carefully read the letter dated Oct. 3rd, 1938 which you addressed to the Board of Directors pertaining to certain affairs of that bank. As you are undoubtedly aware, the matters stated in that letter come as a complete surprise and shock to me. While I have attended regularly, except when illness or absence prevented me, meetings of the Board of Directors, nothing was ever disclosed pertaining to the matters you have referred to. I naturally appreciate the fact that these details have now been called to my attention and brought out into light, and am only sorry this was not done before.

You may be assured of every co-operation, that as a member of the Board of Directors I shall do everything possible to comply with the suggestions in your letter and see that the bank is properly managed and in full compliance with the provisions of law. Frankly, the statements made in the letter are rather over-whelming and the directors have taken immediate steps to ascertain the facts and bring everything to light.

A special committee was appointed at the meeting to make a full investigation and then report further to the directors.

If there should be any matters upon which you feel I should receive further information from you, I shall be very glad to have you communicate with me. I remain,

Very truly yours,

*W. E. Buck*

WEB:B

October 12, 1938

Around 2:30 p.m. I talked to Mr. Sedlacek in San Francisco.

He said that he and one of Mr. Husband's men had been in the Anglo California bank working steadily and had just about completed a reclassification of the criticized assets. He says that they have set up a total loss of \$6,037,908.74 and provided for additional reserves of \$8,374,228.60, which will permit taking out of the bank unacceptable assets of \$14,412,137.34. That means that with \$13 million preferred stock, the bank can be cleaned up.

The bank will then have a balance sheet showing \$5 million of preferred stock retirable at \$18 million, common stock of \$10,400,000.00, surplus of \$4 million, reserves of \$1,140,000.00 and undivided profits of \$816,417.66, making a total capital structure of \$21,356,417.66, or a 10:1 ratio.

Mr. Sedlacek said that the Directors of the bank met yesterday and discussed matters, and that while they

- 2 -

are agreed that Herbert Fleishhacker should leave the bank, not one of them is willing to tell him he must resign. It may be necessary, they think, to let this decision go over until the next shareholders meeting which is early in January. Mr. Sedlacek thought we might get quicker action than that because the committee of three Directors is authorized to look at all the criticisms of the bank, including Herbert's manipulations, and prepare a recommendation. They can hire counsel and public accountants and if they want to ask for resignations, can do so.

Sedlacek said that he had seen none of the Directors of the bank since the Board meeting several days ago but the three Directors appointed as a committee are meeting tomorrow and he very likely will meet with them. He believes that they are disposed to do a real job.

Mortimer Fleishhacker has been meeting with Director Berg for the last three days, and Sam Husbands of the RFG met with them this morning. Sedlacek is to see Sam Husbands at 2:00 p.m., Pacific time, but he has already been informed that Mr. Berg is disposed to make a loan to Mortimer Fleishhacker to enable him to clean up his borrowings from the bank.

Upm

October 14, 1938

I talked to Mr. Sedlacek in San Francisco at 4:30 p.m. our time.

He said that he had just returned from the Anglo California Bank. The committee of the Board to consider and report on the Comptroller's letter to the Directors met yesterday. Mortimer Fleishhacker had refused to let Sedlacek meet with them. Mr. Sedlacek told him that he was there to be helpful, that he was not running away from anything and that he would be glad to meet with the committee if he was wanted. Some of the other Directors told Sedlacek that they want him to meet with them, and they have asked him to meet with the committee of three, plus four or five other directors, on Monday at 3:00 p.m. I told him to meet with them at that time unless he received contrary instructions from me in the meantime.

Sedlacek said that Herbert Fleishhacker will be at the meeting on Monday and it is possible that the Directors will ask him to resign at that time.

Sedlacek said that he understood Herbert Fleishhacker was in Washington today and Sedlacek inquired what he had been able to accomplish here. I told him that I had not seen or heard from Herbert Fleishhacker since Thursday of last week.

Upm *[Signature]*

# Bank of America

NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 15, 1938

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

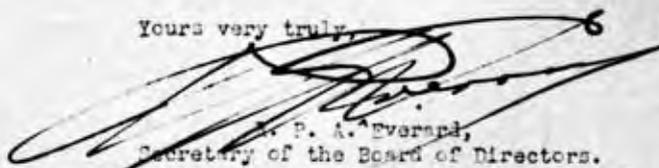
Dear Sir:

There is forwarded to you herewith a communication addressed to you by the Directors of Bank of America National Trust and Savings Association.

This communication is signed by all the Directors of the Bank who attended the Special Meeting of the Board of Directors held on September 30, 1938, for the purpose of considering your letter addressed to the Board under date of September 23, 1938, with the exception of Mr. A. P. Giannini and Mr. Jos. M. Schenck.

Mr. Schenck participated in the proceedings of the meeting, in which all motions were carried unanimously. He resigned as a Director of the Bank under date of October 10, 1938.

Yours very truly,



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



30

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**Bank of America**  
NATIONAL BANKERS ASSOCIATION



302

Los Angeles, California  
October 11, 1938.

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

Dear Sir:

By way of acknowledgment of your letter of September 23, the Secretary of our Board sent you by registered mail on October 1, the following communication:

"Hon. Comptroller of the Currency,  
Washington, D. C.

Dear Sir:

"Please be advised that, pursuant to the request of Mr. Marshall R. Diggs, Acting Comptroller of the Currency, a Special Meeting of the Board of Directors of Bank of America N. T. & S. A. was held on September 30, 1938, for the purpose of considering and taking action upon a communication addressed to the Board of Directors of this Association by Mr. Diggs under date of September 23, 1938.

"All the Directors were present with the exception of one who is now in Europe and two who are in the eastern part of the United States.

"The communication referred to was considered at length and in detail, and a special committee consisting of nine members of the Board was appointed by resolution, a copy of which is enclosed.

"The Committee was instructed to act promptly in order that the Board might respond specifically to said communication at an early date.

Respectfully,

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

Enclosure

(Resolution)

"WHEREAS, Marshall R. Diggs, Acting Comptroller of the

Comptroller of the Currency

- 2 -

October 11, 1938.

Currency, has sent to each member of the Board of Directors of Bank of America National Trust and Savings Association, a communication under the date of September 23, 1938, directing the attention of the members of the Board to the report of examination of the Bank of America, completed September 15, 1938, and to the Examiner's comments under various specific headings; and

"WHEREAS, Mr. Diags has requested the Board of Directors to consider his letter at a special meeting of the Board called for the specific purpose and to reply in detail to the matters contained therein;

"NOW, THEREFORE, BE IT

RESOLVED, by the Board of Directors of Bank of America National Trust and Savings Association at a special meeting of said Board called for the 30th day of September, 1938, in compliance with the request of Mr. Diags, Acting Comptroller of the Currency, and in accordance with the By-laws, a quorum being present and voting affirmatively hereon, that the following members of the Board of Directors

Marshal Hale  
 C. E. Baker  
 Dr. G. E. Caglieri  
 F. W. Flint, Jr.  
 Dr. A. H. Giannini  
 C. Y. Hawkins  
 H. A. Wanzers  
 Wm. Wallace Mein  
 Dr. C. J. Sullivan

are hereby appointed, authorized and directed to analyze all of the items contained in the report of the examination of this Association completed September 15, 1938, and the letter of the Acting Comptroller of the Currency of September 23, 1938, and submit a written report of facts found by such analysis for the information, review and consideration of the Board of Directors so that the Board, with the complete statement of facts before them, may reply in detail to the letter of the Acting Comptroller of the Currency and take all necessary and constructive steps required by the facts.

"I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution

October 31, 1938.

is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said bank at a special meeting thereof held on the 30th day of September, 1938, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted unanimously in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on the 1st day of October, 1938.

R. P. A. Everard  
Secretary of BANK OF AMERICA  
NATIONAL TRUST AND SAVINGS ASSOCIATION."

Our Board has given consideration to all of the items set forth in your letter of September 25, and our reply in detail as requested is given below.

Our Board respects the authority which the law has conferred upon your office, and we think that we, at least in a measure, appreciate the burden of responsibility which rests upon you. We have noted with satisfaction your statement in your letter of September 25 that the purpose of the criticisms of the examiner, and of those in the above mentioned letter, is to assist our Board in a constructive manner to protect the interests of the depositors as well as of the shareholders of our Bank. We feel that this consideration offers a basis of cooperation upon which there can be no difference of opinion between us and the Comptroller of the Currency.

In your letter of September 25 to each individual member of our Board, in which you refer to your duty to protect the depositors as well as the shareholders of our Bank, you say specifically that it is your desire in this matter to be fair to all concerned. We wish to express our appreciation of this sentiment.

Nevertheless, we are constrained to comment upon the procedure which you have seen fit to adopt, a procedure which, as indicated below, might reasonably have caused harm to the very persons you desire to protect, namely, the depositors and the shareholders.

Under your instructions, Examiner Palmer on September 13, 1938, suddenly appeared before our Board with your telegram and delivered criticisms of the Bank on items with respect to which the Comptroller of the Currency had never theretofore communicated formally with the Management or our Board. This was a startling performance, and our Board feels that there was not sufficient background to justify it since there had been no prior communication from you on the subject.

When you instructed the examiner to read to our Board this last minute telegram at our meeting at which a dividend was due to be declared, you apparently did not take into consideration the practice of corporations to send out press notices in advance of the actual hour of a dividend declaration, subject to release.

October 11, 1938.

On September 16, 1938, three days later, you sent through the mail to each of our Directors a copy of this telegram. Contrary to the custom with mail of this kind, the envelope was marked neither "personal" nor "confidential". It was delivered at the various business addresses of members of the Board in California, and elsewhere, and opened in the ordinary course by office employees. Its contents thus got into the hands of various persons for whom it was not intended.

We do not understand why you decided to send this telegram through the mail to each of us after it had already been read to the Board and apparently had served its purpose.

In sending to each Director your letter of September 23, 1938, with a copy of your important letter of September 23, 1938, addressed to the Board proper, attached, you followed a similar procedure. As a consequence, a number of persons not connected with the Bank became apprised of all of the criticisms which you ask us to consider and answer.

We shall not comment further at this point on this aspect of the matter, except to say that it seems to us most extraordinary that the only two communications our Board has ever received from the Comptroller of the Currency on this subject should come in the nature of warnings that the existence of the management and of the charter of the Bank itself might be attacked if certain conditions, greatly improved under this administration, were not satisfactorily met.

We do not question the good faith of the Comptroller of the Currency, but we are at a loss to understand why he saw fit to address the letter of September 23, 1938, to each Director, calling his individual attention to the most drastic penalty on the statute books relating to the regulations of national banks and pointing to his potential personal liability. There had been no prior communication from him on this subject either to the Management or to us.

The items in question, as set forth in your letter of September 23, 1938, are each replied to below:

1. DESIRE TO PUBLISH INCREASED EARNINGS - DIVIDEND POLICY

We do not understand why the Management should be criticized for being desirous of "publishing large earnings statements." This criticism is made twice in the letter, once at the beginning and again near the end.

As a matter of fact, the Bank was deprived of the opportunity to publish larger earnings figures as a result of the \$14,000,000 write-up, as the income accounts did not receive the benefit of amounts realized and amortized, which totaled approximately \$12,000,000.

Apart from this, our published earnings statements have always conformed to the facts.

October 11, 1938.

In his criticism of our dividend policy the examiner has used the annual normal earnings of the Bank for the years 1933 to 1937 inclusive, approximating \$9,000,000, as the basis for his conclusion that the Management looks to recoveries as a factor for the elimination of losses. The report indicates that the annual normal earnings for the years 1933 to 1935 inclusive, averaged approximately \$7,000,000.

These were extremely lean years in a cycle of depression, and the report further indicates that in the years 1936 and 1937, when normal conditions were returning, the annual normal earnings averaged \$11,000,000. Furthermore, the normal earnings for the current year on a comparable basis are running at the rate of \$15,000,000 per year. It does not appear reasonable for the examiner to use the three lean years in the calculation of normal earnings in order to support his conclusion.

As the Bank is steadily increasing its earnings, despite the low rate of interest on investments prevailing, it is not to be expected that its earnings will again sink back to the low level of earnings in the three depression years referred to. The normal income for the years 1936, 1937 and 1938 (nine months of 1938) is at the average rate of \$12,500,000 per annum.

The net normal income of the Bank shows an increasing trend upward, being \$1,502,000 for September, against an average of \$1,283,574 for the second semi-annual period of last year. Net actual income in September, 1938, was \$1,937,700. It appears certain that the earnings will progressively increase as business recovery and expansion progress.

The examiner has criticized the disbursement of a major portion of the Bank's operating earnings through dividends. We feel that consideration of dividends paid should be related to the net actual earnings of the Bank, as current dividends are not a charge against future earnings, and the report illustrates the fact that earnings in excess of dividends are sufficient to provide for losses that do arise. Furthermore, the losses charged off by this Bank since 1932 have resulted from the greatest period of inflation and deflation that the world has experienced, and it is reasonable to assume that these losses are non-recurrent and that a greater portion of the Bank's net earnings in excess of dividends paid will hereafter be available to increase the Bank's capital structure.

Our dividend rate is not permanently fixed, and is not based entirely upon net normal earnings, but it is based upon the total current earnings of the Bank from all sources. Our Board is keeping close watch on economic trends and earnings, and you may rest assured that should a change in future economic trends adversely affect our earnings, our dividend action will be regulated accordingly.

The average loss experienced on the average total of outstanding loans made since 1932, when the present Management took control, has been only  $1/20$  of  $1\%$  per annum, or  $3/10$  of  $1\%$  for a six year period. On the basis of the present volume of loans, this may be taken as a fair indication of the extent of future losses which may be expected to result in a charge against current earnings.

We believe that a thorough consideration by you of all the circumstances, taking into account our large capital structure and great earning capacity and the comparatively small percentage of doubtful and loss items in relation thereto,

October 11, 1938.

will lead to the conclusion that the present dividend is not excessive and that it leaves an adequate margin of profit to insure protection of our assets.

We observe your comments regarding the warning relating to the declaration of the dividend, which was referred to in the telegram read to the Board on September 13, 1938, by Mr. Palmer, and note particularly the statement that "The Office of the Comptroller of the Currency is informed that, despite this warning, the Board of Directors of the Bank declared a dividend without first having made proper provision for the criticized assets of the Bank." As your office was already been informed, the telegram referred to was not read to the Board of Directors prior to the declaration of the dividend, and the Board had no knowledge of the contents of the telegram at the time of the declaration.

Apart from this phase of the question, we wish to draw your attention to the fact that, as indicated in the attached communications marked "Exhibit 1" all of the items in dispute covered in the last previous report of examination of the Bank had been disposed of.

### 2. LARGE LINES

We observe in the third paragraph of your letter the statement that the examiner had held that the Bank has made an extension of credit to Transamerica Corporation and its subsidiaries to an aggregate amount of \$76,000,000. Since April 29, date of examination, this total has been reduced by more than \$8,200,000.

Your total includes the following items which we do not believe represent extensions of credit by the Bank:

"Guaranteed Loans"	\$5,524,096.00
"Option to purchase"	2,716,800.00
California Lands Inc.	12,051,526.00
Capital Company	27,637,320.00
	<u>\$ 47,980,242.00</u>

These items have been reduced by \$5,670,000 since examination.

With this total of \$47,980,242 deducted, the so-called "large lines" are reduced to approximately \$28,000,000. Of this amount, a total of \$4,800,000 represents loans to clients of the Bank secured by stock of Transamerica Corporation, and it seems to us that this total should also be excluded from the line to Transamerica Corporation and its subsidiaries, because Transamerica Corporation has nothing to do with them.

For your further consideration, we submit below an analysis of the items in question.

(a) "Guaranteed Loans" - This transaction resulted from the settlement of the contracts originally made in 1931 and 1932. In conference with

October 11, 1936.

the Comptroller of the Currency and with his approval, Transamerica Corporation guaranteed certain assets of the Bank to the extent of more than \$35,000,000. At that time the Bank was under another management and with a different Board of Directors. It was not an extension of credit to Transamerica Corporation by the Bank, but the contrary is true, as Transamerica Corporation pledged its credit to the Bank.

During the past six years this item has been reduced to approximately \$5,000,000. This item is listed in the report as \$5,524,096.03, and the reduction therefore since April 25, 1936, has been approximately \$500,000.

Transamerica Corporation permitted one of its affiliated corporations, the Corporation of America, to execute these contracts, and subsequently assumed the obligation through its wholly owned subsidiary, Inter-America Corporation. When the stock control of Bank of America was to be distributed by Transamerica Corporation and Inter-America Corporation liquidated, it became apparent to the managing officers of the Bank that it would be necessary to revamp the setup of this contract while unity of ownership still existed. The balance of the \$35,000,000 contracts at that time was \$8,561,099.82 and Transamerica Corporation subsidiaries liquidated such balance by payment of the sum of \$5,844,299.82 and through delivery of 56,600 shares of the National City Bank of New York to the Bank, which was then worth at the market \$2,716,300. An option agreement was executed by which Transamerica Corporation would purchase from the Bank 11,300 shares of National City Bank stock annually at \$48.00 per share, thus completing the purchase of the entire 56,600 shares in a five year period. As a consideration for the option, Transamerica Corporation delivered to the Bank 13,400 shares of the National City Bank of New York, the equivalent of more than 32% of the book value of the shares under option.

As a part of the general plan of settlement, the Bank was desirous of reacquiring all of the charged off assets, aggregating approximately \$55,000,000, which were covered under the original \$35,000,000 contracts and subsequent transactions, and which it was judged from an appraisal had a determinable minimum recovery value of \$6,500,000. The Bank therefore acquired these assets for the sum of \$6,500,000, properly supported by pledge of securities. If such assets fail to provide recoveries to the extent of \$1,300,000 in any year, the Bank will receive cash or may liquidate the pledged securities to make up any deficiency; except that any excess accumulated in any year will be permitted to carry into a future year and apply against any deficit.

The Bank materially benefited by the settlement of the

October 11, 1938.

\$35,000,000 contracts effected through these transactions. No specific liquidation program had been established under the old contracts, whereas the new arrangement provided for a very definite program of liquidation within a five year period, the remaining term of which is now four years. Further, under the settlement agreement the Bank will receive the benefit of recoveries anticipated on the charged off assets after the full amount of the guaranty is recovered. Under the terms of the original \$35,000,000 contracts, such further recoveries, as well as future appreciations in bond accounts, as indicated by the examiner on page 8, insert 7, of his report, would have gone to Transamerica Corporation in the full amount. An additional benefit to the Bank is the income on dividends received on the National City Bank of New York stock amounting to \$56,600 a year.

With respect to the guaranteed item of \$6,500,000, the first year's requirements have been satisfied and the item reduced by approximately \$1,500,000 in a fourteen months' period.

The option to purchase shares of the National City Bank of New York has been reduced by \$543,360 through the sale of 11,320 such shares to Transamerica Corporation at the option price of \$48 per share.

Bank of America has pledged with it by Transamerica Corporation as security for its guaranty of \$6,500,000, now reduced to \$5,011,000, the following collateral:

66,560 shares	Central Bank, Oakland	\$ 4,060,160.00
5,445 "	First National Bank of Portland	1,470,160.00
10,000 "	Bankamerica Agricultural Credit Corporation	1,243,000.00
28,300 "	National City Bank of New York	735,800.00
71 "	Bank of Amador County	30,175.00
40 "	Bank of A. Levy & Co.	18,000.00
31 "	Bank of Davis	6,410.00
		<u>7,563,895.00</u>

Balance Guaranteed Loans October 6, 1938 \$ 5,011,000.00

From the above it is apparent that the guaranty is secured by good collateral having a value of \$2,552,000 in excess of the remaining balance. This item is not classified as either doubtful or loss.

(b) CAPITAL COMPANY AND CALIFORNIA LANDS, INC. CONTRACTS

October 11, 1938

310

These contracts are listed by you as \$39,739,740.47. They have been reduced since the examination to \$36,972,000.

While these contracts represent a substantial amount, we believe that the obligations are money good and that they should be regarded as sound obligations. In addition to the real estate purchased by the land companies and underlying the contracts as security, the companies each have a net worth represented by other assets which affords the Bank more than adequate protection. Until January 1, 1936, these companies purchased the properties from the Bank at the amount invested in them by the Bank, but since that time the companies have acquired properties at the foreclosure bid price which has approximated the actual market value.

On the real estate purchased prior to 1935, and especially that taken over during the early stages of the depression, the companies have sustained substantial losses, but since January, 1935, the acquisitions have been at prices which should show little, if any, loss to the companies. Since June 30, 1935, with one exception, no further sales of real estate have been made by either company, and we do not contemplate any further sales to the companies.

Included in the properties sold to Capital Company under contract are properties known as Subdivision Trusts. These properties originated through loans made by the Merchants National Trust & Savings Bank, Los Angeles, secured by beneficial interests in trusts which held title to properties either improved for subdivision or planned to be subdivided. These trusts have been dissolved, title to the property acquired by the Bank, and the properties sold to Capital Company. On several occasions it appears that the examiner has implied that sales of subdivision properties were inconsequential. However, we point to the record. Sales in 1936 amounted to \$1,693,000 and in 1937 amounted to \$2,012,000.

These contracts provide a definite program of liquidation. Under the terms of the contracts, the total amount due is payable within 10 years, and under this provision the maximum term of payment is now 8 years. The minimum liquidation required is 10% annually of the original purchase price. Liquidation on these contracts has been twice the annual requirements. In the period from April 1, 1934, to June 30, 1936, Capital Company and California Lands sold \$75,900,000 book value of real estate, and this amount has been applied on the contracts. During each of the years 1938 and 1939, \$11,000,000 was applied to their liquidation.

With reference to the items referred to in the third paragraph of the second page of the letter of September 23, we call attention to the fact that during the years 1934 and 1935 there was applied on the land company contracts \$2,756,000 and \$5,910,000 respectively, whereas, the inference to be drawn from your letter is that no payments were made in those years.

The payment of taxes by the Bank results from the fact that when this general type of contract was first entered into by the former management, with the approval of the Comptroller, real estate taxes were an offset to franchise taxes in this state and such payment therefore was not a net cost to the Bank.

Attention is called to the fact that losses of \$1,665,000 were absorbed on sales in the year 1936 by the land companies and comparable losses were absorbed in other years. This would more than offset any amount of real estate taxes paid by the Bank and, in addition, the Bank received interest on the contracts and saved the cost of maintenance and operation of other real estate, which is also borne by the land companies.

The Comptroller of the Currency in his letter expresses the opinion that the real estate sold to Capital Company and California Lands Inc. under contract should be shown as "Other Real Estate Owned" on the books of the Bank and so shown in future published reports of the Bank.

We have obtained opinion of Counsel with respect to these contracts and he holds that they are bona fide, valid and binding, and that even should we be disposed to treat the real estate sold thereunder in the manner suggested by the Comptroller, we could not properly do so unless the contracts were first cancelled by the mutual agreement of all parties at interest. To carry the contracts on our books as "Other Real Estate Owned" and so to show them in future published reports of the Bank would, in the opinion of our Counsel, be a misrepresentation of the facts; such treatment of these contracts would imply that the Bank had equitable title to the real estate and was in a position to dispose of it at will, whereas the facts are that such real estate is not subject to further disposition by the Bank, as it has already been disposed of, and that the Bank is obligated legally, morally and otherwise to carry out all the terms of said contracts. (See opinion of Mr. Louis Ferrari, Counsel, hereto attached and marked "Exhibit 2").

#### 5. CONCENTRATION OF OTHER REAL ESTATE -- BANKING PREMISES

Our attention is called to the amount of investment in banking houses, furniture and fixtures.

In our opinion, the banking premises of the Bank of America are thoroughly sound assets necessary for the proper conduct of the Bank's business. Experience of the Bank has indicated that it is more economical to own banking premises than to rent them. According to the examiner's report, page 14, insert 5, our occupancy expense for 1937 was in ratio of .0023 to each dollar of capital and deposits. This, we observe, compares with a ratio of .0041 for 284 reporting banks in all parts of the country reported in a survey published by the American Bankers Association. This indicates an occupancy expense for Bank of America of approximately one half of the average for the reporting banks referred to above.

Since 1932 the total occupancy expense of the Bank has been decreased \$123,000 per year. This has occurred in a period during which 53 additional banking premises were added.

Our investment in banking premises and in Merchants National Realty Corporation is within the limitations of the provisions of Section 24 A of the Federal Reserve Act as amended June 16, 1935.

In the year 1937 the Bank and Merchants National Realty Corporation

October 11, 1938

reserved the sum of \$1,404,000 for depreciation on banking premises and equipment. The net book value of the depreciable assets in banking premises and equipment was approximately \$31,248,948, and it is therefore evident that the depreciation taken on such depreciable assets in 1937 was at the rate of 4 1/2%, a rate more than sufficient to provide an adequate reserve for depreciation of the depreciable banking premises and equipment.

Reference is made to the former banking premises carried in Merchants National Realty Corporation. As a result of the merger of the Bank of Italy National Trust and Savings Association and the Bank of America of California as Bank of America National Trust and Savings Association, a number of properties owned by both banks were no longer occupied as banking premises due to the consolidation of branches. These properties referred to as "Ex-Bank Premises" were ultimately acquired by Capital Company for a total price of \$9,156,786.86. During the life of the agreement, \$3,281,000 was applied to the reduction of the purchase price, leaving an unpaid balance of \$5,874,000.

When the date for the distribution of Bank of America stock approached, the Bank determined that it would be in its best interests to make a final settlement of this obligation along with certain other obligations which Transamerica subsidiaries had incurred for the purpose of removing certain assets from the Bank. Transamerica Corporation was still the owner of practically all the capital stock of the Bank, and it therefore was possible for the Bank to effect an arrangement whereby Capital Company would continue to manage the properties and in addition undertake to purchase or otherwise dispose of them on a definite program so that the entire amount of the existing contract would be liquidated within a maximum period of 10 years. Such an arrangement was thereby consummated, and Merchants National Realty Corporation acquired the properties under an agreement obligating Transamerica Corporation's subsidiary, Capital Company, to sell or purchase for its own account such properties to the extent of not less than \$590,000 per annum. The first payment of this amount has been made and the balance now payable is \$5,284,000, and will be similarly liquidated each year.

Under the old contract Transamerica Corporation retained the net income from the properties, which was approximately \$250,000 per annum, while the Bank received only 1% on the balance owing on the contract. The receipt by Merchants National Realty Corporation of the net annual income of approximately \$250,000 from these properties has resulted in a substantial benefit to the Bank, which is reflected in a decrease to the extent of such net income in the amount of rentals which the Bank is obliged to pay to Merchants National Realty Corporation for properties leased from the Corporation.

#### 4. A. O. STEWART LINE

The total indebtedness of A. O. Stewart, both direct and contingent, as of April 28, 1938, was \$8,088,003.96 and not \$11,013,003.96, which figure apparently included the credit of \$2,925,000 to Pacific Coast Mortgage Company, which is in no way connected with the Stewart line. We are informed that Mr. Stewart is by no means a major stockholder in this concern, his holdings amounting to less than 5% of the total shares outstanding. It appears to us that the Mortgage Company credit is adequately secured.

Approximately 80% of the total amount owing by Mr. Stewart, direct and indirect, is secured by U. S. Government obligations and over 70% of the total liability is secured by Government obligations and listed securities, the current value of which is \$4,221,392. Other securities are valued at \$2,767,761, making a total value of \$6,989,153 securing the line.

Reductions of \$105,331.35 in his direct liability and \$292,536.22 in his contingent liability have been effected since the examination and in the same period an additional advance was granted to the Reclaimed Iron & Steel Company A. & B. of \$508,721.70 secured by \$350,000 par value U. S. Government bonds.

His loans are always kept in good current condition and his dealings with us at all times have been entirely satisfactory. This is unquestionably a sound credit. He has been a desirable and profitable client for 25 years.

#### 5. GERMAN CREDITS

With regard to this item to which you call our attention, the Department was informed prior to the completion of the examination of April 29, 1936, that the loss classification of \$1,000,000 listed in the report of August 31, 1937, had been charged off. This, we are informed, was the subject of correspondence and conversation with your office. Previously, \$1,000,000 had been charged off as required in the examination report of October, 1936.

There apparently has been a misunderstanding with regard to the verbal agreement recounted by the examiner. We are informed that at the time of the October 14, 1936, examination \$4,000,000 was classified adversely in connection with these credits and by agreement with the examiner, this was listed as \$3,000,000 doubtful and \$1,000,000 loss on our agreement that \$1,000,000 would be charged off annually until the carrying value should be reduced \$4,000,000. One of the reasons for requesting this classification was to enable us to spread the deduction for tax purposes over a period of years. \$3,000,000 has been charged off to date and upon completion of the charge off required by this examination, though it is contrary to our understanding, the carrying value will have been reduced \$3,000,000. The Management appears to have fully complied with each specific request for charge off. We nevertheless are not convinced that the amounts charged off are actual losses.

#### 6. SECTION 5200 UNITED STATES REVISED STATUTES

On page three of your letter you make the charge that the Bank has violated Section 5200 U.S.R.S. by exceeding the lawful limit in the case of loans to Transamerica and its subsidiaries in the amount of \$14,118,182.97. In arriving at the aggregate total of these loans, the examiner included the "Guaranteed Loans," amounting to \$5,524,096, which, for reasons already explained, cannot be considered as involving an extension of credit to Transamerica Corporation. He also included certain advances made to Capital Company in the sum of \$497,040, which were for the purpose of reimbursing

October 11, 1938

that company for expenditures on bank premises. These two items reduce the total from \$23,118,152 to \$17,097,026. By payments totaling \$3,156,316 made on the remaining obligations listed in this category subsequent to the date of examination, the amount of \$17,097,016 is further reduced to \$13,940,700.

On the legal question here involved, we have advice of Counsel that there is no violation of Section 5200 U.S.R.S. (See opinion of Mr. Louis Ferrari, Counsel, hereto attached and marked "Exhibit 3").

## 7. CAPITAL

Quoting from your letter, on page 4, second paragraph, you make the categorical statement, "The Bank is undercapitalized to the extent of at least \$42,000,000.00, without taking into consideration its asset condition." Your analysis of our capital position shows the net sound capital of our Bank, after deducting estimated losses, doubtful items, and liabilities not shown on our books, to be \$96,447,599.77

On September 30, 1938, the total capital structure as shown by the books of the Bank amounted to \$112,615,000, after provision for dividend of \$2,400,000 payable December 31, 1938. Deducting losses after partial review of \$7,957,000 and one half of doubtful assets, as required by Comptroller's regulations, amounting to \$2,549,000, and adding \$3,220,000 charged off since the examination, and the reduction in bond "loss" classification of \$1,760,000, the current net sound capital structure of the Bank is \$107,090,000, which, with current bond appreciation of approximately \$9,000,000, amounts to more than \$116,000,000, which exceeds the amount shown by the examiner, and indicated in the above paragraph, by approximately \$20,000,000.

In the Banking Act of 1933, Congress permitted national banks to extend new branches to the boundary lines of the state. At that time, only five years ago, Congress fixed the capital requirements of statewide national branch banking systems. Under this legislation, our requirement for capital and surplus is \$52,400,000. Our capital position is therefore more than twice as strong as the law requires.

We have opinion of Counsel on the question of the legal requirements of capital. (See opinion of Mr. Louis Ferrari, Counsel, hereto attached and marked "Exhibit 4"). He holds that the capital requirements of the national banking laws are on the basis of population and not on ratio to deposits; that so far as the law is concerned, our Bank is over-capitalized by more than \$50,000,000. He further holds that there is no authority for the Comptroller of the Currency to make any regulation, or rule, for the capital of a national bank based upon a ratio of capital to deposits.

As the Bank's net sound capital position has been steadily improving, and as substantially all of the losses charged off since 1932 resulted from loans made prior to that time, the Bank's position has been bettered by the writing off of losses on loans and other items amounting to \$80,215,000, depreciation on Banking Premises, Furniture and Fixtures, amounting to \$7,518,000.

Comptroller of the Currency

- 14 -

October 11, 1938.

depreciation on Bonds and Securities, amounting to \$4,957,000, (aggregate total \$62,690,000), and by the increase in capital funds of \$14,000,000 since 1932. Incidentally, it is well to note that of the amount of charge off, approximately \$36,000,000 resulted from the acquisition of a national bank, namely, Merchants National Trust and Savings Bank of Los Angeles, controlled by the Hallman interests. There is attached hereto and marked "Exhibit", certain correspondence relative to this matter.

As already pointed out in comments on dividends, losses in the amounts charged off since 1932 may properly be considered non-recurrent, and it is our belief, therefore, based on a review of the earnings and expenses of the Bank and the condition of its assets, that substantial additions to total capital accounts will be possible through the years to immediately follow.

We have, however, no disposition to take a technical position in this matter. We think, regardless of the law, that the capital of a national bank should bear a relationship to the nature of its deposits and its loans. In our case we are largely a savings bank. More than half of our deposits are not payable on demand, and, accordingly a large proportion of our loans are, pursuant to law, secured by real estate.

#### 8. CRITICIZED AND FIXED ASSETS

\$137,816,327.00 of criticized and fixed assets listed in the examination report are classified as follows:

Slow	\$124,766,349.00
Doubtful	6,095,402.00
Loss	<u>7,956,576.00</u>
	\$137,816,327.00

The Comptroller in his letter compares this total with the total capital structure of the Bank.

We fail to understand the reason for such a comparison, which includes assets that are unquestionably sound and not classified adversely as doubtful or loss. The implication, when this item is applied to the capital structure, is that there results an insufficiency of more than \$25,000,000, which, of course, is not the case. There might be a point in comparing the "doubtful" and "loss" classifications with the capital structure, but the inclusion of the "slow" classification in the total destroys the comparison. While we do not believe that the examiner's "slow" classification is correct, we do believe that a comparison of sound "slow" assets with the total assets of the Bank would be a reasonable one.

The "loss" classification listed by the examiner totals \$7,956,576. Of this amount, \$5,219,888 had been eliminated prior to the receipt of the examination report, which does not seem to us to indicate a reluctance on the part of the management to admit known losses and voluntarily charge them off, as stated in the second paragraph of your letter.

October 11, 1938.

Your statement that \$137,818,327.86 is subject to adverse classification was caused us to review the regulations which seem to indicate clearly that the item of "slow" classification of \$124,766,349 is not subject to inclusion in "adverse classification," which classification apparently should include only those items classified as "doubtful" or "loss".

#### B. BONDS AND SECURITIES CLASSIFIED

(a) Bonds and securities in classified groups are having close attention and, as indicated by the examiner, represent a relatively small amount as compared with the Bank's total Bond Account.

The examiner's comments under the heading of "Bonds and Securities" relating to the option granted to Transamerica Corporation to purchase 56,600 shares of National City Bank of New York at \$48 a share have been responded to in the discussion under the caption "Guaranteed Loans."

The officers of the Bank have not refused to charge off bond depreciation classified as a loss, but have pointed out that in each previous case where such loss has been classified, the loss has been eliminated by market appreciation or the sale of bonds. The loss classification of \$2,523,000 in the examination report of August 31, 1937, originating through market depreciation on bonds which had been written up was fully reviewed with the Chief National Bank Examiner in Washington by the Vice President and Cashier of the Bank, and the Chief National Bank Examiner agreed that the item could be considered as eliminated.

The classification of \$257,068 in the current report is estimated upon certain municipal bonds previously written up which remain in the Bank's portfolio. When the premiums already written off through regular amortization but not taken into consideration by the examiner are deducted from the gross carrying value, this estimated loss is reduced to \$87,019.32. Reserve of \$294,000 has already been set up for the amortization of the premium on these bonds as a block.

On date of examination there remained on the books unrealized \$2,826,597.55 of the original write-up of government and municipal bonds amounting to \$14,007,000. This amount has been further reduced by sales of bonds to \$2,686,000 against which there has been written off premium of \$630,156.87, the balance of the write-up remaining on our books, to which attention is directed, is therefore \$2,056,000, which it was and still is our intention to eliminate in an orderly manner.

All securities listed in examiner's report on Administration as illegally acquired (insert 25-28 inclusive) have been eliminated through sale.

Classified bonds and securities, \$8,480,913.96, with a loss classification of \$2,343,287.12. The classifications include stock of the National City Bank of New York, which is being purchased by Transamerica Corporation under

option agreement (see reference under caption "Guaranteed Loans"). Deducting the book value of this stock at the time of examination, namely, \$2,712,800, the total of classified bonds and securities is reduced to \$5,764,113. Deducting the reported loss on these shares through market depreciation at the time of examination, namely, \$973,050, the total of the "loss" classification is reduced to \$1,370,231. Subsequent sales, amounting to \$9,431 and market improvement to date amounting to \$779,177 of the remainder of the classified bonds, further reduce the "loss" classification to \$581,623, which will be eliminated as an asset of the Bank if agreeable to you.

(b) Unlawfully Acquired Bonds & Securities

Seven issues with a total book value of \$1,264,990.51 are held by us to be not "predominantly speculative." This figure has been reduced to \$1,249,750.51 by sale of portion of Carriers & General Corporation 5s due 1950 for \$15,240.00.

The remaining 15 issues amount to \$119,367.53, of which 13 have been eliminated through sale for \$14,671.17. The balance of \$104,696.36 consist of:

	<u>Book Value</u>
National City Bank - 1900 shares (Acquired from TAC in settlement of Insurance Reserve fund)	\$ 79,600.00
West End Chemical Company - 387,122 shares (This item will be eliminated by applica- tion of dividends already received)	7,846.36
Caribbean Sugar 7s due 1941	<u>17,250.00</u>
	\$ 104,696.36
The present market value of West End Chemical Company shares is ...	\$ 256,965.40

(c) Bonds rated B2 or less

The greater part of the above securities were purchased prior to March, 1936, and received a sound credit rating at the time of purchase. The lower ratings since purchase are responsible for the total of bonds criticized. At the time those bonds were bought, our investigation of the issues led us to believe they were satisfactory investments for the Bank. The items are gradually being reduced.

(d) Convertible bonds

Of these bonds, \$543,889.27 book value have been sold subsequent to the report of April 28, 1938, leaving a balance of \$3,675,651.75. With the exception of those previously mentioned under "Classified Bonds", these issues

are considered conforming to the regulations relating to convertible bonds or bonds "predominantly speculative." However, a substantial reduction of this holding is being effected under a definite program of sale.

(e) Bond Write-Up

It is not the "policy" of the Bank to write up securities. The reasons for the writing up in value of certain United States Government and municipal bonds to the extent of \$14,000,000 have been heretofore discussed.

If the Bank had sold the bonds in the instance referred to, realized the profit, paid it in dividends, and then received such profit back from Transamerica Corporation as payment on account of the obligations which have been reduced by application of the write-up, additional taxes amounting to \$2,900,000 would have resulted from the procedure in the years 1935 and 1936. Considering all the facts and circumstances relating to the Corporation of America contracts, we are of the opinion that this write-up was justified, though, as stated, it is contrary to the policy of the Bank and will not be repeated.

The bond account at October 11, 1938, had an appreciation in excess of \$9,000,000.

10. SERVICE CHARGES ON DORMANT ACCOUNTS

It is the rule of the Bank to subject accounts to service charges. This is a general rule applicable to commercial and savings accounts whether dormant or active, and is supported by an agreement which the depositors sign.

Refunds of such charges are frequently made to depositors; but the Bank does not recognize any right of the depositor to such refund. It makes the refund purely as a matter of public relations policy in an endeavor to re-establish a customer relationship.

Our Counsel has advised us that our contract with the depositor is a valid one and enforceable and that there is no legal reason why the contract should not be enforced. (See opinion of Mr. Louis Ferrari hereto attached and marked "Exhibit 6").

11. VIOLATION OF SECTION 5201 U.S.R.S.

The largest loan listed in the examination report was not made in violation of Section 5201, but was made upon the security of shares of stock of Transamerica Corporation. Following the making of the loan, Transamerica Corporation distributed to its stockholders shares of stock of Bank of America N. T. & S. A. This distribution from the capital assets of the corporation had the effect of reducing the value of the corporation's own shares, and therefore, as a matter of good business procedure and to prevent a possible loss, as permitted by provisions of Section 5201, the Bank took possession of the Bank shares distributed to the borrower.

In the case of the other loans listed as being made in violation of Section 5201, corrective measures have already been taken and the situation complained of remedied.

Under miscellaneous criticisms the Examiner reports the Bank's ownership of 253 8/10 shares of its own stock. These shares were acquired on debts previously contracted and have been sold.

12. MANAGEMENT AND SUPERVISION BY THE BOARD OF DIRECTORS

We have considered your criticism in which you call to our attention the duties and responsibilities which rest upon us as Directors of the Bank. With respect to the essential principles there can be no room for disagreement between you and our Board. The question of procedure in the discharge of these duties and responsibilities does, however, lend itself to further consideration.

We do not in the least minimize our responsibilities for the policies of our Bank. We are solicitous for the welfare of our depositors, our borrowers, our stockholders and for the high quality of services which we extend to the people of the State of California.

It is our desire that our minutes give to your office all of the information of our transactions which you may require, but there are naturally physical limitations to the volume of matter which can be recorded. We had understood that your office had agreed to our procedure of incorporating our committee minutes into our Board's minutes by reference and placing the full committee report on file. The Secretary has been instructed to communicate with your office and, in collaboration with you, formulate a plan of procedure for keeping minutes that will be satisfactory.

13. THE MANAGEMENT

Our Board is working in complete accord with the Management of the Bank. We know at first hand all of the aspects of the great fight they have made in bringing the Bank through the lean years of 1932-33 to its present state of prosperity. We know of no other bank management which can compare with ours in initiative, enterprise, courage, and devotion to the best interests of the Bank and the people of California.

On Page 5, second paragraph, of your letter, you imply that the Management has taken an antagonistic attitude toward the Examiner and your office with respect to the affairs of the Bank. While there are no doubt some misunderstandings and some differences of opinion, we are sure that there exists on the part of the Management no fundamental opposition to you in your supervision of the Bank. Both ourselves and the Management have devoted our energies to the improvement of the assets of the Bank, and have, it seems to us, made good progress. We shall continue our efforts in this direction until every necessary correction has been duly made, and you may count on the cooperation of our Management to this end.

In indicative of the progress made by the institution under the  
past management, we submit the following information in comparative  
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	<u>3-31-32</u>	<u>4-30-36</u>	<u>Increase</u>	<u>Decrease</u>
-000 omitted				
Reserve Real Estate Loans	\$ 195,076	\$ 220,400	\$ 25,324	
Other Real Estate Loans	37,423	57,710	20,287	\$ 30,705
Classified Loans	207,202	123,073		84,129
Slow	155,533	115,150		40,383
Doubtful	31,429	5,923		25,506
Loss	30,240	4,720		25,520
Loans Dependent Upon Trans- action Stock	20,535	4,817		15,718
Total of all Loans	499,655	571,623	72,008	
Uncollected Interest	9,070	6,302		2,768
Bonds & Securities	247,504	509,187	261,683	
U.S. Gov. Bonds, etc.	50,214	200,740	150,526	
Capital, Surplus & Profits	54,200	110,621	56,421	
Current Deposits	102,520	492,430	389,910	
Time Deposits	432,296	771,651	339,355	
Cashier's & Certified Checks	5,104	26,020	20,916	
Total Deposits	622,530	1,365,491	742,961	
Bills Payable	138,192	Nil		138,192
Loans to Affiliates Classified (11-9-32)--74,569		45,099		29,470 (40%)
Loans to Affiliates Classified Adversely, (11-9-32)--14,315		335		15,090 (96%)

October 11, 1938

	<u>3-31-32</u>	<u>4-30-38</u>	<u>Increase</u>	<u>Decrease</u>
	*000 omitted			
Statutory Bad Debts	\$ 28,984	\$ 8,235		\$ 10,749 (69%)
Net Sound Capital	56,200	96,447	\$ 40,147 (72%)	
Good Appreciation	--	7,636	7,636	
Operating Income Before Recov- eries	(1932) -- 22,765	(1937)-39,028	16,261 (72%)	
Operating Expenses Before Losses	(1932) -- 20,323	(1937)-27,438	7,115 (35%)	
Loans Classified Adversely	51,868 (10% of total loans)	8,417 (1.4% of total loans)		43,451 (83% Impr.)
Net earnings before Depreciation, (1932) Amortization, Reserves & Dividends	7,601	(1937)-19,204	11,603 (253%)	

These figures in themselves tell the story of the constant and successful effort of the Management in behalf of the Bank.

#### 14. CONCLUSION

In the foregoing communication we have attempted to reply in detail, as you requested, to each of the criticized items set forth in your letter of September 23, 1938. In the discussion of each item we have disclosed to you our views with respect to the criticism and our plans regarding its ultimate disposition. All figures used in this communication have been verified by responsible officers and department heads.

Each of us has read and re-read your letter of September 23, 1938. We are still at a loss to understand why you thought such a communication to us was necessary.

The national banking laws confer upon the Comptroller of the Currency two grave and extraordinary powers. One in the Act of 1864 which permits the Comptroller of the Currency to bring suit in his own name for the forfeiture of the charter of a national bank when the Directors knowingly violate or knowingly permit a violation of the law, and the other in the Banking Act of 1933 which permits the Comptroller of the Currency to make a citation to the Federal Reserve Board for the removal of an officer or director for violation of law, or engaging in unsafe or unsound banking practices despite warning to desist.

No graver responsibilities could have been imposed by Congress upon a supervising officer of the government. The very nature of the powers conferred, it seems to us, should imbue the Comptroller with the desire, should he ever contemplate their exercise, to subject himself to the most deliberate restraint. These provisions are no doubt designed to put into the hands of the executive branch of the government, the means to prevent occasions of gross abuse by

directors and officers in order to save the depositors from losses due to impaired capital and losses in assets. They are desperate remedies and surely they were intended to be employed only after all other efforts at conciliation had failed.

Yet in our case, a national bank with great earning capacity, a net capital position in excess of \$100,000,000, twice the legal requirement, and not involved in any emergency situation, the Comptroller of the Currency, with no inkling theretofore to our Board, or to the Management, that he thought that any such procedure was even remotely contemplated, suddenly within a space of ten days threatened, in effect, to invoke both of these remedies against us. Frankly, Mr. Comptroller, it is inconceivable to us that you would ever feel it necessary to adopt any such radical procedure.

Whatever may have been the circumstances which moved you thus to act, we should like to take this occasion to assure you of our desire to cooperate with you in every effort to further the progress of the Bank. We feel that this can be accomplished in the ordinary manner by conferences from time to time between your office and the Management. We believe that the chief difficulty between the examiners and the Bank is in the matter of the attitude toward real estate as security for loans. We have no reason to believe that this difficulty rests on anything else than an honest difference of opinion. The examiners seem always to have held a low opinion of real estate as security. We, on the other hand, taking into consideration our type of bank, have a high regard for the value of real estate as security for obligations.

Real estate is the backbone of the country. It represents a greater proportion of the wealth of the country than does any other form of property. From it as a source of taxation the State, County and Municipal governments obtain their chief revenues. Ownership of real estate gives stability to the citizen. Our homes, farms, business houses, and industrial plants offer a fruitful field for long term financing. It is necessary for us to satisfy the diverse credit requirements of all the communities which we serve.

Bank of America National Trust and Savings Association, as its name implies, is in a large measure a savings bank. Its savings deposits in fact exceed those of any savings bank in the country. We therefore feel that the examiner should consider our real estate security in the light of the principles which should govern a sound savings bank practice.

The Management has had from time to time disagreements with the national bank examiners, but it has never thought it had any quarrel with the Comptroller of the Currency. We have never felt that a position taken by an examiner was necessarily the position of the Comptroller of the Currency on important questions of law and banking policy. While we do not question the right of the examiner to call attention to such matters as capital requirements, dividend policy, real estate loan policy, and other such large questions, we feel that the decision in these important matters should rest with you. These are the fundamental questions of policy with respect to which we feel the Management should be accorded the privilege of direct contact and conference with you.

October 31, 1938

We trust that this communication will be accepted for what it is intended to be, a frank response to your letter of September 23, 1938. Within the shortest time at our disposal, we have not been able to go fully into all of the details of the examiner's report. Through our special committee, we shall give further consideration to the matters under discussion and collaborate with the management to the end that satisfactory disposition may be made of such matters. In the meantime, for the information and satisfaction of your office, we shall appreciate your affording the management an opportunity to clarify some of the issues raised.

With renewed assurances of our continued cooperation, we remain

Respectfully,

Guido E. Cagliari

John A. Corotto

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F. W. Seine, Jr.

A. H. Baker

Nancy C. Maggiora

Fred L. Decker

Alexandine Bellotti

~~\_\_\_\_\_~~

Blanche

Joseph Caughino

C. N. Hawkins

W. Wallace Mann

Paul B. Fay

A. E. Buttrick

A. H. Mann

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Marshall Hale

Julius Gentner

E. J. Trammitt

MEMBERS OF THE BOARD OF DIRECTORS

Reference is made to the letter of the Chairman of the Board of Directors of the bank to the Acting Comptroller of the Currency under date of May 6, 1938 and to the letter of the Board of Directors of the bank to the Comptroller of the Currency under date of October 15, 1938. "

The Chairman of the Board, in his letter, claims that exaggeration of problems and underestimation of progress appear to be the obvious theme of the reports of examination of the bank; that the progressive improvement in the condition of the bank since his return to the management in 1932 is minimized by undue criticism; that the management of the bank has overcome obstacles that were generally viewed as insurmountable; that economic conditions since 1932 have not favored improvement in the condition of the bank; and that the problems of the bank can be more quickly cured if the bank receives a slight degree of cooperation from some of the Government agencies and representatives concerned, instead of being subjected to the critical and highly technical tactics presently employed which continue to absorb too great a proportion of the time and effort of the bank's management. This office does not concur in the opinion of the Chairman of the Board that there has been a misrepresentation of the condition of the bank in the reports of examination, or that there has been any exaggeration therein of the problems of the bank or any underestimation of its progress in solving them. Nor does this office agree that the management of the bank has overcome obstacles that were generally viewed as insurmountable. If such had been the case, the bank would not have been licensed to reopen after the banking holiday in 1933. Nor does this office agree that the economic conditions since 1932 have not favored improvement in the condition of the bank. If such had been the case, national banks throughout the country would not have shown the general improvement in their condition, due in a large part to prevailing economic conditions, that comparative figures disclose. In the case of your bank, the assistance afforded by improved economic conditions can readily be appreciated from the fact that the profits to the bank during the period from the sale of

securities has exceeded \$35,000,000 or a sum equal to approximately 72%  
of the net operating profits of the bank during that period. 325

The examination of a bank is made for the purpose of informing the supervisory authority of the bank's condition so that that authority may perform the duties imposed upon him by law. Copies of the report of examination are sent to the Board of Directors of a bank to disclose to it the bank's condition and to indicate to the bank's management those problems of the bank that require its special attention. The examination of a bank is not made for the purpose of complimenting the bank's management, and if criticism thereof is necessary to advise the Board of Directors of a bank of its condition, those criticisms must be made. The primary function of a bank supervisory authority is the protection of the funds of depositors. A bank supervisory authority considers the bank from the viewpoint of its being a trustee for its depositors and not from the viewpoint of its being the principal earning asset of a stockholder, either corporate or individual. This office seeks to cooperate with the Board of Directors and the management of banks under its supervision, with a view to insuring the safety of depositors' funds and working out the problems of such banks. In the case of your bank, that cooperation between the bank's management and this office has been lacking, due to the management's arbitrary and antagonistic attitude toward well-founded criticisms in the reports of examination of the bank on the basis that such criticisms are uncomplimentary to the management.

The Board of Directors, in its letter, which will be replied to under separate cover, states that Examiner Palmer, when he appeared before the Board of Directors at its meeting on September 13, 1938, with a telegram from this office which he read to the Board, delivered criticisms of the bank on items with respect to which the Comptroller of the Currency had never theretofore communicated formally with the management or the Board of Directors. The items set forth in the said telegram had all theretofore repeatedly been criticised in formal reports of examination of the bank

which had been sent to the bank addressed to the Board of Directors. In addition, they had been discussed with the Chairman of the Board of Directors and the Vice President and Cashier of the bank, as well as with other representatives of the bank, here in Washington. This office felt that its position concerning such matters was not being communicated to the Board of Directors. Consequently, this office took the most direct method of getting before the Board of Directors its position theretofore taken with respect to the necessity for the conservation of the earnings of the bank and the making of proper provision for the bank's criticised assets before the Board of Directors should declare further dividends. From the letter of the Board of Directors, it is evident that this office was correct in its belief that its position had not theretofore been fully disclosed to the members of the Board of Directors. The responsibility for such a situation rests with the Board of Directors. The directors should give to the bank that degree of supervision contemplated by the law and their oaths of office, and see that the matters brought to their attention are corrected or adjusted. Unsatisfactory conditions in banks are due generally to the failure of directors to direct. While directors are not required to devote their entire time to the details of the business management of the bank, and may commit such routines to their duly authorized offices, provided they retain and exercise a general supervision, directors do not discharge the duty imposed upon them by law by reposing the entire administration to officers selected by them, without supervision of examination.

This office is pleased to note the assurances given by the Board of Directors of its cooperation in every effort to further the progress of the bank. This office also notes the statement in the letter of the Board of Directors that it will appreciate this office affording the management of the bank an opportunity to clarify some of the issues raised, and, further, that the main criticisms contained in the report of examination are fundamental questions of policy with respect to which the Board of Directors feels that the management should be accorded the privilege of direct contact and

- 3(a) -

conference with this office. The management of the bank has always been accorded the privilege of direct contact and conference with this office, and has availed itself of this privilege on many occasions. The management of the bank will be afforded an opportunity to clarify the issues raised in the report of examination of April 28, 1938 at any time that the management is prepared to discuss with this office a constructive program looking toward the correction of the fundamental problems of the bank.

There are three major problems in your bank as disclosed by the report of examination as of April 28, 1938. The first two have to do with the asset condition of the bank and the policy of the management in relation thereto. The third has to do with the policy of the Board of Directors in failing to conserve the bank's earnings to provide and maintain an adequate capital structure, and in dissipating such earnings through the payment of excessive dividends.

Sound banking practice does not permit of any extension of credit, directly or indirectly, to any person, partnership, corporation or association and/or to his or its directly or indirectly owned or controlled subsi-

diaries or affiliates that would result in an unwarranted concentration in any type of bank assets.

The report of examination of the bank as of April 28, 1938 discloses an unwarranted concentration in the bank's assets of direct and indirect obligations of Transamerica Corporation and its subsidiaries and affiliates in the aggregate amount of \$76,203,902 which sum represents 68% of the bank's total book capital structure. The details of this concentration and the policy of the bank's management in dealing with it are set forth in the report of examination. The elimination of this concentration is highly desirable in the interest of sound banking.

In connection with this Transamerica Corporation concentration, your attention is directed to the manner in which the Inter-America Corporation contracts have been eliminated by the bank's management. The sum of \$14,500,000 was credited on the books of the bank against the balance due to the bank under these contracts. This credit was an unwarranted voluntary reduction by the bank's management of a part of the purchase price agreed to be paid to the bank by a reputedly solvent corporation for assets sold by the bank to that corporation under the terms of contracts secured by a pledge of collateral. The sum of \$2,716,800 was eliminated by the acceptance by the bank from Transamerica Corporation, a reputedly solvent corporation, of 56,600 shares of stock of National City Bank of New York, in satisfaction of the debt of Transamerica Corporation to the bank at a time when Transamerica Corporation was obligated and apparently unable to make cash payment of such amount from its earnings. Transamerica Corporation paid to the bank the sum of \$5,844,287 in cash, which sum represented funds paid out by the bank to repurchase previously charged off assets of the bank, and was made available to Transamerica Corporation through a series of inter-company credits. Under the terms of these Inter-America Corporation contracts, Bank of America sold certain assets of the bank, which had been classified by national bank examiners during the year 1931 as "Loss" or "Doubtful" or as assets of such unsatisfactory character as to require their elimination

From Bank of America's balance sheet, in the face amount of \$35,312,922, and to guarantee to the bank the payment of such purchase price, in accordance with the terms of the contracts, certain securities were assigned, transferred and deposited with the bank, in pledge. These Inter-American Corporation contracts were made for the purpose of eliminating warehouse factory assets from the bank and substituting therefor enforceable secured contracts of a reputedly solvent corporation to make payment to the bank of the purchase price agreed to be paid for such assets. There is no justification for the voluntary reduction of the debt of the corporation secured by a pledge of collateral; for the substitution of personally charged off assets of the bank under a guarantee by Transamerica Corporation as to their liquidating value for the direct obligation of Transamerica Corporation; or by the questionable acquisition of stock of National City Bank of New York, even though Transamerica Corporation exercised an option to purchase such stock.

California Lands, Inc., a corporation wholly owned by Transamerica General Corporation, is indebted, directly and indirectly, to Bank of America to the extent of \$12,402,542. California Lands, Inc. owns, operates, leases, and sells farm properties for its own account and properties acquired under foreclosure for the account of Bank of America and subsidiaries of Transamerica Corporation. The contracts now in force between California Lands, Inc. and Bank of America were executed on April 4, 1934. Since that date, California Lands, Inc. has reduced its indebtedness to the bank to the extent of \$7,435,325 through liquidation of real estate of that amount, while, at the same time, it has acquired additional real estate under these contracts to the extent of \$4,322,207.

Capital Company, a corporation wholly owned by Transamerica General Corporation, is indebted, directly and indirectly, to Bank of America to the extent of \$29,130,861. Capital Company owns, operates, leases, and sells urban properties for its own account and properties acquired under foreclosure for the account of Bank of America and subsidiaries of Transamerica Corporation. The contracts now in force between Capital Company and Bank of

- 6 -

America were executed on April 4, 1934 and subsequent dates. Since April 4, 1934, Capital Company has reduced its indebtedness to Bank of America in the amount of \$23,158,410 through liquidation of real estate of that amount, while, at the same time, it has acquired additional real estate under these contracts to the extent of \$35,254,457. 330

The performance of California Lands, Inc. and Capital Company under these contracts, which represent a major portion of the total Transamerica Corporation concentration, demonstrates that the indebtedness of these corporations to Bank of America under these contracts is dependent upon the liquidation of the underlying real estate and not upon any capacity of the corporation to make payments under the contracts regardless of such liquidation.

Sound banking practice requires that no unwarranted extension of credit be made, directly or indirectly, to Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates; or to any partnership, corporation or association and/or its directly or indirectly owned or controlled subsidiaries or affiliates, in which Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates owns or own a substantial part of the invested capital; or, for the benefit of Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates, directly or indirectly, to any person, partnership, corporation or association on the security of obligations or assets of Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates.

The report of examination of the bank of April 28, 1938 discloses an unwarranted concentration in the bank's assets of real estate aggregating \$97,660,265, which sum represents 87% of the bank's total bank capital structure. This concentration includes the contracts of California Lands, Inc. and Capital Company in the amount of \$39,739,346. These contracts required no down payment by these corporations. They provided for payment of 10%

of the book value of the real estate covered by the contracts approximately two years after the date of the contract, and 10% per annum thereafter. The bank retains title to the real estate until it is sold by California Lands, Inc. and Capital Company, and is obligated to pay all taxes on the real estate. The bank agrees to accept at face value cash, notes, or sales contracts received by these corporations in payment for the real estate sold by them. The cost of the rehabilitation or improvement of the properties covered by the contracts by these corporations is added to the unpaid balance due from them under the contracts. These corporations pay 1% interest on the balance due the bank. All real estate covered by these contracts is carried by the bank on its books as "Real Estate Sales Contracts" and shown as "Loans and Discounts" in published reports of condition. The amount of real estate covered by these contracts has increased from 29% of the bank's book capital structure of \$97,419,540 as of June 22, 1934 to 35% of the bank's book capital structure of \$112,420,311 as of April 28, 1938.

The real estate concentration also includes real estate shown in the report of examination of April 28, 1938 as "Banking House" in the amount of \$27,613,727, included in which were properties of a book value of \$1,578,005 which are not used as banking premises, and which should, accordingly, be carried as part of "Other Real Estate Owned". The report of examination of April 28, 1938 shows "Investment in and Advances to Companies or Nominees Holding Title to Banking House" in the sum of \$19,332,734. This sum represents an investment of the bank's funds in the stock of Merchants National Realty Corporation and includes the sum of \$6,039,920 which represents real estate owned by the corporation and not used as banking premises, which real estate should be carried on the books of the bank as "Other Real Estate Owned."

Sound banking practice requires that the books of the bank and the published reports of condition of the bank correctly reflect the nature of the assets of the bank. Sound banking practice and compliance

with the provisions of law would, therefore, require that real estate carried on the books of the bank as "Real Estate Sales Contracts" be carried as "Other Real Estate Owned" and so reported in published reports of condition of the bank. As a result of the terms and conditions of these contracts, the bank is enabled to carry parcels of land, which are either unsaleable or can only be liquidated at a substantial loss, for an unlimited period of years, through the device of crediting the proceeds of the sale of a given parcel as a payment on the balance of the total contracts instead of treating each transaction as an individual item.

Reference is made to the criticism contained in the report of examination of April 28, 1938 in connection with the write-up of the cost price of certain United States and high grade municipal bonds. Your attention is called to the fact that during the past ten years there have been three occasions on which the difference in the value of the securities account of the bank between the height of appreciation and the low point of depreciation in the same cycle approximated \$17,500,000 with an extreme between the highest point of appreciation and the lowest point of depreciation of more than \$33,000,000. If the management takes advantage of a rising securities market to capitalize an unrealized profit represented by appreciation, it must stand ready to make adequate provision for depreciation in the market value of its investment securities so written up. This it has refused to do in the past. As revealed by the report of examination of April 28, 1938, a portion of these bond write-ups were still carried on the books of the bank as an asset.

Reference is made to the criticism contained in the report of examination of April 28, 1938, in connection with impounded German credits. These German credits were carried on the books of the bank at \$7,964,961. The liquidation of these credits involves their conversion into registered marks. The exchange loss on these credits, represents the difference between the value of registered marks and the value of free marks, which has been classified as "Doubtful" and "Loss". This classification is considerably

more lenient that the charge offs voluntarily taken by other large national banks holding these German credits. The management has heretofore refused to recognize these classifications.

The methods employed by the bank's management in attempting to effect corrections of criticized assets are exemplified by the cases of the Bankamerica Company and Transamerica Corporation. Bankamerica Company is a corporation dealing in securities and underwriting municipal bond issues. The liability of this company to the bank was removed from the Transamerica Corporation concentration in the April 28, 1938 report of examination, because of a questionable technical change in the relationship between Bankamerica Company and Transamerica Corporation.

Bankamerica Company was sold by Transamerica General Corporation to Western States Corporation, a Nevada corporation, having a capital consisting of 10,000 shares \$1.50 cumulative dividend Class "A" voting stock of the par value of \$5.00 a share, entitled to preference up to \$27.50 a share and accumulated dividends upon liquidation or dissolution, and 10,000 shares of Class "B" non-voting stock of the par value of \$250.00 a share. Capital Company, which was obligated to Bank of America to the extent of over \$29,000,000, paid \$5,000,000 to Western States Corporation for the 10,000 shares of Class "B" non-voting stock of an aggregate par value of \$2,500,000. Bankamerica Company is still indebted to Bank of America despite the change of ownership of Bankamerica Company.

The liability of Transamerica Corporation to the bank was eliminated through a series of transactions as follows: - -

On October 1, 1931, Bank of America sold to Transamerica Corporation, for a consideration of \$9,155,786.26, certain real estate carried on the bank's books as banking premises, but which were not being used for banking purposes. The contract provided for a down payment with the balance payable within five years from the date of the contract, or October 1, 1936.

Subsequently, Transamerica Corporation resold the properties acquired by it under this contract to Capital Company (a corporation all of

the stock of which is owned by Transamerica General Corporation, which, in turn, is 100% owned by Transamerica Corporation).

On July 14, 1937, more than nine months after the date on which the balance due to Bank of America under this contract was to have been paid to it, Bank of America contributed \$5,875,000 in cash to the surplus of Merchants National Realty Corporation (a banking premises holding corporation all of the stock of which is owned by Bank of America), and increased the book value of the bank's investment in the stock of this corporation by the same amount. On the same date, Merchants National Realty Corporation purchased from Capital Company, for the sum of \$5,874,457, the properties then held by Capital Company which had been purchased by it from Transamerica Corporation, such sum being the balance remaining due to Bank of America under the original contract of October 1, 1931 between Bank of America and Transamerica Corporation. Capital Company then paid to Transamerica Corporation the proceeds of this sale, to eliminate Capital Company's liability under its contract with Transamerica Corporation. Transamerica Corporation, in turn, used the same funds to make payment to Bank of America in order to eliminate Transamerica Corporation's liability under its contract of October 1, 1931, with Bank of America. The net result of these transactions is that Bank of America increased its investment in the stock of Merchants National Realty Corporation in the sum of \$5,875,000, which acquired real estate having a book value of \$5,874,457, thus eliminating the direct obligation of Transamerica Corporation to the bank.

Reference is made to the extension of credit to Transamerica Corporation and its subsidiaries exceeding the limits prescribed by Section 5200 of the Revised Statutes, as set forth in the report of examination of April 28, 1938. California Lands, Inc. and Capital Company, both of which corporations are wholly owned by Transamerica General Corporation, which, in turn, is wholly owned by Transamerica Corporation, resold to the bank certain assets formerly charged off by the bank and sold by it under certain agreements. By virtue of this resale to the bank of its previously charged

off assets, Transamerica Corporation was enabled, from the proceeds of this sale, to effect the liquidation of the Inter-America Corporation contracts to the extent of \$5,844,247 and thereby regain collateral previously held by and pledged with the bank under these contracts, substituting in lieu thereof its guarantee to the bank, to the extent of \$6,500,000, of the liquidating value of the previously charged off assets repurchased by the bank from Transamerica Corporation's wholly owned subsidiaries.

The amount of this indebtedness of Transamerica Corporation to the bank as of April 28, 1938 was \$5,524,096. In addition, First National Corporation of Portland, Transamerica Service Corporation, Bank of America Agricultural Credit Corporation, California Lands, Inc., Capital Company and Inter-Continental Corporation, all subsidiaries of Transamerica Corporation, were indebted to the bank as of April 28, 1938 to the extent of \$17,594,056, making a total extension of credit of \$23,118,152. The bank's loaning limit under the provisions of Section 5200 of the Revised Statutes is \$9,000,000. This excessive extension of credit of \$14,118,152 is a violation of Section 5200 of the Revised Statutes.

From the first examination of the bank made after its conversion into the national banking system in 1927, to the last examination of the bank made as of April 28, 1938, the book capital of the bank was increased approximately \$54,000,000 and the net sound capital of the bank was increased approximately \$42,000,000. During that period the capital structure of the bank was increased to the extent of \$49,391,397, of which \$40,000,000 was provided by the sale of common stock of a par value of \$12,500,000 at a premium of \$27,500,000; \$6,565,800 by voluntary contribution; and \$2,825,597 by an unrealized write-up of municipal bonds. During the same period the increase of real estate acquired under foreclosure was \$42,157,464 and the total real estate concentration of the bank increased \$74,844,786.

From the date of conversion of the bank into the national banking system to June 30, 1938, the total of losses charged off was approximately \$32,000,000 while the net operating profit for the same period was approxi-

- 14 -

336

mately \$88,000,000. Losses shown in the report of examination as of April 28, 1938, which was delivered to the bank subsequent to its report of earnings and dividend as of June 30, 1938, shows additional losses of approximately \$8,000,000. It is apparent that the losses of the bank have exceeded its net operating profit from 1927 to June 30, 1938. During the same period, recoveries on losses charged off have amounted to but 6%, which is less than half of the general experience of national banks in connection with recoveries on their charged off assets.

The report of examination of October 21, 1927 shows \$1.00 of net sound capital (\$54,273,088) for each \$10.76 of deposits (\$583,946,000), while the report of examination of April 28, 1938 shows \$1.00 of net sound capital (\$96,447,599) to each \$14.36 of deposits (\$1,385,494,280). The assets classified in the October 21, 1927 report (\$33,709,000) represented 5% of the total assets of the bank amounting to approximately \$670,000,000, while the assets classified in the April 28, 1938 report (\$137,818,000) represented 9% of the total assets of the bank amounting to approximately \$1,512,000,000. The assets classified in the October 21, 1927 report represented 57.7% of the bank's book capital of approximately \$58,373,000, while the assets classified in the April 28, 1938 report represented 122% of the bank's book capital of approximately \$112,420,000.

The law imposes upon the Board of Directors of a national bank the responsibility for the determination of the disposition of the earnings of the bank. Sound banking practice requires that the losses of a bank be charged off and that its earnings be conserved to provide and maintain an adequate sound capital structure. An adequate capital is not supplied by compliance with legal minimum capital requirements. \$1.00 of capital to \$10.00 of deposits is accepted as a sound ratio. The determination, of course, of what constitutes an adequate capital in any given case necessitates a consideration of the nature of the assets of the bank, as well as the nature of its liabilities. In the case of your bank it is the opinion

of this office that \$1.00 of capital<sup>1</sup> to \$10.00 of deposits would be a 937  
minimum amount of capital to satisfy the requirements of adequacy because  
of the large concentration of frozen assets in an aggregate amount ex-  
ceeding the bank's total book capital structure.

The report of examination of April 28, 1938 points out to the  
bank's directorate and management the unwarranted credit extension to  
Transamerica Corporation and its subsidiaries and affiliates; the heavy  
concentration in real estate, a large portion of which is not properly  
carried on the books of the bank or properly reported in published reports  
of condition; and the dissipation of the bank's earnings in excessive  
dividends. All are matters of major importance, worthy of the time and  
efforts of the management consumed. While the problems are serious, they  
can be cured by the establishment and maintenance of a constructive program  
which would, of necessity, include the conservation of the earnings of the  
bank and their application to the charge off of losses and the setting up  
of adequate reserves for other assets adversely classified. This office  
could cooperate with the bank's directorate and management in working out  
the bank's problems if a satisfactory program were established and carried  
out.

Because of the large concentration in credits extended to Trans-  
america Corporation and its subsidiaries and affiliates for a long period  
of time, the heavy concentration in real estate and in assets dependent  
upon the liquidation of real estate for their elimination from the bank,  
and because of the absence of fundamental correction of the repeatedly  
criticised asset condition of the bank, it is the opinion of the Comptroller  
of the Currency that it would be an unsafe and unsound practice in conduct-  
ing the business of your bank for the Board of Directors to declare any  
dividend, unless, in addition to meeting all statutory conditions precedent,  
assets classified as estimated losses in the last preceding report of exam-  
ination and any other assets known to be losses, first shall have been  
charged off and all other assets adversely classified shall have been

properly provided for through write-down or through the establishment and allocation of adequate reserves.

Pursuant to the provisions of Section 30 of the Banking Act of 1933, the Comptroller of the Currency hereby warns the bank, its officers, the Board of Directors and members thereof, to discontinue the unsafe and unsound practice of extending credit in such a manner as to result in an unwarranted concentration, or of declaring any dividend unless proper provision for the criticised assets were first made, and to discontinue the violation of Section 5200 of the Revised Statutes through extension of credit in amounts in excess of the limitations set forth in such section.

October 20, 1938

Mr. Charles W. Collins came in at 2:00 p.m. and told me that he had just returned from San Francisco where he had been conferring with the officials of the Bank of America, N.T. & S.A. He said that in his opinion a conference between this Office and Messrs. Mario Giannini and Russell G. Smith of the Bank of America would be productive of results. I listened to his opinion and made no comment to that point. Not getting any response from me, he continued to speculate that he supposed the Comptroller was interested in saving the bank rather than breaking it wide open, and he was sure that cooperation on our part would mean the correction of anything that was wrong. He seemed to feel that most of the difficulties are a holdover from the days before A.P. Giannini resumed the headship of the bank a few years ago and spoke of the progress made by the bank in the past few years.

Preparing to leave, Mr. Collins intimated that he would be glad to have me call him in the event that I desired a conference arranged. I then asked him if he was requesting a conference and for whom he spoke--at whose

- 2 -

request he was making his inquiry. He said that he had not been authorized to make any request, that all his conversations were informal, that he had been on the telephone with San Francisco and he knew they would expect a call from him after his visit to me. He said that he did not want to be technical about the matter, to which I replied that I'm afraid I would have to be technical-- that a committee of the Board had been appointed, as he knew, to study the letter addressed to the Board by this Office. Mr. Collins then referred to the request in the last paragraph of the letter of October 11th from the Board in which they said they would appreciate this Office "affording the management an opportunity to clarify some of the issues raised." Mr. Collins said he had helped in the preparation of the letter. I told him that the letter had merely been acknowledged and that the paragraph to which he referred was one of the matter<sup>ed</sup> which was being studied and to which reply would be made.

Upm  
*Upm*

October 20, 1938

At 8:20 p.m. I talked to Mr. Sedlacek in San Francisco.

He told me that the meeting of the Board of Directors of the Anglo California National Bank has been postponed until Thursday, a week from today, because of pressure from Herbert Fleishhacker for more time. Herbert has told the Directors that he hopes to get information from Washington by next Thursday which will make his own status a little clearer and his retirement from the bank, if that is necessary, a little less embarrassing to him and to the bank.

Sedlacek said that if Herbert has not resigned by next Thursday, they ~~will~~<sup>may</sup> remove him, effective at once.

Sedlacek says that on October 31st Herbert is being brought to court on some summary procedure and that his insolvency to the extent of several million dollars will then be revealed. Sedlacek thinks that for the benefit of both Herbert and the bank, it would be wise if his resignation could be in before that time and then the explanation could be made to the public that in view of the unjust law suits against him, he is putting the interests of the bank first and resigning until such time as he can vindicate himself.

- 2 -

I told Sedlacek that it had been reported to me that he had been quoted as saying that the Secretary of the Treasury would not request the RFC to purchase preferred stock in the Anglo California National Bank until and unless Herbert Fleishhacker had resigned. Sedlacek said he had made no such statement but had pointed out that the only way in which the Comptroller of the Currency can secure the removal of Officers or Directors is by instituting a proceeding under Section 30 of the Banking Act of 1933.

Director Humphries asked Sedlacek's approval of the postponement of the Board meeting until next Thursday but Sedlacek declined to take any position on that, saying that his instructions were to work with the committee of the Board looking toward a correction of criticised practices and that was all.

Sedlacek said that the Directors are really concerned about the situation and are going through with the necessary steps to clean up the bank. He reports that Herbert Fleishhacker keeps telling the Board of Directors that given a little time, he will do the honorable thing. Sedlacek believes he still is depending upon Jesse Jones to make his exit as easy and comfortable and with as much time as possible.

- 3 -

Sedlacek says that the Directors are extremely eager for him to stay and help them as much as possible with the preparation of a letter and a program to the Comptroller fixing up the bank. The members of the committee are not bankers and are somewhat helpless in the face of Mortimer's constant talk. If Sedlacek doesn't help them, the chances are that the letter will be pretty much Mortimer's composition. Mortimer continues to accuse Paul Hoover and Sedlacek of double-crossing Herbert and himself. There are some indications that some members of the Board think perhaps Mortimer should resign also. The Directors seem convinced of the fact that the Office of the Comptroller and our representative in San Francisco are fair and impartial, bear no malice and are working for the best interests of the bank.

I told Mr. Sedlacek that in view of the fact that the Directors' committee is cooperating in a real effort to clean up the bank and correct criticised practices, I thought it wise for him to stay and give the committee as much help as he possibly could, keeping in mind always that any proposal from the Directors to us should be their proposal rather than his--that he could work with them and cooperate with them but be very careful not to get into a position of being, in effect, Chairman of the committee.

Upm 

October 20, 1938

Mr. Gloyd Awalt, who represents the Anglo California National Bank in San Francisco, came in at 2:20 p.m. He said that he had been on the telephone talking to Herbert Fleishhacker, President of the bank, who seems disposed to be willing to submit his resignation as President and Director but who feels that he should be given a little time to arrange matters and who asked Mr. Awalt to ask this Office if his resignation, effective January 1, 1939, would be acceptable to us.

I told Mr. Awalt that my understanding is that the Board of Directors of the Anglo California National Bank has appointed a committee of three Directors to study our letter to them and make such suggestions to us as they find desirable and necessary to meet the criticisms of this Office. I told him that so far as I knew, there had been no stipulation by this Office that anyone must resign--that we were looking to the Board of Directors of the bank to suggest to us whatever corrections they feel necessary. I told him that it seemed to me the problem should be looked at as a global-whole rather than treated piece-meal and that until we had some recommendation from the Board or its committee, we would probably not be willing to take up matters item by item. He said that he was

- 2 -

informed from San Francisco that our position is that before we will request the RFC to purchase preferred stock in the bank, we will insist upon the resignation of Herbert Fleishhacker. I told him that so far as I knew, so such position had been taken or stated--that our report of examination and our letter to the Board of Directors indicated that the management of the bank should be strengthened but that the detailed recommendations should come from the Board of Directors in the first instance rather than from us.

Mr. Awalt said that Mortimer Fleishhacker had called him on the phone and asked him to come out there and help them prepare their reply to our letter--particularly some of the legal aspects. Mr. Awalt is involved in some local bond issue and is unable to go at once and he asked me if it would be all right if their reply to our letter was received by November 15th. I told him that we had set no time limit but were hopeful of immediate action and I understood progress was being made and had been hopeful of a reply in a very few days. I told him that the Directors of the bank seemed to be approaching the matter in a genuinely cooperative way and we were not disposed to be unreasonable but that we did want a reply as soon as possible.

Upm *Upm*