

● PSF: TVA Jax - Mar. 11, 1938

Transcript of Conference, 3-11-38

TENNESSEE VALLEY AUTHORITY
WASHINGTON

PSF: TVA

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January 17, 1938

MEMORANDUM TO THE PRESIDENT

From: Harcourt A. Morgan, Vice Chairman
David E. Lilienthal, Director

Re: TVA Board Situation

We attach a joint statement expressing the principles we believe should govern the conduct of the Board of Directors of the Tennessee Valley Authority, and how these principles are being violated. This we have written to clarify our own minds, as a means of keeping you informed, and possibly as the basis of a public statement if we should be compelled, by further attacks on the Board, to make such a statement.

We trust you may have an opportunity to read the statement since the issues of public administration seem to us basic.

The seriousness of the situation may be summarized as follows:

1. The undersigned believe that Arthur Morgan, since May, 1936, has repeatedly violated the accepted democratic principles of proper conduct for a member of a board of a public corporation.
2. Specifically, these violations have involved external and internal opposition to the official actions of the Board in a form which raises serious questions as to his belief in the wisdom and feasibility of the Act, particularly with respect to power, and in a manner seriously to handicap and discredit the work of the Authority.

I

The Board of Directors of the Tennessee Valley Authority is responsible for an extensive and in some respects unique project for planned conservation and use of natural resources. In 1933, when this project was set in motion, there were few guideposts for the administration of the enterprise. Its future course was largely uncharted. To carry out this undertaking, there was assembled a staff of thousands of trained men and women of scores of professions and occupations, drawn from all parts of the country and selected solely on the basis of merit. This staff has done a job of which Americans can be proud.

From its creation in the summer of 1933 until the spring of 1936, the Tennessee Valley Authority was guided by a Board whose every corporate action was by unanimous vote of all three Directors. Since the spring of 1936, however, the Authority's work has been accomplished in spite of the repeated failure of Arthur E. Morgan to accept and cooperate in carrying out provisions of law and Board decisions. Much that has been accomplished since the spring of 1936 has been in spite of Mr. Morgan's continued efforts to obstruct Board decisions with which he disagreed. For more than a year, as a consequence, the undersigned majority of the Board of Directors have been compelled to assume responsibility for the project.

II

Disagreement and differences of opinion are not objectionable of themselves. In a democracy, such differences of opinion form the basis of the essential discussion which precedes decision on policy--a decision made by the majority. Wide differences of viewpoint on public affairs have always existed, and sharp and distinct differences between public officers have characterized the most wholesome periods in American development. This is particularly true where, as in this project, many of the problems have been new to public administration.

The process of accommodating conflicting views on particular issues is characteristically democratic. It roots from the conviction that in the give-and-take of discussion among independent men where viewpoints must be urged and defended on the basis of reason, the net result will be adjustment, reasonableness, consideration of other viewpoints than one's own, the elimination of personal bias or personal ambition--a weighing and sifting and adjustment from which emerges a decision and action.

These considerations apply with peculiar force to men acting jointly, whether they be the board of directors of a private business or of a public enterprise such as the Tennessee Valley Authority. Where men are responsible collectively for the making and carrying out of decisions affecting public and private affairs, if they are worthy of the trust and confidence placed in them by their

appointments, they are quite likely to see problems from different points of view.

Expression of disagreement, however vigorous and determined, is desirable. After a decision has been made, however, efforts by a minority to obstruct and subvert the decision of the majority are contrary to the principle of majority rule, and hence contrary to the "morals of democracy." After differences of viewpoint have been expressed and weighed and a decision has been made, an obligation rests upon those whose views did not prevail to accept the decision of the majority in good spirit, without rancor and without personal feeling.

III

The present situation in the Board of Directors of the Tennessee Valley Authority presents a clear-cut issue respecting this democratic principle. That issue may be stated in this way: When a board of public trustees, after weighing differing points of view, and after the fullest board discussion, has reached a conclusion by a majority vote, how far may the dissenting public trustee, while still continuing to hold his office, properly carry his opposition to these board decisions?

We believe the following methods of opposition, which are among those employed by our associate since the spring of 1936, fall outside permissible limits.

It is not permissible, as Arthur E. Morgan has done repeatedly in published statements, to attack the personal motives and good faith and impugn the integrity of his associates on the Board, not upon the basis of direct charges but by innuendo, indirection, and aspersion.

It is not permissible for Arthur E. Morgan, as an expression of disagreement, to engage in unsupported attacks upon the integrity, professional ethics, and competence of key members of the staff, and to harass and interfere with them while they are carrying out duties resulting from decisions duly arrived at by a majority of the Board of Directors.

It is not permissible for the Chairman of the Board, after Board action has been duly taken, to fail and refuse to carry out explicit action taken by the Board.

It was not permissible for Arthur E. Morgan secretly to cooperate with a utility executive in the preparation of a memorandum the express purpose of which was to show that a decision of the Board was wrong and activated by improper motives.

It was not permissible for Arthur E. Morgan to collaborate, in secret, with the former Chief Engineer of the Insull utility system, in the preparation of a detailed recommendation on power pooling policy, which report proposed evasions and violations of the TVA Act; nor was it permissible, during negotiations, for him to

permit such report to be made available to the utilities.

Such methods of expressing disagreement with the Act and with majority decisions of the Board, as have been employed by Arthur E. Morgan, are not permissible. Such methods are wrong because they violate the democratic principle of majority rule. They violate a spirit of good sportsmanship in public affairs: one should be a good loser in matters of opinion as well as in sports. We believe these methods to be wrong because they are not designed to persuade but to obstruct and discredit the carrying out of the law and of decisions duly reached after fair consideration.

And finally, we believe Mr. Morgan's methods are wrong because the doctrine of "rule or ruin" cannot exist alongside the doctrine of majority rule and minority responsibility!

IV

The Tennessee Valley Authority was created by Congress to construct and administer a system of essential public works, to lay plans for public development, and in other ways to carry on executive functions of the Government in an area affecting millions of people. The Authority was created as a public corporation in order that it might be, in the language of the President's message, "clothed with the power of government but possessed of the

flexibility and initiative of a private enterprise." The administration of the corporation was vested in a Board of Directors consisting of three members, appointed by the President and confirmed by the Senate, of which one member was to be designated by the President as Chairman. No authority was conferred upon any individual member of the Board, nor upon the Chairman, but "the Board shall direct the exercise of all the powers of the corporation" (Sec. 2(g)). The charter of TVA is the Act of Congress. The members of the Board have no authority to act outside that charter, or to give expression, in their official acts, to views inconsistent with that charter.

The TVA Act was the product of public debate extending over more than a decade. Its enactment was a decision upon issues which had been highly controverted. Congress recognized that the Act involved controversial issues of policy, and that its execution could be subverted unless the administrators were in sympathy with the Act and its purposes. Section 2(h) of the Act provides, therefore, that "all members of the Board shall be persons who profess a belief in the feasibility and wisdom of this Act."

To the Board of Directors have come, in the past four and one-half years, a host of difficult problems for decision. Throughout, the Board has encouraged a full discussion at its meetings of all of these problems, from

the varying points of view of the three Directors. On most questions unanimous agreement has been readily obtained. On some important questions unanimous agreement was naturally difficult. But whether there could be unanimity, action there must be, for the Tennessee Valley Authority is not a debating society but an executive agency. A decision must be reached. A considerable number of important decisions since the spring of 1936 have been made not unanimously, but by a majority of the Board. The Act authorizes action by such a majority.

V

We have set out above types of action taken by Arthur E. Morgan which we regard as methods of expressing disagreement which are not permissible. The principles we regard as governing the expression of disagreement are as follows:

1. Harmony and unity in carrying forward the unique and challenging responsibilities of the Tennessee Valley Authority ought to be the dominant consideration. Therefore, each member of the Board should make an honest, wholehearted effort to find some basis of agreement by adjustment of his views with those of his associates when the two do not coincide. Discussion, conciliation, and adjustment of views, with a real effort to see the viewpoint of one's colleagues, should pervade the councils of the

Tennessee Valley Authority. The undersigned have never sought to limit discussion or dissent within the forum provided by meetings of the Board.

2. No member should be prompted by personal consideration, by efforts to discredit an associate, nor by any other object than to carry out the duties imposed by law and his oath of office.

3. If a member of the Board finds that after open-minded consideration of conflicting views, he is unable to concur with a majority of his associates, it is his privilege and duty to state that fact upon the minutes of the Board.

4. If a member of the Board under these circumstances regards the expression of his dissent as important, he has the unquestioned right to direct a memorandum to the Board, recording fully and frankly why he is unable to concur. Such a memorandum should be a discussion of facts and principles, and not an ill-tempered attack upon motives; nor should it deal in mere personalities.

5. A member of the Board who is in the minority with respect to a particular decision has, we believe, the privilege to continue to urge upon his associates, in meetings of the Board, a revision or reversal of their decision. The majority of the Board should always be ready to consider, respectfully and with an open mind, any new reasons advanced or a renewal of reasons theretofore expressed by the minority

member, why the decision reached should be revised in line with the contentions of the minority member. Upon a number of important occasions, upon reconsideration within the Board made at the request of a member who was in the minority, revisions and changes of policy and administration have been made in this way. In our opinion, there should be no effort to foreclose any issue so far as discussion within the Board is concerned, simply because it has once been decided, within the limits, of course, of reasonable allocation of time and energy of the Board in reconsidering decided questions.

6. Having failed to persuade his colleagues to his viewpoint, no member of this Board may obstruct the work of the Board, as Arthur E. Morgan has done.

VI

There have been many instances in American public life in which a public officer, having been unable to persuade his colleagues or his superiors to his own views, has retired to private life and, standing up as a private citizen, has continued to contest and seek to upset a policy with which he disagreed as a public officer. To this there can be no possible objection. If, however, he remains as an executive officer of an agency with the decisions of which he is out of sympathy, an obligation rests upon him not to use his vantage point as an executive

to obstruct the carrying out of determined policies,

These limits upon the expression of disagreement have been transgressed repeatedly since May 1936 by our associate. Throughout, with one exception, we have maintained silence in the face of this extreme provocation, in the hope that tolerance would lead ultimately to unity and loyalty. In this we have been disappointed and rebuffed. Our associate has increased both the scope and intensity of his attack upon majority action until, in recent months, this opposition and obstruction have occupied virtually his entire time, even to the exclusion of his attendance upon Board meetings.

VII

To promote unity and avoid dissension, we have acquiesced and agreed to some proposals of our colleague which both of us thought were impractical, immature, and confused. Once these decisions were made, we supported them in common with all other decisions. To yield one's own judgment and opinion is at times the price of harmony and unity in collective judgments. But there should be no misunderstanding on this score: so long as we are members of this Board, we will never permit any private agency to secure a monopoly over the public power resources of this river. This we have resisted against plausible and high-sounding schemes and efforts both from without and from

within this Board. We propose to continue to do so. To surrender this principle and thereby violate the law and our oath of office is too high a price to pay for internal harmony.

The undersigned majority of this Board, with the continued aid of a loyal, devoted staff, propose to continue to carry this project forward in accordance with the law which constitutes its charter.

PS F: TVA

TENNESSEE VALLEY AUTHORITY

Washington

BOARD OF DIRECTORS
ARTHUR E. MORGAN, CHAIRMAN
HARCOURT A. MORGAN
DAVID E. LILIENTHAL

March 5, 1938

MEMORANDUM FOR THE PRESIDENT

From David E. Lilienthal

In Re: Berry Marble Claims

This morning you suggested that I prepare a brief statement for you concerning the so-called Berry Marble Claims against the TVA.

1. The Condemnation Commission held Berry entitled to no award.

On March 2, 1938, a Special Commission appointed by the Federal Court at Knoxville, held that the claims of Senator Berry and his associates for damages against the Tennessee Valley Authority, by reason of the flooding of lands on which they had marble leases, could not be sustained, and that they were entitled to no money award. The Commission put its decision solely upon the ground that the testimony of the TVA's experts had convinced them that the marble leases were "commercially valueless."

2. The Commission put no reliance upon Dr. Morgan's charges.

The Commission made no reference to the testimony of Dr. A. E. Morgan, who appeared in the proceedings against the advice of counsel for the Authority. The Commission therefore confirmed TVA counsel's advice that Dr. Morgan's testimony was irrelevant to TVA's case.

The history of the proceedings is as follows:

3. Mineral claims, such as Berry's, always require negotiation before condemnation is resorted to.

The TVA has a regular routine in appraising the value of farm land to be acquired for reservoirs. Appraisers are sent out, their estimates reviewed, etc., and then if the price thus determined

is not accepted, condemnation proceedings are instituted. But when we have claims for minerals or mineral leases, or comparable problems, this simple farmland procedure is not feasible, and negotiation for settlement is always necessary, as routine.

4. There was a wide conflict of expert opinion on the value of Berry's leases.

Senator (then Major) Berry and his associates made claims against the Authority for damage to them by reason of the prospective flooding of lands on which they had mineral leases claimed to cover valuable marble. Long before the dam was completed, the Board authorized the employment of consulting geologists, who with our regular staff examined the properties and reached the conclusion that they had no substantial commercial value. The Berry claimants, however, produced experts who claimed a very large commercial value, the difference of opinion being chiefly on the marketability of the marble.

5. The uncertainty of result of a condemnation suit led counsel to advise trying to reach a settlement, by both parties' calling in an outstanding geologist as conciliator.

Our counsel told us that condemnation proceedings might result in a large award against TVA, since in the case of expert testimony there is never a way of anticipating which experts the courts will believe. Furthermore, to proceed to condemnation meant large expense. (The case has cost a large sum to date.) Accordingly, efforts were made by counsel and experts on both sides to come to some agreement.

No one connected with the Authority, and no member of the Board believed that the marble claims had substantial value, but everyone recognized that the expense of litigation and the uncertainty of results where mineral claims are involved made it good judgment to try to settle the case.

During the period of Dr. A. E. Morgan's seven-weeks' absence from his office in the summer of 1936, a conference was had between the claimants and the active members of the board, counsel and geologists, and it was agreed that an outstanding geologist, selected by the TVA's Chief Geologist, be called in to see if there was any basis for agreement. This was done with the approval of the Authority's counsel who was desirous of avoiding litigation if possible.

The active members of the board believed, and so stated, that so distinguished and impartial a geologist as the one selected, Dr. John Finch, Chief of the Bureau of Mines, would support the

conclusion of our own geologist and consultants, and show Major Berry and his associates that they would lose the case and should therefore drop their claims.

6. The conciliation agreement did not bind anyone to anything.

A Memorandum Agreement was entered into which, by its express terms, provided that neither party should be bound to accept the conclusions of the mediator. In other words, the matter was not submitted to arbitration and this was specifically recognized. Even the agreement for conciliation could be terminated by either party upon short notice.

7. The conciliation agreement expressly provided that the validity of the claims was not acknowledged by reason of entering such mediation.

A. E. Morgan objected to any effort at mediation upon the ground that to do so would be to recognize the validity of the claims. The agreement to call in Dr. Finch in no way halted or interfered with an investigation for actual facts, as distinguished from rumors or impressions, on the issue of bad faith. One of the Board Resolutions stated: "The Board hereby re-emphasizes that such an arrangement (that is, for Dr. Finch's services as conciliator) is in no wise to be construed as a validation of any claims nor is either party to be bound in any way by reason of the fact that Dr. Finch has been called in as intermediary....that the mediation proposal is to be wholly without prejudice or effect on any other problems presented by these claims."

8. Evidence tending to show bad faith appeared for the first time more than a year after mediation was agreed to.

Because of Dr. Morgan's objection, the efforts to mediate were not carried forward and condemnation proceedings were instituted. A few weeks before the condemnation proceeding began, one of the claimants who felt he had been mistreated by the others presented information to counsel for the Authority which for the first time enabled the Authority to unearth facts tending to show bad faith. Once they had these facts, Counsel for the Authority proceeded to put this evidence into the record of the proceedings and urged the Commission to throw out the claims.

After counsel for the Authority had submitted complete evidence on both points—the lack of value of the claims and the question of good faith—Dr. Morgan asked to be heard before the Commission. His testimony

was a recital of his objections to the mediation proposal. He stated in answer to questions by the presiding Commissioner that he had no knowledge except as he had read it in the newspapers of the evidence of bad faith which had been submitted by counsel for the Authority.

- 9. The Commission disallowed the claims in toto because of TVA's expert testimony that the marble had no commercial value; it disregarded Dr. Morgan's testimony as irrelevant.

This expert testimony was developed almost two years before the trial. No reference was made by the Commission to bad faith.

- 10. To call upon an outstanding government geologic authority as the majority did in this matter was one way of protecting the Board against paying unwarranted damages.

There is not a line in the record of the whole matter that supports the charges and inferences of A. E. Morgan that there was a conspiracy between Senator Berry and the majority of the Board; nor is there any single act of the majority and the staff that did not follow established principles of good public administration.

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spokesmen, a secret differential by disguising much of the actual firm power of TVA as secondary power and selling it at secondary-power rates. In short, this great humanitarian administration which poses as the protector of the ill-clad, the ill-fed, the ill-housed third, which has dauntlessly laid down the gage of battle against the monopolies, has now set out a plate of cream at its back door for those whom the administration terms "the fat cats of special privilege."

What a perfect example of blowing hot and cold at the same time. One cannot blame the corporations for getting the best rates possible, but one is naturally surprised at an administration damping the trusts and monopolies on one hand and with the other passing out hand-outs amounting to hundreds of thousands of dollars a year to specially chosen "princes of privilege" in order to justify the existence of TVA as a social experiment. (Emphasis ~~added~~ supplied)

2. Special emphasis given to Chairman Morgan's charges of dishonesty:

Chairman Morgan's statements regarding the Berry claims, charged a lack of honesty, openness, fairness, etc., to the other Directors. The impressive feature of this charge has been the allegation of dishonesty. Speaking with reference to this statement in the Senate on March 9, Senator Vandenberg said:

"Congressional Record, page 4133. I should like to make an observation. It seems to me that the editorial that has just been read goes clearly to the root of the problem that the Senate confronts in making its alternative choice. In ordinary circumstances, when a factual exploration is involved, I would feel that the Federal Trade Commission, having the facilities and the equipment to search for facts, and a real capacity, could attain a better result than could a Senate investigating Committee. But, Mr. President, when the responsible head of a great governmental institution, which has probably spent or has committed itself to spend half a billion dollars, charges a lack of honesty—I quote him—"a lack of honesty, a lack of openness, a lack of decency, and a lack of fairness." and particularly a lack of

honesty, I submit that the situation has totally changed from the time when the able Senator from Nebraska submitted his resolution in the first place. We now confront a challenge to the honesty of the great institution that is committing the American people to half a billion dollars of expenditure. I do not think the American Congress can sublet its responsibility for finding out what the Chairman of the TVA meant when he charged lack of honesty. I do not think the Congress can sublet that responsibility to any other power on earth and afterward look the American people in the face." (Emphasis ~~supplied~~ supplied)

PSF:TVA

Fourth Draft - statement

March 5, 1938

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A comprehensive, long-term plan for the adjustment of relations between the Tennessee Valley Authority and private power companies in the Southeast was proposed today by Director David E. Lilienthal, to whom the TVA Board some weeks ago delegated the responsibility of negotiating a basis for settlement.

The plan proposed includes the sale to the appropriate public agencies—city, power district, rural association, or TVA—of electric facilities owned by the power companies in northern Alabama, northeastern Mississippi, and substantially all of the State of Tennessee, including the cities of Memphis, Chattanooga, and Knoxville. In virtually all of this territory, the communities themselves have held elections favoring establishment of their own electric distribution systems and purchase of TVA power, or definite steps by the communities have been taken in this direction. In a number of communities, negotiations for the purchase of the plants having heretofore failed, construction of a competing plant is in progress, or construction is about to begin.

Negotiations for purchase are in progress with the utilities operating in the Knoxville area and in west Tennessee, part of the Electric Bond and Share system. In letters dated March , addressed to the presidents of the Mississippi Power Company, Alabama Power Company, and Tennessee Electric Power Company, and to the president of the Commonwealth & Southern Corporation which controls these operating companies, Mr. Lilienthal invited immediate negotiations to include properties owned by these companies.

In commenting on the proposed plan, Mr. Idlienthal said:

"For approximately five years the Authority has been perfecting its plans for water control in the Tennessee River basin. We now have reliable estimates of the present and future output of power which can be produced after the prior requirements of navigation and flood control have been met. Five years' experience has also developed a rather complete picture of the market for this power as represented by contracts and requests for contracts with municipalities and county power associations, whose needs are given preference by the terms of the Tennessee Valley Authority Act. Most of the power which is now and will be available is needed to fulfill the power requirements of these preferential non-profit agencies. A balancing of these factors, consideration of the economics of power transmission and of the importance of avoiding duplication of facilities, form the basis for the plan here suggested.

"For a number of years the Tennessee Valley Authority and various public agencies in the Tennessee Valley area have endeavored to reach a basis of agreement with the private power companies, and a number of contracts with the companies have been entered into, some of which are in force today. But because of disruptive litigation against the TVA, and for other reasons, no comprehensive adjustment has been possible. The plan which is now suggested will, I believe, serve as an appropriate basis for immediate negotiation, for the following reasons:

"1. It is comprehensive and provides a long-time basis of adjustment upon which all parties can then make their plans for the future.

"2. By providing for the sale of properties, it makes it unnecessary for communities which have voted to use TVA power to construct competing and duplicate distribution facilities. The only reason competing and duplicate systems or facilities will ever be constructed in the Tennessee Valley will be because the management of the companies find themselves unwilling to cooperate in a plan for the sale of their properties in return for a fair consideration.

"5. The proposal is consistent with the TVA's obligations under the Act of its creation and is therefore to be distinguished from plans which have been suggested ever since the Authority's inception which run directly into the teeth of the statute and violate its fundamental policies.

"Only a definite and limited amount of power can be produced under the Authority's Plan for the Unified Development of the Tennessee River System, submitted to Congress in March, 1935. That amount of power (present and prospective) is known, within narrow limits, and the facts pertaining thereto have been reported to Congress in public reports from time to time. Once a market is found for all of that power, with a reasonable reserve for expansion and increase within the region served, then the situation with respect to the power companies' properties lying outside of such region becomes stabilized.

"Specifically, if the suggested plan met with the approval of all parties and were put into effect, it would mean that now and for the future all the power that the Authority can equitably allocate to Mississippi would be absorbed by the proposed purchase and present commitments; a similar situation would apply in Alabama and Tennessee.

Fourth Draft

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A limited amount of power would be available to Georgia in addition to present contracts. Upon completion of Hiwassee Dam in 1942 or 1945, a further definite amount would be available for Georgia and also a limited and definite amount in an area near that Dam in North and South Carolina, provided, of course, public agencies in such areas called upon the Authority for contracts. With the completion of Gilbertsville Dam, estimated to be in 1945 or 1946, a similar problem of allocation of a definite amount of power to western Kentucky would be presented.

"The plan, in brief, provides for an integrated and economic distribution market, operated by local agencies, adequate to absorb the entire TVA power output provided for in the Unified Plan, allocated as fairly as possible, as the law provides, among the various sections of the Tennessee Valley region. In broad outline it is contemplated that TVA will provide generation and transmission, and that local public agencies will be responsible for distribution; in the buying of properties the same general allocation of functions is proposed. Under this plan, TVA sources of power and its transmission lines would be interconnected with the facilities of the utility companies in the surrounding area, for the purpose of interchange of power and standby protection, on a mutually advantageous basis.

"It has been repeatedly said that the communities in the Tennessee Valley and the TVA intend to pay grossly inadequate prices for any properties to be purchased, and that no fair price can be secured because the sales will be made under the threat of competition. That is

Fourth Draft

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not the fact. In order that this issue may be set at rest, I have included in the letters just sent to the several Commonwealth & Southern companies a suggestion on price, namely that the price be based upon the actual cost of the properties purchased less the diminution in value resulting from the fact that the property is no longer new; in other words, the actual cost less the accrued depreciation."

CONFIDENTIAL
PROPERTY OF THE
U.S. GOVERNMENT
NOT TO BE
DISSEMINATED
OUTSIDE THE
DEFENSE
DEPARTMENT

J. G. ...

March 3, 1938

MEMORANDUM FOR COLONEL McINTYRE:

The President mentioned that he thought it might be wise for him to release the joint memorandum submitted to him some time ago by the majority members of the Board. Copies were mimeographed for his use and a small supply is attached.

If he felt it appropriate, public expression of his approval of its expression of principles would be of inestimable assistance.

Additional copies are available if you wish to have them.

March 3, 1938

MEMORANDUM TO COLONEL McINTYRE:

This will remind you that the President indicated he might wish to mention at his Press Conference the plan which Mr. Lillienthal discussed with him, a statement concerning which he has in his possession. There are two dangers which you may wish to bring to his attention:

1. It may be a mistake for him to assume responsibility for details of the plan.
2. In view of the persistence with which power sympathizers continue to indicate that the President is in sympathy with policies advocated by Dr. Morgan, any general statement by him is likely to be construed that he (the President) has proposed a plan as mediator in the TVA difficulties, and that Mr. Lillienthal has been forced to surrender his views in favor of the Chairman's.

Therefore, if the President makes any reference to the plan about to be announced by Mr. Lillienthal, it is suggested that he might say he is aware of the plan, and has approved it in rough draft, and understands Mr. Lillienthal will have an announcement to make soon.

This is an important opportunity for him to mention his approval of the plan, and will be enormously helpful if the outlined danger can be safeguarded.

* You may wish to tell the President that the letters referred to in the statement are being mailed today (Friday).

March 3, 1958

MEMORANDUM FOR COLONEL McINTYRE:

This will remind you that the President suggested that he would like to be prepared to comment on the Berry matter. The attached informal memorandum will give him the necessary background.

PSF TVA

THE NEW YORK TIMES, MONDAY, MARCH 7, 1938.

Rogers Peet

Dr. A. E. Morgan's Letter Assailing TVA 'Intrigue'

Special to THE NEW YORK TIMES.
WASHINGTON, March 6.—The text of the letter written by Dr. Arthur E. Morgan, chairman of the Tennessee Valley Authority, to Representative Maury Maverick of Texas, outlining the situation prevailing among the members of the Authority on matters of policy, follows:

You are a friend and supporter of the President and also of the TVA. I believe that I can write you, in confidence.

In your recent speech in the House, as reported in the Congressional Record, you say:

"This lack of frankness is also true of Chairman Morgan. About the only difference is that Mr. Lillenthal smiles and evades all questions, and Mr. Morgan looks solemn and evades all questions."

I believe that if you should fully understand the situation you would not support that statement. As I think you know, Mr. Lillenthal and Dr. H. A. Morgan invariably vote together on all board matters. Whenever there is a difference of opinion, I am invariably in the minority. Except for possibly two or three detail incidents, I think there is not an exception to this rule in the entire history of the TVA.

During the first few weeks of TVA, while our TVA office was in Washington, and while I was extremely busy there working out the rudimentary organization as to finance, employment, government accounting, and relations with other government departments and agencies, the other two directors were in Knoxville preparing a plan for a division of functions within the board. One of the members explained his absence on the ground that he must close up his previous work, and the other that he wanted to take a trip over the TVA territory and become acquainted with it. Neither of them hinted to me that they were working out a division of powers.

Recalls Division of Tasks

President Roosevelt, by Executive order, had put me in charge of Norris Dam, so that was left in my hands. Since neither of the other two directors knew anything whatever about dam building, the enlarged construction program until recently was left in my hands. Also,

hearty accord with the purposes of the New Deal as announced by the President, and with the purposes of the TVA as stated in the act. But how to bring about a correction of the faults in the organization, without injuring the TVA and the Administration, has been a difficult problem. I have gone to a few persons in key positions, and have stated the facts. I have asked to be given facilities to make definite reports with facts and data. I have not been supported in that request.

Menace to Good Government

I have talked to certain Senators and Representatives, and have told them enough so that they could inquire if they wished.

The two directors, who always vote together and thereby control TVA organization matters, do not desire any inquiry or publicity. Their propaganda has been that I am unduly favorable to the utilities or that it is just a "family quarrel" or a "cat-and-dog fight," and that I am exposing the TVA to its enemies. They have needed only to cloud the issue to keep in control.

Under these circumstances just what course could I pursue to clear up a situation which in my opinion is a menace to good government, and to the long-time welfare of the TVA, short of making my difficulties known in public?

There are certain people in the country who have had confidence in the TVA Administration because I was there. For me to remain quiet and acquiescent, and then for some exposure to show up undesirable conditions, would put me in the position of having betrayed those who had such confidence. I have tried to give public notice that certain TVA policies were not mine, without going farther than was necessary. It has seemed to be a situation where any course I should take would seem to be wrong from some point of view.

Under the circumstances, in addition to letting the public know in a general way that I did not approve the prevailing TVA policies, it seemed best to wait until those in key positions should come to realize that the public interest is not being served by the present control. Since they would not take my word, they would have to learn by events. I think that probably the time has

only be inferred by a general review of board actions requested by Mr. Lillenthal and by his various statements on items of policy. As I understand that policy, I do not approve of it. Especially I disapprove of carrying through a policy which, I believe, never has been disclosed to the public.

That policy, I believe, finds expression in a large number of separate steps, any one of which may or may not be consistent with a sound power policy. In the absence of a clear public statement of the actual TVA power policy, and because I am not in the confidence of a majority of the board, it frequently is impossible for me to decide concerning the merits of particular cases.

In order not to obstruct the orderly work of the board, I seldom have assumed to oppose particular activities, many of which cannot be appraised except in the light of some general policy. My failure to follow up inquiry as to particular items does not imply acceptance of any unpublished policy or of its detailed application. It implies only that I do not wish to inject into board meetings an incessant reiteration of my position that there cannot be proper administration in detail where a sound and public policy is lacking.

"ARTHUR E. MORGAN."

"Not an Obstructionist"

Although I protested strongly repeatedly against the policy established toward the Aluminum Company, and recorded these protests by negative votes and by formal statements, yet when I had been overruled and the policy was established, I did not vote against the particular applications of that policy in individual contracts. One reason was that I did not have the facilities or the information to properly appraise those individual contracts. Another was that while I reserved the right to criticize and to disagree, I have not wanted to be an obstructionist. A large part of the business of the TVA board is non-controversial, and I have cooperated in that to the fullest extent, regardless of personal relationships or of my lack of confidence in the motives and actions of the majority of the board.

Senator McKellar probably made his recent Senate statement on the status of TVA contracts from data

their policies. The formal meetings of the board, so far as any controversial matters are concerned, as a rule are only to approve action decided upon beforehand by the two members. After I am not permitted to know in advance what issues will be presented to the board for action. The two members come to the meetings, often with resolutions in typed form, sometimes after long periods of preparation without my knowledge. When I ask for a day or two to inform myself, I am customarily overruled and the action is taken at once. For instance, I heard indirectly that the board members disagreed on the Arkansas Power and Light Company contract. Dr. H. A. Morgan wants to confine TVA benefits to TVA States. Arkansas is outside that area. I was not consulted. When the two directors finally agreed, the matter was brought up in board meeting.

If I present a resolution or make a motion and the other members do not agree to it, I am not allowed to have a record of my motion in the board minutes. Formerly when minutes came to me for signature I would sometimes make a notation for my reasons for refusing to sign them when I thought the action irregular or improper. The majority of the board then decided that the minutes should only be signed by the secretary and that is now done; and that chance for recording my objections is removed.

"A Practice of Intrigue"

At the time of the recent appropriations committee hearings, the board took action to the effect that only the general manager and his staff should answer questions of fact, and that in case a board member should be called on to answer questions of policy, his answer should conform to the majority opinion of the board, and that he should not express his own opinion. I did make a short statement to the committee by ignoring the arranged program and asking to make a brief statement. I then stated the conditions imposed by the board.

There is a practice of evasion, intrigue and sharp strategy, with remarkable skill in alibi and the habit of avoiding direct responsibility, which makes Machiavelli seem open and candid. It took me a year or

think is an answer to that criticism, especially as I have successfully carried through other similar projects on a smaller scale. In view of the attacks made upon me by the other members of the board from the start, my best course seemed to be to do an effective job in my own field. It would please me to have a totally impartial board make the most critical kind of an examination of the TVA dam-construction program.

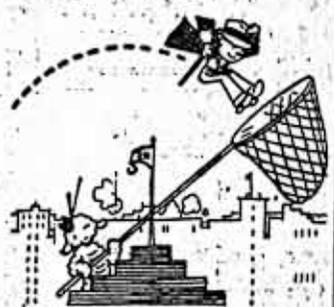
Denounces Berry Claims

On the other hand, in my opinion, a similar, competent and unbiased examination of the electrical program will disclose disorder, waste, confusion and lack of planning to a startling degree. Unless the agencies of government can penetrate behind strategy and intrigue and get at the essence of what is being done by the government, and unless the government can "buck up" and look facts in the face, my enthusiasms for government in business will necessarily be affected.

If I had let each of the other two directors alone in their fields there would probably have been less difficulty. It is because I looked upon the TVA as a single organization, with all the directors responsible together to the public for all the major policies, that my troubles mainly have come.

The Berry marble claims, in my opinion, were an effort at a deliberate, bare-faced steal. The other two directors had the same evidence that I did. For a year and a half I tried to work it out in confidence in the board, and without publicity, and only spoke out at the last minute. The public and the Congress do not yet know the extent to which that was improperly handled.

To sum up, I have said nearly all these things to persons in key positions who I believed were in a position to correct the situation. I have delayed publicity in the public interest. First, because amendments to the TVA Act were before a hostile committee hoping to destroy it. Then I had reason to believe that one director would not be reappointed, and it seemed possible to get correction without publicity. Then the national election approached and the publicity would be used by the enemy. Then I un-



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164 were \$50
141 were \$45

\$45 { 247 were \$85
209 were \$75
1491 were \$65

SUIT CLEAN-UP

\$35 { 804 were \$65
960 were \$55
847 were \$50
982 were \$45

\$45 { 396 were \$75
1104 were \$65
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overcoats that were \$125
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25th and 26th at 2
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Entire Stock of a Jeweler
retiring from Business
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Watches in all Models
today.
Sat., March 26th,

tion of the TVA. The other two directors took over most functions, and arranged that in their special work each of the three directors was made responsible for almost independent organizations.

Because of unexpected Congressional appropriations for the construction of additional dams, the construction program under my direction came to be about twice as great in money expended as the part of the work which was directed by the other two directors combined. Mr. Lillenthal steadily opposed additional dam construction in board meetings, but not in public.

When the two directors had divided up the field, they announced to me that the TVA was primarily concerned only with power and fertilizer, and that nothing should be undertaken which was not incidental to this. Muscle Shoals then seemed the center of the stage. They told me that they had divided the work there among themselves, and that it would not be necessary for me to go to Muscle Shoals.

"Able to Block Some Moves"

Until the past year I have had no complaint about the proportion of the work assigned to me. My complaint has been that the country in general believes that the TVA is governed by a board of which I am chairman, and that its policy and program are determined by that board. For evasion, deceit or misrepresentation to be practiced in any part of the TVA would seem to the average person to be partly my responsibility. However, the two directors, who always vote together and are in complete control of the TVA, decide matters just as they want. In general my vote does not count, although occasionally, as in the Berry marble case or in the case of the draft of the Arkansas Power and Light Company contract presented to the board for approval, I have been able to block some moves which seemed to me to be especially bad and which could be made publicly embarrassing to the other members.

As you know very well, the enemies of the TVA and of the President are eager to use any discord in the TVA to destroy it. I am in

opinion, explicitly false reports, which have been made to the President, to Congress and to the public concerning conditions in the TVA by a TVA director or by the two directors acting in unison.

With reference to the Aluminum Company contract, I feel that the relations of the TVA and the Aluminum Company have failed to protect the public interest. I have protested to the board repeatedly on this matter. When I have protested on a general policy matter and have been overruled, it has not been my custom to object in case of the detailed applications of that policy, for that would only encumber the work of the Authority. My attitude in that matter is stated in the following memorandum to the board, dated June 18, 1937:

"To the board of directors: Dr. H. A. Morgan; Mr. D. E. Lillenthal from Arthur E. Morgan, chairman, date June 18, 1937.

"Subject: Explanation for the basis of my vote on Board Items 282-51 and 282-52, to be filed with and made part of the minutes of the board meeting of May 5, 1937, as Exhibit 6-5-37-r1.

"At the board meeting of May 5, 1937, attended by Dr. H. A. Morgan and myself, contracts with the North East Mississippi Electric Power Association and with the Pontotoc Electric Power Association were presented for board approval.

"TVA Power Policy Not Explained"

"Mr. Lillenthal was not present, but his personal representative, Mr. Forrest Allen, stated that he was anxious that the contracts be approved. Nearly all such actions have been presented to the board when Mr. Lillenthal was present, and approved by a majority of the board, regardless of my attitude or action. In this case I voted to approve the contracts and wish to file this memorandum of explanation, not only of this action, but of my actions generally where power policy matters are involved.

"In my opinion, the TVA power policy has never been fully and publicly stated and cannot be learned by any formal action of the TVA board. In my opinion, the actual TVA power policy can

be learned only by a personal inspection of the TVA files. It is difficult for me to get such information independently, because I am not adequately staffed for such work, but my information is that the TVA is practically sold out, and even may be oversold. I am also checking that information carefully. I did not learn this from Mr. Lillenthal or from his staff, but from an investigation by my own personal assistant.

Cites "Joker" in Contract

The Arkansas Power and Light Company contract as presented to me for approval contained a "joker" which would have allowed the company to buy prime power at secondary power rates. I protested strenuously and got that point eliminated. But I am not in a position to pick up all such points. I have picked up a considerable number, by special personal inquiry outside regular channels.

The TVA engineer who helped me to analyze this Arkansas contract, and who disclosed this "joker" is a very able man. He has helped me outside his regular field in analyzing problems I have presented to him. After this and other services he, I believe, being punished by insecurity of employment, though I am perfectly aware that a plausible explanation would be given for keeping him in a state of insecurity.

I have found Mr. Lillenthal and his staff purposely keeping important information from me. I am not allowed to have the help I need to properly analyze the power program and the power matters which come to the board for action. TVA engineers, even those in my own field, are instructed not to supply me with information I request, except through the general manager, who was appointed by the other TVA directors over my protest and who in my opinion is part of the closed group. Under such circumstances it is difficult for me to know what is going on in the electrical division, or for that matter in any part of the TVA. I believe that a thorough and impartial investigation would disclose serious defects in the power program.

"Customarily Overruled"

The other two members of the board meet privately and work out

of responsibility. In my opinion, good government and the welfare of the TVA demand that the situation be cleaned up and that standards of openness, fairness and honesty shall prevail. I cannot see a Federal Trade Commission investigation as getting at the root of the matter. One government agency will hesitate to question the motives of another. The Federal Power Commission investigation of "yardstick" towns will not stand critical examination. In my opinion, nothing short of a Congressional investigation is adequate.

I have sent to you a letter identical with letters I have just mailed to TVA Congressmen, together with a letter from Mr. J. D. Ross, Bonneville administrator. Please compare this letter of Mr. Ross's with Mr. Lillenthal's statement of Jan. 18, 1938. Mr. Lillenthal's statement of Jan. 18, 1938. Mr. Lillenthal's statement is cleverly worded so as not fully to expose the realities of the situation.

Dam Program "Aboveboard"

The dam-construction program, on the other hand, has been completely open and aboveboard. I have brought in consultants who were strongly opposed to the TVA and have had their honest critical judgment of our plans. With possibly one or two exceptions, this TVA dam-construction program is the largest undertaking of its kind in history. That program has been organized and prosecuted with efficiency, thoroughness and economy. It will stand any investigation as to the manner of its administration, and I hope it may be examined by thoroughly competent and disinterested men. We have faced some of the most difficult technical problems ever met in dam construction. Success in a program of that sort is not just a matter of routine or chance.

Almost from the beginning of the TVA I have been faced with a campaign of propaganda to the effect that another director was the practical man and I was the theorist. The actual organization of the dam-construction program and of our general administrative set-up, which was also in my charge, I

of responsibility. In my opinion, good government and the welfare of the TVA demand that the situation be cleaned up and that standards of openness, fairness and honesty shall prevail. I cannot see a Federal Trade Commission investigation as getting at the root of the matter. One government agency will hesitate to question the motives of another. The Federal Power Commission investigation of "yardstick" towns will not stand critical examination. In my opinion, nothing short of a Congressional investigation is adequate.

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There are a great many matters which concern me which I have not mentioned in this letter. In some cases a large number of incidents or pieces of evidence have led me to hold opinions which I could not sustain by legal evidence. I think there has been exceptional skill in avoiding clear disclosures of various matters and in shifting responsibility to others.

The principles enunciated by the President when he took office seem to me to be essential to the stability of our government. I am greatly committed to them. Also, I believe that the TVA offers great opportunity to promote effective methods of conserving and using our common resources. For those great possibilities to be lost by habits of misrepresentation, intrigue and arbitrary action seems tragic.

I am nearly 60 years old and many years ago deliberately gave up expectation of a public career. I did not seek my present position in any way. It would be pleasant to resign and do some of the many things I am anxious to get at. Yet, to surrender the chance to make some contribution to decency and effectiveness in government does not seem to be the right course.

BENNETT'S PARTY FACES REMODELING

Canadian Conservatives Link
His Successor as Leader With
Choice of New Policy

By JOHN MAC GORMAC

ment that the delegates decided to change the name of their party to the National Conservative party, apparently as an overture to Mr. Duplessis.

But many Conservatives argue that to join forces with the Quebec group would be to join forces with fascism. They would rather join liberalism in a national government and in this would have their blessing of powerful Canadian business and financial interests who would expect such a government, among other things, to solve the Dominion's railroad problem.

NINE ENTER LOCK AND KEY City College Students Elected to Honor Society

Nine undergraduate students at City College have been elected to Lock and Key, junior and senior honorary society for students prominent in extracurricular activities. It was announced yesterday by Joseph Janovsky, chancellor of the society.

TVA HEAD HINTS REFUSAL TO RESIGN

Continued From Page One
thorough and impartial investigation would disclose serious defects in the power program.
He charged that there "is a practice of evasion, intrigue, and sharp

Then I understood that correction would shortly be made. Then the nineteen power company suit came on, and publicity would be ammunition for the enemy. And so on."

His reference to the possibility that a director would not be pointed was believed to have to the report current in the President was considering reappointing Mr. Lillenthal. He explained that when carrying on the dam program in the early days Mr. Lillenthal opposed construction at

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Grace: PSF: TVA
Neither Mr. Ingling nor
I have the unchecked
correspondence listed -
P

THE WHITE HOUSE
WASHINGTON

Not
returned
P.L.

March 9, 1938.

CORRESPONDENCE SENT TO BEN COHEN

Letter of August 31, 1937 from
Dr. Harcourt A. Morgan enclosing
list of series of articles and
public statements by Chairman
Morgan which cast suspicion on
the good faith of the conduct of
the Board in administering the
power program of the Authority.
Also encloses resolution.

The President's reply of September
3, 1937 to Dr. Harcourt A. Morgan.

President's letter to Dr. Arthur E. ✓
Morgan of September 3rd, written
Aboard the USS POTOMAC.

Letter to Mr. James Roosevelt of
September 8, 1937 from Dr. Arthur E.
Morgan thanking him for his tele-
gram of September 7th, arranging
an appointment for September 16, ✓
1937.

Also letter to Mr. McIntyre from
Dr. Arthur E. Morgan asking if the
President wished to see him.

COPY

PSF: TVA folder-2-38

Aboard the USS POTOMAC
September 3, 1937

My dear Arthur:

I have received from Dr. Harcourt A. Morgan a copy of the resolution passed by a majority of the Tennessee Valley Authority, stating that your article in the Atlantic Monthly of September has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors and resolving that the Tennessee Valley Authority disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

Naturally, I am concerned by this and do not think that the matter can properly rest where it is. May I suggest, therefore, that there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you may have, if any, to justify your statements.

After all, no great constructive work can be carried out if those in charge of the administration of the work feel that their integrity and motives have been challenged by a fellow member. I know that you will agree with me in this.

Very sincerely yours,

Dr. Arthur E. Morgan, Chairman,
Board of Director,
Tennessee Valley Authority,
Knoxville, Tennessee.

COPY

WHEREAS, Arthur E. Morgan, Chairman of the Board of Directors of the Tennessee Valley Authority, in an article entitled "Public Ownership of Power", appearing in the September issue of the Atlantic Monthly, has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors; and

WHEREAS, It is recognized that each member of the Board has the duty to express his opinion upon every question presented for action, and the privilege of expressing his dissent when his views do not prevail, nevertheless attacks, such as those in the article referred to, on the honesty and motives of associates who hold contrary views, are inappropriate to the discussion of public affairs, handicap administration, and are alien to the best traditions of public service; and

WHEREAS, A due regard for the responsibility of administering this project precludes the Authority from answering attacks of this character in the forum which Dr. Morgan has chosen; therefore, lest the Authority's silence be interpreted as acquiescence in the use of the aforesaid methods,

BE IT RESOLVED, That the Tennessee Valley Authority hereby disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

Sept 16

TENNESSEE VALLEY AUTHORITY

Knoxville, Tennessee

file

BOARD OF DIRECTORS
ARTHUR E. MORGAN, CHAIRMAN
HARCOURT A. MORGAN
DAVID E. LILIENTHAL

September 8, 1957

Mr. James Roosevelt
Secretary to the President
Temporary White House
Poughkeepsie, New York

42

Dear Mr. Roosevelt:

Thank you for your telegram of September 7
indicating that the President will see me
on September 16. I shall be in Washington to
keep the appointment.

See Answer

Sincerely yours,

Arthur E. Morgan

By Helen Lewis
Secretary

Dictated by Dr. Morgan,
but signed in his absence.

Copy to The White House
Washington, D.C.

STANDARD FORM No. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

DR ARTHUR E MORGAN
TENNESSEE VALLEY AUTHORITY
KNOXVILLE
TENNESSEE

REFERENCE YOUR LETTER MR McINTYRE WILL ARRANGE YOU SEE THE PRESIDENT

WASHINGTON ON THE SIXTEENTH REGARDS

JAMES ROOSEVELT
Secretary to the President

FROM The White House
Washington
SEPTEMBER 7 1937

U. S. GOVERNMENT PRINTING OFFICE 131254

TENNESSEE VALLEY AUTHORITY
Knoxville, Tennessee

BOARD OF DIRECTORS
ARTHUR E. MORGAN, CHAIRMAN
HARCOURT A. MORGAN
DAVID E. LILIENTHAL

August 30, 1937

*Mac
In Washington
on the 16th*

The Honorable Marvin McIntyre
Secretary to the President
Hyde Park, New York

Dear Mr. McIntyre:

The President suggested that I call to see him soon. Would he wish to make an appointment for Thursday, Friday, or Saturday (September 2-4) of this week, or after September 15?

Sincerely yours,

Arthur E. Morgan

Arthur E. Morgan
Chairman of the Board

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE

*Mac
In Washington
on the 16th
(must)*

August 30, 1937

The Honorable Marvin McIntyre
Secretary to the President
Hyde Park, New York

Dear Mr. McIntyre:

The President suggested that I call to see him soon. Would he wish to make an appointment for Thursday, Friday, or Saturday (September 2-4) of this week, or after September 15?

Sincerely yours,

Arthur E. Morgan
Chairman of the Board

copy to the White House, Washington

PSF
TVA

K-

I understand MHM
phoned Chairman
Morgan re this -

To

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

HONORABLE ARTHUR B MORGAN
CHAIRMAN
TENNESSEE VALLEY AUTHORITY
KNOXVILLE TENNESSEE

FROM

The White House
Washington

MARCH 9 1938

*** 16-5481

A ✓
MEETING FRIDAY IS NOT CALLED AS YOU SAY TO RECONCILE THE DIFFERENCES BETWEEN THE BOARD MEMBERS BUT TO ENABLE ME TO GET FACTS. YOU HAVE MADE FROM TIME TO TIME GENERAL CHARGES AGAINST THE MAJORITY MEMBERS AND THEY IN TURN HAVE MADE COUNTER CHARGES AGAINST YOU. ~~I WANT TO GET ALL OF YOU TOGETHER TO SUBSTANTIATE THESE GENERAL CHARGES FACTUALLY.~~ IT IS YOUR DUTY AS CHAIRMAN AND MEMBER OF THE AUTHORITY TO ATTEND THIS MEETING. PLEASE ADVISE

FRANKLIN D ROOSEVELT

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

HONORABLE ARTHUR B MORGAN
CHAIRMAN
TENNESSEE VALLEY AUTHORITY
KNOXVILLE TENNESSEE

FROM

The White House
Washington

MARCH 9 1938

*** 16-5481

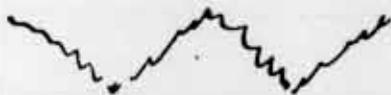
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PSF: TVA
MEETING FRIDAY IS NOT CALLED AS YOU SAY TO RECONCILE THE DIFFERENCES BETWEEN THE BOARD MEMBERS BUT TO ENABLE ME TO GET FACTS. YOU HAVE MADE FROM TIME TO TIME GENERAL CHARGES AGAINST THE MAJORITY MEMBERS AND THEY IN TURN HAVE MADE COUNTER CHARGES AGAINST YOU. I WANT TO GET ALL OF YOU TOGETHER TO SUBSTANTIATE THESE GENERAL CHARGES FACTUALLY. IT IS YOUR DUTY AS CHAIRMAN AND MEMBER OF THE AUTHORITY TO ATTEND THIS MEETING. PLEASE ADVISE

FRANKLIN D ROOSEVELT

WMA A

The demand duty
rests on me

As the Chief Executive, ~~of~~
to get the facts.





Office of the Solicitor General
Washington, D. C.

March 10, 1938

PSF
TVA

MEMORANDUM FOR THE SOLICITOR GENERAL:

RE: Power of the President to remove a Director of the Tennessee Valley Authority.

The question discussed herein may be resolved into three issues: (1) Does the TVA Act purport to limit or deny the President's power of removal; (2) if the Act imposes such a limitation, does it constitute an invalid interference with the executive power of removal; (3) if the power of removal exists, are notice and hearing essential to its exercise?

1. The intent of the statute. The TVA Act contains the following provisions dealing directly with the removal of members of the Board:

SEC. 4(f): " * * * Provided, that any member of said Board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives."

"SEC. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board."

Section 6, quoted above, cannot be said to imply a general limitation on the removal power of the President. Section 6 makes removal by the President mandatory in case of violation of the prohibition against political appointments. The section has no bearing on the existence of a general discretionary power of removal in the President.

Section 4(f), quoted above, raises a more serious question of Congressional intent. It is arguable that in providing for removal by concurrent resolution of Congress it was intended that this method of removal should be exclusive. The language, however, falls short of

embodying such a purpose. In view of the recognized executive power of removal in the absence of statutory limitation, and the constitutional doubt which arises with respect to statutory limitations where the office is an executive one, it is fair to conclude that the language of Section 4(f) does not support the view that the President was meant to be deprived of the removal power. The principles just stated are discussed more fully below.

The legislative history of the Act throws no light on the intention of Congress. Section 4(f) was originally Section 2(e) of the Senate bill. See 77 Cong. Rec. 3563. It had no counterpart in the House bill. (Ibid.) The Conference Committee retained the provision as part of Section 4(f), where it now appears. (Idem, p. 3565). The Committee reports make no mention of the provision. Senate Report 23; House Report 48, 73rd Cong., 1st Sess.; Conference Report, 77 Cong. Rec. 3554. Nor do the debates appear to have touched upon the question. The precursor of the TVA Act, the bill which was vetoed by President Hoover in 1931, contained no similar provision. See 74 Cong. Rec. 5548-5553.

In view of the fact that the language of Section 4(f) does not expressly deny the power of the President, and in view of the fact that the legislative history discloses no purpose to limit the President's power, we may consider the scope of the President's power in the absence of Congressional limitation. It is established as a general principle that the appointing power carries with it as an incident the power of removal. In Burnap v. United States, 252 U. S. 512, 515, Mr. Justice Brandeis said:

"The power to remove is, in the absence of statutory provision to the contrary, an incident of the power to appoint. Ex parte Hennen, 13 Pet. 230, 259, 260; Blake v. United States, 103 U. S. 227, 231; United States v. Allred, 155 U. S. 591, 594; Keim v. United States, 177 U. S. 290, 293, 294; Reagan v. United States, 182 U. S. 419, 426; Shurtleff v. United States, 189 U. S. 311, 316. And the power of suspension is an incident of the power of removal."

The appointing power in the case of the T.V.A. is of course vested in the President; confirmation of the Senate is not regarded as part of the appointing power in considering power of removal. This is made clear in Myers v. United States, 272 U. S. 52, dealing with first-class postmasters. The authority for the Myers case, it should be noted, has not been impaired by Humphrey's Executor v. United States, 295 U. S. 602, insofar as the Myers case is limited to executive officers comparable to postmasters.

What has been said with respect to the construction of the statute is not, it is believed, affected by the decision in the Humphrey's case, supra. That case involved the power to remove a member of the Federal Trade Commission for no stated cause, where the statute provided that "any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." The Government argued that this statutory provision should not be construed as a limitation on the executive power of removal, but merely as an enumeration of some of the permissible grounds for removal and as a guide to the discretion of the President. In support of this argument, the Government relied largely on Shurtleff v. United States, 189 U. S. 311, where identical language in a statute dealing with general appraisers of merchandise was held not to limit the power of removal to the causes stated. In the Humphrey's case, however, the Court distinguished the Shurtleff case on the ground that there the term of office was not for a fixed period and hence a restriction on the President's removal power would in effect have meant that Congress created an office with indefinite tenure. Furthermore the Court in the Humphrey's case laid great stress on the legislative history of the Federal Trade Commission Act as indicating the purpose of Congress to secure the maximum independence of the Commission from executive interference and control. In the case of the T.V.A., the statutory provision is quite different, since it does not in any way refer to the President's removal power. Moreover, from the standpoint of the independence of the agency from executive control the two statutes are sharply different. This last point deserves some elaboration.

The T.V.A. Act does provide a nine-year term for members of the Board subsequent to the original members, and in addition provides overlapping terms. These provisions indicate that some measure of independence and expertness was contemplated. Nevertheless the Board performs essentially executive functions with respect to the management and disposal of Government property and the construction of facilities for national defense, navigation, and flood control. These are functions traditionally associated with such agencies as the War Department, the Bureau of Reclamation, and soil conservation agencies in the Department of Agriculture. The T.V.A. is lacking in those quasi-judicial and quasi-legislative functions which were emphasized by the Court in the Humphrey's case as fortifying the conclusion that Congress intended the removal power to be strictly limited. Furthermore the President himself is given numerous and important functions with respect to the administration of the T.V.A. Act. For example the President was given power within 12 months after the passage of the Act to lease the nitrate plant at Muscle Shoals (Section 5(n)); to provide for the transfer to the T.V.A. of real or personal property of the United States (Section 7(b)); to receive, together with Congress, an annual report and financial statement (Section 9(a)); to determine when it is advisable to install additional power units in Wilson dam and the nitrate plant (Section 16);

to designate the construction engineer for Cove Creek Dam, now called Norris Dam (Section 17); to investigate whether any undue advantage has been given to private persons in the control and management of any dam or other property (*ibid*); to make surveys of and general plans for the Tennessee Basin which may be useful to Congress and the states (Section 22); to recommend to Congress such legislation as he deems proper to bring about in the Tennessee Basin the maximum amount of flood control, the maximum development of the river for navigation, the maximum generation of electric power consistent with flood control and navigation, and other purposes enumerated in the Act (Section 23); for a period of three years from the enactment of the Act, to acquire property for the United States necessary in carrying out the Act, and to provide for the payment therefor by directing the Board to contract to deliver power for a period not exceeding 30 years (Section 24).

In summary, the failure of the Act to place any express limitation on the President's power of removal, together with the executive nature of the functions performed by the T.V.A. and the participation of the President in those functions under the Act, indicates that Congress has not deprived the President of the removal power.

2. The Constitutional Question. . . . If what has been said is sound, no constitutional question is presented. If, however, it should be determined that Congress did purport to deprive the President of the removal power in the T.V.A. Act, a serious question arises as to the constitutional validity of the statute in that regard.

In Myers v. United States, 272 U. S. 52, it was held by a divided Court that Congress exceeded its authority in requiring that consent of the Senate be had for the removal by the President of first-class postmasters. The decision was based upon the ground that the principle of separation of powers forbids such an interference by Congress with the Presidential power of removing Presidential appointees. The holding in that case remains authoritative, although much of the discussion of the prerogatives of the President has been qualified by the decision in the Humphrey's case, 295 U. S. 602. In the latter case the statute did not require senatorial approval for removals, but required simply that removal by the President be for one or more of three stated causes. Furthermore, the agency there involved was shown to be quasi-judicial and quasi-legislative in function, as distinguished from an executive agency or officer. The present question is not concluded by either decision, but it is submitted that the Myers case furnishes much the closer precedent.

In the first place, the character of restriction which we are assuming has been imposed in the T.V.A. Act is closely akin to that involved in the Myers case; namely, the transfer of the power of removal from the executive branch. In the present case, in fact, the transfer would be more complete, since the President would be wholly deprived of the power of removal. In the second place, the character of the agency resembles

the executive office involved in the Myers case more closely than it resembles the Federal Trade Commission. This point has been discussed above in connection with the effort to ascertain the intent of Congress. The doctrine of separation of powers would here seem to work on the side of the executive. The right of the President, in view of his general responsibility for the activities carried out by T.V.A., as well as his special functions under the statute, to be free from interference by Congress appears to be more substantial than the right of the T.V.A. as a creature of Congress to be independent of presidential power with respect to removal. In this connection, I think that the national defense aspects of T.V.A. are an important factor in bringing it within the purview of executive power.

While, as stated, it is believed that to deprive the President of the power of removal would be unconstitutional in the case of T.V.A., there necessarily exists a question of policy concerning the advisability of forcing an issue between the President and Congress which would involve the President's taking a position that Congress has acted unconstitutionally. It is true that the constitutional question arises only if the statute is construed in a way which appears unsound; but if litigation should ensue it would not be practicable to avoid a discussion of both questions. Moreover, as a practical matter, there is to be considered the possibility that members of Congress active in the passage of the T.V.A. Act may make public representations that in fact the intention of the sponsors was to deny the removal power to the President. These possibilities ^{not} would alter the legal conclusions which have been suggested, but they do indicate embarrassments which may have to be faced in litigation.

3. Notice and Hearing: The general rule, as stated in Shurtleff v. United States, 189 U. S. 311, is that notice and hearing are required where removal is for a cause stated in the statute as a ground for removal. In the absence of statutory provision designating causes for removal, it appears that notice and hearing are not required. None were afforded in Myers v. United States. It was suggested in Reagan v. United States, 182 U. S. 419, that notice and hearing are required where the office is for a fixed term; but in view of the Myers case where the office was also for a fixed term--four years--the statement in the Reagan case can not be regarded as authoritative.

While notice and hearing would not seem to be essential, it is suggested that they would be of psychological value in persuading a court that the power of removal in the President should be upheld. Where a clear and urgent ground for removal exists, strength is added to the argument that the executive power of removal is necessary to assure the functioning of the Board.

Paul Freund.

Exhibit numbers have been marked on
this copy to facilitate identification.

file
PSF: TVA

PSF: TVA

March 11, 1938

STENOGRAPHIC TRANSCRIPT OF THE CONFERENCE HELD TODAY IN THE PRESIDENT'S OFFICE

Present: The President
Chairman Arthur E. Morgan
Vice-Chairman Harcourt Morgan
Director Lilienthal

THE PRESIDENT: This is an opening statement by the President. This conference is for the purpose of giving a hearing on grave charges which members of the Board of the Tennessee Valley Authority have directed at each other. As Chief Executive, I cannot ignore charges of this character concerning an executive agency of the government. I have a responsibility to determine whether or not the facts bear them out and thereupon to take such action as may seem appropriate.

I have the right to assume that, in accordance with the Act creating the TVA, every member of the Board believes in the feasibility and wisdom of the Act and I am asking you whether that is correct. The law requires it. Is that correct?

A. E. MORGAN: I certainly do.

HARCOURT MORGAN: Yes.

MR. LILIENTHAL: Yes.

THE PRESIDENT: Secondly, I think I have a right to assume that every member of the Board entered on his duties prepared to do his part to cooperate with his fellow-members to make the Act work.

A. E. MORGAN: Yes.

HARCOURT MORGAN: Yes.

MR. LILIENTHAL: Yes.

THE PRESIDENT: And, finally, I think I have the right to assume that every member of the Board is prepared to recognize that a certain amount of team-work is necessary to make the Act work. Am I right on that?

MR. A. E. MORGAN: Certainly.

MR. HARCOURT MORGAN: Yes.

MR. LILIENTHAL: Yes.

THE PRESIDENT: But there are persons and powerful interests in this country that profess to disbelieve in the feasibility and wisdom of the Act. There are persons and powerful interests that are quick to seize on the simplest act or slightest word of members of the Board to discredit the Administration of the Act. Open dissension and personal recrimination among members of the TVA have unfortunately reached a point where the successful administration of the Act is imperiled. No one who professes a belief in the feasibility and wisdom of the Act can view such a situation without the gravest concern.

Let me set forth certain principles of public administration: effective administration requires action. The action of a Board must be determined by a majority of its members. That is true in the case of all governmental agencies, whether they be of an executive nature, such as this Board, or of a quasi-judicial nature, such as the Interstate Commerce Commission; the Federal Trade Commission, and many others. A minority has, in all of these governmental agencies; executive and judicial, the right to record its dissent publicly, if the minority desires, after action is taken. It has a right, by fair persuasion, to seek to obtain the adoption of a different course of action. But neither a majority nor a minority has a right to make public display of personal, internal differences to the point where effective administration of the law under which they are acting is jeopardized.

I have reluctantly become convinced that the work of the TVA Board is now being impeded and that the real issues of public policy which may exist among its members are now being obscured by personal recriminations. It is intolerable to the people of the United States that issues of fundamental public policy should be confused with issues of personal integrity or misconduct. It is intolerable that either majority or minority members of an administrative board should cast doubt upon the honesty, the good faith or the personal integrity of their colleagues, or should charge any of their colleagues with improperly obstructing the carrying out of the board's decisions unless they are prepared to support such charges by good and sufficient evidence. If there be no such evidence then there should be either a definite end to such personal attacks and aspersions or else resignation from the Board.

I have called this hearing to investigate charges of dishonesty, bad faith and misconduct. I am not concerned at this hearing with the pros and cons of any particular policy that the TVA Board has or has not adopted. This is not an inquiry to determine a national power policy, a national conservation policy, a national flood control policy, or any other straight matter of policy. It is an inquiry into charges of personal and official misconduct.

As President I have special concern in the charges that have been made and that reflect not simply upon the judgment but upon the personal integrity and official conduct of members of the Board and the management of government property. The TVA Act authorizes the President to investigate and gives him a method of investigating, when he may deem proper, the management of any property owned by the government in the Tennessee Valley basin to determine whether or not Government has been injured or deprived of any of its rights.

Chairman Morgan has publicly charged that Dr. H.A. Morgan and Mr. Lillenthal have been guilty of dishonesty and impropriety in the conduct of their respective offices. Dr. H. A. Morgan and Mr. Lillenthal in turn have advised me that Chairman Morgan has been guilty of actions which are not permissible in the conduct of his office.

I shall give each of you gentlemen an opportunity to present the facts if any upon which such charges are predicated and I want to make it very clear that this hearing is for the purpose of securing facts, and only facts.

There are two points which I should like to emphasize before I call upon you gentlemen to speak. First, I am not now taking up any charges relating to mere disagreements or personal differences over details of administration. At this time I am interested only in the grave charges of dishonesty, impropriety and unpermissible conduct that have been made, and I shall ask you gentlemen to confine yourselves to the facts supporting these charges. A second caution which is necessary is that I am not interested in opinions, rumors, suspicions or speculations. Charges as serious as these unless made recklessly and irresponsibly must have been made with the supporting facts clearly in mind. It is those facts and only those facts which I want. And at this time I want your oral statements of the facts. If there are supporting documents, you may also submit them and they will be made a part of the record. But again I must insist that in submitting any documents you confine yourselves in the documents to basic facts on which the charges were predicated.

I had hoped that the bitter personal feeling among the members of the TVA would prove to be only the temporary result of honest differences of opinion or policy and that with the passage of time the members of the Board even when they could not agree would come to respect each others opinions and cooperate as is their duty in administration of the Act. I did not act when complaints were made to me as early as January 1937. One of these complaints was made by a responsible government official not connected with the TVA. The complaints were that the Chairman of the Board had made a speech in Chicago and had published an article in the New York Times which could be taken as personal attack upon his fellow Board members. At that time in January 1937 I repeated my counsel to all of the members of the Board individually to make every effort to compose their differences and not to permit the enemies of the TVA to make capital out of them. But I censure none of you.

Things went along until the end of August 1937. The end of August or beginning of September a complaint was made to me by H. A. Morgan and David Lilienthal that an article by Chairman Morgan and published in the September issue of the Atlantic Monthly directly and by implication was an attack on the honesty and integrity of the Board of the Tennessee Valley Authority.

I have not got the Chicago speech.

Exhibit 1. The New York Times, Sunday, January 17, 1937 by Chairman Morgan.

Exhibit 2. Atlantic Monthly, September, 1937. Public Ownership of Power, by Chairman Morgan.

Following the publication of the Atlantic Monthly article, I received a letter from Dr. A. Morgan calling my attention to the article and sending me a copy of a resolution, adopted by the majority of the Board, which I am putting into the record as Exhibit 3.

TENNESSEE VALLEY AUTHORITY
Knoxville, Tennessee

WHEREAS, Arthur E. Morgan, Chairman of the Board of Directors of the Tennessee Valley Authority, in an article entitled "Public Ownership of Power", appearing in the September issue of the Atlantic Monthly, has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors; and

WHEREAS, It is recognized that each member of the Board has the duty to express his opinion upon every question presented for action, and the privilege of expressing his dissent when his views do not prevail, nevertheless attacks, such as those in the article referred to, on the honesty and motives of associates who hold contrary views, are inappropriate to the discussion of public affairs, handicap administration, and are alien to the best traditions of public service; and

WHEREAS, A due regard for the responsibility of administering this project precludes the Authority from answering attacks of this character in the forum which Dr. Morgan has chosen; therefore, lest the Authority's silence be interpreted as acquiescence in the use of the aforesaid methods,

BE IT RESOLVED, That the Tennessee Valley Authority hereby disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

On September 3, I wrote to Chairman Morgan, informing him of the complaint which had been made by virtue of the resolution of the majority of the Board, and in my letter suggested to him, "That there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you have, if any, to justify your statements."

Exhibit 4:

Aboard the USS POTOMAC
September 3, 1937

My dear Arthur:

I have received from Dr. Harcourt A. Morgan a copy of the resolution passed by a majority of the Tennessee Valley Authority, stating that your article in the Atlantic Monthly of September has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors and resolving that the Tennessee Valley Authority disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

Naturally, I am concerned by this and do not think that the matter can properly rest where it is. May I suggest, therefore, that there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you may have, if any, to justify your statements.

After all, no great constructive work can be carried out if those in charge of the administration of the work feel that their integrity and motives have been challenged by a fellow member. I know that you will agree with me in this.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Dr. Arthur E. Morgan, Chairman,
Board of Directors,
Tennessee Valley Authority,
Knoxville, Tennessee.

- - - - -

Tennessee Valley Authority
Knoxville, Tennessee
August 31, 1937

The President
Hyde Park
New York

My dear Mr. President:

You may not be familiar with the series of articles and public statements, a list of which I append, through which the Chairman of the Board of the Authority has cast suspicion on the good faith of the conduct of the Board in administering the power program of the Authority.

Mr. Lillienthal and I have believed that in the interest of harmony and good administration, a public reply to those charges would be unwise, and injurious to the administration of this project. An article in the September Atlantic Monthly, however, so seriously impugns the integrity of unnamed "public men" and the Board of the Authority, that it seemed essential to take official notice in the records of the Board.

The attached resolution has therefore been adopted at today's Board meeting. No public statement has been made by the Board, but in order that you may be advised we are sending you a copy of the resolution.

This article might not have given the Board quite so much concern if it had not been published so shortly before the trial of the 17-utility suit against TVA before Judge Gore and two other judges yet to be chosen. Dr Morgan's charges have not escaped the notice of our opponents in this litigation in which the very existence of TVA and other projects is at stake. This is illustrated by the comments of Mr. Wendell L. Willkie upon Dr. Morgan's article, appearing in the same issue of the Atlantic. Mr. Willkie says:

"Dr. Morgan, a public official, questions the honesty of other public officials. If he is correct that state regulation has failed through corrupt public officials, then he doubly warns us against the adoption of public ownership, where the opportunities for corruption by public officials would be greatly multiplied.

"

"Dr. Morgan is the only government official of standing who has had the courage to state that 'in the operation of public "yardstick" systems there should be no hidden subsidies.' He of course would not say this if he were not conscious that such exist. Unfortunately, he has not carried the decision in the councils of those who control government power policy or the TVA."

Our attorneys are concerned that these attacks on the motives of the Board may prove damaging in this critical litigation which comes to trial in a few weeks.

Respectfully submitted,

HARCOURT A. MORGAN

Aboard the USS POTOMAC
September 3, 1937

Dear Dr. Morgan:

I have received your letter of August thirty-first and have written to Dr. Arthur Morgan and enclose a copy of my letter to him.

I am asking Mr. McIntyre to arrange for me to see Dr. Arthur Morgan in Washington when I return about the fifteenth or sixteenth of this month.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Dr. Harcourt A. Morgan,
Board of Directors,
Tennessee Valley Authority,
Knoxville, Tennessee.

Exhibit 6;

TENNESSEE VALLEY AUTHORITY
Knoxville, Tennessee
September 7, 1937

Dear Mr. President:

This acknowledges your letter of September 3 with enclosure of copy of your letter to Dr. Arthur E. Morgan, Chairman.

I note your recognition of the serious consequences of such a situation upon the Board's administrative responsibility.

Sincerely yours,

Harcourt A. Morgan

The President
The White House
Washington, D. C.

- - - -

About two weeks later Chairman Morgan came to see me, and if I correctly understood him, he advised me orally that it had not been his intention to impugn the motives or the good faith of his fellow-directors. Although I thought that the Atlantic Monthly article might fairly be taken as an attack on the personal integrity of Chairman Morgan's fellow board members I accepted what I understood to be his statement that no such attack on their integrity was intended. So much for the year 1937.

Recently, however, (the President here handed a document to Chairman Morgan and asked him to look it over).

Coming now, to 1938, very recently Chairman Morgan has issued statements which seem, from a normal interpretation of English words, to assail the honor, the integrity, and the motives of his fellow-Directors.

Now, Chairman Morgan, you are -- I do not have to tell you -- an old friend of mine. I do not want you to misunderstand. You are a man of deep conviction, intense feeling, and fine purposes. I know that in Executive positions all right thinking people have to be constantly on the alert under pressures and strains in order not to suspect the motives of those who resolve on a course of action with which one profoundly disagrees. Even insofar as you have made charges of dishonesty and bad faith against your fellow-Directors, I do not want to silence you; on the contrary, I want now to investigate those charges. Differences of opinion may be composed but charges reflecting on the personal integrity of your fellow-Directors cannot be compounded. Such charges cannot be allowed to rest in innuendo. They must be made specifically. In other words, the time has come when, on your charges, it is necessary that I ask you to produce what is called a bill of ~~particulars~~. *particulars*

THE PRESIDENT: In these questions I shall first give to Chairman Morgan an opportunity to state facts supporting the charges he has made. As I finish with each charge I shall give the other directors an opportunity to reply. When Chairman Morgan has finished all of his charges I shall then follow the same procedure with Dr. Harcourt Morgan and Mr. Lillienthal with respect to the charges that they have made, giving Chairman Morgan an opportunity in the same way to answer each of them.

Coming now to the specific charges that have been made by Chairman Morgan. Specifically in the last two weeks Chairman Morgan has made charges of dishonesty and impropriety in unmistakable terms. I refer in particular to three releases that Chairman Morgan has recently given to the Press. Two of them were released on March 3, 1938. The first was entitled "A statement by Arthur E. Morgan, Chairman of the TVA in reply to public statements by Dr. Harcourt Morgan and Mr. David E. Lillienthal and by Senator George L. Berry, concerning the chairman's testimony in the Berry Marble case".

The second release was a summary of that statement, different somewhat in form but not in substance. Although the heading on each of these statements related to the Berry marble claim, the statements themselves cover a much broader range.

The third statement released on March 7, 1938 made to be the text of a letter addressed to Representative Maverick on February 14, 1938, giving Chairman Morgan's general views on the situation in the TVA Board.

EXHIBITS
6A AND 6B

These documents are lengthy. I don't know if I have them all. The first two appear in the New York Times of March 5, 1938 and the letter to Representative Maverick in the New York Times of March 7, 1938.

First I will take up the so-called Berry marble claims. I asked Chairman Morgan since a large part of these recent statements have been devoted to the handling of the so-called Berry-Marble claims, I shall ask you first of all to give me the facts on the basis on which you make your statements.

In the letter to Congressman Maverick, which you made public, you said: "The Berry marble claims, in my opinion, are an effort at a deliberate bare-faced steal. The other two directors had the same facts that I did. For a year and a half I tried to work it out in confidence in the Board, and without publicity, and only spoke out at the last minute. The public and the Congress did not know the extent to which that was improperly."

The gist of your complaint also appears to be contained in your Berry Claims statement that: "the real difficulty has been in the effort to secure honest openness, decency and fairness in government. The Berry marble case, as I have said, is an instance of this difficulty."

You say that the difficulty is in securing "honesty", and you charge your colleagues thereby with dishonesty and malfeasance. I must, therefore, ask you what evidence of dishonesty or malfeasance on the part of your colleagues have you in regard to the so-called Berry marble case.

ARTHUR E. MORGAN: During a long period, I have repeatedly but unsuccessfully endeavored to secure the PRESIDENT'S adequate consideration of grave conditions within the TVA. The most recent occasion was last fall at the meeting mentioned by the President concerning the Atlantic Monthly article when I personally presented to the President a draft of the letter and which I asked him to send to the TVA Board. This letter requested the Board to make available to me the data and assistance necessary for me to make a report to the President concerning the conditions I had criticized. The President did not grant that request and made no alternative suggestions. I am of the opinion that this meeting is not, and in the nature of the case cannot be, an effective or useful fact finding occasion.

THE PRESIDENT: Wait a minute. I don't want opinions. I have asked you a question about the Berry marble case, and I want you to confine your answers not to opinions but to facts.

MR. ARTHUR E. MORGAN: I wish to complete my statement, which will take about a minute longer.

THE PRESIDENT: I don't want you in any statements to talk about opinions. I want you to confine yourself to facts.

MR. ARTHUR E. MORGAN: I am giving my reasons for not answering you directly and I think I must do it.

THE PRESIDENT: Are you planning to answer the direct question?

MR. ARTHUR E. MORGAN: My statement will indicate whether I am or not. I am of the opinion that this meeting is not, and in the nature of the case cannot be, an effective or useful fact finding occasion. To properly substantiate the charges is not the work of a morning. Since the Congress has now taken up the matter --

THE PRESIDENT: Have you any reason to believe this will be confined to a morning?

MR. ARTHUR E. MORGAN: Since the Congress has now taken --

THE PRESIDENT: Have you any reason to believe that this hearing will be confined to a morning?

MR. ARTHUR E. MORGAN: I should like to complete my statement, if I may, without interruption. Since the Congress has now taken up the matter, I believe that any report by me should, in the terms of the TVA Act, be filed with the President and with the Congress. It is my studied judgment that the President, the Congress and the people of this country are entitled to accurate information and appraisal of the program, policies, administration and activities of the Authority. Such information and appraisal can best be obtained and made available to the people, to Congress and to the President by a Congressional Committee which will make an impartial, comprehensive and complete investigation of the Authority's affairs.

THE PRESIDENT: Chairman Morgan, I, of course, have already stated that this hearing is not a hearing on the policies that are being carried out or were intended to be carried out under the TVA Act. Certain charges have been made by you against the majority of the Board and by the majority of the Board against you. Those charges on your part relate to malfeasance in office -- . . . Charges made by the majority of the Board do not charge you with malfeasance in office but they charge you with failure to cooperate in the carrying out of decisions by the majority of the Board. To repeat, the object of this hearing is to ask you to substantiate your charges and to ask the majority of the Board to substantiate their charges. There are certain specific allegations made by you; there are specific allegations made by the majority. Those allegations are now the subject of this hearing. I want the facts from all three of you on which those allegations were made. In this particular question which I have asked you and to which you have not yet responded, the subject is the so-called Berry marble claims. I repeat that you have said, "The real difficulty has been in the effort to secure honesty, openness, decency and fairness in government. The Berry marble case, as I have said, is an instance of this difficulty." I must, therefore, ask you what facts of dishonesty in the Berry marble case on the part of your colleagues have you to substantiate the charges of dishonesty.

A. E. MORGAN: The statement I have just made I think is adequate to express my position at this meeting.

THE PRESIDENT: Was the quotation which I have just read intended to be a charge of dishonesty or was it merely a disagreement with the way the claim was handled by the majority of the Board?

A. E. MORGAN: I have the same answer to that as to the last question.

THE PRESIDENT: In other words, you decline to answer that question. It is a perfectly straight question.

A. E. MORGAN: I have given a perfectly straight answer.

THE PRESIDENT: Do you intend, by this answer, to repeat charges which have been interpreted as charges of dishonesty?

A. E. MORGAN: I think the answer speaks for itself.

THE PRESIDENT: I note that the first effort to obtain facts in regard to a charge of dishonesty has not been replied to by Chairman Morgan. I now ask Dr. Harcourt Morgan and Mr. Lilienthal, have you any facts in answer to the charges of dishonesty on your part relating to the so-called Berry case?

HARCOURT MORGAN: The bottom of this entire situation is the difference in attitude between the majority of the Board and the Chairman regarding conciliation agreements.

A. E. MORGAN: Is this in answer — (interrupted)

THE PRESIDENT: To my question relating to the Berry claims.

A. E. MORGAN: I understood we were going to be confined to the facts. Is this an argument?

THE PRESIDENT: You are going to get to that part now?

HARCOURT MORGAN: Yes, sir. Prior to the eve of the condemnation trial there was no member of the Board who had any evidence of bad faith.

THE PRESIDENT: Wait a minute, Dr. Morgan. Evidence of bad faith on the part of the claimants?

HARCOURT MORGAN: On the part of the claimants, yes. There was nothing except rumor and suspicion. The Chairman proposed, in effect, that we proceed on a presumption of bad faith. The history of these conciliation agreements is that a claim, a mineral claim, such as Berry's always involve negotiation before a condemnation is resorted to. TVA has a regular routine in appraising the value of farm land to be acquired. Appraisers are sent out, their estimates are reviewed and then if the price thus determined is not accepted, condemnation proceedings are instituted. But, when we have claims for minerals or any other special situations, this simple farm land procedure is not feasible and negotiations for settlement are common. This is natural in view of the numerous, complicated technical factors which go to make the value of mineral claims. Major Berry and his associates made claims for allegedly valuable marble which ran into millions and they claimed to have experts who would so testify. The Board's Staff and consulting geologists were of the opinion that the marble had no substantial commercial value, and the Board was convinced of this.

With opposing experts having a part, and the usual uncertainty of any lawsuit, the risk of a large award against the Authority seemed substantial. In addition, the conduct of condemnation proceedings was bound to be costly, as this case has in fact proved.

HARCOURT A MORGAN: Because of the foregoing considerations, the majority of the Board believed that the interests of the Authority would be promoted if the views of the expert - of experts - in the employ were to be confirmed by an impartial outside expert agreed upon by both sides. From advice of our own consultants we were confident that outside conciliations would adopt our views. Such a result might well have had the effect of showing Major Berry and his associates that they would lose the case and should therefore drop their claims. The memorandum of agreement that was entered into, by its express terms provided that neither party should be bound to accept conclusions of the outside impartial expert. In other words, the matter was not submitted to arbitration, and this was specifically recognized. Moreover, the agreement for conciliation could be terminated by either party by a mere written notice. Official board action adopting the arrangement for the conciliator expressly provided that it in no wise affected the validity of any of the claims nor did it restrict the Authority's action respecting them. It also expressly provided that the mediation proposal was to be wholly without prejudice or effect on any other problems presented by these claims. I wish now to emphasize that the investigation of claimants' good faith, preceded uninterruptedly. The memorandum of agreement was executed on July 13, 1936. The majority of the Board specifically reaffirmed the procedure there provided at a meeting of the Board February 25, 1937. During all this time, no real evidence of bad faith on the part of claimants was uncovered by the attorneys nor was any produced by Chairman Morgan. However, directions were issued that the search for such evidence should proceed. Now, I should like to submit a letter which was sent by our General Solicitor to the Assistant General Solicitor in charge of this suit -- these claims. That is, General Fly, General Solicitor, to Mr. Frank H. Towsley. Would you care to hear the letter?

THE PRESIDENT: I'd like to hear it, and we will mark it Exhibit 7.

HARCOURT A. MORGAN: This letter is under date of September 23, 1936.

Exhibit 7:

TENNESSEE VALLEY AUTHORITY
Office Memorandum

To: Mr. Frank H. Towsley, Assistant General Solicitor.
From: James Lawrence Fly, General Solicitor.
Date: September 23, 1936

Subject: Harris and Ford Claim.

I got the impression from my conversation with you a few days ago and from your memorandum that there is nothing to do in this matter until the beginning of a condemnation proceeding. The Chairman is particularly interested in the question as to the legal efficacy of the lease and as to the equitable character of the claim. For example, it is interesting to know when each tract of property was leased, when and to what extent payments were made, when and to what extent taxes were paid, when and to what extent renewals or additional leases were entered into, or payments made on past due accounts on the old leases: all of this, of course, in connection with the pertinent dates as to our legislative history.

Will you kindly make sure that we promptly get all of this information which it is possible to get and which is not already on hand.

(Signed) James Lawrence Fly
James Lawrence Fly

THE PRESIDENT: What happened to that?

HARCOURT A. MORGAN: I'd like now for us to consider the situation leading up to and including the Chairman's appearance and statement before the Commission — the condemnation proceedings. When it became impossible to go through with the appointment of the conciliator —

THE PRESIDENT: Who had been suggested as conciliator?

HARCOURT A. MORGAN: Chairman Finch, of the Bureau of Mines — Director Finch. When it became impossible —

THE PRESIDENT: Let me ask this: Did the Board, in any way, obligate itself to accept findings or recommendations by any conciliator?

HARCOURT A. MORGAN: It did not.

THE PRESIDENT: Let me ask this: At that time, had there been any disclosures of improper claims?

HARCOURT A. MORGAN: No facts. There were rumors.

THE PRESIDENT: There were rumors?

HARCOURT A. MORGAN: Yes.

THE PRESIDENT: When were those rumors in any way substantiated?

HARCOURT A. MORGAN: Not until the trial began.

DAVID E. LILIENTHAL: A few weeks before the trial.

THE PRESIDENT: Go ahead.

LILIENTHAL: We have a memorandum directed to the Chairman from the assistant General Counsel in charge of this condemnation case, following Mr. Towsley's resignation from the T.V.A., in which he states that fact implicitly, and I presume Dr. Morgan will read that into the record.

HARCOURT A. MORGAN: When it became impossible to go through with the appointment of the conciliator, condemnation proceedings were instituted. As the time for the trial neared, our counsel succeeded in unearthing certain evidence suggesting bad faith. This line of investigation was completed just before the trial began. Once in possession of these facts, counsel for the Authority vigorously proceeded to put this evidence into the record of the proceedings and urge the commission to throw out the claims. This discovery — development and presentation of this evidence was all accomplished without any assistance from Chairman Morgan. Counsel for the Authority also presented exhaustive evidence on the lack of value in the claims, this being the expert testimony developed by the Authority long before the trial. On the afternoon of the last day of the trial, Chairman Morgan appeared in the court room and volunteered himself as a witness after all this evidence had already been introduced by T.V.A. Counsel. In doing so, he refused to consult with the T.V.A. Counsel, and he insisted upon taking the stand to strike the Counsel's objection that a complete case had been made up so far as there was any evidence on the issue of bad faith. Chairman Morgan presented no new facts.

DR. HARCOURT MORGAN: (cont'd) He merely recited his version of the history of the agreement for a conciliator or his objection to it of rumors and suspicions and of the differences of opinion between and the other Directors. As a matter of fact Chairman Morgan's appearance was to cast reflections upon the other Directors. His testimony and appearance were so construed by opposing counsel. These statements can be supported by reference to contemporary newspapers accounts and to the transcript of the case which is available.

The further effect of the Chairman's testimony and appearance was to reflect on the TVA counsel. Now coming to the decision of the Commission: The Commission disallowed the Berry claims in toto without any reference to or reliance on Chairman Morgan's testimony. The decision was based on the TVA's expert testimony that the marble had no commercial value.

PRESIDENT ROOSEVELT: What was that Commission?

DR. H. MORGAN: Beg Pardon?

PRESIDENT ROOSEVELT: What was that Commission?

MR. LILLIENTHAL: Under our statutes condemnation proceedings were under a special commission appointed by the Fed. District Court.

PRES. ROOSEVELT: And this decision was the decision of that Commission?

DR. H. A. MORGAN: I will repeat that last: The Commission's decision was based on TVA's expert testimony that the marble had no commercial value, testimony developed long before the trial. We can give the Commission's report.

Exhibit 8:

UNITED STATES OF AMERICA)
upon the relation and for)
the use of the)
TENNESSEE VALLEY AUTHORITY) No. 3327 AND CONSOLIDATED CASES
-VS-)
C.A.HARRIS, ET AL)

TO THE HONORABLE GEORGE C. TAYLOR, DISTRICT JUDGE:

R E P O R T

The undersigned Commissioners, who have heretofore been appointed by Your Honor to hear proof and take such other steps as may be necessary to fix and determine the value of the property and rights sought to be condemned in the following cases, which have been consolidated and tried together by agreement, to wit:

- #3327 - C. A. Harris, et al
- #3127 - George E. Miller, et al
- #3152 - E. G. Stooksbury, et al
- #3102 - A. R. Sharp, et al
- #3124 - W. G. Sharp, et al

respectfully beg leave to report as follows:

(Exhibit 8 (continued))

The properties sought to be condemned consist of the interests of the owners in the minerals in all of the cases, except that of Cause #3327 brought against C. A. Harris, et al, which case involves the compensation to be paid the defendants as lessees under certain leases acquired by them from the owners of the property.

A great volume of proof has been taken, the record consisting of some nineteen hundred pages, briefs have been filed and the cases argued at length. Your Commissioners have inspected the various properties and have also inspected other properties on which it is claimed marbles similar to those involved in these cases are located.

We are of the opinion, and so find, that the properties cannot be profitably operated commercially and that the various defendants are entitled to no award. Two quarries have been opened, known in the record as the Newton Hill Quarry, which is under lease in Cause #3327, referred to in the record as the Berry and Collins leases, and a quarry known as the Clear Creek Quarry. The great preponderance of the evidence leads us to the conclusion that for the various reasons set out in the record these quarries are not susceptible of profitable commercial operation. In fact, one of the most competent and best qualified witnesses for the respondents has testified that to pay the lessees a cash price for their leases and to assume the obligations and burdens provided in the terms of said leases, would necessarily, throughout a period of years, result in a financial loss to any person purchasing these leases. The proof offered by the Authority to the effect that the properties cannot be operated at a profit is very positive, clear and direct, while on the other hand the evidence introduced by the respondents tending to show that the properties can be profitably operated, is in the main highly speculative. The respondents in this case have attempted to establish value by determining:

(1) The amount and extent in cubic feet in the deposit, (2) The cost over a period of from fifty to two hundred years of extracting the deposit from the earth, (3) The cost of transportation from the quarry to Knoxville, (4) The sale price over a long period of years, F. O. B. Knoxville, (5) The annual amount of cubic feet which would be absorbed by the market. In arriving at the value of the leases in the manner stated, the value ranges from One and a half million dollars (\$1,500,000.00) to Eighty seven million dollars (\$87,000,000). Counsel for the respondents in argument makes a claim for not less than Five million dollars. We are of the opinion that this method of computing the fair cash market value as of the date of the taking of the property is highly speculative and is not in accord with decisions of the highest Courts of the land, and that an attempt to place a valuation upon the property upon such basis is wholly futile. We have been referred by Counsel for the Authority, to quite a number of quarry cases, all holding that such a method of valuation is not in accordance with the true rule. We refer to only two of the cases cited. The Court of Appeals of New York, the highest Court of that State, has recently dealt at length with prospective earnings from a stone deposit. We quote briefly from the opinions:

Exhibit 8 (continued):

"This procedure in itself proved nothing. As long ago was said of similar testimony, "All the witnesses has done is to establish, by calculation, that such a stock, from such a time, will produce so much. He does not himself prove any fact, and the calculations he has made must therefore depend upon the facts which are proved by others".....The hypothetical question, although in the end called for testimony in the guise of opinions as to market value, would have been answered only on the fixed assumption that the property of the claimants was to have been operated for a generation at an annual profit of half a million dollars. Accordingly, we are led to seek in the record some basis for that assumption.

There was no concrete proof that the market at the Metropolitan New York and New Jersey district would absorb an accession of 750,000 cubic yards of crushed trap rock annually. Indeed, the Court of Claims refused to take an opinion from the experts for the "claimants" on that suggestion because "too many elements enter into the answer". There was, of course, no proof of a production and transportation cost invariable at \$1.10 per cubic yard for decades to come, nor was a market stabilized at \$1.90 over an equal period in the future. These hypothesized profit factors had no reality, and any conclusion thereby contrived was inadmissible. *New York Central R. Co. v. Maloney*, 234 N. Y. 208, 137 N. E. 305; in re *New York, L. & W. R. Co.*, 35 Mun. 639."

Sparkhill Realty Corp. vs.
State 197 N. E. 192

"On a previous trial of this case witnesses were allowed to estimate the damages sustained by the plaintiffs by calculating the number of tons of limestone under the surface of the right of way, and multiplying that by the estimated price per ton, reaching a value of several thousands of dollars per acre. This was one of the reasons for the reversal of the judgment by this court, and sending it back for another trial. We hold that such a method for fixing the value of land was speculative, and could not be applied to land taken by virtue of the right of eminent domain. It involves an uncertain estimate of the quantity and quality of the stone, includes necessarily the use of labor and capital, requires skill and intelligent supervision on the part of the operator, and vigilance and success in the financial management. No human mind can foresee the presence of these elements of business success if the stone be removed at the ordinary rate of quarrying, or forecast the profit or loss of actual operations. The true rule is that which quits the realm of speculation, and comes down to what is within the knowledge of business men living in the neighborhood....."

Reading & P. R. Co. vs.
Balthasar, 17 *Atlantic* 513

The record discloses that respondents, who have operated the two quarries, have sold a certain amount of one or two types of the marbles found in these deposits. It is not shown that the operation of these quarries has resulted in a profit, nor that the sales of particular kinds of the marbles have resulted in a profit, but on the contrary it would appear from an examination of the quarries themselves that such sales

as have been made were without profit, taking into consideration the various colors and kinds of marbles that had to be removed at a loss before the particular marbles which were sold could be quarried and removed from the ground. The question to be determined is not what the properties might realize over a long period of years, but it is what a willing seller, who did not have to sell, and a willing buyer, who was not compelled to buy, would pay in cash for the properties and leases as of the date of taking. We are unable to conclude from the record and the physical facts that the properties are of value.

The other respondents who have not opened quarries on their properties, have contented themselves with proving simply the quantity and character of the deposit under the ground, and while the record discloses that the character of the marble is similar to that exposed at the two quarries, there is no proof that quarries could be opened on these properties and quarried commercially at a profit.

By reason of the foregoing, we beg leave respectfully to report that each and all of the respondents have failed to prove that they are entitled to an award in each of the cases which were consolidated and tried together.

Respectfully submitted,

S. W. DUGGAN

RUSH STRONG

LEN G. BROUGHTON, JR.
COMMISSIONERS.

DR. H. A. MORGAN: I should like to submit prior to this the memorandum.

PRES. ROOSEVELT: Submit what?

DR. H. A. MORGAN: The memorandum of the conciliation and the resolutions confirming that.

THE PRESIDENT: This exhibit No. 9 is a memorandum of action by the TVA Board on July 13, 1936, appointing a conciliator:

Exhibit 9:

MEMORANDUM

In an effort to arrive at an agreement as to the amount to be paid by the Authority to Major Berry and his associates, in accordance with their interests, on account of the prospective taking by flooding of certain marble deposits in Union County, Tennessee, through the operation of Norris Dam reservoir, the undersigned will proceed as follows:

1. _____ is hereby appointed as conciliator.
2. He shall act as a medium between the parties and use his best efforts to assist the parties in arriving at an agreement.
3. Each party shall furnish to said conciliator such facts, statements, information, documents or materials as such party shall deem appropriate. The conciliator shall make such independent investigation as he shall deem proper.
4. The said conciliator shall act in a confidential capacity as to each of the parties. He shall make no award, finding, or formal report or recommendation, but he shall be free to discuss and advise with the parties separately. He shall not be qualified to act as a witness or directly or indirectly to furnish evidence in the course of any court or official proceeding relating to the subject-matter of this memorandum.
5. The said conciliator shall be paid a fee of \$ _____ per day, and his necessary expenses of travel, for the time actually spent on this undertaking. The said fee and expenses shall be paid in equal shares by the parties hereto.
6. This arrangement shall continue in effect until one of the parties, by written notice to the other and to the conciliator, terminates the same.

TENNESSEE VALLEY AUTHORITY

By H. A. Morgan (signed)
H. A. Morgan

July 13, 1936

MAJOR GEORGE BERRY & ASSOCIATES

By Leslie W. Morris (signed)
Attorney

THE PRESIDENT: The next exhibit No.10 is an entry in the minutes of the T.V.A. February 25, 1937, re-emphasizing that conciliation is in no wise to be construed as a validation of any claims that any other party is bound by the conciliation.

EXHIBIT No. 10.

271-10. David E. Lilienthal moved the adoption of the following resolution:

WHEREAS, The Board has thoroughly reconsidered the matter of marble claims in the Norris Reservoir area and has conferred with the claimants, Major George L. Berry and associates, and

WHEREAS, Following such reconsideration, the Board concluded that it was appropriate, prior to proceeding with condemnation, to make further inquiry with regard to the wide difference of opinion between the claimants' experts and those of the Authority as to the value of the claimants' properties, and

WHEREAS, it was further concluded that the method of inquiry outlined in a memorandum agreement dated July 13, 1936, and providing in part for the services of Dr. John Finch, Chief of the Bureau of Mines, Department of the Interior, as conciliator under the conditions and for the purposes stated in the memorandum, is the best method of ascertaining whether the difference of opinion between the experts of the Authority and of the claimants is so wide as to make agreement impossible, thus making it necessary for the Authority to institute condemnation proceedings, therefore

BE IT RESOLVED, That the method of inquiry outlined in the memorandum agreement dated July 13, 1936, and filed with the records of the Authority as Exhibit 2-25-37b, is hereby approved.

FURTHER RESOLVED, That the Board hereby re-emphasizes that such an arrangement is in no wise to be construed as a validation of any claims, nor is either party to be bound in any way by reason of the fact that Dr. Finch has been called in as intermediary, or by any proposals, recommendations, or informal findings which he might make.

FURTHER RESOLVED, That the mediation proposal is to be wholly without prejudice or effect on any other problems presented by these claims.

The motion was duly seconded and carried, Harcourt A. Morgan and David E. Lilienthal voting "Aye", and Arthur E. Morgan voting "Nay".

Chairman Morgan stated he would file with the Authority's records as Exhibit 2-25-37c, a memorandum setting forth his objections to the resolution.

DR. H. A. MORGAN: Now a letter from Assistant General Counsel Dunn, who succeeded Mr. Towsley, after his resignation from the Authority. This letter from Assistant General Counsel Dunn to Chairman Morgan.

(Dr. Morgan here handed the letter to the President)

THE PRESIDENT: I shall have to read this letter from Evans Dunn to Chairman Morgan, for I shall want to ask a question.

Exhibit 10-A:

Dr. Arthur E. Morgan, Chairman of the Board
Evans Dunn, Assistant General Counsel
March 8, 1938

CONDEMNATION CASE v. C. A. HARRIS, ET AL. (BERRY MARBLE CASE)

In view of the continued and persistent publicity to the effect that evidence of fraud in the Berry case was known long prior to the time of the trial, I feel I would be derelict in my duty if I did not go on record as pointing out to you that in our opinion, as attorneys handling the case, there was no actual or legal evidence of fraud in the possession of anyone connected with the Authority prior to its discovery by us in the fall of 1937 a short while before the case was heard. I feel further that I must correct any erroneous impression you are under that the case was directed, directly or indirectly, by anyone other than myself with the help of my associates, Mr. Ziegler and Mr. Montgomery, under the general supervision of General Counsel Fly. At no time prior to the trial nor during the trial was it suggested to us in any wise what testimony should or should not be introduced nor in any manner how the Authority's case should be presented to the Commission. As far as I know, the case was discussed with no Board member apart from your conversations with Mr. Ziegler and Mr. Mynatt. The inferences contained in your press statement to the contrary are, I assure you, entirely without foundation. And, I may point out, all evidence of fraud which we had found had been introduced before you decided to appear as a witness. You neither gave nor suggested further evidence.

There has also been some indication by you that I led you to say inadvertently on the witness stand that you had no knowledge of fraudulent facts prior to February, 1937. Perhaps you have reference to the opinions and suspicions of fraud which I knew you and most of the rest of us, with knowledge of the case, entertained. However, the line of questions asked you dealt solely with tangible facts. Your answers on this point were accurate and were responsive to questions which, I am convinced, were in no respect misleading. Confusion has apparently resulted because you fail to distinguish between suspicions, inferences, rumors, and personal opinions on the one hand, and actual facts upon which an opinion might be predicated on the other hand. A charge of fraud is a very serious matter and should not be made without substantial evidence to support it. The suspicions and opinions which you and others of us entertained were, in my opinion, not proper evidence upon which to make such a charge.

I am frank to say that had we not discovered in November 1937 the powers of attorney and had not the witness Ford at the last minute decided to break his silence and supply us with facts and information which he previously would not disclose, the question of bad faith or fraud could not properly have been injected into the case at all. So far as I know, this evidence was unknown to any director, member of the staff or employee of the Authority prior to the dates mentioned above. It was diligently sought out and uncovered during preparation for the hearing as soon as there was indication of any possibility of securing tangible evidence.

I think it is unfortunate that it has been made to appear in the newspapers, whether intentionally or not, that there was knowledge of fraud long before the trial occurred, and that there was dereliction on the part of the legal staff in failing to initiate court proceedings charging fraud. It seems clear from a legal and factual viewpoint that the Authority was in no position to institute such proceedings.

THE PRESIDENT: Now, Chairman Morgan, I must ask you, you have heard me read this letter, do you have any knowledge of fraudulent facts prior to February 1937, or did you have only suspicions of fraud.

CHAIRMAN MORGAN: I am an observer and not a participant in this alleged process of fact finding and I want to add to that my reason for that position. When the President requested me to attend this conference, he did not give me any hint of its purpose. On my declining to attend, he gave no motive for the purpose of the meeting. I was far from my office and had only time to reach Washington. In contrast I was advised the other Board members were fully advised of the purpose of the meeting. They gave you prepared documents and briefs and had a large staff of assistants available.

THE PRESIDENT: In view of that position, we will put in as exhibits my telegrams to you and your telegrams to me during the past three days. It may be stated that you had the same information in regard to this meeting as the other two Directors had. If you are basing your refusal to answer factual questions on the ground you are not prepared, I will adjourn this hearing until next Monday or Tuesday to suit your convenience, if you will then be prepared to answer the factual questions.

CHAIRMAN MORGAN: My first statement covers that point.

THE PRESIDENT: In other words, you still decline to answer factual questions if you had had a week's notice, Chairman Morgan.

CHAIRMAN MORGAN: My statement covers that question, I think. I may state I never saw the letter which has been mentioned from Mr. Dunn.

THE PRESIDENT: Reverting to the statement you first made and which you have now repeated for the record, it is true that when you came to see me in September 1937 you asked me to request the Board to make available to you data and assistance necessary to make a report to the President concerning the conditions you had criticized. You then stated the President did not grant that request and made no alternative suggestions. The fact is that within a few days after you saw me in September, I told Dr. Harcourt A. Morgan that you wanted the facts, that you wanted data and necessary assistance to make a report. Dr. Harcourt Morgan told me that you had full authority to get any data you wanted from any of the files of the TVA and that at no time had the majority members of the Board withheld any information from you, from those files or records.

CHAIRMAN MORGAN: That statement is not correct but I will answer it at the proper time - that statement by Dr. Morgan and not yourself.

DR. HARCOURT A. MORGAN: Mr. President, may I finish this as a continuation of my statement?

THE PRESIDENT: Let me ask, did the majority members of the Board, or either one of you, take any action which would prevent Chairman Morgan from complete access to the records and files of the Board?

DR. HARCOURT A. MORGAN AND MR. DAVID E. LILIENTHAL: No.

THE PRESIDENT: At any time was assistance to Chairman Morgan refused by the majority or either of the majority?

DR. HARCOURT A. MORGAN AND MR. LILIENTHAL: No.

CHAIRMAN MORGAN: There is a statement of the General Manager who works under the Board.

THE PRESIDENT: That is what I am coming to.

MR. LILIENTHAL: In further response to that question, the charges were documented by Chairman Morgan in his appearance before the Commission. He presented the Documentary basis.

CHAIRMAN MORGAN: I will add to that that the man who furnished me those documents was reproved by his superior for giving them to me.

THE PRESIDENT: I now put into the record a telegram from Mr. McIntyre, Secretary to the President, to Chairman Morgan of March eighth, telling him that he is trying to reach him on the telephone and that the President wants him and the other two members of the Board to meet in the office of the President at eleven o'clock on Friday morning.

Exhibit 11:

The White House
Washington
March 8, 1938.

Hon. Arthur E. Morgan
Chairman Tennessee Valley Authority
Knoxville, Tennessee.

Have phone call in for you. The President wants you, Mr. Lillienthal and Dr. Harcourt Morgan to meet him in his office eleven o'clock on Friday morning.

M. H. McINTYRE
Secretary to the President

EXHIBIT 11-A
On March eighth Secretary McIntyre received a telegram from Chairman Morgan stating, "On considering the matter, in view of my experience with the other two members of the Board, I am convinced that the type of conference proposed with them and the President cannot now serve any useful purpose. Therefore, the President should not plan on my presence". The same day, three days ago, which incidentally was the same day on which the other two members of the Board were notified, I sent a telegram to Chairman Morgan, reading:

Exhibit 12:

The White House
Washington
March 8 1938

Hon. Arthur E. Morgan
Chairman, Tennessee Valley Authority
Knoxville, Tennessee.

Mr. McIntyre has just shown me your telegram STOP The meeting Friday is to take up TVA matters of the utmost importance and it is imperative that you as Chairman attend. Will you please advise me immediately.

FRANKLIN D. ROOSEVELT

On March ninth in the morning I received a telegram from Chairman Morgan:

Exhibit 13:

Clermont, Florida, March 9, 1938

THE PRESIDENT

This is in reply to your request for my presence at a meeting of the TVA Board in your office on Friday March eleventh. During a long period I have repeatedly and unsuccessfully endeavored to secure your adequate consideration of very grave difficulties in the TVA and as a final resort as a protection of the public interest was forced to make the situation public. In the present situation I believe those difficulties should be considered by a Congressional Committee rather than by an effort to compose the issues in your office.

ARTHUR E. MORGAN

To this I replied about noon on March ninth:

Exhibit 14:

TELEGRAM

THE WHITE HOUSE
Washington
March 9, 1938

Honorable Arthur E. Morgan,
Chairman,
Tennessee Valley Authority,
Knoxville, Tenn.

Meeting Friday is not called as you say to reconcile the differences between the Board members but to enable me to get facts. You have made from time to time general charges against the majority members and they in turn have made counter charges against you. As the Chief Executive the clear duty rests on me to get the facts. It is your duty as Chairman and member of the Authority to attend this meeting. Please advise.

FRANKLIN D. ROOSEVELT.

On March tenth, early yesterday morning I received a reply telegram addressed to me by Chairman Morgan:

Exhibit 15:

TELEGRAM

Clermont, Florida,
March 10, 1938

THE PRESIDENT.

Shall be present at Friday conference.

Arthur E. Morgan.

THE PRESIDENT: I also put in evidence copies of two letters of March eighth from Secretary McIntyre to Dr. H. A. Morgan and Mr. Lillienthal asking them to be present this Friday morning:

Exhibit 16:

THE WHITE HOUSE
Washington
March 8, 1938

My dear Dr. Morgan:

The President wants all three members of the T.V.A. to be in his office at eleven o'clock on Friday morning, March eleventh.

I am so notifying Chairman Morgan and Mr. Lillienthal.

Sincerely yours,

M. H. McINTYRE

Secretary to the President

Dr. H. A. Morgan,
Tennessee Valley Authority,
North Interior Building, F.
Washington, D. C.

Exhibit 17:

THE WHITE HOUSE
Washington, D.C.
March 8, 1938

My dear Mr. Lillienthal:

The President wants all three members of the T.V.A. to be in his office at eleven o'clock on Friday morning, March eleventh.

I am so notifying Chairman Morgan and Dr. Morgan.

Sincerely yours,

M. H. McINTYRE

Secretary to the President

Honorable David E. Lillienthal,
Tennessee Valley Authority,
North Interior Building, F.
Washington, D. C.

I now come -- will you go ahead with the Berry case, Dr. Morgan.

DR. H. A. MORGAN: Yes. May I attach this to where I left off and have the other succeed it? Now, in conclusion, I wish to state that there was no friendly agreement with Major Berry and his associates. To call an outstanding geologic authority, as the majority of the Board proposed to do in this matter, was one way of protecting the Board against possible unwarranted damages. There is not a line in the record of the whole matter that supports the charges and inferences of Chairman Morgan that there was an irregular, friendly arrangement between Senator Berry and associates and the majority of the members of the Board. The arrangement was a hard-headed business proposition, the possibility of bad faith was never ignored and was thoroughly and continuously canvassed by the Board's Counsel. The majority of the Board insisted only that a private claimant should not be prejudged guilty of bad faith on the basis of mere rumors and suspicion. Once some real evidence of bad faith was uncovered it was vigorously used, as Major Berry's own complaints to the Board show. In this connection, I should like to submit his correspondence just after the trial complaining because of TVA's counsel had pulled no punches, and I should like to present this correspondence of Major Berry.

EXHIBIT No. 18.

Knoxville, Tennessee

January 11, 1938

The Honorable
George L. Berry
United States Senate,
Washington, D. C.

My dear Senator Berry:

This is in response to your letter of January 7 to Mr. Lilienthal and myself. I have discussed your letter with Mr. Lilienthal, and he concurs in these views.

As I said in my letter of January 5, the Board gave counsel full authority to conduct the condemnation case. The Board never gives its attorneys specific instructions as to the manner in which particular litigation shall be handled, or as to the items of evidence which should be introduced, and no such instructions were given in this case.

Very truly yours,

Harcourt A. Morgan

cc. Chairman A. E. Morgan
Mr. D. E. Lilienthal
Mr. J. B. Blandford, Jr.

Exhibit 18 (Continued):

UNITED STATES SENATE

January 7, 1938

Honorable H. A. Morgan,
Honorable David E. Lilienthal,
Tennessee Valley Authority,
Knoxville, Tennessee

Gentlemen:

This is to acknowledge your communication of the 5th, signed by Dr. Harcourt A. Morgan, and I gather that it represents the views of you two gentlemen to whom this letter is addressed. I am then to understand that you gentlemen approved the counsel's procedure as it relates to the following facts:

1. That the counsel was instructed by you gentlemen to inject completely foreign matter dealing with (a) my War record, and (b) a lawsuit, both of which occurred nearly twenty years ago. Am I correct in assuming that you instructed the attorney to inject these?

2. I gather they meant exactly that the subject of "bad faith" was an aftermath, but that it was injected by your attorneys upon your direction.

This being the case, may I insist that the basis for your conclusion be made known to me, as suggested in my communication of December 24, 1937.

Yours very truly,

/s/ Geo. L. Berry

Knoxville, Tennessee

January 5, 1938

The Honorable
George L. Berry
United States Senate
Washington, D. C.

Dear Senator Berry:

I hope you will excuse the delay in answering your letter of December 24, addressed jointly to Mr. Lilienthal and myself. For several days I have been confined to my home by illness. Today, however, I have discussed your letter with Mr. Lilienthal and am authorized to make this joint response.

You state that your purpose in writing us was to call attention to our statement that our attorneys in the condemnation proceeding had presented facts discovered on the eve of the trial indicating bad faith. You state that this is "unfair and unwarranted". You then question the conduct of one of the Authority's attorneys in the case.

In adopting the recommendation of our General Counsel for instituting condemnation proceedings, the Board gave counsel full authority to prosecute the case to its conclusion. We feel that counsel have conducted the case with no other purpose than to develop the facts and serve the Authority's interests.

Our statement respecting introduction in the condemnation proceedings of newly discovered evidence indicating bad faith was made after consideration of the whole proceedings and after consultation with counsel. That statement represents our considered and deliberate view.

Very truly yours,

cc: Chairman A.E. Morgan
Mr. D. E. Lilienthal
Mr. J. B. Blandford

Harcourt A. Morgan

Exhibit 18 (continued);

Washington

December 30, 1937

Honorable George L. Berry
United States Senator
Pressmen's Home, Tennessee

Dear Senator Berry:

I have read your letter of December 24 addressed to Dr. H. A. Morgan and me. Since this is a joint communication, I wish to confer with Dr. Morgan before replying.

You may be sure that we shall discuss it as soon as Dr. Morgan returns to his office. At present he is confined to his home under doctor's orders.

Faithfully yours,

David E. Lilienthal
Director

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Knoxville, Tennessee

December 28, 1937

Senator George L. Berry
Pressmen's Home
Tennessee

My dear Senator Berry:

This acknowledges receipt of your letter of December 24, addressed jointly to Dr. Morgan and Mr. Lilienthal.

Dr. Morgan is confined to his home again, with another carbuncle, but your letter will be brought to his attention at the first opportunity.

Very truly yours,

B. I. Rose, Secretary to
H. A. Morgan, Director

cc: Mr. Lilienthal

Exhibit 18 (continued):

GEORGE L. BERRY
PRESSMEN'S HOME, TENNESSEE

December 24, 1937

Honorable H. A. Morgan
Honorable David A. Lilienthal
Tennessee Valley Authority
Knoxville, Tennessee

Gentlemen:

I have read with great interest the statement which appeared in The Knoxville Journal of Thursday, December 23, 1937, purported to have come from Messrs. H. A. Morgan and David Lilienthal, which I gather was intended to be an answer to certain voluminous statements made recently by Mr. A. E. Morgan. In this connection I am assuming that you have read the statement issued by me in Washington, D. C., in which I made the effort at least to identify what appeared to me to be then and what appears to me now as being a malicious misrepresentation of the facts by Mr. A. E. Morgan. Of course I should not have undertaken to issue the statement in view of the fact that the case was in the hands of the Commission except for the misrepresentations of Mr. A. E. Morgan, who holds the title of Chairman of the Tennessee Valley Authority. I have no apologies to make in identifying Mr. A. E. Morgan's maliciousness.

Of course the character of statement issued by you gentlemen must necessarily be a matter of your concern for which you must accept the responsibility. My purpose in writing you is to call attention to what I regard as an unfair and unwarranted declaration appearing in your statement which appears in paragraph 1, section b, which reads:

****"Had presented facts indicating bad faith, facts previously unknown to anyone connected with the Authority until discovered by our attorneys on the eve of the trial after two years of tenacious investigation."

I have read the accounts of the hearings and I observe in the course of the hearings the Chairman of the Commission directed your attorneys that if they did not present facts showing the existence of bad faith that such considerations would not be further allowed by the Board. I observe, too, from the records that no further effort was made in this direction for the very simple reason that there existed no basis for the claim of bad faith -- any declaration your attorneys or you gentlemen may make to the contrary notwithstanding. I now challenge the submission to me of a scintilla of authority or fact identifying the existence of bad faith. How such a declaration could be made in view of the fact that I was in business before there was any TVA or before there was a law enacted to create the TVA or before Mr. Roosevelt had announced his candidacy, was nominated or elected President, is beyond my comprehension, and while we are on the subject and since you gentlemen accept the responsibility for the high morals and decency of your attorneys, may I direct your attention to the fact that some person by the name of Ziegler, I believe, in cross examining the undersigned, proceeded to undertake to establish the war record of the undersigned. Of course what that has to do with marble litigation brought by the TVA is beyond my comprehension, but I thought everybody in Tennessee knew of my war record. There would be no difficulty in ascertaining the fact with relation to my war record by referring to the records of the War Department in Washington. I have no apologies to make for it.

If I were a publicity monger I should be delighted to have it brought out into the public. Certainly, I offer no apology directly or indirectly for the services I made the effort to give to the government and to the then Commander-in-Chief of the Army and Navy, the late President Woodrow Wilson. This procedure on the part of Mr. Ziegler indicated unscrupulousness and maliciousness. Obviously the purpose was to cast some shadow. Of course, the Chairman stopped the inquiry by demanding, as anyone with an ounce of sense would have demanded, what such a line of questioning had to do with the establishment of the valuation of the properties of my associates and self.

Then, as a beautiful climax, the same man, Ziegler, supposedly your attorney, help up a printed pamphlet and proceeded to question me with a view of ascertaining if I had not been in a lawsuit and if an award of some considerable amount of money had not been made against me by the Federal Court of Tennessee, Northeastern Division. The Chairman asked if it was the court record he was submitting and your man Ziegler replied by saying, "No, this is a pamphlet." The Chairman then stated, "Well, it might be a catalog of some kind," and asked Mr. Ziegler why he did not get the court record and Mr. Ziegler confessed he could not find it; then the ass proceeded to inquire from me if I had had anything to do with the misplacing of the records in the case which he had in mind. Conceive of it, if you will, a lawyer representing the Government of the United States making such an interrogation and thus casting aspersions upon the ability of the government to preserve its records.

What was all this brought up for? It was brought up to engage in character assassination; your man Ziegler attempting to engage in half truth, identifying himself as being just a malicious liar. He was not prepared to say that the case he had in mind occurred nearly twenty years ago, the outgrowth of a family dispute within a volunteer labor union, a case brought by seceding organizations seeking to secure the removal of the International Board of Directors of which I was one, and brought at the time I was in France as a member of the American Expeditionary Forces. Well, the court decided not to remove the International Board of Directors, and while the Judge held there had been a diversion of moneys from one fund to another necessary in the conduct of the Union's affairs, the plaintiffs having lost their one and sole reason for bringing the affair into court, namely, the removal of the Board of Directors, proceeded to withdraw the case and paid all costs from a to z. The convention of the Union, attended by delegates from all local unions including those who brought the suit, unanimously sustained the International Board of Directors and the same Board members have been repeatedly reelected from that date to this unanimously by referendum vote.

If your man Ziegler is your man, and if he represents the capacity, the ability, the courage and the decency of life, then I have miscalculated what all the finer things in life mean.

I should not have written you except for the laudation placed upon the capacity of your attorneys. I have nothing to say about the others, nor do I raise any question about their obligation to fight the case to the limit -- that is what they are being paid for -- but I think it reasonable to expect that decency, even in a fight, should prevail. I have never been charged with "hitting below the belt" as I told your man Ziegler. I am not going to begin now, but if there is anybody around the TVA office that has concluded that I have abandoned my right to protest against indecency and unfairness, then they are badly mistaken.

With kind regards, I am

Sincerely yours,

/s/ Geo. L. Berry

George L. Berry.

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THE PRESIDENT: Is that all you have on the Berry case?

DR. H. A. MORGAN: Yes, that is all.

THE PRESIDENT: Chairman Morgan, is there anything that you want to ask in regard to the statement of Dr. H. A. Morgan?

DR. ARTHUR E. MORGAN: I am an observer to the proposed inquiry into the facts and not a participant.

THE PRESIDENT: I now come to the allegation of the "joker" in the Arkansas Power and Light Company contract. In Chairman Morgan's letter to Representative Maverick he made the following statement: "The Arkansas Power and Light Company contract as presented to me for approval contained a 'joker' which would have allowed the Company to buy prime power at secondary power rates. I protested strenuously and got that point eliminated."

Chairman Morgan, the word "joker" in the context of your letter and in common understanding is a serious reflection on your Board, and that interpretation is borne out by your reference to the punishment of the engineer who exposed this so-called "joker". Will you give me the facts supporting your charge regarding the insertion of a "joker" in the Arkansas Power and Light Company contract.

DR. ARTHUR E. MORGAN: My first statement gives the reasons for my not doing so.

THE PRESIDENT: Dr. H. A. Morgan and Mr. Lilienthal, have you any facts to give on the Arkansas Power and Light Company's contract and its relation to the charge by Chairman Morgan that a "joker" contrary to the public interest was inserted therein.

MR. LILIENTHAL: Mr. President, I was responsible for the Arkansas Power and Light Company contract and I would like to respond with the facts as to that contract. It is necessary, in responding, to give somewhat more elaborately than I wish it were necessary the terms of that contract and also to indicate the procedure within the Board with respect to the consideration and approval of that contract. This contract contains the same rates as our municipal contracts for firm power, and somewhat higher rates for the secondary power provided for in the contracts than those charged the Monsanto Chemical Company, a large chemical company, which contract was negotiated during my illness, in April, 1936, by Chairman Morgan and under his direction.

In addition, this Arkansas contract is the first that requires the customer to guarantee a certain load factor, that is a certain average use of the electrical capacity contracted for. The contracts seem to the draftsman in the legal division and among the technical staff to be the most favorable contract by the Authority thus far executed, although, as in all contracts of this magnitude, a certain amount of flexibility was permitted the purchaser. The degree of flexibility was less, however, than in most of our municipal contracts or industrial contracts.

All of this relates to the charge that this Contract provided a "Joker" or a provision contrary to the public interest. There was no "Joker" in the contract, and the fact is that Chairman Morgan never claimed there was a "Joker" until his letter to Congressman Maverick of a few days ago. Chairman Morgan stated at a board meeting that, reading the contract as a whole, it permitted too great flexibility to the Company, thus, under some circumstances, permitting the purchaser, firm power at the price of secondary power. In the judgment of the engineers who directly negotiated this contract, this criticism was not well taken, but in deference to the Chairman's views, and since the provision suggested by him looked in the right direction, his suggestion was immediately adopted, and a provision was inserted as follows: "Except as provided in Section 5 hereof, in periods of suspension of run-of-stream secondary power occurring after such power shall have been available for periods aggregating more than fifteen (15) months, Arkansas Company shall not be entitled to take firm power at a demand in excess of the average of the three (3) highest monthly firm peak demands occurring during the last fifteen (15) months when run-of-stream secondary power was available."

This was the only change in the contract as presented to the Members of the Board and was made at the Chairman's suggestion. However, the negotiators, having opened this avenue of approach, they carried it into another provision relating to the right to use the Authority's capacity, but not water, in low water seasons for peaking purposes, and therefore inserted a similar limit on the peaking privilege.

Mr. President, far from anything sinister as has been directly charged in the negotiation of this contract, it was negotiated with the greatest openness and with full clearance with the Board of Directors and the engineering staff. As early as April 8, 1937, I sent to the Board of Directors a memorandum, copy of which I should like to insert at the conclusion of this particular summary, which summarizes the first draft, the first proposed draft of a contract, and attaching a copy of that draft. That memorandum went to all members of the Board. Naturally, as any one familiar with negotiations of complicated matters of this kind will recognize, this draft did not contain the provisions which I quoted and which was suggested by the Chairman. The Chairman made no suggestions at that time. On April 27, 1937, the second proposed draft of contract was sent to each member of the Board by Joseph C. Swidler, who headed the staff group which negotiated the contract. This draft was likewise based on the standard model. The Chairman made no suggestion of amendment at that time.

On May 14, Mr. Bock, the assistant Chief Engineer, informed the department which had the drafting of this contract in charge that he (Mr. Bock) had given the chairman's copy of the April 27th draft to Mr. Barton Jones (at that time I believe and still the acting chief design engineer and key member of the engineering department, a very able man) and asked if there was a later draft.

One was then in process of completion by those who were drafting the contract and this later draft was sent to Assistant Chief Engineer Bock on May 17, 1937 with a copy to Chairman Morgan. I should point out that Mr. Bock at that time was directly reporting to Chairman Morgan, who, at that time was Chief Engineer.

A draft dated June first was sent to Chairman Morgan. Shortly thereafter the Board Meeting was held, at which this last draft was considered and the Chairman made a suggestion for improvement, to which I have referred. The Board finally approved the contract on June 16 and I call your attention to the fact that the first draft went to the members of the Board on April 8. There was no suggestion on any of the drafts sent to the Chairman that his associates constituting the Board considered the draft of June 1, nor was there any Board approval of any draft until the Board unanimously approved the contract on June 16. As I pointed out, the staff went beyond Chairman Morgan's suggestion and secured additional assurance along the lines which he had suggested.

I should like to have placed in the record copies of the covering memorandum from General Counsel Fly to Messrs. Assist. Chief Engineer Bock and Chairman Morgan, dated May 17 and June 2 respectively.

Exhibit 19:

Mr. Carl A. Bock, Assistant Chief Engineer
James Lawrence Fly, General Counsel
May 17, 1937

POWER CONTRACT WITH ARKANSAS POWER AND LIGHT COMPANY

Pursuant to your oral request of Mr. Barr, I am attaching hereto a copy of the latest draft of the proposed contract with the Arkansas Power and Light Company.

The representatives of the Company and of the Authority are in substantial agreement on the substance of the contract, but there is still a wide diversity of views on the form. This draft incorporates certain suggestions made by the Arkansas Company's representatives which we have not yet accepted.

I regret that I do not have an extra copy of the latest draft of the Contract with the Aluminum Company available. However a copy has been sent to Chairman Morgan together with an explanatory memorandum, and it may be that these will be available to you. If not, I shall be glad to secure for your use the Legal Division's file copies. You will note that in the Aluminum Company contract, unlike the Arkansas Company contract, there is substantially complete agreement as to form but no agreement on some of the most important matters of substance.

JAMES LAWRENCE FLY

Attachment
cc Dr. A. E. Morgan

Exhibit 20:

Dr. A. E. Morgan, Chairman
James Lawrence Fly, General Counsel
June 2, 1937

PROPOSED POWER CONTRACT WITH ARKANSAS POWER & LIGHT COMPANY

I am attaching hereto for your information the latest revision of the proposed contract with the Arkansas Power & Light Company.

JAMES LAWRENCE FLY

Attachment

In short, Mr. President, the contract was enacted by the TVA staff members under my direction which they thought was fair and desirable. The contract was, of course, drafted, subject to Board approval and neither the Board nor any member had given such approval. The chairman made a suggestion belatedly, it is true, for improvement. The suggestion was adopted by the staff and no vote on the contract was taken at the meeting in which the suggestion was made. A suggested revision incorporating the chairman's idea was incorporated into the draft. The contract, thereupon, was un-animously approved. This is the story of the Arkansas contract joker and the supporting data I should like to hand to you.

Exhibit 21:

The Board of Directors
David E. Lilienthal
April 8, 1937

The Board has been advised from time to time of the negotiations between officers of Ebasco Services, Inc., acting for the Arkansas Power and Light Company, and the Tennessee Valley Authority, looking toward the purchase and sale of a substantial block of power to be delivered, roughly, at the end of the new TVA line to Memphis.

Conferences on engineering and rate matters have been carried forward vigorously, and I submit herewith an outline of a proposed contract between the Arkansas Company and TVA. This outline has the approval and is recommended by TVA conferees, Messrs. Glaeser, Evans, Swidler, and Muir. I believe it represents a fair contract, if the remaining outstanding provisions can be agreed upon on a proper basis.

The only important provisions not passed upon in this outline are (1) resale provisions, (2) reciprocal standby arrangements, and (3) cancellation privileges. The Arkansas Company understands that resale provisions must be included in the contract, and they stated to our conferees yesterday that they would promptly submit a proposed schedule of reduced rates in Arkansas. Recommendations with respect to these proposed resale provisions will be made to the Board as promptly as possible.

This contract is an important one for TVA, involving as it does a guaranteed minimum annual revenue of \$600,000 (which will probably actually on the average amount to about \$750,000) and jointly utilizing investments heretofore made for another purpose, namely service to the City of Memphis.

The Arkansas Company is in need of an additional source of power, and therefore I hope we may proceed to a determination of this matter as promptly as feasible. May I suggest early study of these terms, pending the bringing of the matter to the Board for oral discussion.

Dictated by Mr. Lilienthal
over the telephone.

David E. Lilienthal

DEL:BB (Copy to Messrs. J.B. Blandford, M. G. Glaeser, L. Evans,
J. C. Swidler, E. J. Muir (2))

Exhibit 22:

The Board of Directors
Joseph C. Swidler, Chairman, New Contracts Committee
April 27, 1937

CONTRACT WITH ARKANSAS POWER AND LIGHT COMPANY

At Mr. Lilienthal's request, I am handing you herewith a copy of the tentative draft of power contract between the Authority and Arkansas Power & Light Company.

This tentative draft, a copy of which has been sent to representatives of the Company, is the result of conferences which were held in Chattanooga and in New York. This draft, however, introduces a definition of run-of-stream secondary power which has not been agreed to by the Arkansas Power & Light Company.

Further conferences probably will be necessary to get this tentative draft in final form, but the present draft will inform the Board as to the present status of negotiations.

Joseph C. Swidler

Attachment
JCS:ml

MR. LILIENTHAL: In connection with the Arkansas alleged joker in the Arkansas contract, the statement was made by Chairman Morgan in his letter to Congressman Maverick, February fourteenth, a statement comparable to the one made this morning about someone being disciplined for furnishing data on which I think the facts ought to be presented to you because it is a reflection on the integrity of the staff and the Board. In this letter, Mr. President, the chairman refers to the member of the engineering staff, who, because of his participation in the Arkansas Power and Light contract action and who advised that a provision more favorable to the TVA with respect to secondary power should be inserted, was being disciplined by "insecurity of tenure" in the TVA. This presumably refers to Mr. Barton M. Jones, Acting Chief Design Engineer, inasmuch as he was the only one formerly on the chairman's staff when the chairman was Chief Engineer, who participated in the Arkansas Power and Light discussion. I should like to present the facts with respect to that because of the very disturbing effects it has had.

Mr. Barton Jones was first employed by the Authority on the twenty-sixth of June. He had previously been a Professor of engineering at Antioch College. In September 1933 he was made construction engineer at the Dam. On November 19, 1936 he was informally placed in charge of a design department without official designation by unanimous action of the Board following upon the rather sudden resignation of Mr. Byron Steel, who was chief design engineer. In that connection I should like to submit the memorandum to the Board by Mr. Carl Bock, assistant chief engineer in connection with that temporary appointment. On August 13, 1937 upon recommendation of the Assistant Chief Engineer, Mr. Bock (I may add parenthetically) Mr. Bock had for many years previously been a business and professional associate of Chairman Morgan. The director of personnel and general manager -- on their joint recommendation the Board approved the official designation of Mr. Jones as Acting Chief Design Engineer with the provision that "permanent status in this capacity is subject to review after appointment of the chief engineer," a subject which was then under discussion. On December 30, 1937, on recommendation of the Assistant Chief Engineer, the director of personnel and the General Manager and with the unanimous approval of the Board, and following, as you will see, some six months upon the so-called discipline and the so-called joker incident, Mr. Jones' position was reclassified to a higher grade and higher salary without changing his title. At no time does the record indicate any positive or suggested statement questioning the confidence or qualifications of Mr. Jones except as may be found in the memorandum of November 19, 1936 from Mr. Bock, who the Board of Directors, in which he says: "We have several possibilities in mind (that is for the position of chief Design Engineer) and are investigating them as rapidly as possible." Mr. Bock apparently was not prepared on November 19, 1936 to make a formal recommendation to the Board of Directors at that time that Mr. Jones be made chief Design Engineer. Some months later when the title Acting Chief Design Engineer was officially conferred by the Board upon Mr. Jones, I am informed that the director of personnel following the conversation with Mr. Jones, at Mr. Jones' initiative, raised the question of early designation and with the concurrence of assistant chief engineer Bock and the General Manager unanimous official Board action was taken. It seemed advisable at that time to make the official designation that of Acting Chief Design engineer in view of the fact that we were then attempting to set up machinery through which the selection of chief engineer could be made and consequently it was believed that this permanent designation of assistant chief engineer should await the appointment of a chief engineer who should have some say in a matter of that importance. Nothing has arisen, so far as I know, which should lead Mr. Jones to believe that continuation of his temporary designation arises out of questions raised with respect to his competence and surely not with respect to a suggestion he made with respect to the Arkansas contract which suggestion was received and adopted.

MR. LILIENTHAL: In a new organization, particularly during a period of reorganization such as we now have been going through, temporary designations have necessarily been more frequent than is generally desirable and have longer duration than might be advisable under ordinary circumstances. The Acting General Manager carried that designation of Acting General Manager for more than a year. The Acting Chief Conservation Engineer has carried that designation since the early summer of 1937. There is no valid reason so far as I can see for interpreting the temporary designation of Mr. Jones as a specific or general reflection either upon his competence or his security of tenure nor can it by any stretch of the imagination be regarded as a form of discipline for his participation and helpful participation in the Arkansas contract. I should like to append -- I should add that on March 4th following the letter, following the date of the letter of Chairman Morgan and Mr. Maverick which was written some time in February in which this charge of disciplining and insecurity of tenure was made, Mr. Bock, the Assistant Chief Engineer, wrote a memorandum dated March fourth in which he complains of the continued designation of Mr. Jones as Acting Chief Design Engineer. But that followed Chairman Morgan's charge. I should like to offer the memorandum of Mr. Bock to the Board and Mr. Clapp's memorandum to Mr. Bock. I believe that states the facts with respect to the so-called and inferentially corrupt charge regarding the Arkansas contract.

Exhibit 23:

The Board of Directors
Carl A. Bock, Assistant Chief Engineer
November 19, 1936

APPOINTMENT OF ACTING CHIEF DESIGNING ENGINEER

Mr. Steele's resignation, as reported in my memorandum of November 11, made it necessary to appoint temporarily an acting head for his department. I discussed this situation immediately with the Chairman and with Mr. Bass and with Mr. Clapp. They concurred with my proposal to assign B. M. Jones to act for the time being. I reported this situation to Mr. Blandford as soon as I could reach him by phone. I was unable to reach Mr. Lilienthal.

With Mr. Clapp's approval I have informally designated Mr. Jones as Acting Chief Designing Engineer. We have several possibilities in mind and are investigating them as rapidly as possible. There are several other important vacancies in the design organization which we are trying to fill.

Carl A. Bock

CAB:TO
CC to John B. Blandford
Neil Bass
G. R. Clapp

Exhibit 24:

Mr. C. A. Bock, Assistant Chief Engineer
Gordon R. Clapp, Director of Personnel
December 15, 1937

RECOMMENDATION WITH RESPECT TO BARTON JONES

We are forwarding the proposed reclassification of Barton Jones' position to the General Manager's office for Board action. The recommendation is as we discussed it, namely: reclassification to an entrance rate of \$8750. As you perhaps recall the Form 78 carrying your recommendation proposes elimination of "Acting" from Mr. Jones' title. I tried to get you on the phone today to discuss this but find that you are out of town for several days. I believe it was our understanding at the time Mr. Jones was made Acting Chief Design Engineer that the title would remain that way until such time as the position of Chief Engineer is filled in order that it might be reviewed at that time. I am, therefore, entering the word "Acting" on the Form 78. This, of course, should not affect the proposed reclassification.

Gordon R. Clapp

GRC:GES

THE PRESIDENT: Chairman Morgan, we are, I must repeat, examining charges of malfeasance or corruption. Have you anything to say in regard to the statement in regard to the Arkansas Power and Light Company matter which Mr. Lilienthal made.

ARTHUR E. MORGAN: The first statement I made covers my reason for not commenting upon these statements.

THE PRESIDENT: We now come to a third charge. In Chairman Morgan's letter to Representative Maverick he says "Some of the reasons for my concern are the explicitly misleading and evasive reports and, in my opinion, explicitly false reports which have been made to the President, to Congress and to the public concerning the TVA by a TVA director or by the two directors acting in unison." In view of the high trust which public officers hold in respect to the public, Congress, and the President, there could be no more serious breach of their fiduciary duty than making wilfully false reports. Therefore, I ask you to specify any reports which you refer to which you believe were explicitly misleading, evasive or false.

CHAIRMAN MORGAN: My first statement gives my reasons for not participating in this alleged inquiry of facts.

THE PRESIDENT: That amounts to a refusal to answer the question. I ask Dr. H. A. Morgan and Mr. Lilienthal whether in view of the refusal of the Chairman to specify in any shape, manner or form what reports were explicitly misleading, evasive or false or wherein any reports were explicitly misleading, evasive or false. Have the other two members of the Board any statement they wish to make?

MR. LILIENTHAL: Mr. President, we are in this unprecedented situation. We have been accused over the signature of the Chairman of the Board of the Tennessee Valley Authority whom, like ourselves, you appointed, with dishonesty and in this case with falsifying the records -- a subject which is not only malfeasance and not only affects our personal honor as the President of the Country has construed it and properly construed it, but probably is subject to the grand jury action and clearly libelous. We are denied the privilege in the presence of the Chief Executive of the United States of having the facts presented on which we can present a reply. I find it difficult to state as temperately as I must in this in view of the importance of this hearing the unfairness -- the bitter unfairness of thus being subjected to public charges going to our personal honor, and then being refused in the presence of the President of the United States an opportunity to reply. We can't reply to a charge on which there is no specifications. And I may add this, that I -- we challenge anyone in the United States -- anyone at any time to submit a single line supporting that charge.

THE PRESIDENT: I now come to a fourth statement by Chairman Morgan. In his letter to Representative Maverick, speaking of his colleagues, he says "There is a practice of evasion, intrigue, and sharp strategy with remarkable skill and malevolent habit of avoiding direct responsibility which makes Machiavelli seem open and candid. It took me a year or more of close association to be convinced that the attitude of boyish open candor and man to man directness was a mask for hard-boiled selfish integrity." Elsewhere in the letter Chairman Morgan refers to "misrepresentation, intrigue and arbitrary action". A plain reading of the English language makes it clear that these words ascribe sinister malpractices to his colleagues. I therefore ask Chairman Morgan to give me any or all facts upon which these statements are based.

DR. ARTHUR E. MORGAN: My first statement covers my reasons for not taking part in this process.

THE PRESIDENT: Again Chairman Morgan has declined to answer a straight question. I asked Dr. H. A. Morgan and Mr. Lillenthal if they wished to make any statement in regard to these charges.

MR. LILIENTHAL: Mr. President, the reference, the descriptive reference in the latter part of the quotation, obviously refers to me. Naturally, I certainly in this presence, and nowhere else, care to engage in a controversy as to my personal desirability. I certainly wouldn't argue whether I have a pleasant personality. Unless we have facts on which those charges are based, I am powerless to answer the accusations. I have been, Mr. President, and you have been, trained as a common law lawyer. One of the fundamental decencies of Anglo-American law is that when charges are made there shall be an opportunity to respond to those charges. That fundamental decency is not accorded to me at this time and, therefore, I find no way of responding to vague charges.

THE PRESIDENT: It is perfectly clear to me that the last two charges which we have discussed are not charges relating to differences in the Board on issues of policy or organization; but they are charges of intrigue and conspiracy. Therefore, they cannot be separated from the necessity of answering those specific charges. Today we are not going into the question of policy or problems of organization, on which there has been a difference of opinion in the Board, as there is in almost every Board charged with conducting government affairs. There are two or three other charges which will not take very long.

DR. H. A. MORGAN: May I make a statement, Mr. President?

THE PRESIDENT: Yes.

DR. H. A. MORGAN: I don't know what those charges are based on. I do know that for three years this Board went down the program of the Valley unanimously, with ^{one} dissenting vote. There was nothing else for us to do but to go down together. And the Chairman left us on the very last program of the last three years. Therefore, for my part, we went on with the program under the plan of the three previous years. It was after the reappointment of Mr. Lillenthal when this reaction on the part of the Chairman came to the general program of the previous years. As Mr. Lillenthal has indicated, it is difficult to discuss questions of great public interest when personalities are driven into it.

THE PRESIDENT: The next charge relates to conspiracy. Chairman Morgan, in his statement on the Berry claims, said this of the situation: "To a steadily increasing degree, however, I have contended with an attitude of conspiracy, secretiveness and manipulation". Chairman Morgan, can you give me facts in substantiation of that charge?

DR. A. E. MORGAN: My first statement covers my attitude.

THE PRESIDENT: Mr. Lilienthal, are there any facts you care to bring out on that general charge?

MR. LILIENTHAL: I have only this to say: In studying these charges that have been made, and trying to find what the possible basis in fact may have been, the only time that such a charge was made before that that I recall comes to my mind. On December 22, I am speaking now of '37 - I am speaking in memory, at a meeting of the Board, Chairman Morgan handed to the members of the Board and read a one page memorandum, in which he makes specifically this general charge, basing it I recall on the basis that Dr. Morgan and myself conferred together prior to the Board's meeting and concluded with the charge that this was against public interest, which must cease, quoting now from memory:

"On such a vague basis and without supporting facts I find it difficult to make any response to that, but I call attention to the fact the charge has been made and we have been cognizant of it at least since December, 1937. Previous to that, we were cognizant of it only by reason of newspaper columnists' comments, which, for reasons I am sure are apparent, vague assertions were made. In other words, this was an administration of collusion and conspiracy, and so on."

THE PRESIDENT: The next relates to the aluminum company contract. In Chairman Morgan's letter to Representative Maverick, he said "With reference to the aluminum Company's contract I feel that the relations of the T.V.A. to the Aluminum Company has failed to protect the public interest. I have protested to the Board repeatedly on this matter". In the context of Chairman Morgan's letter, which generally charges serious wrong-doing to the other members of the Board, this statement in the plain interpretation of the English language lends itself to the interpretation of a sinister relation between the majority members and the Aluminum Company. I asked Chairman Morgan if that was your intention, and if so, to support a charge with any facts you may have.

CHAIRMAN MORGAN: My first statement covers all that I wish to say on that.

THE PRESIDENT: Chairman Morgan has declined to answer the question. Dr. Harcourt Morgan and Mr. Lilienthal, do you wish to introduce any facts in relation to this contract?

MR. LILIENTHAL: Mr. President, it was my responsibility to negotiate the contract referred to and I should like to respond in respect to it. In this situation, we know what the charges are, even if there is a declamation to submit the facts to you, because we have in the Board records, complete exchange of views, memoranda, and otherwise, on the matter. Chairman Morgan charges that the Aluminum Company contract does not protect the public's interest. In other words, that we were derelict in our duty to you, and to the Congress, and to the public, is based on the Board's refusal to enter into a contract which the Chairman had urged over considerable period which involved the construction by the Authority of the so-called Fontana Dam on the Little Tennessee River, and instead of entering into such a contract - entering into regular contracts for the sale of power to the Aluminum Company of America without any regard to construction by the T. V. A. of the proposed Fontana Dam. In the opinion of the majority after exchange of views, the contract proposed by the Chairman we felt, would be against the public interest and we therefore decline to agree to it. Without our arguing the relative merits of the two contracts, it is still necessary in view of the charge of malfeasance to discuss some of the facts as briefly as I can, which will show the viewpoint of the majority was, to say the least, not arbitrary, not unreasonable, and not contrary to public interest.

The contract proposed by the Chairman and by the Aluminum Company, which I shall call the Fontana Contract, provided, briefly, for the sale by the Aluminum Company to the Authority of its Fontana dam site, owned by the Aluminum Company for a number of years, and a substantial amount of acreage likewise owned by that company at a price of three and a half million dollars to be payable in secondary power of the Authority.

This proposed contract, with which we declined to agree, also provided for the integrated, what was called the integrated, operation of the Aluminum Company's three existing dams on the Little Tennessee River, integrated with the dams of the Authority on the Tennessee River and its tributaries. As payment for agreeing to integrate these operations, the Aluminum Company, under this proposal made by the Chairman, was to be assured an amount of power largely in excess of the amount of power they are now able to generate in their plants without such integration. Of course, the construction of Fontana Dam, which is above the Aluminum Company's existing three dams on that same river would increase the flow of those plants and would, in effect, create a part of this additional power, and the rest of the excess over this addition was an allocation between the Aluminum Company and the Government of the United States of the benefits of this integration.

Deliveries of power in excess of the present capacity of the Aluminum Company's plants were to begin, according to this proposed contract, after ten years and continue for the remainder of the life of the contract, which was proposed to be for fifty years. In addition, the contract provided for the sale of additional blocks of secondary power to the Aluminum Company.

Now, it is important in this record to recall, Mr. President, that before this draft of the contract was presented to the Board of the TVA in May 1937, the Authority had requested the House Appropriations Committee to authorize the acquisition of the site and the construction of a Fontana Dam as a part of the integrated -- as part of the unified plan for the development of the river.

The House Appropriations Committee specifically declined to authorize that and criticized the proposed transaction in its report, and that Committee's conclusion was supported by the Congress. Had Congress authorized the construction of the Dam, the Authority could have entered into the contract with reasonable assurance that by the end of the ten-year period the dam would have been constructed and the power benefits called for by the contract could have been paid for out of the actual increase in available power which Fontana Dam's integrated operation would create. In view of the refusal of Congress to authorize this project, signing the contract, we think, would have risked obliging the Authority to deliver to the Aluminum Company free for over a period of forty years a large amount of power generated by the Aluminum Company's other dams.

Chairman Morgan contended that the matter should be reopened with Congress. This the majority of the Board considered to be unwise, since Congress had in effect rejected the basis of this transaction. Moreover, the transaction was predicated in part upon the payment in power for the site, which was authorized by a provision of the Act which expired in May, 1936, and is no longer effective. To put the deal through would have required not merely an appropriation and authorization of the dam but an outright amendment of the TVA Act, and these steps we regarded as unwise.

There were other objections to the contract as a piece of good business for the Government which can be best explained by comparing the provisions of the power contract which we actually signed and which is charged as being contrary to the public interest, which we will call the "Executed Contract", and compare that with the so-called "Fontana Contract".

In the first place the Fontana Contract provided for free power to the Aluminum Company plus the sale of secondary power. The Executed Contract, the one we entered into, does not provide for any free power and provides for the sale at a higher price than in the proposed contract, as well as secondary power.

In the second place, the price for power in the proposed Fontana Contract had not been settled. The Authority's representatives had offered power to sell at \$13.08 per horse power year, while the Company contended that the price should only be \$10.56 per horse power year.

Secondary power of a poorer quality than this, less useful, was actually sold to the Aluminum Company in the executed contract, the one now under attack, at a price which varies, depending on the number of interruptions, from \$12.77 per horse power year to \$21.00 per horse power year. The TVA offer in the proposed Fontana Contract, which Chairman Morgan urged, was at the rate of approximately two mills per kilowatt hour. The contract we actually entered into for a poorer grade of power will average approximately 2.5 mills per kilowatt hour.

And then there is this extremely important matter, which took a great deal of study and deliberation to ascertain and on which Dr. H. A. Morgan asked for extended memoranda from the engineers to clarify this extremely complex proposal. The contract urged by Chairman Morgan recognized the right of a private down-stream owner of a dam to the full benefits of headwater storage by Government dams above, a principle which is contrary to that provided in the Federal Water Power Act. In the opinion of the majority of the Board, this was an unwise and unnecessary concession, which in my opinion we had no right to make, after deliberate consideration, on a fundamental matter of principle.

On May 26, 1937 I had one of a series of conferences here in Washington with Mr. Arthur V. Davis, Chairman of the Board of the Aluminum Company of America, with respect to the contract that was finally executed. I should like to read one paragraph which illuminates this extremely important fundamental question on the conservation of our water resources in this country.

I am quoting now from this memorandum and I should like to submit the entire memorandum afterwards. "I indicated" (to Mr. Davis, of the Aluminum Company of America) "that there was a serious question in law, as I understood it as to whether the Government project is obligated to compensate"—that being the theory — "for 'benefits' under these circumstances, although it was clear that where benefits were conferred by the Government on a licensed private agency the benefits must be compensated for."

The Aluminum Company projects are not licensed under the federal statutes. I said to Mr. Davis, "that under the action of the Board pertaining to this negotiation, I was not authorized to go beyond the matter of power sales, nor were any of the Authority's representatives so authorized."

Finally, the Fontana Dam, the proposed Fontana Dam, is still part of the unified plan which the Board recommended to the Congress in March of 1936 and it will be constructed depending on Congressional authorization. Nothing in the power contracts we actually entered into forestalls this development or forestalls the possible later unified operation of the Aluminum Company's projects and the Authority's projects, provided an agreement can be worked out which protects the public's interest and particularly this important principle referred to.

In the meantime the existing arrangements under the contract under attack, protects the Authority against the gift of power and the sale of power without adequate compensation, and the Board's engineers testified at a Board meeting at which the executed contract was approved that this contract, if entered into, would aid flood control in the Tennessee Valley.

I have summarized these proposed contracts urged by Chairman Morgan, and vigorously urged, not for the purpose of proving Chairman Morgan wrong in urging that the Authority proceed on a different basis with respect to the Aluminum Company, but merely to show that the Board acted with reasonableness and consistently with public interest.

THE PRESIDENT: We will resume in one hour, at twenty minutes past two.

(The Hearing was resumed at 2:30 o'clock P.M.)

MR. LILIENTHAL: Mr. President, previous to adjournment I expressed the desire to add to the record the memorandum of a conference between Arthur V. Davis, of the Aluminum Company of America, and myself, representing the TVA, dated May 26, 1937.

THE PRESIDENT: (Examining memorandum) Memorandum of conference between Arthur V. Davis of the Aluminum Company of America, and David E. Lilienthal of the Tennessee Valley Authority, accepted.

Exhibit 25:

Memorandum of Conference between Arthur V. Davis, Aluminum Company of America, and David E. Lilienthal, Tennessee Valley Authority, Wednesday, May 26, 1937, at 3:00 P.M., in the Washington Office of the Tennessee Valley Authority.

Mr. Davis stated that before discussing the draft of the proposed contracts for power sales, he would like to know my position on the construction of Fontana. I repeated the substance of my statement to the House Committee on Appropriations on this subject.

Mr. Davis then stated that Mr. Crowden on behalf of the Company had discussed certain plans with Mr. Bock for the construction of dams on two sites owned by the Aluminum Company--the Nantahala and Glendale projects. He stated that before discussing the power contract (the stated subject of the meeting) he would like to know if there was agreement on principle as to the payment to the Aluminum Company in power for the "benefits" accruing to TVA at the various dams lying downstream from the Aluminum Company dams, arising out of the storage of water by the two new projects.

I indicated that there was serious question in the law as I understood it as to whether a Government project is obligated to compensate for "benefits" under these circumstances, although it was clear that where benefits were conferred by the Government on a licensed private agency the benefits must be compensated for. I said that under the action of the Board pertaining to this negotiation, I was not authorized to go beyond the matter of power sales, nor were any of the Authority's representatives so authorized.

Exhibit 25 (continued):

Mr. Davis stated that whether he would be willing to buy power at a particular price might depend upon how the Board decided to exercise its powers under Section 26a, as to "benefits" etc. I said that I thought this would be an ambiguous position to take before the public, as it might very well seem a bargaining for or purchasing of regulatory approval; but that of course his views on the matter would be placed before the Board, not only as a result of this discussion, but also through the hearings on his application for approval of plans under Section 26a.

We then proceeded to a discussion of the power contract. He thought that the representatives had agreed on a division of 40,000 run-of-stream and 20,000 firm, but upon an explanation, appeared ready to agree to a 30,000 - 30,000 division.

On the tenure of the agreement I suggested that perhaps a five-year term would be better than a ten-year term inasmuch as other industries producing soil building materials might require the power in the future, and that TVA had an obligation in that direction. I thought he could operate under a short term arrangement because he has alternate sources of supply on the Little Tennessee. Ten years he felt to be a minimum. I also indicated that the Board might not feel it should sell as much as 50 per cent of all of our remaining secondary power to one concern, since it might be deemed a form of discrimination against other industries and other sections.

As to price, the rates were explained by Mr. Swidler, but Mr. Davis made no comment and asked for further conference Thursday at 11:30 A. M.

A. E. MORGAN: May I speak a minute in reference to this one. The statement with reference to the Aluminum Company issue contains significant and vital inaccuracies, misrepresentations and omissions. It is a long, fragmentary, technical statement and I think clearly indicates the futility, as a fact finding process, of such a meeting as this was intended to be.

THE PRESIDENT: How long would it take you, Chairman Morgan, to present what you consider to be the correct facts in regard to this memorandum?

A. E. MORGAN: I haven't any statement on that row.

THE PRESIDENT: You do not want to present one to the President?

A. E. MORGAN: I haven't any further statement to make, I think, than I have made.

THE PRESIDENT: Before I go on with the seventh charge, I want to make two matters a little more clear. Lest there be any thought that any injustice has been done to Chairman Morgan in asking him to be here today and to answer questions relating to facts, I make the statement that the decision to hold this hearing was not made until the morning of Tuesday, March eighth. By Noon Secretary McIntyre started to get in touch with the three members of the Authority and the record shows that Chairman Morgan received such notification by that afternoon. The decision was communicated to the press at the press conference the same day. Neither of the other members of the Board had any advance notice of this hearing. They were on exactly the same basis of information as to the hearing as the Chairman. I knew, of course, that the Chairman had been in Florida for some weeks, I think --

MR. A. E. MORGAN: Yes.

THE PRESIDENT: -- But assumed that because he had made the statements of March 3 and March 5 from Florida that he had made those statements on the basis of facts in his possession at that time. As a matter of fact, therefore, for the purposes of this hearing I assumed, I think with justification, that Chairman Morgan knew a great deal more about the allegations and charges than either of the other two members, and would be prepared today to answer questions in regard to the charges.

I cannot emphasize too strongly, and I think in the public interest, that Chairman Morgan should be willing to participate in this inquiry to ascertain the truth of the personal charges that are here involved. It should be made clear that until these charges of dishonesty, of lack of personal integrity, and of personal misconduct in office are definitely removed from the realm of controversy, there can be no constructive inquiry by me or by anybody else into power policies, navigation policies, fertilizer policies or any other policies of the Tennessee Valley Authority. All of us who want those policies considered and even reviewed on their merits ought, as a matter of public duty, to cooperate to dispose immediately of these personal attacks in general form which only obscure and confuse fundamental issues of policies.

Chairman Morgan has offered the thought that the Davis memorandum contains inaccuracies. I do not see how, in the absence of a statement as to what those inaccuracies are, it is possible to get much further. I have asked for a list of the inaccuracies. Chairman Morgan has declined to give them to me. I now ask Dr. H. A. Morgan and Mr. Lilienthal if they want to say anything further in regard to the charge of inaccuracies which has been made without specification.

MR. HARCOURT MORGAN: I have nothing to say.

MR. LILIENTHAL: I have nothing to say.

THE PRESIDENT: We now come to the final charge. Chairman Morgan in his statements on the so-called Berry claims said that the situation in the TVA Board was not due primarily to differences in power policy or to just another family quarrel, but the real difficulty was to secure "honesty in government". He stated, "The Berry marble case as I have said is an instance of this difficulty". He thus charges that there are other instances of dishonesty, that is obvious from reading the English language. In his letter to Representative Maverick in speaking of the present TVA situation, Chairman Morgan said, "In my opinion, good government and the welfare of the TVA demand that the situation be cleaned up and that standards of openness, fairness and honesty shall prevail". I am compelled to ask Chairman Morgan what instances of dishonesty he had in mind when he made those statements.

CHAIRMAN MORGAN: My reasons for not answering further were included in my first statements.

THE PRESIDENT: Chairman Morgan declines to answer the question. Dr. H. A. Morgan and Mr. Lilienthal, have you anything you want to say on that question?

DR. H. A. MORGAN: Not without a statement by the Chairman.

THE PRESIDENT: Commencing over a year ago, Chairman Morgan made a series of statements that seemed to attack the propriety of his colleagues' conduct, statements which they have regarded as impugning their personal integrity. The Chairman's public utterances have culminated in the last few weeks with statements that unmistakably and unequivocally attack the motives and personal honor and integrity of his colleagues in discharging their public duties.

Generally speaking, I think it is only fair to say to Chairman Morgan that these statements on his part must be interpreted as a whole and that in that effect they place a heavy cloud not only on other members of the Board but also on existing important operations of the TVA. The press, as you know, has been practically unanimous in solely interpreting your attitude as reflected in your public utterances. There has been no correction nor retraction on your part and I think, Chairman Morgan, that you have a heavy responsibility to the government and the public to support now the position that you have taken and there has been so universally ascribed to you and therefore I must ask you again whether you have any other facts that you had in mind when you made these charges of dishonesty and lack of integrity and in broadcasting them so widely and then in acquiescing in the interpretation that has been universally placed on them.

CHAIRMAN MORGAN: I have nothing to add to the first statement I made on that point.

EXHIBIT 25-A

THE PRESIDENT: It is not my desire that this inquiry should be in any sense uni-lateral. Dr. H. A. Morgan and David Lilienthal, you also have made charges against Dr. Arthur Morgan, charges that relate to obstructing the carrying out of the decisions of the Board. You made your charges not public, not to the press, but to the President in his official capacity. Those charges were sent to me under date of January 18, I think it was. I ask that they be identified and made part of the record. They were printed in the New York Times, March 5. These charges were not made publicly but were made to me. It is true that the majority of the members of the Board did not make them public but that I chose to make them public after Chairman Morgan had made repeated public charges against the majority. These charges by Dr. H. A. Morgan and Mr. Lilienthal do not necessarily reflect on the personal integrity of Chairman Morgan but they do reflect on his willingness to cooperate in decisions reached by the Board in the manner prescribed by law. These charges against him are equally serious, particularly as they suggest that Chairman Morgan is obstructing the work of the Board and has cooperated with interests which may be adverse to the interests of the Tennessee Valley Authority. These charges, while not reflecting on Chairman Morgan's personal integrity, do impute misconduct in office to Chairman Morgan. The charges go so far as to assert that his "opposition and obstruction have occupied virtually his entire time to the exclusion of his attendance on Board meetings". I am, therefore, obliged to take note of these charges and especially to take note of them by virtue of the investigatory powers conferred on the President by Section 17 of the Act. Before I ask you for substantiation of the charges, I remind you again that I am not concerned at this inquiry with matters of policy or of organization but I am concerned with your charges that Chairman Morgan has improperly obstructed the work of the Board. As your charges against him are couched in general terms, I must now ask you also to give me specific evidence to support each of the several charges enumerated in part 3 of your memorandum to me. I think everybody has seen a copy of that memorandum. There is about a page of general charges. The first specific charge is: "It is not permissible as Arthur E. Morgan has done repeatedly in public statements to attach the personal motives in good faith and the pure integrity of his associates on the Board - not by associates' direct charges. What are the facts upon which this general charge is based?"

DR. HARCOURT A. MORGAN: Mr. President, commencing over a year ago, Chairman Morgan engaged in what we regard as a campaign of attack upon the personal motives and the integrity of the other Directors. This was done in the form of widely circulated public speeches and articles. However, to support this charge are, of course, the actual published statements, some of which you refer to -- many of which you referred to, this morning. I have here a list of them, as well as copies which I shall submit for the evidence.

THE PRESIDENT: This list of speeches and articles contains five. I list the five in the hearings by name and the actual articles are appended. I do not think the record need copy all the articles. They are available.

MR. EARLY: Identify them but do not include the text.

THE PRESIDENT: Identify each of the five by the Exhibit number; the text need not be copied but is available.

Exhibit 26: Remarks of Arthur E. Morgan, Chairman of the T.V.A. as chairman of a discussion on power at the annual meeting of the American Economics Association, December 30, 1936.

Exhibit 27: Article in the New York Times of January 17, 1937, headed as follows: "Dr. Morgan pleads for 'Cooperation' with the Utilities".

Exhibit 28: Tennessee Valley Authority release to afternoon papers April 26, 1937, entitled "Multiple Purpose River Control".

Exhibit 29: Article in the Saturday Evening Post, dated August 7, 1937, entitled: "Yardstick -- And What Else," by Dr. Arthur E. Morgan.

Exhibit 30: Article in the Atlantic Monthly, dated September, 1937, entitled "Public Ownership of Power" by Arthur E. Morgan.

DR. H. A. MORGAN: These speeches and articles are largely taken up with policies and issues with which the T.V.A. is concerned. Our charge, however, does not in anyway question Chairman Morgan's right to express views on these matters differing from those of the majority. Our charge challenges the Chairman's statements only insofar as they attack the personal motives and the integrity of the majority by wholly unsupported innuendo, indirection, and aspersion.

To illustrate, Mr. President, the method that Chairman Morgan has used, I should like to refer to a few quotations, and here I read from some of the passages quoted in the Atlantic Monthly to which you referred this morning:

"The writer is a minority member of the Board of Directors of the Tennessee Valley Authority, of which he is Chairman. In important respects he differs from what he judges to be the actual power policy of his associates. This statement, therefore, reflects his personal views and not the working policy of the power issue. Neither does it undertake to criticize in detail what the writer believes to be the improprieties of the policy".

Quoting again, "If the Tennessee Valley Authority Act is fairly interpreted and administered, it can mark a great advance in the planned and orderly development of a great river system. In many cases, referring to the Tennessee Valley Authority - - -

THE PRESIDENT: (Interrupting) Let me interrupt: Did that quotation say "fairly administered"?

DR. HARCOURT MORGAN: "Fairly interpreted and administered".

THE PRESIDENT: "Fairly interpreted and administered".

DR. HARCOURT MORGAN: Quoting again, in many cases referring to the Tennessee Valley Authority projects, "Some large dam can serve for navigation control, flood control and for power; if the operation of such a system is in the hands of persons interested only in power, such a multiple purpose project can be abused, perhaps with serious results. For private interests to try to force a high price by obstructive litigation or for public men to try to secure an unreasonably low price by threat of duplication or dismemberment leads to suspicion, conflict, and social waste.

PRESIDENT: In other words, am I correct in this, that your allegation there is that by that language Chairman Morgan is, by imputation or innuendo charging that these dams and projects are not being run for multiple purposes but only for power purposes?

DR. H. A. MORGAN: I so interpret it. In the continuing quotation is evidence. In the operation of the "public yardstick", which is in quotation, "Systems, there should be no hidden subsidies, no undisclosed Government assistance to local public power systems. It is due both to private investors and to municipalities which considering their power systems that full and actual cost of service be publicly disclosed. If there is Government subsidy, it should be in the open".

THE PRESIDENT: Again, on that, am I right in saying the allegation is that that language, by imputation or innuendo charges that the members are guilty of giving hidden subsidies or Government subsidies without disclosing the fact to the public?

DR. H. A. MORGAN: May I answer that in the concluding statement? The point of these remarks was not missed, for the article was immediately siezed upon by the utilities attacking the authority in a so-called letter of rebuttal in the contributor's column of the same issue of the Atlantic Monthly. Mr. Willkie commented as follows:

Exhibit 31.

New York City

Dear Atlantic,-

In his article for the September number, Dr. Morgan refers to two abuses in the utility industry which would be impossible of repetition under present laws. One of them is the type of extravagant financial promotion represented by the Insull affair, which is an almost inevitable accusation in any article directed against utilities. The other has to do with the excessive charges which Dr. Morgan states are frequently rendered by service companies.

The relationship between the service company and the operating company is now thoroughly regulated under the Public Utility Act of 1935. In The Tennessee Electric Power Company, the charges of the mutually owned, non-profit service company represent five sixths of one per cent of the company's gross income -- an amount so small that its total elimination would not affect in the slightest the cost figures of labor, taxes, interest, or materials and supplies which I set out in my original article and upon which Dr. Morgan comments. Likewise, the elimination of every officer's salary in the entire system would amount to only a fraction of one per cent of the company's gross and could not affect the conclusions to be drawn from the figures cited. Neither the Federal Trade Commission nor any other commission or investigating body has ever claimed that there was a dollar of overcapitalization in The Tennessee Electric Power Company. The Tennessee Electric Power Company keeps its books in strict compliance with the rules of the Federal Power Commission, and the Commonwealth and Southern Corporation keeps its books in accordance with the regulation of the Securities and Exchange Commission. Therefore Dr. Morgan's questioning of the figures cited must have been made without examination of the facts. There are no intermediate holding companies in the Commonwealth and Southern Electric System.

Dr. Morgan, a public official, questions the honesty of other public officials. If he is correct that state regulation has failed through corrupt public officials, then he doubly warns us against the adoption of public ownership, where the opportunities for corruption by public officials would be greatly multiplied.

Dr. Morgan makes one charge which I must acknowledge. He charges the Alabama Power Company with propaganda against the public ownership of power. To state that thus the Alabama Power Company is 'taking away from the American people the long-established right directly to administer essential public services' is as logical as to say that Dr. Morgan's article or 'propaganda' in favor of public ownership is taking away the people's right to private operation of industry.

I am, of course, in entire agreement with Dr. Morgan when he states that 'it is coming to be the recognized duty of management to provide the widest and best possible service at the lowest possible cost consistent with a fair return.' I think the industry has well deserved his praise for 'its excellent technical work,' and for the fact that the larger part of its investment is 'prudent, necessary, honestly made.'

Dr. Morgan is the only government official of standing who has had the courage to state that 'in the operation of public "yardstick" systems there should be no hidden subsidies.' He of course would not say this if he were not conscious that such exist. Unfortunately, he has not carried the decision in the councils of those who control government power policy or the TVA.

Dr. Morgan stated that one of my proposals -- i.e., that of the Power Pool, suggested by President Roosevelt -- was "too vague to be conclusive." I think that that is probably a just criticism. It was my hope that the President's proposal would become much more specific as a result of the power conference called by the President last autumn. Unfortunately, however, that conference was terminated by the President a short time after engineers on both sides had started their research into the details of a pooling agreement. It was reported at the time that a majority of those active in the government power programme wanted, not cooperation with the utilities, but their elimination. If we can get back to the cooperative attitude, it should not be difficult for reasonable men to settle the problem in a reasonable way.

Faithfully yours,

Wendell L. Willkie

DR. HARCOURT A. MORGAN (Continues): "Dr. Morgan is the only governmental official of standing who has had the courage, the courage (with emphasis), to state that in the operation of public yardstick systems there should be no hidden subsidies. He, of course, would not say this if he were not conscious that such exist." The implication is very clear.

THE PRESIDENT: In other words, in order for that letter from Mr. Willkie to the Atlantic Monthly to have appeared in the same issue as the original article, it was necessary that Mr. Willkie have a copy of Chairman Morgan's article before it was printed and have the opportunity given him by the editor to write a letter in regard to that article before the article was published. Correct?

DR. H. A. MORGAN: Correct. And in no case was the statement for this article ever submitted to the board. "Unfortunately, (Continuing this same quotation) he has not carried the decision into the councils of those who control government power policy or the TVA". Mr. Willkie continues the statement, "Dr. Morgan, a public official, questions the honesty of other public officials. If he is correct that regulation has failed through corrupt public officials", corrupt public officials (with emphasis), "then he doubly warns us against the adoption of public ownership where the opportunities for corruption by public officials would be greatly multiplied".

MR. EARLY: All of that is quotation?

DR. H. A. MORGAN: Yes, that is the end of the quotation.

THE PRESIDENT: Chairman Morgan, do you wish to say anything in reply?

DR. A. E. MORGAN: Yes. May I see a copy of this, please? I have no data whatever with me. May I see a copy?

THE PRESIDENT: Yes.

DR. ARTHUR E. MORGAN: Not the article but the charges of the two members of the board, the letter of January 13.

DR. H. A. MORGAN: That will be reported in the minutes.

MR. LILIENTHAL: That is that mimeographed statement.

MR. EARLY: Oh, I have copies of it.

DR. H. A. MORGAN: I take it that is a copy of the published statement.

MR. EARLY: This is a copy released by the TVA.

DR. H. A. MORGAN: Released by the President.

THE PRESIDENT: This was released at my request on Tuesday afternoon, last.

DR. A. E. MORGAN: Yes. There are only two or three things that in presenting to the press are so misleading here that I think I must comment on them. One relates to the last statement about the dishonesty of public officials in Mr. Willkie's comments. That is a comment on certain public servant officials who are corrupted by utilities, and the context shows it. It is not referring to Tennessee Valley Authority at all, but it was in my discussion of the necessity for disciplining the utilities that they had at times corrupted public utility officials and that is what Mr. Willkie refers to which is the significant point.

THE PRESIDENT: Did you have any communication with Mr. Willkie with regard to your Atlantic Monthly article?

DR. ARTHUR E. MORGAN: I had no communication with Mr. Willkie or any kind or any way. He did not get his copy from me. That was furnished him by the Atlantic Monthly, I suppose. Also it has been inferred that I had a copy of his paper. After my article was in page proof, his succeeding article was sent to me and I made two or three interlineations after my article was substantially completed and was in page proof. Then I saw his and made one or two interlineations after my article was substantially completed. I saw his as it came from the Atlantic Monthly to me. That has not been cleared.

THE PRESIDENT: In other words the Atlantic Monthly sent you your article to him and when his reply or addition was sent to them they sent that to you?

DR. ARTHUR E. MORGAN: The situation is this. When -- I think that his article appears before mine. You see.

MR. LILLIENTHAL: That is correct because you referred to it in your article.

DR. ARTHUR E. MORGAN: No, that is not the case. My article appeared before his. My article had been submitted supposedly completely. I corrected the galleyproof. It was in page proof. And when it was in page proof, I happened to be spending a few days in Massachusetts, near Boston, on other matters entirely and the Editor of the Atlantic Monthly sent me that and told me if I could get the copy to his office by two o'clock the next afternoon there would be opportunity for me to comment on Mr. Willkie's article. Mine was in page proof, the last day before it went in. That was how I happened to receive page proof.

THE PRESIDENT: But he must have had a copy of your article before he wrote his letter.

DR. ARTHUR E. MORGAN: But his letter was not his article.

THE PRESIDENT: I am talking about his letter.

DR. ARTHUR MORGAN: The Atlantic Monthly sent a copy of my article to him and he commented.

THE PRESIDENT: Did you see a copy of his comment?

DR. ARTHUR E. MORGAN: No.

THE PRESIDENT: But, you saw a copy of his article in the next number.

DR. ARTHUR E. MORGAN: Yes. There is one other point that I want to mention.

CHAIRMAN MORGAN: I would like to quote one statement that was quoted by Dr. Harcourt Morgan, "Arthur Morgan has increased both the scope and intensity of his attacks upon majority action until in recent months this opposition and obstruction have occupied practically his entire time even to the exclusion of his attendance upon Board meetings". That is an incorrect statement.

HARCOURT MORGAN: In connection with the Chairman's statement I should like to submit my evidence, the resolutions of the Board of August 31, with reference to this article and —

THE PRESIDENT: I think those are in already.

CHAIRMAN MORGAN: At various times members of the Board have been absent from meetings for considerable periods. On one occasion one of the other members was absent five months in the year, and in other cases members have been absent for considerable periods. It has been my custom to inquire of Board members or of the General Manager of his office whether a meeting was desired and my calls for meetings have been very few because those calls have gone through the general manager's office and have been left to him. I might say when recently I did call for a meeting that call — the meeting did not come as called by me but by all three members of the Board. It was taken up with the other two — if I and one other member are present at Knoxville very often it is not feasible to get a meeting; if the other two members are present it is feasible to get a meeting. I am in an adverse position there.

As to carrying on the work of the Board, especially recently the Board meetings have been largely comparable to this meeting where I was on trial. They have been quite similar in appearance and there has been a piling up of records and terms against my record. That has been to a very considerable extent. Aside from the routine of the Board we have no difficulty.

THE PRESIDENT: Are records of those meetings kept?

CHAIRMAN MORGAN: Yes.

THE PRESIDENT: Stenographic records?

CHAIRMAN MORGAN: No, that has stopped. They are not kept. My attendance at a meeting in which the vote on any controversial matter is all arranged beforehand is somewhat limited. There is a vast amount of work in the TVA. The way in which I can most effectively work is a matter to some extent of my own judgment. I am keeping up even when away from Board meetings, I am keeping up with the current work of the Board. Material is sent to me if I do not happen to be in my office and I find under present conditions I can do more effective work in public service and for the TVA where I can have quiet and no antagonism. I can be of more service than if in formal meetings. I am serving the TVA as best I can with my own judgment, with all my time and energy except during a period of illness recently.

And the statement that opposition and obstruction have virtually occupied my entire time is complete inaccuracy and to indicate that I am not giving my time and energy and judgment to the TVA is an entire inaccuracy.

THE PRESIDENT: Chairman Morgan, you have just said something to the effect that decisions and policies are arranged and decided on before a meeting by the two majority members. I take it that on any board of management, that the members of a board of management or administration have a perfect right to consult together before a meeting, to decide on policy, whether it be a private corporation or a government agency, and that that is common practice. You have had the same opportunity to consult with each of your fellow members before me as they have had to consult with each other. Is that not true?

MR. A. E. MORGAN: The statement I have just made was to refute the implication that I was no longer a member of the Board and that I had abandoned my duties.

THE PRESIDENT: That does not answer the question.

MR. A. E. MORGAN: I introduced the statement at that time to relieve that false impression. Beyond that I do not want to go any further. I want to rely on my original statement. I made that particular statement lest it be inferred that I had practically abandoned my duties.

THE PRESIDENT: Did you not have the same opportunity to confer with your fellow members before a meeting or during the meetings as they had to consult with each other?

CHAIRMAN MORGAN: No.

THE PRESIDENT: Why?

ARTHUR MORGAN: That is a long story. I don't think I should enter into it here.

THE PRESIDENT: There again, Chairman Morgan, you have, in making the verbal statements which you have just offered, imputed improper methods of discussion between Board members before me. Did you mean to do that?

ARTHUR MORGAN: I prefer to limit my statements to indicate that I have not in any way withdrawn from the activities of the Board and I wish the force of my statements to be limited to that. That point I wanted to make very clear because otherwise --

THE PRESIDENT: (Interposing) You have imputed improper methods of consultation in what you have said.

ARTHUR MORGAN: Only where necessary to indicate that I have been performing my duties to the TVA. I don't want to go any further than that.

THE PRESIDENT: You made an imputation. Do you stand on that imputation of improper practices?

ARTHUR MORGAN: Yes.

THE PRESIDENT: You are not willing to state what they are?

ARTHUR MORGAN: Not at this time and place.

MR. LILIENTHAL: I assume that at the proper time there will be an opportunity to answer the additional charges that have been made in this meeting?

THE PRESIDENT: Yes.

ARTHUR MORGAN: I have made no additional charges in this meeting.

THE PRESIDENT: Chairman Morgan, I must disagree with you in the statement. You have made an additional charge of improper practices on the part of your two colleagues, that of making improper decisions and of conferring together in an improper manner before Board meetings.

ARTHUR MORGAN: I made those same charges publicly. There is nothing new in those charges. They are the same.

THE PRESIDENT: You are not willing to specify what those charges are?

ARTHUR MORGAN: No. I can only say that I have added nothing.

THE PRESIDENT: Vice Chairman Harcourt Morgan has offered this exhibit, resolution of August 31, 1937 relating to the Atlantic Monthly article.

The exhibit, numbered 32 (previously identified in the record) reads as follows:

Exhibit 32:

TENNESSEE VALLEY AUTHORITY
Knoxville, Tennessee
August 31, 1937

WHEREAS, Arthur E. Morgan, Chairman of the Board of Directors of the Tennessee Valley Authority, in an article entitled "Public Ownership of Power", appearing in the September issue of the Atlantic Monthly, has impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors; and

WHEREAS, It is recognized that each member of the Board has the duty to express his opinion upon every question presented for action, and the privilege of expressing his dissent when his views do not prevail, nevertheless attacks, such as those in the article referred to, on the honesty and motives of associates who hold contrary views, are inappropriate to the discussion of public affairs, handicap administration, and are alien to the best traditions of public service; and

WHEREAS, A due regard for the responsibility of administering this project precludes the Authority from answering attacks of this character in the forum which Dr. Morgan has chosen; therefore, lest the Authority's silence be interpreted as acquiescence in the use of the aforesaid methods,

BE IT RESOLVED, That the Tennessee Valley Authority hereby disavows such methods in the discussion of its problems as injurious to the project and to the public interest.

MR. HARCOURT MORGAN: I should like to ask the Chairman, if permissible, to whom he refers as being absent from Board meetings five months.

THE PRESIDENT: To whom do you refer?

ARTHUR MORGAN: To Mr. Harcourt Morgan. Not in one period of time but in the course of a year.

HARCOURT MORGAN: I would like to explain that situation. I think you are possibly informed of my very serious illness. I was in a hospital for more than three months. I can give you the dates. The last date that I was present in August 1936 was August 11. I was then threatened with a nervous condition and I went away and came back on the tenth of September. At that time I was threatened with a serious carbuncle on the back of my neck. I went to bed. A Board meeting was called on the 15th of September, I think, and contrary to the doctor's direction I got up and went to that meeting.

HARCOURT A. MORGAN (continues): And then went home and went to the hospital. If I recollect right I didn't get out of the hospital until the last days of November -- three weeks of that period it was a question of which way I was to go. During the convalescence in December, during which time I had a nurse in my home, but carried on -- that is, authoritative activities with representatives of the staff and held two meetings. Two meetings were held during December in my home out of deference to my condition. I was unable to go to the office. I was unable to go to the office until some time in January and the first meeting I attended in January was on January 15. I think that explanation of the Chairman's statement is essential.

CHAIRMAN MORGAN: I'd like to add, there was no inference whatever of undesirable evidence.

HARCOURT A. MORGAN: It still is an open statement without any comment.

CHAIRMAN MORGAN: That is correct, but my implications that that same flexibility should apply to all members of the Board.

THE PRESIDENT: The next allegation on the part of Dr. H. A. Morgan and Mr. Lilienthal in the memorandum of January 18, reads as follows: "It is not permissible for Arthur E. Morgan as an expression of disagreement to engage in unsupported attacks upon the integrity, professional ethics, and competence of key members of the staff and to harrass and interfere with them while they are carrying out duties resulting from decisions duly arrived at by a majority of the Board of Directors."

Dr. Harcourt Morgan and Mr. Lilienthal, upon what facts was this charge made?

MR. LILIENTHAL: Mr. President, this is an extremely grave charge, and presents a situation -- a series of facts which are very distressing -- were very disruptive, and which to explain requires an extended statement of facts. I hope that in view of the importance and gravity of the charge that we may have an opportunity to state this matter in the detail which it deserves. The first set of facts upon which this charge is predicated relates to the attacks upon counsel for the Authority during the trial at Chattanooga, Tennessee, of the so-called 18 utilities case, which, as you recall, was an attack upon the constitutional validity of the Tennessee Valley Authority Act. This instance is illustrative of the type of opposition -- of disruptive opposition from within the Authority from which we have suffered -- from which the T.V.A. project has suffered -- from Chairman Morgan in varying degrees. Because it is so serious and so illuminative of the Administrative problems with which we are confronted, I should like to submit as an Exhibit to this statement a completely documented file, rather extensive, which gives the entire story and demonstrates, I think, unquestionably the accuracy of the general charge which I shall outline. The full significance of what has occurred in this instance can only be appreciated from a study of this documentary record, and everything that I shall say is based upon this record. I find that in this record -- in this file -- there are one or two memoranda from Mr. E. L. Chandler to Mr. James Florence Fly, dated sometime in November of 1937, which have been omitted from the files. I find it here.

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I happen to regard these as immaterial, but Chairman Morgan has stated in the discussion of this matter with the Board that he regards them as very significant. I want to assure you that we will promptly supply copies for the record of those additional memoranda which are extensive. Mr. President, six days before the 18 companies suit came to trial at Chattanooga, Chairman Morgan appeared in Chattanooga at the request of Mr. Fly, General Counsel of the Authority, to discuss the possible testimony by the Chairman in that litigation. The telegrams requesting his appearance and so on are part of this file. A long conference was held, attended by Chairman Morgan, Mr. Fly, and Mr. John Lord O'Brien, whom I am sure you are familiar with, a distinguished attorney of Buffalo, New York, who has been for some years special counsel for the Tennessee Valley Authority in its constitutional litigation. In that conference, certain statements were made. It was an extended conference. A report of the conference in detail is included in this documentary file in a memorandum dated November 17, 1937. I should like to quote certain portions of that record: "He (the Chairman)/and parenthetically in the course of this discussion with Mr. Fly and Mr. O'Brien/ pointedly criticized some of the power transactions and some of the lines and construction jobs and expressed the idea that it would be possible for the Court to declare some of such activities illegal without affecting the whole plan." "Further," in the memorandum, "he (Chairman Morgan) questioned us /meaning Mr. Fly and Mr. O'Brien/ somewhat upon the legal series of the case; how the case might be divided up; what the grouping of the charges were, and sounded us out on the legal possibility that the court could and would take the view that some of the power operations might be enjoined and the rest of the program remained intact. Mr. O'Brien and I soon gathered the drift of this discussion and tried to impress upon him the significant point that anything which damaged any phase of our case, particularly anything coming from a man in his position, could not but damage the entire case. We expressed the thought that if the court concluded that the plan was bad, it was very likely to defeat us on the entire cause."

Another quotation -- and these are excerpts from the entire record: "Again the Chairman drifted into an oral criticism of the other Board members, and, finally backed to a discussion of the theories of the case. Repeatedly, he came back to the same problem of finding some theory of the case or possible judicial decision whereby certain of the power activities might be enjoined." According to a memorandum of November 18, from Mr. Fly, it is stated "A third point which was not mentioned in the rough draft of yesterday, was that the chairman asked for a list of the proposed witnesses." (Parenthetically, meaning the witnesses of the T.V.A. as of course the Power Company witnesses were not made available to us.) "I gave him a list of our own engineering staff and did not volunteer a list of the outside witnesses; however, he said he wanted the latter and I gave them to him. He indicated that he expected to talk to the witnesses in the next few days, but he drew no sharp line between the engineers in our own organization and those which we have retained specially on the case. The Chairman has in fact been talking extensively to our own engineers but I do not know with any accuracy the scope of his work with them. It has not been reported to me."

At the same time, six days before this momentous constitutional litigation was to begin and while counsel and engineers were all under great strain of preparing for this case against some 50 lawyers headed by the late Newton D. Baker, the Chairman, in writing, charged counsel first, collusion with the other directors in excluding him from the case; second, endeavoring to commit him to unapproved policies, and third, violating administrative procedure in calling directly upon engineers for assistance, and fourth, calling upon at least one engineer for an improper type of evidence. I am not referring at the time to the place in the voluminous record where these statements are documented. These charges which were made in writing were also repeated orally.

THE PRESIDENT: Who were they made to?

MR. LILIENTHAL: To Mr. Fly.

THE PRESIDENT: Counsel for the TVA?

MR. LILIENTHAL: Counsel for the TVA, and in our opinion they were without any foundation in fact, as the subsequent analysis of this record shows, and they constituted an improper harrassment of counsel at a critical time. This is in support of a specific charge in this memorandum to you.

THE PRESIDENT: Was the trial then on or was it just about to begin?

MR. LILIENTHAL: This was six days before the trial began. In this memorandum by Chairman Morgan to General Counsel Fly and in these conferences the Chairman emphasized the significance of his position as Chairman, his standing as an engineer, his experience in adjusting rates between conflicting interests, and asserted that he ought to have a guiding hand in the conduct of the case.

Despite the foregoing embarrassments (to understate the case) Chairman Morgan, at the suggestion of counsel, attended a number of conferences concerning the proposed testimony of different witnesses. He requested and he received a list of prospective witnesses. As the trial proceeded, he was forwarded complete copies of all hydraulic engineering testimony of the opposition which, of course, presented its case first. He had offered no suggestions in aid of the preparation.

Some weeks later, in the midst of the trial, on the fourteenth of December Chairman Morgan wrote Mr. E. L. Chandler, a TVA engineer of very high standing and ability, reprimanding him for preparing engineering data of false or misleading character, stating that this was improper professional conduct and advising the engineer to write the General Counsel and withdraw the material submitted. The memorandum to which I refer is No. 87 in this - for ready reference - in this file which I desire to submit as an exhibit, supplemented as it will be, as I have said before by additional memorandums.

Forwarding a copy of that memorandum the Chairman wrote Mr. Fly, with a copy to Mr. John Lord O'Brian, that a number of engineers had expressed to Chairman Morgan their embarrassment at being called upon to give testimony of a misleading character. Mr. Fly, on December 20, (memorandum in this record) called upon the Chairman to support his charges or to withdraw them. On December 22, Mr. John Lord O'Brian made a similar demand. I need not point out the extreme seriousness of any such charge unless made with the fullest support of the facts.

The Chairman did not respond to these demands for support of these charges or a withdrawal of them in the alternative. On December 29, after being reliably informed that the Chairman was secretly conferring with engineers in the specific attempt to procure evidence of unprofessional conduct by the lawyers and the engineers or in the alternative, the lawyers or the engineers, Mr. Fly again called upon the Chairman to support the charges specifically or to withdraw them.

I call your attention, Mr. President, to the fact that during this time this extremely crucial case was on trial. On December 30, in a memorandum which is No. 74 in this file, the Chairman responded, discussing vaguely (that is to say without specification) three cases, one of which involved Mr. Chandler, and as shown by this file that is entirely without merit in our opinion.

Since that time, although frequently requested by both Mr. Fly and Mr. O'Brian, the Chairman has refused to give any further information as to the basis of his charges of unprofessional conduct. He has persistently refused to give the names or the circumstances under which prospective witnesses were alleged to have been improperly influenced by counsel. Both Mr. Fly and Mr. O'Brian felt that such charges against counsel could not go unnoticed. In the midst of the case they were forced to carry on an extensive inquiry and the long series of communications with the various witnesses and with all the parties who had been considered as witnesses, none of which would have been necessary if the supporting facts to this grave charge had been furnished. Evidently the entire field was covered and the complete file establishes the utterly groundless character of the charges. Every one of the witnesses used, or men who were prospective witnesses, whether within the TVA or outside the TVA, have filed statements in this record in that respect.

This incident came at a time when the Authority's life was at stake, and more than the Authority's life was at stake. In many ways it may be said that the future of the conservation policies of this country were at stake. And the burden of it fell upon the men who were charged with this grave responsibility. As Mr. O'Brian stated, the making and the continuance of those charges was a grave harassment of counsel under these extreme circumstances and was disruptive of the work on the case itself. I think we all know enough about the conservative character of Mr. John Lord O'Brian, of his own experience in the trial of cases and the counselling of important interests and I should therefore like to read orally and to refer in the record to his second letter to Chairman Morgan dated January 9 in this respect.

"Dear Dr. Morgan:

"I have your letter of December 30, 1937 (This is a memorandum containing unsupported charges).

"Prior to the trial and during the trial I have actively participated in and have closely observed the preparation and presentation of the testimony. Since receiving your recent letter, I have again gone over the file of material concerning the preparation and presentation of the engineer's testimony in the case now on trial, and have talked with the attorneys and also with a number of the witnesses. As a result, I am more than ever confirmed in the opinion which I previously expressed to you that the case has been handled with unusual ability and in accordance with the highest standards of integrity.

"To this I desire to especially call your attention. Your charges, coming while the case was actively on trial have had a disrupting and demoralizing effect upon all the attorneys and upon the conduct of the Authority's case.

"After careful review of the matter I am convinced that charges must have originated in some misunderstanding that have no real foundation in fact. The matter ought to be definitely cleared up in justice to the lawyers and also in justice to the Authority's case which needs the best efforts of all of the attorneys. As all the attorneys are now under great strain in the stages of this trial I am writing to ask whether you will not clear the record and set the members of the legal staff free from a very heavy and, I think, unwarranted burden of anxiety at this critical time." That is the end of Mr. O'Brian's letter.

Now, at about this stage, the Board received copies of these memoranda and, being cognizant of the situation felt it imperative to recognize the gravity of this interference of the conduct of the case; and it held a meeting and the circumstances of that meeting are set out, the difficulties we had in securing the chairman's presence, the necessity for several recesses and respectful request to him to appear, as otherwise the matter could not be cleared since it was a matter in which he had made charges.

The Board, by resolution gave a vote of confidence to the legal and engineering staff concerned after a study of the record and a discussion and the discussion was taken down except the very first part of the board meeting, by stenographers and is available, whether in this record or not I am not sure. Two resolutions were adopted, one condemning this conduct as disruptive and an interference with the conduct with the Authority's business and second, a vote of confidence in counsel and the engineers. Chairman Morgan declined to vote in favor of a resolution which embraced both engineers and lawyers, although he stated on the record that he would be willing to approve a resolution if it were confined to the engineers alone. At the board meeting at which this resolution was considered I asked Chairman Morgan, and a member of the legal division asked Chairman Morgan in fairness to these lawyers whose professional integrity had been attacked, in fairness to the case, in fairness to the court, to name the people against whom pressure had been exerted and against improper influence had been exerted. Chairman Morgan, as in this hearing, persistently refused to give even a clue as to the circumstances under which the allegedly unprofessional pressure had been put upon witnesses and likewise refused to withdraw the charges. Despite the fact that from his own statement in this record it is clear, it seems to me to any fair student of this record that the charges were reckless and without foundation in fact the Chairman has continued to this day in his tenacious refusal to withdraw the charges or to give the names of the witnesses concerned or any other specific information, and I hope that the President of the United States today will seek to secure the names of those witnesses which the members of this Board and the legal division were unable to secure. As I say, I should like to submit as an exhibit to that portion of the statement this entire file with the supplement referred to. (File not submitted at this time.)

Another instance of facts supporting this same charge of interference and harrassment in the conduct of Authority's business is the position and conduct of Chairman Morgan in the matter of the negotiations of the contract with the Aluminum Company, which contract I described this morning. You will recall I stated there the background of those negotiations and the reasons, which we thought were good reasons why the Authority declined to enter into a contract respecting a division of so-called benefits to be derived by the parties from the proposed construction of Fontana Dam. The decision of the Board not to pursue negotiations relating to Fontana Dam was reached May 19th, 1936, at a conference of all the Directors here in Washington shortly after a conference with you, Sir. It soon came to the attention of the Board, however, that Mr. Adolph J. Ackerman, a former employee of the Aluminum Company, one of the engineers, who had been designated by Chairman Morgan to carry on Fontana Dam negotiations for the Authority, was continuing unofficial negotiations with the company on the Fontana Dam matter, notwithstanding the fact that the Board had limited negotiations in its May 19th meeting for the future to the purchase and sale of power. In those unofficial negotiations, I want to make it clear I am not ascribing to Mr. Ackerman any dishonesty or corruption, in continuing the negotiation. All I am saying the fact that that is what happened. Thereupon on June 2, 1936 Chairman Morgan being absent, the beginning of an extended absence of some six weeks for a rest -- and I am not criticizing the absence -the Board adopted a resolution providing that there should be no further communication with Congress during the current session with reference to Fontana Dam and no futher negotiation with the Aluminum Company with regard to that Dam.

THE PRESIDENT: The appropriation having been turned down by the Committee by this time?

MR. LILIENTHAL: Yes, sir. And by the company. I am submitting a copy of this resolution for the record.

EXHIBIT 33:

MINUTE ENTRY
BOARD MEETING HELD ON JUNE 2, 1936.

"As a result of its lengthy discussion concerning the proposed Fontana Dam construction project, the Board arrived at the following conclusions:

1. No further communication is to be had with Congress concerning authorization to construct the Fontana Dam.
2. All negotiations with the Aluminum Company of America involving the acquisition of the Fontana Dam site are to be immediately discontinued.
3. The conclusions of the Board with regard to the acquisition of the Fontana Dam site are not to preclude further negotiations with the Aluminum Company of America relating to the interchange and sale of electric energy."

Nevertheless, early in August, 1936 Chairman Morgan conferred in New York with Mr. Arthur V. Davis, Chairman of the Board of Aluminum Co. According to Chairman Morgan's own statement in writing of that conversation in a memorandum dated August 15, 1936, he told Mr. Davis that he disagreed with the Board action in discontinuing Fontana negotiations and that he would seek reconsideration by the Board. Moreover, without prior consultation with the Board he outlined to Mr. Davis a basis upon which an agreement might be worked out if Fontana negotiations were resumed. He not only questioned the appropriateness of the Board action but also asked Mr. Davis "whether discontinuance of negotiations responded to the wishes of the Aluminum Company and to what extent they were informed of his action." The memorandum of August 15 to which I refer I submit as an exhibit.

Exhibit 34:

The Board of Directors
Arthur E. Morgan
August 15, 1936

ALUMINUM COMPANY NEGOTIATIONS

While I was in New York last week, I spoke for a moment to Mr. A. V. Davis of the Aluminum Company. I told him of the action of the Board to the effect that negotiations with the Aluminum Company should be discontinued and that therefore we could not go further with negotiations with them. I told him that inasmuch as I considered the matter to be vital to the unified control of the Tennessee River, it was my intention to bring the matter to the Board again and to ask for reconsideration of their action. He asked in case of any renewal of negotiations what would be the first step.

My reply was substantially as follows: Technical negotiations have been carried on through the Aluminum Company's assistant chief engineer, Mr. Growden. It is the opinion of our engineers that Mr. Growden has a theory concerning the distribution of the additional power which will result from unified operations, with which our engineers cannot agree. Mr. Growden, in their opinion, assumes that of the additional power which would result from integrated control a very large part should go to the Aluminum Company. Our engineers do not agree with this suggested apportionment. It seems that perhaps the next step would be for the Aluminum Company to bring in some outside disinterested engineer who was not committed to any theory about the matter to make a review of the situation with our engineers to discover whether the Aluminum Company would find a more moderate position acceptable. Unless that result can be achieved, it would seem to be an almost impossible gap between the engineers of the Aluminum Company and those of the TVA from the point of technical appraisal. Mr. Davis indicated that he would not be averse to such an appraisal. I reiterated to him, however, that the Board had taken official action discontinuing negotiations.

In view of the fact that the engineers under my direction were carrying on these negotiations, I was desirous of knowing whether discontinuance of negotiations corresponded to the wishes of the Aluminum Company and to what extent they were informed of such action. Mr. Davis told me he had had no information as to the action of the Board.

(S) Arthur E. Morgan

cc Mr. John E. Blandford
Dr. H. A. Morgan
Mr. David E. Lilienthal

There is one other set of facts supporting this same charge and that relates to Chairman Morgan's interference in the Wilson Dam valuation and allocation. In this case it is our opinion that he not only failed to cooperate with the staff to whom this matter had been delegated by proper action of the Board, a staff engaged on an important duty imposed by Congress, but he actually interfered with their work.

Mr. President, you know that under Section 14 of the TVA Act the Board is required to determine the value of Wilson Dam and other properties. By unanimous action of the Board the position of advisor to the Board was created and was filled, likewise by unanimous action, by Dr. Martin G. Glaeser, who was to head a committee of economic consultants consisting of himself, Professor James Bonbright of Columbia University, who was, as I recall, appointed as a trustee of New York Power Authority by yourself when you were Governor, and Dr. Edward Morehouse of the Wisconsin Public Service Commission. This committee was charged by the Board with the primary responsibility of preparing recommendations to the Board on questions of value and allocation in conformity with Section 14 of the Act. These problems are of tremendous complexity; both the valuation and the allocation require elaborate engineering studies:

In addition, they raised altogether novel questions of social and economic theory. A special difficulty on the allocation was the fact that the act required "final" allocations, which logically should be based on final determinations as to relative usefulness of the projects for the various purposes, determinations which could not be made until the completion of the Tennessee River system. The difficulties were enhanced by the requirement of the act that the valuation and allocations on Wilson Dam must be finally submitted to the Congress by January 1, 1937. Whether this dead line could be met in any event was subject to serious doubt, but it was clear that if any serious attempt were made it would have to be attended by the closest cooperation among all those engaged in the work.

Although the primary responsibility for the valuation work was placed upon Dr. Glaeser's committee, some of the staff which were supposed to be assisting in the undertaking were not subject to his direct administrative control. Principal among these were engineers on Chairman Morgan's staff to whom the Board assigned the responsibility of assisting the committee by making an appraisal of Wilson Dam for its use in the preparation of the valuation recommendations. Instead of coordinating the work of these engineers with that of Dr. Glaeser, Chairman Morgan on his own responsibility broadened the scope of their work to include not only the appraisal but a complete independent valuation.

EXHIBIT

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Dr. Glaeser in a memorandum which he wrote to Mr. Lilienthal on January 9, 1937 stated that the appraisal unit under Chairman Morgan's direction had assumed the job of valuation as well as appraisal and pursuant to its own theories of valuation had adopted methods of conducting its appraisal which did not conform to the valuation theories of the committee constituted by the Board.

In the same memorandum Dr. Glaeser also complained that both Chairman Morgan and the engineers on his staff seemed reluctant to supply him with data essential to the work of allocation and that there was a delay of four and a half months in securing from Dr. Morgan's staff certain data essential to the work of allocation.

Partly as a result of these delays and partly due to the complexity of the problem no recommendations on allocation had been made to the Board by the valuation committee at the time of the appropriation hearings in April of 1937 before the House Appropriations Committee. Board discussions had clearly revealed that no allocation could be made pending the solution of many problems which were still open. Nevertheless, when Congressman Taber questioned Chairman Morgan on dam allocations he proved to have at his hand a complete set of allocation figures for the dams constructed, under construction and scheduled for construction, and these he forth with supplied the Committee, although they had never been supplied to the Board and the Board was unaware that they had been prepared.

The Chairman's explanatory statement, again illustrating his use of the prestige of his office in support of his personal views, in presenting this grave administrative problem with which we were contending is as follows. This is a quotation from his testimony before the House Appropriations Committee:

Dr. Morgan. I have a statement here that has not been approved by the T.V.A. Board, but I can give you my own opinion. I am satisfied personally that it is an excellent allocation. The Board has not acted upon it either pro or con, but our engineers, under my direction have worked it out.

That appears on page 366 of the Hearings before the Subcommittee of the Committee on Appropriations of the House, Second Deficiency Appropriation Bill for 1937, April 12, 1937.

While Chairman Morgan thus explained that the allocations were his own and that they had not been approved by the Board, his proposals to a Committee of Congress in effect operate as a commitment of the Authority. Unless the ultimate allocation figures are substantially the same as those recommended by Chairman Morgan, opponents of the Authority's power activities will, of course, attempt to make capital of every deviation.

It is interesting to note the wide disparity, so far as the allocations to power is concerned, between this proposed allocation and that approved by the Federal Power Commission recently for the Bonneville Dam.

Those constitute the facts underlying the charges to which you refer in the memorandum of Dr. H. A. Morgan and myself dated January 18, 1938.

MR. EARLY: Do you want to submit that volume in the record, Mr. Lillienthal?

THE PRESIDENT: It is not quite complete. We won't need to copy that unless it is desired by other people. I suggest you complete it, insert those items which have been left out, and file it with me as an exhibit to be available for future use if desired.

MR. A. E. MORGAN: Will the list of items in that be included in the testimony?

THE PRESIDENT: We will have the index copied and sent to Chairman Morgan and will give him, at the same time, a list of the items that go in.

MR. LILLIENTHAL: I will send him the list, and a copy of the index.

THE PRESIDENT: Is that all?

MR. LILLIENTHAL: Yes.

THE PRESIDENT: Chairman Morgan, I should like to know if you have any reply to make to the allegations that have been made by Mr. Lillienthal?

CHAIRMAN MORGAN: The statement he has made contains, involves striking and vital inaccuracies, misrepresentations, and omissions. I think that statement, and the large amount of matter included is a very clear illustration of the futility as a fact-finding process of such meeting as this was planned to be.

THE PRESIDENT: Of course that is a general statement that you have just made. Can you specify in any way -- give me a lead -- as to what was left out, as to how it is misrepresentative.

CHAIRMAN MORGAN: As I said in the first statement, for a long time I hoped for an opportunity to do that. I feel that that day is past, and I have nothing to add to my first statement.

THE PRESIDENT: Would you be ready to give me that, an explanation of this statement of yours, within a week?

CHAIRMAN MORGAN: I don't think I have anything to add to that first statement:

THE PRESIDENT: Would you be ready to give me that - an explanation of this statement of yours, within a week?

CHAIRMAN MORGAN: I have nothing to add to that first statement.

THE PRESIDENT: Could you do it in two weeks?

CHAIRMAN MORGAN: I have the same thing. I refer to my first statement.

THE PRESIDENT: In other words, doesn't it amount to this, that you decline to give any facts in support of the general allegation?

CHAIRMAN MORGAN: I think my first statement covers it.

THE PRESIDENT: I take judicial notice of the fact that Chairman Morgan has declined, definitely, to give any reply to any of the questions of fact that have been put.

CHAIRMAN MORGAN: I have not declined to give replies -- only under certain circumstances.

THE PRESIDENT: Will you be ready to give the replies within any reasonable time?

CHAIRMAN MORGAN: If I can be assured of a free access to the --- I think I don't want to make any statement or make any commitment which would imply that any other method of inquiry should be postponed until I do something.

THE PRESIDENT: That is neither here nor there. I am not opposing any other inquiry, but I am, to a very great degree, as President, responsible for the conduct of the work of the T.V.A. I cannot delay indefinitely and I am asking you to make it possible for the work of the Authority to go along by clearing up certain general allegations that have been made by the presentation of certain specific facts.

CHAIRMAN MORGAN: Mr. President, the whole situation has developed in ways that I could not foresee, and I think, to answer your questions I will have to -- I would like to get a copy of your remarks and then give you a considered answer just as quickly as I can -- in a day or two. You are thinking in terms of a lawyer, with a lawyer's background -- Mr. Lilienthal is -- and I am thinking in terms of an engineer and Administrator.

THE PRESIDENT: As far as law goes, I have not been a lawyer for a great many years and I have forgotten more law than I ever learned.

CHAIRMAN MORGAN: I think I am fair in asking for a brief period to arrive at a judgment on that point.

THE PRESIDENT: I want to do everything I can to help along that line. As I have said, I do want to clear up factual matters. After they are cleared up, I am perfectly willing to go into questions of ultimate policy, but I am convinced that we have to clear up factual matters first and I want to give you every opportunity to do that. I am perfectly willing to make that a period of a few days, a week, or even two weeks, as long as I can get this factual matter cleared up.

CHAIRMAN MORGAN: What has been said here is multitudinous, and I find it difficult to arrive at a judgment on the spur of a moment. If I can have your words in the record and to read them over, I can answer them.

MR. LILIENTHAL: There is an opportunity here, aside from the complexities, of clearing up a grave injustice both to human beings and to the T.V.A. and I would like to renew my suggestion that you assist us in that respect, subject to your pleasure. In Dr. Morgan's Memorandum to Mr. Fly, he states that there were three engineers who came to him, separately, and indicated, in effect -- the entire memorandum is in the record -- that they were under pressure to testify in ways they could not conscientiously do. Mr. Fly has properly asked for the names of those engineers. The Board has formerly asked for the names of those engineers. Mr. O'Brien has asked for the names of those engineers. There is no complexity about such a question. There is no problem of studying the record in that connection. It seems to me essential and I hope that you will see fit to ask, as Chief Executive of this Country, what are the names of those three engineers.

THE PRESIDENT: I am thinking not only in terms of these three engineers but of all the other engineers. I think in fairness to the whole engineering staff, every individual on the staff who is closely or remotely connected with this trial, in fairness to them, this matter which in a sense overhangs all of them should be cleared up. Couldn't you do that now?

CHAIRMAN MORGAN: I consider that matter very carefully. I have to consider the welfare of those engineers as well as other engineers and I think I need time for a considered reply to all that. It is not as simple as it seems.

THE PRESIDENT: Meanwhile, a great many people are suffering.

MR. LILIENTHAL: I hope there is an opportunity to check this record and use the statements of the engineers refuting this suggestion of dishonorable conduct on their part.

THE PRESIDENT: For the record, the next charge reads that it was not permissible for Arthur E. Morgan to cooperate with a utility executive in the preparation of a memorandum, the express purpose of which was to show that a particular decision of the Board was wrong and actuated by improper motives.

I think that the next charge, which is very similar, can be discussed at the same time. It is that it was not permissible for Arthur E. Morgan to collaborate with a former chief engineer of the Insull Utility System in the preparation of a detailed recommendation on a power pooling policy, which report proposed evasions and violations of the TVA Act; nor was it permissible, during the negotiations, for him to permit such report to be made available to the utilities.

MR. LILIENTHAL: We will present those together as they are related. This really consists of three parts. That is, the charge relating to the power pooling matter.

First, Chairman Morgan collaborated without authority from the Board with the former Chief Engineer of the Middle West Utilities Company - the Insull Holding Company - in the preparation of the detailed recommendation of power pooling policy. Second, that the report proposed evasions and violations of the TVA Act. And third, that the report was made available during and in the course of the negotiations to the Utilities participating in the negotiation.

The facts are these: You will recall, Mr. President, that in September of 1936 you invited representatives of the Government and the Commonwealth and Southern Corporation and others, to a conference with you on September 30th to discuss the possibility of transmission line pool. The invitation explicitly limited the conference to a discussion of the pooling transmission lines and it was so understood by all the government representatives except Chairman Morgan.

The Board took action to prepare for this conference and by a resolution entrusted to Dr. Martin G. Glaeser to whom I have previously referred, the responsibility for assembling such data as might be useful and for formulating recommendations.

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The Board subsequently learned however that Chairman Morgan, with the assistance, over a period of almost ten days -- and I shall support that by documentary evidence - of an engineer named G. W. Hamilton. He was independently engaged in preparing a memorandum on the subject.

Now as to the Hamilton matter. In the first place, we raise no question whatever as to Mr. Hamilton's ability as an engineer nor as to his integrity nor as to his personal honesty. It doesn't matter. The fact about Mr. Hamilton is that he worked for Insull Companies since 1906, and in 1932, about the time of the collapse of that system was Vice-President and Chief Engineer for the Middle West Utilities Company. Earlier in the period of the TVA's history an application with respect to Mr. Hamilton's employment as a consultant or, I think, perhaps as a permanent employee, was rejected by the Board expressly because of concern not as to his technical ability but that his background might affect his judgment on policy questions. Later he was retained as a consultant, but to overcome this concern that policy questions would be influenced by a man of his background - and again without any reflection on him at all - his contract with the Authority, contrary to most of the Authority's standard contracts for consulting services, was narrowly limited to, and I quote: "Consulting and advisory services in connection with design and construction of switchyard and other distribution facilities to the Authority when and as requested by the Authority." And I should like to submit for the record a copy of that consultant's contract. (The contract is entitled "Tennessee Valley Authority Contract for Services as Temporary Consultant" - between George W. Hamilton of Chicago, Illinois, and the Tennessee Valley Authority, approved by the Board November 27, 1935). In practice the scope of his services was limited to these literal terms of the contract. For example, an informal proposal to the Board to use Mr. Hamilton as a consulting engineer and as a witness in the condemnation suit arising out of the Hiawassi Dam Project was rejected because of this but without reflection as to his abilities.

Notwithstanding Mr. Hamilton's background and the known practice of the Board in regard to that matter, Mr. Hamilton, it subsequently appears, was asked by the Chairman to collaborate with him in the preparation of his power pool memorandum and without advising the Board. Mr. Hamilton's voucher, which is required under our practice where travel is taken on while a consultant is in our service shows that he worked with Chairman Morgan continuously from September 22 until September 30, the day of the power pool conference in this office. I should like to submit that file. I will have it referred to tomorrow and submit that for the record. He worked for the Chairman, the travel voucher shows, in Knoxville, in New York City and in Washington. He gave this as the only work which he did during this period from September 22 till September 30. His travel voucher does not limit his work to technical phases but is couched in general terms: "On official business, working with Dr. Morgan in connection with power transmission pool" and similar remarks.

THE PRESIDENT: Was that voucher approved by the Auditor of the TVA?

MR. LILIENTHAL: That is a later step in this recital. It was ultimately approved.

THE PRESIDENT: That the work performed according to your statement was not in accord with the contract of Hamilton?

MR. LILIENTHAL: It was a question as to that and our counsel advised that the contract and Chairman Morgan's authority with respect to engineers was sufficiently broad that he should be paid and he was paid. I found myself unable to vote for that action -- the only dissenting vote in the entire history of the Authority by either Dr. H. A. Morgan or myself, my ground being that while I was of course willing to accept counsel's view as to our legal obligation I felt it important that they should know what it was Mr. Hamilton did and our efforts to learn that thus far have been unsuccessful, that is, to know in detail.

On the morning of September twenty-ninth at your suggestion a conference was held in the offices of the Tennessee Valley Authority -- I believe it was at your suggestion -- certainly with your approval and of the Government conferees and I can't take time to name them. At that time Dr. Morgan handed me a mimeographed copy of his memorandum on power pooling and said he had been unable to give me and Dr. Glaeser a copy earlier because the memorandum had only been completed and mimeographed the night before. Mr. Hamilton's voucher shows that the preceding day, the day before the conference of the Government conferees, Dr. Morgan and Mr. Hamilton were in New York City working on the power transmission pool matter.

This memorandum on power pooling, prepared by Dr. Morgan and Mr. Hamilton, was in no sense a technical document but was devoted almost entirely to the principles and to the policies which should govern power pooling and generally the relationships between Government and the private utility industry. You have probably read that memorandum and at least know its general contents. Only three or more than a score of the pages of this memorandum dealing with the respective rights of public utilities were devoted to the rights of the public. And these three pages in my opinion substantially understated the existing rights of the public and the Government under our laws of practice. The point I make of course is that this memorandum was in no sense a technical document but a statement of broad policy. Many pages in this memorandum were devoted to the rights of the utility companies and these were stated in terms far stronger than most utilities would claim for themselves. For example, the right to capitalize promoters profits. It was this memorandum, which, as will appear in remarks I plan to make in a moment was made available to portions of the press in advance of presentation to the government conferees and without consultations or approval of the board and so far as I know without your approval.

When Mr. Hamilton's voucher was challenged by the auditors as outside the contract, Chairman Morgan was asked to specify the work which had been done by Mr. Hamilton, and in a Board meeting at which I was not present, Dr. H. A. Morgan requested detailed information as to what it was that Mr. Hamilton did during this period. Chairman Morgan did not respond to this request for specification, but relied upon general statements that the work was within the contract. Instead, he took exception to the right in the TVA charged with the responsibility with disbursement of government funds to inquire into the nature of services rendered to the Chairman of the Board. He implied that these staff members were improperly motivated;

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and in that connection I should like to submit a memorandum from Chairman Morgan to Mr. Frank J. Carr, Comptroller of the Authority, dated March 3, and Mr. Carr's reply dated March 8. (These two memoranda relate to bill rendered by Mr. George W. Hamilton for consulting services.)

PRESIDENT ROOSEVELT: 1937?

MR. LILIENTHAL: 1937. The voucher was finally paid under the circumstances that I have previously related. Neither Chairman Morgan nor Mr. Hamilton have ever specified in writing the nature of the work performed by Mr. Hamilton with relation to the power pool memorandum. While the General Counsel, as I have said, approved this payment as to its legality, he did say expressly as he states, because he could not do otherwise than accept the Chairman's general statement that the services rendered were within the contract.

While Chairman Morgan was preparing in further support of the charges of unpermissible conduct -- while Chairman was preparing his memorandum Dr. Glaeser, to whom the Board had delegated this preliminary work of preparing the memorandum for the Board which was duly submitted to the Board through the Acting General Manager. Dr. Glaeser also supplied Chairman with a copy. Dr. Glaeser advises that he asked Dr. Morgan for a copy of the additional memorandum he was preparing as he had to put his own memorandum in final form. No copy was supplied Dr. Glaeser -- no copy was supplied to any one in the TVA until the morning of the conference with the government conferees and just before they gathered I was handed a mimeographed copy and was told it had not been supplied to me earlier because it had been completed and mimeographed the day before.

We have concluded and we charged that the preparation of this memorandum in collaboration with Mr. Hamilton under the circumstances is not permissible conduct for the Chairman of the Board of the TVA. We raise no question of personal honor or dishonesty on the part of either the Chairman or Mr. Hamilton in this connection. This charge refers to unpermissible conduct.

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We have charged in our memorandum of January 18, Mr. President, that the memorandum prepared by Dr. Morgan and Mr. Hamilton proposed violations and evasions of the TVA Act and although that memorandum was supplied to you and is in your office for the purposes of this record, I should like to submit a copy of that memorandum here. (The memorandum relates to "proposed TVA and Commonwealth and Southern Corp. Power Transmission Pool by Arthur E. Morgan" -- September 28, 1936.)

PRESIDENT ROOSEVELT: That can be put with the exhibits but not copied unless requested.

MR. LILIENTHAL: Perhaps it is important to make a somewhat detailed analysis as to why we regard this as an evasion and violation of the Act, and perhaps I can begin and if you care to stop me --

PRESIDENT ROOSEVELT: I think if you could summarize it in two or three sentences.

CHAIRMAN MORGAN: It would suit me for it to be added to the record.

PRESIDENT ROOSEVELT: Have you got it in manuscript form?

MR. LILIENTHAL: Yes sir.

PRESIDENT ROOSEVELT: Suppose you summarize it in two or three sentences and then put the whole thing into the record. What in general were the alleged violations and evasions of the Act.

MR. LILIENTHAL: The Tennessee Valley Authority Act gives an unequivocal preferential right to municipalities and other public agencies to purchase TVA power under certain specified policies and conditions. The proposal in this memorandum in our opinion and by reference to particular paragraphs, particularly paragraph No. 20, set up obstacles to the exercise of that preferential right which defeated the right. It is provided that where a municipality desires to purchase power from the pool, it may not purchase that power unless it has complied with certain conditions; first, that it shall acquire the existing private system; second, that there shall be established certain logical and normal areas or boundaries of distribution systems and these conditions are elaborated. Now, while the Authority may urge, as it does, and recommend acquisition, it has no power to compel acquisition as a condition to the sale of power. Then there is a second condition, that the Authority agree upon logical areas and boundaries of distribution systems and that the Authority shall sell its power to communities only in such areas. Now, there is nothing in the act --

PRESIDENT ROOSEVELT: You mean only in such areas that have been allocated to the TVA?

MR. Lilienthal: No, only in such areas that have been agreed upon between the TVA and power companies as being a proper distribution area. There is nothing in the Act which permits the Authority to attach as a condition of the sale that the municipality shall serve a certain area. The condition suggested would defeat the Act in another way, because if there were a number of municipalities and one declined to acquire its own distribution system and declined to participate in the distribution system then none of the municipalities in the area could obtain power which is contrary to the act. Furthermore, the price basis proposed in this memorandum sets out an effective bar to those provisions of the Act which give preference to municipalities in the purchase of power. The memorandum proposes that not only must a municipality, in order to have the privilege of purchasing power purchase the existing distribution system, but also it must pay "incidental costs or damages." That, as every one knows who is familiar with matters in the utility field, frequently amounts to as much as the physical cost of the property at its going value. TVA contracted to buy some property on August 9, 1934 from the Alabama Power Company. The Company testified before the State Commission that the incidental damages exceeded the purchase price of the properties themselves.

Another condition was that municipalities must reemploy existing competent personnel of utilities before they had the right to buy power. Our TVA policy has been to reemploy all qualified personnel and we believe in that policy. We recommend it to municipalities, but to set it up as a condition of violation of the Act. This is perhaps as serious as anything in support of this charge that this memorandum proposed evasions and violations of the Act. Section 30 of this memorandum, Mr. President, proposes as a key to the enforcement of pool administration that the pool contract set up the arrangement for the regulation of municipalities as to resale rates, et cetera, conform to principles agreed upon by TVA and the power companies. Here we have, as far as I know, the unprecedented suggestion that private agencies and power companies shall be given the power to participate in the regulation of rates of public agencies;

in other words that private agencies which are not entrusted with the direction of their own affairs without public supervision are now to be given the authority over the public agencies themselves and our conclusion generally is if there is any occasion for elaborating on it we will be glad to supply it. Our charge that this memorandum, as a whole, provides a method for defeating the right of public agencies to support.

We have also charged the release or the making available in such a way that the memorandum was available to the Utilities of this pooling memorandum at the time of this conference. On September 29, the day before the conference with you, Sir, on September 30, the Washington office of the McGraw-Hill Publishing Company telephoned the Washington office of the Tennessee Valley Authority and stated that the New York office had copies of Chairman Morgan's power-pool memorandum and requested a copy for the local office. Do you recall the McGraw Hill Publishing Company publishes Electrical World, which is the semi-official trade journal of the electric industry, and an editorial policy bitterly opposed to the Authority, as well as all of the Administration's projects related to power.

On October 1, the day after your conference, the New York Times at the close of a long discussion of the power-pool meeting setting forth certain points which were attributed to "spokesmen" for the President indicated that these defined the scope of the conference. The points made were paraphrased or directly quoted from the Chairman's mimeographed memorandum on pooling of September 28 which I have already observed appear to be at wide variance to the limitation you had placed upon the conference, namely, that it would be an exploration of the possibilities of transmission line pool. At a meeting at which Mr. Willkie and representatives of the Authority gathered to discuss a temporary extension of the contract, the so-called January 4 contract, Mr. Willkie displayed a copy of the memorandum. Chairman Morgan later explained that Mr. Willkie had secured the copy from a New York Times reporter. Upon publication of the New York Times account, Chairman Morgan wrote to you as follows:

"Washington, D.C.
October 1, 1936

"Dear Mr. President:

This morning's New York Times, in an article on yesterday's power pool conference, mentioned, without using my name, certain suggestions which appeared in a memorandum of mine on the proposed power pool, copy of which I sent to you on September 29. No copy of this memorandum was made available to the Times with my knowledge or consent, and if it was used without securing White House approval, it was very inappropriate and I sincerely regret it.

Sincerely yours,

Arthur M. Morgan."

Chairman Morgan did not explain how the New York Times secured its copies, nor did he charge any impropriety to the Times. The inference which we have drawn, and this is an inference, is that the Chairman made copies so generally available that they could readily be obtainable by interests adverse to the government without limitation as to use.

We have also charged cooperation with a utility executive in the preparation of the memorandum which is a fifth of this series of charges as to conduct which we believe not permissible by the head of an administrative agency. That charge is that Chairman Morgan cooperated with a utility in the preparation of a memorandum, the express purpose of which was to show that a particular decision of the Board was wrong and improperly motivated. The incident to which this charge refers was collaboration between Chairman Morgan and Mr. Wendell L. Willkie in a memorandum attacking the Board for allegedly misrepresenting Mr. Willkie's position on an essential question of Board policy.

The power pool negotiations to which I have referred were discontinued by you on January 25, 1937, for reasons stated in letters sent out at that time relating to the Gore injunction. However, at about the same time, it became necessary to consider negotiations for the renewal or extension of the January 4 contract which had been extended for three months from November 3, 1936, so that it would expire on February 3, 1937. I was formally designated by the Board to conduct negotiations for the Authority. In a letter I wrote to Mr. Willkie dated January 29, 1937, I made the following statement:

- "3. Your companies are not willing to contract for the sale and interchange of power from TVA unless that contract bars the Tennessee Valley Authority from selling power to any other agency in any part of the vast areas in the four states in which your companies carry on operations. In other words, as a condition of the purchase of any power, your position is that the Tennessee Valley Authority must give you a monopoly which would prevent it from selling power to municipalities, rural co-operatives or industries in any part of the states in which you operate".

These negotiations for the sale of power with no other factor involved had been carried on between the technical staffs of the TVA and the Commonwealth and Southern companies and they had reached an impasse because of the disagreement on this matter referred to in my letter, that is, the insistence of Mr. Willkie that our Authority should not sell power to municipal or other preferred customers -- preferred under the statute, so long as it sold power to Mr. Willkie's companies.

A final meeting with Mr. Willkie was held in Knoxville on February 2 in an effort to compose differences and reach some agreement.

THE PRESIDENT: February 2, 1937?

MR. LILIENTHAL: 1936.

THE PRESIDENT: 1937?

MR. LILIENTHAL: 1937, that is right, and reached some agreement by which the Authority could find a market for its surplus power without conditions which would result in a violation of the statute. At this meeting, which was a very lengthy one between Mr. Willkie, the General Counsel and members of the Board and staff, Chairman Morgan read to Mr. Willkie the passage which I have just read from my letter of January 29, and asked him if I had correctly interpreted Mr. Willkie's position. Mr. Willkie explained his position at great length over several hours and stated in his opinion it had not been correctly stated: But in the opinion of the Board and of the Board's counsel, Mr. Fly, who was also present, his explanation only reinforced the accuracy of the interpretation which had been placed upon it. Nevertheless, Chairman Morgan wrote a long memorandum to the Board immediately after the meeting, in which he charged that the Board had misrepresented Mr. Willkie's position.

On February 24, 1937, Chairman Morgan, in a memorandum directed to me, revealed that he had collaborated with Mr. Willkie in his position. I want to make it perfectly clear I am not suggesting any impropriety on Mr. Willkie's part in that collaboration. After all, it is Mr. Willkie's job to support and defend the positions which he takes. The point I am making is that this is not permissible conduct on the part of the Chairman of the T.V.A.

I should like to submit for the record a memorandum of the Chairman of the Board:

"After the meeting I read this memorandum to Mr. Willkie and asked him whether it accurately stated his position as presented to the Board. He confirmed the statement, sentence by sentence, as I read it to him, and said that I might make it public if I should see fit to do so."

It seems to me that the interpretation of the Board and the counsel of Mr. Willkie's position was clearly accurate. In a letter to me, dated February 1, Mr. Willkie stated:

"We are willing to buy substantial quantities of power from the Government, provided the Government will agree not to sell power directly or indirectly which is to be used to compete with us in the territory where the power we purchase from the Government is necessarily distributed".

and on February 3, 1937, Mr. Willkie issued a newspaper statement, taking a similar position. The issue was essentially one of terminology. Mr. Willkie, while insisting upon a monopoly, obviously preferred using other terms, (and I do not criticize him for that), and sought to use words to which less public odium attached in order to discredit the Authority's position.

The negotiation for power contract which was to replace the contract which expired February 3, runs consecutively and no new power contract has been signed to this date. The Commonwealth-Southern subsidiaries are the natural market for the surplus power which the Authority will have.

THE PRESIDENT: Let me interject for all possible assistance to the record, the simple statement that I have on several occasions discussed this subject with Mr. Willkie, and there is no question that his demand has been for an exclusive contract within a given region. We have not used the word "monopoly" or similar words, but we have talked definitely about the exclusive right after a contract was signed to the use of the T.V.A. Power.

I have called Mr. Willkie's attention to two simple facts in that regard: The first is the law, the Tennessee Valley Authority Act, which provides for preferential treatment for municipalities. In the second, I have called attention to the underlying form of Government under which we operate. Municipalities are chartered agents of sovereign states. The Federal Government does not give them their charters, the States do. Some states give to municipalities the right to establish and operate a restricted class of utilities such as sewer systems. Other states give to municipalities their right after popular vote to establish and operate municipal water works. Others give them the additional right to establish municipal electric light and power plants. I called Mr. Willkie's attention to the fact that no act of the Federal Government through an agent could limit or restrict, or harm that fundamental constitutional right of a state or its creature, the municipality, to establish electric light and power service if it so voted.

Mr. Willkie's apparent attitude was that these two fundamental objections could be got around some way by some form of contract for the exclusive use of T.V.A. power, and on that there has not been a meeting of the minds because I have felt compelled to leave it to the constitutional law under which the forty-eight states operate, and also the act, the T.V.A. passed by the Congress. I want that to go into the record to make it perfectly clear.

MR. LILIENTHAL: I have just a couple of sentences to conclude that, and that is that it seems to me that the refusal of the companies in the past to purchase power on any terms unless the Authority agrees to violate the provisions of this Act is attributable, we feel, on the basis of this record, in part at least, to the support which Chairman Morgan has given to Mr. Willkie in this controversy over this issue and is another instance of interference with Board action.

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May I, before closing this record, offer certain documents, namely a memorandum to me by Chairman Morgan dated February 24, 1937, a letter from Mr. Willkie to me dated January 22, 1937 and my reply to him of January 29, 1937 and a memorandum to the Board of Directors of TVA from myself dated February 5, 1937.

THE PRESIDENT: We will accept them for the record.

Chairman Morgan, in regard to these two specific charges, both covered at the same time, is there anything you want to say about it?

CHAIRMAN ARTHUR MORGAN: I do not feel that I can say very much. They contain misstatements, misrepresentations and omissions in an extreme degree. One of them, the presenting of it in this case and at this time -- I am not indicating what anybody's motives are but it is what would be done if there were a very grave failure to meet public responsibility, as what would be done if there had been a very grave failure to meet responsibility to the public and there was an effort to minimize that failure and cover it up by bringing it in under favorable circumstances. On that point I could not speak on short notice; I would have to make a careful statement. It is the kind of action that would be taken by people who were aware of having gravely failed in public obligations and were trying to present a preliminary test in a favorable atmosphere.

THE PRESIDENT: You do not want at this time to specify?

CHAIRMAN ARTHUR MORGAN: I must do that with care and the same is true with respect to the other one.

MR. LILIENTHAL: I simply want the record to show that that is nothing else but an additional charge against the Board.

THE PRESIDENT: In other words, a new charge of misrepresentation in setting up this record?

MR. LILIENTHAL: And in inferring a failure on our part to carry out a public duty.

CHAIRMAN ARTHUR MORGAN: I said that if it were done for that purpose, the same thing would be done. I do not say that it is done for that purpose at all. It requires a great deal of restraint on my part not to speak strongly for the moment. I think I should not.

THE PRESIDENT: There is one question I want to ask because it is related to the conference I held on the 30th of September, 1936. I know that you were in New York on the 28th all day and apparently on the morning of the 29th and, prior to the conference, you were there with Mr. Hamilton, as his travel request shows. I am marking the travel request in evidence.

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(Travel request marked in evidence)

CHAIRMAN ARTHUR MORGAN: Yes.

THE PRESIDENT: I have to ask you, why did you go to New York for the final preparation of this memorandum?

CHAIRMAN ARTHUR MORGAN: I wanted some technical facts concerning transmission conditions and the possibilities. In your call on the Board for the power pooling conference you had mentioned a successful power pool in this country, that of Samuel Ferguson at Hartford, Connecticut. I had heard of him, Mr. Lilienthal spoke of him in good terms and I knew he was one of the very few utility executives in America who was friendly to the TVA and who had some information about power pools. In New York I met him and there were also one or two matters with reference to the policy phase of the situation that I wanted to ask Owen Young about, inasmuch as you were asking him in as a friend of the Administration. I spent possibly 30 minutes in the office of Owen Young and asked Samuel Ferguson to meet me there and I went over certain technical matters of power transmission with those two men.

Now, those were the only contacts I had in any way, shape or manner with any utility people in this connection with one single exception. I wanted to know how many miles of transmission line the Commonwealth & Southern Corporation had in the south and Mr. Hamilton, while I was present in the room, called up the Commonwealth & Southern office, asked for the statistical division and asked how many miles of transmission line they had in the southern states. He was given that figure by the statistical division. That was absolutely the only contact, direct or indirect, in any way that I had with any utility interests in that connection.

THE PRESIDENT: Do you know if Owen Young is connected in any way with the Commonwealth & Southern?

CHAIRMAN MORGAN: I don't know that he is. You had invited him to come to the meeting here— not as a utility man — and I asked him —

THE PRESIDENT: I would not say that as a general allegation because it is a known fact that Mr. Owen Young's principal business is the supplying of electrical machinery of all types to utilities and to users of utilities.

CHAIRMAN ARTHUR MORGAN: He supplied a great deal to the TVA but I know that he was a supporter and a friend of yours.

THE PRESIDENT: Note that in the discussion of the charges by Dr. H. A. Morgan and Mr. Lillienthal we took up charges 1 and 2 and then numbers 4 and 5. We now go back to number 3. Dr. H. A. Morgan and Mr. Lillienthal, in charge number 3, alleged, "It is not permissible for the Chairman of the Board after Board action has been duly taken to fail and refuse to carry out explicit action taken by the Board. Please give me facts on specific instances, if any, that you had in mind in making this charge.

MR. LILLIENTHAL: We regard the facts set out under charge number 2, that is the attacks upon the integrity and so forth, as supporting this charge but in addition and as an illustration of this charge and an illuminating illustration of the administrative difficulties under which we have been laboring, I should like to relate in particular certain formal Board action and direction to the Chairman of the Board taken by the Board on August 4 by unanimous vote.

THE PRESIDENT: August 4, what?

MR. LILLIENTHAL: August 4, 1936, by unanimous vote.

DR. H. A. MORGAN: Not 1936, 1937.

MR. LILLIENTHAL: No, 1936. The background of this also relates to the policy, difference of opinion among the members of the Board brought to you from time to time for counsel on territorial restriction. The temporary territorial restriction clause in the so-called January 4 contract had failed of its purpose because of litigation, because of obstacles that had resulted in a waste of a great amount of power.

I had expressed grave doubts even on temporary basis of the legality of such a restriction, but this was during the period when all of us, as we should in collective judgments, were yielding our judgment in the interest of parliament, in unity.

But at the time of the completion of the Norris Dam and therefore at the imminent expiration of that contract, the negotiations for the renewal or the extension of that contract were pending. Now in the light of the demands for power which were being made at the time by public and cooperative agencies and after consulting counsel and restudying them and after consulting you and after repeated and extended Board discussions and helpful interchange of views extending as a matter of fact almost from the time of the first meeting of the Board, it was my conclusion that the sale of power to public agencies could no longer be barred on that basis and at a meeting on August 3, 1936 of all the members of the Board I proposed in substance that I be directed in these negotiations for a new contract to stand on the following policy, that in future contracts, the Authority will not agree to territorial restrictions on the sale of TVA power to public agencies.

That is a very compressed statement of the policy. I explained to the Board at that time that the issue from a time point of view was critical since in the negotiations for the renewal of the contract and for the sale of power Mr. Willkie, as I have said before, insisted on what seems to me a demand for territorial monopoly as a condition to power sales contracts. Other proposals were made but so far as policy was concerned that was the position. I asserted at the Board meeting that I assumed this was the Board's policy. It had been discussed many times that it was one of the matters discussed with you for your council and that I thought it had been discussed sufficiently. Chairman Morgan thought he wanted more time and in deference to that view the matter was not decided at that meeting but was brought up again on the following day, August 4, 1936. Chairman Morgan still felt the policy was not a correct one but joined with us in drafting a form of statement to that policy and that form was as I have quoted to you a moment ago. A vote was taken, the motion was carried, Chairman Morgan voting nay.

I had conferences between the President and the Board in the spring of 1936. In anticipation of the expiration of the January 4 contract you had suggested that you might be of service to the Board where major questions of power policy arose on which there was a division among the Board and where that happened it might be helpful to have a discussion with you. This question of policy as to territorial restrictions was the oldest and most serious of questions upon which the members of the Board, almost from the first, had difficulty. Accordingly at this meeting of August 4, the Board unanimously agreed to telegraph the President - you were then at Hyde Park - requesting a conference on this "major policy concerning power". We discussed the form of the telegram and it was drafted jointly, Chairman Morgan doing the longhand work on yellow pad paper and we also discussed in detail the form of an explanatory letter which Chairman Morgan felt should accompany such telegram. Both of these - the letter was for the signature of the Chairman and the telegram for the signatures of the three members of the Board.

The letter stated - and I want to offer a copy to the record, it is a letter to you, Sir, of August 4: "Since there is a disagreement within the Board as to this policy, Mr. Lilienthal proposed that the Board request a meeting with you, and the following telegram was sent", and then it quotes the telegram, and that will appear in the exhibit. The meeting went on on other matters. Mr. Blanford who at that time, I believe, was the Coordinator, brought in from the Chairman's secretary copies of the telegram for Harcourt A. Morgan and myself for our files. The Chairman sent neither the telegram nor the letter as directed.

The meeting concluded at about eleven or eleven-thirty. The Chairman left Knoxville for Washington several hours later -- I think two-thirty or so. That day at six-forty the Chairman sent a telegram, a copy of which I will submit for the record, to the Acting General Manager asking that he tell the other members of the Board that after further consideration he decided not to send the telegram because he thought it would be "putting pressure on the President". The telegram from Chairman Morgan was sent by train. It arrived the next day. In a letter of explanation dated in Washington August 5 but postmarked in New York August 7, Chairman Morgan changed his explanation. He then said he had failed to send the telegram before leaving Knoxville through unintentional misunderstanding but "felt justified in acting on my more deliberate judgment in declining to sign my name to it". He gave as a new reason in this letter that it was unfair "to suddenly present to the Board matters of great importance and then to urge immediate action" and that the person who makes proposals may have carefully considered them "whereas to the members who have not heard the matter insistence upon mediation may be very embarrassing".

Mr. President, this memorandum seems to us very revealing of an administrative attitude which we have charged to be incompatible with the carrying forward of a great project of this kind. First it shows in our opinion that the Chairman believed he was not bound even by unanimous Board action when subsequently he changed his mind. Second that although the delay which gives him justification for refusing to send the telegram was attributed to misunderstanding, it is hard to see how there could be a misunderstanding on the part of a trained office staff since the exact form of the telegram and the exact form of the letter were agreed upon at the Board meeting and typed copies of the telegram were distributed before the Board adjourned, and third even though at the Chairman's request urgent negotiations were postponed with the utilities pending the conference, the Chairman felt it unnecessary to carry out the action which would permit calling for such transaction.

The Chairman states surprise on a matter which had been a subject of continuous debate within the Board and of a number of conferences with the President virtually from the creation of the Authority. It will be noted that Chairman Morgan did not hesitate to use the name of the President in an effort to intimidate a majority of the Board from giving to the President for decision a controversy which had arisen in the Board and which the President had suggested should be submitted to him for counsel and discussion under such circumstances. I should like to submit in support of that as exhibits (which are identified for the record) copy of the letter drafted by the Board, mailed August 5; copy of the telegram which was not sent; copy of the Board's resolution authorizing me to enter into negotiations with utilities, but providing that the policy as to territorial restrictions would not be insisted upon until we had had an opportunity to discuss the matter with you; a telegram from Chairman Morgan to Mr. John B. Blandford indicating that the telegram was not being sent; a memorandum from Chairman Morgan to his fellow members on the board explaining why the telegram had not been sent; and a letter to the President dated August 5 from Dr. H. A. Morgan and myself written after we had learned that the telegram had not been sent; memorandum dated August 4 from me to the Board of Directors indicating a policy on territorial restriction.

EXHIBITS
45, 46,
47, 48,
49, 50,
AND 51.

MR. EARLY: All of these for the record have been summarized and the gist of them given. I don't think it is necessary to publish them or include them textually.

THE PRESIDENT: No. Chairman Morgan, is there anything that you want to say regarding that?

DR. ARTHUR E. MORGAN: Mr. President, that is a relatively simple case. If I could speak on that a minute without committing myself as to policy on the rest of the hearing I should like to.

This meeting as it was called is characteristic in that a very vital matter was suddenly submitted to the Board without knowledge that it would come up at the meeting. I differed in policy, but there can be a great deal of stress in the meetings. This emergency now may have been thought of for months and we must get it off today. There is a common strategy as to bringing something in after long deliberation and rushing it through at that meeting when I haven't had any time to consider it.

Now, there as that telegram was prepared to be sent with my name on it -- my secretary, Miss Ruth McGee, at the time, worked in the outside office and she typed it, etc. There was more than one draft of it and at the earlier draft I had said to her: "I want to see this before it goes out." Then it had come in and gone out of the office and I think perhaps Mr. Blandford picked out the time, I can't recall, but I thought it had gone and Miss McGee and I were preparing to come to Washington on the train to do something. I did not know until we were on the train, we were talking things over and she asked me, "what about that telegram?" I said: "Oh, hasn't it gone?" She said: "No." I thought it had been sent until then and that is why it was not sent while I was in the office.

But after I had time to sit down after the heat of the meeting I felt more strongly than ever that it should not be sent because I believed it would, whether intentionally or not, put you on the spot. I thought it very definitely seemed to force you to a conclusion when you had certain matters under consideration where you naturally ought to have a little more time for that and, therefore, at the very next station we wired the Board.

We discussed, my secretary and I, how the Board would be most apt to get this at once because they had indicated they were leaving the office. We said it would be most likely to get to them if we sent it to the Coordinator -- similar now to the General Manager. We sent the telegram to the Coordinator in which I said to our Board that I did not want my name on that telegram.

Now, that degree of reconsideration of a decision made under pressure seemed to me not to be beyond the decencies and proprieties of a board to try and work things out.

And as to the letter itself, that was drafted and instead of putting it in the mail it was brought here, it was delivered to you here in the White House. So that I think I have stated very clearly the sequence of events. I thought the telegram was sent. I had had a chance to think over it a little bit. I felt on deliberation it would be unwise for my name to be on that. I immediately wired the Board and told them the facts, so that if they wanted to act they could. My motive was to keep you from being put on the spot.

I think it was a proper action on my part, even if I had been pressed into it to vote for a thing and wish an hour afterwards that I hadn't.

MR. LILIENTHAL: Mr. President, may I respond to that only in this way, that in a letter Chairman Morgan sent to Senator Norris on August 13, 1936, he states a different reason than the one that has been now suggested and the one suggested in his memorandum to us.

(The letter referred to was dated Knoxville, Tennessee, August 13, 1936, and addressed to Honorable George W. Norris, United States Senator, Waupaca, Wisconsin)

MR. LILIENTHAL: I may say that this is not violating any confidence, because Chairman Morgan said, "You may use your own judgment in showing or quoting this letter to Mr. Lilienthal".

In Chairman Morgan's letter to Senator Norris, he refers to the memorandum to the Board. He states in this letter that he had received a personal letter from the President requesting him to see the President shortly after the first of August to discuss power policy. Chairman Morgan stated in this letter that, "for the President to receive this telegram, sent by all the Directors, might seem to be a reply to his letter to me which it was not. I therefore felt that in fairness to him an explanatory letter should reach him first".

In this letter to Senator Norris, Chairman Morgan does not refer to any of the earlier reasons he had given for not sending the telegram except the circumstance of delay that rested entirely on this new reason. It ought to be noted, too, incidentally, that in that letter to Senator Norris, Chairman Morgan referred to the memorandum to the Board dated August 5, in which he sets out his span for not following the Board's directions, which memorandum was dated August 5 but postmarked August 7, as the "Memorandum I wrote to the Board on August 7", I pointed out, incidentally, that it appears that Chairman Morgan either misdated his memorandum or he held the memorandum of explanation to the Board of this extraordinary incident two additional days after it was written. I submit the letter. (This letter is identified on this page.)

EXHIBIT 52

CHAIRMAN MORGAN: As to that, there is absolutely no conflict between those statements. There is no conflict there.

PRESIDENT ROOSEVELT: There is one other matter which is a bit general. I don't know whether Dr. H. A. Morgan and Mr. Lillienthal want to say anything about it. In reading the document to me of January 18, 1938, they make other less specific but nevertheless fairly clear charges on which I want whatever other facts you had in mind.

You imply in the document of January 18, that Chairman Morgan is actuated by "The doctrine of rule or ruin", and "personal considerations". Those again are pretty general statements. Do you wish to say anything about those two?

MR. LILLIENTHAL: It seems to me, Mr. President, that that, as well as the charge that has been made of a conspiracy between his fellow members of the Board ought to be gone into. The whole record from May, 1936, subsequent to that, we believe, if analyzed, supports that conclusion.

DR. H. A. MORGAN: I have a memorandum which deals somewhat with the answer. This answer of the Chairman on collusion and conspiracy, charges which I think may clarify in a measure the statement on which you requested explanation or further facts. I say that so far as I have personally been concerned, and so far as I have been able to interpret Mr. Lillienthal's position, that we have always been ready and eager to cooperate with the Chairman and to work in harmony together. As stated in our memorandum to you, Mr. President, on January 18, we have always been ready and anxious to cooperate with the Board and to work together in harmony with each other and with the Chairman and as we said in that memorandum, prior to May, 1936, it was possible for us to work in this way. There were, of course, differences of opinion on matters of policy from time to time but this was only natural and was to be expected in any democratic organization. The harmony in the Board during all that period is attested by the facts that all actions taken up to May 1936 were, by unanimous votes. I called attention to that in a previous statement. Not a single dissent was recorded in the minutes of the Board.

CHAIRMAN MORGAN: I should like to make just one general statement inasmuch as this is all going to the Press. The difficulties I have encountered began within a few weeks after the organization of the TVA and they were very critical, and they continued through the years. The fact that for three years there was not a dissent in the vote of the Authority, that there was apparent harmony, represents three long, painful, trying years and forbearance and patience, because I thought that another solution would come out, and that I could wait and wait and wait and do my best during that time. There is just one other remark as this comes to a close: All these charges are having circulation, and if I have time to answer them, the answer should have the same opportunity for distribution.

NOT WITH
EXHIBITS.
APPARENTLY
RETAINED IN THE
PRESIDENT'S
OFFICE

THE PRESIDENT: In that connection there are two matters that I should like to put into the record because they are matters relating to specific things that might come up. The first is a memorandum from Secretary Early to me on the sixth of August, 1936. It reads as follows: "Secretary Early to remind the President of the letters he has received from Dr. Arthur Morgan. To tell the President that Arthur Morgan is most anxious for a conference with him here or in Washington."

This was written, I take it, at Hyde Park.

MR. EARLY: Yes, it must have been.

THE PRESIDENT: (continuing to read): "That Dr. Arthur Morgan would like to see him for a few minutes alone before the other members of TVA are brought into the Conference. Dr. Arthur Morgan says that at a recent meeting of TVA the Board voted on certain power policies. Dr. Arthur Morgan opposed the action by the Board but was voted down. He thinks it very important that the President see the Board and have a talk on power policy. Dr. Morgan wants the President to be assured that he is going along, will make no trouble, and that the reports to the contrary need not be of any concern or cause any apprehension whatever to the President."

That was shortly before the resolution vote of the fourth of August. It was two days after that.

CHAIRMAN MORGAN: In 1936?

THE PRESIDENT: Yes.

CHAIRMAN MORGAN: I would like to interpose there that at the time of Mr. Lilienthal's reappointment it was the Presidential period and any disturbance before election might have been serious and there had been a rumor from somewhere that I was going to break over the traces, and I wanted to assure the President that during that time I was not going to.

APPARENTLY
RETAINED
ALSO

THE PRESIDENT: The other matter that should appear somewhere in the record is the fact that beginning on May 18, 1936, I received a recommendation in regard to reorganization of the TVA from Chairman Morgan.

As I understand the prior facts, when the Authority was first set up, as a matter of immediate and temporary convenience, it was decided that there should be a temporary division of the preliminary work; that Chairman Morgan was to undertake the engineering and the preliminary work looking towards the completion of existing dams and the building of new dams; that Dr. H. A. Morgan should undertake the revamping and the putting on its feet of the fertilizer experiments at Muscle Shoals and everything having to do with the soil erosion and of things through fertilizers, and that Mr. Lilienthal, in general, was to work on the problem of the transmission and distribution of potential power, both existing power at the Wilson Dam and future power at the new dams that were being planned.

That temporary allocation of duties worked on the whole, considering that it was a brand new organization, carrying out new policies. It worked well for the first two years.

During the winter of 1935-36 -- I think my dates are right -- there was friction in regard to personnel and I talked with all three members, both collectively and individually in regard to improving the combined work, especially in personnel, of the three major activities. The result was that in May, on May 18, 1936, Chairman Morgan proposed in a letter to me certain steps for the reorganization of the TVA. This letter is available at any time. It is very short. He recommended three steps, first for the appointment of a general manager to have responsibility and authority to administer the TVA program and that the functions of the Board should be to formulate and to adopt policies and general plans. He recommended in this same first recommendation that only unanimous action by the TVA Directors be effective in the adoption of policies. He stated that he wished to nominate a man for general manager.

The second recommendation related to a consolidation under the general manager of the engineering staffs and the functions of both the Engineering and Construction Division and the Power Division.

The third recommendation was for the appointment of a board of consultants to develop policy plan and program for power. Chairman Morgan said, "I wish to nominate the members of that consulting board to be approved by the Board of Directors of the TVA."

During that summer of 1936, and the Autumn, many discussions were held in regard to reorganization. I felt that the problem of reorganization ought to be primarily one to be determined by the Board itself, that it was not a matter which should be loaded onto the President for a decision. One of the duties of the Board itself was to set up its own organization.

However, things did not improve and finally, after consulting with different members of the Board, I appointed a personal committee to go to the Tennessee Valley, study the problem at first hand and make a report to me. They were appointed on April 3, 1937. They consisted of Asst. Secy. of Commerce, Ernest G. Draper, Rear Admiral A. L. Parsons, of the Civil Engineer Corps of the U. S. Navy, and Mr. Herbert Emmerich, Deputy Governor of the Farm Credit Administration, all of them experienced in the setting up and perfecting of organizational work. They had the assistance of Mr. John H. Gaus, another experienced man, who acted as consultant to the committee. They went to Tennessee Valley; they looked over the physical problems and the personnel problems. They reported to me on the 14th of May stating that they had a great deal of helpful cooperation from the members of the Board and Staff of the Tennessee Valley Authority. Their report, 29 pages long, is available, but at this time I want only to refer to one or two portions of the report, relating to the form of organization or the work of the Tennessee Valley Authority under the existing law. In regard to the Board of Directors they found the following:

"Granting the possible need for division of administrative function among Board members in the nascent period of the Authority, the time is past when this form of organization can continue effectively. It is essential that the members of the Board discontinue operating as three independent administrators and proceed to operate only by Board action as a Board. The Board members should undertake no individual administrative action. They should refrain from directing the operations of any of the departments or of any of the personnel. They should divest themselves of all supervision of all specific activities or projects. In Board meetings they should not have different spheres of interest. Reports should be made by the management to the Board as a whole, not to individual members of the Board. Instructions should be transmitted to the management by the Board and not by individual directors. All of the members of the Board should be interested in and take time to study all of the important angles of the operations of the Authority.

THE PRESIDENT: "They should be relieved of management functions and should be free to devote themselves as a Board to planning and policy management. Negotiations with outside interests should not be conducted by Board members but should be conducted either by the entire Board or delegated to members of its staff. Public statements in planning commitments on the part of the Authority by individual directors shall not be made unless specifically authorized by the Board as such."

Later on the report says "that for all other purposes, that is outside of legal advice, the Board's contact with the management should be through a general manager."

Without going into further details it was largely, I think, as a result of this report that the Board did appoint a general manager and he is now functioning so far as its personnel goes, so far as the avoidance of the duplication of work goes, through this general manager. In other words, I take it that the greater part of the recommendations of this Board of three which I called to give me a report, have been carried out. Is that substantially true?

DR. MORGAN: At your suggestion prior to the appointment of this Board, our Board organized an acting General Manager -- and I think that was very helpful to this Board because that had been in operation coming out of the old coordinator's job. Our Board prior to the time you had asked this acting General Manager to give a statement to the Board on organizing -- the remarkable thing is that those few statements are almost parallel which was given your member and the Acting General Manager of the Board.

THE PRESIDENT: If there is nothing further I want to make one very short final statement. I have now heard the charges and countercharges of the TVA Board. I have endeavored to give each side the opportunity of answering the complaints of the other side. Frankly, I am disappointed that Chairman Morgan has not answered by giving any factual answers to the questions which I have put, but I hope that in the course of the next week Chairman Morgan will realize that it is of the utmost importance to the continuation of the work that he should reply to very simple factual questions.

He should have every opportunity so to do. And, therefore, if it is agreeable to him and to the other two members, who also may want to present additional facts, I will set a resumption of this hearing for a week from today, Friday morning, at eleven o'clock, and if you care to appear in person at that time it will be entirely agreeable to me. If you prefer to submit any factual report in writing without appearing, use your own judgment.

But again I want to make it clear that what we have discussed today relates to general charges and I have been seeking to get specific justification for these general charges. We cannot in the public interest allow them to remain on the record merely as general charges, and so a week from today I hope that you will either come personally or submit to me such other or further definite factual evidence, not of opinions, but of fact and fact only, as relate to the subjects that we have talked of today. When that time comes of course it will be my duty to determine what further action is necessary in the public interest. I do call your attention to this fact, that the Board, the Tennessee Valley Authority, is about to resume very important negotiations with private utility interests, negotiations that inevitably will be difficult and delicate. In my judgment, the public interest cannot further be jeopardized by internal dissension and I can only reiterate that it is the duty of every member of the Board to consider at Board meetings impersonally and objectively the important problems and policies of the Tennessee Valley Authority and not to obstruct the carrying out of decisions reached by a majority of the Board. And I must say quite frankly that any of you who cannot do that owe it to the public of the United States not to remain on the Board. I think that covers everything.

MR. LILIENTHAL: Except one thing, Mr. President. Dr. Harcourt A. Morgan and myself have been charged with dishonesty and corruption and that charge has been so interpreted through the country. We stand charged as dishonest and corrupt public servants throughout this whole country, and a staff of almost fourteen thousand splendid men and women are under that cloud. We have had no facts to support charges which certainly must have had facts before they were made. I am sure you appreciate that in addition to our official concern about this matter that after all we have a very deep personal concern and jealousy about our honor and the tax upon our honor.

THE PRESIDENT: I appreciate fully that situation but at the same time I must lean over backwards not to railroad any hearing through where one of the members being heard has stated that there are some things which he would like to have time to consider.

DR. ARTHUR E. MORGAN: That isn't exactly what I asked. I said that my relationship to your request for information was something that I needed to have time to consider. And, incidentally, about how long before this transcript would be available?

THE PRESIDENT: I think tonight.

MR. EARLY: We will have it ready, Sir, I think within the hour. Not all of these documents, however, will be given textually. Identifications will appear in the record but not the text.

DR. ARTHUR E. MORGAN: But the list of documents?

MR. EARLY: Yes.

THE PRESIDENT: And if you want any of those that are listed and which are not actually in the record itself they will be available to you in Mr. Early's office, so if it is convenient to you, Mr. Early will send a complete copy -- it is getting late now -- to each one of you, to the hotel.

MR. EARLY: Mr. President, it would take the office a week to copy that entirely.

THE PRESIDENT: I mean a copy of the hearing.

MR. EARLY: I can get those to you tonight if you would like them.

MR. ARTHUR MORGAN: Mr. President, before I go I would like to make this statement:

I personally want to thank the President for the fine consideration he has shown us.

(The conference was adjourned at six o'clock, P.M., to reconvene Friday, March 18, at eleven o'clock, A.M.)
