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[Part 1 of 3]

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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.

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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 sieze 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. Lilienthal have been guilty of dishonesty and impropriety in the conduct of their respective offices. Dr. H. A. Morgan and Mr. Lilienthal 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.

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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. H. 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.

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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.

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EXHIBIT 5

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. Lilienthal 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.

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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 faily 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 ~~petitions~~. particulars

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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. Lilienthal 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. Lilienthal 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.

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 openess, 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 criticised. 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.

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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.

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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 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.

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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

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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.

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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. LILIENTHAL: 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 -VS- C.A.HARRIS, ET AL	)	No. 3327 AND CONSOLIDATED CASES

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:

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(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 ($1,5000,000.00) 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:

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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 held 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

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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.

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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

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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 constructed 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.

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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.

Evans Dunn

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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 criticised. 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.

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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

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

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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. Lilienthal 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. Lilienthal.

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. Lilienthal:

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. Lilienthal,
Tennessee Valley Authority,
North Interior Building, F.
Washington, D. C.

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

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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.

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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,

Harcourt A. Morgan

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

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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

- - - - - -

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

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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.

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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.

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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 prowlege.

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. Burton 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.

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