

Book 363

Bank of America

May 21 - September 20, 1939

Bank of America

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THE UNDER SECRETARY OF THE TREASURY
WASHINGTON

May 23, 1939

My dear Mr. Secretary:

Attached hereto you will find a complete chronology of events in the case of the Bank of America National Trust and Savings Association. This chronology begins on December 8, 1937, and runs through May 1939. I have gathered this material from your files, my files, the Comptroller of the Currency's files, and the General Counsel's files. I believe it is complete.

Sincerely,

John W. Haney

The Honorable,

The Secretary of the Treasury.

Chronology of events relative to

THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS
ASSOCIATION

December 8, 1937

To

May 11, 1939

1. December 5, 1917

Hearings before the subcommittee of the House Committee on Appropriations relative to the Treasury Department Appropriation Bill for 1919:

"Johnson: Mr. Secretary, do you have any suggestions to make as to whether, or not, the banking laws should be in any wise changed? I ask that because you are familiar with the banking laws.

"H.M.Jr.: There is only one thing that bothers me about the banking situation, and that is we may want to do away with holding companies for bank securities. There are 5 or 10 holding companies that hold a lot of bank stock, and I think that is an unhealthy situation.

"Johnson: Do you think that the banking laws as they are now cover the situation pretty well?

"H.M.Jr.: Basically, yes.

"Faber: Are not the provisions of the banking law as to branch banking rather too liberal, especially in the case of small communities?

"H.M.Jr.: That is something else, and if you do not mind -

"Faber (interposing): They do the same things nationally on a broader scale, without regard to the limitations of the law as to branch banking.

"H.M.Jr.: I do feel very strongly on the subject of holding companies. There would be just a few people controlling important banks. They are growing all the time.

"Faber: I think you are correct on that.

"H.M.Jr.: They have one in New York. I have no criticism of that particular group, but I do not think it is a healthy situation. (p.20)

2. January 19, 1938

Secretary's staff meeting. The following quoted from the minutes:

"Magill: Henry, I thought you might be interested to know I had a lunch yesterday with Bill Douglas.

"Magill: Yes. Then he said he had some stuff on Trans-America.

"H.M.Jr.: On what?

"Magill: On Trans-America.

"H.M.Jr.: He volunteered that?

"Magill: Yes. And he said, 'I'm thinking of sending it to Jafty O'Connor.'

"H.M.Jr.: Yes.

"Magill: 'Well,' I said, 'he isn't in the Treasury. Why don't you send it to the Secretary?'

"H.M.Jr.: Yes.

"Magill: He said, 'all right, I'll do that. I don't know where to send it, but I'll send it wherever it should go.' He said, 'It's fragmentary, but looks very bad.'

"H.M.Jr.: Yes, Well, I'd like to have it.

"Magill: Yes. Well, that's about ...

"H.M.Jr.: Now, is Trans-America subject to regulation?

"Magill: No, I wouldn't think so.

"H.M.Jr.: No other than the New York Stock Exchange.

"Magill: I wouldn't think so, within what he was talking about.

"H.M.Jr.: Well, that's interesting."

3. January 21, 1938

Letter from Mr. William O. Douglas, Chairman of the SEC, to the Secretary transmitting, pursuant to Mr. Magill's suggestion, a copy of a survey of the Transamerica Corporation prepared in connection with the SEC's study of investment companies. Mr. Douglas indicated that the SEC could make no further survey of Transamerica as part of the investment study. (Summary of SEC report prepared by Mr. Upham and dated January 26, 1938.)

4. January 28, 1938

Minutes of group meeting in the Secretary's office relative to bank holding companies. (The whole series of joint meetings on the President's message to Congress relative to group banking was a part of the Secretary's interest in the Bank of America situation.) During the meeting the Secretary was insistent that prompt steps be taken with reference to the Bank of America. The following is quoted from the minutes of the meeting:

"H.M.Jr.

(to Mr.

Douglas): You don't mind my saying that I've got that - that that was a nice report on Transamerica you dumped into my lap. I mean I just want these gentlemen to know that I've got it and that you gave it to me, because I can't just sit with it and not do something about it, and - I mean I'm willing to accept it where you people leave off. I mean ...

"Douglas: That particular study wasn't a hundred percent; that is to say, we hadn't got way down into the roots of the whole thing; we just touched the surface of that problem.

"H.M.Jr.: I haven't fully absorbed it, but after I have I'd like to talk to you some more. But it only bears out this - the fact that there is something very much to be worried about. (p.6.)

"H.M.Jr.: What I want to do at this time, before we go any further, is this. As Secretary of the Treasury, I am going to ask the Chairman of the R.F.C. to take a look at the Bank of America to see whether they have sufficient capital, and I'm going to ask him to do it just as promptly as possible.

4. January 26, 1936 (continued)

"Jones: All right, if we can have your (Diggs) report and your (Crowley) report, why, we'll dig right into it and I'll give you an answer in a very few days. We've got some general information, but I don't think we've had the benefit of the Comptroller's report. (p. 22.)

see

"H.M.Jr.: And what I would say is that just as soon as Mr. Jones is ready, and now that he's heard what you've got to say - the more I go into it, the more serious it looks - but the minute that he's ready, I'll call another meeting like this. And, fortunately, we can call it a bank holding meeting and not have it look as though we were studying Transamerica or Bank of America. But I would say to Mr. Jones - I mean he's a fast worker and Sundays don't mean anything to him when he has to work, so that the minute he's got something and is ready to report back to these agencies, who are charged with the responsibility - and fortunately we've got everybody in the room who's got anything to do with it; there isn't anybody in the Government who isn't in the room now, and the minute you've got something ...

"Jones: I'll give you a ring.

"H.M.Jr.: You'll give me a ring and we'll have another meeting. But I think it's all the more important that we take a look at the Bank of America and see that they have ample capital. There seems to be two opinions as to their statement, and that's what bothers me - the fact that the F.D.I.C. thinks one thing and the Comptroller's office thinks another. And I think the quicker we get to the bottom of it, the better. And, of course, we don't want to start any whispermongering or anything, but I would say, Mr. Douglas, that one or two days to you wouldn't make an awful lot of difference." (pp. 24-25) (Mr. Jones' report given to the Secretary about February 18. See 14 below.)

5. January 28, 1936

Letter from Mr. O'Connor to the Secretary (received January 29 at 11:55 a.m.) in which Mr. O'Connor expressed surprise at Mr. Crowley's critical remarks at the morning conference (4 above) with reference to the Bank of America. Mr. O'Connor stated that if Mr. Crowley's statements were correct, he should have presented the facts to the Board of the FDIC and a notice should have been sent to the Bank.

6. January 29, 1935 - 11:00 A.M.

Secretary suggested that Mr. O'Connor, as a member of the Board of the FDIC, ask Mr. Crowley to bring information relative to Bank of America formally before the Board of the FDIC for whatever action the Board deemed necessary. Mr. O'Connor agreed. (Secretary's memorandum.)

7. January 29, 1935

Letter from Mr. O'Connor to the Secretary in which he advised that Mr. A. P. Giannini was in his office and indicated that he favored a bank holding company bill based upon a 10 per cent stock ownership definition of a bank holding company.

8. January 29, 1935

Letter from Mr. O'Connor to the Secretary in which he advised that Mr. Crowley stated to him that there was nothing the Board of the FDIC could do at that time with reference to Bank of America and that there was no action he could suggest to the Board.

9. January 29, 1935

Mr. Oppen's memorandum, dated January 31, 1935, covering meeting at Secretary's house at 5:00 P.M., on January 29, to advise him of the SEC's interest in the Transamerica situation. Messrs. Purtop, Lane, and Judy of the SEC present. Meeting concluded by request from the Secretary, accorded to by the SEC representatives, that any final action determined upon by the Commission would be communicated to the Treasury.

10. January 31, 1935

Letter from the Secretary acknowledging Mr. O'Connor's letters of January 28 and 29 (5, 6 and 8 above) and stating that in view of his oral discussion with Mr. O'Connor on January 29, he assumed no further reply to the letter of January 28 was necessary.

11. January 31, 1935

Memorandum from Mr. Oppen to the Secretary advising that Mr. Chester Lane of the SEC had informed him that the SEC had discussed with Messrs. Kellest, his partner Warner, Baker, and Scampini, all of Transamerica, the proposed distribution of Pacanucci stock (see memorandum under 9 above). No conclusion reached and another meeting scheduled for next day.

12. February 1, 1938

Memorandum from Mr. Opper to the Secretary advising that Mr. Chester Lane of the SEC had informed him that the SEC had taken the position that the Paganucci stock could not be distributed without registration. Hebllett advised of that conclusion. Question of a general investigation of Transamerica still open. Lane indicated he would keep us advised.

13. February 1, 1938

Memorandum from Mr. Upham to the Secretary in which Mr. Upham stated that Mr. Crowley had informed him that at a conference with Mr. Giannini on Saturday (January 29) he had told Mr. Giannini that, so far as he was concerned, Mr. Giannini's application for approval of some branches of state banks would never be granted. Mr. Giannini also indicated that he favored the bank holding company bill. (See 15, 20 and 21 below)

14. February 16, 1938

Secretary's staff meeting. Secretary gave Mr. Jones' report (see 4 above) to Mr. Upham. (Minutes p. 1.)

15. March 8, 1938

Letter from the Secretary to Mr. Crowley in which he inquired as to whether there had been any change in the policy of the FDIC since its letter of February 16 to the Central Bank of Oakland, California, in which letter the bank was advised that action upon its application for approval of certain branches would be postponed until public policy on the matter had been clarified.

16. March 9, 1938

Secretary's staff meeting. The following quoted from the minutes:

"H.M.Jr.: *** Mr. Oliphant, I'd like your people to examine Mr. Glass' bill from the standpoint 'does it control Transamerica?' Will you please, also, Mr. Oliphant, find out what, if anything SEC is doing in regard to Transamerica, see? Does it do anything on Transamerica?" (p. 2) (Memorandum showing effect of Glass Bill, if enacted, upon Transamerica Corporation sent to Mr. Upham by Mr. Foley on March 11, 1938. Copy filed hereunder.)

17. March 14, 1938

Messrs. Foley and Eberowdy discussed the Transamerica situation at lunch with Messrs. Allen Throop and Robert H. Eline of the SEC. Mr. Throop gave Mr. Foley a copy of a letter from Mr. Throop, as General Counsel of the SEC, to Mr. Keillett, of counsel for Transamerica, in which Mr. Throop advised that his office could not render an opinion that the proposed distribution of the Pacanucci stock could be effected without prior registration. Copy of Mr. Throop's letter.

18. March 15, 1938

Secretary's staff meeting. The following quoted from the minutes:

Telephone conversation between the Secretary and Mr. Douglas of the SEC:

"H.M.Jr.: Fine. How one other thing. Ah, if it would be agreeable to you, I'd like my Mr. Upham to contact, in your shop, whoever is doing the investigation of, ah, Transamerica." (p. 3)

Discussion in staff meeting:

"H.M.Jr.: (To Mr. Oliphant) I want you to assign some very good lawyer that Upham could call on when necessary, to advise him - advise me - on this particular thing, see? Somebody - will you? I want somebody who'd do this and the Comptroller's office - some one person, see, so it would be just between you (Mr. Upham) and one person - so that nobody but you and one person (Pursuant to the above Mr. Oliphant appointed Mr. Eberowdy in Mr. Foley's division of the General Counsel's office.)

"H.M.Jr.: All right, Gy!

"Upham: Yes, fine.

"H.M.Jr.: I want you to tie this thing together and then as we go along you keep Mr. Taylor and myself advised what you are doing, see, but that is a big enough job for anybody - I mean the Comptroller's and plus the SEC end, and tie the thing together. I am not at all satisfied with what's going on. I mean I'm not going to wait until we have a potential GVA on our hands, or something like that. I mean, it is just every time I take a nibble at it, it gets worse - smells worse - no if you can get what those boys are doing over there, than the thought - I've got an idea besides that." (p. 5)

18. March 15, 1935 (continued)

"H.M.Jr.: ***

Triple confidentially, the thing I had in mind was this: This thing is sour as it is and the New York Stock Exchange - if we could hit the New York Stock Exchange, Here's the Transamerica listed, and if you fellows want to do something - have you got the guts to go after Transamerica and kick them off? That's what I've got on my mind. Have you got the guts to do that? That is their job. Have you got the guts to go and investigate Transamerica, and if it's as sour as I know it is, to give them a delisting?" (p. 6)

19. March 21, 1935

Secretary's staff meeting. The following quoted from the minutes:

"H.M.Jr.: (To Mr. Upham) Did you get the report on the holding companies?"

"Upham: It came in about noon Saturday.

"H.M.Jr.: Are you going to go to work today?"

"Upham: I am speaking of the principle of their report.

"H.M.Jr.: The report of the Transamerica?"

"Upham: The auditing firm puts in so many exceptions - that they didn't see this and they didn't see that, and on the basis of what was presented to them, it looks all right.

"H.M.Jr.: At least you got it?"

"Upham: Yes.

"H.M.Jr.: It must mention the holding companies of Transamerica; doesn't it list those?"

"Upham: Yes.

"H.M.Jr.: You could check that against the bank.

"Upham: Surely. (pp. 11 and 12)

20. April 1, 1935

Letter (copy not dated, but apparently April 1, 1935) from Mr. Glanville to Mr. Crowley in which he requested that the application to establish the branches of the Central Bank of Oakland be approved, and further stated that he would discuss with Mr. Crowley the question of additional capital for the Oakland bank at the California State Bankers Association meeting in May.

21. April 1, 1935

Letter from Mr. Crowley to Mr. Glanville agreeing to permit the establishment of the four branches of the Central Bank of Oakland with the understanding that no more banks would be acquired by the Oakland bank without first getting the permission of the FDIC, and that the matter of additional capital would be discussed.

22. July 8, 1935

Excerpts from memoranda prepared by Mr. Upham covering meeting at 10:30 A.M. of Messrs. Taylor, Dicks and Upham with the Secretary:

Mr. Morganthau said that he was sick and tired of hearing about Glanville and the German credits and the fact that he wouldn't do what the Comptroller wanted him to do and said that he thought the Comptroller's office ought to handle it without bringing it to him. He expressed the opinion that the people in the Comptroller's office and the FDIC as well were "relaxed" or they would do something about it. He said that he felt that Mr. Glanville was awfully smart from his own standpoint but he thought the bank supervisors ought to be equally as smart. Mr. Morganthau gave as his offhand opinion that the Bank ought either to increase its capital or cut its dividends in half. (p. 2)

* * *

Mr. Morganthau said on second thought that he was inclined to the view that the Comptroller ought to insist on the Bank taking whatever house-cleaning steps were felt to be necessary and that if they do, he would then treat them just like any other bank and agree to EFG money going into the Bank on the same basis that they put it into other institutions. If not, he said he would personally be inclined to "sit still until Koll freezes over" before doing anything in the way of permitting additional branches. In any event, he said he would make no promises on branches but let them come to see us when they have complied with our requirements.

22. July 8, 1938 (continued)

"Mr. Upham concluded Mr. Morgenthau that he had requested the Comptroller's office to bring in a program of minimums that they would insist upon. Mr. Diggins said that this program was not ready but that it would be in three or four weeks when the latest report of examination comes in." (p. 3)

23. September 1, 1938

Mr. Folger discussed with Mr. Smith, Vice President and Cashier of the Bank of America, the asset condition of the bank and management policies. Emphasis was given to the necessity for conserving earnings to take care of losses rather than payment of excessive dividends.

24. September 8, 1938

Acting Comptroller Diggins recommends to the Secretary (at his request) that the dividend rate of the Bank of America be reduced from 19.2% to not over 6%; that the bank charge off promptly losses estimated by examiners in semi-annual examinations; that the bank discontinue the practice of transferring other real estate to affiliates by substituting therefor the form of contract now in use; and that the bank be given little if any authority to operate additional branches until its condition has been materially improved.

25. September 13, 1938

Deputy Comptroller Gough makes detailed reply to A. P. Glanville's letter of May 6th complaining about examiner's criticisms. Refers to "mass created by numerous loans to affiliates, the mass of real estate held directly and indirectly, the under-capitalized condition of the bank . . . and payment of dividends at exorbitant rates," besides many other details.

26. September 13, 1938

Mr. Oliphant's opinion to the Secretary, advising that the Secretary had authority to call in an official of a national bank (from Smith), or some other appropriate person, and divulge to him "confidential" information in the office of the Comptroller of the Currency, for the purpose of asking his advice.

27. September 13, 1938

Telegram from Acting Comptroller Diggins to Examiner Palmer to be read at meeting of bank board warning bank that declaration of dividend would be unsafe and unsound banking practice. (Board declared dividend nevertheless.)

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28. September 15, 1938

Letter from A. P. Giannini to Acting Comptroller Diggs protesting warning telegram.

29. September 16, 1938

Letter from National Bank Examiner Palmer to Acting Comptroller Diggs, advising that he had read the telegram to the board of directors at its meeting on September 13, 1938.

30. September 20, 1938

Telegram from L. M. Giannini to Acting Comptroller Diggs informing him that the bank had requested a hearing before the Board of Governors of the Federal Reserve System.

31. September 21, 1938

Memorandum from Mr. Upham to Mr. Oliphant in which Mr. Upham stated that on many occasions, between March 1938 and September 1938, the Secretary had asked him to inquire about aspects of the Bank of America situation and to press for action based on examination reports. Upon many occasions Mr. Upham brought those requests to the attention of the Comptroller's office.

32. September 21, 1938

Charles W. Collins, representing the Bank of America, conferred with Mr. Barse to learn the course of action which the Comptroller's office contemplates taking.

33. September 21, 1938

Memorandum from Mr. Barse to Mr. Oliphant, advising of a further conference with Mr. Collins in which Mr. Collins indicated that the controversy with the Bank could be satisfactorily settled and that the Federal Reserve Board had no jurisdiction in the matter unless a certificate were filed with the Board by the Comptroller requesting the removal of officers or directors of the Bank.

34. September 23, 1938

Letter to each director of the Bank of America from Acting Comptroller Diggs outlining their personal liability as directors.

35. September 23, 1938

Letter to each director of the Bank of America from Acting Comptroller Magee summarizing the criticisms in the latest report of examination. Letter refers to "ever-increasing ill-advised dividends . . . frozen and unbankable assets . . . inadequate reserves . . . and undercapitalized condition"; summarizes examiner criticisms in some detail.

36. September 27, 1938

Mr. Charles W. Collins telephoned to Deputy Comptroller Gough asking for information about the status of the Bank of America negotiations. Mr. Gough made a non-committal reply.

37. September 29, 1938

Mr. Prentiss, District Chief Examiner in San Francisco, telephoned Chief Examiner Folger that the cashier of the bank had suggested that Mr. Prentiss call on A. P. Glanville for a "satisfactory arrangement" of the difficulties. Mr. Prentiss was instructed not to approach Mr. Glanville.

38. September 30, 1938

Memoandum from Mr. Oliphant to Mr. Upham, advising that the telegram of September 13, 1938, which was read to the Board of Directors of the Bank, constituted a sufficient warning to serve as a basis for certifying the facts with reference to the declaration of the dividend to the Board of Governors of the Federal Reserve System under section 30 of the Banking Act of 1933. New General letter of warning sent to the Directors of the Bank should treat the telegram of September 13, 1938, as a warning with reference to the declaration of the dividend.

39. October 3, 1938

Letter received from secretary of board stating that a committee of nine directors had been named to review the communications from the Office of the Comptroller.

40. October 11, 1938

Letter, and enclosures, to the Comptroller of the Currency signed by 20 members of the board of the Bank. Strongly criticized the procedure of the Comptroller's office in sending critical communications concerning the Bank to individual directors rather than to the board as a unit. Such procedure advised persons not connected with the Bank of the criticisms. Indicated that press releases announcing the dividend had been issued before the telegram by the Acting Comptroller was read to the board of directors. Disagreed with the criticisms in Mr. Magee's letter of September 23 (above).

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41. October 15, 1938

Letter to the Comptroller from the Secretary of the board of directors of the Bank transmitting the above letter of October 11, signed by individual Bank directors, and advising that that letter was signed by all directors present at the meeting except Mr. A. P. Giannini and Mr. Joseph M. Schenck. Mr. Schenck resigned as a director on October 10, 1938.

42. October 17, 1938

Letter dated October 11th to Comptroller from directors of bank purporting to answer in detail the examiner criticisms summarized in Mr. Diggs letter of September 23d.

43. October 20, 1938

Charles W. Collins called on Acting Comptroller Upham to urge that the management of the bank be afforded an opportunity for a conference with the Comptroller's office.

44. October 27, 1938

Letter from Mr. Eccles to the Secretary transmitting a memorandum concerning the procedure to remove bank directors under section 30 of the Banking Act of 1933. Mr. Eccles indicated that it would be a mistake to proceed under section 30 because of the possible delay and complicated procedure.

45. October 29, 1938

Letter from Mr. Russell G. Smith, Vice President and Cashier of the Bank, to the Comptroller discussing certain items in the report of examination completed September 15, 1938.

46. October 29, 1938

Letter from Chairman Crowley to Comptroller Delano outlining chief weaknesses of Bank of America as seen by FDIC. They are: Large volume of real estate; small relative net sound capital; unsound relations with affiliates; unjustifiable expansion; unwarranted dividends.

47. November 2, 1938

Letter from the Secretary to Mr. Eccles advising that the memorandum with Mr. Eccles' letter of October 27, 1938 (above), had been referred to the Comptroller of the Currency.

48. November 1, 1915

Letter from Acting Comptroller Upham to Chairman Eccles stating that the General Counsel of the Treasury is prepared to discuss Section 30 procedure with the Federal Reserve Board staff.

49. November 5, 1915

Memorandum from Mr. Duffield to the Secretary advising of Mr. Duffield's meeting with representatives of the Federal Reserve Board to discuss their activities in the Transamerica matter. Although the Board had warned Transamerica, the corporation had not complied with the Board's requirement that it either (1) cease to be a bank holding company, or (2) divest itself of all interest in securities companies. If no plan were presented by November 29, the vice president of the San Francisco Reserve Bank had been instructed to investigate and report to the Board.

50. November 9, 1915

Letter from secretary of the Board of the bank claiming that net sound capital had been improved \$2 million since September 30th.

51. November 10, 1915

Letter from Mr. Kansas to Mr. Douglas requesting a copy of the SEC report on Transamerica which was laid before the SEC on November 8.

52. November 12, 1915

Memorandum from Mr. Duffield to the Secretary, suggesting coordinated action of all three banking agencies. Federal Deposit Insurance Corporation should take the first step to terminate the Bank's insurance and the Federal Reserve should take the first step to remove the Bank from the System. If the section 30 proceeding by Comptroller to remove directors were successful, the proceedings by the Federal Deposit Insurance Corporation and the Federal Reserve could be dropped.

53. November 14, 1915

Letter from Chairman Eccles to the Comptroller assuring him that the Board and its staff "are ready to cooperate to the fullest extent possible to expedite the proper disposition of any section 30 proceeding instituted by your office."

54. November 17, 1915

Letter from Mr. Douglas to Mr. Kansas in reply to Mr. Kansas' letter of November 10, and enclosing a copy of the SEC report on Transamerica.

55. November 17, 1938

Letter from Mr. Douglas to the Secretary, requesting copies of the reports of examination of the Bank of America from 1931 to 1938, inclusive, for inspection and use in any public hearing authorized by the SEC to determine whether Transamerica has failed to comply with the provisions of the SEC Act of 1934.

56. November 19, 1938

Letter from the Secretary to Mr. Douglas, attaching "for the confidential use of the Securities and Exchange Commission the examiner's reports requested on condition, however, that none of the material in those reports will be used in any public hearing without first obtaining my approval in writing."

57. November 19, 1938

Memorandum of conference in Mr. Upham's office between Mr. Rogge, Assistant General Counsel for the SEC, and Messrs. Upham, Foley, Durfield, and Sherbondy. Mr. Rogge pointed out that eventually some of the information in the reports of examination of the Bank would have to be made public. It was agreed that there would be a further exchange of correspondence in which the SEC would list the portions of the reports which it would need to make public. Mr. Rogge saw no necessity for any remarks in the SEC proceeding which would imply insolvency of the Bank.

58. November 21, 1938

New examination of Bank of America begun.

59. November 22, 1938

Order of the SEC in the proceedings to suspend or withdraw the stock of Transamerica from national securities exchanges.

60. November 23, 1938

Letter from Comptroller Delano to directors of bank agreeing to a conference in Washington with representatives of bank; also continuing to insist upon (1) proper standards of banking practices, (2) a reduction in the percentage of criticized assets, and (3) an increase in capital ratio. Conservation of earnings was also mentioned.

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61. November 23, 1938

Opinion from Mr. Oliphant to the Secretary, advising that the Secretary could make available to the SEC information contained in reports of examination of a national bank, which information the Commission contemplated using in a public hearing in proceedings to suspend or withdraw the registration of certain securities.

62. November 23, 1938

Letter from Mr. Douglas to the Secretary, attaching a copy of the Commission's proposed Order and requesting the Secretary's "consent to make public official use, as part of the proposed proceedings, of such of the information obtained from these twenty-five reports as bears on the allegations contained in the proposed order or amendments thereof."

63. November 23, 1938

Letter from the Secretary to Mr. Douglas, consenting to the "public official use" of the information in the reports bearing on the allegations in the SEC order.

64. November 26, 1938

Letter from Acting Comptroller Upham to National Bank Examiner L. H. Sedlacek, permitting and authorizing Mr. Sedlacek to discuss with the SEC the affairs of the Bank of America, including the names of borrowers and the collateral for loans.

65. December 6, 1938

Letter to Eccles. Comptroller Delano advises Chairman Eccles of the major points of criticisms upon which he hopes to get substantial agreement in conferences with the Bank of America representatives. They include: cessation of expansion; conservation of earnings, with dividends not in excess of 6%; elimination of "other real estate" and real estate contracts within five years; increase in capital by not less than \$25,000,000 by the sale of new stock at once; elimination by Transamerica Corporation and its affiliates of approximately \$15,000,000 in assets illegally purchased by the bank; and immediate elimination of Transamerica excessive loan.

66. December 7, 1938

Letter from Mr. Douglas to the Secretary, requesting the loan to the Commission of any expert appraisers available in the Treasury Department to assist the Commission in appraising certain farm and city property held as collateral for loans made by the Bank of America.

67. December 7, 1938

Comptroller's office prepares agenda for meeting with representatives of Bank of America. Short agenda includes immediate elimination by Transamerica and affiliates of approximately \$15,000,000 in assets purchased by the bank; bank to agree not to write up on its books value of assets; elimination of other real estate and real estate contracts within 5-year period; cessation in the expansion program of Bank of America and Transamerica; conservation of earnings; increase in capital of \$50,000,000 at once. Major emphasis was to be placed on the last three items. Additional details were contained in a technical "long agenda."

68. December 7, 1938

Chairman Crowley informs Comptroller Delano of major corrections which bank should make. They include: \$50 million immediate capital increase; conservation of earnings with dividend policy subject to approval of Comptroller; no expansion of number of offices; program for elimination of "other real estate"; elimination by Transamerica of assets illegally purchased; restriction of credit extension to Transamerica and affiliates.

69. December 9, 1938

Memorandum from Mr. Oliphant to Mr. Delano, advising that there is no legal objection to the designation by the Comptroller of one or more persons in his office to serve as points of contact with the SEC as requested in a letter from Mr. Douglas.

70. December 10, 1938

Memorandum from Mr. Foley to Mr. Delano, advising that there is no legal authority for the Treasury Department to loan personnel (such as appraisers) to the SEC. However, services could be ~~per-~~formed for the SEC and appropriate payment made by the Commission to the Treasury.

71. December 8-15, 1938

Various conferences were held between President L. M. Giannini, Vice President W. E. Blauer, and Vice President and Cashier Russell G. Smith, and Comptroller Delano and other Government officials. Coordinately, technical matters were discussed in conferences with Chief Examiner Folger and Assistant Chief Examiner Smith.

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72. December 15, 1938

Letter from Mr. Jesse H. Jones to Mr. Eanes, enclosing the above letter of December 15 from Mr. Giannini. Mr. Jones indicated that the memorandum with Mr. Giannini's letter was as agreed upon by Mr. Eanes, Mr. Jones, Mr. Crowley, and Mr. Delano. Mr. Jones also indicated that it was his understanding that Messrs. Upham, Folger, Smith and others in the Comptroller's office concurred with Mr. Eanes.

73. December 15, 1938

Letter to Comptroller from L. M. Giannini submitting memorandum program of 17 points that he agreed to present to his Board with his recommendation for their acceptance. Major part of program was agreement to "effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of 1 to 10"; to furnish as much additional capital as may be required for this ratio as determined by the Comptroller of the Currency after the result of the examination then in progress, the Board being free to declare a semi-annual dividend in March 1939 provided steps have been taken by the bank to increase its capital as outlined above, the increased capital to be paid into the bank as early as practicable but in no event later than June 30, 1939. No dividends to be declared after June 30, 1939, unless the sound capital structure bears a ratio to entire deposits of substantially 1 to 10.

74. December 17, 1938

Letter from Acting Comptroller Upham to Assistant Chief National Bank Examiner F. W. Krippel, permitting and authorizing him to discuss with the SEC the affairs of the Bank of America.

75. December 17, 1938

Memorandum from Mr. Foley to the Secretary, making certain objections to the program worked out with Mr. L. M. Giannini by certain administrative officers, and indicating that the General Counsel's office had not participated in the negotiations. Mr. Foley pointed out that the proposed agreement would have no binding legal effect and that there would be no way of enforcing it since it implied that no letter of warning would be sent. The agreement would waive the dividend warning contained in the telegram of September 13, 1938. In addition the proposed agreement ignored certain illegal activities engaged in by the Bank.

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76. December 22, 1938

Letter from Comptroller Delano to L. M. Giannini stating that Comptroller cannot bind his official action by agreement and stating that he is glad to know that Mr. Giannini believes program outlined will be acceptable to the Board of Directors of the bank.

77. December 31, 1938

Letter to Comptroller from L. M. Giannini stating that December 15 memorandum was not of Mr. Giannini's authorship but was prepared in the office of the Comptroller. Mr. Giannini repeated that he would recommend to the Board that the bank undertake to follow the program outlined in the memorandum.

78. January 11, 1939

Letter signed by L. M. Giannini to Comptroller Delano stating that at a meeting of the Board on January 10, upon his recommendation the Board authorized the management to follow the program outlined in the memorandum of December 15.

79. January 16, 1939

Letter from Mr. Douglas to Mr. Hanes, enclosing certain correspondence between the SEC and attorneys for Transamerica concerning a proposal to postpone the opening of the SEC hearing on Transamerica. Mr. Douglas also transmitted for suggestions a proposed letter from Mr. Douglas to the attorneys for Transamerica, denying that the Transamerica proceedings carried any implication of a failure on the part of the Comptroller of the Currency or the Federal Reserve Board to carry out their duties, and denying that no controversy existed between the Bank of America and the Comptroller's office.

80. January 16, 1939

Opening of the Transamerica hearing at the SEC. (The hearing was attended regularly by Mr. Donald J. Sherbondy in Mr. Foley's office. Mr. Foley transmitted numerous memoranda to the Secretary, advising him of significant occurrences at the hearing.)

81. January 16, 1939

Complaint in the case of Bank of America v. Douglas, et al in the District Court of the United States for the District of Columbia, alleging, among other things, that the Secretary of the Treasury acted illegally in making available the reports of examination of the Bank of America to the SEC, and requesting an injunction restraining the SEC from using such reports and from investigating the Bank.

82. January 18, 1939

Memorandum from Mr. Foley to the Secretary with reference to a conference between Mr. Foley and the Attorney General. Mr. Foley left with the Attorney General, as background material in case he was called upon for an opinion, a copy of Mr. Oliphant's opinion regarding the legality of the Treasury's action in making available to the SEC the reports of examination.

83. January 20, 1939

Letter from the Secretary to the Attorney General, requesting an opinion as to the authority of the Secretary of the Treasury to make available to other agencies of the Government reports of examination of a national bank.

84. January 20, 1939

Letter from Mr. Douglas to the Secretary, requesting copies of Treasury rules and regulations with respect to the disclosure of information in the files of the Department, and an affidavit concerning the present and past policy of the Department with respect to furnishing such information to Government agencies.

85. January 20, 1939

Letter from Mr. Douglas to the Secretary, requesting an affidavit of the Comptroller of the Currency to the effect that the Comptroller did not regard himself as authorized by law to prescribe accounting practices to be followed by national banks.

86. January 21, 1939

Affidavit of Deputy Comptroller Upham in case of Bank of America N. T. & S. A. v. Wm. O. Douglas, et al. in the District Court of the U. S. for the District of Columbia, the important part of which is to the effect that neither the banking laws nor the Comptroller acting under them have prescribed any particular accounting methods or practices for national banks.

87. January 21, 1939

Memorandum from Mr. Foley to Mr. Morgenthau with reference to a conference in the office of Mr. Golden Bell at the Department of Justice, at which were also present other officials of the Department of Justice. Mr. Bell indicated that it was inappropriate for the Attorney General to render a formal opinion on the question of the use of information from files in the Treasury Department by the SEC because the Treasury had already acted in the matter. After several hours of discussion all parties present agreed that the action of the Secretary of the Treasury

87. January 21, 1939 (continued)

on the merits was proper and a memorandum to that effect was prepared for the Attorney General. Mr. Foley indicated that it was his opinion that the Attorney General would communicate with the Secretary on the matter.

88. January 21, 1939

Verbatim report of a telephone conversation between the Secretary and Mr. Kemp in the Attorney General's office. The Attorney General was not in his office. Mr. Kemp advised that the memorandum prepared at the conference with Mr. Foley that morning had been examined by the Attorney General who said it was correct. Mr. Kemp read the memorandum to the Secretary, the substance of the memorandum being that there was no legal objection to the Secretary turning over reports of examination and other relative information to the SEC. The memorandum contained the statement that it was improper under the circumstances to render a formal opinion since the action had already been taken by the Treasury, and, further, the action of the Treasury was involved in a court proceeding. Mr. Kemp advised that he understood that the Attorney General concurred in the memorandum.

89. January 27, 1939

Letter from Mr. Douglas to the Secretary, requesting certified copies of Treasury rules and regulations with respect to the disclosure of departmental information.

90. January 27, 1939

Letter from Mr. McReynolds to Mr. Douglas transmitting certified photostatic copies of Treasury rules and regulations.

91. January 27, 1939

Memorandum from Mr. Foley to the Secretary setting forth the practice of the Office of the Comptroller of the Currency in dealing with requests for inspection or use of reports of examination and other confidential records relative to national banks.

92. January 28, 1939

Two letters from Mr. McReynolds to Mr. Gough, Deputy Comptroller of the Currency, and to Mr. W. H. Thompson, Assistant Administrative Assistant to the Secretary, authorizing Mr. Gough and Mr. Thompson to respond to subpoenas and testify as witnesses in the case of Bank of America v. Douglas. (Mr. Anderson, Assistant Counsel in the Comptroller's Office, also appeared as a witness in the same case.)

93. January 30, 1939

Opinion of Mr. Justice O'Donoghue in the District Court of the United States for the District of Columbia, which upheld the action of the Secretary of the Treasury in making available to the SEC the reports of examination.

94. February 17, 1939

Memorandum from Mr. Foley to Mr. Delano, pointing out that Mr. Delano might desire to give consideration to the question of whether the Bank of America was to be warned before the date for the board of director's meeting in March, at which a new dividend would probably be declared.

95. February 20, 1939

Letter from Comptroller Delano to L. M. Giannini stating tentative figures of current examination show necessity for capital increase of \$33 million to \$38 million.

96. February 21, 1939

Two memoranda, both initialed by Mr. Thurman Arnold at the Department of Justice, of a conference of Mr. Arnold with Messrs. Delano, Foley and Sherbondy, to advise him of facts in the Bank of America situation which might involve criminal violations. Mr. Arnold agreed that it appeared inadvisable at that time for the Comptroller of the Currency to refer formally to the Department of Justice any possible criminal violations.

97. February 25, 1939

Letter from Chairman Jones to President Giannini in furtherance of conference between them and Comptroller Delano. Giannini told that RFC will lend to stockholders of Bank of America money necessary to enable them to subscribe for any increase in capital stock determined upon and approved by the Comptroller. Preferred stock to bear $\frac{4}{8}\%$; loans to be at $\frac{3\frac{1}{2}}{8}\%$.

98. March 7, 1939

Letter signed by President Giannini to Comptroller Delano objecting to program outlined but stating willingness to follow it out nevertheless.

99. March 9, 1939

Memorandum from Mr. Sherbondy (through Mr. Foley) to Mr. Wenchel, advising him of certain facts in the Bank of America situation which might involve tax avoidance.

100. March 14, 1939

Directors of bank appointed a special committee to work out details of plan to increase capital. Board also voted regular semi-annual dividend at previous rate of 19.2

101. March 15, 1939

Letter of criticism prepared based upon report of examination recently received. Criticisms substantially same as those of letter of September 23, 1938.

102. March 15, 1939

Memorandum from Mr. Foley to the Secretary, advising him that Mr. Rogge at the SEC had informed Mr. Sherbondy by telephone that the SEC had a letter from one of their men on the West Coast forwarding a rumor that the Bank of America had recently made a loan of approximately \$800,000 to a prominent official in Washington. Mr. Foley indicated that he had hurriedly checked without success the recent report of examination of the Bank.

103. March 22, 1939

Memorandum from Mr. Upham to Mr. Foley, requesting a legal opinion as to whether Transamerica is a holding company affiliate of the Bank of America, in view of the fact that Mr. Russell G. Smith, Vice President and Cashier of the Bank, had informed Mr. Folger that at the January meeting of the Bank's stockholders, Transamerica had voted the Bank stock owned by it.

104. March 23, 1939

Another series of conferences begun between officials of the bank and Chief Examiner Folger with regard to the recently completed examination.

105. March 25, 1939

Transamerica hearing suspended under an agreement by which the Bank would make available to the SEC its books and records.

106. March 30, 1939

Memorandum from Mr. Foley to Mr. Delano, advising that if Mr. Russell G. Smith's statement that Transamerica had voted its Bank stock at the last meeting of the Bank's stockholders was true, Transamerica was a holding company affiliate of the Bank of America.

107. March 30, 1939

Argument in the United States Court of Appeals for the District of Columbia on the appeal of the Bank of America from Mr. Justice O'Donoghue's decision in the District Court.

108. March 31, 1939

Memoandum of a conference at the Treasury between Mr. Louis Ferrari, Counsel for the Bank, and Mr. Russell G. Smith, Vice President and Cashier of the Bank, and Messrs. Clarence F. Smith, James I. Robertson, and Donald J. Sherbondy, of the Treasury Department, to discuss the matter of service charges by the Bank against its dormant accounts. Representatives of the Treasury made no commitments in the matter and the representatives of the Bank agreed that they would forward additional information requested by the Treasury representatives.

109. April 3, 1939

I. M. Giannini wrote Chairman Jones that he would suggest the bank increase its capital funds by \$25,000,000 and that he would recommend to the directors of Transamerica that any dividend received on stock subscribed to by them in excess of the interest paid to the HFC would be remitted to the Bank. Mr. Giannini asked Mr. Jones to treat his letter as an application for a loan or loans up to \$25,000,000 in line with Mr. Jones' letter of February 25th.

110. April 4, 1939

Letter from Mr. Hanes to the Secretary, transmitting copies of the following letters with reference to the proposed \$25,000,000 loan by the HFC to the Bank to increase its capital, and advising that a complete file was being transmitted to the President at Warm Springs:

(1) April 4, 1939

Letter from Mr. Jones to Mr. Hanes, transmitting the following:

(a) February 25, 1939

Letter from Mr. Jones to Mr. I. M. Giannini, advising that upon request of the Secretary of the Treasury and the approval of the President, the HFC would lend to stockholders of the Bank money to enable the stockholders to subscribe for preferred stock of the Bank. The loan would be at 3 1/2% and the preferred stock would carry 4 1/2%.

110. April 4, 1939 (continued)

(b) March 31, 1939

Letter from Mr. Douglas to Mr. Jones, advising that the EFC had no objection to the proposed EFC loans; and

(c) April 3, 1939

Letter from Mr. L. M. Glavin to Mr. Jones, making application on behalf of the Bank's stockholders for a loan up to \$25,000,000 upon the terms and conditions outlined in Mr. Jones' letter of February 25th.

(2) April 4, 1939

Letter from Mr. Jones to the Secretary recommending that the EFC loan \$25,000,000 on the preferred stock of the Bank, and advising that the usual formal recommendation would be sent to the Secretary in due course.

(3) April 4, 1939

Letter from Mr. Delano to the Secretary recommending that the Secretary request the EFC to make the loan to the stockholders of the Bank.

(4) April 4, 1939

Letter from Mr. Crowley to the Secretary, advising that the proposed increase in the capital of the Bank was in line with the program developed by the Comptroller of the Currency and that the new capital would materially strengthen the position of the Bank.

(5) April 4, 1939

Letter from Mr. Hanes to the Secretary recommending that the Secretary request the EFC to make the loan.

111. April 4, 1939

Letter from Comptroller Delano to Secretary Morgenthau outlining the procedure to be followed in financing the increase in capital and stating that this is a necessary step toward the effecting and maintenance of a ratio of 1 to 10. Mr. Delano gave as his opinion that "because of the asset condition of the Bank of America, the securing of these additional funds is a very important and necessary part of our program for the improvement of the capital position of the bank."

112. April 7, 1939

Under Secretary Hanes advised Comptroller Delano that the Comptroller was to clear with the FDIC and the Federal Reserve the letter which Mr. Glanville will be asked to sign and send to the Comptroller, stating that as a condition of any loan which the FRC might make to stockholders of the bank, the bank would agree to declare no further dividend if in the opinion of the Comptroller the FDIC or the Federal Reserve, the payment of such dividend would impair the capital stock of the bank or constitute an unsafe or unsound banking practice.

113. April 7, 1939

Memorandum from Mr. Foley to the Secretary, advising him that on April 4th the SBC filed a law suit in the United States District Court for the Northern District of California, requesting an injunction to restrain Firsttrust Inc., A. P. Glanville, L. M. Glanville, and John M. Grant, President of Transamerica, from defrauding investors by a scheme of selling so-called trust certificates.

114. April 7, 1939

Memorandum from Mr. Foley to the Secretary, advising him that on April 6th the SBC filed another law suit in the District Court of the United States for the Northern District of California, to restrain a former employee (Mahoney) of the SBC from disclosing confidential information with reference to the Transamerica investigation to the Bank of America, L. M. Glanville, and Transamerica Corporation.

115. April 10, 1939

Proposed draft of a letter from Mr. L. M. Glanville to the Comptroller advising that as a condition to the FRC loan, the Bank would agree to declare no further dividend if in the opinion of either the Comptroller or the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation, the payment of such dividend would impair the capital stock of the Bank or would constitute an unsafe or unsound banking practice.

116. April 11, 1939

Letter from the Secretary to Mr. Richberg, acknowledging receipt of Mr. Richberg's letter of April 10th. The Secretary stated that as to the Bank matter it was his practice not to discuss "out of channel's" legal problems affecting the Department, and suggesting that Mr. Richberg take the Bank situation up with the Treasury lawyers. The Secretary advised that he would telephone Mr. Richberg if possible that week, as to when it would be convenient to see him.

117. April 13, 1939

Memorandum from Mr. Delano to the Secretary, digesting the criticisms of the Bank as shown by the report of examination, dated February 28, 1939.

118. April 13, 1939

Comptroller Delano asked the FHB for their opinion as to this procedure and if they were prepared to assume the responsibility.

119. April 13, 1939

Assistant Secretary Bethen of the FHB informed Comptroller Delano that it could not properly assume this responsibility and could not approve of the procedure outlined.

120. April 13, 1939

Mr. Crowley advised Comptroller Delano that he agreed with the principle of control of dividends paid by banks which are in an unsatisfactory condition and that the Bank of America should reduce its dividends. He said he would desire to see the provision as to dividends be the reason for the Bank of America not increasing its capital.

121. April 14, 1939

Letter from Mr. Delano to the Board of Directors of the Bank of America discussing the report of examination of the Bank completed February 28, 1939.

122. April 15, 1939

Comptroller Delano orally informed by Secretary Morgenthau that President Roosevelt had approved change in proposed letter to be secured from L. M. Glavinini eliminating from the letter the Board of Governors of the Federal Reserve system and the FDIC as agencies having veto power over the declaration of future dividends by the Bank of America.

123. April 15, 1939

Letter from Comptroller Delano to L. M. Giannini informing him with respect to publicity necessary in published financial statements as to dividend rate payable on preferred stock and subscribed price upon which dividends based and repayment made in event of retirement or liquidation of stock.

124. April 15, 1939

Comptroller Delano asked L. M. Giannini to sign letter agreeing to veto by Comptroller of dividends on Bank of America stock. Mr. Giannini told that President desired letter signed as condition precedent to underwriting or financing of increased stock by RFC. Mr. Giannini took exception to the proposal as entirely unjustified, discriminatory and evidence of persecution. Mr. Giannini asked a letter reciting the fact that this is a condition imposed by the President.

125. April 16, 1939

Letter from L. M. Giannini to Comptroller Delano stating his willingness to proceed with the program outlined in December but omitting any reference to the matter of veto by the Comptroller of dividends by Bank of America and objecting to the imposition of new conditions at this time as a breach of the mutual good faith pledged in December.

126. April 27, 1939

Memorandum from Mr. Upham to Mr. Foley, transmitting a memorandum from National Bank Examiner McLean at San Francisco, with further reference to the voting of the Bank's stock by Transamerica at the January meeting of the Bank's shareholders.

127. May 2, 1939

Memorandum from Mr. Foley to Mr. Upham, advising that if there is evidence available to prove the statements made in Mr. McLean's memorandum, the information in that memorandum would not alter the conclusion in Mr. Foley's memorandum of March 30, 1939, addressed to Mr. Delano, advising that Transamerica is a holding company affiliate of the Bank of America.

128. May 8, 1939

Decision of the United States Court of Appeals for the District of Columbia in the case of Bank of America v. Douglas, which approved the action of the Secretary of the Treasury in making available to the SEC the reports of examination.

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129. May 11, 1939

In view of press statements that Mr. L. M. Giannini had sent telegrams to Senator Wagner and Congressman Steagall requesting an investigation of the Controversy with the Bank, at the Secretary's request Mr. Bernard and Mr. Spingarn in the legislative section of the General Counsel's office took personally to Senator Wagner and Congressman Steagall copies of the opinions in the case of Bank of America v. Douglas and Securities and Exchange Commission v. Mahoney. Both gentlemen indicated that they approved the actions of the Treasury Department in this matter and that they had not given any serious consideration to the telegrams from Mr. Giannini.

June 1, 1939

To: The Secretary

From: Mr. Hanes

Attached hereto is a memorandum from the Comptroller of the Currency concerning the Bank of America situation.

I still feel that the most important thing to be done in this case is to get the Bank to agree to increase its capital in order to bring the ratio of capital to deposits up to 1 - 10. The Comptroller states briefly the history of this case, and outlines four plans of action. We will be ready to discuss this with you at your convenience.

JWH

May 24, 1939

MEMORANDUM TO: Mr. John W. Hanes,
Under Secretary of the Treasury

On September 13, 1938, following an extensive series of criticisms by national bank examiners a telegram was forwarded by Acting Comptroller Diggs to National Bank Examiner Palmer directing him to personally advise the Board of Directors of the Bank of America which was then in session, that on account of the unsatisfactory asset condition of the bank the declaration of any dividend (unless proper provision for criticized assets was first made) would be and would continue to be an unsafe and unsound practice in conducting the business of the bank. Disregarding this warning the Board declared a dividend of \$4,800,000, or at the annual rate of 19.2%.

On September 23, 1938 Acting Comptroller Diggs forwarded a detailed letter of criticism to each member of the Board of Directors based on the report of examination completed September 15, 1938. Under date of October 11, 1938 the Board replied in detail to all items set forth in this letter. The reply of the Board was signed by twenty directors.

This letter was concluded by a request on the part of the directors for a conference between representatives of

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the bank and the Comptroller of the Currency. On November 23, 1938 Comptroller Delano replied to the directors' letter of October 11, 1938 acquiescing in the Board's request for a conference and suggesting that the bank send representatives to Washington at their convenience.

As a result of this exchange of correspondence there was held in the Comptroller's office during the week of December 5-12, 1938, a series of conferences between representatives of the bank, the Comptroller of the Currency, the Under Secretary of the Treasury, the Chairman of the Reconstruction Finance Corporation and the Chairman of the Federal Deposit Insurance Corporation. These conferences culminated on December 15 in a letter addressed to the Comptroller by Mr. L. M. Giannini in which there was enclosed a memorandum outlining certain steps which the bank proposed to take to meet some of the criticisms directed against its management. The memorandum covered seventeen items, the first and most important of which provided that the bank "will effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of one to ten." The bank's representatives proposed that this increased capital should be put into the bank as early as practicable but in any event not later than June 30, 1939. It was generally understood by all concerned that the Reconstruction Finance Corporation would underwrite or furnish such additional capital.

At its meeting on March 14, 1939 the Board of Directors declared a dividend of \$4,800,000, payable one-half on March 31, and one-half on June 30, 1939. This is at the annual rate of 19.2%. At the same meeting a committee of thirteen was appointed to work out the details of a plan to increase the capital stock of the bank.

On March 23, 1939 Mr. L. M. Giannini, President, and Mr. R. G. Smith, Vice President and Cashier, called at the office of the Comptroller for the purpose of discussing the report of examination completed February 28, 1939. Mr. Smith stated that he was disappointed with the report in that the Examiner had continued to criticize matters which had been criticized in previous reports of examination, including the dividend rate. He assured the writer that the provisions of the agreement dated December 15, 1938 were being followed.

The examination which was completed on February 28, 1939 indicated that additional capital funds of 36 million dollars would be required as of that date to bring the ratio between capital and deposits to the one to ten basis. However, Mr. Giannini took the position that on June 30, 1939, there would be sufficient changes in the position of the bank to make it certain that an increase of 25 million dollars would provide the required ratio. On April 3, 1939

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Mr. Giannini filed an application with the Reconstruction Finance Corporation for a loan or loans to enable the bank's stockholders to subscribe for 25 million dollars of preferred stock.

Under date of April 4, 1939 Mr. Jesse Jones advised the Secretary that he was authorized by his Board to recommend that the Reconstruction Finance Corporation lend all or any part of 25 million on the preferred stock of the Bank of America National Trust and Savings Association to enable the bank to increase its capital funds by that amount.

At a conference held in the Comptroller's office on April 15, 1939 the Comptroller informed Mr. L. M. Giannini that the President of the United States was unwilling for the Reconstruction Finance Corporation to underwrite the new capital issue of the bank or furnish the funds therefor unless Mr. Giannini in a letter to the Comptroller would agree that further dividends which the bank proposed to declare would be subject to approval by the Comptroller. In other words, the dividend policy of the bank in the future would be under the control of the Comptroller of the Currency. Mr. Giannini refused to consider this condition unless it was placed before him in writing. Under date of April 16, 1939 he addressed a letter to the Comptroller stating he was willing to proceed with the increase in capital on the

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basis of the agreed plan but to impose new conditions at this time would constitute a breach of good faith pledged at the December meeting. The matter rests here.

Four alternatives present themselves:

(1) To further press the bank for additional capital, insisting that it either secure it without the assistance of the Reconstruction Finance Corporation, or if forced to resort to such assistance that the Directors acquiesce in the President's demand that the Comptroller shall have veto power over their dividend policy.

(2) To exert pressure against the bank for reduction of dividend, insisting that in the absence of new capital there must be a conservation of earnings to build up the capital structure.

(3) To build a case through further warnings for a Section 30 citation of the Bank of America management before the Federal Reserve Board. I am convinced that, under the present circumstances, we cannot successfully prosecute such a case.

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(4) To follow the suggestion of the Secretary of the Treasury and summon into conference Mr. Tom K. Smith, President of the Boatman's National Bank, Mr. T. Jefferson Coolidge, former Under Secretary of the Treasury, and Mr. Robert M. Hanes, First Vice President of the American Bankers Association, placing the entire matter in all its ramifications before them and requesting their opinion and advice. I favor this procedure.

Preston Delano
Preston Delano
Comptroller

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APR 24 1933

TREASURY DEPARTMENT

WASHINGTON, D. C.

RE BANK OF AMERICA

June 7, 1939
11:15 A. M.

Present: Mr. Hanes
Mr. Duffield
Mr. Delano
Mr. Upham

H.M.Jr: Now, this thing here I read at home - Mr. Hanes's memorandum to me and Mr. Delano's memorandum to Mr. Hanes - and I take it I have the choice of four alternatives, and I take number four, which is the one that you (Delano) recommend. You say: "Following the suggestion of the Secretary of the Treasury, summon into conference Tom K. Smith, President of Boatmen's, Jeff Coolidge, Robert M. Hanes; place the entire matter in all the ramifications before them, and request their opinion and advice. I favor this procedure."

Unless somebody feels otherwise, I would like to have the Comptroller invite these three gentlemen. You invite them, not me.

Delano: All right, sir.

H.M.Jr: So it doesn't look as though....

Delano: Have to get someone in Coolidge's place. He just sailed for Europe.

H.M.Jr: The point I was expressing, which I think is important - that you invite them, not me, so it doesn't look as though I'm trying to supersede you in any way. I think that's very important.

Delano: I'll be glad to do that. As a matter of fact, Tom K. Smith will be here Monday.

H.M.Jr: But they ought to come in prepared to spend a week here.

Now, are you (Hanes) in accord?

Hanes: Yes. I can't think of any other course to pursue except as contained in those four. Now, it would seem to me that the last one - that's the way I feel is the best way to approach it. The question

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of the names of those people - I think that ought to be left to somebody else. As I say, I objected to having my brother because I think that might bring some - maybe some difference of opinion as to whether he was the right one to do it, and I certainly am not....

H.M.Jr: But you're willing to let....

Hanes: I'm willing to leave that to you and Preston, whatever you all say. But I just want it understood that I didn't suggest it.

H.M.Jr: No, we know that.

Then the other thing is, who would you take in Coolidge's place? I want a Republican. You want to take the president of the First National of Boston?

Delano: He's a pretty good fellow.

H.M.Jr: He's a very good fellow.

Delano: I think that would be pretty good.

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

Delano: Just trying to think of it as you spoke.

Upham: You mean Spencer?

Delano: I think Spencer is the president.

H.M.Jr: That isn't the man I mean.

Delano: Stockton?

H.M.Jr: No, it isn't Stockton.

Delano: Charlie Spencer is the president.

H.M.Jr: That isn't the man I mean. Coolidge used to bring down a fellow he called his boss.

Upham: Probably Colonel Pope.

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H.M.Jr: No.

Delano: Well, Stockton is chairman of the executive committee and Charlie Spencer is president of the bank.

H.M.Jr: No, it's neither of them. Now, isn't that funny? Has he retired, or something, the man?

Delano: I was just up there and Spencer is president of the bank, I'm sure of that, and I couldn't think of his name for a moment. And the chairman is - Stockton is chairman of the executive committee.

Duffield: Mr. Secretary, while you're thinking about another man, I want to ask a question. Is there any question of having a holding company bank?

H.M.Jr: Are they?

Duffield: I don't know whether they are. Would anybody say, "There's a bunch of unit bankers saying...."?

Delano: It would rather have to be confidential.

Upham: Bob Hanes is a branch banker.

Duffield: I just don't know....

H.M.Jr: Well, they're not chain bankers anyway.

Isn't that funny? What's that man's - I wonder if Kieley would know. Let's see - just a minute.

Hanes: He was in the First National, head of it?

H.M.Jr: Head of the First National.

Upham: Don't mean Dan Wing?

H.M.Jr: Kieley, who is the man Mr. Coolidge used to have come down from Boston - was the head of the bank up there?

He used to bring him down once in a while, introduce him to me. Elderly gentleman that

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Mr. Coolidge - somebody he used to speak of as his boss.

Kieley: I don't know.

Hanes: I'll tell you where you can find out. You get the list of officers and directors of his bank the year he was here. That will give it to you.

H.M.Jr: The First National Bank of Boston.

Very fine gentleman, very able.

Upham: Former Governor of Massachusetts?

H.M.Jr: No.

Delano: Can't think who that would be.

H.M.Jr: I just happened to have met him. I was impressed with his ability. Phil Stockton?

Hanes: Yes, Stockton - he was connected with that bank.

Upham: He is still chairman.

Delano: He's chairman of the executive committee.

H.M.Jr: I guess that's he. Phil Stockton - is his name Phil?

Upham: That's right, Phil Stockton.

H.M.Jr: That's the man.

Delano: He is now chairman of the executive committee.

H.M.Jr: Well, that's the man. What about him?

Hanes: I don't know him, do you?

Delano: I know him, yes. I'm just trying to think if I know him well enough to give you an answer. I don't know that I do. He's a - I would diagnose him as a perfect type of old Boston school of bankers - tough, hard, cold.

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H.M.Jr: Yes.

Delano: All those things.

H.M.Jr: That's the fellow.

Delano: Realistic.

H.M.Jr: That's the man.

Delano: Beacon Street type of man.

H.M.Jr: That's the man I mean.

Delano: Now, I trust your judgment more than mine. I don't know him very well.

H.M.Jr: He is all of that - very successful. He impressed me as a man of very high moral standards.

Delano: I think his Boston background is....

H.M.Jr: Well, I was thinking: New England morality. Huh?

Delano: It's all right with me.

H.M.Jr: Well, I would just - I mean you're getting a man from the Middle West, you're getting a man from the South, you're getting a man from New England. It seems to me a pretty good combination.

Delano: That's pretty good, yes. I certainly don't know any reason you shouldn't use him.

H.M.Jr: Stockton was the man I know.

Upham: I think it's Stockton.

H.M.Jr: What do you think?

Upham: I think it's better. As I told the Comptroller, it seems to me that to have a former Undersecretary and a brother of the present Undersecretary looks as though we were packing the court, from Mr. Giannini's standpoint.

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H.M.Jr: If you had Phil Stockton, Tom K. Smith....

Upham: Be a good deal better.

H.M.Jr:and Mr. Robert Hanes.

Delano: I think those three men - I'd like very much to sit down with them. I think we could do you a real service, getting a dispassionate, cold look at the picture.

H.M.Jr: Is it embarrassing to you (Hanes) to have your brother on it?

Hanes: No.

H.M.Jr: Would you rather we didn't have him?

Hanes: No. He'll give you an honest opinion. That's all I guarantee.

H.M.Jr: Let's do it that way.

Delano: All right.

H.M.Jr: And then you'll get it going?

Delano: Yes.

H.M.Jr: And what I'd like to do is to go right back to the beginning and simply say, "Here is the problem. Now, what do you think, gentlemen, we should do?" And put everything - I don't - I suppose there are two ways to do it. Really ought to have the reports first, then let them see what we have done.

Delano: Well, I thought, subject to your wishes in the matter, if we could get the three gentlemen to agree to do this first: state what our problem is and state the confidential nature of their job, that there will be no publicity as to the fact they are in the picture; they are doing an intramural, inter-office thing for us.

H.M.Jr: That's right. And you handle it.

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Delano: I'll ask them, and just as fast as suits their convenience we'll start it. We'll make everything available, Mr. Secretary, that we have.

H.M.Jr: That's right.

Delano: No reservation whatsoever.

H.M.Jr: None whatsoever. One other thing; I got a letter....
Is that agreeable to everybody? Cy?

Upham: (Nods yes).

H.M.Jr: Gene?

Duffield: (Nods yes).

H.M.Jr: This is from Crowley, written June 1st:

"My dear Mr. Secretary:

"In completing our program in the State of New Jersey there remains one or two institutions which undoubtedly the State Department will have to close. One of these institutions, the Hamilton Trust Company of Paterson, New Jersey, is a national member bank with deposits of \$3,700,000, all of which are fully insured. We were advised this morning by the Board of Directors of the bank and the New Jersey Banking Commissioner that they have decided this bank should be discontinued.

"I thought you would perhaps like to have this information prior to the bank's closing."

Well, that's just because I complained once before that he didn't let me know. What?

Upham: That's right.

Hanes: Is that all?

H.M.Jr: Yes.

June 13, 1939

To: The Secretary

From: Mr. Egan

I attach hereto memorandum from Preston Belmont which is self-explanatory. I had a talk with my brother and he advised me that there is another reason, which he did not go into detail about with Preston, which makes it impossible for him to serve. It is with both regret and reluctance that he does not accept the responsibility of helping us out. I will tell you verbally the reason, and I am sure you will understand.

Either of the men mentioned by Preston in his memorandum would be excellent choices. I know both of them and know their reputations to be of the highest.

(Initialed) J.W.H.

JWH: jr

June 15, 1939

MEMORANDUM TO: Mr. John W. Hanes,
Under Secretary of the Treasury

Mr. Robert Hanes, because of his impending election to the presidency of the American Bankers Association, feels very strongly that he should not serve on the committee which is to confidentially review the Bank of America case for this office. He suggests in his stead either Mr. John K. Ottley, Chairman of the Board, First National Bank of Atlanta, or Mr. John M. Miller, Jr., Chairman of the Board, First and Merchants National Bank of Richmond, Va.

As the matter now stands, we have secured the services of Mr. Tom K. Smith and Mr. Charles E. Spencer, Jr. They have both agreed to be here next Wednesday, June 21.

Will you please instruct me as to our course in selecting the third member for the committee?

Preston Delano

June 23, 1939

10 a. m.

Present:

Mr. Tom K. Smith
Mr. Spencer
Mr. Ottley (arrived late)
Mr. Hanes
Mr. Preston Delano
Mr. Upham
Mrs. Klotz

HM, Jr: Now, gentlemen, what's the trouble? What's the impasse?

Mr. Smith: Here's what I called you last night about. I had the impression you wanted our opinion concerning certain features of this situation, and when we asked the Comptroller definitely what angles of it he wanted us to express an opinion on, I found that the idea of what you wanted did not coincide with the information he was asking us for and in order to be sure that we weren't mistaken and would not leave Washington without covering all of the things that you wanted, I called you to ascertain what you wanted and found that that was correct.

The Comptroller made available for our use everything that we asked for; limited the scope of the investigation in no way, and offered us all the facts and we worked with Folger and the Examiner until midnight last night. He's interested in knowing what should be done from here on. I was under the impression that you were interested in knowing our appraisal of the situation, whether it was serious and whether sufficiently serious to justify your continued effort.

HM, Jr: I told you last night I don't get

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what is the difference between what the Comptroller wants you to do and what I want you to do, and that's why I have asked you to come in. I know what I want. I tried to get it to you two gentlemen when you. Where does the Comptroller differ?

Mr. Smith: He differs this way: all he wants us to do is familiarize ourselves with the situation to date and then tell him what we think he should do from here on. Now, I understood you to say you would like our appraisal of the situation of the bank and have us express our opinion as to whether you are entitled to be as concerned as you are.

HM, Jr: Do you (Mr. Delano) want to talk?

Mr. Delano: Yes. May I.

Mr. Smith: All right.

Mr. Delano: I don't see what the basis of misunderstanding is, because necessarily, in my mind, being asked for an expression of what should happen, what policy we should pursue from now on would include a complete analysis and complete appraisal of the present situation and how serious it is and what has been done about it. I would like to make a most categorical denial of any attempt to block or to limit the extent of this investigation.

HM, Jr: This is awfully serious and I just -- these two gentlemen called me up and they -- more or less one coaching the other.

Mr. Smith: I did that deliberately because I wanted him to hear everything I said.

HM, Jr: These people are independent; doing this thing as a favor to the Treasury, giving up their valuable time. Let's get this straightened out once and for all, because this isn't child's play. I told you last night, didn't I, I did not understand.....

Mr. Smith: Go on and make your statement.

HM, Jr: I understood what I had in my mind,

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but I still don't understand what you think the Comptroller wanted which differs from what I wanted.

Mr. Smith: It isn't what he wanted; it's what he didn't.

Mr. Delano: I want to say this, Tom. If the Secretary remembers, I wrote a memorandum on this thing and in that memorandum I suggested that these gentlemen come in here and explore the whole situation. We would make available to them everything we had.

Mr. Smith: And you have done that.

Mr. Delano: And we did that. And then ask for their opinion and their advice. That's exactly the language in the memorandum. That's what I would like to have.

Mr. Smith: But you did not ask for our opinion until this morning, and when I asked you yesterday if you wanted our opinion you said you did not want it.

Mr. Spencer: We had these questions, "Is the situation serious?" and "Where do we go from here?" and we had all this information, plenty of it, and there wasn't any barrier put in our way and yesterday you said that you wanted our opinion as to what you or the Comptroller's Office should do from now on.

Mr. Delano: That's just exactly what I said.

Mr. Smith: And that's all you said you wanted. You get this, John?

Mr. Hanes: I don't get it. I am just as dumb as Hell on this.

HM, Jr.: You and I both.

Mr. Hanes: Let me say this: I think the Secretary and I had the same understanding that what has gone by is, of necessity, the background for determination as to what is coming in the future and that's

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what our course of procedure shall be from here out. That's all background and necessary information. However, I don't see that any opinion on that particular phase of it, which has already been done -- whatever we have done in the past is done; we can't undo -- from this point out, however, it makes a lot of difference which course we pursue and my understanding was the Comptroller should furnish you with all the background.....

Mr. Smith: He's done that, 100 percent.

Mr. Hanes: and then you would say "If I were the Comptroller of the Currency, from this point on this is the course I would pursue."

Mr. Smith: That's what he asked us for.

Mr. Hanes: That was my understanding and, I think, the Secretary's understanding.

HM,Jr: John and I are together so far.

Mr. Delano: Because that's exactly what my understanding was.

HM,Jr: Where does Mr. Smith and Mr. Spencer ...

Mr. Smith: ... You asked me the other day, you told me this situation was serious; that they have violated good banking practices and all that. You still feel that way about it. "I would like to know whether these other men would feel the same way about it" and so forth and so on. In other words, "Is this a serious problem, because Mr. Jones and Mr. Eccles are saying that it isn't."

HM,Jr: Let me talk. See if I can clear this thing up. I will restate to you what I said the few minutes you were here. Restate my position exactly.

I said what I felt was this. This is one of 14,000 banks. It's no more important to me than the other 13,999. But for a year and a half there has

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all of this investigating, rumors, charges, counter-charges about this bank and I would hope that you three gentlemen would tell the Treasury, once and for all, first, is this bank following both the spirit and letter of the banking law.

Mr. Smith: I will stop you right there. That's not in what you (Hanes) said.

Mr. Hanes: No. That all, however, is in the background of what has gone before.

Mr. Smith: John, I said "What do you want us to tell you?"

HM, Jr: Is this bank following the spirit and letter of the banking law, I said, then if it is let's forget about it. If it isn't, then I wanted you gentlemen to tell me did we have the authority to make them follow the spirit and the letter of the law and if we did not, would you make recommendations as to what kind of legislation was necessary to make them obey the spirit and the letter of the law.

Mr. Hanes: I am 100 percent with you.

HM, Jr: I can't remember anything else. Is that about right?

Mr. Smith: Absolutely! The Comptroller leaves out the first part of your question.

HM, Jr: Is that approximately what I told you?

Mr. Smith: Here. I wrote it down yesterday. "Is the situation serious?".....

HM, Jr: ... Let me put it -- I wanted to -- I did not repeat myself, but that's what I wanted to know. If the bank is following the spirit and letter of the law. If he's conducting a good bank, all right; let's drop it and go on with something else, but if he isn't, first, have we the authority and, second, what legislation do we need to make him obey the law. That's about as I remember.

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Mr. Smith: That's right.

Mr. Hanes: That would all follow on any recommendation you made or decision you reached based on the background. Here's the situation ...

Mr. Smith: Wait a minute! I asked the Comptroller definitely if he wanted to know that.

HM, Jr: ... Wait a minute! When I saw these three things, there is no difference between you (Mr. Hanes) and me. Wouldn't you like to know that?

Mr. Hanes: I sure would and I think that's the information you have to have in order to determine what you do from here out.

HM, Jr: I stressed both the spirit and the letter. Where can anybody differ on that?

Mr. Smith: The Comptroller told us he did not want the first part and that, to my mind, is the most important part.

Mr. Hanes: I think that's so.

Mr. Delano: I could not possibly say that.

Mr. Hanes: We have to act on this thing right now. We are up against a decision. If I were in the Comptroller's place, I would thank you to tell me right now, with that background, what are we going to do.

Mr. Smith: That's what I think.

Mr. Hanes: And then say "The reasons I am telling you what to do from now on, based on the fact they are violating the law"

Mr. Smith: All right. I don't enjoy this a second, but let me tell you why I wanted to talk to you about it. You called in here three men who are practical bankers, who, in the light of their experience, should be able to give you expert advice

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as to whether they are running a good bank. The Comptroller told us yesterday he did not want our opinion as to that point.

HM, Jr.: Well, let's clear that up. Do you or don't you?

Mr. Delano: I do, Mr. Secretary. In other words, the point is there is a misunderstanding which I very greatly regret and I can't understand how it occurred, but what I want -- I want to put it in the record -- is a careful analysis, a careful look at this whole picture and an opinion covering all its ramifications and advice as to what we should do from now on. If Mr. Smith or Mr. Spencer or Mr. Ottley have any other interpretation of anything I said, I can only apologize for misusing the English language, because that's what I want. I don't see how you could possibly ask for a definition of policy without including that in the background.

Mr. Smith: You did, Preston! You did! Mr. Spencer was sitting there with me and Mr. Ottley was there. I felt this way about it, frankly: why call in a lot of men who are practical bankers unless you want their opinion of this picture?

Mr. Hanes: I should feel very badly if we have given these three men, who have given up their valuable time to come down to help us, the impression that we did not want their opinion. I would feel very badly.

Mr. Smith: When we left the meeting last night -- I am not critical of Preston or anybody else -- we left the meeting last night with the feeling that whatever was responsible for our request was for our advice as to what should be done from here on and I think that largely that's a matter of the Comptroller's Office. However, we have gone in it with them fully and are prepared to make suggestions. I understand what you want now.

HM, Jr.: Let's get this entirely straight, because after all the Comptroller has a tremendous re-

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sponsibility. I don't want him to leave the room and say I ordered things to be done that he is not satisfied with.

Mr. Delano: You could not possibly have my wishes better than you have.

HM, Jr.: You are sure? I don't want to hear afterwards that this is something that was forced down your throat.

Mr. Delano: I couldn't, Mr. Secretary. I talk to you from across the table. This thing is regrettable, this misunderstanding of the English language, and I am

(Mr. Ottley came in at this point.)

Mr. Smith: With a little more study we are ready to make our recommendations on the complete picture.

HM, Jr.: You think we want to go over the -- let me just state, for Mr. Ottley's benefit, so he gets it directly from me what I am saying. I can say that Mr. Hanes and I are entirely in accord on this thing. What I hoped was when you three gentlemen would come in and were generous enough with your time and advice that, as I told Mr. Smith in the first place, the Bank of America does not mean anything more to me than the other 13,999 as individuals or that Mr. Giannini does not mean anything in my life. He's just the president of a bank. Only met him once in my life and as far as I am concerned that's enough. But he does not mean anything in my life. I can't afford, as Secretary of the Treasury, to enjoy the luxuries of prejudices or favoritism.

In asking you peoplein, I wanted to know and Mr. Hanes wanted to know, one, is the Bank of America being run both within the spirit and the letter of the banking law of the United States; two, if it is and you say it is running both within the spirit and the letter of the banking law, fine! and then let them go ahead and run their business and we will forget it.

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If they are not, has the United States Treasury got authority to enforce the law. If they are breaking the law, would you make recommendations as to what kind of legislation we need in order to make them live up to the law. And that's what I hoped we would get from you three gentlemen as a result of this conference. Whatever the misunderstanding was -- the Comptroller can talk for himself; he says that that is what he would like, but he's here and he can talk for himself. Do you back me up on this?

Mr. Hanes: Yes. That's my understanding of it.

HM, Jr.: Evidently there was some misunderstanding.

Another thing Mr. Smith asked me, "Did anything the President or I had done, if you gentlemen disagreed, did you have to say, Well, if that's what the President wants we can't do anything about it. I said, No. You men give the Treasury what you think is the way it should be done; never mind what the President of the United States said or Henry Morgenthau, Jr. said. We want what you people think is the right way. If we have, in this very difficult situation, have made a move which is not in the best interests, both the President and I -- I will talk for the President -- would like to get what you people really think is right. I know that is the way he feels. I will talk for him. I will take that responsibility. In other words, we only want what you men think is in the best interests of the Treasury and the country and the banking fraternity, because if this isn't right and something goes wrong -- it's taken you men seven years to get banking back as an honest profession. Why let some one institution -- this or any other -- again give the banking fraternity a black eye? And I take it that's one of the reasons you men wanted to come here to help us, so one institution or one man can't do that.

Mr. Otley: May I make one observation. The thing that has surprised me the most, having been in

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the banking business all my life and been a National Banker since 1896, I have had great awe for Washington and thought if I didn't do exactly what they told me that they could probably put my bank out of business and put me in the Federal penitentiary, but the thing at which I have been astounded, having read all of the conferences of the various departments, just looks like I was all wrong in my thinking; that I don't have to be afraid of you any more.

HM, Jr.: It is a sad comment, but it's like, if I can quote Tom Smith, he said, "If I told you six months ago that this fellow did twenty things that were wrong, I say now he has done fifty." And I -- frankly, I am worried because either there is something the matter with us, something the matter with the legislation, or maybe this fellow is right. But I want to know. To be a little facetious, it's like letting a counterfeiter go through our Bureau of Engraving and Printing and see how we make a plate. From now on you are no longer afraid of us. It's a pretty sad comment and criticism of us!

Mr. Hanes: It's a criticism of Section 30. It's no good.

Mr. Smith: It's a criticism of the Comptroller's Office. Don't happen to be the present Comptroller, but the office, because these Examiners' reports have criticized this bank since the reopening and the examinations have been piling up. That's correct?

Mr. Delano: Yes.

Mr. Smith: Progressively, and apparently nothing done.

Mr. Hanes: You know, that was the first thing I said. Let's not go back and talk too much about that record because it's not a good record. We have not got a good record in the Comptroller's Office on this thing at all and for that reason I would be perfectly frank and say I don't want to expose that record.

Mr. Smith: This calling you last night was

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not a mistake, because we had this misunderstanding and it's cleared up. The Secretary, John (Ottley) I called -- (Mr. Ottley does not know anything about this) (To Mr. Ottley) I called him last night and told him, asked him what's the scope of our investigation, not scope but what information did he want from us; whether he wanted our opinion of the situation or simply our opinion of what should be done from here on. This interview is the result. Now they tell us -- you have heard what he said. He wants our opinion as to the situation and as to what should be done in the future.

HM, Jr: And I go a step further. I don't give a damn where the chips fall! You don't have to pull your punches as far as I am concerned. I want a straightforward report.

Mr. Smith: When do you want our report?

HM, Jr: Just as soon as you can make it. You don't have to spare my feelings. I think it ought to be in writing. This is too important, but I don't care who you criticize. You can start with me or anybody else.

Mr. Smith: Frankly, we haven't any criticism of anybody who's in the present organization.

HM, Jr: I am glad to hear that. (Gave an exaggerated sigh of relief.

I have been around here. I think it is all for the good and it's -- you want to ask anything more?

Mr. Smith: No.

HM, Jr: All right. You want to say anything?

Mr. Delano: No.

Mr. Smith: I have been furnished with all the information that will be necessary to produce a picture.

HM, Jr: Thank you again, gentlemen.

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(Mr. Smith, Mr. Spencer, Mr. Ottley and Mr. Upham left.)

Mr. Delano: Is there any doubt of my desire to cooperate fully in this investigation? Any thought of any desire to hamstring these gentlemen?

HM, Jr.: I don't know. I don't know. All I know is this thing has shaken me terribly.

Mr. Delano: God! I can't imagine what in the dickens started this thing. I just can't imagine.

HM, Jr.: You are asking me a question. I don't know. I don't know. Tom Smith I have known him, worked for me. Mr. Spencer is a total stranger to me.

Mr. Delano: Of course, I can't see how anybody could ask for a definition of policy or recommendation of where to go from here on without having concluded a complete investigation and opinion of the present situation. Now, frankly, I just don't know where this impression comes from; haven't the slightest idea.

HM, Jr.: All I know is Tom Smith, when he could not get me, finally through Mrs. Klotz called her at her home and said he had to talk to me about it and was terribly excited.

Mr. Delano: No hamstringing about it.

HM, Jr.: Everything that has been said has been said right here. He did not say a thing over the phone that he has not said here.

Mr. Delano: It's peculiar how sometimes little things leave an impression.....

HM, Jr.: He did not say anything over the phone that he did not say here.

Mr. Delano: ... because I know I did say to him, "Tom, I am much more interested in the question of what we should do from here on than any mistakes of the past." I did say that. I would not try to

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stop him from making any comments on mistakes. Everything that we have done has been done with the Secretary's full knowledge.

HM, Jr: That isn't

Mr. Hanes: ... about this particular bank.

HM, Jr: Oh, yes! I mean the conduct of your office. You mean this bank. Oh!

Mr. Delano: So far as trying to choke off any criticism, that could not enter the picture and even if a person were timid, I am not. The thing I can't understand is how anybody could get the impression that he got. Of course, Tom said this. He said, "I don't know that we are qualified to tell the Comptroller what his procedure should be from now on." He said that to you again this morning.

Mrs. Klotz: He changed as he went on, but he made that statement.

HM, Jr: There is only one way. If there is any little doubt been raised in my mind, there is only one way to cure it and that's "actions always speak louder than words".

Mr. Delano: I know you are terribly busy and this is terribly important to me, because I have the greatest respect for your high office and you personally and I would like to do anything I can to remove any doubt that's in your mind. If it happened, Mr. Secretary, and I say this before any witness, if it happened it was due entirely to a misunderstanding and not to any attempt of mine to negative something you wanted to do.

HM, Jr: Just remember, I did not bring this up as far as I was concerned, but something evidently happened yesterday which disturbed Mr. Spencer and Mr. Smith tremendously. They can see me, or the cop on the corner or the colored man downstairs who cleans can see me. But you asked me point blank question and I say the easiest way to clean this up is to give

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these men the backing they are asking.

Mr. Delano: They can have anything in my shop.

HM, Jr: Fine! O. K. John, can you wait a minute?

oOo-oOo

June 28, 1939
12:26 p.m.

HMJr: Hello.

Preston
Delano: Hello.

HMJr: Preston.....

D: Yes, sir.

HMJr: Henry Morgenthau.

D: Yes, sir.

HMJr: When do you want to see me? I hear that you've got a report from that Committee.

D: That's right, sir.

HMJr: Now, when do you want to see me about it?

D: Well, whenever it's convenient for you. I transmitted it to Mr. Hanes.

HMJr: Oh!

D: And he said he was going to talk to you about it.

HMJr: Well, he -- he hasn't.

D: He hasn't? I suppose he's been so tied up with this other thing. Well, I thought I ought to put it through channels. You know?

HMJr: That's all right.

D: And he said he would talk to you about it. Now, I was sort of leaving the matter for adjustment by him.

HMJr: Yeah.

D: But I'm at your service.

HMJr: Well, I tell you what I'll do. Suppose -- let me just think. How would ten o'clock tomorrow do?

D: That's fine, sir.

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HMJr: Well, I'll tell Hanes and if you'll be here at ten o'clock tomorrow we'll have a little meeting on the bank.

D: All right, sir.

HMJr: See?

D: I'll be there.

HMJr: Thank you.

D: Righto! Good bye.

RE BANK OF AMERICA

June 29, 1939.
10:00 A. M.

Present: Mr. Hanes
Mr. Gaston
Mr. Foley
Mr. Duffield
Mr. Preston Delano
Mr. Upham

H.M.Jr: Now, Mr. Delano, where are we on the report of these three gentlemen?

Delano: We have a report, Mr. Secretary. Have you seen it?

H.M.Jr: No, I have not.

Delano: Would you like to have me read it?

H.M.Jr: Please.

Delano: It's short.

H.M.Jr: Please.

Delano: It's addressed to me.

"We have examined the record submitted by you to us and have discussed the situation with various members of your organization. As a result, we submit this memorandum:

"BANK OF AMERICA N.T. & S.A.

"The condition of this bank is serious and it should have immediate, continued and determined attention.

"Asset Position

"The correction of the asset position is the most important thing. Real estate, potential real estate and other frozen assets aggregate more than \$135,000,000. Careful study by the examining force will disclose the losses which should be promptly charged off and this policy should be continued indefinitely until the assets are in proper shape. Unless the charge-offs are made as set forth in the examiner's report, the management will be guilty

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of unsafe and unsound banking practices and subject to the proceeding under Section 30 and/or the termination of insurance and/or the publication of the examiner's reports. Under no circumstances should the Comptroller's Office be persuaded not to insist upon a thorough and complete classification of the assets as well as the prompt elimination of all items classified as 'Loss.'

"Capital Structure

"The large investment in bank buildings in comparison to capital funds, the asset position of the institution, and the many ramifications and operations with affiliates calls for a larger capital structure.

"Cordially submitted,

Jno. K. Ottley
Tom K. Smith
Chas. E. Spencer, Jr."

- H.M.Jr: Now, may I ask you what the next move is you're going to make?
- Delano: I'd like to do this, Mr. Secretary. I'd like to clear the record about this request for capital that they have made to the RFC. You recall they made a request for an underwriting of 25 million dollars worth of capital.
- H.M.Jr: Yes.
- Delano: We are a little bit embarrassed in pressing them for additional capital as long as that request is there and they haven't been answered officially. Of course, you recall, I did discuss the matter with Mr. Giannini orally, imposing a condition which they were unable to agree to. I think, however, to make the matter right, an answer should go back to the RFC and the RFC should be told that we approve this application with these conditions - the following conditions, and set out what conditions we desire to set out. Then when that has been transmitted to them, my office can go forward with its pressure for additional capital, because as a matter of routine, when the RFC and the Bank do not reach an agreement - speaking of other cases - in the matter of preferred stock issue, and we want more capital, we can press them for more capital.

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H.M.Jr: But what about their recommendation for charge-offs?

Delano: Well, we'll go forward with that. That's exactly in line with our policy, Mr. Secretary.

H.M.Jr: Well, I'd like to have some kind of a time-table. Let's take the charge-off business - I mean when would it be reasonable to expect that you - I think you say you can order them to charge off. Did you use that....

Delano: The way that happens technically is this. The examiners - and the Bank's being examined at the present moment; we are very careful in a very important examination - at this moment the examiners will classify the assets, they will classify losses, classify doubtful, classify slow, in accordance with, I think, the best judgment and practice, because we have our chief examiner out there overseeing this particular operation. Now, losses will be automatically charged off there as a result of this classification that they make.

H.M.Jr: I tell you what I think I'd like to do, if Mr. Hanes thinks well of it. We're here right now, between now and tomorrow midnight, under great pressure; I'd like to have you write me a letter to deliver in person on the 5th of July, saying that, based on the recommendations of these gentlemen, you propose to do the following. And put in dates, you see. I mean say "I'm allowing so much time for this - to exchange letters with the RFC, and within such a time our examiners will take steps on the write-off." And then, whatever thing that you're doing, give me some idea of how many days are involved, you see.

Delano: (Nods yes).

H.M.Jr: And that - so I would have this before me, see? And that gives you - say if you could do it on the 5th of July, then I could study that and then I could discuss it with you in person. But I'd like something from you to me based on this report. Does that sound all right, John?

Hanes: That's all right. But, if I might say so, that does not do what I think ought to be done in this Bank, and that is get more capital into it. The first

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thing to get the deposit ratio in sound position is to get their capital structure up, and we are in a little bit of an untenable position from the fact that they wrote us a letter saying that they would comply with certain demands made by the Comptroller. After that examination was made we said that they needed so many dollars of capital. Jesse Jones said, "I'll underwrite the capital." They said, "We'll take it." Then we imposed a condition upon them which is, I believe, not within the province of the Comptroller's office under the law; that is, to take the power of the Board of Directors away from them in the method of declaring dividends. Well, they might agree to that, they might not. I personally think that it would be a pretty big responsibility for the Comptroller's office to take; that is, the veto power on the Board of Directors for declaring a dividend, or rather, the permissive consent of the Comptroller to pay a dividend and taking the responsibility of saying it's safe and sound practice to pay a dividend. I don't think the Comptroller's office is in a position to determine that, nor should they take that responsibility.

Therefore, I'd say the first item, it would seem to me - an orderly way to do this thing - the first item would be to take up first the last item mentioned in their memorandum; that is, let us get more capital in the Bank, let us put the Bank in good shape. Then when this - Gus Folger is out there now making this examination - when this examination is made, go to the mat with these fellows and make them charge off in accordance with the examiner's report on these losses and make them set up a reserve, whatever constitutes in the opinion of the chief bank examiner good safe and sound banking practice. If they don't do that, your only alternative you have left then is a Section 30 case, which I think is a long drawn-out process and is something that I don't think ought to be resorted to unless you've got all the proof in the world before you go into it.

H.M.Jr:

Well, up to this point I haven't made any recommendations of any kind. All I'm asking for on Wednesday is a program from the Comptroller. Glad to get what you (Hanes) have in your mind before you go on your vacation. But on Wednesday I'd like to sit down

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with the Comptroller when he gives me a written program and discuss it fully. You see?

Delano: All right.

H.M.Jr: And that gives you plenty of time.

Delano: Oh yes. Only one point I'd like to make about it - the extent of time that it will take these examiners out there to complete their report, particularly in view, you know, Ed, of this legal question that we are trying to determine out there, may be a little bit difficult to estimate.

H.M.Jr: Well, you can say it will be a maximum and a minimum.

Delano: Yes. Well, I'll confer with the General Counsel on the question.

H.M.Jr: But give me a maximum and a minimum. I'll say I'll give you until the 6th, because the General Counsel is slow on it. I'll give you until the 6th of July to come in. But I mean I want a maximum and minimum - "This thing will take from so long to so long to do the following things." Then I'd like to sit down - the 5th or 6th will do. I'll have to do a little studying.

All right. Thanks.

June 30, 1939
9:14 a.m.

HMJr: Hello.

Operator: Mr. Delano. Go ahead.

HMJr: Hello.

Preston
Delano: Yes?

HMJr: Hello, Preston.

D: Yes, sir.

HMJr: I just wanted to make sure that as far as the Bank of America is concerned you're not taking any action between now and next Wednesday.

D: No, sir.

HMJr: You're not?

D: No.

HMJr: All right. I just didn't know whether you said you were clearing the decks as far as the preferred stock was concerned.

D: No, the only thing I suggested was -- of course, I -- I didn't think that we would do that here without consultation with you, laying the matter fully before you as to the form in which we did it and all.

HMJr: I see. Now, the other thing is, when is your chief bank examiner going to be back?

D: Well, just as soon as he gets that thing closed out there.

HMJr: Well does -- does he have to stay there himself?

D: Well, this was so important, Mr. Secretary, that I thought he should stay there. I can call him if you want him.

HMJr: I wish you'd call him and ask him what is the earliest that he could be back here. Does he fly?

D: No, Gus doesn't fly. I hate to ask him to.

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HMJr: Well.....

D: You see, one thing that's developed out there is this: The examiners have, they think, a basis for charge-offs of some dimensions, and I wanted Gus to go there, to be very certain that everything that was done was done with his own particular knowledge.

HMJr: Uh-huh.

D: Because I think he's a very sound and a very good man.

HMJr: I agree with you. Now what I want is, before I go into this thing, I want Gus Folger here to advise me.

D: Yes. Of course.

HMJr: So will you find out what is the earliest day that he can be back in Washington and -- so that he can advise the Treasury.....

D: Right!

HMJr:as to the charge-off situation.

D: Right!

HMJr: You see?

D: Yes, sir.

HMJr: As to the charge-off situation, what is the earliest day he could be back.

D: I -- I'll.....

HMJr: Supposing you phone him and let me know.

D: Well, I've wired him to phone me just as soon as he gets there.....

HMJr: Oh!

D:and just as soon as he does, I'll.....

HMJr: Oh, he isn't there yet?

D: No, he's on his way.

HMJr: Oh, my heavens! Oh, my heavens! Well.....

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D: Don't you think he ought to pass on the charge-off situation himself?

HMJr: Yes.

D: I mean, that's -- that's the reason I sent him.

HMJr: Yes. And then I want him to recommend to me on the charge-off situation.

D: Um-hm.

HMJr: If I had a man to correct me, that's the meat of the coconut.

D: Well, I think that's the most important thing we've got right now.

HMJr: Well then, if you could find out what -- I want him to pass on the charge-off thing and I want him to make the recommendation to you and me.

D: Yeah.

HMJr: And until I can get Gus' recommendation, I think I'll just wait.

D: All right, sir. Now, you do want him to stay there though until he can make up his mind, don't you?

HMJr: Oh, yes.

D: I mean, we don't want to just pull him back.

HMJr: Oh, no.

D: Ah.....

HMJr: I want him to -- to come to a definite conclusion as to what.....

D: Right!

HMJr:procedure we should follow on the charge-off.

D: And then you want him to sit in with you and me on that?

HMJr: Yes. That would be included in your timetable.

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D: Well, in that case we won't be able to do anything on the sixth on this, will we?

HMJr: Well, I -- that's just why I'm calling, because I don't know how long it will take Gus to make up his mind.

D: Um-hm. You see, one of the difficulties of the situation is this legal question that we sent Sherbondy out there to work with Gus on.

HMJr: Yes.

D: Now, it depends a little bit upon on how fast Sherbondy can make up his mind to advise Gus on the legal.....

HMJr: Well.....

D:nature of that paper.

HMJr:get -- find out from both of them that -- the whole thing.

D: Yeah.

HMJr: When can Gus and Sherbondy come back and recommend to us.....

D: Right!

HMJr:what steps we should take in regard to charge-offs.

D: All right, sir. I'll do that.

HMJr: Thank you.

June 30, 1939

MEMORANDUM FOR THE SECRETARY:

I reached Mr. Folger at San Francisco this afternoon and discussed the matter of his prompt return here for a conference. He believes he can inform himself sufficiently as to the situation to permit his return leaving there Friday night, July 7th, and arriving here Tuesday, July 11th.

This leaves out of consideration whether Mr. Sherbondy will have finished the legal work by that time, but on the assumption we will have sufficient facts assembled for a conference I have instructed Mr. Folger to follow that schedule. If it develops that he can advance the date of his return he will so advise us.

Preston Delano

July 6, 1939
9:10 a.m.

HMJr: Hello.

Operator: Mr. Delano. Go ahead.

HMJr: Hello.

Preston
Delano: Hello, Mr. Secretary.

HMJr: Delano.....

D: Yes.

HMJr: Morgenthau.

D: Yes, sir.

HMJr: Good morning.

D: Good morning, sir.

HMJr: Now, I understand through Mrs. Klotz that Folger will be back by next Tuesday?

D: That's the present plan. Yes, sir.

HMJr: Well, he can't complete his work by Friday night thoroughly?

D: Well, he thinks he could, but at the time he phoned me, which was last Monday.....

HMJr: Yes.

D: Now, of course, we are pressing him on time, Mr. Secretary.

HMJr: Yes. Well, that's correct, because there's -- so much time has passed.....

D: Yeah.

HMJr:and nothing's happened that -- I mean, if it meant his staying until Saturday night, that would be all right, you see.

D: Well, I'll -- I'll be in touch with him today and I'll.....

HMJr: Will you call him today and then call me back?

D: Yes, I'll do that.

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HMJr: But if he can clean up by either Friday night or Saturday night and feel he could bring the story back, I really would like to have him back and I'd like to make up my mind what we're going to do here next week.

D: All right, sir.

HMJr: See?

D: Right!

HMJr: All right, and give me a ring today, please.

D: And are we having a meeting today on this chronology or....

HMJr: No, there's nothing to meet on.

D: I see. Well.....

HMJr: We'll wait until Folger comes back.

D: Wait until Folger comes back.

HMJr: Yes.

D: All right, sir.

HMJr: But you'll let me hear from you this afternoon?

D: Yes. As soon as I can get in touch with him I'll give you a ring.

HMJr: Thank you.

July 6, 1939
11:26 a.m.

HMJr: Hello.

Operator: Mr. Delano. Go ahead.

HMJr: Hello.

Preston
Delano: Hello. I.....

HMJr: Morgenthau.

D: Yes, this is Delano, Mr. Morgenthau.

HMJr: Yes.

D: I reached Folger in San Francisco.

HMJr: I don't hear awfully well.

D: I say, I reached Gus Folger in San Francisco.

HMJr: Yeah.

D: And he will leave there Friday night according to schedule.

HMJr: Oh, good!

D: Be here about Tuesday.

HMJr: He's getting along all right then?

D: Yes, I think we've got something there.

HMJr: Good. Good.

D: And shall I get in touch with you then on Tuesday?

HMJr: Would you do that, please?

D: Yes, sir. Now in the meantime, I understand you don't want me to do anything about clearing the record or anything of that sort.

HMJr: No, I want to -- I want to hold everything.

D: Right!

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HMJr: Until -- until.....

D: Until we have a conference on it.

HMJr: Yes, because as I understand it, there were certain -- how shall I say -- proposals which were to have been fulfilled on or before July 1st.

D: That's right.

HMJr: Just like the Stabilization Fund, they died.

D: (Laughs).

HMJr: We want to reinstate them right out of poor health again.

D: Yes, sir. Well, I'll get in touch with you Tuesday then.

HMJr: Right.

D: Right.

HMJr: Thank you.

D: Good bye.

July 7, 1939
2:52 p.m.

Operator: Mr. Delano. Hello?

Preston
Delano: Hello.

HMJr: Hello, Delano.

D: Yes.

HMJr: I think it would be nice to have that Advisory Committee of three come back here next Thursday. Hello?

D: Yes.

HMJr: And by that time we ought to know about where we are, and I'd like to put it up to them, see?

D: I see.

HMJr: So could you send them telegrams?

D: Um-hm. I wonder if I -- would it be better to talk to them do you think?

HMJr: Well, any way you want, but ask them to come Thursday - be prepared to stay Thursday and Friday.

D: Be prepared to come here and be prepared to stay Thursday and Friday.

HMJr: Yes.

D: All right, sir.

HMJr: Will you do -- by that time we ought to know where we're at.

D: Yes. Now, is this meeting this after -- is there a meeting this afternoon, Mr. Secretary?

HMJr: No, no meeting.

D: I had a.....

HMJr: No.

D:call to stand by for a meeting and I.....

HMJr: No, this was just this message.

D: Um-hm. Right!

HMJr: Right.

D: All right, I'll prepare -- that's on Thursday and Friday of next week.

HMJr: If you please.

D: Right, sir.

HMJr: Thank you.

D: Good bye.

July 11, 1939
2:20 p.m.

HMJr: Hello.

Operator: Mr. Delano. Go ahead.

HMJr: Hello.

Preston
Delano: Hello, Mr. Secretary.

HMJr: I'm sorry I couldn't talk to you this morning. I had a lot of other things.

D: Well, of course, I appreciate that you're pressed. It had to do with this: You didn't get Tom K. Smith either, did you?

HMJr: No, I couldn't talk to anybody this morning.

D: Well, he's all tied up with a -- public utility re-organization there in St. Louis.

HMJr: Oh, yeah.

D: And he can't get away until about the 24th.

HMJr: Uh-huh.

D: Now, he makes the suggestion that we go ahead just the same with Charlie Spencer and Ottley.

HMJr: Yeah.

D: And I've got them standing by, if that's agreeable.

HMJr: Yeah. Well now, is your chief bank examiner back?

D: Yes, he's back. Folger is here.

HMJr: Yeah.

D: And we have gone into preliminary huddles with him. He has got a very interesting -- findings out there.

HMJr: Well, when will he be ready to report to me?

D: Any time that you want him.

HMJr: Well, let me just look at my calendar. (Brief pause.) Well, how about ten thirty tomorrow morning?

D: Ten thirty tomorrow morning will be fine.

HMJr: And will you bring your people in then?

D: Well, I'll bring anyone you say. I'd like to bring Cy, of course.

HMJr: And.....

D: And Folger and myself.

HMJr: That's enough.

D: Unless you would want some others.

HMJr: No, that's plenty.

D: All right, sir.

HMJr: And then, if these other gentlemen could be here Thursday that would be fine.

D: Well, I'll tell you what they're up against -- we're up against ^{now} on that.

HMJr: Yeah.

D: Charlie Spencer can only get here about -- he has to take a one o'clock plane on Thursday.

HMJr: Yeah.

D: Would Friday morning be too late?

HMJr: No.

D: Well, suppose I arrange to have the two of them here Friday morning?

HMJr: Perfect!

D: Right, sir. Then that makes ten thirty tomorrow morning....

HMJr: Yeah.

D:for G. H. M., Cy and myself.....

HMJr: That's right.

D:your office,

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HMJr: Yeah.

D: And these other gentlemen to arrive Friday and then.....

HMJr: We'll put -- we'll save -- we'll save ten o'clock Friday.

D: Ten o'clock Friday.

HMJr: Yeah.

D: All -- all agreed, sir.

HMJr: Fine.

D: This afternoon we'll try to get some of the legal questions ironed out. You know, Sherbondy didn't get back, but we have his report.

HMJr: Good. Well, I -- let's see if we can't do something this week.

D: Right. I'll be prepared to discuss it tomorrow morning at ten thirty.

HMJr: O. K.

D: Righto.

HMJr: Goodbye.

RE BANK OF AMERICA

July 12, 1939.
10:30 A. M.

Present: Mr. Gaston
Mr. Foley
Mr. Duffield
Mr. Preston Delano
Mr. Upham
Mr. Folger
Mr. Tietjens

H.M.Jr: Well, sir, could I get a thumbnail sketch of what your Chief Examiner found on his trip to the Coast?

Delano: I think, Mr. Secretary, possibly the best way is to let him tell you.

H.M.Jr: Fine.

Delano: He's here, and we've been in close touch with him since he got back.

H.M.Jr: All right.

Folger: I found, Mr. Secretary, that our new Chief Examiner, who, while he is new out there, has been with us a long time, had this examination started as of March 31, and his Examiners at his direction have gone ahead with an examination of fixed assets in the Bank.

H.M.Jr: What's the name of the new Chief Examiner?

Folger: Wright.

H.M.Jr: Ray?

Folger: Wright - W-r-i-g-h-t. Owen D. Wright.

H.M.Jr: Uh-huh.

Folger: Well, he had his Examiner - his tentative figures showed losses of about five million dollars.

H.M.Jr: What bank is this? You haven't mentioned the bank yet.

Folger: Bank of America National Trust and Savings Association.

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Well, after discussing banking houses, furniture and fixtures, other real estate, real estate carried under contract given the Bank by California Land and Capital Company, we again set up tentative figures, with losses of, instead of five million, \$13,500,000, in round figures.

(Consults typewritten data) That's correct - \$13,500,000. And \$16,400,000 doubtful, 102 million slow.

The five million had been reviewed by the Examiner....

H.M.Jr: Before?

Folger: The five million that they had first estimated as a loss had been reviewed with officers from the Finance Committee of the Bank. And of course, the losses and fixed assets and other real estate, assets of that character, have not yet been reviewed. And the discussions that I had were entirely with our staff there - Chief Examiner and two or three of his Examiners who are engaged in this examination, particularly the head man, Mr. McLean, who is making this examination.

H.M.Jr: What are the principal - the fairly - the principal items that make up the \$13,500,000?

Folger: Loans and discounts, main office and branches, \$1,400,000. I'm speaking in round figures.

H.M.Jr: Yes, that's all right.

Folger: International Department, a million dollars. That's very largely general credits. Bonds and securities, \$1,600,000. Then they have some small items that don't amount to anything much - cash items and overdrafts, twelve thousand, three thousand. Other real estate owned, 665 thousand. Banking premises, other real estate, 488 thousand. Merchants National Realty Corporation, future and former, a million 126 thousand.

These items that I'm reading off here are being stated here as the Bank carries the assets on their books. That Merchants National Realty,

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future and former, means it's banking houses which have been abandoned and some real estate that they contemplate or say they contemplate using for banking houses in the future.

Banking premises, 5 million 27 thousand. That's banking houses that are now being occupied. And Merchants National Realty Corporation, again, 2 million 100 thousand.

That makes \$13,522,000.

- H.M.Jr: Now, I'd like to ask you this. Now, have you arrived at a decision - have you had time - that this is going to be your recommendation?
- Folger: Yes, sir.
- H.M.Jr: Now, just state it in your own language. What are you going to recommend, if you are ready to recommend?
- Folger: Well, I am recommending that the report be written showing approximately this amount of loss.
- H.M.Jr: I see.
- Folger: And approximately 15 million dollars of doubtful assets.
- H.M.Jr: Now....
- Folger: And the reason I say approximately is that it's - I wouldn't want to write a report and I wouldn't want to ask - suggest that Examiners write a report until the loss - the items that will be listed as losses are reviewed with the Bank.
- H.M.Jr: As to the thirteen five?
- Folger: That's customary.
- H.M.Jr: That's the thirteen five.
- Folger: Yes, sir.
- H.M.Jr: But you're ready to go to town on the thirteen five?

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Folger: Yes, sir.

H.M.Jr: Publicly, if necessary?

Folger: Oh yes. We wouldn't want to write a report that we wouldn't think would stand up.

H.M.Jr: Now, let me ask you this. In the thirteen five, how much of that would you say is losses within the last twelve months, and how much within one, two, three, four, five years?

Folger: Well, very largely in assets that have been carried for years.

H.M.Jr: For years. So it's nothing new.

Folger: No.

H.M.Jr: Well then, the question could be asked, why didn't the Comptroller's office do this before?

Folger: Well, the Comptroller's office has been charging off an average of about five million each examination.

H.M.Jr: Well, why now do you feel it is necessary to jump it from five million to thirteen million five?

Folger: Because the real estate, the aggregate of real estate, is entirely disproportionate to the - it's too large, and they're not doing the things that we have recommended and have criticized them for. They are not conserving their assets, we don't think, in a proper way. They continue to pay a dividend that is too high - the rate is too high.

H.M.Jr: But the fact remains, I gather, that this might have been done any time during the last several years.

Folger: That's correct, in a way. You examine the Bank and it has a lot of real estate, see; the directors and the management claim that it is worth the money and they have a place to show it. But finally it accumulates and they don't sell it and they can't sell it, and there comes a time when we must say,

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"If you can't sell it, you can at least write it down."

H.M.Jr: And you feel that time has come.

Folger: Yes, I think we should. If they won't reduce the dividend rate and won't apply their earnings, more of their earnings, on this kind of assets, the fixed assets here - that you've got real estate and banking houses amounting to a hundred million dollars and....

H.M.Jr: How much?

Folger: A hundred million dollars.

H.M.Jr: Real estate and banking houses?

Folger: Yes.

H.M.Jr: Well, you don't feel, then, that this is unnecessarily harsh.

Folger: Well now, I don't think so, but they're going to think so, of course.

H.M.Jr: Well, I'm not asking what they think, but I'm asking what you think.

Folger: I think it's the right thing to do.

H.M.Jr: And you feel that you can go before any Congressional committee, if necessary, and justify this.

Folger: Yes, sir.

H.M.Jr: What?

Folger: Yes, sir.

H.M.Jr: Well now, I'd just like to start and ask the Comptroller this question. Am I correct in my feeling that all the arrangements or, rather, negotiations that we have - that your office was carrying on with the Bank of America lapsed on June 30?

Delano: Well, that's our interpretation, Mr. Secretary. Now, there's some question as to just what that

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thing was. It was an agreement on the part of the Bank that they would do certain things, and if you remember, we made it very clear that it wasn't a contract. It was a sort of meeting of the minds that they'd do certain things. Now, I feel that - and we debated that question in my office with my staff - we feel that as far as that's concerned, the things we think they should do we'd still like to have them do, and we shall continue to press to have them do; as far as any commitments on our part, if they may be implied in that thing, we think they expired on June 30th.

H.M.Jr: Well, if that's the way you feel, and I take your word for it, then if you decide to take this recommendation and incorporate this into the report, I would like you to consider this, that we just from now on do one thing at a time, you see. I mean I'm just offering this for consideration. And that pending and depending upon the response of the Board of Directors to your report - I mean I'm just raising this, I'm not - I'm just raising it for your consideration - that we concentrate our efforts on getting them to carry out the recommendations of your office, which will be in this report.

Delano: My mind runs exactly with that.

H.M.Jr: You see?

Delano: Yes, I agree with you.

H.M.Jr: See, that we don't try to chew off more than.... This report is written up and presented to the Bank. Well then, it would seem to me that the thing to do would be to concentrate your efforts, everything that you've got, into it to see that the Bank promptly carries out the recommendations in this report. If they don't, then there is always - it's always time enough to say, "What are we going to do about it?" But what I'm trying to - I don't want to go back to what we were talking about before the first of July, and then immediately we'd get into an argument.

Delano: Yes.

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H.M.Jr: What?

Delano: I agree entirely.

H.M.Jr: And then, if I'm correct and my General Counsel agrees - then what we're talking about here is purely a Treasury matter.

Delano: That's right.

H.M.Jr: And doesn't concern anybody else.

Delano: Well, may I ask a question?

H.M.Jr: In the Government.

Delano: May I ask a question?

H.M.Jr: Please.

Delano: We were debating this morning the question of the propriety of discussing this with Mr. Crowley, who is Chairman of the FDIC and whose corporation, of course, insures this thing. Now, I'm just wondering whether we should shut him out from this consideration. I'd like to have the opinion on that.

H.M.Jr: Well now, let me ask you a question. Would he get a copy of this?

Delano: Of this report?

Folger: He could get it. He is entitled to it.

Delano: And the Fed gets it. The Federal Reserve gets it.

H.M.Jr: After it's written.

Delano: After it's written, yes.

H.M.Jr: Let me ask you another question. When a report is in the flux, so to speak, is it customary to show it to the FDIC, consult with them before?

Delano: I'll have to ask that question. I don't know what the answer is.

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- H.M.Jr: Do you normally show it?
- Folger: No, sir, we would not, unless they - it meant a consolidation or if they were advancing - making a loan to the Bank to effect a merger.
- H.M.Jr: Then why show this report before it's finished to the FDIC? What would be the reason for it?
- Folger: Well, the FDIC is, as you know, very much interested in this.
- H.M.Jr: I know. So are a lot of other people interested in it, too. And I just - unless there's an awfully good reason, I don't want another town meeting on this thing. I don't want a town meeting on this thing.
- Folger: They have an interest, though, Mr. Secretary - Federal Deposit.
- H.M.Jr: Well, they have an interest....
- Folger: Tremendous interest.
- H.M.Jr: Correct. But are you by this action impairing or endangering anything as far as FDIC is concerned, placing anything in jeopardy as far as they are concerned?
- Folger: Oh no, I don't think so.
- H.M.Jr: What you're doing is helping them, isn't it?
- Folger: That's the way I look at it.
- H.M.Jr: Let's put it another way. What the hell could they contribute to this thing, before the report is written? What the hell can FDIC contribute to advising you how to write this report?
- Folger: No, I don't think they could advise how to write it.
- Delano: Well, I'm guided by that, Mr. Secretary. The reason I raised the question is because of the size of this particular problem and the fact that the FDIC has been in some of these previous discussions, you see.

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H.M.Jr: And so have a lot of other people.

Delano: Yes, that's very true. I just raised that last question - as I say, we will be guided entirely by whatever decision is made. I'd like to have Cy's opinion on that. May I have Cy's opinion on that, because we discussed....

H.M.Jr: Nothing is going to be settled this morning. You get Cy's opinion. I'd like Foley's advice. Both of you. I mean let's leave that in the air. I mean you just raised it. Nothing is decided this morning. This is just a discussion, see?

Delano: Yes.

H.M.Jr: But you think that over. But my only feeling is that if we were doing something which might injure FDIC, they should be consulted, but if we are doing something to strengthen the situation - and after all, they are the people that have been after us to do something like this from the start, and if we go ahead and do something like this, I should think they'd be tickled to death. But if there is anything legal or ethical or moral - any reason why they should be shown....

Delano: Yes.

H.M.Jr: Now, the only reason that I hesitated, for your sake and my sake - I don't want a town meeting.

Delano: Well, I agree with that.

H.M.Jr: Now, before the thing is finally jelled, I'm going to advise the President - before it finally jells, once we make up our minds, because I have advised him up to now. But before it finally jells, I'm going to tell him about it, see?

Delano: Uh-huh.

H.M.Jr: I didn't mean to shut you (Upham) off as far as FDIC is concerned. Have you got an opinion?

Upham: I think there is more reason to keep Leo currently informed than there is for anyone else - I mean if there is any reason for keeping anybody else informed. I think there is something to be said

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for keeping him currently informed, and something to be said against it. I'd be inclined, I think, to tell him. But that's - I'd like to hear what Ed has to say.

Delano: I think we should all give careful thought to that, lest our motives in not telling him be misunderstood, Mr. Secretary.

H.M.Jr: All right. Does anybody else have to be told?

Delano: I don't see any reason why anybody else should be told.

H.M.Jr: Now, I tell you what I'd like to do; I tell you what I'd like to do, so we'll keep this thing moving. If convenient, I'd like to see you gentlemen again at 11 tomorrow, to talk about this thing again, you see. Then my thought was if you could sort of have a - something on a piece of paper for me by then, you see.

Delano: Well, I just want to get that clear. Do you mean in the way of a chronology or a....

H.M.Jr: No, I just wondered - do I need anything....

Delano: What do you want on a piece of paper?

Folger: You mean these figures.

H.M.Jr: Well, I'm just wondering. Well, I mean....

Duffield: I had thought - there are some things I'd like to know; I don't know whether you're interested in knowing them too. I wonder how long it will be before this is reviewed with the Board? Particularly I have in mind, will there be a determination before the September dividend date is on top of us?

Delano: Oh yes.

Folger: It only takes a day or two to review this with the Bank.

H.M.Jr: Oh, really? Well, let me ask a question. Let's say on Friday, when these advisory gentlemen come in, and it's decided to take your recommendation Friday, then from then on how does the machinery

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click? I mean what happens then?

Folger: We'd review these assets with the Bank.

H.M.Jr: When would you do that?

Folger: Immediately following our....

H.M.Jr: Well, who would do that?

Folger: Well, usually the Examiner in charge, and sometimes the Chief Examiner with him. In this case, the Chief Examiner will be with him, the Chief Examiner of the district.

H.M.Jr: Oh.

Delano: I'd like to have Mr. Folger there, too.

H.M.Jr: I would too.

Delano: I want to show backing from here.

H.M.Jr: I would too. He ought to get on the Friday night train and go back. I think he ought to get on the train Friday night and go back there.

Delano: That's exactly what we had in mind.

H.M.Jr: It's a nice climate.

Delano: There's a Fair there, too, Mr. Secretary.

H.M.Jr: Have you seen the Fair?

Folger: I was out there a couple hours.

May I make one statement that I failed to make a few moments ago. Mr. Wright, the Chief Examiner of the district, and the Examiner who is in charge of this current examination - they are in accord with this recommendation....

H.M.Jr: Good.

Folger:that we propose to make.

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- H.M.Jr: Good. Well, I think this - we'll come back - you see, I'm not - when I ask for a piece of paper - I'm not entirely familiar with this procedure, and if we reached an agreement Friday morning, what would be the steps that would be taken, and about how long a time would it take?
- Delano: If you'd like to have me informally answer that right now....
- H.M.Jr: Fine.
- Delano: We have something in mind. We can give it to you on paper.
- H.M.Jr: That's all right, it isn't necessary.
- Delano: What we had worked out was that after this Friday meeting with our advisors, if the program was decided on, then Mr. Folger would immediately go back to San Francisco; he would sit down with our Chief District Examiner up there. Together they, or, if Mr. Folger preferred, himself alone, would confer with the proper officials in the Bank as to these write-offs, and inform them - which is customary and which is the procedure; he would inform them what our examination was going to show. Then he would return here and we would put all people to work possible to turn out the examination and expedite it. Then what happens is that a copy of that examination, with the Examiner's criticisms, goes to the Bank and a copy comes in here. Then we "recap" the Examiner's criticisms and write a letter from here to the Bank, which we're going to attempt to get out before August 1.
- H.M.Jr: I see.
- Delano: And that letter - what's said in that letter - is going to be a very important letter, because that letter may contain a point about dividends, if we find that the facts justify, and also it may warn against unsafe and unsound practices that we find in this examination.
- H.M.Jr: Well, let's say that if we're going ahead, we'll do it definitely before the first of August; it must be cleaned up.

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Delano: That's just the question.

Folger: That might be impossible, Mr. Secretary.

H.M.Jr: Nothing's impossible.

Folger: It doesn't take long to review these with the Bank, and we could work at night on that, if necessary.

H.M.Jr: Where is the....

Folger: It will take some time for the Examiner to finish his report. He's writing that report, and since it - and it's longhand, his own handwriting, Mr. Secretary; then it must be typed. There are only a few people that can do that kind of typing - private staff -

H.M.Jr: Where are they located?

Folger: You can't put just anybody....

H.M.Jr: Where/are the private six people located?

Folger: They're in his office in San Francisco.

Upham: It's a tremendous job, typing that.

Folger: May be more than that, because these schedules....

H.M.Jr: I'd like the Comptroller's idea - the first of August - July 31, Monday night, as the deadline to work for.

Folger: We'll certainly do our best to comply with it.

Delano: Well, we'll move heaven and earth to do that. We'll move people out there, if necessary.

H.M.Jr: You see, I hope to leave on the first of August. I'd really like to have this thing cleaned up before I go.

Delano: That's what I had in mind.

H.M.Jr: Send people out there. This thing - there's nothing which I consider more important to do carefully, well, and fairly, than to do this.

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And if necessary, whatever the bottleneck is - why, move people....

- Delano: That's what I'd like to do, I'd like to get this out for you. I'd like to have you see that letter before you go away that we're going to write.
- H.M.Jr: I'd like the President to see it, too.
- Delano: This is the most important letter we have written out of the Comptroller's office for a long time. We want to draw it carefully, with the advice of Counsel, and get it out.
- H.M.Jr: Herbert, you want to ask anything?
- Gaston: No.
- H.M.Jr: Any suggestions?
- Gaston: No. This is the program as I sort of vaguely understood it. Seems to be the only thing to do. I feel that we're back on the track again on this thing.
- H.M.Jr: Ed?
- Foley: I'm satisfied.
- H.M.Jr: Gene?
- Duffield: Fine.
- H.M.Jr: Cy?
- Upham: No, not - there is one thing - I don't know whether Gene or Herbert had said or not whether it was necessary to raise it. That is this letter we were thinking of sending.
- Delano: Oh, we did debate the question at considerable length of trying to close the records here, and we've decided we don't want to do it at all.
- H.M.Jr: Good.
- Delano: We let that die, and we'll concentrate here on that particular point, because we're afraid of giving them ammunition.

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H.M.Jr: Wonderful.

Gaston: That letter's not going?

Delano: Nothing is going.

H.M.Jr: Wonderful. Well, I think this is a good meeting. Then we can do it again at 11. And then if you could do this; I've got these gentlemen down for 10; I'd like them to come to your office at 9. Now, if 10 is too early, I'd rather see them at 11 and give them two hours to go into the thing before....

Delano: Well, here's what's going to happen, Mr. Secretary. Ottley is coming here tomorrow morning.

H.M.Jr: Fine.

Delano: Spencer will be here 4:30 in the afternoon.

H.M.Jr: Wonderful.

Delano: I'll work with Ottley all day and work with Spencer when he gets here, and if necessary will work at night; we'll be ready at 10:00 o'clock for you.

H.M.Jr: See, I'm worried about Folger getting that train Friday night.

Delano: We'll roll him on the train.

H.M.Jr: But the only reason I hesitated about FDIC - I wanted to keep this a Treasury affair, keep it in the family.

Delano: I hope you get my point, Mr. Secretary.

H.M.Jr: That's the only thing. No, that's all right.

Delano: I'm concerned....

H.M.Jr: Please go ahead.

Delano: I was just going to say, I'm concerned if we don't consult them, having consulted them and kept them informed before, because they'll think we had some reason to try to put this over....

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- H.M.Jr: If you feel that way, I'd rather show it to them.
- Delano: I'd rather talk it over with Leo. I just feel that way about it. Now, we're subject to orders here.
- H.M.Jr: No, no - I mean think it over and if it's a question of "Well, it would be better to show it to him than not," then I'd rather show it to him.
- Delano: We think there's nothing to hide in this thing. We think this is a straight routine proceeding and that it is thoroughly and completely justified.
- Now, I'd like to answer one question there that possibly may clarify the air a little bit about why this particular write-off can be made at this time and hasn't been made in the past.
- H.M.Jr: That isn't clear. I'd like that. That isn't quite clear.
- Delano: Well, in the files of this Bank these Examiners have gone in this time and have uncovered a series of appraisals of real estate which we have had no knowledge of up to this time.
- H.M.Jr: I see.
- Delano: Now, those appraisals are used as the basis - their own appraisals are used as the basis of this large eight million dollar write-off. And to my mind - I've asked the Examiner specifically, and I think this is the most important point in the whole thing; he and the other two Examiners are of the opinion that they constitute sufficient and good evidence to justify this write-off. This is a discovery of major importance.
- H.M.Jr: Who discovered that?
- Delano: McLean, didn't he?
- Folger: Yes.
- Delano: McLean was the Scotchman that was put in there, and he turned this stuff up.

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H.M.Jr: Three cheers for the Scotch.

Delano: I think this gives us a handle that we never had before.

H.M.Jr: This is their own appraisal?

Delano: This is their own appraisal.

H.M.Jr: Wonderful.

Delano: I think that's the most important thing we've ever done here.

Upham: Mr. Secretary, those appraisals were not in the Bank's files, they found them in one of the subsidiaries.

H.M.Jr: Which subsidiary?

Upham: Transamerica General, is it?

Folger: Transamerica General, and part of them in Capital Company.

Delano: I meant they were uncovered there some place.

Upham: Yes.

Delano: They've been turned up by the new corps of Examiners we have out there.

Upham: But there are reasons why Sed didn't find them before.

Delano: Oh yes, I'm not criticizing him.

Upham: Didn't want you to get the idea that Sed had fallen down.

H.M.Jr: Well, that's all right. We'll see each other at 11.

July 12, 1939
11:06 a.m.

HMJr: Hello.

Operator: Delano. Go ahead.

HMJr: Hello.

Preston
Delano: Yes.

HMJr: Morgenthau.

D: Yes, sir.

HMJr: I'd like to offer a suggestion you might be thinking over between now and tomorrow.

D: Right.

HMJr: That on his way back west, Folger stop off at St. Louis and spend one day with Tom Smith to show him what we're doing and get his approval as well.

D: Fine! I'll do that.

HMJr: You see, he could right through St. Louis, spend the day there with Tom and show it to him, and then we'd have Tom's backing as well.

D: Of course, we already have that to this extent - that I've discussed it considerably over the phone with Tom.

HMJr: Oh.

D: I mean I -- I -- I have a good deal of confidence in Tom K. Smith and I -- I take the liberty of discussing some of these.....

HMJr: Oh.

D:things as we.....

HMJr: Well.....

D: receive them.

HMJr:would you bring that up tomorrow at the meeting and let us discuss it?

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D: Yes. But -- I mean -- I think it would be a very good move to have Gus do that. Stay over a few hours and discuss that with him.

HMJr: With Tom.

D: With Tom, yes.

HMJr: You think that.....

D: Tom is pretty well informed right now.

HMJr: Well -- O.K.

D: Right.

HMJr: Thank you.

D: Good bye.

RE BANK OF AMERICA

July 13, 1939.
11:00 A. M.

Present: Mr. Gaston
Mr. Foley
Mr. Duffield
Mr. Preston Delano
Mr. Upham
Mr. Folger
Mr. Tietjens

H.M.Jr: All right, Mr. Comptroller, where are we at today?

Delano: Well, we're ready to proceed, I think. Mr. Ottley is here and we're going into a huddle with him, and Mr. Spencer will be here this afternoon. We'll be ready for you at 10:00 o'clock tomorrow morning.

H.M.Jr: Fine.

Delano: In the meantime we have discussed the matter ourselves - this question of the Crowley matter.

H.M.Jr: Oh yes.

Delano: And I think there is rather general agreement that it would be judicious and wise to talk this matter over with Mr. Crowley. It was suggested, however, that you call him on the phone and tell him that this is a Treasury matter and you think that it would be wise to keep it within proper bounds, and that we will come over and talk to him about it because of his position and his interest in this Bank, and because of his concern over it - because of his natural concern over the dimensions and size of it. And when you've done that, Mr. Folger and myself and Cy will drop over and talk to him about it. We're just going to inform him what we're going to do. We're not going to - we'll listen to any comment. But our idea will be to let him know, so he won't learn it from somebody else.

H.M.Jr: O. K.

Delano: I think I've stated that, haven't I,

Foley: That's right, just to bring him up to date, tell him what we're doing.

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H.M.Jr: (On phone) Leo Crowley.

I'd like to have Folger tell me just how you found and where you found and what you did find - that eight million extra that you want to write off, you see. That's in some subsidiary or something? What's the story?

Folger: I'm not prepared, Mr. Secretary, to go into any great detail about that, because only in a general way - I didn't examine the Bank, and I was out there such a short time.

H.M.Jr: Well, tell me what you know about it.

Folger: Well, the Examiners had....

H.M.Jr: Excuse me.

(On phone) Hello. - Hello. - Hello. (Conversation with Chairman Crowley follows:)

July 13, 1939
11:05 a.m.

HMJr: Hello.

Operator: Leo Crowley.

HMJr: Hello.

O: Go ahead.

HMJr: Hello.

Leo
Crowley: Hello.

HMJr: Leo.....

O: Yes.

HMJr:the Treasury is in the process of making another
audit on the Bank of America.

O: Yeah.

HMJr: And knowing your interest from the start on this situa-
tion, we have some new information which the Comptroller
would like to show you. Hello?

O: Hello.

HMJr: Hello.

O: Yeah.

HMJr: And he will get in touch with you in a little while and
arrange to see you.

O: Fine. You.....

HMJr: And..... -- hello?

O: You.....

HMJr: Go ahead, Leo.

O: You can depend on us a hundred percent to stay right
behind whatever move we've made on that thing.

HMJr: All right. Now, I -- I won't -- I can't overemphasize
the importance that I'd like to keep this between the
Treasury and the F.D.I.C.

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C: I'll do so.

HMJr: And then there's no need, as far as we know, of any other agency at this time being consulted.

C: I'll be very sure to treat it that way.

HMJr: And you're the -- also -- I mean.....

C: All right.

HMJr: You'll be the only person -- agency outside of the Treasury now that will know about this.

C: All right. I'll treat it that way, I'm sure.

HMJr: Righto.

C: Thank you.

HMJr: Thank you.

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- H.M.Jr: That's English, isn't it? What?
- Delano: Pretty straight.
- H.M.Jr: I told him a hundred percent. A hundred percent. Can't make it any plainer than that.
- Folger: And these Examiners, Mr. Secretary, in the course of this examination have spent considerable time - weeks in the affiliates of Transamerica, trying to get information as to the value of these fixed assets, the banking premises, other real estate; and the losses that they have estimated in the fixed assets are being practically all based upon appraisals that they have found in one way or another.
- H.M.Jr: Appraisals made by the affiliates?
- Folger: Yes, appraisals held by the affiliates on the various properties.
- H.M.Jr: I see.
- Folger: Some of them, they said, were old and some were current.
- H.M.Jr: Now, what is the - is it some one particular affiliate that they found it in?
- Folger: They found most of them in the Capital Company.
- H.M.Jr: Capital Company.
- Folger: Yes, sir.
- H.M.Jr: What's that, do you know?
- Folger: Well, that's a company holding - one that holds - it's one they've been transferring - the Bank's transferring its real estate, urban properties....
- Duffield: It's controlled by Transamerica Company.
- Folger: And is a hundred percent owned by Transamerica General Corporation. Transamerica General Corporation is in turn owned by Transamerica.
- H.M.Jr: Well, would this affect Transamerica?

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- Folger: No, sir.
- H.M.Jr: Has no effect on Transamerica, this eight million write-off - the thirteen and a half million write-off.
- Folger: No, it wouldn't come out of Transamerica.
- Upham: It would affect them in this way, wouldn't it, Gus, that if the Bank doesn't pay a dividend, Transamerica won't have much to pay its dividend with.
- Folger: That's right.
- Delano: Of course, theoretically, too, it cuts the asset position of the Bank of America, which in turn affects the asset position of Transamerica slightly. I mean there is that....
- Folger: Yes, in that way - in that way.
- H.M.Jr: I mean, for instance, if there was a million dollars which you write off - is that in the Capital Company, or you just found....
- Folger: No, just the appraisals in the Capital Company. These are not assets of Transamerica, they are assets of the Bank.
- H.M.Jr: I see.
- Folger: But, as Mr. Upham just said, if the Bank charged its losses off and didn't pay such large dividends, why, that would affect Transamerica.
- H.M.Jr: Well now, I read in the newspapers that Transamerica has agreed to give SEC any information that it wants about the Bank of America?
- Duffield: Other way around, isn't it? The Bank has agreed to give everything it needs on Transamerica.
- Upham: No, I think the Secretary stated it the way I read it. Transamerica has agreed to give the SEC the records of the Bank of America. That's the way I read it.
- Duffield: All right.

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H.M.Jr: But we don't come in that picture.

Delano: No.

H.M.Jr: What?

Delano: No.

Upham: See, Gene, there is no question of the right of their access to Transamerica records, is there? The thing in question is the right of the SEC to have access to the Bank's records.

Delano: They're stipulating, as I understand it, certain things they find in the books, so they can hold hearings on the stipulated basis.

Folger: I didn't hear anything about that in California. I only heard that they resumed hearings on the 10th, and I left before the 10th.

Duffield: They recessed them right away on that date.

H.M.Jr: Well then, by tomorrow morning these two gentlemen will have read this thing, and they'll come in at 10:00 o'clock, won't they?

Delano: Yes, sir.

H.M.Jr: And then at that time....

Delano: I can't promise for Mr. Spencer, because he isn't here yet, but he's supposed to be here at 4:30. And Ottley is reading this stuff. Ottley is here, just waiting for us to go back and work with him.

H.M.Jr: And what he's looking over, I take it, are these proposed write-offs.

Delano: Well, he's looking - we're going to turn him over largely to Mr. Folger.

H.M.Jr: Good - to see if in his opinion he thinks that Folger's recommendations are fair. Is that right?

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Delano: That's my understanding of what you wanted done.

H.M.Jr: Yes. Who wants to volunteer anything?

Upham: (Nods nothing).

Delano: I have a note from Tom K. Smith - not very pertinent at the moment, but there's a paragraph here I'd like to read. He reiterates what he told us on the telephone, that he couldn't get here because of the utility reorganization. Then he says, "Under the circumstances I don't think it is possible for me to be in Washington prior to Monday, July 24th. Since Mr. Folger has just returned from California, I'm wondering whether it would not be better to postpone our meeting until he has had time to carefully prepare his report, as well as a synopsis of the criticized items, without which it is difficult for the Committee to reach a conclusion."

I think that's just outmoded now by what we have done. As a matter of fact, Mr. Folger has his synopsis completed, and we're going ahead.

H.M.Jr: What about the suggestion that Folger stop off long enough on his way to the Coast to see Tom Smith and show him this?

Delano: We're trying to arrange that.

H.M.Jr: I think that would be worth while.

Folger: We'll arrange that. That isn't the way I go to California, but I can go that way.

H.M.Jr: It will take you a little bit out of the way. St. Louis is a lovely place.

Delano: That's an awful statement.

Upham: It's the hottest place in the world.

H.M.Jr: I know. I was there in either July or August. Weren't you (Gaston) with us when they took us to that open-air opera there?

Gaston: Yes.

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H.M.Jr: I think it's worth while, though.

Folger: All right, sir.

Delano: We'll try and arrange that.

Now, Mr. Folger has a memorandum on this - remember, you discussed the question of whether you wanted - he's got an outline showing the rough figures of classification, and what he proposes to do.

H.M.Jr: Has he got that?

Delano: He's got that, and he'll be glad to give you that.

H.M.Jr: Let's see it.

Upham: Didn't sign it, did you?

Folger: No.

H.M.Jr: Just a second. Sit down.

(After reading memorandum) That's exactly what I wanted, because I hope to see the President between now and tomorrow night, and that gives me something to show him. Do you see what I mean? That's perfect.

Foley: Here's our opinion on the land contracts.

Delano: What do you say, Ed?

H.M.Jr: They're what?

Delano: He says here's his opinion on the land contracts, and I asked him what he said.

Foley: They're contracts of sale rather than agency contracts.

Delano: Yes. At this particular time we don't need that, you see.

Foley: No.

H.M.Jr: Would you (Delano) mind signing that? Would you write just "Approved," if you do approve.

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Delano: Just "Approved"?

H.M.Jr: Yes. Is it dated, Folger?

Folger: Yes, sir.

Foley: That's the opinion our man went out to San Francisco on.

H.M.Jr: What?

Foley: Sherbondy.

H.M.Jr: But I don't know why; did you want an opinion?

Foley: The Comptroller asked me for an opinion as to the status of this land.

Delano: That's right.

Foley: He wanted to know whether they were agency contracts or whether they were contracts of sale. Sherbondy looked into the problem and has analyzed the contracts quite fully....

Delano: That's right.

Foley:in this opinion, and has come to the conclusion that they are contracts of sale. We have reviewed the opinion here and I have signed it.

Delano: This has a bearing....

Folger: Loss classification - doesn't involve our....

Delano: This is in the doubtful.

Foley: As a result of the opinion, he'll put it in the doubtful category rather than the loss category.

H.M.Jr: Is it important that I know about it?

Delano: No, Mr. Secretary.

H.M.Jr: All right.

July 14, 1939
9:10 a.m.

HMJr: Hello.

Operator: Mr. Delano.

HMJr: Thank you.

O: Go ahead.

HMJr: Hello.

Preston

Delano: Yes, sir.

HMJr: Hello, Preston. Have you seen Leo Crowley yet?

D: No.

HMJr: Well, the thought I had in mind, if it's agreeable to you, was that I'd invite him to this ten o'clock meeting.

D: Oh, yes.

HMJr: When we -- when I meet with the bankers.

D: I should think that would be very good. We were -- we were so crowded yesterday we couldn't get there.

HMJr: Well, I thought it might be helpful.

D: Well, I think that would be very --/nice^a courtesy to show him too.

HMJr: All right, I'll do that.

D: Fine.

HMJr: Thank you.

D: Right.

RE BANK OF AMERICA

July 14, 1939.
10:00 A. M.

Present: Mr. Gaston
Mr. Duffield
Mr. Foley
Mr. Preston Delano
Mr. Upham
Mr. Folger
Mr. Crowley
Mr. Charles Spencer
Mr. John K. Ottley

H.M.Jr: Well, Mr. Delano, where are we this morning?

Delano: We have been conferring with these gentlemen and they have been giving us their time and their services as advisers here, and I think probably they'd like to chat with you about this thing. They know our program and they....

H.M.Jr: Fine.

Ottley: Mr. Secretary, I ought to - I like to get a picture, and I thought that you might be interested in these figures, and from going over the statement we compiled these figures.

From the previous examination that we studied when we were here before, the slow assets of this institution were 112 million - just call them in round figures. The recent examination.... - I could give you this, if you like, when I get through.

H.M.Jr: Yes.

Ottley: The slow assets in the last examination showed 102 million. The decrease in slow assets was nine million - that's an all round figure.

H.M.Jr: That's between the November examination and the....

Spencer:and the April.

H.M.Jr:and the one which they are making now.

Ottley: Right.

The doubtful column showed in the examination we had before seven million, and the present examination shows six million. That means that the doubtful

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column has increased eight million.

Upham: Sixteen, he means.

Ottley: Now wait a minute.

H.M.Jr: Not the way you read it.

Ottley: The doubtful column last examination was seven million; the doubtful column this examination was sixteen million, which shows an increase of eight million. In the slow column, it decreased nine million. Their doubtful column increased eight million.

H.M.Jr: May I interrupt you a minute. Does that mean by any chance that they transferred - could those be the same assets?

Folger: The slow has been reduced, you notice.

H.M.Jr: And the doubtful has been shifted.

Folger: Been shifted.

H.M.Jr: That's what I mean.

Folger: The slow having been shifted over on the doubtful.

H.M.Jr: I mean the fact that it's been about the same figure - does that mean you've taken seven million of the slow and transferred it?

Folger: Yes. There hasn't been that improvement in the slow. It's been shifted over to doubtful.

H.M.Jr: So you shifted about seven million from the slow to the doubtful - is that what's happened?

Folger: That's about it.

Ottley: Now, the loss column in the previous examination showed five million; the loss column in the present examination shows 13 million. In short, that makes a difference of \$7,638,000.

Crowley: May I ask you a question. Gus, that five million which showed on the last examination was charged off.

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Folger: Practically all.

Crowley: So this is all 13 million of new loss.

Ottley: Quite right. The reason I got these figures up - they just showed that they had a loss last examination of 5 million 800 thousand - this, 13 million 522 thousand.

Now, I just - as long as I'm talking, I'll just speak for myself, and then Mr. Spencer will say what he has to say. And I have a copy of the report that we made to you in writing the last time.

H.M.Jr: Yes.

Ottley: And we don't have anything to take back in what we said before, and our counsel and advice, for whatever it's worth, is that the only way to handle this situation is for the Comptroller's department to just make them charge off. And, as I understand it from the law - you would think, I'm sure, and we do, that they would like to - that they would want of their own volition, under these circumstances, to decrease their dividends. But, as I understand the law, that's not covered by that. But if these charge-offs are insisted upon, why, it will necessarily reveal itself in their surplus and undivided profits accounts.

H.M.Jr: Right.

Ottley: Another thing that's worthy of consideration - that their capital stock is virtually represented - I won't say to the dollar, but virtually represented by banking houses, fixtures and other real estate.

H.M.Jr: Not very liquid.

Ottley: I wouldn't say so; even though I'm an optimist, I couldn't say that.

H.M.Jr: Well - are you through, Mr. Ottley?

Ottley: Yes, I'm through.

Spencer: Well, those figures that Mr. Ottley read on that last column - the five million eight, practically all of it charged off, and this 13 million - in talking

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with the Comptroller we find that there's five million of that that they have recognized as a proper charge-off. I would say your real hard fight is going to be with the eight million dollars, and that's comprised very largely of bank buildings either actually in use or, you might say, discarded in some of these transactions with the two big real estate companies.

Now, I get it that this is pretty nearly the first examination where they've been able to get in and find out how some of those real estate transactions were brought about, and I think it's an open-and-shut proposition if you just stick at this and insist upon having the charge-off made, which will be fought, in my mind.

And our suggestion to the Comptroller's department was - they've got certain information that would lead them to believe that their figures are right - I think a current appraisal of ten or as many as you can get between now and when they really sit down and discuss this eight million dollar charge-off, would be a very desirable thing to have; because some of these appraisals which are in their own files of subsidiaries - some of them go back to '29 and from '29 on up. But they are their own figures, which I should feel would put them in a position where they'll fight. But you've gotten your information right from their files and they'll undoubtedly come in with a new appraisal on a few pieces, showing that their figures may be right. But there are so many transactions in there, and I don't think it will be difficult at all to get ten or a dozen of the larger ones that would give a current picture on that.

The whole thing, as I see it, is one of dividend payments. Their earnings are fairly good. If they'll conserve roughly half of their dividends, I should say they could bail themselves out in a reasonable time.

H.M.Jr:

I see.

Well now, of these eight million dollars of write-offs which we're talking about, how many pieces of property would that - does that represent?

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- Folger: It represents a great number, Mr. Secretary.
- Spencer: Several hundred, isn't it?
- Folger: Yes, several hundred.
- H.M.Jr: This is what I'm thinking about. There's two ways - I'd like to have your advice - there's two ways of doing this thing. There's the way of going ahead and saying, "Your appraisals are good enough for us. We'll simply take your appraisals and we'll write off this eight million dollars." Or if we would take what you're suggesting, that we're going to have another appraisal made, then if I was on their side I'd say, "Well, if you thought you needed another appraisal, why did you go ahead and write off the eight million? Why didn't you wait until you had the appraisal?" See what I mean? I mean it looks as though we had some doubt. Either I would say, "Well, the appraisals of the Transamerica and their subsidiaries are good enough for the Treasury, and on that basis we're writing off eight million," or wait and say, "Well now - well, maybe they are and maybe they aren't; we want our own."
- But I wouldn't write off the eight million and then hurry up and get a lot of more appraisals, because I think it would be a sign of weakness.
- Spencer: You feel you're going to be fought on every one of these eight million dollar charge-offs.
- Folger: Oh, absolutely.
- Spencer: And it's a question of when you get the ammunition in your hands for current appraisals. In my mind, I would start off by saying, "We'll take your figures on this, and that calls for a charge-off of eight million dollars." And they're going to fight you on every one of those items right down the line.
- H.M.Jr: Well, if there's any doubt in anybody's mind that their appraisals won't stand up, then before I write off any part of the eight million, I want additional appraisals. But I take it from the Comptroller's office that he wants to take their appraisals. Then....

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- Crowley: Pardon me. Gus, do I understand that this eight million dollars is largely write-ups of values when they bought these properties?
- Folger: We think so, but we don't have all of that evidence. We only find a few cases. As you no doubt know, the Transamerica bought banks and then would turn the bank over after having purchased it to the Bank of America for a branch, and most of them were bought in the days when we had no right to examine Transamerica or any of its affiliates, and we don't have a complete record as to what that building was acquired at, what price, by Transamerica, and what price they gave for it.
- H.M.Jr: You see my point. Either we're going to say that the appraisals that they give us - it's good enough for us - or I'd rather wait and have the whole lot represented in the eight million appraised. I think we ought to do one or the other. Does that make sense?
- Ottley: Taking your view and what Mr. Spencer says, in view of the difficulty - we've discussed this, what Mr. Spencer suggested, and the statement is ready to go and also ready to take up these charge-offs. While personally I would like to have those appraisals as a rebuttal, I think there is a lot in what you say, and it might be better to just take their figures and say, "Now, we want them charged off," and then if they come back and say, "Well, that appraisal was made in '29," you might then, if you got into a dispute on one - you could, if necessary, check their appraisal.
- H.M.Jr: Well, let me put it this way. Now, I'm a manufacturer in Atlanta and I want to borrow a hundred thousand dollars and I come into your bank and I say, "Mr. Ottley, I've consolidated a lot of businesses and here are my reports," and you go through them and say, "Well, based upon the various appraisals and so forth and so on, I'll take your appraisals of these various companies which you have consolidated; you took 15, 20 companies and made them into one" - or "I want my own appraisals." Now, I think you've got to do one or the other. What?
- Ottley: Well, if you had to do one or the other, I'd just say to take their appraisals and stand on that for the moment.

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- H.M.Jr: Well, of course, if many of them go back to '29 - that's ten years; a lot of water can go over the dam.
- Ottley: That's right.
- Spencer: Great majority of them will show less on a present appraisal, but there are probably a few ones that they can call for a higher appraisal, and those are the ones they'll use.
- Crowley: Mr. Secretary, if you get into the question of going out and appraising this property, you'll get into an endless controversy, because the value of a piece of property is the judgment of one or two or more men. And I don't want to interfere with you (Spencer), but the problem of Transamerica is that they wrote some of these properties up and apparently they haven't taken the proper depreciation over a period of years. What you want them to do is to catch up on that depreciation and that appreciation they took years ago. But if you go out and place values on this corner and that corner, you'll find some have enhanced in value; that's not the way the banking business is to be done. A man is supposed to build a bank building and take a regular depreciation, and that must be done regularly before you declare your dividends. That's what your objection is on this thing here.
- But if you get into the question of going out and appraising hundreds of branch banks here, you may find that your appraisals will write this thing up 15 or 20 million dollars, because there are always optimistic people out there when it comes to values of real estate.
- H.M.Jr: Let me - I didn't mean to interrupt you.
- Crowley: That's all right.
- H.M.Jr: Do I understand from you two gentlemen who are advising me - I'd like to put it this way. Do you feel that we can go ahead and take their own appraisals, which show eight million dollars less value, and take a stand that "Well, we'll just take what they say."

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- Spencer: I agree to that.
- Ottley: I do.
- H.M.Jr: And do you agree, then, that we should take Mr. Folger's figure of $13\frac{1}{2}$ million? That's the eight plus....
- Spencer: Five has already been agreed to.
- H.M.Jr: Well, it's $13\frac{1}{2}$.
- Spencer: Partially....
- Ottley: 13 million 522 thousand.
- H.M.Jr: Shall we take his figure?
- Ottley: I don't see that you can do anything else.
- H.M.Jr: Then if we proceed on that basis and then they challenge us and they bring in theirs piece by piece, it seems to me - "All right, you say this piece of property is worth 500 thousand dollars more. You've got your appraisers. All right, we'll get appraisers from Home Owners Loan and FHA and we'll bring in our appraisers." Something like that.
- Ottley: At the last date.
- H.M.Jr: Pardon?
- Ottley: At the last date.
- H.M.Jr: Whatever they challenge - if they say, "This is worth more," we'll meet them appraisal for appraisal. But my feeling, unless you people disagree, is that we'll take the appraisals that we found in these various subsidiaries. I mean, from their standpoint, why should we take any other appraisal? We shouldn't certainly take a higher one, as bank examiners, ought we?
- Spencer: I think you're perfectly justified in taking their own figures.
- H.M.Jr: I mean the question as to whether we should take theirs or say, "That's too low, we should get in and get a higher one" - that's what it amounts to, doesn't it?

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- Spencer: You can argue that either way. Some appraisals are high and some are low.
- Ottley: I think that the only - that was our thought last visit, and our visit this time....
- H.M.Jr: Which is about what, three weeks apart?
- Ottley: Just about three weeks, I think. What we said then and what we said now is that if of their own volition they would reduce their dividends, this thing would correct itself. But, going over the records, we are of the opinion that they won't do that and that if we start out on that you'll just get into a college boy debate.
- But with these figures here - you just take that, if you like -
- H.M.Jr: Please.
- Ottley: But this examination, based on their own appraisals, showing 13 million dollars - I think the only thing - I think, taking everything into consideration, and particularly the matter of the element of time, that you'd just go and say, "Here's the statement and here are your appraisals," and demand they charge off that amount of money.
- H.M.Jr: Well, that's my inclination, if you people feel that that's right. And then, I don't like to cross too many bridges until we come to them, and it seems to me that if we do this, taking Mr. Folger's recommendation, then the next move is up to them, and there's no use in our saying they will or won't pay a dividend. Let's see what they do. Then if they go ahead and pay their full dividends, it's up to the Comptroller to say, "What are we going to do to meet this situation?" And that - what I'd like to - that would be the next time I call you people in.
- How does this sound to you, Leo?
- Crowley: I think that's all right. I think you've got to follow the classification of your examiner. Now, if he says that there are eight million dollars of

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losses in these buildings - I don't think we want to put ourselves in a position that we're talking about current values; that's not the way this banking business is done. A bank examination is supposed to take up and pick up these assets as they were when they were bought and put on the books, and make them take their regular depreciation over the life of the assets. If you're going to work and appraise bank buildings, what they're worth today, throughout the banking system, you're going to have a lot of disorganization.

And the thing to make this fellow do is to take in consideration that he's done these things, he has these losses, and he's got to conserve his earnings in order to work this thing out. And when you write your letter, I'd bring out the fact that his ratio is below what he should have for ordinary safety for his depositors, and make him take the odium of determining whether he's going to reduce his dividends or put capital in. He's running the bank, not us.

H.M.Jr: I agree with you a hundred percent.

Crowley: Make him take the responsibility.

H.M.Jr: Now, Leo, as head of FDIC, are you perfectly happy the way we're proceeding? Are you entirely satisfied?

Crowley: Yes, I'm perfectly willing to follow the same examinations that these men have taken and give them support in bringing about a better situation.

H.M.Jr: Give them your support.

Crowley: Yes, sir.

H.M.Jr: A hundred percent?

Crowley: Yes, sir.

H.M.Jr: I mean this is your time to make any suggestions.

Crowley: Oh no - I'd like to talk with them about the examination and talk with them about their letter and things like that, but I mean the principle....

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- H.M.Jr: Oh yes. Well, before this letter goes out, I most likely am going to trade on these gentlemen's charitable feelings and ask them to come back again before the end of this month, because this is a very important situation.
- Spencer: I think this is a very important banking situation as a whole.
- Ottley: Not only for the banking situation, but the country as a whole. You can't emphasize it too much.
- H.M.Jr: Before this letter goes out, we'll ask you to come back and help us. We'll certainly expect Mr. Crowley to take a look at it, because after all - what is it, one quarter or one half of your capital is represented in insured deposits of this bank.
- Crowley: About one and a half. About 800 million dollars.
- H.M.Jr: Which is twice your capital. So he has a little stake.
- Spencer: More than your total resources.
- Ottley: That means Charlie Spencer and I have got some interest in this, too.
- H.M.Jr: But we've got the backing now of FDIC.
- Crowley: That's right, absolutely.
- H.M.Jr: And don't you agree there is no reason why we should pre-judge this man as to his dividend policy? After all, he's got a Board of Directors, and maybe they'll see the light and do the right thing.
- Ottley: Well....
- Spencer: We had a list of those directors taken off and checked up.
- H.M.Jr: Yes.
- Spencer: They might all amount to one good man, I should say. The only good fellow got off the Board out there - that fellow Schenck, who is with the pictures.
- H.M.Jr: I think his lawyer advised him to get off.

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Well now, Ed, have you got anything to raise legally on this?

Foley: I have no suggestions, Mr. Secretary.

H.M.Jr: And Mr. Folger, at my suggestion, is going to stop off at St. Louis and show this picture to Tom Smith, so he'll get the benefit of it. Mr. Folger is going back. He loves to travel on the train. He can't wait to take the train to St. Louis. The darndest fellow you ever saw - just restless.

Ottley: How do you arrive at whether people like to travel or not?

H.M.Jr: Well, by the amount that they stay in Washington.

Ottley: But I mean the people that live out of Washington. Can you answer that?

H.M.Jr: No, that's too difficult.

Now, what's the next move, Preston?

Delano: Next move is to have Mr. Folger get on that train tonight and go to the Pacific Coast, and out there he'll....

H.M.Jr: What does he do when he gets there?

Delano: He confers with proper officials of the bank, telling them about this projected additional write-off of $8\frac{1}{2}$ million dollars. And then after that, after they have been shown that courtesy and had a chance to protest, which they will do, we'll write this off, we'll put our examination in. And then Mr. Folger will come back here and assist us in getting out the letter which will go from here commenting on the situation created by this examination.

H.M.Jr: Now, when we do that letter, I'm going to ask these gentlemen to help.

Delano: Yes.

H.M.Jr: Do you (Folger) want a bullet-proof vest? Folger?

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Folger: I don't think so, Mr. Secretary.

H.M.Jr: Cy, you got anything to suggest?

Upham: No, I have nothing to say.

H.M.Jr: Well, I can't tell you how much I appreciate your gentlemen's giving us this time, because we've made more headway in the last month than we've made in the last six years. So I think that you ought to feel that....

Spencer: I think that's very largely due to the examining force of the Comptroller's office really getting in and getting more of the story than I would consider the Comptroller's office ever had before. Wouldn't you say so, Mr. Delano?

Delano: Yes, sir.

H.M.Jr: Well, it's happy circumstances all around. And you people certainly can see progress. What?

Spencer: Yes.

H.M.Jr: This is not a pretty picture. It's not a - I don't - I don't feel yet, though, that the depositors' money is at stake.

Spencer: No.

H.M.Jr: Do you?

Spencer: No. It's one of those things that if they proceed the way they're running along - I wouldn't say when, but I'd say sometime they're going to be in very serious difficulty. It seems to me it can be corrected if they would just conserve their earnings and pay some smaller proportion of them as a dividend, and throw the rest back into their portfolio.

Ottley: But we come right back to what we said when we had our first conference with you and Tom Smith was present: charge off - make them charge it off. Now, you can do that. And if they're as good as half smart, why, that dividend will probably take care of itself, but if they don't - if they don't

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do that, when they publish the statement next time, why, what is on that piece of paper will be reflected in their statements.

- Crowley: Well, they need, Charlie, from 25 to 50 million dollars of capital plus a reduction in their dividends. They need more capital and they need to conserve their earnings.
- Ottley: Excuse me.
- Spencer: Go ahead.
- Ottley: You notice what we said the last time. We touched on that very thing. We said that the bank was under-capitalized. There was some discussion at the last conference about a possibility of 25 million dollars addition of capital. I'd rather, personally, and we're all in accord - Tom Smith and Charlie Spencer and I are in accord that we'd rather see a sound policy adopted than to have 25 million dollars additional capital put in.
- H.M.Jr: I'm in entire agreement with you, entire agreement.
- Spencer: If they pay out all their earnings and get 25 million dollars more capital, it's only going to prolong it.
- Crowley: Four or five years.
- H.M.Jr: I never could understand how borrowing 25 million dollars and then continuing to pay all your earnings out in dividends....
- Ottley: Not only all, but more.
- H.M.Jr:strengthens the bank. I just couldn't understand it. But then, I - it just never made sense to me. But this does.
- Crowley: Well, he's got himself clear out on a limb on this dividend thing; been trying to support that stock through earnings that were not requisite. They weren't there. And he hasn't been taking his losses.
- And, Gus, I presume that over a period of years there are a lot of losses in a bank of a billion 300 million dollars; five million dollars certainly is not all the losses that are in the bank of a billion 300 million dollars.

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- Folger: Oh no.
- Crowley: And any good banker always recognizes he's got a lot of potential losses there.
- Spencer: Over a 20-year period you can throw your capital away.
- Crowley: That's right.
- Folger: Last year his normal earnings amounted to approximately five million.
- H.M.Jr: His normal earnings were what?
- Folger: His normal earnings were approximately five million. And then he had a profit on bonds sold of about nine million, making 14 million. But he paid out in dividends 9 million 600 thousand, which is almost twice the amount of his normal earnings exclusive of the bond profit, which is a non-recurring profit.
- Ottley: Mr. Secretary, I'd just like to make one observation, and I may be all wrong about it - that in looking at this picture you are not looking at what I understand to be a bank; that is, with ramifications that they have here - with how many, twenty-six....
- Delano: Twenty-three.
- Ottley: What?
- Delano: Twenty-three.
- Ottley: They've got twenty-three subsidiaries.
- H.M.Jr: The Bank of America has?
- Ottley: Yes, sir, and that would be - if you'd put one rat in this room here and shut that door, you'd probably be able to catch him; but if you undertook - but if you had twenty-three rats running around here in this room and undertook to catch them, you'd have a terrible job.
- H.M.Jr: You'd go crazy.

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Ottley: What?

H.M.Jr: You'd go crazy.

Ottley: Right. Now, that's one thing, twenty-three subsidiaries. Another thing is that, in round figures, instead of having their capital and surplus and undivided profits in either cash or sound loans, or in bonds of high character, they have their capital, surplus and undivided profits, in round figures, in real estate.

H.M.Jr: I see.

Ottley: They can't lend that real estate and they can't pay off the profits of that real estate.

Crowley: John, we've got to be careful on that, because I presume 75 to 90 percent of all the banks in the country - that their capital and surplus is invested in bank buildings and fixtures and furniture, in sub-standard assets. Isn't that right, Gus?

Folger: Yes.

Crowley: You don't worry particularly about a bank, if they have a reasonable capital ratio, as long as their slow assets don't exceed their capital figure.

Ottley: That's not what they're confined to.

Folger: We don't have the larger banks, Mr. Crowley - the larger banks don't have such a great amount of their capital and surplus invested in real estate.

Crowley: Well, I'm including your sub-standard assets, too.

Ottley: We're not talking about sub-standard, we're talking about real estate.

Crowley: But he's in a little better position with 490 pieces of real estate than the fellow who has 15 or 20 pieces amounting to five million dollars invested in real estate. He can find a better market with 490 pieces that may bring him 20 or 25 thousand dollars each, than if he has to sell a five million dollar bank building.

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- Spencer: That's what Gus brought out last night. He said they had eight million dollars in furniture and fixtures; that's a large amount. But with 500 branches what's eight million dollars? Only 16 thousand dollars a branch. And that way it didn't sound like so much furniture and fixtures.
- H.M.Jr: Well, I think the Comptroller's office now is going to town and for the first time I see daylight, and I'm very much pleased at the progress that they're making. Very much pleased. Very much pleased. And we're getting places for the first time now since I've been here, and I'm very much pleased.
- Spencer: Well, so long as you can feel we are rendering assistance, we're glad to come any time.

July 14, 1939
10:44 a.m.

Operator: Operator:

HMJr: Hello.

Tom
Smith: Hello, Henry. How are you?

HMJr: How are you?

S: Fine. A little warm out here, but then aside from that it's.....

HMJr: We've got a wonderful connection. It sounds as though you're in the next room.

S: Well, that's -- that's this new equipment. You can hear better over the -- over the -- this distance than you can locally.

HMJr: Tom, the reason I'm calling you, we've just got through a meeting with Ottley and Spencer.

S: Yeah.

HMJr: And we're in complete agreement, but I value your opinion so much that Folger, on his way back from the Coast, is going to stop off and show all the material to you.

S: Yes.

HMJr: And -- and be sure that you are in accord with what we are doing.

S: All right.

HMJr: But.....

S: When is he going through?

HMJr: I -- well they're -- I think he's leaving tonight. I suppose he'll -- he'll telephone you before he comes.

S: Yes.

HMJr: But I wanted to let you.....

S: I wish he would do that.

HMJr: Well, I'll get word to him.

S: I don't expect to leave town, but I might go out in the country over Sunday.

- 2 -

- HMJr: Well, I'll tell him to get -- I'll get word now to them that they should contact you. You see?
- S: That's right.
- HMJr: But this thing -- for the first time we're making headway and I give a great part of the credit to you three gentlemen.
- S: Well, I'm very glad, Henry, to be -- do anything I can to help smooth the situation out.
- HMJr: Well.....
- S: You know that though.
- HMJr: Sure. What's his name -- the Comptroller is a new man.....
- S: That's right.
- HMJr:now. I mean, he's a new man now. He.....
- S: Oh, he is.
- HMJr: Oh, yes. He -- he's -- he's doing everything he can to -- to put this thing over now.
- S: Well, I'm -- fine -- I'm awfully glad to hear it. I -- I was awfully sorry about that other thing, but I couldn't permit the.....
- HMJr: Well, it was the turning point, Tom, and it was that thing which brought the thing to a head, and from that day on, it -- it had a wonderful effect.
- S: I see. Well, I'm glad of it then.
- HMJr: And he -- he's really worried now and he wants to do something, and we're going to cut out all of these town meetings and we're just going to show them that they've got so many losses and they've got to write it off, and then the next move is up to them.
- S: That's right. Didn't you -- didn't you find that these two fellows, especially Spencer, are awfully good?
- HMJr: You bet your life!

- 3 -

S: Oh, he's a crackerjack, Henry.

HMJr: Tom, while I've got you on the phone, isn't there anybody in your part of the country that I could bring in as Assistant Secretary and who knows manufacturing and business?

(Laughs)

S: God, I've -- I've --/ I've racked my brain and I've talked to people about it, not directly, but engaged in conversation about things, and the man that I would recommend aren't willing to undertake it.

HMJr: I see. Well, think some more about it, will you, Tom?

S: I want to tell you on the -- on the telephone that I can't tell you -- didn't want to write you. The man that Johnny mentioned.....

HMJr: Yeah.

S: You know who I'm talking about.

HMJr: Yeah.

S: Well, he's gone nutty on the Monetary policy.

HMJr: Has he?

S: If you want somebody to advise you on Monetary policy, I'm quite sure he could do it.

HMJr: No, I don't need that.

S: Well, I know you don't.

HMJr: No.

S: He's got -- but he wouldn't be interested in coming down there and doing the job in the Procurement end, for instance.

HMJr: No, that's what I want.

S: You want somebody in that line.

HMJr: We've got plenty of crackpot money around Washington. We don't need any more.

- 4 -

- S: Well, this man -- I can't write that, you understand, but he just wouldn't do.
- HMJr: O. K.
- S: And furthermore, he told some people out here that he'd been offered -- it had been offered to him.
- HMJr: I see.
- S: Don't tell Johnny that.
- HMJr: No, no. No, no.
- S: Henry, where are you going this summer?
- HMJr: What's that to you?
- S: Well.....
- HMJr: (Laughs.)
- S:the reason is this. I thought you might be up there around Cape Cod and I might pick you up on the beach some day and sit down and throw rocks in the water when we were -- didn't have.....
- HMJr: Well, if -- if Mr. Hitler is a good boy, why my family and I are sailing on the 2nd of August for Scandinavia.
- S: Oh well, then -- then -- I thought you might go up to Cape Cod, you know.
- HMJr: No, I don't -- no. And if we don't go to Europe, we're going out to the northwest.
- S: I see.
- HMJr: I'd like to throw pebbles in the water with you.
- S: Well, we'll -- we're spending a month there at Mishaum.
- HMJr: Oh, yes.
- S: Below New Bedford.
- HMJr: Oh, yes.

S: My family are there now.

HMJr: 'Attaboy!

S: And I'll be there with them from the -- about the 10th of August to the 15th of September.

HMJr: Well now, I'm -- I'm leaning heavily on you, and Ottley and Spencer, and we're -- for the first time I can see daylight.

S: Well, I think it's real daylight too, Henry. I don't know what they've done, but I know that.....

HMJr: You know what they.....

S:we thought exactly par -- our thoughts were parallel on this thing. There never was the slightest difference of opinion between us.

HMJr: Well, you know what they've found, don't you?

S: No, I don't know anything, but I know that.....

HMJr: Well, what they've found is -- is one of the subsidiaries, -- wholly owned subsidiaries of Trans-America -- they've found a lot of appraisals of the Bank's real estate.....

S: Yeah.

HMJr:which shows that the Bank is carrying it on their books at eight million dollars in excess of these appraisals in this wholly owned subsidiary of Trans-America.

S: Yeah.

HMJr: And they're going to take their appraisals, their own appraisals.

S: They're going to set that up as a loss and then say, "Charge it off," and that will take care of the dividend because they won't have any profit to pay dividends with.

HMJr: That's the idea.

S: That's right.

HMJr: No, they've found that there's -- that in addition to the radio loss of -- of some five million dollars, they've run into this other eight million dollars.

S: Practically a year's profits.

HMJr: Well, it -- it totals thirteen and a half million dollars.

S: They earn about fifteen million from normal.....

HMJr: Yeah.

S:income.

HMJr: And they're just going to take their own appraisals, which they've found in whis wholly owned subsidiary of Trans-America.

S: That's right, and that'll be pretty hard for them to.....

HMJr: How.....

S:get across.

HMJr: How are they going to laugh that one off?

S: (Laughs) I don't know. I don't think they can.

HMJr: No, they've just found that. I thought that you knew that.

S: No. I knew they'd found something, but I didn't know what it was.

HMJr: Well, that's what they found, Tom.

S: Well, that -- that -- that's different. I thought they would. I thought they'd find something of that kind.

HMJr: Well, it was called the Capital Corporation, and in their files they found these appraisals.

S: Yeah.

HMJr: And they're eight million dollars less than what the Bank of America values them.

S: Um-hm. Well now, I'll be very glad to go over it. Do you want me to -- my conclusions, -- you want me to see that -- you want me to that -- you want me to convey them to you?

HMJr: Well, I'd convey them to the Comptroller.

- 7 -

S: Give them to him?

HMJr: Yeah.

S: All right.

HMJr: If you've got any doubts, give me a ring on the telephone.

S: All right.

HMJr: And you can reverse the charges.

S: If you don't hear anything from me, you'll know I'm in agreement.

HMJr: That's -- yeah, that's right.

S: All right.

HMJr: Thank you.

S: All right, Henry.

HMJr: Goodbye.

S: Goodbye. And if you don't go abroad you're going -- you're going to the northwest?

HMJr: Yes.

S: All right. If you want me any time.

HMJr: Thank you.

S: Good bye.

HMJr: Goodbye.

July 14, 1939
11:49 a.m.

Preston
Delano: Yes.

HMJr: Preston Delano.

D: This is he, Mr. Secretary.

HMJr: Right. I have just returned from the White House where I brought the President up-to-date, showed him Gus Folger's letter, showed him that little balance sheet that Mr. Ottley gave you.

D: Yes.

HMJr: Told him what we were going to do, and he's very much pleased and told us to go right ahead.

D: Oh, that's fine. That's tremendously -- thank you so much for telling me.

HMJr: And I told him that when we had the letter drafted which we're going to send, you know.....

D: Yes.

HMJr:that we'd show it to him before it went.

D: Well, that's fine.

HMJr: But he's very much pleased and go right ahead.

D: Now, Mr. Secretary, while you're here -- your office phoned about having Gus Folger get in touch with Tom K. Smith.

HMJr: I just wanted to make sure that he didn't drop into St. Louis without.....

D: Yeah.

HMJr:Smith knowing it.

D: Well, I just wanted to say that we had already arranged that, so-we're catching Tom Sunday night.

HMJr: Oh.

D: We couldn't catch him tomorrow night.

- 2 -

HMJr: No.

D: But we're catching him Sunday night and I'm holding Gus for one day because I think it's important that he see Tom.

HMJr: O. K.

D: Righto.

HMJr: Thank you.

D: Thank you very much. Goodbye.

July 14, 1939.

MEMORANDUM *WJ*

TO: Secretary Morgenthau
FROM: Mr. Gaston

Chairman Jerome Frank of the Securities and Exchange Commission came to your office at 2:30 P.M., Thursday, July 13th. Others present were Mr. Foley and myself. You explained that you wished to discuss Bank of America-Transamerica developments and asked what was new on their end. He remarked that you had probably noticed in the papers an account of their stipulation with Transamerica with respect to their access to the records of Bank of America. As a result of court decisions they were to be given access to the books of the bank for the purpose of tracing transactions with Transamerica and facts on these transactions would be available for use in their hearings. Transamerica reserved the right to object to the use of any evidence regarding loans by the bank or appraisals of bank assets. Mr. Frank explained, however, that the reservation meant little as they could deal with that situation when they came to it.

You told Mr. Frank that we had made what you regarded as really important progress recently and you thought that he ought to be informed. You wanted to give him the information confidentially and asked whether he would find it necessary to pass it on to anyone else. He said that if you didn't object he would like to tell it to Leon Henderson and you replied that you didn't object to Henderson's knowing about it. We had had quite a streak of luck you explained. Mr. Folger, Chief National Bank Examiner, had gone to California to participate in a current examination of Bank of America and he and his associates had found in the files of the Capital Company, an affiliate of the Bank of America, appraisals of the bank's "other real estate" on the basis of which the examiners proposed a loss write-off of more than eight million dollars. This was in addition to more than five million dollars of loss found in an examination of their assets. You emphasized that the real estate appraisals were their own and not ours. You added that you hoped the actual report of the examiners would be available about the first of August.

- 2 -

Mr. Frank agreed that this was an important development and that the new report would be very valuable to them. He asked if they would be able to obtain a copy and after consulting Mr. Foley you said that they would. You added that you felt that at last, after a good many obstacles, we were on the right track and were making real progress. You told him how you had called in Messrs. Tom Smith, Otley and Spencer, all able and important national bankers and from three different sections of the country and that their study of the situation had had a great deal to do with putting things on a more satisfactory basis, so that we were now getting concerted action in the Treasury Department.

Hi Mr. J.

The year is 1962

Please

1/2 p.m.

THE BOATMEN'S NATIONAL BANK OF ST. LOUIS

TOM K. SMITH
PRESIDENT

July 17, 1939

Dear Cy,

This is for your information.

Guy¹ arrived at 12:42 yesterday and it was possible for me to rearrange my trip so that I got back to St. Louis about 1:30 o'clock.

We spent the afternoon together and I put him on the 8:00 o'clock Wabash train for Omaha where he will catch the Overland Limited this morning so as to arrive in San Francisco wednesday morning thereby saving himself a day.

The enclosed copy of a letter to the Comptroller explains itself.

Needless to say, I enjoyed the afternoon with Gus and feel that I am much the better for it. He is a grand fellow.

Best regards.

Cordially yours,

W. K. Smith

Mr. C. B. Upham
First Deputy Comptroller of the Currency
Treasury Department
Washington, D. C.

THE BOATMEN'S NATIONAL BANK
OF ST. LOUIS
BROADWAY AND OLIVE ST.

July 17, 1939



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

Dear Preston,

It was possible for me to speed up my trip so that I returned to St. Louis shortly after noon yesterday and spent the afternoon with Mr. Folger.

As I understand the situation, the examiners are in possession of information evidencing a substantial loss in the real estate account so that the present report should show losses aggregating \$13,000,000. It is my understanding that Mr. Folger is returning to San Francisco for the purpose of discussing this matter with the management of the bank, after which time the report will be completed and filed and the administration requested to charge off the losses.

Obviously this is the proper course to pursue and strangely enough it is in line with the suggestion in our report of June 23, 1939 which states that:

"Careful study by the examining force will disclose the losses which should be promptly charged off and this policy should be continued indefinitely until the assets are in proper shape."

I telegraphed you last night that I was in accord with what was proposed, and also informed you that Mr. Folger caught the 8:00 o'clock Wabasa train to Omaha where he will board the Overland Limited so as to reach San Francisco Wednesday morning.

My congratulations upon the progress you have made.

Cordially yours,

July 17, 1939

MEMORANDUM FOR THE SECRETARY:

Telegram from Tom Smith to the Comptroller
this morning, reading:

"It seems to me that procedure
outlined by Folger is proper course."


Upm

July 19, 1939

MEMORANDUM TO THE SECRETARY:

Supplementing Mr. Upham's advice concerning Mr. Folger's interview with Mr. Tom K. Smith in St. Louis, I am enclosing herewith copy of a personal note just received from Mr. Smith which may be of interest.

Preston Delano
Preston Delano

THE BOATMEN'S NATIONAL BANK
OF ST. LOUIS
BROADWAY AND OLIVE ST.

July 17, 1939

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Comptroller of the Currency
Washington, D. C.

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My congratulations upon the progress you have made.

Cordially yours,

is

Treasury Department

TELEGRAPH OFFICE

*Copy to Foley
Controller*

147

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SAN FRANCISCO CALIF JUL 22 1939.

1939 JUL 24 AM 8 56

HENRY MORGENTHAU JR

ON MY RETURN TODAY FROM SEVERAL WEEKS IN SOUTHERN PART OF STATE I FIND THAT YOU HAVE HAD YOUR HANDY MAN FOLGER OUT HERE TO SEE TO IT THAT ANOTHER OF YOUR SMEARING AND TEAR DOWN REPORTS IS GOTTEN OUT WITH A VIEW NO DOUBT OF NULLIFYING OR OFFSETTING THE EXTRAORDINARY PROGRESS OUR INSTITUTION IS MAKING AS SHOWN BY THE 135 MILLION CAPITAL FIGURE PRACTICALLY ONE TO TEN RATIO BASIS MENTIONED IN OUR RECENT LETTER TO COMPTROLLER. EXAMINER MCLEAN WHOM YOU DOUBTLESS PICKED TO DO THE DIRTY

Treasury Department

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TELEGRAPH OFFICE

W. WAA2/2

WORK IS THE SAME MAN WHO APPEARED BEFORE DIRECTORS CERTAIN SPOKANE
INSTITUTION LAST YEAR WITH DELIBERATE INTENT OF DISSUADING THEM FROM
CARRYING THROUGH THE DEAL MADE WITH OUR INSTITUTION INDULGING IN THE
GROSSEST OF LIES TO ACCOMPLISH HIS PURPOSE AND DOUBTLESS UNDER YOUR
ORDERS. IF EVER FURTHER EVIDENCE WAS NEEDED TO CINCH THE CONSPIRACY BACK
OF ALL OF YOUR MOVES THIS LAST STEP OF YOURS CERTAINLY DOES IT

A P GIANNINI
740A

DEC 8 2 1938

July 27, 1939

Mr. L. M. Giannini, President,
Bank of America National Trust & Savings Association,
San Francisco, California

Dear Mr. Giannini:

Receipt is acknowledged of your telegram of July 21, 1939. The matters you referred to in that telegram will be considered with the report of examination just received.

Very sincerely yours,

Preston Delano
Comptroller of the Currency

TREASURY DEPARTMENT

Telegraph Office

PALO ALTO CALIF. JULY 21, 1939

HON. PRESTON DELANO
COMPTROLLER OF THE CURRENCY

AT CONFERENCE TODAY CALLED BY FOLGER PARTICIPATED IN BY WRIGHT MAC LEAN AND REESE WE LEARNED FOR FIRST TIME THOUGH WE HAD BEEN PROCEEDING ON PROGRAM OF APPRAISAL OUTLINED BY CHIEF EXAMINER WRIGHT THAT EXAMINER MAC LEAN HAD BASED ON HIS PERSONAL OPINION SOME ORAL APPRAISALS AND CERTAIN SURVEY MEMORANDA ASSEMBLED BY CLERKS OF CAPITAL COMPANY AND THE BANK FOR USE PRIMARILY IN INSURANCE AND ASSESSMENT MATTERS WHICH OMITTED TO COVER MANY FACTORS OF VALUE COMPILED A PARTIAL LIST OF SO CALLED APPRAISALS OF BANK PREMISES WHICH WHEN COMPARED WITH AUTHENTIC APPRAISALS BY QUALIFIED INDEPENDENT APPRAISERS OF HIGHEST STANDING AND INTEGRITY DISCLOSED FLAGRANT DISCREPANCIES IN VALUATION ADVERSE TO THIS INSTITUTION RELEASE AND PUBLICATION OF SUCH INCOMPLETE FALSE AND MISLEADING FIGURES WHICH CANNOT BE SUBSTANTIATED IS CALCULATED TO BE DETRIMENTAL TO THE BEST INTEREST OF THIS BANK AND OUR OFFICE STOP IN ADDITION TO PROPOSAL MADE TO CONFEREES WE ARE WILLING TO SUBMIT QUESTION OF VALUE TO F. D. I. C. FEDERAL RESERVE AND STATE SUPERINTENDENT OF BANKS OF CALIFORNIA TOGETHER WITH YOUR REPRESENTATIVE WE ONLY WANT UNBIASED FACTS BASED ON GOING CONCERN VALUE AND WILL ABIDE BY DECISION REPRESENTATIVES THESE GOVERNMENTAL AGENCIES OR WE ARE WILLING ACCEPT ANY OTHER EQUITABLE PROPOSAL TO DETERMINE VALUES STOP APPARENTLY NO CONSIDERATION IS BEING GIVEN TO AGREEMENTS SET FORTH IN DECEMBER 15, 1938 MEMORANDUM AND CORRESPONDENCE RELATED THERETO STOP FOLGER OF WASHINGTON IS DIRECTING PROCEDURE HERE AND SEEMS ADAMANT IN

- 2 -

PUTTING OVER THIS DESTRUCTIVE PROGRAM WHICH IS MOST UNJUST AND UNFAIR
WE MUST THEREFORE APPEAL TO YOU AS COMPTROLLER OF THE CURRENCY TO SEE THAT
JUSTICE IS DONE REGARDS

L. M. GIANNINI, PRESIDENT
BANK OF AMERICA N. T. AND S. A.

8:44 A. M.

RE BANK OF AMERICA

July 27, 1939.
11:00 A. M.

Present: Mr. Gaston
Mr. Duffield
Mr. Tietjens
Mr. Preston Delano
Mr. Upham
Mr. Folger

H.M.Jr: What have you got to say for yourself today?

Folger: Well, I arrived out there, sir, last Wednesday and couldn't confer with the representative of the Bank until Friday, because Mr. Giannini, the President, was out of the city, and he was called back by some of his officers in the Bank. We began the conference on the morning of Friday, the 21st. We discussed the current report of examination practically all day, for six or seven hours.

H.M.Jr: Is it Mario Giannini?

Folger: Yes, sir, and his vice-president, Mr. Smith.

And when we got to the real estate, the losses estimated on the other real estate, banking houses, he wanted the Examiner to read off from this report some of the larger items, which he did. We consumed considerable time reading them and discussing them.

Mr. Giannini took the position that the appraisals the Examiner found were not - the people who made them were not appraisers, and furthermore, that they were not made for purposes other than assessments or insurance. He asked the Examiner who made the appraisals, and he was told that they were found in his own files, made by the Bank. After a little while he wanted to know who made them, what individuals. The Examiner produced some of his copies of the appraisals and gave him the names, and he again said that those people were not appraisers.

They are not willing to charge off - I asked them the question -

- 2 -

H.M.Jr: They are not willing to what?

Folger: They are not willing to write off the amount estimated by the Examiner.

H.M.Jr: I see.

Folger: The Examiner feels that he has been quite liberal, lenient with the Bank, that he hasn't been drastic in his classification.

H.M.Jr: Well....

Folger: Well, they....

H.M.Jr: Go ahead.

Folger: Late in the afternoon Giannini, the president of the Bank, wanted to know if I wanted to see him again. I told him I'd be glad to see him any time he wanted to see me, but if he wanted the report changed, if that would be his reason for seeing me, it would be a waste of his time; we were not going to change it.

Well, during the course of the conversation the Examiner had told him that, before I did, that he would....

H.M.Jr: Excuse me.

(On phone) Hello. - Yes, it's convenient.

Jesse calling from San Francisco.

Duffield: Very appropriate.

H.M.Jr: Go ahead.

Folger: The Examiner told him after several hours of discussion that he would agree to eliminate from the doubtful an item on furniture and fixtures, that that would be the only change that he would be willing to make in the report.

H.M.Jr: How much does that amount to in dollars?

- 3 -

Folger: That was about a million dollars listed in doubtful. And that's the only change that was made in the Examiner's....

H.M.Jr: Now, does that come under the thirteen and a half?

Folger: No, sir.

H.M.Jr: That does not affect the thirteen and a half.

Folger: No, sir, the losses are thirteen and a half, and the doubtful - total of doubtful is fourteen and a half, in round figures.

H.M.Jr: It was fifteen and a half?

Folger: It was fifteen and a half.

H.M.Jr: And he did make that change.

Folger: Yes, sir, that's right.

H.M.Jr: But no other.

Folger: He told them that was the only change he was willing to make, after hearing their side of it and discussing the matter for several hours. Then I told them that I thoroughly agreed with the Examiner.

H.M.Jr: Who is the Examiner?

Folger: McLean.

H.M.Jr: Is he the Chief Examiner?

Folger: No, he's the Examiner in charge of this examination. Mr. Wright is the District Chief Examiner.

H.M.Jr: Well, what happened then?

Folger: Well, he sent a letter late - I didn't see him Saturday; he didn't call back. I left Sunday morning. But late Saturday afternoon he did send a letter to the office addressed to me, containing nothing more than what he had said in the course of the conference, that we had

- 4 -

based the report and estimated the losses on information which he didn't think was correct.

H.M.Jr: Do you have a copy of that letter?

Folger: Yes, sir.

H.M.Jr: Could I have a copy for my files?

Folger: Yes, sir.

H.M.Jr: Have you taken the trouble or had the time to see these men who did make this examination of the real estate, as to what their background and training is?

Folger: The men who appraised the real estate? No, sir, I have not.

H.M.Jr: Well, don't you think it would be wise?

Folger: I asked the Bank who they were, and they were employees of the - people employed by the Bank and the Capital Company.

H.M.Jr: I see. They are regular employees.

Folger: Yes, sir.

H.M.Jr: And what was the purpose of these employees making this appraisal?

Folger: Well, he said after a while that they were made for tax purposes, assessments.

H.M.Jr: I see.

Folger: But the appraisals - they don't seem to make any such notation on the appraisals.

Delano: I think we should bring out, too, if I may interject here....

H.M.Jr: Please.

Delano:the fact that these appraisals are formal-looking documents, they are not just memorandums or pieces of paper.

- 5 -

- Folger: I questioned the Examiners about that. They are formal things, schedules, so forth.
- H.M.Jr: But have we any reason to believe that they are fair appraisals?
- Delano: I think possibly you (Folger) better....
- Folger: Well, our Examiner, Mr. Secretary, who's had years of experience, feels that if there is any difference, the properties are not even worth the amount stated in those appraisals.
- H.M.Jr: I see. What I'm getting at - if he says, well, there's this, that and the other thing, and then they brought in independent appraisers and did it all over again, where would we end up? That's the point.
- Folger: Well, in appraising real estate, it depends on who the people are. You can always get somebody to appraise it....
- H.M.Jr: Yes, but what I want to know - is it the feeling of your organization that these appraisals are not too drastic?
- Delano: Yes. That....
- Folger: We feel - I feel, and the Examiner out there who made the examination, and I'm sure Mr. Wright would concur in the opinion, that on a new appraisal, a fair appraisal, it would show more loss than is shown by this report, based on the one at that time.
- H.M.Jr: Well, is there anything else to add on your trip?
- Folger: I don't believe there is, Mr. Secretary, of any importance. I failed to get them to charge off, and came back.
- H.M.Jr: Well now, what's the next move, Delano?
- Delano: Well, Mr. Folger has closed the report, brought it back with him, and we are in process now of writing the usual letter of criticism based on this report, which we hope to have turned out sometime tomorrow in rough draft form. We are then going to refer

- 6 -

it to the legal department to cover the legal features of the thing and to get the legal department to put in what they think would be required under the law as warnings or whatever should build up a proper case. Then on Monday we're getting Tom K. Smith here, and Charlie Spencer will fly down, if necessary, but be here anyway Tuesday morning. Ottley is a little more difficult to get here, because he is on vacation and he is reluctant to come. I felt, though, with Smith and Spencer we'd have enough, and then Ottley said something - if we'd send him a copy of the letter, he'd talk over the telephone to Tom K. Smith about it. So I think everything is in process of getting this thing in shape.

H.M.Jr: Couldn't you get the letter to Mr. Ottley off by Saturday night?

Delano: Well, we'll try it. It just depends on....

H.M.Jr: I expect to see the President at lunch on Monday, and I'd like to be able to show him the document at that time - 1:00 o'clock.

Delano: We'll do the best we can.

H.M.Jr: I'm going to put you down for 11:00 o'clock Monday.

Delano: All right. Now, I won't have the bankers' opinion by that time.

H.M.Jr: I know.

Delano: But we will have a letter for you - will we?

Tietjens: Well, I should - if we get it tomorrow, I think so.

Delano: We'll have a letter for you.

H.M.Jr: Well, I'd like to have a letter that you're willing to recommend to me. And Tom Smith will have had a chance to see it by eleven, won't he?

Delano: Yes. He'll be here - he'll come in in time to see that.

- 7 -

H.M.Jr: Well, let's make it - we'll say 11:30.

Delano: All right.

H.M.Jr: And if possible, we could get it off in the mail Saturday night to Ottley and to Spencer.

Delano: All right.

H.M.Jr: You can talk to him on the phone, and it might save Spencer from coming down.

Delano: All right.

H.M.Jr: I mean if you've got - any letter mailed Saturday night would reach them, wherever they are, Monday morning.

Delano: That's right. We'll try that.

H.M.Jr: The legal division will come through, if they've got to stay up all night. They like to do that.

Delano: I didn't know they enjoyed that.

H.M.Jr: They love it.

Tietjens: Keep the air-conditioning on.

H.M.Jr: Doesn't it stay on at night?

Delano: Sometimes it goes off, and it gets pretty hot.

H.M.Jr: All you've got to do is holler. If you work on this, I'll see that the air-conditioning is on. But I don't want it so cold your brain won't work.

Gaston: Did the Examiner take photostats, Mr. Folger, or true copies?

Folger: He did not take any complete copies of them.

Gaston: He did not.

Folger: He made pro formas, taking off the data.

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H.M. Jr: But no photostats.

Folger: No photostats.

H.M. Jr: Couldn't you phone them out there to get those things and have them photostated, before they disappear?

Folger: Well, I don't believe they'll disappear now.

H.M. Jr: Well, I think Mr. Gaston made a good point. I think I'd phone your man and I'd get them and have them photostated.

Gaston: How old were they, Mr. Folger, how recent?

Folger: Well, some are recent and some are old, Mr. Gaston.

Delano: I think you told me, Gus, about fifty-fifty.

Folger: Fifty-fifty.

H.M. Jr: Have you any doubts about getting hold of them and photostating them?

Delano: That factor of the situation I don't know. Mr. Folger would know more about that.

Folger: Well, we've left the Bank. We're not there examining now.

Gaston: That would be the difficulty, I suppose.

Folger: That would mean carrying their records away from the Bank.

H.M. Jr: Would that be an unusual procedure?

Folger: Yes, sir, it would.

H.M. Jr: What?

Folger: Yes, sir, it would.

H.M. Jr: Then I wouldn't do it.

Folger: It would be very unusual.

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Delano: We thought we ought to do this thing - we've got a pro forma, as we call it, which is a detail of that, and I think nobody in the world would ever doubt that we had that.

Gaston: That's attested by two Examiners?

Delano: Oh yes, there's no question of that - I mean what the Examiner turns up in the way of a report.

H.M.Jr: (Holds telephone conversation with Jesse Jones).

Gaston: Nothing about Giannini at all?

H.M.Jr: No.

Gaston: He evidently hadn't seen him.

H.M.Jr: He never says anything - he never, while all those negotiations were on, I don't think but once we ever talked about it. No, he wouldn't say anything.

Delano: I think we ought to say this. I get this out of the discussions with Mr. Folger. It seems to be very definitely established in the minds of the whole - of all the examining staff that has been in on this - that is, McLean and Wright and Mr. Folger - that we are amply justified in these write-offs, that there is sufficient evidence in the files, in their own files, to completely justify that; it isn't a debatable point with them at all. Now, there is a unanimity of opinion, as I understand it, on that point. Am I correct?

Folger: Yes, sir.

Delano: There's no doubt about it. There's been no coercion from our office in that matter at all. It was something that turned up out there.

H.M.Jr: I'm glad, though - I take it you yourself are thoroughly satisfied.

Delano: I am thoroughly satisfied.

Now, I have one other matter here. I have a wire from Giannini which is somewhat the same kind of a wire that he (Folger) has a letter on. I'd like to read this wire....

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H.M.Jr: All right.

Delano:and suggest how we're going to handle it.

H.M.Jr: Righto.

Delano: Just for the record. This is dated July 21.

"AT CONFERENCE TODAY CALLED BY FOLGER PARTICIPATED IN BY WRIGHT MACLEAN AND REESE...." - I don't know who Reese is. Who is Reese?

Folger: One of the Examiners.

Delano: "....WE LEARNED FOR FIRST TIME THOUGH WE HAD BEEN PROCEEDING ON PROGRAM OF APPRAISAL OUTLINED BY CHIEF EXAMINER WRIGHT THAT EXAMINER MACLEAN HAD BASED ON HIS PERSONAL OPINION SOME ORAL APPRAISALS AND CERTAIN SURVEY MEMORANDA ASSEMBLED BY CLERKS OF CAPITAL COMPANY AND THE BANK FOR USE PRIMARILY IN INSURANCE AND ASSESSMENT MATTERS WHICH OMITTED TO COVER MANY FACTORS OF VALUE COMPILED A PARTIAL LIST OF SO CALLED APPRAISALS OF BANK PREMISES WHICH WHEN COMPARED WITH AUTHENTIC APPRAISALS BY QUALIFIED INDEPENDENT APPRAISERS OF HIGHEST STANDING AND INTEGRITY DISCLOSED FLAGRANT DISCREPANCIES IN VALUATION ADVERSE TO THIS INSTITUTION RELEASE AND PUBLICATION OF SUCH INCOMPLETE FALSE AND MISLEADING FIGURES WHICH CANNOT BE SUBSTANTIATED IS CALCULATED TO BE DETRIMENTAL TO THE BEST INTEREST OF THIS BANK AND YOUR OFFICE STOP IN ADDITION TO PROPOSAL MADE TO CONFEREES WE ARE WILLING TO SUBMIT QUESTION OF VALUE TO FDIC FEDERAL RESERVE AND STATE SUPERINTENDENT OF BANKS OF CALIFORNIA TOGETHER WITH YOUR REPRESENTATIVE WE ONLY WANT UNBIASED FACTS BASED ON GOING CONCERN VALUE AND WILL ABIDE BY DECISION REPRESENTATIVES THESE GOVERNMENTAL AGENCIES OR WE ARE WILLING ACCEPT ANY OTHER EQUITABLE PROPOSAL TO DETERMINE VALUES STOP APPARENTLY NO CONSIDERATION IS BEING GIVEN TO AGREEMENTS SET FORTH IN DECEMBER 15 1938 MEMORANDUM AND CORRESPONDENCE RELATED THERETO STOP FOLGER OF WASHINGTON IS DIRECTING PROCEDURE HERE AND SEEMS ADAMANT IN PUTTING OVER THIS DESTRUCTIVE PROGRAM WHICH IS MOST UNJUST AND UNFAIR WE MUST THEREFORE APPEAL TO YOU AS COMPTROLLER OF THE CURRENCY TO SEE THAT JUSTICE IS DONE."

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And that is signed by L. M. Giannini.

H.M.Jr: Did he send that right open - the telegram open?

Delano: Yes, there it is.

H.M.Jr: I mean no code or anything?

Delano: No code, no nothing. We have no code with Mr. Giannini at all.

H.M.Jr: Good.

Well, the only thing that comes to my mind after seeing that - I think that if you'd invite Mr. Crowley to sit in at 11:30 on Monday, and that he would have a chance to see this thing before he came....

Delano: This - he has a copy of it.

H.M.Jr: Well, I think if he would be kept informed....

Delano: Well, I'm keeping him informed.

H.M.Jr: Following your original suggestion about bringing Crowley into this thing - so let's invite him to be here at 11:30 Monday. I don't mean that telegram. I just mean this whole picture.

Delano: Right, right.

H.M.Jr: No, I don't mean the - he ought to know what Folger....

Delano: Well, I'm keeping him informed.

H.M.Jr: Oh, fine.

Delano: I assume that is what we agreed on.

H.M.Jr: Definitely. And then let him come in 11:30 Monday and let him give us his advice.

Delano: They sent him a copy of this wire, you see.

H.M.Jr: Good.

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Delano: Now, I propose to answer it this way. I think it should be answered for the record. I think there should be an answer.

"Receipt is acknowledged of your telegram of July 21, 1939. The matters you refer to in that telegram will be considered with the report of examination just received. Very truly yours."

H.M.Jr: The matters what?

Delano: "The matters you refer to will be considered with the report of examination just received." That's all.

H.M.Jr: Sure.

Delano: Then when we write our letter it will be an answer to the whole thing, you see.

H.M.Jr: I didn't acknowledge his telegram - the one he sent me.

Duffield: That was his father's.

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

Delano: Well, I certainly think you should not.

H.M.Jr: No, no, I've had others like this.

Gaston: Of course, this is Marris.

Delano: This is in the run of business. I think we should make an answer.

H.M.Jr: I should say that telegram was a very good character endorsement for Mr. Folger.

Delano: Says he's adamant.

H.M.Jr: I think it's a good character endorsement. What else?

Delano: (Nods nothing).

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H.M.Jr: If Crowley wants to see me, tell me.

Upham: I was a little slow with my memorandum about Leo. The President sent up his nomination yesterday.



TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

ADDRESS REPLY TO
COMPTROLLER OF THE CURRENCY"

July 29, 1939

Dear Mr. Secretary:

Pursuant to your request, there is enclosed copy of letter addressed to me from Mr. L. M. Giannini, President of the Bank of America, National Trust & Savings Association.

The letter was sent to me by messenger at the District Chief Examiner's office in San Francisco on the afternoon of Saturday, July 22, after I had left the office for the day and was delivered to me later on the same afternoon by Examiner McLean. I left San Francisco for Washington Sunday morning, July 23.

Respectfully,

W. P. Folger
Chief National Bank Examiner

Honorable Henry Morgenthau, Jr.
Secretary of the Treasury
Washington

BANK OF AMERICA
NATIONAL TRUST & SAVINGS ASSOCIATION

July 22, 1939

Mr. W. P. Folger
Chief National Bank Examiner
Care - National Banking Department
No 1 Montgomery, Room 921
San Francisco, California

Dear Mr. Folger:

Ostensibly, your purpose in coming to San Francisco from Washington and recalling me from my much needed vacation was to confer with you on the current report of examination of this Bank. Naturally, I assumed that the conference was for the purpose of discussing certain moot points to the end that the report would fairly represent the true condition of the Bank. I am therefore amazed when I review the course of our conversation yesterday and contemplate your rigid insistence that the report be filed in its present form without opportunity to correct the glaring error of its conclusions.

In the draft of his report which was the subject of our discussions yesterday, your examiner said that Banking Premises owned by the Bank and Merchants National Realty Corporation were being classified as IV \$8,743,000, and III \$3,175,000. He further stated that these classifications were based on oral opinions obtained from an undisclosed source, in some cases, upon his own admittedly unprofessional appraisals or on information found in the files of Capital Company, our operating agent. We called your attention to the fact that memoranda contained in Capital Company files are not intended to represent qualified or authentic appraisals but are simply surveys made for insurance, assessment or other purposes. You know from our discussions that your examiner has reached his conclusions upon information which cannot be recognized as indicative of values and from memoranda not a part of the Bank's records.

In spite of this you decided that appraisals on 26 properties made by one of the foremost appraisers in California, at Mr. Wright's request, should be disregarded and that the incorrect report should be filed, admitting however that the conclusions in it might be changed if later figures pictured a different situation.

Mr. W. P. Folger

July 22, 1939.

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A further important wrong conclusion was reached by your examiner in the classification of approximately \$6,000,000 as Class III in connection with the Real Estate contracts of Capital Company and California Lands, Inc. These contracts have been the subject of exhaustive discussion on previous occasions and the liquidating program was agreed upon in the Comptroller's memorandum of December 15, 1938. The examiner admitted that no consideration was given to the net worth or responsibility of the paying companies and that his classification was made solely upon the sale prices of the underlying security. You would not consent to any change in this wrongful classification.

We must and do emphatically object to your thus placing of record conclusions detrimental to the welfare of this Bank when such conclusions are based upon unauthentic and incomplete information.

This action, taken without accepting our offer to have professional and qualified appraisals made by appraisers of recognized skill, can only be interpreted as an arbitrary move designed to injure this Bank.

We again renew our offer to pay the cost of capable appraisals by any recognized authorities in that field, or to accept a joint appraisal made by the Superintendent of Banks of the State of California, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency, and again insist that any record of values pertaining to our banking premises be made only upon authentic and fully qualified appraisals.

Your calling me into conference for an entire day appears as a useless gesture, unless in the light of the facts disclosed in that conference you permit any questions regarding the value of our banking premises to be decided on the basis of authentic and uniform standards of value.

Yours very truly,

(Signed) L. M. Giannini
President.

RE BANK OF AMERICA

July 31, 1939.
11:30 A. M.

Present: Mr. Hanes
Mr. Gaston
Mr. Foley
Mr. Duffield
Mr. Tietjens
Mr. Preston Delano
Mr. Upham
Mr. Crowley
Mr. Folger
Mr. Tom K. Smith

H.M.Jr: Where's the rest of your advisory committee?

Delano: Mr. Ottley's wife is quite ill.

H.M.Jr: Oh, I'm sorry.

Delano: He couldn't come. And Charlie Spencer had an executive meeting. We've talked with him on the telephone and he's standing by and will come down this afternoon if we want him here.

H.M.Jr: Have you (Smith) read this?

Smith: Yes, sir.

H.M.Jr: Well, I'll read it out loud. And who has not read this besides myself?

Gaston: I haven't.

Hanes: I haven't.

H.M.Jr: Well, I'll read it. This is to be signed by the Comptroller of the Currency. It goes to the directors of the Bank of America.

"Gentlemen: The current report of examination of your bank, completed July 21, 1939, a copy of which has been sent to you, shows a continuation of the unsatisfactory asset condition which has been the subject of previous communications to you and of discussions with the managing officers of your institution. We shall review in this letter some of the more important phases of the bank's problems, and point out the corrections which must be made if the Bank of America N. T. & S. A. is to be operated soundly and the interests of depositors protected.

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"The present examination shows that, after deducting estimated losses of \$13,517,598.69, liability on account of service charges of \$619,760.29, and one-half of Classification III, which aggregates \$14,535,225.14, from the total capital structure as shown by your books, there remains \$93,207,348.57 of adjusted capital structure, or approximately \$9,000,000.00 less than was shown in the prior report.

"Previous letters from this office have outlined the wholly unsatisfactory capital and asset condition of your bank. This two-fold weakness is manifestly attributable to such unsafe and unsound policies as (a) refusal of management and directorate to recognize asset problems in general, (b) refusal to recognize the dangers inherent in the excessive concentration in real estate, (c) use of earnings for the payment of dividends rather than for the creation of adequate reserves and the correction of the asset condition and the under-capitalization, (d) persistent unsound and illegal dealings with Transamerica Corporation and allied interests to the detriment of the bank and in other than conventional and accepted methods employed in dealings with other clients of the bank, and (e) refusal to make and keep the bank independent of, rather than subservient to, the interests and expansion policies of Transamerica Corporation."

I just want to ask one question on the (d) - "persistent unsound and illegal dealings...." I take it you are prepared to defend that statement.

Delano: Yes, that's been checked with the legal division.

H.M.Jr: What?

Delano: That's been checked, Mr. Secretary....

H.M.Jr: I mean you're prepared to prove that they're illegal, huh?

Delano: That's right, isn't it, Ed?

Foley: Yes.

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H.M.Jr: What?

Foley: (Nods yes).

H.M.Jr: "The concentration of fixed assets...." - I mean there's no question about the illegality, is there? You wouldn't - or you wouldn't use that word. What?

Foley: No.

H.M.Jr: Are you satisfied, Folger, that they are illegal dealings, with Transamerica?

Folger: There are illegal dealings.

H.M.Jr: What?

Folger: Yes, sir.

H.M.Jr: You are satisfied? You'd go on the witness stand?

Folger: Yes.

H.M.Jr: What?

Folger: Yes, sir.

H.M.Jr: "The concentration...."

Folger: I wouldn't say that there isn't a question about some of the items. I don't know about that.

H.M.Jr: Pardon?

Folger: But I am satisfied beyond any doubt that there are illegal transactions, illegal dealings.

H.M.Jr: With Transamerica.

Folger: Yes.

H.M.Jr: That's the question I'm asking.

Folger: And its affiliates. Yes.

H.M.Jr: "The concentration of fixed assets, consisting of banking houses, furniture and fixtures and other

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real estate, exceeds the capital and surplus of the bank, and in fact exceeds the adjusted capital structure mentioned above. On page 14, insert 1 of the report of examination, there is a schedule showing the total carrying value of fixed assets, which includes the contracts of California Lands, Inc., and Capital Company, since in effect the only collateral pledged as security for these contracts is the real estate covered by them. The amount properly representing banking houses and furniture and fixtures totals \$48,234,851.52, and the amount invested in other real estate is shown to be \$45,766,704.89. The combined total of these accounts is \$94,001,556.41. In addition, there are 346 loans amounting to \$6,032,175.00 which are under foreclosure, and additional loans aggregating \$7,621,226.49 which are believed by the examiner to be potential foreclosures. This brings the total investment in actual and potential fixed assets to \$107,654,957.90, which sum is greatly in excess of the adjusted capital structure. It is to be noted that \$27,387,220.00 book value of other real estate, comprising approximately 1,000 parcels, has been carried beyond five years.

"The contracts of California Lands, Inc., and Capital Company, mentioned in the preceding paragraph, aggregate \$33,834,723.60."

This typewriting is terrible. I don't know who did it.

"Notwithstanding your assurance that no more real estate would be transferred to these companies, the examiner reports that you have made a direct advance to the Capital Company in the amount of \$1,100,000, which was used for the construction of a building for a large department store in Los Angeles, and that you have added that sum to the unpaid balance of the real estate contracts. Such action on your part not only constitutes an unsafe and unsound banking practice but, in the opinion of this office, is a violation of section 24 of the Federal Reserve Act, as amended. Immediate steps must be taken to remove this obligation from the assets of the bank for cash.

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"The real estate illegally acquired on August 5, 1938 in the amount of \$89,456 (shown in the report as \$85,405) in a transaction designated as the Hellman deal, must be removed from the assets of the bank for cash. You will recall that when these properties were reacquired, a credit of like amount was entered on 'Guaranteed Loans.'

"As you have been previously advised, the illegal real estate loan of Western Furniture Exchange, Inc., in the amount of \$520,000 should be removed from the assets of the bank for cash. That loan was taken from Transamerica Corporation in exchange for 11,320 shares of National City Bank stock carried in the bonds and securities account under 'Option to Purchase.' The property securing the loan is subject to prior encumbrance of \$1,000,000 in favor of the Metropolitan Life Insurance Company. This loan, with a maturity of approximately fifteen years, represents an illegal investment under Section 24 of the Federal Reserve Act, as amended.

"Your particular attention is directed to the concentrations of credit to Transamerica Corporation and its affiliates in amount of \$76,684,859.96; to A. O. Stewart in amount of \$7,623,239.31, and extensions under German Credits of \$5,009,239.82, which aggregate \$89,317,339.09, or almost the entire capital and surplus of your bank. The large extension of credit to Transamerica Corporation (which includes the contracts of California Lands, Inc., and Capital Company) is entirely out of proportion to your capital structure and presents one of the most serious problems confronting you. Although this matter has been repeatedly brought to your attention both in reports of examination and correspondence from this office, you have appeared little disposed to reduce these borrowings through earnings or to have the corporation reduce them by the sale of assets. From the character of the major portion of the collateral pledged as security to this concentration it is apparent that such action will be necessary to bring this line within conservative limitations, and you are directed to take the necessary action to bring this about. Failure to do so constitutes an unsafe and unsound banking practice.

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"The A. O. Stewart line of \$7,623,239.31 has also been subject to criticism over a long period of time and \$3,618,000 has been classified II in this report. One of the loans in this large line amounting to \$1,946,126.94 is adequately secured by United States Treasury bonds but the other collateral consists chiefly of defaulted bonds and stocks with no ready market or of corporations in liquidation. Prompt steps must be taken looking toward the curtailment of this line, or the pledging of satisfactory collateral back of the line."

Is this the first time we've drawn his attention to the A. O. Stewart line?

Folger: No, sir.

Hanes: No, several times.

H.M.Jr: Pardon?

Hanes: That's been done several times.

Delano: Yes.

H.M.Jr: "Notwithstanding...."

Smith: That's the reason you fired Stewart, you know, from the presidency of the Bank - Chairman of the Board of the Federal Reserve Bank in the district.

H.M.Jr: Who?

Smith: He was Chairman of the San Francisco Federal Reserve Bank.

H.M.Jr: Who fired him?

Smith: Don't you remember, this is what made him....

Upham: He never heard of him.

H.M.Jr: I'm surprised, Tom.

Smith: Excuse me.

Upham: Me too.

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H.M. Jr:

"Notwithstanding the large and dangerous concentration in real estate, the large and unwarranted obligations of Transamerica and affiliates, and in spite of the fact that the dividend policy has been criticised continuously since resumption of dividend payments in 1933, you have steadily increased that dividend rate until it has reached the annual total of 19.2%. As an illustration of your unsound policies it is noted that during the year 1938 the bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and securities, were \$5,392,000.00, and during that year \$9,600,000.00 was paid out in dividends. Numerous large transactions have been had with Transamerica and affiliates designed to avoid taking known losses and thus to give color of validity to the distribution of earnings by means of dividends to Transamerica and other shareholders. A net profit of \$6,570,000.00 was realized from the sale of securities from September 1, 1938 to March 31, 1939, which was credited to undivided profits. It is the position of this office that until losses have been written off and adequate reserves established, none of such profits should be distributed to shareholders through dividend payments.

"The report indicates that your bank carries its own Fidelity Insurance for the first \$100,000.00 and that premiums which ordinarily would be paid to an insurance company are deposited with Transamerica General Corporation. The amount of such deposit is \$2,272,659.55 and actually represents reserve funds of the bank that are not shown on the books. You are requested immediately to return this deposit to the bank in cash and to set up the proper account on your books. Failure to do so constitutes an unsafe and unsound banking practice."

Is this the first time we have drawn their attention to that insurance?

Delano:

Have we mentioned this before?

Folger:

The profits on bonds?

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Upham: The Fidelity Insurance.

Folger: No, didn't know it. Been doing that for a long time, but they only found it out this time.

H.M.Jr: I see.

Folger: Didn't know that.

H.M.Jr: "Violations of law and regulations as shown by the report of examination (page 2) include the non-observance of the provisions of Section 5201, U.S.R.S., by granting loans based on the security of shares of the bank's own stock; of Section 5136, U.S.R.S., by the purchase by the bank for its own account of investment securities which do not conform to the law and regulations; of Section 5137, U.S.R.S., by virtue of certain real estate transactions as cited in the report of examination; and of Section 24 of the Federal Reserve Act in the making and purchasing of certain real estate loans. In addition to the foregoing your attention is again called to the fact that the obligations of Transamerica Corporation and its subsidiaries, in which the Corporation owns or controls a majority interest, amounting to \$23,045,819.58 exceeds the 10% loaning limit of the bank under the provisions of Section 5200, U.S.R.S., and is in violation of the provisions of Section 23A of the Federal Reserve Act which limits loans to holding company affiliates.

"It is the Comptroller's duty to insist upon the correction of practices or conditions which violate established sound banking principles. Therefore, it is deemed fair and appropriate to advise you that it is the purpose of this office carefully to scrutinize:

"1. All transactions and practices which have resulted or which may result in weakening the capital structure whether by way of unjustified dividends, or the improvident use of the credit facilities of the bank by contributions to, or the forgiveness of obligations of, allied or special interests.

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"2. The substance and not merely the form of all methods employed in the various and complicated transactions engaged in by your institution.

"Furthermore, this office must insist that the bank conserve its earnings and establish an adequate sound capital position, that it refrain from unjustifiable favoritism to allied interests, that it correct the weaknesses and remove the bases of criticisms, that it take appropriate steps to eliminate the undue concentration in real estate including any portion thereof which may have been camouflaged through the use of allied corporations, and that appropriate policies and practices be established and followed to insure a constant sound condition for the bank.

"If it has not been done prior to the receipt of this letter, the amount classified as loss by the examiner should be charged off promptly, and certainly not later than the day following the next meeting of your Board. You are advised that until these losses have been written off and adequate reserve established, any further declaration or payment of dividends to shareholders will constitute an unsafe and unsound banking practice.

"Each director and officer of the bank is hereby warned, pursuant to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, section 77), to discontinue each and all of the unsafe or unsound practices referred to in this letter or which have been disclosed by the reports of examination, and to make provision for the elimination and discontinuance of the violations of law referred to in this letter or in the reports of examination. Very truly yours...."

Well now, all I can attempt to do, Mr. Delano, on an occasion like this, is to satisfy myself first that there is no doubt in your mind as to the wisdom of sending this.

Delano:

That's right, I'm perfectly satisfied.

H.M.Jr:

What?

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Delano: Yes, perfectly satisfied, Mr. Secretary.

H.M.Jr: Are there any - have you (Upham) any doubts?

Upham: Not any.

H.M.Jr: Any whatsoever?

Upham: Not at all.

H.M.Jr: What?

Upham: No, sir.

H.M.Jr: Do you want to raise any question on any of this?

Upham: No, sir.

H.M.Jr: How about you, Mr. Folger?

Folger: None at all.

H.M.Jr: Not the slightest doubt as to the wisdom or correctness of any statement.

Folger: No, I think it's justified.

H.M.Jr: What?

Folger: No, sir, I think it's all right and justified.

H.M.Jr: How about you, Mr. Foley?

Foley: I'm satisfied.

H.M.Jr: Entirely?

Foley: (Nods yes).

H.M.Jr: Now, Mr. Crowley, if you care to express your opinion on this - have you had a chance to study this?

Crowley: Yes, I read it yesterday. I think it covers the major problems of the Bank, and we are perfectly willing to go along with the Comptroller's office on it. Perfectly willing.

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- H.M.Jr: Are you entirely satisfied?
- Crowley: Yes, we're satisfied with it. We think it's a good letter and it covers the things that we think should be brought to the attention of the Board.
- H.M.Jr: Is it too harsh in any places?
- Crowley: I don't know about the illegal transactions, Gus - I mean whether you can prove, Ed, that they are really illegal. We know that they've been used for the benefit of the other companies. Whether you want to use that word "illegal" or not - that's the question.
- Folger: One item that won't take but a half a minute - they disbursed the money - most all of the things, see, were found in the last examination - a million one hundred thousand dollars of the Bank's money was used to build a store building for a department store.
- Foley: In Los Angeles.
- Folger: In Los Angeles.
- Hanes: On loan - mortgage loan or investment?
- Folger: Advance to Capital Company - one of those contracts.
- Hanes: They own a hundred percent of Capital Company?
- Folger: Yes, Transamerica owns a hundred percent of Capital Company. And this money was advanced to Capital Company.
- Crowley: Well, haven't they the right to do that? I mean haven't they the legal right, whether it's a question of security or not?
- Folger: If you say it's a loan, it's a violation of Section 24 of the Federal Reserve Act, which provides that they certainly - they certainly can't furnish a hundred percent cost - hundred percent of the money to build a building. There must be....

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- Hanes: No collateral on the loan at all, just a mortgage on the property?
- Folger: They haven't got a mortgage. That contract. The Capital Company did under the contract own a vacant lot - transferred to the Bank a vacant lot. The Bank increases that.... It furnishes the money to build a building - a million one hundred thousand dollars.
- Delano: It's not a banking property, you understand, it's just - it's a property leased....
- Smith: Gus, this is beside the question, but why do they do a thing like that?
- Folger: They got what they think was a good contract out of I. Magnum and Company, which is a good company. I think it's a good company. They have a nice large store both in Los Angeles and San Francisco, California.
- Smith: They just go in the real estate business.
- Gaston: They thought it was good business - not the banking business, but just good business.
- Crowley: The Capital Lands - they own this property, they own the equity.
- Folger: Own the lot..
- Crowley: Own the lot. They simply give them the money to build the building in order to get some return out of the lot.
- H.M. Jr: All right. Go ahead, Crowley. This is terribly serious. I don't want to rush anybody, see?
- Crowley: Here's the - I think this is the first time that there's ever been a letter drafted that covered Bank of America in all of its affairs. I think it's a good thing for the record to get a letter out there so that the Board may understand what the Comptroller's objections are to their Bank.

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Now, I think that we all agree as to what is the trouble with Bank of America. They've always tried to stretch a one-base hit into a two-base hit, and there's no reason why it should have all these various companies; and he should re-trench and do the regular banking business. And we tentatively agreed to a program with him on that. And as I see it, there is a question whether he has kept the spirit of that agreement, and he's gone right on paying his dividends, didn't increase his capital, and things like that. And I don't see anything else you can do but to give him this warning and insist upon these corrections.

H.M.Jr: Well, I mean - again, if you don't mind - you don't have to answer, but I mean you've had time enough to study it?

Crowley: Yes, sir.

H.M.Jr: And if you were the Comptroller of the Currency, would you sign it?

Crowley: Yes, we're in full accord. I'm in full accord with this letter, and I would.

H.M.Jr: Now, Mr. Smith, can you talk for yourself and these other two gentlemen?

Smith: Yes, I discussed it with both. I talked to Mr. Spencer twice this morning and I talked to Mr. Ottley.

H.M.Jr: And they - have they seen this letter? They have copies?

Smith: Yes, it was sent them Saturday.

H.M.Jr: Oh, you sent copies. So they have copies of this letter.

Smith: They have read it and they think it's the thing to do. Mr. Spencer raised this point, that this repetition of these charges might be considered a condemnation of the Comptroller's office if it ever became public; but we explained to him that it was considered necessary to show that the charges had - this was a repetition, and it had been made repeatedly, and that it might be necessary at a later date to say to the officers or

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directors of this Bank, "Now, you haven't done what you should have done in spite of the fact that we have warned you repeatedly," and that for that reason the letter should be drawn in the present form. But as to the form of the letter and the action, the Committee is in full accord.

H.M.Jr: Full accord.

Smith: Yes.

H.M.Jr: Do you recommend any changes?

Smith: No. We had a very few unimportant changes to suggest, and they were considered and one or two of them were accepted.

H.M.Jr: They were?

Smith: Yes, yes.

H.M.Jr: Well, let me - have you had ample time to study it?

Smith: Yes, and Mr. Ottley and Mr. Spencer have had, too, and they are satisfied.

H.M.Jr: And they think it should go?

Smith: Yes. They can't understand - of course, I've been familiar with this longer than they have, but they can't understand why such a situation should exist.

H.M.Jr: Well....

Smith: But it does exist.

H.M.Jr: They and myself are in the same boat. I mean I....

Smith: But I'm just giving you their reaction.

H.M.Jr: I haven't understood it for a couple of years.

Smith: No, they haven't any qualifications at all in their opinion.

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- H.N.Jr: Now, Mr. Hanes will be here during my absence, and I wondered whether he'd like to ask anybody any question.
- Hanes: I wanted to ask Ed Foley if he thinks this letter provides us with a good Section 30 background. Have you drawn the letter with that in mind? It seems to me - there's where we were so weak before, that we didn't have a Section 30 case; at least, the Federal Reserve, I take it from Harriner Eccles' letter - that he thought we didn't have a good Section 30 case. Do you think this gives us a better background for a Section 30 case against the Bank of America?
- Foley: Well, Johnny, I don't know whether it gives us any better background or not. It certainly gives us the advantage of what has transpired during the last ten or eleven months since the matter was considered in the light of the Section 30 proceedings. The letter has been drafted, the recent examination of the Bank was made, both with the view of ultimately presenting this under Section 30 to the Federal Reserve Board. This letter has been written by the Comptroller's office and reviewed by the lawyers with that in mind. I think from the information available and from the material that we have, it's as good a letter as we can write at the present time.
- Hanes: The reason I asked the question is, is there any way that we could strengthen our hand; I think we ought to at this time strengthen our hand, because it looks to me like we ultimately are going to end up there. And if there is any way we could strengthen that letter to put us in better position, why, that's a matter for the lawyers and I don't....
- H.N.Jr: It's a good point.
- Hanes: I don't know just what can be done, but it seems to me we ought to get ourselves in some way to take advantage of that Section 30 case.
- Foley: This is not a Section 30 letter; I mean this isn't our case to the Federal Reserve Board.

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Hanes: I understand that.

Foley: This is the letter of criticism based on the recent examination.

Hanes: Which will be used as background for Section 30.

Foley: Looking toward the preparation of the historical background and development of this case, which ultimately may have to be laid before the Federal Reserve Board. And I think that the letter is entirely adequate for....

Hanes: As background.

Foley:the purpose which it is designed to serve.

H.M.Jr: Now, Johnny, take plenty of time. I mean I - this is new - I don't know how much you want to do or how much you have done, but I don't want anybody to be rushed, you see. I mean do you want more time?

Hanes: I don't want any more time, Mr. Secretary. The only reason I was asking that question was because when we came up against this thing before....

H.M.Jr: I know.

Hanes:we just didn't - it seemed the opinion of most everybody that talked about the thing that we didn't have at that time enough background to build a case under Section 30. So that I was interested in seeing everything go into this letter that could possibly be put in there to serve the purpose of background for Section 30, if, as and when we come to it. And it seems to me that's what we're coming to in this case, that we're going to have to go to that before we ever bring this thing to a show-down. Therefore, I am interested in getting all the background we can in it. Now, Ed says it's got - he's got everything he can in there for that purpose.

Foley: Johnny, if we do go to the Fed, a whole year will have elapsed from the time the matter was first considered with that in mind. During

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that year, conferences and letters and memoranda have been had with the representatives of the Bank in the Comptroller's office. That has all contributed to our case. And no substantial progress has been made to correct any of the matters that have consistently been brought to the attention of the management out there during that whole year. And for whatever that's worth in bolstering our case, I think we've taken full advantage of it. I thought....

Hanes: I don't know whether you're familiar with it or not, but I had in mind the letter that Marriner Eccles wrote to the Secretary, a personal letter, in which he stated unequivocally at that time, as I understand it, that we had no Section 30 case. I mean that was certainly the inference that I drew from the letter. And I think if we didn't have one then, we certainly ought to be well along the road to having one now, because we have gone a great many steps forward.

Foley: I suppose there were imponderables that went into that letter that we can't do anything about, Johnny. We can only use the implements that we have available to correct a situation that continues to confront us. And I don't know whether Marriner Eccles feels any differently today than he did when he wrote the letter. But it isn't - doesn't seem to me that that's the point. It seems to me the only thing we can do is to try to make these corrections and when we are up against a refutation of the charges that we make to the Bank, going ahead and laying it before the only court we have, which is the Federal Reserve Board, for dealing with matters of this kind.

Hanes: That's just the point that I was....

Foley: What they'll do with it is their province and not ours.

Hanes: That's just what I was interested in, because if the chairman of the court before which you're going to try your case says you haven't got a case, I'm interested in building that case up just as strong as we can before we go back. That's the only reason I have asked the question, have we done everything

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that's possible here to give us the background we need before we go back?

H.M.Jr: The answer is neither "yes" or "no."

Hanes: He (Foley) says "yes."

H.M.Jr: I just want to say this. Since I've been here, I've never been shocked the way I have been by reading that letter. I think it's a terrific condemnation of a bank, and that's why I wanted to ask everybody in the room - I can't - I just got to - I do put my trust in you people that have studied this thing. And then once we get out in daylight, why, naturally I'm going to back you up. But I've got to take the advice of these people that are here. I mean I'm no Bank Examiner, but it's a terrifically strong letter and I take it that every point in here can be backed up to the limit.

Delano: I think we have taken great care with that.

H.M.Jr: Because in addition - as I say, it's a very shocking condition. Now, I just want to ask - Ed, I'd like you to listen to this, if you would, please - one question, which I'd like to ask you as Comptroller, first. I've asked this before, but not recently. Up to this point - I mean let's say that everything is as you say it is - are the deposits of the depositors - I mean is there any risk involved as far as the depositors' money is concerned?

Delano: No. That's our mature judgment. The Bank is not insolvent.

H.M.Jr: The Bank is not insolvent.

Delano: I think that's a correct statement, is it?

Folger: (Nods yes).

H.M.Jr: Do you - now, do you mind if I just ask Folger whether he agrees? Do you mind my asking him?

Delano: Of course not.

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- Folger: I don't think the depositor is in danger now, Mr. Secretary, necessarily. I don't think the Bank is insolvent.
- H.M.Jr: How about you, Tom?
- Smith: I don't think it's in danger now, but I think if you don't do something it will be.
- Now, there's - I'd just like to make one remark.
- H.M.Jr: Make two.
- Smith: When we looked at this a year ago, nearly a year ago, we saw certain outstanding, glaring cases of bad practice, and of course it's - whenever a man starts lying, he never - he just keeps on, and it accelerates. And we knew then that you would find things as you went along under better examination, and that has developed. In this report you have this insurance fund, you have these appraisals, you have this second mortgage, you have the building of this million dollar building in Los Angeles. Now, there are four things that - some are illegal, and the trouble in the past has been that we didn't have illegalities. Now you're getting some. You had them in the Anglo-California and that was easy. You're getting them here. And as these Examiners have time to dig in, think about it, and are encouraged and supported....
- H.M.Jr: That's important.
- Smith: That's important.
- H.M.Jr: Very.
- Folger: But the law prescribes no penalty for these violations.
- Smith: It's an unsound practice.
- Folger: That's right.
- Smith: And of course the penalty for unsound practice is a change of management, under Section 30. And I

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tell you that when you build up a preponderance of evidence against the Bank, then the Judge of the court before which you're going to try your case can't write you a letter in advance and tell you you have no case. I think it's - I think the Comptroller's office has done a good job in bringing this out. I think the letter - the very fact that the letter sums this up in such a way as to strike you is evidence that they have done a good job. It should bring some of these directors to their senses.

H.M.Jr: Well, I know perfectly what Mr. Hanes has in mind. I mean naturally, in view of the experience we've all gone through....

Smith: He's talking about the technical side.

H.M.Jr: He feels, I take it, that nothing will happen and we'll have to go to the Federal Reserve. Well, all I want to satisfy myself is that the Treasury, with the Comptroller part of the Treasury, has done everything that he could as far as his responsibility is concerned.

Smith: I think he has and I think he's done a good job.

H.M.Jr: Well now, that's that.

Now, you (Delano) have felt that at this stage and at this time, since the first of July, I take it, it is not necessary or wise to consult anybody other than the head of the FDIC.

Delano: That's right.

H.M.Jr: At this time.

Delano: That's right.

H.M.Jr: And therefore, if everybody feels that the Comptroller has done a good job and done everything that he can under the law, and if the Bank should be so unwise as to continue their practices - well then, at least I'll be able to lift my head up for the first time and say, "Well, my Comptroller has done his job well," which I have not been able

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to say heretofore. That's what's bothered me so much.

Now, once we'll be able to hold up our heads and say, "Well, we've done everything humanly possible" - now, if some other agency, with its responsibility, doesn't do its job, well, that's another story.

Let me just for information - I mean not that I want to - or before I go on, if everybody now is satisfied, and I again say I'll wait until tomorrow, I don't want to rush anybody, if anybody wants another look at this thing or more time, we'll wait,

Hanes: There is just one question in my mind. Have we done everything that we're supposed to do under our - the letter that they wrote to us? How do we stand with them now on the putting in of new capital in the Bank?

Delano: Well, I think you're familiar with everything that happened, John. There's been no change....

Hanes: Nothing happened since I left?

Delano:since you left. You're familiar with everything that took place up to that point.

Hanes: Now, the reason I asked that question is because there might be some question as to whether or not we have kept faith in connection with our more or less informal agreement with them last fall. Now, I don't see that that has any bearing on this particular letter or examination. I think this is a matter that we ought to go right on through with. I wouldn't hold up the letter on that account.

H.M.Jr: I think Mr. Delano ought to answer that, because....

Delano: Well, yes. I think, Mr. Secretary, this is not related to - this letter, in any way, to the question that Mr. Hanes is asking, because this goes through the ordinary routine of examination and the letter of criticism. What you're asking is about this conference that we had last December, which came out in the form of a memorandum from Giannini to us here, in which he outlined certain things that he would do. That was, of course, in the opinion of our legal staff, a unilateral document, was it not, Ed? I mean we did not contract

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to do anything here.

Folger: That's right. It was merely a proposal on their part.

Delano: He agreed - it was a proposal on their part, and we said, Mr. Secretary, if they did what they proposed in that memorandum, not our letter, we would consider it in the light of ensuing events.

Now, I'm satisfied from talking with Mr. Folger that several of the provisions of that memorandum - the minor provisions that they agreed to do, they've done. A large part of that thing they have not done, particularly the spirit involved. I think that's a correct statement, isn't it?

Folger: Yes, sir.

Delano: Now, as to our performance in the matter, the only thing about which there could be the slightest question would be this question of the capital. I think everyone here's familiar with what took place with the capital. They agreed to put a certain amount of capital into the Bank. There was no mention in the agreement as to how they would put that in or what the steps would be. They made application for the RFC to underwrite the amount of capital that they proposed to put in, to carry out their obligation. The RFC approved the application and sent the request here.

Those requests are all subject to approval by the President of the United States, and the President of the United States - we couldn't make any understanding or have any agreement with Mr. Giannini which would bind the President of the United States. He imposed a condition there with which they are thoroughly familiar, with which you (Hanes) are familiar, which they were unwilling to meet.

Now, they'll say - I haven't the slightest doubt but what they'll say that the imposition of that condition was a new and unexpected condition that they weren't looking forward to, and all that sort of thing. And our answer to that is the answer that I made to Mr. Giannini when he was here, in

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which I said that the matter of putting and the method of putting capital into that Bank was something that we did not presume to pass on here, and that furthermore we could not commit ourselves here to an action about underwriting that capital which would commit the President of the United States to any particular line of policy he might want to adopt. In other words, there had to be always an unwritten and understood reservation that the President could impose any condition before the RFC would underwrite any application for capital.

That's our position - the position of the Comptroller's office.

H.M.Jr: But that wouldn't affect this letter?

Delano: Not in the slightest, Mr. Secretary. In my judgment, this letter, John, is entirely outside....

Hanes: I said that it was outside of this.

Smith: If they had taken the 25 million preferred stock, this letter would go just the same.

Delano: Just the same. You'd modify some provisions, but it would be the same sort of letter.

Smith: They'll certainly criticize the Treasury and they'll say you haven't kept faith with them.

Delano: They'll say all that.

Crowley: But, Preston, the matter of capital - the matter of where capital comes from is a responsibility of that Board of Directors.

Delano: That's right.

Crowley: And all this letter does is to analyze the last examination and the reason that you have one, two or three more objectionable features is because you went a little deeper into the barrel this time than you have ever done before. Now, no matter what agreement was made about 25 million of capital, that doesn't stop the Comptroller, and it doesn't relieve him of his responsibility or them of theirs, for the operation of this Bank. And I don't see

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where this letter has got anything to do with any past performances on our part at all.

Delano: That's right.

Crowley: All you're doing is bringing his directors up to date as to the condition of his Bank, in accordance with the last examination. Now then, if he wants to come back to talk capital, that's a matter for the RFC and the Treasury and the President. But there's certainly no obligation on the part of the Comptroller to seek capital for a bank. I mean that's not his function. It's the function of the officers and directors to furnish the capital for a bank.

Delano: That's the position we took with Mr. Giannini when I had that oral conference with him.

H.M.Jr: Well, I asked you at one stage here, and coming down with Mr. Hanes today I said, "My understanding was that this is a new deal ever since the first of July, that the thing died as of June 30." And you, John, agreed with me. Is that right?

Hanes: Yes, that's right.

H.M.Jr: And anything - there was a cut-off date as of June 30th.

Delano: That's right.

H.M.Jr: John, anything else?

Hanes: No, I'm perfectly satisfied.

Smith: John, they'll - you'll hear that. That's one of the things - one of the answers that will be made: didn't keep the faith. Then you'll just have to face it, that's all.

H.M.Jr: Well, that's all right. I can face it a good deal easier, if necessary, with this kind of a bank than I could....

Smith:if there really were some merit in the bank.

Upham: They'll deny everything in it, as far as that's concerned.

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- H.M.Jr: I realize this is a very serious thing. That's why I wanted so much time taken. That's why I wanted the advice of these three gentlemen.
- Folger: I don't feel, Mr. Secretary, that we have violated the agreement in any way - the Bank's agreement - nor does the Examiner who made the examination. But we both feel that they have violated the agreement, the Bank has.
- H.M.Jr: Well, that's....
- Folger: The Bank has. They agreed not to put any more real estate in the Capital Company or California Land.
- H.M.Jr: I figure sooner or later we'll all be on the witness stand.
- Crowley: I don't think so. I think that this letter here will - after a lot of trading back and forth, this letter will bring you results.
- H.M.Jr: Well, what trading can they do?
- Crowley: I mean they'll come back and negotiate on capital and things like that. But the Bank of America can't afford to let this case go to Sub-section 30. They've got to make the corrections the Comptroller wants made.
- H.M.Jr: Well - I mean, as I understand it, the Comptroller - I've asked him this question, whether he felt there was any trading to do as to their demands for the write-off or....
- Smith: They'll....
- Delano: No trading. We're not going to trade on that.
- Smith: That doesn't keep them from making any kind, all kinds of propositions.
- H.M.Jr: No, but I'm going away and I just wanted to know what your state of mind is. Is there anything to trade?
- Delano: No, no.

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H.M.Jr: There's nothing to trade.

Delano: No, we're standing on that letter.

Crowley: Well, let's - wait a minute, let's not get ourselves too far out on a limb here that there is no trade to be made here. There's no trade as far as your losses are concerned, but you've got the question of depreciation there. Now, let's assume that they come along here and they offer to put in 25 to 35 million of capital, and they offer to conserve their earnings in order to take care of these things over a period of time. You may have to sit down and work out an agreement with them on the depreciation of these properties. You may have to work out some schedule for absorbing that three million two over a period of time. I'm not saying you won't insist on their taking out the losses on this eight million and this five million seven. But there are some things in there you'll have to negotiate.

Delano: I think it comes in the definition of trading. I think we'd have to agree to talk to people. I think we'd have to agree to outline a course of procedure. But we're not - we're not taking the position, Mr. Secretary, that these things are debatable.

H.M.Jr: You want to ask once more if anybody wants to say anything before you sign?

Delano: I'd like to - I'd like to be sure everybody agrees.

H.M.Jr: Now, has anybody any question? We can wait 24 hours if anybody has any question before Mr. Delano signs. Last call.

Foley: I would like to bring up the question - not as to the merits of the letter, but I'd like to know how you'd like to have the letter sent. Should it go to each one of the members of the Board?

H.M.Jr: Well now, first, have you any question about his signing it?

Foley: None.

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H.M.Jr: All right, then go ahead and sign it.

(Delano signs letter)

H.M.Jr: All right. I'm going to show this to the President at 1:00 o'clock.

Now, so that - that question - will you direct your question to Mr. Delano?

Foley: How do you think this letter should be transmitted to the Board of Directors, Mr. Delano?

Delano: Well, there's been some discussion about that, and we had tentatively decided that we'd send it in the usual way, which is to make a copy for each director but to send all the copies to the secretary of the Board for distribution to those directors. Now, if there's some reason why we should mail it direct, we hold no great - I mean we're not - our minds are not closed on that subject. Would you prefer - I mean would the legal department prefer to have us send it to each individual director?

Foley: No, we have no strong feeling about it. I remember there was some discussion the last time such a letter was sent. They complained that when we addressed it to each one of the members of the Board, it got - this confidential information in respect to the condition of the Bank - in the hands of people in the offices of the directors, and that shouldn't be made available to them.

Delano: Well, they passed a resolution, if you remember, asking us - am I right, Cy? -

Upham: That's right.

Delano:to send it this way, and it seemed to me we could send it this way without losing - unless we lost some of the advantages from a legal standpoint.

Foley: No, I don't think from a legal standpoint it makes much difference. I thought the Secretary ought to know how the letter was going.

H.M.Jr: It's unimportant.

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- Smith: If they took the letter and didn't give it to the directors, then you'd have a much stronger case. The directors would come in and say later, "Oh, they didn't give this to me."
- Delano: I think that's right. Unless there's some technical thing there, Ed, that I don't know about, some legal thing....
- H.M.Jr: I'd like to go on record here and now that if you again, de nova, take up the question of their stock, see - this time on a new deal, I want them to do it - the Bank, if they're going to do it themselves, directly with the RFC, and not the way - this last formula. In other words, I want it done the way, as I understand it, ninety-eight percent of the cases are done - I mean direct from the Bank of America to the RFC.
- Delano: Well, I wasn't aware that this last one....
- H.M.Jr: No, I don't think....
- Crowley: That's right. You're (H.M.Jr.) right. The last was done through a corporation.
- Folger: Composed of borrowers.
- Delano: I see. I didn't catch that point. I thought you meant it came through the Comptroller's office.
- Crowley: There's another provision about that stock, Mr. Secretary.
- H.M.Jr: I mean if it's going to be done, I want it done from the Bank of America to RFC, direct, no go-between, no special adjustments for interest.
- Delano: All right.
- H.M.Jr: And direct. I'm right on that, am I not?
- Crowley: That's right. There's another provision about that stock, Preston. The last deal was a five-year deal, retirable five million dollars a year. Now, as you analyze that Bank, they can't possibly hope to retire that stock in five years. It should go in like any other stock, subject to the consent of the Comptroller before he retires any of it.

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Then you'd get a spread over a longer period of years. Do you get my idea, Johnny? Five years is too short a time.

- H.M.Jr: And again, being from the country, I never could understand how borrowing additional money and taking stock strengthened the bank.
- Smith: That's where you're wrong.
- H.M.Jr: Well, I mean....
- Smith: It's all right to be wrong on one thing.
- H.M.Jr: I've got an ambition, Tom, that I like to be wrong once in the morning and once in the afternoon. Then I know I'm human.
- Smith: I wanted to get....
- H.M.Jr: That's all right, but I still follow up by saying, it may look all right on the books, but if they conserve their assets by not paying them all out in dividends, I can understand that.
- Upham: I'm wrong, too, Mr. Secretary, on that.
- H.M.Jr: Are you?
- Upham: Yes.
- H.M.Jr: Which way?
- Upham: I agree with you, it doesn't strengthen the bank.
- Crowley: Well, it does this, Cy. It gives your depositors a better cushion while they're building up the reserve you want them to have.
- Smith: Whenever you increase the capital stock in an institution, you increase the strength of the institution. Do you want an argument, is that what you're looking for, Doc Upham?
- Upham: No, I've argued it at length, and I agree with the Secretary after mature deliberation.
- Smith: There's something behind that, though.

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- H.M.Jr: No. Well, I'll tell you what's behind mine. When Mr. Hanes left a month ago - he said on the two days he was here would I please say anything I had in mind on policy so that he could be guided during my absence. That's what's behind my statement. And he made that a month ago, in regard to anything, and that's what we're doing today and tomorrow. He asked me to do it. That's why I'm saying this.
- Smith: I think it's a splendid idea to require them to take - if they sell stock to the Government, to sell it direct from the Bank to the RPC and not to a subsidiary or - what do you call it - an affiliate. And it would have been - you're fortunate, too, that you're out of this other deal.
- H.M.Jr: I think so.
- Smith: Because the pay-off was too fast, which is the point that Mr. Crowley made.
- H.M.Jr: Well, Mr. Delano, if I make another suggestion, I would continue to draw on these three men in addition to ourselves, and I think they're a great source of strength. And this is the first time since I've been Secretary of the Treasury that I feel comfortable about Bank of America. And I congratulate you.
- Delano: Thank you.
- Smith: In that line, Mr. Secretary, this Bank has great earning power and if it is properly distributed, you can straighten this situation out. On the other hand, if they are permitted to go on as they have in the past, as Folger says, they'll soon have 200 million dollars worth of real estate, and then you've got an insolvent bank.
- H.M.Jr: If I may say one more thing. As far as I am concerned, as Secretary of the Treasury, I haven't got the slightest feeling for or against Mr. Giannini.
- Delano: I know that.
- H.M.Jr: But not the slightest. It means absolutely nothing to me. All I want to do is to see that this Bank

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is well run. He means nothing to me, and I can go on leading my life and he can lead his. And I have no interest in him for or against him. But I do want to see this Bank run right.

July 31, 1939

3:30 pm

The Secretary called in Mr. Delano and said to him, "The President read this very carefully (proposed letter to Bank of America) and said it is the damndest thing he had ever read and when he finished he said, "Well, it's about time." I would send it airmail."



TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY

WASHINGTON

July 31, 1939

ADDRESS REPLY TO
COMPTROLLER OF THE CURRENCY

Board of Directors,
Bank of America N.T. & S.A.,
San Francisco, California.

Gentlemen:

The current report of examination of your bank, completed July 21, 1939, a copy of which has been sent to you, shows a continuation of the unsatisfactory asset condition which has been the subject of previous communications to you and of discussions with the managing officers of your institution. We shall review in this letter some of the more important phases of the bank's problems, and point out the corrections which must be made if the Bank of America N.T. & S.A. is to be operated soundly and the interests of depositors protected.

The present examination shows that, after deducting estimated losses of \$13,517,598.69, liability on account of service charges of \$619,760.29, and one-half of Classification III, which aggregates \$14,535,225.14, from the total capital structure as shown by your books, there remains \$93,207,348.57 of adjusted capital structure, or approximately \$9,000,000 less than was shown in the prior report.

Previous letters from this office have outlined the wholly unsatisfactory capital and asset condition of your bank. This two-fold weakness is manifestly attributable to such unsafe and unsound policies as (a) refusal of management and directorate to recognize asset problems in general, (b) refusal to recognize the dangers inherent in the excessive concentration in real estate, (c) use of earnings for the payment of dividends rather than for the

- 2 -

creation of adequate reserves and the correction of the asset condition and the under-capitalization, (d) persistent unsound and illegal dealings with Transamerica Corporation and allied interests to the detriment of the bank and in other than conventional and accepted methods employed in dealings with other clients of the bank, and (e) refusal to make and keep the bank independent of, rather than subservient to, the interests and expansion policies of Transamerica Corporation.

The concentration of fixed assets, consisting of banking houses, furniture and fixtures and other real estate, exceeds the capital and surplus of the bank, and in fact exceeds the adjusted capital structure mentioned above. On Page 14, insert 1 of the report of examination, there is a schedule showing the total carrying value of fixed assets, which includes the contracts of California Lands, Inc., and Capital Company, since in effect the only collateral pledged as security for these contracts is the real estate covered by them. The amount properly representing banking houses and furniture and fixtures totals \$48,234,851.52, and the amount invested in other real estate is shown to be \$45,766,704.89. The combined total of these accounts is \$94,001,556.41. In addition, there are 346 loans amounting to \$6,032,175.00 which are under foreclosure, and additional loans aggregating \$7,621,226.49 which are believed by the examiner to be potential foreclosures. This brings the total investment in actual and potential fixed assets to \$107,654,957.90, which sum is greatly in excess of the adjusted capital structure. It is to be noted that \$27,387,220.00 book value of other real estate, comprising approximately 1,000 parcels, has been carried beyond five years.

The contracts of California Lands, Inc., and Capital Company, mentioned in the preceding paragraph, aggregate \$33,834,723.80. Notwithstanding your assurance that no more real estate would be transferred to these companies, the examiner reports that you have made a direct advance to the Capital Company in the amount of \$1,100,000, which was used for the construction of a building for a large department store in Los Angeles, and that you have added that sum to the

- 3 -

unpaid balance of the real estate contracts. Such action on your part not only constitutes an unsafe and unsound banking practice but, in the opinion of this office, is a violation of section 24 of the Federal Reserve Act, as amended. Immediate steps must be taken to remove this obligation from the assets of the bank for cash.

The real estate illegally acquired on August 5, 1938 in the amount of \$89,456 (shown in the report as \$85,405) in a transaction designated as the Hellman deal, must be removed from the assets of the bank for cash. You will recall that when these properties were reacquired, a credit of like amount was entered on "Guaranteed Loans."

As you have been previously advised, the illegal real estate loan of Western Furniture Exchange, Inc., in the amount of \$520,000 should be removed from the assets of the bank for cash. That loan was taken from Transamerica Corporation in exchange for 11,320 shares of National City Bank stock carried in the bonds and securities account under "Option to Purchase." The property securing the loan is subject to prior encumbrance of \$1,000,000 in favor of the Metropolitan Life Insurance Company. This loan, with a maturity of approximately fifteen years, represents an illegal investment under section 24 of the Federal Reserve Act, as amended.

Your particular attention is directed to the concentrations of credit to Transamerica Corporation and its affiliates in amount of \$76,684,859.96; to A. O. Stewart in amount of \$7,623,239.31, and extensions under German Credits of \$5,008,239.82, which aggregate \$89,317,339.09, or almost the entire capital and surplus of your bank. The large extension of credit to Transamerica Corporation (which includes the contracts of California Lands, Inc., and Capital Company) is entirely out of proportion to your capital structure and presents one of the most serious problems confronting you. Although this matter has been repeatedly brought to your attention both in reports of

- 4 -

examination and correspondence from this office, you have appeared little disposed to reduce these borrowings through earnings or to have the corporation reduce them by the sale of assets. From the character of the major portion of the collateral pledged as security to this concentration it is apparent that such action will be necessary to bring this line within conservative limitations, and you are directed to take the necessary action to bring this about. Failure to do so constitutes an unsafe and unsound banking practice.

The A. O. Stewart line of \$7,623,239.31 has also been subject to criticism over a long period of time and \$3,618,000 has been classified II in this report. One of the loans in this large line amounting to \$1,946,126.94 is adequately secured by United States Treasury bonds but the other collateral consists chiefly of defaulted bonds and stocks with no ready market or of corporations in liquidation. Prompt steps must be taken looking toward the curtailment of this line, or the pledging of satisfactory collateral back of the line.

Notwithstanding the large and dangerous concentration in real estate, the large and unwarranted obligations of Transamerica and affiliates, and in spite of the fact that the dividend policy has been criticised continuously since resumption of dividend payments in 1933, you have steadily increased that dividend rate until it has reached the annual total of 19.2%. As an illustration of your unsound policies it is noted that during the year 1938 the bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and securities, were \$5,389,975.00, and during that year \$9,600,000.00 was paid out in dividends. Numerous large transactions have been had with Transamerica and affiliates designed to avoid taking known losses and thus to give color of validity to the distribution of earnings by means of dividends to Transamerica and other shareholders. A net profit of \$6,570,000.00 was realized from the sale of securities from September 1, 1938 to March 31, 1939, which was credited to undivided profits. It is the position of

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this office that until losses have been written off and adequate reserves established, none of such profits should be distributed to shareholders through dividend payments.

The report indicates that your bank carries its own Fidelity Insurance for the first \$100,000.00 and that premiums which ordinarily would be paid to an insurance company are deposited with Transamerica General Corporation. The amount of such deposit is \$2,272,859.55 and actually represents reserve funds of the bank that are not shown on the books. You are requested immediately to return this deposit to the bank in cash and to set up the proper account on your books. Failure to do so constitutes an unsafe and unsound banking practice.

Violations of law and regulations as shown by the report of examination (page 2) include the non-observance of the provisions of Section 5201, U.S.R.S., by granting loans based on the security of shares of the bank's own stock; of Section 5136, U.S.R.S., by the purchase by the bank for its own account of investment securities which do not conform to the law and regulations; of Section 5137, U.S.R.S., by virtue of certain real estate transactions as cited in the report of examination; and of Section 24 of the Federal Reserve Act in the making and purchasing of certain real estate loans. In addition to the foregoing your attention is again called to the fact that the obligations of Transamerica Corporation and its subsidiaries, in which the Corporation owns or controls a majority interest, amounting to \$23,045,819.58 exceeds the 10% loaning limit of the bank under the provisions of Section 5200, U.S.R.S., and is in violation of the provisions of Section 23A of the Federal Reserve Act which limits loans to holding company affiliates.

It is the Comptroller's duty to insist upon the correction of practices or conditions which violate established sound banking principles. Therefore, it is deemed fair and appropriate to advise you that it is the purpose of this office carefully to scrutinize:

- 6 -

1. All transactions and practices which have resulted or which may result in weakening the capital structure whether by way of unjustified dividends, or the improvident use of the credit facilities of the bank by contributions to, or the forgiveness of obligations of, allied or special interests.
2. The substance and not merely the form of all methods employed in the various and complicated transactions engaged in by your institution.

Furthermore, this office must insist that the bank conserve its earnings and establish an adequate sound capital position, that it refrain from unjustifiable favoritism to allied interests, that it correct the weaknesses and remove the bases of criticisms, that it take appropriate steps to eliminate the undue concentration in real estate including any portion thereof which may have been camouflaged through the use of allied corporations, and that appropriate policies and practices be established and followed to insure a constant sound condition for the bank.

If it has not been done prior to the receipt of this letter, the amount classified as loss by the examiner should be charged off promptly, and certainly not later than the day following the next meeting of your Board. You are advised that until these losses have been written off and adequate reserves established, any further declaration or payment of dividends to shareholders will constitute an unsafe and unsound banking practice.

Each director and officer of the bank is hereby warned, pursuant to the provisions of Section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, section 77), to discontinue each and all of the unsafe or unsound practices referred to in this letter or which have been disclosed by the reports of examination, and to make provision for the elimination and discontinuance of the violations of law referred to in this letter or in the reports of examination.

Very truly yours,

Res. H. Wilson

Comptroller of the Currency

CHARLES W. COLLIER
National Trust Building
Washington, D.C.

August 19, 1938

Board of Directors
Bank of America Nat. & S.A.
San Francisco, California

Gentlemen:

Your President has asked me to give you my opinion upon the question whether the Comptroller of the Currency is legally bound by the terms of the program of future operations, with respect to certain policies and assets of Bank of America N.T. & S.A., formulated and approved by him and agreed to by the Bank as of December 15, 1938.

I have examined the correspondence and records relating to this transaction, and the facts may be summarized briefly.

The Comptroller of the Currency in his letter of September 23, 1938 to the Directors of the Bank made certain criticisms of the affairs of the Bank. The Board of Directors after careful consideration of the matter disagreed with these criticisms and replied to the Comptroller accordingly by letter of October 11, 1938. In this letter the Board expressed its desire that the Comptroller accord the management of the Bank a conference on the matters in disagreement.

The Comptroller of the Currency invited the management to come to Washington for such a conference. President Giannini, accompanied by two additional officers of the Bank, proceeded to the conference on December 8, 1938. Sitting with the Comptroller of the Currency were the Under-Secretary of the Treasury, the Chairman of the Reconstruction Finance Corporation, the Chairman of the Federal Deposit Insurance Corporation and the technical staff of the Comptroller's Office.

The Comptroller presented the agenda which formed the subject matter of the conference. At the conclusion of the deliberations on December 15, 1938, an agreement was reached upon a working program which was designed to embrace the course of action desired by the Comptroller of the Currency. This program was presented to Mr. Giannini after

it had received the approval of the Comptroller of the Currency, the Under-Secretary of the Treasury, the Chairman of the Reconstruction Finance Corporation, the Chairman of the Federal Deposit Insurance Corporation, and the technical staff of the Comptroller of the Currency.

Mr. Giannini on the part of the Bank considered some of the terms as unfair and harsh, but agreed to recommend them to his Board of Directors for formal ratification and approval. He then proceeded to lay the program before his board, which approved it and committed the Bank to the faithful performance of its terms.

The conference was formal and the subject matter was within the jurisdiction of the Comptroller. His formulation of the agenda as a basis for discussion and the subsequent negotiations with the Bank upon a course of action were normal functions of the Comptroller. His approval of a final program of procedure to which the Bank agreed to adhere and commit itself as a corporation, was a lawful exercise of his discretion in the administration of the national banking laws. He acted in his official capacity as an officer of the United States.

In my opinion the Comptroller of the Currency is in law bound by the terms of the agreement as long as the Bank abides by them. No other conclusion seems legally possible. It is inconceivable that the Comptroller, after having acted in the performance of his duty, which act was intended to and did result in serious commitments by the Bank, could later upon his volition alone without any laches on the part of the Bank, ignore his decision and proceed, regardless of consequences, as though he had not acted at all. Such a doctrine would destroy the integrity of the administration of law and would lead to disintegration and ultimate chaos in bank supervision.

The Comptroller of the Currency had full discretion as to whether to call the conference, what subjects should be discussed there, and to take whatever official action which might seem desirable and proper to him. However, when he exercised his discretion through the crystallization of a program of action approved by him and accepted by the Bank, he committed his Office legally to abide by the conditions and terms thus formulated.

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It is further my opinion that the Comptroller of the Currency is estopped from raising any questions of violation of law or unsafe and unsound banking practice with respect to any matter covered by the aforementioned program or agreement, so long as the Bank intelligently and in good faith is carrying out its terms; and that there is no legal basis for any mention of procedure under Section 30 of the Banking Act of 1933 with respect to any of the items of the program while the Bank's observance is bona fide and efficient. The program was formulated by him and manifestly it is not subject to attack by him as being in violation of law or as unsafe or unsound.

Yours very truly,

(Signed) Charles W. Collins

Charles W. Collins,
Counsel.

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Attachments are -

Exhibit B

Clancy

13044

Bank of America
NATIONAL ~~EXCHANGE~~ ASSOCIATIONL. M. GIANNINI
PRESIDENTSan Francisco, California
August 5, 1939Honorable Preston Delano
Comptroller of the Currency
Treasury Department
Washington, D. C.

Dear Comptroller Delano:

Pursuant to your request, I am acknowledging receipt of a copy of your letter of July 31, 1939, relative to the current report of examination of this Bank completed July 21, 1939, which was handed to me by our Secretary, Mr. Everard, who will, as requested by you, deliver a copy to each of our Directors.

From the contents of the letter it is apparent that no consideration was given by your Office to my telegram of July 21 and my letter of July 28 addressed to you on the subject of Banking Premises. As stated in my telegram and letter, the examiner's conclusions in this regard cannot be supported by appraisals properly and intelligently made, and in so far as your request as to Banking Premises is concerned, we believe it would be fair for you to defer the classification until qualified appraisals are completed and you are in a position to determine definitely from actual facts what the situation is in this respect.

Having in mind the exceptional success we have had in meeting the many problems which confronted us, in common with the rest of the country, when we succeeded to the management of the Bank in February 1932, and the progress we have made in rebuilding the Bank, all without resorting to the Government for capital, as did thousands of other banks, we find it difficult to reconcile the attitude of your Department with that which we have the right to expect from a Governmental Department traditionally imbued with the spirit of cooperation and consideration for our problems. This is particularly the case when I recall the discussions participated in by you, Honorable John W. Hanes, Under-Secretary of the Treasury, Honorable Jesse F. Jones, Chairman of the Reconstruction Finance Corporation, and Honorable Lee T. Crowley, Chairman of the Federal Deposit Insurance Corporation, which culminated in the memorandum of December 15, 1938.

As related in the letter Mr. Jones addressed to Mr. Hanes on December 15, 1938, the memorandum and a general plan of procedure with regard to items calling for further consideration was subscribed to by all of the above mentioned persons as well as certain other representatives of your Office. While the Secretary of the Treasury was not directly a party

Honorable Preston Delano

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August 5, 1939

to those discussions, he was represented by the Under-Secretary.

We have endeavored meticulously to carry out our obligations under the provisions of the December 15, 1938 memorandum prepared in the Treasury Department, in consonance with the mutual good faith pledged at the December conferences.

There has been so much correspondence between your Office and this institution that I should like to summarize as briefly as possible the progress made and action taken with respect to the items enumerated in the December 15, 1938 memorandum.

With reference to Item 1 of the memorandum, I wrote you on April 16, 1939 from Chicago, advising you of our willingness at that time to comply with the provisions of this item, and have had neither an acknowledgment of nor a response to that communication. On the basis of the items and figures discussed at the December conferences and embodied in the December 15, 1938 memorandum our net sound capital structure would, with the addition of the \$25,000,000 referred to in my April 16 letter, have substantially exceeded a capital deposit ratio of 1 to 10, without giving consideration to more than \$15,000,000 of bond appreciation over book value. However, in the current report of examination your representatives have raised entirely new issues arbitrarily and have presented figures which cannot be substantiated by facts, so that the situation has been entirely changed. As you have been advised, we are proceeding with appraisals of Banking Premises and will present full data relative to these assets as well as to the contracts of California Lands Inc. and Capital Company in the formal response to your letter, and supplements thereto with respect to Banking Premises which you will receive as the appraisals come in.

Item 2. \$1,578,000 in Banking Premises has been reduced \$390,000, to \$1,188,000 which represents two parcels of real estate on Montgomery Street in San Francisco, which you agreed might be held in this account through the second examination of 1939, and permanently if the construction of a new head office building is then under way. We are working on plans for a new building but may request additional time if this year does not seem to be a propitious time to commence construction.

Item 3. This refers to certain stocks and bonds alleged to have been unlawfully acquired and which it was agreed would be eliminated by June 30, 1939. Elimination has been accomplished and the current report of examination shows no new items.

Item 4. This refers to elimination of bond write-up by June 30, 1939. This item has been entirely eliminated.

Item 5. This refers to 16 loans alleged to have been predicated on the security of Bank of America stock. These loans have all been corrected, as well as all other such loans as have come to our attention.

Honorable Preston Delano

- 3 -

August 5, 1939

Item 6. A. O. Stewart line. The loans of A. O. Stewart have been reduced \$655,000 as of August 4, 1939, and a liquidating program acceptable to Chief Examiner Irwin D. Wright of the Twelfth District has been agreed upon. The loan of Pacific Coast Mortgage Company, which was erroneously included in the December 15, 1938 memorandum with the Stewart line, has also been reduced \$775,000.

Item 7. Relative to future acquisition of assets of other banks without the Comptroller's authorization. No such assets have been acquired.

Item 8. Relative to showing dividends declared as a liability until paid. This procedure has been followed.

Item 9. Relative to new loans on Bank of America or Transamerica Corporation stock. The provisions of the memorandum have been followed and all technical exceptions called to our attention by the examiner during the course of examination have been corrected.

Item 10. Relative to loans or renewal of loans to Transamerica Corporation subsidiaries. All such loans or renewals have had the approval of the Board of Directors.

Item 11. Relative to extensions of credit classified as loans to Transamerica Corporation or allied interests. The loans included in this group listed in the report of April 28 in the amount of \$23,118,000 now have been reduced to \$14,507,000 as follows, with the result that our agreement in this respect has been greatly accelerated:

	<u>Bal. 4-28-38</u>	<u>Current Balance</u>	<u>Reduction</u>	
Guaranteed Loans	\$ 5,524,000	\$ 3,897,000	\$ 1,627,000	
First National Corp. Portland	1,000,000	- -	1,000,000	
Transamerica Service Corp.	7,600,000	4,800,000	2,800,000	
Bankamerica Agri. Credit Corp.	50,000	200,000	150,000	Increase
California Lands Inc.				
R/E Discounts	301,000	29,000	272,000	
Unsecured	50,000	- -	50,000	
Capital Company				
R/E Discounts	946,000	681,000	265,000	
Advances	497,000	- -	497,000	
Inter-Continental Corp.	<u>7,150,000</u>	<u>4,900,000</u>	<u>2,250,000</u>	
	\$23,118,000	\$14,507,000	\$ 8,611,000	

Item 12. Relative to write-up of assets and the sale of assets to a related company. The provisions of this item are being strictly complied with.

Item 13. Relative to Other Real Estate and Real Estate Contracts to be eliminated by December 15, 1943. This elimination is being diligently

Report of Preston Deland

- 4 -

August 5, 1939

and the Real Estate Contracts have been reduced by the amount of \$2,211,300 as of July 13, 1939. All transactions have conformed to the terms of the contracts and the provisions of the memorandum of December 15, 1937. The Other Real Estate has been reduced by the amount of \$291,300.

Item 14. Relative to attention to be given to critical assets
 Item 14. We are devoting ourselves vigorously to the correction of items subject to criticism.

Item 15. Relative to assets enumerated to receive further consideration, we report progress as follows:

1. Ex-Banking Premises reduced \$1,543,000.
2. Guaranteed Loans reduced 1,020,300.
3. Option to purchase National City Bank stock reduced \$1,080,000.

4. Service charges on dormant accounts. In your letter of April 14, 1939, you stated that final determination of the question raised by your Office as to the justification for service charges against dormant accounts would be deferred until receipt of information on the subject from Mr. Louis Ferrari, our Vice President and Counsel. Mr. Ferrari recently forwarded to you a letter on the subject, together with copies of contracts entered into between the Bank and the depositors, indicating the right of the Bank to make the service charges referred to.

5. The question raised by the Examiner in previous reports in regard to the difference between the amount of depreciation on Working Premises taken for income tax purposes and the amount actually charged off on the books has not been raised in the current report, by reason of the fact that adjustments made in tax returns by the Bureau of Internal Revenue and our present rate of depreciation will automatically eliminate the difference formerly questioned.

Item 16. Relative to dividends. In the semi-annual period ending June 30, 1939 this bank earned \$14,777,000 from which was deducted \$1,350,300 deduction of bond premium and \$597,000 for employee profit sharing. Remaining balance of \$12,824,000, only \$4,300,000, or 37%, was paid in dividends while \$8,024,000, or 63%, was used to improve the asset position of the bank. We regard this as a conservative dividend policy.

Our consideration of all the facts will show that every criticism made between the Bank and Transamerica Corporation or affiliated insurance companies is for the benefit of the Bank. Transamerica, as practically the

Honorable Preston Delano

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August 5, 1939

Bank's sole stockholder, regarded it proper to assist the Bank in liquidating some of its slow assets.

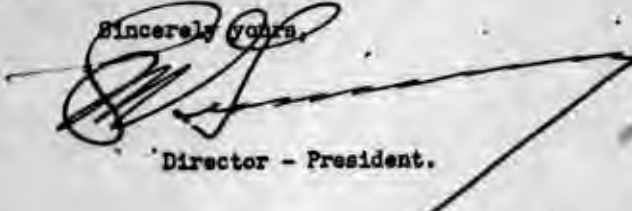
I am proud of the record that the Bank has made since we assumed responsibility for its management early in 1932. Since that time it has earned \$122,200,000 to June 30, 1939, only \$43,200,000, or 35.4%, of which was paid in dividends. The balance of \$79,000,000, or 64.6%, was used to improve the asset condition of the Bank.

May I also call your attention to the fact that on loans made during the period in which we have been responsible for the management of the Bank, approximately seven years, we have had total losses of only \$2,453,000, or \$350,000 annually, which is at the rate of 72/1000 of 1% per year on the annual average volume of loans outstanding.

There seems to be prevalent these days a new philosophy on the part of Government representatives by which the existing investor is relegated to the position of the forgotten man. After all, the stockholders have a right to expect a reasonable return on their investment when the institution which they own earns it for them. I shall continue to do my utmost to see to it that 350,000 stockholders who are interested, directly and indirectly, get a square deal, always having in mind, of course, the security and welfare of our approximately 2,500,000 depositors. I believe that I know as much about the condition of the Bank as any one and it is preeminently sound. In my opinion the payment of only 35.4% of the earnings of the Bank in dividends is conservative and the least to which stockholders are entitled.

Personally I shall welcome an opportunity to appear before any competent and unbiased group of persons or Governmental Agency to support my views and actions and in this regard I shall at all times be prepared to stand or fall on the record of performance presented. We shall continue as in the past to strive diligently for the elimination of all causes of criticism and observe the provisions of the agreement arrived at as a result of the December conferences.

Sincerely yours,



Director - President.

COPY

Telegram sent

July 21, 1939

FREYSON DELAND
 CONTROLLER OF THE CURRENCY
 WASHINGTON D. C.

AT CONFERENCE TODAY CALLED BY FOLGER PARTICIPATED IN BY WRIGHT WAS LEAN
 AND THESE WE LEARNED FOR FIRST TIME THOUGH WE HAD BEEN PROCEEDING ON PROGRAM
 OF APPRAISAL, AUTHORIZED BY CHIEF EXAMINER WRIGHT, THAT EXAMINER MAG LEAN HAD,
 BASED ON HIS PERSONAL OPINION SOME ORAL APPRAISALS AND CERTAIN SURVEY MEMORANDA
 ASSEMBLED BY CLERKS OF CAPITAL COMPANY AND THE BANK FOR USE PRIMARILY IN INSURANCE
 AND ASSESSMENT MATTERS WHICH OMITTED TO COVER MANY FACTORS OF VALUE, COMPILED A
 PARTIAL LIST OF SO-CALLED APPRAISALS OF BANK PREMISES WHICH WHEN COMPARED WITH
 AUTHENTIC APPRAISALS BY QUALIFIED INDEPENDENT APPRAISERS OF HIGHEST STANDING AND
 INTEGRITY DISCLOSED FLAGRANT DISCREPANCIES IN VALUATION ADVERSE TO THIS INSTITUTION.
 RELEASE AND PUBLICATION OF SUCH INCOMPLETE FALSE AND MISLEADING FIGURES WHICH
 CANNOT BE SUBSTANTIATED IS CALCULATED TO BE DETRIMENTAL TO THE BEST INTERESTS OF
 THIS BANK AND YOUR OFFICE STOP IN ADDITION TO PROPOSAL MADE TO CONFERENCE WE ARE
 WILLING TO SUBMIT QUESTION OF VALUE TO F.D.I.C., FEDERAL RESERVE AND STATE
 SUPERINTENDENT OF BANKS OF CALIFORNIA TOGETHER WITH YOUR REPRESENTATIVE WE ONLY
 WANT UNBIASED FACTS BASED ON GOING CONCERN VALUE AND WILL ARRIVE BY DECISION
 REPRESENTATIVES THESE GOVERNMENTAL AGENCIES OR WE ARE WILLING ACCEPT ANY OTHER
 EQUITABLE PROPOSAL TO DETERMINE VALUES. STOP APPARENTLY NO CONSIDERATION IS BEING
 GIVEN TO AGREEMENTS SET FORTH IN DECEMBER 15, 1938 MEMORANDUM AND CORRESPONDENCE
 RELATED THERETO STOP FOLGER OF WASHINGTON IS DIRECTING PROCEDURAL HERE AND HEREIN
 ABOARD IN PUTTING OVER THIS DEFECTIVE PROGRAM WHICH IS MOST UNJUST AND UNFAIR
 WE MUST THEREFORE APPEAL TO YOU AS CONTROLLER OF THE CURRENCY TO SEE THAT JUSTICE
 IS DONE REGARDS

L. H. GIANNINI
 PRESIDENT
 BANK OF AMERICA N T & S A

13044

Bank of America

NATIONAL EXCHANGE ASSOCIATION

L. N. DIANNINI
PRESIDENT

San Francisco, California
July 28, 1939.

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

Dear Comptroller Delano:

As indicated to you in my telegram of July 21, the examination procedure followed in our current examination has been so flagrantly unfair and so at variance with your assurances of last December that the examination would be conducted fairly and impartially, that I cannot believe you are aware of how fully your instructions have been violated by certain representatives of your office.

At the conference called here by Mr. Folger on July 21, at which he, Messrs. Wright, McLean and Reese were present, we protested against the manifestly erroneous and unfair classification of our banking premises contained in the Administration examination report, concerning which we had the previous opportunity of reviewing only the Bond section. In spite of the fact that Mr. McLean's figures were admittedly based on a hodge-podge of clerical insurance survey data, tax assessment figures, curbstone evaluations, and personal opinion, our protests to Mr. Folger were virtually unheeded and the completed report of examination which we have just received still contains this classification, which cannot be supported in the light of expert independent appraisals.

When I was in Washington last Spring, you directed Mr. Folger in my presence, and I believe in good faith, to assign to this examination one of your best qualified examiners, and one upon whom you could definitely rely for a fair and impartial examination. That was all we desired, and it was certainly no more than we had a right to expect. Contrary to this instruction, however, the examination was made by Mr. H. C. McLean, who had previously evidenced his prejudice against Bank of America by deliberately and unnecessarily adopting tactics designed to block the consummation of certain loan negotiations then in progress between the Bank and the Old National Corporation of Spokane. The enclosed excerpt from a letter written by one of the important parties to the negotiations exemplifies very clearly his general attitude toward us.

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July 28, 1939.

Mr. McLean's prejudice is further evidenced by the manner in which he has treated Banking Premises, Other Real Estate, and Real Estate Sales Contracts of Capital Company and California Lands Inc. in the current report of examination in a manner quite contrary to the plan agreed upon last December with you and Messrs. Hanes, Crowley, and Jones, members of the Interdepartmental Committee.

Mr. McLean's analysis was made, and the conclusions drawn therefrom, directly contrary to a plan of procedure which had already been discussed and agreed upon between Chief Examiner Wright and ourselves, and under which we were proceeding. At Mr. Wright's suggestion, a selected list of branch premises was being appraised at our expense by independent and qualified appraisers as a "sampling" of the bank premises account. This plan of procedure and the result of it thus far were entirely brushed aside by Mr. McLean, who, incidentally, presided over the conference.

However, we are proceeding with the appraisals of our banking premises by independent appraisers of recognized standing, and will present you with the complete data in this regard when the appraisals are finished. We are confident the result will show that our banking premises, furniture and fixtures are carried at conservative figures in relation to present values, and that the appraisals will illustrate the fact that these properties have a value substantially in excess of our carrying figures.

That our examination report has been a corded handling of a most unusual nature is indicated by obvious discrepancies of intent within the report itself. We observe that while at two places in the body of the report the Examiner clearly indicates his intention of making the matter of banking premises a subject for further consideration and determination, in the final criticisms and conclusions he nevertheless directs that the classified portion be immediately charged off. This sudden change of mind is evidence to us that Washington dictated the conclusions of the examination report without regard to the findings upon which such conclusions should properly be based. It is also clear that this ingenious presentation of the examination data represents a departure from the procedure under which other national banks are examined and operated.

A statement in the body of the report directly inconsistent with the conclusions appears on Page 2, Insert 6, wherein the following statement is made: "Further, it is requested that all properties owned by the Bank, irrespective of how carried, be supported by current independent appraisals and such other information necessary to make a complete survey and arrive at a sound value...". This is followed on Page 3 by another comment also at variance with the Examiner's conclusions, and which appears as follows: "Elimination of estimated losses on fixed assets subject to further determination." It is strange indeed that the Examiner, earlier in the report, should urge current independent appraisals as a basis for values and then in his conclusion base his findings on clerical data in many instances more than ten

Honorable Preston Delano

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July 28, 1939.

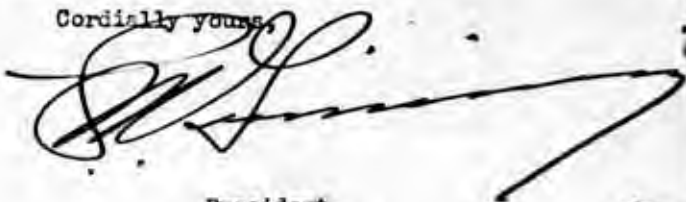
years old and which to his knowledge was prepared for a variety of purposes totally unrelated to the use he made of it and never before used by the Examiner.

Most of the other criticisms contained in the report were but repetitions from previous reports and, as you will recall, we discussed these with you at our conferences last December and your conclusions were covered by your memorandum of December 15, 1938. We are giving these matters close attention and feel assured that you will agree that we have made good progress on all items. We are analyzing the Examiner's criticisms in the current report and will communicate with you in regard to them in due course.

Our purpose in writing to you at this time is to bring to your attention the obvious prejudices which have entered into the preparation of this report. We are convinced that Mr. Wright, Chief Examiner in this District, wants to be fair and impartial, but is following instructions from Washington, which are contrary to your instructions and the agreement arrived at on December 15, 1938.

My kindest regards to you.

Cordially yours,



President.

Excerpt from letter of December 2, 1938.

I think that McLain's report will be not too unfair, but his attitude in this affair has been antagonistic to the Twohy-Transamerica group, to their detriment in the effect upon the Witherspoon outfit. As examples of his attitude, take the following statements:

1. That practically all of the so-called partners of Giannini have lost their shirts.
2. That the S. E. C. never talks until the Board is certain of its facts.
3. That the monopoly committee will devote considerable attention to Transamerica.
4. That he planned to put some rather embarrassing questions to Mr. Twohy regarding the "Twohy loans."
5. That D. W. Twohy had been under the domination of Judge Twohy to the detriment of the bank.
6. That it would be a good thing if the National Bank of Commerce, Seattle, bought the First National of Spokane.
7. That the First National would lose 30% of its deposits upon completion of the branching.
8. That he thought the deferred depositors should be delighted to have received 76% of their deposits. In fact, he gave a statement to the papers upon his arrival here that these deposits were paying a higher rate of interest to the deferred depositors than were their liquid savings bank accounts.
9. Rather sincerely, I felt, he expressed his love of the old independent banking institutions that were disappearing.
10. He thought he was putting me on the "spot" by asserting that his figures indicated I was making \$27,000 on the purchase of the stock and that I was making a tremendous profit on the sale of the stock to Transamerica ultimately. I was rather happy for him to make this crack. He gave me an opportunity to tell him and the buzzard who, I know, had told him this, a few very blunt facts about my association with the deal from the viewpoint of the deferred depositors, the corporation stockholders, and the shadow of the liquidation over the bank, and that there was not a desirable thing I wanted out of the transaction except to see the deferred depositors paid in full, some value put back into the corporation stock, and the bank placed in position to compete successfully with its competitors.
11. I am certain that he has put the Board in such a mental condition that they will fight to the limit against the \$200 price fixed on the new stock, although I exhausted every argument on that score.
12. He came here with one certain aim: To delay this matter in any event until after the S. E. C. hearing. Under my heavy drive for the rights of the deferred depositors to receive their money, he made a suggestion of an R. F. C. loan. He said the R. F. C. in view of our fine record would undoubtedly adopt a more liberal policy in regard to this loan, but admitted this was none of his business.

13. To my statement that the loan from Bank of America for a definite time, and being private parties, was superior to a demand loan from a corporation likely to be affected by a change in the political situation, he commented that the R.F.C. did not want to get banks.
14. He stated that it would be impossible for the Investment & Securities Company to assure payment of \$500,000 a year on its loan. I told him that I had stressed that point and wanted five years, but Mr. Twohy did not think this was essential and that we then agreed on four years; that personally I had no fear in the matter that any organization should want to destroy the good will by any high handed closing out of the minority. He agreed then that this was most likely true.

Enough of this, however, but you can see that backed up by my two dear old associates—D. W. Twohy and J. P. McGoldrick—against a hostile board and an antagonistic examiner, I have had a rather unpleasant week."

EXHIBIT 3

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BANK OF GEORGIA

National Trust & Savings Association

L.M. Glavin
PresidentSan Francisco, California
August 1, 1939.Mr. W. P. Folger
Chief National Bank Examiner
Room 219 Treasury Building
Washington, D. C.

Dear Mr. Folger:

I have received your letter of July 31 responding to mine of the 22nd regarding the conference which we understood was called at your request, on July 21. You will remember that Mr. Heese was also present at the conference, as well as those persons mentioned in your letter.

It is true, as you say, that the major part of the items classified by the examiner in the report of examination were reviewed with members of our General Finance Committee, not our Executive Committee, and it was therefore but natural that the greater part of the conference of July 21 should have been devoted to a discussion of the remaining classified assets. This however emphasizes the departure from usual practice since we had not been afforded any previous opportunity of a detailed review of the Administration assets, other than the bond account.

You refer to a conversation between Mr. Holman and Mr. Smith than the former advised that it was imperative for me to return to San Francisco for conference with you. Perhaps you do not know that on that occasion, as well as on a previous occasion, Mr. Smith endeavored to ascertain from Mr. Holman whether or not there would be any important amount of III and IV classifications in the Administration assets, or any new questions to be discussed. Mr. Holman was non-communicative in this regard and we appeared at the conference without any prior notice of the details to be discussed, except that on inquiry of Mr. Wright, Mr. Smith learned the day before the conference that bank premises would be on the agenda. It seems strange to us that the examination of the Administration assets should have been surrounded with so much secrecy until the stage was set by your arrival in San Francisco.

We had every right to assume that the conference was being called for the purpose of discussing the classification of the remaining assets which had not been reviewed and to expect to receive a fair consideration of any facts which we might present. We were surprised

Mr. F. P. Folger

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August 7, 1929.

therefore at the rigid and arbitrary position taken which had none of the characteristics of a "Review" at which facts were weighed in the balance. It is true that the greater part of the day was spent in discussing the matters but I think it is equally true to say that very little consideration was given to the facts which we advanced with regard to Banking Premiums and Other Real Estates.

The examiner stated that his classifications were based upon the building surveys appearing in the files of Capital Company and that when no survey reports were found he used his own opinions or sought information outside advice. Both he and you have with instances referred to these survey reports as "your" appraisals, found in your files". He repeats again that most of these so-called appraisals are merely building surveys never intended to be appraisals, made by employees of Capital Company, most of whom are not qualified as appraisers, and that the examiner obtained his information from the files of Capital Company and not from the files of the Bank.

If you recall, as you say you do, the discussion of one particular property on which the examiner had no data, you will recall that he stated that his valuation was arrived at based on his own opinion of values in the locality in which the property was situated. We do not know of any precedent by which Examiner Helman may be judged competent to appraise an important parcel of real estate.

It is also significant that no record was made in this report of those Banking Premiums in which the survey reports indicated a valuation in excess of book value, and that only 123 out of substantially more than 313 properties were listed.

It appeared obvious to us during the conference that Mr. Helman was guided by you in the inflexible stand which he took relative to his classifications. This view is supported by the fact that within the body of his report Mr. Helman stated with respect to Banking Premiums, Real Estate contracts and Other Real Estates:

"It is requested that a complete survey be made by independent appraisers and that all such appraisals be made a part of the records of the Bank and be available for inspection. Upon completion of the requested surveys, steps should be taken to arrange a satisfactory program for the elimination of all remaining depreciation and apparent losses."

and again in connection with the summary of classifications,

"Elimination of estimated losses on fixed assets subject to future determination."

Mr. W. F. Tolger

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August 7, 1939.

Now can you deny, as you have done in the 7th paragraph of your letter that you did not disregard our protests against the use of irregular and unreliable data and that you did not disregard the appraisals on 26 properties which had been made at Mr. Wright's suggestion when you dealt in the same paragraph that you decided the report should be filed on the basis of the "facts" before the examiner and that the appraisals by Mr. Paschel or Baldwin and Howell, were not acceptable?

The 26 appraisals which had been made at Mr. Wright's suggestion, were not informal. The figures submitted by Mr. Smith were a valuation of the conclusions of the appraisers on these properties. He explained them that the individual reports on each property was being transcribed and would be available later. You will also remember that we offered to make available to the examiner all of the information which we have regarding our Banking Practices or any other Real Estate owned by the Bank. We pointed out to you why in our opinion it would be impossible to reconstruct the history of all of the many Banking Practices which we now own, none of which have been carried through many successive mergers and consolidations, prior to our ownership. He did offer however to attempt the type of setting which was suggested, although admitting that it would or necessity be an incomplete record.

Real Estate contracts with Capital Company and California Lands, Inc., have been in effect in this Bank since before the nationalization in 1927, and here, in the past, been specifically reported by your office as having been made in the interest of the Bank. No change has occurred that would justify any different treatment of these contracts in this examination than that accorded in previous reports. We cannot agree that "second examining practices would permit of no other basis of classification" than that used by the examiner, without implying that in the past examining practices was unusual. If the ability of either of the companies to pay is to be judged solely upon the security, it would be only fair to take into consideration the value of properties in excess of book value, which was not done. You refer to a contribution of real estate of questionable value but we regard Banking Practices as necessary for the conduct of our business and the Real Estate contracts as obligations of solvent companies which cannot be regarded as of questionable value in the light of the fact that the net worth of each company is sufficient to support the obligations, and in view of the record of performance over past years. We can see no reason why the soundness of the obligations of Capital Company and California Lands, Inc., should be judged on any different basis than the obligations of any solvent borrower against real estate security which would be judged differently than they have been judged in the past.

During the December conference you informed Mr. Danner, Mr. Smith and me that an examiner could arbitrarily classify any assets irrespective of the justification or propriety of the classification. It is apparent that this claimed prerogative has been exercised in the present instance.

Mr. W. P. Folger

August 7, 1939.

My letter to you was written in protest against your proposed action and was not intended to report in detail all of the matters discussed at our meeting. It is noted that your letter does not reply directly to the objections which I have raised. We seem to be quibbling about the use of language and I am accused of misstatement and in turn I have the conviction that there are certain misstatements in your communication. However, I have no desire to quarrel with you or burden you with a debate on the issues which have now been squarely raised and to which we shall respond in a formal manner through a communication directed to the Comptroller.

Yours very truly,

(Signed) L. H. Giannini
President.

July 22, 1939

Mr. W. F. Folger,
Chief National Bank Examiner,
Care - National Banking Department,
No. 1 Montgomery Street, Room 921,
San Francisco, California.

Dear Mr. Folgers:

Ostensibly, your purpose in coming to San Francisco from Washington and recalling me from my much needed vacation was to confer with you on the current report of examination of this Bank. Naturally, I assumed that the conference was for the purpose of discussing certain moot points to the end that the report would fairly represent the true condition of the Bank. I am therefore amazed when I review the course of our conversation yesterday and contemplate your rigid insistence that the report be filed in its present form without opportunity to correct the glaring error of its conclusions.

In the draft of his report which was the subject of our discussions yesterday, your examiner said that Banking Premises owned by the Bank and Merchants National Realty Corporation were being classified as IV \$8,743,000, and III \$3,175,000. He further stated that these classifications were based on oral opinions obtained from an undisclosed source, in some cases, upon his own admittedly unprofessional appraisals or on information found in the files of Capital Company, our operating agent. We called your attention to the fact that memoranda contained in Capital Company files are not intended to represent qualified or authentic appraisals but are simply surveys made for insurance, assessment or other purposes. You know from our discussions that your examiner has reached his conclusions upon information which cannot be recognized as indicative of values and from memoranda not a part of the Bank's records.

In spite of this you decided that appraisals on 26 properties made by one of the foremost appraisers in California, at Mr. Wright's request, should be disregarded and that the incorrect report should be filed, admitting however that the conclusions in it might be changed if later figures pictured a different situation.

Mr. W. P. Falger

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July 22, 1939

A further important wrong conclusion was reached by your examiner in the classification of approximately \$6,000,000 as Class III in connection with the Real Estate contracts of Capital Company and California Lands, Inc. These contracts have been the subject of exhaustive discussion on previous occasions and the liquidating program was agreed upon in the Comptroller's memorandum of December 15, 1938. The examiner admitted that no consideration was given to the net worth or responsibility of the paying companies and that his classification was made solely upon the sale prices of the underlying security. You would not consent to any change in this wrongful classification.

We must and do emphatically object to your thus placing of record conclusions detrimental to the welfare of this Bank when such conclusions are based upon unauthentic and incomplete information.

This action, taken without accepting our offer to have professional and qualified appraisals made by appraisers of recognized skill, can only be interpreted as an arbitrary move designed to injure this Bank.

We again renew our offer to pay the cost of capable appraisals by any recognized authorities in that field, or to accept a joint appraisal made by the Superintendent of Banks of the State of California, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency, and again insist that any record of values pertaining to our banking premises be made only upon authentic and fully qualified appraisals.

Your calling me into conference for an entire day appears as a useless gesture, unless in the light of the facts disclosed in that conference you permit any questions regarding the value of our banking premises to be decided on the basis authentic and uniform standards of value.

Yours very truly,

(Signed) L. M. GIANNINI,
President.

TRANSAMERICA CORPORATION

San Francisco, California,
August 7, 1939.

Mr. Russell G. Smith,
Executive Vice President,
Bank of America N. T. & S. A.,
San Francisco, California.

Dear Mr. Smith:

Mr. Andrews has referred to as your letter of August 2,
quoting excerpts from the report of the National Bank Examiner's
examination of the bank commencing under date of March 31, 1939.

Page 2 - Insert 7.

"Self-Insurance Funds.

"The bank carries its own fidelity insurance
for the first \$100,000, and premiums which would ordinari-
ly be paid to an insurance company are deposited with
Transamerica General Corporation."

Answer.

There are not the facts. It is true that the bank now
carries its own fidelity insurance for the first \$100,000, but the
bank does not deposit the premium with Transamerica General Corpora-
tion.

The Examiner doubtless has reference to the plan formerly
in operation under which Transamerica Corporation carried its own
fidelity insurance for the first \$100,000 on employees of its sub-
sidiaries, including Bank of America N. T. & S. A. This plan was
and still is in operation in respect to all subsidiaries of Trans-
america Corporation under the plan and each such subsidiary was re-
quired to pay and still pays the regular annual insurance premium
to Transamerica General Corporation, a wholly-owned subsidiary of
Transamerica Corporation, just as it would have been required to pay
the premium to an outside insurance company. Thus Transamerica Cor-
poration became and still is the "insurance company" for its own sub-

August 7, 1959.

subsidiaries, on fidelity risks up to the first \$100,000. Those premiums did not constitute and were not in any respect a "deposit." They were an actual operating expense of the subsidiary, and in consideration of the premiums Transamerica Corporation assumed the risk that ordinarily would have been assumed by an outside insurance company. Premiums on all fidelity risks in excess of the first \$100,000 were paid by Transamerica's subsidiaries, including Bank of America N. T. & S. A., into the Fidelity & Deposit Company of Maryland and were treated on the books of the subsidiary as an operating expense, just as the premiums paid to Transamerica Corporation by the subsidiaries were treated on the books of the subsidiary as an operating expense.

"This deposit amounts to \$2,272,659.55 and actually represents reserve funds of the bank that are not shown on the books either as capital funds or as assets."

That is not true. Does the National Bank Examiner maintain that had the premiums on the first \$100,000 risk been deposited with the Fidelity & Deposit Company of Maryland that such deposits would actually represent reserve funds of the bank? Via-vis Bank of America N. T. & S. A. or any other Transamerica subsidiary, Transamerica Corporation is in exactly the same position as any insurance company. The premiums were paid to Transamerica Corporation in good faith in the ordinary course of business and Transamerica Corporation assumed exactly the same and all the risks that any other fidelity insurance company would have assumed in consideration of the premiums paid.

Furthermore, it should be remembered that just as in the case of any insurance company, Transamerica Corporation was liable to each subsidiary for each and every loss, even if they amounted in the aggregate to many times the aggregate of the premiums paid by the subsidiary.

Although it may not have any bearing on the request of the National Bank Examiner that the excess of premiums paid by the Bank of America to Transamerica Corporation, over and above losses so far determined, should be refunded to the bank, it should be pointed out that the self-insurance plan adopted by Transamerica Corporation in 1952 covering itself and its subsidiaries was dictated entirely by a desire to take advantage of the preferential rates on group insurance and to retain for themselves whatever profit there might accrue from the excess of reserves over and above losses. The plan which was in operation for the bank and

Mr. Russell G. Smith.

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which is still in operation with substantially all of Transamerica Corporation's subsidiaries, has saved those subsidiaries many thousands of dollars in premiums during the years since 1952; this by reason of the fact that group insurance premiums are much less than the premiums charged on unit policies.

Page 2 - Insert 16

"Transamerica General Corporation - Deposit of Self-Insurance Funds - \$2,272,689.32"

"Bank carries its own fidelity insurance for the first \$100,000 and premiums which would otherwise be paid out to an insurance company are deposited with Transamerica General Corporation."

Answer.

The answer to this statement of the National Bank Examiner is fully covered under the heading "Page 2 - Insert 7" above.

"Accounts deposited prior to 1934 (should be 1932) were consolidated at that time in one account under the heading 'Fidelity Bond Losses,' and the balance of \$402,336.19 has remained unchanged. Interest was paid on this account until 1934 when the regulation prohibiting payment of interest on bank deposits became effective."

Answer.

Interest was not paid on this account. Interest was never paid on this account. The balance of \$402,336.19 reserve on our books was in effect invested, and interest was debited to "Expense" and added to the reserve for each year until 1934. It was simply a coincidence if we ceased crediting interest to the reserve when the regulation prohibiting payment of interest on bank deposits became effective. The regulation referred to did not apply to us. We ceased crediting the

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reserve with interest when it became self-vident (based on favorable loss experience) that the entire reserve on our books was more than sufficient to pay probable losses. The fact that there is carried on our books a separate account for the \$402,339.16 balance referred to by the National Bank Examiner has no significance. As a matter of fact, we carry four separate accounts on our books covering the fidelity insurance reserves, primarily as a matter of convenience in preparing statistical data on the operation and results of the self-insurance plan.

"Circumstances surrounding the transaction indicate quite clearly that the funds belong to the bank and should be properly shown in its capital structure, and that the deposit maintained with Transamerica General Corporation is nothing more than an unsecured borrowing on which no interest is paid."

Answer.

As is clearly indicated in the answers under captions "Page 2 - Insert 7" and "Page 8 - Insert 15," the reserves do not, by any stretch of the imagination, belong to the bank, any more than the reserves, which are carried on Transamerica's books for depreciation of assets of its subsidiaries, belong to those subsidiaries. Transamerica Corporation assumed the risk in good faith and the annual premiums at annual rates were paid to Transamerica Corporation also in good faith; the subsidiaries meanwhile relying upon Transamerica Corporation to pay all losses, even if in the aggregate they greatly exceeded the amount of fidelity reserves carried on the books of Transamerica Corporation for each subsidiary involved.

While we are not aware of "the circumstances surrounding the transaction" to which the Examiner refers, the circumstances disclosed by our records and files prove conclusively that the reserves do not belong to the bank and are in no sense of the word a "deposit" by the bank.

The circumstances to which we refer are as follows:

1. The management of Transamerica Corporation never regarded and never treated the payment by the bank of insurance premiums as "deposits" by the bank.

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August 7, 1959.

2. The management was aware of the prohibition in the Certificate of Incorporation of Transamerica General Corporation to the effect that "Nothing in this Certificate of Incorporation contained should be construed as authorizing the corporation to carry on the business of receiving deposits of money."
3. Bank of America N. T. & S. A. could not have regarded the payment of premiums as a deposit because it must have been aware of the prohibition against national banks depositing funds with a non-banking corporation.
4. That the bank did not regard the funds as a deposit is borne out by the fact that at no time was Transamerica General Corporation requested by Bank of America or by any National Bank Examiner to confirm the amount of money that was on deposit with it in respect of insurance premiums.
5. The premiums charged to Bank of America N. T. & S. A. by Transamerica Corporation, in consideration of Transamerica Corporation's assuming the risks attaching to such insurance, were calculated on an actuarial basis, and were in amount exactly the same as would have been charged by any insurance company.
6. In its annual letter to Bank of America N. T. & S. A., Coast Service Company (the insurance counselor for Transamerica Corporation) advised the bank that the premiums were carried in "a reserve on the books of Transamerica General Corporation." At no time did the bank deny that the amount so invoiced was for "premiums"; neither did it advise Transamerica General Corporation that the amount was to be carried on deposit in the name of the bank.
7. All losses arising through hold-up, defalcation, forgery, etc. were paid by Transamerica General Corporation to the Bank of America N. T. & S. A. without question and in exactly the same manner as any insurance company would honor claims for losses.
8. Regardless of the amount of losses paid, Transamerica Corporation charged Bank of America N. T. & S. A. with a restoration premium to reinstate the self-insurance fidelity bond to its full amount.
9. When members of the self-insurance group ceased to be subsidiaries they were excluded from the benefits of the plan but were not entitled to nor did they receive the excess of premiums paid in over losses paid.

Mr. Russell G. Smith.

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August 7, 1939.

10. Since the self-insurance plan was inaugurated in 1932, it is surprising to say the least that the allegation that the reserves belonged to the bank was not made long before now. If the reserve is to be regarded as a deposit of Bank of America N. T. & S. A. at this date, it must, ipso facto, have been a deposit of the bank in 1933 and 1934 or any other year. And yet at no time during the examination of Bank of America N.T. & S.A. was that reserve regarded, assumed, alleged, or stated to be a deposit or as part of the net sound capital structure of Bank of America N.T. & S.A.

Although we have fortunately not had the opportunity of proving the fact conclusively, it should nevertheless be accepted as a fact that Transamerica Corporation will pay, until such time as its obligations under the plan expire by time limit, any and all losses occurring in the bank even though the aggregate of such losses exceeds the amount carried by Transamerica Corporation in its reserve. This conclusion is borne out by the fact that in the case of self-insurance reserves carried for two other banking subsidiaries, the aggregate of losses paid did exceed the amount of premiums paid by such banks.

"predicated upon these conclusions, the deposit is shown as a direct liability of Transamerica General Corporation and is included with the other borrowings of Transamerica Corporation and its subsidiaries under 'Excess Loans,' exceeding the limits prescribed under Section 5200 U.S.R.S."

Answer.

The Examiner is apparently not very sure of his ground. In one breath he says the premiums were "deposits" and in the next "an unsecured borrowing." Since the premiums are wrong in both cases, the conclusions of the Examiner are necessarily also wrong. The balance of the reserves still carried on the books of Transamerica Corporation in respect of Bank of America N.T. & S.A.'s risks for fidelity insurance covering the first \$100,000, as well as the balance of the reserves carried on its books in respect of its controlled subsidiaries, is a reserve liability of Transamerica Corporation, and is included in its annual report under the caption "Reserve for Taxes and Contingencies."

Yours very truly,

(Signed) John M. Grant

John M. Grant,
President.

10/12/39

Bank of America

NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

August 8, 1939.

The Comptroller of the Currency,
Washington, D. C.

Sir:

We, the Board of Directors of Bank of America National Trust and Savings Association, have each received a copy of your letter of July 31, 1939. Before proceeding to reply in detail, we deem it necessary to review briefly some of the recent events and discussions which have a bearing on the statements in your first paragraph.

Certain events transpired during the autumn of 1938 which had a far-reaching effect upon the status of the organization and jurisdiction of the office of the Comptroller of the Currency. By order of the Secretary of the Treasury his staff of legal counsel was transferred to the Secretary's office and put under the supervision of General Counsel for the Treasury Department. It appeared, as many believe, that the Bureau of the Comptroller was just another Treasury bureau and that the traditionally independent status of the Comptroller no longer existed. At this time the office was vacant, and the Secretary of the Treasury summarily removed from office the First Deputy and Acting Comptroller and the Second Deputy Comptroller and appointed an employe in his office as a new First Deputy and Acting Comptroller.

These and other closely related events are now of public record. They are mentioned here because they were followed immediately by a radical change of attitude on the part of the Comptroller's office toward our Bank, which culminated in the letter of September 23, 1938. The position taken in this letter was so strange and amazing to us that in our reply at length in our letter of October 11, 1938, we requested the Comptroller to accord our management the opportunity of a personal conference.

About this time the Secretary of the Treasury found himself in cooperation with the Securities and Exchange Commission in preparation for an attack on the Bank from that quarter. He caused the Comptroller of the Currency to open to the Commission the confidential files on the Bank and delivered from the archives of the Comptroller to the Commission the reports of the national bank examiner on the Bank for ten years back with

August 8, 1939

permission (later held by the Court to be unlawful) to make them public. This was all done without the knowledge or consent of the Bank and was without precedent in the entire history of national bank supervision.

On November 23, 1938, two days before the Commission made public its attack on the Bank (later condemned by the Court) and one day after the Comptroller's office had surrendered to the Commission records relating to the Bank, the Comptroller invited the management to come to Washington for a conference at their convenience. President Giannini, accompanied by Vice Chairman William E. Blauer, and Vice President and Cashier Russell G. Smith, arrived in Washington December 5, and after waiting three days, the conference began in the Comptroller's office on the morning of December 8. Careful preparation on his part had evidently been made for these proceedings, and it appears self-evident that they were intended to be deliberate and authoritative.

Mr. Giannini and the other Bank officers mentioned were ushered into the presence of the Comptroller of the Currency, who was in company with the Under-Secretary of the Treasury, the Chairman of the Reconstruction Finance Corporation, the Chairman of the Federal Deposit Insurance Corporation, the First Deputy Comptroller, the Chief National Bank Examiner, the Reviewing Examiner for the Twelfth Federal Reserve District, the National Bank Examiner who made the last examination of the Bank, and certain other members of the technical staffs of the above-named governmental agencies. The Secretary of the Treasury was represented in the person of the Under-Secretary. All members of the Inter-Departmental Committee were represented except the Federal Reserve Board, which apparently refrained from attending the conference because of the Comptroller's previous references to procedure before the Board under Section 30 of the Banking Act of 1933. The Securities and Exchange Commission was not represented.

At the opening of the conference, the Comptroller of the Currency handed to each person present copies of a short and a long agenda. These were itemized into numbered paragraphs, and although not questioning the fundamental integrity of the Bank's financial condition, were nonetheless more drastic and deflationary than any demands theretofore made upon the Bank by the Comptroller.

The conferences proceeded day by day until December 15, 1938, at which time conclusions were reached in the form of a definite working program of 17 numbered points in writing, which embraced all of those items from the agenda upon which a procedure had been agreed on. They cover substantially all of those subjects originally put forward by the Comptroller of the Currency at the opening of the conference, and were approved by the Under-Secretary of the Treasury, the Comptroller of the Currency, the Chairman of

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the Reconstruction Finance Corporation, the Chairman of the Federal Deposit Insurance Corporation, the First Deputy Comptroller of the Currency, the Chief National Bank Examiner, and the Reviewing Examiner for the Twelfth Federal Reserve District.

This program was considered by President Giannini in some respects unfair and unjust to the Bank and unduly burdensome upon its operations. In his letter of December 15, 1938, to the Comptroller of the Currency accepting it, he expressed this feeling, but in order to bring the long discussions to a definite close, he took it upon himself to agree to recommend the entire program to his Board of Directors for approval.

Upon his return to San Francisco, President Giannini laid this program before the Board of Directors of the Bank at the regular meeting on January 10, 1939, whereupon it was formally approved by them and the management directed to put it into execution. There was no question in the minds of Mr. Giannini or the members of the Board of Directors but that the program constituted a binding agreement, both upon the Bank and upon the supervising governmental authorities.

However, in the Comptroller's letter of December 22, 1938, he appeared to take the amazing position that the program in question was initiated and formulated by the Bank, and that the Comptroller of the Currency had no official responsibility with respect to it and was not bound in any respect by its terms. However, the contents of the program, without any reference to the circumstances under which they were formulated, repudiate on their very face any such implication.

The Comptroller's letter above-mentioned puts him into the position of having called the conferences, supplied the agenda, and agreed to the conclusions reached, but subsequently stating that he had no authority to enter into such an agreement because it would bind the future exercise of his discretion. In other words, the Comptroller attempted to repudiate his authorship of the program and his official responsibility under it.

We do not see any sound basis for this position of the Comptroller of the Currency. He, under the direction of the Secretary of the Treasury (according to the most recent ruling), is charged with the responsibility of supervising national banks. Much of this supervision has always been conducted by oral conferences followed by working agreements, as was the case with this Bank. Procedure in this manner has been the past experience of this Bank, and no doubt this is true with respect to all banks.

We have sought legal advice on the validity of this agreement and hereto attach opinion of counsel which holds that the agreement is valid and binding upon the Comptroller, so long as the Bank faithfully and efficiently observed its terms. (See Exhibit "A" hereto attached.)

In the case of this Bank, the items in the agreement had to do with the administration of the national banking laws. The action of the Comptroller in giving his approval of the program was, as we are advised, a lawful exercise of his discretion in the performance of his official duties and having thus exercised his discretion, the program was legally binding upon him, as well as upon the Bank, and required the exercise of good faith in its observance by him, as well as by the Bank. It is legally binding upon him because it was an act performed by him in his official capacity in the enforcement of the national banking laws, which set the Bank upon a course of action proposed by him and agreed to by the Bank. It seems to us that the Comptroller cannot escape the legal responsibility involved in his connection with the matter.

Even stronger, however, is the moral obligation upon him to respect its terms because the Bank acted in good faith in accepting them, and because he knew that the commitment had been made to ask the Board of Directors of the Bank to bind the corporation, with all of the interests involved, to carry out the program thus agreed upon. We feel, therefore, that not only is the Comptroller of the Currency morally and legally bound by the agreement, but that it binds also the Secretary of the Treasury and the members of the Inter-Departmental Committee who approved it.

That the Comptroller of the Currency has in fact totally disregarded the terms and even the existence of the agreement is evident from the fact that there is no mention of it whatsoever in his current letter of July 31, 1939, to the Board of Directors, which deals in an entirely different way with the same subject matter covered by the agreement.

We have also been advised by Counsel that as long as the Bank is working intelligently and in good faith to carry out the terms of the agreement of December 15, 1938 - as is demonstrably the case - the Comptroller is in no proper position to warn the Officers or Directors of the Bank under Section 30 of the Banking Act of 1933 as to any matter covered in the agreement. Such a program formulated and approved by the Comptroller could not possibly be held by him to embrace any violations of law, or any unsafe or unsound banking practices, which could be cited by him under Section 30. (See Exhibit "A" hereto attached.) Nevertheless, in his letter of July 31, 1939, in paragraph 3, the following items are listed and designated as unsafe and unsound banking, every one of which was considered at the December conferences and disposed of in the agreement or otherwise eliminated. They are as follows:

- (a) Refusal of the management and directorate to recognize asset problems in general.

We take exception to the Comptroller's statement that the management and directorate of this institution have

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refused to recognize what he terms "asset problems". The contrary is true! The management and directorate in and out of numerous special conferences have given and are giving continuous and meticulous care, consideration and regard thereto. Evidence thereof has been recorded in the minutes of this institution. We gave further concrete and tangible evidence of the sincerity and industry with which we considered the Comptroller's criticisms relative to the asset structure of our institution by communicating with his office in writing on October 11, 1938, forwarding to him on that date a detailed and lengthy letter compiled after many painstaking hours spent in conference and deliberation. The Comptroller not only failed to indicate wherein he disapproved (if at all) of the position taken and answers respectfully given therein by us, but all we received was a formal acknowledgment of the receipt of our letter. All of the evidence shows that all differences had been or were being satisfactorily reconciled as indicated in the agreement of December 15, 1938. As further evidence of our earnest desire to cooperate, we authorized and directed our President, L. M. Giannini, and other officials of this bank, at great inconvenience and expense to proceed to Washington to confer with the Comptroller with respect to these self-same problems. They did so, and we, having approved the agreement that resulted from the conferences, rightfully drew the conclusion that issues raised by the Comptroller had been successfully resolved. How then can the Comptroller reasonably make the assertion that we in any wise or to any extent refused to recognize the asset problems raised by his office?

- (b) Excessive concentration of real estate.

This charge is completely covered by the agreement and by results achieved thereunder.

- (c) Dividend policy.

This policy is embraced in the agreement, and the Board approved the action taken by President L. M. Giannini in writing his letter of April 16, 1939, to the Comptroller of the Currency.

- (d) Transactions between the Bank and Transamerica Corporation and allied interests.

Items of the agreement embrace these questions, and we believe that transactions entered into subsequent to the agreement were in consonance with its terms and the provisions of existing binding contracts.

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(*) Expansion policies of Transamerica Corporation.

This formed an item in the agenda, but was dropped from the program. Such a policy has no relationship to the question of banking practices of the Bank.

The Comptroller's letter of July 31, 1939, as does his letter of April 14, 1939, proceeds to discuss and criticize in detail a number of important items which were included in the agenda for the December, 1938, conferences, which resulted in the agreement, as though no such conferences had been held and no agreement reached.

It is stated in the opening paragraph of the Comptroller's letter of July 31, 1939, that the current report of examination shows a continuation of the same condition referred to in previous communications. This statement is unwarranted in view of the progress that has been made in eliminating and reducing criticized items, particularly those that were the subject of the December 15 agreement, and in improving the asset condition of the Bank.

In the Board's letter of October 11, 1938, to the Comptroller, it was pointed out that on the basis of your revised formula the net sound capital structure of the Bank on September 30, 1938, amounted to approximately \$107,000,000 before taking into consideration bond appreciation of approximately \$9,000,000, and in the letter of President L. M. Giannini addressed to the Comptroller under date of June 30, 1939, he pointed out the fact that on the basis of the last examination sound capital funds were in excess of \$130,000,000, which figure included approximately \$14,000,000 of bond appreciation.

Furthermore, the principal assets of the Bank which have been subjected to criticism by the office of the Comptroller from time to time are referred to in the memorandum of December 15, 1938, which provides a program of procedure required by the office in connection therewith. In President L. M. Giannini's letter addressed to the Comptroller under date of August 5, he informed him of the substantial progress which had been made in connection with these matters. A copy of such letter is attached hereto marked "Exhibit B."

Classified losses in the current examination in the amount of \$3,594,620.73 have been charged off, including the classification in bonds of Downtown Properties Inc. Although we do not agree with the examiner on this item inasmuch as we have a recent survey indicating an intrinsic value of \$951,000 for the building, we have, nevertheless, set up a reserve of \$300,025 to reduce the book value. The remaining amount of loss classification is composed of items which we cannot admit are properly classified and includes the classification in Banking Premises and in the investment in Merchants National Realty Corporation. These two items were the subject of President Giannini's telegram of July 21 and letter of July 28 to the Comptroller of the Currency and of his letters of July 22 and August 7 to the Chief National Bank Examiner, copies of which are attached and marked Exhibit "B". President Giannini has fully outlined the reasons why the examiner has reached false

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conclusions. Since the reports were so soundly made and since they were filed with the Comptroller of the Currency and with the Chief National Bank Examiner prior to July 31, 1939, the date of the Comptroller's letter, we are surprised to find the Comptroller of the Currency accepting the examiner's erroneous conclusions which cannot be supported, because they are based on an unsound and false premise. The Bank is proceeding to obtain appraisals by qualified and independent appraisers and the appraisal data will be forwarded to the office of the Comptroller when completed. On the basis of appraisals already received, there is a wide discrepancy between the values placed on the properties by the independent appraisers and those listed by the examiner. On properties having a book value of \$5,600,000 already appraised, there is a discrepancy of \$1,193,000 between the examiner's figures and those established by qualified appraisers. Objection is also made to the classification of Other Real Estate for reasons identical with those relating to Banking Premises.

In the report of examination, the Examiner again shows as a liability service charges made on dormant accounts in the total amount of \$619,750, and we observe that the Comptroller has deducted this amount in arriving at an adjusted capital position. The subject of these charges was discussed in President Giannini's letter to the Comptroller of August 5, 1939.

In his computation of adjusted capital the Comptroller also deducted 50% of the Examiner's III classification. This classification, like the loss classification referred to above, is grossly exaggerated by the inclusion of amounts relating to Banking Premises, the investment in Merchants National Realty Corporation and Real Estate contracts of Capital Company and California Lands Inc. We cannot admit this classification with respect to Banking Premises and Merchants National Realty Corporation for the same reasons that we cannot admit the IV classification in the same accounts. With respect to the Real Estate contracts of Capital Company and California Lands Inc., it is apparent the examiner has taken the position that the value of the real estate contracts of these corporations with the Bank is dependent solely upon the value of the real estate purchased thereunder. These companies have a substantial net worth represented by other assets which afford the Bank more than adequate protection. From latest information available, it appears that Capital Company has a sound net asset value of well over \$15,000,000 while California Lands Inc. has a sound net asset value of over \$13,000,000. If assets were classified in the current report on the same basis as in previous reports, the adjusted capital structure, based on the revised formula, would be shown as \$128,134,582 as of March 31, 1939, an increase of \$5,000,000 from the last examination, and not a reduction of \$9,000,000 as stated in the report and in the Comptroller's letter. By including in the current examination report unfair and unsound classifications, an attempt is made to show retrogression and to nullify the effect of progress already made.

Pursuant to the agreement of December 15, 1938, and contrary to the Comptroller's conclusion, no real estate has been sold to Capital Company or

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California Lands Inc. under the Real Estate contracts since December 15, 1938. The advance of \$1,100,000 to Capital Company, committed for prior to December 15, 1938, referred to as a breach of agreement, was made during 1938 and 1939 to provide for the construction of a building on unimproved real estate purchased by Capital Company under contract from the Bank, as a move necessary to effect the sale of a large property, and therefore the advance was in the nature of a protective measure designed to improve the condition of the contract obligation of Capital Company to the Bank. Not only did the advance beneficially affect the value of this particular piece of property, but it also enhanced the value of several other properties in the immediate neighborhood which had been purchased by Capital Company from the Bank under contract for approximately \$650,000, thereby extending further protection to the Bank's asset represented by the contract obligation. Furthermore, this advance, was made under an express provision of the contract by which the Bank is obligated to advance such funds, when called for by Capital Company for the proper rehabilitation and/or improvement of any of the properties sold under the contract prior to any conveyance to a purchaser. The contract further provides that any amounts so advanced shall be added to and become a part of the unpaid balance of the purchase price of the contract. The building in question is leased for a term of 25 years to I. Magnin & Co., a leading department store, and, as previously indicated, the presence of the building has beneficially affected assets held by the Bank as collateral. Negotiations for the sale of the property are now in progress and should be completed within ninety days. However, if for some reason the sale is not consummated by December 15 next, the anniversary of our agreement, the property will be removed from the contract at that time for cash.

The Comptroller directs that real estate designated as the Hellman deal properties in the amount of \$39,456 be removed from the assets of the Bank for cash. These assets, shown by the examiner to have a book value of \$85,405, were acquired by the Bank in connection with a settlement of the Hellman obligations, and although placed on the books in August of 1938, they had been carried in the Loan Adjustment Department since 1934. Their acquisition, therefore, was obviously for the purpose of protecting the Bank in connection with the Hellman obligations. These circumstances were fully outlined in the President's letter to you of June 30. Four small properties have been sold for a total of \$1,720.14, a profit of \$169.14 being realized on the sale, five properties are carried at \$1.00 each, one at \$300, one at \$100, and the most important, an apartment house in Los Angeles, at \$85,000. This latter property is in the process of being sold for \$100,000, and the documents are now in escrow.

The Comptroller advises that the real estate loan of Western Furniture Company in the amount of \$520,000 should be removed from the assets of the Bank for cash. The circumstances surrounding the acceptance of this second Bank of Trust obligation in connection with the disposition of 11,370 shares of The National City Bank stock were fully explained in President Giannini's letter to the Comptroller's office of June 30, 1939.

August 6, 1938.

On Page 2 of his letter the Comptroller directs particular attention to certain concentrations of credit. The obligations of Transamerica Corporation's subsidiaries on the line of credit to A. O. Stewart are covered by the December 15, 1938, agreement and have been fully reported on in President Giannini's letter of August 5. The German Credits were not included in the December 15, 1938, agreement because they were at that time satisfactorily programmed. Some time ago the examiner classified as a loan, before review, \$2,000,000 of the German Credits, all of which are regularly paying interest, and after review with officers of the Bank, agreed to a classification of \$1,000,000 as a loan in case of four successive consecutive months until the sum of \$2,000,000 had been charged off. We have completed the charge-off of the amount and the examiner's classification of \$1,000,000 as doubtful, and the indication of the interest to be received on the Credit until it is entirely charged off should be continued by an auditor or branch of account.

The Comptroller states that we have approved little disposed to cause the reduction of the "line of credit" of Transamerica Corporation and its subsidiaries through a sale of bonds to have the Corporation reduce them by the sale of assets. The issue referred to are fully explained in our letter of October 11, 1938, and are covered by the December 15, 1938, agreement. Very substantial reductions through payments have been reported in President Giannini's letter to the Comptroller of August 5, and elsewhere in this communication.

In his letter to which we are replying, the Comptroller of the Currency compares dividends paid in 1938 with earnings, after the deduction of losses and exclusive of bond profits. We resent the implication that a part of the 1938 dividend of this Bank has been paid from bond profits. Dividends have not been based on bond profits, but rather on earnings from operations, although we concede the fact that profits from the sale of securities enabled this Bank, in common with other banks, to absorb the unusually heavy losses resulting from the depression. While the profit from the sale of securities might be considered as non-recurring, the fact that the large total of losses absorbed in the period referred to is likewise non-recurring, must also be recognized.

We are familiar with the recommended procedure with respect to the treatment of securities profits in bank examinations, and understand that the use of such profits for the purpose of absorbing losses and establishing reserves is clearly authorized. There is neither logic nor consistency in the statement by the Comptroller that the earnings of the Bank were net only after deduction of losses charged off and exclusion of profits realized from the sale of bonds, when the language of his "examination procedure" in regard to the treatment of securities profits clearly indicates that the use of profits from the sale of securities for the writing off of losses and the establishment of reserves is approved. It appears that the Comptroller takes one position in his instructions to examiners with regard to banks generally, but for the purpose of establishing evidence of an unsound practice with respect to this Bank he takes a different position.

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As pointed out by the Board of Directors in a letter addressed to the Comptroller of the Currency under date of October 11, 1938, our dividend rate is not permanently fixed, and while based primarily upon net normal earnings, it naturally is affected by the total current earnings of the Bank from all sources, as indicated in the foregoing comment.

The Comptroller states that dividends have been steadily increased since 1933, but it is worthy of note that no increase has taken place since the declaration of the dividend for the last half of 1937, although earnings have registered substantial gains for each subsequent semi-annual period.

As pointed out in President Giannini's letter to the Comptroller of August 5, earnings for the semi-annual period ending June 30, 1939, amounted to \$14,771,000, from which was deducted \$1,356,000 for amortization of bond premiums and \$597,000 for employees' profit-sharing plan. Of the remaining balance of \$12,824,000, \$4,800,000 or 37% was paid in dividends and \$8,024,000 or 63% was left for the improvement of the asset condition of the Bank. We believe that these figures reflect a conservative dividend policy.

The Comptroller has instructed us to obtain reimbursement from Transamerica General Corporation for the sum of \$2,272,659.55 paid to that corporation as premiums for fidelity insurance. It does not appear to us that this item represents an obligation of Transamerica General Corporation to the Bank to any greater extent than would premiums paid to an insurance company represent an obligation of the insurance company to the insured. The examiner has listed this amount as a "deposit" with Transamerica General Corporation, and the Comptroller has stated that it represents reserve funds of the Bank that are not shown on its books. Starting in 1925, the Bank and its then affiliates insured against fidelity losses under a bankers blanket bond with a deductible provision for self-insurance. This deductible provision, increased until it was set at \$100,000 in 1932. The Bank has paid to Transamerica General Corporation only the amount of reserve which it would be required to pay for the same insurance from an insurance company, Transamerica General Corporation paying to the insurance carrier the reserve on the coverage in excess of \$100,000 or such amount as was at the time deductible from the bond, and retaining the difference as a reserve to pay any claim for losses by subsidiaries up to the first \$100,000. This arrangement in so far as the Bank is concerned, has been terminated. We are enclosing a letter from Mr. John W. Grant, President of Transamerica Corporation, replying to the Examiner's statement that this amount is owing to the Bank by Transamerica General Corporation. (See Exhibit "C".)

The Comptroller referred to certain alleged violations of law as shown in the report of examination, and the following is our response to comments of the examiner in this regard:

Section 5201 U.S.F.S. This was one of the subjects covered by the agreement of December 15, 1938. The examiner reports that during his examination, material correction had been effected in the matter of loans made on the security of shares of the Bank's own stock in violation of this Section. We wish to report that all necessary corrections in this regard have been made.

Section 5136 U.S.R.S. The securities listed by the examiner as having been acquired in violation of this Section have been disposed of with the single exception of the stock of The National City Bank of New York, which for reasons stated in our letter of October 11, 1938, and opinion of Counsel attached thereto, we do not consider as having been acquired in violation of law. The examiner reports the carry value of The National City Bank stock on the books of Bank of America as \$2,173,440, the market value as \$1,448,720, including 18,400 additional shares deposited in consideration for the option and a net deficiency of \$724,720 estimated as a loss in the report. As stated in President Giannini's letter to the Comptroller of July 11, since the date the examination was commenced Transamerica Corporation purchased from the Bank, 11,320 shares of The National City Bank stock for \$543,360 in cash, thereby reducing the carry value of this asset on our books to \$1,630,080. The Bank is now carrying 33,960 shares of this stock and holds as security for the option an additional 18,400 shares, the total market value of all shares being \$1,325,000. The reported net deficiency of \$724,720 has therefore been reduced to \$305,000. We have already agreed in the December 15, 1938 memorandum that this item will be eliminated by July 15, 1942. The examination report lists no securities acquired in violation of Section 5136 since December 15, 1938, indicating a strict compliance with the provisions of the December 15, 1938 agreement by the Bank's officers.

Section 5137 U.S.R.S. The examiner claims that this Section has been violated by the purchase of certain real estate not necessary for the accommodation of the Bank in the transaction of its business and by holding title to real estate acquired for D.P.C. for a longer period than five years.

The principal item referred to in this connection is the "Future and Former Banking Premises" held by Merchants National Realty Corporation. The circumstances relating to the acquisition of these properties were fully set forth in the letter of the Board of Directors addressed to the Comptroller of the Currency under date of October 11, 1938, and were provided for in the agreement of December 15, 1938, and covering letters.

Also, the examiner states that 501 parcels of property carried under real estate contracts of California Lands, Inc., having a book value of \$7,463,063.67, and 490 parcels of property carried under real estate contracts of Capital Company, having a book value of \$13,122,087.43, have been carried beyond the five year statutory period. We do not consider that the statutory period which applies to properties owned by the Bank applies to the properties sold to Capital Company and California Lands Inc. under contract. In the letter addressed to the Comptroller of the Currency by the Board of Directors of the Bank under date of October 11, 1938, it was pointed out that the properties sold to Capital Company and California Lands Inc. under contract could not be considered as real estate owned by the Bank, inasmuch as the contracts were valid and binding and Capital Company and California Lands, Inc. were in complete control of such properties. Regardless of these facts, Item 13 of the memorandum of December 15 provided that the elimination of the

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real estate contracts of Capital Company and California Lands Inc. will be diligently pursued and completed by December 15, 1943. Proper steps are being taken to this end. The contracts have been reduced by \$6,128,700 as of July 18, 1939.

Section 24 of the Federal

Reserve Act. The examiner states that this section has been violated by the making and purchasing of \$16,255,299.66 of real estate loans that do not conform to the provisions of the section. Most of these loans were acquired in consolidations, take-overs, and other like procedure under approval of the Comptroller's office or the Bank Examiner, but, as pointed out in President L. V. Giannini's letter to you of June 30, steps are being taken to bring the non-conforming loans into conformity with the Section as rapidly as possible. Furthermore, we are informed that in discussion of this matter with officers of the Bank, the examiner admitted a substantial error in the total amount of this classification and stated that a more careful review would be made at the next examination.

Section 5200 U.S.F.S. The examiner reports that this section has been violated by the granting of an excessive line of credit to Transamerica Corporation and its subsidiaries in the amount of \$23,045,819.58. This alleged violation of law was responded to in our letter of October 11, 1938, to the Comptroller of the Currency, with opinion of Counsel that no violation of law exists and again in the President's letter to the Comptroller on June 30, 1939. No reply has been made either to this Board or to the management of the Bank on the legal points involved. As pointed out in previous letters on the subject, we do not concede that the item of "Guaranteed Loans" represents a line of credit to Transamerica Corporation, nor that Western States Corporation is a subsidiary of Transamerica Corporation, both of which items, amounting to \$6,007,868.76, now \$5,384,347.81, are included in the line of credit reported by the examiner. The examiner has also included in this total line, for the first time, an item described as "Deposit of Self-Insurance Funds, not shown on the Bank's books, either under capital liability or as an asset." The item is listed for the amount of \$2,272,659.55, and we do not believe it should be included in the total line shown by the Examiner. The reasons for our belief in this letter respect appear earlier in this letter in our response to the examiner's criticisms respecting this particular item, and in the letter of Mr. John M. Grant, President of Transamerica Corporation, relative thereto, a copy of which is attached hereto and marked Exhibit "C". These exceptions amount to \$8,280,528.31, and by eliminating them from the total line of credit shown by the examiner, the aggregate of \$23,045,819.58 is reduced to \$14,765,291.27.

Another item included by the examiner in the total line, referred to as an advance to the Capital Company in the sum of \$1,100,000 is exempt from the provisions of Section 5200 for the reasons which appear in the reference made to this item in an earlier part of this letter.

Regardless of these facts, however, the memorandum of December 15, 1938, provides that items classified as loans to Transamerica Corporation and its allied interests will be brought within the Bank's legal limit allowed to one interest not later than

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July 15, 1942. To illustrate the progress made in this program of elimination, and the compliance of the Bank with the agreement of December 15, 1938, we furnish the following comparative figures covering all assets included therein:

	<u>Bal. 4-28-38</u>	<u>Current Balance</u>	<u>Reduction</u>
Guaranteed Loans	\$ 5,574,000	3,897,000	\$ 1,627,000
First National Corp., Portland	1,010,000	—	1,000,000
Transamerica Service Corp.	7,603,000	4,800,000	2,800,000
Bankamerica Agric. Credit Corp.	50,000	200,000	150,00 Increase
California Lands Inc.			
R/E Discounts	301,000	29,000	272,000
Unsecured	50,000	—	50,000
Capital Company			
R/E Discounts	946,000	681,000	265,000
Advances	497,000	—	497,000
Inter-Continental Corp.	<u>7,150,000</u>	<u>4,900,000</u>	<u>2,250,000</u>
	\$ 23,118,000	\$ 14,507,000	\$ 8,611,000

The examiner contends in his report, and the Comptroller apparently accepts his conclusion, that Transamerica Corporation is a "Holding Company Affiliate" of Bank of America N. T. & S. A. This conclusion is based upon the claim that Transamerica Corporation controlled more than 50 per centum of the stock voted for the election of directors at the preceding election. We have sought opinion of Counsel on this question and he holds that the examiner has made an erroneous interpretation of the law. (See Exhibit "D" attached hereto.) It is evident that the Examiner did not have the full facts before him when considering the effect of the voting by Rieser & Company through proxy holders of the total number of shares registered in its name. From the information on this subject appearing in the report, the Examiner apparently was of the opinion that all of the shares registered in the name of Rieser & Company were owned by Transamerica Corporation and were therefore subject to the control of the corporation, although the corporation did not elect to vote the shares. This particular theory might apply only to 82,541 shares which actually did belong to Transamerica Corporation, as the remainder of the shares registered in the name of Rieser & Company, i.e., 113,334 such shares, were owned by and were therefore under the control of interests outside of Transamerica Corporation and its subsidiaries. Rieser & Company was subject to the control of shareholders outside of Transamerica in respect to the voting of 113,334 shares of stock of such shareholders, and Transamerica Corporation was not entitled legally, morally or otherwise to the control of such shares.

The methods employed by the examiner at the last examination, and on which the letter of July 31 appears to be uncritically based, contains errors of law, mistakes of fact, and errors of judgment, to which we have called the Comptroller's attention. While we recognize that an examiner may comment without limitation upon any affairs of the Bank, including interpretations of complicated questions of law and the evaluation of banking practices, and is

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free to make suggestions and express his opinion to the Comptroller of the Currency, we must assume that the Comptroller does not feel himself bound by any such opinions and suggestions, the examiner not being competent to rule finally on questions of law and not having the banking experience to pass finally upon all questions of banking practice.

The Comptroller of the Currency in his letter of July 31, 1939, apparently has adopted without critical scrutiny the view of the National Bank Examiner. Although the powers of the Comptroller of the Currency over national banks are extremely broad, criticisms by him based on error of law or mistake of fact should be and are subject to inquiry by the Bank. It seems to us that the Comptroller should never desire to bind himself to a false position of this kind, but should welcome presentations of law and fact to guide him to a proper and fair conclusion.

This Bank, of all banks, can never be criticized for lack of appreciation or respect for the authority of the Comptroller of the Currency. In the recent case of Bank of America vs. Douglas et al, it publicly fought single handed for the plenary powers of the Comptroller and for the preservation of the integrity of his high functions, while officials from the Comptroller's own office belittled his authority and held him up to be no more than a minor ministerial official in a Treasury Bureau, chiefly concerned with the study of banking statistics. Had the testimony given in Court by officials from the Comptroller's Office finally prevailed (as it did in the lower Court), the authority of the Comptroller over national banks might have all but disappeared. That his prestige and power were sustained on appeal was due to the strong fight made by this Bank.

In the same spirit the Bank may be expected to stand up for its rights under the law, not only out of respect for itself as a great instrumentality of the United States, but in fairness to its depositors, customers, stockholders, and the great community which it serves.

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



Secretary

August 11, 1939

MEMORANDUM TO THE FILES

In response to a telephone request from Mr. Jesse Jones, who is now on the Pacific Coast, asking whether or not we should consider at this time application for a new capital by the Bank of America, Mr. Hanes called a meeting on August 10th, which was attended by the following: Messrs. Upham, Mulroney, Foley, and Gaston. It was the unanimous opinion of that group that the Secretary should not consider making a request upon the Reconstruction Finance Corporation to furnish new capital to the Bank of America until satisfactory answer had been made to the Comptroller's letter of criticism dated July 31, 1939. Accordingly, Mr. Hanes had the following telephone conversation with Mr. Jones in Los Angeles on August 11th:

"Secretary will not request Reconstruction Finance Corporation to make loan or subscribe to stock of Bank of America until Bank of America has made satisfactory reply to Comptroller's letter of criticism of July 31, 1939."

GENERAL COUNSEL
TREASURY DEPARTMENT
WASHINGTON

August 11, 1939

Dear Mr. Secretary:

Herbert Gaston tells me that you would like a report on possible criminal implications of the so-called self-insurance scheme employed by the Bank of America. While I hesitate to bother you on your holiday with such things, I understand that this is "by your leave." Here are the facts as developed so far.

The Bank carries its own fidelity insurance for the first \$100,000 loss. Premiums which would otherwise be paid to qualified fidelity insurance companies are deposited with Transamerica General Corporation. This corporation is a holding company wholly owned by Transamerica and so far as we know is not qualified to do business as a surety company. Amounts which were so deposited prior to 1934 were consolidated in that year in a single account on the books of the company totaling \$402,336.19 under the heading "Fidelity Bond Losses." This balance has remained unchanged. Interest was paid on this account until 1934 but none has been paid since. Premiums paid since the early part of 1934 have been deposited in another account under the heading "Insurance Reserve." The balance in this account, as of March 31, 1939, was \$1,870,323.36 making the combined total of the two accounts \$2,272,659.55. The Bank presents all claims for fidelity losses to Transamerica General Corporation and when paid these losses

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are charged against the latter account. These deposits are not shown among the assets of the Bank nor are they carried as liabilities under "Reserves." No reference to the making of these deposits has been found in the minutes of the Board of Directors of the Bank and they are apparently being made without the knowledge or approval of the Board. The report of examination with reference to these transactions concludes "circumstances surrounding the transactions indicate quite clearly that the funds belong to the Bank and should be properly shown in its Capital structure and that the deposit maintained with Trans-america General Corporation is nothing more than an unsecured borrowing on which no interest is paid." It does not appear from the report of examination, nor have I been able to ascertain otherwise the officers or employees of the Bank who are responsible for making the described deposits. Who these persons are will have to be developed by further investigation.

The statute under which any prosecution would be brought is found in U.S.C. title 18, sec. 592. It provides that any officer, director, agent or employee of any member bank "who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits of such * * * bank, * * * or who makes any false entry in any book * * * of such * * * bank, with intent in any case to injure or defraud such * * * bank, * * * or to deceive any officers of such * * * bank, or the Comptroller of the Currency, or any agent or examiner * * * shall be deemed guilty of a misdemeanor."

No decided cases have been found dealing with a situation on all fours with this one. Most of the cases involve the misapplication of funds through making loans on fictitious security, or knowingly making bad loans which the officer knows the Directors would not approve, or making loans on the security of unmarketable bonds of the officer's own private enterprises at the risk of the interest of the bank, or permitting overdrafts to be made with intent to defraud the bank, and similar situations. However, in the comparatively recent case of United States v. Mulloney, 8 F. Supp. 674, the trial court said:

"I am aware of no exclusive definition of what constitutes misapplication under this statute * * * It is meant, I think, to cover an obviously improper and unjustifiable use of moneys, funds or credits of a bank which is neither embezzlement nor abstraction, both of which are specially referred to, and which is likely to cause loss, and I so rule. It does not cover transactions merely because they happen to be prohibited, namely, loans to individuals beyond the permitted amount. To be within the statute the transaction must therefore be obviously improper and unjustifiable when it was made, and there must be such probability of loss as to warrant finding beyond reasonable doubt that there was an intent to injure or defraud the bank."

Before any definite opinion can be given as to whether these transactions would fall within the statute thus interpreted much additional information will have to be developed. For instance, we would want to know the provisions of the charter of Transamerica General Corporation and whether it was authorized to do a surety business; how Transamerica General Corporation used the funds thus turned over to it; whether it ever paid losses to the Bank caused by defalca-

tions and the amount of such payments; how these transactions are recorded on the books of the Bank and the Corporation (including the manner in which Transamerica General shows the contingent liability assumed by it in consideration for the so-called premium payments). We would also want to know by what authority the Bank's officers entered into the arrangement (whether by by-law or action of the Board of Directors, or otherwise); also, the actual terms of the agreement, if any, between the Bank and the Corporation so that we can determine the nature of the relationship between the Bank and the Corporation.

The facts stated in the last report of examination and developed in conversations with Mr. Folger do not give a complete enough picture to justify referring the matter to the Attorney General at this time. However, I shall have this information developed as soon as possible and I am sure we can give you a full report on the situation when you return.

Giannini has replied to our letter of criticism of July 31, but completely disregards any of our demands and confines himself to statement of progress made in the light of the Comptroller's memorandum of last December. However, I understand a more definitive reply will be forth coming. Just in case you find the time to read it, I am enclosing a copy of Giannini's letter. The reply is a complete non sequitur.

You will be interested to learn that Jesse Jones, who is now in Los Angeles, telephoned John Hanes yesterday to inquire what our

- 5 -

position would be in regard to putting new capital in the Bank of America should he be able to interest Giannini in reviving negotiations. After considerable discussion at a meeting in Mr. Hanes' office attended by Gaston, Upham and me, we decided that Johnnie should telephone Jesse that "the Secretary of the Treasury would not request the Reconstruction Finance Corporation to purchase preferred stock or advance new capital to the Bank of America until a satisfactory reply had been received to the Comptroller's letter of criticism of July 31." Johnnie thought we were making a mistake, but offered no opposition to the unanimous judgment of the group.

As you may have learned from the newspapers there are to be two resignations from the Customs Bench in New York in October. While the recommendations for these vacancies are made by the Attorney General, you might want to think about possible candidates. If the appointments are to be made on the merits as distinguished from a political basis, and goodness knows they should be, Huntington Cairns might be a real asset to the Court which is exceedingly weak at the present time.

I am leaving on my vacation tonight and expect to spend some time with the McAlpins at Martha's Vineyard, and some time with the Morris' at Bar Harbor. Larry Morris is accompanying me. I shall be in touch with the office from time to time and will be able to get back quickly should anything come up to require it. In my absence, Huntington Cairns will be acting.

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Things have been very quiet since you left. We were all very much reassured by your cable this morning. The newspaper reports that you were bedridden caused us a good deal of worry. I hope you will get a good rest and free your mind from office worries.

I apologize for writing at such length.

Please remember me to Mrs. Morgenthau.

As ever,

Ed

Hon. Henry Morgenthau, Jr.
 Marien Lyst Hotel
 Elsinore, Denmark

P.S.

I am enclosing
 Bill Campbell's telegram
 giving the news of
 Amundsen's in dictation &

E. 10 7h

Enclosure.

filed separately
 in diary
 8/11/39. ✓

TREASURY DEPARTMENT
INTER OFFICE COMMUNICATION

DATE

Aug. 11, 1939

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

Re: Bank of America

Attached is a copy of a letter addressed by L. M. Giannini to the Comptroller. The letter does little more than acknowledge the letter of criticism sent to the Bank on July 31, 1939 and indicates that a "formal response" to the criticisms will be made at a future date.

The present letter is almost entirely directed to the "memorandum of December 15, 1938" and attempts to show, item by item, the progress which has been made on the "general plan of procedure" outlined in that memorandum. The tone of the letter is one of gentle rebuke to the Comptroller for departing from the plan set out in the memorandum and raising "entirely new issues arbitrarily". It makes no specific reference to the criticisms contained in our letter.

E. H. F.

Attachment.

13044

Bank of America

NATIONAL IRVING ASSOCIATION

L. M. GIANNINI
PRESIDENT

San Francisco, California
August 5, 1939

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

Dear Comptroller Delano:

Pursuant to your request, I am acknowledging receipt of a copy of your letter of July 31, 1939, relative to the current report of examination of this Bank completed July 21, 1939, which was handed to me by our Secretary, Mr. Everard, who will, as requested by you, deliver a copy to each of our Directors.

From the contents of the letter it is apparent that no consideration was given by your Office to my telegram of July 21 and my letter of July 28 addressed to you on the subject of Banking Premises. As stated in my telegram and letter, the examiner's conclusions in this regard cannot be supported by appraisals properly and intelligently made, and in so far as your request as to Banking Premises is concerned, we believe it would be fair for you to defer the classification until qualified appraisals are completed and you are in a position to determine definitely from actual facts what the situation is in this respect.

Having in mind the exceptional success we have had in meeting the many problems which confronted us, in common with the rest of the country, when we succeeded to the management of the Bank in February 1932, and the progress we have made in rebuilding the Bank, all without resorting to the Government for capital, as did thousands of other banks, we find it difficult to reconcile the attitude of your Department with that which we have the right to expect from a Governmental Department traditionally imbued with the spirit of cooperation and consideration for our problems. This is particularly the case when I recall the discussions participated in by you, Honorable John W. Hanes, Under-Secretary of the Treasury, Honorable Jesse H. Jones, Chairman of the Reconstruction Finance Corporation, and Honorable Leo T. Crowley, Chairman of the Federal Deposit Insurance Corporation, which culminated in the memorandum of December 15, 1938.

As related in the letter Mr. Jones addressed to Mr. Hanes on December 15, 1938, the memorandum and a general plan of procedure with regard to items calling for further consideration was subscribed to by all of the above mentioned persons as well as certain other representatives of your Office. While the Secretary of the Treasury was not directly a party

August 5, 1939

to those discussions, he was represented by the Under-Secretary.

We have endeavored meticulously to carry out our obligations under the provisions of the December 15, 1938 memorandum prepared in the Treasury Department, in consonance with the mutual good faith pledged at the December conferences.

There has been so much correspondence between your Office and this institution that I should like to summarize as briefly as possible the progress made and action taken with respect to the items enumerated in the December 15, 1938 memorandum.

With reference to Item 1 of the memorandum, I wrote you on April 16, 1939 from Chicago, advising you of our willingness at that time to comply with the provisions of this item, and have had neither an acknowledgment of nor a response to that communication. On the basis of the items and figures discussed at the December conferences and embodied in the December 15, 1938 memorandum our net sound capital structure would, with the addition of the \$25,000,000 referred to in my April 16 letter, have substantially exceeded a capital deposit ratio of 1 to 10, without giving consideration to more than \$15,000,000 of bond appreciation over book value. However, in the current report of examination your representatives have raised entirely new issues arbitrarily and have presented figures which cannot be substantiated by facts, so that the situation has been entirely changed. As you have been advised, we are proceeding with appraisals of Banking Premises and will present full data relative to these assets as well as to the contracts of California Lends Inc. and Capital Company in the formal response to your letter, and supplements thereto with respect to Banking Premises which you will receive as the appraisals come in.

Item 2. \$1,578,000 in Banking Premises has been reduced \$390,000, to \$1,188,000 which represents two parcels of real estate on Montgomery Street in San Francisco, which you agreed might be held in this account through the second examination of 1939, and permanently if the construction of a new head office building is then under way. We are working on plans for a new building but may request additional time if this year does not seem to be a propitious time to commence construction.

Item 3. This refers to certain stocks and bonds alleged to have been unlawfully acquired and which it was agreed would be eliminated by June 30, 1939. Elimination has been accomplished and the current report of examination shows no new items.

Item 4. This refers to elimination of bond write-up by June 30, 1939. This item has been entirely eliminated.

Item 5. This refers to 16 loans alleged to have been predicated on the security of Bank of America stock. These loans have all been corrected, as well as all other such loans as have come to our attention.

Honorable Preston Delano

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August 5, 1939

Item 6. A. O. Stewart line. The loans of A. O. Stewart have been reduced \$655,000 as of August 4, 1939, and a liquidating program acceptable to Chief Examiner Irwin D. Wright of the Twelfth District has been agreed upon. The loan of Pacific Coast Mortgage Company, which was erroneously included in the December 15, 1938 memorandum with the Stewart line, has also been reduced \$775,000.

Item 7. Relative to future acquisition of assets of other banks without the Comptroller's authorization. No such assets have been acquired.

Item 8. Relative to showing dividends declared as a liability until paid. This procedure has been followed.

Item 9. Relative to new loans on Bank of America or Transamerica Corporation stock. The provisions of the memorandum have been followed and all technical exceptions called to our attention by the examiner during the course of examination have been corrected.

Item 10. Relative to loans or renewal of loans to Transamerica Corporation subsidiaries. All such loans or renewals have had the approval of the Board of Directors.

Item 11. Relative to extensions of credit classified as loans to Transamerica Corporation or allied interests. The loans included in this group listed in the report of April 28 in the amount of \$23,118,000 now have been reduced to \$14,507,000 as follows, with the result that our agreement in this respect has been greatly accelerated:

	<u>Bal. 4-28-38</u>	<u>Current Balance</u>	<u>Reduction</u>	
Guaranteed Loans	\$ 5,524,000	\$ 3,897,000	\$ 1,627,000	
First National Corp. Portland	1,000,000	-	1,000,000	
Transamerica Service Corp.	7,600,000	4,800,000	2,800,000	
Bankamerica Agri. Credit Corp.	50,000	200,000	150,000	Increase
California Lands Inc.				
R/E Discounts	301,000	29,000	272,000	
Unsecured	50,000	-	50,000	
Capital Company				
R/E Discounts	946,000	681,000	265,000	
Advances	497,000	-	497,000	
Inter-Continental Corp.	<u>7,150,000</u>	<u>4,900,000</u>	<u>2,250,000</u>	
	\$23,118,000	\$14,507,000	\$ 8,611,000	

Item 12. Relative to write-up of assets and the sale of assets to a related company. The provisions of this item are being strictly complied with.

Item 13. Relative to Other Real Estate and Real Estate Contracts to be eliminated by December 15, 1943. This elimination is being diligently

Honorable Preston Delano.

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August 5, 1939

pursued and the Real Estate Contracts have been reduced by the amount of \$6,128,700 as of July 18, 1939. All transactions have conformed to the terms of the contracts and the provisions of the memorandum of December 15, 1938. The Other Real Estate has been reduced by the amount of \$391,300.

Item 14. Relative to attention to be given to criticised assets in general. We are devoting ourselves vigorously to the correction of items subject to criticism.

Item 15. Relative to assets enumerated to receive further consideration, we report progress as follows:

1. Ex-Banking Premises reduced \$1,542,000.
2. Guaranteed Loans reduced \$1,626,000.
3. Option to purchase National City Bank stock reduced \$1,086,000.

4. Service charges on dormant accounts. In your letter of April 14, 1939, you stated that final determination of the question raised by your Office as to the justification for service charges against dormant accounts would be deferred until receipt of information on the subject from Mr. Louis Ferrari, our Vice President and Counsel. Mr. Ferrari recently forwarded to you a letter on the subject, together with copies of contracts entered into between the Bank and the depositors, indicating the right of the Bank to make the service charges referred to.

5. The question raised by the Examiner in previous reports in regard to the difference between the amount of depreciation on Banking Premises taken for income tax purposes and the amount actually charged off on the books has not been raised in the current report, by reason of the fact that adjustments made in tax returns by the Bureau of Internal Revenue and our present rate of depreciation will automatically eliminate the difference formerly questioned.

Item 16. Relative to dividends. In the semi-annual period ending June 30, 1939 this bank earned \$14,777,000 from which was deducted \$1,356,000 for amortization of bond premium and \$597,000 for employees profit sharing. Of the remaining balance of \$12,824,000, only \$4,300,000, or 37%, was paid in dividends while \$8,024,000, or 63%, was used to improve the asset position of the bank. We regard this as a conservative dividend policy.

A fair consideration of all the facts will show that every criticised transaction between the Bank and Transamerica Corporation or affiliated interests has been for the benefit of the Bank. Transamerica, as practically the

Honorable Preston Delano

- 5 -

August 5, 1939

Bank's sole stockholder, regarded it proper to assist the Bank in liquidating some of its slow assets.

I am proud of the record that the Bank has made since we assumed responsibility for its management early in 1932. Since that time it has earned \$122,200,000 to June 30, 1939, only \$43,200,000 or 35.4% of which was paid in dividends. The balance of \$79,000,000, or 64.6%, was used to improve the asset condition of the Bank.

May I also call your attention to the fact that on loans made during the period in which we have been responsible for the management of the Bank, approximately seven years, we have had total losses of only \$2,453,000, or \$350,000 annually, which is at the rate of 72/1000 of 1% per year on the annual average volume of loans outstanding.

There seems to be prevalent these days a new philosophy on the part of Government representatives by which the existing investor is relegated to the position of the forgotten man. After all, the stockholders have a right to expect a reasonable return on their investment when the institution which they own earns it for them. I shall continue to do my utmost to see to it that 350,000 stockholders who are interested, directly and indirectly, get a square deal, always having in mind, of course, the security and welfare of our approximately 2,500,000 depositors. I believe that I know as much about the condition of the Bank as any one and it is preeminently sound. In my opinion the payment of only 35.4% of the earnings of the Bank in dividends is conservative and the least to which stockholders are entitled.

Personally I shall welcome an opportunity to appear before any competent and unbiased group of persons or Governmental Agency to support my views and actions and in this regard I shall at all times be prepared to stand or fall on the record of performance presented. We shall continue as in the past to strive diligently for the elimination of all causes of criticism and observe the provisions of the agreement arrived at as a result of the December conferences.

Sincerely yours,



Director - President.

(Third draft of the Comptroller's letter in reply to the Bank's letters of August 5 and August 8, 1939)

(no copies of 1st & 2d drafts - as these were not shown to the Secy)

Board of Directors,
Bank of America N. T. & S. A.,
San Francisco, California

Gentlemen:

Reference is made to the letter from Mr. L. M. Giannini, President of the Bank of America National Trust & Savings Association, dated August 5, 1939, and your letter of August 8, 1939, written in reply to the comment of this office upon the latest report of examination of your bank.

The improvements in asset position and banking practice outlined particularly in Mr. Giannini's letter have been duly noted. We trust these improvements continue, but we feel constrained to point out that they are minor in import and fail to give consideration to the vital questions of dividend policy, capital ratio, and the concentration of assets in real estate which largely exceeds your capital and surplus.

Third Draft

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In these critical days it is difficult to over-emphasize the importance of prudent and conservative banking, and in the case of the Bank of America with its vast resources and far-flung interests, prudent and conservative banking clearly requires a reduction in dividend distribution, an increase in capital, and a vigorous and sustained attack upon your problem of real estate and other frozen assets. The position of your bank in the general financial structure is an important one. Such a position imposes responsibilities and restraints commensurate with its great influence.

This office has long been engaged in efforts to effect necessary corrections in your policy. When the present Comptroller assumed his responsibilities last fall, it seemed to him that, regardless of the record of the past, it would be a sensible thing to meet with you and discuss the matter. The conferences of last December were accordingly arranged.

Third Draft

- 3 -

Because of the size of your institution and its importance to the banking system as a whole and also because of the natural concern felt by other banking agencies of the Government, it was deemed wise to include in those discussions representatives of the Treasury, of the Federal Deposit Insurance Corporation and of the Reconstruction Finance Corporation. As a result of these discussions, which were thus participated in by all concerned, the Bank agreed, as is evidenced by its memorandum of December 15, 1938, to corrections in policy and a program of reconstruction which was regarded as constructive. It did not meet all criticisms of this office but it was definitely a step in the right direction.

Probably the most important provision of that memorandum was contained in the first article, which provided that the Bank would increase the protection of its depositors by maintaining a ratio of 1 to 10 between its net sound capital, as determined by the Comptroller, and total deposits. The necessary increase in

Third Draft

- 4 -

the capital structure was to have been effective not later than June 30, 1939. It is unfortunate that this has not been done. It is our understanding that the Bank desired to take a step in this direction through the sale of preferred stock, the transaction to be underwritten by the Reconstruction Finance Corporation, and that this effort was abandoned because of conditions imposed for this use of Government funds. Whatever the reason for the failure to carry out this article of the memorandum it remains unaccomplished. To the best of our knowledge, the Bank has made no attempt to break the impasse by securing capital funds from other sources. The problem remains where it was at the time of the December conference.

At the conference in question there was also considerable discussion of your dividend policy and of many technical details with regard to the operation of your institution which have been the subject of repeated criticisms during successive examinations. In the

Third Draft

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December 15 memorandum outlining the steps which the Bank was willing to take to correct a number of these matters, there was no commitment to a modified dividend policy. While this office was not satisfied with the omission of such a commitment from the memorandum, it felt that if the protection of depositors could be increased by the proposed additions to capital, certain progress was being made and later steps would bring further improvement in other matters under review.

It must be emphasized that the memorandum of December 15 was not and could not be anything other than a unilateral undertaking upon the part of the Bank to do the things therein set forth. The Comptroller of the Currency did not and in the nature of things, could not agree that if your Bank followed a certain program, his office would refrain from criticism or any further employment of its statutory powers. The Comptroller of the Currency cannot contract away his responsibilities under the law and certainly in this case had no such intention.

Third Draft

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It would only belabor the issue again to go over the ground covered by our letter of July 31, 1939, and your replies thereto. There are many technical details of administration about which much argument may be made. The broad and important issues are clear and understood. However, lest there be a misunderstanding on one point, I think there should be comment or amplification of a statement in Mr. Giannini's letter of August 5, 1939. Mr. Giannini says that the Bank has earned \$122,200,000.00 from the time the present management took charge in 1932 to June 30, 1939 and that only \$43,200,000.00 has been paid in dividends. He also states that on loans made during the same time, you have had total losses of \$2,453,000.00 or \$350,000.00 annually. What Mr. Giannini does not state, however, is that during the period mentioned, total losses charged off on loans amounted to \$48,041,380.85, with recoveries of only \$1,593,632.89. In addition to the losses on loans of \$48,041,380.85, additional

Third Draft

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charge-offs were necessary in amount of \$22,891,101.77, making total charge-offs from January 1, 1932 to June 30, 1939 of \$70,932,482.62.

It should be further noted that during the period mentioned (over seven and one-half years), the net addition to the capital structure amounted to only \$12,468,334.28, or approximately \$30,700,000.00 less than the amount paid to stockholders in dividends. Restating the matter, the net amount of increase in your capital structure for the period mentioned amounts to approximately fifteen months dividends at the current rate. Such a policy cannot be defended as prudent and conservative banking when it is coupled with a concentration in fixed assets, consisting of banking houses, furniture and fixtures, other real estate, and probable foreclosures, amounting to more than \$107,000,000.00.

With further reference to your dividend policy, your attention is directed to that part of my letter of July 31, 1939

Third Draft

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in which you were advised that the amount classified as losses by the examiner should be charged off promptly, and certainly not later than the day following the next meeting of your Board. You were further advised in that letter that until those losses were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice. The examiner classified as losses book assets in the total amount of \$13,517,598.69. In your letter of August 8, 1939, you advised that classified losses in the amount of \$3,594,620.73 had been charged off, and that a reserve of \$300,025.00 had been set up against the bonds of Down Town Properties, Inc. You do not advise that the remainder of the classified losses have been charged off as directed.

We remain, gentlemen,

Very sincerely yours,

Comptroller of the Currency

8/26/39

For Sicily

268

August 29, 1939

**Board of Directors,
Bank of America N. T. & S. A.,
San Francisco, California**

Gentlemen:

Reference is made to the letter from Mr. L. H. Giannini, President of the Bank of America National Trust & Savings Association, dated August 5, 1939, and your letter of August 8, 1939, written in reply to the comment of this office upon the latest report of examination of your bank.

Nothing contained in either of these letters changes our ideas as to the procedure necessary to place your bank in satisfactory condition, as outlined in my letter of July 31, 1939.

Very sincerely yours,

(Signed) PROSSER, DEAN

Comptroller of the Currency

RECEIVED

AUG 30 1939

Financial Department
Office of the United States Treasury

September 15, 1939

At 4:00 p.m. Mr. Upham called Mr. Delano at the Hotel Chateaux Frontenac in Quebec and told him about the dividend action of the Bank of America N.T. & S.A., and that he had been discussing the situation with the office staff and Mr. Crowley, and substantially what their combined opinion was. Mr. Upham also told Mr. Delano that Secretary Morgenthau was asking him for a recommendation in the morning as to procedure.

Mr. Delano said that his suggestion would be that Mr. Upham tell the Secretary that we are going ahead on the assumption that there will be an ultimate citation to the Federal Reserve Board under Section 30 and/or the application of other sanctions. In the meantime he thought we should be preparing the case with the greatest possible care, checking in the bank to get full information as to whether or not they had flouted our instructions by not charging off the items classified as loss in the last examination, and checking the other matters which we have pointed out as unsafe and unsound banking. The whole situation should then be checked with the attorneys and with Messrs. Ottery, Smith and Spencer for

- 2 -

an ultimate decision as to whether or not to proceed under Section 30 or by using some other section such as, perhaps, publishing the report of examination.

If the lawyers think that we have a case, we could then move in under Section 30. Mr. Delano said that he would not put so much emphasis on winning or losing the case but was very eager that we have a well-prepared case and that there be no undue delay.

Mr. Delano asked me to repeat back to him my understanding of what his recommendation was to be conveyed to the Secretary and I did so, whereupon he indicated that I had the correct understanding.

(Mr. Delano asked what the status of the letter to the Attorney General on self-insurance by Bank of America N.T. & S.A. through Transamerica Corporation was and I informed him that the letter was being forwarded to him tonight by air mail for signature.)


Upm

September 13, 1939

Dear Preston:

Under Secretary Hanes informs me through Mr. Foley that Secretary Morgenthau wishes the enclosed letter to the Attorney General transmitted to you by air mail tonight for your signature. I presume it makes no difference whether you mail it to the Attorney General from there or return it to us for mailing.

Cordially,

(Signed) 
C. B. Upham
Deputy Comptroller

Honorable Preston Delano,
The Comptroller of the Currency.

Enclosure

CBU:pm

SEP 1, 1939

SIP:

There is enclosed herewith a copy of a letter received by this office from National Bank Examiner L. H. Sedlacek, setting forth very briefly the facts concerning three transactions whereby funds or credits of the Bank of America National Trust & Savings Association, San Francisco, California, were used in an attempt to eliminate obligations owing to the Bank by its parent corporation, Transamerica Corporation, or subsidiaries of Transamerica Corporation. Some time ago a copy of this letter was transmitted personally by representatives of the Treasury Department to Mr. Thurman Arnold, as Acting Attorney General in your absence from Washington, and a copy with photostatic copies of pages from reports of examination of the Bank relative to these transactions was more recently transmitted personally by representatives of the Treasury Department to officials of the Criminal Division of the Department of Justice.

The report of examination of the Bank, commenced on March 31, 1939 and closed on July 21, 1939, (subsequent to the receipt of the above-mentioned letter from National Bank Examiner Sedlacek), contains the following statement with reference to an additional transaction or practice which this office feels it should bring

*copy of this was sent to
John Royce 9-26-39 by Special Messenger*

to the attention of the Department of Justice:

"Bank carries its own Fidelity Insurance for the first \$100,000.00 and premiums which would otherwise be paid out to an Insurance Company are deposited with Tennessee General Corporation. Amounts deposited prior to 1934 were commingled at that time in one account under the heading 'Fidelity Bond Loans' and the balance of \$402,336.19 has remained unchanged. Interest was paid on this account until 1934 when the regulation prohibiting payment of interest on bank deposits became effective. Premiums paid since the early part of 1934 have been deposited in another account under the heading of 'Insurance Reserve' and balance as of March 31, 1939 was \$1,670,323.36 making the combined total of the two accounts \$2,072,659.55. Claims for all Fidelity losses are presented to Tennessee General Corporation and when paid are charged against this latter account.

"The above deposit is not shown in the assets of the bank, nor is it shown in the liabilities under the terms."

"The Tennessee Corporation surmounting the transaction includes quite clearly that the funds belong to the bank and should be properly shown in its Capital structure and that the deposit maintained with Tennessee General Corporation involving more than an unsecured borrowing on which no interest is paid. Precluded upon these conclusions the deposit is shown as a direct liability of Tennessee General Corporation and is included with the other borrowings of Tennessee Corporation and its subsidiaries under Texas Loans, exceeding the limits prescribed under Section 500 D.S.R.S."

"This method of handling self-insurance funds constitutes an unsafe and unusual practice and the question arises as to the correctness of the published reports of condition. It is requested that these funds be returned immediately to the bank in cash and that proper accounts be set up on the books."

"Since receipt by this office of the report of examination containing the above charges, efforts have been made to obtain additional

- 3 -

information concerning the nature of the so-called self-insurance plan of the Bank. Accordingly, there are transmitted herewith copies of a letter, dated August 7, 1939, from Mr. John H. Grant, President of Transamerica Corporation to Mr. Russell G. Smith, Executive Vice President of the Bank of America N. Y. & S. A. (which was transmitted to this office with a letter, dated August 6, 1939, from the Secretary of the Board of Directors of the Bank), and a letter, dated August 30, 1939, from National Bank Examiner C. H. McLean to Chief National Bank Examiner, Mr. Irwin D. Wright (which letter was transmitted to this office by letter, dated August 31, 1939, from Chief National Bank Examiner Wright). In so far as they may be ascertained from these documents, the facts relative to the Bank's so-called self-insurance plan appear to be as follows:

1. At least until a recent date, Transamerica Corporation had a plan whereby all subsidiaries of Transamerica Corporation obtained fidelity insurance for the first \$100,000 by making payments, analogous to premiums, into a common pool. Under that plan the Bank paid so-called premiums to Transamerica General Corporation, a wholly owned subsidiary of Transamerica Corporation which, prior to July 1937, owned more than 99 per cent of the stock of the Bank.

2. There was no written agreement between the Bank and Transamerica General Corporation with reference to the so-called self-insurance plan.

- 4 -

3. Transamerica General Corporation is not authorized by its charter to do a surety or fidelity business.

4. Payments by the Bank to Transamerica General Corporation are not shown on the books of the Bank either as an asset due from the Corporation or as reserve funds of the Bank, but were charged to expenses as paid.

5. Transamerica General Corporation does not handle the funds received from the Bank as trust funds, but carries them on its ledger as "Deposit of Self Insurance Funds of the Bank of America N.T. & Co., Inc.". President Grant of Transamerica General Corporation claims that the funds are considered as actual reserves and this contention is supported by the consolidated statement of Transamerica Corporation (which owns all the stock of Transamerica General Corporation) which shows these funds as Reserves for Taxes and Contingencies.

6. Transamerica General Corporation added interest to the balance of the payments from the Bank on its books for each year until 1934.

7. Until the termination of the plan Transamerica General Corporation pays all approved loss claims up to \$100,000 to the Bank. From July 1, 1938 to June 30, 1939 it paid the following:

Holdups	\$18,195.73
Shortages	87,872.84
Forgery losses	12,000.10
	<u>\$117,068.67</u>

- 3 -

8. At least in so far as the Bank is concerned, the plan of making payments for self-insurance to Transamerica General Corporation appears to have been discontinued. The last payment, in the amount of \$327,011.00, was made on July 20, 1938 and covered the premium due to June 30, 1939. The current premium on the \$100,000 self-insurance, in the amount of \$124,725.31, has been set up on the Bank's books, as of August 8, 1939, under the heading "Reserve for Contingencies Self Insurance".

9. Transamerica General Corporation considers itself liable for all losses for one year from the date of cancellation of the arrangement, or until June 30, 1940. It is not contemplated that Transamerica General Corporation will pay to the Bank the balance remaining in the so-called reserve fund after that date. From the above quoted excerpt from the report of examination, it appears that the balance, as of March 31, 1939, was \$2,372,659.55.

The information contained in this letter is being submitted to the Department of Justice for such attention and action as may be deemed appropriate. Should the Department of Justice desire any additional information, it will be furnished upon request.

Very truly yours,

Freston Delano

Freston Delano
Comptroller of the Currency.

The Honorable

The Attorney General of the United States.

Enclosure.

DJS:es typed 9.6.39 - 9.12.39

TREASURY DEPARTMENT
Office of the Comptroller of the Currency

Comptroller of the Currency
Washington, D. C.

January 10, 1939

Dear Sir:

I have been requested by the General Counsel for the Bureau of the Comptroller of the Currency to set forth in a condensed form the more pertinent facts contained in the last reports of examination covering the Bank of America National Trust and Savings Association, San Francisco, California, concerning the following three transactions which have been the subject of controversy.

In 1931 and 1932 assets of the aforementioned bank totaling almost \$50,000,000 were classified as "non-bankable and loss" in reports of examination. These assets to the extent of more than \$35,000,000 were made the subject of three contracts of sale (referred to hereafter as Inter-America Corporation contracts) entered into between the bank and the Corporation of America, which was a wholly-owned subsidiary of Transamerica Corporation. Each contract provided for payment of the purchase price by the Corporation of America at the end of one year from date of execution. Maturity dates of the original contracts were extended from time to time. At that time Transamerica Corporation owned 99.65% of the stock of the bank and was, therefore, responsible directly or indirectly for the threatened impairment of the bank's capital structure. Subsequently, Transamerica Corporation took over the assets of Inter-America Corporation (successor to the Corporation of America) and assumed its liabilities, one of which was the balance remaining due on the \$35,000,000 obligation represented by the aforementioned three contracts. The following two transactions relate to the means used in attempting to eliminate obligations of Transamerica Corporation or its subsidiaries under the aforementioned contracts:

(1) In 1935 and 1936 the appreciation in value of certain unrelated government and municipal bonds owned by the bank was written up to the extent of more than \$14,000,000 on the bank's books. Simultaneously, the bank repurchased like amounts of the "non-bankable and loss" assets previously sold under the Inter-America Corporation contracts, applying the proceeds of these repurchases toward the reduction of the liability to the bank under the said contracts. On or about the dates the "non-bankable and loss" assets were repurchased they were charged off as losses on the books of the bank. In justification for these transactions it is stated by officers of the bank that if the

unrealized profits on securities which were written up had been utilized in the payment of a dividend, more than 99% of that dividend would have inured to the benefit of Transamerica Corporation or its subsidiaries and the return of that dividend by Transamerica Corporation or its subsidiaries to the bank for application on the Inter-America Corporation contracts would have brought about substantially the same result as was accomplished in the manner indicated above, except that by the means adopted the payment of taxes in an approximate amount of \$3,000,000 was avoided. It should be noted that the obligations under the Inter-America Corporation contracts were collateralized and that the Transamerica Corporation and its subsidiaries were solvent corporations and, therefore, financially able to pay their obligations.

(2) On February 1, 1933, and January 2, 1934, the bank entered into contracts with wholly-owned subsidiaries of Transamerica Corporation whereby the bank sold all of its charged-off assets, including those to be charged off up to July 1, 1937, for a total consideration of \$300,000. Subsequent to these sales some of the charged-off assets were liquidated and the proceeds thereof, in the amount of \$1,486,185, were credited upon the unrelated Inter-America Corporation contracts. On July 14, 1937, a transaction was entered into whereby the remaining portion of the charged-off assets was resold to the bank by subsidiaries of Transamerica Corporation for a price of \$6,500,000 under a so-called guaranty by Transamerica Corporation that the bank would obtain through liquidation of those assets the amount of the purchase price. Of the aforementioned \$6,500,000, paid by the bank in repurchasing the formerly charged-off assets which had been previously sold for only \$300,000, a major portion thereof in the amount of \$5,844,386 was made available to Transamerica Corporation by its subsidiaries through inter-company book entries, and that amount was eventually credited upon the obligations of Transamerica Corporation to the bank. The remaining portion of the purchase price was used by a wholly-owned subsidiary of Transamerica Corporation to eliminate a portion of its indebtedness to the bank on certain real estate contract obligations.

The following transaction relates to a means used by Transamerica Corporation and the Bank of America National Trust and Savings Association in an attempt to eliminate a separate obligation of Transamerica Corporation which arose out of a purchase by the corporation from the bank on October 1, 1931, of certain real estate carried on the books of the bank as "banking premises," but which were not being used for banking purposes, for a consideration of \$9,155,786, which obligation had been reduced to less than \$6,000,000 at the time of the transaction here referred to. After Transamerica

Corporation had purchased the aforementioned real estate, it sold same to one of its wholly-owned subsidiaries, the Capital Company. On July 14, 1937, (note that this date is the same as that referred to in connection with the transaction immediately hereinbefore discussed), more than nine months after the debt due to the bank was to have been paid to it, an arrangement was entered into whereby the bank contributed \$5,875,000 to the surplus of Merchants National Realty Corporation (all of the stock of which was owned by the bank and carried in its bond accounts), thus increasing the book value of its investment in the stock of that corporation by the same amount on the same date the Merchants National Realty Corporation purchased from Capital Company aforementioned, for the sum of \$5,874,457, the aforementioned unused banking premises. That purchase price represented the balance remaining due the bank from Transamerica Corporation on the contract of October 1, 1931. That sum was immediately paid by Capital Company to Transamerica Corporation to eliminate Capital Company's liability on its contracts with Transamerica Corporation in connection with its purchase of the properties, and Transamerica Corporation in turn used the same funds to eliminate its liability to the bank under the October 1, 1931, contract. In connection with this transaction it should be noted that in effect the bank used its funds to the extent of \$5,875,000 to purchase real estate (through the medium of a wholly-owned affiliate), but in its reports of condition and other public statements the assets so obtained were carried as "other stocks, bonds and securities," rather than "other real estate owned."

It should be noted that in each of the aforementioned transaction funds or credits of the bank were allegedly used to eliminate secured obligations of Transamerica Corporation or its subsidiaries by methods which some persons might deem deceptive, and that none of the transactions in question were formally approved by the Board of Directors of the bank.

Very truly yours,

S. L. R. Sedlmeyer,
National Bank Examiner.

September 14, 1939

At my suggestion, Tom Smith and Cy Upham are going to send Folger out today to check on the Bank of America to see whether they have carried out the order of the Comptroller. They had not intended to send him. I suggested that before actually sending him that they call up Preston Delano and talk to him first.



TREASURY DEPARTMENT

OFFICE OF
CONTROLLER OF THE CURRENCY

San Francisco, California,
September 14, 1933.

NATIONAL BANK EXAMINER

Confidential

Mr. Irwin D. Wright,
Chief National Bank Examiner,
11th Federal Reserve District,
San Francisco, California.

Mr. J. B. Dunham,
San Francisco, California.

Dear Mr. Wright:

The following information is passed on to you for whatever interest it may serve:

Partridge, manager of the California-Montgomery branch of the Bank of America is somewhat of a first class "floridigger" and likes to talk, although not without ability. Between from lunch today he remarked that he had lunched with "A.P." and had advised him that a settlement or compromise with the S.B.C. was now in progress. He added also that "A.P." had told him that Jimmie Roosevelt had called upon him the other day while he was in San Francisco and advised that his father had said that he wanted to get the matter cleaned up and out of the way so he could go ahead with other more important problems.

Respectfully,

J. B. Dunham
J. B. Dunham
National Bank Examiner.

September 15, 1939

Mr. Hanes, Mr. Tom K. Smith, Mr. Foley, Mr. Tietjens and Mr. Upham met with Secretary Morgenthau at 8:45 a.m.

Mr. Foley reviewed briefly the circumstances in connection with our relationship with the Bank of America N.T. & S.A. since last September, recalling that in September, 1938, a telegram was sent warning them that the declaration and payment of a dividend at the current rate of 19.2 per cent would be considered by the office of the Comptroller as unsafe and unsound banking, and that subsequent thereto a long follow-up letter of warning was prepared but never used because of negotiations with the bank which were begun in November and resulted in the informal memorandum of December 15th. He said that it was thought at that time that the sending of such a letter would be a disturbance to the negotiations and probably completely nullify them.

He recalled that in March the matter of sending the letter of warning was mentioned and the decision at that time was that it would disturb the possibility of the bank increasing its capital by the financing of preferred stock through the RFC. In June and July he said a letter of

- 2 -

criticism was prepared on the basis of the examination just completed but this also did not contain as complete a warning as was contained in the letter earlier prepared.

Mr. Foley told the Secretary that he and Mr. Smith and Mr. Tietjens and I had met last night and had decided to send the present revision of the letter prepared last December as a comprehensive warning. Mr. Smith interrupted to say that that was the decision of the Legal Division, to which he and Mr. Upham did not object. Mr. Morgenthau asked Mr. Smith what doubts he had about sending it and Mr. Smith replied that he had no doubts. Mr. Foley commented that it was no doubt a legal rather than an administrative decision and that he had no doubt whatsoever about the desirability of sending the letter to strengthen the Section 30 case if and when we cited the officers and directors of the bank to the Federal Reserve Board.

Mr. Morgenthau commented that this was a very important matter upon which he would want to have the approval of Messrs. Ottley and Spencer as well as Mr. Smith. Mr. Smith said that he would clear it with Ottley and Spencer on the telephone. Mr. Morgenthau asked if this meant months of delay and Mr. Foley replied that he thought probably a month.

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Mr. Morgenthau asked Mr. Foley how strongly he felt that the letter must go and Mr. Foley replied that if we want a comprehensive case to present to the Federal Reserve Board, the letter should go.

Mr. Morgenthau said that if the group present, plus Messrs. Ottley and Spencer and Crowley could reach a decision between now and noon tomorrow, in which Mr. Hanes concurred, he would be available tomorrow noon to make the final decision.

Mr. Smith said that he would check it with Messrs. Ottley and Spencer and he was sure that they would concur because it represents no change in the principle for dealing with the institution, as recommended by them earlier.

Mr. Hanes asked if it were true that a citation under Section 30 to the Federal Reserve Board would follow automatically the sending of this letter or, in other words, was this the last step that would have to be taken prior to the citation. Mr. Foley replied in the affirmative, saying that no letter of general warning has been sent and this would constitute such a communication.

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Mr. Morgenthau asked if the sending of this letter would be a bar to utilizing subsection (1) of the Federal Deposit Insurance Act and was told that the letter would not interfere with that program if it were decided upon.


Upm

September 15, 1939

Memorandum

Mr. Delano called at 11:45 from Ottawa and told me that he had received and signed the letter to the Attorney-General with respect to self-insurance by the Bank of America National Trust and Savings Association, and it was leaving Ottawa by airmail this noon. He said he had assumed that since Mr. Foley was going to give it personally to the Attorney-General that that meant some pressure would be put behind it. He stated he regarded it as important that this be done. He added that he thought the letter made out a pretty substantial case.

I told Mr. Delano that we were going over the proposed letter to the board of directors of the Bank, it being a revision of the long letter of warning prepared last winter. I told him that the General Counsel regarded it as essential to the building of a comprehensive case that such a letter be sent and that Mr. Tom K. Smith and I took the position that if they regarded the letter as essential to building as strong a case as possible we could not object. I told him we were consulting Mr. Crowley and Mr. Spencer, and if possible, Mr. Ottley on the letter. I told him that

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if the letter goes we are all agreed that there is no point to checking facts in the bank for at least a month and probably longer because no citation to the Federal Reserve could come without the elapse of, in Mr. Foley's opinion, a month, and in the opinion of Mr. Smith and myself, two or three months. Mr. Delano said he was in accord with the view taken by Mr. Smith and myself as to the sending of the letter if the lawyers thought it necessary. I told him that we in the Examining Division had some reservations and doubts about the letter but that we would look over it carefully to see that it is as accurate as it can be so far as facts and figures are concerned, leaving the decision as to whether it must go to Mr. Hanes, Mr. Smith, Mr. Spencer and Mr. Foley, the final decision to be made by the Secretary tomorrow morning.

I told the Comptroller that in view of the fact that there would likely be no checking in the bank for some time that Mr. Folger would not go either to Seattle or San Francisco at this time. I told him that Mr. Mulronev would go to Seattle and would stop off at Salt Lake City and that I would not go to Salt Lake City.

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Mr. Delano asked specifically whether or not the letter being prepared would include reference to the self-insurance matter. I told him that it would and he expressed the opinion that it should.

Upm

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA


September 15, 1939.

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

Dear Sir:

At the request of the Board of Directors
of Bank of America National Trust and Savings
Association, I am forwarding to you herewith a communication addressed to you by the Board under date of September 12, 1939.

Respectfully,


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

*Rec'd
9:30 a.m.
9/18/39
289
ac*

13044

Bank of America

NATIONAL TRUSTS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

September 12, 1939.

The Comptroller of the Currency,
Washington, D. C.

Sir:

This will acknowledge your letter of August 29, 1939, addressed to the Board of Directors.

The letter, in which a dogmatic ultimatum of one paragraph is resorted to, was read and considered at the regular meeting of the Board held today.

As directors of a National Bank we have definite responsibilities imposed upon us by law; we are devoting our energies to the welfare of this Bank and feel that we are intimately acquainted with its affairs. When we express our opinions to your office in letters, painstakingly prepared and at considerable expense, we believe that we are entitled to a detailed reply and to know wherein the legal opinions on controversial points which we have sent to you as exhibits, our interpretations of law, and conclusions expressed are erroneous.

Your office has charged us in past correspondence with what amounts to a neglect of duty. Imputations of negligence have been based on assumptions that were not in keeping with the facts. Sensitive to these accusations and loyal to our trust, we have spent many hours of research and effort in answering the criticisms seriatim. In meeting the issues we feel certain that you, too, must be convinced that many of the assumptions relied upon by you to substantiate your arraignment of us are without foundation. We pointed these instances out item by item. In doing this we were motivated by a sense of responsibility to our depositors, stockholders, and the public at large, and no less by a sincere desire to cooperate with your office. In turn, we believe we are entitled to your cooperation and assistance, and we therefore would appreciate a detailed answer to our letters to guide us in our continued efforts to meet your criticisms.

September 12, 1939.

As an indication of the unsoundness of the position taken by the Examiner and the soundness of the position we have taken in regard to our investment in the Banking Premises and the Merchants National Realty Corporation, we wish to draw your attention to the fact that since writing to you on August 8, 1939, we have received present day appraisals of 30 properties made by the American Appraisal Company which show total appraisals of \$8,832,000, while the estimates of the Bank Examiner totaled \$6,944,000. This shows that the present day appraisals are 27% greater than the Examiner's estimates. To illustrate further, we point to the fact that in the last report of examination the Examiner has listed as doubtful \$1,574,270.46 in connection with the Banking Premises at Seventh and Spring Streets and at Seventh and Olive Streets, Los Angeles. The Examiner's estimated value of the Seventh and Spring property is shown as \$2,500,000, and the estimated value of the Seventh and Olive property is shown as \$750,000; whereas present day appraisals of these two properties by the American Appraisal Company are respectively \$3,701,000 and \$1,355,000, a total difference of \$1,806,000. We do not believe that you would wish to insist upon a position based upon erroneous estimates when authentic appraisals are available to you. As previously advised, we are having appraisements of the remaining properties completed by qualified and independent appraisers.

At this time we should also like to reaffirm the position we have taken in the matter of the Bank's dividend policy. President Giannini by letter addressed to you under date of August 5, 1939, pointed out to you that since the present management assumed responsibility for the operations of the Bank in 1932, the Bank earned \$122,200,000 up to June 30, 1939, only \$43,200,000, or 35.4% of which was paid out in dividends, the remaining \$79,000,000, or 64.6%, being used to improve the asset position of the Bank. These figures indicate that the policy of Bank of America in regard to the payment of dividends is a conservative one. Contrary to the implication contained in the tenth paragraph of your letter of July 31, aggregate dividends paid during this period were more than covered by operating earnings and were not derived from securities profits and recoveries.

During periods of severe depression in recent years, many banks have paid dividends even though not warranted by earnings, because of the psychological effect which the payment of dividends has upon depositors and stockholders alike, and by reason of the importance of such action as a factor in restoring public confidence. This has not been true of the Bank of America. A fact worthy of note is that very few of the leading banks in the United States have increased their capital funds since 1929 without the issuance of additional capital stock; whereas Bank of America has increased its capital funds from \$106,271,000 as of December 31, 1929, the all time high figure up to that date, and from \$94,315,000 as of March 31, 1932, to \$117,805,000 as of July 31, 1939, without the issuance of additional stock. This figure of \$117,805,000 is \$65,405,000 in excess of the legally required capital of \$52,400,000. As also indicated in our President's letter of August 5, total losses on loans made during the more than seven year period in which the present management has been in charge of the Bank's operations, have amounted to the approximate rate of 72/1000 of 1% per annum on the annual average volume of loans outstanding. We believe this gratifying result is a reflection of sound operating policies.

The Comptroller of the Currency

- 3 -

September 12, 1939

The continued threats directed against our institution and its management by your office are, decidedly, not in keeping with the purposes of the office of the Comptroller of the Currency and except for the extraordinarily strong position of our Bank and the confidence it enjoys might easily have caused serious damage to it.

It should not be necessary for us to continue this character of correspondence as the fact has been demonstrated, and your office should have realized by now, that the Bank is fundamentally sound and capably managed; but, inasmuch as you have given no consideration to the progress of the Bank, its growth and strong capital structure, and fair but conservative dividend policy, there appears to be no other course open to us, unless we are able to present our case at a hearing before the Federal Reserve Board as suggested in a letter addressed to your office by the Chairman of the Board of this Bank under date of September 15, 1938. In the meantime, we shall continue to operate and manage the Bank to the best of our ability in accordance with the responsibilities imposed upon us by a statute.

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



Secretary

COPY

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

Office of the Chairman

September 16, 1939

CONFIDENTIALMr. Ed Foley
The Treasury
Washington, D. C.

Dear Ed:

Enclosed please find matter I
discussed with you on the phone to-
day.

Sincerely,
(Signed) Jerre (?)
Jerome N. Frank

Enclosure.

POSTAL TELEGRAPH

San Francisco California
September 15, 1939
11:45 P.M.

C
O
P
Y

ROBERT E. KLINE JR. ESQ.
ASST. GENERAL COUNSEL
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C.

RE OURTEL FOURTEENTH TRANSAMERICA FURTHER INFORMATION BEARING ON HUNOR OF SETTLEMENT IS AS FOLLOWS: A SANFRANCISCO FINANCIAL EDITOR TOLD ME THIS MORNING THAT HE HAD TALKED TO A. P. GIANNINI IN LAST DAY OR TWO WHO ADVISED HIM THAT THE ATTORNEY GENERAL HAD CALLED ON GIANNINI IN CALIFORNIA ABOUT TWO MONTHS AGO AND HAD THEN ADVISED HIM THAT THE PRESIDENT HAD ASKED MURPHY TO ADVISE GIANNINI THAT THE PRESIDENT WAS ANXIOUS TO HAVE SOME SOLUTION BROUGHT ABOUT OF GIANNINIS DIFFICULTIES WITH GOVERNMENT. GIANNINI TOLD EDITOR IN QUESTION THAT THE REASON WHY SETTLEMENT HAD NOT BEEN BROUGHT ABOUT HERETOFORE WAS BECAUSE MURPHY HAS BEEN BUSY IN LOUISIANA. EDITOR INDICATED GIANNINI IS TELLING THIS STORY TO ANY PERSONS INTERESTED. FORMER DIRECTOR OF TRANSAMERICA CORPORATION WITH FRIENDS IN BANK OF AMERICA ADVISES TODAY THAT JAMES ROOSEVELT HAS BEEN AND NOW IS IN CONFERENCE WITH GIANNINIS IN SANFRANCISCO WITH A VIEW TO USING ROOSEVELT TO BRING ABOUT SETTLEMENT OF GIANNINIS DIFFICULTIES WITH GOVERNMENT. WE HAVE HAD IT FROM OTHER SOURCES THAT JAMES ROOSEVELT IS IN SANFRANCISCO AND IN CONFERENCE WITH THE GIANNINIS. ANNOUNCEMENT WAS MADE ON RADIO YESTERDAY THAT ROOSEVELT HAD RESIGNED HIS POSITION WITH METRO GOLDWYN MAYER WHEN DURING PAST FEW DAYS. I HAVE BEEN ASKED WHETHER THERE IS TRUTH IN RUMORS THAT TRANSAMERICAS DIFFICULTIES WITH COMMISSION HAVE BEEN SETTLED. I HAVE ADVISED THAT THERE IS NO TRUTH IN SUCH RUMORS. FORMER TRANSAMERICA DIRECTOR ADVISES TODAY THAT GIANNINI INSPIRED SOURCES ARE STATING APPARENTLY TO OVER-COME EFFECT OF DENIAL HERE THAT REGIONAL OFFICE IS PURPOSELY BEING KEPT IN DARK CONCERNING NEGOTIATIONS FOR SETTLEMENT. WHILE I APPRECIATE DIFFICULTY OF INVESTIGATING RUMORS I NEVERTHE LESS FEEL THAT INVESTIGATION SUGGESTED IN MY TELEGRAM TO YOU OF YESTERDAY WOULD HAVE SALUTARY EFFECT AND WOULD BE THOROUGHLY JUSTIFIED UNDER CIRCUMSTANCES NOW EXISTING. PLEASE ADVISE.

HOWARD A JUDY
REGIONAL ADMINISTRATOR

September 18, 1939

MEMORANDUM FOR THE PRESIDENT

Continuing my policy of keeping you informed as to developments in connection with our investigation of Bank of America National Trust and Savings Association, I am attaching a copy of a letter together with enclosures which the Comptroller of the Currency has delivered today to the Attorney General.

(Signed) H. Morgenthau, Jr.

Enclosures

EHF:s Typed 9/18/39

Sep 15 1959

Sir:

There is enclosed herewith a copy of a letter received by this office from National Bank Examiner L. H. Sedlacek, setting forth very briefly the facts concerning three transactions whereby funds or credits of the Bank of America National Trust & Savings Association, San Francisco, California, were used in an attempt to eliminate obligations owing to the Bank by its parent corporation, Transamerica Corporation, or subsidiaries of Transamerica Corporation. Some time ago a copy of this letter was transmitted personally by representatives of the Treasury Department to Mr. Thurman Arnold, as Acting Attorney General in your absence from Washington, and a copy with photostatic copies of pages from reports of examination of the Bank relative to these transactions was more recently transmitted personally by representatives of the Treasury Department to officials of the Criminal Division of the Department of Justice.

The report of examination of the Bank, commenced on March 31, 1959 and closed on July 21, 1959, (subsequent to the receipt of the above-mentioned letter from National Bank Examiner Sedlacek), contains the following statement with reference to an additional transaction or practice which this office feels it should bring

to the attention of the Department of Justice:

"Bank carries its own Fidelity Insurance for the first \$100,000.00 and premiums which would otherwise be paid out to an Insurance Company are deposited with Transamerica General Corporation. Amounts deposited prior to 1934 were consolidated at that time in one account under the heading 'Fidelity Bond Losses' and the balance of \$402,336.19 has remained unchanged. Interest was paid on this account until 1934 when the regulation prohibiting payment of interest on bank deposits became effective. Premiums paid since the early part of 1934 have been deposited in another account under the heading of 'Insurance Reserve' and balance as of March 31, 1939 was \$1,870,323.36 making the combined total of the two accounts \$2,272,659.55. Claims for all Fidelity losses are presented to Transamerica General Corporation and then paid are charged against this latter account."

"The above deposit is not shown in the assets of the bank, nor is it shown in the Liabilities under 'Reserves'."

"Circumstances surrounding the transaction indicate quite clearly that the funds belong to the bank and should be properly shown in its Capital structure and that the deposit maintained with Transamerica General Corporation is nothing more than an unsecured borrowing on which no interest is paid. Precedent upon these conclusions the deposit is shown as a direct liability of Transamerica General Corporation and is included with the other borrowings of Transamerica Corporation and its Subsidiaries under Excess Loans, exceeding the limits prescribed under Section 5200 U.S.R.S."

"This method of handling self-insurance funds constitutes an unsafe and unsound practice and the question arises as to the correctness of the published reports of condition. It is requested that these funds be returned immediately to the bank in cash and that proper accounts be set up on the books."

Since receipt by this office of the report of examination containing the above excerpt, efforts have been made to obtain additional

- 3 -

information concerning the nature of the so-called self-insurance plan of the Bank. Accordingly, there are transmitted herewith copies of a letter, dated August 7, 1939, from Mr. John W. Grant, President of Transamerica Corporation to Mr. Russell S. Smith, Executive Vice President of the Bank of America N. Y. & S. A. (which was transmitted to this office with a letter, dated August 8, 1939, from the Secretary of the Board of Directors of the Bank), and a letter, dated August 30, 1939, from National Bank Examiner C. H. McLean to Chief National Bank Examiner, Mr. Irwin D. Wright (which letter was transmitted to this office by letter, dated August 31, 1939, from Chief National Bank Examiner Wright). In so far as they may be ascertained from these documents, the facts relative to the Bank's so-called self-insurance plan appear to be as follows:

1. At least until a recent date, Transamerica Corporation had a plan whereby all subsidiaries of Transamerica Corporation obtained fidelity insurance for the first \$100,000 by making payments, analogous to premiums, into a common pool. Under that plan the Bank paid so-called premiums to Transamerica General Corporation, a wholly owned subsidiary of Transamerica Corporation which, prior to July 1937, owned more than 99 per cent of the stock of the Bank.

2. There was no written agreement between the Bank and Transamerica General Corporation with reference to the so-called self-insurance plan.

- 4 -

3. Transamerica General Corporation is not authorized by its charter to do a surety or fidelity business.

4. Payments by the Bank to Transamerica General Corporation are not shown on the books of the Bank either as an asset due from the Corporation or as reserve funds of the Bank, but were charged to expenses as paid.

5. Transamerica General Corporation does not handle the funds received from the Bank as trust funds, but carries them on its ledger as "Deposit of Self Insurance Funds of the Bank of America N.T. & S.A.". President Grant of Transamerica General Corporation claims that the funds are considered as actual reserves and this contention is supported by the consolidated statement of Transamerica Corporation (which owns all the stock of Transamerica General Corporation) which shows these funds as Reserves for Taxes and Contingencies.

6. Transamerica General Corporation added interest to the balance of the payments from the Bank on its books for each year until 1934.

7. Until the termination of the plan Transamerica General Corporation pays all approved loss claims up to \$100,000 to the Bank. From July 1, 1938 to June 30, 1939 it paid the following:

Holdups	\$18,195.73
Shortages	85,875.86
Forgery losses	22,985.10
	<u>\$127,056.69</u>

- 5 -

8. At least in so far as the Bank is concerned, the plan of making payments for self-insurance to Transamerica General Corporation appears to have been discontinued. The last payment, in the amount of \$327,912.89, was made on July 20, 1939 and covered the premium due to June 30, 1939. The current premium on the \$100,000 self-insurance, in the amount of \$324,725.51, has been set up on the Bank's books, as of August 8, 1939, under the heading "Reserve for Contingencies Self Insurance".

9. Transamerica General Corporation considers itself liable for all losses for one year from the date of cancellation of the arrangement, or until June 30, 1940. It is not contemplated that Transamerica General Corporation will pay to the Bank the balance remaining in the so-called reserve fund after that date. From the above quoted excerpt from the report of examination, it appears that the balance, as of March 31, 1939, was \$2,172,638.55.

The information contained in this letter is being submitted to the Department of Justice for such attention and action as may be deemed appropriate. Should the Department of Justice desire any additional information, it will be furnished upon request.

Very truly yours,

/s/ Preston Delano
Comptroller of the Currency.

The Honorable

The Attorney General of the United States.

Enclosure.

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January 10, 1936

Comptroller of the Currency

Washington, D.C.

Dear Sir:

I have been requested by the General Counsel for the Bureau of the Comptroller of the Currency to set forth in a condensed form the more pertinent facts contained in the last reports of examination covering the Bank of America National Trust and Savings Association, San Francisco, California, concerning the following three transactions which have been the subject of controversy.

In 1931 and 1932 assets of the aforementioned bank totaling almost \$50,000,000 were classified as "non-bankable and loan" in reports of examination. These assets to the extent of more than \$35,000,000 were made the subject of three contracts of sale (referred to hereafter as Inter-American Corporation contracts) entered into between the bank and the Corporation of America, which was a wholly-owned subsidiary of Transamerica Corporation. Each contract provided for payment of the purchase price by the Corporation of America at the end of one year from date of execution. Maturely dated of the original contracts were extended from time to time. At that time Transamerica Corporation owned 99.65% of the stock of the bank and was, therefore, responsible directly or indirectly for the threatened impairment of the bank's capital structure. Subsequently, Transamerica Corporation took over the assets of Inter-American Corporation (successor to the Corporation of America) and assumed its liabilities, one of which was the balance remaining due on the \$35,000,000 obligation represented by the aforementioned three contracts. The following two transactions relate to the means used in attempting to eliminate obligations of Transamerica Corporation or its subsidiaries under the aforementioned contracts:

(1) In 1930 and 1936 the appreciation in value of certain unvalued government and municipal bonds owned by the bank was written up to the extent of more than \$14,000,000 on the bank's books. Simultaneously, the bank repurchased like amounts of the "non-bankable and loan" assets previously sold under the Inter-American Corporation contracts, applying the proceeds of those repurchases toward the reduction of the liability to the bank under the said contracts. On or about the dates the "non-bankable and loan" assets were repurchased they were charged off as losses on the books of the bank. In justification for these transactions it is stated by officers of the bank that if the

- 2 -

unrealized profits on securities which were written up had been utilized in the payment of a dividend, more than 99% of that dividend would have inured to the benefit of Transamerica Corporation or its subsidiaries and the return of that dividend by Transamerica Corporation or its subsidiaries to the bank for application on the Inter-America Corporation contracts would have brought about substantially the same result as was accomplished in the manner indicated above, except that by the means adopted the payment of taxes in an approximate amount of \$3,000,000 was avoided. It should be noted that the obligations under the Inter-America Corporation contracts were collateralized and that the Transamerica Corporation and its subsidiaries were solvent corporations and, therefore, financially able to pay their obligations.

(2) On February 1, 1933, and January 2, 1934, the bank entered into contracts with wholly-owned subsidiaries of Transamerica Corporation whereby the bank sold all of its charged-off assets, including those to be charged off up to July 1, 1927, for a total consideration of \$300,000. Subsequent to these sales some of the charged-off assets were liquidated and the proceeds thereof, in the amount of \$1,488,185, were credited upon the unrelated Inter-America Corporation contracts. On July 14, 1927, a transaction was entered into whereby the remaining portion of the charged-off assets was re-sold to the bank by subsidiaries of Transamerica Corporation for a price of \$6,800,000 under a so-called guaranty by Transamerica Corporation that the bank would obtain through liquidation of these assets the amount of the purchase price. Of the aforementioned \$6,800,000, paid by the bank in repurchasing its formerly charged-off assets which had been previously sold for only \$300,000, a major portion thereof in the amount of \$5,844,386 was made available to Transamerica Corporation by its subsidiaries through inter-company book entries, and that amount was eventually credited upon the obligations of Transamerica Corporation to the bank. The remaining portion of the purchase price was used by a wholly-owned subsidiary of Transamerica Corporation to eliminate a portion of its indebtedness to the bank on certain real estate contract obligations.

The following transaction relates to a means used by Transamerica Corporation and the Bank of America National Trust and Savings Association in an attempt to eliminate a separate obligation of Transamerica Corporation which arose out of a purchase by the corporation from the bank on October 1, 1931, of certain real estate carried on the books of the bank as "banking premises," but which were not being used for banking purposes, for a consideration of \$9,155,784, which obligation had been reduced to less than \$6,000,000 at the time of the transaction here referred to. After Transamerica

Corporation had purchased the aforementioned real estate, it sold same to one of its wholly-owned subsidiaries, the Capital Company. On July 14, 1937, (note that this date is the same as that referred to in connection with the transaction immediately hereinafore discussed), more than nine months after the debt due to the bank was to have been paid to it, an arrangement was entered into whereby the bank contributed \$5,875,000 to the surplus of Merchants National Realty Corporation (all of the stock of which was owned by the bank and carried in its bond account), thus increasing the book value of its investment in the stock of that corporation by the same amount; on the same date the Merchants National Realty Corporation purchased from Capital Company aforementioned, for the sum of \$5,874,457, the aforementioned unused banking premises. That purchase price represented the balance remaining due the bank from Transamerica Corporation on the contract of October 1, 1931. That sum was immediately paid by Capital Company to Transamerica Corporation to eliminate Capital Company's liability on its contracts with Transamerica Corporation in connection with its purchase of the properties, and Transamerica Corporation in turn used the same funds to eliminate its liability to the bank under the October 1, 1931, contract. In connection with this transaction it should be noted that in effect the bank used its funds to the extent of \$5,875,000 to purchase real estate (through the medium of a wholly-owned affiliate), but in its reports of condition and obtainable statements the assets so obtained were carried as "other stocks, bonds and securities," rather than "other real estate owned."

It should be noted that in each of the aforementioned transaction funds or credits of the bank were allegedly used to eliminate secured obligations of Transamerica Corporation or its subsidiaries by methods which some persons might deem deceptive, and that none of the transactions in question were formally approved by the Board of Directors of the Bank.

Very truly yours,

S. L. H. Sedlacek,
National Bank Examiner.

EXHIBIT 0

TRANSAMERICA CORPORATION

San Francisco, California,
August 7, 1939.

Mr. Russell G. Smith,
Executive Vice President,
Bank of America N.T. & S.A.,
San Francisco, California.

Dear Mr. Smith:

Mr. Andrews has referred to me your letter of August 2, quoting excerpts from the report of the National Bank Examiner's examination of the bank commencing under date of March 31, 1939.

Page 2 - Insert 7.

*Self-Insurance Funds.

"The bank carries its own fidelity insurance for the first \$100,000, and premiums which would ordinarily be paid to an insurance company are deposited with Transamerica General Corporation."

Answer.

These are not the facts. It is true that the bank now carries its own fidelity insurance for the first \$100,000, but the bank does not deposit the premium with Transamerica General Corporation.

The Examiner doubtless has reference to the plan formerly in operation under which Transamerica Corporation carried its own fidelity insurance for the first \$100,000 on employees of its subsidiaries, including Bank of America N.T. & S.A. This plan was and still is in operation in respect to all subsidiaries of Transamerica Corporation under the plan and each such subsidiary was required to pay and still pays the regular annual insurance premium to Transamerica General Corporation, a wholly-owned subsidiary of Transamerica Corporation, just as it would have been required to pay the premium to an outside insurance company. Thus Transamerica Corporation became and still is the "insurance company" for its own sub-

Mr. Russell G. Smith.

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August 7, 1933.

subsidiaries, on fidelity risks up to the first \$100,000. These premiums did not constitute and were not in any respect a "deposit." They were an actual operating expense of the subsidiary, and in consideration of the premiums Transamerica Corporation assumed the risk that ordinarily would have been assumed by an outside insurance company. Premiums on all fidelity risks in excess of the first \$100,000 were paid by Transamerica's subsidiaries, including Bank of America N. Y. & S. A., into the Fidelity & Deposit Company of Maryland and were treated on the books of the subsidiary as an operating expense, just as the premiums paid to Transamerica Corporation by the subsidiaries were treated on the books of the subsidiary as an operating expense.

"This deposit amounts to \$2,272,599.55 and actually represents reserve funds of the bank that are not shown on the books either as capital funds or as assets."

That is not true. Does the National Bank Examiner maintain that had the premiums on the first \$100,000 risk been deposited with the Fidelity & Deposit Company of Maryland that such deposits would actually represent reserve funds of the bank? *Via-voie* Bank of America N. Y. & S. A. or any other Transamerica subsidiary, Transamerica Corporation is in exactly the same position as any insurance company. The premiums were paid to Transamerica Corporation in good faith in the ordinary course of business and Transamerica Corporation assumed exactly the same and all the risks that any other fidelity insurance company would have assumed in consideration of the premiums paid.

Furthermore, it should be remembered that just as in the case of any insurance company, Transamerica Corporation was liable to each subsidiary for each and every loss, even if they amounted in the aggregate to many times the aggregate of the premiums paid by the subsidiary.

Although it may not have any bearing on the request of the National Bank Examiner that the excess of premiums paid by the Bank of America to Transamerica Corporation, over and above losses as far determined, should be refunded to the bank, it should be pointed out that the self-insurance plan adopted by Transamerica Corporation in 1932 covering itself and its subsidiaries was dictated entirely by a desire to take advantage of the preferential rates on group insurance and to retain for ourselves whatever profit there might accrue from the excess of reserves over and above losses. The plan which was in operation for the bank and

Mr. Russell G. Smith.

- 3 -

August 7, 1938.

which is still in operation with substantially all of Transamerica Corporation's subsidiaries, has saved these subsidiaries many thousands of dollars in premiums during the years since 1932; this by reason of the fact that group insurance premiums are much less than the premiums charged on unit policies.

Page 8 - Insert 16

"Transamerica General Corporation - Deposit of self-insurance funds - \$2,372,689.55

"Bank carries its own fidelity insurance for the first \$100,000 and premiums which would otherwise be paid out to an insurance company are deposited with Transamerica General Corporation."

ANSWER.

The answer to this statement of the National Bank Examiner is fully covered under the heading "Page 2 - Insert 7" above.

"Amounts deposited prior to 1934 (should be 1932) were consolidated at that time in one account under the heading 'Fidelity Bond Losses,' and the balance of \$402,336.19 has remained unchanged. Interest was paid on this account until 1934 when the regulation prohibiting payment of interest on bank deposits became effective."

ANSWER.

Interest was not paid on this account. Interest was never paid on this account. The balance of \$402,336.19 reserve on our books was in effect invested, and interest was debited to "Expense" and added to the reserve for each year until 1934. It was simply a coincidence if we ceased crediting interest to the reserve when the regulation prohibiting payment of interest on bank deposits became effective. The regulation referred to did not apply to us. We ceased crediting the

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Mr. Russell G. Smith.

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August 7, 1959.

reserve with interest than it became self-evident (based on favorable loss experience) that the entire reserve on our books was more than sufficient to pay probable losses. The fact that there is carried on our books a separate account for the \$402,559.16 balance referred to by the National Bank Statement has no significance. As a matter of fact, we carry four separate accounts on our books covering the fidelity insurance reserves, primarily as a matter of convenience in preparing statistical data on the operation and results of the self-insurance plan.

"Circumstances surrounding the transaction in-
deed quite clearly that the funds belong to the bank
and should be properly shown in its capital structure, and
that the deposit maintained with Transamerica General Cor-
poration is nothing more than an unsecured borrowing on
which no interest is paid."

Answer.

As is clearly indicated in the memo under caption "Page 2 -
Insert 7" and "Page 8 - Insert 16," the reserves do not, by any stretch
of the imagination, belong to the bank, any more than the reserves,
which are carried on Transamerica's books for depletion of assets of
its subsidiaries, belong to those subsidiaries. Transamerica Corporation
assumed the risk in good faith and the annual premium at annual rates
were paid to Transamerica Corporation also in good faith, the subeli-
aries remain liable relying upon Transamerica Corporation to pay all losses,
even if in the aggregate they greatly exceeded the amount of fidelity re-
serves carried on the books of Transamerica Corporation for each subeli-
ary involved.

While we are not aware of "the circumstances surrounding the
transaction" to which the Bankular refers, the circumstances disclosed by
our records and files prove conclusively that the reserves do not belong
to the bank and are in no sense of the word a "deposit" by the bank.

The circumstances to which we refer are as follows:

1. The management of Transamerica Corporation never requested and never
treated the payment by the bank of insurance premium as "deposited"
by the bank.

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Mr. Russell G. Smith.

-5-

August 7, 1939.

2. The management was aware of the prohibition in the Certificate of Incorporation of Transamerica General Corporation to the effect that "Nothing in this Certificate of Incorporation contained should be construed as authorizing the corporation to carry on the business of receiving deposits of money."
3. Bank of America N.Y. & S.A. could not have regarded the payment of premiums as a deposit because it must have been aware of the prohibition against national banks depositing funds with a non-banking corporation.
4. That the bank did not regard the funds as a deposit is borne out by the fact that at no time was Transamerica General Corporation requested by Bank of America or by any National Bank Examiner to confirm the amount of money that was on deposit with it in respect of insurance premiums.
5. The premiums charged to Bank of America N. Y. & S. A. by Transamerica Corporation, in consideration of Transamerica Corporation's assuming the risks attaching to such insurance, were calculated on an actuarial basis, and were in amount exactly the same as would have been charged by any insurance company.
6. In its annual letter to Bank of America N. Y. & S. A., Coast Service Company (the insurance counselor for Transamerica Corporation) advised the bank that the premiums were carried in "a reserve on the books of Transamerica General Corporation." At no time did the bank deny that the amount so invoiced was for "premiums"; neither did it advise Transamerica General Corporation that the amount was to be carried on deposit in the name of the bank.
7. All losses arising through hold-up, defalcation, forgery, etc. were paid by Transamerica General Corporation to the Bank of America N. Y. & S. A. without question and in exactly the same manner as any insurance company would honor claims for losses.
8. Regardless of the amount of losses paid, Transamerica Corporation charged Bank of America N. Y. & S. A. with a restoration premium to reinstate the self-insurance fidelity bond to its full amount.
9. When members of the self-insurance group ceased to be subsidiaries they were excluded from the benefits of the plan but were not entitled to nor did they receive the excess of premiums paid in over losses paid.

Mr. Russell G. Smith

August 7, 1939.

10. Since the self-insurance plan was inaugurated in 1932, it is surprising to say the least that the allegation that the reserves belonged to the bank was not made long before now. If the reserve is to be regarded as a deposit of Bank of America N.Y. & S.A. at this date, it must, ipso facto, have been a deposit of the bank in 1932 and 1934 or any other year. And yet at no time during the examination of Bank of America N.Y. & S.A. was that reserve regarded, assumed, alleged, or stated to be a deposit or as part of the net sound capital structure of Bank of America N.Y. & S.A.

Although we have fortunately not had the opportunity of proving the fact conclusively, it should nevertheless be accepted as a fact that Transamerica Corporation will pay, until such time as its obligations under the plan expire by time limit, any and all losses occurring in the bank even though the aggregate of such losses exceeds the amount carried by Transamerica Corporation in its reserve. This conclusion is borne out by the fact that in the case of self-insurance reserves carried for two other banking subsidiaries, the aggregate of losses paid did exceed the amount of premiums paid by such banks.

"Predicated upon these conclusions, the deposit is shown as a direct liability of Transamerica General Corporation and is included with the other borrowings of Transamerica Corporation and its subsidiaries under 'Excess Loans,' exceeding the limits prescribed under Section 5200 U.S.R.S."

ANNEX

The Examiner is apparently not very sure of his ground. In one breath he says the premiums were "deposits" and in the next "an unsecured borrowing." Since the premises are wrong in both cases, the conclusions of the Examiner are necessarily also wrong. The balance of the reserves still carried on the books of Transamerica Corporation in respect of Bank of America N.Y. & S.A.'s rights for fidelity insurance covering the first \$100,000, as well as the balance of the reserves carried on its books in respect of its controlled subsidiaries, is a reserve liability of Transamerica Corporation, and is included in its annual report under the caption "Reserve for Taxes and Contingencies."

Yours very truly,

(Signed) John H. Grant

John H. Grant,
President.

TREASURY DEPARTMENT
OFFICE OF
COMPTROLLER OF THE CURRENCY

August 31st, 1939

Mr. C. E. Upham,
Deputy Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Sir:

In compliance with your letter of August 24th, in which you request certain information about the so-called "self-insurance" of Bank of America National Trust and Savings Association, Examiner McLean has endeavored to supply answers to the seven statements set out in the memorandum of August 12th, copy of which was enclosed with your letter.

Mr. McLean's letter is enclosed herewith and if the information contained therein is not adequate, please advise me at once, and I will endeavor to have the reply prepared in accordance with your desires.

Sincerely,

(Signed) Irwin D. Wright

IRWIN D. WRIGHT
Chief National Bank Examiner
Twelfth Federal Reserve District

IDW:A

TREASURY DEPARTMENT

OFFICE OF

CONTROLLER OF THE CURRENCY

August 30th, 1939

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Mr. Irwin D. Wright,
Chief National Bank Examiner,
1 Montgomery Street, Room 921,
San Francisco, California.

Dear Mr. Wright:

I am enumerating below additional information developed in connection with the self-insurance fund of the Bank of America National Trust and Savings Association, which is carried on the books of Transamerica General Corporation and was criticized in my last report of examination.

This information was requested in Mr. Tietjen's memorandum to Mr. Upham dated August 12th, 1939.

1. I was unable to obtain a copy of the charter of Transamerica General Corporation, but was advised that it contained general corporate powers and did not authorize the transacting of a surety or fidelity business.

2. The funds deposited with Transamerica General Corporation by the Bank are claimed by the Corporation as general funds and are said to be shown as earnings in income tax returns. The funds are not handled as trust deposits but I was unable to verify the statement that the funds were considered as earnings on which income tax is paid.

3. Transamerica General Corporation pays all approved loss claims to the Bank. In the period July 1, 1938 to June 30, 1939 it paid the following:

Holdups	\$18,195.73
Shortages	85,875.86
Forgery losses	22,985.10
	\$127,056.69

- 2 -

4. The amount on deposit with Transamerica General Corporation is not shown on the books of the bank in any manner, either as an asset due from the corporation or as reserve funds of the bank. The funds when paid over to Transamerica General Corporation are charged to expense and claimed as a deduction in income tax returns.

Transamerica General Corporation carries the funds on its ledger as "Deposit of Self Insurance Funds of the Bank of America N.Y. & S. A. However, President Grant claims the funds are considered as actual reserves and the heading on the ledger is incorrect. The contention is supported by the consolidated statement of Transamerica Corporation which shows these funds as Reserve for Taxes and Contingencies.

5. The only authority by which the bank entered into the arrangement, and it is not believed to cover recent transactions, is as follows:

Jan. 20, 1923. Resolution of the Executive Committee of the Bank of Italy, State Bank, to deposit with the Stockholders Auxiliary Corporation premiums covering forged securities.

Dec. 1, 1927. Paid \$50,000.00 to National Bankitaly Company, Reserve for Fidelity Bond. To open account.

Sept. 8, 1928. Letter shows National Bankitaly Company carried in self-insurance account for the bank the following:

Forgery Reserve	\$154,031.18
Fidelity Reserve	51,497.67

Sept. 11, 1928. Resolution of the Executive Committee to pay \$50,000.00 forgery reserve and \$31,000.00 fidelity reserve to National Bankitaly Company.

- 3 -

June 23, 1931. Resolution of Executive Committee covering establishment of self-insurance in the bank.

Dec. 13, 1932. Authorization to transfer account from National Bankitaly Company to Transamerica General Holding Company, which would indicate that the bank considered the funds as part of its reserves.

6. There is no agreement in existence. It is stated by officials that it was a mutual agreement whereby all subsidiaries of Transamerica Corporation paid self-insurance funds into a common pool, instead of paying them out to authorized insurance companies, so that any savings would revert to the parent company. It is further stated that Transamerica General Corporation would have considered itself liable for all losses, even if in excess of the premiums paid in by other subsidiaries of Transamerica Corporation. This would appear to be a deliberate underwriting of insurance and not authorized in the charter.

7. Payments to Transamerica General Corporation were made by the Administration Office under instructions from the Cashier.

The last payment was made July 20, 1938 covering the premium due to June 30, 1939 and was remitted to Transamerica General Corporation by entry letter through the Clay and Montgomery Branch of the bank in the amount of \$327,812.89.

The arrangement apparently has been discontinued and current premium on the \$100,000.00 self-insurance in the amount of \$324,725.31 was set up on the bank's books August 8, 1939 under the heading "Reserve for Contingencies Self Insurance."

I am advised that Transamerica General Corporation considers itself liable for all losses occurring under the fidelity bond for one year from the date of cancellation of the arrangement, or until June 30, 1940, the same as any other insurance concern and for the period July 1, 1939 to August 28, 1939 it has paid claims or has claims pending totaling \$31,046.29.

- 4 -

Mr. Grant's letter in which he refutes the statement in my report that interest was paid on this account is in error. A re-check of the account shows that interest was paid on the balance until the end of 1934.

I believe the above information to be correct in all respects, even though a considerable portion of it was obtained verbally from President Grant of Transamerica General Corporation and from Vice President Russell G. Smith of the Bank of America National Trust and Savings Association.

Yours very truly,

(Signed) C.H. McLean

C. H. McLean
National Bank Examiner

September 18, 1939

MEMORANDUM FOR THE COMMISSIONER OF INTERNAL REVENUE

Attention: Elmer Irey

For your information

I am attaching a copy of a letter and enclosures which the Comptroller of the Currency has delivered today to the Attorney General in connection with our investigation of Bank of America National Trust and Savings Association and allied and affiliated organizations.

(Signed) H. Morgenthau, Jr.

Enclosures, same as in ltr to Pres

EHF:s Typed 9/18/39

September 18, 1939

My dear Mr. Frank:

In conformity with our mutual arrangement for cooperation in connection with the investigation of Bank of America National Trust and Savings Association and allied and affiliated organizations, I am enclosing for your information a copy of the letter and the enclosures which the Comptroller of the Currency has delivered today to the Attorney General.

Sincerely yours,

(Signed) H. Morgenthau, Jr.

Hon. Jerome N. Frank
Commissioner
Securities and Exchange Commission
Washington, D. C.

Enclosures, same as in ltr to Pres.

EHF:is Typed 9/18/39

BANK OF AMERICA TRANSACTIONS

September 18, 1939.
10:00 a.m.

Present: Mr. Gaston
Mr. Foley
Mr. Duffield

H.M.Jr: Ed, on this thing of your legal document to the Bank of America, Johnny called me up Saturday to say that Saturday was the deadline and he didn't have time to study it, so I did want to get it off to the Comptroller, so we said, "Well, sure, let it go out and let the Comptroller sign it." Then I laughed up my sleeve because after once the Comptroller signed it and it has come back, it is going to be pretty hard for him to say no.

Foley: Yes.

H.M.Jr: I thought that was good strategy. I was rather pleased with myself.

Gaston: It is his strategy.

H.M.Jr: Whose?

Gaston: John's.

H.M.Jr: Why?

Gaston: He just doesn't want to take the responsibility.

H.M.Jr: I was seriously thinking of telling him that this thing was so serious that I would go direct to the Comptroller on it.

Foley: You see it was necessary to get the letter in the airmail Saturday afternoon in order to catch Delano in Chicago. If we didn't get him there, we didn't know where we could pick him up this side of Seattle.

H.M.Jr: I don't think this was Hanes' - I think Hanes was bothered about the letter. Am I wrong?

Foley: I don't know. I had no conversations with John on Saturday. He talked with Cy.

- 2 -

- H.M.Jr: I just wanted to keep the three of you posted on this thing.
- Gaston: I think this, that he was worried about the letter and didn't want to approve it without further study and that he rather welcomed the idea of just washing his hands of it.
- Foley: Well, it is a 26-page letter, Mr. Secretary, and he told Cy that he took it home and he was too tired and he didn't have time to read it, and I think that may be so.
- H.M.Jr: I think that is so.
- Now, let me read this thing that goes to the Attorney General about that telegram.
- Foley: It isn't as long as it looks.
- H.M.Jr: Just sit down and ease yourselves while I look at this.
- Do you mind reading this out loud? Has anybody heard it?
- Gaston: I haven't seen it.
- H.M.Jr: Take your time and just read it out loud.
- Foley: "There is enclosed herewith a copy of a letter received by this office from National Bank Examiner...."
- H.M.Jr: Can you give a little background on it?
- Foley: Well, this is a letter we are proposing to send to the Attorney General giving him the facts in regard to the so-called self-insurance plan, whereby premiums were turned over to Transamerica General and Transamerica General was to indemnify all losses up to \$100,000 which were not covered by outside insurance.
- Gaston: Yes.
- Foley: So far as we are able to find out, Transamerica General has no power to do a general insurance business in its charter. The money has been

- 3 -

deposited. This money has been deposited with Transamerica General and Transamerica General claims that the money belongs to it and it isn't the Bank's money and has refused to return to the Bank the balance on hand at the present time, even though the Comptroller's office has made demands on them for that.

Gaston: Are you well satisfied that the undertaking by Transamerica to insure them was entered into in advance of the period covered? In other words, it isn't something that was just thought up afterwards by which they could get - Transamerica could get title to these payments? Was it a real contract to insure?

Foley: They say there is, but we haven't got the contract and they haven't shown it to us. They say they have got a contract but we don't know where it is. While we haven't facts enough to determine definitely that there is a violation of law here, a criminal violation of law, nevertheless it seemed to us that it would warrant giving all the facts to the Attorney General so that the Attorney General could make an independent investigation, send auditors out there and satisfy himself and perhaps turn it over to the local D.A.

"There is enclosed herewith a copy of a letter received by this office from National Bank Examiner L. S. Sedlacek, setting forth very briefly the facts concerning three transactions whereby funds or credits of the Bank of America National Trust & Savings Association, San Francisco, California, were used in an attempt to eliminate obligations owing to the Bank by its parent corporation, Transamerica Corporation, or subsidiaries of Transamerica Corporation. Some time ago a copy of this letter was transmitted personally by representatives of the Treasury Department to Mr. Thurman Arnold, as Acting Attorney General in your absence from Washington, and a copy with photostatic copies of pages from reports of examination of the Bank relative to those transactions was more recently transmitted personally by representatives of the Treasury Department to officials of the Criminal Division of the Department of Justice."

- 4 -

Delano went over with me last spring and we talked to Thurman Arnold, but we never formally asked them to do anything about it.

"The report of examination of the Bank, commenced on March 31, 1939 and closed on July 21, 1939, (subsequent to the receipt of the above-mentioned letter from National Bank Examiner Sedlacek), contains the following statement with reference to an additional transaction or practice which this office feels it should bring to the attention of the Department of Justice:

'Bank carries its own Fidelity Insurance for the first \$100,000.00 and premiums which would otherwise be paid out to an Insurance Company are deposited with Transamerica General Corporation. Amounts deposited prior to 1934 were consolidated at that time in one account under the heading Fidelity Bond Losses and the balance of \$402,336.19 has remained unchanged. Interest was paid on this account until 1934 when the regulation prohibiting payment of interest on bank deposits became effective. Premiums paid since the early part of 1934 have been deposited in another account under the heading of Insurance Reserve and balance as of March 31, 1939 was \$1,870,323.36 making the combined total of the two accounts \$2,272,659.55. Claims for all Fidelity losses are presented to Transamerica General Corporation and when paid are charged against this latter account.

'The above deposit is not shown in the assets of the bank, nor is it shown in the liabilities under Reserves.

'Circumstances surrounding the transaction indicate quite clearly that the funds belong to the Bank and should be properly shown in its Capital structure and that the deposit maintained with Transamerica General Corporation is nothing more than an unsecured borrowing on which no interest is paid. Predicated upon these conclusions the deposit is shown as a direct liability of Transamerica General Corporation and is included with the other borrowings of Transamerica Corporation and its Subsidiaries under Excess Loans, exceeding the limits prescribed under Section 5200 U.S.R.S.

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'This method of handling self-insurance funds constitutes an unsafe and unsound practice and the question arises as to the correctness of the published reports of condition. It is requested that these funds be returned immediately to the bank in cash and that proper accounts be set up on the books.'

"Since receipt by this office of the report of examination containing the above excerpt, efforts have been made to obtain additional information concerning the nature of the so-called self-insurance plan of the Bank. Accordingly, there are transmitted herewith copies of a letter, dated August 7, 1939, from Mr. John W. Grant, President of Transamerica Corporation to Mr. Russell O. Smith, Executive Vice-President of the Bank of America N. T. & S. A. (which was transmitted to this office with a letter, dated August 6, 1939, from the Secretary of the Board of Directors of the Bank), and a letter, dated August 30, 1939, from National Bank Examiner G. N. McLean to Chief National Bank Examiner, Mr. Irwin D. Wright (which letter was transmitted to this office by letter, dated August 31, 1939, from Chief National Bank Examiner Wright). In so far as they may be ascertained from these documents, the facts relative to the Bank's so-called self-insurance plan appear to be as follows:

- "1. At least until a recent date, Transamerica Corporation had a plan whereby all subsidiaries of Transamerica Corporation obtained fidelity insurance for the first \$100,000 by making payments, analogous to premiums, into a common pool. Under that plan the Bank paid so-called premiums to Transamerica General Corporation, a wholly owned subsidiary of Transamerica Corporation which, prior to July 1937, owned more than 99 percent of the stock of the Bank.
- "2. There was no written agreement between the Bank and Transamerica General Corporation with reference to the so-called self-insurance plan.
- "3. Transamerica General Corporation is not authorized by the charter to do a surety or fidelity business.
- "4. Payments by the Bank to Transamerica General Corporation are not shown on the books of the Bank either as an asset due from the Corporation or as reserve funds of the Bank, but were charged to expenses as paid.

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"5. Transamerica General Corporation does not handle the funds received from the Bank as trust funds, but carries them on its ledger as 'Deposit of Self Insurance Funds of the Bank of America N.T. & S.A.'. President Grant of Transamerica General Corporation claims that the funds are considered as actual reserves and this contention is supported by the consolidated statement of Transamerica Corporation (which owns all the stock of Transamerica General Corporation) which shows these funds as Reserves for Taxes and Contingencies.

"6. Transamerica General Corporation added interest to the balance of the payments from the Bank on its books for each year until 1934.

"7. Until the termination of the plan Transamerica General Corporation pays all approved loss claims up to \$100,000 to the Bank. From July 1, 1938 to June 30, 1939 it paid the following:

Holdups	\$18,195.73
Shortages	85,875.86
Forgery losses	22,985.10
	<u>\$127,056.69</u>

H.M.Jr: Who pays the losses?

Foley: The fund pays the losses to the different participants in the fund. They had 127 thousand losses in that twelve months.

"8. At least in so far as the Bank is concerned, the plan of making payments for self-insurance to Transamerica General Corporation appears to have been discontinued. The last payment, in the amount of \$327,812.89, was made on July 20, 1938 and covered the premium due to June 30, 1939. The current premium on the \$100,000 self-insurance, in the amount of \$324,725.31, has been set up on the Bank's books, as of August 8, 1939, under the heading 'Reserve for Contingencies Self Insurance'.

"9. Transamerica General Corporation considers itself liable for all losses for one year from the date of cancellation of the arrangement, or until June 30, 1940. It is not contemplated that Transamerica General Corporation will pay to the Bank

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the balance remaining in the so-called reserve fund after that date. From the above quoted excerpt from the report of examination, it appears that the balance, as of March 31, 1939, was \$2,272,659.55.

"The information contained in this letter is being submitted to the Department of Justice for such attention and action as may be deemed appropriate. Should the Department of Justice desire any additional information, it will be furnished upon request."

The letter has been signed by Mr. Delano.

Gaston: When he says there is not contemplated....

H.M.Jr: Can't hear you.

Gaston: What he says there, it is not contemplated that they shall return that reserve until one year after the expiration of this contract, isn't contemplated by whom? Does he mean the Examiner doesn't contemplate they shall return it or that the Bank - Transamerica is contemplating returning that?

Foley: No, I think he means that certainly up until that time, the Transamerica General will not return the money. After that time is a matter of conjecture. I think he feels that they never will return it.

Gaston: But as of this date the Bank is not claiming that money as its asset at all, it is Transamerica's money and they are not preparing to reclaim it at all?

Foley: That is right.

H.M.Jr: What is the significance of your question?

Gaston: Well, the Bank is evidently treating this. I didn't just understand the significance of his statement that it is not contemplated that they should return this money until a year elapsed, but it is quite evident from what Ed tells me that the Bank regards this as an insurance premium and expects Transamerica to keep the money, over two million dollars that they have siphoned into Transamerica.

Foley: And it is just another device to get money out of the Bank into these affiliates.

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Gaston: And apparently there is no record of a contract at all, so this thing may be phony, just a device for siphoning two million dollars into Trans-america.

H.M.Jr: I just want to clear one thing. This telegram that you got from Frank, has he sent a copy of that to the President?

Foley: I don't know, sir. He was quite upset. He wanted to know if we had been called off.

H.M.Jr: The best answer to that would be to send him the telegram. Does he know about this letter?

Foley: No.

Duffield: While you are waiting, Mr. Secretary, that list of offerings is.... Mr. Hanes' office asked that it be sent by the SEC to Archie's office and Hadley told me that they had received no list from the SEC for two or three weeks because there were no offerings contemplated.

H.M.Jr: Well, there is one today.

Duffield: Well, you don't have to register at SEC if you are 100 million dollars, so it may be that this one here today is out from under that.

H.M.Jr: Durez Plastics, one million six.

Duffield: Well, I know Ted Sherman up there in the Chairman's office at the SEC. I will try to find out.

H.M.Jr: See that it gets to Merle Cochran.

Duffield: To Mr. Cochran.

H.M.Jr: To Merle Cochran.

Duffield: It used to come into Mr. Hanes' office, because I used to see them there. Rademacher tells me that they asked that it go to Archie.

(H.M.Jr. places call to Jerome Frank)

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- H.M.Jr: He is at Charlottesville. Is that the National Resources Board?
- Foley: No, it is some sort of an institute of economics. It is sort of like that institute of politics at Williamstown.
- H.M.Jr: Just so it won't interfere with Hanes' office - there is my point. Where is the notice on that? If it goes right into Cochran, he could bring it in every morning when he brings in sales and purchases and securities. We would get it the same way. My thought is, I am going to send a copy of this to Frank - this letter, saying that we are continuing our policy of keeping him informed. "I herewith send you a copy of the letter which the Comptroller has today signed." Then I would like to take it to the President today at 1:00 o'clock, saying that to continue my policy of keeping him informed as to the transactions of the Bank of America, "I herewith submit a copy of a letter today," and I want to put in, "continuing my policy of keeping you informed," see?
- Foley: Yes.
- H.M.Jr: Then also, it would be interesting to see whether this would happen automatically. I called a letter to the attention of the Commissioner of Internal Revenue to see if there is any question of profits, taxes, on this thing.
- Foley: I told Jerry that I hadn't heard anything at all about our being called off or anything of that kind. As a matter of fact, I told him I had in front of me then a letter of criticism that I was reviewing at that time. That is the other letter.
- H.M.Jr: I hope that you took the opportunity to say that since I have been Secretary of the Treasury I have never been called off.
- Foley: I didn't say that.
- H.M.Jr: Well, it is true.
- Foley: Yes.

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- H.M.Jr: Will you make me a couple of copies of this so I can take it to the President if I want to?
- Klotz: Yes.
- Foley: I saw somewhere that the Attorney General was contemplating another trip to the Coast. Bob will be acting if he is not there.
- H.M.Jr: When you go over there, can't you tell him that you hope they will put Rogge on this? Who is Rogge?
- Foley: He is the head of the Criminal Division and this would ordinarily go to him. He is back now from New Orleans. He got a conviction of Smith down there, Weiss, and two or three others. I suppose they will try other cases.
- H.M.Jr: Will you give a copy of these letters to Mrs. Klotz and then they will all be signed before you leave.
- (On phone) Hello. (Telephone conversation with Attorney General Murphy follows:)

See page 335.

September 18, 1939

11:55 a. m.

Present:

Mr. Gaston
Mr. Foley
Mrs. Klotz

HM, Jr: Tell me what you told the Attorney General.

Mr. Foley: I went in and gave him the letter and he read it while I was there, and said, "Ed, how long have you been investigating the Bank of America?" and I said, "The Comptroller's Office makes periodic examinations of the Bank and has been doing it ever since the Comptroller's office was set up."

"Well," he said, "hasn't there been some more interest in the Bank of America lately than there was before, since Diggs and O'Connor were supplanted by Delano?"

"We have, the Secretary has taken a personal interest and we have been more active than we were before that time on the Bank of America."

And he asked me, "How long ago was that? Two or three years ago?"

I said, "No; it was a year and a half, not any longer than that."

He said, "What do you want me to do about this letter?"

"Well, we would like to have John Rogge head of the Criminal Division. We suggest that because he's familiar with the Bank of America. Like to have you people make an investigation and satisfy yourself that these facts based on your own investi-

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gation warrant criminal action and, if you are satisfied, then we would like to have you lay the matter before the Grand Jury and go ahead and convict some of these fellows."

Then he threw me this telegram that Judy had sent to the SEC. He said, "Have you seen this?" I said, "Yes, Mr. Frank sent me a copy of that telegram on Saturday."

"Did that have anything to do with your coming over this morning?"

"None at all."

He said, "It must have had something."

I said, "Nothing to do with it whatsoever. This letter was prepared last week -- early last week. It was sent to the Comptroller, who was out of the city. It was signed by him, returned to our office on Friday. I think the Secretary mentioned to you at Cabinet meeting on Friday that I would be over to see you personally about something on Bank of America."

He said, "Yes."

I said, "It wasn't until Saturday that I heard about this telegram and the Secretary did not know about it until this morning because he wasn't in the office Saturday."

He said, "Well, has this matter ever been presented to us before?"

I said, "The Comptroller and I came over last spring and talked to you about certain matters in connection with Bank of America and our proposed plan of procedure."

He said, "Did you ask us to do anything?"

I said, "No. And this is the first time

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since I have been General Counsel of the Treasury that we have had a bank matter and we thought, under the circumstances, this was the better way to bring it to your attention."

He said, "I prefer to have it come over that way, rather than with a request that I put the matter before the Grand Jury."

I said, "So did I."

Then he called Thurman and checked with Thurman to see if I had been over. Thurman told him I had; that he had no objection to our course of action and, he said, so reported to the A.G. when he returned. He said, "They came to me because I was Acting A.G. It's not my Division. It's inactive status."

He said, "This statement that I -- the President asked me to see Giannini. That's absolutely true. I called him in, talked to him about 15 minutes. He talked about this Jewish plot that was afoot to ruin him, to ruin the second largest bank in the United States, and talked about the whole Cabinet having the President against him," and so forth and said, "The President told me that Henry and Giannini were at sword's points; that Giannini made a fool of himself and he wanted me to look into it while I was out there. What could I do but call him in and talk to him. I assured him all we were trying to do was carry out the law and we were not trying to discriminate against him and weren't trying maliciously to ruin him or his bank."

He said, "I resent this fellow, Judy, making these insinuations." I said, "Judy, General, is not our man. He works for SEC." Then he called Chester Lane and he said, "I have a telegram and letter here from Jerome Frank and Jerome Frank told me to talk to you because he would not be in today. As far as I am concerned, what you do and what the Treasury does in so far as the Bank of America, is up to you and to the Treasury. If there is any delay, there is no one to blame but SEC and the Treasury. I am

not standing in the way. I want you to go ahead and do your duty." Then he looked over at me and smiled.

He said, "There is a matter that I think you ought to know about. J. Edgar Hoover reported to me that this fellow Carr that I sent out to the West Coast to look into the Schenk and other movie tax cases would probably report that there wasn't anything to those tax cases on the criminal side and that the people in the Treasury were aware of that and were already taking steps over there to lay down some publicity campaign to smear the Department of Justice."

I said, "Well, General, I don't know anything about that. He said, 'I don't suppose there is any such thing as that afoot.'" I said, "I don't know of any such thing; never heard of that."

HM, Jr.: But you did!

Mr. Foley: Publicity campaign?

HM, Jr.: No, but you know who I talked to, because you were present.

Mr. Foley: I am talking only about a publicity campaign. He said, "That's what Hoover told me" -- that we were making up a campaign, a publicity campaign against the Attorney General. I told him that wasn't true.

HM, Jr.: But, I mean, you were present -- about Tommie Corcoran and I told Tommie to tell the Attorney General.

Mr. Foley: Yes, but he was talking about a publicity campaign.

HM, Jr.: But he got it from J. Edgar?

Mr. Foley: Got it from J. Edgar that we were going to put out some publicity, which I told him I did not know anything about.

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Mr. Gaston: Why should J. Edgar be reporting to the Attorney General what an Assistant Attorney General is going to report. Carr is Assistant Attorney General.

Mr. Foley: No. He's one of Sam Clark's assistants.

HM, Jr.: Did you tell him about my conversation with Tom Corcoran?

Mr. Foley: No, I did not talk about that.

Then he said to me, "There is some jealousy between your investigators and ours."

And I said, "Well, certainly, General, there always has been. J. Edgar Hoover wants to investigate tax cases and he's doing everything he can to go into the Treasury field and certainly our people feel that's our prerogative and they resent efforts on Hoover's part or his men to investigate matters within their field."

He said, "Well, I guess there is that jealousy and I think tax investigations should stay where they are."

HM, Jr.: Well, I am glad you said that. But you were present

Mr. Foley: ... on the Carr business, but he did not talk to me about there being no case there. He did not discuss that. He was discussing this report on publicity.

I think that's the end. I wanted to say a little more and the telephone rang and he said, "Excuse me" and I left.

He obviously was disturbed. He thought that there was some kind of implication with this telegram and his seeing Giannini and all the rest of it and my being over there this morning, he started out by being suspicious; then got sort of friendly and it ended up he had to get on the telephone.

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HM, Jr.: I told him the same thing. In the first place I have not seen this telegram until today. I wrote him a note at Cabinet and said, "I would have this thing for you early next week. I told you the week before at Cabinet I had a couple of cases coming along and this was one of them." When he first started I thought he was criticizing me. Then he went into this whole business just about the same; told me about the President asking him to do this, only in more detail. Then he said, "About these cases on the West Coast, the Schenck case and the Bioff case I don't think there is anything in the Schenck case. I have had four different people in Justice and they all agree that there is nothing to the Schenck case criminally, but notwithstanding that I am going to present it to the Grand Jury."

Mr. Foley: He did not tell me that.

HM, Jr.: It was on the tip of my tongue -- I just did not get to it -- to say, "Well, I see Tommie Corcoran is a fast messenger because he has gotten this message to you."

Mr. Foley: Well, I did not refer to that because I did not think he was talking about that.

HM, Jr.: The only mistake I have made in all this, and you may say I haven't, that when I want to get a message to him I do it through Tommie Corcoran. I did talk about Carr and it seemed strange that he should get the impression

Mr. Foley: He put it on J. Edgar. Maybe he had it from both sources. He did not mention Tommie to me at all.

HM, Jr.: Will you tell Tommie about this?

Mr. Foley: Sure! I will be glad to.

HM, Jr.: That he got it from J. Edgar Hoover. Or would you let the matter go?

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Mr. Foley: What he was putting on J. Edgar was that we were laying plans over here to put out a publicity campaign to smear him because he did not present these cases, after we investigated them.

HM, Jr.: Should I call him back and tell him no?

Mr. Foley: I told him I did not know of any such thing. Maybe you want to reassure him that there is no such thing afoot. He said he hoped there wasn't and I said as far as I knew it wasn't so.

HM, Jr.: Do you think I ought to call him back and tell him that?

Mr. Foley: Yes, I think it might be a good idea. He asked me to give you that message.

One other thing I said, in connection with the movie cases our people feel that there is a case there. "Now your people, Jim Carr particularly, did not think there was a case Annenberg either. And when you sent it out to Campbell, Campbell presented it to the Grand Jury and there was still some doubt in Morris' mind, and I think everybody feels the Treasury was correct in saying there was a case on Annenberg." And he said, "Absolutely correct. And I have had newspaper editors, lawyers I knew in Detroit, come to me to talk about it and they did everything they could to keep me from going ahead with that case and I daresay if somebody else had been in this chair, the case would not have been presented to the Grand Jury and I did not succumb to the influence and I think my record and people know if there is anything against anybody, I don't care who it is, I am going to carry out my duty and bring the facts before the proper authorities, but the Treasury, and SEC particularly, on this Giannini case to be investigating and investigating"

I said, "General, you have access to the courts and we don't have access to the courts. Maybe that's why you get better results." "Well," he said, "other

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people had access to the Courts." I said, "Do you mean in other Administrations? Yes, that's perfectly true." I think he meant Cummings.

HM, Jr: It's amazing that the Republicans have not said why didn't Cummings do this, that or the other thing?

Mr. Foley: Well, he's pretty sensitive about that telegram.

(At this point the Secretary spoke to the Attorney General and record of their conversation follows this page.) *filed after this transcript instead of following here*

September 18, 1939
11:24 a.m.

HMJr: Hello.

Frank
Murphy: Henry?

HMJr: Yes, Frank.

M: I've just talked with Ed Foley.

HMJr: Yeah.

M: I expect there's some connection between Ed Foley's call here this morning with your recommendation and the telegram that the S.E.C. got which it reported to you the other day.

HMJr: No, there's no connection.

M: Well, in any event.....

HMJr: No, the two things have no connection.

M: In any event the.....

HMJr: I mean, there's no connection as far as my office is concerned because this thing was started -- oh, let me think a minute -- well, I think it was started before I went to Europe.

M: Yeah. The -- ah.....

HMJr: I want -- I want that very sure in your mind. I started that before I went to Europe.

M: Well they come here simultaneously.....

HMJr: Yes.

M:and I learned of -- before it reached me.....

HMJr: Yes.

M:through other sources, of Judy's wire to the Securities and Exchange Commission.

HMJr: Yes.

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M: And that it had been handed to you.

HMJr: I -- I got -- well, I got it this morning, but it was handed to me on Saturday.

M: Yeah. Well now, Henry.....

HMJr: But I mean, maybe I'm awful dumb -- from our standpoint this thing has been in preparation for at least six weeks. Now, do you think that somebody is trying to stop me, is that the idea?

M: Oh no, I don't at all.

HMJr: Oh! Well then I don't get you.

M: No, I don't -- I certainly don't think that! I think that somebody over there is nervous about me.

HMJr: About who?

M: About me.

HMJr: About you?

M: Yes.

HMJr: Oh, no.

M: Because.....

HMJr: Oh, that's what you meant?

M:it says the Attorney General had called on Giannini in California about two months ago and advised him that the President had asked Murphy to advise Giannini that the President was anxious to have some solution brought about.....

HMJr: Well, I -- I didn't get it -- I thought that you thought that I had just sent it over as an answer to the telegram.

M: No.

HMJr: No, I.....

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- M: No, I don't.....
- HMJr: So we understand each other perfectly. I saw the telegram today for the first time.
- M: Yeah.
- HMJr: I -- I spoke to you at Cabinet Friday.
- M: Yes.
- HMJr: I had no knowledge of the telegram and told you that this was coming. You remember I wrote a piece in longhand?
- M: Yes.
- HMJr: So I didn't know anything about the telegram.
- M: Well in any event, Henry, as far as your letter of this morning is concerned, I've directed that the Criminal Division -- that they call a grand jury and indict if the facts warrant it. You know, we don't waste any time on these things over here.
- HMJr: Grand.
- M: We go right ahead if we've got a case. Now, in regard to the S.E.C., all they've got to do is go ahead. We've got -- there's never been anything in this office until this morning. We couldn't negotiate a settlement of anything.
- HMJr: Well, now I'm beginning to understand, but just remember for your own sake that I talked to you about this Friday at Cabinet.
- M: Yes.
- HMJr: And as a matter of fact, I talked to you -- at the Cabinet before I said to you, "Frank, I've got a case for you coming along."
- M: Yes.
- HMJr: And you said, "What is it"? And I said, "It's not quite ready but it will be."

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M: Yes.

HMJr: Well this is what I had in mind.

M: Well, we'll show you how these things are handled with dispatch here.

HMJr: So -- well, I thought that.....

M: I'll have it cleaned up so quickly.

HMJr: Yeah.

M: But the -- some administrator out there seems to think that the -- that I've been trying to negotiate a piece in this thing.

HMJr: Oh hell.

M: Well now, exactly what happened was this, Henry: Before I went to the coast we got -- I was visiting with the President about the whole Californian situation.

HMJr: Yes.

M: All of our cases that are out there -- and in the course of that visit he thought that I ought to have a talk with Giannini.

HMJr: I see.

M: And that in that talk to make it very clear to Giannini if there's violation of the law we'd go straight ahead with them.

HMJr: Oh.

M: That he'd -- if there was anything that was corrupt or payment of money to people or violation of the laws.....

HMJr: Oh.

M:that nothing in the world would stop a hit which is my view on those things.

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HMJr: That was the President's suggestion?

M: Yes.

HMJr: I see.

M: And he said -- also the President said, "Then on anything else he ought to try to come within the law and harmonize his actions with the S.E.C."

HMJr: I see.

M: In other words, the President never said anything about it, nor did I, but what both the Treasury and the S.E.C. could approve.

HMJr: Oh. Well of course I had never -- this was the first I've known that you had any conversation -- conversations with him.

M: We.....

HMJr: With Giannini.

M: I -- and so when I was on the coast I had a visit with him.

HMJr: I see.

M: As a result of this talk with the President.

HMJr: Uh-huh.

M: And the conversation is just about as I'm telling you.

HMJr: I see.

M: He started in by telling me that the President of the United States was out to destroy you and the Treasury Department and everybody in Washington, and he said, "I'm going to fight!"

HMJr: Yeah.

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M: He's like a mad bull in a china shop.

HMJr: Yeah.

M: And I went on to explain to him that it waen't anything of the kind.

HMJr: Yeah.

M: That we'd have to go ahead where there were violations of the law and for him to see Rogge and see the S.E.C. officials and come entirely within their directions about things.

HMJr: Yes.

M: I never made any suggestion about negotiating anything and can't negotiate anything and wouldn't.

HMJr: Well, I suppose that's the way this -- the basis for that telegram.

M: And so -- well what's happened, no doubt, as the result of his visit with me.....

HMJr: Yes.

M:is Giannini, who is quite a boastful fellow....

HMJr: Yeah.

M:goes around and talks about what's going to be done for him down here. Well about the only thing that will be done for him here will be what was done for Moe Annenberg probably.

HMJr: Yeah. Well, we've given you everything we've got and I thought it was important enough to call you, and I'm awfully glad you called me back because this gives me a -- a new light on the picture. And if you would -- will take interest in it personally, I'm not going to worry.

M: Say, I'll do it, Henry, and -- and listen, you'll see some action on it, see?

HMJr: Swell! I'm so glad you called me because.....

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M: I'll -- I'll show him that he -- I mean, if our facts are right.....

HMJr: Yeah.

M:that his influence and his -- I'm going to fight talk how far it will get him here.

HMJr: Well I've made this statement in my own office, that I didn't know whether Giannini was bigger than the United States Government or not.

M: Well he -- he thinks he is.

HMJr: He thinks he is.

M: Well so did Moe Annenberg.

HMJr: Right. And this is a good time to find out.

M: Yeah. With a lot of those fellows.

HMJr: Right.

M: Say, what's this about Jimmy Roosevelt resigning out there?

HMJr: Well.....

M: Did he resign?

HMJr: Not that I know of.

M: I noticed it in this.....

HMJr: Yeah - telegram.

M:telegram. Announcement was made on radio yesterday that Roosevelt had resigned his position with Metro Goldwyn Mayer.

HMJr: I didn't know.

M: Uh-huh.

HMJr: But you've got everything that I know, and I talked to Jerome Frank this morning and asked him -- I'm

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sending him, Jerome Frank, a copy of the letter I sent you.

M: Yeah.

HMJr: So that he can have it.

M: Yeah.

HMJr: And.....

M: Well I've written -- dictated a memorandum already to Rogge and I've got the thing in motion.

HMJr: Do you think Rogge can handle this?

M: I think it would be a good thing to have him handle it.

HMJr: I think he'd be perfect, because after all Rogge.....

M: He knows it.

HMJr:handled the thing for S.E.C. He'd be a natural.

M: Yeah.

HMJr: He'd be a natural.

M: Yeah. I think that's the best -- the most effective way to handle it and get results.

HMJr: Fine.

M: Rogge's splendid. Now, what happened on the movie cases.....

HMJr: Yeah.

M: Hardly anyone in this office -- well no one as a matter of fact, who examined those cases thought much of them excepting the By-off case.....

HMJr: Yeah.

M:as criminal cases.

- 9 -

HMJr: I see.

M: But regardless of that, I directed that it go to a grand jury.....

HMJr: I see.

M:in order that the matter be explored. It's the way -- I think you've just got to hit these things with both fists and then see if something won't come out of it.

HMJr: I see.

M: And that's the status of it.

HMJr: Good.

M: Despite the fact that four people who made studies of it in this office recommended that the -- that merger case is not a criminal case.....

HMJr: I see.

M:I have directed that it go to a grand jury.

HMJr: I didn't know that.

M: And -- and without delay. So we'll find out what it amounts to when we get all the facts in.

HMJr: Fine, Frank.

M: All right, Henry.

HMJr: Thank you so much.

M: Goodbye.

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HM, Jr: Well, I wish for my sake and your sake that you would talk to Tom Corcoran and Cohen because I hate to think that, well, that they might have talked to J. Edgar Hoover.

Mr. Foley: No! No!

Mr. Gaston: J. Edgar Hoover read Irey's article in the Saturday Evening Post and of course he's always angry when somebody else gets publicity.

HM, Jr: This part of the conversation, which you just heard, and the part about J. Edgar Hoover, I wish you would tell him. I would like to feel that I can pull these fellows in and talk to them as I told them that day "as members of the Treasury family".

Mr. Foley: Yes, you can. They have no traffic with J. Edgar.

HM, Jr: Well, you repeat this to them just the way it happened. I don't want to think the Attorney General is using J. Edgar Hoover as a red herring. You notice he did not say not to tell Tom Corcoran anything; to come and tell him direct.

Mr. Foley: He said that's all right.

HM, Jr: On top of this, does your letter go? Of course it goes.

Mr. Foley: Sure! I think we got him straightened out. I would like to have had a few more minutes and leave it on a friendly basis.

HM, Jr: On your letter, is there anybody you want who would present the case?

Mr. Foley: I wanted to present this to you. That's going to be a very, very important proceeding and I think that we have to get the very best person available. I have asked for suggestions from Phil Wenchel and from other people as to any one of our 450 lawyers who might be qualified to make the presentation. Phil Wenchel feels that Ben Leming, who

-10-

handled the Du Pont tax case, is the best man he has now.

HM, Jr.: (Handling a dahlia in vase on his desk.) You know how he would describe this flower? "A gray with slight purple tinge," instead of a beautiful, gorgeously colored, bursting flower." No sense of drama!

Mr. Foley: He's a good digger. He has had experience with complicated paper transactions, complicated figure transactions, through holding companies and affiliates. I was turning over in my mind this morning, suggesting that -- I don't know whether it's possible to do it or not -- we ask the Attorney General for the loan of John Rogge to do it.

HM, Jr.: Give him the whole picture.

Mr. Foley: He has the background from SEC and if he is going to do anything on the criminal side, digging on this thing, presentation of it to trial examiner, for three or four months, would give him an insight. The proceeding to remove the directors. Section 30 case. If the A.G. would release him, John Rogge would be the best man. He's the best trial lawyer in the Government.

HM, Jr.: How about Robert Jackson?

Mr. Foley: He would be superb, but you could not get him because he has all the Supreme Court cases.

HM, Jr.: By God! I brought him to Washington and they took him away from me for this, that or the other thing! Why can't I have Robert Jackson? By God! I am going to have him!

Mr. Foley: I think it is important enough from our standpoint

HM, Jr.: But if you asked Robert Jackson and he turned it down, Rogge would not feel so complimented and would turn it down.

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Mr. Foley: I think so.

Mr. Gaston: Unless you had a confidential conversation with Frank and

HM, Jr: No, I think Rogge would be best.

Mr. Foley: He's had background. He's been through this thing for a year or more and we would give him all the help. We have five or six people who know this thing pretty well and the Comptroller would have to make the examinations available.

HM, Jr: Well, we are all right. Thank God for Frank Murphy instead of Homer Cummings! I would like in my own mind to kind of clear up Corcoran and Cohen. Strange thing we should have them for lunch Thursday and talk about Carr and then have it J. Edgar Hoover.

Mr. Foley: I have not seen Foley since then. I saw Ben on Friday afternoon. We did not discuss anything that happened over here, but I haven't any doubt that Tom saw the A.G. that night and probably told him what you said and he probably got sore and he had this conversation with J. Edgar and he put the two things together.

Mr. Gaston: He ought to learn that J. Edgar Hoover is a very dangerous man. He's poison and Murphy has been too close to him.

oOo-oOo

September 18, 1939
12:07 p.m.

HMJr: Hello.
Operator: Yes, sir.
HMJr: The Attorney General, please.
O: Right.

12:09 p.m.

HMJr: Hello.
O: The Attorney General.
HMJr: Hello.
Frank
Murphy: Hello, Henry.

HMJr: Hello, Frank. Ed Foley is sitting here with me and he told me about his conversation with you, and one thing I want to get straight with you as to what -- he said that J. Edgar Hoover had reported that I was -- over at the Treasury was going to do something -- campaign about smearing your department because you didn't go after the Schenck case. Well, in the first place, you'd be the last person in Washington I ever would want to smear; and in the second place, I've never told a newspaper man anything against a Presidential appointee.

M: Well, I believe that entirely.
HMJr: And I -- I want you to know that.
M: And.....

HMJr: Now I've got every reason to be entirely satisfied -- a hundred per cent satisfied the way you're handling Treasury cases. Now what I did do last week, and possibly I was in error in that, and if I am I wish you'd tell me so - I had Tommy Corcoran and Cohen for lunch - and Foley, the four of us.

- 2 -

And we were talking about it, and I said how pleased I was about the Annenberg case but that I was worried about the Schenck case. And -- then I told them about this fellow Carr and I asked them to get that word to you.

M: Um-hm.

HMJr: Now, they're the only persons -- people that I've talked to outside of my official Treasury family. But I did ask Corcoran and Cohen to get that word to you direct.

M: Yes, well that's all right.

HMJr: Now, but.....

M: Perfectly all right.

HMJr: But I did tell them, knowing how close they are to you.....

M: Yeah.

HMJr:that I was worried about this fellow Carr.

M: Yes.

HMJr: But outside of that, nobody.

M: Yeah. Well I am going to watch that very carefully.

HMJr: But the last thing in the world is if I've ever got any worries and -- I'm going to walk over and tell you.

M: Yeah. Henry.....

HMJr: And I hope you'll do the same for me.

M:here's the point. I have wanted the -- you, as Secretary of the Treasury, to feel that there's a fresh and energetic movement on over here and that all the political grips are thrown off.

HMJr: Well, Frank.....

M: And.....

- 3 -

- HMJr:my God, I sent you a telegram from Europe congratulating you on the Annenberg case.
- M: On Annenberg -- got every friend I've known; he did everything in the world; if wealth or influence or security or any of those things could have helped a man; he couldn't get a day's delay.
- HMJr: Well, you've been like a breath.....
- M: And.....
- HMJr:of fresh breeze off the ocean.
- M: And so it will be with the Giannini case. Just let me get my teeth into this.
- HMJr: Right.
- M: And I'll show you how to get results in that case.
- HMJr: 'Attaboy!
- M: And.....
- HMJr: But don't you ever let anybody tell you that I'm telling the newspaper men anything critical about....
- M: Well, some report had come to Mr. Hoover.....
- HMJr: Well I don't know where.....
- M:but where he got it I don't know. But some report had come that Carr was going to make a recommendation to me, and then there was a plan on the Treasury fellows to organize a campaign against the Department of Justice as a result of it. Well now, I don't -- Sam Clark is handling those cases above Carr, and Clark and the others have told me -- four of them that worked on the case, that they didn't think much of the anti -- or of the tax case growing out of that merger. See?
- HMJr: I see.
- M: But I'm the one, even despite their recommendations, that forces it to a grand jury. You see?

- 4 -

HMJr: I see.

M: I wanted to go in there and get everything cleaned up on it. Now, what Carr is doing out there on the coast is unknown to me. I don't know - he hasn't made a report yet.

HMJr: Well, when I saw.....

M: He has to get past my desk with his report.

HMJr: Well, when I saw Corcoran and Cohen, I said, "I'm talking about official Treasury business."

M: Yes.

HMJr: "But I do wish you'd bring this to the Attorney General's attention." That's the only people/I've spoken to who are not on our payroll..... that

M: Yeah.

HMJr:about the Schenck case.

M: Yeah.

HMJr: I haven't mentioned it to another living soul.

M: And as far as the Schenck case is concerned, Henry, I'll press it right through if there's anything to it, you know.

HMJr: Well, that's up to you.

M: Or if we can get our hands on anything, I'll go the limit on it.

HMJr: O. K.

M: All right, Henry.

HMJr: Goodbye.

M: Thanks for calling me. Hello.....

HMJr: Hello.

- 5 -

M: Henry,.....

HMJr: Yes.

M: And Ed and everybody ought to be notified that the answer to all influence about such things as the Giannini case is just to step on the gas a little bit more.

HMJr: Right.

M: And show him that the Government is stronger than he and Moe Annenberg, or anybody like them.

HMJr: That's right.

M: That's just -- every time they try that on me I just go that much stronger.

HMJr: You're right.

M: That's the way to answer.

HMJr: O. K.

M: All right.

HMJr: Thank you.

M: Goodbye.

September 19, 1939

11:45 am

Present:

Mr. Gaston
Mr. Foley
Mrs. Klotz

Mr. Foley: The Attorney General called me this morning; started in talking about the Judy telegram all over again.

HM, Jr: He wants him "judi-cated"?

(Hearty laughter.)

Mr. Foley: He says he's checking up Mr. Judy and he finds that this fellow that Judy quotes in his telegram as being some kind of a financial editor out there, who reported the rumors that are going around the Coast, is contacting everybody out on the West Coast and is telling all the columnists, editors and all the papers out there that the A.G. had this conversation with Giannini and there isn't anything to these rumors that are being spread that the A. G. is to fix the difficulties up with Giannini, and so forth, and he does not like it a bit. He thinks it's outrageous.

HM, Jr: That's where the smear campaign

Mr. Foley: Yes, that's the smear campaign. I said, "I don't know anything about it. I was quite taken aback when I went over in the regular course of our handling of this thing and you started out the way you did. I was completely innocent and entirely oblivious of any of the background. I had heard only from Jerry Frank on Saturday and I did not have both telegrams. I had only the top telegram." He had both. The other telegram talked about movement

-2-

in stock, and so on. He wanted me to know what he was doing and he thinks the SEC isn't being fair with him. He thinks there is a nigger in the wood pile. He's very jealous of his reputation. His record. Everybody knows that he can't be reached and if there is anything wrong he's going right to the bottom of it. That he can't be influenced in any way by Mr. Giannini or anybody else.

HM, Jr: Tough guy!

Mr. Foley: Tough guy. I told him what I wanted was his help. Rogge was the fellow familiar with this Giannini thing; that we were proposing to proceed under Section 30 and had a letter of warning prepared and we would like John Rogge to get the letter of criticisms for two reasons: first, we wanted John's help and suggestions and advice; second, we might want to ask him to lend us John Rogge to present the case to the Fed, in which case John should see the letter before it went out. He said, "Fine; wanted to help if he could," but send the letter to him so he could talk to Rogge.

HM, Jr: Better yet.

Mr. Foley: (With letter addressed to Rogge.) I did not prepare this for your signature. I prepared it for mine. I wanted you to see it before it goes out and if you would rather sign it

HM, Jr: I would want to sign it.

Mr. Foley: All right. I will have it done for your signature.

HM, Jr: Two separate birdies told me a story. One, that the reason Eccles was not here last week, he was looking after the Bank of America thing in Utah, and the other thing is that Eccles has it all fixed up that he is to be the next President of the Bank of America.

Mr. Gaston: Hearing under Section 30 would interfere with that.

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HM, Jr: I can't help but get a kick out of Mr. Frank Murphy's -- I think Mr. Murphy would have saved himself a little trouble if, after he went out on the West Coast to investigate what I was doing in regard to Bank of America he would have done me the courtesy of telling me so and if he had also informed SEC. No matter who told him to go, if he had informed the SEC and Treasury this thing would never have come up and I think he must have a little bit of guilty conscience and that's what he's so burned up about. If I was asked to do a job with two agencies interested, either before or after I would tell them so. I don't see there is any nigger in the wood pile other than SEC is out on the end of a limb and they don't want to get sawed off by the Attorney General.

Mr. Foley: Do you want to see if this is all right. (Reading letter with penciled corrections, revised for Secretary's signature.)

HM, Jr: Just before that goes, I have told Johnnie Hanes that you wrote the thing, so he does not think I am "unduly rushing him" I thought that this might go from you to him for initialing.

Mr. Gaston: May I suggest "I would like to have your advice and Mr. Rogge's".

Mr. Foley: That's right.

HM, Jr: But just so Johnnie does not think I am "rushing him unduly", go to him for his initials and then to me.

And this is also in the room. Johnnie tells me today that Jesse Jones told him, sometime ago, that the President had asked Jesse Jones to see if he could not straighten out this Giannini matter. And that's why Jones interested himself so much. And Johnnie said, "You told me that." I said, "No, Johnnie. I never told you that. First time I ever heard it." I believe it.

Mr. Gaston: I believe that Jesse Jones told

-4-

Johnnie.

HM, Jr: Let it come that way and put an expedite on it.

oOo-oOo

*original
draft*

My dear Mr. Attorney General:

In accordance with our telephone conversation, I am enclosing the proposed letter of warning to the Board of Directors of the Bank of America National Trust and Savings Association pursuant to Section 30 of the Banking Act of 1933, which we would like to have John Rogge look over and criticize before it goes out. As you know, John Rogge is thoroughly familiar with the Giannini situation from his SEC experience.

Our purpose in seeking your cooperation and help is twofold; (1) we want the benefit of Rogge's advice now; and (2) later on we may want to ask you to lend us Rogge to present our case to the Federal Reserve Board.

In the face of our warning a 19.2 per cent dividend was declared on September 12, 1939 and is payable on October 1, 1939. We would like to get the letter of warning off in a reasonable time before the dividend is actually paid.

Needless to say — this is highly confidential.

Sincerely yours,

The Honorable

The Attorney General

Enclosure

EHP:s Typed 9/19/39

September 19, 1939

My dear Mr. Attorney General:

In accordance with Mr. Foley's telephone conversation, I am enclosing the proposed letter of warning to the Board of Directors of the Bank of America National Trust and Savings Association pursuant to Section 30 of the Banking Act of 1933, which I would like to have you and John Rogge look over and criticize before it goes out. As you know, John Rogge is thoroughly familiar with the Giannini situation from his SEC experience.

My purpose in seeking your cooperation and help is twofold: (1) I want the benefit of your and Rogge's advice now; and (2) later on I may want to ask you to lead me Rogge to present our case to the Federal Reserve Board.

In the face of the Comptroller's warning a 19.2 per cent dividend was declared on September 12, 1939, payable on September 30, 1939. I would like to get the letter of warning off a reasonable time before the dividend is actually paid.

Needless to say — this is highly confidential.

Sincerely yours,

(Signed) H. Mothenthau, Jr.

The Honorable

The Attorney General

Sent "Personal & Confidential"
by special messenger at 1:00 p.m.

Enclosure

EMF's Typed 9/19/39

Initialed E. H. T. Jr. & J. W. H.

G
O
P
Y

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

Gentlemen:

In my letter to you, dated July 31, 1939, which reviewed some of the more important phases of your bank's problems as revealed by the report of examination, completed July 31, 1939, I advised you that until losses set up by the examiner in that report were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice. I further warned each director and officer of the Bank, pursuant to the provisions of section 50 of the Banking Act of 1933, 48 Stat. 126 (U.S.C. title 12, sec. 77), to discontinue such unsafe and unsound banking practice, as well as other unsafe or unsound practices and violations of law referred to in that letter and in the reports of examination of the Bank.

On September 12, 1939, in direct violation of my warning you declared a dividend at the rate of 19.2 per cent, without writing off all losses set up by the examiner in the report of examination, completed July 31, 1939, and without establishing adequate re-

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served. The declaration of that dividend constituted the continuance of an unsafe and unsound practice after you had been duly warned pursuant to section 50 of the Banking Act of 1933 to discontinue such practice.

In view of the apparent futility of the measures employed by this office in our efforts to bring about a real and adequate correction of serious unsafe or unsound banking practices and violations of law engaged in by your bank, we are constrained again to direct the attention of each member of your Board of Directors and of each officer of your bank to the provisions of section 50 of the Banking Act of 1933, 48 Stat. 105 (U.S.C. title 12, sec. 77) and to warn again against the continuation of violations of law and the continuation of practices which are unsafe or unsound.

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

Transactions described in this letter, taken by themselves,

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

Dividend Policy and Undercapitalization

Since 1933 the dividend rate has increased steadily from 6 per cent to 19.3 per cent. It is manifestly an unsafe or unsound practice to disburse in the form of dividends a major portion of the Bank's earnings, while the Bank carries a dangerous accumulation of real estate and other fixed assets, a large and unwarranted concentration in the obligations of Transamerica and its subsidiaries, and has total criticized assets, as shown by the report of examination, completed on July 31, 1939, of more than \$150,000,000, an amount considerably in excess of the total capital structure of the Bank as shown by its books. It is noted from the same report of examination that during the year 1939 the Bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and other securities, were \$8,889,978, while during that year \$9,600,000 was paid out in dividends. Thus, a large part of the

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

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

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

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

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

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

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

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

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

Real Estate Concentration

The report of examination of the Bank, completed on July 21, 1939, discloses an unwarranted concentration of the Bank's assets in real estate, aggregating \$94,001,556.41, a sum in excess of the adjusted capital structure of the Bank. This concentration includes real estate shown on the Bank's books as "banking premises" in the amount of \$26,786,496.80 of which, properties having a book value of \$1,196,895.20 are not used as banking premises and have been carried by the Bank in excess of eleven years. The real estate concentration also includes contracts with California Lands, Inc., and Capital Company in the amount of \$34,934,723.80, since the only collateral pledged as security for the fulfillment of these contracts is the real estate which is purported to be sold thereunder;

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

Contracts with California Lands Inc. and Capital Company

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

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

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of the Bank and its depositors.

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

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real estate sold by them.

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

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

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

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

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

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

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

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

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

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

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

Transamerica Corporation Large Line

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

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

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

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

Inter-America Corporation Contracts.

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

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

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

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

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

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

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

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

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

Second. On February 1, 1933, and January 2, 1934, the Bank entered into contracts with wholly owned subsidiaries of Transamerica Corporation, whereby the Bank sold all of its charged off assets, including those to be charged off up to July 1, 1937, for a total consideration of \$300,000. Subsequent to those sales, some of the charged off assets were liquidated and the proceeds thereof in the amount of \$1,486,185 were credited upon the Inter-America Corporation contracts. On July 14, 1937, the Bank repurchased from the Capital Company and California Lands, Inc. (successors to the original contracting subsidiaries) the residue of such charged off assets for a consideration of \$65,500,000, under a so-called guaranty by Transamerica Corporation that the Bank would obtain through liquidation of these assets the amount of the purchase price. In addition, the contract provided that Transamerica Corporation would share equally with the Bank in all recoveries over and above \$65,500,000 until the year 1947. Of the purchase price paid by the Bank, \$5,844,287 was made available to Transamerica Corporation through a series of inter-company book entries and eventually was credited upon the obligations of Trans-

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

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

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

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

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

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

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

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

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

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

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

"Self Insurance"

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

Transamerica General Corporation is a wholly-owned subsidiary of Transamerica Corporation, and it does not appear that the Corporation has any authority to do an insurance business. This practice of depositing with or paying insurance premiums to Transamerica General Corporation constitutes an unsafe and unsound banking practice. If it has not already been done, the practice should be discontinued and the remaining balance of the premiums paid to Transamerica General Corporation, which, according to the examiner, totalled \$2,272,699.55 as of March 31, 1939, should be returned to the Bank. Failure of the Bank to discontinue making such payments to Transamerica General Corporation or failure to take immediate

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

Violations of law.

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

Section 5202 of the Revised Statutes, as amended (U.S.C. title 12, sec. 52). This section has been violated by excessive "obligations" of Transamerica Corporation, and its subsidiaries, to the Bank. (Report of examination, completed July 21, 1939, page 8, inserts 1 seq.)

Section 5146 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24). This section has been violated by the acquisition by the Bank of 56,600 shares of stock of the National City Bank of New York from Transamerica Corporation, on July 14, 1937, 45,200 shares

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

Section 5157 of the Revised Statutes, as amended (U.S.C. title 12, Sec. 59). This section has been violated in the following transactions:

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

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

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

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

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

Section 24 of the Federal Reserve Act, as amended (U.S.C. title 12, Sec. 57). The report of examination, completed on July 21, 1939, at page 9, insert 13, contains a recapitulation showing a total of \$16,255,229.65 real estate loans which are in violation of the requirements of this section. You are further advised that the loan to Capital Company for the construction of a department store (Ibid., page 6, insert 10) which, according to your letter of August 6, 1939, has been increased to \$1,450,000, is a violation of this section.

In the course of this letter certain practices indulged in by the Bank have been characterized as unsafe or unsound, such as the practice of unduly favoring Transamerica Corporation or its subsidiaries or allied interests, without due regard for the interests of the Bank and its depositors and other creditors. In this connection each director and each officer of the Bank is hereby warned, pursuant to the provisions of section 36 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77), to discontinue all practices which may unduly favor Transamerica Corporation or its subsidiaries or allied interest, whether by way of paying unjustifiable dividends before having made appropriate provisions for the elimination of criticized assets and the establishment of an adequate sound capital position, or by way of

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

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

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

Very truly yours,

Freston Delano
Comptroller of the Currency

Office typed 9.16.59

September 20, 1939

To: MR. HANES

From: MR. UPHAM

The New York Times of today carries a news item headed, "Transamerica Buys 2 Banks in Arizona". The article is attached.

The following excerpt is taken from a letter dated August 18, 1937, from one of our national bank examiners:

" * * Transamerica Corporation has long been desirous of entering the banking field of the State of Arizona as an integral part of its district wide branch bank program. After exhausting every possible effort to purchase stock control of the Valley National Bank of Phoenix, which operates eighteen branches, the corporation recently turned its attention to and succeeded in purchasing a two-thirds stock control of the competing subject banks, as well as the Phoenix Savings Bank and Trust Company, an affiliate of the Phoenix National Bank, through identical stock ownership."

The examiner in his report of examination of the First National Bank of Arizona as of June 2, 1937 made the following statement:

"Since the last examination (December 18, 1936) the control of this bank was acquired by an agent of the Transamerica Corporation. * * *"

In his report of examination of the Phoenix National Bank as of June 3, 1937, the examiner stated:

"Since the date of the last examination (December 17, 1936) the control of this bank has passed to Transamerica Corporation, holding company affiliate of the Bank of America National Trust and Savings Association, San Francisco, California, through the purchase by G.M. McClerkin of 13,605 of the 20,000 outstanding shares. Public announcement by Transamerica Corporation has been made regarding its purchase of this interest. * * Similar control has also been acquired of the affiliated Phoenix Savings Bank and Trust Company by Transamerica Corporation. In its entry into the banking field in Arizona, Transamerica Corporation has also acquired control of the First National Bank in Arizona, Phoenix, Arizona."

On October 30, 1937 the First National Bank of Arizona at Phoenix and the Phoenix National Bank were consolidated under the charter of the First National Bank of Arizona at Phoenix, and under the corporate title of First National Bank of Arizona, Phoenix, with a capital stock of \$550,000. Of the 55,000 shares outstanding, 39,110 shares were held as

follows:

G.M. McClerkin	10,110 shares
Occidental Life Insurance Company	14,500 "
Pacific Coast Mortgage Company	14,500 "

G.M. McClerkin, Vice President of the Bank of America National Trust and Savings Association, from all information available possesses very limited responsibilities. Occidental Life Insurance Company, an affiliate of Transamerica Corporation, is one of the largest corporations of its type on the Pacific Coast. Pacific Coast Mortgage Company, while not technically an affiliate of Transamerica Corporation, is unquestionably under the domination of the latter. The financial responsibility of Pacific Coast Mortgage Company as an independent unit is unknown. The balance of the outstanding stock is well distributed among local residents.

The list of shareholders of this bank as of July 3, 1939 showed the shareholdings of Transamerica Corporation and interests close to Transamerica Corporation, as follows:

Transamerica Corporation	6,145 shares
Occidental Life Insurance Company	14,500 "
Pacific Coast Mortgage Company	14,500 "
Western States Corporation	<u>5,405</u> "
	40,550

It would appear that the stock acquired by Transamerica Corporation, referred to in the newspaper article, was that of the Pacific Coast Mortgage Company (14,500 shares), and 1,320 shares acquired from other sources.

lym

NEW YORK TIMES. - September 20, 1939

TRANSAMERICA BUYS 2 BANKS IN ARIZONA

Report to SEC Also Shows Control of an Insurance Company

The Transamerica Corporation has reported to the Securities and Exchange Commission that it has acquired control of two banks and an insurance agency in Phoenix, Ariz. Although it controls banks in California, Nevada and Oregon, these are the first it has controlled in Arizona.

On Aug. 3 and 5, it reported, it acquired 15,820 shares of the stock of the First National Bank of Arizona in Phoenix. These gave it 31,960 shares, and, with the 14,500 owned by a subsidiary, the Occidental Life Insurance Company,

64.30 per cent control of the bank's 50,000 shares.

On the same dates it bought a like number of shares in the Phoenix Savings Bank and Trust Company. Other details of the deal were the same as those for the First National Bank. The Transamerica 64.30 per cent of the 50,000 shares. Phoenix Savings Bank, however, owned all 5,000 shares of stock, \$1 par value, in the National Insurance Agency and this also became a Transamerica subsidiary.