

PSF: GIANNINI CASE

Subject File

PSF: Giannini Case

151

Box ~~111~~

The following letters are attached: 1939

Memo to Jim Rowe-From Jerome Frank-Oct 13th

Telegram from Howard Judy-S.E.C. Calif
to Robert E. Kline Jr. S.E.C. Wash, D.C.

And memo of Sept 18, 1939-to Jim Rowe from
the President

The President told G.G.T. to tell J. Rowe
to "forget it." (Refer to Paragraph 4)

file
Confidential

THE WHITE HOUSE
WASHINGTON

~~Jerome Frank~~
Ser - 2

PSF

October 13, 1939 Giannini
Case

Memorandum For the President:

Transamerica

After you talked to Jimmy Roosevelt about this matter I talked to him and later to Jerome Frank. I believe I have inadvertently done Mr. Frank an injustice while doing a poor reporting job to you.

Whatever his reason for sending the attached wire from the San Francisco Regional Administrator to you, (1) I thought he wanted you to see the wire and (2) I got a mistaken impression he wanted to know whether he should proceed with the case exactly as he had been doing or whether he should confer with the Attorney General on new tactics. I did not mean to imply that he wondered if the case should be dropped.

Unfortunately, in an effort to be brief, I did just that. My memorandum of September 18th is susceptible of no other interpretation and your belief that Frank was trying to "put you on the spot" (as relayed by Jimmy) is entirely my fault. I should of course have stated explicitly what I meant instead of believing that the inference was clear from the wire. And anyway, I should have said "how he should proceed" instead of "if he should proceed".

The responsibility and blame, therefore, are entirely mine. Mr. Frank asked me to give you the attached memo.

JHR
JAMES ROWE, JR.

CONFIDENTIAL MEMORANDUM

October 13, 1939

TO: Mr. James Rowe

FROM: Jerome N. Frank, Chairman
Securities and Exchange Commission.

Wednesday evening Jimmy phoned me about the Judy telegram of September 15 which I sent you on September 16. You will recall that, before I sent it to you, I suggested on the phone that you show it to the President because the President's name had been used in the story, reported by a financial editor, concerning Mr. G's. alleged statements. Jimmy gave me the impression that the President had thought (1) that I believed the story and (2) that I wanted to know from him whether the SEC should proceed with its investigations and hearing in the light of the facts stated in the telegram. Jimmy stated that his father felt that in some way I was putting him on the spot. I was greatly surprised. I trust that Jimmy was in error and that the President received no such impression. For (1) I did not believe the stories about Jimmy and (2) wanted the President to see the telegram merely to inform him of the false stories that were being told. I knew, of course, that he would never ask the SEC to terminate its proceedings unless he felt that such termination was justified by the facts. I would be obliged if you would show this memo to the President.

7-P.
THE WHITE HOUSE
WASHINGTON

September 18, 1939

Memorandum For The President.

Chairman Frank of the SEC asks that you see the attached copy of a wire from his Regional Administrator in California. He wishes to know if he should proceed with the case against Transamerica?

JHR

James Rowe, Jr.

J.R.J.
Why not? Redouble
the vigor

JHR

F-100-SEC

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

OFFICE OF THE CHAIRMAN

September 16, 1939

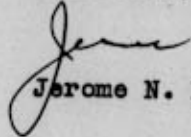
CONFIDENTIAL

Mr. James H. Rowe, Jr.
The White House
Washington, D. C.

Dear Jim:

Enclosed please find matter I
discussed with you on the phone to-
day.

Sincerely,


Jerome N. Frank

Enclosure.

C
O
P
Y

POSTAL TELEGRAPH

San Francisco California
September 15, 1939
11:45 P.M.

ROBERT E. KLINE JR. ESQ.
ASST. GENERAL COUNSEL
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C.

RE OURTEL FOURTEENTH TRANSAMERICA FURTHER INFORMATION BEARING ON RUMOR 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 OVERCOME 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 NEVER- THE 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

PSF Giannini Case

MEMO FOR THE FILES

Sent to Jerome Frank SEC 6/26/40 memo in the President's
handwriting

"Jerry Frank --

Giannini Case -- Why not settled?

F. D. R."

— PSF Giannini Case

June 29, 1940

RE: GIANNINI

The attached memo discusses, as briefly as possible, the suggestion that the SEC proceedings relating to the Giannini interests should be "settled."

There are three proceedings affecting those interests which the Commission has instituted:

(1) A proceeding is pending before the Commission, begun while Mr. Justice Douglas was Chairman and at his suggestion, to determine, after public hearings, whether the stock of Transamerica Company should be delisted for alleged grave violations of the Securities Exchange Act. If the facts set forth in a report by the Commission staff-- resulting from an extensive investigation of the company's books-- are true, then this is one of the most flagrant cases which has ever come before the Commission. The hearings were begun early in 1939 but were postponed to permit a more thorough investigation, of the many books and papers of the company, which investigation has taken many months; also the company has employed every kind of dilatory tactics. The Commission, beginning when Mr. Justice Douglas was Chairman, has rejected proposals that it deal with this case, as it never has dealt with any other, by dismissing it without either a public hearing, based on oral testimony, or a stipulation

by the company admitting the facts, and without a published Commission opinion. With the investigation now substantially complete, the Commission was proposing to resume the public hearing in a few weeks. However, as explained in the attached memo, in the past few days the company, through an attorney not heretofore in the matter, has put forward what appears to be a reasonable proposal for public admissions of facts by the company, which may make possible a speedy determination of the case, without protracted hearings, on the basis of a published Commission opinion.

(2) There is a suit in the federal court for an injunction against Timetrust, Incorporated, certain of the Gianninis and others, in which it is alleged by the Commission that there have been serious violations of the fraud sections of the Securities Act. As explained in the attached memo, that suit is now on trial and the trial will probably terminate within a few days.

(3) A proceeding is pending before the Commission to determine whether Walston & Co., in which members of the Giannini family are substantially interested, should have its registration as a dealer, under the Securities Exchange Act revoked for important violations of provisions of that Act. As explained in the attached memo, there has been a full public hearing and argument; an opinion of the Com-

PSF Giannini Case

I

Transamerica Corporation

1. The stock of Transamerica Corporation is listed on the New York, Los Angeles and San Francisco Stock Exchanges. Section 12 of the Securities Exchange Act of 1934 makes it unlawful for any broker or dealer to deal in a security on such an exchange unless the security has been registered pursuant to an application with the SEC. The stock of Transamerica was thus registered by the Company in accordance with applications filed with the Commission; and the company has filed annual reports with the Commission as required by the statute.

2. In 1938 (while Mr. Justice Douglas was Chairman of the SEC and at his suggestion) the Commission ordered a public hearing to determine whether the company had made false and misleading statements of material facts and omitted material information in its application and annual reports to the Commission, so as to call for an order of the Commission delisting its stock under Section 19(a)(2) of the Securities Exchange Act.

3. The Commission's public hearing began early in 1939 but, after a short period, was adjourned in order to permit the Commission's staff, pursuant to an under-

standing with Transamerica, to examine the books and records of the company and its subsidiaries.* That was an immense task and the examination has only recently been completed. Without here indicating that, in the absence of a full hearing, the detailed facts alleged in the report of the Commission's staff are correct, they tend to show, if true, the following:

(a) Transamerica's reports to the Commission are most seriously false and misleading as to figures huge in amount.

(b) Transamerica has been stimulating interest in the market for its stock on the exchanges by direct purchases for the account of the company and its subsidiaries and affiliates, and by soliciting potential investors to purchase the stock through various means, including gravely false and misleading representations.

(c) Moreover, the company, for years, has been seeking to mislead its stockholders by disseminating false and misleading informa-

* The books of Bank of America have not been examined. There has been litigation about that matter.

and has procured additional capital, in the amount of \$50 million, in accordance with suggestions from the Treasury.

tion concerning earnings, sources of dividends and other matters, those misrepresentations being achieved by means of press releases, reports filed with the Commission and the exchanges, annual reports to the stockholders, and other devices.

4. The institution of the proceedings in 1938 resulted from an extensive examination by the staff of the reports filed by Transamerica with the Commission, in the light of all the facts then known. In connection with that examination, the Commission's staff, at that time, was voluntarily given information by the Secretary of the Treasury. The bearing of that information was this: Transamerica owns an immense amount of stock of Bank of America. Consequently any major inaccuracies in the financial statements of the Bank are reflected in the financial statements of the Transamerica. The information given by the Secretary of the Treasury indicated that the Bank statements were very materially false and misleading. Recently the Bank of America has agreed with the Treasury to make substantial adjustments of its financial statements,

and has procured additional capital, in the amount of \$30 millions, in accordance with suggestions from the Treasury.

It has occurred to some persons that, because that adjustment has been made with the Treasury, the proceedings brought by the SEC should now be dismissed. But that proposal involves several fallacies:

(a) The very rectification of the Bank's financial statements renders the statements filed by Transamerica for the past years -- which reflect the financial condition of the Bank -- materially false and misleading; accordingly, a present rectification of the books of the Bank will not make proper the statements heretofore filed by Transamerica.

(b) More important, is the fact that the misrepresentations in and omissions from the statements of Transamerica are, by no means, due solely or entirely to such errors in the Bank's statements as are now rectified in the Bank's statements. In fact, the great proportion of the misrepresentations and omissions relate either to Transamerica alone, or to transactions between Transamerica and the Bank which are not, in any way, affected by the agreement with the Treasury. So that even if

the corrected Bank figures were now reflected in amended statements filed by Transamerica, the latter's statements would still be most seriously wrong.

In sum, if the report of the Commission's staff is correct, then Transamerica has been flagrantly guilty of violations of the Securities Exchange Act in many ways other than in respect of errors in the Bank's figures carried into Transamerica statements.

5. Of course, whether or not the report of the Commission's staff is correct can properly be determined, under the statute, only upon evidence introduced at a public hearing.

6. In numerous conferences with representatives of Transamerica they have been told by or on behalf of the Commission that, if they were willing to enter into a stipulation, to be filed as part of the public record, admitting that the facts as they appear to the Commission's staff are correct, then such a stipulation could take the place of further oral testimony at a hearing. If such a stipulation were made, then the Commission could proceed promptly to make a published finding and an order based on the stipulation. On the basis of such a stipulation, in accord with the staff's report, the

Commission would be obliged to find that the statute had been seriously violated. But if the company were to file amended statements, in accordance with what was thus stipulated, the Commission would have discretion to enter, and would consider entering, an order which would not require delisting. (This would be substantially in accord with the Commission's action in connection with the delisting proceedings relating to Missouri Pacific.) Up to June 28, 1940, however, the company had refused to make such a stipulation and had asserted that it would never amend its statements in accordance with any such facts as the staff might be likely to assert to be true. What the company wanted was a termination of the proceedings without any admission on its part of any facts which would constitute a violation of the statute and without any hearing at which evidence tending to show such facts would be introduced.

On that basis it would be impossible for the Commission not to proceed -- as it proceeds regularly, with other companies, pursuant to the statutory require-

ments -- with a public hearing, at which evidence presented by its staff would be introduced (with an opportunity on the part of the company to cross-examine and to introduce evidence in opposition).

7. However, the following facts suggest that there may have been some change in the attitude formerly expressed by Transamerica:

Several weeks ago Mr. Lake, a member of the firm of Ladenburg, Thalman & Co., which recently had dealings with Giannini concerning the sale of Bancamerica stock, called on Chairman Frank and said that he thought he might induce Transamerica to conduct itself in an appropriate manner with reference to the rectification of its registration statements. The Chairman outlined to him the difficulties previously encountered in dealings with Transamerica and said that he would be pleased if he could overcome them. Subsequently Mr. Lake went to California with his attorney, Mr. Alex Siegel of New York, and there conferred with the officials of Transamerica. On June 28, 1940, Mr. Siegel and Mr. Lake called on the Commission, stating that they were authorized by Transamerica to discuss with the Commission a proposal

which might avoid a protracted public hearing and a delisting order.*

Their proposal is (a) that the company should file, in the public hearing record, a stipulation with the Commission as to the truth of the facts as asserted by the Commission's staff on the basis of its investigation, and (b) should file amended statements that conform with those facts; and (c) that the Commission, on that basis, should publish findings as to any past improprieties found, but enter an order dismissing the proceedings. Conferences between the Commission staff and Messrs. Siegel and Lake are now in process.

If the dismissal of the proceeding pursuant to the foregoing proposal were, most incorrectly, termed a "settlement," then, in that sense, there now seems, for the first time, to be some real likelihood of a "settlement."

* Mr. Siegel stated, in confidence, that the manner in which Transamerica had dealt with the Commission had been most unfortunate and that the proposal he was making was one which should have been made long ago by that company.

8. The Commission's order for a hearing has been widely publicized and the press is aware of the nature of the proceedings. Even if it were lawful and proper for the Commission to terminate the proceedings without a further public hearing and without a published opinion and findings, it would, as a matter of policy, be most unwise to do so; for there would be wide criticism to the effect that favoritism had been shown Transamerica as distinguished from other companies against whom similar proceedings have been begun.

9. From time to time when untrue stories have appeared in the press that the SEC proceedings were about to be "settled" -- i.e., dismissed without appropriate preceding action of the kind discussed above -- the Commission has denied them. Commissioner Healy, on each such occasion, has said that if the matter were "settled" without a further hearing and a published Commission opinion, he would publish a vigorous denunciation of the "settlement." (He has been much upset by persistent rumors -- which he does not believe -- that the Gianninis have immense "political influence" in Washington which will yield such a "settlement.")

Former Chairman Douglas -- at whose suggestion these proceedings were begun -- whenever suggestions for disposition of this case were made, insisted that it must be dealt with in accord with our regular practice. And he often stated that our practice was never to dismiss an adversary proceeding once begun without a public hearing and a published opinion.

II

Apart from the delisting proceeding discussed above, two other proceedings are pending which involve quite distinct disputes between the Commission and the Transamerica interests:

(a) Timetrust, Incorporated: There is pending, in the District Court in San Francisco, an injunction suit brought by the Commission against Timetrust, Incorporated, and other persons. It involves a charge that Timetrust, Incorporated, was engaged in the sale to the public of certificates, representing interests in Bank of America stock, in violation of the fraud sections of the Securities Act. The defendants include, in addition to Timetrust, Incorporated, and its principal officers, the Bank of America, A. P., and L. M. Giannini, and John M. Grant, President of Transamerica.

The four defendants last named were alleged in the complaint to have aided and abetted Timetrust, Incorporated, in committing the frauds charged against it. Those four defendants rejected a proposal that the case be disposed of on the basis of a stipulation of facts and a consent injunction against Timetrust and its officers, even after the proposed stipulation and consent had been worked out and approved by the attorneys for all the other defendants and counsel for the Commission. After approximately a year's delay, the suit was finally brought to trial, and the trial is now in process, and, in all likelihood will be completed by the end of next week.

(b) Walston & Co.: This is a brokerage house in San Francisco, registered with the Commission as a broker and dealer under Section 15 of the Securities Exchange Act. About a year ago the Commission instituted a revocation proceeding to determine whether the registration, in violation of the statute and regulations, had failed to disclose material facts, i.e., that members of the Giannini family were partners in the firm, and that the firm was controlled by the Giannini interests. This proceeding went to hearing on evidence; the hearing has been completed, the matter has been

argued before the Commission, and is now awaiting the Commission's decision.

Of course, neither of these two matters would be affected by any such disposition of the delisting proceeding against Transamerica as is discussed above.

11. 11. Confidential

PSF Giannini Case

J. Frank
~
1940

THE WHITE HOUSE
WASHINGTON

July 1, 1940

Memorandum For The President:

Giannini

Jerome Frank told me he had a note from you saying, "Why isn't the Giannini case settled?"

He asked me to hand you these two memoranda, which state the views of Frank, Eicher and Henderson.

The two-page memorandum is actually a summary of the other memorandum. The latter discusses in some detail the three proceedings pending against Giannini. It also points out the practical impossibility of settling this matter other than by public stipulation, even if the majority were disposed to do so -- which, because of the evidence before them, they are not.

J+R
James Rowe, Jr.

PSF GIANNINI
Case

THE WHITE HOUSE
WASHINGTON

File
Personal +
Confidential

July 15, 1940

Memorandum For The President.

Transamerica

Chairman Frank has sent me two memoranda of conferences between the General Counsel of the Securities and Exchange Commission and lawyers representing the Giannini interests.

Apparently Giannini has retained new lawyers to handle the matter. The memoranda, dated July 1 and July 3, concern preliminary conferences looking toward an agreed stipulation of facts in the case involving delisting from the Exchange of Transamerica securities. If these negotiations are successful, they will obviate the necessity of a public hearing before the Commission. The stipulation (to be made public) would be on the basis of an admission by Transamerica that it has violated the Securities Exchange Act.

The negotiations are continuing at this time in San Francisco between government counsel and counsel for Transamerica. If a stipulation can be agreed upon, this should end the matter. (But this is only one of three proceedings by the SEC against Transamerica. However, it is the important one.)

JHR

James Rowe, Jr.

July 13, 1940

Attached are memoranda of two conferences which indicate that progress is being made in the matter therein referred to. You may want to transmit that information.

J.N.F.

C O P Y

MEMORANDUM OF CONFERENCES

June 28 and July 1, 1940

Conference with Mr. Alexander B. Siegel, of Van Vorst, Siegel and Smith, New York, N.Y., and Mr. Harry Lake, of Ladenburg, Thalman & Co., Chicago, Illinois

Re: Transamerica Corporation

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On Monday, June 24th, at the request of Chairman Frank, I called Mr. Harry Lake at his hotel in San Francisco and arranged to discuss the Transamerica case with him and Mr. Siegel on Friday, June 28th.

Mr. Siegel, it appears, is a member of the firm of Van Vorst, Siegel and Smith, of New York, counsel for Ladenburg, Thalman & Co., of Chicago, with which Mr. Lake is associated. Both gentlemen are well known to Mr. Frank. Ladenburg, Thalman & Co. were prominently involved in the recent underwriting of \$30,000,000 of preferred stock of Bank of America. As a result of this underwriting, Mr. Siegel and Mr. Lake became interested in expediting the settlement of the dispute between Transamerica Corporation and the SEC. They came to Washington on Friday, June 28th, pursuant to the agreement I had made.

At a conference in Chairman Frank's office Mr. Siegel and Mr. Lake explained that while they were not generally representing Transamerica Corporation they were authorized to discuss with us the problems arising in the delisting proceeding. Mr. Siegel acted primarily as spokesman. He told us that he had urged upon the officers of Transamerica Corporation, and the Gianninis, the importance of disposing promptly of the delisting case, and had persuaded them that their best course would be to stipulate all of the facts underlying the charges contained in the original order for hearing. He said that he had done his best to ascertain what these facts were, and had embodied them in a statement of facts, which he proposed to hand to us. He told us that he wished us to examine his draft statement of facts; that if there were any other facts which we considered pertinent he would endeavor to include them in the stipulation; that if a satisfactory statement of facts could be reached Transamerica would then prepare and file such amendments as might be necessitated by the stipulation; and that the proceedings could then be terminated without further public hearings.

Mr. Frank and I made it clear that while a stipulation of facts -- if found by the Commission to be satisfactory and complete -- might take the place of the taking of testimony at a public hearing, the Commission could not dispose of the case without an opinion and final order. Mr. Siegel did not apparently question the propriety of this position.

Before taking Mr. Siegel's proposed stipulation of facts we explained to him that the Commission had tentatively adopted a revised order for hearing based upon the examination of Transamerica's books which the Commission's accountants had been conducting for the past year. We offered to show Mr. Siegel a copy of the tentative revised order, but suggested that it would be wise for him first to secure specific authority both from Transamerica and the Bank of America. Mr. Siegel undertook to do so.

On Friday afternoon Mr. Siegel and Mr. Lake returned to my office, and Mr. Siegel dictated in my presence a letter in which he stated that he had talked over the telephone both with John M. Grant and with L. Marie Giannini, and had been authorized by them to discuss with me the contents of the tentative revised order. Thereupon I handed him a copy of the revised order. Mr. King, who was with me, ran over the order with him solely for the purpose of indicating which of its paragraphs involved matters not contained in the original order for hearing. We suggested that Mr. Siegel and Mr. Lake study the revised order over the weekend, and return to my office for further discussion on Monday, July 1st.

Mr. Siegel and Mr. Lake came to my office on Monday morning, July 1st. Mr. King was with me. They told us that they had studied the revised order, and Mr. Siegel showed me portions of a letter which he had drafted, directed to Transamerica, in which he summarized the contents of the revised order. He then asked whether we regarded his stipulation of facts as satisfactory, in so far as it dealt with the matters contained in the original order for hearing.

We discussed the stipulation of facts for about two hours. Mr. King pointed out numerous respects in which the stipulation seemed to him to contain an inadequate statement of the pertinent facts. Mr. Siegel, not unnaturally, asked us to state to him the additional facts which we would wish to have incorporated in the stipulation. While I was reluctant to disclose in detail the facts which might be relied upon by the Commission's staff if the case should go to hearing, I requested Mr. King to indicate illustrative examples of the facts which we would regard as necessary. Mr. Siegel took notes of all the facts mentioned by Mr. King, but the discussion was somewhat unsatisfactory, as Mr. Siegel undertook to dispute either the accuracy

- 3 -

or the relevancy of each fact suggested. I pointed out to Mr. Siegel the extreme difficulty of working out any satisfactory stipulation of facts in a case where the ultimate conclusions must necessarily rest upon inferences drawn from a mass of apparently unrelated basic facts. Finally, I suggested that the conference be adjourned to enable me to discuss the matter further with the Commission.

Chester T. Lane

CTL/mlb/egs

C O P Y

MEMORANDUM OF CONFERENCE

July 3, 1940

Conference with Mr. Alexander B. Siegel, of Van Vorst, Siegel and Smith, New York, N.Y., and Mr. Harry Lake, of Ladenburg, Thalman & Co., Chicago, Illinois

Re: Transamerica Corporation

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At my conference on July 1st with Messrs. Siegel and Lake (see memorandum of conferences, June 28th and July 1st) I asked for an adjournment in order to be able to discuss the matter further with the Commission. Mr. King and I talked the matter over with the Commission at a meeting on the afternoon of July 1st, and I also had a discussion with Mr. Treanor by telephone. Messrs. Siegel and Lake returned to my office on the morning of Wednesday, July 3rd.

Mr. Siegel opened the discussion by proposing to continue with an analysis of the facts which we would regard as essential to a stipulation. However, I suggested that any such further discussion be deferred pending a discussion of general principles. I told him that the Commission was agreeable to an effort to work out a stipulation of facts which would be used as the record upon which the Commission might base its findings and order. I indicated, however, that I regarded the working out of such a stipulation as a give and take job. I said that if we were to endeavor to inform him of the facts which we considered essential to our case, we would necessarily be to some extent disclosing the nature and theory of our case in advance of hearing, if one should be held. I said I would be willing to do this, at least up to the point where it became apparent that efforts to work out a stipulation would be fruitless; but that I would do it only if there were a recognition on the other side of an obligation to disclose frankly to us all facts which we might consider necessary, whether or not they appeared on the surface relevant to the charges in the proposed order. More specifically, I said that we could not enter into negotiations for a stipulation involving frankness on all sides unless it was understood that the principal officers, such as Grant, the Gianninis, and Andrews, would make

themselves equally available to discuss fully and frankly all angles of the order, and to fill in the details of particular transactions with which we might be only partly acquainted.

I added that if negotiations were to be conducted on the only basis which seemed to me to be satisfactory, it seemed to me obvious that they should be conducted not in Washington, but in San Francisco, where the officers and records would be available. I undertook to have Mr. Treanor present in San Francisco for the beginning of negotiations by Monday, July 8th, and to have Mr. King in San Francisco as promptly as possible thereafter.

Mr. Siegel said he entirely agreed with the methods of negotiation which I suggested, and would recommend them to the Transamerica interests. He pointed out that any negotiations undertaken on this basis should be without prejudice as regards any admission made by the Transamerica interests in the course of the negotiations, and on the understanding that if negotiations should break down no such admissions should be used against them. I said that this understanding would be agreeable to me. Mr. Siegel said he would telephone Grant and the Gianninis and let me know whether they would be willing to go along on this basis as promptly as possible.

Before concluding the conference I stressed again the importance of refraining from argument, during the fact-finding period of the negotiations, as to the relevance of particular facts in which we might be interested. Mr. Siegel said that he would undertake personally to see that no such arguments took place during the fact-finding period, and that discussions of relevance would be reserved for further conferences with me in Washington after both sides were satisfied that all the facts involved had been ascertained. In this connection he apologized to Mr. King for the attitude which he had taken at our earlier conference, and which is referred to in the last paragraph of my memorandum of conferences on June 28th and July 1.

Finally, I told Mr. Siegel that I had one further suggestion which I was hesitant to make. I said that any respondent before the SEC had a right to be represented by counsel of its own choosing. However, I said that our past contacts with certain of the Giannini counsel, including particularly Ferrari and Mazzer, had been such as to make me believe that any negotiations in which they took part would be predestined to failure.

I therefore urged that if his clients wished seriously to negotiate for a stipulation, they should permit themselves to be represented by men like himself or Mr. Cushing (who had handled the negotiations between the Bank and the Treasury which led to the settlement of the Bank's problems).

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On Wednesday evening Mr. Siegel telephoned me from New York to say that he had been in touch with Grant and the Gianninis by telephone, and that they were entirely agreeable to proceeding upon the bases which I had outlined. He said that accordingly he would leave immediately for San Francisco, and I told him I would have Treanor in San Francisco to meet him on Monday, July 8th.

Chester T. Lane

CTLane:MLB

PSF Giannini Case

THE WHITE HOUSE
WASHINGTON

October 14, 1940

Memorandum For The President.

Transamerica

Jerome Frank has asked that you see the attached memorandum before you talk to Jesse Jones. (The long memorandum is merely a resume of the facts).

Those familiar with this case claim it is the crookedest one in the five-year history of the SEC. Commissioner Healy has said that if the record of procedure is not followed in this case, he will make a public attack on the Administration; he has heard that the Gianninis have boasted they will get this case "settled"; indeed, the Gianninis have boasted so much about their ability to get it settled that they have made it almost impossible for the SEC to deal with them. (See the attached telegram to Jim Treanor, Counsel in charge of the case).

The Commissioners are unanimous in their attitude on this case and, frankly, I do not believe they will change their mind. I know they have talked to Bill Douglas who has strongly urged them to go ahead. The members of the staff working on the case are practically ready to stage a revolt against the Commission because they cannot understand its dilatory tactics.

There are enough unfriendly persons in the SEC to make any possible compromise a political weapon against the Administration.

James Rowe, Jr.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

EDWARD C. EICHER
COMMISSIONER

THE WHITE HOUSE
OCT 14 9 05 AM '40
RECEIVED

October 11th 1940 -

Dear Mr. President: -

The memo in re Transamerica that Jerry Frank is sending you tomorrow is thoroughly approved by me. To do what Grace Jones suggests is chuck full of dynamite.

Reason for sending you this separate note is my departure early in the morning for home to do some campaigning, including a radio speech at Des Moines -

Sincerely,

Edward C. Eicher

To
The President,
The White House

CONFIDENTIAL

October 12, 1940

In re: Gianninis (Transamerica)

This memo represents the views of Leon Henderson, Ed Eicher and myself. We believe that it is impossible for the SEC to deal with this case (as the Gianninis desire) differently from other similar cases, and that, if we were willing to do so, the result, for the reasons stated below, might well be disastrous to the President and the SEC.

The written reports, in our files, of very able and conscientious members of our staff are such that, if they are correct, this case, in the opinion of every SEC Commissioner who has considered it (including Bill Douglas, under whose Chairmanship the public proceedings were begun) is one of the most flagrant in the history of the SEC.

Jesse Jones, who has never had experience on a quasi-judicial body, may be inclined to believe, and may so report, that we are somewhat over-zealous, legalistic and impractical. To set that notion at rest, it may be desirable to consult Bill Douglas, who, because of his experience, obviously is able to understand the case better than Jesse and is fully as desirous of protecting the President.

This case was begun about two years ago and has been subjected to every kind of delaying tactics known to the bar. The present public hearing, after many postponements made at the request of the Gianninis, was set for October 14, 1940, to permit the working out of the first step of a reasonable proposal made weeks ago by the SEC and then accepted, in principle, by A. P.* If that first step had been taken there would have been a further postponement of the hearing for several months. But A. P. recently repudiated that proposal. He threatens suit to enjoin the SEC unless there is a further postponement; but, while abusing the SEC counsel (see attached telegram), refuses to ask for one. However, at the request of Jesse, as creditor of Transamerica, we postponed the hearing until October 21, to permit further discussion.

But, except on the basis of some reasonable proposal, it will be impossible to grant a further adjournment without grave danger of provoking a denunciatory public statement, concerning SEC impropriety, by Commissioner Healy. He is (and justifiably) aroused by the fact that, after weeks of effort on the part of the SEC, A. P. has repudiated the proposal to which he agreed in principle; he believes that the Gianninis are merely stalling. And, as noted below, he is aware that A. P. has boasted that, because of his political influence, the case will be "settled."

The truth is that what the Gianninis are now seeking is something which they have often proposed (while and since Bill Douglas was Chairman) and which the SEC has always felt obliged to refuse, i.e., the dismissal of the entire case without the taking of evidence at a public hearing (or a stipulation of facts filed in the public hearing record) and without published findings by the SEC based thereon.

Ed, Leon and I believe that, even if we found it possible to do so, for the SEC to agree to such action would have grave consequences, not only for the SEC but also for the President, for the following reasons:

(1) It would involve a departure from the SEC interpretation of the statute in other similar cases. That interpretation is well known by the bar.

* This proposal was made soon after an earlier effort failed after weeks of work on the part of the SEC.

No adequate explanation could be given for a differentiation of this case. And the SEC ought never to be in a position where its actions, in a quasi-judicial case, are based on something other than the views of its own members as to their statutory obligations as applied to the facts of the particular case.

(2) On several occasions when the press has reported that A. P. said the case would be thus "settled," Commissioner Healy has said that, if it were -- or if we did not expeditiously proceed with the case -- he would make a public statement that the case had been "fixed" due to A. P.'s boasted political influence, and refer to A. P.'s contributions in earlier campaigns.

(3) Some of the ablest members of our staff have worked on this case. A. P. has bragged to some of them of his "influence." If the case is not dealt with as other similar cases have been, some of them are highly likely to resign, stating their suspicions in such a way that they will soon become public.

(4) In any event, severely adverse comments, concerning discriminatory treatment in favor of A. P., would almost surely appear in the press. For the press is aware of the gravity of the case due to (a) the contents of our notice of hearing published in 1938 when the case was begun, and (b) the disclosures in the injunction suit brought against the SEC by the Bank in 1939. Many newspapermen also know that A. P. has bragged that his political influence would stop the case.

The attached memo summarizes the situation without developing all the complicated details.

Jerome N. Frank

Telegram received by James A. Treanor, SEC lawyer, at the San Francisco Office sent from Los Angeles, October 9, 1940. Dictated over the long distance telephone by Mr. Treanor.

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You know, Jim, you had me pretty much fooled after our conversation on your being on the up and up and on the square, especially after you invited Louis Ferrari* to Cape Cod,** as being an absolutely sincere Christian out to get only the facts and not trick anyone into an arrangement designed solely to distort the facts and smear people wholly on behalf of the crookedest of crooks, Elisha Walker, and his tool Carpenter, who has been sitting in with you fellows on that diabolical conspiracy against our institution. The smearing Timetrust release appearing in the News and Chronical of the other day*** and your suggested institutional amendments absolutely convinced me of your insincerity and deliberate trickery.

/s/ A. P. GIANNINI

* Gianninis' lawyer and relative.

** To confer with our General Counsel

*** A news story, not inspired by or put out by the SEC, based on a portion of an SEC brief filed in a case pending in court.

October 12, 1940

CONFIDENTIAL MEMORANDUM

This public proceeding (to determine whether there have been such violations of the 1934 Act as to require the delisting of Transamerica stock) was begun, under Bill Douglas, by a published notice of hearing, in 1938, which set forth, in effect, that there was reason to believe that there were gravely false material statements in the registration statements publicly filed with the SEC. [Of course, under the statute, investors are entitled to rely on such statements as truthful.] When the case was begun it was widely publicized by AP, who hired Eddie Bernays to put out releases denouncing the SEC almost daily. Further publicity was given through the publication of correspondence between Don Richberg, representing the G's, and Bill Douglas, who was then Chairman. More publicity resulted from a suit for an injunction brought by the Bank against the SEC.*

The alleged false items in the registration statements (upon which investors rely) may for convenience be divided into what, in this memo, will be called Class A items and Class B. items:

* The case is reported as Bank of America vs. William O. Douglas, et al. The Court of Appeals for the District of Columbia held that the SEC had a right to inquire into the correctness of the Bank's figures so far as they were reflected in the Transamerica registration statements. It criticized the particular subpoenas which had been issued and remanded the case to the District Court where it is still pending.

Class A items relate to alleged gross falsities in the Bank's figures. These alleged falsities concern the SEC because stock of the Bank is one of the major assets of Transamerica and because those Bank figures are therefore reflected in the figures in the publicly filed registration statements of Transamerica. So far as the Bank's books are concerned, there has been a correction in those figures, made since the SEC proceeding was begun, by agreement between the Bank and the Treasury, which has supervision of the Bank. It has been erroneously assumed by some persons that the agreement with the Treasury disposed of that part of the SEC proceedings. The truth is that, inasmuch as the Bank has reached its agreement with the Treasury, the SEC has agreed to dispose of that part of the case relating to the errors in the Bank figures as soon as Transamerica files public amendments to its registration statements correcting those Bank figures substantially in accord with the agreement with the Treasury. This is the most the SEC could legally do.

But, wholly apart from the alleged falsity in the Bank's figures, there will remain what I have called Class B items. They comprise falsities in the figures of Transamerica, and its subsidiaries other than the Bank, which will not be rectified by a correction, in Transamerica's registration statements, of the Bank's figures. If the carburetor and the clutch of a car are out of order, you cannot fix both by repairing only one.

According to the SEC staff, the falsities in those Class B items are far more serious than those involved in the Bank's figures (Class A items). The Commission cannot deal with that part of the case differently from other similar cases relating to other companies. In such other cases, the Commission has regularly held that, once a public hearing is called, the obvious obligation to investors and the public makes it imperative that a case cannot be dismissed in the absence either of evidence taken at a public hearing or of a stipulation of facts filed in the public hearing record, together with published findings made by the Commission, based on such evidence or stipulation.

Earlier this year, an effort was made by the SEC at the suggestion of a lawyer, Siegel, on behalf of the G's, to work out a total stipulation of the facts. After several weeks devoted by the SEC to such an effort, it came to nothing.

Soon after, early in August 1940, the SEC revived the following suggestion previously made by it, which, weeks ago, was accepted in principle, by AP, despite Mario's protest: Amended registration statements to cover the Class A items (the Bank's figures) were to be agreed upon between Transamerica and the SEC and were to be filed by Transamerica. That part of the case would then be dismissed without the taking of evidence or a stipulation or published findings by

the SEC. When that was done, the public hearing was to be adjourned to give time to work out, so far as possible, a stipulation of facts as to the balance of the case. If that effort proceeded in good faith, there would be no further public hearing for several months. As a result of the failure of the earlier (Siegel) effort, it was understood that, instead of waiting for a total stipulation, as soon as any item of facts was agreed upon, the stipulation on that subject would be treated as final. It was also understood that the SEC would not treat, as an admission of error by Transamerica, the amendments to its registration statements (i.e., as to the Class A items). On the other hand, recognizing that rectification of the Bank's figures would not rectify the other figures, it was understood that the SEC counsel should not be precluded from asserting facts bearing on errors in such other items merely because some of those errors resulted from the same transactions which had caused the errors in the Bank's figures. When the stipulation, so far as it was possible to stipulate, was completed, it would be made part of the public hearing record. If it did not cover all matters, then it would be supplemented by evidence taken at a resumed public hearing. On the basis of the stipulation and such evidence, if any, the Commission would then make and publish its findings.

Working on the basis of the foregoing proposal, the SEC recently agreed, down to the last detail, on the amendments

concerning the Bank's figures, with Transamerica's lawyer, Ferrari, and Andrews, the chief financial officer of the Bank. Ferrari was eager to have those amendments filed and to proceed with work on the stipulation of facts. Then, however, the proposal was rejected by AP.

Several reasons have been advanced by Mario to Jesse Jones for that repudiation: (a) Mario says that the proposed amendments of the Bank's figures are not in accord with the Bank's agreement with the Treasury. But those amendments were fully agreed to, as noted above, by the Transamerica lawyer and the Bank's chief financial officer; that did not, however, deter AP from accusing our lawyer of trickery in connection therewith. (b) Mario, going back on the understanding, insists that no part of the stipulation should be considered as final until the entire stipulation has been worked out. (c) Also, going back on the understanding, he is insisting that, if any alleged falsities in items other than the Bank's figures were caused by transactions which also caused alleged errors in the Bank's figures, then the SEC counsel must not go into them. (d) He charges that the SEC has been unfair in recently making a public release to the press injurious to the G's, concerning the Timetrust case now pending in the Federal District Court in California. There is no truth in that complaint; as far as we have been able to determine, a newspaper man recently, on his own initiative, belatedly read a brief filed in court, sometime ago, by the SEC, and then made a news story of it.

After repeated postponements at the request of Transamerica, the public hearing was set for October 14, subject to adjournment to work out the stipulation, if the amendments to the registration statements were filed. After having repudiated the proposal summarized above, Mario told Jesse that suit would be begun to enjoin the SEC unless there was a further postponement. But the G's refused to ask the SEC for a further postponement. At the request of Jesse, as creditor of Transamerica, the Commission granted a postponement until October 21, to give time to discuss Mario's contentions.

Mario has recently made this startling suggestion to the SEC counsel: Transamerica would prepare proposed amendments to its registration statements covering all items which it considered called for any correction. It would then submit those amendments to the SEC. If the SEC considered that the amendments corrected all the necessary items, then the case would be dismissed without any evidence or stipulation and without any published findings by the SEC. If, however, the SEC then considered the amendments not adequate, the matter would be referred by Transamerica and SEC to some third person as arbitrator.

Of course, such a proposal would violate the statute, since the SEC is directed by Congress to act as a quasi-judicial body in such cases and to make its own findings; it cannot,

therefore, lawfully agree that some third person should determine its decisions.

If further details are desired, they can be supplied.