PSF Tennessee Valley Authority Subject File Box 187
Mar. 12, 1935 - 1941 and Undated

Box 187

PSF:TVA

THE GRAND COUNCIL OF THE ORDER OF DEMOLAY

Simon H. Rubel
Active Member
in the State of Mississippi

Corinth, Mississippi

March 12, 1938

Colonel Marvin H. McIntyre
White House,
Washington, D. C.

Dear Marvin:

Agreeable to my promise, I am sending to you under separate cover, the correspondence referred to by me in Washington.

Was happy indeed, to have seen you looking so well under such trying circumstances.

I notice report today of the meeting with the boss and am certainly not in sympathy with anyone who acted as A. E. did.

Anytime I can be of service to you, let me know.

Do not forget my picture.

With kind personal regards and best wishes always, I am,

Sincerely yours,

Simon

SHR:ae

TO BE RELEASED MONDAY MORNING NEWSPAPERS, MARCH 7, 1938.

A STATEMENT BY CHAIRMAN ARTHUR E. MORGAN OF THE T.V.A.

Three weeks ago I wrote a confidential letter to a member of Congress with no intention that it should be made public.

In view of the press statement on Friday and Saturday it seems desirable to make public the substance of that letter.

I am releasing this without having seen these statements by the two T.V.A. directors which was referred to in the press.

Route 1
Clermont, Florida
February 14, 1938

The Honorable Maury Maverick
House of Representatives
Washington, D. C.

Dear Mr. Maverick:

You are a friend and supporter of the President and also of the T.V.A. I believe that I can write you in confidence.

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

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

I believe that if you should fully understand the situation you would not support that statement. As I think you know, Mr. Lilienthal and Dr. H. A. Morgan invariably vote together on all Board matters. Whenever there is a difference of opinion, I am invariably in the minority. Except for possibly two or three detail incidents, I think there is not an exception to this rule in the entire history of the T.V.A. During the first few weeks of T.V.A., while our T.V.A. office was in Washington, and while I was extremely busy there working out the rudimentary organization as to finance, employment, government accounting, and relations with other government departments and agencies, the other two Directors were in Knoxville preparing a plan for a division of functions within the Board. One of the members explained his absence on the ground that he must close up his previous work, and the other that he wanted to take a trip over the T.V.A. territory and become acquainted with it. Neither of them hinted to me that they were working out a division of powers.

President Roosevelt, by Executive Order, had put me in charge of Norris Dam, so that was left in my hands. Since neither of the other two Directors knew anything whatever about dam building, the enlarged construction program until recently was left in my hands. Also, the President designated me as Chairman, and the other two Directors knew very little about business administration, so it was left to me to organize the general administration of the T.V.A. Otherwise, the other two Directors took over most functions, and arranged that in their special work each of the three Directors were made responsible for almost independent organizations. Because of unexpected Congressional appropriations for the construction of additional dams, the construction program under my direction, came to be about twice as great in money expended as the part of the work which was directed by the other two Directors combined. Mr. Lilienthal steadily opposed additional dam construction in Board meetings, but not in public. When the two Directors had divided up the field, they announced to me that the T.V.A. was primarily concerned only with power and fertilizer, and that nothing should be undertaken which was not incidental to this. Muscle Shoals then seemed the center of the stage. They told me that they had divided the work there among themselves, and that it would not be necessary for me to go to Muscle Shoals.

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

As you know very well, the enemies of the T.V.A. and of the President are eager to use any discord in the T.V.A. to destroy it. I am in hearty accord with the purposes of the New Deal as announced by the President, and with the purposes of the T.V.A. as stated in the Act. But how to bring about a correction of the faults in the organization, without injuring the T.V.A. and the administration, has been a difficult problem. I have gone to a few persons in key positions, and have stated the facts. I have asked to be given facilities to make definite report with facts and data. I have not been supported in that request.

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

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

Under these circumstances just what course could I pursue to clear up a situation which in my opinion is a menace to good government, and to the long time welfare of the T.V.A., short of making my difficulties known in public? There are certain people in the country who have had confidence in the T.V.A. administration because I was there. For me to remain quiet and acquiescent, and then for some exposure to show up undesirable conditions, would put me in the position of having betrayed those who had such confidence. I have tried to give public notice that certain T.V.A. policies were not mine, without going further than was necessary in publicity. It has seemed to be a situation where any course I should take would seem to be wrong from some point of view. Under the circumstances, in addition to letting the public know in a general way that I did not approve the prevailing T.V.A. policies, it seemed best to wait until those in key positions should come to realize that the public interest is not being served by the present control. Since they would not take my word, they would have to learn by events. I think that probably the time has come to go further than that.

Some of the reasons for my concern are the explicitly misleading and evasive reports, and in my opinion, explicitly false reports, which have been made to the President, to Congress and to the public concerning conditions in the T.V.A. by a T.V.A. Director or by the two Directors acting in unison.

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

"To The Board of Directors: Dr. H. A. Morgan, Mr. D. E. Lilienthal
From Arthur E. Morgan, Chairman
Date June 18, 1937

Subject Explanation for the basis of my vote on Board items 282-61 and 282-62, to be filed with and made part of the minutes of the Board meeting of May 5, 1937, as Exhibit 5-5-37-rI:

"At the Board meeting of May 5, 1937, attended by Dr. H. A. Morgan and myself, contracts with the North East Mississippi Electric Power Association and with the Pontotoc Electric Power Association were presented for Board approval. Mr. Lilienthal was not present, but his personal representative, Mr. Forrest Allen, stated that he was anxious that the contracts be approved. Nearly all such actions have been presented to the Board when Mr. Lilienthal was present, and approved by a majority of the Board, regardless of my attitude or action. In this case I voted to approve the contracts, and wish to file this memorandum of explanation, not only of this action, but of my actions generally where power policy matters are involved.

"In my opinion, the TVA power policy has never been fully and publicly stated, and cannot be learned by any formal action of the TVA Board. In my opinion the actual TVA power policy can only be inferred by a general review of Board actions requested by Mr. Lilienthal, and by his various statements on items of policy. As I understand that policy, I do not approve of it. Especially I disapprove of carrying through a policy which, I believe, never has been disclosed to the public.

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

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

(signed) Arthur E. Morgan
Arthur E. Morgan

Copies to:
J. B. Blandford, Jr.
J. L. Fly
C. E. Hoffman

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

Senator McKellar probably made his recent Senate statement on the status of T.V.A. contracts from data furnished by the T.V.A. According to my present information, which I am checking, his statement contained substantial errors. I am planning to write him as soon as I have finished this check.

It is difficult for me to get such information independently, because I am not adequately staffed for such work, but my information is that the T.V.A. is practically sold out, and even may be over sold. I am also checking that information carefully. I did not learn of this from Mr. Lilienthal or from his staff, but from an investigation by my own personal assistant.

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

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

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

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

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

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

There is a practice of evasion, intrigue and sharp strategy, with remarkable skill in alibi and the habit of avoiding direct responsibility, which makes Machiavelli seem open and candid. It took me a year or more of close association to be convinced that the attitude of boyish open candor and man-to-man directness was a mask for hard boiled selfish intrigue; so I am not surprised that Congressmen do not quickly see the situation from a distance. Under the circumstances it is fairly easy to make the differences seem like a "family quarrel" and so to keep the issue confused.

Dr. H. A. Morgan is not "in the dog house", as you suggest. The land grant college organization, with the county agent system, is a powerful political bureaucracy. By holding the T.V.A. purse strings, by making grants of T.V.A. money to land grant colleges in the T.V.A. states, and by paying the salaries of a very large number of county agricultural agents with T.V.A. funds, Dr. H.A. Morgan is one of the powerful figures of the South, though he nearly always chooses to be behind the scenes. By invariably voting on all matters with Mr. Lilienthal, he gives Mr. Lilienthal a free hand in power, while he has a free hand in the fertilizer and agriculture programs. I have been unable to make a real inquiry into the fertilizer program. It is his own private, confidential field, just as power is for Mr. Lilienthal.

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

Almost from the beginning of the T.V.A. I have been faced with a campaign of propaganda to the effect that another Director was the practical man and I was the theorist. The actual organization of the dam construction program and of our general administrative set up which was also in my charge, I think is an answer to that criticism, especially as I have successfully carried through other similar projects on a smaller scale. In veiw of the attacks made upon me by the other members of the Board from the start, my best course seemed to be to do an effective job in my own field. It would please me to have a totally impartial board make the most critical kind of an examination of the T.V.A. dam construction program. On the other hand, in my opinion, a similar competent and unbiased examination of the electrical program will

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

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

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

To sum up, I have said nearly all these things to persons in key positions who I believed were in a position to correct the situation. I have delayed publicity in the public interest. First, because amendments to the T.V.A. Act were before a hostile committee hoping to destroy it. Then I had reason to believe that one Director would not be reappointed, and it seemed possible to get correction without publicity. Then the national election approached, and the publicity would be used by the enemy. Then I understood that correction would shortly be made. Then the nineteen power companies suit came on, and publicity would be ammunition for the enemy. And so on.

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

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

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

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

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

Sincerely,

Arthur E. Morgan

A statement by Arthur E. Morgan, Chairman of the Tennessee Valley Authority, in reply to public statements by Dr. H. A. Morgan and Mr. D. E. Lilienthal, and by Senator George L. Berry, concerning the Chairman's testimony in the Berry marble case.

After my testimony in the Berry marble case on December 20, 1937, public statements concerning my testimony were made by Dr. H. A. Morgan and Mr. D. E. Lilienthal, and also by Senator George L. Berry. I declined to comment on those statements at the time, since it seemed improper to do so while the case was in the hands of the Commissioners. Their decision in the matter has now been made. Section twenty-five of the T. V. A. act provides T. V. A. Commission handling a condemnation case shall "examine into the value of the land sought to be condemned". With this limitation of its duties and because the T. V. A. legal staff did not initiate formal court proceedings charging fraud the commission properly confined its decision to the question of the value of leases condemned, with no reference of bad faith. The decision of the commission is that the claims are without value. It now seems proper and necessary that I reply to the statements of these three persons, as in my opinion the public interest is involved. If I have additional information not properly included in a statement to the press it will be available in case of a congressional investigation.

Concerning the statement of Dr. H. A. Morgan and Mr. D. E. Lilienthal:

During the past four and a half years there have been numerous occasions when I have been under great difficulty to determine between conflicting responsibilities. On the one hand, I greatly wished to support the New Deal program with the announced purposes of which I am in very hearty agreement, and also the T. V. A. program, with the purposes of which I am also in hearty accord. I have a firm belief in the feasibility and wisdom of the TVA Act; thus I realized all the more deeply the necessity for honest, efficient, open, and non-political administration of the large properties and great responsibilities entrusted to the Board. On the other hand, there are certain fundamental decencies and standards of

integrity and propriety in public life which are more important to civilized society than any particular government program. The manner of conducting business by the majority of the TVA Board was such that frequently I was faced by a dilemma as between these two kinds of responsibility. This was true in the Berry marble case.

The statement of December 22, 1937 by Dr. H. A. Morgan and Mr. David E. Lilienthal, the majority members of the TVA Board, illustrates this difficulty. Probably the best approach to a reply is to give an outline of my action by quoting from the records now on file, together with a few explanations to make them clear.

My first clear impression of the seriousness of the claims was a statement made to me by Edwin C. Eckel, the Chief Geologist of the TVA, early in June, 1936, followed by a long report by TVA geologist, James S. Cullison, dated June 2, 1936. This memorandum summarized reports from:

> Dr. Oliver Bowles, assistant chief engineer of the non-metal division of the United States Bureau of Mines, a foremost expert in marble, who examined the Berry properties in October, 1935 and reported them to be unsound commercially and valueless from a profit standpoint;
>
> Dr. Ernest W. Burchard, official of the United States Geological Survey, with experience in surveying and valuing marble properties throughout the United States, Alaska, Philippines and South America, who, with a group of geologists surveyed the Berry properties in 1935 and reported that anyone trying to operate the properties "wouldn't have a chance in the world of making any money";
>
> Dr. W. F. Prouty, professor of geology at the University of North Carolina, a recognized authority on marble deposits and consulting engineer for many marble companies, who inspected the Berry properties in 1935 and reported "none of them worth quarrying";
>
> Mr. Ernest H. West, Dorsett, Vermont, 37 years in the marble business and has served as consultant for large

> marble companies in exploration; appraisals, and purchases. He investigated the Berry properties early in 1936 and found them "impracticable to quarry" and with no market value.

TVA geologists, Robert A. Lawrence and James S. Cullison, made similar written reports to the effect that these properties had no commercial value. Also in November, 1934 the Land Acquisition Division formed a marble committee composed of John J. Craig, president of the Candora Marble Company, Knoxville; E. N. Willard and E. A. Lewis, Knoxville, both of whom are experienced marble operators. This committee made an inspection and written report in 1935 on the tracts involved in the suit, which report showed no value. Various TVA staff members who had investigated the claims in the course of their official duties, in their reports had strongly expressed the opinion that the claims were not taken in good faith and that they represented an effort to "hold up" the government.

On June 17, 1936 I addressed the following confidential memorandum to each of the other Board members:

> "I have just read the report of our geologist . . . From my present information I have the following impression:
>
> "1. The leases were secured after the construction of the Norris (formerly Cove Creek) Dam by the Federal Government had become an active possibility, and when it appeared, therefore, that the properties would be flooded, with the result that the Government would have to acquire them.
>
> "2. Up to the period of construction of the Norris Dam the amounts paid for these leases were negligible - said to be $1 per lease.
>
> "3. The assumption of value in marble deposits was an afterthought, after the prospect of other values had been dissipated.
>
> "4. One of the chief promoters, if not the chief promoter, of these leases I have been told is a close adviser of the President, a man who is active in Tennessee political life,

and has now a prominent official position in the national administration.

"5. Most of the marble sold for these deposits was sold for use in Federal buildings, as specified by Federal architects.

"6. TVA geologists and industrial and geological consultants have reported that these marble deposits have no commercial value, being too expensive to work.

"7. The deposits are not unique, I am told, but are similar to many other deposits in the region. The amount of such deposits is said to be practically unlimited.

"I understand that the man whom I mentioned as close adviser to the President, and his associates, are asking four or five million dollars for these claims. It seems to me that for anyone connected with the present administration to profit financially in any way from the acquisition of this land by the TVA would be indefensible.

"I am of the opinion that the President should be informed of the existing situation, so that he may take any action or make any investigation he thinks necessary to assure himself as to the facts."

About a month later, on July 10, 1936, during my absence and without notice to me or to my office, Dr. H. A. Morgan and Mr. Lilienthal, the other two members of the Board, took the case out of the hands of the TVA staff which handles such matters, and made an "agreement of conciliation" under which Dr. Finch, Director of the U. S. Bureau of Mines, and a marble expert, would be asked to carry on friendly negotiations to arrive at the value of the marble. The "agreement" was somewhat vaguely worded, but I think it is clear that was the intent.

At the meeting of the TVA Board on my return, I protested verbally against this "agreement". Since TVA geologists, consulting geologists, and expert marble operators, heretofore mentioned, had stated in their

reports that the marble was valueless and the deposits were not unique but were similar to deposits existing for more than a hundred miles in the region, the chief question involved, in my opinion, was not the value of these claims, but the question of an effort to "hold up" the government.

On August 8, 1936 I wrote to the Honorable Harold L. Ickes, Secretary of the Interior, suggesting that he defer the loan of Dr. Finch to serve as conciliator until certain matters which were disturbing to me could be taken up directly with Senator Berry and with the TVA Board. Secretary Ickes agreed to this delay.

On August 9, 1936, I wrote Major Berry the following letter:

> "Dear Major Berry:
>
> "During the last few weeks, on reading certain memoranda of the TVA staff, and on talking with various members of our staff who are informed on the situation, I have become much concerned with reference to the claims against the TVA which you and your associates have made relating to certain limestone deposits in and about Norris reservoir, said to have value as marble. Since you and I are in responsible positions in the Federal administration, it is especially necessary that these claims shall be so clearly understood, and that their handling shall be so open, that no reasonable criticism can be brought against either you or the TVA if the entire circumstances are fully understood. It seems desirable, too, that the negotiations and conclusions shall not be just on the basis of legal rights, but shall also be governed by the dictates of propriety and of public spirited citizenship. You doubtless will agree with me that because of your position in public life these claims cannot be handled simply by negotiation and bargaining, but that all information concerning your relation to the claims should be freely and fully given.

"In order to provide a better basis of judgment I should like to request that you supply each member of the Board of Directors of the TVA with the following information concerning any claims which you and your associates do not wish to fully relinquish:

Will you please list those options or leases, with the dates when they were first formally and legally valid?

Will you please tell us just when and to what extent you personally came to be financially interested in those claims, and will you give us copies of the contracts or other instruments which are the legal evidence of such interest?

Will you please describe to us any other conditions or considerations concerning your interests in those claims which will enable us to get a fully accurate and representative understanding of them?

When did Mr. Collins definitely acquire a financial interest in these leases or contracts, for what cash or other consideration, and under what contracts, engagements, understandings, or conditions?

How much direct expenditure of money, and how much of each other form of investment was made by Mr. Harris, by yourself, by Mr. Collins, and by any other associates?

How much of each kind of investment was made by each of you before November, 1932? How much between that date and the date of the President's message in March, 1933, on the TVA, and how much in each year since?

Concerning the leases or other acquisitions on which you have made or intend to make claims against the TVA:

On how many and which ones were payments allowed to become in arrears? In each case, when were arrears in payments made up? Please give details.

When was each claim filed for record?

What is the total amount of your claims against the Tennessee Valley Authority? (I am informed that the claim on one lease is for a million and three quarters dollars.)

I believe you have sold some marble from one of these tracts of land. Will you please inform us as to when the first and other important sales were made by you and your associates, and as to the amount of sales made to private parties for use on non-government work?

"In my opinion, the primary and most important consideration in this matter is not the economic value of the deposits, but the

propriety with which the matter is conducted, in view of the fact that a claim is being made by one official for the payment to himself and his associates of public mony, a claim which must be considered by a board of public officials. Under such circumstances I believe that all elements of bargaining and strategy, which would be recognized as legitimate between private parties, must be subordinated to the most complete and open disclosure of all pertinent facts.

"I am aware that the majority of the Board of Directors of the TVA have taken action to secure certain other data and judgment with reference to these leases and claims. As Chairman of the Board of the TVA, it is my opinion that the information requested in this letter is essential to a proper appraisal of the matter in line with the public interest. I assume that you will agree with me on this, and that the necessary course will be taken to fully protect the standing of the Administration which we both serve.

Sincerely yours,

TENNESSEE VALLEY AUTHORITY

(signed) Arthur E. Morgan
Chairman of the Board"

Major Berry replied on August 15, 1936, as follows, declining to give any of the information requested except three lease dates which already were matters of public record:

"My dear Mr. Morgan:

This will acknowledge receipt of your communication of August 9 mailed from New York City and received by me on August 12, 1936, on my arrival in Washington, D.C., which was marked "personal and confidential." I have given your letter my very careful consideration.

"In the first instance may I be permitted to say I cannot quite understand the purpose of the letter as it involves the question either of anxiety or uncertainty as to the status of the claim in which the undersigned and associates have against the Tennessee Valley Authority.

"In the second instance I am completely mystified by the reference to my position in public life as it relates to this issue.

"In the third instance you are entirely mistaken in assuming that we have made claims against the Tennessee Valley Authority 'relating to certain limestone deposits'. Our claims are not with relation to limestone deposits but with relation to marble.

"In the fourth instance I must direct your attention to the

matters which you say have been brought to your attention in the last few weeks by memoranda from the TVA staff, which cannot be regarded as a new situation in any respect because the subject has been placed before you and to you direct by letter more than a year ago.

"Perhaps you are aware that after considerable effort, my associates and self were invited to meet with TVA representatives and we did meet in formal session with Messrs. H. A. Morgan and David E. Lilienthal, which meeting was held on June 10, 1936 in the office of the Tennessee Valley Authority. Dr. H. A. Morgan presided in your absence.

"Prior to this meeting, and covering a great many months, our geologist with your geologist and representatives of the TVA had been investigating the marble properties, and my understanding is there was a practically unanimous agreement as to the volume but no agreement arrived at as to the price of the marble; therefore, we met for the purpose of discussing the price to be placed upon our properties. We were unable to agree upon this phase of the situation and it was finally unanimously agreed, after nearly an all-day conference, that we would undertake to secure the services of Mr. Finch, Director of the Bureau of Mines, to act in the capacity of conciliator. No doubt, you have before you the records in connection with this issue. It was further agreed that Dr. H. A. Morgan, Acting Chairman in your absence, and the undersigned would address the Honorable Harold Ickes, Secretary of the Interior, for the purpose of securing the conciliatory assistance of Dr. Finch. This was done. Secretary Ickes has agreed to have Mr. Finch act, and the correspondence relating thereto is in the office of the Tennessee Valley Authority. In view of this agreement, I wonder if it is your purpose to oppose this procedure, if you have come to a definite conclusion and have advised your associates as to your position in the matter. If so, may I be advised of the contents of your decision?

"For the purpose of record, I am taking the liberty of attaching hereto copy of my communication addressed to you under date of April 22, 1935. You will observe by this letter the attitude of the writer at that time with reference to our properties. The letter of April 22, 1935, of course, indicates that the matter is not a new subject. I should like to make the situation quite clear as to my position in this matter by pointing out the following facts:

> "(1) The Tennessee Valley Authority without consultation flooded our properties. Perhaps we could have sought an injunction to prohibit it but we have been exceedingly patient because we believe in the Tennessee Valley development and the program of the Tennessee Valley Authority as it relates to the development approved by the Congress and the President of the United States.

"(2) We did not go into the marble business in Union and adjoining counties for the purpose of collecting moneys from the government of the United States. We entered into the enterprise there because it presented tremendously important possibilities since it had been demonstrated that the marble which we have quarried, fabricated and sold is without comparison in beauty and utility in this or any other country in the world. We can prove the accuracy of this statement.

"(3) We entered into the marble enterprise before the TVA legislation was passed by the Congress of the United States. We entered into the marble business in Union and adjoining counties during the administration of ex-President Hoover. The first property we secured in Union County was registered on April 5, 1932; the second properties were registered on April 6, 1932; the third properties were registered on May 24, 1932, and we have secured control of no properties in that area since the TVA came into existence. Thus it will be observed that we were not actuated by a desire to secure moneys from the United States but by business judgment. After we had secured the properties, came the TVA and destroyed the possibilities of the use of our properties in the flooded area. These are the simple facts in the case.

"(4) I note your reference to my holding public position. Please be advised that since the election of President Franklin D. Roosevelt, I have held some twelve different positions in Washington, completing them all, and now hold the position as Coordinator of Industrial Cooperation, but in no case has there been a salary, per diem or expense account of any character allocated to me, but I want to make it quite clear that my semi-public position in no wise grants the Government of the United States the right to confiscate my property without full and complete payment of the values attendant to such confiscation.

"(5) As to the amount of money invested by myself and associates that isn't the issue. The issue is that our properties have been confiscated, and we want the government to fulfill its moral obligations in paying us for such confiscation.

"It is not my desire here to engage in prejudicing the conciliatory efforts of the Director of the Bureau of Mines, Mr. Finch, in an effort to determine the unsettled point, as I understand it, to wit - the value of this ma rble. We propose to show him the sales, the prices received for this marble and we propose to give such additional information as he may care to have. He has been selected as the conciliator by the Tennessee Valley Authority, my associates and myself. We hope he will succeed. If he does not succeed, we shall then propose the arbitration of the differences and we shall present all the facts necessary to prove our case. We, in no wise, seek litigation over this important business

transaction, but let it be said here that my associates and I will not be satisfied unless an equitable and just decision has been made in this case, and if it be necessary that we go into the courts to secure such an adjustment, we shall do so and we shall be prepared to prove our case.

"In addition to all that has been said in the foregoing, please understand my position upon the question of propriety. We shall adjust ourselves to that code. We have no desire for publicity, but we shall not object to the absolute truth being made known to every citizen of our country. For my part, I am not accustomed to engaging in any enterprise that will draw from the treasury of the state or federal government for a penny except that which is due me.

"Finally, I must be perfectly frank in saying to you that I did not like the tenor of your letter.

"Copy of this communication is going to Messrs. H. A. Morgan, David E. Lilenthal and to my associates.

Very truly yours,

(signed) Geo. L. Berry
George L. Berry"

On August 21 I sent to Secretary Ickes a copy of my letter of August 9 to Major Berry and a copy of Major Berry's reply.

On August 26, 1936 I wrote a memorandum to the TVA Board in which I stated:

> "I am of the opinion that under the circumstances the potential physical value of this property in case Norris Dam were not built is not the primary consideration, and I believe that any action which might seem to imply recognition of the validity of this claim is unwise."

In the Board meeting of July 10, when the "conciliation agreement" was decided upon, a record of the "agreement" was omitted from the Board minutes of that date. At a Board meeting on September 15 I protested orally and in detail against the agreement. The majority of the Board took action to include in the minutes of the meeting of July 10, which minutes had not yet been

prepared, a record of the making of such "agreement."

The minutes of the meeting of July 10 were not actually prepared for signature until October or November. After the minutes finally came to me for signature, I again opposed the action of the other members in making the "agreement of conciliation" in the following terms:

> "In my opinion the action taken under 228-13 ("the conciliation agreement") is unwise. The meeting was held after a protest by me against any such action had been sent to the Board, a copy of which protest is filed herewith, and made a part of this record. The meeting was held without notice or waiver of notice. I hold that, under the circumstances, this action is invalid."

At the Board meeting on September 15 it was decided to request a meeting with Major Berry. In addition to notifying him of the Board's desire, I wrote him personally:

> "If a meeting is arranged in accordance with the enclosed letter of even date, I should like to discuss with you the subject of my letter to you of August 9."

Major Berry replied asking that a meeting be deferred until after November 3, 1936. On February 5, 1937 he again wrote, requesting a meeting. In my reply to him I stated:

> "From my own viewpoint, a conference with you and your associates would be much facilitated if, previous to such a conference, the TVA directors should be supplied with the information requested in my letter of August 9, 1936."

He did not supply that information.

A meeting between Major Berry and his associates and the TVA Board with certain TVA staff members was held on February 24, 1937. Again I asked for the information requested of Major Berry in my letter to him of August 9, 1936. I stated that if the inquiry were a friendly one, then all pertinent facts should be disclosed. If such facts were withheld by Major Berry, then the basis of a friendly inquiry was not established. Major Berry declined to supply the information requested. He held that the value of the marble was the only question in issue.

I held that a determination of the propriety of the claims should precede any arbitration as to their physical value, and that until such question of propriety was faced, any negotiations as to physical value would imply a waiving of questions which should not be waived.

The meeting was continued by the TVA Board to the following day, February 25. At that meeting I presented the following written protest to this action of the Board:

> "The information presented by the TVA staff is to the effect that Mr. Berry and his associates are asking a very large sum of money (one of their claims being for $1,600,000) for options or leases for which they have paid very little money, probably less than $5,000 or $10,000. Some or all of these options or leases, it appears, were perfected or revived after the construction of the Norris Dam was a practical certainty.

It is certain that one of the group bought his interest in the claims in June, 1933 after Norris Dam was authorized. My letter to Mr. Berry of August 9, 1936, asked for information which would largely remove any unfounded concern on this matter. Mr. Berry has not furnished that information. Unless and until such information is furnished I feel that I cannot approve the contract for the services of conciliation to consider physical values which might by implication give good standing to possible improprieties or lack of good citizenship.

"If the TVA Board considers it advisable to secure the opinions of additional outside consultants, the same quality of consultation can be secured directly, without the involvements or implications of a contract for conciliation.

"I hold that the form of agreement of July 13 was not validly adopted, because the meeting of the two directors at which it was approved was held without notice or waiver of notice, and dealt with a matter which I had indicated to the Board was of serious concern.

(signed) Arthur E. Morgan "

However, the majority of the Board, over my objection, reapproved the "conciliation agreement", and directed me to write a letter to Secretary Ickes again asking for the loan of Dr. Finch as conciliator. In writing Secretary Ickes I sent him the following data:

1. Copy of my letter to the Board, dated June 17, 1936
2. Copy of agreement for conciliation, dated July 13, 1936
3. Copy of my letter of August 9, 1936 to Major Berry
4. Copy of Major Berry's reply
5. Copy of Board minute authorizing the employment of Dr. Finch as conciliator, dated February 25, 1937
6. Copy of a statement of my dissent from the Board majority action

Secretary Ickes refused to loan Dr. Finch, whereupon the "conciliation agreement" was at last abandoned by the Board, and condemnation proceedings were decided on, and were filed on May 18, 1937.

My objections to the "agreement" were that it tended to create a presumption of propriety and legitimacy to the mineral leases, and that it established an improper relationship. In my opinion, the bald facts which were known to everyone concerned were such as to compel any open-minded person to the opinion that the claims were being presented in bad faith, that is that they were an effort to use a relatively negligible investment in mineral leases, taken when the construction of the Norris Dam was a very strong probability, as a basis for collecting a very large sum of money from the government. Various TVA staff members, whose routine duty it was to examine into the physical value of the leases and to report their findings, had reported that opinion.

In their public comments of December 22, 1937, concerning my testimony in the case, Dr. H. A. Morgan and Mr. Lilienthal state:

"The arrangement for Dr. Finch's services (under the "conciliation agreement") interposed no hindrance in pressing the issue of bad faith."

This is a wholly untenable position. In the words of the conciliation contract, that contract covered only "an effort to arrive at an agreement as to the amount to be paid by the Authority to Major Berry and his associates . . ." Any use of the conciliator, appointed under that agreement, to inquire into questions of bad faith or any search for evidence of bad faith during the life of such a friendly agreement would seem to indicate a deficiency of ethical discrimination. The "agreement" clearly implied a friendly inquiry.

From the standpoint of the TVA Board, this friendly "agreement" seemed either to surrender the right to search for evidence of bad faith, or else it "double crossed" Major Berry. To carry on friendly negotiations, presumably on the basis of mutual confidence and regard, and at the same time have the TVA attorneys search for evidence of past bad faith on the part of Major Berry and his associates, the use of which evidence would be to nullify any conclusions reached in such negotiations, would seem to be beneath the dignity and self-respect of government. Openly expressed doubt as to the good faith of the claims was a more appropriate attitude toward Major Berry.

He evidently believed the "conciliation agreement" was made in the spirit of friendly cooperation, for on July 20, 1936 Major Berry wrote to Secretary Ickes concerning the "agreement":

> "I hope you will find it possible to authorize Mr. Finch to endeavor to compose the situation between the parties involved because it is a friendly discussion and is the obvious desire of all parties concerned not only to find the facts with relation to the damages but the equitable adjustment of same, all predicated upon the most friendly spirit of the parties."

The other directors of the TVA also received copies of this letter.

Moreover, in his letter to me of August 15, 1936, referring to the "conciliation agreement", (copies of which were received by the other members of the TVA Board) Major Berry stated:

> "It is not my desire here to engage in prejudicing the conciliatory efforts of the Director of the Bureau of Mines, Mr. Finch, in an effort to determine <u>the unsettled point</u>, as I understand it, to wit - the value of this marble." (The italics are mine.)

Again, in his later meeting with the Board he again emphasized that this was the sole point at issue, and when I differed from him on that, the other Directors supported him. As I recall, when Major Berry testified in the case he stated that until the very day of his testimony he had no hint that there would be a charge of bad faith against him and his associates. I doubt whether Major Berry would have entered into this agreement if he had believed that during these negotiations those carrying on the friendly negotiations were at the same time searching for evidence of fraud on his part.

In the statement of Dr. H. A. Morgan and Mr. D. E. Lilienthal of December 22, 1937, they say:

> "The majority of the Board was confident of the soundness of its own experts, but felt that this distinguished public servant (Dr. Finch, whose services were requested under the "conciliation agreement")could be helpful in securing a wholly impartial review of all expert opinions and facts."

The Board could have reassured itself without any friendly "conciliation agreement." When the "agreement" with Senator Berry was being reaffirmed by the two Board members, after six months of protest on my part, I again protested to the Board as follows:

> "If the TVA Board considers it advisable to secure the opinions of additional outside consultants, the same quality of consultation can be secured directly, without the involvements or implications of a contract for conciliation."

In fact, the same man probably could have been secured, if desired. Dr. Finch was being called in, though totally unfamiliar with the situation, to determine the value of property, most of which at that time was submerged in the reservoir, and therefore totally inaccessible. This step was being taken after several representative geologists, including Dr. Oliver Bowles, a member of Dr. Finch's staff as Assistant Chief Engineer of the non-metal division of the U.S. Bureau of Mines, a foremost marble expert, and other leading ma rble experts, had reported the marble deposits to be commercially valueless.

Moreover, the terms of the "conciliation agreement" would seem not to make Dr. Finch available to the Board "in securing for itself a wholly impartial review of all expert opinions and facts." His would have been a task of conciliation between the parties as to the value of the marble. He is a technical expert on marble, and not an investigator of motives. His fees and expenses, to quote from the agreement, were to "be paid in equal shares by the parties" (to the "conciliation agreement"). Such a friendly inquiry into physical value as a basis for a friendly settlement would not include a search for evidence of fraudulent intent, and was out of place when the dominant question was whether there was not an attempt to defraud the government.

The newspaper release of the two Board members contains the following statement:

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

In my opinion, the italicized words quoted imply an untruth. As a matter of fact, there was no such "two years of tenacious investigation" by the majority of the TVA Board or by the legal staff, of which, as previously mentioned, Mr. Lilienthal, one of the Board members, was then head, as General Counsel. On the part of Dr. H. A. Morgan and Mr. David E. Lilienthal there was the exact opposite from tenacious investigation as to bad faith.

When I, as Chairman of the TVA Board, held that Major Berry as a citizen and as a public official should disclose the time he became financially

interested in the mineral claims, his actual investment in the leases, and other pertinent data, as outlined in my letter to him of August 9, 1936, which data would have a direct bearing on the question of the good faith of the claims, neither of the other Directors supported me in that request. Mr. Lilienthal explicitly opposed such a request. He said it would be too hard on Major Berry. In the presence of TVA staff members he said that he had read reports of several TVA staff members expressing the opinion that the claims were in bad faith, and he vehomently criticised such statements of TVA staff members, saying that he would tolerate no more charges of bad faith against Major Berry. A few minutes later he withdrew his remarks, but very distinctly left the impression that any TVA staff member who should suggest bad faith in the matter would be taking a personal risk in doing so. His attitude was one of vigorous opposition to my insistence that Major Berry, as a citizen and as an official of the national government, was under a moral obligation to disclose the facts which would bear on the good faith of his claims.

As to "two years of tenacious investigation" by TVA attorneys: Prior to May, 1935, the Land Acquisition Division of the TVA, with the assistance of TVA engineers and geologists, made a competent study of the value of these leases. By May or June, 1935, the Land Acquisition Division had reached the conclusion that the claims were without commercial value, that settlement was impossible, and that condemnation should be undertaken. It was not the business of the Land Acquisition Division, but of the Legal Division, to seek for legal evidence of fraud. Shortly after May, 1935 and until July, 1936 the matter was in the hands of the Legal Division. In July, 1936, Dr. H. A. Morgan and Mr. Lilienthal, as a majority of the Board, took the matter into their own hands to deal with directly. Up

to that time I believe there had been little if any specific search by the Legal Division for evidence of bad faith. The two members of the Board kept the matter directly in their hands on the basis of friendly negotiations until about the last of March, 1937. During that period I believe there was little if any search for evidence of bad faith by the TVA legal staff. Then, after desultory preparation, active preparation for the hearing began in September, 1937, about two months before the actual beginning of the hearing.

The statement of Dr. H. A. Morgan and Mr. Lilienthal of December 22, 1937 continues:

> "Dr. A. E. Morgan's reflections on our lawyers, whom he seeks to discredit in this case, and whose legal advice he disregarded, are therefore without foundation in fact. No 'punches were pulled', no 'facts pertinent to the issue' were suppressed, and the case was well handled by our counsel."

The testimony referred to is sufficient evidence that I did not criticize the TVA lawyers. I purposely and carefully refrained from doing so, because I felt that the lawyer in charge of the case was put into an almost impossible position by Dr. H. A. Morgan and Mr. David E. Lilienthal, the other two Directors. It is a favorite strategy of Director Lilienthal to state that the Chairman has reflected upon or has maligned or otherwise has offended TVA staff members or other persons.

This method of creating ill will toward a member of the Board has continued for more than four years. Its cumulative effect may be considerable, and it is one of the conditions which has made harmonious cooperation very difficult.

The statement of the two members of the Board continues:

> "No one connected with the Authority had any facts respecting bad faith on the part of the claimants at the time Dr. Finch was invited to aid the parties, nor until shortly before the trial. Dr. Morgan so testified before the Commission."

I did not so testify, though certain questions put to me by the attorney for the Board seemed to me to be so framed as to lead me to do so. In my opinion, the facts fully known to every member of the Board, or at hand in reports presented to it - all long before the condemnation case was started - and before the "conciliation agreement" was made - constituted strong, if not conclusive, evidence of bad faith - that is, of intent to "hold up" the government. There was much data available to the Board, which indicated an intent to "hold up" the government. The following items were among those which were specifically and directly brought to the attention of all the members of the Board:

> General knowledge that dam construction had long been under consideration
>
> Dr. Eckel's report of March 25, 1935
>
> Reports of geologists, engineers and marble experts, summarized in the report of June 2, 1936

My memorandum of June 17, 1936

My protest to the Board in August, 1936

My letter to Major Berry, August 9, 1936

Major Berry's reply of August 15, 1936

My protest at Board meeting September 15, 1936

My protest in signing the delayed minutes of the Board meeting of July 10, 1936, sometime after November, 1936

My verbal protest of February 24, 1937

My protest by memorandum of February 25, 1937

Repeated mention by TVA staff members of opinions that the claims were in bad faith.

As I repeatedly stated to the Board, to proceed under such circumstances with a friendly agreement to determine physical values in my opinion was markedly improper.

I avoided a public statement and withheld making an appearance in the condemnation hearing until the afternoon of the day the hearing was to close, and when a ll prospects had passed that the other Directors would take steps which it seemed to me were necessary to protect the public interest. For nearly a year and a half I protested in confidence to the TVA Board, and to other public officials where I considered it to be in

the public interest to do so, in the hope that the interests of the government could be protected without publicity.

The Berry marble case represents the kind of difficulty with which, as Chairman of the TVA Board, I have been faced in the effort to maintain good standards of public service, in the face of a coalition of two members of the Board which placed me in the position of a minority member.

Regardless of whether the TVA is a true "yardstick" for power rates, it is of necessity a yardstick of government in business. It is conducting business in a large way, and the manner in which it conducts that business will be a measure of the ability of government to do business with integrity, impartialness, and economy. For more than four years I have striven to demonstrate that the government can conduct business with economy and according to high standards of conduct. The great program of dam construction and integrated water control of the Tennessee River system, which until recently has been under my direct supervision, will, I believe, meet any such standards.

To a steadily increasing degree, however, I have contended with an attitude of conspiracy, secretiveness, and bureaucratic manipulation, which has made the proper and effective conduct of TVA business increasingly difficult. During this period the public has been steadily, and I believe purposely, led to believe that the difficulties within the TVA have been due primarily to differences as to power policy, or to just another "family quarrel." The real difficulty has been in the effort to secure honesty, openness, decency, and fairness in government. The Berry marble case, as I have said, is an instance of this difficulty.

Until recently the dam and reservoir construction program, which included about two-thirds of TVA expenditures, except for land purchase have been under my direction; and most of the staff members, except in the legal, electrical, and fertilizer divisions, were selected under my general supervision. In my opinion by far the greater part of the TVA staff is competent, honest,and loyal. I believe that the TVA can be a sound and very valuable contribution to government. I have no agreement with those who would cripple or destroy it. I believe that its major river control work, up to and including power generation at the dam sites, is efficient, economical, and in the public interest, and that the remainder of the program can be made so; but only if the administration is honest, businesslike, open, fair and non-political, and devoted wholly to doing the best possible job in the public interest.

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In the statement of Senator Berry, which also appeared in the press of December 22, 1937, he made the following specific points:

1. Senator Berry said, "Now as to Mr. A. E. Morgan's position as quoted in the daily press, he says, 'the leases were secured after the construction of the Norris Dam by the Federal Government.'

"Mr. Morgan knows and we have proven beyond peradventure that the properties were controlled by my associates and myself before the enactment of the Tennessee Valley Authority law. To be specific, the records show that we were in possession of these properties in the early part of 1932 and the law establishing the Tennessee Valley Authority was not enacted until 1933. The statement of Mr. A. E. Morgan, therefore, and he knew it, was a deliberate and malicious falsehood."

What I did testify, as correctly quoted in the daily press, is:

"The leases were secured after the construction of the Norris (formerly Cove Creek) Dam by the Federal Government had become an active possibility."

The statement that its construction "had become an active possibility" was fully justified by the following facts: At the time the leases were taken in 1932, the construction of the dam had been under consideration for about ten years. Twice Congress had passed bills for its construction, which were vetoed by Presidents Hoover and Coolidge. About $200,000 of Federal appropriations had been spent for surveys and plans for the dam. There was a general widespread knowledge of the probable construction

of the Norris (Cove Creek) Dam, as abundantly evidenced in the Congressional Record and in local newspapers. Stephan Raushenbush in his book, "The Power Fight", written in 1932 and widely circulated, describes the Cove Creek Dam, gives estimates of the primary and secondary power it will produce, and mentions its value for flood control and navigation. He quotes from the Congressional Record a statement by Mr. Henry Ford in 1927:

> "The real goal and objective of the power combine at this time is the Cove Creek Reservoir Dam. The power combine knows that that reservoir dam is worth $50,000,000 and perhaps $100,000,000, and the combine knows that this dam belongs to the people of Tennessee, yet the combine asks the Federal Power Commission to make a gift to them of Cove Creek."

Mr. Raushenbush further states:

> "The Norris Proposal (of 1930) . . .planned . . . for the building of the Cove Creek Reservoir Dam. This latter will act as a means of flood control and navigation control. He stated that sooner or later the Government probably would build it for these purposes even if it developed no power. But as an addition which almost doubles the value of the Govenment's other property he favored it."

It was generally understood in the region that a change of administration, which seemed imminent, would remove the last obstacle to its construction.

A contract made in November 1935, when the construction of Norris Dam was well advanced, which was introduced as evidence at the hearing on the Berry marble claims, provided that Senator Berry and his

associates would prosecute mineral claims against the United States Government for certain land owners, and were to retain 62-½ per cent of all sums so recovered. Senator Berry, as well as his associates, personally signed this contract.

On March 25, 1935, Edwin C. Eckel, Chief Geologist of the Tennessee Valley Authority, who worked under my direction, gave warning concerning the Berry claims, which warning was transmitted to the TVA Board. He said: "The properties were apparently taken out in order to hold up the government, and our encouragement of that policy would lead to similar attempts at Pickwick, Wheeler, and all other dams."

2. Senator Berry's next point is, "Mr. A. E. Morgan further says, 'that the assumption of value in marble deposits was an afterthought.' This is another example of the falsity and the viciousness of Mr. Morgan's declaration. If it were an afterthought, and it was not, the fact would not be removed that my property was confiscated without due process."

I have three reasons for the statement "that the assumption of value in marble deposits was an afterthought." The report of a TVA geologist, which was brought to the attention of the TVA Directors in June, 1936, contains the following statement:

> "Mr. Harris (Major Berry's associate in the marble claims) has personally stated to me, 'The leases were taken on the zinc lead which we traced all the way, northeast from Clinton, Tennessee'. Apparently the original intent was to obtain leases on zinc properties." Two drilling rigs were put to work "late in 1932." The geologist's report continues:

"It was during this drilling that Charles Oder, Assistant State Geologist, came to inspect the property and he has informed me personally that they admitted, with some hesitation, that they were drilling for oil. Mr. Oder has also stated that he discouraged both the zinc and oil prospecting in the properties, but suggested the possibility of developing the marble."

The TVA geologist's report states: "It can be seen from the above-gathered facts that a number of leases were taken, first, for zinc, and when it turned out to be too poor, for oil production. After this effort was discouraged by Mr. Oder, they finally as a last resort have settled down to marble."

The second reason for my assertion is Major Berry's own statement made when his appointment to the Senate was under consideration. In the press of May 2, 1937, the following occurs in direct quotation marks as the statement of Major Berry: "We had no idea in the world when we began that there was any marble present." (Knoxville News-Sentinel, May 2, 1937.)

My third reason for the statement is testimony given at the hearing of the marble case in Knoxville. Newspaper accounts of the hearing on December 7 state that Major Berry's associate, Mr. Harris, testified that leases were taken with the intent of exploring for zinc, and that during such exploration the marble was found.

3. Senator Berry further states: "Mr. A. E. Morgan declares 'that most of the marble sold from the deposits was sold for use in Federal buildings as specified by Federal architects.'

"This is a further example of a warped partisan mind because the facts are that my associates and myself sold no marble to the Federal Government. We sold to the fabricators and the record has been so determined. Then Mr. A. E. Morgan proceeds to say that the geologists and industrial geological consultants have reported that the marble has no chemical value. The inconsistency is immediately apparent. If they had no chemical value how could they be sold to Federal buildings and specified by Federal architects?"

In my testimony I read the confidential memorandum which I had addressed to the TVA Board, dated June 17, 1936. In that memorandum I stated: "I have the following impression . . . most of the marble sold from these deposits have sold for use in Federal buildings, as specified by Federal architects." (Marble "fabricators" purchase and prepare any marble specified by architects.)

At the time this memorandum was written, June 17, 1936, the TVA had information that this marble was used in the following public buildings: The United States Federal warehouse building in Washington; New York public school buildings (No. 2 and 40); Cermak pumping station, Chicago - all Federal or local government projects. The only other buildings on which we could find a record of this marble's being used were Ferncliff Mausoleum, Hartsdale, New York; "St. Catherine's Church," Boston; and the Union Building, Knoxville.

I did not say "that the geologists and industrial geological consultants have reported that the marble has no <u>chemical</u> value". As correctly reported in the newspapers, I said, in my memorandum of June 17, 1936 to the TVA Board: "TVA geologists and industrial and geological consultants

have reported that these marble deposits have no commercial value, being too expensive to work."

I did not state that Major Berry personally sold marble to the Federal Government, though in a letter from him which was introduced at the trial he states that he tried to do so.

Senator Berry further stated:

4. "Mr. A. E. Morgan then proceeds to say that the man, and he means me, is a close adviser of the President, and that my associates and myself are asking for four or five million dollars for our claims and proceeds to declare that anyone connected with the present Administration to profit financially in any way would be an indefensible act. Nobody knows better than Mr. A. E. Morgan, and the records so indicate, that my associates and myself have never asked the Federal Government for any amount of money. We have asked them for a fair appraisal of the worth and the determination of the values confiscated by the Tennessee Valley Authority. Mr. A. E. Morgan, in this instance as well as in other instances, either deliberately or ignorantly engages in the simple process of lying and he knows it."

The quotation referred to is from the same confidential memorandum of June 17 to the TVA Board, which was introduced in evidence at the hearing.

Mr. John I. Snyder, Director of the Land Acquisition Division of the TVA, in a memorandum dated May 15, 1935, stated as follows:

"Subject: Ford and Harris Mineral Leases

"I have come to the conclusion, after an examination of the geology and engineering reports submitted by the above parties, which claim a damage of $1,633,333.33 for the proposed flooding of what they call the marbles of Big Spring Hollow, that it is futile to waste time negotiating with them.

"I suggest that we immediately determine whether we wish to condemn all their interests or just those parts which we will have to flood and get the proceedings started as soon as possible. I think it would be very desirable if we could bring this matter to trial before the water actually covers the property."

There were a number of meetings between Senator Berry's representatives and these of the TVA at which definite amounts of money were named. The following is quoted from the report by the TVA legal representative of a meeting on Ma rch 30, 1936, attended by four representatives of TVA, and eight representatives of Senator Berry and his associates:

> "Very little progress was made in the conference, and it was obvious from the first that the parties were too far apart to find any basis of settlement. The amount claimed by the marble people is approximately $1,600,000, based upon a series of figures, each of which is highly speculative and probably unprovable in an action at law."

These references to written records confirm the general knowledge among TVA engineers, geologists, land acquisition men, and attorneys that in negotiation with Senator Berry's associates and representatives their

claims were stated in terms of money and in large figures. It was understood at the time by TVA staff members that the amount of $1,600,000 was claimed for one group of leases, and that the total claims would amount to four or five million dollars. It was my understanding from conversation with staff members at the time, that while during conferences Major Berry's representatives made these large claims for specific amounts, they carefully refrained from making any written records of such claims.

5. Senator Berry further states:

"In addition, the records show that we have made every effort to compose the matter by mediation, conciliation and arbitration, and it is Mr. A. E. Morgan and no one else that blocked the processes of ascertaining the facts. Moreover, it is Mr. A. E. Morgan who is responsible for the abrogation and the cancellation of an agreement to mediate the differences. This establishes definitely his attitude of bad faith and his disregard of the majority action of the Tennessee Valley Authority Board of Directors. All of these things were said direct to Mr. Morgan in the presence of his associates, therefore, when he issued the statement quoted in the daily press he makes himself the party of repudiation of a sacred agreement, and no one can have confidence in the good faith of a person who violates a sacred, binding agreement. Such violation not only represents impropriety, but the essence of bad faith. The simple facts are that Mr. A. E. Morgan, as chairman of the Tennessee Valley Authority, has discovered his inefficiency and his ignorance of the laws of the land

and now endeavors to cover up his failures, weaknesses, and ignorance in an attempt to becloud an issue.

"Conceive the chairman of the Tennessee Valley Authority, one who is supposed to have intelligence and business capacity, flooding valuable property without first endeavoring to settle, or secondly, proceeding in condemnation action. He did not do either but he assumed to intimidate and coerce not only my associates and myself, but hundreds of other property owners in the Tennessee Valley."

As to my having "blocked the processes of ascertaining the facts," the exact opposite is the case. On at least four occasions, the first being my letter to him of August 9, 1936, quoted heretofore, I asked Major Berry for the pertinent facts concerning the origin and status of his interests. None of this information was supplied, except for three lease dates which already were matters of public record. It is true that Senator Berry made repeated efforts to bring about a settlement of his claims by quiet agreement, without disclosing these facts, and without an open hearing. It is true that he had conferences on the matter with one or more of the TVA directors, which conferences were not reported to me, the Chairman of the Board. The "conciliation agreement" between Major Berry and Directors H. A. Morgan and D. E. Lilenthal was made after numerous TVA geologists, engineers, appraisers and marble experts had reported the marble to be without commercial value, and after repeated expressions of opinion by the TVA staff that the claims seemed to be an effort to defraud the government. The "conciliation agreement" was reaffirmed after I had repeatedly expressed to the TVA Board my deep concern over what seemed to me to be an effort to defraud the government, and had specifically drawn their attention to these numerous reports, and to

these charges of bad faith made by TVA staff members, and had vigorously protested to the Board in writing against any agreement under the circumstances. Because the agreement was reached after my memorandum of June 17, 1936 the TVA Board, during my absence, and without notice to me, I held that it was invalid. Though the agreement was later validated by a majority of the Board over my protest, I was of the belief that a "friendly" agreement reached in the face of what seemed to me to be obvious intent to EXPLOIT was not a good public policy, and lacked several degrees of being "sacred." After I had protested for more than six months and had brought the matter clearly to the knowledge of the Secretary of the Interior, who otherwise might have become unwittingly involved, and after he had refused the loan of Dr. Finch as "conciliator," the TVA Board at last unanimously abandoned the "conciliation agreement" and on March 31, 1937 authorized condemnation.

6. Senator Berry further states:

> "The proof of his (Dr. A. E. Morgan's) lack of ability, capacity and vision is shown in the fact that no condemnation proceedings were brought against the valuable properties until the good year 1937."

The Berry marble claims were thoroughly and vigorously examined in 1934 and 1935 by the TVA geologists, whose work came under my general supervision. Further evidence was collected by the Land Acquisition Division of the TVA. This evidence was entirely to the effect that the leases were without commercial value, and that there was apparent intent to "hold up" the government. When the physical evidence was fairly complete, and when it appeared that the claims were fantastically exorbitant, the entire matter was turned over by the Land Acquisition Division to the TVA Legal Division for condemnation. There progress almost stopped until Dr. H. A. Morgan and

Mr. D. E. Lilienthal, during my absence and without notification, adopted the unprecedented course of taking the matter out of the hands of the usual TVA agencies, and undertook to handle it. In the several thousand TVA land acquisition cases, I believe this was the only case in which the Board of Directors took the handling of the acquisition of land or minerals out of the usual TVA channels and directed it themselves; that is, except in the case of the purchase of phosphate lands for TVA, in which case purchase prices were determined under the direction of Dr. H. A. Morgan.

As I understand the situation, delay in condemnation was in accord with Senator Berry's wishes, he desiring a friendly settlement, and the delay was acquiesced in by the Legal Division. Except for a few days in February, 1937, when I was inquiring into the process of condemnation, such delay was in no respect whatever due to my action, but rather the contrary.

The above account covers every point made by Senator Berry in his statement of December 22, concerning the marble claims. I have not discussed his other extended uncomplimentary remarks concerning myself. However, it is interesting to recall a letter written to me by Mr. Berry on May 23, 1936, a few weeks before I protested against the settlement with him.

The letter is as follows:

"My dear Dr. Morgan:

"I cannot begin to tell you how thoroughly happy I am over the announcement that you will continue with the Tennessee Valley Authority as Chairman, notwithstanding newspaper comments to the contrary.

"I have said to the President repeatedly and to others that I

knew of no man who possessed the vision and the courage who could have successfully undertaken the great Tennessee Valley project outside of your own good self. It is a great task and you and your associates are deserving of the highest commendation.

"Good wishes to you."

This letter was signed "George L. Berry."

* * * * *

The T. V. A. deserves a fair and open hearing, which is full and impartial with nothing hidden, and without predelection for or against any person ~~or against any person~~ or against the T. V. A. itself. The investigating body should be provided with sufficient funds to make possible a first hand examination of the obscure financial records of the power program, and of all other important phases of the T. V. A. which come into question. The fertilizer policy for example was adopted without being disclosed to the T. V. A. Board, and no impartial technical appraisal and report of the fertilizer program ever has been made to the Board or to the public.

It would seem that such an investigation could best be conducted by a joint House and Senate Committee on which all important attitudes towards the T. V. A. would have adequate representation. The T. V. A. is important not only for itself, but because it represents a case of a new form of government organization, and also because it represents one policy with reference to the power industry, and a diametrically opposite policy toward the fertilizer industry. It is important not only for itself, but as a type of governmental method and attitude.

PSF
TVA

Gentlemen, we shall now proceed with the investigation which was adjourned last Friday. First, I should like to say a few words. I want to emphasize again the controlling considerations which govern the hearing beginning last Friday and which I stated at that time.

As I said last week, I am holding this hearing pursuant to the responsibility and authority which are imposed upon me as the Chief Executive. In that capacity I have direct and primary responsibility for the honest and effective administration of the executive and administrative branches of the Government. Serious charges have been made by the Chairman of the Tennessee Valley Authority against his fellow directors and in turn by Dr. Harcourt Morgan and Mr. Lilienthal against Chairman Morgan. It is my duty, both to investigate the truth of the charges and to take appropriate action based on the facts of this investigation. The President does not have the sole responsibility, but he has primary and direct responsibility.

As I emphasized at the earlier session of this investigation, it is not for the purpose of composing differences, it is not for the purpose of exploring issues of policy, mere personal differences, or disagreements over details of administration. The object of this inquiry, as I stated before, is to ascertain the facts, if any, upon which the charges of personal dishonesty, malfeasance, and official misconduct were based.

So long as these matters are outstanding, all other questions relating to the Tennessee Valley Authority are necessarily confused. Until these grave charges of dishonesty, bad faith, and misconduct are cleared up, it is impossible to secure the proper administration of the project or fair consideration of any issues of policy that may be outstanding.

At last week's session I asked all three directors a number of questions intended to elicit the facts upon which the various charges and countercharges were based. Director Harcourt Morgan and Director Lilienthal submitted oral and documentary evidence on these points, both with reference to the charges against them and the charges which they in turn had made against Chairman Morgan. Chairman Morgan declined to submit any facts at that time, either with reference to his charges or in response to those which had been made against him. In order to give him an opportunity to reconsider his position and a further opportunity to assemble the facts, I adjourned the hearing until today. At the same time, however, I am ready to receive any further facts which the other directors may wish to submit.

One further word. I cannot emphasize too strongly the point I made last week. It is my duty to conduct this inquiry and it is yours to assist and cooperate therein. Whatever responsibility

any of you may feel with regard to your duty to present the facts in any other forum, as executive officers appointed by and responsible to the Chief Executive, it is your duty at this hearing to respond fully and to the best of your knowledge.

I need hardly remind you again that I am interested only in facts and not mere opinion and suspicion. Now, Chairman Morgan, since you declined to respond to many of the questions which I asked last week, I wish again to request at this time that you submit the facts, if any, concerning the matters that I then inquired about.

(Note: The following questions are based upon the assumption that some responses will be made. If, at the outset, there is a general refusal to make any statement there appears to be no course but to close the hearing with the closing statement which is the last page of this document.

Of course, however, the other directors should first be given an opportunity to add anything they may have.

The questions attached hereto cover substantially the same ground covered last Friday and are in substantially the same order. Generally speaking, the first question listed under each item covers the point broadly. The remaining questions are suggestions for use depending upon the responses made to the first.)

Chairman Morgan, I shall first ask you about the so-called Berry marble claims, with regard to which you have publicly charged the other directors with dishonesty and malfeasance. I repeat the question I asked you last week:

Q. What facts have you showing dishonesty or malfeasance on the part of your fellow directors in the handling of the so-called Berry marble claims?

A. If the Chairman declines to answer, point out that he must be assumed to have had some facts available at the time his charge was made, and ask him what facts he had at that time.

B. If Chairman Morgan answers, ask him such of the following questions as are not covered in his statement.

1. You have stated that you emphasized to the Board the opinion of its experts that the leases were without commercial value. Claims of this technical nature may be worthless without being fraudulent. Did you have any facts as to actual fraud in your possession, and, if so, did you present them to the Board?

2. Did you present any facts as to actual fraud to counsel in the case?

3. Did you confer with counsel prior to your appearance before the condemnation commission and advise with him concerning the evidence which you planned to offer; or as to the possible effect of your testimony on the success of the case as a whole?

4. Did TVA counsel approve your appearance and accept you as a Government witness?

5. What facts relating to fraud did you present which were not already a part of the record in the case before the commission?

6. Did you at any time have any facts which gave you reason to believe that Dr. Finch, Director of the Bureau of Mines, would act in a dishonest or corrupt manner in this matter?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

Chairman Morgan, you have also charged that a "joker" was inserted by your associates in the Arkansas Power and Light Company contract, and that the engineer who exposed this "joker" was punished.

Q. What facts did you have to support your accusation of dishonesty in this matter?

A. If Chairman Morgan declines to answer consider the following question.

What facts did you base the accusation on at the time it was made?

B. If Chairman Morgan answers, but not fully, ask him the following questions.

1. Did you ever make any suggestion of dishonesty in regard to that contract prior to the letter to Congressman Maverick?

2. Were the Arkansas Power contract provisions relating to secondary power, prior to the amendment which you suggested, consistent with the large industrial power contracts you had already approved?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

Chairman Morgan, your letter to Representative Maverick charges that the Authority's contract fails to protect the public's interest and imputes a sinister relation between the majority members and the Aluminum Company.

1. What, if any, facts have you supporting the charge of corrupt relationship between the majority of the board and the Aluminum Company?

2. If you do not mean to charge any impropriety in the relations between the other board members and the Aluminum Company, am I now to understand that you are disavowing such an intention and such a charge?

3. Am I to understand, then, that what was really involved in connection with the Aluminum Company contract was a mere disagreement between you and the majority of the board on the issues of policy involved?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

In your letter to Representative Maverick, Chairman Morgan, you charged the majority of the board with making explicitly false, misleading, and evasive reports to the President, to Congress, and to the public.

1. Please give me any specific facts you may have showing dishonesty on the part of the majority of the Board in the making of such reports.

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

Another of the charges in your letter to Representative Maverick was that "There is a practice of evasion, intrigue, and sharp strategy with remarkable skill and malevolent habit of avoiding direct responsibility which makes Machiavelli seem open and candid."

1. What, if any, dishonest or corrupt acts on the part of your associates do you consider involved in this charge?

2. What specific facts do you have to support any such conclusion?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

And now I want to take up what I referred to last week as your "final charge." I think it is fair to say that throughout your several recent public statements there runs a general charge of dishonesty against the other directors. I am referring particularly to such remarks as one which I mentioned last week in this connection, your statement that the situation in the TVA Board was not due primarily to differences in power policy or to just another family quarrel, but that the real difficulty was to secure "honesty in Government." You stated that "the Berry marble case, as I have said, is an instance of this difficulty." You unequivocally charged, therefore, that there were other instances of dishonesty as well. Again in your letter to Representative Maverick, speaking of the present TVA situation, you said, "In my opinion, good government and the welfare of the TVA demands that the situation be cleaned up and that standards of openness, fairness, and honesty shall prevail."

1. I want to know what specific facts you had in mind when you charged the other directors with a lack of common honesty?

(If the Chairman should here make a statement based essentially on personal disagreements or personal opinions or matters of policy or administration, he should be confined to specific facts relating to personal integrity.)

I ~~have not endeavored to cover in detail all of the matters presented here last Friday. However,~~ The questions heretofore put cover most of the salient points which were left outstanding in regard to Chairman Morgan's charges. Dr. Harcourt Morgan and Mr. Lilienthal gave testimony on their charges. I shall now ask Chairman Morgan whether he now has any further response to those charges and to the testimony which Dr. Harcourt Morgan and Mr. Lilienthal gave on them. I will take them up in the order in which we dealt with them last week.

The first of those charges was the carrying on of a public campaign attacking the personal motives and integrity of the other directors. This was documented by 5 publications which are marked exhibits 26 to 30, inclusive, in the record.

The features to which Dr. Harcourt Morgan and Mr. Lilienthal have taken exception are those which they believe attack their personal motives and integrity. I now ask Chairman Morgan what facts he has in response to that charge.

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

Chairman Morgan, at the hearing last week, Dr. Morgan and Mr. Lilienthal testified at length concerning their charge that "as an expression of disagreement" you had engaged "in unsupported attacks upon the integrity, professional ethics, and competence of key members of the staff", and had harassed and interfered with the staff while "carrying out duties resulting from the decisions duly arrived at by a majority of the Board of Directors."

Q. What facts have you in answer to this charge, or to the testimony presented last week upon this charge?

There is a specific question which I will ask you to answer in regard to the Chattanooga trial.

Q. As I understood Mr. Lilienthal's testimony last week, he said, among other things, that during the course of the trial you had charged TVA counsel with improprieties dealing with unnamed prospective witnesses. This, of course, is a very grave accusation. Last week you declined to give the names of these engineers or the circumstances of the incidents that you had in mind. I want to ask you specifically for the names of the three engineers referred to you by you in your memorandum to Mr. Fly under date of December 30, 1937 (document No. 34, in the file of the Chattanooga trial).

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

The next charge, Chairman Morgan, is with regard to your cooperation with Mr. Willkie in the preparation of a memorandum, the purpose of which was to show that a decision of the Board was wrong and improperly motivated.

Q. What facts have you with reference to this charge or the testimony introduced last week upon this charge?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

Another charge upon which testimony was introduced last week, is that you collaborated with a former chief engineer of the Insull utilities system in the preparation of a memorandum on power pooling policy; that that memorandum proposed evasions and violations of the TVA Act, and that the memorandum was made available to the utilities during the negotiations relating to the power pool.

Q. What have you to say in answer to the charge, or in response to the testimony of last week upon this charge?

Chairman Morgan, there are two specific questions on this matter which I would like to have you answer. You stated last week that just before my power pool conference in the fall of 1936, you talked to Mr. Owen D. Young, President of the General Electric Company, and Samuel Ferguson, President of Hartford Electric Company, in New York concerning some policy phases involved in the power pool memorandum that you were preparing. Mr. Lilienthal stated last week that the Authority's staff which was designated by the Board to prepare a power pool memorandum for my conference was unable to obtain information from you concerning what you were doing.

Q. Is it a fact that although you consulted with utility representatives regarding these matters, you failed to consult with your fellow directors and the staff which the Board had designated to work on this matter; if so, will you give me the reason?

Q. In the course of the preparation of this memorandum what, if any, Government officials did you confer with?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

A final charge that was made against you, Chairman Morgan, is that you failed to carry out an explicit direction of the Board after board action duly taken.

Q. Have you anything further to say on this?

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal if they have anything further to say on this matter.

CLOSING STATEMENT

This will conclude the hearing for today. Until I have had a further opportunity to study and consider the record, I shall not know definitely whether or not I will have any further need for your presence in Washington. I should like to ask you, therefore, to be available in Washington over the week end and through Monday. In the meantime, I shall give the record very careful consideration.

PSF

TVA

THE WHITE HOUSE
WASHINGTON

5/15/38

MEMORANDUM FOR THE PRESIDENT

This stuff went to Simon under frank.

The stamps on the envelope are the ones he put on.

MHM

PSF
TVA

Office of the Attorney General
Washington, D.C.

March 17, 1938.

The President,

The White House.

My dear Mr. President:

I have the honor to comply with your request for my opinion respecting your power to remove the chairman of the Tennessee Valley Authority from office.

The following provisions of the Tennessee Valley Authority Act (48 Stat. 58, 60, 63) are the only statutory provisions bearing upon the question:

> Sec. 4. (f). "The board shall select a treasurer and as many assistant treasurers as it deems proper, which treasurer and assistant treasurers shall give such bonds for the safe-keeping of the securities and moneys of the said Corporation as the board may require: Provided, That any member of said board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives."
>
> Sec. 6. "In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States. (Underscoring supplied.)

As I understand it, the chairman has demonstrated his inability to cooperate in an orderly manner with the majority of the board,

resulting in a situation seriously threatening the ability of the Authority to continue to perform its statutory functions. Also, as I understand it, he has openly defied your constitutional authority to take care that the laws be faithfully executed by refusing to answer your reasonable inquiries concerning the situation existing in the Authority.

I think I may state it as an unassailable proposition that in such a case the power of removal ought to exist. Furthermore, the Tennessee Valley Authority being an executive agency, performing executive functions, and therefore in the executive branch of the Government, the power of removal ought to be in the President. Under the principles announced by the Supreme Court in Myers v. United States, 272 U. S. 52, there would appear to be no question that the power of removal is in fact vested in the President. The later decision in Humphrey's Executor v. United States, 295 U. S. 602, limited the application of the Myers case but did not disturb the ruling therein as applied to executive officers.

In the Myers case the Court upheld the President's power to remove a postmaster notwithstanding a statutory provision that he should hold office for four years and be removable by the President by and with the advice and consent of the Senate. In the Humphrey's case the Court held the contrary in the case of a member of the Federal Trade Commission, but relied upon the distinguishable fact that the Federal Trade Commission exercises quasi-legislative and quasi-judicial functions and is not a part of the executive branch; and it also laid great stress

upon the legislative history of the Federal Trade Commission Act as indicating a purpose of the Congress to secure the maximum independence of the Commission from Executive interference and control.

These distinguishing factors are not present in the case of the Tennessee Valley Authority. It does not exercise quasi-legislative or quasi-judicial functions, and the legislative history of the Tennessee Valley Authority Act contains no such indications of purpose on the part of the Congress to restrict the President's ordinary power to remove executive officers appointed by him.

But aside from the question of the constitutional power of the President to remove from office, and aside from the question of the power of the Congress to restrict the President in making such removals, I am satisfied that the Tennessee Valley Authority Act, properly interpreted, does not place any such restriction on the President's power.

The provision in section 4 (f) that members of the Board may be removed by concurrent resolution of the Senate and the House does not, and could not have been intended to, provide an exclusive means of removal. This is demonstrated by the provision in section 6 that under certain conditions the President shall remove. Perhaps the most that can be said of the provision in section 4 (f), under the circumstances, is that it was intended to provide a method of removal by the legislative branch in addition to the more cumbersome method of removal by impeachment.

The provision in section 6 that the President shall remove members of the Tennessee Valley Authority Board for violation of the inhibition

against appointments and promotions for political reasons, cannot be construed as an intendment with statutory force that he shall not remove them for other causes. To authorize the President to remove a director for mere consideration of a political endorsement in appointing a minor employee, and yet to deny him the power to remove a director for more substantial causes (perhaps amounting to malfeasance in the highest degree) would be an absurdity--and the rules of construction do not permit an interpretation which would attribute to the Congress the intendment of an absurd result.

It is my opinion that you have the power to remove the chairman of the Tennessee Valley Authority from office and that there is no requirement concerning notice, hearing, or assignment of cause--although it may be desirable to give them.

Should the power of removal be exercised and litigation follow, there would no doubt be raised, not only the question of the congressional intent as embodied in the above-quoted sections of the statute, but also the question of the constitutional authority of the Congress to qualify the President's power of removal. Consequently, you will appreciate that to remove the chairman would involve considerations of policy, including that of the advisability of having this constitutional question raised at this time.

In conclusion, I think I should point out that the power of suspension is coexistent with the power of removal and that it would be permissible, if you should find it advisable, merely to suspend the

chairman, following the suspension by the nomination of a successor and making final removal dependent upon approval of the nomination by the Senate.

Respectfully,

Robert H. Jackson
Acting Attorney General. (per H.W.R.)

PSF: TVA

THE WHITE HOUSE
WASHINGTON

March 17, 1938

MISS LE HAND:

For the President to read.

S. T. E.

TVA Jitters

BY PAUL Y. ANDERSON

Washington, March 14

FRIDAY was wash day at the White House, but for all the President's heroic efforts over the tub a mountainous bundle of TVA linen seems surely destined for the senatorial laundry. What is happening to him is what usually happens to easygoing housekeepers. He should have pitched in long ago. Instead, good easy man, he allowed things to accumulate, and what would have been no more than a brisk job of straightening up must now be a thorough house-cleaning—and one out of which envious neighbors will do their worst to make a scandal.

By his dramatic action in summoning the TVA directors to confront one another in his presence and there prove or retract their mutual accusations Mr. Roosevelt may have hoped to render further investigation superfluous. If so his intent was defeated by the stubborn refusal of Chairman Arthur Morgan to produce any facts in support of his charges against his fellow-directors, Harcourt Morgan and David Lilienthal. It is true the chairman cut such a sorry figure that the President would be on solid ground in demanding his resignation at once, but in the face of his broad and persistent intimation that he can and will present proof when Congress authorizes an inquiry, one seems inevitable.

The question is being asked: Does the President have power to remove a member of the board? The only method of removal expressly provided in the TVA act is by concurrent resolution of the two houses of Congress. Some lawyers contend that a Presidential power of removal is implied in the act. It will hardly matter in this case. Resignation or removal of one director or all three is virtually assured. The outcome probably will be determined by the prospective investigation. Unless Chairman Morgan makes a far better showing than he has thus far, nothing is likely to save him. The tame tory columnists and peanut partisans who labor so heavily at making a martyr of him have no genuine concern for his ultimate fate. He is just a handy mudball to heave at the TVA and will receive the same solicitude as one that has been thrown.

His defiant attitude at the White House furnished the most striking corroboration of his colleagues' charge that he is temperamentally unfit to exercise a divided authority. Obviously he was under the most compelling ethical obligation to produce facts in support of his charges of dishonesty, indecency, conspiracy, and intrigue—charges which, as Lilienthal properly said, are libelous if untrue. And certainly he was morally obligated to render an accounting to the man who appointed him and them. No one who takes the trouble to read the eighty-page transcript of the hearing can fail to be impressed by the President's fairness in the face of insistent provocation. Anyone who, after reading it, is willing to compare the proceeding to a Soviet treason trial would do well to take himself to the nearest psychiatric clinic.

Because of their dramatic content news accounts have emphasized Chairman Morgan's charges, and his refusal to substantiate them. More significant to me, on the basis of the record, was one of the charges leveled against him by Lilienthal and Harcourt Morgan—and the evidence which they adduced to support it. The charge was that he actively and persistently interfered with and seriously hampered the preparation and presentation of the government's case in the vital injunction suit brought—and lost—by eighteen utility companies.

To the TVA the outcome of that proceeding was a matter of life or death. It was the culmination and quintessence of all the legal attacks by the combined forces of the power companies. In it all the tactics of obstruction were summed up and put to the test. Yet the record presented by Lilienthal and Harcourt Morgan appeared to show that the chairman sabotaged the government's case from beginning to end, and even sought to impeach some of the government's witnesses. What impresses me most in this connection is not the angry denunciations from the other two directors, but the coldly bitter objections of the lawyers who handled the case. It is not amiss to note that one of these lawyers—and the one who expressed the deepest indignation—was John Lord O'Brian, who served with some distinction as assistant attorney general in the Administration of Herbert Hoover. He was retained in this case as special counsel.

In the midst of the trial Chairman Morgan charged that a number of TVA engineers had complained to him that they were being required to give evidence of a misleading character. Challenged by Mr. O'Brian and James L. Fly to name the engineers, the chairman refused. Already burdened with the task of conducting the government's case against the best lawyers that utility money could hire, TVA counsel went to the trouble of interviewing every engineer who had been called or was scheduled to be called as a witness. They found nothing to support the chairman's nasty accusation.

Considering the chairman's unblemished personal reputation and his excellent record as engineer and administrator before joining the TVA, it seems logical to conclude that considerable provocation must have been required to push him to such extremities. The conclusion derives a color of corroboration from what is known of Lilienthal's nature and methods. The transcript of the hearing itself leaves little doubt that this astute, ambitious, tough-minded young lawyer overlooked no angles in compiling a record against his older colleague. It may

as an unpleasant characteristic, but it does not impair the force of the record. That can only be done by facts—facts such as the President asked for and was denied.

Although Senator Norris still thinks the investigation should be made by the Federal Trade Commission, to avoid partisan sniping and personal buffoonery, he is resigned to a Senate inquiry. Since a select committee is indicated, and since it would be appointed by Vice-President Garner, always a friend of the TVA, there seems to be no great cause for alarm. In view of the tragic aspect of the whole matter, and considering that a certain amount of clowning cannot be avoided, no great harm can be done by making Senator Bridges a member of the committee.

[In last week's dispatch from Mr. Anderson it was stated that whereas once the N. A. M. bribed Congressmen and page boys, now it attempts to bribe "whole committees." The last word should have been "communities" not "committees."—EDITORS THE NATION.]

Europe Learns from Vienna

BY ROBERT DELL

Paris, March 14

HITLER'S annexation of Austria came sooner than anybody had expected, owing to Hitler's desire to prevent a plebiscite that would certainly have resulted in a large majority for Austrian independence. The absorption of Austria puts Czechoslovakia in immediate danger, for the Czechoslovak-Austrian border is not fortified, whereas there are strong fortifications on the German frontier. The Czechoslovak government and the people are meeting the situation with calm firmness. A Prague paper, *Pravo Lido*, spoke for the whole nation when it said yesterday, "We are not Austria and will never in any circumstances follow the example of Austria." Long ago steps were taken to make possible rapid mobilization whenever necessary, and the Czechoslovak army is excellent. The government has declared, in reply to questions from Paris and London, that Czechoslovakia will yield to no intimidation and will resist invasion by force. It has been assured by both the French and the Russian government that France and Russia will fulfil all their obligations under their respective treaties with Czechoslovakia.

On Saturday Sir Eric Phipps, the British ambassador in Paris, was informed by Delbos that the cause of Czechoslovakia was the cause of France, and the same information was given to Lord Halifax by the French ambassador in London. If, therefore, Hitler deals with Czechoslovakia as he has dealt with Austria, the result will be war. He has assured the Czechoslovak government of his pacific intentions, but it is remembered in Prague that in 1936 he solemnly undertook to respect the independence of Austria.

Neville Chamberlain
Courtesy London *Tribune*

The last illusion of those who persisted in believing that Mussolini could be detached from Hitler and induced to defend Austria has been destroyed. This illusion persisted at the Quai d'Orsai up to Friday, when the French chargé d'affaires in Rome was instructed to call on Foreign Minister Ciano, who refused to see him. Nothing about Austrian events was published in Italy until Saturday, when the press approved Hitler's action. Gayda stated in the *Giornale d'Italia* that Italy would do nothing to hinder a natural stage in German national history and mentioned that Italy had formally abandoned Austria on March 1, 1937. How anybody can have imagined that the Rome-Berlin axis would exist if Mussolini had not abandoned Austria to Hitler passes my understanding. Yet eminent diplomatists like Sir Robert Vansittart, chief adviser to the Foreign Secretary, appear to have imagined it.

It seems that Hitler did not inform his Italian vassal in advance of his intention to seize Austria, but he has since given Mussolini an assurance that he will always respect the Brenner frontier. German and Italian officers have been fraternizing on that frontier. Mussolini cannot be very happy about the future. He has got nothing from his betrayal of Austria except a worthless promise from Hitler. His only hope now is in the British government. Hitler cannot save him from financial and economic catastrophe.

In France one of the first results of Hitler's coup was Blum's change in his ministerial plans and his attempt to form a government of national union, including Communists and men from the center and right who are loyal republicans, not royalists or pro-fascists. Blum particularly wanted Paul Reynaud as Foreign Minister. The attempt failed because the Communists were ready to subordinate their party and class interests to the interests of the nation, but the center and right were not, excepting Reynaud and a few others. Indignation against the latest example of Hitler's bad faith was intensified by a feeling that it is the inevitable consequence of Anglo-French policy and repeated capitulations. There is great bitterness against Chamberlain and Halifax, only hinted