PSF Tennessee Valley Authority Subject File Box 187
Mar. 12, 1938 - 1941 and Undated

Box 187

CONTINUED

PSF: TVA

Washington, D. C.,
March 18, 1938.

Dear Mr. President:

At the conference held with you last Friday I stated that I could not participate for the reason that such a procedure could not bring out the many pertinent facts which must necessarily be considered in order to arrive at an informed and correct conclusion. I stated that the meeting was not and could not be a useful, fact-finding occasion. You must know how much I disliked to put myself in a position of even seeming not to comply with your wishes.

I took this course - hard for me, I assure you - not in the least in any spirit of defiance, but with a very deep sense of obligation to you and respect for your high office, and I feel, with a very deep conviction, that the course I felt compelled to take was altogether in the best interests of the T.V.A.

During the week I have reconsidered the question of the right course for me to pursue; and I want you to know that I have had uppermost in my mind the welfare of the T.V.A. and my relations to you, through whose appointment I have had entrusted as one of three to organize and administer this great undertaking, in such manner that it would contribute its part to the achievement of the high social objectives of your Administration.

The reconsideration which I have given to this whole matter in the light of the record which has been made thus far has confirmed my opinion that it really is not possible in sessions of this sort to go deeply and thoroughly enough into the facts

pertinent to the issues to get the truth with respect to these matters. I do not believe that it is either wise or possible to attempt to arrive at a conclusion by taking unsupported statements of Board members, including myself.

May I point out by way of illustration one single point raised in the discussion of the Berry Marble case - one of the simplest points upon which statements were made at last Friday's meeting. It was stated that until just shortly before the hearing in December, 1937, of the case before the Commissioners, nobody had any evidence of bad faith; that there were only rumors. The record shows that under date of July 13, 1936, a "Conciliation Agreement" was made with Major Berry. I had no notice of the meeting at which the agreement was made and I was not present. I protested against this agreement on the ground, among others, that it recognized value in the Berry claims which on the facts then known showed all the ear-marks of being made in bad faith. I continued to protest. Nevertheless on February 25, 1937, as shown by the record, the agreement was again approved. The record shows that I voted against that resolution. Now the question is, what were the facts known by all three directors at that time which led me, and should have led the other two, to the inevitable conclusion that there was bad faith in the presentation of these claims.

At this meeting on February 25, 1937, when the Conciliation Contract was again approved by the Board, I and the other members of the Board had before us the following positive facts, which to me showed clearly - and I assert they would show to any reasonable and prudent man - that these claims were made in bad faith:

1. The T.V.A. geologists, independent geologists of high standing, and a wholly independent committee of practical marble experts, after thorough investigation had reported that the marble deposits were of absolutely no value commercially. Dr. Prouty, Professor of Geology of the University of North Carolina, had reported, in referring to these marble deposits, that "none of them were worth quarrying". Dr. Burchard of the United States Geologic Survey made a similar report. All the others agreed with this finding of no value.

2. Record titles to the leases were not in Major Berry. He was a stranger to the record.

3. Major Berry, in August 1936, had positively declined to state to the Board at my request what his interest was, how he had acquired it, and the amount he had paid.

4. There was then and had been continual improper and unseemly pressure exerted upon the Board on the part of Major Berry for payment by way of a private and non-public settlement outside entirely of the regular procedure for the acquisition of lands and rights of lands by the T.V.A.

All the foregoing and other facts had been brought to the attention of the other members of the Board prior to this meeting of February 25, and on their face they were positive and direct proofs of bad faith.

I thus challenge the statement that there were only rumors of bad faith, but the only way possible to make adequate and regular proof of the facts would be by an orderly hearing,

the examination of witnesses under oath, and after a full opportunity for argument.

I have thus stated this single point in the Berry case only by way of example. There are other very important points not yet presented to you or to the public concerning the handling of the Berry case which can be shown only by witnesses who may have to be subpoenaed and where there must be facilities for examination, cross-examination and argument, which are not available here.

May I add here that I think it clear that any public servant desiring to protect the public interest, and having before him the facts which I then had, would not possibly have been justified in taking any other position than the one I then took, and constantly maintained thereafter.

I had asked Major Berry, among other things, to disclose his documents showing his interest in the claims. Major Berry refused to produce them, and I was not supported by my fellow Board members in my request and insistence that they be produced. Afterwards and just before the hearing some of them were obtained by others and presented to the condemnation Commissioners as proof of bad faith.

With respect to most of the other issues raised last Friday there is even more necessity of hearing witnesses and of the production of documents. It will also be necessary to call technical men and experts, to ascertain the facts and their significance in order to arrive at an informed and considered judgment.

I see only one way in which all the relevant facts on these matters can be brought out: namely, by a full and impartial inquiry by the Congress (through a Committee), in which the power of subpoena can be made available, and before which all the witnesses and documents can be produced.

I hope and believe that on consideration you will come to the conclusion that such an investigation is the appropriate and effective way of dealing with this whole subject.

May I assure you that I have only one wish, namely, that in the best interest of the T.V.A., every relevant fact be brought out by the parties who know the facts at first hand, so that the President and the Congress and the public may be fully informed.

It is for the reasons which I have stated that I have felt impelled to maintain the position which I have taken.

With great respect, I am as always,

Sincerely yours,

Arthur E. Morgan

Arthur E. Morgan.

The President,
The White House,
Washington, D. C.

ASSISTANT SOLICITOR GENERAL

WASHINGTON

March 19, 1938

PSF: TVA

TVA file

Hon. M. H. McIntyre,
Secretary to the President,
The White House.

Dear Mr. McIntyre:

Just before Solicitor General Jackson was called out of the city yesterday he requested me to advise him on the subject of the enclosed memorandum.

As he left immediately and as the information may be desired without delay I am handing you my memorandum to him, not being able to reach you on the telephone.

Sincerely yours,

Golden W. Bell.
Assistant Solicitor General.

Enc.

GOLDEN W. BELL
ASSISTANT SOLICITOR GENERAL

JTF/ems

19-2-293

Department of Justice
Washington

March 18, 1938.

MEMORANDUM FOR THE ACTING ATTORNEY GENERAL

Re power of the President to remove the chairman of the Tennessee Valley Authority from the office of chairman without removing him from membership on the board.

The Tennessee Valley Authority Act, 48 Stat. 58, 59, provides in section 2(a) as follows:

> "The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman."

Dr. Arthur E. Morgan was nominated by the President and confirmed by the Senate as a member, not as chairman. Cong. Rec. vol. 77, p. 4627.

The chief clerk of the State Department has informed us that Dr. Morgan was commissioned as a member, not as chairman, and that apparently he was designated by the President as chairman in a letter, independently of the commission, in accordance with what the chief clerk stated to be the usual practice. He did not have a copy of the letter.

The President's power to remove is founded upon the principle that the power to remove is concomitant with the power to appoint, unless denied or restricted by constitutional or valid statutory provision. By analogy the power to designate carries with it the power to revoke the designation.

The statute provides that "In appointing the members of the board, the President shall designate the chairman." It is apparent that the underscored words were used somewhat loosely, perhaps in particular contemplation of the fact that the original designation of a chairman would be in connection with the appointments of the members. As applied to events transpiring after the initial appointments and designation of the first chairman, there is no occasion for construing the words as contemplating that a chairman may be designated only when a new appointment is made.

If, for example, the chairman should die, resign or be removed an appreciable period might well elapse before a new member could be selected, confirmed and commissioned--and the statute must be construed as authorizing the designation of a chairman in such a case independently of the new appointment, or else the functioning of the board might be seriously handicapped. Similarly, it must be concluded that if the member designated as chairman should decline after a period to continue to serve as chairman, but without resigning from the board, there must be power in the President to designate another chairman without the necessity of removing the affected individual who might be a very capable member although an unsatisfactory chairman.

It is my opinion the President has the power to revoke the designation of Dr. Arthur E. Morgan as chairman and to designate another member as chairman in lieu of Dr. Morgan.

Respectfully,

GOLDEN W. BELL,
Assistant Solicitor General.

PSF: TVA

TENNESSEE VALLEY AUTHORITY

Washington, D. C.

March 21, 1938

The President
The White House
Washington, D. C.

Dear Mr. President:

Since Friday last I have given the deepest consideration to the question you put to me at the end of the session. For reasons which I have given in the two conferences already held, I feel impelled to say that I cannot participate further in these proceedings.

Assuring you of my deep respect, I am

Very truly yours,

Arthur E. Morgan

Arthur E. Morgan

file Anti-Inactivity Act PSF: TVA 1938

STATEMENT BY DAVID E. LILIENTHAL, DIRECTOR, TENNESSEE VALLEY AUTHORITY

Mr. Willkie's press statement proposes that the Federal Government (presumably the TVA) purchase "in their entirety" his "companies in the Tennessee Valley." He seeks to justify such a proposal upon the ground that only in this way can investors in these companies be saved from destruction. The public is told that this is the "last resort in a desperate situation."

The facts show that there is no such crisis as he describes. Every one of his southern companies did substantially more business last year than in 1933 when the TVA was created; every one of his companies had more net earnings last year than in 1933. The Tennessee Electric Power Company, in the very heart of the TVA area, increased its net earnings after charges for the 12 months ended November 30 in 1937 over the year 1936 by 13%; these net earnings were 34% greater than in 1933.

For years now, Mr. Willkie has predicted financial catastrophe for these companies in the TVA area. His forebodings have been consistently wrong.

Disaster is coming this time, he states, because certain communities have voted to build and operate their own electric distribution systems, purchasing the power from TVA at wholesale, some of them securing their construction funds through loan-and-grant contracts with PWA unanimously upheld by the Supreme Court on January 3, 1938.

On Friday last the President suggested that in communities where the citizens had voted to set up their own electric plants, the utilities and the cities try to agree on the sale of these distribution systems at a fair price. Right on the heels of this reasonable suggestion of a means of avoiding duplication, Mr. Willkie makes the remarkable statement that nothing remains except for the Federal Government to buy out his entire property in that area.

No one wants two electric systems in a single town. No one wants actual and prudent investment in useful property to be destroyed. And neither uneconomic duplication nor disastrous loss of useful property need occur in the Tennessee Valley if the problem is approached, not in the spirit of trying to win a debate in the newspapers, but by a calm and rational analysis of the problem, and sincere negotiations. By this method the whole problem can be worked out without any such radical scheme as he has suggested.

First, as to electric distribution systems in communities which have voted to own and operate their own electric systems, and which lie within feasible distance of TVA sources of power; virtually every one of these communities has persistently sought to buy these properties from his companies rather than build

a duplicate and competing system. I know that the people in the Tennessee Valley do not want avoidable competition and they do not want to destroy a dollar's worth of actual investment in useful property. Time and again, with great patience, they have endeavored to buy, after the voters, usually by overwhelming vote, have made their decision. There is every reason to believe that if Mr. Willkie will confer with officials of these localities, he will find a genuine desire to reach a fair price and in this way avoid duplication, competition, and destruction of useful property. In this effort the good offices of the Federal Government will be available.

In those communities where Mr. Willkie's companies have refused even to discuss sale, he must expect to find a certain amount of skepticism because of the past record of litigation and obstruction. But this can be overcome by clear evidence of a genuine desire promptly to reach a fair conclusion, and evidence of adequate authority for ultimate consummation of transactions and not merely more litigation.

What of the transmission lines owned by Mr. Willkie's companies, which now bring power to these communities, lying within the range of TVA dams, to which he might wish to sell his distribution systems? Here, too, uneconomic duplication and

destruction of prudent investment in useful property can be avoided by the conference method. TVA and Mr. Willkie's companies could negotiate for the sale to TVA of such of these transmission lines as would serve the purposes of bringing TVA power to the communities' distribution systems. No detailed study of this matter has been made, but I am confident that in this way the loss of actual investment here would be little if any, provided the company wished to sell these lines to the TVA. In the past, TVA has purchased transmission lines under these very circumstances from Mr. Willkie's companies, and at the present time a considerable mileage of transmission lines is being used jointly by TVA and by Commonwealth & Southern to avoid excessive investment and duplication. (Where utility properties have been purchased by TVA, it has been the uniform policy "to take over the personnel of the company," to use Mr. Willkie's expression, and such policy would undoubtedly apply to any future purchases.) This principle of the purchase of transmission lines would merely have to be extended to other cases, and thus protect the legitimate investment in Mr. Willkie's companies.

I need hardly say that TVA cannot and will not buy anything but useful physical assets. It has no authority nor has it any intention to pay for water or write-ups. Nor would TVA be a party to recommending that any municipality pay inflated prices. And it is understood, of course, that TVA would and could not be interested in purchasing any interest in any holding company; what we are talking about here are the useful physical facilities of operating properties.

Now as to generating plants lying within the TVA area. Mr. Willkie's companies in that area at the present time badly need additional power supply. In the immediate future these companies must either purchase power in substantial quantities from TVA or build large additions to their capacity, or both. This situation is a complete answer to his statement that "the President's policy" of the sale of distribution systems to the communities means that sources of "generation....not purchased by the cities will be reduced to the value of junk." The loss of market when any city begins purchasing power from TVA will to that extent relieve Commonwealth and Southern from the necessity of purchasing power from TVA or from some other source. Furthermore, Commonwealth and Southern owns a number of dams on navigable streams of the Tennessee River System, producing hydro-electric power. If there is a desire on Mr. Willkie's part to sell, TVA has the statutory and constitutional authority to buy such dams and power plants, and to operate the dams in the interests of navigation, flood control, and power.

The Federal government is wholly without power to deny to municipalities the right to set up their own plants, if under state law the voters so determine. That is for the communities to decide for themselves. Nor has the Federal government sought to influence these local determinations. The courts found that the Federal government, to quote Mr. Justice Sutherland, made no efforts "to foster municipal ownership

of utilities". They also made findings that, solely to increase employment, PWA offered loans and grants to cities for any kind of public works properties which any city, of its own free will, might select, and that the Federal government in no manner urged or induced cities to build power projects rather than sewers, court-houses, jails, bridges, libraries or schools.

Since 1933 TVA has consistently urged cities which have voted to acquire distribution systems, to buy existing ones rather than build duplicate systems. In most instances the companies have refused even to enter negotiations with the cities; in others they either demanded excessive prices, or insisted that the cities pay cash, and refused to take amply secured city revenue bonds which would have been the equivalent of cash. TVA, however, was most reluctant that duplicating systems be built and therefore in 1934 procured an option from one of Mr. Willkie's companies to purchase fourteen local distribution systems. TVA then negotiated with the cities under a plan by which it was to rehabilitate the distribution systems and then sell them to the cities. Those negotiations had reached the point of substantial consummation, when TVA was notified that technical obstructions were to be interposed to the consummation of the plan and the option was therefore cancelled.

In litigation which subsequently began between one of Mr. Willkie's companies and PWA, witnesses called by the company's lawyers testified (and the court so held in findings adopted by the Supreme Court) that TVA

and PWA had advised the representatives of cities that they desired to avoid any loss to Alabama Power Company resulting from duplication and that therefore no PWA loans and grants would be made if the option plan could be carried out. It was only after the option plan was obstructed that PWA made most of the loan and grant agreements with those cities. After several years of litigation, the Supreme Court refused to hold the PWA loan and grant agreements invalid. Those agreements are now in effect and the United States is obligated thereunder to make the loans and grants to the cities. Accordingly, unless negotiations between the companies and the cities themselves are promptly renewed and are successful there is no way to prevent a duplication of the distribution systems. If such renewed negotiations were successful, and the cities purchased the companies facilities, then of course the cities would voluntarily give up these PWA contracts.

These problems can not be worked out through press statements but only by businesslike discussion and negotiation. Of course, any arrangement negotiated by the parties must be approved as reasonable to the utilities and the public after a hearing by appropriate state and federal agencies. If pursuant to his expressed desire to sell, Mr. Willkie resumes negotiations with the municipalities in question and with TVA, I am confident that TVA, and probably every other branch of the Federal government concerned will be glad to cooperate in working out this problem on a fair, equitable basis.

Gj-✓

File Personal

TVA 48 PSF: TVA

THE WHITE HOUSE
MAY 3 9 17 AM '39
RECEIVED

2424 Kingston Pike
Knoxville, Tennessee

May 1, 1939

My dear Mr. President:

Your expression of confidence in sending my name to the Senate for reappointment as a director and chairman of the Tennessee Valley Authority affects me deeply. Your letter is most generous.

I hope it is appropriate for me to say that your inspiration, advice and counsel have been of great help to me and my associates in carrying out our work in accordance with the underlying principles of democracy which your administration has so clearly emphasized.

In accepting continuation of my obligations under the Tennessee Valley Authority Act, I do so with a full realization of the work ahead. The goal of increased opportunity for the people of the area and the Nation, through their contribution to the conservation and utilization of their resources of water, land, and people, must be attained.

Faithfully yours,

Harcourt A. Morgan

Harcourt A. Morgan

The President
The White House
Washington, D. C.

PSF: TVA
file
personal confidential

ANALYSIS OF TENNESSEE ELECTRIC POWER COMPANY ACQUISITION AGREEMENT

1. Purchase Price.

The agreed purchase price for all of the physical electric properties and business of the Tennessee Electric Power Company and Southern Tennessee Power Company as of May 1, 1939, is $78,600,000. (The price is stated as of May 1, 1939, because this is the earliest probable date of conveyance.) This price, together with current assets retained by the Company and other adjustments, will yield the Company approximately $80,000,000 for its electric properties and related current assets. The precise allocation of the purchase price among local public agencies for distribution facilities and the Tennessee Valley Authority for transmission and generation has not been determined, but it is probable that the TVA portion will be between $42,000,000 and $44,000,000. Nashville, Chattanooga, and other local agencies will account for the remainder of the purchase price in the acquisition of the several distribution systems.

2. Relation of Purchase Price to "Rate Base"

The claimed rate base on the properties as of January 1, 1938, was $94,000,000, according to the analysis prepared by Lybrand, Ross Brothers and Montgomery, pursuant to the direction of Commonwealth & Southern Corporation. To this figure should be added approximately $2,000,000 more for net additions and extensions, in order to bring this rate base to May 1, 1939. The claimed rate base, according to the

Jackson and Moreland analysis, also made at the Company's direction, was $100,600,000, as of January 1, 1938. The purchase price expressed as a percentage of these rate bases, as of May 1, 1939, is therefore 82 per cent and 76.6 per cent respectively. This compares with 105 per cent of the claimed rate base represented by the price paid by TVA and the City of Knoxville to Tennessee Public Service Company for the electric facilities in Knoxville and vicinity.

3. Relation of Purchase Price to Original Cost and Cost of Reproduction.

The original cost depreciated, according to the Jackson and Moreland analysis, was $99,500,000, as of January 1, 1938, and the reproduction cost new less depreciation as of the same date, according to Jackson and Moreland, was $121,451,000.

The original cost of the physical properties, excluding intangibles, as of January 1, 1938, according to the Lybrand, Ross Brothers and Montgomery audit made for TVA, was approximately $81,500,000, with new additions to date of purchase increasing this figure to approximately $83,500,000. The accrued depreciation for the properties, according to the study made by TVA engineers on an age life basis, approximates $24,000,000, leaving $59,500,000 as the original cost depreciated of the physical properties according to the TVA analysis.

To give consideration to the difficulties of accurately calculating accrued depreciation, and to take into consideration elements of value not reflected in the cost of physical properties, such as organization expenses, unification costs, and cost of service installations for appliances on customers' premises, the Authority for

its initial offer adjusted this figure to approximately $67,500,000, as of January 1, 1938, equivalent to approximately $69,500,000 as of May 1, 1939.

4. Relation of Purchase Price to Early Offers of Commonwealth & Southern and TVA.

The Company's original offer to sell was premised on $106,000,000, representing the opinion of the firm of Jackson and Moreland as to the fair value of the Company's electric properties. Subsequently the Company offered to sell at $96,000,000, which was claimed to represent the Knoxville basis. This was later reduced to $94,000,000, which was represented as the rate base fixed by the Tennessee Railway and Public Utilities Commission.

The gap between the last TVA bid of $67,500,000 and the Commonwealth & Southern offer of $94,000,000, both as of January 1, 1938, was bridged in the final series of conferences when the sale price of $78,600,000 was agreed on as of May 1, 1939. It should be emphasized that the $78,600,000 represents properties with a value $2,000,000 greater than the properties included in the prices as of January 1, 1938. That is, the price should be considered as $76,600,000 when related to the $67,500,000 and the $94,000,000 figures.

From the Authority's point of view, the increase from $69,500,000 to $78,600,000 represents the value of eliminating competition in this important market area, and relief from the harassment and expense attendant upon competitive conditions in the Valley.

5. General Description of Properties.

The proposed agreement provides for the transfer to TVA of five dams with hydro-electric generating plants having a combined installed capacity of about 140,000 KW. These dams are Hales Bar on the Tennessee River at Chattanooga, Blue Ridge and the two Ocoee Dams on the Ocoee River, and the Great Falls Dam on the Caney Fork of the Cumberland River. The Hales Bar Dam is the only privately owned dam on the Tennessee River. It constitutes an integral unit in the Authority's unified development of the river as a navigable waterway. It provides a pool of approximately 40 miles between the reservoir of Guntersville Dam and the Chickamauga Dam just above Chattanooga. Hales Bar Dam is a major development embracing a concrete structure approximately one-half mile long and 67 feet high. In height it corresponds closely to the Authority's Wheeler Dam.

In addition to the dams and hydro-electric plants, three major steam plants are included with a combined capacity of 100,000 KW. The steam plants are located at Hales Bar, Nashville, and Clarksville, Tennessee.

The Tennessee Electric Power Company's system includes over 1500 miles of high tension transmission lines, serving about 400 communities in central and eastern Tennessee. The major cities are Nashville, Chattanooga, Columbia, Cleveland, Murfreesboro, Athens, Fayetteville, Shelbyville, Lewisburg, Lafollette, and Maryville.

6. Financing.

The Authority plans to finance its share of the purchase price through appropriated funds and bond issues, and local public agencies will,

for the most part, obtain their funds through independent financing by the sale of revenue bonds, secured only by the revenues of the distribution systems.

7. Rates.

It is proposed that each of the distribution systems will place in effect the standard resale rates incorporated in the TVA wholesale power contracts without surcharges of any kind. These rates are from 20 to 30 per cent lower than the existing rates in the area. It is expected that the public receiving service from the Company's system will save approximately $3,000,000 annually under the new rates for service.

8. Limitations of Territory.

The agreement for the purchase of Tennessee Electric Power Company involves no agreement of any kind on the part of TVA concerning the limitation of its operations. However, the acquisition of the facilities of the Tennessee Electric Power Company, together with the facilities in the adjoining areas in Alabama and Mississippi, will absorb substantially all of the power which the Authority will produce.

9. Relation of Price to Book Value of Securities.

The Company has presently outstanding approximately $49,500,000 in face amount of funded debt, $24,000,000 in preferred stock and $24,000,000 in common stock. The agreed upon purchase price will permit redemption of the bonds and preferred stock at face or par value and leave a margin for common stock of approximately $6,500,000. This,

together with the other assets, with the water, ice, and transportation properties retained by the Company, variously estimated from $2,000,000 to $4,000,000, will leave a balance for common of some eight and a half to ten and a half million dollars.

10. Participation of Communities.

The terms of the agreement will protect the right of any municipality to serve itself with TVA power. However, no municipality will be forced into public ownership. Most of the major communities served by the Company have already applied for TVA power, and will participate in the acquisition. Contracts have been negotiated or are under negotiation with all of these communities.

Letter also sent to President of the Senate

COPY

COMPTROLLER GENERAL OF THE UNITED STATES

Washington

June 2, 1941

The Speaker,

House of Representatives.

My dear Mr. Speaker:

I regret that I have to report to the Congress the existence of a disagreement between this office and the Tennessee Valley Authority which for reasons hereinafter stated requires the enactment of clarifying legislation satisfactorily to settle the fundamental issue of whether it is the intent of the Tennessee Valley Authority Act to exempt the fiscal officers of the Authority from accountability under the Budget and Accounting Act and other general statutes requiring an accounting for the disposition of public funds.

Immediately after taking office as Comptroller General a number of informal discussions were held last November, at the instance of the Tennessee Valley Authority, with Director James P. Pope and another representative of the Authority, in an earnest attempt to settle some then existing differences between the Authority and this office and to establish satisfactory working procedures for the future settlement of their fiscal officers' accounts and for making the annual audit of the Authority's transactions expressly required by section 9 (b) of the Tennessee Valley Authority Act as amended by section 14 of the act of August 31, 1935, 49 Stat. 1080. These matters were thought to be progressing satisfactorily when in response to my suggestion that the Authority submit a written statement of its proposed changes in the procedure, there was received from the Authority a memorandum contending

for the flat proposition that by reason of its corporate status and the provisions of section 9 (b) of the act the Tennessee Valley Authority is wholly exempt from the provisions of the Budget and Accounting Act and other statutes requiring an accounting for public funds and that the duties of this office in relation to the Authority were strictly limited to the making of the annual special audit of the Authority's transactions expressly required by said section 9 (b) of the Tennessee Valley Authority Act. (The memorandum went to the length of proposing--apparently for the purpose of eliminating even that prescribed official examination, and in disregard of the express requirements of section 9 (b) that such annual audits be made by the Comptroller General and that the expenses thereof, with one exception, be borne by appropriations made for the General Accounting Office--that this office withdraw its representatives engaged in such audit and that "The Comptroller General should appoint a firm of certified accountants of national reputation to make an annual audit of the accounts of the Authority, the expenses of the audit to be borne by the Authority.")

These contentions of the Authority that it is exempt from accountability under general law were not in accord with the views of my predecessors, but the whole matter was carefully reexamined with the result that I had to advise the Authority that while admittedly there is some room for argument, I could not say that I found the views of my predecessors in this office on this point without substantial support or that they went further than appeared to be justified in resolving the doubt in harmony with the basic legislative policy of holding public officers to a strict accounting for the use of public

funds entrusted to them. The reasons for my conclusions in this respect were fully set forth in decision of December 21, 1940, addressed to the Chairman, Board of Directors, Tennessee Valley Authority, a copy of which is enclosed herewith as a part of this report. For the reasons stated in the decision it was, and is, my view that any intent of the present law to exempt the Authority from accountability under the Budget and Accounting Act and other general statutes is not sufficiently clear to justify me in proceeding officially on that basis. The directors of the Authority remain firm in their contentions to the contrary, however, and, in effect, now refuse any rendition of accounts under general law as is shown by letter dated February 12, 1941, as follows:

"TENNESSEE VALLEY AUTHORITY

Knoxville, Tennessee

February 12, 1941

"The Honorable
Lindsay C. Warren
Comptroller General of the United States
Washington, D. C.

"My dear Mr. Warren:

"This will acknowledge receipt of your letter of December 21, 1940, which has been studied with great care.

"That letter rules that the accounts of the Authority are subject to final settlement and adjustment in the General Accounting Office under the provisions of the Budget and Accounting Act of 1921 and that the entirely different audit procedure provided in section 9(b) of the Tennessee Valley Authority Act is to be considered as in addition to and not in lieu of such final settlement and adjustment.

"It seems clear that this view is identical with the one taken by a former Comptroller General, the late Mr. McCarl, and departs sharply from the basis for relationship developed tentatively in a series of discussions with your predecessor, Senator Brown. In effect, therefore, we respectfully suggest that your letter of December 21 puts the legal question of relationship between the Tennessee Valley Authority and the General Accounting Office back to where it was when the Authority was created. The only question is the intent of Congress as expressed in the statutes which govern both agencies. At that time (1933) there may have been room for difference of legal opinion as to the intent of Congress as expressed in the Tennessee Valley Authority Act and its legislative history. Since that time, however, repeated attempts to amend the Tennessee Valley Authority Act to bring it under the Budget and Accounting Act have been defeated in Congress, the last such attempt being through the medium of an amendment to the Appropriation Bill as recent as two weeks ago. In each instance, over a period of years, when the issue was brought before Congress, it has declined to extend the Budget and Accounting Act procedure to the Authority.

"I am sure you will understand, therefore, why the Board of Directors of the Authority cannot acquiesce in the position taken

in your letter. We are convinced that the position stated in your letter is inconsistent both with the express provisions of our governing statute and the intent of the Congress clearly expressed in its legislative history and the actions of Congress over a period of seven years. For us to acquiesce in a requirement of settlement and adjustment of Tennessee Valley Authority accounts by the General Accounting Office under these circumstances would in our judgment constitute an avoidance of our responsibility as a Board for the administration and management of the project which Congress and the President have assigned to our charge.

"We feel certain you would agree that the issue is an issue of law, depending entirely upon the construction of the relevant statutes. The Board, therefore, would under such circumstances follow the advice of its General Counsel. The advice that has been given to the Board both by its present General Counsel and his predecessor has been that the jurisdiction of the General Accounting Office over the transactions of the Authority is defined by section 9(b) of the Tennessee Valley Authority Act and that any extension of that jurisdiction beyond the limits there set out is without authority of law. These legal opinions are supported by the independent conclusion of the Joint Congressional Committee specifically charged by the Joint Resolution creating that body with the duty of determining this particular issue. We have concluded that the only way in which this controversy, now stalemated on opposing opinions of law, can be brought to a conclusion is by obtaining a ruling on the legal questions by the chief law officer of the Federal Government. To that end we have forwarded to the Secretary of the Treasury a letter requesting a revision of procedure, a copy of which is forwarded herewith for your information. We are advised that the Secretary plans to transmit this request to the Attorney General for his opinion upon the questions of law that are involved.

"In disagreeing with your position, you will understand, I am sure, that the Board of Directors is simply trying to discharge its responsibility under the Act in full conscience and that it is with the greatest reluctance we find ourselves at issue with you.

"Respectfully yours,

TENNESSEE VALLEY AUTHORITY

(Signed) David E. Lilienthal
David E. Lilienthal
Vice-Chairman
Board of Directors"

I cannot proceed on the suggested basis, heavily relied on by the Authority, that the subsequent failure of Congress to enact proposed amendments which, among other matters, would have expressly required the Authority to render accounts pursuant to the Budget and Accounting Act, is determinative of the meaning and intent of existing legislation in this respect. On the other hand, I appreciate that the rejection of such amendments could be regarded as an indication of the attitude of Congress at the time. It is understood that the Authority's letter to the Secretary of the Treasury, referred to in the letter above quoted, is still under consideration in the Treasury Department. However, the conflicting arguments on the issue appear to have been fully developed, and as neither the Treasury Department nor the Attorney General has jurisdiction to decide or determine the matter so as to relieve me of official responsibility in the premises, it is not perceived how the Authority's present course of seeking such collateral administrative opinions can settle the issue.

The result is that I am faced with the alternatives of permitting the Authority indefinitely to continue to withdraw large sums from the Treasury for which no accounting is rendered, which I believe would be contrary to law and my official duty, or of holding that the fiscal officers of the Authority are delinquent

in the rendition of their accounts and thereupon to withhold approval of requisitions for further advances from the Treasury as required by section 12 of the act of July 31, 1894, 28 Stat. 209, as amended, 31 U. S. C. 78. I am loath to follow the latter course in view of the room for doubt as to the legislative purpose and of the expressed convictions of the Authority's directors that the rendition of accounts would constitute an avoidance of their legal responsibility. Moreover, such disapproval of requisitions would leave the Authority without funds for current activities and would jeopardize not only normal operations but national defense activities dependent thereon. I see no other course, however, unless the issue be settled by clarifying legislation.

In these circumstances, I must suggest the immediate importance of an amendment to the Tennessee Valley Authority Act to set the matter at rest. Whether the fiscal officer of the Tennessee Valley Authority should receive and disburse the funds appropriated for the activities of the Authority without rendering accounts therefor for adjustment and settlement under the general law is, of course, purely a question of legislative policy. If it be the legislative will that the Authority shall not be required to render an accounting pursuant to general law, that can be accomplished by amending section 9 (b) of the Tennessee Valley Authority Act, as amended by section 14 of the act of August 31, 1935, 49 Stat. 1080, by adding

at the end thereof a new paragraph substantially as follows:

"All amounts appropriated for the purpose of carrying out the provisions of this Act shall be paid to the Treasurer of the Corporation upon the request of the Board and, notwithstanding the provisions of the Budget and Accounting Act or of other provisions of law, no accounting to, or rendition of accounts for adjustment and settlement by, the General Accounting Office for amounts heretofore or hereafter received or disbursed by the said Treasurer shall be required. Provisions in appropriation acts directing that appropriations for, and receipts of, the Tennessee Valley Authority shall be covered into and accounted for as one fund shall not be construed as requiring the rendition of accounts for adjustment and settlement by the General Accounting Office."

Conversely, if it be the legislative purpose not to exempt the Authority from accountability under general law, that would be made clear by the addition to the said section 9 (b) of a paragraph substantially as follows:

"Nothing in this Act shall be construed to relieve the Treasurer or other accountable officers or employees of the Corporation from compliance with the provisions of existing law requiring the rendition of accounts for adjustment and settlement pursuant to section 236, Revised Statutes, as amended by section 305 of the Budget and Accounting Act, 1921, 42 Stat. 24, and accounts for all receipts and disbursements by or for the Corporation shall be rendered accordingly."

I hold the view that any governmental agency charged with the responsibility of conducting operations of the character of those of the Tennessee Valley Authority should have some latitude of authority beyond that needed and usually granted by the Congress to the regular departments and establishments of the Government. In this connection see page 28 of my decision of December 21, 1940, herewith. However, I strongly oppose the view, sometimes expressed,

that the only route to such necessary latitude of authority is through exemption entirely from regular accountability under the Budget and Accounting Act for the disposition of public moneys. When an agency of the Government conducts its business under special grants of authority, permitting greater flexibility of action, the audit and settlement of its accounts in the regular way is in nowise inconsistent with the exercise of that flexibility of action, because in the audit and settlement full consideration must be given to the same special authority under which the agency's business was conducted.

During the past few years charges have been made that the close scrutiny by representatives of the General Accounting Office over expenditures of the Tennessee Valley Authority has reflected prejudice of the former against the latter. Such charges have never seemed to me to merit serious consideration; but even if justification for them could be found in the past none now exists.

It is perhaps not necessary for me to state in this communication that I strongly appreciate the importance of the work of the Tennessee Valley Authority and have always supported legislation to enable it to be prosecuted successfully. My record in this regard is known to members of both Houses of the Congress, but I also strongly favor uniform and complete accountability of all

Government agencies for the disposition of public moneys entrusted to their use.

While it is inconceivable to me that any agency entrusted with the expenditure of mammoth amounts of funds collected from the people of the United States should desire to evade responsible accounting and scrutiny by an independent office created for that purpose, I make no further comment at this time with respect to the situation here presented other than to urge the early enactment of legislation which will definitely settle the question as, in the wisdom of the Congress, it should be settled.

Respectfully,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States.

THE WHITE HOUSE
WASHINGTON

June 21, 1941

JIM ROWE:

To mention to McCormick
that this TVA accounting should not
be turned over to the General Accounting
office.

F.D.R.

I have done some - Biddle
+ Litchfield also interested.
McCormick will call me
back. JHR.

FI looks bad!
+ All settled by compromise between TVA
women. Everyone happy. JHR

PSF: Tenn. Valley Authority Folder 2-41

TENNESSEE VALLEY AUTHORITY

Knoxville, Tennessee
June 13, 1941

The President
The White House
Washington, D. C.

My dear Mr. President

For your information we are forwarding herewith copies of a letter from the Comptroller General to the Speaker of the House, and of our letter in reply thereto. In our opinion the issue discussed in this letter is of great importance to all administrative agencies.

Faithfully yours

Harcourt A. Morgan

Harcourt A. Morgan
Chairman of the Board

Enclosures

Same letter sent to President of the Senate

June 6, 1941

The Honorable
The Speaker of the
House of Representatives
Washington, D.C.

My dear Mr. Speaker:

The letter recently addressed to you by the Comptroller General suggesting the need for legislation clarifying the relationship between his office and the Authority has been called to our attention. The difference of opinion between the Comptroller General and the Authority as to the nature of that relationship is not the result of recent developments. On the contrary, it has existed from the Authority's inception and has since been specifically considered by Congress on a number of occasions.

The Authority's views on the matter may be summarized as follows:

(1) The question in dispute is whether under existing law the jurisdiction of the Comptroller General extends only to auditing the Authority's accounts in accordance with Section 9 (b) of the Tennessee Valley Authority Act, as the Authority contends, or whether it is empowered to "settle and adjust" such accounts in accordance with the Budget and Accounting Act of 1921, as the Comptroller General contends.

(2) Congress has already spoken on the issue by repeatedly refusing to extend the Budget and Accounting Act to the Authority; indeed, the present Section 9 (b) of the Tennessee Valley Authority Act was enacted in 1935 in place of an alternative provision suggested by the then Comptroller General for the very purpose of rendering the Budget and Accounting Act applicable.

(3) In any event, the difference of opinion between the Comptroller General and the Authority involves a purely legal question of statutory interpretation which the Attorney General should determine and which he is now considering. The Attorney General's decision will settle the construction to be accorded the existing law, and Congress will of course be in a position thereafter to decide whether as a matter of policy the law as so construed should be amended.

(4) It should be emphasized that the dispute between the Comptroller General and the Authority has nothing to do with any question of whether the Authority's transactions should be subject to outside audit, or whether it is under obligation to account fully for funds appropriated to it. The Authority has welcomed and will continue to welcome audits of its transactions made by the General Accounting Office in accordance with Section 9 (b) of the Tennessee Valley Authority Act. On its own initiative, it has also obtained for the past three years independent audits by the nationally known firm of certified public accountants, Lybrand, Ross Bros. & Montgomery, as the result of which it has been able to include certified financial statements in its annual reports to Congress. While thus fully recognizing its public obligation to

subject itself to periodic audits and to account fully for funds entrusted to it, the Authority believes that the application to it of the rigid and cumbersome procedures of the "settlement and adjustment" system--which bear little or no relation to auditing as that term is understood by accountants and businessmen--would mark an immediate end of its corporate flexibility and unduly hamper its activities.

In view of the importance to the Authority of the basic issue which has been raised, it has been thought desirable to discuss in somewhat greater detail each of the points summarized above. Such discussion follows:

(1) Nature of the question in dispute. The issue is a simple one. Ever since its organization the Authority has been of the opinion that the Tennessee Valley Authority Act, by which it was created, defines and delimits the jurisdiction of the General Accounting Office over its transactions. Section 9 (b) of that statute provides that the Comptroller General "shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection." It is provided that the Comptroller General and his representatives "shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation." He is to make a report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the Board, one for public inspection at the principal office of the Corporation, and the other for the uses of the Congress. The statute further directs the Comptroller General

to "make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties entrusted to the Corporation by law." The Authority has not only never resisted the conduct of this audit provided for in its own statute but has repeatedly sought to have it made more effective.

On the other hand the representatives of the General Accounting Office have contended that the Authority is subject, in addition to this detailed audit procedure, to all of the procedures set up in the Budget and Accounting Act of 1921, including monthly rendition of accounts and vouchers to the General Accounting Office in Washington, the approval or disapproval of requisitions of funds by the Comptroller General, and the final settlement of the accounts of disbursing officers.

Clearly these conflicting points of view raise a purely legal issue of statutory interpretation.

(2) Prior consideration of the issue by Congress. The precise issue which the Comptroller General now raises was presented to Congress in 1935 by one of his predecessors during the consideration of certain proposed amendments to the Tennessee Valley Authority Act. At that time the then Comptroller General proposed that Congress adopt an amendment designed for the specific purpose of subjecting the Authority to the procedures prescribed in the Budget and Accounting Act. After full consideration in committee and debate on the floor of both houses this proposal was rejected.

The same question was presented to the Joint Committee Investigating the Tennessee Valley Authority in 1938. After full

public hearings during which representatives of the Authority and the General Accounting Office appeared before the committee, the final report sustained the Authority's position on every point (Report of Joint Committee Investigating the Tennessee Valley Authority, pp. 109-133).

It was our hope that this carefully considered conclusion of a joint committee of Congress specifically charged with the duty of determining this issue would be accepted as conclusive.

(3) Since the question in dispute is one of statutory interpretation, it should be finally determined by the Attorney General. When the present Comptroller General assumed office we reviewed the history of this controversy with him in an effort to convince him of the soundness of our legal position which had been sustained by the Congress in 1935, and again by the Joint Investigating Committee in its report issued in 1939. It was after the conclusion of these conferences that we received the Comptroller General's letter of December 21, 1940, reiterating the original view of his office on the question of law involved. Upon receipt of that letter we were of the opinion that the only proper way in which to settle a difference of opinion between two agencies of the Federal Government upon a question of the proper construction of a federal statute was to submit the issue to the Attorney General of the United States for his opinion. Accordingly, on January 31, 1941, we wrote to the Secretary of the Treasury suggesting a change in procedure, knowing that before determining the question the Secretary would in turn submit the entire issue to the Attorney General. A copy of that letter is enclosed herewith. On February 12, 1941, we wrote to the Comptroller General

stating that since all that was involved was an issue of law depending upon the construction of the relevant federal statutes the Board had concluded that the only way in which the question could be resolved would be by obtaining a ruling from the chief law officer of the Federal Government. A copy of that letter is also enclosed herewith. Our request to the Secretary was submitted to the General Counsel of the Treasury, who has ruled that the Authority's position is correct. The opinion of its General Counsel has in turn been submitted by the Treasury to the Attorney General for his opinion.

In his letter to you the Comptroller General states that the Attorney General does not have jurisdiction to determine this matter so as to relieve him of official responsibility. It is impossible for us to understand this position. It means in substance that the Comptroller General refuses to be bound by the opinion of the Attorney General upon a question of statutory construction and insists upon reserving to himself final judgment on his own jurisdiction. Were it not for this attitude there would be no reason for requesting legislation at this time. Legislation is neither needed nor appropriate in order to determine the proper construction of existing law. This same question was considered by the Joint Congressional Committee Investigating the Tennessee Valley Authority, which stated:

> The committee doubts whether any useful purpose will be served by legislation clarifying the relations between the Authority and the General Accounting Office. The Authority should be placed on the same basis as other Government corporations, in the affairs of which the General Accounting Office is not permitted to intervene. Congress has already recognized this need in the case of the Reconstruction Finance Corporation, the Inland Waterways Corporation, and the Panama

> Railroad. The accounts of these corporations are audited by private auditing firms, selected by their respective boards of directors. If, however, it is determined that relations between the General Accounting Office and the Authority shall continue, the General Accounting Office's activities should consist in the making of periodic commercial audits. Such audits should be made in the field and not in Washington. Disputes concerning interpretation of statutes and other legal questions should be referred promptly to the Attorney General for final determination /Committee report, pp. 132-133/.

(4) The procedures of the Budget and Accounting Act are not suited and have not generally been applied to governmental corporate enterprises such as the Authority. While the present Comptroller General and certain of his predecessors have clung in theory to the position that the procedures of the Budget and Accounting Act are applicable to the Authority, they have not--possibly because of obviously reasonable doubts as to the validity of that position--actually sought in practice fully to apply them. It thus becomes apparent that what the Comptroller General now proposes is that the Congress abandon the procedures under which the Authority has successfully operated for eight years and substitute therefor a new law subjecting, in practice as well as in General Accounting Office theory, all of the transactions of the Authority to the final administrative control of the General Accounting Office. Viewed in this light the proposal raises the broad question as to the effectiveness of publicly owned corporations as instrumentalities of government.

One unfamiliar with the facts would infer from the Comptroller General's letter that the Authority stands alone in its attempt to maintain its corporate independence. The exact opposite is the truth. The General Accounting Office has not been permitted to extend the "settlement and adjustment" procedure to such corporate

enterprises as the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, the Inland Waterways Corporation, the Panama Railroad Company, the Home Owners' Loan Corporation, the Federal Savings and Loan Insurance Corporation, and the War Finance Corporation.

The very nature of the Government corporation is inconsistent with the type of control inherent in the procedures of the Budget and Accounting Act. This has been recognized by all commentators on the subject. The Supreme Court itself in holding that the United States Emergency Fleet Corporation and other government corporations created during the first World War should not be subjected to this type of jurisdiction stated:

> Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States /Skinner & Eddy Corp. v. McCarl, 275 U.S. 1, 8 (1927)/

In his letter the Comptroller General concedes that

> . . . any governmental agency charged with the responsibility of conducting operations of the character of those of the Tennessee Valley Authority should have some latitude of authority beyond that needed and usually granted by the Congress to the regular departments and establishments of the Government.

He then expresses the opinion that there is no inconsistency between this view and his insistence upon accountability under the Budget and Accounting Act. With this conclusion we most emphatically disagree. In order to determine the extent of the inconsistency it is necessary to compare the relationship between the Authority and the General Accounting Office under existing law, and the relationship that would

be brought about by the change proposed by the Comptroller General.

As previously pointed out, under existing law the Comptroller General is given the broadest possible auditing powers. He has the right to examine every record, every voucher, and every item of income and expenditure; he is under a duty to make his annual audit report available to the President and the Congress; he is under the additional duty of reporting especially to the Congress any improprieties or violations of law that he may discover. If the ultimate objective is to assure proper accounting and to protect against dishonesty and extravagance it is difficult to see why these powers are not sufficient.

In fact the Comptroller General does not suggest that the proposed change in the law is required because of any deficiencies in the Authority's accounting or internal audit procedures. The Authority's system of accounts is in accord with standard practices in accounting and its power accounts conform to the uniform system prescribed by the Federal Power Commission, with such adaptations to meet the particular problems of the Authority as are approved by the commission. In addition, the Authority has always maintained an elaborate system of internal audit controls, and its accounts have been subjected to audits by two outside organizations, the General Accounting Office and Lybrand, Ross Bros. & Montgomery, a nationally recognized firm of certified public accountants. In the eight years of its existence the Authority has handled more than 300 million dollars of federal funds without the faintest suspicion of fraud or misappropriation. The inevitable effect of superimposing the procedures of the Budget and Accounting Act upon existing auditing

procedures would be not to protect the Government against improper expenditures but to subject the administrative discretion of the Authority's Board to a final veto power exercised by the Comptroller General.

There is widespread misunderstanding concerning the actual operation of the so-called "settlement and adjustment" procedure of the Budget and Accounting Act. Under this process the disbursing officers of the departments and establishments subject to the act are required to submit monthly or quarterly lists of receipts and disbursements to the General Accounting Office, accompanied by vouchers and other documentary support. The General Accounting Office then determines whether in its opinion expenditures made were legally authorized. At this step in the process it is clear that the Comptroller General reserves to himself the final authority to pass upon the interpretation of all statutes with no possibility of appeal. In this way he is permitted to substitute his judgment, or that of his counsel, for the judgment of the agency charged with the responsibility for administering the statute in question.

The detailed internal control exercised by the Comptroller General over administration is enforced in two ways. By means of his statutory power to disallow a payment already made, and to charge the payment against the account of the disbursing officer he is in a position to force the disbursing officer to follow his interpretations blindly without consideration of their soundness. In case of any attempt at resistance to the Comptroller General's view as to law or as to policy, he possesses the ultimate veto power through the threat of disapproving a requisition for funds. In our

prior dealings the General Accounting Office has not limited this asserted veto over administration, at least in theory, to questions of statutory interpretation. Its investigators have repeatedly noted exceptions to transactions solely because in their judgment the expenditures involved were not wise or necessary or desirable. In this way, if the Budget and Accounting Act were to be fully applied in practice and the exceptions followed by disallowances, the investigators of the General Accounting Office would be placed in the position of overruling the discretionary decisions of the Board of Directors of the Authority, even though they were in no way responsible for successful performance of the duties which the Authority is expressly directed by statute to carry out. In our opinion such a situation would constitute the antithesis of responsible administration.

It should be emphasized that what has been said is in no way a reflection upon the present incumbent of the office of Comptroller General. The objections to the extension of General Accounting Office control are based upon principles of administration and have no relation to the person occupying the office at any particular time.

In considering the validity of the contention that the proposed extension of jurisdiction would in no way jeopardize the efficiency of the Authority's operations, it is significant that all of the avowed opponents of this program have welcomed the proposal with enthusiasm. They understand that they have been presented with a final opportunity to cripple this enterprise by depriving it of those attributes of initiative, flexibility, and independence that have contributed so much to its success.

In the closing paragraph of his letter the Comptroller General states that it is inconceivable

> that any agency entrusted with the expenditure of mammoth amounts of funds collected from the people of the United States should desire to evade responsible accounting and scrutiny by an independent office created for that purpose.

This statement is based upon the misconception that there can be no true public accounting except that particular type of detailed administrative supervision exercised by the General Accounting Office. The Authority has never sought to evade accountability to the public. All of its transactions are carried on in the light of continued publicity. In its annual reports to the Congress it accounts for every penny that it has expended and for every move that it has made, and its financial statements are certified to each year by a recognized firm of certified public accountants. Again in its annual appearances before the Appropriation Committees of the two Houses it gives a detailed accounting. This is accounting to Congress and to the public in the truest sense.

In conclusion, it must again be emphasized that the legal issue in dispute between the Comptroller General and the Authority has nothing to do with any question as to whether the Authority's transactions shall be regularly subject to audit, nor whether it shall account fully to Congress and the public. The Authority has always welcomed the fullest auditing investigations--as distinguished from application of the "settlement and adjustment" procedures--both by the General Accounting Office and by other accounting agencies, and on the basis of these investigations it has sought to include in its reports to Congress the fullest possible accounting and

statistical information concerning its activities. Its books are open to the inspection and review of any interested person. This policy it will continue to pursue.

Respectfully,

Harcourt A. Morgan
Chairman of the Board

David E. Lilienthal
Vice Chairman

James P. Pope
Director

Mr President PSF TVA

If you are still on the Berry marble claims, you might ask Dr Morgan if he had reason to believe that his fellow directors were prepared to allow a claim in favor of Berry before he had produced his title and interest. Was not the point of difference between the directors? ~~of~~ It was proper for the Board to give any serious attention to the value of the marble claims before Berry had submitted documentary proof of his title.

Bx 187 PSF: Subject file TVA

Berry -

No one had said word
of bad faith.
"Conciliation" agreement
with Berry before
No notice. Ratified
Feb 26 '37 -

1. No value
2. Why Berry not in Panel
3. Declined to state claim
4. Presume un Bd.

All brought to attention of Bd
Pres
Challenge good faith.

/

BF

TVA

MEMORANDUM

SUBJECT: CHAIRMAN MORGAN'S COMPLAINTS AGAINST THE INTERNAL REORGANIZATION OF THE AUTHORITY

Chairman Morgan repeatedly condemns action of the Authority on the ground that it is being carried out by the other two directors through a "general manager of their choice" and without consideration of him. He repeatedly implies that there were irregularities in setting up the general manager form of organization and in selecting the present general manager. For example, he charged in his letter to Congressman Maverick that he had been deliberately stripped of his power and jurisdiction.

The careful and thorough study which preceded the reorganization, the deliberate and wholly regular adoption of the new form of organization by the Board, insofar as internal rearrangement is concerned, can be adequately developed by the directors.

Additional evidence of the regularity and appropriateness of the general action taken might also be brought out by questions from the President based upon his own familiarity with certain aspects of the matter. The President in his letter of February 25, 1937, addressed to the Board requested a copy of Mr. Blandford's tentative report on reorganization for his personal perusal (Blandford had been directed to prepare such a report at a Board meeting at the end of May 1936). In this letter the President also indicated his desire to invite persons of his own choosing to make a special study of the organization problems of the Authority and report to him.

This committee was appointed. Mr. Blandford's report was made available to the committee. The committee spent considerable

time both in Washington and in the Valley interviewing members of the Board and the staff of the Authority. They submitted a report and recommendations bearing upon desirable administrative reorganization in the Authority. This report, upon instructions from the President, was made available by the committee to the Board of Directors. It concurred with the Blandford report in proposing the general manager form of organization and in all other major respects supported the Blandford report. The Blandford report was then submitted to the Board and some ten days later, in June 1937, the Board adopted the general manager form of organization. From this action the Chairman dissented.

The general manager form of organization is undoubtedly what the Chairman refers to when he says that he has been stripped of his authority and jurisdiction. Much of what the Chairman imputes to the effects of the general manager plan arises from his special conception of his peculiar responsibility as Chairman of the Board despite the fact that there is no statutory or administrative theory upon which this special conception can rest.

PSF: TVA

SPECIAL NOTE

In his attacks upon the attorneys and engineers handling the 19 company case in Chattanooga, the Chairman referred in his memorandum to Mr. Fly of December 20, 1937 to three cases where pressure had been put upon engineers to testify contrary to their opinions. He has only named one of the three men despite repeated requests from the attorneys and the Board for specification. It would be exceedingly helpful if, as soon as this incident is mentioned, his memorandum of December 20 could be called to his attention and he could be asked to specify the other two cases so that this incident could be fully explored.

Mr. President:

Would it not be well to ask Arthur Morgan to remain a few moments when the others leave. Then to tell him how sorry you are that he has refused to participate and has given the impression that he cannot receive from you a fair hearing. That you had honestly hoped he would help you to lay the basis for a review of TVA policies on their merits. Such a review can never be obtained when the opponents of the Administration are ready to seize the opportunity to condemn TVA and all its works simply because Arthur Morgan things David Lilienthal is a scoundrel and David Lilienthal thinks Arthur Morgan won't play ball if he can't call the plays. Maybe you can make the poor old fellow feel that he has not only let you down, but has let down the sort of TVA he really wants.

I greatly fear he would misquote it into a request from me to let bygones be bygones — be a good boy & stay on — & make it appear I had no case — & also that he would continue to give the idea he still had no confidence in my fairness — only the Congress would be fair. FDR

PSF
TVA

MEMORANDUM

SUBJECT: CHAIRMAN MORGAN'S CHARGE OF CONSPIRACY AND COALITION AGAINST HIM BY OTHER TWO DIRECTORS STRIPPING HIM OF HIS POWERS AND JURISDICTION

Chairman Morgan charges coalition, sharp strategy against him, etc. The real explanation is that he has made it appear that the other two directors are always against him because after Mr. Lilienthal's re-appointment in May 1936, the Chairman abandoned his former practice of cooperating with the Board and instead opposed its actions generally by irrational dissenting votes, etc.

A letter which the Chairman wrote the President at the time of the re-appointment of Mr. Lilienthal outlined the conditions under which he would withhold his resignation. This letter is significant evidence that his actions since the appointment spring from a pre-determined plan of obstruction.

Questioning him upon the basis of the material contained in that letter should do much to reveal the obstructive and irrational attitude that he then held and has ever since manifested in the conduct of his office.

For example, one of the conditions stated in that letter was that in the future no action must be taken by the Board except by unanimous vote. In other words, he there disavowed the principle of majority rule written into the statute. Practically all of his obstructive tactics since that time have been in an effort to kill or prevent execution of policies with which he was not wholly in accord as though he in fact enjoyed the veto power requested in his 1936 letter to the President.

PSF: TVA

POINTS TO REMEMBER

1. If Delay is Requested by AEM.

Chairman Morgan will probably ask for delay on the ground that he has been ill in Florida and that Dr. H. A. Morgan and Mr. Lilienthal have had an advantage over him with respect to time for preparation. The facts are:

A. All three directors were notified of the inquiry at the same time.

B. During the period of his absence in Florida, Dr. A. E. Morgan has released the most violent of his attacks on the other two directors. Whatever material he has to support those attacks must have been available to him Florida. If he does not now have the material to support the accusations, he could not have had the material to support them at the time he made them.

C. In any event, whether he is ready or not, Dr. H. A. Morgan and Mr. Lilienthal are ready to respond.

D. When he can not postpone the inquiry, Chairman Morgan is likely to request the privilege of filing a statement. Under no circumstances should he be permitted to file a statement later as such a statement would undoubtedly be a fresh attack. If he is willing to describe his supporting data and identify the exhibits, he might be accorded the privilege of filing such acceptable exhibits as he has not brought.

2. <u>If AEM denies that attacks include accusation of dishonesty</u>.

Chairman Morgan has used every possible way of charging dishonesty and official impropriety by insinuation and inmuendo. He may on this occasion, as he did last autumn, deny that he intended to attack the honesty or integrity of the other board members and may contend that his differences relate to questions of policy and administrative procedure. This is not the fact. His plain intention has been to discredit the motives and integrity of his associates, and cast suspicion upon their honesty as public officials.

In any case, and whatever might have been his defense as to intent in the earlier days of his disaffection, it is no longer valid in view of the fact that he has been complacent in the face of the almost universal interpretation of his loose and unsupported statements as charges of dishonesty. Since last August when, by formal action, the matter was called to his attention, his attacks have increased in violence and frequency. He has permitted his statements to be interpreted as revelations of scandals, as the basis for charges that the TVA is a "New Deal Teapot Dome" and similar sensational accusations. In the face of this record he can not deny that he has charged the majority Members of the Board with improprieties involving moral turpitude.

3. <u>Concerning the Complaint that AEM is Denied Information of TVA Activities</u>.

In his attacks (particularly his letter of February 14 to Congressman Maverick) Chairman Morgan complains that he is prevented from securing

adequate information to form an independent judgment of certain aspects of the TVA program. Yet he considers his information adequate to make grave charges and scandalous insinuations. Either his charge that information is denied is false, or his charges of official improprieties are unsupported. They are contradictory.

4. The Persecution Complex.

The persecution complex which appears to dominate him is particularly evident in this letter to Congressman Maverick of February 14 (written from Clermont, Florida). In it he interprets the ordinary administrative procedures through which all members of the board carry on their work as devices specifically invented as a part of a conspiracy to frustrate his independent inquiries.

5. The Attack on Land Grant Colleges.

As an illustration of the Chairman's reckless broadcasting of unsupported charges against persons and agencies, note how he describes the land grant college and county agent system in his letter to Mr. Maverick - "The land grant college organization, with the county agent system, is a powerful political bureaucracy." Compare this with the thoughtful commendation of the President's Advisory Committee on Education after its long and careful study of the program of the land grant colleges and the extension services and the record of 75 years as an agency facilitating cooperation between

the Federal Government and the states in matters relating to agriculture.

6. Confusion of Thinking Shown in his Concept of Dishonesty.

In the course of the hearing it will be interesting to note that, to the Chairman, disagreement with him is frequently considered evidence of dishonesty. Experience has shown that unless he is compelled by specific demand to use the word dishonesty in its customary meaning, he will use it in the special AEM sense meaning departure from his judgment and the record will unintelligible. AEM typically turns a disagreement into evidence per se of improper motive or personal attack.

CONFIDENTIAL DRAFT WITH EXPLANATORY NOTES

PSF
TVA

OPENING STATEMENT

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

Chairman Morgan has publicly charged that Dr. H. A. Morgan and Mr. Lilienthal have been guilty of dishonesty and impropriety in the conduct of their respective offices. Dr. H. A. Morgan and Mr. Lilienthal, in turn, have advised me that Chairman Morgan has been guilty of actions which are not permissible in the conduct of his office. I shall give each of you gentlemen an opportunity to present the facts, if any, upon which the charges are predicated.

This hearing is for the purpose of securing facts and only facts. There are two points which I should like to emphasize before I call upon you gentlemen to speak. First, I am not now interested in any charges relating to mere disagreements or personal differences over details of administration. At this time I am interested only in the grave charges of dishonesty, impropriety and impermissible conduct which have been made and I shall ask you gentlemen to confine yourselves to the facts supporting these charges. A second caution which is necessary is that I am not

interested in opinions, rumors, suspicions, or speculations. Charges as serious as these, unless made recklessly and irresponsibly, must have been made with the supporting facts clearly in mind. It is those facts and only those facts which I want. At this time I want your oral statements of the facts. If there are supporting documents, you may also submit them and they will be made a part of the record, but again I must insist that in submitting any you confine yourself to the documents containing the basic facts on which the charges were predicated.

Now Chairman Morgan, I shall first give you an opportunity as Chairman to state the facts supporting the charges which you have made. As you finish each charge, I shall give the other directors an opportunity to reply. When Chairman Morgan has finished with all his charges, I shall then follow the same procedure with Dr. Harcourt A. Morgan and Mr. Lilienthal with respect to the charges they have made, giving Chairman Morgan an opportunity in the same way to answer as to each of them.

Chairman Morgan, in September of last year, Dr. Harcourt A. Morgan submitted to me a copy of a resolution adopted by the majority of the Board of Directors stating that your article on "Public Ownership of Power," in the September, 1937, Atlantic Monthly, had impugned the integrity of the Tennessee Valley Authority and the honesty and motives of its Board of Directors and disavowed such methods in a discussion of the Authority's problems as injurious to the project and to the public interest. I immediately wrote you

informing you of my concern. In my letter I said that the matter could not properly rest and that there was a very definite obligation on you either to withdraw what your colleagues believed to be an impeachment of their integrity or that you present whatever specific facts you had, if any, to justify your statement. I shall ask the stenographer to copy these two documents into the record at this point.

You did neither. Instead you came to me personally a few weeks later and told me that your article was not intended as an attack on the integrity of your colleagues, but that this interpretation had been read into your statements. ~~Since that time,~~ Specifically in the last week, you made charges of dishonesty and impropriety in unmistakable terms. I refer in particular to three releases which you have recently given to the press. Two were released on March 3, 1938. The first was entitled "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." The second was a summary of that statement differing somewhat in form but not in substance. Although the heading of each of these statements related to the Berry marble claim, the statements themselves cover a broader range. The third statement, released March 7, 1938, made public the text of a letter addressed to Representative Maverick on February 14, 1938, giving your general views upon the situation in the TVA Board. Since these documents are lengthy, I am asking the stenographer to attach them to the transcript as exhibits.

Chairman
J Morgan

14

I

SO-CALLED BERRY MARBLE CLAIMS

QUESTION: Now, Chairman Morgan, since a large part of your recent statements have been devoted to the handling of the so-called Berry marble claims, I shall ask you first of all to give me the facts upon the basis of which you make your statements.

In your letter to Congressman Maverick which you made public, you said:

> "The Berry marble claims, in my opinion, are an effort at a deliberate, bare-faced steal. The other two directors had the same 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."

The gist of your complaint also appears to be contained in your Berry claims statement that:

> "The real difficulty has been in the effort to secure honesty, openness, decency, and fairness in Government. The Berry marble case, as I have said, is an instance of this difficulty."

15

(See 15A)

You say that the difficulty is in securing "honesty," and you charge your colleagues with dishonesty and malfeasance. What facts of dishonesty on the part of your colleagues have you in regard to the so-called Berry marble case?

QUESTION: (If Chairman Morgan answers that he did not intend to charge dishonesty but merely to disagree with the way the claim was handled, he should be asked why he allowed the press to interpret his statements as attacking his colleagues' integrity and in general to make scandalous charges when he knew that there was no question of the personal honesty

of his fellow Directors involved. In this connection it would be well to point out that the press construed his testimony in the Berry marble case in December 1937 as charging his colleagues with impropriety, that Chairman Morgan not only failed to correct this impression but intensified it by his three later statements last week and by his unprecedented demand for a Congressional investigation.)

If you did not intend to charge dishonesty but merely to disagree with the way the claim was handled, why did you acquiesce in the press interpretation of your charges as a serious reflection on your colleagues' integrity? Why did you not correct that widespread misunderstanding of your views, if in fact it was a misunderstanding, instead of repeating the charges several times, at the trial in December and again in your recent statements?

QUESTION: Dr. Harcourt Morgan and Mr. Lilienthal, do you have any facts in answer to the charges relating to the so-called Berry case?

II

"JOKER" IN ARKANSAS POWER & LIGHT COMPANY CONTRACT

QUESTION: In your letter to Mr. Maverick you made the following statement:

> "The Arkansas Power and Light Company contract as presented to me for approval contained a 'joker' which would have allowed the company to buy prime power at secondary power rates. I protested strenuously and got that point eliminated.... The TVA engineer who helped me to analyze this Arkansas contract and who disclosed this 'joker' is a very able man. He has helped me outside his regular field in analyzing problems I have presented to him. After this and other services he 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."

16

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

(If Chairman disavows his intention of charging dishonesty or impropriety he should be made to state that his serious reflection was based merely on the fact that a contract failed to contain a provision which was adopted promptly when suggested.)

QUESTION: Now Dr. Harcourt Morgan and Mr. Lilienthal, do you have any facts that you want to give on this matter?

III

FALSE REPORTS TO CONGRESS, ETC.

QUESTION: In your letter to Congressman Maverick you say:

> "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 TVA, by a TVA director or by the two directors acting in unison."

In view of the high trust which public officers hold in respect to the public, the Congress, and the Chief Executive, there could be no more serious breach of their fiduciary duty than making wilfully false reports. What, if any, such reports did you refer to, and specifically what do you charge was false about them?

17

(In this connection, if Chairman Morgan refers to specific documents such as the last annual report and to specific aspects of them, it will be well to inquire whether at the time such reports were made he pointed out to the other directors specifically wherein they were false and wherein they should be corrected. In the case of the last annual report which he did not concur in, he refused to give his specific objections thereto despite repeated requests for them from the other directors.)

J. 92

172

QUESTION: Dr. Harcourt Morgan and Mr. Lilienthal, have you anything to say regarding these matters?

IV

SINISTER MALPRACTICE - "EVASION, INTRIGUE AND SHARP STRATEGY"

QUESTION: In your letter to Congressman Maverick, speaking of your colleagues, you say:

> "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."

Elsewhere in the letter you refer to "misrepresentation, intrigue and arbitrary action."

These words ascribe sinister malpractices to your colleagues. I want you to give the facts upon which this was based.

(Chairman Morgan will probably list some or all of the following: (1) that the other members of the Board met secretly and adopted policies; (2) that the policies so adopted were railroaded through Board meetings without adequate notice and ignoring his repeated requests for further time to consider them; (3) that the other directors failed to give consideration to his views or show the respect due his office; (4) that they stripped him of his administrative powers and jurisdiction; (5) that they appointed a general manager and other key staff members of their own choosing over his dissent and dismissed or otherwise intimidated men loyal to the Chairman.

(As to the "secret" meetings and alleged "railroading," fair analysis of any of these alleged incidents will develop that what actually occurred was clearly consistent with the proper administration of the project; that the informal meetings went no further than

proper collaboration between executives; that the Chairman's voluntary and extended absences frequently made action in his absence imperative; that the so-called two-to-one voting conspiracy or coalition against him was nothing more than the continuance by other directors of policies which he suddenly departed from and dissented on after Mr. Lilienthal's reappointment; that staff changes were pursuant to a general plan of reorganization adopted upon recommendation of experts in Government procedure and after ample opportunity for study and discussion by all directors, for the purpose of relieving Board members of administrative responsibilities so that they might devote themselves more fully to policy problems.

(It should be observed that probably no amount of pressing for details will bring out any facts which, even as interpreted by Chairman Morgan, will support the impression of sinister malconduct which his statements in the Maverick letter clearly convey.)

QUESTION: Dr. Harcourt Morgan and Mr. Lilienthal, will you state any facts you have bearing on these charges?

V

CONSPIRACY

QUESTION: In your statement on the Berry claims, you said this of your situation:

> "To a steadily increasing degree, however, I have contended with an attitude of conspiracy, secretiveness and bureaucratic manipulation."

19

What are your facts on that?

(Chairman Morgan will probably give the same type of incidents on this as on previous question.)

QUESTION: Dr. Harcourt Morgan and Mr. Lilienthal, are there any facts which you have to bring out on this?

VI

ALUMINUM COMPANY CONTRACT

QUESTION: In your letter to Congressman Maverick you said:

> "With reference to the Aluminum Company contract I feel that the relations of the TVA and the Aluminum Company have failed to protect the public interest. I have protested to the Board repeatedly on this matter."

In the context of your letter which generally charges serious wrongdoing to the other members of the Board, this statement lends itself to the interpretation of a sinister relation between them and the Aluminum Company. I will ask you now if that was your intention, and if so, to support the charge with the facts.

20

(Chairman Morgan will almost certainly say that his real difference, his only one, has to do with integrating the Aluminum Company development on the Little Tennessee River with the projects of the Authority and that he disagrees with the majority of the Board which refused to enter into a contract providing for such integration in 1936 on the ground that the contract was unfavorable to the Authority, and which decided in 1937 to contract for power sale alone without integration.

QUESTION: Have you, Dr. Harcourt Morgan or Mr. Lilienthal, facts which you desire to adduce on this?

VII

GENERAL CHARGE OF DISHONESTY AND IMPROPRIETY

QUESTION: In your statements on the so-called Berry claims you said 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 thus charge that there are other instances of dishonesty. In your letter to Congressman Maverick, speaking of the present TVA situation you say

> "In my opinion good government and the welfare of the TVA demand that the situation be cleaned up, and that standards of openness, fairness and honesty shall prevail."

Now I want to ask you, Chairman Morgan, what instances of dishonesty had you in mind when you made those statements.

QUESTION: Commencing over a year ago, Chairman Morgan, you have made a series of statements which seemed to attack the propriety of your colleagues' conduct and which they have regarded as impugning their personal integrity. Your public utterances have culminated in the last few weeks with statements which unmistakably and unequivocably attack the motives and personal honor and integrity of your colleagues in discharging their public trust. Generally speaking, and I think it is only fair to say that your statements must be interpreted as a whole, their net effect is to place a heavy cloud not only upon the other members of the Board, but also upon important operations of the Tennessee Valley Authority. The press has been practically unanimous in so interpreting your attitude as reflected in your public

utterances. You have never publicly retracted or corrected the impression you have given. I think you have a heavy responsibility, therefore, to support the position that you have taken and that has been so universally ascribed to you. I therefore must ask you to say whether you have any other facts whatever which you had in mind in making these serious charges of dishonesty and lack of integrity and in broadcasting them so widely in the manner in which you have done and in acquiescing in the interpretation which has universally been placed upon them.

23

Insert 24

We now come to the charges which Dr. Harcourt A. Morgan and Mr. Lilienthal have made against Chairman Morgan. These charges are contained in a document which they submitted directly to me on January 18, 1938. Last week I authorized its release. The charges of Dr. Harcourt A. Morgan and Mr. Lilienthal appear to relate to certain specific matters set forth in this document.

I will now ask Dr. Harcourt Morgan and Mr. Lilienthal to give me the facts upon which these charges were based. I want to remind you gentlemen again that I am interested only in the facts on the fundamental issues. For convenience, I suggest that we take up these charges in the order in which they are listed in the memorandum of January 18.

25

I

PUBLIC ATTACKS ON BOARD

QUESTION: The first is:

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

What are the facts upon which this general charge was based?

QUESTION: Chairman Morgan, have you any reply?

II

ATTACKS UPON AND HARASSING AND INTERFERING WITH STAFF

QUESTION: The next charge in the memorandum of January 18 reads as follows:

26

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

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

QUESTION: Chairman Morgan, I should like to hear your reply to the facts on this matter which Dr. Harcourt Morgan and Mr. Lilienthal have just stated.

III

FAILING TO CARRY OUT BOARD DECISIONS

QUESTION: Dr. Harcourt Morgan and Mr. Lilienthal, your next charge is that

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

21

Please give me the facts on the specific instances, if any, that you had in mind in making this charge.

QUESTION: Chairman Morgan, are there any facts that you desire to bring out on these matters?

IV

COLLABORATION WITH PRIVATE UTILITIES

QUESTION: The next two charges of Dr. Harcourt A. Morgan and Mr. Lilienthal are apparently related. The first of these reads as follows:

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

28

I take it you gentlemen meant "actuated." The second states:

> "It was not permissible for Arthur E. Morgan to collaborate with the former chief engineer of the Insull utility system, in the preparation of a detailed recommendation on a power pooling policy, which report proposed evasions and violations of the TVA Act; nor was it permissible, during negotiations, for him to permit such report to be made available to the utilities."

QUESTION: Chairman Morgan, what is your reply?

V

"RULE OR RUIN"

QUESTION: Finally, I interpret this document of January 18 to make certain other less specific but nonetheless fairly clear charges on which I want whatever other facts you had in mind. You imply that Chairman Morgan is actuated by "the doctrine of 'rule or ruin'" and "personal considerations."

29

What are the facts on these points?

QUESTION: Chairman Morgan, do you wish to say anything as to this?

Filibuster

PSF: TVA

Under the Constitution the Chief Executive is directly and primarily ~~responsible for the administrative efficiency of the executive agencies of the Government~~. changed to "to see that the laws be faithfully executed".

I have been confronted for some time with a threat to the continued successful functioning of the Tennessee Valley Authority, a great executive agency.

In January, 1957, in a public speech and articles in the public press, ~~Mr.~~ Arthur E. Morgan, ~~Chairman and~~ one of the three members of the Board of Directors of the Authority, seemed to intimate — but without specifications or supporting evidence — that he doubted the integrity of his fellow members. Insert A.

In August, 1957, again in the public press — but again without specifications or supporting evidence — ~~Mr.~~ Arthur E. Morgan ~~seemed to intimate~~ engaging in continuing that he doubted the integrity of his fellow members. At this time I wrote him as follows:

> "That there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you may have, if any, to justify your statements."

In reply Dr. Arthur Morgan informed me that while he was highly critical of the work of his colleagues, he had no intention of impugning

their good faith or integrity. He complained about the internal organization of T.V.A. and requested me to intervene on his behalf. I urged him to return and to endeavor to complete an internal reorganization of the work along the lines recommended in the report of a special committee of experts on administration which I had sent to the Tennessee Valley in the spring of 1938.

In December, 1937, the constitutionality of the T.V.A. Act was at stake in a law suit brought by eighteen utility companies. During such litigation the minority member of the Board widely disseminated within the Authority's organization charges of unethical professional misconduct against the T.V.A. counsel in charge of the litigation — again without specification or evidence.

On January 18, 1938, the majority members submitted to me, without publicity, an official memorandum complaining of certain specific kinds of unpermissible conduct on the part of the minority member, including the making of reckless and unsupported charges, including an unwillingness to cooperate with the decisions of a majority of the Board and including serious interference with the work of key members of the Authority's staff in the performance of their duties. In contrast to Arthur Morgan's charges against them, the complaint of the majority

against him did not charge him with dishonesty or lack of integrity. That is a fact that directly bears on the press and conscience of the majority.

- On March 3rd and on March 5th, 1938, ~~[the minority member]~~ Dr. Arthur E. Morgan made extensive and unequivocal charges of dishonesty and lack of integrity in public office on the part of the majority members — again in the public press — and again without specifications or evidence.

Despite my long personal friendship for ~~Dr.~~ Arthur E. Morgan and my appreciation of his many public services in the past, this action ~~on~~ by ~~his part~~ him compelled action by me.

As Chief Executive constitutionally responsible for the faithful execution of the T.V.A. Act I could not ignore charges of dishonesty, bad faith and conspiracy in ~~the~~ its administration~~, of an executive agency~~.

In fairness to Dr. Harcourt Morgan and Mr. David Lilienthal as public officials and as ~~human beings,~~ American citizens I ~~could not withhold from the~~ had to make public their accusations of obstruction against ~~Dr.~~ Arthur E. Morgan ~~which they had made only to me, at the same time he was making~~ because without notice to me he made public his accusations of dishonesty against them.

~~Nor~~ I could ~~I, like Pontius Pilate,~~ not wash my hands of ~~concern with~~ these grave and libelous charges against men whose alleged guilt had not been proved, any more than I can today wash my hands of these charges because of the possibility or the probability ~~The concurrent power of the Congress to investigate the administration of executive agencies does not relieve me of my responsibilities.~~ that at some later date they may be investigated by another branch or branches of the Government.

I therefore summoned the three members of the Board of the

T.V.A. to appear before me on March 11th, face to face with each other, to present such facts as they might have to support the serious charges which they had made. It was not a formal court proceeding but a simple and fair way to get the truth — to let each confront the other and tell his story in straight-forward non-technical words.

I informed the members that I was concerned at this particular inquiry not with the pros and cons of T.V.A. policies, but with their charges of dishonesty on the one hand and misconduct on the other.

I first called upon Arthur E. Morgan to substantiate with facts the several charges of dishonesty and want of integrity which he had made against his fellow directors. I called his attention to the fact that the gist of his complaint in regard to the handling of the Berry marble claims appeared in his own words to be that "the real difficulty has been in the effort to secure honesty, openness, decency, and fairness in Government." And I pointed out to him that common decency toward his fellow directors called for utter frankness and candor in his charges.

At the hearing on March 11th Arthur E. Morgan flatly refused to submit to me any evidence in support of his charges. He read a prepared statement to the effect that the "meeting is not, and in the nature of the case cannot be, an effective or useful fact finding occasion. To properly substantiate the charges is not the work of a morning." When asked whether he had any reason to believe that the hearing would be confined to a morning and whether he would be prepared to submit facts if given one week or two

weeks to do so, he failed to reply.

The majority members explained the action which they had taken in the Berry marble claims case, as well as their action on the Arkansas Power & Light Company contract, and on the Aluminum Company contract to which Dr. Arthur E Morgan had referred in his published statements. I could not expect a more adequate explanation than that which they made, in view of the failure and refusal of Dr. Arthur E Morgan to submit the facts upon which he relied to support his charges.

I then asked the majority members to present the facts in support of their charges against Dr. Arthur E Morgan.

The majority members first referred to a number of his published articles and speeches during 1937 which they contended contain unsupported and unsupportable statements impugning their honesty and integrity. Whether these articles or speeches were intended ~~or could fairly be construed~~ to impugn the motives of the majority of the directors, it is clear that the more recent public statements of Dr. Arthur E Morgan to which the majority members also referred, do assail the personal honesty and integrity of the majority members in unmistakable terms.

But Dr. Arthur E Morgan refused, although I pleaded with him and gave him repeated opportunity, to present any facts in justification of his attacks upon the integrity of

pendent expert under a conciliation agreement made a report upon the value of the marble deposits without ~~prejudice to the rights of~~ binding either the Authority or the claimants in any way.

When this procedure was proposed at a Board meeting ~~the~~ Arthur E. Morgan objected to it. As a member of the board he had a right so to do. He apparently believed that, despite the express terms of the ~~conciliation~~ agreement, ~~the agreement~~ it would in some way adversely affect the rights of the Authority to contest the claims. The majority members, conscious of the hazards of any litigation and not having as yet ~~discovered~~ unearthed any ~~direct~~ legal or direct evidence of the bad faith which they nevertheless suspected, were equally within their rights in voting to ~~proceed with~~ adopt the ~~conciliation~~ procedure suggested by the Authority's counsel. There is not the slightest basis for ~~Mr.~~ Arthur E. Morgan's imputing bad faith to the majority members because they and the Authority's counsel differed with him on technical points of legal procedure. It is wholly unwarranted for ~~Mr.~~ Arthur E. Morgan, on the one hand, to complain that as a layman he cannot adequately explain to me why his colleagues acted improperly and, on the other hand, as a layman to take it upon himself to accuse his colleagues of gross misconduct in the handling of a law suit.

~~Mr.~~ Arthur E. Morgan's whole attitude toward this inquiry ~~is~~ itself gives credence to the charge that he has been unwilling to cooperate with his fellow directors in the administration of the Act, and that is temperamentally

unfitted to exercise divided authority. With the exception of a few fragmentary questions and answers on the Berry marble claims, Mr. Arthur E. Morgan has stood aloof and refused to cooperate in this proceeding or to supply the pertinent facts asked of him by his own administrative superior, the Chief Executive. His fellow directors have responded, as a matter of course, and have given specification to support their grievances. By contrast, he has not even been willing to specify the facts upon which he based his charges against them to give them an opportunity to answer and so an opportunity to judge.

In contrast to obstinacy and disobedience,

I have tried to be mindful of the debt the public owes Mr. Morgan for Arthur E.

for past services, of his sense of the righteousness of his own convictions, and of the patience with which the public interest demands that a situation of this kind be worked out if possible. I have therefore struggled with this problem for over a year and in its present acute form for six months. I hope it may be fairly said that I have been patient.

There is a limit however to forbearance, And as I have said before, I must consider the position in which Dr. greatly Harcourt Morgan and David Lilienthal find themselves. Some decision on this record is due them. If there should be no decision after Mr. Arthur E. Morgan has refused to substantiate his grave and libelous charges against them they would be definitely and permanently seriously injured in their rights and standing as citizens and public officials.

Furthermore I must consider the continuing operations of a great

Government agency. It would violate my constitutional duty to take care that the laws are faithfully executed if I should leave unsupported charges bringing indefinitely over the heads of two officials who have to cooperate in the difficult task of divided authority, and thereby permit a recalcitrant non-cooperative official further freedom to sabotage governmental operations at a crucial time.

Finally I must also consider the consequences of permitting the establishment of a precedent whereby any subordinate in the Executive Branch of the Government can refuse to give to his superiors or to himself facts sought in order to straighten out difficulties which he charges exist in his own work; can refuse accountability to the Chief Executive for his actions as a member of the Executive Branch, even though he be charged with misconduct in office; and can insist that orderly executive functioning must be maintained only through the legislative committees.

Under such circumstances indulgence of my personal wish to continue my patience with Arthur Morgan would be unfair to everybody and everything else involved. I therefore feel obliged to act upon the evidence now before me.

On that evidence I am obliged to find that:

(a) Arthur Morgan has failed to sustain the grave and libelous charges of dishonesty and want of integrity which he has made

against his fellow directors; his conduct in this respect is legally and morally unjustified;

(b) On the face of the record the charges of the other directors that Arthur Morgan has obstructed the work and demoralized the organization of T.V.A., must be accepted as true; he has refused to offer testimony in denial of the charges;

(c) Arthur Morgan is guilty of insubordination and contumacy in refusing to submit to the Chief Executive any facts upon which he based charges of dishonesty and want of integrity on the part of his fellow directors.

Under these circumstances, I feel myself under the painful duty of requesting Arthur Morgan at once publicly to withdraw the charges which he has made impugning the honesty, good faith, integrity and motives of his fellow directors and to give them and the country the assurances that he will in future loyally cooperate with his fellow directors in carrying out the provisions of the T.V.A. Act.

I make this request of him.

If he cannot accede, it is his duty to resign.

I hope that Dr. Arthur Morgan will not make it necessary for me to take further action.

Under the Constitution the Chief Executive is directly and primarily responsible for the administrative efficiency of the executive agencies of the Government.

I have been confronted for some time with a threat to the continued functioning of the Tennessee Valley Authority, a great executive agency.

In January, 1937, in a public speech and articles in the public press, Dr. Arthur E. Morgan, Chairman and one of three members of the Board of Directors of the Authority, seemed to intimate — but without specifications or supporting evidence — that he doubted the integrity of his fellow members.

In August, 1937, again in the public press — but again without specifications or supporting evidence — Dr. Arthur Morgan seemed to intimate that he doubted the integrity of his fellow members. At this time I wrote him as follows:

> "That there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you may have, if any, to justify your statements."

In reply Dr. Arthur Morgan informed me that while he was highly critical of the work of his colleagues, he had no intention of impugning

Insert B - p 2

; and in my calling them
attention to the Statement
that he did not have
access to records,
they denied this fact
categorically and
stated that all
records had been
and would be
open to the Chairman

their good faith or integrity. He complained about the internal organization of T.V.A. and requested me to intervene on his behalf. I urged him ~~to return and to endeavor~~ to key to complete the ~~an~~ internal reorganization ~~of the work along the lines recommended in the report of a special committee of experts on administration which I had sent to the Tennessee Valley in the spring of 1939~~ in harmony with his fellow directors.

In December, 1937, the constitutionality of the T.V.A. Act was at stake in a law suit brought by eighteen utility companies. During ~~such~~ this litigation ~~the minority member of the Board~~ Arthur E. Morgan widely disseminated within the Authority's organization charges of unethical professional ~~misconduct~~ against the T.V.A. counsel in charge of the litigation — again without specification or evidence.

On January 18, 1938, the majority members submitted to me, without publicity, an official memorandum complaining of certain specific kinds of unpermissible conduct on the part of ~~the minority member~~ Dr. Arthur E. Morgan, including the making of reckless and unsupported charges, including an unwillingness to cooperate ~~with~~ in carrying out the decisions of a majority of the Board and including serious interference with the work of key members of the Authority's staff in the performance of their duties. In contrast to Dr. Arthur E. Morgan's charges against them, the complaint of the majority

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that is a fact that directly
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against him did not charge him with dishonesty or lack of integrity.

On March 3rd and on March 5th, 1938, the ~~assembly member~~ Dr Arthur E Morgan made extensive and unequivocal charges of dishonesty and lack of integrity in public office on the part of the majority members — again in the public press — and again without specifications or evidence.

Despite my long personal friendship for Dr. Arthur E Morgan and my appreciation of his many public services in the past, this action on his part compelled action by me.

As Chief Executive constitutionally responsible for the faithful execution of the T.V.A. Act I could not ignore charges of dishonesty, bad faith and conspiracy in the administration ~~of any executive agency~~.

In fairness to Dr. Harcourt Morgan and Mr. David Lilienthal as public officials and as human beings, I ~~could not withhold from the~~ American citizens. I had to make public accusations against Dr. Arthur Morgan ~~which they had made only~~ because without warning to me, at the same time he made public his accusations of dishonesty against them. Nor could I ~~like Pontius Pilate~~ not wash my hands of ~~connection with~~ these grave and libelous charges made against men whose alleged guilt had not been proved, any more than I can today wash my hands of these charges on the possibility that another branch of the

The concurrent power of the Congress to investigate the administration of executive agencies does not relieve me of my responsibilities.

I therefore summoned the three members of the Board of the

T.V.A. to appear before me on March 11th, face to face with each other, to present such facts as they might have to support the serious charges which they had made against each other. It was not a formal court proceeding but the simplest and fairest way I know to get the truth — to let each confront the other and tell his story in a straight-forward, non-technical way.

I informed the members that I was concerned at this particular inquiry not with the pros and cons of T.V.A. policies, but with their personal charges of dishonesty on the one hand and official misconduct on the other.

I first called upon Chairman Arthur E. Morgan to substantiate with facts the several charges of dishonesty and want of integrity which he had made against his fellow directors. I called his attention to the fact that the gist of his complaint in regard to the handling of the Berry marble claims appeared in his own words to be that "the real difficulty has been in the effort to secure honesty, openness, decency, and fairness in Government." I pointed out to him that common decency towards his fellow directors called for utter frankness and candor on his part.

At the hearing on March 11th Dr. Arthur Morgan flatly refused to submit to me any evidence in support of his charges. He read a prepared statement to the effect that the "meeting is not, and in the nature of the case cannot be, an effective or useful fact finding occasion. To properly substantiate the charges is not the work of a morning." When asked whether he had any reason to believe that the hearing would be confined to a morning and whether he would be prepared to submit facts if given one week or two

weeks to do so, he failed to reply.

The majority members explained the action which they had taken in the Berry marble claims case, as well as their action on the Arkansas Power & Light Company contract, and on the Aluminum Company contract to which Dr. Arthur E. Morgan had referred in his published statements. I could not expect a more adequate explanation than that which they made, especially in view of the failure and refusal of Dr. Arthur E. Morgan to submit the facts upon which he relied to support his charges.

I then asked the majority members to present the facts in support of their charges against Dr. Arthur E. Morgan.

The majority members first referred to a number of his published articles and speeches during 1937 which they contended contain unsupported and unsupportable statements impugning their honesty and integrity. Whether or not these articles or speeches were intended ~~or could fairly be construed~~ to impugn the motives of the majority of the directors, it is clear that the more recent public statements of Dr. Arthur Morgan to which the majority members also referred, do assail the personal honesty and integrity of the majority members in unmistakable terms.

But Dr. Arthur E. Morgan refused, although I pleaded with him and gave him repeated opportunity, to present any facts in justification of his attacks upon the integrity of

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the majority of the Board.

The majority members also proffered facts tending to show that in the course of delicate and important conversations between the Authority and private utilities Dr. Arthur E. Morgan had private conferences and communications with one or more executives of such utilities, with a large prospective power purchaser, with an electrical equipment manufacturer, which conversations and conferences might well have hampered the Government in carrying out the decisions of the majority of the Board.

When there is dissension within a multiple-headed executive, it is difficult to draw the line where dissent becomes obstruction. I have serious doubt as to the propriety of a number of the things which Dr. Arthur E. Morgan did in an effort to create a situation in which he could force acceptance of his own ideas. So long as we have multiple-headed administrative boards, however, we should allow considerable latitude for human discretion and not frighten a minority into acquiescence. Therefore, in such matters I think every doubt should be resolved in favor of Dr. Arthur E. Morgan. Nevertheless, significance does attach to the multiplicity of these instances in which he trespassed into doubtful territory.

The majority members also proffered facts tending to show that Dr. Arthur E. Morgan did not send a telegram to me requesting a conference on a vital matter of policy, as directed by the Board. Although here again Dr. Arthur E. Morgan may have committed a technical wrong — although his explanation

testified that he had changed his mind ~~might not be technically sufficient — standing~~ alone a few instances of this sort would not appear to be significant, but taken in the light of his other acts, however, ~~they are not wholly lacking~~ the chain is significant in significance.

The majority members also presented facts tending to show — I think I should say fairly showing — that Dr. Arthur Morgan interfered with and obstructed the conduct of vitally important constitutional litigation affecting the very life of the Authority, ~~to which~~ I have earlier referred, ~~to his difficulties with T.V.A. counsel during recent constitutional litigation~~. To the demands of counsel for the T.V.A. that Dr. Arthur Morgan give evidence and specifications, the latter refused to make reply. The interference reached the point that special counsel for the T.V.A., the Honorable John Lord O'Brian, formerly The Assistant to the Attorney General of the United States under a ~~Republican~~ previous Administration, an independent lawyer of great experience and wide reputation, felt impelled to write the Chairman as follows:

"Dear Dr. Morgan:

"I have your letter of December 30, 1937.

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

"Your charges, coming while the case was actively on trial, have had a disrupting and demoralizing effect upon all the attorneys and upon the conduct of the Authority's case. After

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

The T.V.A. had entrusted the conduct of this important litigation to competent counsel. Its unusually capable General Counsel had the assistance of an able, outside, independent special counsel. Whatever differences there may have been within the Board as to the conduct of this litigation, no evidence has been submitted to me which would have justified the minority member at a most critical stage of the proceeding in openly charging reputable counsel with unethical professional conduct, thereby, consciously or unconsciously prejudicing the case of the Government. Dr. Arthur E. Morgan, when given the opportunity by me, offered no explanation for this reckless and astounding conduct.

I concluded the first hearing, on March 11th, as follows:

"If there is nothing further I want to make one very short final statement. I have now heard the charges and countercharges of the T.V.A. Board. I have endeavored to give each side the opportunity of answering the complaints of the other side. Frankly, I am disappointed that Chairman Morgan has not answered by giving any factual answers to the questions which I have put, but I hope that in the course of the next week Chairman Morgan will realize that it is of the utmost importance to the continuation of the work that he should reply to very simple factual questions.

" He should have every opportunity so to do. And, therefore, if it is agreeable to him and to the other two members, who also may want to present additional facts, I will set a resumption of this hearing for a week from today, Friday morning, at eleven o'clock, and if you care to appear in person at that time it will be entirely agreeable to me. If you prefer to submit any factual report in writing without appearing, use your own judgment."

A second hearing was accordingly held, on March 18th.

At that second hearing Dr. Arthur Morgan persisted in his refusal to participate in any inquiry to ascertain the facts regarding his charges of dishonesty and want of integrity, although in a prepared statement he referred "by way of illustration" to certain facts and circumstances tending to show that the Berry marble claims were worthless and that there was reason to suspect the bona fides of the claims. But there is absolutely no evidence before me that the majority members of the Board ever contended either that these marble deposits had any commercial value or that they themselves had no reason to suspect the bona fides of the claims.

On the contrary, the evidence shows that claims aggregating millions had been filed against the Government; that the majority of the Board were as deeply concerned about them as was Dr. Arthur Morgan; and that the Board's counsel was endeavoring to obtain all available evidence to oppose the claims both on the ground that the marble was commercially valueless and that the claims were not advanced in good faith.

The majority members, acting on the advice of T.V.A. counsel, believed that it would tend to protect rather than hurt the Government's case if an inde-

pendent expert under a conciliation agreement made a report upon the value of the marble deposits without hindering ~~prejudice of the rights~~ of the Authority or the claimants in any way.

When this procedure was proposed at a Board meeting Dr. Arthur E. Morgan objected to it. As a member of a board he had a right so to do. He apparently believed that, despite the express terms of the ~~conciliation~~ agreement, ~~the agreement~~ it would in some way adversely affect the rights of the Authority to contest the claims. The majority members, conscious of the hazards of any litigation and not having as yet unearthed any legal evidence of the bad faith which they nevertheless suspected, were equally within their rights in voting to ~~proceed with the conciliation~~ adopt the procedure suggested by the Authority's counsel. There is not the slightest basis for Dr. Arthur Morgan's imputing bad faith to the majority members because they and the Authority's counsel differed with him on technical points of legal procedure. It is wholly unwarranted for Dr. Arthur E. Morgan, on the one hand, to complain that as a layman he cannot adequately explain to me why his colleagues acted improperly and on the other hand as a layman to take it upon himself to accuse his colleagues of gross misconduct in the handling of a law suit.

Dr. Arthur Morgan's whole attitude toward this inquiry by me itself gives credence to the charge that he has been unwilling to cooperate with his fellow directors in the administration of the Act and that he is temperamentally

unfitted to exercise divided authority. With the exception of a few fragmentary questions and answers on the Berry marble claims, Dr. Arthur Morgan has stood aloof and refused to cooperate in this proceeding or to supply the facts asked of him by his own administrative superior, the Chief Executive. His fellow directors have come here, as a matter of course, and have given specific reasons to support their grievances. By contrast, he has not even been willing to specify the facts upon which he based his charges against them to give them an opportunity to answer and me an opportunity to judge.

I have tried to be mindful of the debt the public owes Dr. Morgan for past services, of his sense of the righteousness of his own convictions, and of the patience with which the public interest demands that a situation of this kind be worked out if possible. I have therefore struggled with this problem for nearly two years and in its present acute form for six months. I hope it may be fairly said that I have been patient.

As I have said before, I must consider the position in which Dr. Harcourt Morgan and David Lilienthal find themselves. Some decision on this record is due them. If there should be no decision after Dr. Arthur Morgan has refused to substantiate his grave and libelous charges against them they would be definitely and seriously injured in their rights and standing as citizens and public officials.

Furthermore I must consider the continuing operations of a great

Government agency. It would violate my constitutional duty to take care that the laws are faithfully executed if I should leave unsupported charges hanging indefinitely over the heads of two officials who have tried to cooperate in the difficult task of divided authority and thereby permit a recalcitrant non-cooperative official further freedom to sabotage governmental operations at a crucial time.

Finally I must also consider the consequences of permitting the establishment of a precedent whereby any subordinate in the Executive Branch of the Government can refuse to give his superior or the Chief Executive himself facts sought in order to straighten out difficulties which he charges exist in his own work; can refuse accountability to the Chief Executive for his actions as a member of the Executive Branch, even though he be charged with misconduct in office, and can insist that orderly executive functioning be maintained only through the legislative processes of legislative committees. It is worthwhile to consider what would happen to the efficiency of the executive branch of the Government if such a precedent were established.

Under such circumstances indulgence of my personal wish to continue my patience with Dr. Arthur E. Morgan would be unfairness to everybody and everything else involved. I therefore feel obliged to act upon the evidence now before me.

On that evidence I am obliged to find that:

(a) Dr. Arthur Morgan has failed to sustain the grave and libelous charges of dishonesty and want of integrity which he has made

against his fellow directors; his conduct in this respect is legally and morally unjustified;

(b) On the face of the record the charges of the other directors that Dr. Arthur Morgan has obstructed the work and ~~demoralized~~ the organization of T.V.A., must be accepted as true; Dr. ~~Morgan~~ has refused to offer testimony in denial of the charges;

(c) Dr. Arthur Morgan is guilty of insubordination and contumacy in refusing to submit to the Chief Executive any facts upon which he ~~might have relied at the time of making~~ charges of dishonesty and want of integrity against his fellow directors.

Under these circumstances, I ~~have felt~~ myself under the painful duty to request Dr. Arthur Morgan at once publicly to withdraw the charges which he has made impugning the honesty, good faith, integrity and motives of his fellow directors and to give them and the country assurances that he will in the future loyally cooperate with his fellow directors in carrying out the provisions of the T.V.A. Act.

I ~~have made~~ this request upon him.

If he cannot accede, it is his duty to resign.

I hope that Dr. Arthur Morgan will not make it necessary for me to take further action.

PSF
TVA

(last paragraph)

He has had ample time and opportunity to make his decision. If he determines to follow neither of these courses, I give him until 11:00 tomorrow morning, Tuesday, March 22nd, to present to me, in person or in writing, any reason why as Chief Executive I should not take further action in the case as a necessary result of the findings which I have just stated. For your information, Chairman Morgan, I must tell you frankly, in the light of the record, only two courses appear open -- your removal or your suspension as a member of the Board of Directors of the Tennessee Valley Authority.

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(To go on page 1 -- end of third paragraph)

In April, 1937, a special committee of experts on administration organization recommended certain administrative changes in the internal organization. The recommendation for a general manager followed the suggestion of Arthur E. Morgan, but when the recommendations were put into effect by the Board he could not agree on the selection of a general manager.

BF

THE T.V.A. INVESTIGATION

The T. V. A. Act requires that "all members of the Board shall be persons who profess a belief in the feasibility and wisdom of the Act." I have a right to assume ~~therefore~~ that in accordance with the Act every member of the Board believes in the feasibility and wisdom of that Act? I have a right to assume that every member of the Board is interested in his duties prepared to do his part to cooperate with his fellow members to make the Act work? I have a right to assume that every member of the Board is prepared to recognize that a certain amount of teamwork is necessary to make the Act succeed?

But there are persons and powerful interests that ~~do not~~ dis profess a belief in the feasibility and wisdom of the Act. There are persons and powerful interests that are quick to seize upon the simplest acts or slightest word of members of the Board to discredit the administration of the Act. The open dissension and personal recrimination among members of the T.V.A. has reached a point where the successful administration of the Act is imperilled. No one who professes a belief in the feasibility and wisdom of the Act can view such situation without the gravest concern.

Let me set forth certain principles of proper Administration upon which

Effective administration requires action. The action of a Board must be determined by a majority of its members. A minority has the right to record its dissent, publicly if it desires, after action is taken; it has a right by fair persuasion to seek to obtain the

adoption of a different course of action. But, neither a majority nor a minority has a right to make public display of personal internal differences to the point where effective administration of the Act is jeopardized.

I have reluctantly become convinced that the work of the T.V.A. Board is now being impeded, and that the real issues of public policy which may exist among its members are now being obscured by personal recriminations. It is intolerable that issues of fundamental public policy should be confused with issues of personal integrity or misconduct. It is intolerable that either majority or minority members of an administrative board should cast doubt upon the honesty, good faith or personal integrity of their colleagues or should charge any of their colleagues with improperly obstructing the carrying out of the Board's decisions unless they are prepared to support such charges by good and sufficient evidence. If there be no such evidence then there should be a ~~surcease of~~ either desist and refrain from personal attacks and aspersions or resignation from the Board.

I have called this hearing to investigate charges of dishonesty, bad faith and misconduct. I am not concerned at this hearing with the pros and cons of any particular policy that the T.V.A. Board has or has not adopted. This is not an inquiry to determine a national power policy,

it is an inquiry into charges of personal and official misconduct.

~~I feel that I~~ As President, have especial concern in the charges that have been made which reflect not simply upon the judgment but upon the personal integrity and official conduct of members of the Board in the management of government property. Under section 17 of the T.V.A. Act the President is expressly authorized to ~~select attorneys and assistants for the purpose of~~ making any investigation he may deem proper to ascertain whether, in the management of any property owned by the Government in the Tennessee Valley Basin, ~~there has been any undue or unfair advantage given to private persons or corporations by any officials of the Government or whether in such matters~~ the Government has been injured, ~~or unjustly deprived of any of its rights.~~

I had hoped that the bitter personal feeling among the members of the T.V.A. would prove to be only the temporary result of honest differences of opinion or policy and that with the passage of time the members of the Board, even when they could not agree, would come to respect each other's opinions and cooperate, as is their duty, in the administration of the Act. I did not act when complaints were made to me as early as January, 1937, one of them by a responsible government official not connected with T.V.A., that the Chairman of the Board had

made a speech at Chicago and had published an article in the New York Times which could be taken as personal attack upon his fellow board members. I repeated my counsel to all the members of the Board individually to make every effort to compose their differences and not to permit the enemies of T.V.A. to make capital of them. But I censured no one,

In September of last year complaint was made to me by Harcourt A. Morgan and David E. Lilienthal that an article by Dr. Arthur E. Morgan published in the September issue of the Atlantic Monthly directly and by implication was an attack upon the honesty and integrity of the Board of the Tennessee Valley Authority. I at once wrote to Dr. Morgan informing him of the complaint and suggested to him "that there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you have, if any, to justify your statements." Dr. Morgan orally advised me, if I correctly understood him, that it had not been his intention to impugn the motives or good faith of his fellow directors.

Although I thought that the Atlantic Monthly article might fairly be taken as an attack upon the personal integrity of Dr. Morgan's fellow board members,* I accepted his statement that no such attack was

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* The following statements, among others from the article, go far to suggest to the ordinary reader that Dr. Morgan suspects the motives of

(Footnote continued on following page)

intended. So much for last year

But recently Dr. Morgan has issued statements which in unmistakable terms assail the honor, integrity and motives of his fellow-

his colleagues:

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

/September Atlantic Monthly, p. 346./

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"Third, having invited the investment of private capital to supply the public with electric power, the public is under obligation to respect actual honest and useful investment, and not to jeopardize or destroy it by capricious and arbitrary coercion. The abuses of the private power industry have bred in some men an attitude of bitter hatred, and a conviction that the only course to take is a war without quarter against the private companies. This attitude may be exploited by other men who have no such convictions, but who will endeavor to ride to political power on the issue. A fair settlement of the question might leave such men without a place in the limelight. In my opinion, for public men to retaliate with arbitrary coercion, to use false or misleading propaganda, and to use other methods than open and impartial processes of government, not only is unfair to legitimate private investors, but tends to substitute private dictation for democratic process of government. I have no confidence in the supposed liberalism of people who use such methods. Whoever will use unfair methods for the public probably will use unfair methods against the public for his own advantage. The public can have no greater security than the habit in its public officials of fair and open treatment of every issue, no matter who is affected /ib.pp. 344-345/.

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"Under any method there are certain proprieties and decencies of government which should be observed. Where the public has invited private capital to supply an essential public service, there should be no capricious arbitrariness in destruction or duplication of facilities to the loss of honest, necessary, and useful investment . . . . In case public power is used as a 'yardstick,' or as a measure of what the private power industry should charge for its services, then it is imperative that records and accounts be honest and fair and open, and that there be no hidden element of subsidy. The very fundamental element of such comparison is honesty, fairness, and openness in measurement /ib. p. 342/."

See, also, more detailed analysis of the Atlantic Monthly article by Harcourt Morgan and Lilienthal, which is attached to Harcourt Morgan's letter of September 13, 1937.

directors. Now, Dr. Morgan, I do not want you to misunderstand me. You are a man of deep conviction and intense feeling. ~~I know how hard it is to work with men whose minds somehow do not work in harmony with one's own.~~ That in executive positions all right thinking men have to be constantly on the alert I know how difficult it is under pressures and strains not to suspect the motives of those who resolve upon a course of action with which one profoundly disagrees. Even insofar as you have made charges of dishonesty and bad faith against your fellow-directors, I do not want to silence you; on the contrary I want now to investigate those charges. Differences of opinion may be composed, but charges reflecting upon the personal integrity of your fellow-directors cannot be compounded. Such charges cannot be allowed to rest upon innuendo, but must be made specific. I now want to ask you to produce what ~~we lawyers call~~ is called a bill of particulars.

In the statement you issued last Wednesday, March 2, you state: "I have felt compelled to fight for certain decencies and proprieties in public life which are more important to good government than any particular government program. The Berry marble case presents an instance of this difficulty." The suggestion is that you had to fight against your colleagues for such decencies and proprieties. The suggestion is that your colleagues were prepared to recognize a claim without fully

investigating its merits. You charge that they "entered a friendly agreement with Major Berry to determine the value of the marble which by that time was mostly under water and inaccessible, without any inquiry as to whether there was evidence of bad faith." The suggestion is that this "friendly agreement" was an improper agreement and that there was reason at the time of the agreement not simply of questioning the validity but the good faith of Major Berry's claim. These are very serious charges, charges of malfeasance in office. Your statement suggests that calling upon Dr. John Finch, Chief of the Bureau of Mines, to act as conciliator was calculated to put in jeopardy the government's interests. You do not question merely the wisdom or expediency of the steps taken by your colleagues, you question their integrity. You state that "the real difficulty has been in efforts to secure honesty, openness, decency, and fairness in government," and you repeat that "the Berry marble case is an instance of this difficulty."

As a responsible official you could not have made these serious charges against your colleagues publicly without being prepared to prove them. I now ask you, not for a specification of the acts of your colleagues with which you disagree, but for a specification of their acts which prove their want of honesty, openness, decency and fairness. As you refer to the Barry case as an instance of this difficulty, I desire

you to specify such other instances as in your opinion have occurred. The broad charges made by you certainly suggest that there are other instances. In your letter to Congressman Maverick, released to the press on March 6, you state that "the public and the Congress do not yet know the extent to which that /the Berry claim/ was improperly handled," and you charge your colleagues with failure to protect the public interest in the Aluminum Company contract and with permitting "a joker" to be inserted in the Arkansas Power and Light Company contract which would have enabled the company to buy prime power at secondary power rates. As I have previously pointed out, it is my duty under section 17 of the Act to make an investigation if there has been any undue or unfair advantage given to any private corporation or if in the management of government property in the Tennessee River Basin the government has been injured or unjustly deprived of any of its rights.

In your letter to Congressman Maverick, released March 6, Dr. Morgan, you also state that some of the reasons for your concern "are the explicitly misleading and evasive reports" and "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." This is an accusation against your colleagues of making to me and to the Congress deliberately

false and misleading reports, and I ask you to cite to me specifically the reports and the statements therein to which you refer.

Finally you charge in your letter to Congressman Maverick that "there is a practice of evasion, intrigue and sharp strategy, with remarkable skill in alibi and avoiding direct responsibility, which makes Machiavelli seem open and candid," and that you have discovered "hard-boiled, selfish intrigue" masking under "the attitude of boyish-open candor and man-to-man directness." Such charges can only be made by one who has despaired of the possibility of cooperative team-work with his colleagues in a great public endeavor. I must ask you for proof that your colleagues have not simply differed with you on issues of policy and organization, but have intrigued and conspired against you.

It is not my desire that this inquiry should be a unilateral affair. Harcourt Morgan and David Lilienthal, you also have made charges against Dr. Arthur Morgan of obstructing the carrying out of the decisions of the Board. You made your charges not publicly, but to me in my official capacity. It is true that I, not you, chose to make those charges public after Dr. Morgan had made repeated public charges against you. Your charges do not necessarily reflect upon the personal integrity of Dr. Morgan but upon his willingness to cooperate in the

decisions reached by the Board in the manner prescribed by law. Your charges are equally serious, particularly as they suggest that Dr. Morgan in obstructing the work of the Board has cooperated with interests which may be adverse to those of the T.V.A. Your charges necessarily impute misconduct in office to your colleague. You go so far as to assert that his "opposition and obstruction have occupied virtually his entire time, to the exclusion of his attendance upon Board meetings." I am obliged therefore to take note of your charges also by virtue of the investigatory powers conferred upon me by section 17 of the Act.

24

I would remind you also that I am not concerned at this inquiry with matters of policy or of organization but with your charges that Dr. Morgan has improperly obstructed the work of the Board. As your charges are couched in general terms, I must now ask you also to give me specific evidence to support each of the several charges enumerated in Part III of your memorandum to me, which reads as follows:

24

> "The present situation in the board of directors of the Tennessee Valley Authority presents a clear-cut issue respecting this democratic principle. That issue may be stated in this way: When a board of public trustees, after weighing differing points of view, and after the fullest board discussion, has reached a conclusion by a majority vote, how far may the dissenting public trustee, while still continuing to hold office, properly carry his opposition to these board decisions.
>
> "We believe the following methods of opposition, which are among those employed by our associate since the Spring of 1936, fall outside permissible limits.

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

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

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

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

"It was not permissible for Arthur E. Morgan to collaborate with the former chief engineer of the Insull utility system in the preparation of a detailed recommendation on power pooling policy, which report proposed evasions and violations of the TVA Act; nor was it permissible, during negotiations, for him to permit such report to be made available to the utilities.

"Such methods of expressing disagreement with the act and with majority decisions of the board, as have been employed by Arthur E. Morgan, are not permissible. Such methods are wrong because they violate the democratic principle of majority rule. They violate a spirit of good sportsmanship in public affairs: One should be a good loser in matters of opinion as well as in sports.

"We believe these methods to be wrong because they are not designed to persuade but to obstruct and discredit the carrying out of the law and of decisions duly reached after fair consideration.

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

I have now heard the charges and counter-charges of the members of the T.V.A. board. I have endeavored to give each side the opportunity of answering the other's complaints. I shall allow ~~ten~~ 5 days for the members to submit to me such other or further evidence as ~~—~~ evidence not of opinion but of fact and fact only as they deem pertinent to the inquiry. I shall then determine what further

action is necessary in the public interest. Now I can only reiterate that ~~I consider~~ it is the duty of every member of the board, ~~believing as all of you do in the feasibility and wisdom of the Act, to put aside all personal feelings~~, to consider at your board meetings, impersonally and objectively, the important problems of T.V.A. and not to obstruct the carrying out of the decisions of the Board. ~~It is not fair to T.V.A.,~~ ~~that~~ Any of you who cannot do that, should not remain on the Board. The Board is about to resume important negotiations with private utility interests. Those negotiations will be difficult and delicate. The public interest ~~should~~ can not be jeopardized by ~~unnecessary~~ further internal dissension.

PSF
TVA

Amendment

I cannot, ~~Mr.~~ Morgan, emphasize too strongly that I think in the public interest you should be willing to participate in this inquiry to ascertain the truth of the personal charges here involved. Until these charges of want of honest and personal integrity and of personal misconduct in office are definitely removed from the realm of controversy, there can be no constructive inquiry into the power policies, navigation policies, fertilizer policies or other policies of T. V. A. All of us who want those policies considered and ~~renewed~~ reviewed on their merits should cooperate to dispose of these personal issues which only obscure and confuse ~~the~~ those fundamental issues of policy.

Mar 8 — A.M. decision to call this hearing
11 noon — word sn.

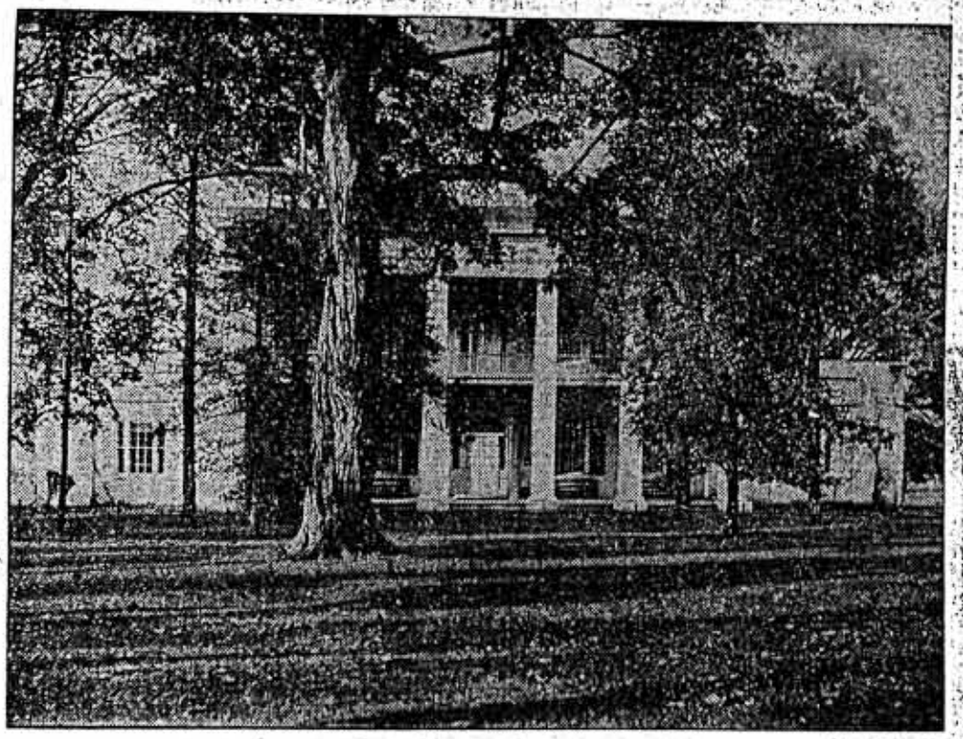
Mar. 3-5 Statements by A.M.

PSF
TVA

He has had ample time and opportunity to make his decision. If he determines to follow neither of these courses I give him until 11:00 tomorrow morning, Tuesday, March 22nd to present to me in person or in writing any reason why as Chief Executive I should not take further action in the case as a necessary result of the findings which I have just stated. For your information, Chairman Morgan, I must tell you frankly in the light of the record only two courses appear open -- your removal or your suspension as a member of the Board of Directors of the Tennessee Valley Authority.

Once More a President Will Be Entertained at Old

Roosevelt's Visit in Nove
At Shrine for More
Monroe in 1819 to T
Up Avenue of



The Hermitage as it appears today evidently greatly resembles the home where in 1845 Old Hickory entertained his last guest, death. Before that time the historic homestead had been the mecca of distinguished men of his time. Only the cedars have grown older to change the appearance of the front entrance.

By HELEN DAHNKE

IN the halls of the historic Hermitage next month the voice of 1934 Democracy's New Deal will mingle with the echoes of a Democracy which was given a new interpretation in 1828.

For President Franklin D. Roosevelt, thirty-first President of the United States, is coming to Nashville in November to pause at the homestead shrine of President Andrew Jackson, who, like him, dared more than a century ago to break party precedents and political idols in the cause of the common people. Between them lies a century of years during which many other distinguished men, including many Presidents, have visited the Hermitage.

When President Roosevelt is served a meal in the dining room of the Hermitage; when he walks into the garden to see the tomb of that "new Democrat" of 100 years ago; when he sees the great collection of Jackson papers and letters preserved there by Tennesseans—he will be close again to the birth of the party which today he leads.

Eight Presidents have dined at the Hermitage, according to records kept by the Ladies' Hermitage Association, in addition to many others who, either while in the office of the chief executive or afterwards, have visited there. According to these records Presidents who have dined there were: James Monroe, Andrew Jackson, Martin Van Buren, James K. Polk, Millard Fillmore, Franklin Pierce, James Buchanan and Theodore Roosevelt.

* * *

IN addition there have visited the official host, with members of the Ladies' Hermitage Association arranging the details. But whatever the plans, members of the association express themselves as hoping that the President will "enjoy himself in Tennessee's most famous home."

* * *

JAMES MONROE was the first President to come to Nashville and to the Hermitage, where he was entertained for several days. Parton in his biography of General Jackson writes:

"Mr. Monroe visited Nashville during his presidency, when General Jackson figured conspicuously among those who welcomed and escorted the President. At the grand ball given him at Nashville, General Jackson and Mr. Monroe entered the ballroom, arm in arm, the General in his newest uniform, towering above the little President. On the other side of the President walked General Carroll, who was also a man of lofty stature.

"'Ah,' whispered one of the ladies present, 'how our General does surpass everyone—how he does throw everyone into the shade!'"

President Monroe, who a short time before had completed a lengthy correspondence with General Jackson on his conduct of the Indian wars and his stay in Florida, as well as on his own foreign policy in the new nation, arrived here June 5, 1819. General and Mrs. Jackson were at home for one of those idyllic stays at the beloved country homestead, about which their married life centered. The general's career as a United States senator and as President was still in the future, for the time he was resting on his oars as the nation's first military man.

Parton's account of President Monroe's visit continues:

"On the following Wednesday the President set out with Nashville, accompanied by General Jackson, staff and General E. P. Gaines. A few miles out they were met by a committee composed of

niscence of General Jackson. "We had many big men, sir, in Nashville at that time, but General Jackson was the biggest man of them all. I knew the General, sir, but he always had so many people around him when he came to town that it was not often I could get a chance to say anything to him. He didn't used to put up at our house. The old Nashville Inn was General Jackson's house."

And a few years later, Henry A. Wise, the young Virginian who took his bride, a Nashville girl, to the Hermitage, was to describe the courtliness and hospitality of the household and its master and mistress thus:

"Had we not seen General Jackson before, we would have taken him for, a visitor; not the host of the mansion. He greeted us cordially and bade us feel at home, but gave us distinctly to understand that he took no trouble to look after any but his lady guests; as for the gentlemen there were the parlors, the dining room, the library, the sideboard and its refreshments—there were the servants and if anything was wanting all that was necessary was to ring. He did not sit at the head of the table but mingled with his guests...." wrote the Virginian, who was later to be governor of his native state.

In the dining room, in those years when General and Mrs. Jackson were host and hostess, there was plenty of hearty food. A good idea of the times and what was served at the Hermitage may be secured from cuisine at other houses of the time. At the home of Jacob McGavock, clerk of the Middle Tennessee district court in the later years of Jackson's life, Old Hickory frequently dined on Saturdays, when he was in town for business or court sessions. There a descendant of Mr. McGavock says, the mid-day meal always included a baked ham, a roast of fresh meat, number of vegetables, sweet peach and cucumber pickles and many other

James Buchanan and Andrew Johnson

Roosevelt.

* * *

IN addition there have visited in Nashville, with brief side trips to the Hermitage, during some time of their careers: Zachary Taylor, Andrew Johnson, Rutherford B. Hayes, Grover Cleveland, William McKinley, Woodrow Wilson and William Howard Taft.

Johnson, as governor of Tennessee, signed the bill which purchased the Hermitage for the state. Though during the years he was military governor the household was Confederate in sympathies, so convinced was he of the sacredness of the spot that he placed soldiers at the Hermitage to protect the property during the war.

In addition, the President of the United States of the Confederacy, Jefferson Davis, spent months at the Hermitage as a boy. And Sam Houston, who became president of the Republic of Texas, visited his political mentor there many times in his young manhood in Tennessee and during his maturity as a Texas leader.

So it is, that between President Jackson's time and the coming of President Franklin Roosevelt, famous feet have trod the beautiful avenue of cedars leading to its white walls, famous hands have laid flowers on the graves in the garden.

Plans for the entertainment of the President when he arrives next month have not been completed. They await word on his wishes from the President himself. Congressman Jo Byrns from the Hermitage district is to be

ville, accompanied by General Jackson, staff and General E. P. Gaines. A few miles out they were met by a committee, composed of Ephraim H. Foster, Gen. John H. Eaton, John McNairy, Felix Grundy, Major William B. Lewis and others. The party was escorted into town by volunteers and at College Hill was met by a delegation of Masons for whom Wilkins Tannehill acted as spokesman. They proceeded to the Foster home, where General Eaton extended the formal welcome. At 4 p. m., dinner was served to the President and his party at the Nashville Inn and on Thursday evening there was a great ball. The next day President Monroe journeyed on to Kentucky."

It was at the great ball that General Jackson wore his newest uniform mentioned and cut so fine a figure that the ladies whispered about.

* * *

IN these years of his prime, the host of the Hermitage was the perfect great squire of the countryside, whenever he and his Rachel were home. Young people from all the countryside made the Hermitage their second home. There was big cooking in the kitchen, lavish hospitality in the diningroom and when on special days General Jackson rode to Nashville in the carriage, it was drawn by four big iron-grey horses and the servants who drove and served as footmen were dressed in blue livery with brass buttons with glazed hats adorned with silver bands.

"A very big man, sir," an aged waiter of the old City Hotel of Nashville is quoted by Parton as saying some years later in remi-

Gaylock says, the mid-day meal always included a baked ham, a roast of fresh meat, number of vegetables, sweet peach and cucumber pickles and many other things in good amounts.

The McGavock home, in those days had the same kind of plate silver which was used at the Hermitage every day—heavy and plain. But at the Hermitage, one of the distinguishing features of the table service was a set of heavy serving dishes of silver, which General Jackson had purchased for Mrs. Jackson from the widow of Commodore Decatur after the naval hero's death. There are still at the Hermitage and are unique in the manner in which the tops may be unscrewed so as to form a second dish within the dish.

* * *

THE arrival here of former President Martin Van Buren, April 27, 1842, was the occasion for amusingly partisan editorials in the Nashville Whig, anti-Jackson organ, and the Nashville Union and American. The editor of the Whig, C. C. Norvell, was trying to be gracious in print to the city's distinguished visitor, but he could not resist a few partisan digs at the too-enthusiastic Union editor.

Under the caption, "Arrival of the Ex-President," the Whig editor wrote April 28, 1842:

"The steamer Nashville, Captain Miller, reached the wharf last night, a few minutes after dark, from New Orleans, having on board the ex-President of the for the reception for Van Buren there were present, unfortunately, "some of the light-fingered gen-

THEODORE ROOSEVELT

The dramatic walk of the first President Roosevelt down the avenue of the cedars with head bared in 1907 is distinctly remembered by a number of the board members of the Ladies Hermitage association.

FRANKLIN PIERCE

Records of the Ladies' Hermitage association say that President Pierce likewise was dined at the historic home.

MILLARD FILLMORE

Great plans were made by Nashville's leading citizens for the visit of President Fillmore in 1854.

JAMES BUCHANAN

The seventh president to be entertained at the Hermitage was President Buchanan whom Jackson named minister to Russia in his first administration.

PRESIDENT ANDREW JACKSON

Host of many distinguished men in his lifetime at the Hermitage, the spirit of the immortal Tennessean will walk as host again next month through the halls of his home as President Roosevelt comes for a visit.

try, who relieved two or three persons of their pocketbooks."

During this visit of the protege whom he chose to succeed him, General Jackson suffered a severe hemorrhage, such as he was to endure in increasing severity in the years between then and his death. However, his indisposition did not prevent him from making one of the colorful cavalcade which greeted President Van Buren when he arrived, according to the Whig issue of April 30:

"On Thursday last, about 2 o'clock p. m., Mr. Van Buren, ex-President of the United States, and we were pleased to remark that a large number of his political opponents waited upon him and were received with equal politeness. In the evening Mr. Van Buren and Mr. Paulding, at the invitation of the managers, visited the theater to witness the representation of 'London Assurance.' The house was full to overflowing and that fine comedy was performed with great spirit.

"Mr. Van Buren, we understand, will leave today for the Hermitage and after remaining a short time with General Jackson will visit Kentucky and pass a few days at Ashland on the express invitation of Mr. Clay."

* * *

THE editor of the Union was much more wordy in his remarks on the arrival and stay of Mr. Van Buren; so wordy indeed that the editor of the Whig continued to jibe him on his "fancy sketch" for weeks to come. The Union reported that Mr. Van Buren was met "by spontaneous demonstration of welcome by thousands at the landing," and that "broad acres of people made the welkin ring as he passed from the boat to the shore and pressed through the crowd to the carriage of General Jackson."

The Whig, opposition paper to the Jackson democracy of the time, spent its editorial columns of May 5, 1842, while Van Buren was still in this section, to show that the polished little bachelor was in this section for political reasons.

During his visit former President Van Buren declined a public dinner, which a group of leading Democrats would have tendered him and issued a statement to the Democratic committee of Davidson county in which he eulogized General Jackson; pointed out that he had followed as closely as he could in his footsteps while he had been President and said that while he was in Nashville he "deemed it wise to abstain from all discussion of political subjects."

On May 7, the ex-President left for Columbia for a short visit with ex-Governor James K. Polk, "evidently for political effect," the Whig editor sarcastically explained. The paper further stated that its readers would be kept informed of Van Buren's whereabouts since they were evidently of political importance.

* * *

JAMES K. POLK, another protege and political follower, whom Jackson, in his few months of life was to see succeed him in the White House, undoubtedly was the overnight guest at the Hermitage many, many times during his life, for there were always many houseguests there when the master and mistress were at home.

However, newspaper editors of that day did not record many of the most interesting details of the goings and comings which would please readers today and there are lacking details of most of these visits. Parton in his history tells of the renewed political fire which the aging General Jackson stirred up during the summer before Polk was elected President and of how, on many of his visits to Nashville, he would stop to see Mrs. Polk, pat her hand and assure her that he would bend every effort to put her husband in the White House.

Polk did win and when he left his home in Columbia, January 28, 1845, on his journey to Washington to be inaugurated, he stopped in Nashville, spending the night of January 30 with General Jackson at the Hermitage and the night of January 31 at the old Nashville Inn. On February 1, he left Nashville on the Steamboat China, accompanied by many friends, bound for Washington.

The master and host at the Hermitage, one of his staunchest friends and his political mentor, was left behind to entertain his last guest, Death, in early June of that year.

Although the records of the Ladies' Hermitage Association state that four other Presidents have dined in the Hermitage dining-room since Polk's time, it is difficult to substantiate this by the newspaper records available. The catalogue of the association state that these others are Millard Fillmore, Franklin Pierce, James Buchanan and Theodore Roosevelt. The story of Theodore Roosevelt's visit to the Hermitage is a familiar one from first-hand accounts today, but those of the other three named are not so easy.

During the years after General Jackson's death, the household of the Hermitage was more withdrawn from the world than it had ever been and its privacy was not often disturbed by public personages. However, it is easy to understand that Fillmore, Pierce and Buchanan would have journeyed to the tomb of President Jackson, for in their younger days in national affairs they had been under the influence of Old Hickory. In fact, their names are listed among his supporters in Congress during his second administration.

* *

BUCHANAN was not a man personally to his liking, as he wrote during the last months of his life to President Polk who was about to name him as his secretary of state. Parton, in his biography of Jackson, writes that General Jackson described Buchanan as a man "not overburdened with scruples of honor," to which President Polk replied with the question as to why then had Jackson sent him as minister to Russia during his presidency. And to this General Jackson's adroit answer had been that he wanted to send 'him out of my sight as far as possible." However, Buchanan was probably hospitably received at the Hermitage whenever he came, despite such personal feeling for hospitality was a broad, all-embracing matter in those days and no one was turned away.

As an ex-President, Fillmore came to Nashville May 3, 1854, and the arrangements for his entertainment, as published in the Union and American of the time, are so imposing as to be interesting for these informal times when President Franklin Roosevelt and Mrs. Roosevelt dash about the country in quick trips that will allow of little pompous preparation.

On May 5, 1854, Mr. Fillmore concluded his visit with a trip to the Hermitage, where doubtless he was entertained at luncheon by the then aging Andrew Jackson, Jr., and his wife, Sarah Yorke Jackson. The next day he left for his home via Charleston.

The program for Mr. Fillmore's entertainment, while not explicit on what occurred at the Hermitage

(Continued on Page 14)

MARTIN VAN BUREN

As "Matty," President Van Buren was very close to General Jackson. He visited the Hermitage in 1842.

JAMES K. POLK

The last of Jackson's presidential selections, President Polk of Tennessee spent the night of January 28, 1845, at the Hermitage as he journeyed to Washington for his inauguration.

JAMES MONROE

First of the presidential visitors to the Hermitage was Monroe who came in 1819.

FRANKLIN D. ROOSEVELT

When President Roosevelt comes to Nashville next month he will be entertained at the Hermitage, being the ninth president to be served in the state dining room there.

PSF : TVA

THE T.V.A. INVESTIGATION

The T. V. A. Act requires that "all members of the Board shall be persons who profess a belief in the feasibility and wisdom of the Act." I have a right to assume therefore that every member of the Board believes in the feasibility and wisdom of that Act. I have a right to assume that every member of the Board is prepared to do his part to cooperate with his fellow members to make the Act work. I have a right to assume that every member of the Board is prepared to recognize that a certain amount of teamwork is necessary to make the Act succeed.

But there are persons and powerful interests that do not profess a belief in the feasibility and wisdom of the Act. There are persons and powerful interests that are quick to seize upon the simplest acts or slightest word of members of the Board to discredit the administration of the Act. The open dissension and personal recrimination among members of the T.V.A. has reached a point where the successful administration of the Act is imperilled. No one who professes a belief in the feasibility and wisdom of the Act can view such situation without the gravest concern.

Effective administration requires action. The action of a Board must be determined by a majority of its members. A minority has the right to record its dissent, publicly if it desires, after action is taken; it has a right by fair persuasion to seek to obtain the

adoption of a different course of action. But, neither a majority nor a minority has a right to make public display of personal internal differences to the point where effective administration of the Act is jeopardized.

I have reluctantly become convinced that the work of the T.V.A. Board is now being impeded, and that the real issues of public policy which may exist among its members are now being obscured by personal recriminations. It is intolerable that issues of fundamental public policy should be confused with issues of personal integrity or misconduct. It is intolerable that either majority or minority members of an administrative board should cast doubt upon the honesty, good faith or personal integrity of their colleagues or should charge any of their colleagues with improperly obstructing the carrying out of the Board's decisions unless they are prepared to support such charges by good and sufficient evidence. If there be no such evidence then there should be a surcease of personal attacks and aspersions.

I have called this hearing to investigate charges of dishonesty, bad faith and misconduct. I am not concerned at this hearing with the pros and cons of any particular policy that the T.V.A. Board has or has not adopted. This is not an inquiry to determine a national power policy,

it is an inquiry into charges of personal and official misconduct.

I feel that I as President have especial concern in the charges that have been made which reflect not simply upon the judgment but upon the personal integrity and official conduct of members of the Board in the management of government property. Under section 17 of the T.V.A. Act the President is expressly authorized to select attorneys and assistants for the purpose of making any investigation he may deem proper to ascertain whether, in the management of any property owned by the Government in the Tennessee Valley Basin, there has been any undue or unfair advantage given to private persons or corporations by any officials of the Government or whether in such matters the Government has been injured or unjustly deprived of any of its rights.

I had hoped that the bitter personal feeling among the members of the T.V.A. would prove to be only the temporary result of honest differences of opinion or policy and that with the passage of time the members of the Board, even when they could not agree, would come to respect each other's opinions and cooperate, as is their duty, in the administration of the Act. I did not act when complaints were made to me as early as January, 1937, one of them by a responsible government official not connected with T.V.A., that the Chairman of the Board had

made a speech at Chicago and had published an article in the New York Times which could be taken as personal attack upon his fellow board members. I repeated my counsel to all the members of the Board individually to make every effort to compose their differences and not to permit the enemies of T.V.A. to make capital of them. But I censured no one,

In September of last year complaint was made to me by Harcourt A. Morgan and David E. Lilienthal that an article by Dr. Arthur E. Morgan published in the September issue of the Atlantic Monthly directly and by implication was an attack upon the honesty and integrity of the Board of the Tennessee Valley Authority. I at once wrote to Dr. Morgan informing him of the complaint and suggested to him "that there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you have, if any, to justify your statements." Dr. Morgan advised me, if I correctly understood him, that it had not been his intention to impugn the motives or good faith of his fellow directors.

Although I thought that the Atlantic Monthly article might fairly be taken as an attack upon the personal integrity of Dr. Morgan's fellow board members,* I accepted his statement that no such attack was

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* The following statements, among others from the article, go far to suggest to the ordinary reader that Dr. Morgan suspects the motives of

(Footnote continued on following page)

intended.

But recently Dr. Morgan has issued statements which in unmistakable terms assail the honor, integrity and motives of his fellow-

---

his colleagues:

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

[September Atlantic Monthly, p. 346]

* * * * * * *

"Third, having invited the investment of private capital to supply the public with electric power, the public is under obligation to respect actual honest and useful investment, and not to jeopardize or destroy it by capricious and arbitrary coercion. The abuses of the private power industry have bred in some men an attitude of bitter hatred, and a conviction that the only course to take is a war without quarter against the private companies. This attitude may be exploited by other men who have no such convictions, but who will endeavor to ride to political power on the issue. A fair settlement of the question might leave such men without a place in the limelight. In my opinion, for public men to retaliate with arbitrary coercion, to use false or misleading propaganda, and to use other methods than open and impartial processes of government, not only is unfair to legitimate private investors, but tends to substitute private dictation for democratic process of government. I have no confidence in the supposed liberalism of people who use such methods. Whoever will use unfair methods for the public probably will use unfair methods against the public for his own advantage. The public can have no greater security than the habit in its public officials of fair and open treatment of every issue, no matter who is affected [Ib. pp. 344-345].

* * * * * * *

"Under any method there are certain proprieties and decencies of government which should be observed. Where the public has invited private capital to supply an essential public service, there should be no capricious arbitrariness in destruction or duplication of facilities to the loss of honest, necessary, and useful investment . . . . In case public power is used as a 'yardstick,' or as a measure of what the private power industry should charge for its services, then it is imperative that records and accounts be honest and fair and open, and that there be no hidden element of subsidy. The very fundamental element of such comparison is honesty, fairness, and openness in measurement [Ib. p. 342]."

See, also, more detailed analysis of the Atlantic Monthly article by Harcourt Morgan and Lilienthal, which is attached to Harcourt Morgan's letter of September 13, 1937.

directors. Now, Dr. Morgan, I do not want you to misunderstand me. You are a man of deep conviction and intense feeling. I know how hard it is to work with men whose minds somehow do not work in harness with one's own. I know how difficult it is under pressures and strains not to suspect the motives of those who resolve upon a course of action with which one profoundly disagrees. Even insofar as you have made charges of dishonesty and bad faith against your fellow-directors, I do not want to silence you; on the contrary I want now to investigate those charges. Differences of opinion may be composed, but charges reflecting upon the personal integrity of your fellow-directors cannot be compounded. Such charges cannot be allowed to rest upon innuendo, but must be made specific. I now want to ask you to produce what we lawyers call a bill of particulars.

In the statement you issued last Wednesday, March 2, you state: "I have felt compelled to fight for certain decencies and proprieties in public life which are more important to good government than any particular government program. The Berry marble case presents an instance of this difficulty." The suggestion is that you had to fight against your colleagues for such decencies and proprieties. The suggestion is that your colleagues were prepared to recognise a claim without fully

investigating its merits. You charge that they "entered a friendly agreement with Major Berry to determine the value of the marble which by that time was mostly under water and inaccessible, without any inquiry as to whether there was evidence of bad faith." The suggestion is that this "friendly agreement" was an improper agreement and that there was reason at the time of the agreement not simply of questioning the validity but the good faith of Major Berry's claim. These are very serious charges, charges of malfeasance in office. Your statement suggests that calling upon Dr. John Finch, Chief of the Bureau of Mines, to act as conciliator was calculated to put in jeopardy the government's interests. You do not question merely the wisdom or expediency of the steps taken by your colleagues, you question their integrity. You state that "the real difficulty has been in efforts to secure honesty, openness, decency, and fairness in government," and you repeat that "the Berry marble case is an instance of this difficulty."

As a responsible official you could not have made these serious charges against your colleagues publicly without being prepared to prove them. I now ask you, not for a specification of the acts of your colleagues with which you disagree, but for a specification of their acts which prove their want of honesty, openness, decency and fairness. As you refer to the Berry case as an instance of this difficulty, I desire

you to specify such other instances as in your opinion have occurred. The broad charges made by you certainly suggest that there are other instances. In your letter to Congressman Maverick, released to the press on March 6, you state that "the public and the Congress do not yet know the extent to which that [the Berry claim] was improperly handled," and you charge your colleagues with failure to protect the public interest in the Aluminum Company contract and with permitting "a joker" to be inserted in the Arkansas Power and Light Company contract which would have enabled the company to buy prime power at secondary power rates. As I have previously pointed out, it is my duty under section 17 of the Act to make an investigation if there has been any undue or unfair advantage given to any private corporation or if in the management of government property in the Tennessee River Basin the government has been injured or unjustly deprived of any of its rights.

In your letter to Congressman Maverick, released March 6, Dr. Morgan, you also state that some of the reasons for your concern "are the explicitly misleading and evasive reports" and "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." This is an accusation against your colleagues of making to me and to the Congress deliberately

false and misleading reports, and I ask you to cite to me specifically the reports and the statements therein to which you refer.

Finally you charge in your letter to Congressman Maverick that "there is a practice of evasion, intrigue and sharp strategy, with remarkable skill in alibi and avoiding direct responsibility, which makes Machiavelli seem open and candid," and that you have discovered "hard-boiled, selfish intrigue" masking under "the attitude of boyish-open candor and man-to-man directness." Such charges can only be made by one who has despaired of the possibility of cooperative teamwork with his colleagues in a great public endeavor. I must ask you for proof that your colleagues have not simply differed with you on issues of policy and organization, but have intrigued and conspired against you.

It is not my desire that this inquiry should be a unilateral affair. Harcourt Morgan and David Lilienthal, you also have made charges against Dr. Arthur Morgan of obstructing the carrying out of the decisions of the Board. You made your charges not publicly, but to me in my official capacity. It is true that I, not you, chose to make those charges public after Dr. Morgan had made repeated public charges against you. Your charges do not necessarily reflect upon the personal integrity of Dr. Morgan but upon his willingness to cooperate in the

decisions reached by the Board in the manner prescribed by law. Your charges are equally serious, particularly as they suggest that Dr. Morgan in obstructing the work of the Board has cooperated with interests which may be adverse to those of the T.V.A. Your charges necessarily impute misconduct in office to your colleague. You go so far as to assert that his "opposition and obstruction have occupied virtually his entire time, to the exclusion of his attendance upon Board meetings." I am obliged therefore to take note of your charges also by virtue of the investigatory powers conferred upon me by section 17 of the Act.

I would remind you also that I am not concerned at this inquiry with matters of policy or of organization but with your charges that Dr. Morgan has improperly obstructed the work of the Board. As your charges are couched in general terms, I must now ask you also to give me specific evidence to support each of the several charges enumerated in Part III of your memorandum to me, which reads as follows:

> "The present situation in the board of directors of the Tennessee Valley Authority presents a clear-cut issue respecting this democratic principle. That issue may be stated in this way: When a board of public trustees, after weighing differing points of view, and after the fullest board discussion, has reached a conclusion by a majority vote, how far may the dissenting public trustee, while still continuing to hold office, properly carry his opposition to these board decisions.
>
> "We believe the following methods of opposition, which are among those employed by our associate since the Spring of 1938, fall outside permissible limits.

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

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

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

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

"It was not permissible for Arthur E. Morgan to collaborate with the former chief engineer of the Insull utility system in the preparation of a detailed recommendation on power pooling policy, which report proposed evasions and violations of the TVA Act; nor was it permissible, during negotiations, for him to permit such report to be made available to the utilities.

"Such methods of expressing disagreement with the act and with majority decisions of the board, as have been employed by Arthur E. Morgan, are not permissible. Such methods are wrong because they violate the democratic principle of majority rule. They violate a spirit of good sportsmanship in public affairs: One should be a good loser in matters of opinion as well as in sports.

"We believe these methods to be wrong because they are not designed to persuade but to obstruct and discredit the carrying out of the law and of decisions duly reached after fair consideration.

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

I have now heard the charges and counter-charges of the members of the T.V.A. Board. I have endeavored to give each side the opportunity of answering the other's complaints. I shall allow ten days for the members to submit to me such other or further evidence as they deem pertinent to the inquiry. I shall then determine what further

action is necessary in the public interest. Now I can only reiterate that I consider it the duty of every member of the board, believing as all of you do in the feasibility and wisdom of the Act, to put aside all personal feelings, to consider at your board meetings, impersonally and objectively, the important problems of T.V.A. and not to obstruct the carrying out of the decisions of the Board. It is not fair to T.V.A., that any of you who cannot do that, should remain on the Board. The Board is about to resume important negotiations with private utility interests. Those negotiations will be difficult and delicate. The public interest should not be jeopardized by unnecessary internal dissension.

PSF: TVA

Dr. Morgan's Prepared Statement

During a long period I have repeatedly but unsuccessfully endeavored to secure the President's adequate consideration of grave conditions within the T. V. A.

The most recent occasion was last Fall, when I personally presented to the President a draft of a letter which I asked him to send to the T. V. A. Board. This letter requested the Board to make available to me the data and assistance necessary for me to make a report to the President concerning the conditions I had criticized. The President did not grant that request, and made no alternative suggestions.

I am of the opinion that this meeting is not, and in the nature of the case cannot be, an effective or useful fact finding occasion. To properly substantiate the charges is not the work of a morning.

Since the Congress has now taken up the matter, I believe that any report by me should, in the terms of the T. V. A. act, be filed "with the President and with the Congress".

It is my studied judgment that the President, the Congress, and the people of this country, are entitled to accurate information and [redacted] appraisal of the program, policies, administration, and activities of the Authority. Such information and appraisal can best be obtained and made available to the people and to Congress and to the President by a Congressional committee which will make an impartial, comprehensive, and complete investigation of the Authority's affairs.

PSF
TVA

Under the Constitution, [directly and primarily]

The Chief Executive is ~~constitutionally~~ responsible for the administrative efficiency of the executive agencies of the Government. That responsibility is inescapable. It cannot be flinched no matter what the responsibilities of Congress and no matter how painful the personal relations involved.

That responsibility has required action by me in connection with the internal management of the Tennessee Valley Authority. I take such action with regret while the Authority is engaged with private power companies both in important constitutional litigation and in important netotiations, and while there is sentiment in Congress for investigation by Congress. Immediate action seems necessary, however, to protect the best interests of the Authority in such litigation and in such negotiations and to clarify the issues for any investigation such as Congress may wish to make pursuant to its own powers and responsibilities.

Prior to the summer of 1936, the individual members of the Board of Directors found it possible to compose differences and to function together as an operating Board. Since that time there has been increasing inability to work together between Chairman Arthur E. Morgan, on the one hand, and the majority of the Board on the other.

In the spring of 1937 an attempt was made to settle difficulties between the majority and minority over administrative affairs by the

appointment of a General Manager, and the adoption of an understanding that the Board of Directors as such should confine themselves to questions of policy in which the decision of a majority should bind all. This solution was attempted after representations to me by the Chairman of the need for administrative reorganization and upon the recommendations of a special committee of experts on administrative organization (Assistant Secretary of Commerce, Ernest G. Draper, Rear Admiral A. L. Parsons and Mr. Herbert Emmerich) which I appointed to investigate the matter. The solution was only partially successful because the minority member of the Board did not agree with the majority in the selection of the General Manager.

In January, 1937, in a public speech and articles in the public press, the minority member clearly intimated--but without specifications or supporting evidence--that he doubted the integrity of his fellow members.

In August, 1937, again in the public press--but again without specifications or supporting evidence--the minority member seemed to imply lack of integrity on the part of his fellow members. At this time I wrote him as follows:

> "That there is a very definite obligation on you either to withdraw what your colleagues believe to be an impugning of their integrity or that you present whatever specific facts you may have, if any, to justify your statements."

In reply Dr. Morgan informed me that while he was highly critical of the work of his colleagues, he had no intention of impugning their good faith or integrity. The Chairman complained about the internal organization

of T.V.A. and requested me to intervene on his behalf. I urged him to return and to endeavor to complete the internal reorganization of the work along the lines recommended in the report of the special committee.

In December, 1937, the constitutionality of the Act was at stake in litigation in Chattanooga in suits brought by eighteen utility companies. During such litigation the minority member of the Board made charges of dishonesty in the conduct of the litigation against the General Counsel of the Authority in charge of the litigation--again without specification or evidence. Such charges were widely disseminated within the Authority's organization.

On January 18, 1938, the majority members submitted to me privately an official memorandum complaining of certain specific lines of unpermissible conduct on the part of the minority member, including the making of reckless and unsupported charges and including an unwillingness to cooperate with the decisions of a majority of the Board.

On March 3rd and on March 5th, 1938, the minority member made extensive charges, again in the public press--and again without specifications or evidence--of dishonesty and lack of integrity in public office on the part of the majority of the directors. Immediately the majority members required of me that the minority member be required

to produce specifications and facts to support the charges, that either they be adjudged guilty in accordance with the allegations or exonerated and cleared of such charges. They required such action both for the sake of the morale of the administrative organization of the Authority and as amatter of personal honor.

Depite my long personal friendship for Chairman Morgan and my appreciation of his many public services of the past, his action forced my hand. I summoned the three members of the Board of the T.V.A. to appear before me on March 11 to present such facts as they might have to support the grave charges which they had made against each other. I informed them that I was not concerned at this particular inquiry with the pros and cons of T.V.A. policies, but with their charges of personal and official misconduct. I stated that it was intolerable that issues of fundamental public policy should continue to be confused with issues of personal integrity or misconduct.

I first called upon Chairman Morgan to substantiate with facts the several charges of dishonesty and want of integrity which he had made against his fellow directors. I called his attention to the fact that the gist of his complaint in regard to the handling of the Berry marble claims appeared in his own words to be that "the real difficulty has been in the effort to secure honesty, openness, decency, and fairness in Government."

Chairman Morgan flatly refused to submit to me any evidence in support of his charges. He read a prepared statement to the effect that the "meeting is not and in the nature of the case cannot be, an effective or useful fact finding occasion. To properly substantiate the charges is not the work of a morning." When asked whether he had any reason to believe that the hearing would be confined to a morning and whether he would be prepared to submit facts if given one week or two weeks to do so, he failed to reply.

The majority members explained the action which they had taken in the Berry marble claims case, as well as their action on the Arkansas Power & Light Company contract, and the Aluminum Company contract to which Doctor Morgan had referred in his published statements. In view of the failure and refusal of Doctor Morgan to submit the facts upon which he relied to support his charges, I could not expect a more adequate explanation than that which they made.

After I had requested Chairman Morgan to present the facts to substantiate his charges, which he failed to do, and after I had given the majority members the opportunity to answer the Chairman's charges, which they did, I asked the majority members to present the facts in support of their charges against the Chairman.

The majority members took up their several charges against the Chairman and presented specific facts tending to support them. The majority members referred to a number of special articles and speeches of the Chairman during 1937 which they contended contain unsupported and unsupportable statements impugning their honesty and integrity.

Whether these articles or speeches were intended or could fairly be construed to impugn the motives of the majority of the directors, it is clear that the more recent public statements of the Chairman to which the majority members also referred, do assail the personal honesty and integrity of the majority members in unmistakable terms. And Chairman Morgan refused, although given repeated opportunity, to present any facts in justification of his attacks upon the integrity of the majority of the Board.

The majority members further adduced facts tending to show that in the course of delicate and important conversations with private utilities the Chairman had conferences and communications with more private utility executives, with a large prospective power purchaser, with an electrical

equipment manufacturer which might have embarrassed the Board in carrying out the decisions of its majority.

When there is dissension within a multiple-headed executive, it is difficult to draw the line where dissent becomes obstruction. I have serious doubt as to the propriety of a number of the things which Chairman Morgan did in an effort to create a situation in which his own ideas should win acceptance. So long as we have administrative boards, however, we should allow considerable latitude for human discretion and not frighten a minority into acquiescence. Therefore, in such matters I think every doubt should be resolved in favor of the Chairman. Nevertheless significance does attach to the number of these instances in which the Chairman trespassed into doubtful territory.

The majority members also adduced facts tending to show that the Chairman did not send a telegram to me requesting a conference, as directed by the Board. Here again the Chairman may have committed a technical wrong. His explanation that he had changed his mind might not be technically sufficient. ~~And it~~, standing in isolation, however, a few instances of this sort would not appear to be significant. Taken in the light of his other acts, ~~however~~, they are not wholly lacking in significance.

The majority members also adduced facts tending to show — I think I should say fairly showing — that the Chairman interferred with and obstructed the conduct of vitally important constitutional litigation affecting the very

life of the Authority. I have earlier referred to his difficulties with the General Counsel during the recent trial in Chattanooga. The interference reached the point that special counsel for the T.V.A., the Honorable John Lord O'Brian, formerly Assistant to the Attorney General of the United States under a Republican Administration, an independent lawyer of great experience and wide reputation, felt impelled to write the Chairman as follows:

"Dear Dr. Morgan:

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

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

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

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

The T.V.A. had entrusted the conduct of this important litigation to competent counsel. Its General Counsel had the assistance of an able, outside, independent special counsel. Whatever differences there may have been within the Board as to the conduct of this litigation, no minority member could be

justified at a most critical stage of the proceeding in loosely charging reputable counsel with tampering with witnesses and thereby, consciously or unconsciously, recklessly diverting counsel's attention from the most urgent and pressing preparation of the trial. Such charges widely disseminated throughout the organization of the Authority were calculated to embarrass counsel and to intimidate the Authority's witnesses. The Chairman, when given the opportunity by me, offered no explanation for this astounding conduct.

This very hearing gives credence to the charge that the Chairman has been unwilling to cooperate with his fellow directors in the administration of the Act. His fellow directors have come here and explained their grievances and attempted to answer the Chairman's charges. The Chairman on the other hand has stood aloof and refused to cooperate in this proceeding and to supply facts as required of him by his own administrative superior, the Chief Executive.

On the evidence before me, I therefore am obliged to make the findings that Doctor Arthur Morgan--

(a) has failed to sustain the charges of dishonesty and want of integrity which he has unjustifiably made against his fellow directors;

(b) is guilty of obstructing the work and demoralizing the organization of T.V.A.;

(c) is guilty of insubordination and contumacy in refusing to submit to the Chief Executive any facts upon which he might have relied in making charges of dishonesty and want of integrity against his fellow directors.

Under these circumstances, I am under the painful duty to request Chairman Morgan at once publicly to withdraw the charges which he has made impugning the honesty, good faith, integrity and motives of his fellow-directors and to give them and the country assurances that he will in future loyally cooperate with his fellow directors in carrying out the provisions of the T.V.A. Act. If he cannot do this, it is his duty to resign. I venture to express the hope that Chairman Morgan will not make it necessary for me to take further action.

PSF
TVA

Dr. Arthur Morgan's attitude toward this very hearing gives credence to the charge that he has been unwilling to cooperate with his fellow directors in the administration of the Act and is temperamentally unfitted to exercise divided authority. Dr. Arthur Morgan has stood aloof and refused to cooperate in this proceeding or to supply even facts as required of him by his own administrative superior, the Chief Executive. His fellow directors have come here and explained their grievances. He has not even attempted to specify the facts upon which he based his charges against them so that they might have an opportunity to make answer.

I cannot be unmindful of the position in which Dr. Harcourt Morgan and David Lilienthal find themselves. Some decision on this record is due to them. If there should be no decision after Dr. Arthur Morgan has refused to substantiate his grave and libelous charges against them they would be definitely and seriously injured in their rights and standing as citizens and public officials.

Finally I must consider the continuing operations of a great government agency. To leave under unsupported charges for an indefinite period those two officials who have tried to cooperate in the difficult task of divided authority and to allow the other member to block governmental operations, would violate my constitutional duty to keep care that the laws are faithfully executed.

The present indication of what it will be necessary for me to find, whether I like it or not, is that,

(a) Dr. Arthur Morgan has failed to sustain the charges of dishonesty and want of integrity which he has made against his fellow directors and that his conduct in this respect is legally and morally unjustified;

(b) On the face of the record the charges of the other directors that Dr. Arthur Morgan has obstructed the work and demoralized the organization of T.V.A., must be accepted as true; Dr. Morgan has refused to offer testimony in denial of the charges;

(c) Dr. Arthur Morgan is guilty of insubordination and contumacy in refusing to submit to the Chief Executive any facts upon which he might have relied at the time of making charges of dishonesty and want of integrity against his fellow directors.

As the case stands today,

(a) no further evidence can be brought out because of the attitude of the Chairman;

(b) on the evidence presented and on the refusal to submit evidence action must be taken.

I want to read the record again and consider the situation overnight. I therefore request that all three members of the T.V.A. appear in my office at 11:00 o'clock tomorrow morning.