

REGULATORY AGENCIES AND BANK PROTECTION

Remarks by

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Most of what I have to say today relates to the Bank Protection Act of 1968. I approached its preparation with something less than enthusiasm for my prior knowledge of Regulation P was fairly minimal. Given the chaotic conditions in domestic and international money markets, I have had little time for reading about anything else. I was uncomfortably aware that the initial reaction to the proposed regulations of the supervisory agencies was a cry of anguish from their constituencies. I have also been aware of the high cost of providing secured areas because of our current building plans. And I received no reassurance at all from the news that as an apparent preliminary to a talk on Regulation P given by Roger West of the FDIC in Grand Forks last week, a branch of the Valley Bank and Trust Company in Grand Forks was held up. This last, I hope, will explain any diffidence I may show in talking on Regulation P today.

I started my preparation by reading the Hearings conducted by Senator Proxmire's Committee on the bill.

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The hearing presents a cumulative record of mounting offenses. But if was not the first time Congress had turned its attention to this problem.

A logical place to start may be in 1964. In February of that year, The Committee on Government Operations published its report on the subject of Crimes Against Financial Institutions. The record which brought about the Congressional investigation vividly reflected the problem. The previous watershed was 1932, when an all-time record of 609 bank robberies were committed.

The Congressional response was the Federal Bank Robbery Statute in 1934 making bank robberies federal crimes to be investigated by the Federal Bureau of Investigation. Following that legislation and the efforts of the FBI, bank robberies continued to decline in each year, reaching a low of 24 in 1943. But after World War II the trend reversed at an alarming pace.

In its 1963 investigation, the Committee on Government Operations had available to it statistics through fiscal year 1963. Based on research, submitted statements, and testimony available to that Committee, the Report stated that:

"Although extensive educational campaigns to thwart assaults against banking institutions have been conducted for many years ...much remains to be done in view of the constant rise in such crimes. Not all institutions have profited from the efforts which have been made in their behalf. For instance, although approved alarm systems have existed and have been advocated for many years, the FBI's study of 152 bank robberies in November and December 1962 revealed that 66 of those banks had no alarm systems whatsoever..."

Also presented to the Committee were the views of FBI Director, J. Edgar Hoover, who stated:

"Bankers as a whole are genuinely aware of the problem of rising bank crimes, and desirous of doing their part of meet it. However, some bankers occasionally display an attitude bordering upon indifference to the security problems, while some others feel that an institution which is insured stands to lose very little if it is victimized... Neither of these views is realistic, for they tend to overlook the fundamental responsibility banks have to assist in thwarting crime, and to help safeguard their employees, customers, neighboring business places, and others throughout the community whose well-being is jeopardized when an armed robbery occurs."

That 1964 Congressional Committee report included a list of 24 conclusions. Time does not permit a review of all those conclusions, but several should

be mentioned.

1. On security matters the federal supervisory agencies prefer to make recommendations, rather than to regulate. Their belief that the banking institutions have done a creditable job in the area of crime prevention must be viewed in the light of the fact that the bank crime rate keeps increasing.
2. There is a direct relationship between the lack of security and the incidence of external crimes.
3. Modern bank design and the increase in outlying branches have contributed to the increase in bank holdups.
4. There is ample information available on the means of preventing external crimes. There are numerous aids and devices available for use in the prevention of crimes and for the apprehension of criminals. However, many bankers resist the use of these means and devices.
5. Practically all losses by banking insitutions resulting from crimes are covered by insurance. While insurance protects the institutions, its existence has had a tendency in some cases to make bank management lax as regards security against banking crimes.

The Committee on Government Operations, in its 1964 report, also made eight recommendations, which included a suggestion to Federal Bank Supervisors to formulate regulations for the prevention of crimes. As you know, in varying degrees we encouraged banks to establish security procedures, but no regulation specifying minimum security standards was issued and the incidence of crimes continued to increase.

Congress became concerned, and rightly so, I believe, about the rising rate and the apparent inability of the public and private sectors to do much about prevention. Accordingly, a bill was put before Congress in early 1968 by the Department of Justice as a part of the President's total package of crime control legislation. It was passed as the Bank Protection

Act of 1968.

It was pointed out and argued that our country is involved in a high crime era and that crimes against banks are just another example of the lawlessness of the times. Yet this was not a satisfying explanation for the fact is, as pointed out earlier, that bank crimes are increasing more rapidly than others. The FBI put together data which showed that between 1966 and 1967, robberies were the most rapidly increasing type of crime with a 27 per cent growth (next was auto theft with 17 per cent growth); and an analysis of robberies between 1960 and 1967 showed that bank robberies were increasing almost twice as fast as robberies of gas stations and chain stores. Not only then have bank crimes increased rapidly in real numbers, but they are also increasing rapidly relative to other types of crimes. The suggestion that our industry is considered a soft touch by criminals is inescapable.

Behind the statistics are ample reasons for the personal concern of bankers. Not only is the dollar loss becoming staggering, but there is, more importantly, a real personal danger to personnel and to the customers. For example, in 1967, the calendar year in which there were more than 2,500 bank crimes, the total financial losses were in excess of \$15 million, including \$12 million from the 1,730 robberies. During 1967, 23 persons were killed and 61 injured as a result of the bank robberies, which included employees, customers, bank guards and police officers. In the first six months of 1968, dollar losses from the 624 bank robberies totaled \$3.7 million, 21 bank employees injured, and one was killed. Nine bank customers were assaulted during the crimes, and two police officers were killed and five injured.

The Congressional Committees of both Houses, received for the record, testimony, statements and evidence from the Justice Department, police officials and their trade associations, banking and savings and loan trade associations, bank supervisors, equipment manufacturers, bank insurers and other interested parties. Although the record appears fair, there is little in the form of compliments toward our industry; to the contrary, there is frequent reference to indifference on the part of some bankers toward protection. As examples of the apathy of some bankers, consider this quote from the Senate record:

"Unfortunately, many bankers view security measures with an attitude near indifference. They feel that their insurance will reimburse them for any losses occasioned by robberies or burglaries, and that protective equipment is therefore an unnecessary expense. This thinking overlooks, however, the fact that the rise in bank crimes increases insurance premiums which, in turn, can increase the cost of services to bank customers. More seriously, it also ignores the fact that no insurance policy can replace the lives or well being of bank employees, customers and law enforcement officers killed or assaulted during a holdup."

"Nevertheless, a Nebraska banker recently advised the FBI that he would not pay to keep a light bulb burning at night over his vault because he was insured. A Kansas banker, commenting following a burglary, said that he had considered the installation of a 'listening device' inside the vault, but that the cost of \$70 was 'prohibitive.' The following night his bank was burglarized and damages to the bank and property were estimated at \$7,000."

Although the use of protective devices has been encouraged in recent years, the acceptance rate by the industry has not been good. A survey of the 2,500 institutions victimized in calendar year 1967 showed that only slightly more than half, or about 1,300, of those banks had any type of alarm system, and less than 400 were equipped with cameras. In addition, that survey showed that in a significant number of cases, the

protective devices either were not utilized, or did not function properly. It is important to note this point, as several aspects of the regulation are intended to provide reasonable assurance that the equipment will be used and will function properly. The Congressional records are convincing that properly functioning protective devices do deter crimes.

I think the concluding remarks of the official testimony of the Justice Department, summarized the rationale of the Act:

"Crimes against banks are unique, in that unlike most other crimes, we have the advantage of knowing where the criminal will strike. This knowledge gives us an unique opportunity to take defensive measures. It simply does not make sense that this opportunity should not be capitalized upon."

The Act is a refreshingly short and understandable piece of legislation. It contains less than 100 written lines, or less than two pages; and briefly states that Federal Supervisors shall, within six months, formulate regulations establishing minimum standards with respect to (1) installation, (2) maintenance, and (3) operation of security devices and procedures, reasonable in cost, to discourage crimes against banks and to assist in identification and apprehension of persons who commit such crimes. The statute further states that time limits must be established in the regulation within which compliance with minimum standards must be accomplished, and that periodic reports respecting the installation, maintenance and operation of security devices and procedures are to be required by regulation. In drafting the regulations, the Federal Supervisors were required by the statute to consult with bank insurers and state agencies which supervise those insurers and were given a two-year period to report back to Congress. The statute provides for a \$100 per day penalty for violation

of rules promulgated under the Act.

When it became apparent that the Bank Protection Act would become law, the four federal supervisory agencies organized a group of their most capable technical people and assigned to them the responsibility to draft a uniform regulation to be issued by all the agencies.

The proposed regulations came out in early November. Although they did represent the considered opinion of highly qualified technicians -- or perhaps because of it -- they were not well received. Most of the criticism seemed to revolve around the costs of the mandatory elements. As I said at the outset, I have a certain sympathy for this reaction because of the high costs attached to the design of the secured areas of a Federal Reserve Bank. Admittedly, if you are designing for maximum security of maximum sums, the kinds of sophisticated protective devices now regarded as essential come high. But there are many gradations in security requirements and the criticism of the proposed regulations was due to the failure of the draftsmen to provide adequate flexibility.

The final regulations were much better received. They are, I believe, models of reasonableness, but then I'm prejudiced. Given the range of institutions covered by the regulations they offer as much flexibility as is consistent with the objectives of the Act. There are those who believe too much may have been provided, for a considerable burden has been placed on directors and top management to determine the pattern of compliance. I believe, though, that it is important to try this route for conditions do vary among banks and localities. Besides, by personal conviction I happen to believe that programs which appeal to enlightened self interest have a better chance of success than those based on command. It is enough perhaps

that among the critics are a few Congressmen who will be watching the progress the industry makes; presumably if the progress is not satisfactory either the law will be changed or pressure put on the regulatory agencies to stiffen the regulations. I am sure you are each familiar with the language of the regulations so I'll not consume your time and mine with a recapitulation of what has been covered adequately on a number of programs in the last five months and been the subject of innumerable articles in trade journals.

Of more interest might be a review of the reactions since the Act was passed.

For this I am indebted to our own Examinations Department and to the ABA Journal. Since last fall various members of our official staff, but primarily Les Gable, the vice president in charge of examinations, have given many talks to a wide variety of audiences across the Ninth District. Examiners and calling officers have begun an active interchange with commercial bankers about the law and its implementation. There is a genuine awareness of the seriousness of the situation. As an aside, it may just be that Regulation P has been a beneficiary of campus riots and urban revolts.

The ABA had similar results with its survey.

Completed questionnaires to the survey were received from 312 bank executives, of which 43 per cent came from small banks, those with assets of less than \$10,000,000, and 38 per cent were sent in by medium-sized banks with assets ranging from \$10,000,00 to \$50,000,000. The remaining 19 per cent were from large banks in the over \$50,000,000 category.

Of a total of 300 bankers responding to the question on actual robbery or burglary experience, 13 per cent indicated that within the past decade their institutions had at least once, and in quite a few instances several times, been subjected to such criminal acts.

It is interesting to note that the proportion, 28 per cent, of the large banks indicating they had experienced such holdups greatly outdistanced that of the medium-sized banks, 10 per cent, and the small banks, 7 per cent. On a regional basis, the percentage was greatest among the banks in the New England, Pacific Coast, Middle Atlantic, and South Atlantic states. In contrast, only 6 per cent of the respondents from the West North Central region indicated that they had any robberies or burglaries.

Of the over-all 13 per cent saying they have experienced such crimes, 53 per cent mentioned specifically that this had influenced their security programs. As to specific measures taken, 26 per cent said they installed surveillance equipment as a result, 12 per cent mentioned alarms of some type or another, and 11 per cent said they hired more guards or tightened up their security at entrances in some way.

There were some die-hards:

A large bank in North Carolina reported:

"We have had very little robbery or burglary experience. In view of this, the number of security devices installed will tend to be smaller than would otherwise be the case."

Then there was the president of a small bank in Nebraska who explained it this way:

"The sheriff is 20 miles away. He says he can do little. Out in this part of the country we sort of expect to kill our own skunks and put out our own fires."

Of the two, a discerning -- and prudent bank robber would obviously pick the bank in North Carolina.

So I reach the end -- at least some of my initial reservations in preparing this talk were unfounded -- especially, I'm glad to say, the one that stemmed from Roger West's experience in North Dakota. And yet, the end of that story really is what the Bank Protection Act of 1968 is all about. While it is true the security devices did not deter the criminal

from nor prevent his initial success, the efforts the bank had made to train employees in security procedures paid off. First -- no one was injured during the course of the robbery, and second -- the teller followed the robber out -- presumably at a discreet distance -- and secured the license and description of the get away car; third -- the police were immediately notified and given the descriptions of the car and the robber. Within two hours the robber was in jail, and the money back in the bank. And that is what the Bank Protection Act is all about.

Thank you

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Incidentally, I must confess to a weakness for reading Congressional Hearing reports. As an old tax lawyer, I found them required reading, of course, to pick up the flavor of Congressional intent; but they also have their unexpected rewards in the exchanges between Congressmen and witnesses. On page 30, during the testimony of Peter J. Pitchess, who is Sheriff of Los Angeles County, Senator Proxmire and the witness started an exchange on the social gradations among criminals. They were agreed that by tradition and fact bank robbers are generally regarded as the elite. The exchange was reported like this:

MR. PITCHESS. That is absolutely so, because it takes a great deal of finesse and so forth.

In fact, they organize and they meet separately and they look down their noses at the robber who will use weapons and so forth.

But in the robbery field the bank robber does enjoy a certain degree of status. The bank robbers we have picked up have told us, "I wouldn't knock over a gas station. That is for the punks. I am sticking with the banks."

Oh, there is a degree of pride in this field.

SENATOR PROXMIRE. Too bad that pride can't be elevated so they will get into some other line. I am not suggesting they go into politics though.

MR. PITCHESS. I am a nonpartisan sheriff.

At this point, Senator Proxmire with the sense of discretion for which he is famous, released the witness. Turning to the serious testimony --