

Telephone conversation 1/15/40 at 3:10 p.m.
between L. M. Giannini and Lawrence Clayton
at the instance of Mr. Giannini in San Francisco.

LC: Hello Mario. How are you getting along?

G: Fine. Never felt better in my life. Well, we got it out in the open finally.

LC: That was quite a relief to you, was it?

G: That fellow certainly admitted all the charges, didn't he?

LC: I didn't know that he had admitted anything.

G: He admits that he is the fellow directing it.

LC: Yes, he admitted he was the one who had the responsibility for what was being undertaken. He said that as long as he had any breath left it would be his duty, etc.

G: I wanted to get your slant on this matter. I wanted to call John if it was proper or to call Marriner to discuss with them what their attitude would be if we converted to a State bank. What do you think?

LC: I don't think they could say much except that the Board would make its own mind up as to whether the conditions of membership were met. They wouldn't be controlled at all by the findings of the other people. Whether or not they would in a case of that kind undertake of their own initiative to examine the bank is another thing and I don't think anyone here would say now what they would do that far ahead. They would make their own independent conclusion in any event.

G: Yes, I thought that that was one way we could get an examination made,-- by making application to convert to a State bank. Wouldn't that entail an examination by the Federal Reserve?

LC: Not necessarily. They might conclude that they already had enough information on the basis of the Comptroller's examinations to tell whether or not you were o.k.

G: What should we do?

LC: My advice would be to call Marriner at his apartment tonight and just get his informal slant on it. My personal feeling is that before long he is going to have some suggestion to make of his own initiative. That is just my feeling because we are getting the conviction here more and more all the time that this is a situation that we can't sit by any longer and fail to take notice of.

G: Did you read our statement?

LC: Yes, I thought it was very effective.

G: We are sending it to all members of Congress and to the various departments, to 3,000 banks and 8,000 or 10,000 business concerns and to all of our employees.

LC: I thought you had some very effective paragraphs in it. Especially the one in which you stated that it is hard to understand why the case has not been certified to the Board. Have you got your copy of the order to show cause?

G: Yes, it got here this morning. That is something which they really haven't any right to do.

LC: Well, there are a lot of things you might say about it but I shouldn't say anything to you on that. But I can say this much that with Congress providing a mechanism to meet the very situation, why should they avoid the mechanism which Congress has provided and manufacture one of their own?

G: That is exactly the point that I would make in acknowledging this communciation.

LC: Of course they say that they are proposing this so as not to have it formal, official, legal and so on, and that it is an effort to be more than fair, to give you an opportunity to present your case before a third party.

G: If they would let us have an arbitrator too it would be fair. This man would make findings which would have the effect of findings of an examiner of an administrative agency, like the SEC and there is no such provision in the law for this sort of a hearing. I can't see what we would have to gain by this sort of a proceeding. If he wants to cite, let him go ahead. I sent him a wire Friday night which was two days after our meeting in which I said that I had learned through testing the sentiment of our stockholders that the prevailing sentiment is for conversion to a State bank. That was after he had said that he was going to continue to persecute us, in effect. And we asked them to wire us any regulation prescribed under their department and to send us the necessary forms.

LC: You wanted them to wire you only the citations of the regulations involved, didn't you?

G: That is right, to cite us the regulations and forward us the forms necessary to convert, and we haven't had any answer yet.

- LC: That was last Friday? We haven't heard of that here so far as I know.
- G: Of course it complicates matters to have this letter now. Now it looks like we are trying to get out from under this new procedure.
- LC: This isn't the kind of a citation you asked for over a year ago. In the other case, if the Federal Reserve Board should find that the charges were not substantiated or were only partly substantiated, he would be bound by it because it would be a finding by an official body expressly provided by Congress.
- G: I don't propose to respond to this order by appearing at any hearings, at least at the present time, that's the way I feel. I propose to write and ask for the citation of any statutory authority he is working under in holding this sort of a hearing and that in the absence of any legal authorization to hold such a hearing, we won't make an appearance; that he has definitely a procedure available under the law through a hearing before the Federal Reserve Board.
- LC: Well, I don't think you could find out anything now on the specific question that you asked me earlier. I think you had better call Marriner tonight at the Shoreham. I don't know how much he will feel he can say to you, but I am sure that he personally has a feeling that he is against all this battling back and forth and believes it should be settled by an agreed program all around and covering the issues on the various fronts. After all, it is the case of Federal supervision on the one side and a great institution on the other.
- G: We are perfectly willing to be reasonable.
- LC: That is what he feels.
- G: If the Comptroller would show you the memorandum we were agreeable to last December you would see--
- LC: We have seen that. The point is that it should be approached in an entirely different way from a knockdown and dragout on the question of authority, prerogatives, and so on. The main thing is the right program to accomplish what is reasonably necessary.
- G: He gives in this citation, or this order, both barrels by threatening to publish the examination report, and to cite us before the Board.
- LC: And then there is a third, any other procedure provided for by law. That could mean forfeiture of charter, cancellation of insurance and so forth. Well, it's my feeling at this moment that Marriner has an entirely different view of the way this should be handled. And I believe if you called him tonight that would be the best. I will tell him to expect the call about eight o'clock. His number on his private line is Adams 9616.