

A meeting of the Federal Reserve Board was held in Washington on Friday, December 22, 1933, at 12:40 p. m.

PRESENT: Mr. Black, Governor
Mr. Hamlin
Mr. James
Mr. Thomas
Mr. Szymczak
Mr. O'Connor

Mr. Morrill, Secretary,
Mr. Wyatt, General Counsel,
Mr. Martin, Assistant to the Governor.

ALSO PRESENT: Messrs. Harrison, Young, Norris, Seay, Martin and Geery, Governors of the Federal Reserve Banks of New York, Boston, Philadelphia, Richmond, St. Louis and Minneapolis, respectively; and Messrs. McKay, Gilbert and Fleming, Deputy Governors of the Federal Reserve Banks of Chicago, Dallas and Cleveland, respectively.

Governor Black stated that he had asked the representatives of the Federal reserve banks to meet with the Board in order that he might advise them in confidence of certain recent developments. He added that it was understood that the representatives present from the Federal reserve banks might upon their return to their banks make known these developments, in confidence, to the members of their respective boards of directors at meetings to be called for the purpose. Governor Black thereupon read from a memorandum as follows:

"At a conference on Thursday, December 14th, the following were present:
The President
The Attorney General
The Acting Secretary of the Treasury
The General Counsel to the Treasury Department
The Governor of the Federal Reserve Board.

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"It was stated by Mr. Morgenthau that the meeting was to discuss a plan by which the Government would obtain the profit upon the gold owned by the Federal Reserve Banks in event of devaluation.

"Mr. Cummings then read a memorandum embracing a plan for this purpose.

"My reaction to the plan was asked and after stating several objections to it I asked time for its full consideration. This consideration has now been given and this memorandum contains the conclusions reached.

"Before discussing the plan may I present four facts:

"First: Several weeks ago the President appointed a committee consisting of the Secretary of the Treasury, the Attorney General and me, to consider the very question presented at the conference and to report to him. Immediately after the appointment of this committee the questions involved were studied and I reported to the Secretary of the Treasury and to the Attorney General that I was prepared to discuss them. This committee is still in existence, has had no meeting and has made no report. This statement is made solely for the purpose of making it clear that the plan proposed by the Attorney General is not the product of this committee.

"Second: During the present administration the Federal Reserve System has operated in complete harmony with the Recovery Program of the Administration, as illustrated in part by its purchase during this period of \$600,000,000 of governments in an effort to supply funds for every credit need in aid of the Recovery Program.

"Third: There has been no manifestation on the part of any Reserve Bank of any opposition to the proper disposition under full legal authority of the profit upon the Reserve System's gold holdings, regard being had for the constitutional provision that just compensation be made for the property taken.

"Fourth: The gold in question is either in the Treasury or in the twelve Federal Reserve Banks. The gold of the System has been in the same places for approximately twenty years. There has been discussion for many months of devaluation and profit upon gold in event of devaluation. This discussion has not affected the location of one dollar of this gold. No effort has been made or considered to change the possession of this gold. None will be made. The gold will remain right where it is in event of devaluation until all question of the profit upon this gold is legally settled. The Reserve Banks can be trusted to this extent, but if desired an agreement to this effect can be made.

"In the light of these four statements of fact the plan suggested by the Attorney General must be discussed. This plan involves:

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"(1) Action by the Treasury commandeering the gold holdings of the System. This action to be without publicity, to be based upon authority of the law relating to the protection of the currency system of the United States, to be applied after usual banking hours without prior notice to the officers of the Reserve Banks.

"(2) The demand at this hour and under these conditions of all gold in the vaults of the Reserve Banks, all gold held by the Federal Reserve Agents in trust for the holders of Federal Reserve notes, and all denominated 'equity' in the gold of the System held by the Treasury.

"(3) If the demands of the Government agents are not complied with then those agents are to post on the vaults of the banks a notice that all gold held therein is the property of the United States.

"(4) Compensation for the gold so commandeered is to be made by these government agents through the medium of a writing stating that the bank is 'entitled' to gold certificates for the gold taken.

"Under this plan it is proposed to give the Government both possession of and title to all gold in the vaults of the Reserve Banks, all gold held in a trust capacity by the Federal Reserve Agents, and all gold held in the trust relations by the Treasury covered in the Gold Redemption Fund, the Federal Reserve Agents' Gold Fund and the Federal Reserve System's Gold Settlement Fund.

"To this whole plan I enter my very earnest and serious objection. My objections are:

"(1) That the whole plan is of doubtful legality, and in my opinion would be unwarranted in law.

"(2) That under the plan the result desired cannot be obtained--that is, title to the gold would not in the end rest in the Government.

"(3) The plan is unworkable.

"(4) The plan is unnecessary.

"(5) An attempt to put the plan in operation would result disastrously to the Federal Reserve System and to the entire banking and credit situation, and would be inimical to the Administration.

"May I discuss these objections?

"First: The whole plan is of doubtful legality and in my opinion would be unwarranted in law.

"This conclusion rests upon three bases:

"(1) The problem as to the constitutionality of the Thomas amendment.

"This problem exists. There is a serious question whether the Thomas Amendment is not unconstitutional in delegating legislative power to the President. This question of the validity of

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"the Thomas Amendment is a vital one, because unless the President's action is valid the Reserve Banks will in fact obtain no profit on their gold stocks. If the statute is unconstitutional any action by the President would be a nullity and the existing parity between the dollar and gold would not be affected by a proclamation reducing the value of the dollar. Again, if the gold content of the dollar was reduced fifty per cent resulting in a book profit to the Reserve Banks upon its gold, such profit would be lost if the present parity between the dollar and gold were subsequently reinstated. If the entire profit of the Reserve Banks on their gold were taken by the Government upon a fifty per cent devaluation of the dollar, the subsequent restoration of the 20.67 ratio would result in wiping out the capital and surplus of the Reserve Banks. Again, any action which is taken with respect to the gold profit must be considered in view of the statutory requirement regarding the maintenance of gold reserves.

"(2) There is no authority in law for calling in the Reserve Banks' gold under the anti-hoarding provision, first, because under the law the Reserve Banks have the right to buy and hold gold; second, because the law requires them to hold gold as reserves; third, because some of their gold was turned over to them under Government order against hoarding and the Reserve Banks were recognized as the proper agency for holding this returned gold; fourth, because the central banks of a nation holding gold for reserves and as the base for the nation's credit could hardly be termed 'hoarders'.

"(3) There is no authority in law for calling in the reserve gold under the provision that gold may be called in by the Secretary of the Treasury when 'such action is necessary to protect the currency system of the United States'. There could be no logic in asserting that the currency system would be protected by depriving sixty per cent of the currency of the country of its gold base. It would appear superfluous to argue this question.

"(4) The Thomas Amendment does not in terms confer any authority upon the President to deprive the Federal Reserve Banks of any gold profit resulting from devaluation. The Thomas Amendment vests no one, even by implication, with authority to deal with the subject. The debates in the Senate upon the bill show that the question whether gold profits should be taken was discussed; that the Chairman of the Committee on Banking and Currency expressed the view that the bill was not intended to cover that subject, and that it could be dealt with later. Senator Fletcher was asked whether the amendment provided any method by which any profit made by those holding gold, at the date of devaluation, could be taxed. He replied there was not, and further that he did not favor incorporating such a provision in the pending bill.

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"although he was in sympathy with the proposal and believed that it should be considered later. The determination as to profits must be made by Congress.

"Second: Under the plan the result desired cannot be obtained--that is, title to the gold would not in the end rest in the Government.

"It may be possible under the plan to obtain actual or constructive possession. As a matter of fact the gold of the reserve banks now in the Treasury is as follows:

\$	in the Gold Redemption Fund.
\$	in Federal Reserve Agents' Gold Fund.
\$	in the Gold Settlement Fund.

"While it is true that these funds are gold deposits placed with the Treasury in trust for certain authorized statutory trust purposes, the possession is with the Treasury. Title to these funds could not be given to or vested in the Treasury by any action of the Governor or the Federal Reserve Agent or any other officer of a Reserve Bank. The 'control' of a reserve bank is vested by law in its 'Board of Directors', and any disposition of its gold with any legal authority could only be had by the Board of Directors. And, under the plan suggested, any demand of the Treasury upon or compliance with such demand by an officer of a Reserve Bank would be ineffectual to vest title to the gold in the Government. For the same reason--that is, lack of authority in the bank officers to pass title--no title could be vested in the Government in the gold coin or gold bullion, by action of the officers in compliance with the plan.

"A directors' meeting would have to be held and, laying aside for the present the authority of directors even in dealing with the gold reserve of a central bank, the holdings of such meetings would contravene the evidence purposes of the plan and the devaluation proposed coincident with the plan. What has been said as to the impossibility of passing of title under the plan is especially applicable to the gold held by the Federal Reserve Agent, whether it is in his possession or is deposited in trust with the Treasury, since under the law this gold is held by him only as trustee for holders of Federal Reserve notes, and as such trustee he would have no right to transfer the title to such trust gold to the Government or any other party.

"Again, title to the gold could not be obtained under the proposed plan by giving to the Reserve Bank a writing declaring that the Reserve Bank is 'entitled' to gold certificates for its gold. That is not payment, and if payment, the giving of such an obligation is prohibited under joint resolution of Congress abrogating the gold clause, in which resolution the Government is prohibited from making any obligation containing language specifying that the 'obligation shall be paid in gold or a

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"particular kind of coin or currency.'

"The Reserve Banks have only \$ of gold coin and bullion that is not in the hands of the Treasury. Under the plan possession of this gold might be obtained, if it were not for the lack of authority of the bank's officer to deliver possession, but in no way under the plan could title be obtained.

"It would be futile to adopt a plan that could not accomplish its purpose and which would not vest title in the Government.

"Third: The plan is unworkable.

"This is true, first, because of the legal difficulties discussed, especially the lack of authority in the bank's officers to deliver title, and, second, because no bank officer, in the absence of such authority, should dare to part with the bank's gold and in my opinion would not take this responsibility, but would immediately refer it to the directors upon whom the responsibility rests. This would involve the calling of a directors' meeting, the time involved in that procedure, the publication of devaluation to the bank's officers and to one hundred and eight directors, and, however proper that might be since the survival of the bank is involved, the plan would fall in this procedure and devaluation would become public property.

"Consideration, too, should be given to the question as to whether these bank officials should be required to choose between a course which would subject them to the criticism of their directors, if they arrogated to themselves the power vested by law in their directors, or a course which might subject them to the penalty of the law against hoarders. I am of opinion that these officers have not merited the necessity of such a choice, and I am also of opinion that the record of these banks in support of the Administration's recovery program should preclude the possibility of the imposition of such a plan upon them.

"Fourth: The plan is unnecessary.

"It is not necessary to resort to this or any other plan when the law can provide very speedily a full plan. This full plan can be provided by Congressional legislation which could be had immediately after devaluation. This Congressional action could ratify the devaluation and remove the constitutional questions surrounding the Thomas Amendment. It could provide for compensating advantages to the Reserve Banks for taking their gold and remove the constitutional doubt as to such taking without compensation. It could give necessary protection to the Reserve Banks in event of a later revaluation. No private plan of devaluation could provide such necessary protection, and the proposed plan is devoid of such protection.

"It would remove the uncertain legal problems involved in applying the anti-hoarding law or laws for improving the currency system in taking possession of this gold. It could

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"make effective the title to the gold and could provide, through giving certain compensating advantages to the reserve banks, for the application of the profits made.

"All of this is so simple, so straight, and so effective that it should be followed. It would remove a large element of criticism which would follow devaluation under any other plan. Congressional action is going to be absolutely necessary in connection with devaluation. It can be of no practical effect without determination of many monetary problems involved in its application. Congressional action could well embrace this problem of profits.

"Fifth: An attempt to put the plan into operation would result disastrously to the Federal Reserve System and to the entire banking and credit situation and would be inimical to the Administration.

"This is equally true whether the plan succeeds or fails. It would be unwise to subject the System, the banking situation, and the Administration to the harsh criticism that will follow the attempt. It would be more unwise to accept the criticism and then fail in the plan, and this outcome would seem certain.

"We must realize what is being suggested. It is to take the gold reserves from the System and to replace them with gold certificates that may not be redeemed in gold; to deprive the System of what the law says it must have; to leave sixty per cent of the currency off the gold base that the law requires; to do this without notice even to the Central Banks themselves; to raise large questions of the goodness of reserve currency; to jeopardize in certain contingencies even the solvency of the Reserve System; to have the reaction of this situation upon the banking structure of the country, probably to cause large withdrawals from the Reserve Banks themselves: all followed by a distrust of the whole banking structure.

"The method of approach of this plan will bring its own criticism. All this without necessity when the straight path is the simple path to the end desired. The Administration should not be subjected to this criticism.

"I respectfully suggest that the success of the proposed plan resulting in putting title in the Treasury to the gold should be the last thing the Administration should want. In the Treasury the gold could (1) remain in the treasury and not be used, or (2) could be sold by the Treasury and this it would not want to do, or (3) could serve as the base for an issue of gold certificates, and then under the law could be used for no other purpose. Neither the Administration nor the Treasury would want such an issue of gold certificates nor such a limitation upon the gold. At present gold certificates are not allowed to circulate. If circulated by the Treasury they must be redeemed in gold by the Treasury, or the Treasury would be in the anomalous position of issuing gold certi-

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"ificates not redeemable in gold. If redeemable in gold, then three or more billions of gold would be payable to the public on these gold certificates and could be hoarded or exported by the public. And this in the face of the present policy of the Administration in respect to gold.

"As against this defenseless situation, in view of our present policy with respect to gold, exactly the reverse would occur if the gold was left in the Federal Reserve Banks. There all the gold would be for reserve purposes, and as the base for an issue of currency redeemable in gold or lawful money. Federal reserve notes would be issued and the present policy in regard to gold would be preserved. The profit on the gold as allocated by Congress to the Government would be credited by the Reserve Banks to the Government and would be available in lawful currency or in deposit credit for meeting Government obligations. The gold would remain in the Reserve Banks for other purposes in accord with Governmental policy.

"I trust it may not be necessary but in conclusion I must ask, if my objections are overridden and this plan is adopted, that the confidence reposed in me in this matter be broadened to embrace the Governor and Chairman of each reserve bank so that they may be fully informed and be guided by their own view of their responsibility in the matter.

"I regret the length of this memorandum. To have said less would have been to fail the Administration and to fail the Reserve System. This I would not do.

Respectfully submitted,

Governor, Federal Reserve Board.

"Total gold in the Treasury and in Federal Reserve Banks is \$4,012,918,000

"Of this \$4,012,918,000, \$3,201,941,000 is held in the different agencies of the Treasury as follows:

San Francisco Mint	1,439,799,000
New York Assay Office	879,610,000
Philadelphia Mint	503,075,000
Denver Mint	365,022,000
Seattle Assay Office	2,194,000
New Orleans Assay Office	1,308,000
Cashier's Office, Washington	<u>10,933,000</u>

Total . . . 3,201,941,000

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"The remaining \$810,977,000 of gold coin and bullion is located in the Federal Reserve Banks as follows:

New York	\$406,430,000
Chicago	134,707,000
San Francisco	92,906,000
Boston	47,616,000
Richmond	29,443,000
Cleveland	22,738,000
Philadelphia	20,549,000
St. Louis	12,476,000
Minneapolis	11,849,000
Dallas	11,805,000
Kansas City	11,280,000
Atlanta	<u>9,137,000</u>
Total	810,977,000

"In addition to gold coin and bullion the Federal Reserve Banks hold gold certificates as follows:

New York	\$264,797,000
Chicago	314,059,000
San Francisco	29,160,000
Boston	48,644,000
Richmond	23,717,000
Cleveland	89,332,000
Philadelphia	92,870,000
St. Louis	16,180,000
Minneapolis	18,462,000
Dallas	12,478,000
Kansas City	18,087,000
Atlanta	<u>15,010,000</u>
Total	942,796,000

"Gold of the Federal Reserve Banks in the Treasury is as follows:

Collateral for Gold Certificates held by Federal Reserve Banks	\$942,794,000
Federal Reserve Agents gold fund collateral for Federal Reserve notes)	1,105,174,000
Gold Settlement Fund	673,403,000
Gold Redemption Fund	<u>40,888,000</u>
Total	2,762,259,000

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"The total gold reserves of the 12 Federal Reserve Banks are \$3,573,236,000

Gold in the Treasury other than Federal Reserve Gold is 439,682,000

Of this \$219,391,000 is collateral for gold certificates in circulation outside of Federal Reserve Banks and \$156,039,000 is reserves against United States notes, \$30,329,000 against redemption funds for national bank notes and Federal Reserve bank notes and \$33,923,000 free gold.

Gold certificates in circulation outside of Federal Reserve Banks, \$219,391,000, and gold in circulation outside of Federal Reserve and Treasury, \$311,045,000."

At 12:58, during the course of the reading of the memorandum, Chairman Newton and Acting Governor Johns, of the Federal Reserve Bank of Atlanta, having just arrived by train from Atlanta, entered the meeting, and at 1:54 p. m. Mr. Miller entered the meeting. At 2:58 the meeting was adjourned and at 4:24 p. m. those present at the morning meeting reassembled, with the exception of Messrs. O'Connor and Martin.

At 4:40 p. m. the Board members withdrew and at 5:15 p. m. all who had been present at the previous meetings reassembled, with the exception of Messrs. O'Connor and Martin.

During the meetings a number of the Governors present asked that they be furnished some statement in writing which they could carry back with them to their boards of directors and it was agreed on the part of the Board that a statement of the Board's position should be prepared. It was also agreed on the part of the Governors that they would prepare a statement of their views. The understanding was also

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reached that the meetings of the boards of directors of all of the Federal reserve banks would be called for Wednesday, December 27, 1933.

In the course of the discussion reference was made to an opinion addressed to the Federal Reserve Board under date of December 21 by Mr. Newton D. Baker, who had been retained by the Board as special counsel in this matter. A copy of this opinion and a supplemental memorandum addressed to Governor Black by Mr. Wyatt under date of December 22, 1933, will be found attached hereto.

SECRETARY'S NOTE: At a separate meeting of Board members, a statement of the Board's position was formulated and at a subsequent meeting the same day this opinion was read to the Governors. The Board later received from Governor Harrison a statement of the views of the Governors, copies of which, he informed the Board, were furnished to all of the Governors. The statement read as follows:

"The conference considered the report which Governor Black made to the meeting relative to the desire of the Administration to make appropriate arrangements to secure title of all gold held by the Federal Reserve banks or Federal Reserve Agents so that if and when the President of the United States decides to exercise the power to devalue the dollar conferred upon him by the so-called Thomas Amendment, the profit on any such gold would automatically and simultaneously inure to the benefit of the United States.

"While those present, of course, have had no opportunity to discuss the various questions presented with their respective directors, it was nevertheless their informal opinion that the profit on gold held by the Federal Reserve System resulting from a legal devaluation of the dollar should in principle go to the Government. They feel it is most important, however, to point out that the choice of steps taken or the procedure followed by the Government to realize this profit, in the event of devaluation, have many serious aspects and that in the interest of the Federal Reserve System, the member banks, and the public, any

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"plan adopted should, in the opinion of the Conference, definitely avoid divesting the Federal Reserve banks, for any period of time, of both the title and the right to the gold held by them as reserve against their notes or their deposits.

"The Conference is of the opinion that any procedure which even in the slightest degree disturbs the confidence of the public in the integrity of the position of the Federal Reserve banks or the sanctity of their gold reserve will probably result in a banking crisis the extent of which it is difficult to estimate. In these circumstances it is believed that there is the gravest risk to any plan of action, designed to give to the Government the gold profit resulting from devaluation, which is based on the hypothesis that the title and the right to all gold held in the reserves of the Federal Reserve System is to be transferred to the Treasury, leaving title to no gold in the Federal Reserve banks. The Governors, in the short time available today to study the question, see no way by which the profit on gold resulting from devaluation can be transferred to the Government, without the serious threat to public confidence in our banking system, except by appropriate Congressional action which at the same time provides for the protection of the necessary gold reserve against the obligations of the Federal Reserve banks.

"In the event that the Government decides that Congressional action is inadvisable or inappropriate but that the profit should be given to the Government by other means, the Governors are of the opinion that no steps can be taken by the Federal Reserve Bank except by action of their respective boards of directors. Having in mind the importance of a thorough exploration of the various possibilities presented today for our consideration, the Governors are arranging for meetings of their respective directors on or before next Wednesday."

Thereupon the meeting adjourned.

Chester Morrill
Secretary.

Approved:

E. A. Black.

Governor.

December 22, 1933.

Dear Governor Black:

Following the delivery to you of Mr. Baker's written opinion of December 21, 1933, you called attention to the fact that the opinion did not specifically state his views as to what action should be taken if a formal demand for the gold should be made upon the Federal reserve banks and agents by a representative of the Treasury Department pursuant to an order or requisition issued by the Secretary of the Treasury under the provisions of Section 11(n) of the Federal Reserve Act either with or without a tender of gold certificates in payment therefor.

I understood Mr. Baker to reply substantially as follows:

In such event he would suggest that the Federal reserve banks and agents very carefully refrain from doing anything which might be construed as constituting a waiver of any legal rights which they might have or as an admission of the legality of the Secretary of the Treasury's demand or request or any action taken thereunder; but that the Federal reserve banks and the Federal reserve agents should yield possession of the gold under formal legal protest, receiving under formal protest any gold certificates or other form of currency tendered and deliver to the representative of the Treasury Department a dignified written statement giving notice that the bank was acting under protest and with full reservation of its legal rights in the premises.

Respectfully,

Walter Wyatt,
General Counsel.

December 21, 1933

To: The Federal Reserve Board.

The questions to be considered arise out of the desire of the Treasury of the United States to secure title to the gold in the possession of the Federal reserve banks in anticipation of a reduction in the value of the gold dollar, so that the profit resulting will become property of the Federal Government.

The gold in question is in five categories: Free gold in the possession of the Federal reserve banks, gold pledged with the Federal Reserve Agents and in their possession, gold pledged with the Federal Reserve Agents and deposited in the Treasury, the Gold Redemption Fund and the Gold Settlement Fund deposited in the Treasury by the Federal Reserve Banks. In some instances this gold is in coin or bullion, and, in some, in the form of gold certificates. For simplicity it is assumed that the President, in the exercise of the power conferred upon him by paragraph (b)(2) of Section 43 of the Act approved May 12, 1933, (the Thomas Amendment) as amended by public resolution approved June 5, 1933, is about to proclaim a less weight, in grains of gold, as "the standard unit of value" or dollar, and that the difference between the gold in such new standard and the gold in the existing dollar will constitute a profit to the holder. Clearly, if the gold now in the possession of the Federal reserve banks can be transferred with title to the Government before the proposed change

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in standard is made, the profit will inure to the Government and if such change is made while the possession and title to the gold is still in the hands of the Federal reserve banks the profit would accrue to the banks.

It may be assumed that the profit in question, if permitted in the first instance to accrue to the banks, would be subject to the power of Congress to be covered into the Treasury after due provision had been made to meet all the obligations of the Federal reserve banks, in view of the power reserved to Congress to abolish the Federal Reserve System and upon liquidation to receive for the benefit of the Government all surplus remaining after the obligations of the banks to their depositors and stockholders were fully satisfied. If, therefore, it should be provided by an act of Congress that all or any part of the prospective surplus should be paid over to the Treasury, the act would be valid and effective as to so much of said profit as would in fact constitute a liquidated surplus above the obligations of the banks.

It is not, however, proposed now to seek legislation of this sort, but it is rather suggested that at the invitation of the Treasury the Federal reserve banks, acting upon the advice of the Federal Reserve Board, should voluntarily surrender their gold to the Treasury and receive in exchange therefor gold certificates. The theory of this appears to be that the effect of this would be to vest in the Federal

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Government title to the gold and replace it in the Federal reserve banks with so-called gold certificates which could be redeemed by the Federal Government, after devaluation, by quantities of coin or bullion calculated into equivalent dollars at the less content in grains of gold.

Whether the Federal reserve banks should voluntarily comply with this request or be advised so to comply by the Federal Reserve Board is the question to be considered.

Several important considerations must be remembered. The validity of the so-called Thomas Amendment has never been judicially passed upon. Some of its features are open to grave doubt. It is possible to question the constitutional validity of the delegation by Congress of the powers therein confided to the President. Only a future judicial determination can therefore make certain that a new standard unit of value, when proclaimed by the President, will be a valid standard.

The powers and duties of the Federal Reserve Board and of the Federal reserve banks must also be held in mind. With regard to the Federal Reserve Board, it is clear that it has no power to direct the Federal reserve banks to enter into the proposed arrangement. The Federal Reserve System was created primarily to furnish an elastic and reliable currency. This object was directed to be attained by the creation of real as distinguished from fictitious or theoretical reserves and by expanding or contracting the currency to meet the needs of business. The System is not charged with the operation of the Treasury of the United States except that it may be used as a fiscal agent, but the language of much of

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the Act and the whole spirit of it plainly impose upon the Federal reserve banks, as trustees of important public interests, the duty of assuring the soundness of Federal Reserve currency and of the banking system of the United States which is subjected to a disciplinary control to the extent at least that banks become members of the System by becoming stockholders of Federal reserve banks.

The Treasury and the Federal Reserve System, therefore, have separate responsibilities. While it is obviously expected that the two agencies will cooperate, within the limits of their powers, in the creation and maintenance of a sound and harmonious financial system, the Federal Reserve System is nevertheless an independent agency exercising its functions free from control by the Treasury and in response to its own obligations as they are stated by the law of their creation and as their own boards of directors, acting under the responsibility of office, determine to be consistent with the law and in furtherance of its purpose.

The gold in the hands of the Federal Reserve System is there under statutory requirement for specific purposes. The Federal Reserve Agents selected by the Federal Reserve Board are the custodians of a substantial part of this gold, but the limit of their powers and the purpose of their custody are definite. All of this gold is dedicated to particular objects and cannot lawfully be used for any other object.

It seems clear that neither the Federal reserve banks nor the

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Federal Reserve Agents have any right to prejudice the safety or solvency of any of the purposes for which gold is entrusted to them by dealing with the gold in any way or for any reason which, in their judgment, does not further the object of the trust upon which they hold it. Since by the terms of the problem which we are considering the possession and title of this gold is sought as a means of transferring to the Federal Government and from the banks an anticipated profit and any action taken in furtherance of that purpose is taken with knowledge of the proposed devaluation of the gold dollar, it is clear that neither the Federal reserve banks nor the Federal Reserve Agents have any right, by voluntary agreement, to cooperate in the proposed undertaking. They are trustees who must resolve all doubts in favor of their trust and who cannot be called upon to waive rights of their trust, as they may hereafter be determined, by present acquiescence in a plan of action affecting the property in the trust when their own action is not dictated by a belief that the action proposed will benefit the trust. I am, therefore, of the opinion that neither the Federal reserve banks nor the Federal Reserve Agents should voluntarily cooperate in the proposed plan.

This leaves other aspects of the problem of the greatest gravity. It is suggested that representatives of the Treasury Department operating under subsection (n) of Section 11 of the Federal Reserve Act, as amended by Section 3 of the Act of March 9, 1933, make a formal demand upon Federal reserve banks and Federal Reserve Agents for the delivery of all gold coin,

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gold bullion and gold certificates owned by them, such action being predicated upon the power of the President to fix the new standard and the requirement that all other currency of the Government be maintained at a parity with the standard so fixed. The power of the Secretary of the Treasury to make this demand is not wholly free from doubt, and the effect of such a demand adversely made would manifestly be disastrous. In the erection of the Federal Reserve System the Congress manifested its intention not to rest the currency authorized to be issued by Federal reserve banks upon the credit of the Government. The now well-established power of the Government to issue money based solely upon the Government's credit was not resorted to, but rather a currency was created which rested upon values known to exist in gold and certain commodities as represented by eligible paper. These obligations are, of course, the obligations of the United States when issued but the Federal reserve banks are entrusted with the custody of definite proportions of gold and other values as an assured basis for the obligations. The people of the United States understand that Federal reserve notes rest upon gold, in substantial part, for their redemption value, and if it were suddenly to become known that all the gold in the hands of the Federal reserve banks had been taken over by the Government, the possibility of an instantaneous and disastrous loss of confidence in the great volume of Federal reserve currency outstanding is apparent. It is suggested that the Government would pay for the gold so taken from the Federal reserve banks and Agents in gold certificates, but it is a matter

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of common knowledge that the holders of gold certificates cannot at present have them redeemed in gold. It would, therefore, follow that all the gold had been taken and in its place gold certificates left which, though theoretically, are not practically redeemable in gold. This would mean that the Federal reserve notes issued would become an issue resting only upon the credit of the Government, a thing which was not intended when they were authorized and does not seem to be intended by any of the more recent financial legislation.

The orderly way to deal with the difficulties presented by this situation is obviously by an act of Congress. Such an act would provide its own machinery for determining the extent to which any profit, apparently accruing to the Federal reserve banks, could be treated as a surplus and covered into the public Treasury. Such a course is free from difficulty in view of the fact that all the gold in the country is now either in the possession of the Government or in the possession of the Federal Reserve System and there subject to Congressional action. As Congress is about to meet, no apparent embarrassment from loss of time would have to be encountered. It is, however, suggested that there is necessity for early Presidential action fixing the new standard before Congress assembles and that those who are advising the Treasury hesitate to have the new standard fixed until the gold held by the Federal Reserve System is first in the Treasury. As a consequence, it may be that the Treasury will be disposed to insist upon making demand upon the Federal Reserve banks for the immediate surrender of the gold in their possession, and the

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practical question arises as to what should be done by the Federal reserve banks and Agents in the event of such demand.

As I have above indicated, I do not believe the Federal reserve banks or Agents have a right voluntarily to comply with such demand or to take any action which waives any rights they have with regard to the gold they now hold. On the other hand, the consequences of public contention and controversy as between the Treasury of the United States and the Federal Reserve System must be avoided, if possible. Both the Treasury and the Federal Reserve System are aware of the fact that the times are unusually perilous and that such controversy might in itself be as disastrous as any conceivable solution of the question of rights involved. I, therefore, venture to suggest that if the Treasury makes a demand under subsection (n) of Section 11 of the Act, the Federal reserve banks and Agents should hand to the Treasury Department, or its Demand Agent, in writing, a formal protest against the action proposed to be taken, so framed as to preserve and not waive any rights the Federal reserve banks and Agents have with respect to the gold in question. I can see no reason why the Treasury under such circumstances may not tender gold certificates and rely upon the demand and tender to effect any change of title to the gold which the Treasury may ultimately be held to have had a right to enforce. Such a course would obviate any such controversy, and if any action the Treasury can take either under the sections already cited or any other section of the applicable law is effective to transfer to it the title to this gold, it will have been transferred and the rights of the Treasury with regard to it fully protected.

Newton D. Baker.