

# STOCK EXCHANGE PRACTICES

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## HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

### S. Res. 84

A RESOLUTION TO THOROUGHLY INVESTIGATE PRACTICES  
OF STOCK EXCHANGES WITH RESPECT TO THE  
BUYING AND SELLING AND THE BORROWING  
AND LENDING OF LISTED SECURITIES  
THE VALUES OF SUCH SECURITIES  
AND THE EFFECTS OF SUCH  
PRACTICES

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#### PART 3

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## STOCK EXCHANGE PRACTICES

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SATURDAY, JUNE 4, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., pursuant to adjournment, in room 301, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Goldsborough, Townsend, Walcott, and Couzens.

Present also: William A. Gray, Esq., counsel to the committee.

The CHAIRMAN. The committee will come to order. Who is the first witness?

Mr. GRAY. Mr. Ryan.

The CHAIRMAN. Mr. Ryan.

### TESTIMONY OF JOHN D. RYAN, CHAIRMAN OF THE BOARD OF THE ANACONDA COPPER MINING CO., BUTTE, MONT.

The CHAIRMAN. You may be sworn. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matter now under investigation by the committee. So help you God.

Mr. RYAN. I do.

Mr. GRAY. Will you give your full name, Mr. Ryan?

Mr. RYAN. John D. Ryan.

Mr. GRAY. And your residence.

Mr. RYAN. Butte, Mont.

Mr. GRAY. And you are associated with the Anaconda Copper Co.?

Mr. RYAN. I am chairman of the board of the Anaconda Copper Mining Co.

Mr. GRAY. And the board, of course, is the controlling and managing factor of the corporation?

Mr. RYAN. Yes, sir.

Mr. GRAY. Are you connected also with the National City Bank?

Mr. RYAN. I am a director of the National City Bank.

Mr. GRAY. Have you any association with the National City Co.?

Mr. RYAN. None.

Mr. GRAY. None whatever?

Mr. RYAN. No, sir.

Mr. GRAY. The Anaconda Copper Co., without going into a long history, unless you desire to do it, absorbed the Andes Copper Co.

and the Chile Copper Co. and the Greene-Cananea Copper Co., did it not?

Mr. RYAN. Yes, sir.

Mr. GRAY. Any explanation you want to make, of course, we will be glad to have it, but I just wanted to get that fact.

Mr. RYAN. I will just say that the Anaconda Co. had ownerships in all of those companies prior to the time that we are now talking about, as I take it.

Mr. GRAY. That is, prior to 1928 and 1929?

Mr. RYAN. Prior to 1928 and 1929.

Senator TOWNSEND. The majority ownership?

Mr. RYAN. Just a moment.

Senator TOWNSEND. All right.

Mr. RYAN. It owned, for 25 years, about a 12 per cent interest in the Greene-Cananea Copper Co. It owned, since about 1922, a 50 per cent interest in the Chile Copper Co. It owned, at one time, all of the Andes Copper Mining Co., but issued an issue of convertible bonds to equip the property of the Andes Co., and those bonds, being a convertible right, took 50 per cent of the outstanding stock, when converted.

At the time that we are coming to, in 1928, the Andes bonds were still outstanding, to the amount of \$40,000,000.

The Anaconda Co. owned 50 per cent of the Chile, and 12 per cent of the Greene-Cananea Cos. And subsequent to December, 1928—following December, 1928, the Anaconda Co. offered its shares in exchange for the outstanding shares of the Chile Copper Co., and on July 1, it offered its shares for the outstanding shares of the Greene-Cananea Co. and the Andes Copper Mining Co.

Mr. GRAY. Might we stop, Mr. Ryan, and get the dates? The conversion of Anaconda for Chile Copper stock became effective when?

Mr. RYAN. It became effective in January, and was closed—that offer of exchange was closed, I mean originally, April 30.

Mr. GRAY. It was January 23 that it became effective, was it not?

Mr. RYAN. I think it was.

Mr. GRAY. January 23, 1929. It originally was to be closed on April 30, 1929.

Mr. RYAN. Yes, sir.

Mr. GRAY. Now, the time was extended.

Mr. RYAN. From time to time.

Mr. GRAY. Until when?

Mr. RYAN. Still out—I don't know that it has been closed now.

Mr. GRAY. All right.

Mr. RYAN. The Anaconda Co. has acquired a total of about 98½ per cent of the Chile stock.

Mr. GRAY. Now, the Greene-Cananea, the right of exchange became effective on July 1, 1929, did it not?

Mr. RYAN. I think so.

Mr. GRAY. And that was closed on October 1, 1929, was it not?

Mr. RYAN. Yes, sir.

Mr. GRAY. The rate of exchange on Chile Copper was what?

Mr. RYAN. Seventy-three one hundredths of a share of Anaconda for a share of Chile Copper.

**Mr. GRAY.** And the rate of exchange on Greene-Cananea was what?

**Mr. RYAN.** One and one-half shares of Anaconda for one share of Greene-Cananea.

**The CHAIRMAN.** Those properties are located where?

**Mr. RYAN.** The Chile Copper Co. is located in Chile, as its name indicates. And the Andes Copper Co. is located in Chile. The Greene-Cananea Copper Co. is located in Mexico.

**The CHAIRMAN.** What part of Mexico?

**Mr. RYAN.** In the northern part, 40 miles from the Arizona border.

**Mr. GRAY.** I did not get the dates of the Andes. When did that conversion become effective?

**Mr. RYAN.** July to October, the same dates as the Greene-Cananea.

**Mr. GRAY.** And the rate of conversion there was what?

**Mr. RYAN.** Forty-five one-hundredths of a share of Anaconda for a share of Andes.

**Mr. GRAY.** And so that we may get the complete picture, during that time, also, in the summer of 1929, the funded debt of the Anaconda Co., as represented by certain bonds, was converted into stock, was it not?

**Mr. RYAN.** The funded debt of the Anaconda Co. and the subsidiaries, except the Chile, which had a bonded debt out which we could not retire, was refunded; the money to refund the outstanding debt was secured by the offer of two shares of new stock of Anaconda for five shares outstanding. In other words, a 40 per cent additional issue of Anaconda at \$55 a share.

**Mr. GRAY.** To express that just a little differently, Mr. Ryan: Every stockholder of the Anaconda Co. was given the right for every five shares of stock that he owned to buy two shares of new stock from the Anaconda Co. at \$55 a share?

**Mr. RYAN.** At \$55 a share.

**Mr. GRAY.** That is correct?

**Mr. RYAN.** That is correct. That provided most of the money required in money. There were \$50,000,000 of Anaconda debentures convertible into stock at varying prices, running from 53 to 65, is my recollection, that were converted during that period. First, there were \$105,000,000 of bonds in the Anaconda—straight bonds; \$50,000,000 of Anaconda debentures, convertible, at from 53 up to 65; \$40,000,000 of Andes convertible, and were converted into Andes stock; and \$16,000,000 of Anaconda bonds that had been out—that matured on December 28.

**Mr. GRAY.** 1929?

**Mr. RYAN.** 1929. That is \$211,000,000 of the funded debt of Anaconda was retired by the issue of its stock or its subsidiary, Andes stock, during the period from December, 1928, until December, 1929.

**Mr. GRAY.** The effect of those transactions, though there was not a merger of the corporate body, was to have the stockholders of Chile, Greene-Cananea, and Andes, all hold stock of Anaconda.

**Mr. RYAN.** Hold stock of Anaconda.

**Mr. GRAY.** And put Anaconda—the Anaconda Co., I suppose, kept alive the stock of those companies?

**Mr. RYAN.** Yes, sir.

Mr. GRAY. And it put Anaconda in a position where it retired all of its debts, except \$40,000,000 of Chile, which could not be converted?

Mr. RYAN. In addition to that amount, there was a small amount of Butte & Anaconda Railway, one of our subsidiaries.

Mr. GRAY. All right.

Mr. RYAN. A total of \$47,000,000 we could not refund.

Mr. GRAY. Now, I direct your attention to a corporation known as the United Metals Selling Co. What is that company?

Mr. RYAN. The United Metals Selling Co. is a company wholly owned by the Anaconda Copper Co. It sells all of the metals of the company. It does virtually all of the banking business for the subsidiary companies of the Anaconda, with the exception of Chile and Greene-Canauea, for which it has never done that business; and it is intermediary between the operating companies and the banks and the market.

Mr. GRAY. In other words, it is a corporation wholly owned by the Anaconda, which sells its product and does its financing; is that correct? I want to get it in a brief way.

Mr. RYAN. I would not say it does its financing.

Mr. GRAY. Through which it does its financing.

Mr. RYAN. An intermediary in the financing.

Mr. GRAY. Now, the United Metals Selling Co. did, in the year 1929, engage very heavily in the buying and selling of these copper stocks on the market, did it not?

Mr. RYAN. If you will let me here just explain what the operations were, I think it would, perhaps, save a good many questions.

Mr. GRAY. I haven't any objection, if you will.

Mr. RYAN. And a good deal of time.

Mr. GRAY. You understand from our talk what I want to develop.

Mr. RYAN. Exactly, Mr. Gray.

Mr. GRAY. I want to show what the transactions of the United Metals Selling Co. were in the Anaconda Copper Co. and these other affiliated stocks during the year 1929.

Mr. RYAN. In the year 1929 the offer of the exchange of Anaconda for Chile stock was made. There was an outstanding interest in Chile of 2,200,000 shares that were worth at that time in the market about \$125,000,000. That interest was owned in large—I would not say a large part—but perhaps a quarter of it by members of the Guggenheim family. There were others with a considerable interest, but they were the largest. And the general public. It was desirable that the Chile and Anaconda stocks should be brought together reasonably in the market so that at the time when the negotiations were finally closed for the exchange on the ratio agreed upon, it would not find Chile stock so high that no Chile shareholder would exchange, or it would not find Anaconda so high that the Anaconda shareholder would feel that his interest had suffered in the trade. That exchange went on from January 23, I think I would say, Mr. Gray, until April 30. There was a good deal of difficulty in getting the large proportion of the Chile stock. We wanted it all. And after the terms of exchange were published, the market operations conducted by the United Metals Selling Co., as a pure agent for the Anaconda Co., were in considerable volume in order to keep the stocks of the two companies relatively at the levels of the basis

of exchange; and stock was bought and stock was sold to carry out that plan.

Mr. GRAY. Let me put that in another way, Mr. Ryan. The United Metals Selling Co., a wholly owned Anaconda Co. proposition, kept buying and selling stocks of those companies in the market in order that the price might be maintained at a position where, in your opinion, or in the opinion of the board of Anaconda Co., the conversions could be made at the price agreed upon without any difficulty ensuing as a result of fluctuations in the market; is that right?

Mr. RYAN. Those ratios of exchange were all fixed on engineering data; they were arrived at without any consideration of the stock-market values of the stocks of those companies. Having arrived at those bases of exchange by engineering data and by negotiation with the principal owners of those stocks of those companies, the balancing of the prices one with the other to save the defeat of the exchanges, it was carried on by the United Metals Selling Co. as an agency for the Anaconda; yes.

Mr. GRAY. And by balancing the price, you mean they went out and kept buying and selling in order to keep the prices what they wanted them to be at this time?

Mr. RYAN. The price was between those two companies at this time.

Mr. GRAY. I understand.

Mr. RYAN. Not to depress Anaconda, but to balance the prices between the Anaconda and these other companies, to bring about the exchange.

Mr. GRAY. And if the price of one or the other of those stocks went up a little higher than you thought it should, or went down a little lower than you thought it should, the United Metals Selling Co. continued its operations in order to bring that stock back to where you thought it ought to be?

Mr. RYAN. I do not say it continued. If there was any disparity between those two companies—let us say Chile and Anaconda—when that exchange was under way, which would seem likely to defeat the object and prevent the exchange, stock was bought or sold accordingly.

Mr. GRAY. By the way, let me ask you: You were the one that handled those propositions and gave all the orders, were you not?

Mr. RYAN. I think so. I mean the board of directors of the companies, the Anaconda Co. and the United Metals Selling Co. (and the United Metals Selling Co. board) authorized the purchase and sale of stocks and authorized, in some cases, the giving of options; but the business was carried out through me and under my direction.

Mr. GRAY. And your position with the United Metals Selling Co. was what?

Mr. RYAN. President of the company.

Mr. GRAY. President of the company?

Mr. RYAN. Yes, sir.

Mr. GRAY. And so, perhaps, you could enlighten the committee as to just what you would do if the price was getting away from you; how you would maintain it.

Mr. RYAN. I don't know just what I would do.

Mr. GRAY. Tell us what you did do.

Mr. RYAN. It would depend on the circumstances. If we were in a weak market and one of those stocks was especially weak, I might do one thing; and if we were in another market, perhaps I would do another. But to sit here and tell you what I would do in the balancing of stocks over a period of months in such a market as we had in 1929 would be foolish, and I would not attempt it.

Mr. GRAY. Now, let us see. When the stock would go down you would buy all that was offered, wouldn't you?

Mr. RYAN. No.

Mr. GRAY. Wouldn't you have to do that in order to keep the price up?

Mr. RYAN. Mr. Gray, if any corporation or any group attempted to buy all the stocks when stocks might go down in that period the result would be very disastrous. I do not think I would be foolish enough to do that.

Mr. GRAY. Well, whatever you did do you succeeded in maintaining an equilibrium?

Mr. RYAN. I do not know how far we succeeded; but the object of the whole business that was done in that operation was to bring about an exchange of the stocks of those other companies—let us speak of Chile now—that was the earliest one. The best we can say is that the—

Mr. GRAY (interposing). You were successful?

Mr. RYAN (continuing). That 98½ per cent of the Chile stock is now in the Anaconda Co. as a result of that offer and exchange.

Mr. GRAY. Yes. Now, do you know, expressed in figures of Anaconda stock, how much Anaconda stock—how much of all those stocks, expressed in figures of Anaconda, so that we will not have to bother with all these others—how much United Metals Selling Co. had in the beginning of 1929.

Mr. RYAN. I had it. I have made a statement for you.

Mr. GRAY. You did. Let me ask you—I do not want to testify—was it 29,412 shares?

Mr. RYAN. I think it was. I do not want to testify to those figures. If you have got that statement I gave you I will be glad to testify from that. I do not want you to be asking me questions and saying one thing when I could refer to the statement. I can not remember those figures.

Mr. GRAY. Now, Mr. Ryan, you did not give me figures as to the United Selling Co. I will ask you this, in order to point you to the last matter: Whether it is not a fact that you owned—the United Metals Selling Co. owned—approximately 29,000 shares at the beginning of the year, and in all these transactions in buying and selling during the year you had accumulated 200,000 shares of those Anaconda stocks.

Mr. RYAN. No.

Mr. GRAY. That is correct, isn't it?

Mr. RYAN. No. I have a memorandum furnished me by the United Metals Selling Co. some time ago.

Mr. GRAY. Tell us what it shows.

Mr. RYAN. It shows that at the end of 1928 the United Metals Selling Co. owned 42,062 shares of Anaconda.

Mr. GRAY. All right.

Mr. RYAN. Now, this was prepared, I think, before the one I furnished you.

Mr. GRAY. The one you furnished me was your own personal stock-holdings, and I am not going to ask you about them.

Mr. RYAN. You say at the end—

Mr. GRAY (interposing). You had 200,000 and some.

Mr. RYAN. 202,840 shares.

Mr. GRAY. That is correct, is it?

Mr. RYAN. Yes, sir.

Mr. GRAY. All right.

Mr. RYAN. Now during that period of December, 1928, to December, 1929, the United Metals Selling Co. acquired in the market 172,100 shares of Chile, for which it received 125,633 shares of Anaconda.

Mr. GRAY. Well, all of those things are reflected, are they not, in the other figure?

Mr. RYAN. Wait a minute. This is exactly in answer to your question.

Mr. GRAY. All right. Go ahead.

Mr. RYAN. It acquired in the market 73,700 shares of Greene-Cananea, for which it received in exchange 100,550 shares of Anaconda. It received in exchange of Chile and Greene-Cananea together, during the year 1929, 236,183 shares of Anaconda.

We had 40,000 shares at the beginning of the year. We had 202,000 shares at the end of the year, so you will see that almost exactly the shares acquired during the year were the shares acquired for the exchange of Chile and Greene-Cananea.

Mr. GRAY. So far as the result was concerned; but in the meantime you were buying and selling stocks?

Mr. RYAN. Yes, sir.

Mr. GRAY. And as a result, the United Metals Selling Co. made how much money?

Mr. RYAN. I do not know.

Mr. GRAY. Your books show a figure of \$1,300,000.

Mr. RYAN. How much?

Mr. GRAY. A little over \$1,000,000.

Mr. RYAN. I do not recall.

Mr. GRAY. And in the usual course, your books also show—I am not questioning the right to do so—

Mr. RYAN (interposing). I will say this, Mr. Gray: That the United Metals Selling Co. made no money on those transactions. There were no profits on those transactions I have just testified about.

Mr. GRAY. Mr. Ryan, do not your books show a credit of over \$1,000,000, which was transferred to the Anaconda Co.?

Mr. RYAN. It did the business for the Anaconda Co., so if there was any profit it turned it over.

Mr. GRAY. All right.

Mr. RYAN. The United Metals Selling Co. did a great deal of other business. This was not its business. It was just doing some work for Anaconda, to bring about the transfer of the shares that the Anaconda wanted.

Mr. GRAY. Now, in the course of the United Metals Selling Co.'s campaign, such as you have now outlined, they gave an option, did they not, to Block, Maloney & Co.?

Mr. RYAN. Yes, sir.

Mr. GRAY. That option was for 70,000 shares; is that correct?

Mr. RYAN. Yes, sir.

Mr. GRAY. And that option was for the delivery of that stock, 17,500 shares on the 1st day of February, 1929, at 122½; 17,500 shares on the 6th day of February, 1929, at 125; 17,500 shares on the 13th day of February, 1929, at 127½; and 17,500 shares on the 14th day of February, 1929, at \$130 a share; is that correct?

Mr. RYAN. I do not know about the dates. I have not the dates. But 70,000 shares was placed under option to Block, Maloney & Co., and were taken up in early February—

Mr. GRAY (interposing). 1929?

Mr. RYAN. At the same time, if you don't mind—

Mr. GRAY (interposing). I don't mind.

Mr. RYAN. It will, perhaps, save time.

Mr. GRAY. Go ahead.

Mr. RYAN. An option of 50,000 shares of Chile Copper Co. that was held in the joint account of myself, Mr. Guggenheim, and the National City Co.

Mr. GRAY. We will come around to that again. No objection to your mentioning it now.

Mr. RYAN. An option on 50,000 shares of Chile Copper Co. was given, making 120,000 shares, on identically the same terms, and identically the same delivery. That was 50,000 shares of Anaconda, converted from Chile.

Mr. GRAY. I was going to ask you that.

Now, though the minutes of the United Metals Selling Co. show that that option was given on the 14th day of February, but the last day that part of it was exercised—

Mr. RYAN (interposing). Mr. Gray, if you will pardon me, the minute of the United Metals Selling Co. is a minute ratifying and approving—

Mr. GRAY (interposing). I was just straightening that out for you, if you will let me finish my question.

Mr. RYAN. The option was given by the officers of the company, and they exercised it, and it just happened at a meeting date, and the minute that you speak of on the 14th was a ratification, and not the option.

Mr. GRAY. In other words, let me express it in another way: You, acting for the United Metals Selling Co., had given to Block, Maloney & Co., this option, which had been exercised at the prices and at the times named, and that was ratified in the minute?

Mr. RYAN. Yes, sir.

Mr. GRAY. No matter; it was on the 14th of February?

Mr. RYAN. Yes.

Mr. GRAY. At the very same time that you were doing that, you were handling the operation in which you, the National City Co., Mr. Guggenheim, Mr. Kelley, and Mr. Thornton were interested and you gave an option to Block Maloney out of the stock in the account for 50,000 more shares of Anaconda at the same price?

Mr. RYAN. Yes.

Mr. GRAY. So that the committee may understand it, the Mr. Kelley whom I have named is the president of the Anaconda Copper Co., is he not?

Mr. RYAN. Yes.

**Mr. GRAY.** Mr. Guggenheim, whom I have named, was an officer of the Chile Copper Co.?

**Mr. RYAN.** No; he was a large stockholder. He was not an officer of the company.

**Mr. GRAY.** And Mr. Thornton, whom I have named, was connected with the Greene-Canaan Copper Co., was he not?

**Mr. RYAN.** Yes.

**Mr. GRAY.** In what capacity?

**Mr. RYAN.** As president.

**Mr. GRAY.** Therefore there was a joint account in which the National City and you four gentlemen were interested in these various stocks at that same time, that is, around February?

**Mr. RYAN.** Not in the various stocks; only in the Chile stock.

**Mr. GRAY.** Well, I will come to the other one in a few moments. Did you know, Mr. Ryan, that every share of stock that was included in those two options, the 70,000 one from the United Metal Selling Co. account and the 50,000 one from the joint account of yourself and the others named, went right through Block, Maloney & Co. and into the Anaconda pool that was then being operated by W. E. Hutton Co.?

**Mr. RYAN.** I did not; but I want to say to you, because yesterday in talking about the pool you said that my name did not appear in the pool—I want to say to you that I had no interest in either one of those pools, had no possible interest in it; that I did not know that the stock was going into the pool or any pool, and it was simply a transaction with Block, Maloney & Co., because they came to me and asked for an option and thought they could sell that much stock, and we had taken in so much stock on the exchange that we were desirous of selling, and gave them the option accordingly. I had no interest personally at the time of beginning or at the time the pools were operating or at any other time, in either one of the two pools that have been called Anaconda pools and have been mentioned in this testimony.

**Mr. GRAY.** I will say to the chairman and the committee that I will prove the tracing of this stock after I am through with Mr. Ryan.

Carrying along the operations of the United Metal Selling Co., you continued to buy and sell that stock between August and October of 1929, did you not?

**Mr. RYAN.** Yes. At that time the Andes and Greene exchanges were pending and the operations kept on in July and August and, to a small extent, in September, because the exchanges were nearly complete by the first of September, and were carried on in this same way as the earlier operations in Chile to keep the market balanced as between those three stocks.

**Mr. GRAY.** I ask you, Mr. Ryan, whether the operation of the United Metal Selling Co. during those months that I have mentioned was not carried on also for the purpose of aiding the National City Co. in maintaining a market for the stock it was then putting out?

**Mr. RYAN.** The United Metal Selling Co. had no part in maintaining the market for the National City Co. I did not know anything about it during the months of July and August. From the 11th of July until the 4th of September I was not in New York. We were not doing anything and had not done anything in connection with

the National City distribution or purchase or whatever it was except to give them an option on 100,000 shares of stock on the 1st of July that was exercised on the 26th of August—a hundred thousand shares of Anaconda stock.

Mr. GRAY. Prior to that time you know that on December 17, 1928, from the records the United Metal Selling Corporation bought from the National City Co. 25,000 shares of Andes Copper for the sum of \$1,125,000, and on January 14, 1929, nearly a month later, the United Metal Selling Co. sold that same quantity of stock for exactly that same price back to the National City Co. What did that transaction represent?

Mr. RYAN. I really do not know, Mr. Gray. I can not recall what that transaction was or anything about it. There was a joint account between the Anaconda Co. itself and the National City in Andes at one time. Whether that was the time or not I don't know. As a matter of fact, I did not know about that item before I left New York, and I have no recollection of it now. I do not know what it is. But—

Mr. GRAY. Did you know that the National City and the Anaconda were operating in Andes in a joint account on the market?

Mr. RYAN. No. I will tell you about that.

(After referring to memoranda.) Yes; it was just about that time, in December.

Mr. GRAY. It was just about that time they were operating in the market?

Mr. RYAN. No. Here is what happened. At December 31, 1928, the conversion privilege—the Andes bonds were called for conversion, the Andes bonds of \$40,000,000 which had been outstanding were called for conversion, and the period ended on December 28. Of course, we were anxious and the National City Co. were anxious, because they placed the Andes bonds for us, that the bonds should be converted instead of being taken up and paid off in cash as we would have to pay, and it was a very desirable thing that the bonds should be converted. So the Anaconda Co. and the National City Co. operated in Andes stock to stabilize it and bring about the conversion for a period beginning December 13, 1928, and until the close of the year. 151,000 shares of stock were accumulated, of which 127,000 were transferred to the City Co. and offered to the public, and 23,100 shares were sold after the conversion period was over, with a total profit to the account of \$335,042.43.

Mr. GRAY. In what name was that account carried, and what brokerage house?

Mr. RYAN. I do not know.

Mr. GRAY. You conducted that operation too, did you not?

Mr. RYAN. No, sir; I did not conduct that operation.

Mr. GRAY. Let us see if we understand that clearly—

Mr. RYAN. If you will let me finish that.

Mr. GRAY. Go ahead.

Mr. RYAN. The total profit on the account was \$335,042.43, of which \$167,000 was paid by the National City Co. to the Anaconda Co., and the same amount was retained by the National City Co.

Mr. GRAY. I want to know why in that transaction while you were proffering that stock on the market, that is, the National City

and the Anaconda Co., why there were 25,000 shares of that stock on a certain date transferred from the National City Co. to the United Metal Selling Co., and then within a month later—a month less three days—transferred back again at exactly the same price.

Mr. RYAN. I can not say anything, Mr. Gray, except that they delivered that, thinking that the United Metal Selling Co. was handling that account, as it handled the business generally with the company, and when we ascertained that it had been delivered and it should have been delivered to the Anaconda Co., if at all, it was returned on that account. The United Metal Selling Co. did not handle that. The Anaconda Co. handled it itself.

Mr. GRAY. Let me direct your attention to the fact that on December 17, 1928, when the 25,000 shares of Andes went from the National City to the United Metal Selling Co., the market price was 45 and it was transferred at 45, and that on January 14, 1929, when the United Metal Selling Co. sold it back to the National City Co. at 45, the market price was 48 to 50 a share on that date.

Mr. RYAN. The United Metal Selling Co. did not sell it back. They simply returned it because a mistake had been made in delivering it.

Mr. GRAY. That was a mistake?

Mr. RYAN. Yes; and there was no sale at all. There was no purchase or sale.

Mr. GRAY. What was your one-two-three account with Hornblower & Weeks?

Mr. RYAN. A personal account; no other interest in it.

Mr. GRAY. On February 21, 1929—and this is the only one I am going to ask you about your personal account—you bought through Hornblower & Weeks from the National City Co. for your one-two-three account 20,000 shares of Andes Copper at a price of \$50 a share, while the market on that day was \$58 to \$60. How do you explain that transaction?

Mr. RYAN. I do not recall it at all. I have no doubt that is what it was, but I say I do not recall it. I had no idea of my personal transactions coming up.

Mr. GRAY. I did not intend to ask you about it, except this one transaction.

Mr. RYAN. I am willing that you should, but I would have to take time to prepare for it. But that undoubtedly was a delivery against a previous transaction. I did not buy it on that day. It was a delivery on that day. I have no doubt that is what it was.

Mr. GRAY. Let me now direct your attention to what you call your Chile Copper Co. account. That joint account was first carried with Hornblower & Weeks, was it not?

Mr. RYAN. No. I think purchases were made through Hornblower & Weeks, and when a round block of stock, for instance, fifteen or twenty thousand shares, was required, it was turned over to the National City Co. and they took it up and carried it.

Mr. GRAY. We may save a little time. I have in front of me the account as it appears on the books of the National City Co. I will give you these figures and I want to have you tell me whether they are correct. Have you a copy of that?

Mr. RYAN. No; I have not a copy, but I have my own figures and I may be able to check it.

Mr. GRAY. On January 15, 1929, the National City Co., on this account in which all you gentlemen were interested, received from Hayden & Stone 7,500 shares of Chile; on the 16th, from Hornblower & Weeks, 20,000 shares of Chile; on the 17th, from Hornblower & Weeks, 5,000 shares of Chile; on the 18th, from Hornblower & Weeks, 30,000 shares of Chile; on the 21st, from Block, Maloney & Co., 11,900 shares of Chile; on the 22d, from Block, Maloney & Co., 13,700 shares; on the 22d, from Dewey Bacon & Co., 4,900 shares; and on the 22d, from Hornblower & Weeks, 15,000 shares—making 108,000 shares of Chile. Is that approximately correct?

Mr. RYAN. I do not know as to the amounts from the different brokerage houses, but my statement as furnished me shows that from January 14 to the 22 there was accumulated 111,100 shares of Chile exchanged on February 4 for 81,103 shares of Anaconda.

Mr. GRAY. What date was that exchanged?

Mr. RYAN. On February 4.

Mr. GRAY. On February 4. Now, the conversion privilege came into effect on January 23, did it not?

Mr. RYAN. I think it did.

Mr. GRAY. And your last delivery of that stock into the National City was on January 22, was it not?

Mr. RYAN. Yes.

Mr. GRAY. It is a fact, is it not, that with the knowledge in your possession that on January 23, 1929, the Anaconda Co. was making effective an agreement for the conversion of Chile Copper stock, you, Mr. Kelly, Mr. Guggenheim, and the National City Co. started to accumulate Chile Copper stock?

Mr. RYAN. At the time we started to accumulate and did accumulate the Chile stock the ratio of exchange had not been agreed upon.

Mr. GRAY. You knew it was going to be converted?

Mr. RYAN. We expected it, and that was the reason for opening this account. We expected that a ratio would be agreed upon, and that before it had been agreed upon and made public, the stocks of these two companies had to be brought together, as I explained it previously, reasonably together, to avoid the crash that might occur if one of them was out of line with the other.

Mr. GRAY. Yes; but what you did, having a knowledge of something that the public never learned until January 23, was to start to accumulate this stock right up to the last minute on January 22 and accumulated it and among the three of you made a net profit of a million and a quarter, did you not?

Mr. RYAN. I made a loss, a very serious loss, myself, on the transaction.

Mr. GRAY. On this one transaction?

Mr. RYAN. Yes. I exchanged it for Anaconda and took the Anaconda over and I have got it yet.

Mr. GRAY. You mean you have a loss as of to-day?

Mr. RYAN. What I say is as of to-day.

Mr. GRAY. So do all the rest of us.

Mr. RYAN. I know.

Mr. GRAY. I should not have used the word "us," because I haven't any.

Mr. RYAN. You can not say that on a certain day if I had done this and done that I would have made a profit. The fact of the

matter is that I exchanged it for Anaconda and took the Anaconda and I have got it to-day. I made a very serious loss on it.

Mr. GRAY. When the division was made between these people that were in this little syndicate, you happened to take your stock and Mr. Guggenheim took cash, did he not?

Mr. RYAN. He sold his stock; yes.

Mr. GRAY. And Mr. Guggenheim's cash was \$404,400.86, was it not?

Mr. RYAN. I think it was.

Mr. GRAY. And he had a one-third interest?

Mr. RYAN. He had a one-third interest.

Mr. GRAY. And the other two-thirds, therefore, added to that, gives you a result of somewhere close to a million and a quarter profit the day you made that division; is that right?

Mr. RYAN. If we were all smart enough to sell it at the highest price we would all have made a lot of money.

Mr. GRAY. You were smart enough to go out and accumulate it, but not smart enough to get rid of it before the market dropped?

Mr. RYAN. Exactly. You are perfectly right.

Mr. GRAY. Let us see how that was disposed of. How much stock did you convert—Chile into Anaconda?

Mr. RYAN. I gave you that figure a minute ago—81,103 shares.

Mr. GRAY. And of that the group sold 50,000 shares to Block, Maloney & Co.?

Mr. RYAN. Yes.

Mr. GRAY. And the rest of it was divided either by cash or stock between you. That is correct, is it not?

Mr. RYAN. Thirty thousand was divided.

Mr. GRAY. Let us take the Greene-Cananea matter. That was operated and the stock accumulated through Hornblower & Weeks. That is correct, is it not?

Mr. RYAN. I do not know that it was all through Hornblower & Weeks.

Mr. GRAY. We have no record of the National City Co. that any of it came from anywhere but Hornblower & Weeks. And that account was 55, was it not?

Mr. RYAN. I believe it was.

Mr. GRAY. Did you know that when the National City Co. operated in Cananea a little later, through another account, it happened to be known as Greene Cananea No. 55?

Mr. RYAN. No, sir; I did not know that.

Mr. GRAY. As a matter of fact, that stock was accumulated—The CHAIRMAN. They both had the same number?

Mr. GRAY. Yes.

That stock was accumulated in this manner—if it is correct, please tell me, and if it is incorrect, please advise me—that on the 14th of December, 1928, Hornblower & Weeks delivered to the National City on this account 15,000 shares. On the 19th day of February, 1929, 15,000 more; and on the 13th of March, 1929, 25,000 more. Is not that correct?

Mr. RYAN. I have no memorandum of it.

Mr. GRAY. What does your total show—55,000 shares?

Mr. RYAN. No; the total shows 75,000 shares.

Mr. GRAY. You are correct. As a matter of fact, there were 25,000 shares that came out of this 55 account and went to the National City prior to this time, that is, to the National City Bank, not the National City Co., on a loan of \$3,500,000; is that not correct?

Mr. RYAN. Yes; I think it is.

Mr. GRAY. The 55 that I have mentioned, plus that 25, would make 80; and then, as a matter of fact, in order to adjust your accounts back at Hornblower & Weeks and National City Co., this little syndicate returned 5,000 to Hornblower & Weeks, leaving you in a net position of 75,000 shares?

Mr. RYAN. I do not remember what the operation was, but it was a net position of 75,000 shares.

Mr. GRAY. What you then did was to divide that stock up; is not that correct?

Mr. RYAN. Yes.

Mr. GRAY. In the Greene Cananea the same gentlemen were interested as were interested in the Chile Copper, including the National City and excluding Mr. Guggenheim; is not that correct?

Mr. RYAN. Yes. But, Mr. Gray, I would like to call your attention to the fact that the transaction in Greene Cananea was in December, 1928.

Mr. GRAY. Down to March, 1929. I have given you the dates.

Mr. RYAN. Yes; but it was a practically idle account. There was no exchange of Greene contemplated at that time, and there was no exchange of Greene authorized for Anaconda until July 1, 1929.

Mr. GRAY. I believe the record shows that.

Mr. RYAN. At that time this account was open. The Greene Cananea mines had just developed and opened up a very rich ore body, had demonstrated the value of it, which was very much in excess of what it had been before, but had not reached a point where it was desirable to take it over into Anaconda because the ore body had not been developed; but this account was more than six months old before any exchange into Greene Cananea had taken place.

Mr. GRAY. A little less than four months before your last transaction, and all this information that you are now giving us you gentlemen had, and you thought that Greene Cananea Copper was too cheap, so you would have to make a little money—

Mr. RYAN. Everybody had the information. The world had it. It was a sensational ore body, and everybody knew as much about it as we did.

Mr. GRAY. I am sorry I didn't know about it.

Mr. RYAN. I am sorry, too.

Mr. GRAY. The net profit of that syndicate from that transaction was \$2,909,978.15, was it not?

Mr. RYAN. There was no profit to the members of the syndicate that were associated with me or to myself, because we kept the stock. We did not sell it; we kept it and turned it into Anaconda when the exchange was over in July, and we still have the Anaconda.

Mr. GRAY. Do you know whether or not as of the date of distribution the account reflects a profit of that amount?

Mr. RYAN. I do not know. I did not sell any stock, and I have no means of knowing on the date of distribution.

Mr. GRAY. From these two accounts, Greene Cananea—

Mr. KELLEY (to Mr. Ryan). Insist on having a chance to answer.

Mr. GRAY. I am giving him a chance.

Mr. RYAN. No; you are not.

Mr. GRAY. What is it you want to answer?

Mr. RYAN. Go ahead.

Mr. GRAY. I probably operate a little fast. This is Saturday, you know.

Mr. KELLEY. You are riding him.

Mr. GRAY. I let Mr. Kelley sit there, Mr. Chairman, because of the fact that if there was any information he had that Mr. Ryan did not have, I would be glad to have him communicate it.

Senator GOLDSBOROUGH. What was that remark, Mr. Kelley?

Mr. KELLEY. I said that Mr. Gray was trying to ride the witness for the benefit of the gallery.

Senator GOLDSBOROUGH. I think those things better go into the record.

Mr. GRAY. From these two accounts, Green Cananea and Chile Copper Co., the National City took their interest in stock; that is right, is it not?

Mr. RYAN. I think so.

Mr. GRAY. In the distribution?

Mr. RYAN. I think so.

Mr. GRAY. Did you know that the records of the National City Co. show that?

Mr. RYAN. No; I did not.

Mr. GRAY. Did you know that in the account books of the National City, the one headed Greene Cananea is a joint account, Greene Cananea, and it does not indicate who it belongs to at all?

Mr. RYAN. No; I did not know that.

Mr. GRAY. Did you know that the only thing that appears on the top of the account of Chile Copper is "Chile Copper Joint Account," and there is nothing on the books to indicate who that stock belongs to?

Mr. RYAN. No; I don't know that. I have no means of knowing anything about the accounts of the National City Co.

The CHAIRMAN. I just want to say to this gentleman who introduced himself here and found fault with the way that you are questioning, Mr. Gray, that, first, there are no galleries here, and second, it is not his turn to butt in. He will be called as a witness later.

Mr. GRAY. I am not going to call him, Mr. Chairman; I do not need him.

Senator GOLDSBOROUGH. He is only permitted to sit there, Mr. Chairman, through courtesy, and he has no right to attempt to prompt the witness, anyhow. I am quite sure Mr. Ryan is able to take care of himself.

The CHAIRMAN. I suggest that you put him on the stand and ask him some questions.

Mr. KELLEY. I will be very glad to answer them, Mr. Chairman.

The CHAIRMAN. Unless the counsel for the committee thinks it entirely unnecessary, you will certainly be given a chance to tell about this great company of yours.

Mr. GRAY. I think that is all from Mr. Ryan. If Mr. Ryan wants to make any statement I will be very glad to have him make it.

The CHAIRMAN. I want to ask a few questions of Mr. Ryan before he leaves, partly for my own information.

The total stock outstanding of Anaconda is what?

Mr. RYAN. About 9,000,000 shares.

The CHAIRMAN. Was that the amount outstanding when it hit the peak in prices?

Mr. RYAN. Yes. The exchanges were all made by October, 1929, and that was about the time of the peak in prices.

The CHAIRMAN. That peak was around \$175 a share?

Mr. RYAN. I do not know what the peak was, but I think it was small in February, 1929. These exchanges were not all made at that time. But subsequent to that time, subsequent to the time of the peak, there was an offer of two shares of new stock of Anaconda for every five shares outstanding at \$55. That automatically reduced the price of Anaconda in the market. Let us say, for instance, that Anaconda was selling at \$120 a share and they offered two new shares at \$40. For every five shares of Anaconda at \$120 you got five shares of Anaconda and two shares at \$55, which would make—what would that be, Mr. Kelley?

Mr. KELLEY. I have not been following you.

Mr. RYAN. The rights at the price then prevailing were worth about \$30 a share; so that automatically reduced the price of the stock.

The CHAIRMAN. But that has no bearing on the fact that the total issue had a selling value of around \$175?

Mr. RYAN. No, sir. In somebody's testimony yesterday, or in Mr. Gray's question, that point was overlooked, that the rights came off at that time.

The CHAIRMAN. But the total selling value of Anaconda stock was 9,000,000 times 175?

Mr. RYAN. What is that? No, no. There were only 3,800,000 outstanding. These exchanges were not made at that time.

The CHAIRMAN. So it was 3,800,000 times the peak of the market?

Mr. RYAN. Something like that.

The CHAIRMAN. What percentage of your stock is held by the public?

Mr. RYAN. There are over 100,000 shareholders of Anaconda, so the average is about 90 shares per person. So we say it is all held by the public. I can say, I suppose, though, that as far as I learn from the records, I am the largest holder of Anaconda stock and have been all during this period that we are talking about. I still am the largest holder of the stock.

The CHAIRMAN. At the peak you owned what percentage during the period of 1929? About what percentage of the company?

Mr. RYAN. I do not know. I have not figured it up in percentage.

The CHAIRMAN. A very small percent?

Mr. RYAN. Yes, naturally; but still the largest individual holding in the company.

The CHAIRMAN. When did the sharp rise in the copper market take place?

Mr. RYAN. Mr. Chairman, we are getting into things that——

The CHAIRMAN. Oh, well, we don't need a long discussion. I just want to get a few facts.

**Mr. RYAN.** I just want to give you a little history about that, because just a straight answer to that question—

**The CHAIRMAN.** You can answer it. I simply asked you what time the sharp advance in copper took place.

**Mr. RYAN.** Do you mind if I give you some figures here? They are very brief.

**The CHAIRMAN.** No; but the attorney said it took you an hour to explain it to him. We haven't an hour this morning. We want to take what answers we can get in a much shorter time than that.

**Mr. RYAN.** The average price of copper by 5-year periods since the formation of the Anaconda Co. in 1895 was 15.555 cents per pound. That is the average for 35 years by 5-year periods. In 1928, early in 1928, I think, the price was about at that average. In October of 1928 the Export Association of which the Anaconda Co. is a member warned the buyers when copper went above 16 cents a pound that they were putting up the market on themselves and doing everybody harm. That warning was repeated a month or so later.

**The CHAIRMAN.** That warning was done how and by whom and when?

**Mr. RYAN.** By the Copper Exporters (Inc.), an association formed under the Webb-Pomerene Act, of which all of the copper producers are members. They handle all the foreign sales of practically all the American producers.

**The CHAIRMAN.** American copper, then, was sold in a foreign land by one concern?

**Mr. RYAN.** Yes.

**The CHAIRMAN.** And that one concern indicated that they thought the price was getting too high?

**Mr. RYAN.** Issued a public warning, published in every financial paper in the world, that there was plenty of copper and there was no need of buyers being panicky; that at 16 cents a pound enough copper would be brought out to take care of the needs. But despite that fact the price got out of control and went as high as 24 cents a pound, at which time the Anaconda Co. had sold six months' production, six months ahead, and three months of that production was still in the ground and we had sold it in trying to stop the price from advancing to the high level.

**The CHAIRMAN.** What was the result of the increase in other lands? There were other copper properties opened up in other places, were there not?

**Mr. RYAN.** I would not say as the result of the advance in price at that time. These developments in other countries had been going on for several years, and they would have taken place anyhow, whether the price went as high as it did or not.

**The CHAIRMAN.** What is the cost of producing copper in other countries as compared with the cost of the Anaconda?

**Mr. RYAN.** I don't think you can state a comparative cost.

**The CHAIRMAN.** Is it higher or lower?

**Mr. RYAN.** Anaconda has mines in other countries as well as in the United States.

**The CHAIRMAN.** I mean the Anaconda properties in the United States.

**Mr. RYAN.** The cost of the Anaconda properties in other countries is lower than it is in its mines in the United States.

The CHAIRMAN. What would be the approximate cost of producing copper in the Anaconda properties in the United States, per pound?

Mr. RYAN. I have not the costs before me, Senator. I did not expect to testify as to the costs and those things, and I have not the figures here before me.

The CHAIRMAN. But it is much lower in foreign lands?

Mr. RYAN. It is lower; yes. Anaconda produces about half its copper in the United States; I mean on the basis of normal production.

The CHAIRMAN. In your Montana properties, how does the production compare with that at normal times?

Mr. RYAN. The production in all of our properties, wherever situated, just now is 20 per cent of the normal.

The CHAIRMAN. The properties are operating on a 20 per cent basis?

Mr. RYAN. On a 20 per cent basis; yes.

Mr. GRAY. There is one other question, Mr. Ryan. In the matter of buying and selling on these various accounts did you issue the orders or did you give to your brokers any discretion?

Mr. RYAN. I do not know what I did about that. I can not recall and go back whether I gave discretion or whether I did not. I issued orders over the telephone, but I can not recall at this time just what kind of orders were issued.

Mr. GRAY. In other words, you may have fixed prices sometimes, and at other times you may have permitted the broker to use his discretion?

Mr. RYAN. I can not say; I can not recall that.

Mr. GRAY. That is all I want to ask.

(Witness excused.)

#### **TESTIMONY OF JAMES A. FAYNE, MEMBER OF THE FIRM OF HORNBLOWER & WEEKS, NEW YORK, N. Y.**

(The witness was duly sworn by the chairman.)

Mr. GRAY. Will you give your full name, Mr. Fayne, please?

Mr. FAYNE. James A. Fayne.

Mr. GRAY. Where do you reside, please?

Mr. FAYNE. Rye, Westchester County, N. Y.

Mr. GRAY. You are a member of the brokerage firm of Hornblower & Weeks?

Mr. FAYNE. Yes.

Mr. GRAY. And that firm is a member of the New York Stock Exchange?

Mr. FAYNE. Yes.

Mr. GRAY. It is a fact that a great many of the transactions in which Mr. Ryan was interested, either for himself or himself and the National City and others, were handled through your firm. Is that right?

Mr. FAYNE. I only know his own transactions. All of the transactions were considered to be his.

Mr. GRAY. That is to say, you yourself as a member of the firm of Hornblower & Weeks did not know there was anyone else interested in the accounts that he was buying and selling in?

Mr. FAYNE. No; we simply knew him to be accountable and responsible for the accounts.

Mr. GRAY. You have had an account that was known as the Greene account, with your company. I am speaking now of the year 1929, in the spring. Do you recall that account?

Mr. FAYNE. Well, not from personal recollection. I do because your examiner, Mr. Benton, refreshed my memory on it two days ago.

Mr. GRAY. That was Mr. Ryan's account?

Mr. FAYNE. I considered they were all Mr. Ryan's accounts.

Mr. GRAY. You had an account that was known as the Greene No. 55?

Mr. FAYNE. Yes, sir.

Mr. GRAY. Both of those accounts dealt in copper stocks alone; is not that true?

Mr. FAYNE. Oh, yes; always in copper stocks alone.

Mr. GRAY. I direct your attention to the fact that on March 20, 1929, there were certain transactions that took place in the account that was known as Greene 55. I am showing you a photostatic copy of the transcript of this account taken from the books of Hornblower & Weeks. As a matter of fact, it is not true that the order in which the items appear on the books is the order in which the transactions took place, is it?

Mr. FAYNE. It is seldom true. It may be.

Mr. GRAY. In other words, it may be that an order that is entered first on that date may have been nearly the last transaction; is not that true?

Mr. FAYNE. Yes. It depends upon when the tickets come into the office.

Mr. GRAY. As a matter of fact, do you recall the range of the stock on that day?

Mr. FAYNE. May I say I have refreshed my memory through Mr. Benton?

Mr. GRAY. I am very glad that you have. What was the range?

Mr. FAYNE. From about 188 to about 196.

Mr. GRAY. Please keep your voice up. From about 188 to about 196?

Mr. FAYNE. Yes, sir.

Mr. GRAY. As a matter of fact, before 2 o'clock on that day, that is, between the opening of the exchange at 10 o'clock in the morning and 2 o'clock in the afternoon, there were no excessively large transactions in that account, were there?

Mr. FAYNE. No, sir. I think the largest was 800 shares.

Mr. GRAY. And during those hours between 10 and 2 o'clock that account had stock bought for its account and stock sold for its account, did it not?

Mr. FAYNE. Yes, sir.

Mr. GRAY. Very active, was it not?

Mr. FAYNE. No; it was a very active day in the market.

Mr. GRAY. Speaking generally about this account all the way through—

Mr. FAYNE. It was very active, not exceptionally active.

Mr. GRAY. Taking, for instance, the nineteenth, just as an illustration—this [indicating] is the sold side, is it not?

Mr. FAYNE. Yes.

Mr. GRAY. There were sold 400 shares, 1,100 shares, 2,100 shares, 1,600, 600, 2,300, 1,200, 500, 1,000, 500, 400—that is correct, is it not?

Mr. FAYNE. Yes.

Mr. GRAY. And on the same day there were bought 100, 500, 300, 500, 600, and so forth?

Mr. FAYNE. Yes.

Mr. GRAY. And on the 19th, as a matter of fact, the range of the market was such that the opening was low and the prices rose steadily throughout the day until the close of the market?

Mr. FAYNE. Was it lower than the previous close?

Mr. GRAY. I can not answer you that question, whether it was lower than the previous close; but, as a matter of fact, the market through the day steadily rose?

Mr. FAYNE. Yes; that is correct.

Mr. GRAY. And the sales range from 200, 100, 2,500, 2,400, 500, 500, 1,100, 500, 300, 100, 500—down to the point that I have read; that is correct, is it not?

Mr. FAYNE. Yes.

Mr. GRAY. Also there appear two items, one sale of 10,000 and one of 25,000.

I will finish, Mr. Chairman, in about two minutes on this matter.

That represents what—a sale of stock out of that account?

Mr. FAYNE. Yes, sir.

Mr. GRAY. A sale of 35,000 shares, does it not?

Mr. FAYNE. That is right.

Mr. GRAY. I direct your attention to the fact that on the same day in this other account of Mr. Ryan's appears the purchase of 35,000 shares—does it not?

Mr. FAYNE. Yes, sir.

Mr. GRAY. And at the same price?

Mr. FAYNE. Yes, sir.

Mr. GRAY. An unusually large quantity, was it not?

Mr. FAYNE. Exceptionally large.

Mr. GRAY. Yes.

Mr. FAYNE. Extraordinary.

Mr. GRAY. And just at present, Mr. Fayne, I do not want you to stop for an explanation, but I will give you an opportunity to make it. That resulted from your giving one broker an order to sell 35,000 shares and another broker to buy 35,000 shares, did it not?

Mr. FAYNE. No, sir.

Mr. GRAY. All right; we will leave it for a moment. As a result of that transaction, that stock jumped from 192 to 196 that afternoon and you stepped in and sold at these advanced prices a very large quantity of stock, did you not?

Mr. FAYNE. Yes, sir.

Mr. GRAY. Do you mean to tell me that that buying and selling at 192 was not a pure wash sale which had the effect of putting the market up some four or five points thereafter?

Mr. FAYNE. Precisely.

Mr. GRAY. It was not?

Mr. FAYNE. Precisely; I mean to say precisely it was not a wash sale.

Mr. GRAY. All right; you can make any explanation you want about it.

Mr. FAYNE. Now?

Mr. GRAY. Yes; certainly.

Mr. FAYNE. The purchase order was entered in a purely routine way. An order was given to a member of the stock exchange to buy at 192½ or better all the Greene-Cananea that was offered immediately.

Mr. GRAY. That was called an immediate unlimited order?

Mr. FAYNE. It was called immediate.

Mr. GRAY. And an unlimited order?

Mr. FAYNE. It is not unlimited, Mr. Gray. It would be unlimited as to an amount, but not as to time.

Mr. GRAY. Go ahead.

Mr. FAYNE. He misinterpreted that as a G. T. C. order.

Mr. GRAY. That is good till cancelled order?

Mr. FAYNE. That is a good till cancelled order.

Mr. GRAY. Yes.

Mr. FAYNE. In the ordinary procedure it would take in that particular stock on that day not more than three minutes and probably with a good execution two and a half minutes to get a report back to our office, back to me. No report came, and after the lapse of three minutes, assuming that nothing extraordinary had occurred and that a normal transaction had taken place, that we had bought maybe six or eight hundred shares, but certainly not more than a thousand shares, I gave another broker an order to sell all the stock he could at 192 or better.

Mr. GRAY. Let us stop right there. Irrespective of what else you did, you gave one broker an order to buy all the stock he could at 192½ or whatever it is or better, and another broker an order to sell all the stock he could at that same price?

Mr. FAYNE. Not at the same time.

Mr. GRAY. But in three minutes of each other?

Mr. FAYNE. There is a half point limit difference.

Mr. GRAY. A half a point limit difference, all right; but within three minutes of each other?

Mr. FAYNE. Yes, sir.

Mr. GRAY. And the largest sale on that day was something like 800 shares, and this order was 35,000 or all he could buy or sell?

Mr. FAYNE. And so had every other order entered that day, all that he could buy or sell.

Mr. GRAY. You had discretion in this matter, did you not?

Mr. FAYNE. Absolute discretion, especially when Mr. Ryan was not available.

Mr. GRAY. In other words, it permitted you to go in and buy all the Anaconda stock you wanted to and sell all you wanted to, in your discretion?

Mr. FAYNE. I had absolute discretion; yes.

Mr. GRAY. Or Greene-Cananea in this case. But as a matter of fact, that was also true with respect to Chile and Anaconda, was it not?

Mr. FAYNE. Yes, sir; with respect to numerous other stocks.

Mr. GRAY. You kept your market right where you wanted it?

Mr. FAYNE. It stabilized the market. That was my job.

Mr. GRAY. That can be done that way, can it not, very easily?

Mr. FAYNE. Stabilize it.

Mr. GRAY. Stabilize it, you kept putting it down and putting it up and keeping it down and keeping it up whenever you wanted—it is an easy thing to do when you know how.

Mr. FAYNE. No.

Mr. GRAY. Well, we have had a lot of traders that tell us that it is.

Mr. FAYNE. I know; I have read a lot of testimony to that effect, but I do not think it is correct.

Mr. GRAY. What happened? Here you have two orders outstanding with two brokers. What happened?

Mr. FAYNE. The brokers who had the sell order came to us on the phone and said, "We have sold over 10,000 shares. Is it all right?" We said, "No; cancel the order immediately."

We immediately got in touch with our broker and told him what happened, and then and there for the first time found that he had misinterpreted our order, as you say, as unlimited, so far as the amount was concerned and time, and stood there bidding for stock; the sell broker got in there and filled his bids.

Mr. GRAY. With the result that one of your brokers that you had an order to sell with sold 35,000 shares to the broker that you gave an order to buy?

Mr. FAYNE. But neither broker had any idea that I intended—

Mr. GRAY (interposing). I don't care whether he had any idea or not.

Mr. FAYNE. With that result.

Mr. GRAY. That is what happened. When it happened what did you do thereafter? That twenty-five or thirty-five thousand shares went to this Greene 25 account—

Senator GOLDSBOROUGH. Fifty-five account.

Mr. GRAY. Fifty-five account. With these 25's and 35's and 55's, I have to keep my tongue wagging to keep them straight.

Then what was the next step that was done with it as far as these accounts are concerned?

Mr. PAYNE. You mean what did I do or what happened in the accounts?

Mr. GRAY. What happened in the accounts?

Mr. FAYNE. I do not handle the accounts. I did not handle the entry of the transactions.

Mr. GRAY. Let us see what happened in that account.

Mr. FAYNE. May I tell you what I did?

Mr. GRAY. Yes; you tell us what you did.

Mr. FAYNE. I immediately tried to get in touch with Mr. Ryan and found he was not in the office. By this time every broker on the floor had noticed the extraordinarily large transactions on the tape.

Mr. GRAY. A lot of traders got fooled and stepped in, didn't they?

Mr. FAYNE. Floor traders are always attracted to a stock by an unusual volume on the tape, and this was a very unusual volume.

Immediately word came to me from the floor that all sorts of stock was wanted and it had gone from 192 or 192½, and I then took it

upon myself, without being able to get in touch with Mr. Ryan, to immediately keep that stock from going through the roof by selling all the stock I could upon my own authority.

Mr. GRAY. Whether it was done to keep it from going through the roof or not, it went to 196 and something, did it not?

Mr. FAYNE. Yes.

Mr. GRAY. And you disposed of it at the advanced price, a great deal of the stocks that were in this account; that is correct, is it not?

Mr. FAYNE. All that they would take from me on a scale up.

Mr. GRAY. Do you know how much stock you sold on either or both of these accounts after that transaction of 35,000 shares?

Mr. FAYNE. No. Mr. Benton showed me the other day that 2,700 shares was sold the next day. Therefore, I assume everything else must have been sold the first day.

Mr. GRAY. In other words, you cleaned the account out?

Mr. FAYNE. That is what the record shows. I have no present recollection. You have those records.

Mr. GRAY. How much did you have in it to clean out?

Mr. FAYNE. That I do not recall. I knew, of course, because I always had in front of me a memorandum furnished by my book-keepers every morning.

Mr. GRAY. Did you know that the books of these two accounts showed that as of the same date, the entry being made the next date because deliveries are not made until the next date, that that 35,000 shares was switched back again to the other account that sold it?

Mr. FAYNE. I must have known it, because—

Mr. GRAY (interposing). It did happen, didn't it?

Mr. FAYNE. Yes; it did happen.

Mr. GRAY. So whether it was a mistake or not and whether it was intentional or not, Mr. Fayne—and I am not discussing that part of it; I want to show what was done and what can be done in a situation of this kind—the fact is that at 2 o'clock in the afternoon one broker got an order to buy at a price 35,000 or an unlimited quantity of shares, and at a point within a half a point of that another broker got an order to sell 35,000 or an unlimited quantity; that as a result of that transaction going through people were attracted to the stock, the stock, notwithstanding the fact that you say you were trying to keep it down, jumped four and a fraction points, thus giving you the opportunity to dispose of all of the stock belonging to Mr. Ryan and his friends at an advanced figure and you got rid of all of it that day except 2,700 shares, which you disposed of the next morning? That is the situation.

Mr. FAYNE. If you will let me say "compelling" me to get rid of it, I will agree with you.

Mr. GRAY. Let you say what?

Mr. FAYNE. Compelling; not enabling. I had to get rid of it to try to stabilize the market, Mr. Gray. You remember Greene-Cananea was a volatile stock. It went up because there was a very small number of shares outstanding. It went up, for instance, on the previous transactions from its opening under 188 to 192 on normal transactions.

Mr. GRAY. Well, of course, if you were endeavoring to keep the price of the stock stable and stop it from going through the roof, as

you said, no matter what your motive was, whether it was that or the taking of the profit, what you did do was to get the profit?

Mr. FAYNE. Yes; but I had no idea that my principal was going to close the account. In fact, I think it was closed because of this transaction.

Mr. GRAY. You did that as a part of your discretion, did you not?

Mr. FAYNE. Yes; but I mean that did not necessarily close the account. It was the result of the trading that went on.

Mr. GRAY. Of course, you could; but you did not.

Now, another question: This transaction carried with it, of necessity, brokers' charges and commissions, did it not?

Mr. FAYNE. Yes, sir.

Mr. GRAY. In other words, it carried through with it an expense. Do you know what it amounted to?

Mr. FAYNE. Just on the volume and the stated commission it must have been around seventeen to eighteen thousand dollars.

Mr. GRAY. Yes.

Mr. FAYNE. Commissions and taxes.

Mr. GRAY. Now, you say that it was your mistake?

Mr. FAYNE. No; I do not. I beg your pardon. I say it was the floor broker's mistake to whom I gave the order.

Mr. GRAY. The floor broker was acting for you?

Mr. FAYNE. That is right.

Mr. GRAY. And in the ordinary handling of stock exchange matters, if a mistake of that kind would happen the brokerage house who were exercising the discretion and whose agents on the floor made the mistake, would stand the loss, would they not?

Mr. FAYNE. Yes, sir.

Mr. GRAY. In this instance your books show that it was charged against one of these accounts. If this was not done deliberately in connection with these two accounts and it was a mistake, why didn't Hornblower & Weeks stand that expense?

Mr. FAYNE. Because our principal would not permit us to.

Mr. GRAY. Would not permit you to?

Mr. FAYNE. I went to Mr. Ryan after 3 o'clock and told him it was because of the mistake of the broker which had the order. Mr. Ryan would not do it. He is that kind of a customer.

Mr. GRAY. And he would not let you stand for it?

Mr. FAYNE. No, sir.

Mr. GRAY. I submit this to the committee because, whether it was a real transaction, done intentionally, or whether it was a mistaken transaction done as Mr. Fayne says, it shows what can be done and what results follow when they are permitted to handle transactions this way.

The CHAIRMAN. In other words, it had the effect of a wash sale.

Mr. GRAY. It is a plain wash sale on the record.

Mr. FAYNE. Yes; it had the effects of it, but it was not a wash sale.

Mr. GRAY. Mr. Chairman, that is all I have to-day.

The CHAIRMAN. The committee will recess until the call of the chairman. Thank you, Mr. Fayne.

(Whereupon, at 11.30 o'clock a. m., the committee adjourned, to meet again upon the call of the chairman.)

# STOCK EXCHANGE PRACTICES

FRIDAY, JUNE 10, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met at 2.30 o'clock p. m., pursuant to call, in the hearing room of the Committee on Interstate Commerce, the Capitol, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Townsend, Walcott, Blaine, Watson, Couzens, Fletcher, and Gore.

Present also: Hon. William J. Morgan, former attorney general of the State of Wisconsin.

The CHAIRMAN. The committee will come to order. This meeting was called to hear Mr. Ernest W. Stirn, of Chicago. He is unlike any other witness who has been here; he is not an unwilling witness. He is here to help the committee get started on what seems to be an important matter. He and his attorney have done a lot of work on this. This is one of the cases that come to us very complete without expense of investigation on the part of the committee. He is appearing with Mr. William J. Morgan, former attorney general of the State of Wisconsin, and I was thinking that, to expedite the matter, we might first have a statement by Mr. Morgan touching the high spots of the case as to what they expect to prove; and if there are no objections on the part of the committee, we will let Mr. Morgan take charge of the case, due to the fact that the committee has not its own counsel here, and subject, of course, to such limitations as the committee may from time to time impose. If there is no objection, we will proceed that way.

Senator TOWNSEND. With the thought, of course, of throwing some light on the matter?

The CHAIRMAN. Yes; it is a stock-market matter.

Senator BLAINE. From the standpoint of the man who got gypped.

The CHAIRMAN. From the standpoint of a man who took advice and lost money.

Senator FLETCHER. In other words, based on experience.

Senator BLAINE. Based on experience.

The CHAIRMAN. Mr. Morgan, will you open up with a brief statement of what you expect to prove?

## STATEMENT OF HON. WILLIAM J. MORGAN, FORMER ATTORNEY GENERAL OF THE STATE OF WISCONSIN

Mr. MORGAN. Mr. Chairman and gentlemen of the committee, I am not the man who got gypped and lost the money, as my father told me when I was a little boy never to play at the other fellow's game.

The case that Mr. Stirn, who is an analyst connected with the University of Chicago, graduate department, has made a special study of, is the short selling of Radio-Keith-Orpheum Corporation stock, coincident with a plan that had been devised in the minds of the officers and directors of that corporation to reorganize it, and the net result of which was that the Radio Corporation of America acquired the Radio-Keith-Orpheum Corporation for the sum of \$11,500,000, although the assets of Radio-Keith-Orpheum Corporation then, on their own statement, showed \$127,000,000, of which \$67,000,000 were clear assets above their liabilities. In other words, they got a right in the Radio-Keith-Orpheum Corporation worth \$67,000,000 for \$11,500,000.

Now, at the time that we are concerned with Radio-Keith-Orpheum was a Maryland corporation with an authorized capital of four and one-half million shares of stock, of which 4,000,000 were class A stock, and 500,000, held by the Radio Corporation of America, were class B shares, both nonpar value stock.

The dates are very significant. On the 22d of October, 1931, there was begun upon Radio-Keith-Orpheum stock a concerted, consistent short selling drive.

Senator COUZENS. By whom?

Mr. MORGAN. The specialist who handled that stock on the New York Stock Exchange was Mr. Meehan; Mr. Michael J. Meehan.

Senator TOWNSEND. Mr. Chairman, without any wrong implication, I wish to say that all our other witnesses have been put under oath.

The CHAIRMAN. We are going to put the witness under oath; and if the committee thinks proper I will put the attorney under oath. He is only telling what he expects to prove.

Senator TOWNSEND. I think anything that is put on the record should go on under oath.

Senator BLAINE. Mr. Morgan is not stating facts, but what he expects the witness to testify to.

Senator TOWNSEND. That is going on the record.

Senator BLAINE. Mr. Morgan will not object to being sworn.

Mr. MORGAN. As an attorney, you understand, I derived these facts and figures that I took from the papers of Mr. Hiram S. Brown, who is president of Radio-Keith-Orpheum Corporation.

Senator FLETCHER. It is unusual to put an attorney under oath who is making a statement of what he expects to prove.

Senator TOWNSEND. I do not press the matter.

Mr. MORGAN. I do not object to being sworn.

The CHAIRMAN. You may proceed, then. As I understand, then, you are willing to be sworn, although you consider it an unusual procedure?

Mr. MORGAN. Oh, certainly. I am not testifying. I am here to tell you what Mr. Stirn is going to testify to.

The CHAIRMAN. Just a bird's-eye view of the testimony?

Mr. MORGAN. Yes; just to give you an idea so that you can follow his testimony. I only want to be helpful to the committee.

On November 5, 1931, a meeting of the officers and directors of Radio-Keith-Orpheum Corporation was held. Now, at that time, under the laws of Maryland, and under the charter of this corpora-

tion, it had no specific power to decrease its capital stock. Nevertheless, at that meeting, according to a letter sent to its stockholders on November 10, 1931, by Hiram S. Brown, president of the Radio-Keith-Orpheum Corporation, he stated that Radio-Keith-Orpheum Corporation finds itself faced with an emergency which requires prompt action by stockholders if a receivership is to be avoided, and stated that the directors had approved and recommended to the stockholders an amendment of the charter in the following particulars:

1. The number of shares of class A stock outstanding will be reduced to one-fourth of the amount now outstanding, so that each stockholder will hold one-fourth of the number of shares now held, and there will be outstanding (excluding treasury shares) approximately 580,000 shares.

2. All stock, issued and unissued, will be reclassified into common stock, the class B stock being surrendered as hereinafter stated.

3. \$11,600,000, principal amount, of 10-year 6 per cent debentures, and 1,740,000 shares of common stock will be offered for subscription to stockholders at an aggregate price of \$11,600,000 plus accrued interest on the debentures. Each present holder of one share of class A stock will be entitled to purchase, for \$5 plus accrued interest on the debentures, \$5 principal and amount of debentures and three-fourths share of common stock.

Senator FLETCHER. You are going to put that into the record, I take it, that whole letter?

Mr. MORGAN. Yes. I am reading from the letter.

The CHAIRMAN. You may read the whole letter into the record, or just read part of it and have it all printed, if you like.

Mr. MORGAN. Shall I go back and give his reasons?

The CHAIRMAN. The whole point is, we are trying to determine whether this should go into the record, and whether you shall read it into the record, or offer it for the record. The usual practice is that you read a part of it, if you wish, and comment upon it, and then offer it after that.

Mr. MORGAN. I have read a part.

The CHAIRMAN. You may read it and comment on it and then offer it. It may go in.

(The letter of Nov. 10, 1931, is printed in the record in full as follows:)

RADIO-KEITH-ORPHEUM CORPORATION,  
New York, N. Y., November 10, 1931.

*To the Stockholders:*

Radio-Keith-Orpheum Corporation finds itself faced with an emergency which requires prompt action by stockholders if a receivership is to be avoided. This emergency results, in large measure, from the abnormal financial and credit situation, which prevents the raising of funds through usual means.

Last May it appeared that the corporation would require, in addition to available funds, \$6,000,000 to finance the 1931-32 production programs of its two picture producing subsidiaries. The management, with the assistance of members of the executive committee, endeavored to procure the money by bank loans, but only \$1,700,000 was obtained. The corporation was obliged, therefore, to raise additional funds otherwise and a loan netting the corporation \$5,870,000 (with the requirement that the above bank loans of \$1,700,000 be repaid immediately from the proceeds thereof) was effected as of July 1, 1931, through the sale of \$6,000,000 of secured gold notes of the corporation, payable \$3,000,000 during the first six months of 1932 and the remaining \$3,000,000 July 1, 1933. The corporation was required to pledge or hold avail-

able for pledge under the indenture securing such loan substantially all of its free assets and is therefore without property now available as collateral.

At the time the above loan was made a detailed budget of estimated income and disbursements of the corporation and its subsidiaries for the 12 months commencing May 1, 1931, was prepared. The estimate of receipts in this budget was considered by the management to be conservative. The budget indicated a surplus of receipts over disbursements to an extent sufficient to enable the corporation to meet the maturities under the above loan and have sufficient funds for carrying on operations. At the end of each month up to September 1, the cash balance on hand exceeded the estimated cash balance as set forth in the budget, but during the latter part of August and throughout September and October, there was an unexpected and unprecedented decline in gross receipts reflecting the effect of adverse developments in the financial and business situation. Estimates of income of the corporation, revised in view of the decline in receipts during recent weeks, indicated that the corporation must procure at least \$4,000,000 to meet requirements to and including January 1, 1932, \$1,000,000 of which was required early in November and must also provide additional funds to take care of certain estimated future requirements, including maturing debt.

During October the management was engaged in constant negotiations to procure the required amount, but due to the unfavorable financial situation the corporation was unable to raise funds for its requirements. It is clear that unless these funds can be provided, receivership is inevitable, with the consequent disorganization and injury to business of the corporation, which would be disastrous for stockholders. Accordingly, to cover the immediate requirements and the estimated future requirements above referred to, the following plan has been devised and is submitted to stockholders:

1. The number of shares of Class A stock outstanding, will be reduced to one-fourth of the amount now outstanding, so that each stockholder will hold one-fourth of the number of shares now held, and there will be outstanding (excluding treasury shares) approximately 580,000 shares.
2. All stock, issued and unissued, will be reclassified into common stock, the Class B stock being surrendered as hereinafter stated.
3. Eleven million six hundred thousand dollars, principal amount, of 10-year 6 per cent debentures and 1,740,000 shares of common stock will be offered for subscription to stockholders at an aggregate price of \$11,600,000 plus accrued interest on the debentures. Each present holder of one share of Class A stock will be entitled to purchase, for \$5 plus accrued interest on the debentures, \$5 principal amount of debentures and three-fourths share of common stock.
4. Of the purchase price of these securities, 50 per cent will be payable at the time of subscription, and the remainder (with interest at the rate of 6 per cent per annum) in one or more installments, when called, on 30 days' notice, or earlier at the option of the purchasers.
5. Purchasers will receive an appropriate transferable certificate entitling them (if full payment has been made) to receive, after three years, or earlier at the option of the corporation, debentures, and certificates for common stock. In the meantime, holders of certificates will be entitled to vote on the common stock represented by certificates, and to receive interest paid on the debentures and any dividends declared on the common stock.

If this plan is carried out, the result will be that a stockholder who exercises his subscription rights will own (for each share of Class A stock now owned) (a) one-quarter share of common stock and (b) a certificate representing \$5 principal amount of debentures and three-quarters of a share of common stock. A stockholder who transfers his subscription rights or fails to exercise them will own one-quarter share of common stock for each share of Class A stock now owned.

Radio Corporation of America, which owned or controls all outstanding Class B stock and a substantial amount of Class A stock, has agreed in order to assist the corporation, (a) to purchase, on the same terms, such of the debentures and common stock offered to stockholders as are not subscribed for by stockholders or their assignees, (b) to surrender for cancellation 500,000 shares of Class B stock (which is convertible into 500,000 shares of Class A stock when earnings per share have been certain specified amounts), and (c) to waive its rights (in respect of the Class B stock) to purchase any of the new securities. In addition, Radio Corporation of America has advanced to the corporation, at 6 per cent interest, \$1,000,000 to meet immediate requirements, and has agreed to

advance an additional \$1,000,000 if required before the plan can be carried out. No compensation is to be paid to Radio Corporation of America for its underwriting or for its advances except that 125,000 shares of common stock are to be delivered to Radio Corporation of America upon the surrender of the 500,000 shares of Class B stock. Radio Corporation of America is not underwriting the payment of deferred instalments of the purchase price by subscribing stockholders. The holders of the \$6,000,000 of Secured Gold Notes above mentioned have agreed, if the plan is carried out, to extend their notes so that \$100,000 will mature on the first of each month in 1932, \$200,000 on the first of each month in 1933, \$300,000 on the first of each month (to and including June) in 1934, and \$600,000 on July 1, 1934.

Substantial economies have been and are being effected, and the management believes that, unless gross receipts decline to a point below anything which even under present conditions can reasonably be anticipated, this financing should enable the corporation to go through the period of depression, and place it in a position to take advantage of better conditions.

The board of directors has approved the plan, subject to the necessary action of stockholders, and has called a meeting of stockholders for December 10, 1931. There are attached hereto (a) a formal notice of such meeting, (b) a more detailed statement of the offer to stockholders and of the terms of the new debentures, and (c) comparative consolidated balance sheets as of January 1, 1929, and September 30, 1931, and consolidated profit and loss statements for 1929, 1930, and the nine months ended September 30, 1931. A proxy to be executed by stockholders who do not expect to attend the meeting is inclosed.

A stockholder who votes in favor of the amendments does not obligate himself to exercise his subscription rights. Since the affirmative vote of holders of two-thirds of the Class A stock is required, and since the plan must be carried out before January 1, 1932, stockholders who do not expect to attend the meeting are urged, for the protection of their investment, to execute and mail proxies promptly, whether or not they desire to exercise their subscription rights.

By order of the board of directors,

HIRAM S. BROWN, *President.*

*Radio-Keith-Orpheum corporation and subsidiary companies—Comparative consolidated balance sheets as of September 30, 1931, and January 1, 1929 (the approximate date of organization of the corporation.)*

	Sept. 30, 1931	Jan. 1, 1929
<b>ASSETS</b>		
Cash.....	\$2,017,118.42	\$1,589,548.39
Notes and accounts receivable.....	1,707,277.60	974,635.87
Inventories and scenarios.....	14,061,783.92	2,918,884.04
Capital assets.....	93,682,352.82	56,035,481.61
Investments in and advances to affiliated and other companies.....	4,877,285.31	5,467,722.19
Other investments and deposits and other assets.....	3,938,816.87	2,376,935.15
Deferred charges.....	7,140,366.20	2,036,514.11
<b>Total.....</b>	<b>127,414,981.14</b>	<b>71,397,699.36</b>
<b>LIABILITIES</b>		
Notes and accounts payable, and debentures (current).....	10,632,069.64	5,153,061.33
Deposits payable.....	357,281.80	859,581.18
Notes payable and debentures (deferred).....	6,087,306.88	1,339,000.00
Funded debt.....	39,679,684.17	22,116,370.00
Reserves for rehabilitation of properties, taxes and contingencies.....	3,715,183.50	6,365,781.97
Interest of minority stockholders in subsidiary company.....	10,289,200.00	2,172.81
Preferred stocks of subsidiary companies.....	46,943,769.84	11,920,900.00
Capital stock.....	4,654,670.26	20,301,461.00
Initial surplus.....	5,055,815.05	3,339,368.27
Earned surplus.....		
<b>Total.....</b>	<b>127,414,981.14</b>	<b>71,397,699.36</b>

*Radio-Keith-Orpheum corporation and subsidiary companies consolidated statement of profit and loss for period January 1, 1929 to September 30, 1931*

	Year 1929	Year 1930	9 months ended Sept. 30, 1931	Total
Income.....	\$51,696,860.78	\$71,357,831.02	\$61,253,815.45	\$184,308,507.25
Less expenses.....	40,080,872.66	62,474,608.85	56,523,124.98	163,078,601.49
	5,615,988.12	8,883,227.17	4,730,690.47	19,229,905.76
Less:				
Depreciation of capital assets and amortization of leaseholds.....	2,438,683.81	3,343,069.21	2,938,537.13	8,720,290.15
	3,177,304.31	5,540,157.96	1,792,153.34	10,509,615.61
Add other income.....	1,564,858.72	1,618,433.36	1,037,811.93	4,221,104.01
	4,742,163.03	7,158,591.32	2,829,965.27	14,730,719.62
Less:				
Investments and advances written off, etc.....	66,108.23			66,108.23
Interest and discount.....	1,843,586.65	2,357,520.14	1,968,398.59	6,169,505.38
Sundry other deductions.....	58,909.56	52,861.02	316,471.04	428,241.62
	1,968,604.44	2,410,381.16	2,304,869.63	6,683,855.23
Less:	2,773,558.59	4,748,210.16	525,095.64	8,046,864.39
Provision for Federal income taxes.....	250,000.00	575,000.00	63,000.00	888,000.00
	2,523,558.59	4,173,210.16	462,095.64	7,158,864.39
Net profit before dividends.....				
Less:				
Dividends paid to public on preferred stocks of subsidiary companies.....	853,994.34	787,581.75	461,473.25	2,103,049.34
Net profits available for dividends on class A stock.....	1,669,564.25	3,385,628.41	622.39	5,055,815.05

Mr. MORGAN (continuing). Then follows this statement of President Brown, in this letter, of the agreement:

Radio Corporation of America, which owns or controls all outstanding class B stock and a substantial amount of class A stock, has agreed, in order to assist the corporation, (a) to purchase, on the same terms, such of the debentures and common stock offered to stockholders as are not subscribed for by stockholders or their assignees, (b) to surrender for cancellation 500,000 shares of class B stock (which is convertible into 500,000 shares of class A stock when earnings per share have been certain specified amounts), and (c) to waive its rights (in respect of class B stock) to purchase any of the new securities. In addition, Radio Corporation of America has advanced to the corporation, at 6 per cent interest, \$1,000,000 to meet immediate requirements, and has agreed to advance an additional \$1,000,000 if required before the plan can be carried out. No compensation is to be paid to Radio Corporation of America for its underwriting or for its advances except that 125,000 shares of common stock are to be delivered to Radio Corporation of America upon the surrender of the 500,000 shares of class B stock.

That was the plan agreed upon at that meeting of November 5, 1931. I suggest that no one could have had knowledge of what was intended, except the members of the corporation, prior to that meeting.

On November 10 this letter of President Brown's, from which I have been quoting, was sent to the stockholders, and a concerted short selling drive on the Radio-Keith-Orpheum stock was practically completed November 12.

Now that is the subject of our inquiry, of which Mr. Stirn will testify.

The CHAIRMAN. Do you understand from that that those people were selling to someone else, or selling to themselves in that sale?

Mr. MORGAN. The net result of this short selling campaign and these amendments to the charter which were adopted contrary to law, was that the Radio Corporation of America acquired the assets of Radio-Keith-Orpheum Corporation for \$11,500,000, the assets being worth \$67,000,000.

The CHAIRMAN. Were there people that were in both groups?

Mr. MORGAN. Oh, sure.

The CHAIRMAN. Did they sell to themselves, in other words?

Mr. MORGAN. The Radio Corporation of America held 500,000 shares, and they had directors in both corporations. I am not able to say how many of the directors served on both corporations. There may have been some that were not on both; they were the same interests.

Senator BLAINE. The Radio Corporation of America obtained this interest by paying the assessment of \$5?

Mr. MORGAN. Precisely so.

Senator BLAINE. They did not call it an assessment; they called it debentures.

Mr. MORGAN. All of the stockholders of whom I have personal knowledge—and there are many in Wisconsin—did not meet this assessment. Stripping it of technical language, the term here is that it amounted to an assessment of nonassessible stock of \$5 a share.

The CHAIRMAN. From the understanding we have, indirectly it was an assessment on the stock.

Mr. MORGAN. Yes; they tried to beat the devil around the bush and called it debentures. And those that did not pay the \$5 a share had three-fourths of their stock confiscated. That was purchased by the Radio Corporation of America.

The CHAIRMAN. Do you propose to prove now that this short selling was really by the people themselves that were in control of the property, and it was driven down for the purpose of selling to themselves?

Mr. MORGAN. Mr. Chairman, the drop in Radio-Keith-Orpheum stock is the greatest that occurred in any stock listed on the New York Stock Exchange that is not now in receivership. I know of none so great.

The CHAIRMAN. You speak of short selling or bear raiding. Was that at a time that would help to bring about these results that seemed to have been desired?

Mr. MORGAN. That seems to be the plan, and we will be glad if you will subpoena those in control of this corporation so that we may have them testify to this committee; and we will be glad to follow it through the clearing house and the respective brokerage houses who sold the stock and who made the profits.

Senator FLETCHER. The result of this operation was to squeeze out all but a few stockholders?

Mr. MORGAN. Yes, sir.

Senator FLETCHER. And those stockholders were squeezed out?

Mr. MORGAN. It was the most drastic squeeze-out that I have ever investigated or made a study of.

The CHAIRMAN. The witness may be sworn.

## TESTIMONY OF ERNEST W. STIRN, MILWAUKEE, WIS.

The CHAIRMAN. You do solemnly swear that the evidence you are about to give on this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STIRN. I do.

The CHAIRMAN. Now, you have your testimony that you intend to give in writing, haven't you?

Mr. STIRN. Have it in writing; yes.

The CHAIRMAN. And you prefer to read it now, do you?

Mr. STIRN. Well, I would like to read a good deal of it and the rest put in the record.

The CHAIRMAN. Yes; all right. Just make it clear here so we will know which is which, so the reporter gets the divisions. Of course, Senators have a right to interrupt you, you understand, and ask questions; and I suggest that they do not interrupt until you get far enough along so we know what it is about.

Senator FLETCHER. Let us begin with your name and residence and occupation.

Mr. STIRN. To identify myself, my name is Mr. Ernest W. Stirn, research graduate student working for a doctorate in the history department, University of Chicago.

Mr. MORGAN. Mr. Stirn, have you had in mind in making this research a publication as a result?

Mr. STIRN. The University of Chicago may publish this later on, as I understand, or for that matter, some other publications, as they see fit.

Now, Radio-Keith-Orpheum Corporation is one of four corporations controlled by interlocking directorates; that is, directorates having blocks of shares in all four of these corporations. These four corporations are the Radio Corporation of America, General Electric Corporation, the Radio-Keith-Orpheum Corporation, and the Westinghouse Electric & Manufacturing Co.

I shall attempt to show the volume of sales in 1930 in this group of corporations compared in terms of ratio sales to the number of shares outstanding, to the total number of sales of all stocks, and to the number of shares listed on the New York Stock Exchange, in terms of per cent.

One, Radio Corporation: The number of shares outstanding in numbers of Radio Corporation in 1930 was, gentlemen, 13,130,000. The volume of sales in Radio Corporation in the year 1930 amounted to 37,038,190.

General Electric Corporation, with a number of 28,845,000 shares outstanding: Out of this number, 21,865,000 were actually sold; that is, actual certificates disposed of.

Radio-Keith-Orpheum Corporation, with a number of shares outstanding amounting to 2,377,315. Out of this number 18,397,908 were sold. In other words, nearly ten times as many; there were ten times as many sales as there were stocks existing.

Westinghouse Electric & Manufacturing Co., with 2,586,000 shares outstanding. Out of this number 10,592,975 were actually sold.

The total number of shares outstanding in this group were 46,939,566 shares.

The volume of sales of this group of four corporations amounted to 88,896,663 shares.

Now, the total number of sales in 1930 on the New York Stock Exchange amounted to 810,038,161. The number of listed shares on the New York Stock Exchange amounted to 1,296,794,480.

The ratio of the number of shares to total volume of all sales amounted to 191 per cent, which is a tremendous percentage. The ratio of volume of sales to total sales is 10 per cent. That is, this group of corporations contributed practically 10 per cent of all sales on the New York Stock Exchange, which is a colossal figure.

The ratio of volume of sales to the number of shares existing; that is, out of 1,296,000,000 shares this group of corporations contributed 0.07 per cent, which is also a figure incomparable in history.

Senator FLETCHER. That was during what time?

Mr. STERN. In the year 1930.

Now the next point, which was perhaps the most outstanding point in this investigation so far as my figures are concerned, is this, that the deflation of the price of Radio-Keith, that is, the drop from its high price to its low, is perhaps the worst case on record in history since the year 1630.

Two other companies, I may say in passing, who are now in receivership, have exceeded the depreciation in the price of Radio-Keith-Orpheum Corporation.

The CHAIRMAN. Let us have their names.

Mr. STERN. First is Insull Utilities Investment Corporation (Inc.), listed on the Chicago Stock Exchange. This corporation is under the investigation of the Swedish Government—

Senator BLAINE. No.

Mr. STERN. I beg your pardon. This corporation is under the investigation of the Wisconsin Public Utilities Commission at Madison, Wis., under the chairmanship of Theodore Kronshage. If we analyze this depreciation in terms of per cent, it is found the depreciation from the high of \$90 per share, that is without warrants, to a low of 12½ cents a share, amounted to 72,000 per cent.

Senator FLETCHER. What corporation is that now?

Mr. STERN. That is Insull Utilities Investment Corporation.

The CHAIRMAN. That is one. What is the other one?

Mr. STERN. The other one is Kreuger & Toll, which depreciated from a high of 46⅔ to a low of ¼ in April, 1932.

Mr. MORGAN. Also in receivership?

Mr. STERN. Also in receivership. This corporation is under investigation of the Swedish Government, and also I understand to be investigated by Samuel Untermyer, of New York city.

Mr. MORGAN. There is no other corporation that is not in receivership that has had as great a drop as this?

Mr. STERN. Absolutely not, that I know of.

Mr. MORGAN. That is in all time, and not just for the recent period?

Mr. STERN. That is for all time. These are all-time figures since the beginning of the Amsterdam Stock Exchange in 1630.

The percentage of depreciation in Kreuger & Toll amounted to 18,400 per cent.

I have not investigated the short-selling campaign of either of these two issues, therefore I can make no comment upon them, but in the instance of Radio-Keith, with a high of 50 on April 24, 1930, and a low of  $\frac{3}{4}$ , or 75 cents a share, in December, 1931—

Senator BLAINE (interposing). What time in December?

Mr. STIRN. I can not say offhand. It is either December 28 or December 29. You have the figure there, I believe, of class A stock. That is before it was taken off the list of the New York Stock Exchange. Then it was quoted over the counter practically for nothing.

Senator BLAINE. Do you know what it was on November 5 when Mr. Brown, one of the directors, voted to reorganize?

Mr. STIRN. Yes.

Senator BLAINE. Are you coming to that?

Mr. STIRN. Yes; I will come to that, because the significant thing is to show historical events before November 5, because these previous events forecast what happened on the New York Stock Exchange.

Now, the depreciation, therefore, in the Radio-Keith-Orpheum class A stock amounts to 15,000 per cent. That is upon the basis of a June low 1932 of \$1.50 for the new common shares, which makes the old class A shares worth  $37\frac{1}{2}$  cents.

The CHAIRMAN. And they hit a high at what price?

Mr. STIRN. Of \$50, and I can show the invoices from brokers' accounts where many, many people have paid that and sold out after the short-selling campaign at 75 cents.

Senator FLETCHER. How had it been in 1929?

Mr. STIRN. The corporation, I may say, Senator, was organized in October, 1928, and just in a few weeks—it was organized first on a when-issued, W I basis, on the New York Curb, and then was put on the New York Stock Exchange, I believe, in December, 1928. I can show by these charts that immediately upon the inception of this company the same rigging operations began, in the number of total sales and the great swings in the price of the stock for the week.

Senator FLETCHER. It never has been higher than 50?

Mr. STIRN. Yes. In 1929 the stock rose to  $51\frac{1}{2}$  or  $51\frac{3}{4}$ .

Senator FLETCHER. Most of these stocks began to drop in October, 1929?

Mr. STIRN. Yes.

Senator FLETCHER. You do not know what their experience was then?

Mr. STIRN. Radio-Keith at that time went to \$12 a share, that is, from  $51\frac{3}{4}$  to \$12.

Senator FLETCHER. I see.

Mr. STIRN. And then it rose again from \$12 to \$50, which in point of appreciation in percentage has not been excelled on the New York Stock Exchange, and I am trying to show that it has been unexcelled in point of depreciation and appreciation, with a few exceptions.

Senator FLETCHER. In other words, it has been manipulated?

Mr. STIRN. If you want to call it such; yes.

The CHAIRMAN. Have you any other term for it?

Mr. STIRN. Rigging.

The CHAIRMAN. Proceed.

Mr. STIRN. As invented by John Law on the London Stock Exchange way back in 1734, which caused such a scandal at that time that the House of Commons inaugurated or passed a law prohibiting short selling from 1734 to 1868, nearly a hundred and fifty years, just on account of that one rigging operation John Law managed, just as M. J. Meehan managed Radio-Keith.

Senator WATSON. What happened?

Mr. STIRN. Pardon me?

Senator WATSON. What happened after they suspended it? I thought you said they passed a law compelling them to stop short selling. Then what happened to the stock exchange?

Mr. STIRN. Why, there could not be any short selling.

Senator WATSON. What happened to the stocks, the values?

Mr. STIRN. That was the famous South Sea Co.

Senator WATSON. I am not talking about that. What happened?

The CHAIRMAN. What was the effect of the cessation of short selling on the stock market on values of shares? That is what the Senator means, isn't it?

Senator WATSON. Why, certainly.

Mr. STIRN. I can answer that referring you to——

The CHAIRMAN. Briefly, Mr. Stirn, just answer the question.

Mr. STIRN. It stabilized prices, and they went upward.

The CHAIRMAN. That is right; it took a good while to get that simple answer. Go ahead.

Mr. STIRN. The conclusion is that any stock showing such intensive short sales, as I shall develop later, the inference is that short positions were maintained for a long period of time on the stock of the Radio-Keith-Orpheum Corporation. If the directors or officials of this company indulged in such a practice, a short position held since the spring of 1930 from the high of \$50 per share would yield the handsome profit of 15000 per cent.

Now, of course, you recall history in the Middle Ages or the so-called Dark Ages, a yield of 12½ per cent was penalized by the state by the loss of one hand, a yield of 25 per cent by the loss of two hands——

Senator BLAINE. You do not advocate that punishment now, though?

Mr. STIRN. Fifty per cent punishable by death. Going back farther in history——

Mr. MORGAN (interposing). So we are becoming more tolerant, Senator.

Mr. STIRN. To answer your question, Senator, under a constitutional monarchy as obtained in Great Britain—I, of course, refer to the Lord Kylsant case where a man who operated a stock rigging operation in a mercantile marine corporation now is sentenced to spend a year in a common ordinary jail in London.

The famous Stutz Motors case in 1920, where the stock fell from \$700 to \$20. And the Piggly Wiggly corner of 1923, where the stock fell from \$124 to \$82, which does not equal the price depreciation of Radio-Keith.

The Northern Pacific Railroad case, which stock on May 9, 1901, fell, after Harriman's open market operations, from \$1,000 a share to approximately \$167, a deflation not equalling that of Radio-Keith, and the depreciation of the Northern Pacific Railway at that time was one of the causes of the panic of 1901.

The Hudson Railroad case in 1866, which fell from 180 to 112 under the operation of Vanderbilt, does not in point of depreciation equal that of Radio-Keith.

The Praire du Chien corner, Senator, that is in 1865. In point of depreciation it does not equal that of Radio-Keith.

The Morris Canal corner of 1835 in point of depreciation does not equal that of Radio-Keith.

The South Sea Co. corner, managed by John Law, who invented rigging, on the London Stock Exchange, in 1734 fell from 5,000 pounds sterling to 1,200 pounds sterling, the effect of which was a ban on short selling on the statute books of Great Britain from 1734 to 1868, does not equal in point of depreciation that of Radio-Keith.

Senator COUZENS. I have not seen the short selling in this case. Are you coming to that?

Mr. STIRN. I am going to develop that later. What I am trying to point out, Senator, is the depreciation and comparisons.

Mr. MORGAN. And why he chose this to make a study of, Senator.

Senator COUZENS. I do not know what that has got to do with the operation in the Radio-Keith-Orpheum.

Mr. STIRN. Well, Radio-Keith-Orpheum—you may say, "Why pick on Radio-Keith-Orpheum?" The answer would be it is the most outstanding case in history.

Senator COUZENS. I am not asking you why you picked on that. I am asking you to show where the short selling occurred.

Mr. STIRN. I want to develop that later.

Senator COUZENS. I don't want to sit and listen to 30 or 40 years of history to find out how the short selling happened on the New York Stock Exchange in this case.

Mr. STIRN. I think the case I have developed is so important that you can not prove this except by such a broad analysis.

Mr. MORGAN. Proceed as rapidly as possible, Mr. Stirn, on the actual figures of short selling. You might refer back to some of this later. Accommodate your time to the Senators'.

Mr. STIRN. True enough. Before I develop that further, though, Mr. Morgan, I should like to point out the 1930 monthly high and low prices of the hundred most active stocks on the New York Stock Exchange, together with the volume of sales per month and per year, the average number of sales per year, the number of shares listed on the exchange, and the rate of commission on shares, illustrating the profits accruing from this source of income on the exchange.

Mr. MORGAN. Have you made a tabulation of that?

Mr. STIRN. I have made that, and if the chairman suggests, I shall incorporate that in the record and not proceed with that.

The CHAIRMAN. Without objection it is so ordered.

(The tabulation presented by Mr. Stirn is here printed in the record in full, facing this page.)

1930 monthly high and low prices of 100 most active New York Stock Exchange stocks together with volume of sales per month and per year, the average number of sales per year, the number of shares listed on the exchange or the number of shares outstanding or not pertaining to the number authorized, and the rate of commission on shares illustrating the profits accruing from this source of income on the exchange

Stock	Sales per year	Shares outstanding in 1930 common stock	1929 sales	Volume of sales per month—1930											
				January	February	March	April	May	June	July	August	September	October	November	December
<i>Radio Corporation</i> .....	37,058,890	15,150,690	36,661,200	2,368,000	3,103,100	3,609,200	5,913,600	4,644,500	3,713,500	2,726,100	2,458,400	2,488,900	2,119,000	1,584,050	1,123,820
<i>General Electric</i> .....	21,865,890	28,845,938	7,108,065	1,711,400	1,801,700	2,106,100	2,760,700	2,168,900	2,598,280	1,475,700	886,700	1,503,900	2,820,600	1,545,200	1,425,750
<i>United States Steel</i> .....	20,521,930	8,703,000	19,202,000	2,178,900	1,907,500	1,993,900	2,139,400	1,707,700	1,883,600	1,018,600	1,109,100	1,064,776	2,503,000	432,800	1,490,840
<i>United Corporation</i> .....	21,550,804	12,332,515	14,259,070	1,100,500	2,253,000	1,333,300	3,190,500	1,361,300	3,239,200	1,400,000	854,100	1,120,000	1,350,600	1,092,200	1,171,010
<i>General Motors</i> .....	19,930,119	43,500,000	30,443,100	1,117,900	816,100	2,256,200	2,302,900	1,829,300	1,656,200	1,489,300	1,100,200	1,703,500	1,791,300	1,295,200	1,230,120
<i>RKO, Class A</i> .....	18,350,412	2,377,515	6,574,000	1,395,000	839,000	1,254,800	3,001,200	2,009,200	1,541,200	1,353,300	1,166,100	1,329,100	1,671,900	1,024,900	596,708
<i>Warner Bros.</i> .....	16,182,408	3,769,025	4,189,200	1,366,100	3,216,800	2,108,500	1,320,000	1,579,600	1,971,200	1,100,600	1,830,600	1,337,700	1,117,100	739,700	836,530
<i>Vanadium</i> .....	16,835,730	1,947,700	144,100	144,100	312,200	639,200	715,600	1,029,200	1,912,900	2,360,200	2,378,900	1,769,400	1,337,900	743,200	1,260,425
<i>International Nickel</i> .....	14,534,625	14,584,025	14,366,600	951,800	625,700	1,495,300	1,051,200	830,800	1,364,600	525,100	890,000	1,742,200	1,709,618	1,135,200	1,011,560
<i>Standard Oil of New Jersey</i> .....	14,459,125	25,418,968	14,240,600	303,500	440,700	1,264,550	2,537,100	2,122,400	1,621,400	1,411,500	844,800	743,000	833,200	646,300	798,700
<i>Fox Film A</i> .....	13,568,150	2,425,660	4,191,180	3,259,300	1,305,900	784,300	2,013,500	839,500	577,200	347,600	478,500	640,700	980,400	873,300	101,495
<i>American Can</i> .....	12,951,595	2,473,998	13,870,600	837,400	816,200	724,500	681,200	687,700	979,000	839,700	910,600	1,253,800	1,753,000	1,216,000	1,290,400
<i>United Aircraft &amp; Transportation</i> .....	10,280,695	2,082,190	5,815,800	538,800	496,600	834,100	1,638,200	1,293,900	903,200	789,000	994,600	1,196,600	1,065,600	587,800	676,638
<i>Grigsby Grunow</i> .....	12,763,725	1,093,230	403,300	252,800	333,600	1,084,800	635,300	882,500	377,100	249,700	519,900	150,809	89,300	109,846	109,846
<i>New York</i> .....	12,089,500	1,997,897	1,541,300	403,300	252,800	269,900	889,150	591,950	630,350	372,970	159,750	390,100	131,950	52,420	72,310
<i>Chicago</i> .....	11,015,038	1,876,838	6,200,000	454,800	447,700	1,221,300	1,682,500	1,449,600	1,521,400	862,200	471,300	857,100	871,100	536,600	408,200
<i>Electric Power &amp; Light</i> .....	10,719,125	2,586,515	6,782,200	531,900	723,800	775,300	810,600	797,600	816,700	626,700	513,100	876,300	1,854,300	1,079,925	974,150
<i>Westinghouse</i> .....	10,783,800	6,642,232	9,991,100	655,900	964,200	764,600	1,400,800	883,700	716,500	313,300	317,100	372,200	539,154	436,375	705,481
<i>International Telephone</i> .....	10,592,975	2,566,920	18,092,900	749,900	889,400	892,400	2,032,600	738,600	763,500	317,500	269,200	361,200	327,700	262,600	319,340
<i>Columbia Graphophone</i> .....	8,473,326	17,973,023	5,208,900	137,700	480,900	332,900	724,300	367,900	507,400	613,900	371,200	294,700	607,500	494,475	587,193
<i>American Telephone</i> .....	8,070,310	194,471	300,600	116,100	63,000	186,200	225,200	384,900	256,100	327,300	536,000	427,100	545,000	343,300	607,075
<i>Case, J. I.</i> .....	7,940,930	6,958,333	6,335,460	442,900	289,000	430,200	1,014,000	416,800	387,600	104,800	120,100	319,400	273,500	260,200	445,300
<i>Kreuger &amp; Toll</i> .....	7,923,940	184,492	283,800	37,100	68,700	89,700	63,400	78,600	88,200	129,800	88,200	187,000	132,000	154,600	432,600
<i>Auburn</i> .....	5,923,524	3,041,526	3,020,880	144,700	145,300	220,750	156,350	111,375	223,450	217,150	195,900	212,800	398,350	414,530	434,450
<i>Insull Utilities Invest. (Inc.)</i> .....	5,520,068	519,145	519,145	186,200	186,200	25,850	630,850	846,800	914,200	375,353	194,450	283,450	671,150	565,000	495,480
<i>Chicago</i> .....	4,063,125	153,090	144,650	144,650	144,650	145,000	98,700	99,400	86,500	38,300	26,300	43,800	56,000	77,700	777,295
<i>New York</i> .....	4,018,075	153,090	144,650	144,650	144,650	145,000	98,700	99,400	86,500	38,300	26,300	43,800	56,000	77,700	777,295
<i>Chicago</i> .....	2,458,700	153,090	144,650	144,650	144,650	145,000	98,700	99,400	86,500	38,300	26,300	43,800	56,000	77,700	777,295
<i>New York</i> .....	4,514,400	153,090	144,650	144,650	144,650	145,000	98,700	99,400	86,500	38,300	26,300	43,800	56,000	77,700	777,295

<sup>1</sup> When issued.

<sup>2</sup> New.

<sup>3</sup> Certificates.

January to July, 1930 monthly high and low prices of 24 most active stocks listed on the New York Stock Exchange; the monthly and total volume of sales in 1930; volume of sales in 1929; and the number of shares outstanding in 1930

[The corporations in italics indicate an interlocking directorate]

Stock	Sales in 1929	Sales in 1930	Number of shares outstanding in 1930	January	February	March	April	May	June	July	August	September	October	November	December
<i>Radio corporation</i> .....	\$36,661,200	\$37,058,890	15,150,690	12,368,000	3,103,100	3,609,200	5,913,600	4,644,500	3,713,500	2,726,100	2,458,400	2,488,900	2,119,000	1,584,050	1,123,820
<i>General electric</i> .....	7,108,065	21,865,890	28,845,938	1,711,400	1,801,700	2,106,100	2,760,700	2,168,900	2,598,280	1,475,700	886,700	1,503,900	2,820,600	1,545,200	1,425,750
<i>United States Steel</i> .....	19,202,000	21,550,804	8,703,000	2,178,900	1,907,500	1,993,900	2,139,400	1,707,700	1,883,600	1,018,600	1,109,100	1,064,776	2,503,000	432,800	1,490,840
<i>United Corporation</i> .....	14,259,070	20,416,498	12,332,515	1,100,500	2,253,000	1,333,300	3,190,500	1,361,300	3,239,200	1,400,000	854,100	1,120,000	1,350,600	1,062,200	1,171,010
<i>General Motors</i> .....	30,443,100	19,930,425	43,500,000	1,117,900	816,100	2,256,200	2,302,900	1,829,300	1,656,200	1,489,300	1,100,200	1,703,500	1,791,300	1,295,200	1,230,120
<i>Radio-Keith-Orpheum Corporation</i> .....	6,574,000	18,897,908	2,377,515	1,395,000	839,000	254,800	5,001,200	2,009,200	1,541,200	1,353,300	1,166,100	1,329,100	1,671,900	1,024,900	596,708
				1,366,100	3,216,800	2,108,500	1,320,000	1,579,600	1,971,200	1,100,600	1,830,600	1,337,700	1,117,100	739,700	836,530
<i>Warner Bros.</i> .....	4,189,200	16,835,730	3,769,025	144,100	312,200	639,200	715,600	1,029,200	1,912,900	2,360,200	2,378,900	1,769,400	1,337,900	743,200	1,260,425
<i>Vanadium</i> .....	1,947,700	14,534,625	378,387	951,800	625,700	1,495,300	1,051,200	830,800	1,364,600	525,100	890,000	1,742,200	1,709,618	1,135,200	1,011,560
<i>International Nickel</i> .....	14,366,600	13,808,093	14,584,025	303,500	440,700	1,264,550	2,537,100	2,122,400	1,621,400	1,411,500	844,800	743,000	833,200	646,300	798,700
<i>Standard Oil of New Jersey</i> .....	14,240,600	13,489,975	25,418,968	3,259,300	1,305,900	784,300	2,013,500	839,500	577,200	347,600	478,500	640,700	980,400	873,300	101,495
<i>Fox Film</i> .....	4,191,180	12,951,595	2,425,660	837,400	816,200	724,500	681,200	687,700	979,000	939,700	910,600	1,253,800	1,753,000	1,216,000	1,290,400
<i>American Can</i> .....	13,870,600	12,763,725	2,473,998	538,800	496,600	834,100	1,638,200	1,293,900	903,200	789,000	994,600	1,196,600	1,065,600	587,800	676,638
<i>United Aircraft &amp; Transportation</i> .....	5,815,800	11,093,230	2,082,190	403,300	252,800	333,600	1,084,800	1,635,300	682,500	377,100	249,700	519,900	150,809	89,300	109,846
<i>Grigsby-Grunow</i> .....	1,541,300	11,007,336	1,997,897	454,800	447,700	221,300	1,810,600	1,449,600	1,521,400	862,200	471,300	857,100	871,100	536,600	408,200
<i>Electric Power &amp; Light</i> .....	6,200,000	10,719,125	1,876,838	531,900	723,800	775,300	810,600	797,600	816,700	626,700	513,100	876,300	1,854,300	1,079,925	974,150
<i>Westinghouse Electric</i> .....	6,782,200	10,592,975	2,586,515	655,900	964,200	764,600	1,400,800	883,700	716,500	313,300	317,100	372,200	539,154	436,375	705,481
<i>International Telephone</i> .....	9,991,100	8,473,326	6,642,232	749,900	889,400	892,400	2,032,600	738,600	763,500	317,100	269,200	361,200	327,700	262,600	319,340
<i>Columbia Graphophone</i> .....	18,092,900	7,940,930	2,566,920	137,700	480,900	332,900	724,300	367,900	507,400	613,900	371,200	294,700	607,500	494,475	587,193
<i>American Telephone Co.</i> .....	5,208,900	5,923,524	17,973,023	116,100	63,000	186,200	225,200	384,900	256,100	327,300	536,000	427,100	545,000	343,300	607,075
<i>Case, J. I. threshing machinery</i> .....	300,600	4,033,125	194,471	442,900	289,000	430,200	1,014,000	416,800	387,800	104,800	120,100	319,400	273,500	260,200	445,300
<i>Kreuger &amp; Toll</i> .....	6,335,460	2,458,700	6,958,333	37,100	68,700	89,700	63,400	78,600	88,200	129,800	88,200	187,000	132,000	154,600	432,600
<i>Auburn Automobile</i> .....	283,800	1,512,800	184,496												
ON THE CHICAGO STOCK EXCHANGE															
<i>Insull Utilities Investment (Inc.)</i> .....	3,020,880	2,875,105	3,041,526	144,700	145,300	220,750	156,350	111,375	223,450	217,150	195,900	212,800	398,350	414,530	434,450
<i>Middle West Utilities</i> .....	3,533,605	7,345,183	13,447,900	446,550	995,350	25,850	630,850	846,800	914,200	375,353	194,450	283,450	671,150	565,777	495,480

1930 monthly high and low prices of 24 most active stocks—N. Y. Stock Exchange

	January		February		March		April		May		June		July	
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Radio.....	45¼	34	49¼	36¼	55	46	69	53¼	65	41¼	55¼	32½	46	33
General Electric.....	66½	60	78¾	70¾	86	74	96	83	88	73	84	62	74¼	64½
United States Steel.....	184	166	189¼	176	195	177¾	198¾	180¼	183¾	165¾	173¾	151	170	153¼
United Corporation.....	37	30	40	35	44	37¾	52	43	50	37	45¾	28	35	29
General Motors.....	43½	37	45	41	51	41¾	54¼	45	52	42½	52	38	41	38
Radio-Keith-Orpheum.....	30¾	19	32¼	27	38	30¾	50	35	47½	35½	43¾	27¼	35	26
Warner Bros.....	54	38	67½	53	80¼	66¾	80¼	67¾	74¼	58½	66	38½	46	35½
Vanadium.....	69¾	49	73	62	124½	89¼	145¼	103	133	87	124	66½	106	75
International Nickel.....	38	31	40½	36	43½	38	44	34	35¼	30¼	33	21	26	22¾
Standard Oil of New Jersey.....	66	62	65½	63	75	58	84	74	84	71	80	60	75	63
Fox Film.....	34	16	39½	26¼	36	26½	57	33	55¼	44¼	54	37½	49	38½
American Can.....	131	117¼	146	128	154	138	156½	142	148½	127	148	108¼	135	112½
United Air & Transportation.....	53	43½	62	44	89	60¾	99	79¼	88¼	57¾	78	43	63	48¼
Grigsby Grunow.....	22½	12½	18¼	14¼	19¾	15	27¾	17	26½	17¼	28	14½	16½	12½
Electric Power & Light.....	60	49¼	67¼	57	93	67	103½	87	97	71	95½	58½	76	63¼
Westinghouse Electric.....	163	140	188¼	160	195	181	201½	180¾	187	160	183½	124¼	162	127¼
International Telephone.....	75	62	73¾	64¼	70½	62½	77	67	75	58¼	64	40	49	42¼
Columbia Graphophone.....	31	24	31	27	31	26¼	57	28	34	23¼	28	16	20¼	15
American Telephone.....	226¼	216	241	224	266	235	274¼	246	251¾	224½	232½	200	221	203¼
Case, J. I.....	249	192¼	246¾	216¼	294¾	236	262¾	260¼	352½	276	288¼	156½	203½	160
Kreuger & Toll.....	28½	23¾	31	28	31¼	28½	55	31	33¾	30	32¼	25¼	29	24½
Auburn.....		175½					263¾							
Insull Utilities Investment (Inc.).....		63¾		70½										
Middle West Utilities.....		22					38¼							

<sup>1</sup> Among the stocks cited the precipitate rise of the Radio-Keith stock in the spring of 1930 was exceeded by one stock only, namely, Fox Film.

Mr. STIRN. I have prepared, also, statistics giving the date of the number of short sales, the daily number of short sales, the weekly number of all short and long sales, and the high and low prices for the day from September 18 to November 30, inclusive, 1931, and the weekly number of all sales and daily prices from November 30 to December 29, 1931, with reference to the Radio-Keith-Orpheum Corporation.

Senator GORE. Was that when this raid was on, Mr. Stirn?

Mr. STIRN. Yes, sir; when the public headlines of the press announced these bear raidings, without having any evidence to substantiate those headlines at that time.

Senator BLAINE. Is that Schedule D, page 4?

Mr. STIRN. Schedule E, page 11, and Schedule F, page 16, of that blue book, Senator.

Senator BLAINE. Go ahead.

Senator FLETCHER. Does that give the daily transactions in the stock?

Mr. STIRN. Yes. I am also showing terms of percentages as compared to all sales. The data from which I shall base my statement is that of the New York Stock Exchange statistics in regard to short selling, May 25 to November 30, 1931. It may perhaps be a strange coincidence of history that this report by President Whitney's stock exchange, which President Whitney says shows that short selling does not contribute to the depreciation of prices on the Exchange, says it was genuine liquidation, and I believe that he made that statement under oath.

Now, with particular reference to the case of Radio-Keith-Orpheum Corporation—

(Thereafter the witness submitted to the committee clerk, for the record, a telegram containing statistics from his memorandum used at the hearing as to the daily short position of Radio-Keith-Orpheum class A stock for a part of September and for October and November, 1931, as follows:)

MILWAUKEE, WIS., August 1, 1932.

JULIAN W. BLOUNT.

*Senate Committee on Banking and Currency:*

Figures given at hearing from my memorandum of New York Stock Exchange statistics in regard to short selling, May 25 to November 30, 1931, as follows:

*Total Radio-Keith-Orpheum Corporation class A*

Shares listed as of Oct. 28, 1931..... 2, 379, 725  
Total shares (same stock) listed as of Nov. 30, 1931..... 2, 380, 291

DAILY SHORT POSITION

	Number of shares		Number of shares
Sept. 21, 1931.....	10, 400	Oct. 7, 1931.....	8, 000
Sept. 22, 1931.....	5, 000	Oct. 8, 1931.....	8, 500
Sept. 23, 1931.....	4, 400	Oct. 9, 1931.....	6, 800
Sept. 24, 1931.....	4, 700	Oct. 13, 1931.....	5, 500
Sept. 25, 1931.....	4, 905	Oct. 14, 1931.....	6, 900
Sept. 28, 1931.....	3, 900	Oct. 15, 1931.....	11, 800
Sept. 29, 1931.....	8, 100	Oct. 16, 1931.....	11, 900
Sept. 30, 1931.....	6, 800	Oct. 19, 1931.....	13, 400
Oct. 1, 1931.....	7, 100	Oct. 20, 1931.....	12, 900
Oct. 2, 1931.....	5, 200	Oct. 21, 1931.....	6, 400
Oct. 5, 1931.....	6, 800	Oct. 22, 1931.....	13, 800
Oct. 6, 1931.....	11, 100	Oct. 23, 1931.....	13, 400

Total shares (same stock) listed as of Nov. 30, 1931..... 2, 380, 291

## DAILY SHORT POSITION—Continued

	Number of shares		Number of shares
Oct. 26, 1931.....	15,000	Nov. 12, 1931.....	143,693
Oct. 27, 1931.....	30,300	Nov. 13, 1931.....	119,669
Oct. 28, 1931.....	62,300	Nov. 16, 1931.....	100,691
Oct. 29, 1931.....	88,126	Nov. 17, 1931.....	82,679
Oct. 30, 1931.....	89,891	Nov. 18, 1931.....	63,827
Nov. 2, 1931.....	109,436	Nov. 19, 1931.....	41,586
Nov. 4, 1931.....	148,681	Nov. 20, 1931.....	42,003
Nov. 5, 1931.....	148,852	Nov. 23, 1931.....	23,942
Nov. 6, 1931.....	137,226	Nov. 24, 1931.....	22,285
Nov. 9, 1931.....	130,456	Nov. 25, 1931.....	21,840
Nov. 10, 1931.....	135,001	Nov. 27, 1931.....	20,560
Nov. 11, 1931.....	138,436	Nov. 30, 1931.....	18,885

The CHAIRMAN. You may proceed, Mr. Stirn.

Mr. STIRN. Now, as Mr. Morgan, former attorney general of the State of Wisconsin, has shown that on November 5 a directors' meeting was held by the Radio-Keith-Orpheum Corporation, and the developments at that meeting were outlined to you by Mr. Morgan. Therefore I shall not need to go further into that.

Mr. MORGAN. Do you like at this time to make President Brown's letter to the stockholders a part of your testimony?

Mr. STIRN. I would.

The CHAIRMAN. All right; if there is no objection, it is so ordered.

(The document here presented by the witness is printed in the record in full, as follows:)

## OFFERING OF DEBENTURES AND COMMON STOCK

NEW YORK, N. Y., November 10, 1931.

*To the Stockholders:*

The board of directors of the corporation has determined subject to the adoption by the stockholders of the proposed amendments to the certificate of incorporation of the corporation described in the accompanying letter, to issue \$11,600,000, principal amount of 10-year 6 per cent gold debentures of the corporation and 1,740,000 shares of the common stock of the corporation, and to offer to each holder of the present class A stock of the corporation, the right to subscribe, upon the terms and conditions hereinafter stated, before 3 p. m., eastern standard time, December 21, 1931, for \$5 principal amount of said debentures and three-fourths of a share of common stock for each share of class A stock registered in the name of such holder on the books of the corporation at 3 p. m., eastern standard time, November 23, 1931, at a price equal to the principal amount of the debentures subscribed for with accrued interest. Fifty per cent of said subscription price must be paid at the time of subscription, and the remainder will be payable on call, on 30 days' notice, but may be prepaid at the option of the subscriber.

The debentures will be dated December 1, 1931, will mature December 1, 1941, will bear interest from December 1, 1931, at the rate of 6 per cent per annum, payable semiannually on June 1 and December 1 of each year, and will be issued in coupon form in the denominations of \$100, \$500, and \$1,000, with privilege of registration as to principal. A sinking fund will be provided payable \$550,000 on December 1, 1934, \$550,000 on December 1, 1935, \$1,100,000 on December 1, 1936, \$1,650,000 on December 1, 1937, \$1,650,000 on December 1, 1938, \$2,000,000 on December 1, 1939, \$2,000,000 on December 1, 1940, and \$2,100,000 on December 1, 1941. Debentures purchased by the corporation may be credited at their principal amount against such sinking-fund requirements, and cash paid to the sinking fund is to be applied, at the option of the corporation, to the purchase of debentures in the market or by tender or

otherwise, or to the redemption of debentures. The debentures will be redeemable at the option of the corporation, on 60 days' notice, as a whole or in part, on any interest payment date, at their principal amount and accrued interest.

So long as any of the secured 6 per cent gold notes issued under the collateral note indenture, dated as of July 1, 1931, to Chemical Bank & Trust Co., as trustee, are outstanding, the debentures will be secured by a lien (subject to the lien of said secured gold notes), on all property now pledged or hereafter validly pledged under said collateral note indenture, and on such other property, if any, as may be specified in the indenture under which the debentures are to be issued, equally and ratably with such other outstanding unsecured indebtedness of the corporation maturing on or before January 1, 1933, not exceeding in the aggregate \$1,548,000, as may be given such lien in consideration of an extension of the maturity thereof, in whole or in part. Upon the payment of said secured 6 per cent gold notes, the lien securing the debentures will terminate, but the indenture under which the debentures will be issued will provide that, so long as any of the debentures shall be outstanding, the corporation will not create any lien on any of its property, whether now owned or hereafter acquired (other than liens on after acquired property, created in connection with the acquisition thereof, as will be provided in the indenture) unless effective provision be made that the debentures shall be secured by such lien ratably with any other indebtedness secured thereby.

The price of subscription is an amount equal to the principal amount of the debentures subscribed for, payable in New York funds together with accrued interest to December 21, 1931, on such debentures. At least 50 per cent of the subscription price, together with such accrued interest, must be paid at the time of the exercise of the warrants. The balance of the subscription price will be payable (with interest at the rate of 6 per cent per annum) on the call of the corporation in one or more installments, on 30 days' notice. Any subscriber may at any time make full payment of the subscription price. Against payment of 50 per cent of the subscription price, transferable certificates will be issued entitling the holder thereof to receive on December 1, 1934, or earlier at the option of the corporation, provided full payment has been made, the principal amount of debentures and the number of shares of common stock subscribed for by him. Such certificate will contain appropriate provisions for sale and/or forfeiture of any debentures and common stock in respect of which default is made in payment the balance of the subscription price. Debentures and stock certificates will not be delivered prior to full payment, or prior to December 1, 1934, unless the corporation elects to make delivery earlier.

As stated in the accompanying letter, Radio Corporation of America has agreed to purchase, on the same terms, such of the debentures and common stock offered to stockholders as are not subscribed for by stockholders or their assignees. Application will be made in due course to list on the New York Stock Exchange the debentures, the common stock, and the certificates to be delivered in the first instance.

Warrants will be issued to each holder of class A stock as soon as possible after November 23, 1931, specifying the amounts of debentures and common stock in respect of which each stockholder is entitled to a subscription privilege. Unless otherwise requested by the stockholder, warrants will be mailed to the address on file with the transfer agent of the corporation.

RADIO-KEITH-ORPHEUM CORPORATION,  
By HIRAM S. BROWN, *President*

**RADIO-KEITH-ORPHEUM CORPORATION—NOTICE OF EXTRAORDINARY MEETING OF STOCKHOLDERS TO BE HELD ON DECEMBER 10, 1931**

Notice is hereby given that an extraordinary meeting of the stockholders of Radio-Keith-Orpheum Corporation, a Maryland corporation, will be held at the principal office of the corporation, First National Bank Building, Baltimore, Md., on December 10, 1931, at 11 o'clock in the forenoon for the following purposes:

(1) To consider and take action upon the proposal to amend the certificate of incorporation of the corporation to accomplish the following objects:

(a) The reduction of the number of outstanding shares of class A stock of the corporation to one-fourth of the number of such shares outstanding prior to such reduction, so that each holder of one share of class A stock will hold one-fourth share of class A stock;

(b) The reduction of the number of outstanding shares of class B stock of the corporation from 500,000 to none;

(c) The reclassification of the authorized class A stock, issued and unissued, and the authorized class B stock of the corporation into common stock, so that the authorized stock, issued and unissued, of the corporation shall be 4,500,000 shares of common stock without nominal or par value; and

(d) The amendment of article 6 of the certificate of incorporation of the corporation, so that said article 6 shall be in substantially the form set out in Schedule A hereto.

(2) To approve all action taken or authorized by the board of directors or the executive committee of the board of directors of the corporation since the last meeting of the stockholders of the corporation; and

(3) To consider and take action upon all matters incidental to the foregoing purposes and upon such other business as may properly come before said meeting or any adjournment or adjournments thereof.

The proposed amendments of the certificate of incorporation of the corporation were declared advisable by the board of directors of the corporation by resolutions adopted at a meeting held November 5, 1931.

The date fixed by the board of directors as the record date for the determination of the stockholders entitled to notice of, and to vote at, said meeting is November 23, 1931. Accordingly, only stockholders of record at the close of business on that date will be entitled to notice of, and to vote, at said meeting.

By order of the board of directors.

WM. MALLARD, *Secretary*.

Dated New York, N. Y., November 10, 1931.

**NOTE.**—If you do not expect to be present at the meeting, please date and sign the accompanying proxy and return it in the inclosed stamped envelope, addressed to the secretary of the corporation, No. 1564 Broadway, New York, N. Y.

#### SCHEDULE A

#### PROPOSED AMENDED ARTICLE 6 OF THE CERTIFICATE OF INCORPORATION OF THE CORPORATION

**Sixth:** The total amount of authorized capital stock of the corporation is 4,500,000 shares without nominal or par value, all of which are common stock.

Dividends upon the stock of the corporation shall be payable only out of surplus or net profits applicable to dividends as determined by the board of directors, and only as and when declared by the board of directors. The board of directors shall have power to fix, from time to time, the amount to be reserved out of surplus or net profits of the corporation as working capital, or for any other lawful purpose, and to determine whether any, and if any what part, of the surplus or net profits of the corporation shall be declared as dividends and paid to its stockholders; and all rights of holders of stock of the corporation in respect of dividends shall be subject to the power of the board of directors so to do.

At all elections of directors of the corporation, each holder of record of the common stock shall be entitled to as many votes, given in person or by proxy, as shall equal the number of his shares of stock multiplied by the number of directors to be elected and such stockholder may cast all such votes for a single director or may distribute them among the number to be voted for, or among any two or more of them, as he may see fit.

No holder of stock of the corporation shall, as such stockholder, have any right to purchase or subscribe for any shares of the capital stock of the corporation which it may issue or sell, whether out of the number of shares authorized by the certificate of incorporation of the corporation as originally filed or by any amendment thereof or out of shares of the capital stock of the corporation acquired by it after the issue thereof; nor shall any holder of stock of the corporation, as such stockholder, have any right to purchase or subscribe for any obligation which the corporation may issue or sell that shall be convertible into, or exchangeable for, any shares of the capital stock of the corporation, or to which shall be attached or appertain any warrant or warrants or other instrument or instruments that shall confer upon the holder or owner of such warrant the right to subscribe for, or purchase from the corporation, any shares of its capital stock.

At any time and from time to time any of the provisions of this certificate of incorporation may be amended, altered, or repealed and other provisions

authorized by the statutes of the State of Maryland at the time in force may be added or inserted in the manner at the time prescribed by said statutes, and all rights at any time conferred upon the stockholders of the corporation by its certificate of incorporation are granted subject to the provisions of this paragraph.

Senator FLETCHER. What year was that you have?

Mr. STIRN. This date is 1931. What I have been dealing with before is 1930. In other words, I am trying to make this analysis as all-embracing as possible.

Mr. MORGAN. Getting right down now to what the Senator asked for a moment ago?

Mr. STIRN. Precisely.

Now, it is an established fact that where boards of directors have in mind a conversion and a confiscation of stock as outlined to you by Mr. Morgan, the result of such a vote by the board of directors, when it becomes public, will create a panic and a fear in the minds of investors, encouraging them to sell their holdings at panic prices. There are many instances which can be established from the invoices of former investors, former class A stockholders, of the Radio-Keith-Orpheum Corporation, who bought that stock at \$50 a share on April 24, 1930, who by this intensive short-selling campaign, were so stricken by fear and panic that they disposed of these holdings at 75 cents a share.

Senator TOWNSEND. Who carried on this short selling? Was it at the direction of the company?

Mr. STIRN. I have not access to the books, as you well know. Only your accountants have that. But I know who the specialist is in that stock. That is J. M. Meehan & Co.

Senator BLAINE. M. J. Meehan.

Mr. STIRN. J. M. Meehan.

Senator BLAINE. Michael J. Meehan.

Mr. STIRN. He is the key witness.

Senator BLAINE. Yes.

Mr. STIRN. As I understand, he took the next ship to Europe, under plea of ill health.

Now, I have referred to this directors' meeting by which a conversion, a confiscation of stock, was authorized, by this meeting.

Senator BLAINE. That is where the directors decided to reorganize the corporation?

Mr. STIRN. Exactly. That is, if a stockholder who, say, had 100 shares of stock, and did not give to the company \$5 for every share owned and thereby obtain a debenture bond at par, at 100, if he did not give the company on the plea of impending insolvency and upon the plea of receivership, this \$5 per share, he lost three-fourths of his prior holdings.

In other words, if he could not subscribe—and this stock was timed at such a time when people could not afford to contribute this \$5 assessment to the corporation—he would lose three-fourths of his holdings. That is in November, 1930, when the panic on the exchange caused so much concern in Washington.

Now, it is an established fact that when such a vote is made and when the plea of insolvency is put before the press, then the inevitable result on the price of the stock will be downward. Anticipating this, perhaps, there was an intensive short-selling campaign

prior to the date of the publication of this vote made by the directors of the Radio-Keith-Orpheum Corporation, as announced by Hiram Brown's letter to stockholders on November 10. These dates are important to bear in mind: November 10, when this debenture—

Senator GORE. Is this 1930?

Mr. STERN. November 10, 1931. This debenture plan was made public by Hiram Brown's letter. On November 5 was held the directors' meeting. Two or three weeks prior to November 5 an intensive short-selling campaign was waged against this stock.

Senator FLETCHER. What was the price of the stock on November 5?

Mr. STERN. First I would like to show you the increase of the number of short sales and then I shall answer your question, if I may.

The CHAIRMAN. Mr. Stock would like to ask one question.

Mr. STERN. Gladly.

Mr. STOCK. Mr. Stern, do you know whether or not a corporation or its directors have a right to assess the stockholders of a solvent corporation that is not in receivership against their will?

Mr. STERN. Not under the laws of Maryland.

Mr. MORGAN. No; if it is a nonassessable stock.

Mr. STOCK. Well, of course, a nonassessable stock may be assessable in time of receivership.

The CHAIRMAN. You are asking a legal question.

Mr. STOCK. I want the thing brought out so that it is on the record. This corporation was not in receivership?

Mr. STERN. It was not in receivership.

Mr. STOCK. And this in effect was an involuntary assessment?

Mr. STERN. Absolutely.

Senator GORE. Have you had the legal question investigated, Mr. Stern?

Mr. STERN. I think Mr. Morgan can answer that better than I, as I am not in training.

The CHAIRMAN. I will say, Senator Gore, that before you came in when we started the hearing, Mr. Morgan, former attorney general of Wisconsin, came in here with Mr. Stern as his attorney, and he made an opening statement of this case.

Senator GORE. I have wondered a good deal about that.

The CHAIRMAN. And I should feel that you are perfectly at liberty to ask Mr. Morgan any question you want to.

Mr. MORGAN. What was it, Senator?

Senator GORE. Did you put it in the record? I do not know much about this Radio-Keith reorganization except in a general way, but I have known about it to wonder a good deal whether it was a legal transaction or not, whether they had a right to do what they did.

Mr. MORGAN. Senator Gore, the corporation was organized under the laws of the State of Maryland, and therefore neither the statutes of Maryland nor the charter of the corporation permitted a decrease of the capital stock. It was a nonassessable stock and it could not legally be assessed.

Senator GORE. It looked like confiscation to me, what little I know about it.

Mr. MORGAN. It was a so-called reorganization for the purpose of assessing a nonassessable stock. It was absolutely illegal, and a gentleman named Cookman Boyd at Baltimore brought a suit to enjoin him, and that is a part of the record of the circuit court of Baltimore County, and I would now suggest that this committee subpoena Mr. J. Cookman Boyd, who can give you the inside of that deal and the legality or illegality of it.

Senator GORE. What became of the suit?

Mr. MORGAN. The suit was settled by the purchase of Cookman Boyd's stock.

Senator GORE. It looked like confiscation to me, what little I know of it.

Mr. MORGAN. It was, precisely, three-quarters of their holdings. It was the alternative of confiscation or pay on the assessment.

The CHAIRMAN. All right, the witness may proceed.

Mr. STIRN. Of course my investigation upon short selling on the New York Stock Exchange is limited to the report as published by the New York Stock Exchange. That is, the exchange authorities have seen fit only to allow to become public figures from May 25, 1931, to November 30, 1931.

In the beginning of this report, which I have here, the first figures from May 25 to September 18 are based on a weekly basis. In other words, not upon a daily basis. From September 18, 1931, to November 30, 1931, they come on a daily basis.

This stock exchange report, moreover, does not include sales against the box, which statisticians and economists of most universities will testify are actual short sales, because an actual covering movement has to be made before the close of the deal, but which President Whitney maintains is not an actual bona fide short sale.

In addition, this New York Stock Exchange report—

The CHAIRMAN (interposing). I think Mr. Whitney said that it was "not necessarily a short sale."

Mr. MORGAN. That is it.

The CHAIRMAN. I think that is his testimony.

Mr. STIRN. But he does not incorporate that in the figures.

The CHAIRMAN. And then he admits inferentially that under certain conditions it might be a short sale.

Mr. STIRN. Perhaps, but he does not include it in the figures. If he included the various types of short sales, these figures would become colossal, Mr. Chairman.

However, for the purpose of Radio-Keith-Orpheum which comes between these dates the incidence of this practically proves the fact that an intensive short-selling campaign was waged against the price of the stock of the Radio-Keith-Orpheum Corporation.

From May 25 to October 21 a normal average number of short sales against the stock of the Radio-Keith-Orpheum Corporation was between 6,300 shares short sales and 10,000 short sales.

Senator BLAINE. That is short position?

Mr. STIRN. Short position at the close of these days.

Senator BLAINE. According to the records of the stock exchange?

Mr. STIRN. Yes. Thank you for that correction, Senator. Perhaps I should say "short position" instead of "short sales."

The inference from these figures is, being a normal development, that this activity was maintained by professional traders on the New

York Stock Exchange and the various branches all over the country and by margin traders. But since October 21 to November 5, that is, approaching the date of this directors' meeting, astounding figures appear.

Senator FLETCHER. Now you are going back to '30.

Mr. STIRN. 1931. I don't know why I always should say 1930. 1931. Thank you for the correction.

On October 21, 1931, there were 6,400 short positions as shown by President Whitney's own report. On October 22, as this secret directors' meeting approaches, there being no public news of this directors' meeting held on November 5 until November 10, which is the date of Hiram Brown's letter to stockholders, we see a gradual increase in the number of short sales.

On October 22, 1931, the short position amounted to 13,800 shares, an increase of over a hundred per cent over night.

On October 23, the position was still maintained at 13,400 shares.

On October 26 the short position was 15,000 shares.

On October 27 it was 30,300 shares; on October 28, 62,300 shares. And, mind you, there was no public news of this.

Senator GORE. How many shares outstanding of this, Mr. Stirn?

Mr. STIRN. Two million three hundred and seventy-nine thousand. But these are short positions, so one really can not compare this position with the number of shares outstanding.

Mr. MORGAN. Two million three hundred and eighty-eight thousand two hundred and ninety-eight shares seems to be exact.

Mr. STIRN. Likewise, on October 28, there was a jump to 62,300 shares. On October 29 another increase to 88,126 shares. On October 30 the short position was 89,891 shares. On November 2 it was 109,436 shares.

Senator GORE. Could you give the prices of this?

Mr. STIRN. I shall; yes; and I shall show you that the chart shows just opposite Mr. Whitney's testimony, which tried to prove that short selling stabilized stock prices.

Mr. MORGAN. At the close of October 21 it was 9, and it has been brought down to November 4 to 6.

Mr. STIRN. The effect of this short-selling campaign was bringing down the stock. Offhand I think \$12 to 75 cents, which is a tremendous depreciation.

Senator GORE. What was the price on October 31?

Mr. STIRN. Permit me first, Senator, to complete this increase, and then I shall answer your question.

Senator GORE. All right.

Mr. STIRN. That meeting was November 4 or 5.

Mr. MORGAN. November 5.

Mr. STIRN. On November 2, three days before this meeting, the short position was increased to the great amount of 109,436 shares, which is a tremendous increase ratio to the number of shares outstanding, if you compare it to other stocks.

On November 4 the short position jumped from 109,436 shares to 148,681 shares.

On November 5, the date of the directors' meeting, the short position stood at 148,852 shares.

The history of the volume of short sales after this meeting shows a gradual tapering off, with the exception of November 11, one day

after Hiram Brown's letter became public. But, inasmuch as that letter was mailed, it could not become public until two or three days thereafter.

Senator BLAINE. Mr. Stirn, what was the total sales of stock of the R-K-O on November 4? Have you got that figure?

Mr. STIRN. Oh, yes. I can give you the figure for the week including November 4. Perhaps that is what you have reference to.

Senator BLAINE. Yes.

Senator GORE. Could you parallel these short sales over this period with the total sales?

Mr. STIRN. Precisely. I have those figures here, Senator.

Senator GORE. Paralleling the short with the long sales?

Mr. STIRN. Precisely. Because a short sale is also registered on the tape of the New York Stock Exchange.

To answer your question, Senator Fletcher, the figures show that there were 166,300 sales of all types, long and short sales, on November 6th. The short position on November 6, the same date, was 137,226, nearly a hundred per cent of total sales.

In other words, if a person were standing in the brokerage office of any broker's house in the country and watching the tape, practically every figure that came over that tape was a short sale.

Mr. MORGAN. Can you give us November 4, Mr. Stirn, the day before the directors' meeting?

Mr. STIRN. The total number of sales?

Mr. MORGAN. Yes.

Mr. STIRN. No, I can not, because these sales are only on a weekly basis, but the Financial Commercial Chronicle and the New York Times might give that data.

Mr. MORGAN. What is the preceding date if you can give it?

Senator BLAINE. Per week?

Mr. STIRN. All right; October 30, on which date I show that the short position amounted to 89,891 shares.

Senator BLAINE. And the total?

Mr. STIRN. The total number of shares on that date was 94,900 shares. In other words, the short position or number of sales contributed practically a hundred per cent.

Senator BLAINE. Less than 5,000 shares not short—"not necessarily short"?

Mr. STIRN. Taking out the long sales, practically all of it amounted to short sales. These figures, therefore, are not insignificant, as President Whitney of the New York Stock Exchange would have the country to believe.

After November 10, when the public became aware of this directors' meeting, the short position was gradually reduced. That is, a covering movement by those people on the inside, this inferentially being an inside rigging operation, it was purely manipulation, a covering movement ensued thereafter.

Senator BLAINE. Mr. Stirn, have you given the peak short position?

Mr. STIRN. Yes; the peak short position, strangely enough, coincides with the date of this directors' meeting, which is November 5, and the short position on that date was 148,852 shares, which is a great, colossal figure for a corporation having so few number of shares outstanding.

On November 11, one day after Hiram Brown's letter to stockholders, there were 138,486 shares sold. On November 12, before this letter could have reached the stockholders all over the country, having been mailed in the regular fashion, there were 143,693 shares. On November 13 a great tapering off in the number of short positions is noticed.

Mr. MORGAN. On November 13, when there was public knowledge of the proposed reorganization or proposed assessments, can you give the total sales? There is a discrepancy there I want you to bring out.

Mr. STIRN. Yes. November 13, the date which you have reference to, the short position was 119,669 shares. The total position of all sales was 150,400.

Mr. MORGAN. The general sales by the public, in other words?

Mr. STIRN. Probably; and you will see the ratio widening between the short position and the total position.

Mr. MORGAN. Yes. Liquidation increasing there?

Mr. STIRN. Precisely. That is a definite pointing to liquidation. On November 16 the short position stood at 100,691. On November 17 the short position—

Mr. MORGAN. Give Senator Gore the figure at which it was sold on November 16.

Mr. STIRN. On November 16 the stock, Senator Gore, sold at  $21\frac{1}{2}$ , the low there. When this operation for the short-selling campaign started the stock sold at eleven or twelve dollars a share, which I think, strangely enough, contradicts the statements by President Whitney, and his addresses as made in the country.

On November 18 the short position stood at 63,827 shares. On November 17 another decrease, the short position standing at 41,586 shares. On November 20 the short position stood at 42,003 shares.

Mr. MORGAN. And the total?

Mr. STIRN. The total number of shares on that date stood at 161,900 shares. Therefore showing an increase in liquidation, that the stock was selling, actual liquidation, and a covering movement maintained probably by insiders who had inside information of this directors' meeting in advance.

Senator GORE. The theory is that this conspiracy broke the price of the stock before they went to cover and they covered at a low price.

Mr. STIRN. That is the clear inference.

November 23 the short position showed another tremendous decrease to 23,943 shares. On November 24 the short position stood at 22,285 shares; on November 25 at 21,840 shares; on November 27 the short position stood at 20,560 shares; and on November 30, the date upon which President Whitney closes his report—

Mr. MORGAN (interposing). Pardon me—did the total sales exceed the short sales on November 12, sir?

Mr. STIRN. Yes; they did. On November 30, to repeat, the short position stood at 18,885 shares.

Senator FLETCHER. What was the price then?

Mr. STIRN. The price then was  $15\frac{1}{8}$ , Senator, a decrease, showing that short sales do contribute to a downward trend in prices.

Mr. STOCK. If you want the short positions after November 30, you have them right there.

Mr. STIRN. I am not acquainted with this.

Senator BLAINE. We have that in the record.

Mr. STIRN. I would ask the Chairman then to incorporate that in the record without remarks by myself.

Senator BLAINE. We might just have the expert state the short sales there, Mr. Chairman.

The CHAIRMAN. There being no objection, it is agreed that Mr. Stock, the expert for the committee, go ahead and finish his statement.

Mr. MORGAN. Mr. Stirn has this for once a week.

Senator BLAINE. Let the expert just state that. We will complete that here and save a lot of time.

Mr. STOCK. The short position on December 1 was 19,442; on December 8, 1931, was 17,592; on December 15, 8,682; on December 22, 9,036; on December 28, 8,356; on December 29, zero.

Senator GORE. Zero on the 29th?

Mr. MORGAN. What was it on December 28?

Mr. STOCK. On December 28, 8,356, and zero on December 29.

The CHAIRMAN. What year was that?

Mr. STOCK. 1931.

Senator FLETCHER. Then it was taken off the list?

Mr. STOCK. It dropped from the list on December 29, 1931.

Mr. STIRN. No longer quoted.

Senator BLAINE. Now, Mr. Stirn, before you go on to another subject there is one thing I do not believe has been made clear to the committee. R. C. A., that is the Radio Corporation of America, acquired the R. K. O., as I understand it. Is that correct?

Mr. STIRN. Yes.

Senator BLAINE. After all this wrecking, why, the R. C. A. became the owner of the assets of R.-K.-O.?

Mr. STIRN. Precisely.

Senator BLAINE. Can you state to the committee the amount that the R. C. A. paid for the control of the R.-K.-O.?

Mr. STIRN. By this plan voted on by the directors of the Radio-Keith-Orpheum Corporation on November 5, 1931, this refinancing plan, which assessed the stockholder \$5 per share, and which he could not produce, his producing power evidently having decreased by these operations of short selling, he could not therefore describe to these debentures which had been paid at par.

Senator BLAINE. Leave out all those explanations, because that is going to confuse us. Just go on with your \$5 assessment.

Mr. STIRN. Yes.

Senator BLAINE. Not as to its consequences; but I want to find out how much the R. C. A. paid.

Mr. STIRN. They paid the price of the debentures, \$11,500,000. In other words, they obtained this corporation for this price.

Mr. MORGAN. All except just small amounts that might have been retained by stockholders?

Mr. STIRN. Exactly. That I think will stand on the record.

Senator BLAINE. And the assets of the company—

Senator BROOKHART (interposing). What was the date this was acquired?

Mr. STIRN. Well, as Hiram Brown stated, there was to be a meeting of all stockholders December 10, if that is the correct date, Mr. Morgan?

Mr. MORGAN. It was adjourned.

Mr. STIRN. That was adjourned from time to time by lack of proxies. There was a minority committee organized in New York, I think, under the leadership of Mrs. Caroline Cole, an outstanding stockholder, who since this time has become a director, by what methods I do not know how, but she is now a director in the Radio-Keith-Orpheum Corporation.

Mr. MORGAN. The stockholders ratified that action on December 14, 1931.

Mr. STIRN. In other words, her tremendous resources having been dissipated, she having Class A stock, which strategically controlled the corporation in the matter of future dividends.

Senator GORE. Did Mr. Morgan explain that about your answer to Senator Blaine, that they acquired this through the acquisition of these debentures for \$11,000,000? I do not quite understand that.

Mr. MORGAN. The total clear assets were \$67,000,000.

Senator BLAINE. According to the letter that President Brown of the R.-K.-O. sent out on November 10, 1931, stating the assets and liabilities, the gross assets in round numbers were \$127,000,000. The net assets, the actual value of the company, was \$67,000,000 in round numbers.

Mr. STIRN. Yes.

Senator BLAINE. And that was acquired by the R. C. A. for \$11,500,000 in round numbers, less the few shares that outside parties—

Mr. STIRN. Contributed.

Senator BLAINE. Contributed.

Mr. STIRN. There are some instances where people subscribed to this plan; that is, buying these debentures at par, 100, a \$1,000 bond for \$1,000, which is now worth around 46 cents on the dollar. That would therefore make the price by which R. C. A. controlled this corporation less than \$11,500,000—cheaper perhaps; I don't know the figure; perhaps \$10,000,000.

Senator BLAINE. As it figures out after the wrecking began?

Mr. STIRN. Yes.

Senator BLAINE. The R. C. A. purchased whatever interest they have, which is largely the total interest, the assets of the company, for about one-sixth of what the actual assets were according to the statement of the president of the company on November 10.

Mr. MORGAN. You mean clear assets, Senator Blaine?

Senator BLAINE. Clear assets. Is that correct?

Mr. STIRN. Correct.

Senator FLETCHER. Do you know what the assets consisted of?

Mr. STIRN. Perhaps Mr. Morgan can answer that, Senator.

Mr. MORGAN. There was a financial statement here which was inclosed in Hiram Brown's letter.

Mr. STIRN. Perhaps I may say in passing that a similar operation was indulged in by people who are now interested in Radio City, N. Y. They indulged in a similar operation in the control of the Masabe Mines in northern Michigan, which they bought, I think,

for something like several millions of dollars and sold it to the United States Steel Corporation for about 10 times the amount.

Senator GORE. Sold to what corporation?

Mr. STIRN. The United States Steel Corporation.

Mr. MORGAN. Mr. Stirn, may I interrupt you to ask you if you have a copy—

Mr. STIRN (interposing). Then previous to that, according to Ida Tarbell's book, the control of the oil well interests in Oklahoma in the late 80's is also comparable to this rigging operation indulged in practically by the same parties. In other words, their history is practically the same for over 40 years.

Senator GORE. Was this an oil transaction, you say? You mentioned some oil transaction.

Mr. STIRN. Yes; and condemned by Ida Tarbell's book. That is, if I may mention names, the early Rockefellers, John D. and his brother William, came in control of the oil wells in Oklahoma and east Texas fields.

Mr. MORGAN. Mr. Stirn, have you in your files another copy of the financial statement that accompanies President Brown's letter? My copy seems to have disappeared.

Mr. STIRN. I think you have it, Mr. Morgan.

Mr. MORGAN. I had one.

Mr. STIRN. Perhaps it is here on the table somewhere.

Mr. MORGAN. We have been looking for it and unable to find it, and I wanted to know if you had another one in your files?

Mr. STIRN. No.

Senator FLETCHER. You don't know but what these might have been, as one witness testified about the assets of a corporation when I asked him what the assets were and he said, "Simply an idea"?

The CHAIRMAN. The Senator wants to know what the assets of the company consisted of. Were they theaters, property?

Mr. STIRN. Theaters, property; yes, sites, and also good will and controlling these motion-picture actresses.

Senator FLETCHER. Contracts?

Mr. STIRN. Their contracts, yes; which in the instance of Warner Bros., having reference to Constance Bennett, was worth around the figure of—what was the figure, Senator Blaine? \$25,000 a week salary? I don't know the figures. I stand corrected on that point.

Senator FLETCHER. I think that would be classed as a liability rather than an asset.

Mr. STIRN. Not if you see the profits made by reason of the pictures produced by these actresses. They actually produce dividends.

The CHAIRMAN. Do you care to tell something about your own experience, your ownership and your own profit or gain? You were interested in the company yourself, were you not, as a stockholder?

Mr. STIRN. Yes; I was.

The CHAIRMAN. You are one of the stockholders?

Mr. STIRN. Yes. Well, taking my own case, if you wish to know about it, and that has nothing to do with these figures, because these figures are history and my case therefore can not be put down as prejudiced, because no true story ever told was better than the figures and the records.

Having my case in mind, and others in my family, who, having held thousands of shares of this corporation, having bought most

of them in the peak of April, 1930, between \$46 and \$50 a share, which in the instance of my father-in-law, Doctor Collins, Rufus G. Collins, of Chicago, who, panic-struck by reason of this short selling campaign, sold his total amount, equalling several thousands of shares, at 75 cents on the dollars.

The CHAIRMAN. At 75 cents on the dollar, or 75 cents a share?

Mr. STIRN. 75 cents a share. That is concrete evidence which can be proved from invoices held by the brokers.

My experience is that I still hold the Class A shares, believing firmly as I do in their worth.

Senator BLAINE. And now, Mr. Stirn, with these short sales, of course I can clearly see how it would have been possible for a pool to have conducted the short selling and made enough out of the short selling to have been paid the \$5 assessment.

Mr. STIRN. Precisely. I think that answers the question.

Senator BLAINE. Now, of course, you know nothing about that—you could not?

Mr. STIRN. No, not having access to the brokers' accounts. That could only be determined, Senator, by subpoenaing Meehan, who knows the whole story.

Senator FLETCHER. How would you have stood if you had paid your \$5 per share?

Mr. STIRN. That would have meant in my instance an assessment of \$5 per share on the 1,234 shares which I owned at that time an assessment of \$6,000. That is, subscribing to these debentures at par. And then had I done that, that \$6,000 would have been worth probably less than \$3,000 now, because these debentures I believe are quoted around 46 cents a share.

Senator BLAINE. But that would not have preserved your stockholder's interest in the 1,200 shares?

Mr. STIRN. Precisely not, because I would be holding new common stock, which to my mind is worthless.

Senator FLETCHER. So you would have lost your stock and half of the assessment?

Mr. STIRN. On the bonds as well as on the depreciation on the business, which is good business.

Senator BLAINE. Which is good bad business, good poor business.

Mr. MORGAN. This seems to be one lamb who developed teeth, Senator Norbeck.

The CHAIRMAN. Yes; most of them hate to admit the facts. We get a great many anonymous letters.

Mr. STIRN. Irrespective of my interest in the company, having learned first of this company, that it was to be bulled to about \$150 to \$250 a share by the personal manipulation of Mr. Hiram Brown, since resigned. That was the source of my material.

Mr. STOCK. Mr. Stirn, you say the debentures are now selling at 40 cents on the dollar?

Mr. STIRN. To my best knowledge at this time.

Mr. STOCK. Do you know whether or not they are being depressed at the present time by the company so that the company may buy in cheap and get rid of them?

Mr. STIRN. That may be evidence from the price quoted.

The CHAIRMAN. Go ahead. Proceed with your statement.

Mr. STIRN. I have finished as far as the statistics on the short selling campaign are concerned. Any further questions I shall gladly welcome. I should like, however, to examine a method which President Whitney used in demonstrating, as he said, that short sales do not depress the market.

Senator FLETCHER. What I want to make clear is——

Mr. STIRN (interposing). By reference to a chart I have prepared.

Senator FLETCHER. What I want to make clear is that after this meeting of the directors and the course determined on as to what they were to do in order to save the company, ostensibly——

Mr. STIRN. That was the plea.

Senator FLETCHER. Yes. Then they devised this plan to assess the stock \$5 a share. The experience is, and the result has been, that those who put up the \$5 would simply have lost about one-half of it and not saved anything for it?

Mr. STIRN. Precisely.

Senator FLETCHER. So that that plan would not have worked if everybody had put up the \$5, would it?

Mr. STIRN. I think that is a good analysis of the whole situation, Senator, and I think the figures conclusively point to that analysis perhaps.

Senator BLAINE. Now, Mr. Stirn, this is just for my own personal information and may be of no value. The Radio-Keith-Orpheum was a company that had bought out the Keith Theaters and moving-picture houses.

Mr. STIRN. Keith-Albee and the Orpheum Circuit; yes.

Senator BLAINE. Those were scattered all over the country?

Mr. STIRN. Those were subsidiaries; yes.

Senator BLAINE. What other large moving-picture organization is there? What is the name?

Mr. STIRN. You mean some other motion-picture concerns, like Fox and Warner Bros. and Paramount?

Senator BLAINE. That owns the Fox theaters?

Mr. STIRN. You mean, who owns the Fox theaters?

Senator BLAINE. Yes. That is a separate company, is it?

Mr. STIRN. That is a separate company, has no relation to Radio-Keith. Your investigation respecting Warner Bros. has proven that insiders, who are Warner Bros. themselves, indulged in a campaign, leading the public to believe in the worth of this stock by sending out letters at that time interesting people in being stockholders, myself included, as I had Warner Bros. stock at 16, now worth about seven-eighths of a dollar.

The CHAIRMAN. How many cents, so we will know what it means?

Mr. STIRN. Seven-eighths is about 87½ cents, but I will not refer to that, as it has nothing to do with Radio-Keith-Orpheum.

Mr. MORGAN. Mr. Stirn, have you put into the record or testified to the bull movement in this stock earlier?

Mr. STIRN. No, sir. The bull movement in this stock, in raising it upwards, is just as outstanding, Mr. Chairman, as the depreciation which I have outlined to you, which was undertaken in the latter months of 1931.

Senator BROOKHART. Do you know if they had brokers buying and selling both at the same time?

Mr. STIRN. Probably, as a hedging operation; yes.

Senator BLAINE. Do you have a graph of the Radio-Keith-Orpheum?

Mr. STIRN. Yes, sir; showing its entire stock history.

Senator BLAINE. Have you two of those?

Mr. STIRN. They are alike; yes.

Mr. MORGAN. Mr. Stirn, the reporter has marked your graph of the Radio-Keith-Orpheum Corporation class A stock "Committee Exhibit 1, June 10, 1932." Will you tell us briefly what that is?

Mr. STIRN. This Exhibit 1 shows the weekly volume of sales of Radio-Keith-Orpheum, that is, of the class A stock, and the weekly swings in prices from the time of the inception of the company, that is, on the New York Curb, the stock being at that time on a when-issued basis, from October 31, 1928, to December 29, 1931, at the time the stock was taken off the list of the New York Stock Exchange. In other words, the weekly price swings are noted here and also the volume of weekly sales.

Mr. MORGAN. Mr. Chairman, may the committee's Exhibit 1 now be received as a part of the witness's testimony?

The CHAIRMAN. If there are no objections, it will be received and printed in the record. It is so ordered.

(The chart marked "Committee Exhibit 1, 6-10-32 MDR," submitted by Mr. Stirn, is here printed in the record in full, facing this page.)

Senator GORE. Mr. Stirn, there have been other instances of rapid depreciation in stock prices. Have you indicated some of those?

Mr. STIRN. You mean if there were other cases in addition to those that I mentioned?

Senator GORE. Yes.

Mr. STIRN. I mentioned the most outstanding cases. In the last 300 years of financial history I believe I have enumerated the most outstanding seven or eight stock manipulations.

Senator GORE. They are on the record?

Mr. STIRN. They are in the record; yes, sir.

Senator GORE. Now, there is one little error, Mr. Stirn, I call your attention to. You referred to John Law as being connected with the South Sea bubble in England.

Mr. STIRN. Yes.

Senator GORE. He was connected with the Mississippi bubble or Mississippi scheme in France.

Mr. STIRN. Also the South Sea Co.

Senator GORE. Well, it occurred the same year, but one was in France and one in England. You check that.

Mr. STIRN. That was under Walpole's ministry.

Senator GORE. Yes. I am very familiar with it, very familiar with it.

Senator FLETCHER. Now, you are going on to give something about that bull campaign whereby they first built up the prices and made the market?

Mr. STIRN. Yes.

The CHAIRMAN. And then began to bear it.

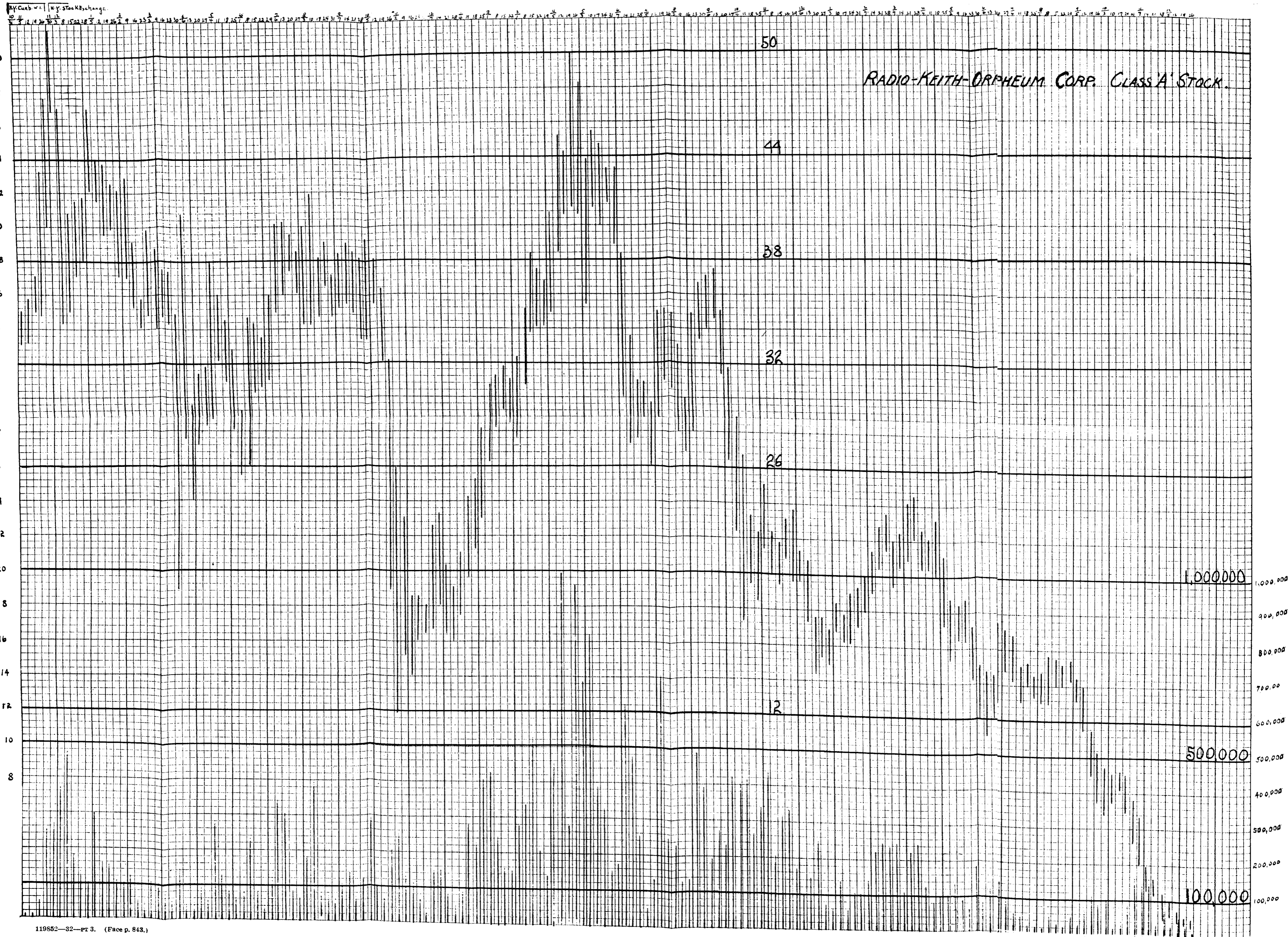
Mr. STOCK. Mr. Stirn, did you have occasion in connection with your investigation to look into the question of publicity? Do you know whether or not during the time this stock was declining and

1928

1929

1930

1931



the short selling taking place there were statements given out by the company or on behalf of the company that would frighten stockholders?

Mr. STIRN. Well, on the bull side I could answer your question. The Wall Street Journal at this period, through one of the editors, as mentioned by Representative LaGuardia, made many statements on the worth of Radio-Keith.

Mr. STOCK. Was that in connection with Radio City?

Mr. STIRN. No, not with Radio City. And many statements appeared in the Financial and Commercial Chronicle at the time of its bull rise, and many other financial sheets.

Mr. STOCK. Do you know what the nature of the newspaper comment was while this stock was declining? Have you looked into that?

Mr. STIRN. Well, I remember a specific newspaper report, that of the Milwaukee Sentinel, I think of the date of just after the publication of this directors' meeting, November 5. I do not know the exact date.

Mr. MORGAN. Was there an absence of news appearing on the worth of this stock during the period of the intensive short drive from October 22 to November 10?

Mr. STIRN. There was no news.

Mr. MORGAN. There was no news?

Mr. STIRN. No news.

Mr. MORGAN. Not until President Brown's letter became public property?

Mr. STIRN. Not until President Brown's letter became public property.

Senator BLAINE. You were about to tell about the Milwaukee Sentinel.

Mr. STIRN. The Milwaukee Sentinel I think in the week beginning November 10 made a comment in its financial section—I stand corrected on that date, however—that Radio Corporation received through this stock rigging operation full control of Radio-Keith-Orpheum Corporation.

Senator BLAINE. Of course, that was not made for the purpose of depressing the price?

Mr. STIRN. No; it really amounted to a criticism.

Senator BLAINE. That was a legitimate article?

Mr. STIRN. That was a legitimate criticism, yes.

Senator BLAINE. Mr. Stock does not refer to that type of advertising.

Mr. MORGAN. He has answered the question, there was no news.

Mr. STIRN. No; there was no news. I think what affected the minds of stockholders was the seeing of the constant depreciation of the price of the stock.

The CHAIRMAN. In other words, boosting articles ceased to appear?

Mr. STIRN. That is it.

The CHAIRMAN. And how many days elapsed between this secret meeting of the directors and President Brown's letter?

Mr. STIRN. Five days, Senator.

The CHAIRMAN. After that the stock got nothing but market quotations and had a steady downward trend, is that it?

Mr. STIRN. Precisely; that is the answer.

Mr. MORGAN. It was five days between the date of the meeting and the date of President Brown's letter. We do not know what date that was mailed.

The CHAIRMAN. What happened in those intervening five days immediately following the secret meeting?

Mr. MORGAN. Very heavy sales.

Mr. STIRN. Heavy sales, genuine liquidation, and a short covering movement.

The CHAIRMAN. A genuine liquidation?

Mr. STIRN. Yes.

The CHAIRMAN. How do you know there was not bear raiding, or can you tell?

Mr. MORGAN. Very heavy sales during those days.

The CHAIRMAN. Don't use the term "genuine liquidation" when it was bear raiding.

Mr. STIRN. Yes; very heavy sales were made, and immediately after November 12 then you began to have a large proportion of total sales to short positions.

Senator BLAINE. Which probably was liquidation?

Mr. MORGAN. Probably liquidation, a result of the publication of President Brown's letter.

Senator BLAINE. Now you have indented the short sales graph. Have you got a long sales graph?

Mr. STIRN. You have a graph, by the way, which I would like to incorporate in the records, because that graph is as outstanding as this. That is Appendix D, or E.

The CHAIRMAN. You are referring to a graph that has already been shown to the committee previous to the hearing?

Mr. STIRN. Yes.

The CHAIRMAN. By whom, on what occasion?

Mr. STIRN. As I have outlined—

The CHAIRMAN. In connection with which stocks?

Mr. MORGAN. Who furnished that graph?

Mr. STIRN. That graph was made by myself.

The CHAIRMAN. Well, we want some man to identify it so that we can get it in the record here to tally with the description.

Mr. STIRN. You have the graph.

The CHAIRMAN. You say it is already in the record of the committee hearing?

Mr. STIRN. Yes.

The CHAIRMAN. How is it designated in the record?

Mr. STIRN. I believe by Appendix E or D.

Senator BLAINE. Of what?

Mr. STIRN. Which I previously sent to the committee.

The CHAIRMAN. In connection with what stock?

Mr. STIRN. With short-selling campaign waged against the Radio-Keith-Orpheum stock. There is only one graph in existence and that was sent to the committee.

Mr. MORGAN. Is this it?

Mr. STIRN. Yes; that is the graph.

Senator BLAINE. Identify that now.

Mr. STIRN. That is a very important graph which shows the relation of the volume of short sales to the price structure of the company.

Senator BLAINE. Yes. That is graph identified as Exhibit 2 now?

Mr. STIRN. Yes; Exhibit 2.

(Graph designated "Committee Exhibit 2 6-10-32 MDR," submitted by Mr. Stirn, is here printed in the record in full, facing this page.)

Senator BLAINE. Just describe it.

Mr. STIRN. Exhibit 2 in the form of a graph demonstrates an intensive short-selling campaign; that is, from the point of volume of short sales; that is, the number of the short positions in the period of September 20 to November 30, 1930, inclusive. It also shows a chart line demonstrating the fall of prices corresponding and being coincident to the great volume of short sales waged against the price of the stocks of this company. That, I believe, answers your question, Senator?

Senator BLAINE. Yes. Now, will you let us have that and we will have that introduced in evidence the same as the others?

Senator BROOKHART (presiding). Does that graph also show the full promotions?

Mr. STIRN. No; that is Exhibit 1, Senator Brookhart.

Mr. STOCK. Mr. Stirn, at the time that this short-selling activity began to increase—

Mr. STIRN. Yes.

Mr. STOCK. And the stock began to decline—

Mr. STIRN. Yes.

Mr. STOCK. Was there any news concerning the intrinsic position of the company, something that had not existed prior thereto, some new development that was unfavorable that might have accounted for this decline in the stock, other than the short selling that you know of?

Mr. STIRN. Well, the news was that of President Hiram Brown's letter.

Mr. STOCK. No; I mean before that. I mean when your stock was declining in October prior to the directors' meeting, when the short selling was increasing.

Mr. STIRN. I think President Brown was interviewed from time to time.

Mr. STOCK. What was the nature of the statements he made concerning the company?

Mr. STIRN. And the nature of his statements tended to throw an unfavorable light on the financial operations of the company.

Mr. STIRN. And the nature of his statements tended to throw an unfavorable light on the financial operations of the company.

Mr. STOCK. That is the thing I referred to before when I asked you if there was any publicity during this period of an unfavorable nature.

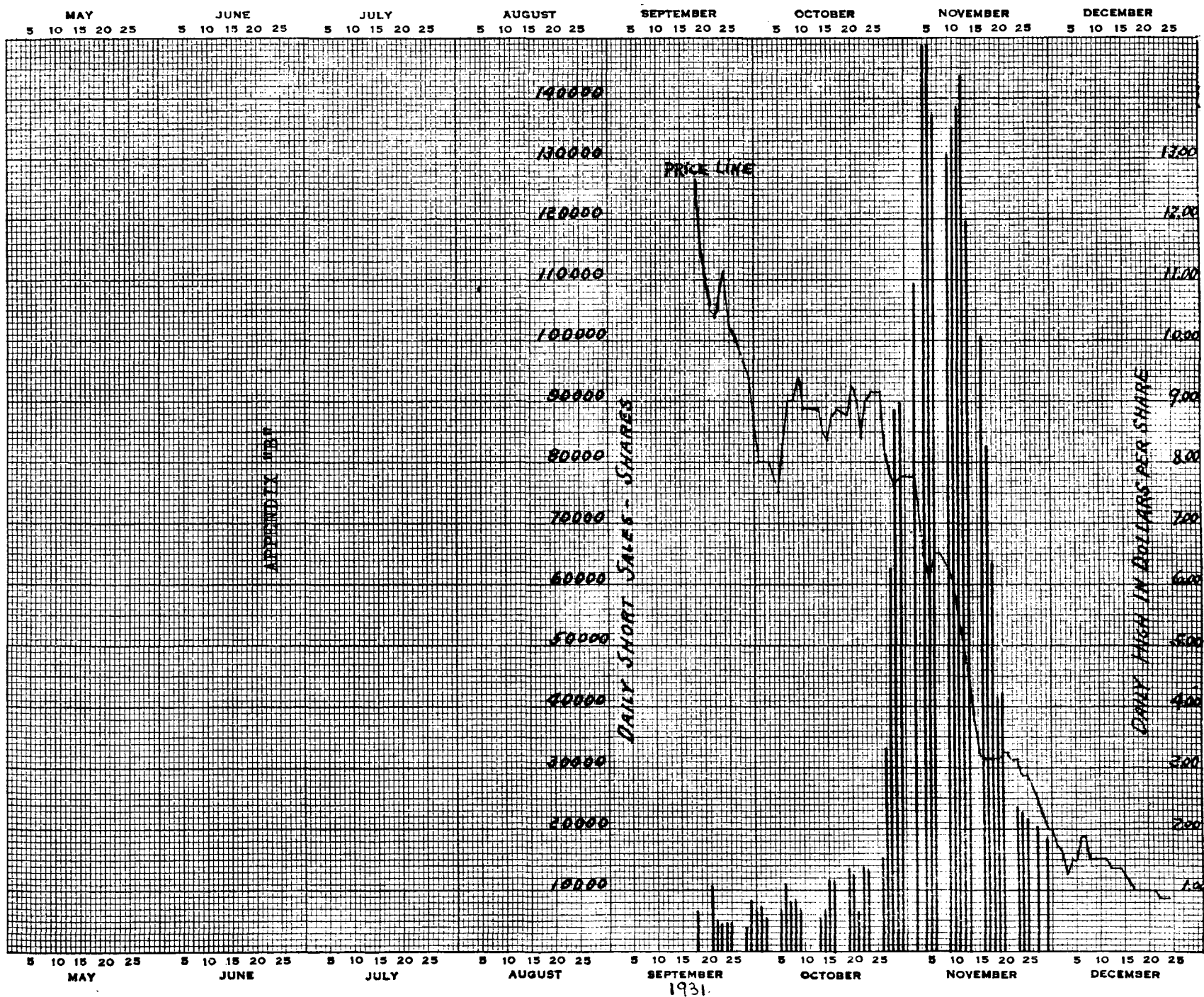
Mr. STIRN. Yes.

Mr. STOCK. That accompanied the decline of the stock.

Mr. STIRN. Perhaps I did not recognize the question or the thing you had in mind.

Mr. STOCK. Now, the statements made by President Brown at that time that he was interviewed, did they concern any new condition

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that had not existed prior thereto, or was it a statement that he made about something that always existed? Do you see what I am getting at?

Mr. STIRN. Yes. Specifically, I think Vice President Cahane's statement—I am not familiar with the date of that—he made a statement saying that since May, 1931, the company had difficulty in renewing its loans with the New York banks.

Mr. MORGAN. Was that statement made otherwise than in the directors' meeting?

Mr. STIRN. Yes; that was made otherwise than in a directors' meeting, but offhand I do not know the date of that statement. I have seen records of that statement in the news section of the Financial Commercial Chronicle, and the date of that can be verified by looking at the index of this journal.

Mr. STOCK. Do you know what banks held these loans of the R-K-O?

Mr. STIRN. Mr. Morgan can answer the question. He has that.

Mr. MORGAN. That is in that exhibit which the other official reporter has.

The CHAIRMAN. Let him go ahead and state the case here.

Mr. MORGAN. State the facts.

The CHAIRMAN. State it briefly what your trouble was. There is no need to make this long.

Mr. MORGAN. Don't go into detail on that. Just give the gist of it. Tell what your experience was, Mr. Stirn, on that, without putting the letters in in full. Use the letters to refresh your recollection of the dates.

Mr. STIRN. The National Bank of Commerce of Milwaukee, Wis.

The CHAIRMAN. Now, he is getting something in the record there that doesn't mean a thing.

Mr. MORGAN. Which held these shares of stock?

Mr. STIRN. Which held these shares of stock.

Mr. MORGAN. At least that loan that you had made.

Mr. STIRN. Yes. I had sent these stocks, 1,234 shares of them, to be transferred to my name.

Mr. MORGAN. At your request?

Mr. STIRN. At my request. These shares were sent to the Empire Trust Co., New York City. The bank specifically requested the transfer of these shares from the brokerage name to the name of Ernest W. Stirn. This request was not fulfilled. The Empire Trust Co., instead of acceding to the request of the National Bank of Commerce, sent these shares to the Commercial National Bank & Trust Co. of New York, who returned not the 1,234 shares in the name of Ernest W. Stirn, as requested by the National Bank of Commerce, but instead of that sent one-fourth of the amount. That is, around 300 shares, thereby recognizing this assessment and its confiscation of stock before it actually was voted upon by the stockholders of the company.

Senator BLAINE. What were those dates?

Mr. STIRN. These dates are significant. These stocks were not finally returned to the bank until January 6, 1931.

Mr. MORGAN. When did the bank send them in?

Mr. STIRN. The bank sent them in December 7, 1930.

The CHAIRMAN. The point is this, they did not return your old stocks?

Mr. STIRN. No.

The CHAIRMAN. But returned new certificates of one-fourth the amount?

Mr. STIRN. That is it precisely.

The CHAIRMAN. Notwithstanding your instructions?

Mr. STIRN. Precisely.

Mr. MORGAN. That is, new common stock?

Mr. STIRN. Yes; new common stock. The National Bank of Commerce demanded new certificates in my name or the return of the old class A stock.

Mr. MORGAN. Or the the return of the original certificates?

Mr. STIRN. And in its letter it even said, upon the advice of counsel, it demanded this action.

Mr. MORGAN. Just a minute, Mr. Stirn. Let me clarify that for you. Is it a fact that the National Bank of Commerce, having originally sent your certificates, which were Street certificates——

Mr. STIRN. Yes.

Mr. MORGAN. In to the transfer agent——

Mr. STIRN. Yes.

Mr. MORGAN. With a request that they issue new certificates in your name——

Mr. STIRN. Yes.

Mr. MORGAN. That being done on December 7——

Mr. STIRN. Yes.

Mr. MORGAN. Prior to the ratification of this plan of the stockholders——

Mr. STIRN. Yes.

Mr. MORGAN. Did the transfer agent then send back to the bank one-quarter of the number of shares in the form of new common stock, which the bank refused?

Mr. STIRN. It did.

Mr. MORGAN. And the bank then returned that new stock with a request either that they issue old class A stock in your name or that they return the original certificates?

Mr. STIRN. Precisely.

Mr. MORGAN. And when did the bank succeed in getting your certificates back?

Mr. STIRN. You mean you want the date on which the bank obtained the certificates finally?

Mr. MORGAN. Yes.

Mr. STIRN. That is, they obtained the old class A stock?

Mr. MORGAN. Yes.

Mr. STIRN. That I think will be obtained if this should be incorporated in the record. There are so many letters here and I can not verify them.

Mr. MORGAN. Look and see if you can find it.

Senator BLAINE. December 7, 1931, was before the stockholders had ratified this new reorganization?

Mr. STERN. Precisely.

Senator BLAINE. Now, let me inquire here: Those stockholders, I assume, were represented largely by proxies. I don't know as you know. Do you know whether they were proxies or actually voting and present?

Mr. STERN. Well, they sent their proxies; yes.

Senator BLAINE. You were not present, were you?

Mr. STERN. No; I was not. I did not send any in.

Senator BLAINE. You can not testify to that.

Mr. MORGAN. The bill of complaint of J. Cookman Boyd filed in the circuit court of Baltimore City, Md., against the Radio-Keith-Orpheum Corporation alleged under oath that [reading]:

At a meeting recessed from time to time but finally held on December 14, 1931, an overwhelming number of shares of stock were alleged to have been voted in favor of said amendment and the votes were cast through alleged proxies.

And further alleging [continuing reading]:

That proxies for a large amount of stock were illegally cast in favor of the proposed amendment; that proxies illegally in form cast many votes in favor of said amendment; that proxies given for the voting of stock against the said amendment were actually and fraudulently cast in favor of said amendment; that persons wrongfully held proxies and unlawfully voted same in favor of said amendments; that not all of the outstanding class A stock was voted in favor of said proposed amendments, as required by the law of this State, nor were all votes cast at said meeting in favor of said proposed amendments, but votes of stockholders were in fact cast against same.

That in consequence said amendment mentioned herein as Amendment 3 was not adopted, and the alleged action on Amendments 1 and 2 was likewise contrary to law and consequently null and void, but that notwithstanding, said amendments were thereupon arbitrarily declared to have been adopted by the said B. B. Kahane.

Were those allegations contained in Mr. Boyd's bill filed in the circuit court of Baltimore City?

Mr. STERN. To the best of my knowledge, yes, sir.

Mr. MORGAN. You have a copy of that bill?

Mr. STERN. Yes. Now in answer to the previous question as to the final date on which the Commercial National Bank & Trust Co. of New York sent back the original certificates of class A stock 1,234 shares, as demanded by the National Bank of Commerce upon the advice of counsel, that date was January 26, 1932, nearly two months after the original request, and it does not take two months to transfer certificates from a brokerage name to the name of the investor. In other words, they were fearful of people still owning the old class A stock, which, according to the charter and the law of Maryland, as I am legally advised by Mr. Morgan, these stocks have priority in matter of dividends whenever and wherever they should be declared.

Senator BLAINE. Mr. Chairman, I am going to suggest that the reporter identify the papers I have just handed him as Exhibit 3. If Attorney Morgan has no objection I would like to have the amended complaint offered in evidence and left with the committee. I am not asking that it be put in the reporter's record, but I would like to have it for the use of the committee and its experts.

The CHAIRMAN. If there are no objections, it will be so ordered.

(The document presented by Senator Blaine was designated "Committee Exhibit 3, 6-10-32, MDR," and the same is here printed in the record in full, as follows:)

In the circuit court of Baltimore City. *J. Cookman Boyd v. Radio-Keith-Orpheum Corporation*

AMENDED BILL OF COMPLAINT

To the honorable, THE JUDGE OF SAID COURT:

The amended bill of complaint of J. Cookman Boyd respectfully represents:

1. That the defendant, Radio-Keith-Orpheum Corporation, is a corporation duly organized under the laws of the State of Maryland.

2. That said corporation has an authorized capital stock of 4,500,000 shares without nominal or par value, divided into 4,000,000 shares of class A stock and 500,000 shares of class B stock, of which about 2,400,000 shares of class A stock and 500,000 shares of class B stock have been issued, and that said corporation is engaged in the business of owning, leasing, and managing theaters and other places of amusement, and in the manufacture, production, sale, buying, leasing, and showing of all kinds of still and motion pictures, as well as in broadcasting news, music, etc.

3. That under its charter said corporation is authorized to borrow or raise money for any of the purposes of the corporation without limit.

4. That your complainant is the owner of 300 shares of the class A stock for which he paid the sum of \$6,300.

5. That said stock is now selling for 75 cents per share.

6. That said corporation, through the gross mismanagement of its officers and directors, has expended and disposed of many millions of dollars of its assets in the purchase and acquisition of places of amusement, as well as the purchase of other motion-picture concerns for excessive and grossly fictitious financial considerations, when the acquisition of same were not only not necessary but palpably inadvisable, and some of these complainants are reliably informed, verily believe, and therefore charge and aver same was done through interlocking directorates, directors on both of the board of directors of vendor and vendee, and directors acting fraudulently and for their personal interest, and to the fraud of the rights of many of the stockholders of this defendant, as well as to the great financial loss and damage of said stockholders as a result thereof. That in consequence thereof, as well as for other acts of gross mismanagement and incompetence on the part of said officers and directors, and by reason of the payment of unwarrantedly large and grossly excessive salaries to its officers and employees, the defendant is unable to meet its obligations in due course as they mature, and said defendant is hopelessly insolvent.

7. That the officers and directors of said defendant, although claiming the net worth of defendant to be at least \$50,000,000, although complainants allege and charge said claim is erroneous, admit the inability of defendant to borrow money for its necessities in ordinary course, and, it was compelled and so agreed—complainants allege and charge that its necessities were a result of the defendant's mismanagement—to borrow the sum of \$6,000,000, which has already been expended for current expense, although it was authoritatively stated that same was for financing through the year 1932, and not only were compelled to pay the legal rate of interest thereon, but in addition, was further compelled to pay a bonus therefor of the sum of \$330,000, as well as to secure said loan by a first lien on practically the entire assets of said defendant. That the officers and directors of said defendant prepared reports of defendant's financial condition showing that as late as the latter part of August, 1931, the net profits available for dividends on class A stock of defendant were in excess of \$5,000,000. That there have been filed with the petition heretofore filed in this cause statements of said defendant marked "Complainant's Exhibits I and II" which same are prayed to be taken as a part of this bill of complaint.

8. That on or about November 5, 1931, at a meeting of the officers and directors of the defendant, it was resolved—and by a circular letter, dated November 10, 1931, signed by the president, Hiram S. Brown, and sent to the stockholders, notifying them of the action of said officers and directors—that certain amendments to the charter of defendant be approved and recommended

for the action of said stockholders thereon at a meeting called for December 10, 1931, at 11 o'clock a. m., and reciting in said circular letter that unless said proposed amendments were adopted a receivership for said defendant would be inevitable. That said proposed amendments were substantially as follows:

"I. By the reduction of the number of outstanding shares of the class A stock of the corporation from 2,380,291 shares to 595,072 $\frac{1}{4}$  shares, so that each holder of one share of class A stock will hold one-fourth share of class A stock.

"II. By the reduction of the number of outstanding shares of class B stock of the corporation from 500,000 shares to none.

"III. By the reclassification of the authorized class A stock, issued and unissued, and the authorized class B stock into common stock, so that the authorized capital stock, issued and unissued, of the corporation shall be 4500,000 shares of common stock without nominal or par value."

That thereafter, at the meeting of said stockholders called for December 10, 1931, at 11 o'clock a. m., called to order by one B. B. Kahane, vice president and general counsel of the defendant, which said meeting, over the protest of the complainant, was unlawfully recessed from time to time until December 14, 1931, at 7.30 o'clock p. m., for the sole purpose at said alleged recessed meeting to endeavor to obtain proxies for sufficient votes to pass said amendments, at which alleged meeting an overwhelming number of shares of stock alleged to have been voted in favor of said amendment was cast through alleged proxies, and this plaintiff, as already appears in a petition heretofore filed in this cause, alleges that proxies for a large amount of stock were illegally cast in favor of the proposed amendment; that proxies illegal in form cast many votes in favor of said amendment; that proxies given for the voting of stock against said amendment were actually and fraudulently cast in favor of said amendment; that persons wrongfully held proxies and unlawfully voted same in favor of said amendments; that not all the outstanding class A stock voted in favor of said proposed amendments as required by the law of this State, nor were all votes cast at said meeting in favor of said proposed amendments, but votes of stockholders were in fact cast against same. That in consequence said amendment mentioned herein as "Amendment III" was not adopted, and the alleged action on "Amendments I and II" was likewise contrary to law and consequently null and void, but that notwithstanding, said amendments were thereupon arbitrarily declared to have been adopted by the said B. B. Kahane.

9. That notwithstanding the matters and facts set forth in paragraph 8 as herein stated, said defendant has unlawfully attempted to reclassify said stock, as well as to confiscate three-fourths of the stock of these complainants and other stockholders of said defendant, and has publicly announced that it has reclassified said stock and that it has reduced the holdings of stock of its shareholders proportionally from four shares to one share.

10. That no reduction of the capital stock of said defendant was made, nor attempted to be made, by said proposed amendments but merely an attempt to change the class A stock and the class B stock into common stock.

11. That although the shares of stock of defendant are fully paid and non-assessable, the defendant by a system or subterfuge of issuing, or attempting to issue, so-called debentures of \$5 each on each share of stock, and upon payment of same to return to said shareholders within three years thereafter three-fourths of a share of stock for each so-called debenture, has attempted to force the shareholders to pay an assessment of \$5 per share by calling same subscriptions to said debentures rather than an assessment on said stock, and in lieu of the payment for said debentures has threatened to confiscate three-fourths of the stock of each shareholder as herein previously stated.

12. That said defendant has entered into an illegal, unlawful, and unconscionable agreement with a corporation known as the Radio Corporation of America, whereby it is agreed that said Radio Corporation of America, which is likewise a large holder of defendant's stock, in consideration of subscribing for such of said so-called debentures as may not be subscribed for by other stockholders, to turn over to said Radio Corporation of America the stock attempted to be confiscated from such of the stockholders of defendant who fail or refuse to subscribe to said debentures. That the action of this defendant in entering into such agreement with the Radio Corporation of America for the refinancing of this defendant and the changing of this defendant's capital set-up was induced by the fact that the dominant directors in defendant cor-

poration were also directors in the Radio Corporation of America. That the action taken was that redounded entirely to the interest of the Radio Corporation of America but at the expense of the defendant's stockholders. That such action was conceived in fraud, was unconscionable and illegal, and should be fully reviewed by this honorable court and the same set aside.

13. That said defendant has likewise attempted to enter into an illegal, unlawful and unconscionable agreement with said Radio Corporation of America wherein, by said agreement, it is proposed to give the said Radio Corporation of America 125,000 shares of defendant's preferred or class A stock, but which in said agreement is erroneously and unlawfully designated as common stock, in exchange for 500,000 shares of defendant's class B stock standing in the name of the said Radio Corporation of America, thereby placing the said class B stock standing in the name of the Radio Corporation of America on an equality with defendant's class A stock, all of which would be to the benefit and advantage of the said Radio Corporation of America but would be to the great loss and irreparable injury of the stockholders holding class A stock of said defendant corporation.

14. That notwithstanding the nisi order of this honorable court passed upon the original bill of complaint, dated the 2d day of December, 1931, and notwithstanding the nisi order of this honorable court, dated December 14, 1931, and notwithstanding the notice and warning by these complainants to said officers, directors, and agents of the defendant against further waste and dissipation of defendant's assets and against any attempt to proceed in accordance with said proposed but illegal amendments, said defendant, its officers, directors, and agents have continued to waste and dissipate the assets of said defendant in the payment of unconscionable and grossly excessive salaries to said officers and employees and they have actually attempted and are now fraudulently proceeding to carry out the acts, matters, and things which were attempted to be provided for in said proposed amendments, notwithstanding it is well known by these officers, directors, and agents, and said defendant, that said actions on their part are illegal and therefore void, all of which is to the great loss, damage, and irreparable injury of these complainants and in contravention of the constitutional rights of these complainants.

15. That unless the defendant, its officers, directors, and agents be restrained by this honorable court from further disposing of defendant's assets, and from carrying out said agreements with said Radio Corporation of America, as well as the confiscation of complainant's stock, and unless said alleged agreements with the Radio Corporation of America are set aside and voided, and the action of the directors and certain stockholders at the meeting or meetings called to act upon said proposed amendments be likewise set aside, and a receiver be appointed to take charge of and manage its affairs, the remaining assets of the defendant will be in and lasting danger of being dissipated and disposed of, all of which would be to the almost entire and irreparable loss of these complainants, and other stockholders, as well as the creditors of said defendant.

16. That it would be to the manifest benefit and advantage of the stockholders, as well as all others in interest, to have a receiver appointed by this honorable court to take charge of and manage its affairs and if necessary to wind up the same and make distribution of any of its remaining proceeds among those lawfully entitled thereto.

To the end, therefore—

(1). That the defendant corporations, its officers, agents, and employees, may be restrained from further disposing of any of the assets of said corporation, and of issuing said alleged debentures and of reclassifying said stock, or of exchanging any of its stock for the class B stock held by the Radio Corporation of America, and of carrying out its alleged agreements with said Radio Corporation of America, and of confiscating any of the stock of these complainants.

(2). That a receiver or receivers may be appointed to take control of and manage the assets and affairs of said defendant corporation and make such provisions for or distribution thereof as this honorable court by its order may decree to be right and proper in the premises.

(3). And for such other and further relief as the nature of this cause may require.

Wherefore this complaint prays that the writ of subpoena be issued, directed to the said defendant corporation having its offices in the city of Baltimore, commanding it to be and appear in this honorable court at some certain day

to be named therein and to answer the premises and abide by and perform such decree as may be passed therein.

And as in the duty, etc.

J. COOKMAN BOYD, Jr.,  
BOYD AND BOYD,  
HARRY E. KARI,

*Solicitors for Complainant.*

STATE OF MARYLAND, City of Baltimore, to wit:

This is to certify that on this 29th day of December, 1931, before me, the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared J. Cookman Boyd and made oath in due form of law that the matters and facts as set forth in the foregoing amended bill of complaint are true and correct as therein set forth to the best of his knowledge and belief.

As witness my hand and notarial seal.

[SEAL.]

RICHARD B. PUE, *Notary Public.*

Upon the foregoing amended bill of complaint and affidavit, it is ordered by the circuit court of Baltimore City, this 30th day of December, 1931, that the prayer of the complainant in the above cause be granted unless cause to the contrary be shown or or before the 9th day of January, 1932, provided a copy of this amended bill of complaint be served on the defendant corporation on or before the 31st day of December, 1931.

Senator BLAINE. I am identifying Exhibit 3 as being a copy of a complaint of Boyd *v.* Radio-Keith-Orpheum Corporation in the circuit court of Baltimore city. Is that correct, Mr. Morgan?

Mr. MORGAN. Yes. I would like to have a copy of that complaint made.

Senator BROOKHART. What became of that complaint? Has it been decided?

Mr. MORGAN. That suit was dismissed, Boyd's stock having been purchased by the defendants.

The CHAIRMAN. Mr. Stock wants to ask you a question.

Mr. STOCK. Mr. Stirn, I understand—this is from my own experience—

Mr. STIRN. Yes.

Mr. STOCK. That a great many complaints came to the New York Stock Exchange authorities concerning the decline in the stock and apparently what looked at that time like a great deal of short selling.

Mr. STIRN. Yes.

Mr. STOCK. And many complaints came to the stock exchange during this so-called reorganization.

Mr. STIRN. Yes.

Mr. STOCK. And after this assessment.

Mr. STIRN. Yes.

Mr. STOCK. Do you know whether or not the New York Stock Exchange has taken any action of any kind?

Mr. STIRN. The only action it took was taking the stock off the list on December 29, 1931.

Mr. STOCK. Has the stock exchange ever made a public statement in reference to this matter as to what action, if any, it has taken?

Mr. STIRN. No public statement that I know of.

Mr. MORGAN. Mr. Stirn, you were going to give us the full movement in this stock at the earlier time.

Mr. STIRN. If you wish to incorporate that in the record that would be Exhibit 4.

The CHAIRMAN. Without objection that may be done.

(The chart presented by Mr. Stirn was designated "Committee Exhibit 4, 6-10-32, MDR," and is here printed in the record in full, facing this page.)

Senator BLAINE. Tell what Exhibit 4 is briefly. Is that a graph of long sales?

Mr. STIRN. Of all sales.

Senator BLAINE. Of all sales on the New York Stock Exchange?

Mr. STIRN. Yes; because short sales are also entered into it.

Senator BLAINE. Not all Radio-Keith-Orpheum?

Mr. STIRN. No. This is a graph of all sales according to the Dow Jones average on 30 industrials for the year 1930.

Mr. MORGAN. Mr. Stirn, that is not what I asked for. I asked for the bull movement in Radio-Keith-Orpheum.

Mr. STIRN. I am going to come to that later, because I can establish that better by referring to the two graphs superimposing one upon the other. I can establish that bull movement much more to your satisfaction in that way.

Senator BLAINE. Let us have this other identified.

Mr. STIRN. This has already been identified, Senator, as Exhibit 1.

Exhibit 4 is a graph showing the prices of the Dow Jones average for the 30 industrial stocks and shows the total volume for the spring of 1930 and gradual increase in the price structure.

Superimposing Exhibit 1 upon Exhibit 4, Exhibit 1 being—

Senator BLAINE (interposing). That is the graph giving the long sales of the Radio-Keith-Orpheum now, long and short?

Mr. STIRN. Absolutely. Exhibit 1 graphically describes the long and short sales in the Radio-Keith-Orpheum Corporation beginning from 1928 and ending in December, 1931.

Mr. MORGAN. Give us briefly the big bull movement in that stock.

Mr. STIRN. Showing the big bull movement in the spring of 1930 in Class A stock of the Radio-Keith-Orpheum Corporation.

Mr. MORGAN. As compared to what?

Mr. STIRN. If the investigator superimposes the graph known as Exhibit 1 upon the graph known as Exhibit 4, the contrast in the rise of the price structure of Radio-Keith-Orpheum Corporation as compared with the Dow Jones industrial average shows a tremendous comparison. In other words, the rise of the price of the stock of Radio-Keith-Orpheum Corporation for the spring of 1930 is most precipitous.

Mr. MORGAN. What was it? Give us the figures.

Mr. STIRN. It began from a low of 19 in January and ended in a high of 50 on April 24, 1930.

Senator BROOKHART. In 1929 it had been up high and then dropped down there?

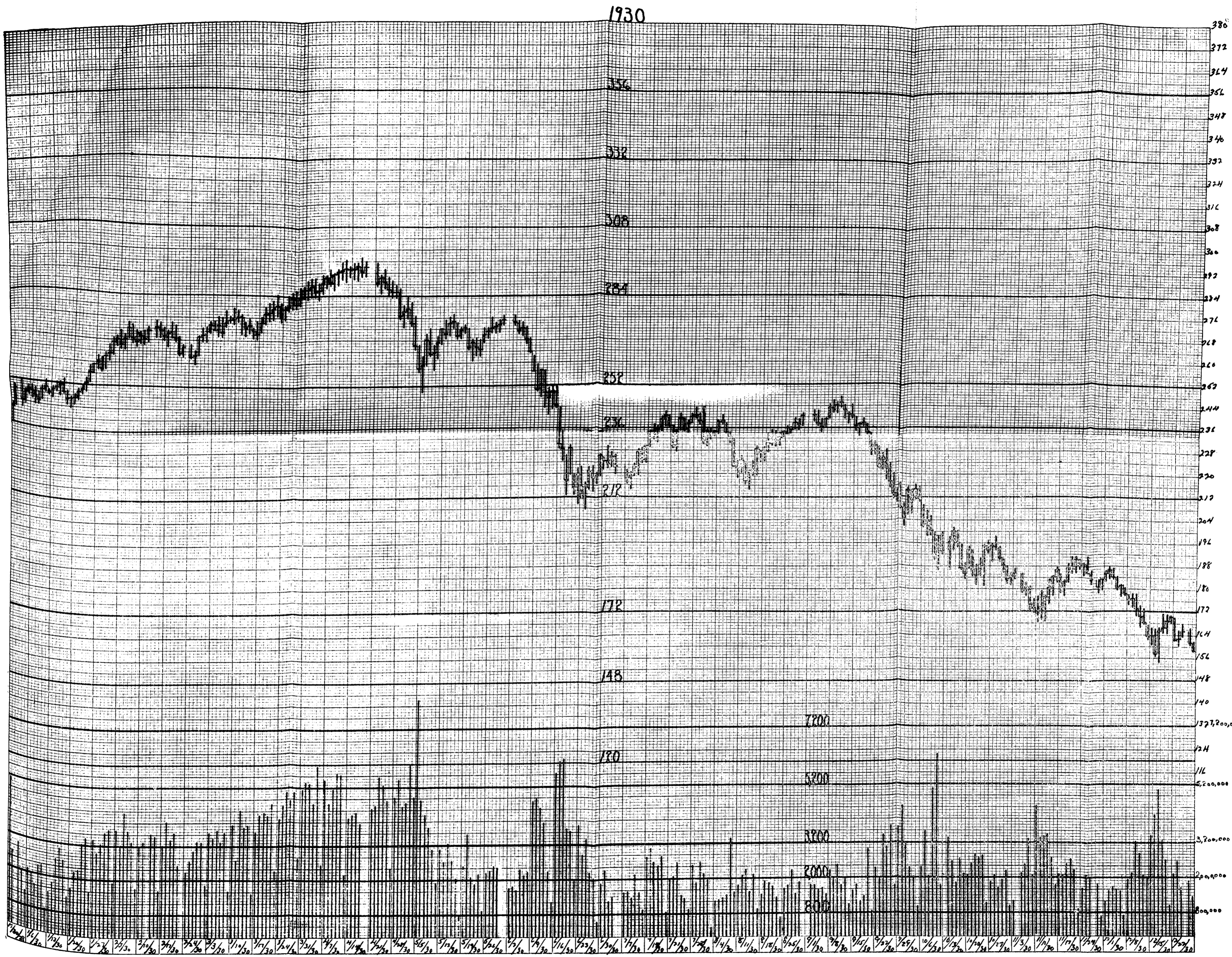
Mr. STIRN. Which just shows that similar operations were engaged in by the company. In other words, they conform to record.

Senator BROOKHART. It is a repetition of some manipulations?

Mr. STIRN. There are about five or six big swings, Senator, which infer manipulation and rigging.

Senator BROOKHART. You think they were all manipulated like the ones you have just described?

Mr. STIRN. I think so; yes. M. J. Meehan & Co., being the floor specialist, have the records. I think the committee can not arrive



at a satisfactory result in this matter without having Mr. Meehan on the stand.

Mr. STOCK. Mr. Stirn, you said that R-K-O rose in price in the spring of 1930 from about 12 to about 50; is that it?

Mr. STIRN. Not 12; no. That was in December, 1929. That is the low in December, 1929.

Mr. STOCK. Well, it rose from that low point?

Mr. STIRN. It practically rose; yes, sir; one could even make a larger figure. It rose practically from 12 to 50.

Mr. STOCK. Just to get it on the record, this was included in the Dow Jones averages in the rise showing that same comparison from what to what?

Mr. STIRN. From an average of 212 to 250 approximately.

Mr. STOCK. So that the Dow Jones stocks rose about 25 per cent?

Mr. STIRN. Yes.

Mr. STOCK. And R-K-O rose about 300 per cent?

Mr. STIRN. Precisely.

Mr. STOCK. Or about twelve times as much?

Mr. STIRN. Precisely. That is an interesting comparison, Mr. Stock.

Senator BROOKHART. Mr. Chairman, I would like to interrupt the proceedings just a minute. I want to go to the floor. I have noticed in the press reports that some kind of a pool or group or something has been organized for a bull movement up there now by the Morgan Co., and I would like to have Mr. Morgan brought down here and see if that is one of this kind of promotion schemes.

Senator BLAINE (presiding). Well, I am just acting chairman now.

Senator BROOKHART. I understand. I am stating it for the record for the attention of the steering committee.

Mr. MORGAN. Mr. Stirn, do you know it to be a fact whether a pool had been organized in this stock for the bull movement?

Mr. STIRN. That can only be ascertained, Mr. Morgan, by subpoenaing Meehan & Co. Meehan having fled to Europe, perhaps will be unwilling to answer your question.

Senator BLAINE. Are there any other questions, Mr. Morgan?

Mr. MORGAN. I think there is an error in the statement of the percentage of the rise in industrials as shown in the Dow Jones group. Isn't that between 18 and 19 per cent that they rose from 212 to 252?

Mr. STIRN. Ask Mr. Stock.

Mr. MORGAN. That would be an increase of 40. That shows a percentage increase of between 18 and 19 per cent.

Mr. STOCK. That is accurate, a greater rise proportionately for R-K-O than for the Dow Jones averages during that period.

Mr. STIRN. Oh, yes.

Mr. MORGAN. Yes; I am figuring that now.

Mr. STIRN. More figures on R-K-O definitely tend to the point of view that it is practically the most outstanding rigging operation in the history of the New York Stock Exchange.

Mr. STOCK. Have you ever had this matter up with the New York Stock Exchange, Mr. Stirn?

Mr. STIRN. No, sir.

Mr. STOCK. Do you know anybody that has?

Mr. STIRN. No, sir.

Mr. STOCK. Is that because you have felt that you could not get any redress from the New York Stock Exchange?

Mr. STIRN. Yes, sir.

Mr. MORGAN. Mr. Stirn, are these figures not correct, that the percentage of increase in Radio-Keith-Orpheum showing that bull movement was in excess of 316 per cent, while the percentage of increase in the Dow Jones group was less than 19 per cent?

Mr. STIRN. I think the record shows that very clearly, Mr. Morgan.

Mr. MORGAN. The computation before was erroneous.

Senator BLAINE. Yes. Well, mathematical computation is always subject to revision.

Mr. STIRN. I think the committee might be interested, Senator Blaine, in the sources of the data which I have prepared. Naturally, to any research worker, the most significant thing is showing the sources of his data and where they may be found. That is to verify the statements made. Now I should like to include the sources of my data in the record.

Mr. MORGAN. You can make reference to it.

Senator BLAINE. Just by reference, the name of the publication.

Mr. STIRN. New York Stock Exchange Statistics in regard to short selling November 25 to November 30, 1931.

Senator BLAINE. Just give the list of publications.

Mr. STIRN. Also the issues of the Commercial and Financial Chronicle for the years 1928 to 1932, inclusive.

Also the Annalist, published by the New York Times for 1928, 1929, 1930, 1931, and 1932.

Standard Trade and Securities, volume 3, statistical section, published by the Standard Statistics Co. (Inc.).

Senator BLAINE. What year?

Mr. STIRN. November 11, 1931.

The New York Stock Exchange Bulletin, volume 3, No. 5, of May, 1932, the study of which will reveal the figures I have prepared earlier for this report upon the colossal commissions made during 1929 and 1930 period on the New York Stock Exchange.

Mr. MORGAN. Mr. Chairman, some Senator asked a question of the witness as to whether he had complained to the New York Stock Exchange. My information is that J. Cookman Boyd did write directly to the New York Stock Exchange, complaining that this plan was being put through in defiance of a suit in equity that he filed and in defiance of the rules of the exchange, and so forth, and he might enlighten us as to what relief he got from the New York Stock Exchange.

Mr. STIRN. Additional to the data I have cited, is the Bank and Quotation Record published by Dana & Co., and the Wall Street Journal for the years 1928 to 1932. That is all.

Senator BLAINE. Now, are there any other questions?

Mr. STIRN. I could say, in passing, that the statistics which I have presented upon short selling in the Radio-Keith-Orpheum stock definitely contradict the published statements on short selling by Richard Whitney, president of the New York Stock Exchange.

Mr. MORGAN. Mr. Stirn, will you be willing to assist the accountants and analysts of the committee in tracing these stock exchange

transactions through the New York Clearing House into the brokerage houses?

Mr. STIRN. Gladly.

Mr. MORGAN. To identify who made these sales through our friend, Mr. Meehan?

Mr. STIRN. Yes.

Senator BLAINE (presiding). Is there any other matter, Mr. Stirn?

Mr. STIRN. I think I have concluded the citation of my sources.

Senator BLAINE (presiding). Now, Mr. Stirn, I think I express the feeling of the committee that we appreciate your coming down here. As I suggested to the chairman, you were one witness who is not an adverse witness; I mean, a witness who is somewhat reluctant in disclosing all the facts. You have taken up a specific case, traced it through, and have shown the effect of the rigging of the market, not only as it relates to the stockholders but also as it relates to the wrecking of a company and the absorbing of that company by another organization. It has been very valuable.

Mr. STIRN. I think that is a true summary of the situation.

Senator BLAINE (presiding). If there is nothing further, the committee will stand adjourned.

(Whereupon, at 4.35 o'clock p. m., the committee adjourned, to meet at the call of the chairman.)

(Additional data submitted by Mr. Stirn is here printed in the record in full, as follows:)

*The high and the low prices of stocks—outstanding price depreciations—on the New York Stock Exchange, New York Curb, and the Chicago Stock Exchange*

Stock	High price	Date	Low price	Date
Anaconda:				
Old	140	Mar. 22, 1929	1 41½	Apr. 8, 1932
New	99	Mar. 20, 1929		
American Telephone	310¼	Sept. 19, 1929	82½	May —, 1932
American Can	184½	Aug. 24, 1929	34¾	May 16, 1932
Auburn	514	Sept. 18, 1929	28¾	Do.
Case, J. I.	467	Sept. 16, 1929	17½	Do.
Kreuger & Toll	46¾	Mar. 6, 1929	1 ¾	Apr. 11, 1932
Insull Utilities	160	August, 1929, New York Curb	½	June 7, 1932
Investment Corporation (Inc.)	149¼	August, 1929, Chicago	1 ½	Do.
Without warrants	90	August, 1929		
Middle West Utilities	1 51¼	September, 1929	1 ¾	Apr. —, 1932
New York Curb	565			
Chicago	570			
Warner Bros.	80	April, 1930	¾	June —, 1932
Radio Corporation	114¾	Sept. 12, 1929	3½	Apr. —, 1932
Paramount Famous Lasky	69	April, 1930		
United States Steel	75½	Oct. 15, 1929	3¾	Apr. 12, 1932
Borden	261¾	Sept. 3, 1929	25¼	June —, 1932
Swift & Co.	100½	July 10, 1929	20¼	Do.
General Theaters Equipment	149½	July 10, 1929	7	Do.
Cities Service	66½	September, 1929	1 ¾	Apr. 5, 1932
Fox Film, class A	68½	do.	33	May —, 1932
Curb, September, 1928	105½		2	Apr. 9, 1932
Goldman Sachs	119			
General Electric new	121¼	September, 1929	1½	May —, 1932
New	95	April, 1930	10	June —, 1932
Westinghouse	61	Dec. 9, 1929		
Radio-Keith-Orpheum	201½	April, 1930	21¾	May 10, 1932
	67¾	Aug. 16, 1929		
	50	Apr. 24, 1930	¾	Dec. 28, 1931

<sup>1</sup> New.

<sup>2</sup> Low prices of corporations under receiverships.

<sup>3</sup> Old.

<sup>4</sup> Class A stricken off the list computed on present price of new stock, at low of 1½; the class A at one-fourth of new common would be about ¾ or 37½ cents.

NOTE.—No corporation not in actual receivership shows so sensational a depression of stock as that suffered by Radio-Keith-Orpheum under the influence of concerted and concentrated short selling.

*Volume of sales in 1930 of group of corporations compared in terms of ratio sales to the number of shares outstanding, to total number of sales of all stocks, and to the number of shares listed on the New York Stock Exchange in per cent*

Name of corporation	Number of shares outstanding	Volume of sales	Total sales	Number of shares listed
Radio Corporation.....	13, 130, 000	37, 038, 890	810, 038, 161	1, 296, 794, 480
General Electric.....	28, 845, 936	21, 865, 890	-----	-----
Radio-Keith-Orpheum, class "A".....	2, 377, 315	18, 398, 908	-----	-----
Westinghouse Electric & Manufacturing.....	2, 586, 315	10, 592, 975	-----	-----
Total.....	46, 949, 566	88, 896, 663	-----	-----
Ratio of volume of sales in per cent to.....per cent..	191	-----	10	0.069

## SUMMARY

Out of the entire number of sales on the New York Stock Exchange in 1930 the group of corporations contributed over 10 per cent of the operations, and this amount is out of 810,038,161 sales.

The volume of sales of this group compared to the number of shares outstanding or actually existing in printed certificates (gold) actually amounted to nearly twice this amount. No other group of stocks approach this figure according to the data. This is clear evidence of professional handling and manipulation, or rigging, if you please, and not honest investment or liquidation, which Mr. Whitney testified to be the fact, under oath, before the committee.

Compared to the total number of shares listed on the New York Stock Exchange the volume of sales in this group approach or approximate 0.07 out of over a billion shares.

*The price upswing of the stock of the Radio Corporation during the pool manipulation revealed by Counsel Gray's examination of witnesses before the Senate Committee on Banking and Currency held on May 19, 1932, quoted in the press of the country May 20, 1932*

First pool:	Price
Mar. 5, 1929.....	77½
Mar. 12, 1929.....	91½
Mar. 16, 1929.....	109½
Mar. 20, 1929.....	94
Second pool:	
Mar. 23, 1929.....	86½- 91½
Mar. 25, 1929.....	88 - 91½
Mar. 26, 1929.....	92 - 95
Mar. 27, 1929.....	89 -100½
Mar. 28, 1929.....	100 -109

Volume of sales in week, 1,863,200.

Profits accruing from operation of first pool, managed by J. M. Meehan, floor specialist, admitted by witnesses to Gray to amount to \$5,000,000. If I recall the figures brought out by Counsel Gray, this pool held 1,493,000 shares at a cost of \$141,000,000, which makes the average cost price to the pool at the figure \$94.44. This was not brought out in the testimony as I remember. Thus:

Top price reached during this pool operation.....	\$109.25
Average cost of stock of the pool.....	94.44

Price differential.....	13.81
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This price differential of \$13.81 per share profit, with a play in 1,493,000 shares, results in a much larger profit than the \$5,000,000 profit announced in the headlines of the press. The profits, therefore, more closely approximated \$21,618,330 on the long side only. The short side also, in addition to the \$21,618,330, taking into account the drop from 109½ to 94, should have netted considerable profit.

The investigation of the second pool as quoted in the press seemingly never has materialized. From the point of view of price appreciation the second pool inferentially netted a larger and more handsome profit than the first pool, as managed by Meehan.

(NOTE 2.—The \$5,000,000 profits made by pool No. 1 in Radio, therefore, can take into consideration a rise in the price of the stock of  $2\frac{1}{2}$  points. On the long and short side there was a play of 26 points.)

*Inactivity of the Radio-Keith-Orpheum class A stock during the pool operations in Radio in March, 1929*

First RKO inactivity:	Price
Mar. 9, 1929	36-37½
Mar. 11, 1929	35-36½
Mar. 12, 1929	34½-35½
Mar. 13, 1929	34½-35½
Mar. 14, 1929	35½-36
Mar. 15, 1929	36½-36¾
Mar. 16, 1929	36½-37
Mar. 18, 1929	35½-37½
Mar. 19, 1929	35½-36½
Mar. 20, 1929	35½-36½
Mar. 21, 1929	35-35½
Mar. 22, 1929	34½-35½
RKO activity on down side:	
Mar. 23, 1929	34½-34¾
Mar. 25, 1929	34½-29¾
Mar. 26, 1929	30¾-19
Mar. 27, 1929	28¾-25½
Mar. 28, 1929	28¾-30

(NOTE.—On Mar. 28, when RKO dropped so precipitously from 30¾ to 19, the operation Radio on the same day was exactly opposite, the stock rising from 92 to 96. Therefore, Mr. Whitney's explanation that such drops are only caused by liquidation is not accurate and truthful.)

Volume of sales:

	Shares
Mar. 9-15, inclusive	71, 100
Mar. 16-22, inclusive	52, 500

Inasmuch as Meehan is floor specialist for both Radio and R-K-O stock presumably he was too preoccupied with the Radio pool, which netted such handsome profits, than to try for a play in R-K-O.

But during the operation of the second Radio pool which was supposed to come under investigation later by Counsel Gray a bear play was simultaneously waged in R-K-O while a bull play was going on in Radio, in the latter part of March, 1929.

*1929 profit on commission record for stocks and bonds listed on the New York Stock Exchange*

1. Total number of shares sold from January 1 to December 31, 1929, monthly average as of January, 1,124,991,490 (New York Stock Exchange Bulletin May, 1932, only gives bank and quotation record January 10, 1930, p. 28, vol. 3, No. 1); 1,124,990,980 (New York Times, the Annalist, January 17, 1930, p. 212, vol. 35, No. 887). Quotes in dollars, but this can not be true because stock price index and monthly averages of all listed shares January, 1929, 89; January, 1930, 57; New York Stock Exchange Bulletin May, 1932, page 4.

2. Rates of commission. Scale in effect since November 1, 1924, under constitution of New York Stock Exchange:

	Cents per share
On stocks selling below \$10 a share	7½
On stocks selling at \$10 and above but under \$25	12½
On stocks selling at \$25 and above but under \$50	15
On stocks selling at \$50 and above but under \$75	17½
On stocks selling at \$75 and above but under \$100	20
On stocks selling at \$100 and above but under \$200	25

On stocks selling at \$200 a share and over, 25 cents for the first \$200 in price and 5 cents a share additional for each \$50 increase in price or fraction thereof.

Members of the exchange executing orders for fellow members follow a scale of rates much lower than rates to nonmembers. (The Stock Market, Charles A. Dice, Chicago and New York Shaw & Co., 1927, p. 113.)

3. Total number of shares listed on the New York Stock Exchange, January 1, 1930: 1,127,682,468 (source of data: New York Stock Exchange Bulletin, May, 1932, p. 5, Vol. III, No. 5); 1,117,000,000 (Standard Trade and Securities, Vol. III, statistical section, Standard Statistics Co. (Inc.), New York statistical section 6, base book; vol. 63, No. 7, sec. 3, p. 134, January, 1932).

4. Ratio sales to listing in per cent, nearly 100 per cent note; not 14 per cent, given by New York Exchange Bulletin, May, 1932, page 11, first table.

5. Monthly volume of sales (unit, 1,000,000): 1929—January, 110.8; February, 77.97; March, 105.6; April, 82.60; May, 91.28; June, 69.55; July, 93.38; August, 95.70; September, 100.1; October, 141.7; November, 72.46; December, 83.86. (Source of data: Standard Trade and Securities Standard Statistical Bulletin, sec. 6, p. 156, vol. 3, January, 1932.)

6. Stock price index and monthly averages of all listed stocks: No. 1 flat price average is flat average price (the average of all prices) in dollars; No. 2 price index is price index (January 1, 1925, 100) based on the adjusted average price, which is the average price (No. 4) adjusted to split ups, stock dividends, etc.; No. 3 S. C. C. average price is Stock Clearing Corporation Monthly average price of settled shares in dollars; No. 4, unadjusted average price, unadjusted average price found by dividing the total market value by the total number of shares listed, in dollars. See New York Stock Exchange Bulletin, May, 1932, page 4.

*Stock price index and monthly averages off all listed shares*

	January, 1925	January, 1926	January, 1927	January, 1928	January, 1929	January, 1930	January, 1931
No. 1 flat average price.....	\$80.17	\$87.91	\$83.49	\$84.64	\$96.76	\$69.01	\$50.95
No. 2 price index.....	100.0	115.8	115.7	140.0	166.1	111.1	75.2
No. 3 S. C. C. average price.....	56.9	68.4	64.6	69.0	78.6	52.6	37.2
No. 4 unadjusted average price...	62.45	70.15	65.53	75.93	89.09	57.38	37.80

	May, 1931	June, 1931	July, 1931	August, 1931	September, 1931	October, 1931	November, 1931
No. 1 flat average price.....	\$50.09	\$46.20	\$48.54	\$47.05	\$46.40	\$37.11	\$36.85
No. 2 price index.....	74.0	64.8	72.3	67.8	67.3	48.7	51.6
No. 3 S. C. C. average price.....	39.4	36.3	37.3	35.5	31.1	27.8	28.8
No. 4 unadjusted average price...	37.23	32.58	36.38	34.09	33.93	24.55	25.97

	December, 1931	January, 1932	February, 1932	March, 1932	April, 1932	May, 1932
No. 1 flat average price.....	\$34.24	\$29.37	\$29.66	\$29.89	\$28.50	\$24.26
No. 2 price index.....	46.9	40.2	39.7	41.5	37.0	3.4
No. 3 S. C. C. average price.....	24.2	25.8	26.8	22.5	21.6	-----
No. 4 unadjusted average price...	23.59	20.24	19.99	20.90	18.64	15.34

*New York Stock Exchange Bulletin, May, 1932. p. 4.*

7. All values expressed on the four charts below are unadjusted average prices in dollars, calculated similarly to No. 4 (above). (See New York Stock Bulletin, May, 1932, p. 4.)

8. Average of January, 1929, \$89.08, according to No. 4; average of January, 1930, \$57.38; adjusted average, \$73.26.

9. Therefore: Number of shares sold multiplied by 17½ cents; gross profit on commission figure 17½ arrived at by the mean 73.26; or gross income, \$191,248,553.30; expenses, -----; net income, -----; gross income to brokers on commissions, salaries to employes, rents, telephone

rates, Western Union rates on private wires, cost of seat on the New York Stock Exchange.

10. Total bond transactions on the New York Stock Exchange for year 1929, \$3,020,316,700.

Brokers rates of commissions, \$1,000, \$2.50; \$500, \$2; \$100, \$2.

11. Therefore, \$3,020,316.7 multiplied by \$2.50, gross profit on commissions per \$1,000 bond, or \$7,550,000.

Conclusion. Commissions on bonds insignificant as compared to broker's commissions on stocks.

12. Referring back to tables in column 2 obtaining figure 17½ by referring to column 6 under January 30 for figure 57.38 under No. 4 column, and then to monthly sales column for October, 1929, sales figure at 141, the commissions profited by brokers for Black October, 1929, are obtained by multiplying 141,000,000 by \$0.175 or \$24,675,000, commissions gross profits for that month. This figure does not apply to profits on short sales or on bear raids, or in bull pools.

13. In December, 1914, after the Exchange was closed for several months following the opening of the World War, the volume of sales were 1.91 (unit of 1,000,000), see previous chart or table for 1914. If this were to be repeated now with adjusted average May, 1932, at 15.34, which means \$0.125 per share commission. This means only \$246,250 commission.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Average
1931	42.54	64.15	65.49	54.33	46.66	58.72	33.54	24.89	51.14	47.89	37.37	50.19	48.03
1932	34.34	31.72	33.06										
1930	62.31	68.72	96.55	111.00	78.04	76.59	47.45	39.87	53.55	65.50	51.95	58.76	67.55
1929	110.8	77.97	105.6	82.60	91.28	69.55	93.38	95.70	100.1	141.7	72.46	83.86	93.75
1928	56.96	47.17	84.99	80.57	82.16	63.71	39.00	67.70	90.91	99.08	115.4	92.84	76.71
				49.64									
1927	34.26	44.16	49.06	46.60	47.63	38.49		51.06	51.92	50.46	51.36	62.37	48.08
1926	39.09	35.46	52.04	30.22	23.19	37.99	36.73	44.19	36.90	40.21	31.18	41.89	37.42
1925	41.43	32.75	38.57	24.84	36.46	30.86	32.28	32.87	36.89	53.42	48.98	42.88	37.69
1924	26.73	20.64	18.21	17.70	14.99	16.80	24.23	22.43	18.15	17.83	41.37	42.88	23.50
1923	20.21	22.69	25.86	20.04	23.11	19.65	12.67	15.98	14.61	15.82	22.57	24.07	19.77
1922	15.39	16.19	22.73	30.47	28.91	24.04	15.15	17.85	21.78	25.68	22.88	19.69	21.73
1921	15.98	10.15	15.91	15.27	17.03	18.17	9.30	10.99	12.91	12.88	15.33	17.62	14.30
1920	19.65	21.73	28.80	27.98	16.37	9.20	12.40	13.70	15.32	13.61	22.16	23.83	18.73
1919	11.63	12.05	21.17	27.66	34.24	32.83	34.17	24.14	23.88	36.89	29.97	24.26	26.07
1918	13.50	11.32	8.21	7.44	21.10	11.60	8.35	6.86	8.03	20.29	14.72	11.96	11.95
1917	16.42	13.63	18.42	14.28	19.54	18.99	12.79	11.51	13.70	17.43	14.71	12.78	15.35
1916	15.94	12.20	15.13	12.53	16.40	12.79	9.18	14.60	29.85	27.98	34.51	31.71	11.07
1915	5.08	4.38	7.88	21.05	12.67	11.21	14.33	20.42	18.50	26.64	17.56	13.68	14.85
1914	10.11	6.23	5.86	7.14	4.76	4.00	7.89	(1)	(1)	(1)	(1)	1.91	6.57
1913	8.73	6.64	7.18	8.46	5.46	9.59	5.12	6.08	7.68	7.41	3.77	7.15	6.54
1912	10.91	7.09	14.55	15.99	13.66	7.20	7.17	8.97	10.06	14.15	8.71	12.60	10.92
1911													10.54
1910													13.64

<sup>1</sup> Exchange closed.



## STOCK EXCHANGE PRACTICES

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SATURDAY, JUNE 11, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met at 10 o'clock a. m., pursuant to call, in the hearing room of the Committee on Interstate Commerce, the Capitol, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Couzens, Townsend, Blaine, Fletcher, Wagner, Barkley, and Bulkley.

The CHAIRMAN. The committee will come to order. Mr. Boyd, will you take a seat right opposite the reporter?

### TESTIMONY OF J. COOKMAN BOYD, ATTORNEY AT LAW, BALTIMORE, MD.

(The witness was duly sworn by the chairman.)

Senator BLAINE. You are an attorney at Baltimore, Md.?

Mr. BOYD. Yes, sir.

Senator BLAINE. How long have you practiced there?

Mr. BOYD. Forty-three years.

Senator BLAINE. Of course you began practicing very young?

Mr. BOYD. I was hardly 21, Senator.

Senator BLAINE. Were you the owner of some stock of the Radio Keith Orpheum Co.?

Mr. BOYD. On two or three occasions I was, sir. The last time was stock which I had owned for probably a year, probably a little more than a year—300 shares.

Senator BLAINE. Were you the owner of it in November, 1931?

Mr. BOYD. Yes, sir.

Senator BLAINE. Do you recall a letter that was sent out by Mr. Brown, president of that corporation, dated November 10?

Mr. BOYD. Yes, sir; I recall that very letter and I studied it very carefully.

Senator BLAINE. Thereafter did you take some procedure with reference to your stock?

Mr. BOYD. I did, Senator, based on the reasons, as I saw them, first, that in that letter was a clause that unless the transfer of stock, the exchange of that character of stock, were effected, the concern would have to go into receivership. I was likewise very much provoked at what I thought the excessive salaries that had been paid and what looked to be a great waste of money. The final consideration was, however, that in my opinion as a lawyer, this being a Maryland corporation the only way they could bring about a legal

exchange of stock would be by unanimous consent; and I knew of at least 300 shares that would not be voted for that proposition, they being mine. That being the case I studied the situation and my son and I filed a bill for receivership.

Senator BLAINE. In your own name?

Mr. BOYD. I was the plaintiff and J. Cookman Boyd, jr., was the attorney.

Senator BLAINE. You also represented clients who were stockholders?

Mr. BOYD. Yes, sir.

Senator BLAINE. Or a client?

Mr. BOYD. Yes, sir; I represent a client, Senator Blaine, from your State.

Senator BLAINE. I am not going to ask you what settlement you made, but I am going to ask you this question, whether or not after the filing of the suit and after the filing of the amended bill of complaint a satisfactory settlement was made with you by the company in respect to your own holdings and in respect to your client's holdings?

Mr. BOYD. After there had been two days argument upon questions involved before the court, there was a satisfactory settlement made with me.

Senator BLAINE. Not on the basis of the low price, however, at which the stock was selling at that time?

Mr. BOYD. No, sir.

Senator BLAINE. In fact, the stock had been taken off the stock market at the time the settlement was made, had it not?

Mr. BOYD. Yes, sir. I do not think that entered into it.

Senator BLAINE. The settlement was made in 1932, I assume?

Mr. BOYD. The settlement was made about the 1st of March, 1932, I would say.

Senator TOWNSEND. This year?

Mr. BOYD. Yes, sir; 1932.

Senator BLAINE. Did you ever notify Mr. Whitney, president of the New York Stock Exchange, respecting this matter?

Mr. BOYD. Senator Blaine, I did notify Mr. Whitney.

Senator BLAINE. Have you with you a copy of your communication to him?

Mr. BOYD. Yes, sir; I sent him a telegram.

Senator BLAINE. Will you kindly produce that?

(The witness produced a paper which he handed to Senator Blaine.)

Senator BLAINE. You have handed me, Mr. Boyd, a copy of a telegram or day letter dated December 15, 1931, addressed to Richard Whitney, president, New York Stock Exchange, New York City, which I will read (reading):

No such thing as Radio-Keith-Orpheum Corporation rights. Proposed issuance of rights absolutely illegal. Sale would only defraud innocent purchasers. Hasn't there already been done enough harm on New York Stock Exchange to the many small holders of RKO stock? Why not investigate as to manipulations of this stock?

J. COOKMAN BOYD.

Was that day letter sent to Mr. Whitney?

Mr. BOYD. Yes, sir.

Senator BLAINE. Did you ever receive a reply to that letter?

Mr. BOYD. No, sir.

Senator BLAINE. Did you ever receive an acknowledgement of the letter from Mr. Whitney or from anyone in his office?

Mr. BOYD. Unless you might say that having received no reply to this telegram I wrote to the secretary of the New York Stock Exchange, and I wrote that letter on the 17th. The telegram was sent on the 15th of December, and on the 30th of December I received an acknowledgment only of the receipt of the letter, from the secretary of the New York Stock Exchange.

Senator BLAINE. We will offer in evidence the telegram you sent.

The letter which you received is in my hands, on the letterhead of the New York Stock Exchange, office of the secretary, dated December 30, 1931, and is addressed to J. Cookman Boyd, Esq., 2 East Lexington Street, Baltimore, Md., and reads as follows (reading):

DEAR MR. BOYD: Your letter of December 17th was duly received. I regret that through an oversight in my office an earlier acknowledgement was not sent to you.

Very truly yours,

ASHBEL GREEN, *Secretary.*

And that is the only communication that you ever received from or on behalf of President Whitney in answer to your letter?

Mr. BOYD. No, Senator Blaine. That was not an answer to my telegram to Mr. Whitney.

Senator BLAINE. Oh, no; it was——

Mr. BOYD. I wrote a letter on the 17th to Mr. Green.

Senator BLAINE. I beg your pardon.

Mr. BOYD. I got no recognition from Mr. Whitney at all.

Senator BLAINE. No answer from Mr. Whitney, directly or indirectly, to your telegram of December 15?

Mr. BOYD. No, sir. I sent the secretary a letter. I wanted to have no mistake.

Senator BLAINE. I will recur to your letter, of which I have a copy in my hand, dated December 17, 1931, addressed to the New York Stock Exchange, New York, N. Y., attention Mr. Ashbel Green, secretary, and reading as follows [reading]:

DEAR SIR: On the 15th instant we sent a telegram to Richard Whitney, president of the New York Stock Exchange, advising him that there was no such thing as Radio-Keith-Orpheum Corporation rights, that the proposed issuance of rights was absolutely illegal and sale of same would only defraud innocent purchasers, with the suggestion that enough harm had already been done on the New York Stock Exchange to the many small holders of RKO stock, and suggested the advisability of an investigation as to manipulations of this stock.

We learn to-day that the New York Stock Exchange yesterday decided to admit to the list for trading Radio-Keith-Orpheum Corporation temporary certificates for common stock without nominal or par value, and that it had likewise admitted to dealings Radio-Keith-Orpheum Corporation rights.

I shall not read the balance of the letter; but the letter from Mr. Green of December 30, which I read, is the only reply that you have had to your letter of December 17 which I just read.

Mr. BOYD. That is correct.

Senator BLAINE. I suggest, Mr. Chairman, that we have made a part of the record the day letter dated December 15, 1931, the letter from Mr. Boyd dated December 17, 1931, to the New York Stock

Exchange, and the reply of Mr. Green, secretary, dated December 30, 1931; but there are two or three other communications in this file of papers which you have handed me, Mr. Boyd. Do they relate to this matter?

Mr. BOYD. I replied again to that acknowledgment of Mr. Green, Senator Blaine.

Senator BLAINE. What date was that?

Mr. BOYD. January 2, I think.

Senator BLAINE. January 2, 1932. I will read that [reading]:

JANUARY 2, 1932.

NEW YORK STOCK EXCHANGE,

*New York, N. Y.*

Attention Mr. Ashbel Green, Secretary.

DEAR SIR: Yours of December 30, 1931, received.

I am not so much interested in your acknowledgment that through oversight in your office earlier acknowledgment was not made of my communication of December 17.

I made certain statements in that letter which to my mind required action by the New York Stock Exchange. Evidently the exchange is more interested in the quantity sold rather than in the quality or legality of same.

I think perhaps more beneficial results might be obtained if a copy of this correspondence was submitted to the Senate in Washington.

Very truly yours,

I assume that that was signed by you?

Mr. BOYD. Yes, sir. May I say that I never anticipated this, and that I am not a voluntary witness here. I was summoned last night. I talk with a great deal of reserve, at least, about matters in which I have had business connections, and I might say that, so far as the R-K-O is concerned, the ending of my relations with them was quite satisfactory. That reference to the Senate in my letter of January 2, 1932, rather evidently was due to the fact that I had written to Senator Dill, who had introduced a resolution in the Senate some time before that providing for an investigation of R-K-O.

Senator BLAINE. I offer the letter of January 2, of Mr. Boyd, to the New York Stock Exchange; and I feel that all these letters, unless you have objection, Mr. Boyd, ought to be made a part of the record.

Mr. BOYD. I have no objection, Senator Blaine, to any communications I had with any official of the New York Stock Exchange. I feel now just as those letters represented my feelings at that time.

(The correspondence referred to will be found printed at the end of the testimony of this witness.)

Senator BLAINE. Would you care to testify as to the total amount you received in your settlement of the suit and the settlement of your client's claim?

Mr. BOYD. Senator Blaine—

Senator BLAINE. If you do not care to, I am not going to ask you to.

Mr. BOYD. There is no reason why I should not, except that I think it is a personal matter, and unless the committee insists, I would rather not do it.

Senator BLAINE. I would not insist, of course.

Mr. BOYD. There is nothing of which I need to be ashamed in the matter, except it may be that I did not settle with them for a larger sum.

The CHAIRMAN. You brought action for how much money? It was to recover how much?

Mr. BOYD. My action was for a receivership of the concern, sir. It was not a suit brought for a specific sum. I alleged that this concern had been very wastefully managed, and, to my mind, there were matters bordering on fraud.

The CHAIRMAN. Did you get as much as \$20,000 in this settlement—or don't you care to answer that?

Mr. BOYD. I might say again, Senator—

Senator TOWNSEND. Mr. Chairman, if the gentleman does not care to answer that question—

The CHAIRMAN. Oh, no; I am not going to insist on it.

Senator BLAINE. It is really not material.

Mr. BOYD. I can only say that it was a substantial sum.

Senator BLAINE. It has the relationship of attorney and client.

The CHAIRMAN. It was not 75 cents a share, like the others got?

Mr. BOYD. Oh, no.

Senator BLAINE. It was very close to the price the stock had been selling for when it was selling at a respectable price?

Mr. BOYD. I would say it was very much nearer to the respectable price than the price at the time they made the settlement.

Senator BLAINE. In spite of your telegram to Mr. Whitney and in spite of your letter to the New York Stock Exchange, attention of Mr. Green, the secretary, do you know whether or not it is a fact that the New York Stock Exchange continued to list the stock of the R-K-O on the stock exchange?

Mr. BOYD. They did; that is, new stock.

Senator BLAINE. And did it also continue to list the debentures?

Mr. BOYD. It did do that. Just how it was done, Senator, I do not know. As I stated in one of my letters, it looked like it was undue haste in the matter.

Senator BLAINE. Do you recall what letter that is?

Mr. BOYD. I think that was the letter of the 17th. It had the impression on me that this matter was being urged more to make it appear that their action in attempting to amend the character of their stock was legal.

Senator BLAINE. You called the attention of the New York Stock Exchange not only to the fraudulent feature of the manipulation, but also to the illegal feature of the reorganization?

Mr. BOYD. Yes, sir; and I am still of the opinion, sir, that the reorganization was and is illegal.

Senator BLAINE. The company, or those who represented the company, must have been of the same opinion when they made the settlement with you to prevent a receivership on the basis of the substantial amount for the stock?

Mr. BOYD. That may be. I can not answer for them.

Might I say, Senator, that in connection with the other matter, we sent practically the same letter to Mr. David Saranoff of the Radio Corporation. There was too close a connection, in my mind, between those two concerns, interlocking directors, and that had a great deal to do with my bitterness of feeling, if there were any about it.

Senator BLAINE. Do you recall who the interlocking directors were?

Mr. BOYD. No; I can not remember that. I know Mr. Saranoff was one; I know some others that I would rather not mention.

Senator BLAINE. I am going to read a portion of the letter of December 16, 1931, to the Radio Corporation of America—

Mr. BOYD. Yes; that is the one I am referring to.

Senator BLAINE. It is addressed to the Radio Corporation of America, attention of Mr. David Saranoff, president [reading]:

GENTLEMEN: We are writing to inform you that any action taken by your corporation, or any expenditure made by your corporation, for or on account of the Radio-Keith-Orpheum Corporation, and especially on account of any matter connected with the attempted amendments to the charter of the Radio-Keith-Orpheum Corporation, or of the change in the 500,000 shares of class B stock of the Radio-Keith-Orpheum Corporation owned by the Radio Corporation of America, or the purchase of any so-called indentures, will be done at the peril of the Radio Corporation of America, as the legality, as well as the outcome of the whole proceedings in connection with the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, or any transfer of or change in or reduction of the stock, has been questioned and is pending in the circuit court of Baltimore City, in the State of Maryland.

Any action of the court in determining the legality or illegality of said proceedings of the Radio-Keith-Orpheum Corporation will date from the day of the filing of the proceedings—in one instance, as to the question of receivership, dating from December 1, 1931, and in the other instance as to the question of the legality of the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, accounting as from December 14, 1931.

Very truly yours,

BOYD & BOYD.

That is, you and your son, attorneys?

Mr. BOYD. Yes.

Senator BLAINE. By yourself, J. C. Boyd?

Mr. BOYD. Yes, sir.

Senator BLAINE. I think all this correspondence should be made a part of the record, Mr. Chairman.

The CHAIRMAN. If there is no objection.

Mr. BOYD. Senator Blaine, that represents our office files.

Senator BLAINE. You will have them returned to you.

Mr. BOYD. Oh, very well, sir.

(The correspondence referred to will be found at the end of the testimony of this witness.)

Senator FLETCHER. What reply did you get from the New York Stock Exchange?

Mr. BOYD. The only reply I received, sir, was an acknowledgement by the secretary of my letter of December 17, written by him on December 30, regarding the fact that it had been overlooked. As to any reply to any material question involved in my telegram or letter, there was absolutely nothing said.

Senator FLETCHER. That is the only reply you received?

Mr. BOYD. The only reply.

There are in this file a letter to Lehman Bros. and one to the Commercial National Bank, which were the transfer agents of the concern, and I notified them along the same lines that I notified the others.

Senator BLAINE. I think, if you have no objection, we should put them all into the record.

Mr. BOYD. No objection. They have not been spoken of before, and I just wanted you to know that if they were not combined there I would not have spoken of them.

Senator FLETCHER. I want to get your idea, if I may, about what you think Congress can do in the matter of regulation, or providing for regulation or supervision or control over the New York Stock Exchange in their transactions.

Mr. BOYD. I would have no objection to giving the matter some consideration and giving you my views, but I would rather not—

Senator FLETCHER. I did not know but what your experience in connection with this case might enable you to point us how we can do something to correct or remedy this kind of business.

Mr. BOYD. Whether I can or not I could not say now. I would be very glad to inform the committee, but you understand, Senator, that we are just a couple of poor lawyers over in Baltimore trying to make a living, and that takes a great deal of our time. Senator Goldsborough would vouch for that.

Senator GOLDSBOROUGH. Yes; I think I may say that Mr. Boyd is a prominent member of the Baltimore bar, but I do not think he knows much about the stock market, perhaps.

Senator FLETCHER. You appreciate that we are trying to find something that we can do to prevent transactions which you evidently regard as being reprehensible in connection with the New York Stock Exchange. We can not prevent corporations from manipulating their stock arrangements and issuing stock, and that sort of thing. I think one great trouble with this business has been the watering of stock and listing it on the stock exchange and selling to the public this watered stock which, after the water was squeezed out, of course, went down to nothing. I do not know that we can do anything with reference to these corporations along that line.

Mr. BOYD. Except possibly something along this line, that a director of a concern, except to a very limited capacity, will be precluded from dealing in his own stock, or indirectly deal with it in the nature of a pool. Make it a criminal offense, or something along that line. That requires some drastic action.

Senator FLETCHER. Yes; I appreciate that. We are concerned here now in an investigation of the New York Stock Exchange and its practices.

Mr. BOYD. I think this question of interlocking directors, Senator, is one of the worst things we have had to contend with and it has been more responsible for these various pools than anything else. One can not serve two masters at the same time.

Senator FLETCHER. Admitting all that, what has the New York Stock Exchange got to do with it? Is there some way we can reach the practices of the New York Stock Exchange? That is the market place for these securities. You brought notice to them of what was taking place, and it would seem that they ought to have paid attention to that notice and perhaps canceled the listing of this stock or protected the public in some way. That is a point that I would like to see developed.

Mr. BOYD. Well, take this matter before us to-day. It was almost indecent haste; it was worse than the marriage of Hamlet's mother to his uncle.

Senator BLAINE. I was going to suggest to Senator Fletcher that Senator Couzens pursued the examination of Mr. Whitney respect-

ing complaints that had been filed, whether they made investigations or what they did; and the chairman ascertained that Mr. Boyd could present a concrete case of how they handled complaints. That was the main purpose of calling Mr. Boyd down here.

Mr. BOYD. I do not know how you got onto it, Senator.

Senator BLAINE. I knew about this last December.

Mr. BOYD. I have been absolutely quiet on the matter since they settled with me.

Senator BLAINE. Not December, but last March. I beg your pardon. I think it has been quite clear from your testimony that, notwithstanding your telegram and notwithstanding the letter that you wrote to the New York Stock Exchange, bringing their attention to these alleged fraudulent practices and illegal practices, the stock of the concern was still listed upon the New York Stock Exchange, as well as the debentures?

Mr. BOYD. Yes, sir; and is being sold now; and I think now, as I did in December, that that stock is absolutely illegal and that it was the duty of the exchange, after warning and before it proceeded with the sale of it, to have its own attorneys look into the matter and advise it. It was not necessary to take the opinion of a 1-horse lawyer.

Senator FLETCHER. Did you go into the matter to determine whether there was watered stock?

Mr. BOYD. No, sir; I was not interested in that.

Senator BROOKHART. If Congress would prohibit the use of the mails and the telegraph in interstate commerce with regard to practices such as you have described, that would meet it, would it not?

Mr. BOYD. Yes; that would. The only trouble about that, sir, is that you might strike the innocent.

Senator BROOKHART. The innocent are being struck now by this system so hard that you can afford to strike a few and still have a result that would be to the great advantage of the public, could you not? Under proper regulation it would be much less than are suffering under the system now?

Mr. BOYD. I think there ought to be some regulation. Just what that is I am not prepared to say.

Senator BROOKHART. The power to reach it is through the interstate commerce clause of the Constitution, by the control of the mails.

Mr. BOYD. Yes; but I would hope that it would not be turned over to the Interstate Commerce Commission.

Senator BROOKHART. No; I mean the interstate commerce clause of the Constitution.

Mr. BOYD. Yes; I think you have a right to do that.

(The correspondence referred to and submitted by the witness is here printed in full, as follows:)

DECEMBER 15, 1931.

RICHARD WHITNEY,  
*President New York Stock Exchange,  
New York City.*

No such thing as Radio-Keith-Orpheum Corporation rights. Proposed issuance of rights absolutely illegal. Sale would only defraud innocent purchasers. Hasn't there already been done enough harm on New York Stock Exchange to the many small holders of R-K-O stock? Why not investigate as to manipulations of this stock?

J. COOKMAN BOYD.

DECEMBER 16, 1931.

RADIO CORPORATION OF AMERICA,

*New York, N. Y.*

(Attention of Mr. David Saranoff, president.)

GENTLEMEN: We are writing to inform you that any action taken by your corporation, or any expenditure made by your corporation, for or on account of the Radio-Keith-Orpheum Corporation, and especially on account of any matter connected with the attempted amendments to the charter of the Radio-Keith-Orpheum Corporation, or of the change in the 500,000 shares of class B stock of the Radio-Keith-Orpheum Corporation owned by the Radio Corporation of America, or the purchase of any so-called indentures, will be done at the peril of the Radio Corporation of America, as the legality, as well as the outcome of the whole proceedings in connection with the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, or any transfer of or change in or reduction of the stock, has been questioned and is pending in the circuit court of Baltimore city, in the State of Maryland.

Any action of the court in determining the legality or illegality of said proceedings of the Radio-Keith-Orpheum Corporation will date from the day of the filing of the proceedings—in one instance, as to the question of receivership, dating from December 1, 1931, and in the other instance, as to the question of the legality of the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, accounting as from December 14, 1931.

Very truly yours,

Boyd & Boyd,  
By J. C. B.

DECEMBER 17, 1931.

NEW YORK STOCK EXCHANGE,

*New York, N. Y.*

(Attention of Mr. Ashbell Green, secretary.)

DEAR SIR: On the 15th instant we sent a telegram to Richard Whitney, president of the New York Stock Exchange, advising him that there was no such thing as Radio-Keith-Orpheum Corporation rights; that the proposed issuance of rights was absolutely illegal and sale of same would only defraud innocent purchasers, with the suggestion that enough harm had already been done on the New York Stock Exchange to the many small holders of R.-K.-O. stock, and suggested the advisability of an investigation as to manipulations of this stock.

We learn to-day that the New York Stock Exchange yesterday decided to admit to the list for trading Radio-Keith-Orpheum Corporation temporary certificates for common stock without nominal or par value, and that it had likewise admitted to dealings Radio-Keith-Orpheum Corporation rights.

The issuance of this proposed stock is illegal, the stock must of necessity be void for many reasons, among them being (1) that the alleged amendment of the charter of the corporation was not provided for by the necessary votes under the law; (2) that proxies not duly executed were voted at said meeting; (3) that proxies given for the purpose of voting against the proposed amendment were voted for the same; (4) that the meeting itself was illegal; and (5) admitting for the sake of argument the legality of everything that transpired, the amendments themselves, even if properly carried, were illegal and void.

In consequence, to permit the sale of this proposed stock and the so-called rights would be a gross fraud upon the public who may purchase the same and do not understand the situation.

Since you have been notified of said illegality, it should be incumbent upon your organization to be satisfied that the same are duly and properly authorized and are legal under the law before the same should be permitted to be sold. The feeling of the general public as to alleged waste, extravagance, and mismanagement of this corporation, as well as gross dissipation of its assets, is of such character as that nothing less than a vigorous research on the part of the stock exchange will satisfy.

The press asserts that there has been filed with you by the Radio-Keith-Orpheum Corporation a statement of assets and liabilities as of September, 1931, which provided for assets of practically \$17,000,000 and liabilities of \$10,000,000.

At the meeting of the stockholders in Baltimore on December 10, 1931, B. B. Kahane, vice president and general counsel of Radio-Keith-Orpheum Corporation, who presided at that meeting, stated that the net worth of the assets of the concern was at that time \$47,000,000, over and above liabilities.

The times are too ticklish, values are too uncertain, and the stock market generally is in such desperate condition as that no chances as to sale of illegal stock like the above should be permitted.

The people themselves have become tired and will demand a strict accounting.

The haste in this matter seems so indecent as to make one ask whether there may be an ulterior motive.

Very truly yours,

BOYD & BOYD.

c/o to

Hon. C. C. DILL,

*United States Senate, Washington, D. C.*

Mr. HIRAM S. BROWN,

*President Radio-Keith-Orpheum Corporation,*

*New York, N. Y.*

DECEMBER 18, 1931.

Messrs. LEHMAN BROS.,

*New York, N. Y.*

GENTLEMEN: We notice by a circular of the Radio-Keith-Orpheum Corporation, dated December 17, 1931, signed by Hiram S. Brown, president, that subscriptions for debentures and common stock are accepted at your office.

Are you informing those who present same to you of the proceedings in the Circuit Court of Baltimore city, State of Maryland, alleging the illegality of this transaction and the order of that court passed in said proceedings? If not, we should suggest from the standpoint of common honesty and fairness that you do so.

Very truly yours,

BOYD & BOYD,

By J. COOKMAN BOYD.

DECEMBER 18, 1931.

COMMERCIAL NATIONAL BANK & TRUST Co. OF NEW YORK,

*New York, N. Y.*

GENTLEMEN: We notice by a circular of the Radio-Keith-Orpheum Corporation, dated December 17, 1931, signed by Hiram S. Brown, president, that certificates for new common stock are now being delivered upon transfers and in exchange for outstanding certificates for class A stock when presented for the purpose at your office.

Are you informing those who present same to you of the proceedings in the Circuit Court of Baltimore city, State of Maryland, alleging the illegality of this transaction, and the order of that court passed in said proceedings? If not, we should suggest from the standpoint of common honesty and fairness that you do so.

Very truly yours,

BOYD & BOYD,

By J. COOKMAN BOYD.

NEW YORK STOCK EXCHANGE,

OFFICE OF THE SECRETARY,

*December 30, 1931.*

J. COOKMAN BOYD, Esq.,

*Baltimore, Md.*

DEAR MR. BOYD: Your letter of December 17 was duly received. I regret that through an oversight in my office an earlier acknowledgment was not sent to you.

Very truly yours,

ASHBEL GREEN, *Secretary.*

JANUARY 2, 1932.

NEW YORK STOCK EXCHANGE,

New York, N. Y.

(Attention of Mr. Ashbel Green, secretary.)

DEAR SIR: Yours of December 30, 1931, received.

I am not so much interested in your acknowledgement that through oversight in your office an earlier acknowledgement was not made of my communication of December 17.

I made certain statements in that letter which to my mind required action by the New York Stock Exchange. Evidently the exchange is more interested in the quantity sold rather than in the quality or legality of same.

I think, perhaps, more beneficial result might be obtained if a copy of this correspondence was submitted to the Senate in Washington.

Very truly yours,

(Witness excused.)

The CHAIRMAN. I want the attention of the committee a moment. This other matter has taken 2 hours and 30 minutes. There is no criticism of the committee or the members. But Mr. Muir is here to be heard and we would like to hear him also. But at this time I had intended to put on Mr. Stock, the investigator of the committee, to make a partial report on Continental shares. He is ready to make a statement of that as the investigator of the committee. If there is no objection to that we will call him.

Senator BULKLEY. I do object. Do you want to hear the reasons for the objection?

The CHAIRMAN. You may state them.

Senator BULKLEY. Mr. Chairman, the subject matter of this controversy over Continental shares is the subject matter of litigation in the courts. For that reason I do not want to express an opinion one way or the other. I have no reason to question the good faith of the people who brought the action against Mr. Eaton and his associates. I think the whole matter should be postponed until the courts have had a chance to act. I do not think we should be in a position of giving publicity to a matter that is pending in the courts.

But that is not the whole point I wanted to address myself to here to-day. If, for any reason, you think it is proper to go ahead notwithstanding this matter is pending in the courts, there is an orderly and there is a disorderly way to go ahead. We all know that where anybody is under suspicion of doing anything that is not right, he has been called here and questioned in person. I do not know of any precedent for a committee expert to go on in a public hearing and spread matters on the record here and have it broadcast through the newspapers of the United States, at a hearing at which the person mentioned has not been called. I protest against that very vigorously.

The CHAIRMAN. I desire to make a brief statement on that matter. It is well understood that this matter is in litigation and, unfortunately, many of the cases that should be investigated are in litigation. The report came to me, which now seems to be erroneous, that this case would be heard on the 6th of June, and that it should not be heard here until that time. I said that we would try to postpone it until that time. It now turns out that it is to be tried at a later date, and at a date after the expiration of the date for the authority of this committee to act. That is one of the reasons for investigating it now. And I think that this is a peculiar case in many respects.

I think this is the first case which has come to our attention which has a tax-dodging feature, of \$2,000,000. The record is very interesting, as Mr. Stock has informed me. And he has gone into the matter very carefully.

Now the question still remains, is this the best way to proceed? I understand they send out investigators in the courts and they make reports.

Senator BULKLEY. Without calling the man accused?

The CHAIRMAN. Yes. I do not think it is right to call the man who is prosecuted, in the first instance.

Senator BULKLEY. I assume you will put in the record any precedents you have for that.

The CHAIRMAN. The members of the committee will bear me out that that is done, if I am not wrong in it.

Senator BROOKHART. Practically every case is done like that. Mr. LaGuardia brought in several cases.

Senator BULKLEY. Mr. LaGuardia was an original witness on his own responsibility.

Senator CAREY. Mr. Chairman, these people will have a chance to come here, if they care to, following this hearing, if anybody wants to be heard.

The CHAIRMAN. I want the committee to pass judgment on the propriety of handling it this way. Our time is getting very, very short, and our attorney has been very busy in other matters. And you know there has been criticism of him when he was spending time on these other matters, and when he made a statement to us he was criticized that he was trying to testify.

I want to leave it to the committee which is the best way to proceed in the matter. I do not want to do anything wrong or anything unethical, neither do I want to delay it until the committee's authority expires.

Senator COUZENS. May we not take this up, Mr. Chairman, in executive session?

Senator BULKLEY. I have suggested that it should be taken up in executive session.

Senator FLETCHER. I think that would be better.

(Thereupon the committee proceeded to the consideration of other business.)

# STOCK EXCHANGE PRACTICES

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TUESDAY, JUNE 14, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met at 11.30 a. m., pursuant to call, in the hearing room of the Committee on Interstate Commerce, the Capitol, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Blaine, Carey, Watson, Couzens, Steiwer, Fletcher, Glass, Wagner, and Morrison.

The CHAIRMAN. The committee will come to order. Professor Ripley, of Harvard, is a witness now on the stock exchange investigation.

Senator COUZENS. Are you going to swear the witness?

The CHAIRMAN. Whatever you say.

Senator COUZENS. We have sworn all the other witnesses.

The CHAIRMAN. He is here at my suggestion in hopes that he could help us out a little. He has been before the Banking and Currency Committee before.

## STATEMENT OF WILLIAM Z. RIPLEY, PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY, CAMBRIDGE, MASS.

The CHAIRMAN. Doctor Ripley, you may proceed. Give your full name and address and occupation, and then proceed.

Mr. RIPLEY. William Z. Ripley, Harvard University.

Senator WATSON. What is your position there, Doctor Ripley?

Mr. RIPLEY. Professor of economics.

Senator WATSON. And how long have you been?

Mr. RIPLEY. Thirty-two years.

Senator WATSON. And were you connected with the railroads before that?

Mr. RIPLEY. No.

Senator WATSON. Never were in the railroad business?

Mr. RIPLEY. I was educated as a railroad engineer.

The CHAIRMAN. You are a railway director now, are you not, Doctor Ripley?

Mr. RIPLEY. Of the Rock Island, and I have been since the reorganization in 1917.

The CHAIRMAN. Proceed, please.

Mr. RIPLEY. We seem to be standing at a parting of the ways in some respects, due to the widespread phenomenon of separation of ownership of property from its management. It is getting to be an old theme now, but the events subsequent to 1929 seem to me

to indicate more and more clearly that the State must take hold. Among other causes for the protraction of this depression is the state of utter bewilderment on the part of the common people, not the wealthy people, not the farmers so much as those found from end to end of our communities, the industrial working class with a little money, the white collar workers up to those of somewhat more ample means. All of those people have been induced to entrust their savings to the care of others. There is nothing else to be done under city life and modern conditions but to turn over your property, whatever it is, except your house and your garden, for somebody else to manage. And this bewilderment at the present time, as I see it, arises from the fact that those who have assumed this duty have, in too many cases, been recreant to their trust. I might give many striking illustrations, but you know them as well as I.

Now, what comment I might offer to you would avoid, if possible, increasing this bewilderment. The facts are already pretty well known. We ought to have, perhaps, some more disclosure in order sufficiently to arouse public attention; but the real constructive thing to which I wish this committee might address itself is that of recommending legislation to meet this situation.

The public, a very large group, numbers millions of people. It has been estimated recently that stock holdings in the United States are not less than 18,000,000. I do not mean the number of people holding stocks, but stock holdings.

And the striking phenomena is—and this is particularly true in the public utility field, that the number of people who have taken a small flier—\$50, \$75, or \$100—runs into the hundreds of thousands. I might cite the striking case in the advertisements of Cities Service, for example, that over 1,000,000 people are registered security holders in a property which aggregates assets of over \$1,000,000,000. That is a modern phenomena. It makes even United States Steel, American Telephone & Telegraph, General Motors, and corporations of that size, seem of relatively minor importance as far as this great public interest is concerned.

Senator FLETCHER. Do you mean they are permanent investors or just speculators?

Mr. RIPLEY. Permanent investors. They have been asked, solicited even, particularly in the field of public utilities, to become owners. I have in mind Associated Gas & Electric Co., in which it is publicly advertised that not less than \$1,000,000 a week, in \$10 bonds—they were called baby bonds—are being sold at the present time: at the most difficult period industrially and financially, perhaps, for placing securities that we have ever known. To my thinking, the phenomena of the continuing thrift of people of this sort is very striking. The New York Times the other day in an article indicated that the postal savings banks—the public governmental accounts of the people in England were surpassing all previous records. Our postal savings have reached an all-time peak of \$700,000,000. If you gentlemen would visit an institution like the Bowery Savings Bank, the biggest savings bank in the world, and note the horde of people who come in there, filing in and out, to increase their deposits. This bank is now doubling its quarters. The common people do not know what to do with their money. I

suspect also that the savings banks do not know what to do with it, either.

What are you going to do about it? And I am glad of the opportunity to urge upon you that same suggestion previously made to this committee. Many of these abuses and evils which have been exposed at your public hearings—failure of the Bank of the United States; the Gillette Razor scandal; and the collapse of the Insull properties—all of these thrive upon secrecy. You would better stop short selling and speculation if everybody knew just what was going on among those companies than in any other way. Therefore, I urge once again that you exercise the Federal power as appurtenant to the taxing power, to require that all means by which the Federal income taxes are computed, should be disclosed upon standardized, accepted forms prescribed by the United States Government.

Senator COUZENS. How frequently would you have that done, professor?

Mr. RIPLEY. I think that has got to be determined by experience. The result of a little book which I published a few years ago, called *Main Street and Wall Street*, has been, in five or six big corporations, as they have written me themselves, to demonstrate the feasibility of quarterly statements. Some of them had never reported before oftener than once a year.

The most pitiable thing about these great collapses is the lack of information among the owners. I am not urging upon you that the widow and the orphan can analyze corporate accounts. But there are professional analysts by the hundreds who get their living that way. There are research departments through which this information would soon be made available, thus becoming public property.

Senator BROOKHART. They are found too often on the pay rolls of those fellows, employed to boost stocks and bonds.

Mr. RIPLEY. That is true. But now it is all a guess. Nobody knows. A few corporations have adopted a fairly sound policy in that respect. The United States Steel Corporation deserves a good deal of credit. From the first day it published, in a full page of the newspapers, the complete condition of their company.

Senator COUZENS. Is it your opinion that that would have any effect on the bull and bear pools?

Mr. RIPLEY. I think so. When a man tries to run a bull or a bear pool he does it because of the lack of information, among the public, largely. If there were a Federal bureau which, as for the railroads, compiled and issued this material, you would have a check upon such affairs. It is, of course, a difficult matter. The New York Stock Exchange has tried to do it for a number of years; but they can not accomplish more than a certain amount. In the first place, they can only deal with those companies which voluntarily put their heads in the noose, through listing on the exchange.

Senator BROOKHART. Now in regard to the railroad stocks, in spite of the Interstate Commerce Commission, has there not been about as much speculation in the railroad stocks?

Mr. RIPLEY. Not so.

Senator COUZENS. No; I think there has not.

Senator BROOKHART. There has been plenty of it.

Senator COUZENS. There has been no bulling of the market.

**Mr. RIPLEY.** Railroad securities have just gone down, as they had to do under the circumstances. There has been no wild fluctuation as there was a generation ago. Where will you see anything like this Auburn business?

**Senator COUZENS.** It is outrageous.

**Mr. RIPLEY.** It is outrageous. I should like to show you letters that come in to me from the common people, school-teachers and white-collar workers. They have been done out of the product of their thrift and industry. It is not always by fraud. Corrupt practice is not always evident. Not infrequently when the business is going on its way, honestly and decently conducted, but without making full disclosure of the state of its affairs, these dealers in New York who have no other interest besides speculation as a living, will, nevertheless, play with it one way or the other by manufacturing information through means disclosed through this committee.

**Senator FLETCHER.** Would you have those statements apply to every concern listed on the stock exchange?

**Mr. RIPLEY.** I would go farther than that, sir, and require that any business engaged in interstate commerce, with more than a certain minimum number of stockholders, with assets of more than a certain amount, and so forth, should be required to make, either to a bureau of the United States Treasury Department, because they handle the income tax, or to some other bureau such statements. Those statements ought to include those things now currently reported. They ought also to include particularly such matters as depreciation, which is just a football in the hands of the unscrupulous in corporate accounts. The matter of the form of statement would have to be carefully provided for by cooperation between good representative business accounting organizations and the Government. It has been done for banks for years, although it is not even yet done properly. Bank accounts ought to be more intelligible and considerably amplified.

**Senator BROOKHART.** Do not bank stocks vary about as much as any stocks?

**Mr. RIPLEY.** If so, that may be due to the imperfection of those accounts as now rendered. But with the railroads, publicity of their affairs, has among other things put the railroad out of politics. They are not in politics now, as they used to be 20 years ago, when I first knew the business. Publicity has been also extended to telephones and telegraphs. There is no reason in the world—and I have asked the advice of good constitutional lawyers—there seems to be no reason in the world why this same requirement might not be extended to industrial corporations which are of a sufficient size and public importance to warrant the procedure.

**Senator FLETCHER.** Doing an interstate business.

**Mr. RIPLEY.** Doing an interstate business, of course. You could not take hold otherwise.

**Senator GLASS.** I think I asked you when you were before the committee before, more than a year ago, this question: Do you think it is impossible to define the difference between an investment and a pure gamble in securities?

**Mr. RIPLEY.** I will tell you frankly how I feel about this speculative and gambling end of it. A good deal as I do about gang war-

fare. I would let them shoot each other up until they are all alike cleaned out.

Senator GLASS. The trouble is that they shoot everybody else up.

Mr. RIPLEY. That is true, but if there were disclosure currently of these corporate affairs, it would at least be a damper on such activities.

Senator GLASS. But, Doctor, the average man; who is not an expert, does not understand these matters. Do you think a man invests his money for an hour, or a day, or a week, or a month? Do you call that an investment?

Mr. RIPLEY. No more than I would a man who takes a flyer in the Irish hospital sweepstakes. Hundreds of people do that. But there are also people of another sort. These have impressed this on my mind, because I get so many letters, which run like this: "I am a school-teacher. I have invested three years' earnings in Schulte Retail Stores. Nobody on earth knows less about Schulte Retail Stores than I do, and I lost my money. Yet nobody can tell me how or why it has all come about."

Senator GLASS. To come back to my question, do you think it is impossible to define the difference between an investment and gambling?

Mr. RIPLEY. It is as indefinite a line as the difference between right and wrong.

Senator GLASS. Well, I think I called your attention to the fact, more than a year ago, that I had had prepared a chart which showed that the average period that stocks which passed on the stock exchange, six or seven years before, was held 30 days, and that had been reduced to 22 days. Do you think people invest their money for 22 days.

Mr. RIPLEY. Now, Senator, I would, right at the start, strike down the validity of those figures, for this reason: Speculators are selling a hundred times over, while those other people invest but once. When you arrive at that figure of 22 days, you are including an overweight speculative transaction on the stock exchange. The people I have in mind are those who are buying utility bonds at the rate of \$1,000,000 a week. There is no market for those bonds. There is no way to dispose of them. Those who take them take them for keeps. They can not speculate if they would.

The CHAIRMAN. What is the name of the concern, if you do not mind telling, Professor?

Mr. RIPLEY. I am perfectly willing to say. It is the Associated Gas & Electric Co.

The CHAIRMAN. Is that the one about which there was some criticism or remarks in the papers because of refusals to put an address on the air?

Mr. RIPLEY. This same issue of the small investor I was asked to discuss before the National Association of Savings Banks. After the arrangement for the address had been made an offer was extended to broadcast it. I gave the text of the address to those in charge. They said it was not the policy of the National Broadcasting Co. to name names. I said I had been naming names all my life. You either take the broadcast as I read it, or you do not have it all. And so it was delivered but was not broadcast at all.

Senator GLASS. Doctor, what I am trying to arrive at—and I do not want you to get away from the point—what I am trying to arrive at is some accepted definition of an investment which could be taxed by taxing transfers of stock on the New York Stock Exchange, which did not conform to that definition.

Mr. RIPLEY. The dividing line is so indefinite that it is very difficult to draw up such a definition. I would say in this pending crash of Kreuger & Toll, a quarter of a billion dollars of securities have been sold to the American people.

The CHAIRMAN. What amount did you say?

Mr. RIPLEY. A quarter of a billion.

The CHAIRMAN. \$250,000,000?

Mr. RIPLEY. Yes, sir.

The CHAIRMAN. You have reference to stocks, or bonds?

Mr. RIPLEY. Both, all along the line.

Senator GLASS. They were sold as an investment.

Mr. RIPLEY. Yes; they were bought and sold—

Senator GLASS (interposing). I am talking about those securities that are passing on the exchange, and you must stand by and find out what they are offered for to-day, and the day they are offered.

Mr. RIPLEY. One can sometimes differentiate, by experience, those corporations which are essentially speculative from those which are not. Such corporations pass from one state over to the other. I can take you back a few years, citing American Can. It was highly speculative. Everybody was playing with it.

Senator GLASS. Those are the people I want to get out. Not those who buy for an investment, but those I want to get out, the ones I am talking about are those who gamble on American Can, buying it to-day, and gamble on what it will be like to-morrow.

Mr. RIPLEY. I would go along with you in any practicable attempt to minimize all such dealings.

Senator GLASS. That is what we ought to do.

Mr. RIPLEY. But my opinion is, Senator, you would discourage speculation more effectively by insisting upon a state of affairs where all of those companies shall have nothing to play with. If, once a quarter, the real status of Auburn Motors was made known; if Radio-Keith-Orpheum, and those other companies, that were up before you, were not blind pools, you would find that speculation would have quite a lot of the heart taken out of it.

Senator GLASS. That would affect the professional traders. I asked Mr. Mitchell, when he was before this committee not long ago, if 10 per cent of the people who take fliers, as your expression is, in market transactions had any knowledge whatsoever of the earning power or the management of the companies who were issuing those various stocks, and he said he did not think 10 per cent had.

Mr. RIPLEY. American Telephone & Telegraph has become a national corporation. The men who represent it on the board of directors are not there because they have a proportionate investment; there are men on there, like Daniel Willard, I suppose, who was put on because he was personally a national asset. The affairs of the American Telephone & Telegraph Co. are public property under the provisions of law which require that their earnings shall be filed, as railroad earnings are filed, with the Interstate Com-

merce Commission. You do not find Western Union played with to-day as in the day when Jay Gould had it in hand. Why? Because Western Union has to disclose its assets, and whatever is going on.

Senator COUZENS. That is true of A. T. & T.

Mr. RIPLEY. Exactly the same way. It seems to me, as a practical measure, Senator, directed to the same goal which you have in mind, that this would be most effective. There is grave difficulty in defining the difference between a speculator and an investor. The whole thing is a product of the war. It was these great salesmanship campaigns in Liberty bonds which taught the consumer of electricity, and the farm family—if the farm family ever has any money at all these days—to take the money out from behind the chimney piece and to buy one or two or three shares of the local utility. And, by the way, the workingmen, the employees of some of these corporations and utilities, have been too often forced to make the investment. That is one of the things that is going to come out in this Insull situation in Chicago.

The CHAIRMAN. In other words, we will find that the men were forced to buy their securities or lose their jobs?

Mr. RIPLEY. I have many letters saying that I was obliged to buy or I would have lost my job if I had not bought this—we commonly call it stuff.

Senator COUZENS. But the aggregate of that is not very great.

Mr. RIPLEY. I did not mean to say that it is the basis of it. And please do not understand me to say that I decry this investment in public utilities. It is a great growing industry which, in the main, is soundly handled.

Senator BROOKHART. Do you value speculation; has it any legitimate value in business?

Mr. RIPLEY. Not very much.

Senator BROOKHART. Then why not set an arbitrary definition between speculation and investment?

Mr. RIPLEY. If we could.

Senator BROOKHART. We could all right.

Senator GLASS. We could propose it, but I do not think we could get it through.

Senator BROOKHART. And would it not be better for business to live under some of the inconveniences rather than go on with speculation?

Mr. RIPLEY. Would it deal with the business effectively? Would it not hamper the man on the border line?

Senator BROOKHART. Suppose it does. Could he not afford to submit to that rather than have speculation?

Senator GLASS. I think those hundreds of thousands of people who bought A. T. & T. in response to a perfectly legitimate financing campaign were investors.

Mr. RIPLEY. Those people did not buy through the company.

Senator WALCOTT. They did not sell their own stock?

Senator GLASS. A. T. & T. did. They conducted an elaborate campaign of salesmanship. The stock was offered to me over and over again.

Senator WALCOTT. I think that is true.

Senator GLASS. And being a man of average sense I did not buy it. And talk about the matter of a statement of their condition, I will

tell you I do not think half of the Senators and Representatives in Congress could understand it.

Senator COUZENS. If that is true, why is this bulling and bearing not done with railroad stocks?

Senator GLASS. It is not variable, that is all.

Senator COUZENS. It is because they have to report to the Government. And for years they have done it.

Senator GLASS. We have not a man in this room that can tell me what is the condition of the Pennsylvania Railroad. You can not.

Senator COUZENS. Yes; I can.

Senator WAGNER. Would you not try to find out if you intended to invest in them?

Senator GLASS. No; not if I wanted to speculate. I would try to find out what it would be to-morrow. And they transfer ten times as much stock, frequently, in one day as the institution has put out.

Senator WAGNER. That is not true of rails.

Mr. RIPLEY. I do not see how you can define the border line between the two.

Senator GLASS. I can define it mighty quick if they would let me do it; and I would put enough money into the hands of the United States Treasury to repeal these measures of high taxation, or break this gambling up.

Mr. RIPLEY. Suppose I bought Gillette Safety Razor and to-morrow found out the real facts and sold it?

Senator GLASS. That would be an exception. One-tenth of 1 per cent. That would be an exceptional case. That would not be touched by the plain definition of the distinction between investing and gambling.

Senator WAGNER. It is difficult to make that distinction.

Senator GLASS. I do not think it is. It is suggested that it might be inconvenient. It might have been inconvenient to you in the Gillette Safety Razor business, but the immense good accomplished in other directions would override that.

Mr. RIPLEY. Of course, Senator Glass, you would have great trouble with fictitious accounts. You have already in your records before this committee had ample demonstration of fictitious accounts. I just wonder if it would be workable, however desirable the end might be. And I am aiming at that same end you are.

Senator GLASS. The stock gamblers thought it would be workable. When I proposed it in the Senate they got busy.

Senator WAGNER. Doctor, I wanted to ask you if in addition to this information that the public ought to have—and I think it is one of the greatest preventatives—would it not be well for the Government as well to supplement that information as well to the general condition of the country; such as a tabulation of the unemployment situation?

Senator WALCOTT. The Department of Commerce is doing that.

Senator WAGNER. We have not yet devised a proper system to do that, although we passed some legislation some time ago that passed under my name. That is difficult to do.

Mr. RIPLEY. At Harvard for quite a few years we attempted to do that. I never had anything to do with the Harvard Economic Service, but three or four of my colleagues did, and if ever there was a disinterested service, it was that. It was an honest endeavor

to give a true picture. But it proved difficult and unworkable. It seems to me, desirable as that information might be, too many people would come back at you, if they acted upon any advice that you gave, that I would rather make a beginning along this line of a simple statement of facts. And may I say—

Senator WAGNER (interposing). I did not intend it to take the place of your suggestion but that my amendment would supplement it.

Mr. RIPLEY. I would like to think it over.

This question of publicity is up all along the line. And with your permission I would like to file an editorial from the Journal of Commerce, of May 23, 1932, upon this plea which I made to the Savings Bank Association.

The CHAIRMAN. If there is no objection, it will be printed in the record.

(The editorial is printed in the record in full, as follows:)

#### ADVICE TO SMALL INVESTORS

Enormous losses have been suffered by thousands of men of small means who, in years of prosperity, invested in securities of a speculative type not suited to their special requirements. Many of these unfortunate people now realize the folly of placing savings that may be needed in emergencies in stocks and bonds of fluctuating and uncertain values. The passion for speculation and the lure of risk taking are irrepressible and will always claim a large number of victims who can not be protected against themselves.

There is, however, another class of small investors who, having no wish to gamble with their hard-earned savings, nevertheless fall a prey to ignorance of the speculative character of the enterprises in which they are induced to place their money. To investors of this type, who want safety but fall through lack of knowledge to obtain it, the address delivered by Prof. W. Z. Ripley of Harvard before members of the National Association of Mutual Savings Banks, carries a special message. His plea for open, sound, and intelligible standardization of the accounts of public utility companies, with Federal regulation of accounting practices as a safeguard, is also of particular concern to the managers of institutional investment agencies, such as the mutual savings banks, which hold in trust funds deposited by millions of small investors.

The recent collapse of two great holding company systems, one in the United States and one in Sweden, has afforded startling evidences of the dense ignorance of supposed experts and financial advisors regarding the involved accounting practices and mispractices of organizations whose bonds and debentures have been widely recommended as sound investments to the people of this country. These revelations emphasize the need for full and authentic information to throw light in dark corners, where dishonest manipulators work, and to give facts about concealed operations which, even when legitimate, ought to be known to prospective investors.

A great many people are inclined to waste time bemoaning the losses of the past, but doing nothing to protect the investors of the future against the same kind of exploitation to which they themselves have been subjected. Professor Ripley is doing the public a great service, therefore, in emphasizing the need for speedy action and the value of a positive program. In forceful language and with the aid of profuse illustrative material distressingly specific in character, which prevented the broadcasting of his remarks, he called the attention of savings bankers to the need for reforms in public utility accounting practice. He urges full and enforced publicity not only as a means of according increased protection to investors but also to the industry itself, since its growth and sound expansion are dependent upon utilization of the savings of the American people.

As Professor Ripley said: "A major development of public-utility finance is the far-reaching campaign to bring about customer ownership of such securities. The immediate future is big with possibilities of such a rush of popular investment. The public-utility industry, quite deservedly when properly managed, has been more nearly depression-proof than any other branch of investment."

Unfortunately, the solid character of the industry does not protect from loss the investor who acquires interest in mismanaged paper companies many times removed from the operating organizations that are depression-proof. It does not prevent him from sharing in speculative ventures, if he invests in bonds of public-utility companies whose underlying holdings may be of a speculative character. Professor Ripley is asking, therefore, that the investor shall be placed in a position to know what he is doing when he invests in public-utility issues. He believes that the investor ought to be told when a bond is not a senior obligation but merely a junior claim upon the unstable earnings of many scattered companies, of varying degrees of soundness. The present complexity of organization, moreover, frequently confuses the expert as well as the man of average intelligence and facilitates manipulations that defeat the purpose of regulatory safeguards.

Although the demand for full publicity, greater simplicity, and uniform practice in public-utility accounting is advocated by Professor Ripley primarily in the interest of the investor, it is plain that uniform, comprehensible accounting acts also as a check upon the efficiency of management. Hence, it assists the work of the regulatory bodies that are chiefly concerned to protect the consumer against excessive charges. Professor Ripley's words no doubt have aroused a timely interest in an important subject among representatives of institutions that control over a third of the savings deposits of the country. It is a pity that he was unable to reach the large audience of small savers, who stand in need of instruction and protection.

**Senator BROOKHART.** Mr. Chairman, I would like to ask another question or two about the stability of railroad investments. I am in full accord with your publicity idea, but is it not true that the publicity as to the earnings of railroads by law tended to stop speculation, more than the publicity?

**Mr. RIPLEY.** I am not aware of any considerable speculation since, at least, the Federal or War Administration. There is not a road one can play with, because the moment anybody tries to organize a pool somebody else gets in touch with the Interstate Commerce Commission and says: "Are their earnings really falling off or are they holding up?" The minute you get that public—

**Senator BROOKHART** (interposing). That is not my question. My question was, do not the earnings put on the railroads by the law tend to stop that speculation, and that complaints made to the commission are on the basis of the limitations of the law; that is, for instance,  $5\frac{3}{4}$  per cent, and a recapture of half over 6 per cent?

**Mr. RIPLEY.** As things have gone in the last few years, it is not limitation on the earnings by the Government; it is the limitation put on the earnings by competition on the highways and the waterways and other ways.

**Senator BROOKHART.** But there is an excess of earnings of millions of dollars now.

**Mr. RIPLEY.** Yes; by a very few companies, such as the Chesapeake & Ohio, and the Norfolk & Western.

**Senator COUZENS.** May I point out that it is not only outside competition; it is inside competition that has helped, favoritism to shippers, and multiplicity of building warehouses, and so on, has contributed a large part.

**Mr. RIPLEY.** Yes; that is so. And while earnings have slid somewhat before, the toboggan slide has had a more or less steady grade. The line goes like this [illustrating], following what you might call the trend, due to fundamental circumstances, all the way up or down.

**Senator BROOKHART.** There isn't anything to play with in co-operative markets.

**Mr. RIPLEY.** Is there an open market? You have to have an open market before you can have speculation.

**Senator BROOKHART.** They do not need it. Now the English co-operatives are about the best institutions in Great Britain, and they have an absolute fixed arbitrary earning for their capital, do they not?

**Mr. RIPLEY.** Yes; I suppose they do. I do not know.

**Senator BROOKHART.** Well, they do all right, and that stabilizes them and destroys speculation entirely in their enterprises, and their percentage of gross is considerably greater than the gross of private business, and has been ever since the war. And its stability is assured, and it is stabler and sounder than anything else. So why can not we prescribe some way of limiting capital earning and stop this speculation? Of course, the definition suggested by Senator Glass would do that.

**Mr. RIPLEY.** I am not objecting to his remedy, but I am asking you how you would deal with the man who buys and has got to sell the next day because he needs the money for something else? It may be an emergency with him.

**Senator GLASS.** Are they not very few, contrasted with the great body of speculators?

**Senator BROOKHART.** I could write a definition in the law which would distinguish between an investor and a speculator and give the investor the benefit of legitimate investment of his capital, and if he could show a fraud was practiced on him he would have certain remedies against those who sold him the stocks or bonds.

**Mr. RIPLEY.** That would make difficult work for the courts.

**Senator BROOKHART.** It would not make anything like the increase in losses we have now.

**Mr. RIPLEY.** What you say may be true, but I would like to see this simple, practical remedy of corporate publicity applied first.

**Senator FLETCHER.** Doctor, let me ask you a question: The reason why we do not have this speculation in railroad stocks is because we have some governmental supervision over the railroads. Now, applying that to the stock exchange, there is the greatest financial institution in the world, the New York Stock Exchange, without any regulatory power or supervisory powers anywhere. Now suppose we undertake to regulate that institution by the Government, would not that be helpful in this matter of preventing these collapses, such as happened in October of 1929, and in 1930?

**Mr. RIPLEY.** That raises an entirely different issue, as to what was the cause of the collapse in 1929.

**Senator FLETCHER.** Well, to get back to this thing we have in mind, that is, the Stock Exchange, whether there isn't a regulatory power required on that?

**Mr. RIPLEY.** I will answer that, then, directly. I think that independent standardized publicity would do more than you could hope to do in any other way. Because, can you not see, sir, that the stock exchange can only deal with those who list upon it? I am urging that all companies, whether they list or not, should be required to make periodical statements.

**Senator TOWNSEND.** Doctor, would you go farther than banks are required to go at the present time?

Mr. RIPLEY. I do not know enough about bank accounts to answer specifically; but I have a very definite impression that it was the weakness of its requirements which rendered possible some of the bank collapses we have had.

Senator TOWNSEND. I presume you have noticed that the decline in prices of bank stocks has been quite as severe as in any other line.

Mr. RIPLEY. I would expect it to be more so, because the banks lie just a little nearer to the causes of collapse.

The CHAIRMAN. Doctor Ripley, may I ask your view on another matter? Is not a part of the trouble that people who hold positions of trust in these corporations betray them? Would it help if there were a restriction on officers and people selling stock under fictitious names while they are in charge of the property?

Mr. RIPLEY. I would like to see this committee recommend a measure, alongside of the requirement of reasonable publicity for all corporations engaged in interstate commerce above a certain size, something which shall deal with speculation by directors of great corporations in the stock of his own company. The officer in one of these companies is unlike the ordinary shareholder, because, while he continues to manage, he can step in and out of ownership with the greatest ease. I happen to know of some cases in detail of the administrators of great businesses who had a heavy investment up to 1929, which they completely unloaded at the present time, large companies that have even gone into receivership, but by reason of advance information the directors stepped out from under. The only way to deal with that question would be publicity. I would like to see some requirement that periodically the president and the members of the boards of directors of corporations, sufficiently imbued with a public interest, should make a showing of the number of shares which they hold. And I would add very severe penalties for evasion through the use of fictitious names. One of the best safeguards for the great body of people who are looking around for a safe placement of their savings, is that the men who manage that business are staying with it; that the captain is still on the ship; that he has not taken to the lifeboat, steering it by radio.

The CHAIRMAN. And telling others to stay in.

Mr. RIPLEY. Yes; and sending out wireless messages for others to stay or even to come on board.

Senator TOWNSEND. That the ship is safe?

Mr. RIPLEY. Yes. What happened in Gillette Razor and Kreuger & Toll? There was undue credulity. None of the steps were taken that they should have taken, to have audits made; to have their lawyers examine the concessions, to be sure they had actually been made and that nothing could go wrong. The whole Kreuger & Toll business was for the creation of a monopoly on a prime necessity of life, matches; that is to say, fire. In other words, a tax on matches is like a tax on salt. Those who get the exclusive right to sell salt or matches through selling third-rate Government bonds are resorting to bribery for a license to extort.

Senator WALCOTT. That is, by the Government?

Mr. RIPLEY. They got a Government monopoly on a necessity of life. The whole theory of the thing from the start was false. But I do not believe there was any corrupt purpose on the part of those

who placed those securities in America. I know some of those men. They were of marked integrity, but of incredible stupidity.

The CHAIRMAN. They did not look into it?

Mr. RIPLEY. They put their own money into it.

Senator WALCOTT. What about Ernst & Ernst?

Mr. RIPLEY. Did Ernst & Ernst go to Sweden? Did they do anything but take the figures presented to them by Kreuger? That is the trouble with a great deal of the auditing that goes on now. The auditor is looking at two sets of figures to see——

Senator WALCOTT (interposing). If it is in balance, that is all that is required?

Mr. RIPLEY. That is too true. And you will find there is often in the certification a little notice that reads something like this: "Having examined the figures submitted to us, this audit is correct," or "to the best of our knowledge and belief."

Senator WALCOTT. They may not have looked into it carefully.

Mr. RIPLEY. Yes; they do not say we have gone to the bottom of this whole business and pledge our reputation that all is exactly as it is set forth.

Coming back to your question, Mr. Chairman.

The CHAIRMAN. I do not remember what that was, but I am going to ask you another one. You said \$1,000,000 of baby bonds were being sold to small investors at the present time.

Mr. RIPLEY. A million dollars worth a week.

Senator WALCOTT. Of one company?

Mr. RIPLEY. Of a single issue.

The CHAIRMAN. Do you desire to make any comment on what kind of an investment it is?

Mr. RIPLEY. The primary comment I should make on it is that it is not suitable for people of small means, because it has not the attribute that such things ought to have, instant convertibility. That is what the savings banks offer. If you break your leg or lose your job, you can get the money back. There should be an open market for any security that is widely held. And the pathetic thing is that very large amounts of money at the present time, by these sales campaigns are being withdrawn from savings banks in order to be devoted to this other kind of investment.

The CHAIRMAN. Has it a promise of a great return?

Mr. RIPLEY. A very much greater return.

The CHAIRMAN. A very much greater return?

Mr. RIPLEY. These bonds which I have in mind are offering 8½ per cent at the beginning. They are in \$10 denominations, with only \$3 paid down. I invite your attention to the bookkeeping and handling charge, \$40,000,000 in \$10 lots, and ask you to consider who is going to pay those charges through rates on light and power.

In addition to the partial payment arrangement, there are all sorts of participation rights; rights to exchange, warrants, and so forth; together with the advantage that you will be allowed to deduct, or that there will be deducted for you, the amount of income tax in the State where you happen to live. Now is it possible to do all that with respect to \$40,000,000 worth of bonds?

The CHAIRMAN. And that was Associated Gas & Electric?

Mr. RIPLEY. Associated Gas. I do not know, in fact, and nobody can know, how sound that company is in and of itself. It is one of

those blind pools, so far as accounts are concerned, in which you trust your investment to somebody else.

That is what the people did in Chicago, and now they discover that all of the facts were not disclosed to them. I want all corporate facts spread on the record so that he who runs may read. You could contribute nothing else by law which would further stabilize conditions.

And, furthermore, you would not meet the opposition of the best and most soundly financed companies. I am trying to interest the industry in this direction, as I told Senator Glass's committee, and I have the promise of six or eight public utility leaders that they would not oppose the proposition. There was put into the record at that time a report which President Gifford, of the American Telephone & Telegraph Co., had prepared. It stated that the American Telephone & Telegraph Co. had not been prejudiced by enforced publicity of accounts; but that they found it worked to their advantage in two ways; first, when they had to raise new capital, immediately the books are opened, every one may know what the situation actually is. If they want to borrow a certain amount of short-term money the bankers may get in touch with the Interstate Commerce Commission and know precisely how things stand.

Senator FLETCHER. Do those people you speak of furnish a statement of their assets, their business, and their earnings, when they are selling these bonds?

Mr. RIPLEY. After a fashion, but who knows with certainty? All the Insull companies furnished statements.

Senator FLETCHER. Do they set forth what their purpose is in raising this \$40,000,000?

Mr. RIPLEY. Yes; I will read you—

Senator FLETCHER (interposing). Is it to go into their development, or expansion, or what?

Mr. RIPLEY. This is a circular of Associated Gas & Electric Securities Co., April 7, 1932:

Since the offering of 8½ per cent 8-year gold bonds was made, stockholder customers throughout the territory served, and other security holders, have purchased these bonds at the rate of nearly \$1,000,000 a week. Approximately \$5,000,000 of bonds have been already sold on the installment basis.

Now, in mentioning that company I am using it only as an illustration of the way in which popular investment in small lots is spreading at the present time, in order to impress on your minds the desirability of taking action without waiting too long.

The CHAIRMAN. Mr. Stock wants to ask you a question.

Mr. STOCK. Mr. Ripley, I do not know whether you are familiar with advertisements of Associated Gas running in the newspapers of about a year ago. These showed, as I remember it, two charts with an upward trend, one of the gross revenues, and the other of power output, giving the distinct impression that the company was progressing during the depression, as contrasted to other companies in the same field.

Mr. RIPLEY. Quite inevitably, the amount of money that goes into construction account—

Mr. STOCK. What I meant was that they had those two lines only, one of which showed the gross revenues and the other the kilowatt-

hours, the output. Now, the reason that they were going up all the time was because they were continually acquiring additional properties with the money which they were getting all the time from the people they sold their securities to.

**Mr. RIPLEY.** Yes; you can increase earnings any time if you sell enough securities to keep on buying more properties.

**Mr. STOCK.** To my point there is, do you not think that was a gross fraud and misstatement?

**Mr. RIPLEY.** I think it is open to that suspicion. A curve of gross revenues only was published, without indication of the attendant fixed charges incurred in raising new capital.

**The CHAIRMAN.** In other words, it was made to look like a good business when it was not.

**Mr. RIPLEY.** In connection with the work I am doing at Cambridge, we have taken sample periods, say a month at a time, and have tabulated the amount of advertising in the newspapers, applying the standard rate for advertising. We computed in this instance of Associated Gas & Electric that they are spending not less than \$1,000,000 a year for newspaper space; not to get people to buy electric refrigerators or service, but to get people to buy stocks and bonds.

**Senator FLETCHER.** Do you think now, Professor, that this buying and dealing in stocks and bonds is going on now to a considerable extent, even in these depressed times?

**Mr. RIPLEY.** Nothing like what happened in 1929. Many of the great sales organizations have disbanded because there is nothing to sell. I speak very feelingly there, because of the college men who have taken employment as stock and bond salesmen.

**Senator FLETCHER.** You mean to say this bond speculation has fallen off very considerably?

**Mr. RIPLEY.** My impression would be that outside of the group of people who do nothing else in and around Wall Street, the public participation was practically stopped. The people have not got the money.

**Senator FLETCHER.** I thought you were showing by the talk of these bonds that the disposition of the public was to continue.

**Mr. RIPLEY.** Well, they have got these utility securities for keeps, because there isn't any open market for them. The banks will not lend you money on them, because they have no dependable market value.

**Mr. STOCK.** These bonds of Associated Gas are selling now at 8½ per cent?

**Mr. RIPLEY.** The statement indicates that the base return is about 8½ per cent.

**Mr. STOCK.** I saw an analysis a few days ago, that all of the issues of better rank are selling for more than that, anywhere from 10 to 12 per cent, so that a person could walk out into the open market and buy them for less than that 12 per cent.

**Mr. RIPLEY.** One of my colleagues was solicited by a salesman to buy one of these securities at a price of \$85. We immediately looked up the quotations in case this had to be sold. We could not find a listed sale for three months, and the price at that time was something under 40. So the person who was persuaded to buy at 85, supposing he had to cash in on it, the most he could get was \$30 or \$40.

Senator TOWNSEND. Doctor Ripley, are you familiar with the effort to sell the Government baby bonds to the public?

Mr. RIPLEY. I do not know about that.

Senator TOWNSEND. You understand it was not successful?

Mr. RIPLEY. I do not know at all.

Senator TOWNSEND. I was just wondering why the people refused to buy the Government baby bonds and bought these others.

Mr. RIPLEY. These Associated bonds were advertised as baby bonds, and they were offered coincidentally through a great body of salesmen throughout the country.

Senator WALCOTT (reading circular). They have a new wrinkle here. They say that "the legality of these bonds will be passed upon by Messrs. Travis," and so on. So after they have sold them, they guarantee that they may be sometime passed upon. This sounds like a swindle. They show here what they say they have by a consolidated statement. It looks like a swindle on the face of it.

Mr. RIPLEY. Well, I do not know. But with all these figures, it is utterly confusing. It makes it impossible for anybody, no matter how skilled an analyst he may be, to make a comparison of one corporation with another.

Senator FLETCHER. It is a matter of interest. Senator Townsend's question was why they did not buy the Government bonds. They do not pay as much interest.

Mr. RIPLEY. If you want to bother with it, this statement will bear me out as respects the complexity of the corporate set-up. When this issue was first offered it was by Associated Gas & Electric Co., which is the holding company at the top. They were advertised as "baby bonds, guaranteed." Now the guarantee was by whom? The guarantee was by Associated Gas & Electric Corporation, every dollar of the stock of which was owned by other company at the top.

The CHAIRMAN. That is, were the bonds a first lien on any property?

Mr. RIPLEY. They were not in any event. Nor did the guarantee mean anything, because it was by a corporation 100 per cent owned by the other corporation. It is exactly as if I borrow money at the bank and get my son to guarantee payment when his only income is from me.

Senator WALCOTT. Like one pocket in your breeches guaranteeing the other.

Mr. RIPLEY. It would not be possible to do that if all these companies were forced to make full disclosure.

Senator WALCOTT. But there are all the figures, and nobody reads them. I am beginning to think, from the hearings we have had here, that what fools the public is these tremendous campaigns of selling, instituted, as we found a week ago, by the National City Bank, in which the officers and directors of the Anaconda Copper were interested, and then if they have anything left over that is sticky, they get the National City Bank to organize another pool, buy 200,000 additional shares and sell it to the public.

Mr. RIPLEY. Better than that, you may have an investment trust, and you put what you have left over in your investment trust.

Senator WALCOTT. But here is a great bank that puts up the money for its affiliate, which, in turn, places the stock on the market,

selling it out to the customers who have to take it to keep on the affiliate's list.

**Mr. RIPLEY.** There is no question about that.

**Senator WALCOTT.** Now, that leads to what the chairman asked you a little while ago: Is it not justified to have some kind of a Federal regulation that will prevent officers and directors of corporations speculating in their own stock?

**Mr. RIPLEY.** That is one of the most infamous things in the situation to-day. The statement of a man like Percy Rockefeller, director of a number of corporations, in stating to you that his major interest in those companies was buying and selling stocks, getting in and out of them was outrageous.

**Senator WALCOTT.** And the man who was helping him to run the pools was a specialist on the stock exchange. You can not beat that.

**Mr. RIPLEY.** But my proposition is that we most need publicity. The stock exchange is doing the best it can. They have their own experts. If they see that a security was being blown up unduly, they begin to check upon it.

**Senator WALCOTT.** England goes a step further, and Berlin used to; it has a fortnightly statement. That prevents a lot of speculation. I am inclined to think we have got to come to something like that.

**Mr. RIPLEY.** I think so.

Answering your question, Mr. Chairman, suppose it were part and parcel of corporate publicity that once a quarter all directors in these corporations should be compelled to disclose the number of shares they own directly or indirectly. Now, they could evade such a law with all kinds of fictitious names. But you could impose a heavy penalty on, making it so dangerous that they would not dare to conceal. In the older days when a man owned a little property in his own business, he was there forever. He slept with it. If it went, his whole fortune disappeared. What happens in the present day? The officers of the corporation are merely taken on as receivers. Their salary goes on just the same. It is a completely different system we are facing at the present time from the one which our fathers created. We have not even attempted to deal with it as we should.

May I say here, sir, that there is presently to be published a book to which I would like to direct your attention. It strikes at this whole business in a way different from anything else in print. It is a book by Prof. A. A. Berle, jr., of the Columbia University Law School. He is an eminent lawyer, as well as a student of social affairs. This is a large volume which will deal with these problems concerning popular investment. The title of the book, is *Private Property and the Corporate System*. It should have a profound influence upon legislation, because he brings to the front and makes evident by all sorts of concrete data, that we are living in a different world than that which existed before the war.

**The CHAIRMAN.** It is getting late, and I am sure the Senators would like to leave, and we will have to bring this to a close very soon. But I would like to ask you a few questions.

Do I understand it is a general practice among business men to add all the expense of advertising to the expense of production and charge it to the consumer?

Mr. RIPLEY. Yes; as a part of the operating expenses of the corporation.

The CHAIRMAN. So if it is necessary to sell more stock the expenses of that are added to the consumer?

Mr. RIPLEY. Yes, sir.

The CHAIRMAN. As a part of his light bill?

Mr. RIPLEY. Yes. Who else will pay for it? And that is why under these financings involved at the present time the cost of raising capital, which is so extraordinarily high, and must be so, adds a large item to operating expenses. The consumer has got to pay for it in the long run. We have a right to know how much it all costs as well as what the proper return thereon should be.

The CHAIRMAN. You have said something about several witnesses here. You have not said anything about Mr. Whitney's testimony. Did you go over that, too?

Mr. RIPLEY. I have read his testimony. I am less interested in the prevention of short selling than in these more fundamental problems. Speculation is just as vicious when it runs the other way.

Senator WALCOTT. It is the marginal buying—

Mr. RIPLEY (interposing). It is marginal buying, and all such business which does the mischief. But if you let the light in upon these transactions, through the accounting publicity which I have recommended, there are many people who will help to correct the undue fluctuation of prices through understanding transactions in such stocks and bonds.

The CHAIRMAN. Mr. Stock wants to ask another question.

Mr. STOCK. Mr. Ripley, I had a definite impression when I heard Mr. Mitchell testify. I had read countless letters from many people who had bought stock, and I had read the interoffice correspondence over Mr. Mitchell's name urging them to sell various securities, and his explanation of that, and to my mind his whole testimony, and the essentials of it can be put in one sentence, that he thought he had to use the same methods in selling investments that you do in selling carpets. That came from him as head of one of the biggest banks in the world. Do you care to make any statement in regard to that?

Mr. RIPLEY. I think there is too large a cost in selling. A cardinal rule with me is never to buy anything which anybody wants to sell me very badly. The entire organization of great sales companies affiliated with great banks, ought to be abolished by law.

Senator WALCOTT. The affiliates?

Mr. RIPLEY. The affiliates. Banking is one thing, and investment is another. The two should be rigidly set off from one another.

The CHAIRMAN. If there is nothing further, the committee will adjourn to meet on Thursday morning on the stock exchange investigation.

(At 12.45 o'clock p. m., the committee adjourned to meet on Thursday, June 16, 1932. at 10 o'clock a. m.)

# STOCK EXCHANGE PRACTICES

THURSDAY, JUNE 16, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met, pursuant to call, at 10 o'clock a. m., in the hearing room of the Committee on Banking and Currency, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Carey, and Fletcher.

Present also: William A. Gray, Esq., counsel to the committee.

Mr. BENJAMIN REASS. Mr. Chairman, I thought that—

Senator TOWNSEND. Mr. Chairman, Mr. Reass has something to say.

Mr. GRAY. Wait a minute, Mr. Reass. Just a moment. Mr. Chairman, Mr. Reass represents Mr. William Fox. I am not going to make any statement about the situation. I am only going to introduce you, Mr. Reass.

Mr. REASS. Thank you very much.

Mr. GRAY. Mr. Reass and I have had a colloquy over Mr. Fox. He asked me to discuss the matter with the steering committee. The matter was in my hands and the steering committee left it with me. He evidently wants to say something to the committee.

The CHAIRMAN. Do you want him to speak?

Mr. GRAY. I think the committee should hear him.

## STATEMENT OF BENJAMIN REASS, ATTORNEY FOR WILLIAM FOX, NEW YORK CITY

The CHAIRMAN. Give your name and address, Mr. Reass.

Mr. REASS. My name is Benjamin Reass, 100 Broadway, New York. I do not know what this reference to the steering committee is, but if—

The CHAIRMAN. This is a meeting of the full committee here.

Mr. REASS. Yes, sir. I did say to Mr. Gray that I was desirous of addressing the committee with respect to Mr. Fox, and I found a rather angry attitude with respect to him. I have taken the liberty of coming here and presenting the facts to you.

Mr. Fox, pursuant to a promise that he made to be here this morning, left with me at half past 6 last night, and foolishly, we started by motor, the weather was bad, and we got here about half-past 4 New York time, half-past 3 your time. During the trip Mr. Fox complained of being ill. I knew he was not well, had not been for some time. This morning I went into his room shortly after 9 to tell him to get ready and come here.

I know he is eager and anxious to tell his story to you. I found Doctor Hornaday there, the hotel physician. Doctor Hornaday said that so far as he was able to determine at that moment Mr. Fox had a bilious attack. He was still examining him and he would notify Senator Norbeck just exactly what the condition was.

In the meanwhile I hurried on here to show this committee that we are not lacking in deference and respect for your request, although it was only in the form of an agreement to come here, and to urge on you to give him a little time, to give the doctor a little time to determine whether his physical condition will enable him to come either to-day or to-morrow morning.

I want to make it clear that Mr. Fox is eager and anxious to present his side of the story here.

Let me add another thing while I am on my feet here in behalf of what has been described as a controversy. I received a phone message not couched in particularly courteous language last week requesting that Mr. Fox come to Mr. Gray's office. Of course, I knew perfectly well that there was no obligation on the part of Mr. Fox or anybody else to come to Mr. Gray's office but, nevertheless, I said he would be glad to do so, and he went and a sort of stenographic record was taken of the requests they made. There were so many questions, accounting questions and other matters that Mr. Fox could not answer. You know, of course, that Mr. Fox has been the head of many huge enterprises, that he was a trader in the markets, that his operations were in the hands of accountants; that it was humanly impossible for a man to answer as to figures covering a period of years antedating and covering the rather strenuous era of 1929 and 1930. You doubtless are familiar with the controversies that revolved around the Fox enterprises.

But we gave him what we had and we got a copy of the stenographic minutes the next day, and I told him that whatever he wanted we would answer.

Yesterday morning at half past 10 Mr. Fox went to Mr. Gray's office prepared with a typewritten statement answering the matters, and there was hurled at us a mass of new matter of which there was not the slightest suggestion or intimation of any kind. One of the inquiries I am going to make before I get through is just where they come from, because that is an important part of the investigation and bears strongly on what Mr. Fox came here to tell you.

There was a different atmosphere, a different attitude; no longer an inquiring attitude but a very different one. Mr. Fox remained there until half past 1 answering questions. I want to repeat that they were not couched in a merely inquiring mood at all. Statement after statement was spread in the questions, which did not seem to me to be asking for answers, but merely stating facts. Of course, it was a physical or mental impossibility for Mr. Fox or any other human to answer these matters. They were matters for accountants. I am certain that a lot of these matters and the accountant's report respecting them was available. I am sure of it, because I see here Mr. Hall, of Touche, Niven & Co., who has made a written report concerning these matters to the banks of the Fox Film and Fox Theaters in April and May of 1929, and many of the questions of Mr. Gray's inquiry to Mr. Fox are all answered in a letter which was exhibited to us on Monday of this week in the

office of Mr. Tinker, a name that you will hear something about, representing the Chase Bank.

The CHAIRMAN. You came here to make a statement about Mr. Fox being sick, and you come here and make a stump speech and criticize Mr. Gray. I think you are entirely out of order, but I will leave it to the committee.

Mr. GRAY. Suppose you leave it to me to answer?

The CHAIRMAN. All right; are you ready to proceed, then?

Mr. GRAY. I don't care what he says.

The CHAIRMAN. I am leaving it to you.

Mr. GRAY. It will not do the gentleman any good. Every time he opens his mouth while Mr. Fox is around, Mr. Fox says, "Sit down, Ben. You don't know anything about it. I will do the talking." Let him go ahead. He can not help Mr. Fox. He will only hurt him.

The CHAIRMAN. All right; proceed.

Senator FLETCHER. You were going to tell about Mr. Fox.

Mr. REASS. Yes, sir. I am sorry I went beyond the necessities of the occasion, but you see what I am driving at. Mr. Fox left there about half past 1 or 2 o'clock and we then went back to my office, where we tried to gather up as much as we could. At half past 6 last night we started for Washington.

Senator FLETCHER. We know that.

Mr. REASS. Mr. Fox is up here. He is not well. I don't know what his condition is. I am hopeful the doctor is correct in his statement that it is a bilious attack which will shortly disappear.

Senator FLETCHER. We know that already.

Mr. REASS. In any event, I understand Mr. Gray is going to send a doctor up there. We can get a statement exactly what the situation is.

Senator FLETCHER. What do you want us to do?

Mr. REASS. Hold this for an hour or two until I can get a report from the doctor.

Senator FLETCHER. An hour or two?

Mr. REASS. Yes. May I ask you to put this over to, say, 2 o'clock? If the situation is as the doctor thinks it is, I haven't any doubt he can be here at that time.

Senator FLETCHER. We will go on with Mr. Gray then.

Mr. REASS. That is all I am asking for.

#### **STATEMENT OF WILLIAM A. GRAY, ESQ., COUNSEL FOR THE BANKING AND CURRENCY COMMITTEE, WASHINGTON, D. C.**

Mr. GRAY. Mr. Chairman and members of the committee, my friend makes some statements that are incorrect. He states, in the first place, that Mr. Fox was coming here under an agreement. Neither Mr. Fox nor anybody else has been asked to come to this committee under any agreement. Mr. Fox was subpoenaed to be here. I said to Mr. Fox when I communicated with his attorney, Mr. Reass, and requested his presence in my office, as I have said to every other man that I have examined in New York City, that I have no legal authority in New York City to compel any of those

gentlemen to come to my office and answer my questions there; that if they preferred simply to answer the subpoena and come before the committee in Washington they could take that step; that I thought it would be very much more convenient for both myself representing the committee and the gentlemen whom I intended or had subpoenaed to sit down and talk over the matter with me in New York City, because I have found in some of my investigations that after looking carefully into them there, they did not require any presentation to the committee. In other instances I have found that they required presentation and have presented them.

Mr. Fox did come into my office and he did sit down with Mr. Reass and he did answer questions, though he preferred to make statements rather than to answer questions when I would let him do so, and they were taken down stenographically, and Mr. Fox, for a man who managed and controlled his own organizations, displayed an amazing ignorance with respect to the transactions that occurred.

In between the time of Mr. Fox's first visit and when I requested him to see me again yesterday afternoon we, of course, had 10 or 12 accountants and others working on these various transactions and got a great deal of information, which convinced me that Mr. Fox was not, to say the least, open and above board with us.

I examined Mr. Fox from half past 10 yesterday morning until 2 o'clock yesterday afternoon in the presence of Mr. Reass, and Mr. Fox very frankly admitted a number of things that I am going to present to this committee, and again displayed quite an ignorance with respect to certain other things. I told Mr. Fox that I wanted him here at 10 o'clock this morning in response to the subpoena, and he stated that he would be here. After Mr. Fox had left, an effort was made to have me extend the time—some outside sources—to have me extend the time when Mr. Fox would be required to come here, in order that he might go into his vaults in New York City this morning and get certain papers with respect to this case in order that he might present them to the committee, while prior to that time he told me that he did not know where these things were or where they could be secured, that they were not in his possession.

I was not at all satisfied with Mr. Fox's attitude, and I am not satisfied that he has been sincere. I do not know whether he will be sincere before this committee when he is under oath or not, and I am not at all satisfied that the man is doing anything else than avoiding appearance before this committee this morning.

Mr. Fox told me yesterday afternoon that he would have Mr. Leitstein, one of his closest associates, here, with certain books and papers and his income-tax returns this morning. We had Mr. Leitstein on the telephone at half past 11 o'clock last night, and Mr. Leitstein said he was not coming. Mr. Leitstein has probably by this time been served with a subpoena to come down here and produce all the books, records, papers, income-tax returns, and everything else he has got, and I think he will come.

So that I have been not, as a representative of this committee, treated with the fairness that I was entitled to have. Therefore, you will not blame me if when this morning somebody sends word that Mr. Fox had a bilious attack and can not come until to-morrow morning, I have done that which I have already done under the

instructions of the chairman of the committee, sent two physicians there for the purpose of examining him. If Mr. Fox is able to come upon the report of those physicians, I shall make application to the chairman of this committee for the proper process to bring him in. If we find, of course, that he is not able to come after our physicians report to us, why, the committee will, of course—I suggest to them that they shall extend to him the necessary time.

Now, let me say this, that Mr. Fox organized and controlled—and this is what I propose to show to this committee—Fox Films and Fox Theaters; that he owned in one of the concerns 100 per cent of the voting and controlling stock; that he owned in the other concern approximately 51 per cent of the voting and controlling stock; that while he owned and controlled that company he so manipulated it that he used the stocks of the company in any way that he saw fit, either for his own purposes or for the purposes of the company; that he bought and sold their stocks; that according to his statement the companies bought and sold their own stocks; that they entered into syndicates; they entered into pools; that in the very first issue of the stock of the Fox Films they went into the hands of one of the brokerage concerns of New York City for distribution and they had a written agreement that they should have a certain amount of the commission. Another written agreement was executed between that firm and Fox's own daughter that the commission should be divided with her. That was the inception of the organization of those concerns, and it was traced on from time to time.

Not only did he do as he chose, as I say, with these stocks, and I think he will before this committee accuse others of wrecking the company, but I think you will be satisfied that he did it before you get through. When I get through with it all, I will show that at the time Mr. Fox disposed of both these companies by the transfer of this stock, what that agreement and arrangement was, and how he still held on to so many interests, had moneys paid to this one and that one and the other one, and I will show you how he sold 210,000 shares of stock in Fox Theaters, and then when he sustained a loss of three million three hundred and some odd thousand dollars, claimed that he had been acting for the company; and, notwithstanding the fact that he dumped it on them and said that it was their trades, he took credit for the loss on his income-tax return.

I will show you plenty. This is one of the worst and most complicated cases that I have ever investigated, and is it any wonder that he is bilious?

The CHAIRMAN. What is the effect of taking that loss?

Mr. GRAY. The effect of taking that loss is that he first had the loss made good to him by the Fox Theaters and then took credit for it on his income-tax returns.

The CHAIRMAN. Does that mean an evasion?

Mr. GRAY. It means an absolute income-tax evasion. There is no question about it.

So I suggest, since we have reached this point, because I had arranged to go on with this presentation this morning—I understand that the chairman, or some members of the committee at any rate, are required to be on the floor of the Senate or in the meeting of some other committees—I think under all of the circumstances, possibly

in deference to Mr. Fox, if he does happen to be sick, and in order that I may properly present the picture, an adjournment be taken until such hour as the chairman deems proper.

The CHAIRMAN. You are not ready to go ahead with anything else? Senator WALCOTT. There is nothing else?

Mr. GRAY. There is another matter, Senator Walcott, but at the same time I feel that this ought to be presented to the committee first.

The CHAIRMAN. What is the wish of the committee?

Senator WALCOTT. I move we adjourn subject to call of the chair.

Mr. GRAY. Perhaps you better fix the time. The witnesses will have to be advised to come. In other words, there are a large number of witnesses here who will follow up his testimony.

Senator WALCOTT. If 2 o'clock is agreeable I will amend my motion to adjourn until 2 o'clock this afternoon.

The CHAIRMAN. Not later than 2, then. I will try to arrange for a meeting in Senator Couzens's room if the room is not occupied, off the Senate gallery, at 2 o'clock. I do not see how we can start sooner. But the members of the committee will be advised as to that later if the motion carries.

Those in favor of the motion will say, aye.

(Ayes.)

The CHAIRMAN. Those opposed, no.

(None.)

The CHAIRMAN. Carried.

(Accordingly, at 10.35 o'clock a. m., the committee adjourned, to meet again at 2 o'clock p. m. of the same day.)

#### AFTERNOON SESSION

Pursuant to adjournment of the morning session, the committee met and resumed the hearing at 2 o'clock p. m. in the Interstate Commerce Committee room in the Capitol, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Carey, Couzens, Fletcher, Bulkley, and Gore.

Present also: William A. Gray, Esq., counsel to the committee.

The CHAIRMAN. The committee will come to order. Mr. Gray will make a report on the absence of Mr. Fox.

Mr. GRAY. Mr. Chairman, after the occurrences of this morning and the failure of Mr. Fox to appear, we sent two physicians up to examine him. I have a written report from the two physicians which I shall file with the reporter, and I also had an interview with one of them. He assured me that although Mr. Fox is not at all dangerously ill and could come here this afternoon for the purpose of testifying, he did when he arrived here last night have a vomiting attack: that he had a bilious condition to-day: that he observed himself evidences of that bilious condition: that he had taken medicine this morning which would justify a doctor in advising him to remain in his room, if not in bed, during the day.

I therefore suggest, Mr. Chairman, that we go on as arranged with some other matters and have Mr. Fox here at 10 o'clock to-morrow morning, because the doctors have said that in their opinion

he will be able without any question to be here to testify to-morrow morning.

The CHAIRMAN. If there are no objections, the Fox Film matter will be postponed until to-morrow morning. It is so ordered.

(The physicians' report presented by Mr. Gray is here printed in the record in full, as follows:)

WASHINGTON, D. C., June 16, 1932.

The SENATE COMMITTEE ON BANKING AND CURRENCY.

Washington, D. C.

GENTLEMEN: Examination of Mr. William Fox made on June 16 at 11 a. m. shows the following:

He had a vomiting attack last evening and on attempting to rise this morning he became dizzy and nauseated and returned to bed. He has tenderness over the abdomen on right side, rather heavily coated tongue, and has been belching gas rather frequently. His temperature and pulse are normal and blood pressure, 114/70.

We feel this is a so-called bilious condition. Doctor Hornaday has given him calomel, and we feel that it is best that he remain in bed to-day. In our opinion he will be able to testify before the committee to-morrow.

W. CALHOUN STIRLING, M. D.,

W. D. TEWKSBURY, M. D.,

*Examining Physicians.*

Mr. GRAY. Mr. Chairman, the other matter which I desire to present to you is a matter that involves Continental Shares & Trading Corporation, also Foreign Utilities, which was a Canadian stock-holding corporation—that is, holding of stocks of other companies—and Otis & Co., which was a New York brokerage house. Mr. Stock, my assistant, and I, too, are thoroughly familiar with the situation, but I am going to ask him to present to the committee a little outline of what the situation is, and then I will call some witnesses and offer some documents for the purpose of establishing the facts in connection with the case. Mr. Stock will present the matter to the committee.

The CHAIRMAN. This matter was postponed from a previous hearing on account of the absence of Mr. Eaton, who suggested that he wanted to be here. May I inquire whether he is here now?

Senator BULKLEY. I would like to have Mr. Daley make a statement. I think I can find Mr. Daley in the gallery here.

The CHAIRMAN. I am asking if Mr. Eaton is here now.

Senator BULKLEY. I think not. I am quite sure he is not. Mr. Daley is his associate and I think he is in town and I think I can locate him.

Mr. STOCK. May I suggest, Mr. Chairman, that Mr. Eaton was subpoenaed to be here to-day.

Mr. GRAY. The idea with respect to Mr. Eaton was this, Mr. Chairman: Mr. Eaton was subpoenaed some time ago. His subpoena, of course, holds, and he should be here to-day, because he was notified of the continuance of the hearing and his presence required; notified in addition to other manners by sending him a wire yesterday. However, as far as the counsel for the committee is concerned, Mr. Eaton's presence is absolutely unnecessary. I mean by that, that the entire picture will be presented, but there are reasons known to you, Mr. Chairman, and the other members of the committee, why we deferred taking up the matter until he had an opportunity to be present. Now he has this opportunity. If he does not choose to take advantage of it, why, that is his responsibility.

The CHAIRMAN. I have a telegram from George T. Bishop, of Cleveland, sent me on behalf of Mr. Eaton, which, if there is no objection, I will ask be inserted in the record at this point, as follows:

CLEVELAND, OHIO, June 15, 1932.

HON. PETER NORBECK,

*Chairman Committee on Banking and Finance,  
United States Senate:*

I understand your committee has under consideration hearing and possibly making public a report prepared by one of your committee examiners concerning certain financial and business transactions of Continental shares, of which I am now president. I also understand that matters so investigated and covered by report are the subject of litigation pending in Ohio and Maryland courts. All implications of illegality or impropriety of matters investigated are denied in court proceedings by parties against whom charges are made. I respectfully request that you and your committee await outcome litigation so as to avoid possible prejudice to rights of Continental shares and other parties involved by premature publication of such ex parte investigation and report.

GEORGE T. BISHOP.

### TESTIMONY OF DAVID STOCK, ASSISTANT COUNSEL TO THE COMMITTEE, WASHINGTON, D. C.

The CHAIRMAN. You will be sworn, Mr. Stock. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, in the matter of this investigation before this committee, so help you God?

Mr. STOCK. Yes, I do.

The CHAIRMAN. The witness may proceed in his own way. You have investigated this matter?

Mr. STOCK. I investigated this matter thoroughly and have documentary proof here, documents and audits of the books of Continental Shares and other companies that had relations with Continental Shares. So that every statement that I make has been taken from that documentary evidence.

That evidence shows that a company, an investment trust or investment company, was formed in the early part of 1926 for the purpose of buying and selling and holding securities in various ventures; that the public investment in that investment trust was about \$150,000,000.

Senator COUZENS. What is the name of it?

Mr. STOCK. Continental Shares (Inc.). That at its peak the common stock of that trust sold at 78 and was selling at 25 cents a share to-day, resulting in a loss of about \$150,000,000.

Senator BROOKHART. What price?

Mr. STOCK. Twenty-five cents a share; 78 down to one-quarter.

The CHAIRMAN. \$78 down to 25 cents?

Mr. STOCK. \$78 down to a quarter of a dollar—25 cents.

This situation is being presented, I understand, because it involves a great many features of manipulation and the use of public money to further the personal ventures of persons in control of the public moneys.

Now, the stock in this company, Continental Shares, was sold through a banking and brokerage firm, Otis & Co., members of the New York Stock Exchange, through their various branch offices all over the country, by methods which I believe will be recognized as high-pressure selling methods.

Senator BULKLEY. Mr. Chairman, let me interrupt just a minute to protest again against the unfairness of this. Mr. Daley is in town to-day, reported to the clerk of the committee this morning, and asked to be advised what would be done and has not been advised of this. I think it is outrageously unfair. I renew my protest.

The CHAIRMAN. Of course, I can not speak for the clerk of the committee, but we postponed this hearing in order that Mr. Eaton and his friends might have notice or might be here. Now we are told that the attorney is here, and he can not be located.

Senator BULKLEY. Mr. Daley reported to the committee room while you were not available, while you were in session with the steering committee, and he did the proper thing.

The CHAIRMAN. Did he report to you, Mr. Blount?

Mr. BLOUNT (clerk to the committee). He handed me a memorandum this morning stating he would like to be called if the committee took up Continental Shares at the morning session. I asked one of the stenographers to call him up in case they did. This case was not reached by the committee this morning, so the Daley request could not be complied with.

Senator BULKLEY. He took the trouble to be here in town to attend this, and I just can not locate him at the moment.

The CHAIRMAN. Ring up the stenographer and see if she got in touch with him.

Senator COUZENS. May I suggest, Mr. Chairman, that in view of the fact that this is being taken down stenographically, the witness might proceed?

The CHAIRMAN. Yes; we might proceed.

Senator COUZENS. In view of the fact that it is being taken down stenographically and the witness is under oath.

The CHAIRMAN. Yes; I think we might go ahead. I do not see how we can do otherwise. It will be a stenographic report anyway. You may proceed.

Mr. STOCK. The evidence shows that Continental Shares, the investment company, was controlled by Cyrus S. Eaton, of Cleveland, one of the directors, and a member of Otis & Co., the brokerage firm that managed the affairs of Continental Shares and marketed the securities of Continental Shares: that Mr. Eaton was the principal partner of Otis & Co., having a 40 per cent interest in that company; that in addition to Continental Shares, the investment company, and the brokerage house of Otis & Co., there was still a third company, Foreign Utilities, a Canadian corporation, which was Mr. Eaton's personal holding company and which he used as his own instrumentality for furthering his own investments and ventures.

I will show that various methods were used to use the moneys of the public in Continental Shares to further the personal ventures of Mr. Eaton and his associates.

One of these is the transaction whereby the founders of the company, Mr. Eaton and his associates, took founders' shares, which provided that those shares shall receive 25 per cent of all profits after the common stock has been paid a certain dividend; that in 1929, in order to take such a cash payment of dividends to founders' shares, a stock dividend was paid on the common stock in order to make this payment possible, which was in direct violation of the provision of the charter and the laws of Maryland, where the company was

formed; that in spite of the fact that Otis & Co., the brokerage house, had taken underwriting fees of about two and a half million dollars for underwriting the stock of Continental Shares and marketing it, in 1930 it saw fit to sell back a great deal of the common stock of Continental Shares to Continental Shares at a price more than twice the then market, thereby causing a loss of \$3,600,000 to Continental Shares.

The evidence shows a great many syndicates, in rubber ventures, steel, and public utilities, all of which were sponsored personally and controlled personally by Mr. Eaton through Otis & Co., and that these syndicates were financed and furthered with the public moneys of Continental Shares, the investment company, either by having—

Senator BROOKHART (interposing). What do you mean by "public moneys"?

Mr. STOCK. Why, the moneys that were obtained from the public by selling the stock in the investment trust.

Senator BROOKHART. That would be money of the private investors rather than the public?

Mr. STOCK. By the public I mean the public investors. I mean those who were outside the inner control of the company.

I will come to these things more specifically as soon as I outline what the evidence shows. In a general way these syndicates were furthered and financed with the moneys of Continental Shares by having Continental Shares buy the shares in those syndicates or by having Continental Shares loan money to the syndicates or by having Continental Shares guarantee or indorse the notes of the syndicate or by having Continental Shares put up its own collateral to obtain loans to further operations of those syndicates.

That in five years or so that this company operated—we have three full books of minutes here—there is not one single instance where any director ever objected to any action taken by Continental Shares. That and other things indicate very clearly to my mind that the directors of Continental Shares were dummy directors put in office and maintained there by Cyrus S. Eaton.

Senator BULKLEY. Have you named the directors?

Mr. STOCK. I will come to that a little later, Senator Bulkley.

Further evidence of the fact that they were dummy directors is the fact that they subscribed to large amounts of stock in Continental Shares, which they have never paid for until this day. Those shares were taken by Cyrus S. Eaton in his own name and voted by him.

Senator CAREY. These directors are the names—

Mr. STOCK (interposing). I will give you those names.

Senator CAREY. Does the record show that these directors appeared at the meetings?

Mr. STOCK. Yes; the record shows that they were present.

The evidence shows that Foreign Utilities was the personal holding company of Mr. Eaton, and Eaton and Foreign Utilities were one and the same.

The evidence shows that in order to maintain the confidence of the public, certain financial statements of the company were altered—there is evidence of that—at the direction of Mr. Eaton, and that certain items that should have been disclosed were concealed from the public in those statements.

There is evidence that the shares in Continental Shares were manipulated—mind you, these shares were listed on the New York Stock Exchange—by Otis & Co. to further the sale of the securities to the public, and that certain losses resulted from that manipulation which were charged back against Continental Shares, the investment company. So that the public not only had been induced to buy the stock but had later on been charged with a loss incurred in manipulation.

The evidence shows a certain transaction in October, 1930, where Otis & Co., the brokerage house, being very heavily in debt, and the banks calling some of the loans, and being forced to obtain about \$20,000,000 immediately, put through a certain transaction which I will describe in greater detail later, which in effect resulted in Continental Shares obtaining a loan at various banks, putting up collateral, and the proceeds of that loan being used to pay the obligations of Otis & Co. and Cyrus S. Eaton and Foreign Utilities.

Now that transaction probably more than any other resulted in wrecking Continental Shares.

Senator BROOKHART. How much was that?

Mr. STOCK. That transaction involved \$57,000,000, Senator.

The evidence also shows that when Mr. Eaton was involved in litigation concerning the Youngstown-Bethlehem merger, which he was interested in preventing and did prevent, he used the moneys of Continental Shares to purchase large amounts of Youngstown stock, in an effort to obtain control of Youngstown and block the merger, and then charged the entire cost of litigation against Continental Shares and a subsidiary of Continental Shares.

Senator BROOKHART. Was Continental Shares interested in the suit?

Mr. STOCK. Only in so far as Mr. Eaton saw that they were interested. He saw fit to plunge them into that litigation.

Now, starting with the first item, the setting up of the company and the creation of founders' shares—or perhaps I should start and give you the names of the directors at that time—would you want me to name those directors, Senator Bulkley?

Senator BULKLEY. Certainly. If you are going to tell the story you will have to tell it all.

Mr. STOCK. At the time of the formation of this company the directors were F. H. Hobson, who was director and vice president; W. R. Burwell, director and president; Philip Wick, director and member of the executive committee; L. G. Watson, who was a director for a short time and at all times was secretary and treasurer; R. V. Mitchell. That is as far as I know the list of directors.

Senator BULKLEY. At what time was that?

Mr. STOCK. That was in 1926, I believe. Yes.

Senator BULKLEY. That hasn't anything particularly to do with the transactions that you are talking about?

Mr. STOCK. No. It has in connection with these founders' shares.

Senator BULKLEY. Mr. Chairman, I see Mr. Daley coming in here now. This is Mr. Daley, who is president of Otis & Co.

Mr. STOCK. Now, when the company was set up, it was provided that 10,000 founders' shares be issued at \$1 a share for a total consideration of \$10,000. These founders' shares were distributed

to various persons, Mr. Eaton getting 5,000, which he turned over to Foreign Utilities.

The charter provided that after \$1 a share had been paid on the common stock in dividends and if there was an excess of earnings, 25 per cent of that could be paid to the founders' shares, but the dividends on the common were cumulative as far as this provision was concerned.

In 1929, there were certain arrears of dividends on the common; that is, back in 1927 and 1928, dividends had not been paid on the common. A stock dividend was declared and paid in lieu of cash. After that stock dividend was paid, a dividend was paid on the founders' shares.

Senator CAREY. Was that money or stock?

Mr. STOCK. That was not money, Senator. As a matter of fact, the stockholders had no more after they got the stock dividend than they had before.

Senator CAREY. I mean on these founders' shares, was that in cash?

Mr. STOCK. That was in cash. They paid a dividend in two years on the founders' shares. The total amounts paid were as follows:

To Cyrus S. Eaton through Foreign Securities, \$164,324.61; to Otis & Co., \$108,454.23; to F. H. Hobson, \$13,145.96; to W. R. Burwell; \$9,859.47; to Philip Wick, \$9,859.47; to L. G. Watson, \$9,859.47; to R. V. Mitchell, \$3,286.49; to John S. Brooks, \$6,572.98; to F. H. Blackburne, \$2,356.49.

Now, the stock dividend was paid in lieu of cash, although the charter provided that \$1 a share be paid to the common.

If this method had been used logically and long enough, this company could have paid all of its profits to the founders' shares in cash and given the stockholders nothing but stock dividends. As a matter of fact, in the year 1929, dividends on these founders' shares were paid, although the company had a deficit of over \$3,000,000.

The CHAIRMAN. How much was paid as dividends on the founders' shares?

Mr. STOCK. I have not added this up, Senator. I have it in here somewhere. I can look it up.

The CHAIRMAN. Never mind. Go ahead with what you are doing.

Mr. STOCK. Now, all of this, mind you, was authorized by the board of directors. Of course, we have the minutes. Not only did the board of directors authorize that the dividends be paid to founders' shares upon payment of a stock dividend to the common stock, but it provided that an underwriting fee be paid to Otis & Co., the bankers of Continental Shares in connection with distributing the stock dividend. I am unable to find where there was any banking function exercised in that connection.

Senator BROOKHART. How much was the payment to Otis & Co.?

Mr. STOCK. Why, the amount was not very much, Senator. It was 10 per cent of the stated value of the common stock, which was distributed as a stock dividend. It was about \$4,600, but to my mind the principle of the thing is very important.

Senator BULKLEY. What other similar payments were afterwards made?

Mr. STOCK. As a founders' dividend, Senator?

Senator BULKLEY. No; as commissions to Otis & Co.

**Mr. STOCK.** There is a whole list of them here. They amount to about two and a half million dollars in the aggregate, and they are all in connection with the underwriting of securities.

I am not going to criticize any of those underwriting fees with the exception of one feature of it which I will come to later, where the banking firm sold back to Continental Shares securities which they had, previously underwritten at more than twice the then market price, so that having been paid for underwriting securities and then having securities left over which they were not able to distribute, they unloaded those securities back on Continental Shares, thereby foisting—

**Senator BULKLEY** (interposing). You are going ahead with the details of that, are you?

**Mr. STOCK.** Yes.

On June 6, 1930, Otis & Co., having up to that point charged underwriting fees aggregating about two and a half millions dollars in connection with the distribution of Continental stock, unloaded back onto Continental over 36,000 shares of common stock, some of which was sold back to Continental at \$76 a share and some of which at \$62 a share, although the market at that time was only \$32 per share. This resulted in selling Continental stock for \$3,600,000 more than it was selling in the market for at that time.

I might say that in a pending lawsuit in Baltimore an allegation to that effect in the bill of complaint was admitted in the answer.

**Senator GOLDSBOROUGH.** Can you refer to the suit that is now pending for receiver in the Baltimore courts?

**Mr. STOCK.** I can do that right now, Senator. There is a suit pending right now in the Circuit Court No. 2 in Baltimore by George L. Gule, plaintiff, against Continental Shares (Inc.), defendant.

Now, evidence of this sale by Otis & Co. to Continental Shares of its own stock at a loss appears in an audit of the books of Continental Shares by Lybrand, Ross Bros., and Montgomery, from which a great deal of the facts of the statement have been taken.

Now, there were a great many syndicate operations of Mr. Eaton and Otis & Co. I will just name a few of them. There was Industrial Shares (Inc.), Utilities Syndicate, Steel Syndicate, Ohio Industry Syndicate, Rubber Syndicate, Cleveland Cliffs Preferred Syndicate, the Cliffs Corporation, International Share Corporation, Good-year Shares (Inc.).

I will just refer to one of these as illustrative of the method of operations. About November 10, 1928, a syndicate that was controlled by Mr. Eaton and Otis & Co., called the Inland Syndicate, sold to Continental Shares 66,960 shares of Inland Steel at \$70 per share. This purchase by Continental was authorized by its own board of directors at a meeting on November 10, 1928.

**Senator BULKLEY.** Did you tell us who the directors were at that time?

**Mr. STOCK.** I can give that, Senator. I do not have it right here.

**Senator BULKLEY.** I think it has a bearing.

**Mr. STOCK.** Yes. (Addressing Mr. Tresemer:) Would you let me have a list of directors in November, 1928, please, Mr. Tresemer?

Now, this sale of 66,960 shares of Inland Steel at \$70 per share to Continental was stock for which Inland Steel had paid on an option \$35 per share. It is obvious that if Inland Syndicate had wanted

to sell that much Inland Steel on the open market they could never have realized the market price of 70.

An audit of Continental Shares' books shows in its accounts receivable certain unpaid stock subscriptions by directors and officers and employees of Continental Shares. These are as follows: W. R. Burwell, president, 25,860 shares, on which he owes \$754,709.

L. G. Watson, secretary and treasurer, 11,614 shares, on which he owes \$322,306.

F. H. Hobson, vice president, 1,400 shares, for which he owes \$26,600.

E. C. Brelsford, secretary and treasurer International Shares, a subsidiary of Continental, 1,500 shares, on which he owes \$62,500.

R. J. Lehman, an employee, 720 shares, on which he owes \$24,200.

And Maurice Howard, another employee, 300 shares, on which he owes \$7,466.

Making an aggregate subscription of 41,394 shares, on which there is still owing \$1,197,781.

Mr. GRAY. How is that carried on the books?

Mr. STOCK. As accounts receivable.

The fact that Mr. Eaton and Foreign Utilities were one and the same, Foreign Utilities being the Canadian corporation, is very important, because many, if not most of these transactions whereby the funds or the credit of Continental Shares were used, revolved around that Canadian corporation.

The books of Continental Shares show that on August 10th, 1929, Foreign Utilities subscribed on rights to 38,433 shares of the common stock of Continental Shares at \$60 a share, amounting to \$2,305,980, and that the same was paid for by cash obtained from Continental Shares for which Foreign Utilities was charged on Continental's books.

In other words, Continental loaned this money to Foreign Utilities to enable them to exercise rights and to take up this stock, 38,433 shares, and loaned them \$2,305,980.

Now, when you go back to the minutes of Continental Shares which authorized this transaction you find the authorization does not run to Foreign Utilities but runs to Mr. Eaton personally, showing that Mr. Eaton and Foreign Utilities were one and the same. I would like to refer to those minutes.

The minutes of the meeting of the board of directors of Continental Shares of July 16, 1929, contains the following [reading]:

Attention is directed to the fact that subscription rights aggregating 38,433 shares of stock will accrue to stock held by Mr. C. S. Eaton by virtue of the offering of additional common stock authorized at this meeting.

Thereupon, upon motion duly made, seconded and unanimously carried, with the exception of Mr. Eaton, who did not vote, thereon, it was resolved that the company exercise in behalf of Mr. C. S. Eaton the subscription rights of 38,433 shares of common stock which accrue to stock held by him under the offering of additional common stock authorized at this meeting, upon payment by him of 20 per cent of the total subscription price of August 10, 1929, and 10 per cent monthly thereafter until full payment has been completed.

That was later on entered on the books.

Senator BULKLEY. What directors were present at that meeting?

Mr. STOCK. I would like to look in the minute book for that. Could you tell me the directors [addressing Mr. Tresemer]?

Mr. CARL TRESEMER. Do you want these as you go along?

**Mr. STOCK.** I might ask if you would let us know who the directors were who were present at the meeting of July 10, 1929.

**Mr. TRESEMER.** I found them on the Inland transaction that you inquired about.

**Mr. STOCK.** Who were the directors at that time, at the time of the Inland transaction.

**Mr. TRESEMER.** Those who voted on it were Burwell, Hobson, Inglis, and Philip Wick.

**Mr. STOCK.** And do you have the minutes of July 10, 1929?

**Mr. TRESEMER.** I have.

**The CHAIRMAN.** Might I suggest you go ahead and testify to what you are familiar with?

**Mr. STOCK.** Now, as I say, this was an authorization by the board——

**Senator BULKLEY** (interposing). Mr. Chairman, the witness has testified that these were dummy directors. I think he ought to say who they were. There are a good many people in Cleveland who would hardly think they were dummies.

**The CHAIRMAN.** He says he does not have the names.

**Senator BULKLEY.** I think if he could supply the names it would be a fair thing to do.

**The CHAIRMAN.** Yes; it would be.

**Mr. TRESEMER.** July 10, 1929, directors present and voting: Messrs C. S. Eaton, W. R. Burwell, F. H. Hobson, and R. B. Mitchell.

**Mr. STOCK.** That authorization, which was made by the directors to Mr. Eaton personally, was later on entered on the books of Continental as a transaction between Continental and Foreign Utilities.

**Senator FLETCHER.** In case of bills receivable, what happened? Are these subscribers for stock still due certain amounts on account of stock, just the certificates issued and no claim or liens on the stock at all, but stocks were delivered and they simply hold that amount, just like anybody else would hold an obligation to the corporation?

**Mr. STOCK.** I understand these certificates were placed in the name of Mr. Eaton personally as trustee.

**Senator FLETCHER.** You do not know whether they were actually delivered to the people who subscribed for them?

**Mr. STOCK.** I believe we have some one here, Senator, who is familiar with that and can explain it better than I can.

Now, other evidence of the fact that Foreign Utilities and Mr. Eaton were one and the same appears in a letter which Mr. Eaton wrote.

**Senator BULKLEY.** Is not that a transaction of Foreign Utilities where Mr. Eaton was not voting?

**Mr. STOCK.** Oh, yes; the one in which the loan was made to Mr. Eaton.

**Senator BULKLEY.** What?

**Mr. STOCK.** The one which Mr. Eaton obtained the loan of over \$2,000,000; of course, he could not vote and did not.

**Senator BULKLEY.** Was it in his own behalf?

**Mr. STOCK.** Yes.

**Senator BULKLEY.** Then, I misunderstood you. I thought it was Foreign Utilities.

Mr. STOCK. Yes. They entered it on the books as Foreign Utilities, yes; but the loan was authorized to him personally.

Senator BULKLEY. Oh, I thought maybe you had some further evidence that he and Foreign Utilities were one and the same.

Mr. STOCK. Mr. Tresemer, would you mind bringing your records around here and sitting close to me? I may have occasion to call for various records.

Mr. TRESEMER. All right.

Senator BULKLEY. Is that a thing that you are trying to prove, Mr. Stock, that Foreign Utilities and Mr. Eaton are one and the same?

Mr. STOCK. Yes, sir.

Senator BULKLEY. I thought that was obviously true. I didn't think there was any doubt about that.

Mr. GRAY. It is obvious. There is ample proof of it. There is not any question about it.

Senator BULKLEY. I didn't suppose there was any doubt about it. Is there any doubt about it, Mr. Daley?

Mr. DALEY. I understand that his family and he control it. They do not own it.

Mr. GRAY. There is ample proof that Foreign Utilities and Mr. Eaton are the same. Foreign Utilities is a holding corporation for the purpose of dealing in stocks in the name of the Foreign Utilities in order that he need not deal in his own name. No question about that.

Senator BULKLEY. I understood that it was practically a family corporation, but I suggest that Mr. Daley tell us what it was and then you would not have to bother about it so much.

Mr. GRAY. Mr. Chairman, as counsel for the committee, I would suggest that if Mr. Daley in due course, after we get through presenting anything, desires to testify with respect to matters the same as any other witnesses called—

Senator BULKLEY (interposing). I was only suggesting a short cut to something that I thought he was being at some labor to prove.

Mr. GRAY. There is no doubt that it will be proved.

Senator BULKLEY. That is what I think.

Mr. STOCK. If the committee is satisfied that Mr. Eaton and Foreign Utilities are one and the same, I will not take up any further time in proving it.

Mr. GRAY. I should not waste any time on that.

Mr. STOCK. All right.

Mr. GRAY. The other transaction demonstrates it beyond any doubt.

Mr. STOCK. Now, I might say that while this Continental Shares and its entire operations were predicated on the sale of securities to the public all over the country by the salesmen of Otis & Co. from their many offices, I want to call this one thing to the attention of the committee, that in many of these cases most of the purchases of stock do not take place on the stock exchange. A company lists its shares and then goes out and has its salesmen sell the stock directly, but the stock exchange is the show window in which the goods are displayed. The salesmen go out and they say, "Well, now, you saw that stock go up five points last week," or "go down," or

whatever it was, and then try to explain prices, but the stock exchange is the show window that enables the salesmen to go out and sell the stock while the attention of the entire country is riveted to the ticker tape.

Now, this company operated on that basis. Most of the stock in this company was sold directly by salesmen. So that it became a very important part of the salesmanship that they make their statements appear as favorable as possible.

I would like to read to this committee a letter written by Mr. Watson, secretary-treasurer of Continental Shares, to Mr. Ferdinand Eberstadt, a partner in Otis & Co., bankers, for this investment company.

JULY 21, 1930.

DEAR MR. EBERSTADT: Mr. Eaton has suggested that we obtain your opinion on the inclosed balance sheet and account sheets as at June 30, 1930. There are one or two points in connection with this balance sheet that we would like to get your specific opinion on before endeavoring to have the auditors alter them our way.

First, under "other assets" there was a loss of slightly in excess of \$2,000,000 taken in treasury stocks. This was due chiefly to two transactions, one in connection with the Lehigh Syndicate, where we had to take back certain securities, and the other in connection with our convertible preferred stock.

My feeling in this is that we should write down the loss but leave out the statement in the parentheses made by the auditors "less reserves to reduce indicated market values." Also under "unpaid subscriptions" I see no reason why we should show the number of shares held.

Second, income and expense account: Neither Mr. Burwell nor myself is at all satisfied with this, in so far as we believe that it would not be any particular breach from accounting principles if the four hundred and twelve thousand-odd dollars representing the loss in Continental Allied and the 2,052,000, the written down total treasury stocks, were combined by way of a reduction under the caption "Profit on sales of securities," so that there would be only one heading here representing approximately 15,700,000.

Now, what happened there was this: The accountants for Continental Shares had prepared a balance sheet and that balance sheet had on the credit side a profit of about \$22,000,000 on the sale of securities in the early part of the year. It also showed certain losses, losses on treasury stocks and losses on other transactions. It showed among other losses a loss of \$412,000 incurred by a subsidiary, Continental Allied, which was set up for the purpose of operating the market in Continental Shares.

Senator BROOKHART. What part did it take in that manipulation? How did it operate?

Mr. STOCK. Well, Senator, I do not know exactly how they operated. It was set up for that purpose, to handle the market and trading operations in that stock.

Senator BROOKHART. Either buying or selling?

Mr. STOCK. Either buying or selling.

Mr. GRAY. Or both?

Mr. STOCK. Or both.

Senator BROOKHART. Would they be doing both?

Mr. STOCK. Yes, sir. That company was in existence all during the year 1930, and I suppose in endeavoring to maintain the market on the stock it lost about \$630,000 in 1930, which of course was sustained by Continental Shares; but by June, 1930, the date of this semiannual statement, those manipulations or operations in the market had resulted in a loss of \$412,000.

In order that the stockholders should not know about that, although the accountants saw fit to include it in the statement they drew up, it was suggested by Mr. Eaton that the auditors alter this statement "their way" and absorb those losses in the profit which they had on a transaction the early part of the year.

Senator BROOKHART. What evidence have you of that?

Mr. STOCK. The statement that actually was issued was exactly in conformity with the suggestion of Mr. Eaton, and those losses did not appear under that balance sheet.

Mr. GRAY. The answer to your question, Senator Brookhart, is that the evidence is contained in the letter that was written first and in the fact that the account afterwards was drawn and published in accordance with the suggestions contained in the letter.

Senator BROOKHART. May I understand it: You say that the net result of the losses is that reflected in the balance sheet?

Mr. STOCK. No, Senator. The fact that they were losses in these instances was not shown.

Senator BROOKHART. I see. But the net result of them in there—

Mr. STOCK. Oh, of course, it had to be.

Senator BROOKHART. I am trying to find out whether you say the balance sheet was false or not.

Mr. STOCK. Well, I will put it this way, that the original balance sheet showed a \$22,000,000 profit in one transaction and smaller losses on other transactions. Now, that is how the accountants showed that statement when they first drew it up. Mr. Eaton saw fit not to show those losses, and have them deducted from the profit of twenty-two million, really showing merely a profit of \$15,000,000.

Senator BROOKHART. But the net result of the balance sheet being the same?

Mr. STOCK. Yes.

Senator BROOKHART. That is what I wanted to get.

Mr. GRAY. The net result was the same.

Mr. STOCK. The committee has heard a great deal of evidence about methods of salesmanship in connection with selling securities. I would like to read a letter—in order to save time I will just read parts of a letter written by Rex Arthur, a partner in Otis & Co., and the resident partner in Denver, Colo., where the operations of Otis & Co. were very extensive, a letter by Mr. Arthur to Ferdinand Eberstadt, a partner of Otis & Co. in the New York office, dated May 22, 1930. [Reading:]

On several occasions I have been at the point of writing you exactly what I think of the Continental Shares situation. Your telegram of yesterday decided me.

First, let me assure you that we are not overestimating the seriousness of the local situation. When Continental Shares breaks below 30 we are in imminent danger of having to sell out a large number of our best accounts, not joy riders and weak speculators, but friends of ours who got this stock in the beginning and all the way up. Naturally, if we start this selling the market will go lower, which will in turn force further liquidation. Granted that this predicament is most serious to the Denver office, I still feel that it is not our predicament alone, but one which in a much larger sense affects the entire firm and the firm's future. When I tell you that the morale of the entire selling organization of Otis & Co. is shot to pieces just over this Continental Shares matter alone, I am not guessing, as I know the feeling of practically every office in the circuit.

As I see Continental Shares, this company is not only the most important financial vehicle which Cyrus Eaton has at his command, but is potentially a tremendous business incubator for us as bankers. For the past nine months this stock has been continuously and persistently working down. With all due allowance for the condition of the general market, it is perfectly clear that the handling of this particular market has been extremely bad. Sporadic attempts have been made from time to time to give support, but there has been no continuity to the effort, and at no time has the market been aggressively working on the up side. Negative support only, that is, with buying orders under the market is just wasted effort, and money, since any stock left to flounder will inevitably work down and through any support level.

Senator FLETCHER. What is the date of that letter?

Mr. STOCK. May 22, 1930. [Continues reading:]

To remedy the situation first the market should be placed entirely in the hands of one operator. I do not think the streets of New York need to be combed to find some one talented enough to handle this market, but whoever the operator is, he should stay in New York and be given a free hand.

Second, the popgun idea should be definitely abandoned and heavy artillery brought on. The Allied Corporation [which is the subsidiary referred to before] did authorize the buying of as much as 10 per cent of the outstanding capitalization at current levels. We accept human nature as it is, and while in theory an investor would be willing to patiently await the income of assuredly three of the most recognized organizations in the field, it is reasonable to assume that he will change his mind when it gets to the point that there is neither a market nor a possibility of returning to the levels. When the general market has an upturn these shares should easily be distributed by our retail organization and outside dealers. It is just a cinch, by the way, that money and effort spent in building up a dealer following is thrown away until such time as the stock is properly sponsored. Other corporations who need capital constantly are perfectly alive to this, and we must come to it. Our own retail clientele alone could supply us with millions of dollars each year. At present instead of doing that we are letting them and their money be booted right to hell or into the hands of our competitors. It is the most perfect example of killing the goose that laid the golden egg that has ever come to my attention.

Now, that, gentlemen, was written by one partner of a banking firm to another.

Mr. GRAY. Rather would you not say, Mr. Stock, by one partner of a brokerage company to another, Otis & Co.?

Mr. STOCK. Well, they were a banking firm and brokerage company, Mr. Gray. Of course, this Otis & Co., as I stated, were members of the New York Stock Exchange.

Senator BULKLEY. Was there no action taken pursuant to that to peg the market?

Mr. STOCK. I did not go into that, Senator Bulkley. I do not know.

Around October 10, 1930, or slightly before that time Otis & Co. had total obligations of \$125,000,000, and the various banks were calling on them for payment, and on the night of October 13, 1930, a meeting was held at which representatives of the New York Stock Exchange and banks were present and demand was made on Otis & Co. as members of the New York Stock Exchange, the demand being based upon an audit by the New York Stock Exchange of the affairs of Otis & Co. that Otis & Co. would not be permitted to open the next morning unless they obtained \$20,000,000. The arrangement also that night was that they would be permitted to open the next morning if they obtained this money by noon the next day.

Now, in anticipation of this action on October 8, 1930, a transaction was arranged whereby this money was to be obtained, and this is what was done: It was arranged that Continental Shares purchase certain securities from Foreign Utilities, the Canadian corporation, for \$57,000,000, \$35,000,000 of which would be paid in cash and the balance in stock of Continental Shares Co. at \$21 a share, which was presumably the market price at that time.

That transaction appears in the minutes of Continental Shares, the authorization for it, together with the list of the securities involved.

Pursuant to that authorization—

Senator BULKLEY (interposing). That was an authorization by the directors?

Mr. STOCK. Directors of Continental Shares.

Senator BULKLEY. What directors were present and voting?

Mr. STOCK. Directors present were Messrs. C. S. Eaton, W. R. Burwell, Richard Humsted, F. H. Hobson, R. V. Mitchell, and Philip Wick.

Mr. GRAY. Let the committee get that transaction perfectly clear, Mr. Stock, as it appears by that resolution. By that resolution Continental Shares agreed to purchase from Foreign Utilities, the Canadian corporation, that has heretofore been designated as Mr. Eaton's corporation, certain stocks which are listed in that resolution.

Mr. STOCK. That is correct.

Mr. GRAY. And they were to give to Foreign Utilities for that list of stocks \$57,000,000, \$35,000,000 of which was to be in cash and the balance to consist of a certain number of shares of Continental Shares itself, their own stock?

Mr. STOCK. Yes; I was coming to that.

Mr. GRAY. Figured at a basis of \$21 a share. Now, as far as the books of the Continental Shares are concerned, that is to say, the minute book where you have indicated this resolution is to be found, there was no mention of Otis & Co. in any way, shape, or form, was there?

Mr. STOCK. No.

Mr. GRAY. All right. That resolution was dated the 8th day of October. It was the 10th day of October, 1930, was it not, that the stock exchange through its governing committee stepped in on Otis & Co.?

Mr. STOCK. That is right.

Mr. GRAY. And it was the night of the 13th of October, 1930, which was a Monday night, that Otis & Co. were advised that they could not open the next day unless they reduced their liabilities or likewise increased their capital one way or the other, approximately \$20,000,000?

Mr. STOCK. That is correct.

Mr. GRAY. And at a meeting held—and this is all proved by records—at a meeting held as late as 9.30 in the morning Tuesday, Otis & Co., having advised the stock exchange that they could put themselves in that position by noon of that day, were permitted to open at 10; that is correct, is it not?

Mr. STOCK. That is correct.

Mr. GRAY. All right; now, from there on?

**Mr. STOCK.** If I have not mentioned it, I would like to do it at this point, that the New York Stock Exchange audit of Otis & Co. showed that their obligations totaled \$225,249,000, and that their capital was impaired to the extent of \$18,423,000.

**Mr. GRAY.** Not their capital but their position with respect to their securities?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** Now, right there let me develop another point: It is a fact which the audit of the affairs of Otis & Co. at that time showed that a great deal of their obligations consisted of loans from various banking institutions for which there had been deposited as collateral either stocks that were owned by Eaton himself or stocks that were owned by Foreign Utilities, Eaton's corporation?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** Is that correct?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** So that the committee may get the picture and understand it as Mr. Stock goes along, it was in order to furnish Otis & Co. money that it was necessary to sell those securities, pay the loans of Otis & Co. or Eaton or both, and release those securities, in order that they might be delivered to Continental Shares for the consideration that was to be paid. That was the scheme, was it not?

**Mr. STOCK.** Yes, sir.

**Mr. GRAY.** All right; now, go ahead and relate it in detail.

**Mr. STOCK.** Before relating how they did this, in order to show that—

**Mr. GRAY** (interposing). If you go ahead and relate how they did it, when we have gotten to that point, instead of diverging to something else, the committee will get it clear.

**Mr. STOCK.** All right. There was at that time, of course, collateral at various banks on which Foreign Utilities, Eaton, and Otis & Co. were obligated, and it was in order to lift those obligations that this transaction was put through. This transaction was put through originally—

**Senator BROOKHART** (interposing). That is Eaton and Otis & Co. or these banks?

**Mr. STOCK.** With those banks' money; yes, sir.

**Senator BROOKHART.** How much was the total amount?

**Mr. STOCK.** If you will permit me—it is difficult to answer that directly.

**Mr. GRAY.** The answer is, Senator, that the total amount of their obligations was \$125,000,000.

**Mr. STOCK.** But how much of that was the bank loans and how much was another type of loan we have never analyzed.

**Senator BROOKHART.** What was the other type of loan?

**Mr. STOCK.** Well, they may have owed money to persons individually. I do not know. There were these particular loans with various banks.

**Senator BROOKHART.** What were those particular loans?

**Mr. STOCK.** There were loans at a New York bank and several Cleveland banks.

**Senator BROOKHART.** Which New York bank?

**Mr. GRAY.** Several New York banks, Senator. Give Senator Brookhart the names of the four banks.

Mr. STOCK. Guaranty Trust Co., Chemical Bank & Trust Co., both of New York.

Senator BROOKHART. How much for each one?

Mr. STOCK. \$2,550,000 paid to the Guaranty Trust Co.; \$1,655,000 paid to Chemical Bank & Trust Co.; \$50,000 paid to the Public National Bank & Trust Co. of New York; \$1,600,000 paid to the Chase National Bank. There are other payments here to those banks. There is \$666,000 paid to the Union Trust Co. of Cleveland; \$1,000,000 paid to the Union Trust Co. of Cleveland; \$3,333,333 paid to the Bankers Trust Co. of New York; \$7,000,000 paid to Otis & Co.; \$636,666 paid to Otis & Co.; \$390,000 paid to Otis & Co. I have a complete distribution that was made of that transaction.

Senator BROOKHART. What is the total amount of that distribution?

Mr. STOCK. That total amount was \$37,000,000—

Mr. GRAY. I will get that for you, Senator, as long as you have asked that question. We jumped perhaps a little in order to answer Senator Brookhart's question and you have referred to the distribution there. That distribution sheet represents the payments, in part at least, that were made by the Chase National Bank, from whom Continental Shares borrowed the money, on account of the various loans of Otis & Co. in order to relieve the collateral for delivery to Continental Shares—that is true, is it not?

Mr. STOCK. That is correct.

Mr. GRAY. And that distribution not only represents certain moneys paid in cash to Otis & Co., but represents certain moneys paid to the banks in New York and to the banks in Cleveland to take care of loans, and it also shows bookkeeping transactions by which credits were given for certain amounts, which was the equivalent of the payment of a loan, does it not?

Mr. STOCK. Yes, sir.

Mr. GRAY. Or such transactions of that type.

Senator BROOKHART. That means that \$37,000,000 was furnished by the Chase National Bank?

Mr. GRAY. I will go a little further than that: The first amount furnished by the Chase National Bank was thirty million, was it not?

Mr. STOCK. That is correct.

Mr. GRAY. The second amount furnished by the Chase National Bank was \$5,000,000?

Mr. STOCK. That was furnished by Union Trust of Cleveland.

Mr. GRAY. And that was the amount in cash or represented the entire amount in cash that was to be paid by Continental shares in their deal with Foreign Utilities?

Mr. STOCK. That is correct.

Mr. GRAY. Now I don't want you to go into the details for a moment of the other transaction, because we will reach it in a more orderly way, but the fact is that there was a change in the arrangement for the delivery of \$21,000,000 of stock by which there was a substitution of about seven million and some odd in cash, which resulted in Continental Shares paying even seven million more because it was necessary that that amount—

Mr. STOCK (interposing). \$670,000.

**Mr. GRAY.** \$7,670,000—in order that Eaton and Otis & Co. should still be saved? In other words, the thirty-five million was not enough, was it?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** Now, I want you to go back to the point where we left off, if you please, starting after this deal was made with Continental Shares and that resolution was adopted and we are told of the position of Otis & Co., and tell us just exactly how the transaction was carried out, by what financial manipulation, through what institution, and then how the moneys were distributed, that is, how they reached the point that it was distributed in the way you indicated. Will you go back to that now?

**Mr. STOCK.** Pursuant to the authorization of the board of directors of Continental Shares, 19 blank promissory notes were given by Continental Shares to the Chase National Bank. These notes were subsequently filled out for various amounts for the purpose of taking up existing loans of Eaton, Otis & Co., and Foreign Utilities at various banks at New York and Cleveland.

**Mr. GRAY.** What was the provision in the resolution with reference to the authority to be given to the Chase National Bank to use those notes?

**Mr. STOCK.** There was not any that I could find.

**Mr. GRAY.** Was there not a provision to the effect that those notes should not be used except upon the authority of certain officers of the company?

**Mr. STOCK.** Oh, yes. I was just coming to that.

**Mr. GRAY.** And did the Chase National Bank when this distribution part of it was made early on the morning of the 14th of October, 1930, for the purpose of saving Otis & Co., wait for the carrying out and the receiving of the necessary authority?

**Mr. STOCK.** No, they did not. They filled out several of these notes immediately in order to obtain the cash to lift the obligations that morning. And subsequently that was handled as a bookkeeping transaction. But the depository agreement between Continental Shares and the Chase Bank provided that it was necessary for Chase to have a written authorization signed by two officers before Chase could honor any draft, check, or order against Continental. These notes were filled out and used without Chase having any such authorization.

In the larger sense, what happened here was that Foreign Utilities was selling \$57,000,000 worth of securities to Continental, which really were up as collateral at various banks.

In addition to that collateral, Continental put up of its own portfolio, not part of the securities that they were buying but out of its own portfolio, securities of a value of \$28,240,000. In other words, what was done in this case was to use not only the collateral that was already up at the banks but to add to that certain collateral already owned by Continental Shares.

**Mr. GRAY.** Let us get that straight. The collateral, which was sold by Foreign Utilities to Continental Shares for \$57,000,000, was not sufficient to put up to obtain the \$35,000,000 loan; is that correct?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** Therefore, Continental Shares had to dip into its own portfolio of outside stocks which it held and deposit them with the

bank in addition to \$57,000,000 worth—or supposed to be valued at \$57,000,000—of Foreign Utilities that were turned over before they could get these \$35,000,000 in loans; is that right?

Mr. STOCK. That is correct.

Mr. GRAY. So the effect of the transaction, as far as Continental Shares was concerned, was to have them part with \$35,000,000 absolutely; that is, in the original agreement to change it to forty-seven thousand six hundred—

Mr. STOCK. Forty-seven million.

Mr. GRAY. Forty-seven million six hundred thousand—I am used to talking in smaller figures—in cash, original \$21,000,000 worth of their stock, which was reduced proportionately as the cash increased—

Senator BROOKHART. Twenty-one million.

Mr. GRAY. Twenty-one million. I told you I was used to small figures. And in addition to that, required them to take \$28,000,000 of their own portfolio, stocks out of their own portfolio, and put them up as additional collateral in order to put through this deal to help out Otis & Co.?

Mr. STOCK. So when this transaction was all finished, the net result of it was that Continental Shares was obligated at the various banks, that its collateral, its own collateral as well as the collateral that it had purchased from Foreign Utilities, was also up as collateral, and the various persons, Otis & Co., Foreign Utilities, and Eaton, had been relieved of the obligations that they owed.

Senator BROOKHART. Your idea of this whole thing is that it was a scheme to loot Continental Shares?

Mr. STOCK. No; I would not put it that way, Senator. I would say that Otis & Co. and Cyrus Eaton got into a very tight hole at this time and the only place that they could turn to to save themselves was this investment company, and that is what they did.

Mr. GRAY. Mr. Stock, it is important to develop one other thing. I can develop it by the accountant, but you probably can state the facts. Continental Shares was an investment trust or a trading corporation. In other words, it was a trust in which the people bought the stock of the particular company which used the money obtained from the sale of their own stock for the purpose of dealing in and investing in other securities?

Mr. STOCK. That is correct.

Mr. GRAY. It had as a result of its investments a certain definite, fixed—or if not fixed a varying income—during the period of a year. What was the effect, if any, on the reduction of the income to Continental Shares stockholders as a result of this transaction?

Mr. STOCK. It cost Continental Shares for carrying charges, interest charges, on the loans at the banks, \$800,000 a year more than the dividends on the securities which they purchased from Foreign Utilities.

Mr. GRAY. Then it cost them a reduction of \$800,000?

Mr. STOCK. Yes, in that year. Now, in the following year—

Mr. GRAY (interposing). It cost them a reduction of \$800,000 in their income.

Mr. STOCK. In the second year it cost them \$2,000,000 in income.

In that connection I want to point out one thing: Otis & Co. being in a very tight fix and the banks being somewhat reluctant to help

them, charged a very fancy figure for these loans. I would like to read a letter written by James Bruce, vice president of the Chase Bank, to Mr. Clarkson, president of the Chase Securities Co., concerning this transaction [reading]:

I really think we are doing Otis & Co. a big service, chiefly because they are not securities which they could put up for their loans, but would have to make special loans on them, and I believe the Cleveland banks are pretty well loaded up with loans on Otis's enterprises, and I think the New York banks are probably a little skeptical. For this reason they should certainly pay a substantial rate on a loan of this kind, and I do not think we should soften up Mr. Wiggin's proposition in any way.

The loan in this case was 3 per cent higher than the rediscount rate. That was a loan of Otis & Co. Why should Continental Shares be charged with it? As a result, it cost Continental Shares \$800,000 the first year and \$2,000,000 the second year more as carrying charges than dividends on the securities that were securing them.

Senator BROOKHART. Who got Continental Shares?

Mr. STOCK. The public, Senator.

Senator BROOKHART. That stock had been sold up to \$150,000,000?

Mr. STOCK. That is correct.

Senator BROOKHART. By people over the country generally?

Mr. STOCK. Yes, sir.

The CHAIRMAN. You said it was 3 per cent over the rediscount rate. What was the actual rate?

Mr. STOCK. The actual rate was  $5\frac{1}{2}$  per cent, and the discount rate at that time was  $2\frac{1}{2}$  per cent. Mind you, this was a security loan. It was not a commercial loan; it was a loan on securities on which I should say the rate is usually not over 1 or  $1\frac{1}{2}$  per cent above the rediscount rate.

The CHAIRMAN. Go ahead.

Mr. STOCK. In order that there be no mistake about the purpose of this transaction, and what the money was to be used for, I would like to read a letter from Mr. S. Smith, vice president of the Chase Bank, to Mr. Wiggin, chairman of the Chase National Bank.

Mr. GRAY. I should say to the committee that these letters are absolutely correct, that they are copies of communications obtained from the Chase National Bank, and that I, myself, personally compared them with the letters, so that they are absolutely correct.

Mr. STOCK. Now, this refers to Otis & Co.

Senator BROOKHART. What is the date of the letter?

Mr. STOCK. The date of this letter is October 10, 1930, and incidentally, the date of the letter from Mr. Bruce to Mr. Clarkson is October 9, 1930.

Mr. GRAY. They are interoffice communications.

Mr. STOCK. I will not read all of this. It refers to the calling of bank loans by various banks and goes on to refer to a statement made by Mr. Eberstadt of Otis & Co. [reading]:

He says the \$30,000,000 loan will clean up their biggest debit account, which is Foreign Shares or Foreign Securities Co.

He is referring there to Foreign Utilities.

They have been buying utility securities and owing Otis. The proceeds of our loan to Continental Shares will go to Foreign Shares and from them to Otis.

(The documents referred to by Mr. Stock are here printed in the record in full, as follows:)

Memorandum,

Mr. CLARKSON,

*President Chase Securities:*

Referring to the matter of a loan to Continental Shares (Inc.), it seems to me the following collateral is all right:

United Light & Power B should be taken at 40. This stock sells at 78 but has purely a nominal market, whereas the A stock, which shares equally in assets and earnings but has no voting power, sells at 32. In other words, according to market values, 2,100,000 shares of A stock sell for \$67,000,000, whereas 1,000,000 shares of B stock sell for \$78,000,000. I think, however, the B stock should be allowed a 25 per cent increase in value of the A stock, which would bring it to about 40. This would give a value to their holdings of U. L. & P. B. of \$6,600,000.

Lehigh Coal & Navigation I think is all right to take in at the market, which would be \$12,400,000, and subject to seeing the balance sheet of Cliffs Corporation I think we could make the balance of the loans on this stock.

They have valued the same at \$40,000,000 and I presume that reasonable valuation would be around \$30,000,000, which would give us ample margin. On the other hand, none of the manuals have anything on this corporation since the end of 1929 and the information they give is rather meager, and I think we should make the loan subject to seeing the balance sheet and a reasonable valuation being substantiated.

I am quite sure, however, from the set-up of the company, which is turn owns the Cleveland Cliffs Corporation, that their holdings are worth this amount of money.

With regard to any possible option, the Continental Shares (Inc.) has 10,000 Founders shares which are entitled to 25 per cent of the available net profits of the company after common stock receives \$1 per share. I presume it would be a hard matter to get any sort of a hold on any of these shares, although that is the desirable thing if the company has a good future. The amount of common shares issued is 3,400,000 shares.

It seems to me that Mr. Wiggin's proposition to them with regard to interest is overfair in every regard, and I do not believe it is worth while for us to employ our money on any better terms. The only suggestion I could make in case we wanted to go more easy on them would be to establish a rate of 3 per cent over the Federal reserve rediscount rate with a minimum of 5½ per cent. In other words, it would run at 5½ per cent at the moment and if the rediscount rate were lowered we would still get 5½ per cent, but would get any raise that may be in the rate.

I really think we are doing Otis & Co. a big service, chiefly because they are not securities which they could put up for their loans, but would have to make special loans on them, and I believe the Cleveland banks are pretty well loaded up with loans on Otis's enterprises and I think the New York banks are probably a little skeptical. For this reason they should certainly pay a substantial rate on a loan of this kind, and I do not think we should soften up Mr. Wiggin's proposition in any way.

JAMES BRUCE,

*Vice President Chase Bank.*

OCTOBER 9, 1930.

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Memorandum for Fr. Wiggin, re Otis & Co. Continental Securities:

I believe LHJ has or is making a memorandum. He is tied up and I have not seen him. As the matter now stands, the \$30,000,000 Continental Shares (Inc.) loan is to be for 18 months at 5½ per cent interest, payable monthly. The company has a right to pay at the end of any quarter on 30 days' notice. If loan is paid before maturity the commission for the unexpired time at the rate of one-fourth of 1 per cent per annum is due. Otis & Co. to use best efforts for Chase on future financing of concerns in which interested and also best efforts to see that we receive as substantial balances as possible. The only item which Eberstadt quibbled over was the penalty for prepayment. The collateral is not yet fully decided. At present we are discussing as follows:

416,000 United Light & Power B, at 40-----	\$16,600,000
403,000 Lehigh Coal & Navigation, at 30-----	12,100,000
11,400,000 Brooklyn Union Gas, at 115-----	1,311,000
96,000 Goodyear-----	4,600,000
2,625,000 Continental Illinois Bank & Trust, at 570-----	1,500,000
772,000 Guaranty Trust, at 583-----	430,000
5,850,000 Bank of Manhattan Trust, at 100-----	585,000
10,888,000 Union Trust of Cleveland, at 75-----	800,000
3,687,000 Cleveland Trust Co., at 385-----	1,400,000
480,000 Harris Trust of Chicago, at 700-----	336,000
68,850,000 Youngstown Sheet & Tube, at 100-----	6,800,000
Total-----	46,462,000

Mr. Clarkson has told them that while we have listed 416,000 shares United Light & Power we understand there is more available, and we want it all. I have not checked the prices on the above list. I understand most of them are about at the market although United Light & Power B is down at 40 when the market is near 80. In all probability some of this loan at least, may be in temporary form, will be taken to-morrow, because of the following:

Re Otis & Co.

There has been considerable conversation about the firm for sometime past; more of it to-day when they had \$11,500,000 of loans called. Morgan's First National, Guaranty, and ourselves agreed to take these up. Eberstadt says they already have \$7,500,000 cash on the way for partial payment. He says the firm this morning conservatively had capital of \$20,000,000, probably more; that they are absolutely solvent. Their total loans were probably \$120,000,000, all properly secured but, of course, he is uneasy if continual calling like there was to-day continues. He says the \$30,000,000 loan will clean up their biggest debit account, which is Foreign Shares or Foreign Securities Co. They have been buying utility securities and owing Otis. The proceeds of our loan to Continental Shares will go to Foreign Shares and from them to Otis. Eberstadt says he is satisfied that they have no other debit balances which are large enough to cause them any uneasiness. He says the members of the firm altogether don't owe the firm more than \$4,000,000 all properly secured. He don't think there is anything in their debts outside to cause any concern. In addition, he is satisfied the principal partners have very substantial net worth outside the firm. I think he estimated this conservatively at \$25,000,000. He is very emphatic there is no internal situation or buying in of their own shares which is a problem. He says that, of course, in their customers' collateral are large amounts of the stocks of companies they have bought into but they are properly margined and he feels sufficiently diversified with no concentration in any one of such size as to cause undue concern.

S. SMITH,

*Vice President, Chase Bank.*

OCTOBER 10, 1930.

Mr. STOCK. Now, there can be no question that the Chase Bank in this case knew all of the details in this transaction. They had a copy of the minutes of the meeting of the board of directors that authorized this transaction. They referred to it in all of the inter-office correspondents.

Several weeks later—I might say that this transaction was found because of the fact that the audit of Continental Shares shows that this transaction was entered twice and handled in two different manners. It shows that several weeks after this transaction went through it was decided to send the securities that had been purchased by Continental Shares up to Canada. I will just state the facts and let the committee draw its own conclusions.

The original sale had been put through in this country, of course. The collateral was in the banks in New York and in Cleveland, and the sale of the securities was a sale of those particular securities, but several weeks later it was decided to send those securities up

to Canada. They were sent up to Canada, St. John's New Brunswick, I believe, and they were there delivered.

Senator CAREY. By whom, Mr. Stock?

Mr. STOCK. They were there delivered by an agent of Foreign Utilities—we have that here—to an agent for the correspondent of the Chase Bank in Canada, and a notary public made an affidavit to the effect that the securities were then and there delivered at St. John's. They were then shipped right back to where they had come from, New York and Cleveland. The expense of that shipment up to Canada and back again was over \$34,000, and they were shipped up there just for the purpose of having a notary public attest the fact that he had seen delivery made in Canada.

The CHAIRMAN. And why that?

Mr. STOCK. Well, Senator, the Foreign Utilities was a Canadian corporation, but all of its business was transacted in this country. This particular sale on October the 10th took place in this country, and the income tax in this country, of course, was lower than the Canadian income tax.

The CHAIRMAN. Or higher?

Mr. STOCK. Or higher, I meant to say; yes. One item alone in this transaction, United Light & Power, one of the securities sold by Foreign Utilities to Continental Shares showed a profit of \$17,000,000.

The CHAIRMAN. It showed that profit as happening in Canada?

Mr. STOCK. Well, as they later on put through this transaction, it was made to appear that it was a sale in Canada and not subject to the American tax.

The CHAIRMAN. It has the appearance of being planned to get away from the tax of the American Government?

Mr. STOCK. Yes. I would like to indicate the manner in which they did this. Several weeks after this original transaction went through they put through another transaction in which—

The CHAIRMAN (interposing). What was the amount of taxes, probably?

Mr. STOCK. Our corporation tax at that time, I believe, was 12 per cent.

The CHAIRMAN. The total sum, about how much?

Mr. STOCK. Well, I don't know how much all the profits were. I am only familiar with that one item of United Light, which was \$17,000,000.

The CHAIRMAN. And the tax on that would have been?

Mr. STOCK. \$2,000,000.

Mr. GRAY. A little over \$2,000,000.

Mr. STOCK. I might say that the way that this matter was handled it appears on the books of Continental Shares in both ways, first put through as a sale on October 10, and several weeks later they put it through a second time, in this way, that instead of Continental Shares buying these securities from Foreign Utilities and letting the proceeds go to various persons, they made it appear that Continental Shares had loaned \$57,000,000 to Foreign Utilities.

Now, to my mind that is perfectly absurd, because the Chase Bank had not only recognized that there had been a sale from Foreign Utilities to Continental but had used the securities involved as collateral in extending the original loan to Continental Shares. How

could the Chase Bank extend a loan of \$57,000,000 to Continental Shares without getting any collateral from Continental Shares? And if the securities in question had not been sold to Continental Shares, where was the collateral on which Chase Bank loaned that money? So they put the thing through as a loan of Continental Shares to Foreign Utilities, and had Foreign Utilities send a note down, a note from Foreign Utilities to Continental. They shipped the securities up to St. John's, New Brunswick, and then had an exchange made of the notes for the securities, Continental returning Foreign Utilities notes and taking back the securities.

The CHAIRMAN. Is there any income tax at all in New Brunswick?

Mr. STOCK. Well, Senator, I would hesitate to testify as an income-tax expert. I have inquired of various people that are well informed on the subject and they say that, if I have stated the matter to them correctly, they think there is a tax. I will state this about that, that, if the original transaction, which was a sale from Foreign Utilities to Chase, resulted in an income tax, nothing that they did after that would have removed that tax.

Senator BULKLEY. Did you mean Foreign Utilities to Chase?

Mr. STOCK. Foreign Utilities to Continental.

Mr. GRAY. Likewise, if a transaction, theoretical as well as actual, took place in this country, the tax was due to the United States Government and not to the Government of New Brunswick, unless, in addition to the tax having to be paid to the United States, Foreign Utilities, as a Canadian corporation, itself might have been liable in some way under some taxing laws of New Brunswick to New Brunswick itself—isn't that true?

Mr. STOCK. That is correct.

Senator BROOKHART. What is the date of this transaction?

Mr. STOCK. October 10, 1930.

Senator BROOKHART. It is not too late to collect that tax yet, is it?

Mr. STOCK. No.

Senator BULKLEY. Did I understand you to say that Continental's books were balanced?

Mr. STOCK. No; they had two separate sets of entries; one was a sale on October 10 and one——

Senator BULKLEY (interposing). They showed it as a sale on October 10?

Mr. STOCK. Yes; that is correct.

Senator BULKLEY. And, then, what is the other one?

Mr. STOCK. Then, the other subsequent entry showed it as a loan.

Senator BULKLEY. Then, there must have been something else in there.

Mr. STOCK. No; they really showed it in duplicate, Senator. Of course, you see, the semiannual statements only come out in June and the end of the year. When the end-of-the-year statement came out on December 31, 1930, it was then considered on the books of Continental as a loan transaction.

Senator BULKLEY. They just disregarded the first one?

Mr. STOCK. They disregarded the first altogether.

Senator CAREY. Mr. Stock, who was responsible for sending the bonds to Canada?

Mr. STOCK. Just what do you mean by that, Senator?

Senator CAREY. Did the Chase Bank send them or did Continental send them or Otis send them?

Mr. STOCK. Well, I can only answer that, Senator, in this way, that I do not know whose idea it was or who originated the idea; I do not know that. I will say that the securities were sent up to the Canadian correspondents of the Chase National Bank, so that they had never left the custody of the Chase National Bank.

Senator CAREY. Who would have saved the income tax on these securities?

Mr. STOCK. Whoever owned Foreign Utilities.

Senator CAREY. Mr. Eaton?

Mr. STOCK. They were the people that made the profit, and that was Mr. Eaton's personal company.

Senator CAREY. Were not these securities pledged with Chase for a loan?

Mr. STOCK. Originally; yes.

Senator CAREY. They were released after the sale?

Mr. STOCK. They were released; yes.

Mr. GUGLE. No; they were not released.

Senator CAREY. Didn't Chase still retain these?

Mr. STOCK. Oh, yes; they still retained them as collateral. That is the point. They did not release them at all.

Senator CAREY. They were really still in the possession of the bank?

Mr. STOCK. Exactly; because they still owed money to Chase on that particular collateral.

Senator CAREY. It would not be a natural thing to send bonds which were used as collateral and have them transferred. I do not see the object of the transfer.

Mr. GRAY. May I develop that by a question, Senator?

Senator CAREY. Yes.

Senator WALCOTT. In the first place, Mr. Gray, in order to correct the record, those securities were not released.

Mr. STOCK. No; they were not released. I misunderstood Senator Carey.

Senator WALCOTT. The record ought to be made clear.

Mr. GRAY. As a matter of fact, in order to clear the record and so that we may understand it better, the securities, prior to the little visit that they paid Canada were lodged with the Chase Securities, or with the Chase National Bank, rather, as collateral for the loan that had been made to Continental Shares, the money involved in which loan had been distributed either by bookkeeping entries or by the payment of cash to the various institutions that held these securities prior to that time as collateral for loans to Otis?

Mr. STOCK. That is correct.

Mr. GRAY. And right there, by the way, some of Eaton's personal loans were taken up, were they not?

Mr. STOCK. Yes.

Mr. GRAY. Having passed into the hands of the Chase National Bank, they having held it as security, as Senator Carey suggests in his question, there was no reason in the world and no interest that the Chase National Bank had in having those securities sent to Canada for any purpose whatsoever, was there?

Mr. STOCK. No; there was not.

**Mr. GRAY.** All right; therefore, the only person that had any interest in the sending of those securities to Canada in order to avoid the tax was whoever it happened to be that made a profit on the sale?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** That is true, is it not?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** And the concern which made the profit on the sale, or the concerns if you please, because there seems to have been several different ownerships, were Foreign Utilities, Otis & Co., and Cyrus Eaton?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** So that, though we may not know the exact inside of who issued those instructions, the fact remained that it must have been one or all of those three individuals or corporations, because those are the only people that would have been interested in saving the tax?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** Does that answer your question, Senator Carey?

**Senator CAREY.** Yes.

**Mr. GRAY.** Is that the end of the statement, Mr. Stock?

**Mr. STOCK.** That is all I have to say; yes.

**Mr. GRAY.** All right. Probably some of the Senators may want to ask you something. If not, why, I will make a statement myself about the situation.

**Senator BROOKHART.** I want to get something straightened out in my head if I can: This Continental Shares, \$150,000,000 corporation, had sold its stock through the stock exchange?

**Mr. STOCK.** Well, Senator, the stock was listed on the stock exchange and being traded in every day, but most of the sales to the public took place by stock salesmen all over the country.

**Senator BROOKHART.** They went out with this high-pressure salesmanship?

**Mr. STOCK.** That is correct. I have a lot of that material right here in my files.

**Senator BROOKHART.** At what price did they sell?

**Mr. STOCK.** Well, they sold over a period of years. You just can not put your finger on a price. There were split ups and conversions, and it would be difficult to generalize about what the price was.

**Mr. GRAY.** Can you tell Senator Brookhart the range of prices on the stock exchange?

**Mr. STOCK.** I would say that the high was \$78 and the low 25 cents.

**Mr. GRAY.** And at or about the time in October of 1930 that this transaction was put through the market was approximately \$21 and something, was it not?

**Mr. STOCK.** \$21; yes, sir.

**Mr. GRAY.** And as a matter of fact, however, before the deal was finally put through, consummated, entirely and absolutely completed, the stock fell to a value of about \$10 a share, did it not?

**Mr. STOCK.** That is correct.

**Mr. GRAY.** So that in the place of stock of the Continental Shares equivalent to twenty-one or twenty-two million dollars, the difference

between the thirty-five million and the fifty-seven being delivered, there having been in the meanwhile \$7,600,000 additional cash received by Eaton or Otis & Co. out of this deal, what they actually delivered was 280,000 shares of stock at \$10 a share?

Mr. STOCK. That is correct.

Mr. GRAY. Which was the proper equivalent of the difference in stock to make up the \$57,000,000?

Mr. STOCK. I might add this to that line of thought, and that is that as a result of these loans incurred by Continental, Continental at the present time is insolvent to the extent of about \$23,000,000.

Mr. GRAY. And Otis & Co.?

Mr. STOCK. Well, Otis & Co.—

Mr. GRAY (interposing). The long and short about Otis & Co. is that they finally could not stand the strain and they went out of business; that is so, is it not?

Mr. STOCK. Well, I think they have some kind of investment business that they are running, but the brokerage business is not in existence.

Mr. GRAY. You are a little wrong about that, Mr. Stock. They went out absolutely, although there has been a reorganization and a new firm.

Senator BULKLEY. I was just going to ask when the high of \$78 was reached.

Mr. STOCK. That was 1929.

Senator BULKLEY. On the New York Exchange?

Mr. STOCK. Yes; 78.

Senator BULKLEY. And it went down steadily from then on, did it?

Mr. STOCK. Well, it had its ups and downs.

Senator BROOKHART. When was this stock sold, mostly when it was issued?

Mr. STOCK. Yes; I would say it was sold mostly in the years 1928, 1929, and the early part of 1930.

Senator BROOKHART. Now, you have listed several charges of losses against the Continental Co. that apparently were illegal that ought not to have been charged against it. Is that what you mean by those items?

Mr. STOCK. Yes; I say the entire founders' shares arrangement was illegal.

Senator BROOKHART. How much was that?

Mr. GRAY. It is impossible, Senator Brookhart, to figure that in an exact figure. I do not know whether it was made clear to you. It was simply this—

Senator BROOKHART (interposing). What I wanted to get was the total of those charges.

Mr. GRAY. You can not get that in dollars and cents, unless it was gotten by some extensive accounting work. The founders' shares were issued at a dollar a share to certain favored people. They were all taken up by Otis & Co. The understanding and agreement was that the holders of founders' shares should get 25 per cent of the profits that were made by Continental Shares over and above the payment to the stockholders of a certain dividend, and after that had been in operation a short time, during the period of one year,

instead of paying that dividend to the stockholders in cash, which would have exhausted the cash that was available for dividends and could have left nothing for distribution to founders' shares, they distributed to the regular stockholders a stock dividend, which did not increase the cash that they had, which is not a dividend at all, as a matter of fact, as every student of economics will tell you, and left the cash in the treasury in order that they might distribute that as 25 per cent of the profits to the holders of the founders' shares, who were Otis & Co. and Cyrus S. Eaton. That is where the fraud is.

Mr. STOCK. May I add that the founders' shares cost a dollar a share and the return for the years 1928 and 1929 on those founders' shares on the original investment was 1,600 per cent per annum, whereas the return on the common stock on the original investment during those two years was only 2 per cent per annum.

The CHAIRMAN. That is the public.

Mr. STOCK. Correct.

Mr. GRAY. The public got 2 per cent on their investment and on these founders' they got 1,600 per cent.

Senator BROOKHART. What particular connection did the stock exchange have with all of this?

Mr. GRAY. There is one more factor, Senator. I will interrupt again, because of one thing Mr. Stock did not state I want to put into the case. Right after this loan was put through on October 14 what was done by Continental Shares with respect to the New York Stock Exchange and the listing of additional stock, after all of these things had happened, was that they applied to list 1,040,000 shares.

Senator BROOKHART. For sale?

Mr. GRAY. For sale, which was part of the fifty-seven million consideration in that transaction. This is the listing application.

Senator BROOKHART. All right now; let us stop there just a moment. The stock exchange had investigated Otis & Co.?

Mr. GRAY. That is correct.

Senator BROOKHART. They knew that Otis & Co. had gotten on their feet, is that right?

Mr. GRAY. That is correct.

Senator BROOKHART. They should have known, and if they did not know they should have investigated the question of how it was done?

Mr. GRAY. Correct.

Senator BROOKHART. But without any investigation they entertained an application for Continental Shares to list this number of shares on the New York Stock Exchange in addition to the stock which had been already listed and permitted it to be listed and sold to the public; is that right?

Mr. GRAY. That is correct. In other words—

Senator BULKLEY (interposing). What is the date of that application?

Mr. GRAY. October 20, 1930, six days after this deal was put through.

Mr. STOCK. In other words, after the stock exchange had made an audit of all of the offices of Otis & Co. and knew all about their affairs after this application was made the stock exchange was

satisfied that the money be taken away from the stockholders of Continental Shares so that a member firm would be able to meet its obligations.

Senator CAREY. Mr. Stock——

Senator WALCOTT (interposing). Just a minute; excuse me. You say that was October, 1930?

Mr. STOCK. Yes, sir.

Senator WALCOTT. What was the price at which those were put out, what was the price when the application was made?

Mr. STOCK. They were selling at \$21 a share at that time, Senator.

Mr. GRAY. That is on October 10, Senator.

Mr. STOCK. Yes; October 10.

Senator CAREY. Mr. Stock, when this stock was sold by Foreign Utilities to Mr. Eaton, Continental Shares, was there an agreed price? There must have been an agreed price.

Mr. STOCK. As to the stock that was being delivered.

Senator CAREY. Continental Shares was making this loan to Otis & Co.?

Mr. STOCK. Yes.

Senator CAREY. There was an agreed price and Foreign Securities or Mr. Eaton sold certain stocks at that time at a profit?

Mr. STOCK. That is correct.

Senator CAREY. It would be a profit?

Mr. STOCK. That is correct.

Senator CAREY. Do you know what that profit amounted to?

Mr. STOCK. I only know as to one item, Senator, and that is the United Light & Power, on which the profit was \$17,000,000.

Senator CAREY. You do not know the amount of income tax that was avoided by the Canadian transaction?

Mr. STOCK. Our own corporation tax at that time was 12 per cent.

Senator CAREY. You do not know what the Canadian tax was?

Mr. STOCK. No; I do not.

Senator WALCOTT. And if there had not been a Canadian tax, what would be the saving?

Mr. STOCK. I beg pardon?

Senator WALCOTT. If there had not been a Canadian tax——

Mr. STOCK. \$2,000,000.

Mr. GRAY. I am of the opinion, Senator Walcott, that this is, you understand, a capital sales tax and not the ordinary income tax, and, although I do not pretend to have a thorough knowledge of the subject and maybe no knowledge, I do not believe there is a capital sales tax in New Brunswick.

Senator WALCOTT. No; there is not, but capital sales tax is more than 12½.

Mr. STOCK. There would not be a capital gains tax in this, Senator. It would be a corporation tax.

Senator WALCOTT. This is not subject to a capital gains tax.

Mr. GRAY. This is stock sold by a corporation.

Senator WALCOTT. It is not a capital gains tax. At least, I should say so.

Mr. STOCK. It would be about the same in both instances, 12 or 12½.

Mr. GRAY. I do not know how long Foreign Utilities held that stock, you know, before it was sold.

The CHAIRMAN. Let me ask one question: I am not sure that you developed the price at which these shares were selling on the day that application for listing was made.

Mr. STOCK. I am afraid I do not know that price, Senator.

Senator WALCOTT. Well, Senator, he has just stated—that was my question—that on or about that date they were selling at 21.

Mr. GRAY. That was on October 10.

Senator BULKLEY. That was the 10th, and they were listed on the 20th.

Senator WALCOTT. Well, that is pretty close.

Senator BROOKHART. What became of these loans from the Chase National Bank?

Mr. STOCK. You mean, does Continental Shares still owe all of that money that was borrowed?

Senator BROOKHART. Yes.

Mr. STOCK. I know that they owe some of it. I can not say that they owe all of it. Can you answer that, Mr. Gule?

Mr. GUGLE. They owe a balance of \$27,000,000.

Senator BROOKHART. What security was put against that?

The CHAIRMAN. I suggest that we will have these witnesses sworn if they are to answer questions. They have to answer under oath if they are going to answer questions like that.

Mr. GRAY. If the committee pleases, although I had asked Mr. Stock to outline the matter for you and had present Mr. Gule, who is thoroughly familiar with the situation and who has instituted this suit in Baltimore, and had present Mr. Tresemer, who is an accountant and is thoroughly familiar from every angle with the situation, and had intended to call them, Mr. Stock has so thoroughly outlined the matter that I am asking, if you please, suggestions from either the chairman of the committee as to whether or not you have the situation fully before you for the purposes of the committee or whether you would like me to call either or both of these gentlemen in addition thereto.

I might also suggest, if it is considered proper by the committee, that I might make inquiry of Mr. Gule now or Mr. Tresemer or both as to whether there is any phase of the transaction that has been omitted by Mr. Stock which they feel they should supplement by their own testimony, or has it been fully covered?

Mr. GUGLE. There are one or two points that might be developed.

Mr. GRAY. Then I think, Mr. Chairman, that I should put Mr. Gule upon the stand for the purpose of developing those additional points and answering any questions that the committee might desire to ask him.

The CHAIRMAN. Mr. Gule, you may come up here and take the witness stand. Just have a seat opposite the reporter.

#### TESTIMONY OF GEORGE L. GUGLE, COLUMBUS, OHIO

The CHAIRMAN. You do solemnly swear that the statement you are about to make will be the truth, the whole truth, and nothing but the truth in relation to this investigation by the committee, so help you God?

Mr. GUGLE. I do.

Mr. GRAY. Will you sit down, Mr. Gogle, and give your full name, if you please?

Mr. GUGLE. George L. Gogle.

Mr. GRAY. And you live where?

Mr. GUGLE. Columbus, Ohio.

Mr. GRAY. And what was your relationship prior to the time of the difficulties with Continental Shares?

Mr. GUGLE. Small stockholder.

Mr. GRAY. And since these various questions have arisen with respect to which Mr. Stock has testified, your interest has been what, the interest of yourself and other stockholders?

Mr. GUGLE. And an organization of some of the minority stockholders.

Mr. GRAY. Keep your voice up, and may I suggest that you face the reporter and then all of the committee can hear, because I will be able to hear you.

Now, your interest, you say, is that of a small stockholder and an organization of the stockholders of a minority interest. You having instituted the litigation in this case—and I want to develop this, in fairness to Mr. Gogle. It was not you that sought the opportunity to come here and testify, but as a matter of fact as counsel for the committee I had you subpoenaed in Cleveland to be here?

Mr. GUGLE. Exactly. I protested against coming.

Mr. GRAY. That is correct, because Mr. Gogle felt that this was a matter which was in litigation, and though he is here in answer to the subpoena, he did not come here because he sought the opportunity to testify.

Now, suppose, Mr. Gogle, having heard Mr. Stock's statement with respect to this matter, before I make any specific inquiries of you, that you make any additional statement that you desire in order to either clarify any of Mr. Stock's statements or to familiarize the committee with any other phase of the transaction that has not been referred to.

Mr. GUGLE. Mr. Stock has fairly well covered the situation. There is an item of about \$16,000,000 of stocks which Mr. Eaton took from Continental Shares and pledged them as collateral for his various syndicates.

Mr. GRAY. To whom did those shares of stock belong?

Mr. GUGLE. Continental Shares.

Mr. GRAY. Were they shares of Continental Shares or were they shares in the portfolio of Continental Shares?

Mr. GUGLE. Shares in the portfolio of Continental Shares.

Mr. GRAY. In other words, your statement is that he abstracted from the property of Continental Shares, it being practically within his control, a certain lot of shares of stock which he used to pledge as collateral for individual and personal loans?

Mr. GUGLE. Exactly.

Mr. GRAY. All right, now; what other statement in addition to that do you want to make to us?

Senator FLETCHER. Were the shares held in the treasury, never issued at all but held in the treasury?

Mr. GUGLE. Oh, no; they were shares in stock of other corporations that Continental owned.

Senator FLETCHER. Oh, I thought the Continental Shares themselves, their own stock.

Mr. GUGLE. But it was shares of stocks in other corporations, like Republic Steel.

Senator WALCOTT. Investment shares?

Mr. GUGLE. Investment portfolio; yes.

Senator CAREY. This was an investment trust?

Mr. GUGLE. This was an investment trust; yes, sir.

Senator BULKLEY. Did you say when that happened, Mr. Gule?

Mr. GUGLE. That happened in the period from 1927 to 1930.

Senator BULKLEY. From time to time?

Mr. GUGLE. From time to time; yes.

Senator WALCOTT. Were those displacements and substitutions authorized by the board of directors?

Mr. GUGLE. They were taken first and then ratified.

Senator BROOKHART. Will you give the various items?

Mr. GUGLE. I made a notation this noon of some of them. There was \$1,399,500 of Cliffs Corporation, \$8,800,000 of Cliffs Corporation, and \$3,000,000 of Cliffs, put up with the Cleveland Trust Co. as collateral on an indorsement that Eaton had Continental make for the Goodyear shares in the loan of \$11,000,000. And to digress for the moment, that \$11,000,000 liability for Continental Shares did not appear in several of their annual statements to stockholders.

Senator BULKLEY. Who was the principal obligor in that case?

Mr. GUGLE. Goodyear shares, the rubber company of Mr. Eaton's.

Senator BULKLEY. I take it that is the rubber holding company?

Mr. GUGLE. Rubber holding company, yes. Then there was \$3,000,000 Republic Steel and \$800,000 of Youngstown Sheet & Tube. That was the value at the time it was put up, but the Youngstown stock was put up with his steel syndicate.

Senator BULKLEY. Who was the principal obligor then?

Mr. GUGLE. Steel Syndicate.

Senator BULKLEY. Is that the name of it, Steel Syndicate?

Mr. GUGLE. The Steel Syndicate.

Senator BROOKHART. Of course, these transactions did not go through the stock exchange?

Mr. GUGLE. Oh, no. They were just abstractions. You might term them embezzlements. These stocks will never be returned to Continental, because the loans are now more than the value of the collateral.

Senator BROOKHART. What authority did he have to transfer those?

Mr. GUGLE. None whatsoever. If they had not been ratified by the directors it would be embezzlement.

Senator BROOKHART. They have been ratified, then?

Mr. GUGLE. They have been ratified, if they can be ratified by a board of dummy directors.

Senator CAREY. Did Mr. Eaton give the company any note or anything for those stocks?

Mr. GUGLE. No, sir.

Senator CAREY. Nothing to show the obligations?

Mr. GUGLE. Nothing to show the obligations. Except in one instance he took 25,000 shares of Harbison & Walker and in place thereof put up 10,000 shares of Youngstown Sheet & Tube.

Senator FLETCHER. What did he do with this stock?

Mr. GUGLE. He put it up as collateral for notes of various syndicates in which he was interested. For instance, he owed \$11,100,000 in the Goodyear shares note at the Cleveland Trust Co., and for that he put up this \$1,399,500, \$8,800,000, and the \$3,000,000 of Cleveland Cliffs, as collateral.

Senator CAREY. And the loans against them now exceed the value of the securities?

Mr. GUGLE. They do.

Senator FLETCHER. Did they have any specified time to run? The loans on it?

Mr. GUGLE. They are all short time loans, but they have been running several years, as a matter of fact.

Senator WALCOTT. Were they demand or time?

Mr. GUGLE. Time, usually 90 days. No; one of them was a year loan renewed afterwards for six months and subsequently renewed for a six months' period.

The CHAIRMAN. Were these authorizations made before the act or were they ratifications?

Mr. GUGLE. They were ratifications.

The CHAIRMAN. Afterwards?

Mr. GUGLE. Afterwards.

Mr. GRAY. Now, Mr. Gule, what else besides that do you want to direct the committee's attention to?

Mr. GUGLE. Nothing, unless it is letters that I saw in a bank relative to that, if you care to go into that.

Mr. GRAY. You mean these letters, the interoffice letters of the Chase National?

Mr. GUGLE. Interoffice letters of Chase concerning the sending of those securities to Canada.

Mr. GRAY. I have all of the letters with the exception of two certain letters that you have mentioned to me that you saw with respect to the sending of those securities to Canada.

Mr. GUGLE. Yes.

Mr. GRAY. Now, those letters I have not seen. I can not produce copies of them and you have seen them and you are here under oath. Will you tell the committee what was the substance of those letters, from whom they were, to whom they were addressed, and what your recollection of the substance of those letters is?

Mr. GUGLE. The first letter was dated November 7, from Mr. Stern.

Mr. GRAY. 1930?

Mr. GUGLE. 1930.

Mr. GRAY. Yes.

Mr. GUGLE. From Mr. Stern to Mr. Clarkson.

Mr. GRAY. And Mr. Clarkson is who?

Mr. GUGLE. President of the Chase Securities Co. and an officer also in Chase National Bank.

Mr. GRAY. What was the tenor and effect of that letter?

**Mr. GUGLE.** The tenor of the letter was:

I am very much opposed to your sending Continental securities to Canada. I also fear that this would amount to a conspiracy to evade an income tax, and urge most strongly that your client's request be not acceded.

**Mr. GRAY.** You say that it said that "I am also opposed to your sending Continental Shares" or "Continental's shares"?

**Mr. GUGLE.** Continental Shares' securities.

**Mr. GRAY.** Meaning Continental Shares', possessive?

**Mr. GUGLE.** Yes.

**Mr. GRAY.** Meaning the shares belonging to the Continental Shares that had been lodged with the Chase National Bank as security for this loan?

**Mr. GUGLE.** Yes.

**Mr. GRAY.** In other words, the shares that have been referred to as having been thereafter sent to Canada?

**Mr. GUGLE.** Yes.

**Mr. GRAY.** Therefore, the first letter was a statement from their own counsel to the effect that he was opposed to the sending of those shares to Canada, for fear that their act in so doing strongly approximated a conspiracy to evade the payment of an income tax?

**Mr. GUGLE.** Yes.

**Senator GOLDSBOROUGH.** Who is this Mr. Stern that you speak about?

**Mr. GUGLE.** He is of the firm of Rushmore, Bisbee & Stern.

**Senator CAREY.** Is he attorney for the bank?

**Mr. GUGLE.** They are attorneys for the bank; yes.

**Mr. GRAY.** I should in fairness to Mr. Stern say that I have given Mr. Stern an opportunity to be here to-day, but when I communicated with his office yesterday afternoon he was away at the convention in Chicago and I could not communicate with him there.

I will say that this letter and another one which Mr. Gule will testify with respect to, I discussed with Mr. Stern, and Mr. Stern indicates that he sent no such letters. But Mr. Stern, of course, is an attorney and he represents the Chase Bank, and though I have extended him an invitation to come here and state what was in those letters and it was in my power to require him to come, it would be unethical for me to do so, because it was confidential communication that he had given his client as an attorney with regard thereto. That was one letter, and the second letter was dated when and what was that?

**Mr. GUGLE.** I don't recall the date of the second letter.

**Mr. GRAY.** Was it at a later date than the first?

**Mr. GUGLE.** A later date than that.

**Mr. GRAY.** What was the second letter?

**Mr. GUGLE.** The second letter was substantially:

Since you are determined to accommodate your client and send Continental's securities to Canada, I wish the following to be the letter written by Continental to Chase.

And attached to that letter was the form of a letter which was subsequently written by Continental to Chase, a copy of which I have in my folder.

Mr. GRAY. I would be glad to have a copy of that letter if you will submit it to us.

Senator FLETCHER. Did Continental Shares show any note or obligation at all for these securities that were taken from their portfolio?

Mr. GUGLE. They have nothing whatsoever to show for them, Senator; no obligation to pay or return.

Senator FLETCHER. And these securities were used as collateral for individual debts?

Mr. GUGLE. No; debts of syndicates or other corporations in which Mr. Eaton was personally interested.

Senator FLETCHER. But Mr. Eaton did not give the Continental Shares a note or memorandum or anything showing that he had taken these securities and used them for his own purpose?

Mr. GUGLE. No, sir.

Senator CAREY. Do the Continental books show this transaction?

Mr. GUGLE. Yes, sir.

Senator CAREY. They are carrying that?

Mr. GUGLE. Yes, sir; they are carrying that.

In addition to what has been developed here, Mr. Eaton personally owes the corporation \$2,087,000, on a note dated December 3, 1930, with collateral worth at that time about \$400,000.

Mr. GRAY. That was a straight loan from the company, authorized in the minutes.

Mr. GUGLE. Exactly.

Senator WALCOTT. What is it worth now?

Mr. GRAY. What is the collateral worth now, Senator Walcott asks?

Mr. GUGLE. About \$15,000.

Mr. GRAY. And that obligation of Mr. Eaton's, of over \$2,000,000, still remains upon the books of Continental Shares?

Mr. GUGLE. Yes.

Senator BULKLEY. What does that represent? Was that a cash advance to Mr. Eaton?

Mr. GUGLE. Yes.

There is another of \$1,100,000, loaned to Industrial Shares. Industrial Shares is a wholly owned Eaton corporation, and the collateral on that was 50,000 shares of Continental's own stock.

Mr. GRAY. I would suggest, because I believe that is the only copy of that letter, that you read it into the record. So that the committee might understand, first, this letter is a letter the form of which accompanied the letter from the counsel of the Chase National Bank to one of the officials of the bank, instructing him that if they persisted in following the suggestion of their clients in the sending of these stocks to Canada, that he wanted them to obtain from Continental Shares a letter in the following form. Is that right?

Mr. GUGLE. Yes.

Mr. GRAY. That letter was written by Continental Shares, and that is the letter you are now going to read into the record?

Mr. GUGLE. Correct.

Mr. GRAY. Please do so.

Mr. GUGLE (reading).

NOVEMBER 8, 1930.

The CHASE NATIONAL BANK OF THE CITY OF NEW YORK,  
New York, N. Y.

Attention, Leon Johnson, Esq., vice president.

DEAR MR. JOHNSON: You hold under pledge from the undersigned as security for a loan of \$30,000,000, evidenced by the note of the undersigned in that amount, dated October 28, 1930, the following shares: 394,987 shares United Light & Power Co., class B common stock; 44,646 shares Youngstown Sheet & Tube Co., black stamp common stock, and/or certificates of deposit therefor; 3,600 shares of Union Trust Co. of Cleveland capital stock; 1,844 shares of Cleveland Trust Co. of Cleveland, capital stock.

We are about to engage in a transaction under Canadian laws in New Brunswick, Canada, which will be facilitated if the above-mentioned shares are physically located in New Brunswick at the time the transaction takes place. You are accordingly requested to send such shares by registered mail to the Canadian Bank of Commerce, St. Johns, New Brunswick, Canada, to be held by said bank for your account and promptly to advise the undersigned from time to time upon the receipt by you of information from the Canadian Bank of Commerce that such stock is so held. You are requested to send such shares in separate lots, and if this be consistent with the insurance regulations, on successive days. The first two lots thus to be sent are as follows:

Lot No. 1, 227,500 shares United Light & Power class B common stock, insured for \$16,000,000.

Lot No. 2, 167,487 shares United Light & Power Co. class B common stock. Forty-two thousand shares Youngstown Sheet & Tube Co., black stamp common stock and/or certificates of deposit therefor, the lot insured for \$16,000,000.

We will advise you later as to how the subsequent lots are to be made up. Upon advice from us of the completion of the transaction, but not later than November 19, 1930, we request that you instruct the Canadian Bank of Commerce to return such shares to you by registered mail. We authorize you to charge our account for all expenses incurred by you in connection with your compliance with this request, and also request that you take out transportation and detention insurance in amounts approximating the present market value of the securities.

Very sincerely yours,

CONTINENTAL SHARES (INC.),  
\_\_\_\_\_, Secretary-Treasurer.

With a note that it was written by L. G. Watson.

Senator FLETCHER. Mr. Eaton was then president of Continental Shares?

Mr. GUGLE. Chairman of the executive committee.

Senator FLETCHER. Had he been all along, during these transactions you have mentioned?

Mr. GUGLE. He had been all along chairman of the executive committee of Continental Shares; since its organization.

Senator FLETCHER. He is yet?

Mr. GUGLE. No. On April 25, 1931, his board of directors were superseded by another lot of directors, put in by him.

Mr. GRAY. Mr. Gugle, before I put some other matters on the record that connect up with the things about which you have testified, I want to give you an opportunity, if there is anything else that you desire to call the committee's attention to, to do so.

Mr. GUGLE. I don't recall anything.

Mr. GRAY. If there are no other questions of Mr. Gugle, I will put upon the record, if the committee please, this statement of the distribution of that \$30,000,000, which was the first portion of the loan that was paid out by Chase National Bank.

I will ask Mr. Gugle one question. You have also a report of that distribution that was made to Continental Shares by Chase National Bank, which, with respect to an item that was numbered thereon, as No. 19, failed to disclose how a certain sum of about

\$5,166,000, if I recall correctly, was distributed, and when investigation was made, it was found that that distribution was to these four banks in New York, including the Chase themselves, of one million and some odd thousand.

Mr. GUGLE. Correct.

Mr. GRAY. That was not disclosed at first.

Mr. GUGLE. No.

Mr. GRAY. The investigation of this sheet that I have in my hand, showing the distribution, also establishes—I think I have developed this before, but it will not do any harm if I develop it again—that some of these stocks which were sold and purported to belong to Foreign Utilities, were, as a matter of fact, deposited with various institutions or individuals, to secure loans made to Cyrus Eaton personally.

Mr. GUGLE. That is correct.

Mr. GRAY. I will not bother reading this. It simply shows the distribution, taking up the various loans. I will ask leave to hand it to the reporter for printing in the record.

The CHAIRMAN. If there is no objection, it is so ordered.

(The statement referred to is as follows:)

CHASE BANK—RE CONTINENTAL SHARES (INC.)

Details of \$30,000,000 loan made by Chase to Continental in October, 1930.

The Chase made 12 loans to Continental Shares on October 14, 15, 16, and 20, 1930, aggregating in amount the agreed \$30,000,000. These loans were each secured by collateral and were subsequently consolidated in a single \$30,000,000 loan on October 28, 1930, which was to mature on April 28, 1932.

Proceeds of all loans were credited to Continental Shares (Inc.) account and in accordance with their instructions disbursed as indicated below:

Date of loan	Amount	Collateral	Payment to
Oct. 14, 1930	\$666,000.00	20,000 shares United Light & Power Co., class B common.	Union Trust Co. of Cleveland, Ohio, credit account.
Do.....	1,000,000.00	50,000 shares Lehigh Coal & Navigation Co., common.	Do.
Do.....	2,333,333.00	70,000 shares United Light & Power Co., class B common.	We charged Continental's account \$316,667 and credited Cleveland Trust Co. of Cleveland, Ohio, \$3,150,000.
Do.....	3,333,333.00	100,000 shares United Light & Power Co., class B common.	Bankers Trust Co. of New York, \$3,010,833.33 balance remained in account. Bank draft.
Do.....	1,500,000.00	10,300 shares United Light & Power Co., class B common; 5,350 shares Manhattan Co. of New York. 400 shares Harris Trust & Savings Bank, Chicago. 500 shares Continental Illinois Bank & Trust Co., Chicago.	Credited to Continental Shares account.
Do.....	1,800,000.00	3,945 shares United Light & Power Co. class B common. 2,125 shares Continental Illinois Bank & Trust Co., Chicago. 500 shares Manhattan Co. of New York. 7,288 shares Union Trust Co., Cleveland. 1,172 shares Cleveland Trust Co. 80 shares Harris Trust & Savings Bank, Chicago. 2,000 shares Youngstown Sheet & Tube Co. common.	
Do.....	10,000,000.00	25,000 shares United Light & Power Co. class B common. 180,000 shares Lehigh Coal & Navigation Co., common. 75,600 shares Goodyear Tire & Rubber Co., common. 19,100 shares Youngstown Sheet & Tube Co., common. 41,000 shares Cliff's Corporation.....	Do. \$7,000,000 paid to Otis & Co. Credit account.

Date of loan	Amount	Collateral	Payment to
Oct. 14, 1930	\$1,555,000.00	50,000 shares Lehigh Coal & Navigation Co., common; 8,000 shares Youngstown Sheet & Tube Co., common C/D.	Credited to Continental Shares account.
Do.....	5,166,666.66	155,000 shares United Light & Power Co., class B common.	\$2,550,000, paid to Guaranty Trust Co., New York City (by bank draft); \$1,655,000 paid to Chemical Bank & Trust Co., New York City (by bank draft); \$50,000 Public National Bank & Trust Co., New York City (by bank draft); \$1,600,000 paid Chase National Bank.
Oct. 15, 1930	1,636,666.00	8,000 shares United Light & Power Co. class B common 15,000 shares Youngstown Sheet & Tube Co. common; 18,500 shares Lehigh Coal & Navigation Co., common.	\$636,666 paid to Otis & Co. credit account.
Oct. 16, 1930	390,000.00	1,537 shares Cleveland Trust Co.....	Paid to Otis & Co. credit account.
Oct. 20, 1930	619,001.34	20,700 shares Lehigh Coal & Navigation Co., common; 3,105 shares United Light & Power Co., class B common; 24,700 Youngstown Sheet & Tube Co., common.	Credited to Continental Shares account.

Mr. GRAY. I will offer, so that it will be in the record, the application of Continental Shares for the listing, which was filed on October 20, 1930, with the New York Stock Exchange. Mr. Stock was in error when he spoke of it being for 1,040,000 shares. The listing is for an additional 990,000 shares. It is apparent that the 990,000 shares was the amount that they required in addition to the stock that had already been authorized to be issued. That is, it was their own stock, in their own possession, unissued, so that they might issue it in connection with this transaction we have just been referring to. So that the listing was for 990,000 shares. This application, however, will give you, in addition to that, certain other information as to the construction or set-up of Continental Shares which, of course, it was necessary for them to give to the stock exchange at that time; and I direct the committee's attention to the fact that this application, of course, had to disclose to the stock exchange the fact that there was outstanding this \$30,000,000 loan on account of these securities that had been deposited as collateral. I ask that that be printed in the record.

The CHAIRMAN. If there is no objection, it is so ordered.  
(The statement referred to is as follows:)

*Continental Shares (Ino.)—Common stock, without par value (voting)*

[Incorporated under the laws of the State of Maryland, March 1, 1926; certificate transferable in New York, N. Y., Cleveland, Ohio, and Boston, Mass.]

	Number of shares
Additional listing applied for.....	990,000
Authorized by charter.....	4,000,000
Outstanding .....	2,419,665½
Total listing applied for.....	3,696,317

Authorized by board of directors, October 8, 1930. No other authority required.

*Capital securities*

Stocks	Par value	Number of shares			
		Authorized by charter <sup>1</sup>	Authorized for issuance	Previously authorized to be listed	Outstanding
Preferred.....	\$100	260,000			
Preferred (6 per cent cumulative).....			30,000	None.	30,000
Preferred series B (6 per cent cumulative).....			128,229	None.	128,229
Convertible preferred (6 per cent cumulative).....	100	240,000	240,000	None.	240,000
Common.....	No par.	4,000,000	3,696,317	2,753,318	2,419,665½
Founders shares.....	No par.	10,000	10,000	None.	10,000

The corporation has no funded debt.

<sup>1</sup> 286,651½ shares of common stock are reserved as follows: 30,804 shares for exercise of outstanding warrants originally issued with preferred stock and preferred stock, series B, of the corporation; 253,539 shares for conversion of 240,000 shares of convertible preferred stock; 2,308½ shares to be issued in exchange for common stock of International Share Corporation.

<sup>2</sup> This figure does not include 47,001 shares formerly reserved for issuance, but released due to expiration of subscription warrants, and to adjustment in the number of shares reserved for conversion privilege.

<sup>3</sup> Includes 46,898½ shares of treasury stock held on Sept. 30, 1930, but since used as part consideration for securities subsequently purchased.

CLEVELAND, OHIO, October 20, 1930.

Referring to its previous applications, especially to A-9316, dated April 10, 1930, Continental Shares (Inc.), a Maryland corporation (hereinafter called the corporation), hereby applies for the listing on the New York Stock Exchange of permanent engraved certificates for 990,000 additional shares without par value of its common stock on official notice of issue in connection with the acquisition of certain securities hereinafter more fully described.

The total amount of common stock, the listing of which has been and is hereby applied for, is 3,696,317 shares (of a total authorized issue of 4,000,000 shares of common stock).

Said 990,000 additional shares of common stock will be, when issued, full paid and nonassessable, with no personal liability attaching to the holders thereof.

#### PURPOSE OF AND AUTHORITY FOR ISSUE

The corporation has acquired the following securities pursuant to resolutions adopted by the board of directors at a meeting held on October 8, 1930:

	Number of shares	Market price per share <sup>1</sup>	Total market value
<b>American bank stocks:</b>			
Bancohio Corporation.....	1,800	\$35.00	\$63,000.00
Central United National Bank (Cleveland, Ohio).....	621	66.00	40,986.00
The Cleveland Trust Co. (Cleveland, Ohio).....	1,844	385.00	709,940.00
Fidelity National Bank & Trust Co. (Kansas City, Mo.).....	867	250.00	216,750.00
The Union Trust Co. (Cleveland, Ohio).....	3,600	74.50	268,200.00
Total.....			1,298,876.00
<b>Canadian bank stocks:</b>			
The Bank of Nova Scotia.....	600	320.00	192,000.00
The Bank of Toronto.....	500	238.00	119,000.00
The Canadian Bank of Commerce.....	3,500	240.00	840,000.00
The Dominion Bank.....	649	228.00	147,972.00
Imperial Bank of Canada.....	466	235.00	109,510.00
Total.....			1,408,482.00
<b>Steel stocks:</b>			
The Cliffs Corporation.....	84,351	115.00	9,700,365.00
Republic Steel Corporation.....	4,888	24.00	117,312.00
The Youngstown Sheet & Tube Co., certificates of deposit.....	44,646	120.00	5,357,520.00
The Youngstown Sheet & Tube Co., unstamped stock.....	1,100	99.00	108,900.00
Total.....			15,284,097.00

<sup>1</sup> Market price as of Oct. 8.

	Number of shares	Market price per share <sup>1</sup>	Total market value
<b>Rubber stocks:</b>			
The Firestone Tire & Rubber Co.....	126,950	\$16.00	\$2,031,200.00
The B. F. Goodrich Co.....	93,800	18.025	1,747,025.00
United States Rubber Co.....	40,000	14.50	580,000.00
			<u>4,358,225.00</u>
<b>Utility stocks:</b>			
Corporation Securities Co. of Chicago.....	4,859	20.00	97,180.00
Insull Utility Investments (Inc.).....	4,858	50.00	242,900.00
International Paper & Power Co., A.....	25,000	11.25	281,250.00
International Paper & Power Co., B.....	171,400	6.00	1,028,400.00
International Paper & Power Co., C.....	251,000	5.00	1,255,000.00
James MacLaren, (Ltd.) (Buckingham, Quebec).....	450	500.00	225,000.00
The United Light & Power Co., B.....	394,987	78.875	31,154,599.62
			<u>34,284,329.62</u>
<b>Sundry stocks:</b>			
National Acme Co.....	9,600	9.25	88,800.00
The Sherwin-William Co.....	3,100	76.00	235,600.00
			<u>324,400.00</u>
			<u>56,958,409.62</u>

<sup>1</sup> Market price as of Oct. 8.

The above securities were acquired at a valuation of \$56,958,409.62, which was the market value as of October 8, 1930, payment to be made as follows: \$35,000,000 in cash and the balance in the shares of the common capital stock of the corporation, on the basis of the asset value thereof, through the issuance of 990,000 shares of the common capital stock of the corporation and delivery of 50,000 shares of Treasury stock.

Full authority for the issuance of such shares of stock is contained in the resolutions adopted by the board of directors on October 8, 1930.

#### OPINION OF COUNSEL

Opinion of counsel covering the authorization, issue, and validity of said 990,000 additional shares of common stock, rendered by Squire, Sanders & Dempsey on October 17, 1930, is herewith furnished the New York Stock Exchange.

#### ORGANIZATION, BUSINESS, AND HISTORY

The corporation was incorporated under the laws of the State of Maryland on March 1, 1926, with perpetual existence. It possesses broad charter powers authorizing it to acquire, hold, and deal in securities of all kinds, to participate in syndicates and underwritings, and to engage in other financial transactions.

While the corporation places some of its funds in stocks purely for investment, its chief purpose is to acquire substantial holdings, either alone or in cooperation with other interests, in prominent companies in such basic industries as steel, rubber, and public utilities. These larger investments are held with a view to promoting the interests of the companies concerned through cooperation in their financial and industrial activities.

#### ORGANIZATION EXPENSES

The initial organization expenses included only the usual expenses such as expenses for legal services, organization, and stock issue taxes, etc., and amounted to less than \$5,000. Subsequent expenses incident to amendments to the charter, etc., have been included in the item "Expenses" appearing in the income statement hereinafter set forth. Underwriting fees in connection with different issues of capital stock are shown in detail under the caption, "Summary of issued and issuable capital stock."

## MANAGEMENT AND AFFILIATION

The executive management of the corporation is vested in the board of directors and executive committee, the latter taking action between meetings of the board. The actions of the officers are governed by the executive committee whose actions are in turn approved at subsequent meetings of the board of directors. The directors are elected annually. The voting rights are confined exclusively to the common stock, except as may be otherwise provided by law, and subject to the voting privileges conferred upon the preferred stock in the event of default of four quarterly dividends.

The present directors are: C. S. Eaton, chairman of the board of the corporation, partner, Otis & Co., and chairman of the board of the United Light & Power Co.; W. R. Burwell, president of the corporation and director of the Goodyear Tire & Rubber Co.; F. H. Hobson, vice president of the Cleveland Trust Co.; David Ingalls; Richard Inglis, partner, Otis & Co.; R. V. Mitchell, of Mitchell, Herrick & Co.; and Philip Wick, of Wick & Co.

Management compensation paid by the corporation at the present time consists of fixed salaries paid to its officers and nominal fees paid to the members of its board of directors and advisory committee, all of which is included in the item "Expenses," appearing in the hereinafter set forth income statement from March 1, 1926, to September 30, 1930.

The founder shares (hereinafter described) are at present owned by the management or affiliated interests.

*Summary of authorized capital stock*

Certificates filed in office of State Tax Commission of Maryland—	Number of shares				Remarks
	Preferred stock	Convertible preferred stock	Common stock	Founders shares	
Mar. 1, 1926, at incorporation.....			500,000	10,000	
Sept. 26, 1927, creation of class.....	60,000				
Dec. 3, 1928, increased by.....	200,000				
Mar. 21, 1929, creation of class.....		240,000			
Mar. 21, 1929, increased to.....			4,000,000		Previously authorized 500,000 shares became 2,000,000 shares.
			.		
Total.....	260,000	240,000	4,000,000	10,000	

*October 8, 1930, summary of issued and issuable capital stock*

Date of authorization	Preferred stock	Convertible preferred stock	Number of shares			Founders' shares	Total proceeds	Underwriting fees <sup>1</sup>	Net proceeds	Remarks
			Issued	Issuable	Total					
Mar. 9, 1926			130,000		130,000		\$6,590,316.10	\$218,400.00	\$6,371,916.10	Sold for cash at \$50 and \$52.50 per share.
Do.						10,000	10,000.00		10,000.00	Sold for cash at \$1 per share.
Aug. 18, 1927	{ 30,000		29,865		29,865		3,000,000.00	146,702.50	2,853,297.50	Issued at \$100 per share. To each share of preferred stock was attached a common-stock purchase warrant entitling the holder to purchase common stock on the basis of 1 share of common stock for each share of preferred stock, at \$65 per share to Sept. 15, 1928, thereafter at \$75 per share to Sept. 15, 1929, and thereafter at \$90 per share to Sept. 15, 1930.
							1,959,165.00		1,959,165.00	
Feb. 18, 1928	30,000						3,000,000.00	44,157.00	2,955,843.00	Issued at \$100 per share.
May 15, 1928			36,239½		36,239½		2,718,383.75	33,668.00	2,684,715.75	Sold to stockholders at \$75 per share at the rate of 1 share for every 4 shares held.
Oct. 15, 1928			48,726¼		48,726¼		4,385,407.50	48,553.25	4,336,854.25	Sold to stockholders at \$90 per share at the rate of 1 share for every 4 shares held.
Do.			4,645¼		4,645¼		46,452.50	4,643.93	41,808.57	Stock dividend in lieu of accrued and unpaid cash dividends on common stock.
Nov. 10, 1928	{ 40,000		36,147	3,853	40,000		4,000,000.00	26,358.00	3,973,642.00	15,097 shares issued at \$100 per share for securities taken at approximately the market value thereof and 24,903 shares sold for cash at \$100 per share. To each share of preferred stock was attached a common stock purchase warrant entitling the holder to purchase common stock on the basis of 1 share of common stock for each share of preferred stock, at \$130 per share to Dec. 15, 1929, and thereafter at \$150 per share to Dec. 15, 1930.
							4,699,110.00		4,699,110.00	
Dec. 12, 1928	{ 35,000		15,797	1,703	17,500		3,500,000.00		3,500,000.00	Issued at \$100 per share for securities taken at approximately the market value thereof. To each share of preferred stock was attached a common-stock purchase warrant entitling the holder to purchase common stock on the basis of one-half share of common stock for each share of preferred stock at \$130 per share to Dec. 15, 1929, and thereafter at \$150 per share to Dec. 15, 1930.
							2,053,610.00		2,053,610.00	
Do.			2,500		2,500		325,000.00		325,000.00	Sold for cash at \$130 per share pursuant to option granted to the sellers of the securities for which the immediately above-mentioned 35,000 shares of preferred stock were issued, such option price being the same as on the common-stock purchase warrants attached to said 35,000 shares of preferred stock.

See footnotes at end of table.

## October 8, 1930, summary of issued and issuable capital stock—Continued

Date of authori- zation	Number of shares					Total proceeds	Underwrit- ing fees <sup>1</sup>	Net proceeds	Remarks	
	Pre- ferred stock	Convert- ible pre- ferred stock	Common stock							Found- ers' shares
			Issued	Issuable	Total					
Dec. 20, 1928.....	23, 229		9, 469½	2, 145	11, 614½	\$2, 322, 900. 00 1, 420, 425. 00		\$2, 322, 900. 00 1, 420, 425. 00	Issued at \$100 per share for securities taken at approximately the market value thereof. To each share of preferred stock was attached a common-stock purchase warrant entitling the holder to purchase common stock on the basis of one-half share of common stock for each share of preferred stock, at \$150 per share to Feb. 15, 1930, and thereafter at \$175 per share to Feb. 15, 1931.	
Do.....			133, 177		133, 177	17, 313, 010. 00	\$332, 942. 50	16, 980, 067. 50	Sold to stockholders at \$130 per share at the rate of 1 share for every 2 shares held.	
			446, 567	7, 701	454, 268					
Mar. 21, 1929.....			1, 786, 268	30, 804	1, 817, 072				Previously authorized shares were through amendment of certificate of incorporation quadrupled.	
Apr. 25, 1929.....			4, 323		4, 323	324, 225. 00		324, 225. 00	Issued at approximately \$72.50 per share for securities taken at approximately the market value thereof.	
July 16, 1929.....			354, 333		354, 333	21, 259, 980. 00	354, 333. 00	20, 905, 647. 00	Sold to stockholders at \$60 per share at the rate of 1 share for every 5 shares held.	
July 18, 1929.....		240, 000				24, 000, 000. 00	1, 444, 250. 77	22, 555, 749. 23	Sold for cash at \$100 per share.	
Do.....				253, 539	253, 539				Reserved for conversion of 240,000 shares of convertible preferred stock.	
Mar. 24, 1930.....			274, 741½	2, 308½	277, 050	9, 361, 872. 17		9, 361, 872. 17	Issued or issuable for all the outstanding common stock of International Share Corporation.	
Oct. 8, 1930.....				990, 000	990, 000				This listing.	
Total.....	158, 229	240, 000	2, 419, 665½	1, 276, 651½	3, 696, 317	112, 289, 857. 02	2, 654, 008. 95	109, 635, 848. 07		

<sup>1</sup> Includes all expenses of selling each class of securities which have been issued, but such expenses as legal fees, organization and original issue taxes, blue-skying expenses, etc., are included in the item "Expenses" included in the hereinafter set forth income statement from Mar. 1, 1928, to Sept. 30, 1930. Such item "Expenses" is as follows:

Mar. 1, to Dec. 31, 1928.....	\$6, 583. 17
Year ended Dec. 31, 1927.....	24, 607. 17
Year ended Dec. 31, 1928.....	83, 785. 50
Year ended Dec. 31, 1929.....	371, 234. 16
9 months ended Sept. 30, 1930.....	415, 253. 41

<sup>2</sup> Issued from time to time on the exercise of common-stock purchase warrants which accompanied the preferred stock.

<sup>3</sup> Issuable on the exercise of common-stock purchase warrants which accompanied the preferred stock.

## PREFERENCES, ETC., OF THE VARIOUS CLASSES OF STOCK

The original terms of the convertible preferred stock provided for its conversion at par into common stock of the corporation at \$30 per share up to and including August 1, 1930, at \$100 per share thereafter up to and including February 1, 1932, and at \$125 per share thereafter up to and including August 1, 1933, on which date the conversion privilege expires. In case of redemption of the convertible preferred stock, the conversion privilege may be exercised at any time up to and including the redemption date. The amended certificate of incorporation includes protective provisions safeguarding this conversion privilege under which the above conversion prices have been adjusted.

The corporation has agreed that without the affirmative vote or written consent of the holders of a majority of the convertible preferred stock then outstanding, the corporation will not issue any preferred stock on a parity with or having priority over the convertible preferred stock as to dividends or upon liquidation, nor create or incur any capital indebtedness (other than debt for not more than one year) if after such issuance, creation or incurrence the sum total of the amount of convertible preferred stock and such other preferred stock and capital indebtedness then outstanding would be more than two-thirds of the then value of the assets of the corporation, less all indebtedness of the corporation other than capital indebtedness. In computing this ratio, the amount of cash and of United States Government securities is to be deducted both from the assets and from the total of outstanding debt and such preferred stock.

The amended certificate of incorporation provides that no preferred stock in excess of the 398,229 shares now outstanding, or preferred stock of any other class, shall be issued unless after the issuance thereof, and after giving effect to the net proceeds of such issue, the net assets of the corporation, as defined, shall equal at least 150 per cent of the par value of the total preferred stock then outstanding and proposed to be issued: *Provided further*, That no stock having priority or preference over the convertible preferred stock or 6 per cent preferred stock shall be authorized or issued except with the consent of the holders of at least two-thirds of all preferred stock then outstanding.

The amended certificate of incorporation provides that no dividends shall be declared or paid on the common stock or founders' shares if net assets, as defined, are or would by such payment be reduced to less than 150 per cent of the par value of convertible preferred stock and preferred stock having a parity with or preference over convertible preferred stock then outstanding.

The convertible preferred stock is entitled to receive \$105 per share plus accrued dividends in case of voluntary liquidation, dissolution or winding up of the corporation and \$100 per share plus accrued dividends in case of involuntary liquidation, dissolution, or winding up of the corporation, in preference to the common stock and founders' shares.

In the event of default in four quarterly dividends, the convertible preferred stock during continuance of such default is entitled to 1 vote per share in like manner as the common stock.

The provisions of the convertible preferred stock, the 6 per cent preferred stock, and the 6 per cent preferred stock, series B, are substantially identical, except that the 6 per cent preferred stock, series B, is redeemable at \$107.50 per share plus accrued dividends and upon voluntary liquidation is entitled to receive a similar amount per share in preference to the common stock and founders' shares, and except as to conversion privilege of the convertible preferred stock. The convertible preferred stock and all series of 6 per cent preferred stock are on a parity with respect to the payment of dividends or in the event of the liquidation of assets. The convertible preferred stock has no preemptive rights in any additional issues of stock.

Except as may be otherwise provided by law, and subject to the voting privileges conferred upon the preferred stocks in the event of default of four quarterly dividends, the voting rights are confined exclusively to the common stock. The holders of the founders' shares shall not be entitled to participate currently in the distribution of the surplus profits of the corporation for any year unless the surplus profits of the corporation available for the payment of dividends on the common stock and the founders shares for such year (after deducting therefrom the accrued unpaid dividends, if any, on the common

stock), shall be in excess of an amount equal to dividends on the common stock at the rate of \$1 per share (which amount is herein called the "excess profits" for such year), and unless dividends on the common stock at such rate for such year and all previous years shall have been declared and paid.

In the event that in any year there shall be such excess profits and that dividends on the common stock shall have been declared and paid at such rate for such year and for all previous years, then the holders of the founders shares as a class shall be entitled to dividends for such year in an amount equal to 25 per cent, but no more, of such excess profits for such year before any dividends shall be paid upon the common stock in excess of \$1 per share per annum. Upon any dissolution (voluntary or involuntary), or winding up of the corporation, the holders of the common stock for each share thereof shall be entitled to receive the sum of \$12.50, plus accrued unpaid dividends, before any distribution is made to the holders of the founders shares. From any assets of the corporation remaining after such distribution to the holders of the common stock, there shall then be paid to the holders of the founders shares, as a class, a sum equal to 25 per cent of the aggregate excess profits of the corporation, less the amount of all dividends declared and paid upon the founders shares. After such distribution to the holders of the founders shares, the remaining assets of the corporation shall belong to the holders of the common stock.

There is set forth in said original application, A-9092, a more detailed summary of the privileges, preferences, voting powers, restrictions, and qualifications of the stock of the corporation, with respect to which there have been no changes except that additional restrictions relative to the issuance of preferred stock or the incurrence of any capital indebtedness were imposed upon the board of directors by amendment to the certificate of incorporation recorded March 26, 1930.

#### COMMON STOCK RESERVED

The outstanding warrants entitling the holders thereof to purchase additional shares of common stock of the corporation are the unexercised warrants originally issued with preferred stock and preferred stock, series B, of the corporation. Such warrants entitle the holders thereof to purchase an aggregate of 30,804 shares of common stock as follows:

Price and duration:	Number of shares purchasable
\$37.50 per share to Dec. 15, 1930-----	22,224
\$43.75 per share to Feb. 15, 1931-----	8,580
Total-----	30,804

There are reserved 253,539 shares of common stock for issuance upon conversion of the 240,000 shares of convertible preferred stock outstanding, on the basis of the adjusted conversion prices referred to above. The number of shares of common stock issuable upon such conversion is subject to increase to protect against dilution as set forth in original application, A-9092.

There are also reserved 2,308½ shares of common stock for issuance in exchange for common stock of International Share Corporation.

#### SUBSIDIARIES

The corporation owns the entire capital stock of Continental Allied Corporation, a corporation of the State of Delaware, organized on February 8, 1930, for the purpose of handling the distribution of the capital securities of the corporation, and more than 99 per cent of the outstanding common capital stock of International Share Corporation, a corporation of the State of Delaware, organized on April 23, 1928, whose charter powers are similar to those of Continental Shares (Inc.).

#### FUNDED DEBT

The corporation has no funded debt.

## DIVIDENDS

All dividends have been paid on all classes of preferred stock and the common stock of the corporation. The amount of dividends paid is hereinafter set forth in the earned surplus account. The current rate of dividend on the common stock is \$1 per share per year.

*Pro forma consolidated list of securities owned by Continental Shares (Inc.) and its subsidiaries on October 8*

[After giving effect to acquisition of securities the purchase of which was authorized on October 8, 1930]

Description	Number of shares	Market price per share	Total market value	Source of quotation
<b>PUBLIC UTILITY COMPANIES</b>				
The Brooklyn Union Gas Co.....	11,400	\$115.50	\$1,316,700.00	New York Stock Exchange.
Corporation Securities Co. of Chicago (common).	4,859,129 <sup>1</sup> / <sub>100</sub>	20.00	97,192.60	Chicago Stock Exchange.
Foreign Light & Power Co. (second preferred).	500	-----	25,000.00	Appraised value.
Foreign Light & Power Co. (common).	2,000	-----		
Innall Utility Investments (Inc.)	4,858 <sup>7</sup> / <sub>100</sub>	50.00	242,900.50	Chicago Stock Exchange.
International Paper & Power Co. A-----	50,000	11.25	562,500.00	New York Stock Exchange.
B-----	196,400	6.00	1,178,400.00	Do.
C-----	335,700	5.00	1,678,500.00	Do.
The Lehigh Coal & Navigation Co.	403,053	31.375	12,645,787.88	New York Curb Exchange.
Niagara Hudson Power Corporation.	3,500	13.125	45,937.50	Do.
St. Lawrence Corporation (convertible, preferred).	15,000	19.00	285,000.00	Montreal, unlisted.
The United Light & Power Co. B.	416,212	78.875	32,823,721.50	New York Curb Exchange.
Total-----		-----	50,906,639.98	
<b>IRON AND STEEL COMPANIES</b>				
The Cliffs Corporation (common)	349,554	115.00	40,198,710.00	Cleveland, unlisted.
The Cliffs Corporation, voting trust certificates.	136	115.00	15,640.00	Cleveland Stock Exchange.
Inland Steel Co.-----	1,000	70.25	70,250.00	New York Stock Exchange.
Republic Steel Corporation (common).	206,777	24.00	4,962,648.00	Do.
Wheeling Steel Corporation-----	3,243	58.00	188,094.00	New York Curb Exchange.
Youngstown Sheet & Tube Co., certificates of deposit.	62,796	120.00	7,535,520.00	New York Stock Exchange.
Youngstown Sheet & Tube Co., unstamped stock.	4,100	99.00	405,900.00	Do.
Total-----		-----	53,376,762.00	
<b>RUBBER COMPANIES</b>				
The Firestone Tire & Rubber Co.	156,700	16.00	2,507,200.00	Do.
The B. F. Goodrich Co.	113,900	18.625	2,121,387.50	Do.
Goodyear Tire & Rubber Co.	96,800	46.50	4,501,200.00	Do.
Goodyear Shares (Inc.)-----	582	3,024.83	1,760,451.06	Price Goodyear common.
United States Rubber Co.-----	110,300	14.50	1,599,350.00	New York Stock Exchange.
Total-----		-----	12,489,688.56	
<b>PAINT COMPANIES</b>				
Devos & Reynolds Co. (Inc.) A-----	40,000	18.00	720,000.00	Do.
The Sherwin-Williams Co.-----	73,150	76.00	5,559,400.00	Cleveland Stock Exchange.
Total-----		-----	6,279,400.00	
<b>BANK STOCKS</b>				
Bancohio Corporation-----	16,800	35.00	588,000.00	Cleveland, unlisted.
The Bank of Nova Scotia.	2,633	320.00	842,560.00	New York, unlisted.
The Bank of Nova Scotia (70 per cent paid).	406	245.00	99,470.00	Do.

*Pro forma consolidated list of securities owned by Continental Shares (Inc.)  
and its subsidiaries on October 8—Continued*

[After giving effect to acquisition of securities the purchase of which was authorized on October 8, 1938]

Description	Number of shares	Market price per share	Total market value	Source of quotation
<b>BANK STOCK—CON.</b>				
The Bank of Toronto.....	500	\$238. 00	\$119, 000. 00	Montreal Stock Exchange.
The Canadian Bank of Com- merce.....	3, 500	240. 00	840, 000. 00	Do.
Central United National Bank....	621	66. 00	40, 986. 00	Cleveland Stock Exchange.
The Cleveland Trust Co.....	3, 552	385. 00	1, 367, 520. 00	Do.
Continental-Illinois Bank & Trust Co. (Chicago, Ill.).....	2, 625	540. 00	1, 417, 500. 00	Chicago, unlisted.
Dollar First National Bank (Youngstown, Ohio).....	1, 526	165. 00	251, 790. 00	Youngstown, unlisted.
The Dominion Bank.....	649	228. 00	147, 972. 00	Montreal Stock Exchange.
Guaranty Trust Co. of New York.....	772	583. 00	450, 076. 00	New York, unlisted.
Harris Trust & Savings Bank (Chicago, Ill.).....	480	700. 00	336, 000. 00	Chicago, unlisted.
The Huntington National Bank of Columbus, Ohio.....	1, 177	290. 00	341, 330. 00	Columbus, unlisted.
Fidelity National Bank & Trust Co.....	867	250. 00	216, 750. 00	Kansas City, unlisted.
Imperial Bank of Canada.....	466	235. 00	109, 510. 00	Montreal Stock Exchange.
The Manhattan Co.....	5, 850	100. 00	585, 000. 00	New York, unlisted.
The National City Bank of New York.....	200	132. 00	26, 400. 00	Do.
The Ohio State Bank & Trust Co. (Akron, Ohio).....	302	125. 00	37, 750. 00	Akron, unlisted.
The Union Trust Co. (Cleveland, Ohio).....	10, 888	74. 50	811, 156. 00	Cleveland Stock Exchange.
Total.....			8, 628, 770. 00	
<b>FOREIGN INVESTMENTS</b>				
<i>German</i>				
Deutsche Bank & Disconto Gesellschaft.....	1 550, 000	1 115. 00	150, 519. 19	
Hamburgische Electricitäts Wer- ke A. G.....	1 100, 000	1 118. 00	28, 081. 05	
I. G. Farben-Industrie A. G.....	1 638, 000	1 136. 00	208, 486. 15	
Total.....			385, 086. 39	
<i>Italian</i>				
Società Meridionale Di Electri- cità (Meridionale).....	8, 782	1 305. 00	140, 286. 96	
Società Generale Per L'Industria Mineralia ed Agricola (Monte- catini).....	24, 100	1 203. 00	256, 234. 21	
Società Generale Electricità Dela Sicilia (Seso).....	8, 000	1 81. 00	33, 939. 00	
Total.....			430, 460. 17	
<i>Sundry</i>				
Cleveland Provision Co. (first preferred).....	1, 500			
Cleveland Provision Co. (com- mon).....	7, 125		150, 000. 00	Cleveland, unlisted.
Eaton Axle & Spring Co.....	7, 000	19. 50	136, 500. 00	New York Stock Exchange.
The Gabriel Snubbers Manu- facturing Co. A.....	3, 700	4. 50	16, 650. 00	Do.
Hazel Atlas Glass Co.....	5, 500	61. 00	335, 500. 00	New York Curb Exchange.
Harbison Walker Refractories Co.....	40, 000	46. 50	1, 860, 000. 00	New York Stock Exchange.
Interlake Steamship Co.....	3, 465	68. 00	231, 540. 00	Cleveland Stock Exchange.
James MacLaren, (Ltd.).....	450	500. 00	225, 000. 00	Appraised value.
National Acme Co.....	9, 600	9. 25	88, 800. 00	New York Stock Exchange.
National Refining Co.....	1, 000	27. 50	27, 500. 00	Cleveland Stock Exchange.
Perfection Stove Co.....	1, 000	30. 00	30, 000. 00	New York Curb Exchange.
Total.....			3, 101, 490. 00	

1 Par value in reichmarks.

2 Per cent of par.

3 Lire (approximate).

*Pro forma consolidated list of securities owned by Continental Shares (Inc.)  
and its subsidiaries on October 8—Continued*

[After giving effect to acquisition of securities the purchase of which was authorized on October 8, 1930]

Description	Number of shares	Market price per share	Total market value	Source of quotation
<b>SYNDICATE PARTICIPATIONS <sup>1</sup></b>				
Ohio Industries.....	-----	-----	\$12,000.00	
Libbey-Owens Securities Corp.....	-----	-----	250,000.00	
Iron and steel companies.....	-----	-----	617,500.00	
Utility companies.....	-----	-----	138,000.00	
Cleveland Cliffs Iron Co. preferred.	-----	-----	209,000.00	
<b>Total.....</b>	-----	-----	<b>1,286,500.00</b>	
<b>MISCELLANEOUS</b>				
Securities and syndicate participations. <sup>1</sup>	-----	-----	8,478,770.50	
<b>Total.....</b>	-----	-----	<b>145,363,467.60</b>	

<sup>1</sup> Syndicates are taken at their market values as of Sept. 30, 1930.

The foregoing market quotations are given to comply with the regulations of the stock exchange, but it is the opinion of the management that the quotations in important instances can not be regarded as conclusive evidence of the value of the securities in question because both of the size and the nature of certain holdings.

In connection with valuing the portfolio of the corporation, attention is called to the fundamental purposes of the corporation and to the fact that immediate accretions of market value are not its ultimate purpose, but that the policy of the corporation is to look to the consummation of its plans for profits rather than to current market quotations. From this point of view it is the feeling of the management that the foregoing statement of values is conservative.

#### FINANCIAL STATEMENTS

There are hereinafter set forth financial statements of the Corporation as follows:

- (1) Income statement from March 1, 1926, to September 30, 1930;
- (2) Earned surplus account from March 1, 1926, to September 30, 1930;
- (3) Paid-in surplus account from March 1, 1926, to September 30, 1930;
- (4) Balance sheets as of December 31, 1928, December 31, 1929, and September 30, 1930.

#### (1) INCOME STATEMENT FROM MARCH 1, 1926, TO SEPTEMBER 30, 1929

	Mar. 1, 1926, to Dec. 31, 1926	Year ended Dec. 31, 1927	Year ended Dec. 31, 1928	Year ended Dec. 31, 1929	9 months ended Sept. 30, 1930
<b>Income:</b>					
Dividends.....	\$163,624.47	\$508,000.09	\$1,369,987.66	\$3,297,802.48	\$3,267,096.16
Interest.....	5,211.92	14,861.47	84,630.67	294,055.13	669,429.48
Profit on sale of securities.....	21,701.99	403,410.36	757,559.49	2,636,754.38	15,802,515.83
	190,538.38	926,271.92	2,212,177.82	6,228,611.99	19,739,041.47
<b>Less:</b>					
Expenses.....	6,583.17	24,607.17	83,785.50	371,234.16	415,253.41
Interest.....	59,209.87	227,272.33	820,125.37	1,647,940.30	1,224,074.39
	65,793.04	251,879.50	903,910.87	2,019,174.46	1,639,327.80
<b>Profit before Federal income tax.....</b>	<b>124,745.34</b>	<b>674,392.42</b>	<b>1,308,266.95</b>	<b>4,209,437.53</b>	<b>18,099,713.67</b>
<b>Federal income tax and contingencies.....</b>	<b>-----</b>	<b>25,842.52</b>	<b>-----</b>	<b>102,500.00</b>	<b>2,100,000.00</b>
<b>Net profit.....</b>	<b>124,745.34</b>	<b>648,549.90</b>	<b>1,308,266.95</b>	<b>4,106,937.53</b>	<b>15,999,713.67</b>
Unrealized appreciation or depreciation in market values during each year (or period) of securities held as of the end of such year (or period).....	<sup>1</sup> 22,212.61	2,015,613.53	12,897,287.67	<sup>2</sup> 6,614,666.22	<sup>2</sup> 38,202,202.46

<sup>1</sup> Includes operations of subsidiaries since date of acquisition or organization.

<sup>2</sup> Depreciation.

## (2) EARNED SURPLUS ACCOUNT FROM MARCH 1, 1926, TO SEPTEMBER 30, 1930

	Mar. 1, 1926, to Dec. 31, 1926	Year ended Dec. 31, 1927	Year ended Dec. 31, 1928	Year ended Dec. 31, 1929	9 months ended Sept. 30, 1930
Balance at beginning.....		\$124,745.34	\$567,796.99	\$1,152,201.10	\$1,578,852.24
Net profit as shown above.....	\$124,745.34	648,549.90	1,308,266.95	4,106,937.53	15,999,713.67
	124,745.34	773,295.24	1,876,063.94	5,259,138.63	17,578,565.91
Less dividends:					
On preferred stock.....		43,000.00	318,563.34	1,511,929.75	1,792,030.50
On common stock.....		162,498.25	* 405,279.50	2,014,539.69	1,745,234.75
On founders' shares.....				* 153,816.95	* 174,532.22
		205,498.25	723,862.84	3,680,286.39	3,712,097.47
Balance at end.....	124,745.34	567,796.99	1,152,201.10	1,578,852.24	13,866,468.44

\* Includes stock dividend of 4,645 <sup>259</sup>/<sub>1000</sub> common shares at paid-in or nominal value of \$10 per share.

\* Covers dividend requirement from date of organization to Dec. 31, 1928.

\* Covers dividend requirement from Jan. 1, 1929, to Dec. 31, 1929.

## (3) PAID-IN SURPLUS ACCOUNT FROM MARCH 1, 1926, TO SEPTEMBER 30, 1930

	Debit	Credit
Sale of 130,000 shares of common stock (original issue)....	\$5,294,726.51	
Less:		
Underwriting fee.....	218,400.00	
Organization expense charged to surplus.....	4,410.41	
	\$222,810.41	\$5,071,916.10
Underwriting fee on 30,000 shares of preferred stock.....		146,702.50
Do.....		44,157.00
Sale of 36,245 shares of common stock through rights at \$75 per share.....	\$2,355,933.75	
Less: Underwriting fee.....	33,668.00	
		2,322,265.75
Underwriting fee on 4,645 <sup>259</sup> / <sub>1000</sub> shares of common stock (issued as stock dividend in lieu of accrued and unpaid dividends on common stock).....		4,643.93
Sale of 48,726 <sup>259</sup> / <sub>1000</sub> shares of common stock through rights at \$90 per share.....	\$3,898,140.00	
Less: Underwriting fee.....	48,553.25	
		3,849,586.75
Underwriting fee on 40,000 shares of preferred stock.....		26,358.00
Sale of 133,177 shares of common stock through rights at \$130 per share.....	\$15,981,240.00	
Less: Underwriting fee.....	332,942.50	
		15,648,297.50
Sale of 10,000 shares of common stock (new).....		300,000.00
Sale of 4,323 shares of common stock (new).....		313,417.50
Sale of 112,584 shares of common stock (new) through warrants attached to preferred stock, at \$16.25 per share.....		1,548,030.00
Sale of 6,676 shares of common stock (new) through warrants attached to preferred stock, at \$18.75 per share.....		108,485.00
Sale of 207,776 shares of common stock (new) through warrants attached to preferred stock, at \$32.50 per share.....		6,233,280.00
Sale of 37,878 shares of common stock (new) through warrants attached to preferred stock, at \$37.50 per share.....		1,325,730.00
Sale of 200 shares of common stock (new) through warrants attached to preferred stock, at \$22.50 per share.....		4,000.00
Sale of 333 shares of common stock through rights, at \$60 per share.....	\$20,374,147.50	
Less: Underwriting fee.....	354,333.00	
		20,019,814.50
Underwriting fee on 240,000 shares of convertible preferred stock.....	1,444,250.77	
Premium on treasury stock sold.....		162,810.30
Scrp canceled—22 shares.....		65.00
Issuance of 274,741 <sup>259</sup> / <sub>1000</sub> shares of common stock in exchange for common stock of International Share Corporation.....		8,675,018.42
	1,666,112.20	65,582,706.82
		1,666,112.20
Balance September 30, 1930.....		63,916,594.62

## (4) Balance sheets as of December 31, 1928 and 1929, and September 30, 1930

	December 31, 1928	December 31, 1929	September 30, 1930 <sup>1</sup>
<b>ASSETS</b>			
Cash and Government securities.....	\$1,185,920.26	\$5,356,895.23	\$2,800,245.75
Notes and accounts receivable.....	1,802,925.00	3,611,770.49	3,170,398.86
Investments—At cost:			
Securities.....	\$44,621,489.41	\$119,641,116.26	\$116,047,771.08
Syndicate participation payments <sup>2</sup> .....	2,655,001.00	1,833,000.00	2,588,500.00
Treasury stock and unpaid common stock subscriptions.....	47,276,490.41	121,474,116.26	118,636,271.08
Accrued dividends on securities.....	643,302.75	1,353,019.18	3,824,659.55
Prepaid corporate taxes.....	293,686.23	522,183.55	333,907.06
	51,202,324.65	132,317,994.71	155,793,010.19
<b>LIABILITIES</b>			
Notes, accounts and option payable:			
Notes payable.....	12,238,420.40	15,699,500.00	23,100,000.00
Accounts payable, including brokers' accounts.....	6,929,907.28	11,911,796.51	6,071,738.96
Balance due on option.....	2,033,000.00	1,926,000.00	
Dividend payable.....	21,201,327.68	29,507,296.51	29,171,738.96
Reserves.....	124,100.59	536,231.00	64,806.25
For State taxes, preferred dividends, interest, etc.....	111,802.24	202,617.99	172,619.06
For Federal taxes and contingencies.....		102,500.00	2,100,000.00
For outstanding shares of International Share Corporation.....			78,719.11
	111,802.24	305,117.99	2,351,338.17
Capital stock outstanding: <sup>3</sup>			
Preferred (6 per cent cumulative).....	135,000 13,500,000.00	158,229 15,822,900.00	158,229 15,822,900.00
Convertible preferred (6 per cent cumulative).....		240,000 24,000,000.00	240,000 24,000,000.00
Common and common scrip (no par value).....	248,335	2,144,924	2,419,665½
Founders shares—Nonvoting (no par value).....	10,000	10,000	10,000
Paid-in capital.....	2,483,350.00	5,372,310.00	6,059,163.75
Surplus:			
Paid-in.....	12,619,534.13	55,195,296.97	63,916,594.62
Profit and loss.....	1,152,201.10	1,578,852.24	13,866,468.44
	13,771,735.23	56,774,139.21	77,783,063.06
	51,202,324.65	132,317,994.71	155,793,010.19
Aggregate market value of securities held.....	59,512,178.00	129,750,138.63	88,710,090.99
Total cost of securities as above.....	44,621,489.41	121,474,116.26	118,636,271.08
Market appreciation or depreciation.....	14,890,688.59	8,276,022.37	29,926,180.09

<sup>1</sup> Includes operations of subsidiaries since acquisition and organization.<sup>2</sup> Includes unpaid balance on sale of securities, and interest, of \$24,272,376.60 which amount had been paid in full to the corporation by October 9, 1930.<sup>3</sup> In addition to the payments on syndicates, the corporation had at September 30, 1930, a maximum commitment of \$10,835,100 on syndicate participations when, as, and if called.<sup>4</sup> Includes 46,898½ shares of common stock, 8,245 shares of convertible preferred stock, and 8,530 shares of preferred stock.<sup>5</sup> 286,651½ shares of the common capital stock of the corporation were reserved at September 30, 1930; 30,804 shares for subscription warrants issued with preferred stock and 253,539 shares for conversion of convertible preferred stock and 2,308½ shares to be issued in exchange for the common stock of International Share Corporation.<sup>6</sup> Shares.<sup>7</sup> Depreciation.

*Continental Shares (Inc.) and subsidiaries—Adjusted balance sheet*

[Based upon balance sheet as of September 30, 1930, adjusted to give effect to the following: (a) Receipt on October 7 and 9 of \$24,272,376.60 from the sale of securities and the application thereof to reduce notes and accounts payable; (b) purchase of securities in the aggregate amount of \$56,958,409.62 and payment for same by incurrence of \$35,000,000 of indebtedness and issuance of 990,000 common shares of Continental Shares (Inc.), and delivery of 50,000 shares of treasury stock, of which approximately 3,100 have been purchased subsequent to September 30, 1930, at current market prices]

ASSETS		
Cash	-----	\$2,800,245.75
Notes and accounts receivable	-----	5,898,022.26
Investments at cost: Securities and syndicate participations	-----	175,594,680.70
Treasury stock and unpaid subscriptions to common capital stock	-----	2,099,887.44
Accrued dividends on securities held	-----	333,807.06
Prepaid expenses	-----	27,527.89
Total	-----	<u>187,354,271.10</u>
LIABILITIES		
Notes payable to banks—secured	-----	35,000,000.00
Accounts payable:		
To brokers—secured	\$4,937,093.02	
Sundry	10,149.61	
		<u>4,947,242.63</u>
Reserves and accruals	-----	2,956,144.42
Capital stock:		
Preferred (authorized 260,000 shares; issued, 6 per cent cumulative)—		
Original issue, 30,000 shares	\$3,000,000.00	
Series B, 128,229 shares	12,822,900.00	
		<u>15,822,900.00</u>
Convertible preferred (6 per cent cumulative), authorized and issued 240,000 shares		<u>24,000,000.00</u>
Preferred capital	-----	39,822,900.00
Common (no par value)—		
Authorized 4,000,000 shares,		
issued 3,409,665½ shares	\$8,524,163.75	
Founders' shares (nonvoting), authorized and issued 10,000 no par shares		<u>10,000.00</u>
Common capital	-----	8,534,163.75
Surplus:		
Paid in	\$82,344,304.24	
Earned	13,749,516.06	
	<u>96,093,820.30</u>	
		<u>104,627,984.05</u>
		<u>144,450,884.05</u>
		<u>187,354,271.10</u>

NOTE A.—In addition to the payments on syndicates, the corporations had a maximum commitment of \$7,049,386 on syndicate participations, when, as, and if called.

The foregoing financial statements of the corporation through December 31, 1929 (and also the statement of securities owned at December 31, 1929) have been certified by Messrs. Ernst & Ernst, whose certificate as to the 1929 financial statements appears in the annual report of the corporation, which has been duly published and distributed to the stockholders of the corporation. A copy of the certificate appearing in the annual report is as follows:

"We hereby certify that we have examined the books of account and record of Continental Shares (Inc.), Maryland corporation, and that, in our opinion, based upon the records examined and information obtained by us, the accompanying balance sheet sets forth the financial position of the corporation as at the close of business December 31, 1929, and the relative summary of profit and loss surplus is correct.

"ERNST & ERNST,  
"Certified Public Accountants."

"JANUARY 9, 1930."

The financial statements covering the period of nine months ended September 30, 1930, and also the statement of securities owned by the corporations as of September 30, 1930, are taken from the books of the corporations and the treasurer of the corporation has certified that the consolidated balance sheet as of September 30, 1930, correctly sets forth the financial position of the corporation and its subsidiaries as at such date and that the accompanying consolidated income statement and earned surplus account, and also the statement of securities owned by the corporations as of October 8, 1930, are correct.

## AGREEMENTS

Continental Shares (Inc.) agrees with the New York Stock Exchange as follows:

To notify the stock exchange promptly in the event of a change in the character of its business.

To notify the stock exchange promptly in the event of any substantial change in the management or affiliations of the corporation.

To publish within 30 days after the close of each fiscal year, and to submit to the stockholders, at least 15 days in advance of each annual meeting, a detailed consolidated statement of earnings and consolidated statement of surplus covering the previous fiscal year, and a consolidated balance sheet as of the end of the year, or separate statements of the parent company and each subsidiary in which the corporation owns a majority of the voting stock.

To publish in each annual report, as a footnote to the balance sheet, a statement showing the aggregate value of securities held directly, or indirectly, at the close of the period, based upon market value for all securities listed on recognized stock exchanges and upon fair appraisal of other securities, compared with the aggregate cost of such securities.

To publish in each annual report a footnote to the income account showing the increase or decrease during the current year of the amount by which the market value of securities held exceeds or is less than their book value.

To publish in each annual report a list of securities held showing names and quantities, provided, however, that an amount equal to 10 per cent of either the combined capital and surplus of the corporation or of the cost of the securities, whichever is lower, may be combined under the heading "Miscellaneous." This list shall disclose the aggregate cost of the securities and their aggregate value, and, in the case of securities not listed on either the New York Stock Exchange or the New York Curb Exchange, the price at which each holding is inventoried for the purpose of determining aggregate market value will be clearly set forth with such information as may be required to support such valuation.

To append to all annual financial statements and inventories required by the committee the certificate of a public accountant qualified under the laws of some State or country, which certificate shall include a statement that no one of the items carried under the term "Miscellaneous" in the list of investments has been held for more than one year.

Not itself, and not to permit any subsidiary, directly or indirectly controlled, to take up as income stock dividends received at an amount greater than that charged against earnings or earned surplus by the issuing company in relation thereto.

Not to pay any cash or stock dividends on common stock when such dividends, plus the amount by which the current value of securities held shall be less than their cost, exceed the earned surplus and undivided profits, without at the time of the payment of such dividends sending to stockholders a statement, in a form which has been approved by the committee on stock list, setting forth clearly the net impairment which will exist after the payment of such dividends stated both in aggregate dollars and dollars per share of common stock. If at the time of the payment of any such dividends the corporation has senior securities outstanding such statement shall, in addition, state in terms of percentage the ratio of the common stock equity remaining after the declaration of such dividends, to such senior securities, taken at par value or the sum to which they would be entitled upon involuntary liquidation, whichever is the greater. For the purpose of this agreement, stock dividends shall be charged against earnings on a basis approved by the committee on stock list.

To notify the stock exchange, on behalf of itself or any subsidiaries which have been, or may be formed, of any change in the terms of any management contract existing at the time of listing and of the terms and conditions of contracts subsequently consummated.

To notify the stock exchange, on behalf of itself and of any subsidiaries, of any changes in the terms and conditions of option warrants.

To maintain, in accordance with the rules of the stock exchange, a transfer office or agency in the Borough of Manhattan, city of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, city of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

To notify the stock exchange 30 days in advance of the effective date of any change in the authorized amounts of listed securities.

Not to make any change in listed securities, of a transfer agency or of a registrar of its listed stock, or of a trustee of its listed bonds or other listed securities, without the approval of the committee on stock list, and not to select as a trustee an officer or director of the company.

To notify the stock exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its listed securities, so as to afford the holders of its listed securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits with respect to listed securities shall be transferable; and shall be transferable, payable, and deliverable in the Borough of Manhattan, city of New York.

In the event of issuance of options or warrants to purchase stock, otherwise than pro rata to stockholders, to notify the stock exchange promptly of the number of shares covered by such options, of their terms and of the time within which they may be exercised, and thereafter to include this information together with like information as to any options in existence at the time of approval of this application so long as said options are outstanding in all financial reports furnished to stockholders or published.

To make application to the stock exchange for the listing of additional amounts of listed securities prior to the issuance thereof.

To publish promptly to holders of listed bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the stock exchange, and to give to the stock exchange at least 10 days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem preferred stock in accordance with the requirements.

To notify the stock exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

#### GENERAL

The fiscal year of the corporation ends on December 31.

The annual meeting of the stockholders is held at the office of the corporation in the city of Baltimore, Md., on the third Tuesday of March in each year.

The principal office of the corporation in the State of Maryland is Baltimore Trust Building, 10 Light Street, Baltimore, Md.

The principal business office of the corporation is 520 Cuyahoga Building, Cleveland, Ohio.

The directors of the corporation (elected annually) are: C. S. Eaton, chairman of the board; W. R. Burwell, F. H. Hobson, Richard Inglis and R. V. Mitchell, all of Cleveland, Ohio; David Ingalls, of Washington, D. C.; and Philip Wick, of Youngstown, Ohio.

The members of the advisory committee are as follows: F. H. Blackburn, chairman of investment committees, General Electric employees' funds; John S. Brookes, jr., general counsel the Koppers Co.; H. W. Fenton, president Harris Trust & Savings Bank (Chicago); T. M. Girdler, director Union Trust Co. (Cleveland); G. M. Hubbard, vice president J. G. White & Co. (Inc.); J. F. Schoellkopf, jr., vice president Schoellkopf, Hutton & Pomeroy (Inc.); and S. D. Warriner, president Lehigh Coal & Navigation Co.

The officers of the corporation are: C. S. Eaton, chairman of the board; W. R. Burwell, president; F. H. Hobson, vice president; and L. G. Watson, secretary and treasurer.

The transfer agents for the common stock are: Guaranty Trust Co. of New York, New York, N. Y., the Cleveland Trust Co., Cleveland, Ohio, and the First National Bank of Boston, Boston, Mass.

The registrars for the common stock are: Bankers Trust Co., New York, N. Y., the Guardian Trust Co., Cleveland, Ohio, and Harris Forbes Trust Co., Boston, Mass.

Certificates for the common stock are interchangeably transferable in New York, N. Y., Cleveland, Ohio, and Boston, Mass.

**CONTINENTAL SHARES (INC.),**  
By **W. R. BURWELL, President.**

This committee recommends that the above-mentioned 990,000 shares of common stock without par value, be added to the list on official notice of issuance in connection with the acquisition of securities, in accordance with the terms of this application, making the total amount authorized to be listed 3,696,317 shares.

FRANK ALTSCHUL, *Chairman.*

Adopted by the governing committee October 29, 1930.

ASHBEL GREEN, *Secretary.*

Mr. GRAY. I ask that these letters, which I will read, be printed in the record. Mr. Stock has made reference to some of them. I do not know whether he has covered them fully. The first one is a memorandum dated October 10, 1930. It comes from Mr. Johnson, an officer of the Chase National Bank, to Mr. Clarkson, another officer of the Chase National Bank. It is their interoffice communication. [Reading:]

Memorandum to Mr. Clarkson.

CONTINENTAL SHARES (INC.)

Mr. Eberstadt, partner of Otis & Co., called this morning and saw Mr. Clarkson regarding the loan for \$30,000,000, which we have agreed to make to the above. We have agreed to take the United Light & Power B stock at \$50 a share instead of \$40 and release from the collateral the following: \$2,000,000, Lehigh Navigation; 500 M 1,000,000, Brooklyn Union Gas; 1,500 M 1,000,000 Goodyear.

That "500 M," which, though it reads 500 million, is evidently intended to mean half a million, and not 500 million. The "1,500 M" is evidently meant for 1,500,000, that being his way of abbreviating it. [Continuing reading:]

They will give us as additional collateral \$4,000,000 Cliffs Corporation which he says has a market in Cleveland. He will put the Cliffs Corporation stock in at 15 points under the market price. They will further agree to maintain a margin of 50 per cent at all times and will not withdraw any collateral until the margin equals 60 per cent. Mr. Eberstadt says that this \$30,000,000 loan will be their entire indebtedness aside from the \$7,000,000 loan shown on their statement. After allowing for a write-off of about \$25,000,000 to bring their securities to the market, he figures their net worth about \$120,000,000. He says last fall they owed \$45,000,000, but were able to clear this by the sale to Insull. They do not expect to borrow any more money and Mr. Eberstadt says that they are all opposed to anything that would increase their debt.

OTIS & CO.

With respect to Otis & Co. (these figures are New York office only) he is not sure of the figure but says that they owe between \$110,000,000 and \$120,000,000, that they have a box of \$6,000,000, practically all good usable stuff, and \$6,000,000 in cash. I pointed out to him that his box was entirely too small, which he appreciates. He says he will give us the Cleveland figures as soon as he can get them.

L. H. J.

OCTOBER 10, 1930.

I point out to the committee that this was a loan that was being made to Continental Shares, but the man who was negotiating it was Mr. Eberstadt, who had absolutely nothing to do with Continental Shares, and was a partner of Otis & Co., a brokerage house in New York City.

There is a memorandum dated October 11, which I shall not read. It is addressed to Chase National Bank. It is headed "Otis

& Co." It starts out by saying, "I wish to confirm the arrangement agreed upon by me acting on behalf of Continental Shares (Inc.)"

It simply recites the arrangement, and it is signed, "Otis & Co." by Mr. Eberstadt. So that he, having no interest in Continental Shares, was the one who made the arrangement.

There is attached to that, which I ask also to go into the record, a schedule of the securities, amounting to \$50,671,000, the stated value of the securities which are to be deposited with the Chase by Continental Shares as security for the loan.

(The statements referred to are as follows:)

OTIS & Co.,

New York, October 11, 1930.

CHASE NATIONAL BANK,

New York, N. Y.

GENTLEMEN: I wish to confirm the arrangement agreed upon by me acting on behalf of Continental Shares (Inc.).

(1) You will make Continental Shares (Inc.) a loan in the amount of \$30,000,000 for 18 months, bearing interest at the rate of  $5\frac{1}{2}$  per cent per annum, payable monthly. The obligation of the company will be evidenced by its execution and delivery to you of a note substantially in the form attached hereto marked schedule A.

(2) The company is to have the right to anticipate and pay off the above loan, or any part thereof, at any time after 30 days' written notice to you, at 100.25 per cent of the face amount of the part so to be paid off.

(3) There is attached hereto, marked "Schedule B," a list of collateral to be lodged with you as security for the loan. This collateral will be delivered to you piecemeal from time to time; and upon such delivery you will make arrangements with the company to make advances to the company on the above loan, from time to time, on a basis arranged between you and the company.

(4) The company is to have the right to substitute from time to time as collateral securities satisfactory to you on a basis acceptable to you, in your discretion, except that there is to be no substitution of the shares of United Light & Power, regardless of basis, unless such substitution is agreed to by you.

(5) The company will deposit as collateral for the loan any additional shares of United Light & Power B acquired by it from time to time during the continuance of the loan.

(6) The company will at all times maintain as collateral security a margin of 50 per cent. In case the margin exceeds 60 per cent the company shall have the right to draw down collateral.

(7) You will not subparticipate any part of this loan to any Canadian or Cleveland banks, and you will, wherever convenient, advise us before of any proposed subparticipations of the loan, so that we can discuss them with you from the point of view of mutual interest.

(8) The company will be pleased to use its influence to initiate or solidify your business relations with companies whose stock it owns, both from the point of view of deposits and financing.

Very truly yours,

OTIS & Co.

#### SCHEDULE B

416,000 shares United Light & Power B, at 50.....	\$20, 800, 000
337,000 shares Lehigh Coal & Navigation, at 30.....	10, 110, 000
41,000 shares Cliffs Corporation, at 100.....	4, 100, 000
7,000 shares Brooklyn Union Gas, at 115.....	805, 000
75,600 shares Goodyear Tire & Rubber, at 41.....	3, 100, 000
2,625 shares Continental Illinois Bank & Trust, at 570.....	1, 500, 000
772 shares Guaranty Trust Co. of New York, at 583.....	450, 000
5,850 shares Bank of Manhattan Trust, at 100.....	585, 000
10,888 shares Union Trust Co. of Cleveland, at 74.....	800, 000
3,687 shares Cleveland Trust Co. at 885.....	1, 400, 000
480 shares Harris Trust of Chicago, at 700.....	336, 000
68,850 shares Youngstown Sheet & Tube, at 100.....	6, 885, 000
	<hr/>
	50, 871, 000

**Senator WALCOTT.** Was the partner of Otis & Co. a director in Continental Shares?

**Mr. GUGLE.** He was not.

**Senator WALCOTT.** Was there any resolution on the part of Continental Shares to authorize him to do this?

**Mr. GRAY.** None that we know of, and we have the minutes. There was no resolution, was there, Mr. Gugle?

**Mr. GUGLE.** There was a resolution afterwards passed, confirming his negotiations.

**Mr. GRAY.** Confirming his negotiations. They did not adopt this resolution until the thing was through.

**Senator GOLDSBOROUGH.** A ratification.

**Mr. GUGLE.** A ratification.

**Mr. GRAY.** I will say to the committee that I have subpoenaed Mr. Eberstadt, and, not anticipating putting Continental Shares on until to-morrow, and recognizing a really important matter that he had to attend to to-day, I relieved him until to-morrow morning. I did that yesterday in New York; so that he will be here to-morrow morning, and we will put Mr. Eberstadt on and ask him a few pointed questions about the situation.

**Mr. Gugle** states that there is another matter he would like to present to the committee. I think the committee would be glad to hear it, Mr. Gugle.

**Mr. GUGLE.** What I am about to speak of, is intended to indicate that this loan was made for the relief of Otis & Co. During the period from October 14 to 20, Chase and other banks paid out and charged to the account of Continental, \$50,500,000, of which \$12,150,000 was later repaid by Otis & Co. That left a net—

**Senator GOLDSBOROUGH.** Are you speaking about the \$30,000,000 loan of Chase?

**Mr. GUGLE.** Speaking about the \$30,000,000 loan. Chase was supposed to be closing a transaction wherein it was to pay out not over \$35,000,000, and was to get \$57,000,000 worth of securities. They paid out during that period \$50,500,000 of Continental's money, part of which was afterwards returned by Otis & Co., but the net amount that Chase paid out was \$37,500,000, and they did not get, by \$12,000,000, the amount of securities that the contract called for, and later, to get that \$12,000,000, we had to pay the \$7,600,000 in addition.

**Senator CAREY.** You say "we." You mean Continental?

**Mr. GUGLE.** Yes, sir.

**Mr. GRAY.** Continental Shares.

That is all, Mr. Gugle, as far as I am concerned.

**Mr. Chairman,** of course I anticipated, as I say, presenting the Fox picture to-day, and, although we have one or two other small matters, I think that the matter that has been presented, and the Fox picture, which I do not hesitate to say to you publicly will present an even stronger picture of manipulation of a man's own personally-controlled corporations than this docs, will be sufficient. I will present to you to-morrow morning, if Mr. Fox is able to be here to present his side of it and answer some questions, that matter; and if he is not here I will present it by authoritative testimony without him.

**The CHAIRMAN.** I understand that Mr. Daley is present, and desires to make a short statement, and subject himself to cross-

examination by counsel for the committee. You may make a brief statement under oath and be subject to cross-examination in case counsel desires to ask you any questions.

**TESTIMONY OF WILLIAM B. DALEY, PRESIDENT OTIS & CO.,  
NEW YORK**

The CHAIRMAN. Do you solemnly swear that the testimony you will give in the matter under investigation by the committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DALEY. I do.

I have given my name. Do you want to ask me any questions first?

Mr. GRAY. No. It is only a matter of your making such statement as you desire to make.

Mr. DALEY. If this case were tried in the regular manner in court, strict proof of these charges could be required, and proper proof could be submitted by the company and its officers.

Some of the statements made here to-day are false. Other inferences are made which are supported here and there by documentary proof which makes a reasonable inference appear. It is very difficult to try to go through these charges one by one in this committee hearing, but I submit to the committee that these charges, having been denied, and in view of the fact that they are brought by an investigator of the committee who has not in any degree examined the records of the company, or the officers or directors of the company, it is unfair to have it come as a report of the investigator of the committee. But, on the cursory examination of certain of the transactions, he would have known that some of the inferences he has made here are not reasonable inferences.

Mr. GRAY. Now, Mr. Daley, you are a member of the bar in Cleveland, is that correct?

Mr. DALEY. Yes.

Mr. GRAY. What association, if any, have you with Continental Shares?

Mr. DALEY. I have none.

Mr. GRAY. What association, if any, had you with Otis & Co.?

Mr. DALEY. I was an employee.

Mr. GRAY. You were an employee in what capacity?

Mr. DALEY. I was in what is known as their buying department, the department that originated the purchase of securities.

Mr. GRAY. When was that?

Mr. DALEY. That was from about the middle of 1928.

Mr. GRAY. Until when?

Mr. DALEY. I am still with the reorganized Otis & Co.

Mr. GRAY. What is your business? Are you practicing law, or are you in the buying department of Otis & Co.?

Mr. DALEY. I am with Otis & Co. (Inc.).

Mr. GRAY. In other words, you are a member of the bar, but not practicing?

Mr. DALEY. Yes.

Mr. GRAY. Then, you know nothing about the affairs of Continental Shares, because you are only connected with Otis & Co., is that correct?

Mr. DALEY. That is correct.

Mr. GRAY. Then, any statements you have made with regard to the statements or testimony that has been produced here with respect to Continental Shares, represent only some personal opinion of yours, based upon an absolute lack of knowledge?

Mr. DALEY. That is not correct.

Mr. GRAY. Where did you get your knowledge about Continental Shares?

Mr. DALEY. One of the statements made by your investigator——

Mr. GRAY. No; pardon me. Where did you get your knowledge about Continental Shares?

Mr. DALEY. Otis & Co. was involved in the report. I am not claiming to know about Continental Shares.

Mr. GRAY. Then, your statement with respect to any statements made here to-day with respect to Continental Shares transactions, you have no knowledge about at all, only where they contact with Otis & Co.?

Mr. DALEY. That is right. Some of the statements made were included——

Mr. GRAY. We will come to that. What connection had you with Foreign Utilities?

Mr. DALEY. No connection.

Mr. GRAY. What connection had you with Cyrus Eaton?

Mr. DALEY. I worked for Otis & Co., in which he was a partner.

Mr. GRAY. He was the dominating partner?

Mr. DALEY. The partner who had the largest interest.

Mr. GRAY. And the one who had the say as to what was to be done?

Mr. DALEY. No, that is not true.

Mr. GRAY. Who did have, then? Name the man.

Mr. DALEY. The executive committee.

Mr. GRAY. The executive committee of Otis & Co.?

Mr. DALEY. Yes.

Mr. GRAY. The executive committee consisted of whom?

Mr. DALEY. It was changed from time to time.

Mr. GRAY. Of whom did it consist in October, 1930?

Mr. DALEY. Mr. Eaton was not one of them; Mr. Inglis.

Mr. GRAY. You are talking about Otis & Co.?

Mr. DALEY. I am.

Mr. GRAY. Mr. Inglis. Who else?

Mr. DALEY. J. O. Eaton, who is not related in any way to C. S. Eaton.

Mr. GRAY. Who else?

Mr. DALEY. Ferdinand Eberstadt; and I think M. C. Harvey.

Mr. GRAY. That same Mr. Inglis was connected with Continental Shares?

Mr. DALEY. That is correct.

Mr. GRAY. Mr. Eberstadt is the one that has been mentioned here to-day?

Mr. DALEY. That is correct.

Mr. GRAY. Who named the executive committee?

Mr. DALEY. The members of the firm.

Mr. GRAY. Of which Mr. Eaton was the dominating member, and held the largest interest?

Mr. DALEY. He held the largest interest, but under the articles of partnership all questions were decided by the majority of the members of the partnership.

Mr. GRAY. You say, of course, that which all of us who happen to be members of the bar know, that if the matter were tried in court, strict proof would be required.

Mr. DALEY. That is correct.

Mr. GRAY. That is true. You have said that some of the statements that were made here to-day were false.

Mr. DALEY. That is correct.

Mr. GRAY. You have made a rather important accusation. I ask you to detail each statement you say is false, and to tell me in what the falsity consists in each case.

Mr. DALEY. The investigator made one statement, that Continental Shares had unloaded stock on Otis & Co.

Mr. GRAY. Unloaded stock on Otis & Co.?

Mr. DALEY. Just the opposite—Otis & Co. had unloaded stock on Continental Shares at a price of \$76 per share, when the market was \$32 per share. An examination of the Otis & Co. records would indicate clearly to an investigator that that was a Continental Shares account on Otis & Co.'s books, and that they have always had that liability.

Mr. GRAY. Let me ask you whether or not Otis & Co., in the first place, did not underwrite the selling of the shares of Continental Shares?

Mr. DALEY. They did, on several occasions, I know.

Mr. GRAY. Let me ask you how much Otis & Co. made from the underwriting of those shares?

Mr. DALEY. I would have to give you approximate figures.

Mr. GRAY. Give it to me approximately, and I will know whether you are correct or not.

Mr. DALEY. For raising somewhere around \$100,000,000, the total fees are \$2,600,000, approximately, gross, which they had, in turn, to distribute among the bankers, which worked out to be something around 2 to 2½ per cent on the amount of money that was raised on the underwriting.

Mr. GRAY. What was the net result to Otis & Co.?

Mr. DALEY. I would say the total net to Otis & Co. would run \$1,600,000.

Mr. GRAY. The statement was made by Mr. Stock to-day that a certain amount of Continental Shares stock was unloaded by Otis & Co. upon Continental Shares at a certain price, when it was worth much less. I ask you whether or not, after Otis & Co. failed to carry out their complete underwriting agreement, it is a fact that some of the shares which they were to underwrite, and which they did not dispose of, though they were obligated to do so, and had been paid a commission for doing so, were handed back to Continental Shares at the original price at which they were to be underwritten, notwithstanding the fact that the price had dropped from \$76 to \$32 at that time?

Mr. DALEY. That not only is not the fact, but your own examination of the Otis records would convince you that was not a fact.

Mr. GRAY. Will you furnish to the committee the records of Otis & Co. here to-morrow, in order to confirm or disaffirm your statement that has been made here to-day that that statement is false?

Mr. DALEY. I think I can do that.

Mr. GRAY. If you will get them here at 10 o'clock to-morrow morning, we will give you an opportunity to present them. What other statement do you say is false?

Mr. DALEY. The reference to Inland Syndicate. I think Otis & Co. was not the manager of that syndicate. If Otis & Co. did since join it, any interest in it was small. Mr. Gugle, who testified, I am sure did have an interest in it, and that was a public syndicate, the stock of which was sold to Continental Shares with the approval of the directors of Continental Shares.

Mr. GRAY. The falsity in that statement you pick out is that Otis & Co. were not the managers of it, and yet you are not sure whether that is so or not?

Mr. DALEY. I know they had only a small interest in it.

Mr. GRAY. You do not know whether they were managers or not?

Mr. DALEY. No; I do not.

Mr. GRAY. And yet that is the statement you do not know about, that you are saying is false?

Mr. DALEY. I know about the small interest they had in it.

Mr. GRAY. Is it not a fact that frequently the managers of syndicates have only a small interest, while they make a very large amount of money out of the percentage paid to them for operating the syndicate, and the commissions they get upon the brokerage transactions that pass through their houses?

Mr. DALEY. That is the case in many instances.

Mr. GRAY. That was where Otis & Co. made their money in this, was it not?

Mr. DALEY. Before I answer that, I think they made their commissions—I have forgotten that syndicate. I would like to look that up.

Mr. GRAY. You look it up, and come in to-morrow and tell us. What else is false?

Mr. DALEY. In the shares of the Cliffs Corporation that were put out, with the Cleveland Trust Co.—

Mr. GRAY. By Continental Shares?

Mr. DALEY. By Continental Shares.

Mr. GRAY. Had Otis & Co. anything to do with that?

Mr. DALEY. No; they did not.

Mr. GRAY. Then, what do you know about it? You said a minute ago, under oath, that you did not know anything about the affairs of Continental Shares.

Mr. DALEY. I have seen some of the transactions of Continental Shares.

Mr. GRAY. You have seen some, but you have not seen as many as our people have seen, have you?

Mr. DALEY. I do not know that you have seen any of them.

Mr. GRAY. You say you have seen them?

Mr. DALEY. Some of them.

Mr. GRAY. When did you see the books of the Continental Shares with relation to this Cliffs Corporation matter?

Mr. DALEY. This particular one, I talked to the president of Continental Shares about.

Mr. GRAY. Who is the president of Continental Shares?

Mr. DALEY. His name is Burwell.

Mr. GRAY. When did you talk to him?

Mr. DALEY. When the Gule charges were first made.

Mr. GRAY. How long ago was that?

Mr. DALEY. I think that has been pending six months, anyway.

Mr. GRAY. You are drawing on your recollection of a talk you had with Mr. Burwell, that makes you come in here and say that the statements we made are not so; is that it?

Mr. DALEY. I said statements and inferences. I have given you one specific statement that is not so. I have not, of course, been permitted to say what is the truth about the Cliffs Corporation.

Mr. GRAY. I am going to give you an opportunity.

Mr. DALEY. I am pretty certain my information comes from Mr. Burwell, the president of it.

Mr. GRAY. Why not wire Mr. Burwell and have him here to-morrow morning, and tell him what has been said about that corporation, in order that he may refute it if it is not so. Wouldn't that be a good idea?

Mr. DALEY. I think it would.

Mr. GRAY. Mr. Burwell is Mr. Eaton's brother-in-law, is he not?

Mr. DALEY. No, sir.

Mr. GRAY. What relation is he?

Mr. DALEY. I think he married a niece.

Mr. GRAY. Then he is a nephew; is that it? Is there any other statement that is false?

Mr. DALEY. No; there are inferences in here that I am sure will not be supported if the investigator would check——

Mr. GRAY. Inferences are a matter of a man's own personality. He draws one inference, and somebody else might draw another.

Mr. DALEY. The objection I make is that the inference was drawn from a one-sided investigation.

Mr. GRAY. You know that Cyrus Eaton was subpoenaed some four or five weeks ago to come here.

Mr. DALEY. That is correct.

Mr. GRAY. You know that at your request he was relieved from a subpoena that was returnable on a certain Thursday, until a certain Friday?

Mr. DALEY. Yes.

Mr. GRAY. You know that you had a conference with me on that Friday, as his attorney, and asked me to advise you when he would be needed, and I told you I would. That is correct, isn't it.

Mr. DALEY. Yes.

Mr. GRAY. You know that though you were in New York with Otis & Co., and not in Cleveland with Continental Shares, that Mr. Eaton got a wire yesterday afternoon telling him to be here to-day, do you not?

Mr. DALEY. I have not seen the wire.

Mr. GRAY. You knew of it?

Mr. DALEY. May I finish?

Mr. GRAY. Yes.

Mr. DALEY. I did not understand that to be the wire.

Mr. GRAY. What did you understand the wire to be?

Mr. DALEY. I understood your wire stated that the hearing of the committee would be held "to-morrow morning"—substantially those words.

Mr. GRAY. Yes.

Mr. DALEY. Not that he should be there.

Mr. GRAY. Was the wire read to you?

Mr. DALEY. It was not read to me, but the substance of it was given to me.

Mr. GRAY. By whom?

Mr. DALEY. By Mr. Eaton.

Mr. GRAY. In other words, he called you up over the long-distance phone, and advised you about the wire, did he?

Mr. DALEY. No; I called him up.

Mr. GRAY. You called him up. Are you his attorney?

Mr. DALEY. Yes.

Mr. GRAY. Then, I will not ask you anything about your conferences with Mr. Eaton. But, as a result of your calling him up, and his reading you the wire, he is not here?

Mr. DALEY. Not as a result of that conversation.

Mr. GRAY. But he is not here, is he? Don't you think that Mr. Eaton is the best man in the world to tell us whether or not any of these things are false, and that it would be a good idea to wire him to-night and tell him to be here to-morrow morning?

Mr. DALEY. I do not think anybody in the world can defend a transaction before a Senate committee where these charges are flung here. I think it has to be tried out in court.

Mr. GRAY. Do you intend that as a reflection on the committee, or to mean that we will not give him a patient hearing?

Mr. DALEY. In any of those things—you, as a lawyer, know the same thing—it takes weeks of trial to get this.

Mr. GRAY. I will say this to you, as counsel for this committee: Without requiring Mr. Eaton to offer any absolute proof, we will permit Mr. Eaton to take the stand and make any statement he desires, subject, of course, to any questions either the committee or myself desire to ask him. He can make any statement he desires, whether it is hearsay, or whether it is something as to which he will furnish us actual documentary or other proof at the same time. Do you not think it would be very wise to have Mr. Eaton, if he thinks he is being maligned by these statements, come into this committee room to-morrow morning and accept that invitation?

Mr. DALEY. No; I would not do it if I were in his place.

Mr. GRAY. Why?

Mr. DALEY. I do not think a man has a chance to build up a defense, or show his defense in a committee hearing.

Mr. GRAY. Of course, you understand that Mr. Eaton is under subpoena.

Mr. DALEY. Yes.

Mr. GRAY. It would be unpleasant to him, then, and he would prefer me not to take any extreme measures to get him here?

Mr. DALEY. I should think so.

Mr. GRAY. Why would it be unpleasant to him?

Mr. DALEY. I have tried to explain that. I think it is a little bit unfair to have him try his case here before the committee.

Mr. GRAY. You say that the investigator has not examined the books of the company. How do you know that?

Mr. DALEY. I was told that by the employees of Continental Shares.

Mr. GRAY. You were told that by one of the employees of Continental Shares. In other words, everything you have told us to-day is based upon some information that you have gotten from somebody else?

Mr. DALEY. That is correct.

Mr. GRAY. All right. I think that is all I want to ask him.

Senator WALCOTT. I move we adjourn, Mr. Chairman.

(The motion was agreed to.)

The CHAIRMAN. We will adjourn at this time, to meet at 10 o'clock to-morrow morning in the committee room.

(Whereupon, at 4.20 o'clock p. m., the committee adjourned to meet to-morrow, Friday, June 17, 1932, at 10 o'clock a. m.)

# STOCK EXCHANGE PRACTICES

FRIDAY, JUNE 17, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met, pursuant to adjournment on Thursday, June 16, 1932, in the hearing room of the Committee on Banking and Currency, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Townsend, Walcott, Carey, Couzens, Fletcher, and Bulkley.

Also present: William A. Gray, Esq., counsel to the committee.

The CHAIRMAN. The committee will come to order.

Mr. GRAY. Mr. Chairman and gentlemen of the committee, I should like at this time to put on the record a new rule that has been adopted by the New York Stock Exchange. I am doing this for the purpose of directing the attention of the committee to the fact that there seems to be in this rule some recognition of the impropriety of at least one of the matters that has been directed to the committee's attention by the presentation of testimony, and that is the operation of the specialist in his own stocks.

There was a notice sent by the New York Stock Exchange under date of June 15, 1932, to its members, reading as follows [reading]:

NEW YORK STOCK EXCHANGE,  
*June 15, 1932.*

## *To the Members:*

At a meeting of the governing committee held June 14, 1932, section 13 of Chapter I of the rules adopted by the governing committee pursuant to the constitution, was amended to read as follows:

"Sec. 13. When a member has an order to buy and an order to sell the same security, he must offer such security, if bonds at one-eighth of 1 per cent, and if stock at one-eighth of \$1, higher than his bid before making a transaction with himself."

At the same meeting, section 1 of Chapter XI was amended to read as follows:

"Sec. 1. No member, while acting as a broker, whether as a specialist or otherwise, shall buy or sell directly or indirectly for his own account or that of a partner, or for any account in which either he or a partner has a direct or indirect interest, securities, the order for the sale or purchase of which has been accepted by him or his firm or a partner for execution; except, as follows:

"Exception (a). A member who, by reason of his neglect to execute an order, is compelled to take or supply on his own account the securities named in the order, is not acting as a broker, and shall not charge a commission.

"Exception (b). A member may only take the securities named in the order, provided he shall have offered the same in the open market, if bonds at one-eighth of 1 per cent, and if stocks at one-eighth of \$1, higher than his bid, and provided the price is justified by the condition of the market, and that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it.

"Exception (c). A member may only supply the securities named in the order, provided he shall have bid for the same in the open market, if bonds at one-eighth of 1 per cent, and if stocks at one-eighth of \$1, lower than his offer, and provided the price is justified by the condition of the market, and provided that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it.

"Exception (d). A member, acting as a broker, is permitted to report to his principal a transaction as made with himself when he has orders from two principals to buy and to sell and not to give up, such orders being executed in accordance with section 13 of Chapter 1, in which case he must add to his name on the report the words 'on order.' "

These changes are provided for in the reprint of pages 79, 80, 105, 106, 107, and 108, which are sent you herewith and which should be substituted in your loose-leaf copy of the constitution in lieu of the present pages of those numbers.

ASHBEL GREEN, *Secretary*.

The effect of that is this, that prior to that time a broker or a specialist might either buy or sell, subject to no limitation except the fact that there was a provision about the market prices justifying his act. That is, he might buy or sell from himself or to himself or any member of his firm. While now, if he desires to sell a certain stock to himself he must offer it to the market at a price one-eighth above the price he desires to sell it for to see whether he can get such a bid before he sells to himself, and if he desires to sell his own stock must endeavor to buy for his customer at one-eighth less than the price that he is going to sell for before he executes the order for himself, thus, of course, checking up on the actions of the specialists in dealing with themselves.

Is Mr. Eberstadt here? Will you stand there and be sworn first, Mr. Eberstadt?

### TESTIMONY OF FERDINAND EBERSTADT, HUNTINGTON, LONG ISLAND

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth and nothing but the truth regarding the matter under investigation by the committee, so help you God?

Mr. EBERSTADT. I do.

Mr. GRAY. So the committee might understand, Mr. Eberstadt is the gentleman who was mentioned yesterday in connection with Continental Shares, and though the matter was pretty fully covered, I desire to ask him one or two questions.

Mr. Eberstadt, your name is Ferdinand Eberstadt?

Mr. EBERSTADT. Ferdinand Eberstadt.

Mr. GRAY. Where do you reside?

Mr. EBERSTADT. Huntington, Long Island.

Mr. GRAY. Nobody can hear you.

Mr. EBERSTADT. Huntington, Long Island.

Mr. GRAY. And in what business or profession are you now engaged?

Mr. EBERSTADT. Banking.

Mr. GRAY. What is the name of your firm?

Mr. EBERSTADT. F. Eberstadt & Co. (Inc.).

Mr. GRAY. And in New York?

Mr. EBERSTADT. 39 Broadway.

Mr. GRAY. In 1930 in the fall with what firm were you connected?

Mr. EBERSTADT. Otis & Co.

Mr. GRAY. And Otis & Co. were members of the New York Stock Exchange in New York?

Mr. EBERSTADT. They were.

Mr. GRAY. Won't you keep your voice up, please? And when did you cease your connection with Otis & Co.?

Mr. EBERSTADT. Eleventh of June, 1931. Am I allowed to smoke here?

Mr. GRAY. I have no objection, if you can do that and talk at the same time. What, if any, connection had you with Continental Shares?

Mr. EBERSTADT. None whatsoever.

Mr. GRAY. What, if any, connection had you with Foreign Utilities?

Mr. EBERSTADT. None whatsoever.

Mr. GRAY. Who were the members of the firm of Otis & Co. in the fall of 1930?

Mr. EBERSTADT. Mr. Gray, that is a rather long list. The record will show that. I think there were about 17, and in the interest of accuracy, I suggest that I be permitted to give you that some time.

Mr. GRAY. I would be very glad if you will give me that and let me put it upon the record. Primarily I want to know: You were a member of the firm?

Mr. EBERSTADT. That is correct.

Mr. GRAY. Mr. Cyrus K. Eaton was a member of the firm?

Mr. EBERSTADT. That is correct.

Mr. GRAY. And he was the partner who had the authority and the largest interest and he was the dominating factor in the company, was he not?

Mr. EBERSTADT. He was the party who had the largest interest, and he was not the dominating factor. I was a partner and he did not dominate me.

Mr. GRAY. I see. Did you engineer and take care of all of the affairs of Otis & Co.?

Mr. EBERSTADT. I did not.

Mr. GRAY. What, if anything, did you have to do with arranging a loan for Continental Shares from the Chase National Bank?

Mr. EBERSTADT. May I ask you to repeat that question?

Mr. GRAY. What, if anything, did you have to do with arranging a loan for the Continental Shares with the Chase National Bank?

Mr. EBERSTADT. I was asked by Continental Shares to negotiate a loan in the fall of 1930 for Continental Shares with the Chase National Bank.

Mr. GRAY. Who in Continental Shares asked you to do that?

Mr. EBERSTADT. My recollection is that it was Mr. Burwell, who was then president.

Mr. GRAY. Mr. Burwell?

Mr. EBERSTADT. Yes.

Mr. GRAY. Mr. Eaton, I suppose, never said anything to you about it at all?

Mr. EBERSTADT. I would not say that Mr. Eaton had never said anything to me about it at all. You asked me who had asked me to negotiate the loan.

Mr. GRAY. Yes.

Mr. EBERSTADT. It is very certain that in the course of the transaction Mr. Eaton said something to me about it.

Mr. GRAY. Mr. Burwell was president of Continental Shares at that time?

Mr. EBERSTADT. That is correct.

Mr. GRAY. And where were Continental Shares' headquarters?

Mr. EBERSTADT. Cleveland, Ohio.

Mr. GRAY. How did Mr. Burwell communicate with you?

Mr. EBERSTADT. Either personally or by telephone.

Mr. GRAY. No communication by writing?

Senator FLETCHER. Let me understand just a minute. Otis & Co. was a partnership?

Mr. EBERSTADT. That is right.

Senator FLETCHER. Composed of some 17 members?

Mr. EBERSTADT. Yes.

Senator FLETCHER. Continental Shares was a corporation?

Mr. EBERSTADT. That is correct.

Senator FLETCHER. Organized under the laws of what State?

Mr. EBERSTADT. I think of Maryland.

Mr. GRAY. That is correct. And you had no writing from Mr. Burwell or from any other officers of the corporation authorizing the making of this loan?

Mr. EBERSTADT. I have some writings. I received a subpoena asking me to bring along all papers involving transactions between F. Eberstadt & Co. and Continental Shares.

Mr. GRAY. You mean between Otis & Co.?

Mr. EBERSTADT. No; I mean between F. Eberstadt & Co. and Continental Shares. That was a very easy order to comply with, in view of the fact that there never were any transactions. On the other hand, I assumed that the thing referred to Otis & Co. and not as stated, Eberstadt & Co.

Mr. GRAY. You are probably correct in your assumption.

Mr. EBERSTADT. So I brought those papers along.

Mr. GRAY. And what papers have you, Mr. Eberstadt?

Mr. EBERSTADT. I have here an annual report. Do you want this?

Mr. GRAY. Annual report of what?

Mr. EBERSTADT. Continental Shares.

Mr. GRAY. This is with respect to December 31, 1931.

Mr. EBERSTADT. Whatever it is is on there, Mr. Gray.

Mr. GRAY. All right. That has no relation, as I see it, to the present matter. What else have you?

Mr. EBERSTADT. I have here a letter from myself, or a copy of a letter from myself to the Chase Bank, confirming the negotiation of the 10th of October, 1930, which letter commences: "I wish"—

Mr. GRAY (interposing). Is that letter dated October 11, 1930?

Mr. EBERSTADT. That is correct.

Mr. GRAY. That letter was read into the record yesterday. If you will let me see it so that I may make a comparison of it if it is the same as this. [The witness handed document to Mr. Gray.] Yes. All right; that letter was produced, together with a schedule attached, and went into the record yesterday.

Have you any other documents?

Mr. EBERSTADT. I mention this letter in answer to your question about this authority. This letter states that I was acting on behalf of Continental Shares.

Mr. GRAY. Yes; I see it does.

Mr. EBERSTADT. I have here a letter of October 18, 1930, from Burwell referring to this, in which Burwell—

Mr. GRAY (interposing). Will you let me see the entire letter?

Mr. EBERSTADT. Yes [handing letter to Mr. Gray]. Discusses some elements of the note. He wants certain changes made there.

Mr. GRAY. And the document which is attached to that letter, which has some interlineations and changes, is that the form of the collateral note?

Mr. EBERSTADT. Mr. Gray, I think that is the form of the collateral note which is attached to the letter that you referred to before, and that the interlineations are certain changes which Burwell wanted made in that note.

Senator FLETCHER. Burwell handled the matter, did he?

Mr. EBERSTADT. I assume so. I did not go further with the matter. It was handled entirely by Burwell and the bank from that point on.

Mr. GRAY. That was explained in the testimony yesterday.

Mr. EBERSTADT. I assume so. I picked that letter up and thought I would bring it.

Mr. GRAY. For that reason, rather than reading that, I will hand it to the reporter and ask that it be entered in the record.

Senator TOWNSEND. Without objection it may go in the record.

(The documents above referred to are here printed in the record in full, as follows:)

CONTINENTAL SHARES (INC.),  
Cleveland, Ohio, October 18, 1930.

FERDINAND EBERSTADT, Esq.,  
Otis & Co., New York, N. Y.

DEAR FERD: In accordance with your request, I am stating herein the points discussed in our telephone conversation this morning with respect to the note of the Chase National Bank. They are as follows:

1. No provision has been made for the withdrawal of security when the value thereof reaches a point equivalent to 160 per cent of the unpaid portion of the note.

2. The adjective "market" has been omitted in stating the value of the collateral security which must, in the judgment of the bank, be maintained against the loan. The bank could place an arbitrary value upon the collateral without any recourse on our part if this provision is permitted to remain as now written.

3. No provision is made for notice to the company, or demand for payment or additional collateral, before the bank may sell the security, etc. This fact when coupled with the point mentioned in (2) of this letter seems to practically leave us at the mercy of the bank.

4. It is provided that the bank may rehypothecate the security with the United States or the Federal Reserve Bank of New York. This should not be permitted in the case of the United Light & Power stock which the bank will not allow the company to withdraw from under the loan.

Sincerely,

W. R. BURWELL.

See letter for meaning of notes 1, 2, 3, 4.  
\$30,000,000.

New York, ——— 1930.

[Interlined: On or before 18 months after date] for value received, we the undersigned promise to pay to the Chase National Bank of the city of New York, or order, at its banking office, Pine Street, corner of Nassau, Borough of Manhattan, city of New York, N. Y., in funds current at the New York Clearing House, \$30,000,000 with interest at the rate of 5½ per cent per

annum, payable monthly, having deposited with the bank as collateral security for the payment of this note and of all sums which the undersigned shall at any time be liable to pay hereunder and of all other liabilities of the undersigned to the bank, whether absolute or contingent, due or not due, or which may hereafter be contracted or existing, whether incurred directly or indirectly, by the undersigned to the bank, including as well promissory notes, bills of exchange, and other evidences of indebtedness, made, indorsed, or accepted by the undersigned and purchased or owned by the bank, the following property, viz (see attached list) :

The undersigned hereby agree to deposit with the bank forthwith upon demand such additional collateral security as the bank may from time to time demand in order that the securities deposited as collateral for this loan shall at all times be of a value, in the judgment of the bank, equal to 150 per cent of the principal amount of this note then remaining unpaid; and also hereby give to the bank a lien for the amount of this note and of all liabilities aforesaid upon all property and securities of the undersigned and all right, title, and interest of the undersigned in or to any property or securities, which have or shall come into the possession or custody of the bank in any way for safe-keeping or any purpose whatever, whether the bank shall accept it for the purpose for which it is delivered or not, upon any and all proceeds of said property and securities and every part thereof, and also upon every balance of deposit account which the undersigned may at any time have with the bank; and all remittances and property shall be deemed to be in the possession and custody of the bank when actually in the possession or custody of, or in transit to, it or any agent thereof.

[Marginal note, "100% (1)."] On the nonperformance of any of the obligations of the undersigned hereunder or upon any default under any of the instruments evidencing any of said liabilities, or if at any time the [interlined, "market"] value of the securities left in the possession of the bank as security for the payment hereof shall, in the judgment of the bank, decline to such extent as to make the [interlined, "market"] value of the securities deposited as collateral for this loan [marginal note, "(2)"] in the judgment of the bank, less than 150 per cent of the principal amount of this note then remaining unpaid, then the bank is hereby authorized, at any time or times, to sell, in one or more sales, assign, and deliver the whole or any part of the said securities and property (whether or not the same consists in whole or in part of negotiable instruments or choses in action or undivided interests in property) or any substitutes therefor, or any additions thereto or any other property or securities of the undersigned in or to any property or securities, which have or shall come into the possession or custody of the bank, in any way for safe-keeping or any purpose whatever as aforesaid, at any broker's board or at public or private sale, at the option of the bank, with or without demand for payment or for additional collateral [margin, "(3)"] security or for other performance and without regard to any such demand, if made, and without advertisement or notice of intention to sell or of time or place of sale or otherwise, all of which are hereby expressly waived [interlined, "Rider"]; and the bank may be the purchaser of any or all property so sold and hold the same thereafter in its own right absolutely free from any claim or right or redemption on the part of the undersigned, which is hereby expressly waived and released.

The bank is hereby authorized, in its discretion, whether this note or any of said other liabilities be due or not, in its name or in the name of the undersigned or otherwise, to demand, sue for, collect and/or receive any money or property at any time due, payable or receivable upon or on account of or in exchange for, or make any compromise or settlement it deems desirable with reference to, and/or otherwise realize upon, with or without suit, any of said property and securities, and, in so far as said property and securities shall consist of negotiable instruments and/or any chose or choses in action, the said bank may extend the time of payment of any such instrument or chose in action as to other parties liable thereon, without thereby incurring responsibility to or discharging or otherwise affecting any liability of the undersigned; and the undersigned hereby waive presentation, protest, and notice of non-acceptance and/or of nonpayment of any such negotiable instrument to which the undersigned may be a party.

The undersigned will pay all expense of every kind of the enforcement of this note, or of any of the rights hereunder, and hereby agree to pay to the bank on demand the amount of any and all such expense incurred by it.

The bank is authorized at any time and from time to time, at its option, to appropriate and apply any or all of the net cash receipts from any of said property and securities, and/or any or all of any balance of deposit account of the undersigned with the bank and/or any or all moneys now or hereafter in the hands of the bank and belonging to the undersigned, to the payment in whole or in part of this note or of any of the said liabilities or any of said expense, returning the surplus, if any, to the undersigned, or whoever may be entitled thereto; and notwithstanding the holding by the bank of said security for the payment of this note and said other liabilities, or any sale, exchange, enforcement, collection of, realization upon, or compromise, or settlement, actual or attempted, with reference to any of said property and security, the undersigned shall be and remain liable for the payment in full, principal and interest, of this note and of all said other liabilities, including any expense as aforesaid, except only to the extent that the same or any thereof shall be reduced by payment or actual application thereon by the bank of security or the proceeds thereof.

If at any time the collateral held by the bank as security for the payment of this note shall decline to such extent as to make the [interlined, "market" ("2")] value of the securities deposited as collateral for this loan, in the judgment of the bank, less than 150 per cent of the principal amount of this note then remaining unpaid, and the undersigned shall not on demand forthwith furnish such further security or make such payment on account as shall be satisfactory to the bank to restore the value of such securities to said 150 per cent, or if any sum payable under this note or any of said other liabilities for principal, interest, or otherwise, be not paid when due, or if the undersigned shall be in default hereunder for any matter or thing, or if the undersigned, or any indorser or guarantor of this note, or any maker, indorser, or guarantor of any of said security, shall become insolvent (however such insolvency may be evidenced) or make a general assignment for the benefit of creditors, or if a petition in bankruptcy shall be filed against, or a voluntary petition in bankruptcy shall be filed by, or if a receiver shall be appointed of the property or assets, or any thereof, of the undersigned or any such maker or indorser or guarantor, thereupon this note and/or any or all of said other liabilities shall, unless the bank shall otherwise elect, be forthwith due and payable.

[Marginal note, "(4)."] The bank may pledge any of said security (either alone or with other) to the United States or to the Federal Reserve Bank of New York, in its own right or as agent of the United States, to secure deposits or other obligations of the bank of any amounts whatever. Upon the transfer of this note the bank may transfer any or all of said security and shall be thereafter fully discharged from all liability and responsibility with respect to the security so transferred, and the transferee vested with all the powers and rights of the bank hereunder with respect to such security so transferred, but with respect to any security not so transferred the bank shall retain all rights and powers hereby given. No delay on the part of any holder hereof in exercising any power or right hereunder shall operate as a waiver of any power or right; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein expressly specified are cumulative and not exclusive of any other rights or remedies which any holder hereof may otherwise have or would have by the law of pledge or lien without said specification.

The undersigned is to have the right to anticipate and pay off the above loan, or any part thereof, at any time after 30 days' written notice to the bank at 100.25 per cent of the face amount of the part so to be paid off, plus accrued interest on such part to the time of prepayment.

The undersigned is to have the right to substitute from time to time as collateral securities satisfactory to the bank on a basis acceptable to the bank, in its discretion, except that there is to be no substitution of the shares of United Light & Power Co., regardless of basis, unless such substitution is agreed to by the bank.

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\_\_\_\_\_  
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Mr. EBERSTADT. Then I have here a letter of October 18, 1930, from Burwell to me, in which he acknowledges receipt of a schedule of collateral, and I think you will see from those letters that, so far as

Continental was concerned, the thing was handled practically entirely with Burwell.

Mr. GRAY. All right; I think that is unimportant.

Senator BULKLEY. Is there anything in that letter that ought to be read so the committee can understand what is going on here?

Mr. GRAY. Which letter?

Senator BULKLEY. This letter he just mentioned.

Mr. GRAY. I think not; but I will be glad to read it.

Senator BULKLEY. I do not care about that, but I am only asking if we should know what it is as a foundation for something else.

Mr. GRAY. The letter reads as follows. It was addressed to Ferdinand Eberstadt of Otis & Co., in New York under date of October 18, 1930. [Reading:]

In accordance with your request, I am stating herein the points discussed in our telephone conversation this morning with respect to the note of the Chase National Bank. They are as follows:

First, no provision has been made for the withdrawal of security when the value thereof reaches a point equivalent to 160 per cent of the unpaid portion of the note.

That is meant for 60 per cent, is it not?

Mr. EBERSTADT. I guess you can say it either way, Mr. Gray. If you count the 100, it is 160; if you do not count the 100, it is 60. It means a margin of 60.

Mr. GRAY (continuing reading):

2. The adjective "market" has been omitted in stating the value of the collateral security which must, in the judgment of the bank, be maintained against the loan. The bank could place an arbitrary value upon the collateral without any recourse on our part if this provision is permitted to remain as now written.

3. No provision is made for notice to the company, or demand for payment or additional collateral, before the bank may sell the security, etc. This fact, when coupled with the point mentioned in (2) of this letter, seems to practically leave us at the mercy of the bank.

4. It is provided that the bank may rehypothecate the security with the United States or the Federal Reserve Bank of New York. This should not be permitted in the case of the United Light & Power stock, which the bank will not allow the company to withdraw from under the loan.

Sincerely,

W. R. BUEWELL.

With an attached copy of the note itself with the suggested changes to be made thereon.

Mr. EBERSTADT. I think they were purely technical changes.

Mr. GRAY. That is all?

Mr. EBERSTADT. I had some other papers. This is simply a list of those securities which I am sure you must have.

Mr. GRAY. That is already in the record; yes, sir.

Now, Mr. Eberstadt, in the negotiation of this loan, did you know that there were a certain number of blank promissory notes sent by Continental Shares to the Chase National Bank?

Mr. EBERSTADT. Mr. Gray, I am going to try very hard to answer your questions with complete frankness, and sometimes I may ask you to repeat your question. When you say, did I know when I was negotiating this loan, you mean before the loan was closed or after?

Mr. GRAY. You can answer it either time, or both.

Mr. EBERSTADT. During my negotiations with the Chase Bank I know there never were any blank promissory notes of Continental Shares with the Chase Bank.

Mr. GRAY. Did you learn afterwards that blank notes had been sent there?

Mr. EBERSTADT. After the transaction had been completely closed and all terms agreed on, I have since been advised that, as a convenience in clearing this transaction, which was one of considerable magnitude, as you can readily see, some arrangements of that character were made. They were not made by me. I know nothing about them except what I have heard.

Mr. GRAY. And you did not have entire charge of the matter?

Mr. EBERSTADT. I had no charge whatsoever of the clearance of the transaction.

Mr. GRAY. You only had charge of the arrangement of the loan itself?

Mr. EBERSTADT. I only had charge of the negotiation of the loan; that is correct.

Mr. GRAY. Was this loan made on account of Otis & Co.?

Mr. EBERSTADT. I beg your pardon?

Mr. GRAY. Was this loan made on account of Otis & Co.?

Mr. EBERSTADT. In no sense. The term "on account" might mean two things. In either instance the answer is no.

Mr. GRAY. Is it not a fact that the Chase National Bank, if you know it, on the morning of the 14th of October, 1930, without any previous authorization from the Continental Shares made distribution of certain of the funds in that loan in order to protect Otis & Co. and save them from closing their doors that day?

Mr. EBERSTADT. I do not know it, and I do not believe it is a fact.

Mr. GRAY. Is it not a fact that negotiations had been had, or rather the members of your firm had been brought before the governing committee of the New York Stock Exchange and were advised on the night of the 13th of October, 1930, that they would not be permitted to open the doors unless certain obligations were taken care of?

Mr. EBERSTADT. That is not a fact.

Mr. GRAY. Was there a consultation between the members of the firm and the governing committee on the night of the 13th of October?

Mr. EBERSTADT. That is correct.

Mr. GRAY. And did you take part in it?

Mr. EBERSTADT. I did.

Mr. GRAY. And what was the ultimatum of the stock exchange to your firm?

Mr. EBERSTADT. I do not understand it as an ultimatum, but the position taken by the stock exchange was that I think it was \$12,000 of new capital—

Mr. GRAY (interposing). Twelve million.

Mr. EBERSTADT. \$12,000,000 of new capital—

Mr. GRAY. Yes.

Mr. EBERSTADT. Should be put into the firm, which is a very different thing, Mr. Gray, from insisting that the firm take care of any obligations. One referred to capital and the other referred to obligations. I recollect no position taken by the stock exchange with respect to obligations.

Mr. GRAY. Is it not a fact that you were told that unless that twelve million in new capital went into your firm's office on the morning of the 14th you would not be permitted to open?

Mr. EBERSTADT. I don't remember whether we were told that or not. I think certainly that was a fair assumption from the meeting.

Mr. GRAY. You think what?

Mr. EBERSTADT. I think that was a fair assumption, but the meeting closed by the statement that the \$12,000,000 would be put in there.

Mr. GRAY. Yes. And where did it come from?

Mr. EBERSTADT. Most of that money was put up by Eaton. Whether all was put up by Eaton I do not know.

Mr. GRAY. You mean to tell us, Mr. Eberstadt, that as a member of the firm of Otis & Co. you do not know—and you were not here yesterday, and I might say to you that it was established as a fact that the Chase Bank on the morning of the 14th made distribution of a very large portion of that \$30,000,000 in order to take up obligations of Otis & Co. and release collateral at different institutions and thus save Otis & Co. and prevent them from closing.

Mr. EBERSTADT. Mr. Gray, you have put a pretty big contract in that question there. May I ask you to divide that into two or three questions?

Mr. GRAY. Well, I will.

Mr. EBERSTADT. If you would just read that back. I can not answer that question yes or no. The question involves several distinct answers.

Mr. GRAY. Do you mean to tell me that you do not know that the Chase National Bank, on the morning of the 14th of October, paid a number of Otis & Co.'s obligations?

Mr. EBERSTADT. It is possible that they did and they did not. The records—

Mr. GRAY (interposing). Anything is possible, Mr. Eberstadt.

Mr. EBERSTADT. Why, yes; surely.

Mr. GRAY. You were a member of the firm. Won't you please tell me whether you knew that to be true?

Mr. EBERSTADT. The firm's business was a very large business. Whether the Chase Bank, on the morning of the 14th, did or did not pay certain obligations is a matter that no individual could tell you honestly without looking at the records. That is two years ago. The sums involved are a hundred million dollars or more, and I can not sit here and tell you that on the morning of the 14th the Chase Bank paid certain obligations. I can tell you that I would be very glad to get the records if you desire that.

Mr. GRAY. We have them and have them in evidence.

Mr. EBERSTADT. Well, they should show.

Mr. GRAY. What I am asking you, Mr. Eberstadt, is this: You said you wanted to be frank with me.

Mr. EBERSTADT. Yes.

Mr. GRAY. Whether you, as a member of the firm of Otis & Co., now say to this committee that at a critical point in the business affairs of Otis & Co., when they had to add to their capital on the morning of the 14th, that you can not remember, even though it has been a year and a half or nearly two years ago, whether or

not the money required was furnished by the Chase National Bank from this loan.

Mr. EBERSTADT. I do not think it was. The Chase Bank put no money into Otis & Co. Have you any evidence indicating that the Chase Bank put money into Otis & Co.?

Mr. GRAY. I will answer your question, yes; plenty—\$30,000,000.

Mr. EBERSTADT. I do not know of it.

Mr. GRAY. You do not know of it?

Mr. EBERSTADT. No; I do not.

Mr. GRAY. You never heard of it?

Mr. EBERSTADT. I never heard of the Chase Bank putting any capital in Otis & Co.

Mr. GRAY. You are very technical, I see.

Mr. EBERSTADT. No; I am not a bit technical.

Mr. GRAY. I am not talking about the Chase National Bank putting money into the capital of Otis & Co. I am talking about the Chase National Bank taking up obligations of Otis & Co. on the morning of the 14th with funds created by a loan of \$30,000,000 to Continental Shares.

Mr. EBERSTADT. If they did so, they did so pursuant to instructions of the officers of the Continental Shares.

Mr. GRAY. And you never knew that they did it?

Mr. EBERSTADT. I do not know whether they did or not.

Mr. GRAY. You do not know whether they did it or not?

Mr. EBERSTADT. I do not know whether they did or not.

Mr. GRAY. The records will show?

Mr. EBERSTADT. The records will show whether they did or not.

Mr. GRAY. And you have no recollection on the subject?

Mr. EBERSTADT. On the morning of the 14th?

Mr. GRAY. Yes.

Mr. EBERSTADT. On the morning of the 14th?

Mr. GRAY. Yes.

Mr. EBERSTADT. I do not know whether they did on the morning of the 14th or not.

Mr. GRAY. Do you know whether they did on the afternoon of the 14th?

Mr. EBERSTADT. I do not know whether they did on the afternoon.

Mr. GRAY. Do you know whether they ever did?

Mr. EBERSTADT. I assume they did.

Mr. GRAY. Yes. When was it done?

Mr. EBERSTADT. It was done as soon as practical conveniently. That was a very big transaction.

Mr. GRAY. You, of course, did neither write nor receive the communication that I am going to refer to in asking you another question. It is a communication signed by one of the vice presidents of the Chase National Bank, and it is an interoffice communication. It contains this reference. It is addressed to Mr. Wiggin, chairman of the board of the Chase National, under the head of Otis & Co.:

There has been considerable conversation—

Mr. EBERSTADT. May I ask you for the date, Mr. Gray?

Mr. GRAY. Yes. The date is October 10, 1930, while you were about to or were negotiating this loan.

There has been considerable conversation about the firm [Otis & Co.] for some time past—more of it to-day—whether they had \$11,500,000 of loans called.

Morgans, First National, Guaranty, and ourselves agreed to take these up. Eberstadt says they already have \$7,500,000 cash on the way for partial payment. He says the firm this morning conservatively had capital of \$20,000,000, probably more; that they are absolutely solvent. Their total loans were probably \$120,000,000, all properly secured, but, of course, he is uneasy if continual calling like there was to-day continues. He says the \$30,000,000 loan will clean up their biggest debit account, which is Foreign Shares or Foreign Securities Co. They have been buying utilities, securities, and owing Otis. The proceeds of our loan to Continental Shares will go to Foreign Shares and from them to Otis.

Did you tell them that?

Mr. EBERSTADT. What he said I told him is exactly correctly stated.

Mr. GRAY. In other words, as I have read it, that is correct?

Mr. EBERSTADT. Well, I don't know where you stopped quoting and where you didn't. What he said there, so far as I am concerned, is exactly correct.

Mr. GRAY. In other words, this loan to Continental Shares, where he uses the word—

Mr. EBERSTADT (interposing). Excuse me. In other words, before this transaction was made I absolutely believed the condition of Otis & Co. to be completely sound and solvent, and every other partner of Otis & Co. believed exactly the same thing. And the loan was negotiated in the firm belief that Otis & Co. had absolutely no need for capital of any sort or character. Any kind of an accountant's study of that situation, which I assume you have made, will show you that resulting from the purchase of these securities by Continental Shares the purchase price goes to the seller. The seller was immaterial to Otis & Co. I am Otis & Co.—I was Otis & Co., and not Continental Shares, and not Foreign Utilities—and I was interested in those that owed us money paying us the money that they owed us.

Mr. GRAY. Then, you arranged this loan so that the money might come from the Chase Bank to Continental, Continental to Foreign Utilities, and Foreign Utilities to Otis & Co.; is that correct?

Mr. EBERSTADT. Mr. Gray, there is an innuendo in your question which is not correct.

Mr. GRAY. What is incorrect and what is correct about my question?

Mr. EBERSTADT. I arranged this loan at the request of Continental Shares pursuant to their request in order that they might purchase certain securities. I had nothing whatsoever to do with the deal under which they purchased these securities. In fact, I did not know it was completed until a short while before.

Mr. GRAY. You knew that that money was ultimately coming to take care of Otis & Co.?

Mr. EBERSTADT. After the deal was—I beg your pardon—to pay debts due Otis & Co.

Mr. GRAY. All right; to pay debts due Otis & Co.?

Mr. EBERSTADT. Yes.

Mr. GRAY. In order that they might have capital instead of stock?

Mr. EBERSTADT. I do not know how, by a payment of debts, you create capital.

Mr. GRAY. Two of the members of your firm were on the board of Continental Shares?

Mr. EBERSTADT. Did I answer the other question, Mr. Gray?

Mr. GRAY. I think you did. I am asking you another one.

Mr. EBERSTADT. I beg your pardon.

Mr. GRAY. Two of the members of Otis & Co. were on the board of Continental Shares?

Mr. EBERSTADT. Would you mind specifying who you had in mind, please?

Mr. GRAY. If you do not know that there were two, say that.

Mr. EBERSTADT. Well, there were different times.

Mr. GRAY. At any time were two of the members of Otis & Co. on the board of Continental Shares?

Mr. EBERSTADT. Eaton was on the board, I think, at all times.

Mr. GRAY. Yes; and who else?

Mr. EBERSTADT. And Inglis was on the board part of the time.

Mr. GRAY. Yes; and they were both members of your firm?

Mr. EBERSTADT. They were both members of the firm.

Mr. GRAY. By the way, did you know that Foreign Utilities was a holding corporation in which the only person interested was Mr. Eaton?

Mr. EBERSTADT. I never heard that.

Mr. GRAY. You never heard it?

Mr. EBERSTADT. I heard the contrary given under oath.

Mr. GRAY. You heard the contrary given under oath. Was Mr. Eaton interested in Foreign Utilities?

Mr. EBERSTADT. I think so.

Mr. GRAY. And he was interested in Otis & Co.?

Mr. EBERSTADT. Yes.

Mr. GRAY. He was interested in Continental Shares?

Mr. EBERSTADT. Probably had the biggest interest and took the biggest loss in case they lost anything.

Mr. GRAY. That is all.

Mr. EBERSTADT. May I be permitted to ask the chairman a question?

Mr. GRAY. If the chairman wants to answer your question I haven't any objection.

Mr. EBERSTADT. After all, Mr. Chairman, it may be regarded as an impertinence, but I am in a modest way a stockholder in this enterprise, and while I am not familiar with the methods of procedure down here, I feel that the way this particular subject has been approached is more in the sense of a prosecution than in the sense of an investigation. I wanted to ask, if I might, the reason for which the matter was taken up and the reason why it was taken up in this way, particularly when the whole thing is a subject of litigation, not simply in one place, but in several places, particularly in view of the fact that one of the witnesses who appeared here yesterday is the plaintiff in those litigations. I do not want to do anything unfair, and I think that the work which the committee has done in many respects has been done fairly and so impartially that I am particularly amazed and shocked that the thing should have been taken up in this way.

Senator TOWNSEND (presiding). As acting chairman I would ask Mr. Gray if he would like to answer that question.

Mr. GRAY. I do not see, Mr. Chairman, anything to answer at all. Mr. Eaton was subpoenaed to be here to make a statement and to present any matters he desired to present to this committee. He has not chosen to avail himself of that opportunity. Mr. Eberstadt claims to have practically no interest in the matter except that he was a member of the firm of Otis & Co., and has nothing to do with the Continental Shares and nothing to do with Foreign Utilities. Therefore, I take it he is not concerned.

What we have presented to you we have presented to you by facts backed up by documents, and if Mr. Eberstadt is sufficiently interested he might look at the records of the suit which he refers to that is pending in Baltimore, and he will find that the defendants in that suit have admitted every allegation that has been made and proven here. There is nothing more to present in the matter at all, Mr. Chairman. I do not intend to get into any colloquy with Mr. Eberstadt.

Mr. EBERSTADT. May I state, therefore, that counsel for the committee stated that he had investigated these matters. I heard for the first time, I think it was Tuesday, that I was wanted. I volunteered to tell Mr. Watson and Mr. Gray everything that they wanted. I was asked two short questions. I have inquired as to whether Continental Shares was asked to furnish any information. I have been advised that no investigation of any sort was made there. I do not know that any investigation of any character was made with respect to Otis & Co. I raise these points here, gentlemen, because I think that a committee of this importance and this prominence should not permit itself to be made the dupe of those who promote investigations of this character for their own self-interest. If Mr. Gray would like to question me further on that statement, I would be glad to answer the questions.

Senator COUZENS. Mr. Chairman, I do not think that is necessary. We are not here to debate the ethics of this thing. We will debate that among ourselves.

Senator TOWNSEND. I think so, too.

Mr. EBERSTADT. Is that all?

Mr. GRAY. Yes; that is all.

Mr. EBERSTADT. Mr. Gray, Mr. Daley has given me the list of the partners in Otis & Co. I am sure when he gives it, it is right.

Mr. GRAY. I am very glad that the committee will permit that this list shall go into the record as a list of the proprietary and non-proprietary partners of the firm of Otis & Co.

Senator TOWNSEND. Without objection, that may go in.

(The list of partners in Otis & Co. referred to is as follows:)

Proprietary partners: Charles A. Otis; M. C. Harvey; C. S. Eaton; Richard Inglis; J. O. Eaton; S. E. Kline; F. Eberstadt, New York; J. W. Peters.

Nonproprietary partners: J. N. Darrow, New York; R. B. Porter, Detroit; H. Conners, Chicago; Stanley Morrill, Chicago; Ray Sargeant, Denver; Emmet Wilson, Denver; Rex Arthur, Denver; Frank L. Griffith, Columbus.

Mr. EBERSTADT. Are you all through with me?

Mr. GRAY. Yes.

(Another document presented by Mr. Gray in connection with Mr. Eberstadt's testimony is here printed in the record in full, as follows:

NEW YORK, —, 1930.

On or before 18 months after date, for value received, the, the undersigned, promise to pay to the Chase National Bank of the city of New York, or order, at its banking office, Pine Street, corner of Nassau, borough of Manhattan, city of New York, N. Y., in funds current at the New York clearing house, \$30,000,000, with interest at the rate of 5½ per cent per annum, payable monthly, having deposited with the bank as collateral security for the payment of this note and of all sums which the undersigned shall at any time be liable to pay hereunder and of all other liabilities of the undersigned to the bank, whether absolute or contingent, due or not due, or which may hereafter be contracted or existing, whether incurred directly or indirectly, by the undersigned to the bank, including as well promissory notes, bills of exchange, and other evidences of indebtedness, made, indorsed, or accepted by the undersigned and purchased or owned by the bank, the following property, viz:

	Shares
Goodyear Tire & Rubber Co.-----	75, 600
Lehigh Coal & Navigation Co.-----	337, 000
United Light & Power Co. B.-----	416, 000
Youngstown Sheet & Tube Co.-----	68, 850
Brooklyn Union Gas Co.-----	7, 000
Cleveland Trust Co., Cleveland, Ohio-----	3, 687
Union Trust Co., Cleveland, Ohio-----	10, 888
Guaranty Trust Co., New York-----	772
Bank of Manhattan Trust Co., New York-----	5, 850
Continental Illinois Bank & Trust Co., Chicago-----	2, 625
Harris Trust & Savings Bank, Chicago-----	480
Cliffs Corporation-----	41, 000

The undersigned hereby agree to deposit with the bank forthwith upon demand such additional collateral security as the bank may from time to time demand in order that the securities deposited as collateral for this loan shall at all times be of a value, in the judgment of the bank, equal to 150 per cent of the principal amount of this note then remaining unpaid; and also hereby give to the bank a lien for the amount of this note and of all liabilities aforesaid upon all property and securities of the undersigned, and all right, title, and interest of the undersigned in or to any property or securities, which have or shall come into the possession or custody of the bank in any way for safe-keeping or any purpose whatever, whether the bank shall accept it for the purpose for which it is delivered or not, upon any and all proceeds of said property and securities and every part thereof, and also upon every balance of deposit account which the undersigned may at any time have with the bank; and all remittances and property shall be deemed to be in the possession and custody of the bank when actually in the possession or custody of, or in transit to, it or any agent thereof.

On the nonperformance of any of the obligations of the undersigned hereunder or upon any default under any of the instruments evidencing any of said liabilities, or if at any time the market value of the securities left in the possession of the bank as security for the payment hereof shall, in the judgment of the bank, decline to such an extent as to make the market value of the securities deposited as collateral for this loan, in the judgment of the bank, less than 150 per cent of the principal amount of this note then remaining unpaid, then the bank is hereby authorized, at any time or times, to sell, in one or more sales, assign, and deliver the whole or any part of the said securities and property (whether or not the same consists in whole or in part of negotiable instruments, or choses in action, or undivided interests in the property) or any substitutes therefor, or any additions thereto, or any other property or securities of the undersigned or the right, title, or interest of the undersigned in or to any property or securities, which have or shall come into the possession or custody of the bank in any way for safekeeping or any purpose whatever as aforesaid, at any broker's board or at public or private sale, at the option of the bank, with or without demand for payment or for additional collateral security or for other performance and without regard to any such demand, if made, and without advertisement or notice of intention to sell or of time or place of sale or otherwise, all of which are hereby expressly waived, the bank, however, approximately simultaneously with the commencement of the sale or liquidation by it of the said securities or property, or any part thereof, to notify the undersigned, either by telephone or

telegram addressed to it for the attention of its president or treasurer at the address hereinbelow subscribed, that it, the bank, is proceeding to sell or liquidate some or all of the said securities or property; and the bank may be the purchaser of any or all property so sold and hold the same thereafter in its own right absolutely free from any claim or right of redemption on the part of the undersigned, which is hereby expressly waived and released.

The bank is hereby authorized, in its discretion, whether this note or any of said other liabilities be due or not, in its name or in the name of the undersigned or otherwise, to demand, sue for, collect and/or receive any money or property at any time due, payable or receivable upon or on account of or in exchange for, or make any compromise or settlement it deems desirable with reference to, and/or otherwise realize upon, with or without suit, any of said property and securities, and, in so far as said property and securities shall consist of negotiable instruments and/or any chose or choses in action, the said bank may extend the time of payment of any such instrument or chose in action as to other parties liable thereon, without thereby incurring responsibility to or discharging or otherwise affecting any liability of the undersigned; and the undersigned hereby waive presentation, protest, and notice of nonacceptance and/or of nonpayment of any such negotiable instrument to which the undersigned may be a party.

The undersigned will pay all expense of every kind of the enforcement of this note, or of any of the rights hereunder, and hereby agree to pay to the bank on demand the amount of any and all such expense incurred by it.

The bank is authorized at any time and from time to time, at its option, to appropriate and apply any or all of the net cash receipts from any of said property and securities, and/or any or all of any balance of deposit account of the undersigned with the bank and/or any or all moneys now or hereafter in the hands of the bank and belonging to the undersigned, to the payment in whole or in part of this note or of any of the said liabilities or any of said expense, returning the surplus, if any, to the undersigned or whoever may be entitled thereto; and notwithstanding the holding by the bank of said security for the payment of this note and said liabilities, or any sale, exchange, enforcement, collection of, realization upon, or compromise, or settlement, actual or attempted, with reference to any of said property and security, the undersigned shall be and remain liable for the payment in full, principal and interest, of this note and of all said other liabilities, including any expense as aforesaid, except only to the extent that the same or any security or the proceeds thereof.

If at any time the collateral held by the bank as security for the payment of this note shall decline to such an extent as to make the market value of the securities deposited as collateral for this loan, in the judgment of the bank, less than 150 per cent of the principal amount of this note then remaining unpaid, and the undersigned shall not on demand forthwith furnish such further security or make such payment on account as shall be satisfactory to the bank to restore the value of such securities to said 150 per cent, or if any sum payable under this note or any of said other liabilities for principal, interest, or otherwise, be not paid when due, or if the undersigned shall be in default hereunder for any matter or thing, or if the undersigned, or any indorser or guarantor of this note, or any maker, indorser or guarantor of any of said security, shall become insolvent (however, such insolvency may be evidenced) or make a general assignment for the benefit of creditors, or if a petition in bankruptcy shall be filed against, or a voluntary petition in bankruptcy shall be filed by, or if a receiver shall be appointed of the property or assets, or any thereof, of the undersigned or any such maker or indorser or guarantor, thereupon this note and/or any or all of said other liabilities shall, unless the bank shall otherwise elect, be forthwith due and payable. The bank may pledge any of said security (either alone or with other) to the United States or to the Federal Reserve Bank of New York, in its own right or as agent of the United States, to secure deposits or other obligations of the bank of any amounts whatever. Upon the transfer of this note, the bank may transfer any or all of said security and shall be thereafter fully discharged from all liability and responsibility with respect to the security so transferred and the transferee vested with all the power and rights of the bank hereunder with respect to such security so transferred, but with respect to any security not so transferred, the bank shall retain all rights and powers hereby given. No delay on the part of any holder hereof in exercising any power or right hereunder shall operate as a waiver of any power or right; nor shall any single or partial exercise of any power or right hereunder preclude other or further

exercise thereof, or the exercise of any other power or right. The rights and remedies herein expressly specified are cumulative and not exclusive of any other rights or remedies which any holder hereof may otherwise have, or would have by the law of pledge or lien, without said specification.

The undersigned is to have the right to anticipate and pay off the above loan, or any part thereof, at any time after 30 days written notice to the bank at 100.25 per cent of the face amount of the part so to be paid off, plus accrued interest on such part to the time of prepayment.

The undersigned is to have the right to substitute from time to time as collateral securities satisfactory to the bank on a basis acceptable to the bank, in its discretion, except that there is to be no substitution of the shares of the United Light & Power Co., regardless of basis, unless such substitution is agreed to by the bank.

Whenever in the judgment of the bank the market value of the said collateral shall exceed 160 per cent of the principal amount of this note then remaining unpaid, the undersigned shall have the right to withdraw so much of the collateral as shall have an aggregate market value equivalent to such excess; provided, however, that the collateral so withdrawn shall be determined by mutual agreement of the undersigned and the bank.

Mr. WILLIAM R. DALEY. Mr. Chairman, may I report on the matters that I said I would look up yesterday?

Senator TOWNSEND. Yes, Mr. Daley; you may report on the matters that you were to take up.

Mr. GRAY. Mr. Chairman, I do not know that Mr. Daley was to take up any matters for the committee. Mr. Daley took the stand and made a statement. He was cross-examined. It was suggested to him and he agreed with the suggestion, that if he wanted to present certain matters the best thing for him to do was to have the witnesses here this morning. If it is that that he desires to report on, why, of course, we ought to hear him.

Senator TOWNSEND. Have you the witnesses here, Mr. Daley?

Mr. DALEY. One of the matters I testified to was within my own knowledge and I said I would get the records from Cleveland. The auditor had gone for the day when I called and they have not yet reached me this morning, on the first item. That was the so-called unloading of securities by Otis on Continental Shares.

I also talked with Mr. Burwell about furnishing the proof on Inland Syndicate and determined that the best way to convince the committee is to show them the actual record under oath of Inland Syndicate, which will show that Otis & Co. nor Eaton nor any of his associates had any interest whatever in that.

Mr. GRAY. Have you got the records here, Mr. Daley?

Mr. DALEY. I have a wire telling me the fact, and I am just reporting back to-day, and I of course am having those things prepared. May I finish?

Mr. GRAY. The committee will bear in mind that Mr. Eaton was subpoenaed to produce these records a long while ago, and it was not done until late yesterday afternoon, and in my examination of Mr. Daley I do not believe there was any suggestion of their willingness to produce anything.

Senator BULKLEY. You know perfectly well that you can get any evidence that you want from them. I do not like that kind of a statement.

Mr. GRAY. Senator Bulkley, I know perfectly well that under the rules I can ask that Mr. Eaton be reported in contempt of the Senate, and that a direction can then be given to the Sergeant at

Arms of the Senate to take the proper steps to get Mr. Eaton. I did not do that, and as I stated to the committee, for the reason that I did not want to force Mr. Eaton, with the litigation pending, to take the stand and answer the questions. It was stated that he wanted to come here and be present. I shall be very glad to afford him, as counsel for the committee, and I haven't any doubt the committee will give him an opportunity to make a statement. He does not want to do it.

Senator BULKLEY. I do not know whether he wants to or not, but you certainly can get him.

Mr. GRAY. I do not want to have any colloquies with Mr. Daley. If Mr. Daley will make a statement and end it, that is satisfactory to me.

Mr. DALEY. All right; I will do that very quickly. The only reason I have produced the proof to-day is because of the way the committee has produced it, because it is contrary to the fact, and the burden is on the investigators who are making the charges.

Mr. GRAY. We are not making any charges.

Senator TOWNSEND. What is the pleasure of the committee?

Mr. DALEY. May I say one thing further, and then I am all through? I understand in this case that Mr. Stock has even issued a statement to the newspapermen prior to the hearings yesterday which was so libelous that it was not even printed by the newspapers. I just want to call that to the attention of the committee.

Mr. GRAY. Have you a copy of that statement? Let us have it.

Mr. DALEY. I have not.

Mr. GRAY. Why do you make that statement then if you do not have what was in it?

Mr. DALEY. I can produce witnesses who will testify to it.

Senator COUZENS. Mr. Chairman, let the witness make the statement. I do not know what he has to say.

Mr. STOCK. I want to say that I did not issue any statement at all to the newspapers, beyond the statements of Senator Norbeck as chairman of this committee. A statement was prepared.

Senator COUZENS. By whom?

Mr. STOCK. By Senator Norbeck. Now, that statement was in every particular the same thing as I said yesterday. I think it is unfair to come here and make a statement like that without producing the statement. I think it is unfair to me.

Senator BULKLEY. Why don't you produce the statement and have it in the record?

Mr. STOCK. I had that statement here yesterday.

Senator BULKLEY. I ask that that be permitted to be put in the record.

Mr. STOCK. I will be very glad to get a copy of it. I do not have one here with me.

Senator CAREY. Did you give a statement to the press?

Mr. STOCK. I did not.

Mr. GRAY. Mr. Daley has made a number of statements here, Senator Carey, that he has not backed up.

Senator WALCOTT. I do not think that demand ought to be made until Senator Norbeck is here, because he is responsible.

Senator BULKLEY. All right; I withdraw it.

Senator COUZENS. Mr. Chairman, I move that we proceed with other business and let Mr. Daley send in his documentary evidence when he has it. All he has now is apparently a telegram.

Senator TOWNSEND. All right, then. What is the pleasure of the attorney?

Mr. GRAY. I am ready to go ahead.

Senator TOWNSEND. Very well.

Mr. GRAY. Gentlemen, I wish to recall to your mind the failure of Mr. William Fox to appear yesterday and the report that I made at the meeting of 2 o'clock yesterday afternoon as to my interview with the physician and also the physician's written report to me, which was placed upon the record. The information that was then secured was that the man was not seriously ill; that he could have come here, but that it would have been better to permit him to remain in his room until this morning, when he would be able to come here beyond any question.

This morning he is not here. I saw his attorney, and his attorney stated that he was still too ill to come. I have sent a physician to see him this morning. I just received a verbal report, though I expect to get a more detailed report, to the effect that he rose and dressed this morning and then claimed that he was dizzy and has not left his room.

Having made this report to the chairman, Senator Norbeck, I will, with the permission of the chairman and the committee, make a brief statement with respect to what I propose to prove here, and in the absence of Mr. Fox will have to show it by certain records that have been examined.

Senator TOWNSEND. Is it the pleasure of the committee that Mr. Gray proceed with his statement?

Senator COUZENS. I move that that be done. We had an understanding with the chairman before he went away that that would be done.

Senator TOWNSEND. Without objection, Mr. Gray will proceed.

**STATEMENT OF WILLIAM A. GRAY, COUNSEL TO THE COMMITTEE,  
WASHINGTON, D. C.**

Mr. GRAY. Mr. William Fox was engaged in the business of conducting certain moving-picture houses. He formed two corporations, one the Fox Film Corporation, which was formed prior to 1925, and the exact date of which I can not give you at the moment, and the Fox Theaters Corporation, which was formed about November 4, 1925.

Both of those corporations were formed with two classes of common stock, class A common stock, which was the stock that eventually reached the public, and which had no voting power and no control, and class B of common stock, which went into the control of Mr. William Fox.

In one company he had 100 per cent of class B stock and in the other company he had 51 per cent of class B stock.

I direct your attention in the first place to Fox Theaters, and we will show you that at a special meeting of the board of directors in

1925 Fox Theaters entered into a contract with Eiselle & King, a New York brokerage house, for them to sell 500,000 shares of the class A common stock at \$25 a share, it being understood that they should be paid \$3 a share commission therefrom for the marketing of that stock.

The agreement is here. A copy of it will be offered in the record.

I will show you that there was then drawn an agreement between Eiselle & King, this brokerage house, and some individual, evidently intended to be a male, because the word used is "his," the personal pronoun "his" is used in the agreement. But without the change of the personal pronoun there was substituted the name of the woman that was intended to originally go into that agreement, the name of one Taussig. I say that advisedly, because there is some confusion in the name of Taussig. There are several Taussigs who trade, but the statement has been made by Mr. Fox, and I think we can establish it here, that that is his daughter.

That agreement we have, and under that agreement Eiselle & King, this New York brokerage house that had made this agreement with Fox Theaters, made an agreement to divide their commission with her.

We will show you that agreement, and we will show you a photostatic copy of the check by which she received—the amount is not clear in my mind, but I think it is \$411,000, or something like that, as her share of the commissions.

I am touching the high spots as I proceed. Mr. Fox had surrounding him many of the members of his family and others closely associated with him on the board. He had the absolute control of the stocks of both Fox Film and Fox Theaters. He issued Fox Theaters stocks when and as he pleased. He gave options to himself and to others when and as he pleased, and he exercised control of the stocks as he chose in other directions.

I will show you that he desired to acquire for Fox Film the theaters known as the West Coast Theaters; that he was unsuccessful in his first effort; and that when there was a combination formed of those theaters it was known as the Westco Corporation, and he conceived a plan to get the stock of the Westco Theaters in exchange for the stock of Fox Film on the basis of 1 share of Fox Film—and I think I have the figures accurately in my head—for, I think, seventy-three one-hundredths or something like that of a share of Westco Corporation, which at that time was quoted at \$55 a share.

The question arose as to whether or not Fox Film could pay the cash for that stock, the alternative agreement given to the stockholders of Westco Corporation to take that stock in cash. There then entered into the picture the brokerage firm of Hayden-Stone, of New York, who went out and bought a great deal of the Westco Corporation stock at \$55 a share with the knowledge—and this was prior to the time that that knowledge was made public—that they could ultimately make an exchange of that stock for Fox Film stock at an advantage.

At the same time an underwriting agreement was entered into between Fox Film—and I carry a great deal of this in my head; I want to be sure of my statements—by which Hayden-Stone was to be permitted to market 125,000 share of Fox Film, which was to be offered to the public; but Hayden-Stone were to underwrite it at an under-

writing commission of \$3 a share, or, rather, a charge of \$1 and then a commission of \$2, which made it a total of \$3 a share. And Hayden-Stone, without ever having to do a stick of work in connection with the matter, because the entire stock was taken by the stockholders of Fox Film, was paid \$375,000 by Fox Film, as I picture it, for doing nothing.

I do not mean that there was not some responsibility to the underwriting, but the price at which the stock was being offered was so much lower than the then market price, that there was not any question about the stock having been taken or to be taken by the stockholders of Fox Film.

Senator WALCOTT. That would be equivalent to a 12 per cent commission on a hundred dollar par value, \$12 on a hundred dollars, or 12 per cent.

Mr. GRAY. I have made the calculation here, Senator. It was \$100 par value and 125,000 shares. That would be \$12,500,000 for the stock.

Senator WALCOTT. Yes; and \$3 is 12 per cent of 25.

Mr. GRAY. \$375,000 was the commission. It hardly amounts to 12 per cent.

Senator WALCOTT. Yes; but \$3 is 12 per cent of 25.

Mr. GRAY. Fox Film was about \$75 a share at that time on the market.

Senator WALCOTT. Oh, you said \$25 par.

Mr. GRAY. No; there was no par as to either of these stocks. I think I am correct as to that.

At the time that Hayden-Stone entered into this agreement with respect to the underwriting of this stock and knew of the exchange, they started a short sale in Fox Film, notwithstanding the fact that they were underwriting the sale of Fox Film stock to the public to the extent of these 125,000 shares, which short position was covered when they absorbed the stock of the Westco Co. that they purchased and exchanged to the Fox Film Co. for Fox Film stock, which was used for the purpose of covering their short position in the market.

That was in January, I think, of 1928. Fox Film thereafter in September of 1928 had Hayden-Stone underwrite a sale of 154,000 and some odd shares of Fox Film stock, a very small proportion of which Hayden-Stone was compelled to take up under their underwriting agreement, and in that case they were paid \$4 a share for the marketing of that stock, and for the handling of these various transactions the entire amount of money that was paid by Fox Film to Hayden-Stone, with practically no risk, and in fact an opportunity to Hayden-Stone to sell themselves the stock, was within \$9,000 of \$1,000,000 for aiding in the marketing of Fox Film stock.

In this underwriting syndicate Mr. Fox himself took an interest of 27,000 shares and our records show that he was under the agreement, paid \$3 a share for his interest in that pool for 27,000 shares interest, or \$81,000. Mr. Fox stated to me personally day before yesterday—I have all his testimony stenographically—that his check was for about, if I recollect the figure correctly, \$66,000, and not \$81,000. I make that statement in fairness to him.

At the same time, or thereabouts, that these operations took place there were three separate pools or syndicates operated by the brokerage firm of Taylor, Thorne & Co., of New York, and Taylor, Thorne

& Co. had an interest in the underwriting of Hayden-Stone, and the Haystone Securities Co., which is an affiliate of Hayden-Stone, the brokerage house, had an interest in the syndicate operation of Taylor, Thorne & Co., there being three different operations. Mr. Fox had a very heavy interest in these operations in Taylor, Thorne & Co., his interest being camouflaged by carrying it in the name of Nathaniel King and in the name of Eiselle & King, the brokerage firm, but Mr. Fox has admitted to me, and the brokerage firm when called upon to explain why they themselves as a brokerage firm were trading in this syndicate, indicated that it was Mr. Fox's interest that they were holding, and we have the photostatic copies of the checks that were paid by Eiselle & King to Mr. Fox for the profits of these operations. The figures we will give you accurately a little later.

In these syndicates it is a remarkable thing that there was no commission to be charged, at least in one of them, no managing commission, and yet out of one syndicate there was paid \$45,000 to Taylor, Thorne & Co., the managers of the syndicate, who explained that that was a bonus to their employees, for what purpose we do not know. That is to say, that there is nothing more than the explanation that it was a bonus for employees.

There was \$10,000 paid to Mr. Stevens of Stevens & Legg, who was a specialist in the stock, without any explanation of why it was paid, and I have brought Mr. Stevens here for the purpose of explaining to the committee why he, interested also as a participant in the pool and specialist in the stock, should have been paid \$10,000 for services not indicated.

I take you away from Fox Film to Fox Theaters. And remembering that Fox Theaters were under the control of Mr. William Fox, I will indicate to you a series of transactions which we will direct your attention to. Let me say that Mr. Fox came to me and stated that his difficulties were caused in his opinion—because there have been difficulties with respect to these companies that I will direct to your attention—by the operations of those in New York that desired to get control of his companies.

In the fall of 1929, when the stock-market crash occurred, there were all sorts and all kinds of litigation instituted against Fox Film and Fox Theaters, and applications made for the appointment of receivers. How that ultimately ended on April 7, 1930, I will tell you when I get to that part of the picture.

But I asked Mr. Fox on more than one occasion to give to me some indication as to where I might find any evidence of an attempt on the part of some of these people, some of the names of which he did give me, having sold, as he claimed, Fox Theaters and Fox Film short for the purpose of ruining his company, but he has been unable to the moment to give me any information that will be available for the purpose of securing any testimony.

On our own account, however, in order that there might be no question about it, we have gone into every brokerage house in New York City where we knew that these stocks were extensively dealt in and where the people that he named might possibly have done business, and we can find no evidence of any such concerted action. We find transactions; we find short sales, but no evidence of any concerted action.

But in our investigation we went into the house of Michael J. Meehan & Co., one of the houses that he indicated might have been cooperating to destroy him, and there we find a short account of 461,000 shares of Fox Theaters. We find, however, in looking into that, that Mr. Fox secured from the Fox Theaters an option on 500,000 shares of Fox Theaters stock at a price; that Mr. Fox then gave to Mr. Meehan that same option that he secured from Fox Theaters; that Mr. Meehan started operations in Fox Theaters in the market, and you have heard some of this—I am corrected and told that the operation ran to Bradford Ellsworth, whom I have also finally located, and he is here to-day, who was an operator in the Michael J. Meehan's house. However, the operation was cared for by Meehan's and appears on his books first as a small operation that I have just passed over, a 394 account, and this larger operation known as the 433 account.

Instead of taking a small short position to protect that option, which you have heard so many traders come here and tell you is the proper thing to do, in order, if the market goes down, they will be protected, and in order, if the market goes up, that they may sell to their own advantage and exercise the option, Meehan & Co. in his account sold 461,000 out of the 500,000 that they had on option.

To show that it was a pure short-trading account in which Mr. Fox not only furnished the stock on the option, but furnished stocks which I will tell about in a moment, and in which Mr. Fox had an interest in the profits of the short sale trading account, they did not seek to take the option at the price mentioned in order to cover their short sales, but, desiring to carry the stock on to a point where, in anticipation of a breaking market, they might cover to advantage, they needed to borrow 125,000 shares of stock in order to protect the maintenance of their short position, where did they get it? They went to Mr. Fox for it. Mr. Fox had Fox Film buy 125,000 shares of Fox Theaters stock from Fox Theaters, 100,000 shares at one date and 25,000 at another date; had them put in the name of Jack Leo, one of his men, and had Mr. Jack Leo on the same date turn that stock over to the Meehan concern to be used to cover their short position until they were ready to cover it in the market, using both of his theater companies for that purpose. Then, the transaction appears on the books of Fox Film as a loan of the stock to Michael J. Meehan & Co., Michael J. Meehan & Co. giving to Fox Film \$4,300,000 in cash, the usual borrowing-of-stock transaction, the same as if they were two brokers dealing with each other.

Now, then, when Fox Film paid back the first payment of \$550,000 of that loan to Meehan, none of the stock was returned. That was on April 9, 1929. When Fox Film paid back to Meehan the second payment of \$2,400,000, 75,000 shares of the 125,000 that were loaned were returned to Jack Leo. Whether we are going to be able to show whether Fox Film ever got it back or not, I am not sure, but I believe they did. I think that is the inference to be drawn.

When the final payment of \$1,350,000 was made, clearing up the \$4,300,000 loan, instead of the remaining 50,000 shares that had been loaned by Fox Film coming back to Fox Film, or even going to Leo, it was, by a bookkeeping transaction in the Meehan firm, shunted into the short account. They did just exactly as they

pleased with this stock, and it did not make any difference what they did, there was not anybody to question them.

Senator WALCOTT. Mr. Gray, who was interested with Meehan?

Mr. GRAY. I am coming to that. That pool had a number of interests in it. We will give you the entire participation, Senator.

The persons who were interested in that pool, and the amount of their participation—that is to say, the amount to which they agreed that they would become liable in the event of loss, were: J. J. Raskob, \$750,000; William F. Kenny, \$750,000; Mrs. Elizabeth Meehan, \$250,000; Joseph E. Higgins, one of the operators of Meehan's, whom you have had on the stand, \$250,000; Bradford Ellsworth, another operator who is here, \$250,000; Walter P. Chrysler, \$750,000; Nicholas F. Brady, \$750,000; and Mr. William Fox, \$750,000.

There was paid to Michael J. Meehan & Co., in managing these, \$215,306.92. I had intended to let the accountant give you these details, but I am answering your question.

There was paid to Bradford Ellsworth, for some reason, \$24,915, and, deducting those two figures from the gross profit, left a profit of \$1,937,762.46 for distribution among those who were interested in the pool.

There were trading transactions in this stock at all times. Mr. Fox had accounts in 22 brokerage houses, and in some brokerage houses as high as seven accounts. We have had to examine them all. They were in his name, in the names of all the different members of his family, and in the names of all of his employees.

In connection therewith, we will show you that in the other account, in Meehan's, the 394 account, which was a smaller account, on one day the syndicate manager gave instructions to either buy or sell—I am not going to refer to my papers to see which way it was—10,000 shares of Fox Theater stock, at the same time Mr. Fox giving the order to do just the opposite to that which the syndicate manager did, and that that trade went right from the house, through an intervening house or houses, but has been traced right through from the one house where the buy order was made, to the other house where the sell order was made, making it a pure wash sale of 10,000 shares, through five houses, in order to camouflage the transaction.

Mr. Fox said—and I think he is the type of man that will admit it to the committee if he is here—that he bought and sold his own stocks; that he manipulated them—he is proud of it—that he manipulated them on the market; that he traded and kept a market just for the purpose of keeping the price up in order that he might sell his stocks to the public; that as long as the stock exchange in New York does not see fit to interfere with it, he would do it again.

But Mr. Fox admits that he thinks short selling is a rotten thing to do, but that he does it right along, and as long as the stock exchange permits him to do it, he will continue to do it; and that when he went out of Fox Film and Fox Theaters, in April, 1930, he formed a trading corporation of his own, known as the All-Continent Corporation, and that he has very largely and heavily traded, and still does, when he can, short in that account. That appears already through the fact that when this committee first had its hearings, and I was present, we received from the New York Stock Exchange, as of the date of April 8, 1932, a stated short position, and we found a very

large position of All-Continent shares, and wanted to know who it was, and made the investigation, and it brought it back into Mr. Fox.

There are many other miscellaneous things, but I will come to one other thing Fox did. Fox traded in Loew's stock—another moving-picture house. He bought for Fox Film, from Loew's, 400,000 shares of stock, his desire being to accumulate the control of Loew's for Fox Film, Loew's being the strongest, apparently, on the face of it, and the most substantial organization of the three. I might say to you that Loew's is selling on the market at \$16 a share, while these others are selling next to nothing. By that I mean a dollar a share, or under.

He then went out into the market and bought 37,500 shares, and then started to deal in Loew's, principally on the accumulating side, until he had 660,900 shares of Loew's stock, and the most of those transactions—not all of them—appeared on the books of Fox Film, thus indicating that, for Fox Film, he was dealing in Loew's. I am not questioning that transaction as one which Fox took any advantage of to his own benefit, but Mr. Fox was dealing in Fox Theaters, and there is not a line on the books of Fox Theaters to show that he was dealing for Fox Theaters or that he had any authority to do it; that the company ever put up a dollar of money, until the point of November 19, 1929, which I will reach after I tell you what happened before that time.

Mr. Fox dealt in hundreds of thousands of shares of Fox Theaters. He claimed that he was doing it for himself, and that he was doing it for Fox Theaters. I have asked him how he could differentiate in these various accounts, in these various brokerage houses, in these numerous accounts between that which was his and that which was the Fox Theaters, and up until Wednesday afternoon he could not tell me. And yet on November 19, 1929, he had his Fox Theaters Corporation adopt a minute approving his dealings in Fox Theaters for Fox Theaters—and bear in mind that this was after the crash and when the stock had dropped in price—and had Fox Theaters take off his hands 210,000 shares of Fox Theaters, he claiming, and his board of directors ratifying it, that those deals had been for Fox Theaters.

Senator COUZENS. Have you any record at that time as to how many stockholders there were?

Mr. GRAY. That is impossible for me to tell you, although Standard Statistics might give it. There were many stockholders in the public, but they held all class A stock. They had no voting power and no control of any kind whatsoever. That was all in one man, William Fox.

Senator COUZENS. As I understand, you do not know how many stockholders there were or the amount of stock held outside?

Mr. GRAY. I can not tell you now. We will endeavor to get that information for you during the course of the day.

Senator WALCOTT. What was the market price and the purchase price of that transaction?

Mr. GRAY. The difference is what I can give you, and probably I can give you the exact figures. We can give you the market on the day, the day of the minute. I will answer your question, Senator. These 210,300 shares cost \$6,153,774.33, or an average price of \$29.02. The market value on November 19, 1929, had a range from

13 $\frac{3}{8}$  to 13 $\frac{7}{8}$ . Taking the average between those two, the loss to Fox Theaters in taking over its own stock on that day—that is, the difference between what they paid Fox for it and what they assumed on their books and what they could have bought it in the open market for—was \$3,314,724.33.

The CHAIRMAN. That represents the loss to the stockholders by that transaction?

Mr. GRAY. The stockholders of Fox Theaters, by that transaction.

Senator WALCOTT. They were paying about 120 per cent above the market price for it—29 as against 13.

Mr. GRAY. About 125 to 127 per cent above the market price; he claiming, of course, and having his directors ratify it, that he had been dealing for Fox Theaters and there was not a line on the books. I call your attention to the fact that when he was dealing with Loew's for Fox Films, the entries went on the books. As a matter of precaution on the same day they adopted a minute ratifying his handling of Loew's stock.

Senator WALCOTT. Even if that had been true it would not justify the purchase by Fox Theaters at 125 per cent above the market.

Mr. GRAY. It was not alleged to be a purchase. It was alleged to be an adjustment and settlement of his transactions on behalf of Fox Theaters, but no man in the world except him knew whether he was buying for Fox Theaters or himself, and this was right after the crash. What might have happened if there had not been a crash, might have been an entirely different story.

Senator WALCOTT. As an officer and trustee for his stockholders, does it not mean that he is entirely responsible for that loss to the stockholders?

Mr. GRAY. In my opinion, he is, and he is afraid he is, too.

Senator COUZENS. Have you any record of what that stock cost him, when he turned it over to Fox Theaters?

Mr. GRAY. We have photostatic copies of all his brokerage accounts, and they have all been analyzed.

Senator COUZENS. Have you summarized them?

Mr. GRAY. They have been generally summarized. I have given you the cost price of that. The cost price of that stock averaged 29.2.

Senator COUZENS. I mean in dollars, what was the aggregate?

Mr. GRAY. I will give you that, too.

Senator COUZENS. You need not repeat that. I recall it.

Mr. GRAY. \$6,153,774.33.

Along this line, I said to the committee yesterday, and I say now, that we have been able to see Mr. Fox's New York State income-tax report. Though the State income tax which he pays is different from that which he pays to the United States Government, the income-tax report is made up in the same way as the United States Government income-tax report. We have been able to trace—not all, because we have not had the time, but numerous transactions which entered into these things that were dumped—and I use that word advisedly—on Fox Theaters itself. We have been able to trace them from the dumping to Fox Theaters, back through the brokerage houses, so that we thoroughly identify the transaction as being one which Fox Theaters took over, and we have been able to find about six instances that we can definitely say—and, therefore,

we assume that there are many others—he entered as a credit; that is, shows as a loss on his own personal income-tax return. In other words, as far as Fox Theaters were concerned, he said, “These were your dealings. Pay me the loss, and you assume it.” But when he reported to the Government, he said, “They were my dealings. I lost the money. I want credit for it.”

Senator COUZENS. You mean when he reported to the State?

Mr. GRAY. To the State. In that connection, Mr. Fox was under subpoena, and he came into my office with his counsel, and, as his counsel said to the committee yesterday, spent from half past 10 on Wednesday morning until the middle of the afternoon with me, answering questions and making statements. We reached the point where I asked him about his income-tax return.

Senator COUZENS. To whom?

Mr. GRAY. I asked him this about his income-tax return to the United States Government, and he said to me that those things were all handled by his accountants, and he could not tell me anything about them. I suggested to him that his income-tax return indicated—and pointed out to him some of these transactions—that he had sought credit—and I was then talking about the United States income-tax return, which I have not yet seen, but I suggested then to him that his income-tax return—because I knew what his income-tax return to the State of New York showed—established a loss in these things which he had turned over to Fox Theaters. He said he did not know whether it did or not; that if it did, it must have been his accountant's mistake. I asked him as to who his accountant was, and he indicated it was Mr. Leitstein, one of his confidential men. I asked him who the accountant was that made up the statement for the Fox Theaters, to get them to take over this stock, and he said it was Mr. Leitstein that did that. So, we went up against the position of having the accountant who did one, do the other for Mr. Fox. I said, “I would like to have Mr. Leitstein present to-morrow morning, Thursday morning, in Washington, at 10 o'clock, with your income-tax returns, that is, your copies thereof, and your other records upon this question.” We were getting along very agreeably. I said, “Will it be necessary for me to subpoena him, or will you have him there to-morrow at 10 o'clock?” He and his counsel—and I have, on occasions, to take the word of people—said that he would be here yesterday morning at 10 o'clock, and at half past 11 on Wednesday night one of the accountants talked to Mr. Leitstein, and Mr. Leitstein definitely assured him that neither he nor any of his records would be in Washington at 10 o'clock. That advice came to me before midnight, and before I left New York, and I had two men ready to serve Mr. Leitstein at the break of day on Thursday morning, but Mr. Leitstein has mysteriously disappeared, and he has never been found since. That is the status of Mr. Leitstein, Mr. Fox's confidential accountant.

We reached the point where, following Mr. Fox's various vicissitudes from November and December, 1929, down to April, 1930, as a result of the desire of Mr. Harley Clark, who has also broken four or five appointments with my men, and then got away from New York before he could be subpoenaed and went to Chicago, whom I sent a subpoena to Chicago for, but he could not be found in any of

his usual haunts, and I talked to his personal private secretary over the long-distance phone from New York myself, as a final attempt to get hold of him, on Wednesday afternoon, and explained to her that I wanted Mr. Harley Clark in Washington Thursday morning at 10 o'clock. He might be back, and he might not be back, and if he came back he would get my message. I have heard nothing from Harley Clark, but I can prove all the things I am about to tell you.

Senator COUZENS. Who is he?

Mr. GRAY. Mr. Harley Clark was then an owner of a number of theater groups that ultimately became merged in another corporation, known as the General Theaters Equipment (Inc.), that are now in the hands of a receiver in New York City. Mr. Harley Clark, owning General Theaters Equipment in April of 1930, made an offer to Mr. Fox—there was an agreement entered into. Whether I am going to be able to give you the written agreement touching the subject or not I do not know. I think I know perhaps where it is available. I will not say definitely that I can, though. There was an agreement entered into, the sum and substance of which was—because it was carried out—that Mr. Fox was paid \$15,000,000 by Mr. Harley Clark for his B stock in Fox Films and Fox Theaters. Mr. Harley Clark borrowed that \$15,000,000 on those stocks from the Chase National Bank. It was immediately paid back to the Chase National Bank as soon as the financing was completed. Mr. Fox got \$15,000,000 in cash, and he got an obligation of the Fox Film Co., or the General Theaters Equipment, for \$3,000,000 in addition, which has since been paid. His counsel was given \$1,000,000—not me. I did not represent him. His friends and associates and family that surrounded him were given varying bonuses. Jack Leo got half a million dollars; another one of the Leo's half a million dollars. What for? Just for bonuses. Weren't they being paid salaries? Yes. How much? Fifty thousand dollars a year. But these were just bonuses.

Mr. Fox was nominally employed, but has never since done any work for five years, by Fox Film, because we then have all these organizations controlled by one organization, and they acted in the name of one when they wanted, and in the name of another when they wanted. He was employed for five years at the rate of half a million dollars a year. That agreement was on April 7 or 8, 1930, and since then Mr. Fox has been paid, for the two years he has done nothing, half a million dollars a year.

Mr. Fox was also given an interest in the financing. That is to say, if something in the way of "gravy" could be gotten out of the financing, Mr. Fox was to have a 10 or 20 per cent interest—at least a 10 per cent interest, and probably a 20 per cent interest if he could get it. The financing plan was this. It is a little involved—

Senator COUZENS. Did you say the \$15,000,000 was originally secured from the Chase National Bank by Harley Clark?

Mr. GRAY. Yes.

Senator COUZENS. For the purpose of paying Fox?

Mr. GRAY. For the purpose of paying Fox, cash.

Senator COUZENS. What security did Clark put up for the \$15,000,000?

**Mr. GRAY.** B stock of these two corporations. In other words, it passed through Harley Clark and the Chase National Bank, and \$15,000,000 came back.

**Senator COUZENS.** Do you know whether the Chase National Bank had any other securities than the B stock of Fox for the \$15,000,000 loan?

**Mr. GRAY.** They had the note of the General Theaters Equipment Co., which at that time was good, but that \$15,000,000, Senator, was paid back within a few days.

**Senator COUZENS.** But they had the General Equipment note and the Fox Theatre B stock?

**Mr. GRAY.** The Fox Film and the Fox Theatres B stock for security.

**Senator WALCOTT.** The B stock was the voting stock?

**Mr. GRAY.** The B was the voting stock.

**Senator COUZENS.** Did it have any market value at that time?

**Mr. GRAY.** No, sir. It never was marketed.

**Senator COUZENS.** How would the Chase National Bank figure its value when it made that \$15,000,000 loan?

**Mr. GRAY.** I am sorry, Senator, but I can not tell you what thought they had in their mind, except that I will show you the developments, and you may draw your own inferences from that.

Fox Film owed \$108,000,000—let me say that Fox Film and Fox Theatres were at one time prosperous concerns, and Mr. Fox—possibly I should not characterize him, but he has been publicly characterized as a genius, and publicly characterized as a dreamer. At any rate, he involved Fox Film in obligations amounting to some \$75,000,000, in the purchase of various organizations throughout this country, and some \$20,000,000 in the purchase of organizations in England, without, apparently, any arrangement made for financing them, and thus stepped into the maelstrom of trouble that he got into at the end of 1929 and the beginning of 1930.

**Senator WALCOTT.** What is his origin? Where does he come from? What is his nationality?

**Mr. GRAY.** I am sorry, Senator. I would not want to answer that question, because it is a personal one with respect to Mr. Fox, unless I knew, and I do not know.

**Senator WALCOTT.** I was wondering whether he is an American citizen. It does not matter.

**Mr. GRAY.** I can not answer that question with any accuracy, Senator, and therefore I would rather not attempt to answer it.

**Senator WALCOTT.** It is not important.

**Senator COUZENS.** Is that the first name he has had?

**Mr. GRAY.** It is the first name I know him under, Senator.

The financing was done in this way: \$55,000,000 of short term—that is, one year—6 per cent notes were issued by Fox Film, and taken at a slight discount by Halsey, Stuart & Co. Forty-eight million dollars was still required. That \$48,000,000 was raised in this manner: 1,600,000 shares of Fox Film were issued and sold by Fox Film to Fox Theaters for 660,900 shares of Loew's stock that you have heard me mention heretofore as having been bought by Fox for them, and which then had a real value.

There were other considerations that entered into it, because the Loew stock was worth more than the Fox Film stock. There was

an adjustment of some accounts involving \$27,000,000, and the passage of the \$8,000,000 in cash, and some bookkeeping entries to the extent of \$19,000,000, but we can let that pass out of the picture and follow the history of the 1,600,000 shares of Fox Film stock. That stock was valued at \$30 a share. That market for it on the day the transaction took place was about 47 or 48. So that Fox Film gave to Fox Theaters, for Loew stock—I will go slowly with it, so that you can follow it—1,600,000 shares, plus other considerations, of Fox Film stock, at \$30 a share. Immediately Fox Theaters sold that 1,600,000 shares of Fox Film stock to General Theaters Equipment, the Harley Clark group, for \$30 a share. Of that 1,600,000 shares, 1,000,000 remained with the General Theaters Equipment, and was ultimately marketed, and we are not concerned with that for the moment. I do not know whether they have it. I can not say. There was no distribution of it; 200,000 of the remaining 600,000 were handed to Halsey, Stuart at \$30 a share.

Senator COUZENS. Is that the concern that has the famous "Old Counsellor"?

Mr. GRAY. Yes, sir.

Senator CAREY. They recommend to the widows and orphans what to buy.

Mr. GRAY. Very frequently. I am not criticizing them in this transaction, except to indicate to you that besides buying \$55,000,000 worth of notes they got, in addition to that, 200,000 shares of stock at \$30 a share, which was then worth on the market, \$48 a share, thus getting a profit of \$18 a share on 200,000 shares. A matter of calculation shows that to be \$3,600,000. Two hundred and forty thousand shares of stock were distributed among a group consisting—I think I can name them all offhand—of Chase Securities Co., Pynchon & Co., West & Co., Hammond & Co., and Eric & Dreviers.

That group did some other financing, because, you see, they needed altogether \$103,000,000, while \$55,000,000 came from Halsey, Stuart. In consideration of that other financing, which I will develop for you in a moment, 240,000 shares of that 600,000 were handed to that group at \$30 a share, thus giving them a profit of \$18. When I say giving them a profit of \$18, I am approximating, because the market had a range that day. It gave them a profit of that much per share on 240,000 shares, or something over \$4,000,000.

Of course, the real value of that stock at that day, had it been sold outright, would have made for General Theaters Equipment, or for Fox Film, or for Fox Theaters, at any place it happened to stop before it got that far, that difference of seven million and odd dollars, which went to these financiers.

Meanwhile, the Government stepped in and raised a question about Fox Film's right to hold 660,900 shares, under the Clayton act, of Loew stock, and an action was instituted in the courts. As a result of it, a consent decree was entered. A new corporation, called the Film Securities Corporation, entered into the picture, and the Loew stock was put in the name of the Film Securities Corporation, and, as a part of the necessary financing, the Film Securities Corporation issued debentures amounting to \$20,000,000; first preferred stock amounting to \$10,000,000 par value; some common stock that had the voting control, and some four or five hundred thousand shares of common stock that had no voting control.

All of that went into the hands of that group that did the financing and got 240,000 shares of Fox Film. Loans were made practically to the full value of the debentures, and the first preferred stock, which money, of course, ultimately found its way into this financing, and paid the debts of Fox Film.

Senator WALCOTT. Do you think that was a consideration of these bonus stocks?

Mr. GRAY. It was all practically one transaction—that the bonus was given to them as a consideration for the financing? There is no doubt about it.

To complete the picture, four of the concerns that entered into that venture have since passed into the great beyond of business, having ultimately and absolutely failed.

Senator COUZENS. Halsey Stuart is not one of them.

Mr. GRAY. No. Halsey Stuart was in the group on one side, but West & Co., Pyncheon, Hammond, and—I will not name the other group—and Chase Securities. Pyncheon has failed. West has failed. I am corrected. Therefore, I will retract my statement. I had been so advised. Probably I had misunderstood. But two of them, West & Co. and Pyncheon, have failed. Pyncheon was the concern through which practically all of the trading was done at any time that they wanted to keep up the market in any of these securities.

To complete the picture, I will jump a year ahead, and indicate to you that when the \$55,000,000 1-year debentures became due, Halsey Stuart passed out of the picture, and they were assumed by the other group. The 240,000 shares of Fox Film stock that that group got were marketed immediately or continuously from that date on until they were disposed of at market prices. I am advised that Halsey Stuart are still holding their 200,000 shares, and they never marketed them.

Senator COUZENS. Are they a corporation or a partnership?

Mr. GRAY. I can not answer your question, Senator, except that I may say this to you. They are a bond and investment house.

Senator COUZENS. Yes; I know, but I was wondering whether they were incorporated or a partnership?

Mr. GRAY. I will ascertain that for you to-day, and put it all in the record. But if they are members of the New York Stock Exchange, they may not be a corporation. They must be a partnership, or individual. That is the picture, and we can prove it by all our documents.

If the committee desires the time to be shortened, I will offer in evidence certain documents to establish some of those spots that I have indicated to you, and I will then proceed to call other witnesses to develop certain angles of this which I have talked to you about. If the committee desires an absolute demonstration of the correctness of these figures, of course, that will take some time. I will put Mr. Watson on the stand, under whose supervision this work was all done, and will give you, figure for figure, the facts.

May I inquire, Mr. Chairman, as to whether you want me to do that in detail, or shall I offer these various documents? Of course, if Mr. Fox is able to be here this afternoon, I will be very glad not only to examine him, but permit him to make any statement he wants, if the committee approves, with respect to the matter. But

may I suggest, Mr. Chairman, that this statement has been made on the record. I might now offer to you these photostatic copies of checks, agreements, documents, and papers, which will corroborate the story, and then I have Mr. Hoyt here from Hayden-Stone; I have a representative from Taylor-Thorne & Co., where the syndicates were operated. I have Mr. Bradford Ellsworth here, from Meehan's.

I have here Mr. Best, a member of the firm of Meehan & Co., whom I would like to put on the stand, and I have several others here to take up these various angles that run away from the Fox end of it, for the purpose of proving them to you.

Senator COUZENS. May I ask counsel if he anticipates that any of these witnesses he has here will contradict or deny any of these statements he has made?

Mr. GRAY. I do not, sir.

Senator COUZENS. In your private conversations with them, they have not disagreed with your statements?

Mr. GRAY. No; but there are some witnesses, Senator, such as Mr. Stevens, of Stevens & Legg, who was the specialist in the stock of Fox Film, while it was being traded in the syndicate, and who was also a participator in the syndicate, and who got \$10,000 for something besides. I met him only yesterday afternoon and I have not yet asked him as to why. It is not a matter of agreement or disagreement, but it is a matter of my wanting him to tell the committee why those payments were made to him.

Senator COUZENS. Mr. Chairman, I suggest that Mr. Stevens be put on the stand.

The CHAIRMAN. Before that, there is a request here from counsel that certain papers be put in the record.

Mr. GRAY. I have certain papers which I think should be put in the record to corroborate the statement I have made.

The CHAIRMAN. If there is no objection, it will be so ordered. That will complete the record on that.

Senator WALCOTT. Mr. Chairman, before we get to the next witness, I have two questions I would like to ask. One was with respect to this operation through the purchase of Loew's stock. Was that coincidental with the short-selling pool?

Mr. GRAY. There was no short-selling pool in Loew's, Senator Walcott.

Senator WALCOTT. I understand.

Mr. GRAY. I can give you the dates. That is the best way to answer the question for you.

Senator WALCOTT. It would be interesting to know the relationship between these two operations, and as to how far the price of one was rigged against the company to be purchased. Secondly, were there any statements—you said that there was a period there when there were certain statements put out booming the film business. Were there any statements put out coincidentally with the advance in Fox Films, favorable to Warner Bros?

Mr. GRAY. Favorable to Fox Films?

Senator WALCOTT. Well, to the whole business.

Mr. GRAY. Mr. Fox—

Senator WALCOTT. I have been told—

Mr. GRAY. I have some abstracts here from some statements made by a gentleman speaking for Mr. Fox from the moving-picture platforms of the theaters, and the dates of them, to show you also what he said at that time; but, Senator, there is no association between the purchase of the Loew stock by Fox for Fox Theaters, and any of the short selling which was in the Fox Theaters stock and not in the Loew stock. The Loew stock appears only as an incident, in their endeavor to get control, and in their using of the Loew stock, which was owned by Fox Theaters, in the refinancing of the whole proposition.

Senator WALCOTT. That, you think, was not used in order to depress the stock—

Mr. GRAY. No; Loew's stock was not used in any way to affect the question of the market.

Senator WALCOTT. I think that there ought to be developed for the record—

Mr. GRAY. If the date is material, on the matter of Loew's, on March 28, 1929, Fox Theaters purchased from the stockholders of Loew's themselves 400,000 shares of Loew stock at a price of \$50,000,000. That was the nucleus of that accumulation of stock. Then we have here records from the Fox Theaters books, showing what items of entries were made with respect to the purchase of other stocks and the sales of some of the Loew stocks, and other financial charges that entered into the transaction, showing the entire dealings. They have been analyzed to show the accumulation of 660,900 shares of the stock which was made one of the bases that was used for the purpose of financing the new corporations.

I might say, too, something that I omitted, and a thing which is important, because it involved the reports that were made by this new group. I believe I could even analyze them for you myself, but it is a matter of accounting, and I would very much prefer an accountant to tell you about that. But on April 7 or 8, 1930, this new group took over Fox Films and Fox Theaters. Fox Films, as of the end of 1929, were carrying on their books a certain surplus and a certain reserve. To give you quickly the picture, at three different periods of time statements were given out with respect to the financial position of Fox Films at the same period of time, to wit, the end of December, 1929, and they vary with respect to the statement of the reserve and the surplus to the extent, in one case, of at least nearly \$6,000,000. In other words, they gave out a statement—it did not suit their purpose, and they gave out another. That did not suit their purpose, and they gave out another one. Then they gave out an earnings statement for the first six months of 1930, in which they carried into the reserves certain matters that they designated as extraordinary expenses, so that they might not show, and therefore reflected in their earnings statement, which, of course, went before the public, who were buying and selling all these stocks—reflected earnings of a certain number of dollars, whereas, as a matter of fact, the sheets were criticized by a member of the New York Stock Exchange at that time as being untrue, incorrect, and, if they had been true or correct, his statement was that the earnings would show themselves to be in cents, and not in dollars.

That man was John W. Pope, who is now dead. Mr. Pope was a statistician, and I think was then, and even in his memory is recog-

nized to-day as one of the ablest statisticians in the New York district. He had a mind for analyzing situations, and he studied the situation, and he sent a private wire. This is all public record now, and, therefore, I might refer to it. He sent a wire to the members of the brokerage house of Eastman, Dillon & Co., with which he was connected, all over the country and to his customers and clientele, to sell their Fox stock; that he did not like the looks of the picture; and that their statements did not reflect the true condition. For that, charges were brought against him before the New York Stock Exchange. I have the record of that case here. I have those various statements that were issued to the public, and I have Mr. Pope's defense. He went before the stock exchange and proved his case and was exonerated. All that shows the frenzied financing, and apparent financing, and the information that is given to the public about it, and when you get all through with it, you come to the conclusion that the public never knows anything about what is going on.

Senator CAREY. The stock exchange still continued to list the stock, did it?

Mr. GRAY. The stock exchange still continued, and does continue, to list the stock.

Mr. REASS. Mr. Chairman—

Mr. GRAY. I am not through presenting my case, Mr. Reass.

Mr. REASS. I want to address myself to the chairman.

Mr. GRAY. If the Chair desires me to interrupt my presentation and my work and listen to you, I will not object to it.

Mr. REASS. If the chairman says he does not want to hear me, that is the end of it.

Senator COUZENS. I suggest that Mr. Gray finish his story first.

The CHAIRMAN. Mr. Reass has something regarding which he desires to address the Chair.

Mr. REASS. I understood Mr. Gray was making a presentation of facts that he intended to prove.

The CHAIRMAN. If you are addressing yourself to the proceedings here and what Mr. Gray is saying, you will not be heard at this time. I thought possibly you had something to report about Mr. Fox's absence. That is why I wanted to know the subject matter. If you have nothing, just keep your peace until we get through. Can Mr. Fox be here this afternoon?

Mr. REASS. I have been here since this morning, and all I got was the report of the doctor when I got here.

The CHAIRMAN. We are conducting this hearing. You be seated.

Mr. REASS. Yes; I am sorry.

The CHAIRMAN. Go ahead, Mr. Gray.

Mr. GRAY. Mr. Stock desires to give me a full report from the doctor now, if the committee will permit me to find out something about it.

(At this point Mr. Gray conferred with Mr. Stock in a low voice, at the conclusion of which the following occurred:)

The CHAIRMAN. Mr. Fox will have an opportunity to answer all this.

Mr. REASS. You do not know what I am going to say, Senator. I was going to make a request of you. If you do not want to hear me, that is the end of it.

The CHAIRMAN. I asked you what the subject matter was, and you rambled off—

Mr. REASS. There is no use of your getting abusive about it.

The CHAIRMAN. You made a stump speech here yesterday. We do not want another to-day. If you have a request to make, make it in 10 words. Make it and let us see what it is.

Mr. REASS. With that mental attitude, what can I expect in the way of a favorable and judicial consideration of the matter I want to present? I am here merely as counsel. Mr. Fox is ill. Unfortunately, he can not come here. He made a complete statement to Mr. Gray—

The CHAIRMAN. We are going to get a speech again, are we, instead of a request?

Senator TOWNSEND. What is your request?

Mr. REASS. My request, Senator, was this. In view of the fact that what has been said here is in the nature of an opening statement of counsel, and in view of the fact that the widest kind of publicity is given to it, will you hear a statement from me with respect to some of these matters which have reference to Mr. Fox, and which I will be able to show—for instance, with respect to this 201,000, I want to draw your attention to what he told me about that—

Mr. GRAY. Mr. Chairman, we are not trying Mr. Fox. We are simply putting a state of facts on the record.

Mr. REASS. That is all I wanted to ask. If you do not want to hear me—

The CHAIRMAN. The request will not be granted at this time.

Mr. GRAY. I have just received a report, not only from my own physicians—that is, those who acted on behalf of myself as counsel for the committee—but Mr. Fox's physician also, and they all say that they find nothing the matter with Mr. Fox now; that he had a good night's rest, and they see no reason why he could not come here; that the only thing that they know in his own statement that he is dizzy, but they find no indications of it.

Mr. REASS. I have a statement here, Mr. Gray, in writing.

Mr. GRAY. That just came to me a few minutes ago.

Mr. REASS. I got this this morning from the doctor.

Mr. GRAY. I got this just now from your doctor, so you are two hours earlier than I am.

Mr. REASS. That may be so. I expected that.

The CHAIRMAN. Proceed, Mr. Gray.

Mr. GRAY. I will offer to the committee, and ask that it be placed upon the record, a copy of an agreement dated November 11, 1925, between the Fox Theaters Corporation and John C. Eisele and Nathaniel King, copartners doing business under the name of Eisele & King; Taylor-Thorne & Co.; and Willington & Co., being the three concerns that marketed the original marketing of 500,000 shares of stock of the Fox Theaters Corporation. I have referred to that and explained what it is. I will not read it, unless the committee desires me to.

(The document referred to is as follows:)

This agreement, made the 11th day of November, 1925, by and between Fox Theaters Corporation, a corporation organized and existing under and by

virtue of the laws of the State of New York, hereinafter designated as the "corporation," party of the first part, and John C. Eisele and Nathaniel King, copartners doing business under the firm name and style of Eisele & King; Taylor, Thorne & Co.; and Wellington & Co., hereinafter designated as the "brokers," parties of the second part, witnesseth:

Whereas the corporation has an authorized stock consisting of 4,000,000 shares without par value, divided into 3,900,000 shares of class A common stock without voting power, and 100,000 shares of class B common stock with voting power, but identical with respect to rights to dividends, all as more particularly set forth in the certificate of incorporation; and

Whereas the corporation has authorized the sale of 500,000 shares of said class A common stock to the brokers at \$25 per share in the manner hereinafter specified, under which said brokers have an option to purchase said 500,000 shares of stock, on the terms and conditions hereinafter set forth, it is, in consideration of the premises hereof and of \$1 to each of the parties hereto by the other in hand paid, receipt whereof is hereby acknowledged, agreed as follows:

First. Corporation hereby grants to the brokers the exclusive option to purchase all or any of 500,000 shares of its class A common stock, at the price of \$25 per share, on the terms and in the manner hereinafter set forth.

Second. The option and right herein granted to the brokers shall be in force and effect to December 15, 1925, only. If at the end of said period the said brokers shall not have purchased the said full 500,000 shares of stock, then and in that event the said brokers shall be entitled to only such number of shares as they shall have actually purchased up to the expiration of the said period, at which time all rights and options granted herein to said brokers shall cease, terminate, and come to an end, without further act of any kind, nature, or description on the part of either party hereto. The corporation will not issue any stock in addition to said 500,000 shares of class A stock, and the shares of class A and class B common stock issued or to be issued in payment for its properties upon its organization, without the written consent of the brokers during the said option period.

Third. The brokers in selling to the public shares of stock purchased hereunder shall offer in all advertising announcements the full 500,000 shares of stock to the public at an initial price of \$25 per share, without reservation or limitation. All advertising matter, announcements, and publicity shall be issued and paid for by the brokers in connection with the sale of said shares of stock to the public, and the brokers agree to pay all expenses in connection with the sale of said stock to the public.

Fourth. As and when the said brokers shall receive payment for said shares of stock they shall deposit to the credit of the corporation with the Bankers Trust Co. at No. 16 Wall Street, in the city of New York, against the delivery by it of said shares to them, the amount of such payment to which the corporation is entitled hereunder, to wit: \$22 net per share, said brokers retaining out of such gross payment of \$25, \$3 commission per share to which the brokers shall be entitled; it being agreed that with reference to any funds that shall be received by the brokers in connection with the sale of such stock to the public, that the relationship between the brokers and the corporation shall not be that of debtor and creditor, but that such funds to the amount of \$22 net per share shall be held by said brokers for the benefit of the said corporation as a trust fund which shall not be commingled with the general funds of the brokers, and until deposited with said Bankers Trust Co. as aforesaid, the proceeds realized from the sale of said stock to the public shall be regarded as trust fund only in the hands of said brokers, for the sole use and benefit of the corporation.

Fifth. The corporation shall not issue any stock in addition to the said 500,000 shares of the class A common stock, and the shares of class A and class B common stock issued or to be issued in payment for its properties upon its organization, without the written consent of the brokers during the period of one year following the date hereof, at a price to net the corporation less than \$25 per share.

Sixth. It is specifically understood and agreed between the parties hereto that the brokers have entered into this agreement in reliance upon the performance of a certain agreement dated November 10, 1925, between the corporation and William Fox for the transfer to the corporation of the stock and other properties therein designated upon the terms therein set forth.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

FOX THEATERS CORPORATION,  
By WILLIAM FOX.  
EISELE & KING,  
By NATHANIEL KING.  
By JOHN C. EISELE.  
TAYLOR, THORNE & CO.,  
By GEOFFREY H. CONNELL.  
WELLINGTON & CO.,  
By H. G. WELLINGTON.

Mr. GRAY. Accompanying that is another agreement, of which I will offer a copy, between these three concerns that were doing the marketing—namely, Eisele & King, Wellington & Co., and Taylor-Thorne & Co.—and Carolyn Leah Tauszig, which was an agreement under which they were to pay, from the commissions that were earned or, rather, we will put it this way, that the commissions that were earned were to be distributed as follows: Eisele & King, 45 per cent; Taylor-Thorne & Co., 20 per cent; Wellington & Co., 10 per cent; and Carolyn Leah Tauszig, 25 per cent.

I direct the committee's attention to the fact that though the name of Carolyn Tauszig appears in the agreement, she did not sign it, nor did anybody else on her behalf, and that she is referred to as one of the male gender throughout the entire agreement. I mentioned the fact that she is his daughter.

(The document referred to is as follows:)

Memorandum of agreement made the 11th day of November, 1925, between Taylor, Thorne & Co., party of the first part; John C. Eisele and Nathaniel King, partners as Eisele & King, party of the second part; Wellington & Co., party of the third part; and Carolyn Leah Tauszig, party of the fourth part, witnesseth:

Whereas the parties of the first, second, and third parts are members of a syndicate holding the option until December 15, 1925, to purchase all or any of 500,000 shares of class A common stock of Fox Theaters Corporation, and desire the party of the fourth part to join in a syndicate to deal in, purchase, sell, and acquire shares of stock of said Fox Theaters Corporation, and to lend his credit to said syndicate in the manner hereinafter provided; and

Whereas the party of the fourth part is desirous of entering into such syndicate, it is agreed among the parties hereto as follows:

First. That the commissions to be earned by the parties of the first, second, and third parts as a result of said option on 500,000 shares of class A common stock of said Fox Theaters Corporation, shall be shared among the parties hereto in the following manner:

The said Eisele & King shall receive 45 per cent thereof;  
The said Taylor, Thorne & Co. shall receive 20 per cent thereof;  
The said Wellington & Co. shall receive 10 per cent thereof; and  
The said Carolyn Leah Tauszig shall receive 25 per cent thereof.

That the said payments shall be made as and when same are received from the proceeds of sale of said stock to the public. That as against the gross amount of commissions earned in said syndicate, there shall be charged only the actual disbursements of the syndicate involved in the sale of said stock to the public which shall be reasonable in amount, including advertising, publicity, and legal expenses.

Second. That the parties hereto shall each contribute to a fund a sum equal to 50 per cent of the total amount of the commissions distributed among them, with which fund the parties hereto shall acquire and deal in class A common stock of the said Fox Theaters Corporation, and shall for a period of six months from the date of acquisition of the first shares of stock acquired under this agreement, continue to deal in, purchase, sell, and acquire said shares of class A common stock of said Fox Theaters Corporation, but shall not at any time have to their credit more than 50,000 shares.

Third. Eisele & King and Taylor, Thorne & Co. are to be the joint managers of the account and may buy, sell, loan, borrow, or otherwise trade in the stock, except that the other parties hereto shall daily receive reports of the trading transactions involved herein, and neither Eisele & King nor Taylor, Thorne & Co. shall be held accountable except for lack of good faith. At the termination of the account the profit or loss shall be divided pro rata among the participants in the proportion which their participations bear to the aggregate of all participations, and any unsold stock remaining in the account at the time of dissolution by reason of termination thereof, shall be distributed among the participants in like manner upon payment by them of their pro rata share of the cost thereof. The parties hereto shall each take up on demand of said Eisele & King or Taylor, Thorne & Co. at any time his or its pro rata share of the stock which has been accumulated on balance for the account, and in any event agrees to supply a sufficient margin at all times to enable the syndicate to carry the pro rata share of the stock on hand of each member thereof.

Fourth. Nothing in this agreement shall be construed as making the participants partners with the managers or with one another, nor shall any participant be liable for an amount of stock greater than the amount of his participation as expressed in this acceptance of this agreement, or for an amount of money greater than the cost of his participation at the average cost price to the syndicate.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

TAYLOR, THORNE & Co.,  
By GEOFFREY H. BONNELL,  
EISELE & KING,  
By \_\_\_\_\_,  
WELLINGTON & Co.,  
By WELLINGTON & Co.

Mr. GRAY. In connection with that, I will place upon the record a photostatic copy of a check dated January 7, 1926, check No. 3453, on the Mechanics & Metals National Bank of the city of New York, drawn to the order of "Caroline Leah Tauszig," for \$411,185.37, signed "Taylor, Thorne & Co." who had charge of this distribution; and the indorsements thereon being "Caroline Leah Tauszig," and then underneath it, "For deposit only, Mona F. Tauszig."

(The document referred to is as follows:)

No. 3453.

NEW YORK, January 7, 1926.

THE MECHANICS & METALS NATIONAL BANK OF THE CITY OF NEW YORK  
TAYLOR, THORNE & Co.

Pay to the order of Caroline Leah Tauszig.....\$411,185.37  
the sum of \$411,185 and 37 cents.

TAYLOR, THORNE & Co.  
(Indorsements on back of check:) Caroline Leah Tauszig. For deposit only.  
Mona F. Tauszig.

D—Received payment—D through the New York Clearing House, Jan. 9, 1926. The Colonial Bank, N. Y. 102d St., branch D.

Mr. GRAY. I will need from Mr. Fox an explanation of the relationship, because he has stated Mona F. Tauszig is his daughter also, and whether there are two separate daughters, or whether they are one and the same, we do not know. Mona Fox is the name in which he carried a very large number of his brokerage accounts.

Senator COUZENS. Have you examined the New York State income-tax returns in this case, or have you looked into them?

Mr. GRAY. This is back in 1925. The answer to your question directly, Senator, is no. In the less than 2 weeks or 10 days we have had, we would like to have gone a great deal further in this matter as to detail, but we have done the best we can.

Senator COUZENS. I desire to announce at this time that when this committee has a full meeting I will enter a motion to request the submission to this committee of all the income-tax returns of the individuals involved in this matter.

The CHAIRMAN. Before putting the motion—

Senator COUZENS. I do not desire to have it put now.

The CHAIRMAN. I may say for your information that I went over with the drafting clerk this morning pretty carefully the wording of our resolution, and he is of the opinion that we have plenty of authority, under our resolution, to go into these matters.

Senator COUZENS. I think that is quite correct, because I was a party to helping to draft the income-tax laws, and I know that is possible.

The CHAIRMAN. I am speaking of the resolution under which committee is operating here, which he drafted. He insists that this committee has ample authority to go into that matter, and the motion will be placed in the record.

Senator COUZENS. We would have to make a request on the Treasury Department to supply the information we desire, and that was the motion I desired to enter.

Mr. GRAY. I will offer, together with those other papers, a copy of the operations and distributions of the profits among these three concerns, and Carolyn Leah Tauszig, showing the amount of the profits and the distribution to her.

(The statement referred to is as follows:)

(Taylor, Thorne & Co., Eisle & King, Wellington & Co., and Caroline Leah Tauszig)

#### SCHEDULE 2

#### *Statement of distribution of profit from syndicate operations in Fox Theaters Corporation stock*

##### TAYLOR, THORNE & Co.

Commission of \$3 per share on allotment of 89,000 shares.....	\$267, 000. 00	
20 per cent of profit in \$4 account.....		67, 348. 00
Commission received by them account of subscrip- tion to 100,000 shares.....	\$300, 000. 00	
20 per cent of expense account.....		5, 399. 70
Check herewith.....	28, 948. 30	
	<u>334, 348. 00</u>	<u>334, 348. 00</u>

##### EISLE & KING

Commission of \$3 per share on allotment of 200,250 shares.....	600, 750. 00	
45 per cent of profit in No. 4 account.....		151, 533. 01
Commission received by them account of subscrip- tion to 178,750 shares.....	\$536, 250. 00	
Commission received by them account subscrip- tion to 111,250 shares for account Caroline Leah Tauszig.....	333, 750. 00	
45 per cent of expense account.....		12, 149. 34
Due from Eisle & King.....		129, 866. 33
	<u>882, 149. 34</u>	<u>882, 149. 34</u>

## WELLINGTON &amp; CO.

Commission of \$3 per share on allotment of 44,500 shares	\$133,500.00	
10 per cent of profit in No. 4 account	33,674.00	
Commission received by them account of subscription to 55,000 shares	\$165,000.00	
10 per cent of expense account	2,699.85	
Due from Wellington & Co.		525.85
	167,699.85	167,699.85

## CAROLINE LEAH TAUSZIG

Commission of \$3 per share on allotment of 111,250 shares	333,750.00	
25 per cent of profit in No. 4 account	84,185.00	
25 per cent of expense account	\$8,749.63	
Check herewith	411,185.37	
	417,935.00	417,935.00

The above is approved.

CAROLINE LEAH TAUSZIG.

Mr. GRAY. I will offer a copy of a schedule of costs expended or incurred by the different concerns, and a charge of those costs in the proper proportion as against those who were entitled to the profits, which contains the approval of Fox's daughter.

(The statement referred to is as follows:)

(Taylor Thorne & Co., Elsie & King, Wellington & Co., and Caroline Leah Tauszig)

## SCHEDULE 3

*Fox Theaters Syndicate expense account*

Paid by Taylor, Thorne & Co.:

Photo Record Bureau, advertising	\$1.15
Doremus & Co., advertising	10,370.47
F. H. Mitchell, stenographer	7.35
J. H. McMullen, telephone calls	10.30
Glenn & Ganter, legal	500.00
Doremus & Co., advertising	100.00

Paid by Elsie & King:

McCarter & English, legal	5,009.25
Glenn & Ganter, legal	5,000.00
Counsel fees, legal	6,000.00

Total	26,998.52
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Division of expense:

Taylor, Thorne & Co., 20 per cent	5,399.70
Elsie & King, 45 per cent	12,149.34
Wellington & Co., 10 per cent	2,699.85
Caroline Leah Tauszig, 25 per cent	6,749.63

Total	26,998.52
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The above is approved.

(Signed)

CAROLINE LEAH TAUSZIG.

Mr. GRAY. I will call Mr. Stevens. Mr. Stevens, will you take the stand? I will ask him about certain things in connection with this and then I will put on the stand the representative of Taylor-Thorne & Co. to explain the entire transaction to you.

## TESTIMONY OF BYAM K. STEVENS

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matter now under investigation by the committee, so help you God?

Mr. STEVENS. I do.

The CHAIRMAN. State your name and address for the record.

Mr. STEVENS. Byam K. Stevens, Cedarhurst, Long Island.

Mr. GRAY. Mr. Stevens, are you a member of the brokerage firm of Stevens & Legg, in New York?

Mr. STEVENS. I am.

Mr. GRAY. That firm was in existence also under that name in 1927 and 1928?

Mr. STEVENS. It was.

Mr. GRAY. And during the period of time in the fall of 1927 and the spring of 1928 it is a fact, is it not, that you were the specialist in the handling of Fox Film stock on the floor of the exchange?

Mr. STEVENS. The firm was.

Mr. GRAY. The firm was. Was it you or another member of the firm who actually held the book and acted as a specialist?

Mr. STEVENS. The senior partner had the book most of the time.

Mr. GRAY. Who was the senior partner?

Mr. STEVENS. Samuel B. Legg. He died in 1929. I had it a very short time. I had only been on the stock exchange for six months when this syndicate was formed, and I did not have the proper experience at the time to handle the book.

Mr. GRAY. So it was handled principally by Mr. Legg at that time?

Mr. STEVENS. That is correct.

Mr. GRAY. Let me ask you, just by the way, for a moment—you are not entirely familiar with all the syndicate's deals, are you?

Mr. STEVENS. I only know that we joined this syndicate.

Mr. GRAY. Then I will ask you only about your participation. I will show the other by some one else. You know that the firm of Stevens & Legg, a brokerage house in the city of New York, became participators in a syndicate handling Fox Film stock, which syndicate was managed and controlled in the office of Taylor, Thorne & Co., another New York brokerage house? That is true, isn't it?

Mr. STEVENS. That is correct.

Mr. GRAY. Do you know that your participation was an agreement to put up, if necessary—and probably you did put it up—\$60,000 in margin, as a result of which you made a profit of \$42,361.50, getting back from Taylor, Thorne & Co. \$102,361.50?

Mr. STEVENS. That is correct.

Mr. GRAY. Now, that was your profit as the participators in the pool?

Mr. STEVENS. That is correct.

Mr. GRAY. The records of the pool—

Mr. STEVENS. Mr. Gray, I would like to bring out another matter right there.

Mr. GRAY. Yes.

Mr. STEVENS. Our participation was for 5,000 shares. If at the time of the formation of this syndicate we, as a firm or as an individual had taken out 5,000 shares of Fox Film and kept them for a

year and a quarter, at which time we got out of the syndicate, and sold them, then our profit would have been over two and a half times as large as our syndicate profit.

Mr. GRAY. We are not complaining about the amount of the profit. If you paint that picture, I might indicate to you also that if you had taken them up and kept them a little longer, you would not have had any profit but a decidedly heavy loss. So, you see, that has no relation to the question.

The account of the distribution in that syndicate shows that Stevens & Legg, your firm, and the specialist in this stock on February 27, 1928, while the pool was still in operation, and a month or two before it was closed, were paid \$10,000?

Mr. STEVENS. Yes.

Mr. GRAY. What for?

Mr. STEVENS. That was an unsolicited amount. It was given to us by the syndicate manager in appreciation for the work that we had done in running an orderly market.

Mr. GRAY. What do you mean by running an orderly market?

Mr. STEVENS. We maintained a quarter per cent market in Fox Film all during that period.

Mr. GRAY. What do you mean by maintaining a quarter of a per cent market in Fox Film?

Mr. STEVENS. We saw to it that——

Mr. GRAY. Let me help you. You saw to it that the price did not go above the certain figure, or below a certain figure?

Mr. STEVENS. No, sir. We saw to it that there would be no sudden and violent jumps; that there would be an orderly market; that there would be sales take place every quarter of a per cent up or down, as the case may be.

Mr. GRAY. Let us see if that is clear to me, and whether it is clear to the committee. As the specialist in the stock, and an interested participator in the pool, you so handled the trading on the stock market as to see that there were no violent fluctuations in this stock, and that if there were any sales, and any movement up or down, that it did not go more than a quarter of a point at a time.

Mr. STEVENS. That is correct.

Mr. GRAY. How do you do that? We are very, very, very much interested in knowing how the specialist in a stock can stop a stock from going up, or stop a stock from going down, and can regulate the price of the stock on the market, when the public is buying and selling it, within a quarter of a point. That is very interesting, and we would like to know all about it.

Mr. STEVENS. I did not say that we kept the stock from going up or going down. I said that there would be a sale every quarter of a per cent.

Mr. GRAY. That is to say——

Mr. STEVENS. That is done by offering your stock—if the stock is going up, if the last sale was  $57\frac{1}{2}$ , and a buyer comes into that stock, to see that it does not sell at 58, all you have to do on the floor of the New York Stock Exchange is to offer 100 shares at  $57\frac{3}{4}$ .

Mr. GRAY. Yes.

Mr. STEVENS. The buyer, if he takes the stock, makes a sale.

Mr. GRAY. Yes.

Mr. STEVENS. On the down side, you put in a bid the same way. I have no control over the market whatsoever, except to see——

Mr. GRAY. In order to stop the stock from going to 58, you would offer it at 57¾?

Mr. STEVENS. To maintain an orderly market, I did that.

Mr. GRAY. Whose stock are you offering at 57¾?

Mr. STEVENS. The syndicate's.

Mr. GRAY. And when you want to make a market, or maintain a market on the other side, you buy for the syndicate?

Mr. STEVENS. That is right.

Mr. GRAY. And you, as the specialist, I suppose, had unlimited discretion in that respect?

Mr. STEVENS. I did not have unlimited discretion.

Mr. GRAY. Suppose the market began to show signs of breaking away from you. What would you do?

Mr. STEVENS. I had very small discretion, within limits. My discretion was 1,000 shares for each point.

Mr. GRAY. One thousand shares for each point. Of course, you knew, being the specialist, what the general market was in that particular stock?

Mr. STEVENS. I did not know——

Mr. GRAY. You knew what bid and offered instances there were on your books?

Mr. STEVENS. That is true, sir.

Mr. GRAY. And that knowledge was of great advantage to you, was it not?

Mr. STEVENS. One moment, sir. Half the time, in an active market, the market is controlled by the brokers from other commission houses, and not necessarily by the specialists. On all orders away from the market, the specialist has it on his book.

Mr. GRAY. In other words—we have had this before, but to emphasize it—when a person puts in an order to buy or sell at the market, the specialist does not get it, very frequently.

Mr. STEVENS. That is right.

Mr. GRAY. But every order, if it is put in an eighth or a quarter of a point from the market, one way or the other, goes on your books?

Mr. STEVENS. Yes; usually.

Mr. GRAY. So that you have absolute information. Don't you think that is a decided advantage to you, or the syndicate officers with whom you are operating, or for whom you are operating, to have that information, in order to make your purchases and sales?

Mr. STEVENS. They did not get any information with reference——

Mr. GRAY. But you were doing buying and selling?

Mr. STEVENS. That is quite correct.

Mr. GRAY. And you had the book?

Mr. STEVENS. Yes.

Mr. GRAY. And you had the information?

Mr. STEVENS. That is quite correct.

Mr. GRAY. You do not mean to say to this committee that I, as a specialist, kept the information from myself as a broker. You could not do that, could you?

Mr. STEVENS. As far as that was concerned, any commission house broker that had an order, or has an order to execute, can come in

to the specialist and get the same information that I had at that time.

Mr. GRAY. You do not mean to tell me that the stock exchange rules permit you to disseminate the information upon your specialist's books?

Mr. STEVENS. To a commission house broker who has an order to buy or sell. He has the right to ask the specialist the approximate size of the market.

Mr. GRAY. In other words, if he wants to sell at a certain price, he has a right to know whether there are any bids in there at that price, or about that price, on the buy side.

Mr. STEVENS. On the buy side.

Mr. GRAY. Certainly. I think we understand it. You said your \$10,000 was for extraordinary services in maintaining a market. Was there an agreement that you were to be paid something extra?

Mr. STEVENS. No, sir.

Mr. GRAY. In other words, this syndicate, gratuitously—and, if a syndicate has any heart, out of the kindness or bigness of its heart—just handed you \$10,000?

Mr. STEVENS. It was an unsolicited amount.

Mr. GRAY. Did any letter accompany the check?

Mr. STEVENS. No, sir.

Mr. GRAY. Just the check. In other words, they understood—

Mr. STEVENS. At that time—and for 17 years prior to this time—my father and the firm had been making their offices with Taylor, Thorne & Co., and I have known Mr. Taylor all my life. I was brought up with his boys. It was purely and simply a friendship proposition, and he presented us with this check about the middle of the participation in the syndicate.

Mr. GRAY. It is not that transaction but the system we want to know about more than anything else. That is all unless the members of the committee want to ask him anything.

Senator CAREY. Mr. Stevens, is there any rule of the stock exchange which prevents a specialist from being a member of a pool?

Mr. STEVENS. I never heard of one.

Mr. GRAY. It is one of the things I have in mind that should be corrected. I have never gone into those things we have in mind publicly. I think the time to present them to you is when we get through.

Senator WALCOTT. Did not Mr. Whitney testify about that?

Mr. GRAY. Mr. Whitney testified that a specialist had no right whatever to ever show a broker or anybody else the information contained in his books, and that if it could be called to their attention, they would discipline the specialist immediately.

Senator WALCOTT. By immediate expulsion.

Mr. GRAY. Yes; yet it is done, and has been done, and there has been a lot of testimony here about it, from one man and another. The stock exchange, as far as I am informed, has taken no action.

Senator CAREY. Mr. Whitney does not know about it?

Mr. GRAY. Mr. Whitney not only knows about it, because he is getting a copy of this testimony as fast as he can get it, but Mr. Whitney's auditors and men have checked up on every bit of work we have done in New York City since we have been there. My men do not get out of a brokerage house 10 minutes when the stock

exchange auditors are there back of them. You might as well know that, privately and publicly. I do not question their right to do it.

**Senator COUZENS.** Mr. Gray knows that the stock exchange could not exist if it did not permit these things. There would not be business enough to sustain it.

**Mr. GRAY.** Senator, my personal views are a little to the contrary. I believe the stock exchange could exist and that these transactions could be properly conducted—that is, the people's interest could be properly conducted.

(At this point Mr. Reass arose from the committee table to leave the room and the following occurred:)

**Mr. GRAY.** Will you find out if Mr. Fox can be here at 2 o'clock? We would like to have him here.

I believe it could be conducted and could be conducted on a proper plane, but it would eliminate organized gambling with inside information.

**Senator COUZENS.** I insist that there would not be enough business, if it was legitimate, to maintain the stock exchange.

**Mr. GRAY.** You may be absolutely correct, Senator Couzens. That is all.

**Mr. STEVENS.** I would just like to make the statement that never at any time, while we were members of the syndicate, or at any other time, have we as specialists ever given the exact information that was on any of our books, ever.

**Senator COUZENS.** May I ask the witness what he means by "exact"? He must mean that he gave them inexact information.

**Mr. GRAY.** Will you answer Senator Couzens?

**Mr. STEVENS.** If a commission-house broker, Senator Couzens, came and asked for the approximate market, or how he could buy 5,000 shares, I would give him a rough estimate of what there was that he could get there. I never have given, or the firm has never given, the exact information as to what is on a specialist's book.

**Senator TOWNSEND.** You mean you would not say that there were just 5,111 shares. You would say there were about 5,000?

**Mr. STEVENS.** "You could probably buy, at the present moment, 5,000 shares a point and a half up." That is the way I would answer the question of the commission-house broker.

**Senator TOWNSEND.** You might have 5,200?

**Mr. STEVENS.** Absolutely.

**Senator COUZENS.** Are you authorized, under the rules, to give them that information?

**Mr. STEVENS.** I believe you are; yes, sir.

**Mr. GRAY.** The vice in this particular case, Senator, is that he was the one that was doing the dealing, and he was the one who knew the prices. He had the exact information. In other words, it is the system by which that is done, that we are interested in.

Will the representative from Taylor, Thorne & Co. take the stand, please?

**TESTIMONY OF WILLIAM J. GALLIGAN, REPRESENTING TAYLOR,  
THORNE & CO.**

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matter now under investigation by the committee, so help you God?

Mr. GALLIGAN. I do.

Mr. GRAY. Mr. Galligan, where do you reside?

Mr. GALLIGAN. Westfield, N. J.

Mr. GRAY. Are you a member of the brokerage firm of Taylor, Thorne & Co.?

Mr. GALLIGAN. No, sir; I am not.

Mr. GRAY. Were you?

Mr. GALLIGAN. I was employed by them at the time of 1927.

Mr. GRAY. I think it was at my suggestion that some one who was familiar with this matter come to Washington to explain it, that they asked you to come down?

Mr. GALLIGAN. That is right.

Mr. GRAY. In what capacity were you employed by them at that time?

Mr. GALLIGAN. I was in charge of their trading in this Fox Film.

Mr. GRAY. You had three separate syndicates operating in Fox Film stock, in Taylor, Thorne & Co.'s office. Is that correct?

Mr. GALLIGAN. I think there were two in Taylor, Thorne, and one was W. R. K. Taylor & Co.—the last one.

Mr. GRAY. In other words, a change in the name of your firm?

Mr. GALLIGAN. Yes.

Mr. GRAY. That is right. I ask you when the first syndicate was formed?

Mr. GALLIGAN. July 6, 1927.

Mr. GRAY. And it operated up until what date?

Mr. GALLIGAN. April 9, 1928.

Mr. GRAY. Have you a memorandum of the participators in that syndicate?

Mr. GALLIGAN. I have. You have a copy of it.

Mr. GRAY. I have a copy of it; and I show you a paper that I shall hand to the stenographer, and ask you to make comparison, and ask you whether or not this list shows the participators in the pool, the margin which they put up, the profit which they received, and the total amount that was paid back to them when that pool was concluded. Will you look at that and tell me whether that is so?

Mr. GALLIGAN (after examining paper). That is the comparison.

Mr. GRAY. That is correct, is it?

Mr. GALLIGAN. That is correct.

Mr. GRAY. I will offer this and ask that the stenographer put it upon the record, and in passing, I direct your attention to the fact that there are participators in this pool under the name of Kuser, 9 or 10 different members of the family; that Mr. Kuser was a vice president—am I right?

Mr. GALLIGAN. Director.

Mr. GRAY. Director of Fox Film, and had either 9 or 10 members of his family in this pool; that William Fox was the largest participator in this pool, and put up \$120,000 as margin, made a profit of \$84,723, and had returned to him \$204,723; that another contribu-

tor was Nathaniel King, of the firm of Eisele & King, who had just one-half of the contribution that Mr. Fox had. I ask you whether or not, Mr. Galligan, that Nathaniel King participation was King's, Eisele & King's, or Fox's?

Mr. GALLIGAN. I really do not know.

Mr. GRAY. You do not know?

Mr. GALLIGAN. No, sir.

Mr. GRAY. That is one of the things I want to ask Mr. Fox, because I do not know myself. But, as I have stated in other transactions, I am able to establish that he operated in King's name, and the checks went over to him. Mr. Watson, the accountant, tells me that since I have talked with him—not to-day, I mean, but since I have taken up this angle with him, it has been verified as belonging to Eisele & King, a brokerage house. Stevens & Legg, represented by Mr. Stevens, who was just on the stand, was a participator to the extent of a margin of \$60,000.

Mr. GALLIGAN. That is correct.

Mr. GRAY. We even have here—what significance it has, I do not know—the People's Brewing Co., contributing to the extent of \$24,000.

(The statement referred to is as follows:)

*Fox Film Syndicate distribution account*

	Margin	Profit	Total
Johanna Kuser .....	\$6,000.00	\$4,236.15	\$10,236.15
Olivia Kuser .....	2,400.00	1,694.46	4,094.46
Walter G. Kuser .....	2,400.00	1,694.46	4,094.46
Harry A. Brown .....	2,400.00	1,694.46	4,094.46
Walter I. Clayton .....	1,200.00	847.32	2,047.32
Fred Kuser .....	1,200.00	847.32	2,047.32
R. V. Kuser, Jr. ....	1,200.00	847.32	2,047.32
Adela M. Kuser .....	1,200.00	847.32	2,047.32
Robert C. Kuser .....	1,200.00	847.32	2,047.32
William Fox .....	120,000.00	84,723.00	204,723.00
Nathaniel King .....	60,000.00	42,361.50	102,361.50
Taylor, Thorne & Co. ....	60,000.00	42,361.50	102,361.50
Stevens & Legg .....	60,000.00	42,361.50	102,361.50
C. S. Payson .....	24,000.00	16,944.60	40,944.60
J. S. Dean .....	12,000.00	8,472.30	20,472.30
T. R. Vreeland .....	12,000.00	8,472.30	20,472.30
C. F. Sturhahn .....	6,000.00	4,236.15	10,236.15
W. H. Taylor .....	3,600.00	2,541.72	6,141.72
Peoples Brewing Co. ....	24,000.00	16,944.60	40,944.60
M. P. Cowles .....	6,000.00	4,236.15	10,236.15
A. R. Kruser .....	72,000.00	50,833.80	122,833.80
F. M. Warburg .....	30,000.00	21,180.75	51,180.75
Tobey & Kirk .....	18,000.00	12,708.45	30,708.45
A. G. Boesel .....	12,000.00	8,472.30	20,472.30
H. F. McConnell & Co. ....	12,000.00	8,472.30	20,472.30
W. C. Heppenheimer .....	12,000.00	8,472.30	20,472.30
Wm. Bayne & Co. ....	6,000.00	4,236.15	10,236.15
Wm. Russell .....	6,000.00	4,236.15	10,236.15
D. W. Maloy .....	1,200.00	847.32	2,047.32
J. L. Kuser .....	6,000.00	4,236.15	10,236.15
P. A. Foerderer .....	6,000.00	4,236.15	10,236.15
J. B. Rippel & Co. ....	12,000.00	8,472.30	20,472.30
Total .....	600,000.00	423,615.57	1,023,615.57

Mr. GRAY. I hand you another paper, and ask you whether or not this represents a copy of the syndicate agreement that was signed by the participators in that pool?

Mr. GALLIGAN. Yes, sir; it does.

Mr. GRAY. I will offer that.

(The statement referred to is as follows:)

TAYLOR, THORNE & Co.,  
July 6, 1927.

DEAR SIR: We are forming an account, in which we shall participate, and of which we shall be the manager, for the purpose of dealing in the class A stock of the Fox Film Corporation.

The account shall be terminated six months from the date hereof, with the discretion in the manager to continue same for an additional six months, or terminate same at any time in its discretion.

As the manager, we shall have the sole management and entire conduct of the business and affairs of the account with all usual powers, including the right, on behalf of the account, to make or procure loans and to pledge any of such stock, and/or obligations of the account participants therefor, to pay all commissions and expenses of every nature, and for the account to purchase, sell, repurchase, resell, or hold shares of the class A stock of Fox Film Corporation, in such amount, at such price, and in such manner as we may deem advisable, and generally to act in all respects as, in our opinion, may be to the best interests of the account, provided only that the account shall never at any one time own or be committed for a net long position in excess of 50,000 shares at an average cost price to the account not to exceed \$60 per share.

The manager will form an advisory committee from the participants, will give such committee a weekly statement of the account, and will follow any advice given by unanimous decision of such committee in all matters in connection with handling the account.

The manager, notwithstanding its relation as such, as a participant in this account, shall enjoy all the rights and benefits granted to and imposed upon any other participant. It shall in no wise be liable for any error of judgment, or mistake of law or fact, or failure of any party contracting with it to live up to his agreement, nor shall it be liable for anything save for its own failure to exercise good faith.

Upon the signing of this agreement, each participant shall be required to deposit immediately with the manager 25 per cent of the total amount of his participation based upon the number of shares subscribed to by him at an average cost price of \$60 per share; and each participant shall, at the request of the manager, at any time, or from time to time during or upon the termination of this account, take up and pay for in full at the cost thereof to the account, his percentage of any shares of such class A stock held for the account, or for which it may be committed; and shall meet his other obligations, if any, when called upon by the manager.

Stocks so taken up by the participants during the life of the account shall be for carrying purposes only and shall be subject to recall by the manager at any time at the price so taken up.

This agreement shall be binding upon the respective participants, their successors, executors, administrators, and assigns, but no partnership relation shall arise herefrom.

The manager will make no charge to the account for its services in forming and managing his account, but it will charge to the account all the expenses incurred by it in connection with the formation of the account, the purchase, carrying, marketing, and sale of such stock, including legal expenses, interest charges, commissions, and the usual brokerage.

At the expiration of the account, the manager shall distribute to the participants prorata in proportion to their respective percentage interests therein, the shares or cash remaining in its hands, and the participants shall share prorata in such shares and the profits or losses of the account, after allowing for all expenses incurred by the manager, and the apportionment and distribution by the manager of the said shares and profits or losses shall be conclusive upon the participants.

Your participation in this account, and the margin to be deposited by you upon the signing hereof, is set after the place for your signature in accepting this agreement.

Please note your acceptance of this participation by signing the inclosed duplicate of this letter and returning same to us.

Yours very truly,

Number of shares, \_\_\_\_\_. Margin, \_\_\_\_\_.

\_\_\_\_\_, Manager.

Mr. GRAY. In this pool, I direct your attention to the fact that the manager is to make no charge to the account for its services in forming and managing the account, but will charge to the account all the expenses incurred by it in connection with the formation of the account, the purchase, carrying, marketing, and sale of such stock, and so forth. That is correct, is it not?

Mr. GALLIGAN. That is correct.

Mr. GRAY. And, of course, in addition to any participation that the firm itself may have, the firm, or its members, are paid the regular brokerage commission. That is right, is it not?

Mr. GALLIGAN. That is correct.

Mr. GRAY. Wherever there is a commission paid for operating the syndicate as its manager, it gets one plus the other. That is correct?

Mr. GALLIGAN. Correct.

Mr. GRAY. I will ask leave to have that agreement filed of record. In this distribution there appears to have been a charge of bonuses to employees of \$45,000. Will you tell me why Taylor, Thorne & Co., out of the money in this syndicate, paid its employees \$45,000?

Mr. GALLIGAN. Well, it was their money to do with as they wanted.

Mr. GRAY. I suggest to you that it was not the money of Taylor, Thorne & Co., but it was the money of the different participants in the syndicate.

Mr. GALLIGAN. Mr. Gray, I do not agree with that, because the participants agree to this charge.

Mr. GRAY. What did your employees do that justified you in paying them a bonus of \$45,000?

Mr. GALLIGAN. Worked until the wee hours of the morning——

Mr. GRAY. On this alone?

Mr. GALLIGAN. Breaking their necks to keep up with the work of that tremendously busy time.

Mr. GRAY. In other words, that work did not devolve on them on account of this syndicate alone?

Mr. GALLIGAN. No.

Mr. GRAY. But on account of the busy market?

Mr. GALLIGAN. That is right.

Mr. GRAY. You used \$45,000 of this syndicate's money to help pay your employees a bonus?

Mr. GALLIGAN. I do not think that is the correct way of stating it.

Mr. GRAY. In other words, you think you had the right to do it?

Mr. GALLIGAN. It was the firm's money to do with as they chose.

Mr. GRAY. Was it actually paid to your employees?

Mr. GALLIGAN. It was actually paid, every dollar of it, to our employees.

Mr. GRAY. You were in the room when Mr. Stevens testified with respect to the \$10,000 that he got, and you knew he was the specialist. Can you give us any better explanation of the \$10,000 paid to him than the one he gave?

Mr. GALLIGAN. I don't think I can, Mr. Gray.

Mr. GRAY. Did you have anything to do with the making of the payment to him?

Mr. GALLIGAN. No; I did not have anything to do with it.

Mr. GRAY. Did you know about it?

Mr. GALLIGAN. I knew about it; yes.

Mr. GRAY. What was it for?

Mr. GALLIGAN. Just as he explained, for maintaining the market in this stock, for extraordinary work that he did in connection with this account.

Mr. GRAY. Which he could not have done if he had not been the specialist?

Mr. GALLIGAN. I would not say that.

Mr. GRAY. Why the hesitation?

Mr. GALLIGAN. No; but if we had our own broker in there—

Mr. GRAY. And he knew as much as the specialist, of course, he could have done the same thing?

Mr. GALLIGAN. If we had our own broker in there, and he spent his time in there, I think he could have done just as well.

Mr. GRAY. Yes; if he had the same knowledge Mr. Stevens did?

Mr. GALLIGAN. That is right.

Mr. GRAY. It is for that combination of knowledge plus ability that you paid the \$10,000?

Mr. GALLIGAN. I do not think that the question of the knowledge is paramount, because, if knowledge is not abused, it is not material.

Mr. GRAY. But knowledge is knowledge, and power, is it not—well, that is academic.

Mr. GALLIGAN. It is academic.

Mr. GRAY. There is no use pressing that with you. Let me see how much additional information you have. You took stock, by the way, in this syndicate, from William Fox, did you not?

Mr. GALLIGAN. I believe that is right.

Mr. GRAY. Twenty thousand shares under an option?

Mr. GALLIGAN. I believe that is right.

Mr. GRAY. In other words, a part of the stock you used for the purpose of your dealings came from William Fox?

Mr. GALLIGAN. That is correct.

Mr. GRAY. I ask you whether or not you sent a letter out, that I am going to read to you—and I want the committee to hear—under date of October 5, 1927, while this pool was operating. [Reading:]

DEAR SIRs: As the manager of the Fox Film Corporation, class A common stock group, we wish to inform you, as a member, that we have obtained an option on 10,000 shares of the class A common stock, at \$72 a share, this option being contingent upon the average cost at which the account can purchase stock—being increased from \$60 to \$65 a share.

We believe that the said change in cost price is advisable, not only to obtain this option, but also on account of the steady improvement of the company since the beginning of the 1927-28 season.

We, therefore, request that you authorize us to amend the latter part of the third paragraph of the Fox Film Corporation, class A, common stock group agreement, dated July 6, 1927, so that it will read:

"The account shall never at any one time own or be committed for a net long position in excess of 50,000 shares at an average cost price to the account not to exceed \$65 per share."

Will you sign the inclosed duplicate copy of this letter and return it to us at your earliest convenience, as our authorization for making this change in the cost price of this stock.

We are inclosing a confidential copy of the gross income of the company in the United States and Canada, for the first five weeks of the 1927-28 theatrical season.

Very truly yours,

TAYLOR THORNE & Co., *Manager.*

Was that letter sent out?

Mr. GALLIGAN. Yes. The date of it, you said, was October 5. My copy is October 4.

Mr. GRAY. Either one date or the other.

Mr. GALLIGAN. One date or the other. It is the same letter.

Mr. GRAY. At that time, your syndicate was being furnished with confidential information by William Fox as to the earnings of the companies during the time your syndicate was operating, is that true?

Mr. GALLIGAN. That is true.

Mr. GRAY. From week to week?

Mr. GALLIGAN. That is true.

Mr. GRAY. In advance of the time the public got it?

Mr. GALLIGAN. That is true.

Mr. GRAY. I offer that letter and ask that that be made a part of the record.

Do you know whether this option of 20,000 shares you got from Fox was his personal stock, or the company's stock?

Mr. GALLIGAN. I have not any idea.

Mr. GRAY. Do you know whether or not his interest in that pool—

Mr. GALLIGAN. I know that we got it from him personally.

Mr. GRAY. Do you know whether his interest in the pool was his, or whether it was the company's?

Mr. GALLIGAN. All I can tell you is that he signed for it. Who it was for, I really don't know.

Mr. GRAY. That is all on that pool, is it not?

Mr. GALLIGAN. That is all on that pool.

Senator GOLDSBOROUGH. I would like to suggest that when we adjourn, we adjourn to meet in this room, at the hour you decide upon. That room of the Interstate Commerce Committee is very crowded. It is very much more pleasant here, and it takes very little time to get across from the Senate Office Building to the Capitol.

The CHAIRMAN. Are you all through, Mr. Gray?

Mr. GRAY. I will have to ask you to come back, Mr. Galligan. I will have to ask you about the other pools.

The CHAIRMAN. We will adjourn to meet here at 2.30.

(Whereupon at 1 o'clock p. m. a recess was taken until 2.30 o'clock p. m.)

#### AFTERNOON SESSION

Pursuant to the expiration of the noon recess the committee met and resumed the hearing in Room 301, Senate Office Building, at 2.30 o'clock p. m.

The CHAIRMAN. The committee will come to order.

Mr. GRAY. Mr. Chairman, I would like to have this gentleman sworn and have him put his statements on the record. If he wants to make a statement, I think it should be under oath.

Senator WALCOTT. That is a good thing, Mr. Chairman.

**TESTIMONY OF BENJAMIN REASS, ATTORNEY FOR WILLIAM FOX,  
NEW YORK CITY**

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matter that you are to testify to before the committee, so help you God?

Mr. REASS. Yes, sir. Thank you. I say that the reporter has handed to me——

The CHAIRMAN. Give your name and address and occupation for the record.

Mr. GRAY. What is your business?

Mr. REASS. My name is Benjamin Reass. I am a lawyer. My office is at 100 Broadway, New York.

I say that the reporter has handed to me a stenographic statement of a statement that was made by Mr. Gray to this committee, and I would like to read it to you as it came to me from the reporter a few minutes ago. Mr. Gray said:

I have just received a report, not only from my own physicians, that is, those who acted on behalf of myself as counsel for the committee, but Mr. Fox's physician also, and they all say that they find nothing the matter with Mr. Fox now; that he had a good night's rest, and they see no reason why he could not come here; that the only thing that they know is his own statement that he is dizzy, but they find no indications of it.

I immediately phoned Doctor Hornaday——

Senator BULKLEY (interposing). When was that statement made, Mr. Reass?

Mr. GRAY. This morning.

Mr. REASS. About 25 after 12 to-day while I was in this room.

I immediately phoned Doctor Hornaday, a house physician of the Mayflower Hotel, a gentleman whom I never had the pleasure of meeting until yesterday morning about 9.30 when I found him in attendance with Mr. Fox. I phoned him from this building. He said to me that it is absolutely untrue; that he had not made any statement to that effect. He also said to me that the only statement he made was the one he had delivered to me this morning that was sent to me here while I was in attendance on this committee.

I then asked him with respect to the statement of the two physicians that purported to have made a report on behalf of the committee. He said those two physicians were there yesterday and confirmed his diagnosis; that they were not there to-day, but that one of them had phoned to him.

Now, I say in the light of that situation that statement contained in this report is false.

Mr. GRAY. Have you finished?

Mr. REASS. Yes, sir; that is all I want to say about that, sir.

Mr. GRAY. Did Doctor Hornaday tell you that it was Doctor Tewksbury that telephoned to him?

Mr. REASS. He did.

Mr. GRAY. Did he tell you that he told Doctor Tewksbury just exactly what I have reported there?

Mr. REASS. He did not. He said——

Mr. GRAY. What did he tell you he told Doctor Tewksbury?

Mr. REASS. He told me he told Doctor Tewksbury what he said in this report to me.

Mr. GRAY. This morning?

Mr. REASS. Yes.

Mr. GRAY. What did he say to you he told Doctor Tewksbury?

Mr. REASS. I did not ask him that.

Mr. GRAY. Oh, you didn't ask him?

Mr. REASS. I didn't question him.

Mr. GRAY. Then when you state that the statement that I made is false, which was to the effect that all three doctors agreed that this man could come to-day, that he had had a good night's rest; that his temperature was normal and that the only thing that he complained of was that he was dizzy, and that that was his own statement, you do not know whether Doctor Hornaday told Doctor Tewksbury that or not, do you?

Mr. REASS. I do not, of course.

Mr. GRAY. And yet you come here, when you are a lawyer, and have the temerity to make the statement that that statement that I made is false, when you do not know whether that is true or not—isn't that true?

Mr. REASS. I would say that the statement that you made which is reported here and which I read to you is untrue.

Mr. GRAY. And yet you do not know what the conversation between Doctor Tewksbury and Doctor Hornaday was, do you?

Mr. REASS. But I know what Doctor Hornaday said, and Doctor Hornaday says it is not true, and he is here to swear to it.

Mr. GRAY. Well, you put Doctor Hornaday on the stand if you want to.

Mr. REASS. Well, of course, I am going to. That is what I brought him here for. That is all I want to do, is to get Doctor Hornaday to take the stand.

Mr. GRAY. I thought you were trying to do something else.

Mr. REASS. Well, we will see about that. Doctor Hornaday.

#### TESTIMONY OF DR. F. A. HORNADAY, WASHINGTON, D. C.

The CHAIRMAN. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matter that you are to testify to before the committee, so help you God?

Doctor HORNADAY. I do.

Mr. GRAY. Doctor Hornaday, I presume that you are a physician practicing in Washington?

Doctor HORNADAY. Yes.

Mr. GRAY. You are connected with the Mayflower Hotel?

Doctor HORNADAY. Yes, sir.

Mr. GRAY. You know of your report of Mr. Fox's condition yesterday, of course?

Doctor HORNADAY. Yes.

Mr. GRAY. Did you see him this morning?

Doctor HORNADAY. Yes.

Mr. GRAY. When?

Doctor HORNADAY. First at 9 o'clock.

Mr. GRAY. Since?

Doctor HORNADAY. Twice since.

Mr. GRAY. When did you see him last?

Doctor HORNADAY. About 1 o'clock.

Senator WALCOTT. Where is he?

Doctor HORNADAY. He is in room 582 of the Mayflower Hotel.

Mr. GRAY. What is his condition now?

Doctor HORNADAY. His condition is somewhat improved over yesterday. He still complains of being dizzy. He has remained in bed. His temperature is normal, pulse is normal, and his blood pressure is normal, but he complains of the dizziness and of falling over and tendency to fall over when he gets out of bed.

Mr. GRAY. In other words, the only thing that you can find the matter with him is what he tells you is the matter with him; that is correct, is it not, Doctor?

Doctor HORNADAY. Well, no; what he tells me concerning his dizziness I have to accept.

Mr. GRAY. What else did you find to-day to be the matter with him yourself as a physician?

Doctor HORNADAY. He has a matter which he would prefer to keep in confidence.

Mr. GRAY. Keep your voice up.

Doctor HORNADAY. He has a matter which he would prefer giving in confidence. He is willing for me to state it publicly if he must, but would rather have it given in confidence.

Mr. GRAY. I will not ask you to state anything that you as a doctor have been advised by him as to his condition that he prefers to keep private. We are not interested in that. Whatever that may be, that is something that has been the matter with him all the time or for some time past, is it not?

Doctor HORNADAY. Yes.

Mr. GRAY. It is nothing that happened to him yesterday?

Doctor HORNADAY. Nothing that happened to him yesterday, but it is the result of a long, continued condition.

Mr. GRAY. Yes; I understand that.

Doctor HORNADAY. Yes.

Mr. GRAY. But to-day, Doctor, so that we may understand each other and the committee may be properly informed, the only thing that you know to be the matter with him is what he tells you is the matter with him; that is true, is it not?

Doctor HORNADAY. No; it is not.

Mr. GRAY. Well.

Doctor HORNADAY. We examined his urine last night and found it loaded with sugar.

Mr. GRAY. Yes.

Doctor HORNADAY. He is a diabetic of some standing.

Mr. GRAY. Yes.

Doctor HORNADAY. And he has given me to-day a report which he had not turned over to me until to-day showing that a week ago he had a blood sugar of 334, which is a serious condition. I have not taken a blood—

Mr. GRAY (interposing). But that is nothing that happened to him yesterday?

Doctor HORNADAY. No.

Mr. GRAY. And it is possible that the dizziness and the other things that you did find the matter with him are the result of that condition?

Doctor HORNADAY. Yes.

Mr. GRAY. But to-day when you examined him and found that disease, he being a diabetic, from which he has been suffering, you find what?

Doctor HORNADAY. I find that when he tells me the height of his blood sugar—

Mr. GRAY. Yes.

Doctor HORNADAY. That if he were my private patient over a period here in town he would be in the hospital right away until that blood sugar would be lowered.

Mr. GRAY. Yes.

Doctor HORNADAY. He is at a point where if he is subjected to any mental, emotional, or nervous strain he is apt to become a severe diabetic.

Senator WALCOTT. Is he taking insulin?

Doctor HORNADAY. He is not.

Mr. GRAY. How long has he had the condition?

Doctor HORNADAY. He has this morning been put on a rigid diabetic diet.

Mr. GRAY. How long has he had the condition?

Doctor HORNADAY. Several years.

Mr. GRAY. Several years?

Doctor HORNADAY. Yes. But not blood sugar of this height.

Mr. GRAY. But, Doctor, as a matter of fact, from your examination of him this morning and aside from the history that he has given you with reference to his diabetic condition, and aside from his statement to you that he is dizzy, you, from your examination, find nothing the matter with him, do you?

Doctor HORNADAY. Found sugar in his urine, which confirms his diabetic condition.

Mr. GRAY. Confirms his diabetic condition?

Doctor HORNADAY. His diabetic condition is such that, having regard only for him as my patient, I would be very much opposed to his appearing where he would have severe nervous or mental strain.

Mr. GRAY. Yes. Did you talk to Doctor Tewksbury over the telephone?

Doctor HORNADAY. I did.

Mr. GRAY. Suppose, instead of my asking you, you just relate to the committee your conversation with Doctor Tewksbury to-day.

Doctor HORNADAY. I told Doctor Tewksbury, just as I told in the certificate here, that I had seen him and his pulse and temperature, blood pressure, were normal, but he still complained of being dizzy; that while he was better, I thought that he still was not in condition to be out of bed; that the tenderness over his gall bladder persisted and the tenderness over the appendix region persisted—not very great, but still he had those symptoms, and I felt that he would be better off physically, if he could remain in bed to-day.

Mr. GRAY. That tenderness, of course, you learned of from his telling you about it?

Doctor HORNADAY. No; by my—yes.

Mr. GRAY. You can not do it otherwise?

Doctor HORNADAY. He flinches.

Mr. GRAY. He flinches?

Doctor HORNADAY. Yes, sir; he flinches.

Mr. GRAY. In other words, it is the thing that he says and does that conveys that information to you?

Doctor HORNADAY. Yes.

Mr. GRAY. Did you not tell Doctor Tewksbury that he had a good night's rest last night?

Doctor HORNADAY. I did.

Mr. GRAY. Now, let me say to you frankly that the message came to me from Mr. Stock from Doctor Tewksbury to the effect that you had said that you saw no reason why he could not be here at 2 o'clock this afternoon.

Doctor HORNADAY. There is a mistake somewhere, because I did not say that. I did not say that.

Mr. GRAY. All right; you think that he ought to be in a hospital?

Doctor HORNADAY. Yes.

Mr. GRAY. And I suppose you think that he should have been there long ago?

Doctor HORNADAY. Yes.

Mr. GRAY. You know, of course, that during the past few years while he has had this condition he has been—if he has told you that—active in business?

Doctor HORNADAY. Yes.

Mr. GRAY. Yes. You think, however, it might be a particular strain on him to come here and testify before this committee?

Doctor HORNADAY. I think this, that he probably has not had this high blood sugar all the time. As a matter of fact, it has been down. He gave me other reports showing it had been down two or three years ago, but he has not been treated for it. He has treated himself very largely, which he should not do, of course.

Mr. GRAY. Has he been in a doctor's hands?

Doctor HORNADAY. He has not, except to have—

Mr. GRAY (interposing). Not till he comes to Washington to testify?

Doctor HORNADAY. Yes.

Mr. GRAY. I see. That is all.

Well, that is the situation. Doctor Tewksbury, of course, told us there may have been—they are both reputable physicians. Of course, there is a possibility that he misunderstood Doctor Hornaday.

The CHAIRMAN. Let the record show that he has not been urged to come here to-day.

Mr. GRAY. No; nobody has disturbed him at all. All this fuss is being raised by his lawyer.

Mr. REASS. Well, but all this is being broadcast. You know, I told you quietly about the difficulty.

Mr. GRAY. You are not the kind that anybody can tell anything to quietly. You fly off the handle when anybody starts talking to you.

The CHAIRMAN. That is the end of that.

Mr. REASS. That is the end here, of course.

Mr. GRAY. You are excused, if Mr. Fox is not, and I want him to-morrow morning, if he is well enough to appear.

The CHAIRMAN. Have you any testimony as to the condition of Mr. Fox's accountant, who is ducking this hearing?

Mr. REASS. I have not.

The CHAIRMAN. Can't you bring some doctors to show that he is not able to be here?

Mr. GRAY. I have had two detectives looking for him since day before yesterday, after Mr. Fox and his lawyer pledged me their word they would have him here.

Mr. REASS. Of course, there is no use of my undertaking to continue.

Mr. GRAY. Not a bit.

Mr. REASS. Not at all.

Mr. GRAY. Not a bit. I just asked you if you would have him here.

Mr. REASS. Nobody would pay any attention.

The CHAIRMAN. That is all right; I just asked you whether you could bring some doctors here to show that the accountant is not able to be here.

Mr. REASS. Nobody expects an answer to that question, of course.

Mr. GRAY. Mr. Galligan.

**TESTIMONY OF WILLIAM J. GALLIGAN, OF TAYLOR, THORNE & CO., WESTFIELD, N. J.—Resumed**

Mr. GRAY. Now, Mr. Galligan, there was, then, a second pool formed at the office of Taylor, Thorne & Co.? Will you tell the committee the dates during which that ran, please?

Mr. GALLIGAN. We did not call them pools, Mr. Gray; we called them syndicate accounts.

Mr. GRAY. We understand that Mr. Whitney and a few other of you gentlemen in New York differentiate between a pool and a syndicate account, but some of the traders who make their money in these things frankly call them pools. But whatever name it was called by, won't you tell us when it happened?

Mr. GALLIGAN. That was the one dated April 5, 1928?

Mr. GRAY. Yes; and continued until August 31, 1928. That succeeded the first pool. Did any of the profits or stock in the first pool pass into the second pool?

Mr. GALLIGAN. I think that you will find that a great many members of the first syndicate account took a participation in the second account.

Mr. GRAY. Yes.

Mr. GALLIGAN. Now, does that answer your question?

Mr. GRAY. Yes. Now, Stevens & Legg, the specialists, were in that second pool, were they not?

Mr. GALLIGAN. That is correct.

Mr. GRAY. And they put up the margin of \$50,000?

Mr. GALLIGAN. Correct.

Mr. GRAY. Mr. Fox was in that pool, was he not, Mr. William Fox? Don't look for his name. He hid it under the name of Eiselle & King, didn't he?

Mr. GALLIGAN. I don't know anything about Eiselle & King's participation.

Mr. GRAY. Well, I will prove that. I will show the checks. Eiselle & King were in there for the participation in it, and a margin of \$200,000 was put up; is that not correct?

Mr. GALLIGAN. That is correct.

Mr. GRAY. That is correct. On the question of the figures: In the first place, you bought 5,000 shares of class A common stock of the Fox Film Corporation from the Haystone Securities Corporation, did you not?

Mr. GALLIGAN. Yes, sir.

Mr. GRAY. And the Haystone Securities Corporation is an affiliate of Hayden & Stone, a stock brokerage house in New York; isn't that true?

Mr. GALLIGAN. Yes, sir.

Mr. GRAY. And did you know that just immediately prior to the formation of your pool the Haystone Securities Corporation, or rather Hayden & Stone, had underwritten an issue of Fox Film?

Mr. GALLIGAN. Yes, sir.

Mr. GRAY. And did you know that within four days after you arranged your syndicate the Hayden & Stone concern underwrote another issue of Fox Film in September of 1928? You closed on August 31.

Mr. GALLIGAN. That is the last one, is it not, that you are talking about?

Mr. GRAY. Yes; the \$154,000.

Mr. GALLIGAN. Yes. That is correct.

Mr. GRAY. As a matter of fact you had options on 50,000 shares of Fox Film from the Haystone Securities, did you not, at different prices, ranging from 80 to 84½?

Mr. GALLIGAN. Well, the 80 was a purchase.

Mr. GRAY. That was a purchase?

Mr. GALLIGAN. Yes.

Mr. GRAY. And options run 45,000 more from 80 to 84½?

Mr. GALLIGAN. That is correct.

Mr. GRAY. The pool, as a matter of fact, if you have your records there, please verify this, bought and sold so as to evenly balance the account 193,550 shares; is that correct?

Mr. GALLIGAN. I did not count it up, but I imagine your auditors have.

Mr. GRAY. Yes; they have. You will accept that figure?

Mr. GALLIGAN. Well, I don't know of any other figure. I imagine it must be about right.

Mr. GRAY. Have you got the figure of the profit in the pool?

Mr. GALLIGAN. I have that; yes, sir.

Mr. GRAY. The distribution amounted to how much money?

Mr. GALLIGAN. The margin returned, do you want that figure?

Mr. GRAY. No; the profit was \$149,269.59?

Mr. GALLIGAN. That is probably correct, for the reason that two of the members of the pool took down stock instead of money. So that my figure in money here is slightly under your figure.

Mr. GRAY. In other words, the actual money was \$122,959.93?

Mr. GALLIGAN. That is correct.

Mr. GRAY. And the distribution of the stock brought the profits up to one hundred and forty-nine thousand and some odd?

Mr. GALLIGAN. That is right.

Mr. GRAY. There are one or two things I would like to know about that. You know Mr. Bradford Ellsworth, don't you?

Mr. GALLIGAN. I met him for the first time to-day.

Mr. GRAY. You knew him by reputation in New York?

Mr. GALLIGAN. I knew of him; yes, sir.

Mr. GRAY. You knew he was a trader?

Mr. GALLIGAN. I don't know that I could answer that. I knew he was connected down in the Street, and in what capacity I didn't know.

Mr. GRAY. During the operation of this pool, does your record show that you gave a put to Mr. Ellsworth?

Mr. GALLIGAN. I haven't got that paper with me, but I have recollections of a put that he did get.

Mr. GRAY. Yes. Now, so that the committee may, if they do not understand what a put is, it means that you agreed to buy from Mr. Ellsworth within a certain time a certain amount of stock at a certain price. That is true, isn't it?

Mr. GALLIGAN. That is correct.

Mr. GRAY. And in this instance you gave Mr. Ellsworth the put at \$90 a share, while the market was then about 81; isn't that true?

Mr. GALLIGAN. I really can not answer that. I think Mr. Ellsworth would really be better able to answer it.

Mr. GRAY. What I would like to know is why a syndicate operating in Fox Film stock that would go to Mr. Ellsworth and give him a put on 5,000 shares of the stock at \$90 a share when the price of the stock was 81 and a fraction, or give him an opportunity to make on his put approximately we will say 8 points on 5,000 shares, or \$40,000.

Mr. GALLIGAN. Pardon me, Mr. Gray. What was the date of that put?

Mr. GRAY. June 11, 1928.

Mr. GALLIGAN. What was the price of the stock on the stock exchange on that date?

Mr. GRAY. On that day—June 4 was the date of the put. June 11 was the date of its exercise.

Mr. GALLIGAN. What was the price of the stock on June 4, please?

Mr. GRAY. I am advised that it was in the low 80's. I direct your attention to the fact that you had an option to purchase the stock from the Haystone Securities Corporation during that period of time from 80  $80\frac{1}{2}$  to 84  $1\frac{1}{2}$  and that the price range in June ran during the whole month from 72 to 89  $1\frac{1}{2}$ . What I really want to know is why was he given a put? Why was one man given an opportunity to make that much money? What did he do for you, publicity?

Mr. GALLIGAN. No; not that I know of.

Mr. GRAY. What was it?

Mr. GALLIGAN. What I want to know is what is the actual price of that stock the day that put was given, because—

Mr. GRAY. The actual price on the day he exercised it was \$81 a share.

Mr. GALLIGAN. No; I am not talking about that; I am talking about the day that he received it.

Mr. GRAY. I haven't the exact record and I do not want to guess at it, except to say to you that the price ranged and it went up from the beginning to the end of June from 72 to 89  $1\frac{1}{2}$ . Therefore, it was much less than the price of the put. You can not answer why he got it, can you?

Mr. GALLIGAN. No. It may not have been eight points difference though. I do not think that you will find that the actual difference between the price at which the stock was selling the day the put was given and the price of the put was any eight points.

Mr. GRAY. I know, but why was it given to him? It is an unusual thing for a syndicate to do.

Mr. GALLIGAN. Mr. Gray, I had nothing to do with giving him that put.

Mr. GRAY. And your answer is you do not know?

Mr. GALLIGAN. No; I do not know.

Mr. GRAY. All right; we will ask him. Do you know Mr. Galligan, whether or not—you have told me you did not know whether the \$200,000 subscription of Eisele & King was Fox's—do you know whether or not one hundred and fifty thousand of that was taken down by Eisele & King and whether they allowed the other fifty thousand to pass into your third syndicate?

Mr. GALLIGAN. Mr. Gray, you could tell that by our canceled checks.

Mr. GRAY. Yes. Well, I do not have your canceled checks, but I will offer in the record and if it is necessary I will prove this fact a little later, because it has been admitted to me by Mr. Fox. I will offer a check of Eisele & King, dated September 7, 1928, which was eight days after this syndicate closed, to the order of William Fox. It is a check numbered 61710, Newark, N. J., drawn on the National Newark & Essex Banking Co., at Newark, N. J., for \$150,000, which bears the indorsement by stamp "For deposit only to the credit of William Fox."

(The check submitted by Mr. Gray is here copied in the record in full, as follows:)

EISELE & KING,  
INVESTMENT SECURITIES,  
Newark, N. J., September 7, 1928.

No. 61710

Pay to the order of William Fox	Eisele & King	50,000 Dol's	00 Cts
Dollars	National Newark & Essex Banking Co.	Eisele & King, Newark, N. J.	
\$50,000.00.			

(The above check is indorsed as follows:)

For deposit only.

WILLIAM FOX.

Also indorsement of the National City Bank of New York.

Mr. GRAY. And then I will offer in evidence—first let me ask the question: What was the profit out of this transaction to Eisele & King on that two hundred thousand subscription?

Mr. GALLIGAN. \$19,993.48.

Mr. GRAY. Therefore, I offer a check for exactly that amount drawn on September 7, 1928, the same date as the other check. No. 61711, drawn on the National Newark & Essex Banking Co., at Newark, N. J., to the order of William Fox, signed by Eisele & King, for exactly \$19,993.48, which was the profit that Eisele & King made out of this syndicate transaction, bearing the indorsement by stamp "For deposit only to the order of William Fox."

(The check submitted by Mr. Gray is here copied into the record in full, as follows:)

No. 61711.

Pay to the order of William Fox  
48 Cts                      Dollars.EISELE & KING.  
INVESTMENT SECURITIES.  
Newark, N. J., September 7, 1928.  
Eisele & King                      19993 Dol's

EISELE &amp; KING.

National Newark & Essex Banking Co., Newark, N. J.  
\$19,992.48.

(The above check is indorsed:)

For deposit only.

WILLIAM FOX.

Also by the National City Bank of New York.

Mr. GRAY. Now, all that Kuser family were in that pool, were they not, or the most of them?

Mr. GALLIGAN. Well, there was quite a few of them.

Mr. GRAY. And Hayden, Stone &amp; Co. were in that pool, too, were they not?

Mr. GALLIGAN. I just can not find any record of that.

Mr. GRAY. That is at the bottom of your list.

Mr. GALLIGAN. Wait a minute now—yes.

Mr. GRAY. Now I show you what purports to be a copy of the syndicate agreement in that case and ask you whether that is a correct copy. I am wrong—Senator Bulkley directs my attention to the fact that the check which I said was one hundred and fifty thousand is not one hundred and fifty thousand; that the thing which I took for a one is a part of the machinery of the stamp, and the check is fifty thousand. I will show the remainder of that two hundred thousand deposit, when I come to it, went into the third syndicate for the benefit of Fox, but I am mistaken as to the amount.

Mr. GALLIGAN. That is the copy that was made up.

Mr. GRAY. I will offer and ask to have placed in the record a copy of the syndicate agreement in that case.

(The document presented by Mr. Gray is here printed in the record in full, as follows:)

## FOX FILM CORPORATION CLASS A COMMON STOCK TRADING GROUP

APRIL 4, 1928.

Confidential.

DEAR SIRS: We are forming a group, in which we will participate and of which we will be manager, to purchase and sell, in the market or otherwise, exchange, or otherwise trade in, and make contracts in reference to capital stock of Fox Film Corporation class A common stock.

We have agreed to purchase for the group 5,000 shares of the class A common stock of Fox Film Corporation, at \$80 per share, and in consideration for so doing are to receive, without expense to the group, options on the class A common stock of the Fox Film Corporation at the following prices:

5,000 shares -----	80½	5,000 shares -----	83
Do -----	81	Do -----	83½
Do -----	21½	Do -----	84
Do -----	82	Do -----	84½
Do -----	82½		

The group is to be formed for an aggregate maximum liability of 75,000 shares and is to continue for a period of six months from the date hereof, with the right on the part of the managers to terminate the same at any time in their discretion. The members of the group shall be liable for the losses and expenses of, and shall be entitled to participate in the net profits of the group (subject to the distribution of such portion thereof to Taylor, Thorne &

Co. as is hereinafter provided) pro rata in proportion to their respective interests in the group. Members of the group shall, upon 24 hours' notice from the managers, from time to time, pay for and/or take up at the then net cost to the group, all or any part of their respective portions of securities acquired for the group account. All such securities taken up prior to the termination of the group shall be for carrying purposes only and shall remain subject to recall and disposition by the managers during the life of the group.

The members of the group shall also be obligated, on like notice from the managers, to advance their pro rata share of any margin required as collateral under any loan arrangements effected by the managers to carry any securities in the account; and in this respect the managers are herewith making an initial call for margin equivalent to \$10 a share on the maximum commitment of each participant.

Any member of the group may, if he so desires, elect to carry his pro rata share of the group securities, and to the extent that he does so shall not be liable in connection with any loan arrangements effected by the managers for carrying the balance of such securities.

As compensation for services rendered in connection with the formation and management of the group, Taylor, Thorne & Co. (irrespective of its participation as a member of the group) shall be entitled to receive, on termination of the group, 10 per cent of the net profits of the group as determined by the managers, the balance of the net profits of the group, whether represented by cash or securities, to be divided among the members of the group pro rata in proportion to their respective interests therein. It is understood that in determining the net profits of the group any securities then distributable to the members of the group will be appraised by the managers at the then market value, and that such determination of the net profits shall be conclusive. In case, on the termination of the group, there shall remain any securities in the group account to be distributed to the members thereof, Taylor, Thorne & Co. shall have the right at its option, in lieu of receiving 10 per cent of the net profits as aforesaid, to take such securities upon payment of the then net cost thereof to the group account.

The managers will form an advisory committee of participants, consisting of a representative of Hayden, Stone & Co., and Mr. Nathaniel King, and Col. A. R. Kuser. The managers can call upon the members of this committee for their advice on any and all matters in connection with the handling of this account.

The managers will have full power to act in all group matters, including power to determine if and when and to what extent any option contracts shall be entered into or exercised, and to determine at what price or prices, in what amounts, at what times, and in what manner shares of the above-mentioned stocks or receipts therefor shall be acquired or disposed of, whether in the market or at public or private sale or by special agreement. The managers are also expressly authorized to borrow or themselves advance moneys without notice for any of the purposes of the group, and to pledge as security therefor any of the assets of the group and/or the obligations of the members of the group.

The participant further agrees that if, during the life of this group, he desires to sell any of his holdings not included in the group account, he will do so only through the group account.

In the event of the default of any member or his failure to comply with the terms of this agreement, the managers shall have the right to exclude him from further participation hereunder and to sell and dispose of his interest in the group at public or private sale, in any manner for the account of the group; but such members shall not thereby be released from his obligation hereunder. A default by one member shall in no way release another from his full obligation, and any loss resulting from such default shall be charged to the group as a group expense.

Nothing herein contained shall constitute the members of the group partners with the managers or with one another, or render them liable to contribute more than their ratable amount as herein provided, or render the managers liable for the subscription or default of any member.

Any notice hereunder from the managers to any member shall be deemed to have been duly given if mailed or telegraphed to such member, directed to the address furnished by him.

We confirm that we have allotted to you a participation of 5,000 shares in the group above described, subject to your immediate acceptance, to be executed on a duplicate of this letter inclosed for the purpose.

Very truly yours,

\_\_\_\_\_,  
\_\_\_\_\_,  
Managers.

The foregoing is hereby approved and accepted.

Mr. GRAY. I ask you whether or not that paper that I hand you is a true copy of the option given by these pools to the Haystone Securities Corporation.

Mr. GALLIGAN. That looks like the copy that was made up in my office.

Mr. GRAY. I have that and ask that that be compiled in the record.

The CHAIRMAN. There being no objection, it will be made a part of the record with the other papers that counsel has requested go in.

(The last document presented by Mr. Gray is here printed in the record in full, as follows:)

APRIL 4, 1928.

DEAR SIRS: The undersigned, as managers of "Wesco Corporation stock—Fox Film Corporation class A common stock, purchase group," confirm the sale to you on March 29, 1928, of 5,000 shares of class A common stock of Fox Film Corporation (hereinafter called stock) at a price equal to \$80 per share, for immediate delivery against payment to us in New York funds.

As such managers we also confirm the grant to you on March 29, 1928, of the following options, namely:

(a) An option to purchase from us 5,000 shares of stock at \$80.50 per share, at any time on or before June 10, 1928; and

(b) In case such 5,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$81 per share at any time on or before July 10, 1928; and

(c) In case such 10,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$81.50 per share at any time on or before August 10, 1928; and

(d) In case such 15,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$82 per share at any time on or before September 10, 1928; and

(e) In case such 20,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$82.50 per share at any time on or before October 10, 1928; and

(f) In case such 25,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$83 per share at any time on or before November 10, 1928; and

(g) In case such 30,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$83.50 per share at any time on or before December 10, 1928; and

(h) In case such 35,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$84 per share at any time on or before January 10, 1929; and

(i) In case such 40,000 shares of stock are so purchased, a further option to purchase 5,000 additional shares of stock at \$84.50 per share at any time on or before February 10, 1929.

In case any such option is exercised by you, we will make delivery of the shares called for thereby to you at the office of Hayden, Stone & Co., No. 25 Broad Street, New York City, against payment therefor in funds payable through the New York Clearing House.

If the foregoing expresses the understanding between us, kindly sign in the space provided below and return the inclosed copy of this letter to us.

Very truly yours,

HAYSTONE SECURITIES CORPORATION.

Managers of Wesco Corporation stock, Fox Film Corporation class A common stock, purchase group.

Confirmed.

Mr. GRAY. In order to complete the record—you may or may not know anything about the matter—I am offering a letter which can be properly identified as W. R. K. Taylor & Co., letter dated June 15, 1928, to Eisele & King, which was while this pool was in operation, to whom Fox was covering his transactions.

(The letter referred to and read from by Mr. Gray is here printed in the record in full, as follows:)

MESSRS. EISELE & KING,  
Newark, N. J.

W. R. K. TAYLOR & CO.,  
New York, June 15, 1928.

GENTLEMEN: We wish to advise that we are to-day in receipt of a check in the amount of \$100,000 from Mr. William Fox and we inclose herewith copy of our letter to him as acknowledgment of same.

Very truly yours,

J. J. HEINRICH.

Mr. GRAY. He was associated with your firm, was he not?

Mr. GALLIGAN. That is right.

Mr. GRAY. And then another letter, dated June 15, 1928, the same day, to Mr. William Fox [reading]:

We acknowledge receipt of your communication, inclosing check for \$100,000 which you forwarded to us as per the request of Mr. King.

We wish to advise that we have credited this check to the Fox Film class A common stock group, account of Messrs. Eisele & King, being their additional margin of \$10 a share on their participation on 10,000 shares in the said group.

Very truly yours,

W. R. K. TAYLOR & CO.

Those, I think, definitely identify that Eisele & King transaction with Fox.

(The letter last submitted and read from by Mr. Gray is here printed in the record in full, as follows:)

Mr. WILLIAM FOX,  
New York, N. Y.

JUNE 15, 1928.

DEAR SIR: We acknowledge receipt of your communication, inclosing check for \$100,000, which you forwarded to us as per the request of Mr. King.

We wish to advise that we have credited this check to the Fox Film class A common stock group, account of Messrs. Eisele & King, being their additional margin of \$10 a share on their participation on 10,000 shares in the said group.

Very truly yours,

W. R. K. TAYLOR & CO.

Mr. GRAY. Then there was a third syndicate, Mr. Galligan?

Mr. GALLIGAN. That is right.

Mr. GRAY. By the way, these syndicates, of course, were operated purely and simply for the purpose of making money, were they not?

Mr. GALLIGAN. No, sir; they were operated for the purpose of keeping a good market in the stock. The money of the firm was put in there with other participants because they felt that they had a situation that offered a good investment.

Mr. GRAY. Of course, you were not averse to taking profits?

Mr. GALLIGAN. Hardly.

Mr. GRAY. No; but your statement is that the purpose of the syndicate was to keep the market up?

Mr. GALLIGAN. Not to keep the market up.

Mr. GRAY. To keep a good market?

Mr. GALLIGAN. To keep a good market.

Mr. GRAY. All right.

Mr. GALLIGAN. In other words, the sponsorship of the stock.

Mr. GRAY. I will come back and ask you about that, what you mean by that, but I want to get this first.

Mr. Fox was then distributing this stock to the public, was he not?

Mr. GALLIGAN. He sold some stock through us.

Mr. GRAY. Well, he was generally distributing it to the public?

Mr. GALLIGAN. Not generally distributing. I can not quite agree on that term.

Mr. GRAY. Well, he was distributing it to the public, then? I will take the word "generally" out.

Mr. GALLIGAN. He was; through us.

Mr. GRAY. Through you. And at the same time you were maintaining a good market?

Mr. GALLIGAN. Yes, sir.

Mr. GRAY. In order that you might get a proper price for the stock you were distributing it to the public?

Mr. GALLIGAN. Not necessarily. We might—

Mr. GRAY (interposing). Well, then, I wish you would tell this committee, when you say you were maintaining a good market and you were assuming the sponsorship for the stock, just exactly what you mean, in plain language, so that we can understand it.

Mr. GALLIGAN. I mean this, that after all, the general market situation is governed by conditions at that particular time. I mean that if some news of importance, whether of domestic or international importance, was announced to cause the stock market to react, this account that we were operating for stood ready to protect the market by buying stock each quarter per cent down.

Mr. GRAY. And to keep it from reacting as it would otherwise naturally react to the news that you talk about—right?

Mr. GALLIGAN. Well, to keep it from wide fluctuations.

Mr. GRAY. Now, why did you want to keep it from wide fluctuations?

Mr. GALLIGAN. In the first place—

Mr. GRAY (interposing). Let me see if I can give you the answer to it. So that Fox might distribute to the public at the proper price?

Mr. GALLIGAN. No; I would not say that.

Mr. GRAY. Well, then, you give me the proper answer instead of my hunting for it.

Mr. GALLIGAN. I would not say that, Mr. Gray. The people who went into these syndicate accounts put their money up with us and were willing to buy the stock.

Mr. GRAY. I am not talking about the sales to them. They were all interested in the proposition.

Mr. GALLIGAN. No; I am talking about the purchases for the account.

Mr. GRAY. Oh, yes; go ahead.

Mr. GALLIGAN. And regardless of what transpired after that they were willing to make a purchase of that stock at certain times as the market needed protection?

Mr. GRAY. If the natural reaction had taken place and you had not assumed the sponsorship and kept a good market, why, Fox Theaters or Fox Films, either one, when they were selling their stock, would never have been able to get the price from the stock that they did get, would they?

Mr. GALLIGAN. Mr. Gray, I think that is problematical.

Mr. GRAY. Problematical?

Mr. GALLIGAN. I think so.

Mr. GRAY. In other words, you think if the market dropped five points you could still get five points higher out of the public?

Mr. GALLIGAN. When you say we could get "out of the public," what do you mean?

Mr. GRAY. Well, now, let me take a concrete illustration: You are handling certain of these stocks in the—Fox calls it manipulation; I will prove that a little while later—but you are handling certain of these stocks in your sponsorship and you desire to keep a good market at a price around 84. Some news comes out that would cause a natural reaction in the market; and the news, if you did not keep up your sponsorship, might cause Fox stock to drop to 78. If it dropped to 78, you could not sell any to the public for 84, could you?

Mr. GALLIGAN. We would not attempt to sell any.

Mr. GRAY. Of course you wouldn't, but you could not. Answer me that, yes or no—you could not, could you?

Mr. GALLIGAN. We would not attempt to.

Mr. GRAY. No; but by keeping your market good and keeping up your sponsorship you can maintain the price at 84 and stop that natural reaction or wide fluctuation, whichever you choose to call it, down to 78; and you can still continue to sell Fox Film to the public for 84, can't you?

Mr. GALLIGAN. No, sir.

Mr. GRAY. All right, then; I guess I am wrong in all my logic and reasoning. We will let it go at that. That is the best explanation you can give this committee of what you call sponsorship and keeping a good market, is it?

Mr. GALLIGAN. Well, I will elucidate a little more if I have not made it clear enough.

Mr. GRAY. Go ahead.

Mr. GALLIGAN. When these accounts were formed each participant signed a liability of a certain amount. He was willing to put his money into that security and, if necessary, keep it indefinitely. No one knows at the inception of one of these accounts what the course of the market is liable to be, because it is governed entirely by factors beyond the control of any individual or group.

Mr. GRAY. Go ahead. I am waiting for the explanation of what keeping the good market and sponsorship means, and the effect of it and the purpose of it.

Mr. GALLIGAN. Well—

Mr. GRAY (after a pause). In other words, if it is not what I said, you tell what you think it is or admit that it is what I said and we are through.

Mr. GALLIGAN. No; I can not admit what you said, Mr. Gray.

Mr. GRAY. I know it is pretty tough to do it. So I am waiting for you to tell me what you think it is.

Mr. GALLIGAN. No; it is not a question of being pretty tough to do it; it is a question of getting the right answer for you.

Mr. GRAY. All right; we will wait for you.

Mr. GALLIGAN. When you say that by our buying, holding the market up, it enables us to sell stock at a higher price than we otherwise have sold it, I do not agree with that explanation.

Mr. GRAY. You do not think that is just a natural, proper statement?

Mr. GALLIGAN. I do not, sir.

Mr. GRAY. That one follows after the other as day follows the night?

Mr. GALLIGAN. I don't think so.

Mr. GRAY. All right.

Mr. GALLIGAN. For the reason that it is possible after a purchase is made for an account that you are unable to sell it due to general market conditions. When I say general market conditions, we all know that the market is controlled by economic factors.

Mr. GRAY. The New York Stock Exchange? And the market—

Mr. GALLIGAN (interposing). The market; the market I am talking about.

Mr. GRAY. It may enter into it somewhat, but from what we have discovered down here that has got very little to do with it.

Mr. GALLIGAN. Well, I don't think so.

Mr. GRAY. Well, come back and tell me again—we haven't got it yet—what you mean by keeping a good market and assuming a sponsorship for the stock.

Mr. GALLIGAN. By keeping a good market I mean being in a position to buy or sell at any time.

Mr. GRAY. Whichever you need to do in order to keep the market from either going up too far or down too far; is that right?

Mr. GALLIGAN. Not—I won't say to keep it from going up too far or down too far, because that process is liable to happen anyway. It might go down. I can not stop it from going down.

Senator BROOKHART. Were you buying and selling both at the same time?

Mr. GALLIGAN. No—well, I mean there are intervals between. They are not done simultaneously. Is that what you mean, Senator?

Mr. GRAY. To answer Senator Brookhart, in these pools you sell exactly the same amount you buy.

Mr. GALLIGAN. Yes.

Mr. GRAY. Certainly you do.

Mr. GALLIGAN. Yes; that is right.

Mr. GRAY. So that when you quit you balance your accounts. So I guess that is the best you can tell us about that.

Now, I take you to the third pool. The third pool, the date of the operations is what?

Mr. GALLIGAN. April 5, 1928, to August 31, 1928.

Mr. GRAY. No; that is the second one.

Mr. GALLIGAN. Here, I have it. August 31, 1928, to October 30, 1928.

Mr. GRAY. In other words, the day you closed your second syndicate you started No. 3 one; is that right?

Mr. GALLIGAN. That is correct.

Mr. GRAY. Now tell me first of all whether or not—we have seen that \$50,000 came out to Fox in the Eisele & King transaction in the second syndicate—whether or not you find \$150,000 remaining in the third syndicate in the name of Nathaniel King.

Mr. GALLIGAN. There is one hundred and fifty thousand in the name of Nathaniel King, that is right.

Mr. GRAY. And the participators there were pretty much the participators that were in the other, were they not?

Mr. GALLIGAN. Yes, they were.

Mr. GRAY. There are some changes?

Mr. GALLIGAN. There are some changes, but for most part they were the same.

Senator BROOKHART. Why do you close the old pool and start a new one?

Mr. GALLIGAN. Well, I believe that the old one expired by limitation.

Senator BROOKHART. That was just by agreement, was it not?

Mr. GALLIGAN. Just a second, Senator, and I will answer that question for you. [After referring to papers.] The second one had not expired, but it had balanced its position and stopped. So there was not any need of continuing it. Probably some of the participants wanted to get out. There might be several reasons for it, and we just——

Mr. GRAY. Just quit and started a new one?

Mr. GALLIGAN. Closed it and started a new one. There are some changes in the participants in the other account that started the same day.

Mr. GRAY. In the distribution you charged \$5,000 for the expense. It was a round figure and no itemization of it. What was that for, do you know?

Mr. GALLIGAN. It went into our profit and loss account, did it not, Mr. Gray?

Mr. GRAY. It was charged as \$5,000 expense against the syndicate. That is the only thing that we have.

Mr. GALLIGAN. Yes; but I think it went into the profit and loss account.

Mr. GRAY. You mean by that that you took \$5,000 out of the funds to put in your charge that you may have spent that you did not otherwise detail in the report?

Mr. GALLIGAN. I do not believe that is the explanation.

Mr. GRAY. Well, you make the explanation then, please.

Mr. GALLIGAN. Which account are you talking about?

Mr. GRAY. I am talking about this third syndicate, which contains an item of \$5,000 that your firm took from the moneys and charged it just to expense. I want to know what it means.

Mr. GALLIGAN. Might I ask the question of whether that did not appear as a credit in our P. & L. account?

Mr. GRAY. It appears as a credit in your distribution to your firm.

Mr. GALLIGAN. Yes; that is right.

Mr. GRAY. In other words it charged the syndicate \$5,000 for expense?

Mr. GALLIGAN. Pardon me; I don't think it is charged.

Mr. GRAY. Oh, Yes; it was charged to the syndicate and credited to your firm.

Mr. GALLIGAN. The reason I bring this up is this, that we had a participation with Hayden-Stone in one of those——

Mr. GRAY (interposing). I am coming to that. That is something separate. I am going to ask you about that. It has nothing to do with this. If you can not explain it, say so.

Mr. GALLIGAN. I really don't know.

Mr. GRAY. All right. Now, as a matter of fact, that syndicate stepped into the Haystone Securities Corporation's underwriting of 154,000 shares in September of 1928 of the Fox Film stock and made

a profit from their interest in the underwriting of \$25,000; isn't that correct?

Mr. GALLIGAN. That is right.

Mr. GRAY. Yes. In other words, William Fox was a participant—I want the committee to get this—William Fox was a participant in the underwriting syndicate of the Haystone Securities Corporation, for which they were paid over six hundred and some odd thousand dollars for doing practically nothing, he receiving a profit of at least 66, and we figure it \$81,000 from that, and then William Fox had \$150,000 participation in this pool of Taylor-Thorne's or W. R. K. Taylor & Co., which pool that he was interested in was also interested in the Haystone Securities Corporation underwriting and made \$25,000 out of that in addition to go to this syndicate or pool for purposes of distribution—that is correct, isn't it?

Mr. GALLIGAN. That is correct.

Mr. GRAY. All right.

Mr. GALLIGAN. I think there was a big liability in that commitment.

Mr. GRAY. You mean there might have been?

Mr. GALLIGAN. You sign up for it, Mr. Gray.

Mr. GRAY. Yes.

Mr. GALLIGAN. And if the stockholders do not take it, you are responsible for it.

Senator WALCOTT. Was that commitment a firm underwriting?

Mr. GALLIGAN. As far as our firm was concerned?

Senator WALCOTT. No; as far as Hayden-Stone was concerned?

Mr. GALLIGAN. Oh, yes.

Mr. GRAY. I am going to put Hayden-Stone's representative and a member of the firm on the stand and ask him all about that.

Senator WALCOTT. Did your firm have a firm underwriting?

Mr. GALLIGAN. We had a part of it.

Senator WALCOTT. Participation?

Mr. GALLIGAN. Participation in the Hayden-Stone underwriting.

Mr. GRAY. Now, I show you what purports to be a copy of the agreement in that syndicate and ask you whether that is a correct copy.

Mr. GALLIGAN. That looks like a copy that was prepared in our office.

Mr. GRAY. I ask that this be made a part of the record.

The CHAIRMAN. Without objection, it will be so ordered.

(The document here submitted by Mr. Gray is printed in the record in full, as follows:)

**FOX FILM CORPORATION CLASS A COMMON STOCK TRADING GROUP**

(Confidential)

AUGUST 31, 1928.

DEAR SIR: We are forming a group, of which we will be managers, to purchase and sell, in the market or otherwise, exchange, or otherwise trade in, and make contracts in reference to capital stock of Fox Film Corporation class A common stock.

We have agreed to purchase for the group 16,520 shares of the class A common stock of the Fox Film Corporation at \$91 per share, and in consideration for so doing, are to receive, without expense to the group, options on the class A common stock of the Fox Film Corporation at the following prices, 7,500 shares at 91½.

The group is to be formed for an aggregate maximum liability of 75,000 shares and is to continue for a period of six months from the date hereof, with the right on the part of the managers to terminate the same at any time in their discretion. The members of the group shall be liable for the losses and expenses of, and shall be entitled to participate in, the net profits of the group (subject to the distribution of such portion thereof to W. R. K. Taylor & Co. as is hereinafter provided), pro rata in proportion to their respective interests in the group. Members of the group shall, upon 24 hours notice from the managers, from time to time, pay for and/or take up at the then net cost to the group, all or any part of their respective portions of securities acquired for the group account. All such securities taken up prior to the termination of the group, shall be for carrying purposes only and shall remain subject to recall and disposition by the managers during the life of the group.

The members of the group shall also be obligated, on like notice from the managers, to advance their pro rata share of any margin required as collateral under any loan arrangements effected by the managers to carry any securities in the account, and in this respect the managers are herewith making an initial call for margin equivalent to \$15 a share on the maximum commitment of each participant.

Any member of the group may, if he so desires, elect to carry his pro rata share of the group securities, and to the extent that he does so shall not be liable in connection with any loan arrangements effected by the managers for carrying the balance of such securities.

As compensation for services rendered in connection with the formation and management of the group, W. R. K. Taylor & Co. (irrespective of its participation as a member of the group) shall be entitled to receive on termination of the group, 10 per cent of the net profits of the group as determined by the managers, the balance of the net profits of the group, whether represented by cash or securities, to be divided among the members of the group pro rata in proportion to their respective interests therein. It is understood that in determining the net profits of the group, any securities then distributable to the members of the group will be appraised by the managers at the then market value, and that such determination of the net profits shall be conclusive. In case, on termination of the group, there shall remain any securities in the group account to be distributed to the members thereof, W. R. K. Taylor & Co. shall have the right, at its option, in lieu of receiving 10 per cent of the net profits as aforesaid, to take such securities upon payment of the then net cost thereof to the group account.

The managers will form an advisory committee of participants, consisting of Mr. W. R. K. Taylor and Mr. Nathaniel King. The managers can call upon the members of this committee for their advice on any and all matters in connection with the handling of this account.

The managers will have full power to act in all group matters, including power to determine if and when and to what extent, any option contracts shall be entered into or exercised, and to determine at what price or prices, in what amounts, at what times, and in what manner, shares of the above-mentioned stocks or receipts therefor shall be acquired or disposed of, whether in the market or at public or private sale or by special agreement. The managers are also expressly authorized to borrow, or themselves advance, moneys without notice, for any of the purposes of the group, and to pledge as security therefor any of the assets of the group and/or the obligations of the members of the group.

The participant further agrees that if, during the life of this group, he desires to sell any of his holdings not included in the group account, he will do so only through the group account.

In the event of the default of any member or his failure to comply with the terms of this agreement, the managers shall have the right to exclude him from further participation hereunder and to sell and dispose of his interest in the group at public or private sale, in any manner for the account of the group but such members shall not thereby be released from his obligation hereunder. A default by one member shall in no way release another from his full obligation, and any loss resulting from such default shall be charged to the group as a group expense.

Nothing herein contained shall constitute the members of the group partners with the managers or with one another, or render them liable to contribute more than their ratable amount as herein provided, or render the managers liable for the subscription or default of any member.

Any notice hereunder from the managers to any member shall be deemed to have been duly given if mailed or telegraphed to such member, directed to the address furnished by him.

We confirm that we have allotted to you a participation of 10,000 shares in the group above described, subject to your immediate acceptance, to be executed on a duplicate of this letter inclosed for the purpose.

Very truly yours,

T. T. Co., *Managers.*

Mr. GRAY. And I want to direct the committee's attention to this, that it appears in this syndicate agreement, and to say to you that Mr. Fox told me that he did not even know it was there—

The participant further agrees that if, during the life of this group, he desires to sell any of his holdings not included in the group account, he will do so only through the group account.

Thus the man that went into that had no right to sell anywhere else any of the stock which he owned in Fox Film.

Now, as a matter of fact, however, you knew that Mr. Fox, from your association with him, did you not, was carrying a general trading account at Eisele & King's?

Mr. GALLIGAN. I assumed that he was. I never had any definite knowledge of it.

Mr. GRAY. And the amount of money that Mr. Fox or Nathaniel King was entitled to in this case, which happened to be the profits plus his investment, went right into the trading account at Eisele & King's on the books of Nathaniel King?

Mr. GALLIGAN. I didn't know it.

Mr. GRAY. Didn't know that. All right.

Just one thing more to complete the picture: The profit was small, was it not, twenty-four thousand—

Mr. GALLIGAN. You mean on King's profit?

Mr. GRAY. I do not mean your management fees. Your management fees plus your profit was \$24,339.36, was it not?

Mr. GALLIGAN. You have the figures there. I haven't got that.

Mr. GRAY. Yes, but the profit on the deal itself was—

Mr. GALLIGAN. One hundred eighty-two thousand.

Mr. GRAY. \$182,804.27?

Mr. GALLIGAN. That is correct.

Mr. GRAY. Now I would like to ask you: Your firm, together with Wellington Co. and one other firm whose name I do not recall, were the original sponsors—Eisele & King—for the distribution of 500,000 shares of Fox Theaters stock—do you recall that?

Mr. GALLIGAN. I have a memorandum of it here.

Mr. GRAY. We have already put upon the record—if you were here this morning you heard it—the agreement between those three firms on Fox Theaters.

Mr. GALLIGAN. Yes.

Mr. GRAY. We also find a very peculiar agreement by which those three concerns agreed in the distribution of their profits, for the commission, to pay Caroline Leah Tausig, a daughter of Fox, 25 per cent of the commission. Why was that done?

Mr. GALLIGAN. I don't know, Mr. Gray. I had nothing to do with that account.

Mr. GRAY. You know it was done?

Mr. GALLIGAN. Now I don't want to admit something that I don't know.

Mr. GRAY. I don't want you to.

Mr. GALLIGAN. I know there was an account in which she was interested. What percentage—you said 25 per cent?

Mr. GRAY. Yes, 25 under the agreement.

Mr. GALLIGAN. I can not say as to that. I am not familiar with that. I knew there was an account.

Mr. GRAY. Will you tell me why that combination of brokers, having been given by Mr. Fox, who held all the voting stock of the Fox Theaters, the right to dispose of 500,000 shares of stock, should hand back 25 per cent of their profits to Mr. Fox's daughter?

Mr. GALLIGAN. You will have to ask Mr. Fox's daughter.

Mr. GRAY. All right, I expect that is all we want to ask this gentleman.

Senator GOLDSBOROUGH. I would like to ask the witness a question. Did I understand you to say it was not the sole purpose of the creation of pools to make money?

Mr. GALLIGAN. No, I did not say that, Senator.

Senator GOLDSBOROUGH. I understood Mr. Gray to ask you that.

Mr. GRAY. He said that was not the principal purpose.

Mr. GALLIGAN. That is right.

Mr. GRAY. The principal purpose was to keep a good market and to act as the sponsors for the stock. But I have yet to be able to get him to define to my satisfaction, what keeping a good market and acting as sponsors for the stock means. He would not accept my definition.

Senator GOLDSBOROUGH. Well, you can say they are not created to lose money?

Mr. GALLIGAN. That is right.

Mr. GRAY. May I say to you, Senator Goldsborough, that we run into some instances where they were created and were willing to lose while they could dump the stock on the public by keeping the price up, lose money in the pool itself but make a very much larger amount by their distribution of the stock to the public. We run into them where they were created and expected to lose money.

Mr. GALLIGAN. There was nothing like that in these trading accounts, Mr. Gray.

Mr. GRAY. No; I do not think it was in your trading accounts. You wanted to keep the price up so that Fox could sell the stock.

Mr. GALLIGAN. No; the earnings justified the price of the stock.

Mr. GRAY. We do not want to get back into that. You are sure you are not thinking about the publicity that Fox gave over the movie stage?

Mr. GALLIGAN. No.

Mr. GRAY. All right, Mr. Hoyt.

**TESTIMONY OF RICHARD F. HOYT, REPRESENTING HAYDEN,  
STONE & CO., NEW YORK CITY**

Mr. GRAY. If Mr. Hoyt will be more direct in answering questions, I think we will get along very quickly.

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matter now under investigation by the committee, so help you God?

Mr. HOYT. I do.

Mr. GRAY. State your full name, please.

Mr. HOYT. Richard F. Hoyt.

Mr. GRAY. Where do you live?

Mr. HOYT. New York City.

Mr. GRAY. Where in New York?

Mr. HOYT. 206 East Sixty-fifth.

Mr. GRAY. Mr. Hoyt, you are a member of the firm of Hayden, Stone & Co. in New York, are you not?

Mr. HOYT. Yes, sir.

Mr. GRAY. You have been such for how long?

Mr. HOYT. Twelve or thirteen years.

Mr. GRAY. Hayden, Stone & Co. are a partnership, and members of the New York Stock Exchange?

Mr. HOYT. Yes.

Mr. GRAY. Hayden, Stone & Co. were the concern who, when Mr. Fox was ultimately permitted to get the control of the Westco Corporation, handled some of the financing?

Mr. HOYT. Yes.

Mr. GRAY. Will you tell us, if you please, so that we may understand it, what the Westco Corporation was, first?

Mr. HOYT. The Westco Corporation was a corporation formed to acquire approximately two-thirds of the stock of the West Coast Theaters Corporation.

Mr. GRAY. I will have to ask you to keep your voice up. The Westco Corporation was a corporation formed to get control by getting about two-thirds of the stock of the West Coast Theaters Corporation?

Mr. HOYT. Yes.

Mr. GRAY. The West Coast Theaters owning a number of moving picture houses in the West?

Mr. HOYT. On the West Coast.

Mr. GRAY. The Westco Corporation, or the Westco Company, whichever it was, did get that control?

Mr. HOYT. Yes, sir.

Mr. GRAY. Mr. Fox wanted that, didn't he?

Mr. HOYT. I think so.

Mr. GRAY. As a matter of fact, your concern, in the first instance, if I recall my talk with you the other day, blocked his control, and ultimately helped him to get it, and financed it; is that right?

Mr. HOYT. We joined forces with Gore Bros., who owned a large part of that company, and bought out the stock for a group of First National franchise holders. We bought out Mr. Sol Lessor's holdings. Putting Lessor's and Gore's holdings together into the Westco Corporation, gave Westco Corporation about two-thirds of the ownership of the outstanding stock of the West Coast Theaters. We issued for the Westco stock, voting trust certificates, the voting trustees being the two Gore brothers, myself, Mr. John R. Dillon, who is now a member of my firm, and Mr. Robert Leiber, who was the president of the First National Pictures Corporation.

Mr. GRAY. Your next step was your deal with Fox. Tell us briefly what that was.

Mr. HOYT. In approximately December, 1927, I went to Mr. Fox, and told him that we were prepared to sell the stock of the Westco

Corporation to him at \$55 a share, and he immediately said he would buy it.

Mr. GRAY. How was the arrangement made by which that transaction was carried out?

Mr. HOYT. First, the verbal understanding was that he was to buy that for cash.

Mr. GRAY. Yes; and then?

Mr. HOYT. Before any contracts were finally signed, Mr. Fox approached me, as a member of the firm of Hayden, Stone & Co., and asked me if I would agree to underwrite some Fox Film securities to increase the treasury cash balances of the Fox Film and help them to make this purchase.

Senator FLETCHER. How many shares of the Westco Co. were there?

Mr. HOYT. Approximately 295,000.

Senator FLETCHER. No par value?

Mr. HOYT. No par value, I think.

Mr. GRAY. Go ahead.

Mr. HOYT. On January 21, 1928, we signed two agreements. One agreement was as representing the Westco stockholders, by which the Fox Film Corporation agreed to pay \$55 a share for the Westco shares, or, in the alternative, to issue three-quarters of a share of Fox Film A stock to such Westco stockholders as would exchange on that basis.

Mr. GRAY. Let me first, so as to sever some of these things, address myself to the underwriting syndicate. Have you got the agreement there?

Mr. HOYT. I will just mention that now, if you wish.

Mr. GRAY. Yes.

Mr. HOYT. The second agreement was of the same date, by which Hayden, Stone & Co. undertook to form a syndicate which would underwrite 125,000 shares of Fox Film A stock, to be offered to the Fox Film A stockholders at \$75 a share. Hayden, Stone & Co. were to receive a manager's fee of \$1 and the underwriting syndicate an underwriting commission of \$2 per share. The purpose of that was to raise part of the money necessary to purchase the Westco holdings, and it was hoped that enough Westco shares would be exchanged so that that would provide all the money that was necessary.

Senator FLETCHER. The Westco Co. and the Fox Film were both listed on the New York Stock Exchange?

Mr. HOYT. The Westco Corporation had never been listed.

Mr. GRAY. Was it afterwards listed?

Mr. HOYT. Never. It was owned by the franchise holders, who were the stockholders of the First National and had been bought in the first instance to protect the First National Co. on its outlet for films.

The CHAIRMAN. Was it listed on any other stock exchange than the New York Stock Exchange?

Mr. HOYT. I think never.

Mr. GRAY. In the Fox Film underwriting syndicate, you did not take over any of the stock, did you?

Mr. HOYT. It ultimately proved that the stockholders took practically all that stock.

Mr. GRAY. Is this list which I give you here a list of the participants in that syndicate?

Mr. HOYT. This is what I gave; yes.

Mr. GRAY. I ask that this be made a part of the record, with no regard being paid to the memorandum that is on the bottom showing the participants in this 125,000-share underwriting syndicate in January, 1928, and I direct the attention of the committee to the fact that the Haystone Securities Corporation were interested in 54,000 of that 125,000, and the Taylor, Thorne Co., the concern about which we have just heard testimony, had an interest of 20,000 shares. I also invite your attention to the fact that the Shermar Corporation had an interest of 5,000 shares; Kuhn, Loeb & Co., brokers; Lehman Bros., brokers; Hallgarten & Co., brokers, all were interested in this pool underwriting.

The list referred to is as follows:

## EXHIBIT III

*Memoranda, Hayden, Stone & Co., 125,000 shares Fox Film Corporation Underwriting Syndicate, January, 1928*

Hayden, Stone & Co.....	1,500
Haystone Securities Corporation.....	54,000
Taylor, Thorne & Co.....	20,000
Theodore Schulz & Co.....	5,000
Watite Corporation.....	2,500
Blair & Co.....	5,000
Shermar Corporation.....	5,000
Lehman Bros.....	5,000
Kuhn, Loeb & Co.....	5,000
Glenny, Monroe & Moll.....	2,000
Hallgarten & Co.....	3,000
1st Wisconsin Co.....	3,000
Motion Picture Capital.....	5,000
W. S. Aagaard & Co.....	3,000
Wertheim & Co.....	6,000
Total.....	125,000

Mr. GRAY. I ask you who, if you know, is the Shermar Corporation?

Mr. HOYT. I think Mr. Albert Wiggin has the ownership in it.

Mr. GRAY. It is Mr. Albert Wiggin's personal trading company, is it not?

Mr. HOYT. I do not know that. I know he is interested.

Mr. GRAY. Don't you know that he and his family are the only ones interested?

Mr. HOYT. No; I do not know.

Mr. GRAY. Who is Mr. Albert Wiggin?

Mr. HOYT. Chairman of the board of the Chase National Bank.

Mr. GRAY. With respect to this Haystone Securities holding of 54,000 shares, did you subdivide that after this list was created, and give anybody else a subsidiary interest in your holdings?

Mr. HOYT. I have given you the record.

Mr. GRAY. I know it, but I want you to testify.

Mr. HOYT. I would have to refresh my memory. I will be very glad to do it, if you will give me the record.

Mr. GRAY. To whom did you give that interest? (After conferring with an associate.) I am informed—so I will correct my statement—that that was in another account, and not in this account, that there was a subdivision to the Shermar Corporation, and Oscar Gubelman.

(The statement referred to by Mr. Gray was not handed to the reporter.)

Mr. GRAY. You made \$375,000 on that; is that right?

Mr. HOYT. The underwriters and ourselves—the whole syndicate; yes.

Mr. GRAY. The whole syndicate?

Mr. HOYT. Yes.

Mr. GRAY. As a matter of fact, of course, Fox Films paid that?

Mr. HOYT. Yes.

Mr. GRAY. Though we understand what risk you may have assumed, or believed that you did assume, when you entered into the underwriting agreement, there was actually, of course, no work that had to be done by you at all? You took over no stock?

Mr. HOYT. I had to do a great deal of work, Mr. Gray.

Mr. GRAY. What did you have to do with the underwriting, after entering into that agreement?

Mr. HOYT. I had to form another syndicate to take over 109,000 shares of stock, so that that would not be pressed on the market and destroy the main underwriting.

Mr. GRAY. That 109,000 shares of stock arose from the exchange of Westco for Fox Film; is that right?

Mr. HOYT. Yes.

Mr. GRAY. In other words, what you did was to take over approximately what—81,000 shares of Westco?

Mr. HOYT. One hundred and nine thousand.

Mr. GRAY. One hundred and nine thousand shares of Westco at \$55 a share.

Mr. HOYT. Yes.

Mr. GRAY. Which were exchanged for how many shares of Fox Film?

Mr. HOYT. Three-quarters of a share—eighty thousand and odd shares.

Mr. GRAY. Eighty thousand and odd shares; so that you had to protect the syndicate underwriting interest as against that, and you had to protect your own stock as against the syndicate underwriting?

Mr. HOYT. Yes.

Mr. GRAY. When you were permitted to underwrite that at \$75 a share what was its price on the market?

Mr. HOYT. I think somewhere between 77 and 81; along in that range.

Mr. GRAY. In January of 1928?

Mr. HOYT. I have not a record of the transactions.

Mr. GRAY. Was it not in the eighties entirely?

Mr. HOYT. It may have been.

Mr. GRAY. We will put the range in, so as to show where it was.

I ask you whether or not, when you knew that you were going to take this Westco Corporation's stock which you could turn in for Fox Film stock—and whether or not, when you knew that there was going to be put on the market Fox Film stock at \$85 a share, you did not, in your firm, start a short account and sell Fox Film stock?

Mr. HOYT. No, sir.

Mr. GRAY. Did you have an account in which you sold Fox Film stock?

Mr. HOYT. The facts as to that account—

Mr. GRAY. Suppose you tell it in your own way, and let the committee draw the inference as to whether it was short or not.

Mr. HOYT. I and my partners owned substantially over 20,000 shares of Westco Corporation shares. We had, on January 21, signed an underwriting committing our firm to some \$9,000,000 of Fox Film A stock in case the stockholders did not take it. Four days after this underwriting agreement, or these underwriting agreements were signed—I think on January 25—we started selling Fox Film stock on the New York Stock Exchange, as against the very large commitment we had in this situation, and during the period of a few weeks we sold about 19,000 shares of Fox Film stock. Of that, we owned substantially the same amount in our Westco shares, which, under a contract which we had, were exchangeable into Fox Film shares.

Mr. GRAY. You were asked about the range in January. The range was 82 low and 88 $\frac{1}{4}$  high. Did you sell the stock that you sold through this account, in January, and within that range?

Mr. HOYT. I have given you a list of all the transactions.

Mr. GRAY. I do not think you have.

Mr. HOYT. Yes. I have given you all that. I know that we started selling January 25, and you have a record of the prices.

Senator FLETCHER. What year was that?

Mr. HOYT. 1928.

Senator WALCOTT. Were you able to deliver Westco stock on the sale of Fox Film, on the exchange agreement?

Mr. HOYT. By exchanging it with the company if we had needed to; yes.

Mr. GRAY. In order that we may determine, by a short cut, whether that was an account in which you were able to make any money; did you make money in it?

Mr. HOYT. I assume so, because we ultimately exchanged that stock for—we purchased Westco shares in the open market, and exchanged those into Fox stock at \$55 a share; \$55 is less than three-quarters of the price of \$80.

Senator WALCOTT. As against \$77.

Mr. GRAY. I ask you whether or not you made within a few dollars of \$150,000 on that transaction.

Mr. HOYT. I have given you the record.

Mr. GRAY. You have given us the figures in two items. The first one is \$146,262.62, and the other is \$3,298.24—the total of those two figures. Mr. Hoyt, when you started that account—we have in front of us here a transcript of it from the books—were they not, as a matter of fact, all short sales?

Mr. HOYT. In the sense that that account was not long of any stock.

Mr. GRAY. Yes.

Mr. HOYT. But the people who owned that account, Hayden, Stone & Co., were long of Westco shares, which we knew were exchangeable into Fox Film shares.

Mr. GRAY. Therefore, the question I asked you in the first instance, I repeat to you again. Is it not a fact that you went out and sold Fox Film shares short, with the knowledge of the fact that you were going to be able to exchange the Westco shares which you owned for Fox Film shares, so as to make your short sale an advantage, a financial advantage?

Mr. HOYT. Yes.

Mr. GRAY. That is what I want to establish.

Mr. HOYT. Except that I object to the expression, "selling Fox Film short." I owned it.

Mr. GRAY. You did not own them. You anticipated owning them by exchanging.

Mr. HOYT. All I had to do was to take a piece of paper to the Fox Film Co., and I owned Fox Film shares.

Mr. GRAY. What was the next thing you did with respect to Fox Film shares after January, 1928?

Mr. HOYT. Shortly after that, Mr. Fox let us know that the people who held the Westco shares, by a much larger extent than he anticipated, were asking for cash for those shares, instead of exchanging them into Fox Film stock, and I might call attention to the fact that these people had the same opportunity to have exchanged and sold in the market as we did, if they chose to.

Senator BROOKHART. Did they have the same information about what was going on on the inside?

Mr. HOYT. Exactly. Notices had gone out as to the exchange, and were in their hands at this time.

Senator BROOKHART. You had told them all these things you knew yourself?

Mr. HOYT. Yes, sir; without any question. Mr. Fox came to me and said that he wanted me to do something to take care of the Westco stockholders who were coming in and asking for cash. We had this underwriting, and we wanted it to be successful. We had looked into the Fox Film Co. and believed in it. We thought the shares were attractive at the value they were quoted at, so I went around to the people who had done business with me in New York, and told them that I believed in the Fox Film stock at these prices, and recommended that they join in a syndicate which we formed to buy 109,000 shares of Westco stock, which represented those stockholders who had asked Fox Film Co. for cash. That syndicate was formed. You have a list of the participants, and we bought that stock, thereby avoiding the necessity of the company paying out that amount of cash.

Senator WALCOTT. Who were the accountants who passed on the Fox Film transactions for you?

Mr. HOYT. We had an audited statement of the Fox Film Co. I have forgotten the name of the firm of auditors. Naturally, I per-

sonally had looked into the business and felt that it was good at that time.

Mr. GRAY. You organized, then, a syndicate for the purpose of dealing in what—Fox Film stock?

Mr. HOYT. A syndicate to buy Westco shares for cash and convert them into Fox Film stock.

Mr. GRAY. And trade in them?

Mr. HOYT. And then sell those shares when, as, and if the market would make it possible.

Mr. GRAY. Who was in that syndicate?

Mr. HOYT. You have a list.

Mr. GRAY. I do not know whether we have a list or not. I think, rather than inquire with respect to it, except as to several ones, I will put this list, which shows the result of the operations of this pool, in the record, if the chairman will permit. I want to indicate that the participants in it were: Grenville Clark; B. M. Baruch; Jackson & Curtis; Lehman Bros.; Shermar Corporation; White, Weld & Co.; Wertheim & Co.; Charles D. Barney & Co.; O. L. Gubelman; Edlyn Realty Co.; Chadbourne, Stanchfield & Levy; Gore Bros. (Inc.); Amster Investing & Trading Association; Glenny, Monroe & Moll; Robert Lieber; Abbott, Hoppin & Co.; Kuhn, Loeb & Co.; and Haystone Securities.

(The statement referred to is as follows:)

*Hayden, Stone & Co.—Fox Film, a syndicate summary, March 1, to September 10, 1928*

Sales.....	52,316		\$5,205,008.88
Purchases.....	4,100		329,620.00
	<hr/>		<hr/>
	48,216		4,875,388.88
Deliveries to syndicate at W. R. K. Taylor.....	35,000		28,441.00
	<hr/>		<hr/>
	83,216		7,719,488.88
Receipts:			
From conversion of 109,000 shares Wesco Stock, purchased from Wesco Deposit Account at Hayden Stone & Co.....	81,750	\$5,995,000.00	
From syndicates at W. R. K. Taylor.....	1,466	113,927.70	
	<hr/>	<hr/>	
	83,266		6,108,927.70
			<hr/>
			1,610,561.18
Dividends received.....		1,150.00	
Interest.....		16,938.81	
		<hr/>	
			18,088.81
			<hr/>
			1,628,649.99
Miscellaneous expense.....			767.16
			<hr/>
			1,627,882.83
Net trading profit—Managers' commission to Haystone Securities Co.....			404,404.80
			<hr/>
Profits for distribution.....			1,223,478.03

*Hayden Stone & Co., account 703. For Film "A"*

	Purchases			Sales		
1928—Mar. 1.....	81½- ½	500	\$41,000.00	82¼- 83¼	400	\$33,054.00
Mar. 2.....	81½-82½	600	49,407.50	82¼- 82¾	700	57,682.00
Mar. 5.....	80½-82½	600	48,632.50	82¼- 82¾	250	20,502.51
Mar. 6.....				80¾- 81¼	325	26,268.88
Mar. 7.....	80½-81¼	600	48,795.00	81¼- 81¾	100	8,101.00
Mar. 8.....	80½	100	8,070.00			
Mar. 12.....	80- 80½	300	24,135.00	81¼	100	8,101.00
Mar. 13.....	79- 79½	400	31,805.00			
Mar. 15.....	76¾-78½	900	70,105.00	79¾- 79¾	300	23,778.00
Mar. 16.....	76½	100	7,670.00			
Mar. 19.....				79¾- 79¾	200	15,879.50
Aug. 8.....				85¼- 85¾	800	68,333.00
Aug. 27.....				86- 87¼	1,200	103,662.00
Aug. 28.....				87¼- 90¼	2,800	338,638.00
Aug. 30.....				91- 92¾	1,600	145,668.00
Sept. 4.....				91¼- 98¼	2,900	270,864.50
Sept. 5.....				95¼- 98½	4,700	454,047.00
Sept. 6.....				99¼-106	9,141	939,773.99
Sept. 7.....				103¼-105	9,300	970,290.50
Sept. 10.....				104¼-106¾	16,500	1,719,365.00
Total.....		4,100	329,620.00		52,316	5,205,008.88

*Hayden Stone & Co., account 703, participations*

	Participa- tion	Deposits	Profits
Grenville Clark.....	150,000	\$30,000.00	\$26,279.90
B. M. Baruch.....	250,000	50,000.00	44,838.11
Jackson & Curtis.....	150,000	128,480.00	26,172.52
Lehman Bros.....	500,000	428,193.33	87,240.90
Sherman Corporation.....	375,000	321,126.67	65,437.94
White Weld & Co.....	750,000	150,000.00	131,361.77
Wertheim & Co.....	500,000	100,000.00	87,575.07
Chas. D. Barney & Co.....	500,000	100,000.00	87,573.85
O. L. Gubelman.....	125,000	107,068.67	21,811.96
Edlyer Realty Co.....	400,000	80,000.00	70,056.65
Chadbourne, Stanchfield & Levy.....	500,000	100,000.00	87,570.06
Gore Bros. (Inc.).....	250,000	50,000.00	44,838.11
Amster Investing & Trading Assn.....	200,000	40,000.00	35,029.03
Glenny Monroe & Moll.....	100,000	20,000.00	17,514.28
Robert Lieber.....	20,000	4,000.00	3,587.05
Abbott Koppen & Co.....	100,000	20,000.00	17,935.25
Kuhn, Loeb & Co.....	1,000,000	856,460.00	174,481.41
Haystone Securities.....	1,130,000	1,498,786.67	194,174.17
Profit.....			1,223,478.03
Managers commission.....			404,404.80
Total.....	7,000,000	4,084,113.34	1,627,882.83

Mr. GRAY. Let me ask you this. Lehman Bros.; White Weld & Co.; Wertheim & Co.; and Charles D. Barney & Co. are all brokerage houses, are they not?

Mr. HOYT. Yes.

Mr. GRAY. The Sherman Corporation is Mr. Wiggin, as you have indicated, who was the chairman of the board of the Chase National Bank?

Mr. HOYT. Yes.

Mr. GRAY. Do you know O. L. Gubelman? Who is he?

Mr. HOYT. An individual client of Hayden, Stone & Co.

Mr. GRAY. You know him also as being an operator for the Chase Securities, do you not?

Mr. HOYT. My relations with him have been as a customer doing business with us.

Mr. GRAY. For whom? For himself?

Mr. HOYT. For himself.

Mr. GRAY. As far as you know?

Mr. HOYT. Yes.

Mr. GRAY. Haystone Securities is an affiliate of Hayden & Stone, is it not?

Mr. HOYT. Yes.

Mr. GRAY. For trading purposes?

Mr. HOYT. No. The business of Hayden, Stone & Co., consisting largely of commission transactions, the business of Haystone Securities, which is affiliated, was to take large underwritings, or the purchase of securities involving commitments which we did not wish the brokerage house to have.

Mr. GRAY. In other words, where it was something separate and aside from the commission business, and represented either an investment or an underwriting, or trading, you used the Haystone Securities Corporation?

Mr. HOYT. Yes, sir.

Mr. GRAY. The figures in this sheet show that the gross profit was \$1,627,882.83, of which the managers, which were Hayden, Stone & Co. Isn't that true?

Mr. HOYT. Yes.

Mr. GRAY. Of which the managers received \$404,404.80 for conducting the operation? What was the purpose—I think you stated it, but I would like to hear it again—of that particular syndicate?

Mr. HOYT. The purpose of that syndicate was to make an investment in the shares of Westco and exchange those shares for Fox Film, and avoid the necessity of the Fox Film paying for them in cash.

Mr. GRAY. Was one of your objects to make money from the transactions?

Mr. HOYT. I believed that the Fox Film Company was doing so well that over a period of time those shares would sell at a higher price than this syndicate bought them at, and that we would make a profit.

Mr. GRAY. Which you did?

Mr. HOYT. Which I so represented to the people who went in it.

Mr. GRAY. Was Fox, either under his own name, or anybody else's name, interested in that syndicate?

Mr. HOYT. Not to my knowledge; but I would like to point out that while we sold a few shares during that spring, part of the syndicate's holdings, at a profit, later the stock sold at a price where there was no profit, and it was not until August and September that the market value reached a price where we would be able to sell on the stock exchange and make the profit that Mr. Gray has indicated. In other words, this was a large investment carried for a period of seven or eight months in a rising market before we could make that profit.

Mr. GRAY. What was the next operation that you engaged in for Fox Film?

Mr. HOYT. In September of that same year Mr. Fox again came to me and indicated that he was expanding his business, buying additional properties, and he wished to issue more stock in order to finance these purchases. After some negotiation with him, I signed

a contract whereby Hayden, Stone & Co. undertook to organize a syndicate to underwrite 153,000 shares, I think, at \$85 a share.

Mr. GRAY. What was the market on the stock at that time?

Mr. HOYT. I don't know.

Mr. GRAY. Don't you know it was around 109?

Mr. HOYT. Very likely.

Mr. GRAY. And you entered into an agreement to underwrite 153,000 at \$85 a share?

Mr. HOYT. Yes.

Mr. GRAY. Did you have to take some of that stock up?

Mr. HOYT. No, sir.

Mr. GRAY. You got \$4 a share for that work, didn't you?

Mr. HOYT. Very likely. The price was high.

Mr. GRAY. In other words, you got something like \$612,000 or \$614,000 for taking that syndicate?

Mr. HOYT. Yes.

Mr. GRAY. You divided that money among the various participants?

Mr. HOYT. Yes.

Mr. GRAY. I show you a list and ask you whether that is a list of the participants, with the proportionate amounts set opposite their names?

Mr. HOYT. Yes.

Mr. GRAY. William Fox was one of those who was interested in the underwriting of his own stock which he gave you to sell, is that right?

Mr. HOYT. He did not give us any stock to sell.

Mr. GRAY. He gave it to you to underwrite, or entered into an agreement with you to underwrite it?

Mr. HOYT. Yes.

Mr. GRAY. He intended to offer it in the market, and you practically guaranteed that he would get \$85 a share for it?

Mr. HOYT. That the company would get it.

Mr. GRAY. That the company would get it. We are using the word "he" because we have already demonstrated that the company was Mr. Fox. He had 27,000 shares interest in that, did he not?

Mr. HOYT. Twenty-seven thousand.

Mr. GRAY. The distribution was made to the others after a certain amount was taken out for Hayden, Stone & Co., or Haystone Securities, whichever was handling it?

Mr. HOYT. Hayden, Stone & Co., or Haystone Securities in the first instance, took the entire commitment. Then we subsyndicated it through this underwriting.

Mr. GRAY. In the division of your profits, you kept the \$1 and distributed the other \$3, did you not?

Mr. HOYT. As this syndicate was arranged.

Mr. GRAY. So that Fox's profit out of that transaction should have been three times twenty-seven thousand, or \$81,000?

Mr. HOYT. Correct.

Mr. GRAY. At the same time that these various operations of yours were going on, the Taylor, Thorne syndicate, as has been shown, was keeping up a good market and having the sponsorship for the stock, and they had an interest in your syndicate, too, didn't they?

**Mr. HORT.** They had part of the underwriting.

**Mr. GRAY.** They had a part of the underwriting.

(The list referred to is as follows:)

HAYDEN, STONE & Co., September, 1928.

*Memoranda Fox Film Corporation Class A Underwriting Syndicate*

	Shares		Shares
Hayden, Stone & Co.-----	1,000	C. D. Barney & Co.-----	3,000
Haystone Securities Corpora- tion-----	19,344	Glenny Munro & Moll.-----	2,000
Charles Hayden-----	5,000	W. S. Aagaard & Co.-----	2,000
Richard F. Hoyt-----	9,100	Merrill Lynch & Co.-----	2,500
Eleanor Hoyt-----	900	M. A. Boyle (E. M. Baruch)---	2,000
Mrs. C. B. Sherwood-----	1,200	Eisele & King-----	5,000
Lester Watson-----	800	Jackson & Curtis-----	1,500
Clarkson Potter-----	800	Watson & White-----	1,000
C. M. Connfelt-----	800	Oscar Gubelman-----	1,000
Prescott Bigelow-----	800	Amster Trading & Investment Corporation-----	1,000
William Fox-----	27,000	Grenville Clark-----	1,000
Kuhn Loeb & Co.-----	10,000	Abbott Hoppin & Co.-----	1,000
W. B. K. Taylor & Co.-----	10,000	D. C. Jackling-----	1,000
Blair & Co.-----	5,000	R. H. Munson-----	1,000
Lehman Bros.-----	5,000	W. Hinckle Smith-----	1,000
White Weld & Co.-----	5,000	C. S. Bragg-----	1,000
Col. A. R. Kuser-----	5,000	Robert Lieber-----	500
Wertheim & Co.-----	4,000	Felix Rosen-----	200
Shermar Corporation-----	4,000	J. A. Downs-----	1,000
Theo. Schulze & Co.-----	3,000	Gore Bros. (Inc.)-----	1,000
Hallgarten & Co.-----	3,000		
Chadbourne Stanchfield & Levy-----	3,000	Total-----	153,444

**Senator WALCOTT.** Mr. Hoyt, I would like to know what percentage of cash you asked these various participants to put up to protect their interest in the underwriting.

**Mr. HOYT.** We had a substantial cash margin. I have given the accountants all the figures. Some of the participants took up their securities in full and paid for them.

**Mr. GRAY.** Mr. Hoyt, Senator Walcott is talking about the underwriting, and you are talking about the distribution.

**Mr. HOYT.** The underwriting participants never had to put up any money.

**Senator WALCOTT.** They put up no money, then?

**Mr. HOYT.** No, sir.

**Senator WALCOTT.** You carried them on the underwriting?

**Mr. HOYT.** We knew they were financially good for it if the shares were delivered.

**Mr. GRAY.** The papers which I have put in the record show the amount to which they each assumed responsibility.

**Senator WALCOTT.** Do you remember, on this syndicate or the previous one, how much stock you had left to dispose of? You said you had something over, and formed a secondary syndicate.

**Mr. GRAY.** They had none in the underwriting.

**Mr. HOYT.** Both underwritings, substantially, were completely successful.

**Senator WALCOTT.** You had nothing left over?

**Mr. HOYT.** All the stock was taken, through stockholders' rights.

**Senator WALCOTT.** So that your underwriting did not leave you with anything on hand?

Mr. HOYT. Correct.

Mr. GRAY. As a matter of fact, Senator, so that you may understand it, taking the first one, which is the simplest one, Mr. Fox offered to the stockholders of Fox Film the right to subscribe to 125,000 shares of the stock at \$75 a share. At the same time, he entered into an agreement with Hayden, Stone & Co. that if Hayden, Stone & Co. would underwrite that issue of 125,000 shares, and then take over all that the stockholders did not subscribe to—and there was not much danger, because the stock was in the eighties at that time—that he would pay them a commission of \$3 a share. All they had to do was to enter into the agreement, and agree with the other participators that they would give them a part of their agreement, set the situation up, and wait, and then the Fox Film stockholders all came in and took the stock, and they did not have to do anything but get their check for \$375,000.

Mr. HOYT. Mr. Gray, may I make the statement that, in my opinion, if Hayden, Stone & Co., or some other responsible banking house, had not underwritten these shares, Mr. Fox would have been unable to sell one share on his offering to stockholders.

Senator WALCOTT. On his rights?

Mr. HOYT. Yes.

Mr. GRAY. Why?

Mr. HOYT. The stock would not have stayed above the market price, because it meant putting 125,000 shares suddenly upon the market without an outsider's recommendation, whom people believed in, and who knew the value of this enterprise.

Senator WALCOTT. That is what I am trying to get to. What did Hayden, Stone & Co. do to tempt the existing stockholders of Fox Film to take up all of their rights?

Mr. HOYT. As a matter of fact, you do not do very much.

Senator WALCOTT. You sometimes do.

Mr. HOYT. You are in the background. Whenever we underwrite an issue of securities, our customers and clientele and other banking houses in Wall Street know that we have looked into this business and we have gotten audited statements from them, and we have gotten hold of the treasurer and examined his accounts, and we have studied the general set-up of the industry in relation to the competition, and that, having done that, we say we are willing to underwrite the shares at this price, and we believe they are worth more money. That is the background that makes the public in general subscribe. Without that sort of recommendation, there would not have been one share sold on this underwriting.

Senator WALCOTT. I understand that, but I understand——

Mr. HOYT. As a matter of fact, this stock had sold, within a very brief period, much below this price.

Senator WALCOTT. I understand; and the losses were tremendous. But you must have put up over your name, Hayden, Stone & Co., some very strong statements in order at this time, at the very peak of the market, to make a lot of stockholders take up their rights on their Fox holdings.

Mr. HOYT. I do not recall whether we issued any circulars at that time, or not.

Senator WALCOTT. You must have. It is always done on an underwriting. You must have done it, or they would not have had you as

underwriter. You must have done it, to let the public know you were the underwriters.

Mr. HOYT. The company's statement to its stockholders carries the offer of shares, the dates of subscription, and says that Hayden, Stone & Co. have underwritten this issue.

Senator WALCOTT. It is those statements that are responsible for a good deal of mischief. I was wondering whether you have a copy of that.

Mr. GRAY. We have not, Senator, a copy of the statement. I made the statement—and I am going to ask Mr. Hoyt whether it is true, or not, and I want to put it in the bald form. Hayden, Stone & Co. did nothing, did they, but agree to underwrite?

Mr. HOYT. I had spent about three or four years in this business. I had investigated Mr. Fox's business from top to bottom, the income capacity of it, its financial condition, and the method by which he was going to finance.

Mr. GRAY. Not in anticipation of this underwriting?

Mr. HOYT. Yes.

Mr. GRAY. You mean you knew, three or four years before, that he was going to come to you?

Mr. HOYT. I say I had studied the industry for three or four years, but I had spent a couple of months on this particular job.

Mr. GRAY. Like any other student, you had prepared yourself to be in a position to get along in your business or profession, and when it reached this stage, and they gave you the underwriting, answering the inquiry Senator Walcott made, you yourself did nothing. Whatever was done was done by Fox Film and all you had to do was to collect your commission?

Senator GLASS. What Hayden, Stone & Co. did, as I take it, was to put the prestige of your house behind this enterprise?

Mr. HOYT. Yes.

Mr. GRAY. But you actually did nothing else?

Mr. HOYT. If you cover a building with insurance, and it does not burn down, the insurance company that gets the premium does not do anything.

The CHAIRMAN. Does it not do something in case it burns down?

Mr. HOYT. Yes, sir; and we pay if the stockholders do not take the stock.

The CHAIRMAN. What did you yourself have to do?

Mr. HOYT. In this case, the fire did not happen. The stockholders did take the stock, but there are many instances of these underwritings—

The CHAIRMAN. You recommended this stock to the public at what price?

Mr. HOYT. \$75 a share.

The CHAIRMAN. What is it worth to-day?

Mr. HOYT. It sold after that shortly, and was worth over \$100 a share.

The CHAIRMAN. You did not answer my question.

Mr. HOYT. To-day it is worth \$1.50 a share, because after that time this company went out and bought properties for \$100,000,000, far in excess of their value. But when we left the Fox Film business, after this underwriting, it did not owe a dollar in the world to anybody, and had a good income capacity.

Senator FLETCHER. How long did your underwriting obligation last?

Mr. HOYT. A matter of probably 45 days.

Mr. GRAY. Your entire underwriting obligations lasted longer than that?

Mr. HOYT. I mean each one. The first underwriting was January 21, which probably lasted 45 days, and was taken by the stockholders.

Senator FLETCHER. And terminates when the stockholder—

Mr. HOYT. When the stockholder has taken the stock under the offering, or has refused to take it, in which event the underwriter has to take it, and the company gets the money. Then, we had this syndicate which had bought this stock because the Westco people were not taking it, and we carried that through for a period, until September. It was finally able to be sold in the market at a profit. In September we had a second underwriting, as Mr. Gray has pointed out, of 153,000 shares of stock, which probably lasted for 45 days, and in that event the stockholders took it. That was the last business we did, and when we had finished that business the film company had no debts. It had plenty of capital, and was making good money, and the stock afterwards sold at much higher prices.

Senator GLASS. Who financed the film company after you quit?

Mr. HOYT. That I am not familiar with.

Mr. GRAY. Senator, I stated that fully on the record this morning. I gave that whole story.

Senator GLASS. All right.

Mr. GRAY. I will be glad to advise you with reference to it. I do not suppose you want me to do it again, but I will be glad to acquaint you with the situation when we adjourn.

I want to ask one more question of Mr. Hoyt. During your various transactions—first, the underwriting of 125,000 shares; secondly, the handling of this Westco proposition, the organization of that syndicate that sold and traded in the Fox Film stock after the Westco was exchanged for it; and lastly, the operation by which you underwrote 153,444 shares in September, 1928, all of which matters lasted a period of 10 months or so, what was the profit to Hayden, Stone & Co.?

Mr. HOYT. I do not know, but you have all the statements there.

Mr. GRAY. In one instance your profit on the 125,000 shares was \$375,000, is that right?

Mr. HOYT. The profit of the syndicate, out of which we paid all the other participants.

Mr. GRAY. I am properly corrected. It was the profit of the syndicate, acting through Hayden, Stone & Co.?

Mr. HOYT. Yes.

Mr. GRAY. The profit on the other underwriting in September, 1928, was four times 153,000, or a matter of about \$612,000 or \$614,000?

Mr. HOYT. Yes.

Mr. GRAY. In which some others were interested also?

Mr. HOYT. Yes.

Mr. GRAY. The profit in connection with the operation by which you traded, the exact figures of which are in the record here, was in the neighborhood of \$1,687,000 to those who were interested in that syndicate?

Mr. HOYT. Spread out all over these various interests.

Mr. GRAY. The manager's fees were \$404,404 in that transaction also. I am summarizing. These have already been stated.

Mr. HOYT. Yes.

Mr. GRAY. We do not have your brokerage fees, but, at the same time, wherever those tradings went through Hayden, Stone & Co., they, of course, charged what was required to be charged, and they charged the proper brokerage fees for the transactions themselves.

Mr. HOYT. Yes.

Mr. GRAY. Then, your profit in the short account—what I call the “short account”—was \$150,000, when you exchanged your Westco stock for the Fox Film stock?

Mr. HOYT. Yes.

Mr. GRAY. That was all within 10 months. I think that is all I want to ask.

Senator FLETCHER. What did you do on the stock exchange, to keep up the price of the stock?

Mr. HOYT. A few desultory transactions. If the market was weak, we bought a few shares. If the market was strong, we sold a few; but there was no plan or system.

Senator FLETCHER. You watched the stock market all the time?

Mr. HOYT. Mr. Gray, may I restate that my way? You stated it yours.

Mr. GRAY. I have no objection. I think you recognize that all we want are the facts.

Mr. HOYT. My view of this thing is that Hayden, Stone & Co. arranged to supply the Fox Film Co. with the proceeds of 125,000 shares of stock at \$75 a share, or roughly \$9,000,000. On that transaction the total profits to the underwriters, which consisted of a large group, were \$375,000, somewhat less than 4 per cent on the amount of money that this corporation was provided with. Had I gone out and bought \$9,000,000 of bonds from this company, which might have been due in 15 years, I would have made a profit of 6 to 7 per cent on those bonds, and that sum of money, which might have been half a million dollars, would have to be charged off over the period of the life of the bonds, and the corporation would be involved in paying interest charges on those bonds, and its credit involved, and at the end of 15 years it would have to pay the discount over again. We, by our plan, provided this company with \$9,000,000 in cash. The total underwriting is less than 4 per cent. The company has the use of that money forevermore, as capital, free from any interest charges on bonds or preferred-stock dividends, and I consider that is a very small fee for the benefit of the stockholders of that company in assuring them that they have that money.

Senator GLASS. Suppose you had gotten twice that for what you did. They were not children you were dealing with.

Mr. HOYT. No; but I take it I am being criticized for the amount of profit.

Mr. GRAY. You are not being criticized. We simply wanted the facts in order that they might fit in with the rest of the Fox story. You misunderstood the situation.

Mr. HOYT. The second underwriting also showed a profit, which we will not discuss. The profit that we made for this syndicate of 109,000 shares had nothing to do with the corporation in any way,

shape, or form, except that it avoided the necessity of that company having to pay cash, which Mr. Fox did not want to pay out. We got a group of people who were willing to speculate in the rise or fall of these shares, and they bought this stock, and they owned it. They sold a few shares early in the transaction. The market went down, and they had no profit on it. In the fall, on the rising market, it went up, and whatever that profit was, it was a speculative profit by an investor in those shares, and had nothing to do with the Fox Film Co., and Mr. Fox had no interest in it.

Senator CAREY. It has been testified here that Mr. Wiggin, who was the chairman of the board of the Chase National Bank, had a private corporation called the Shermar Corporation.

Mr. HOYT. We have done business with the Shermar Corporation off and on for some years. We know that Mr. Wiggin is interested in it, but the exact amount of his participation I do not know.

Senator CAREY. He was in these pools.

Mr. HOYT. The Shermar Corporation underwrote things of this character with us frequently.

Senator CAREY. And they put up no money to come into this?

Mr. HOYT. At any time when we were landed with an underwriting, we delivered it to the people and they took it.

Senator CAREY. Is it customary for the larger bankers in New York to go into these pools when they are organized? I mean the heads of the larger banks?

Mr. HOYT. I do not know. This transaction, in our office, was quite unusual. We had no intention of doing it. We did it to help Mr. Fox, because we believed in his situation, and believed in the company, and we knew that the underwriting was going to be in bad shape unless this load was lifted off the market.

Senator CAREY. Do you know of other pools in which this Shermar Corporation has been interested?

Mr. HOYT. No; I do not.

Mr. GRAY. Mr. Hoyt, you say you do not know of any other pools they were interested in. Is it not a fact that the Shermar Corporation, through Hayden, Stone & Co.—whether you call them pools or syndicates, or whether you get into underwriting agreements—have been frequently extended the opportunity to join, from Hayden, Stone & Co., or the Haystone Securities Corporation, in transactions of this type?

Mr. HOYT. I said that this was a very unusual transaction in our office, which it is, but that on underwritings we frequently had the Shermar Corporation as a participant.

Mr. GRAY. Yes.

Mr. HOYT. I had already stated that.

Senator FLETCHER. You had Kuhn, Loeb & Co. in this?

Mr. HOYT. Yes, sir.

Senator FLETCHER. Did they do a great deal of that sort of business?

Mr. HOYT. They participate in practically all of our underwritings.

Senator BROOKHART. Do they put up any money, or do they just come in and get a share?

Mr. HOYT. For this sort of underwriting, no money is put up.

Senator BROOKHART. By anybody?

Mr. HOYT. By anybody, until the date has expired for the stockholders to take their rights. If they do not take this stock, the underwriters give a check for it the next day, and get "landed" with it, and that happens often.

Senator CAREY. Were you borrowing from the Chase Bank at that time to carry this pool?

Mr. HOYT. The syndicate account borrowed from the Chase Bank for the account of some of these participants. We ourselves took our stock up and paid for it. The Shermar Corporation, my recollection is, took up its stock and paid for it.

Mr. GRAY. You are talking about the pool.

Mr. HOYT. The only one where any money was involved.

Mr. GRAY. The Shermar Corporation took its stock over and paid for it.

Senator FLETCHER. When did this stock begin to fall?

Mr. HOYT. Not for about two years—not for a long while.

Mr. GRAY. It just depends on what time you are talking about. We have been discussing, Senator Fletcher, a period of time running from December, 1927, until September of 1928. Senator Fletcher then asked when the stock began to fall, and hastily Mr. Hoyt said a couple of years later. But I think Mr. Hoyt will agree with me that the stock started to crash just about one year and one month later, or in October of 1929, and from then on until April of 1930 Mr. Fox was in court with numerous applications for the appointment of a receiver. That will answer your question, Senator, and I think Mr. Hoyt will say that is correct.

Mr. HOYT. Yes.

The CHAIRMAN. We will have a short executive meeting of the committee when we recess. We will now recess subject to the call of the chairman, in the hope that we can meet to-morrow morning to hear Mr. Fox. Is that right?

Mr. GRAY. I am nowhere near through the presentation of this Fox case.

The CHAIRMAN. Very well. The committee will meet in this room to-morrow morning at 10 o'clock.

(Whereupon, at 4.15 o'clock p. m., the committee adjourned to meet to-morrow, Saturday, June 18, 1932, at 10 o'clock a. m.)



# STOCK EXCHANGE PRACTICES

SATURDAY, JUNE 18, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met, pursuant to adjournment on Friday, June 17, 1932, in the hearing room of the Committee on Banking and Currency, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Carey, Couzens, and Fletcher.

Also present: William A. Gray, Esq., counsel to the committee.

The CHAIRMAN. The committee will come to order.

Mr. GRAY. Mr. Chairman and gentlemen of the committee, there have been handed to the chairman, which I will put upon the record, two certificates, one from Doctor Hornaday, and one from Doctor Mallory. These are both under date of June 18 [reading]:

MAYFLOWER HOTEL.  
*Washington, D. C., June 18, 1932.*

*To whom it may concern:*

This is to certify that I have this morning examined Mr. William Fox and find that his temperature and pulse are normal but that his dizziness continues and that he has a severe headache.

His blood sugar was 250 milligrams per 100 c. cs. this morning in spite of a very low food intake for several days and a strict diabetic diet for 24 hours.

In my judgment the subjection of Mr. Fox to any severe nervous or mental strain at this time would have a strong tendency to cause him to develop acidosis or serious increase in his blood sugar or both, with material danger to his health or life. I am inclosing herewith a certificate from Dr. William J. Mallory, of 1720 Connecticut Avenue NW., who, in my opinion, is the foremost diabetic specialist in the city.

F. A. HORNADAY, M. D.,  
*Attending physician.*

WASHINGTON, D. C., June 18, 1932.

*To whom it may concern:*

This is to certify that I examined Mr. William Fox about 6 o'clock p. m. January (June?) 17, 1932, and found his temperature 98 (subnormal) pulse 56 soft and weak, blood pressure 110 systolic 70—diastolic (low). There was definite tenderness in the region of the gallbladder and the appendix.

The blood-sugar test in the morning of June 18 was 250. His condition is such that, in my opinion, he is unable to attend to business, and any stress or anxiety at the time would be a serious danger to him. I have, therefore, advised that he remain in bed, with nurse in attendance and follow strictly the physician's instructions.

WILLIAM J. MALLORY, M. D.

So, it is evident, Mr. Chairman, that you will not have the pleasure of listening to Mr. Fox this morning.

Is Mr. Bradford Ellsworth here?

**TESTIMONY OF BRADFORD ELLSWORTH, NEW HARTFORD, CONN.**

The CHAIRMAN. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matter now under investigation by the committee, so help you God?

Mr. ELLSWORTH. I do.

Mr. GRAY. Mr. Ellsworth, try to keep your voice up. Your full name is Bradford Ellsworth?

Mr. ELLSWORTH. Yes, sir.

Mr. GRAY. You live where?

Mr. ELLSWORTH. New Hartford, Conn.

Mr. GRAY. What is your business?

Mr. ELLSWORTH. I am an independent operator in the stock market.

Mr. GRAY. You are an independent operator in the stock market; you have been so for how long?

Mr. ELLSWORTH. Five or six years.

Mr. GRAY. A great deal of your association has been with the firm of M. J. Meehan & Co.?

Mr. ELLSWORTH. Most of it.

Mr. GRAY. You have been, as a matter of fact, the pool manager for M. J. Meehan & Co., or pool manager in connection with pools and syndicates that have been operated through the house of M. J. Meehan & Co., have you not?

Mr. ELLSWORTH. To a large extent.

Mr. GRAY. In the last five years, generally speaking, would you tell the committee, if you please, in how many different pools you have managed and operated through M. J. Meehan & Co., approximately?

Mr. ELLSWORTH. No, I can not.

Mr. GRAY. You think they are too numerous?

Mr. ELLSWORTH. They are too numerous.

Mr. GRAY. Would you say 100, at least?

Mr. ELLSWORTH. Oh, no.

Mr. GRAY. Fifty?

Mr. ELLSWORTH. No. Of the most important ones, I suppose 5 or 6.

Mr. GRAY. How many others that are not so important?

Mr. ELLSWORTH. I could not tell you that.

Mr. GRAY. By the way, you operated, or were supposed to be the manager of the radio pool that was operated there in the spring of 1929, were you not, about which we had testimony here?

Mr. ELLSWORTH. Yes.

Mr. GRAY. Were you in the country when you were operating that?

Mr. ELLSWORTH. I was not.

Mr. GRAY. Where were you?

Mr. ELLSWORTH. In Europe.

Mr. GRAY. In other words, you were in Europe from the time the pool was begun until the time the pool was finished?

Mr. ELLSWORTH. I was.

Mr. GRAY. Did you get your manager's commission?

Mr. ELLSWORTH. I did.

Mr. GRAY. From whom?

Mr. ELLSWORTH. From the syndicate.

Mr. GRAY. You did not do any managing?

Mr. ELLSWORTH. No; I did not.

Mr. GRAY. Will you tell me why you got your manager's commission?

Mr. ELLSWORTH. That was the only manager's fee I was paid during the time I managed pools for M. J. Meehan & Co. It might have been because my association with the pool drew in two or three important members of the pool.

Mr. GRAY. In other words, so that it may be perfectly clear to this committee, you, as an independent operator, were engaged nominally as manager of this pool, though you were in Europe, in order that your connection with it might insure the presence in the pool and the participation in it, of a few important people that were wanted?

Mr. ELLSWORTH. I say that might have been the reason.

Mr. GRAY. Who was it that wanted those people—Meehan, wasn't it?

Mr. ELLSWORTH. Mr. Meehan was the organizer of the pool.

Mr. GRAY. Meehan ran it, didn't he?

Mr. ELLSWORTH. Yes.

Mr. GRAY. Certainly. All right. We will leave Radio, and come back to Fox. I want to direct your attention to several operations in Fox Theaters stock that took place in the house of M. J. Meehan & Co. Are you familiar with an account that was known as account No. 394 there?

Mr. ELLSWORTH. Yes.

Mr. GRAY. What was your association with that account?

Mr. ELLSWORTH. I believe I was manager of that pool.

Mr. GRAY. In that pool, there was no written syndicate agreement, was there?

Mr. ELLSWORTH. I don't think so.

Mr. GRAY. I ask you whether or not the participators in that pool, together with other interests, were as follows: William Fox, 26 per cent; Elizabeth Meehan, 18½ per cent; Bradford Ellsworth, 18½ per cent; J. H. Higgins, 18½ per cent; and Earl Rodney, 18½ per cent?

Mr. ELLSWORTH. That is correct.

Mr. GRAY. That was a small pool. I mean by that, there was not a very large number of participators?

Mr. ELLSWORTH. That is right.

Mr. GRAY. Try to keep your voice up, please. Elizabeth Meehan is the wife of Michael J. Meehan, is she not?

Mr. ELLSWORTH. She is.

Mr. GRAY. Mr. Joseph Higgins is also an independent operator, as you are? That is true, isn't it?

Mr. ELLSWORTH. He is a member of the exchange in New York.

Mr. GRAY. Is he now?

Mr. ELLSWORTH. Yes.

Mr. GRAY. What exchange?

Mr. ELLSWORTH. The curb.

Mr. GRAY. The Curb Exchange. Mr. Earl Rodney is a member of another brokerage firm, is he not?

Mr. ELLSWORTH. Yes.

Mr. GRAY. He is a member of Burnham, Herman & Co., is he not?

Mr. ELLSWORTH. At that time he was.

Mr. GRAY. My records show—and I would like to ask you whether it is correct—that that pool operated from August 29, 1928, down to October 7 of the same year. Is that correct?

Mr. ELLSWORTH. I have not the figures, and I have not looked at them. I suppose it is correct.

Mr. GRAY. It was in 1928 when they operated?

Mr. ELLSWORTH. Yes.

Mr. GRAY. I direct the committee's attention to the fact that this was at the same time as these trades in Taylor, Thorne & Co., where there were pool operations taking place, and at the same time as these operations that were testified to yesterday as having occurred in Hayden, Stone & Co., were taking place.

The profit in that was \$433,308.35, is that correct?

Mr. ELLSWORTH. You have the figures, Mr. Gray. I have not seen them.

Mr. GRAY. Do you recall that as being correct?

Mr. ELLSWORTH. I recall it was over \$400,000.

Mr. GRAY. How was that pool operated, and where did it get its stock?

Mr. ELLSWORTH. It was on an option.

Mr. GRAY. From whom?

Mr. ELLSWORTH. Mr. Fox.

Mr. GRAY. From William Fox; and an option for how many shares of stock?

Mr. ELLSWORTH. I think over 100,000—125,000.

Mr. GRAY. 125,000, wasn't it? Do you recall the price?

Mr. ELLSWORTH. I do not.

Mr. GRAY. Do you know where Mr. Fox got that stock?

Mr. ELLSWORTH. My impression is that it was stock that remained unsold from his offering through Eisele, King & Co.

Mr. GRAY. In other words, your impression is that it was stock that Fox Theaters had been offering through Eisele, King & Co., and it was that which remained and had not been taken up by the public?

Mr. ELLSWORTH. Yes; that I believe to be true.

Mr. GRAY. So that you mean that the stock itself was Fox Theaters stock, or Fox stock—that is to say, did it belong to Fox Theaters, or did it belong to Fox?

Mr. ELLSWORTH. As it came to us, it belonged to Fox.

Mr. GRAY. As it came to you, it belonged to Fox. Did you exercise your option in that case?

Mr. ELLSWORTH. Part of it, I believe.

Mr. GRAY. Did you start to sell the stock short before you exercised your option?

Mr. ELLSWORTH. Against the option, yes.

Mr. GRAY. Against the option. I am going to direct your attention—by the way, in this particular pool, and in the other pools you mentioned, there was a great deal of stock, or a great deal sold, wasn't there?

Mr. ELLSWORTH. Yes.

Mr. GRAY. What is the purpose of that?

Mr. ELLSWORTH. The large purpose in any operation of that kind is to sell the stock above the option price, if possible.

Mr. GRAY. Why do you engage in a lot of other selling and other buying, in between the time that you start your pool operations, and

the time that you ultimately dispose of the stock which you have an object in selling?

Mr. ELLSWORTH. Sometimes it is necessary to buy stock.

Mr. GRAY. Why?

Mr. ELLSWORTH. If the market goes off, you buy the stock.

Mr. GRAY. As a matter of fact, Mr. Ellsworth, don't you recall, and does not this account show, that you bought and sold thousands of shares of stock, day in and day out, at practically the same prices?

Mr. ELLSWORTH. No; Mr. Gray. By that you mean to say that I caused an unnatural activity in the stock to attract purchasers?

Mr. GRAY. Yes.

Mr. ELLSWORTH. No; that is not true.

Mr. GRAY. You had to do what has been called manipulating the market, did you not?

Mr. ELLSWORTH. I often had to take stock, buy stock. If I got to a hard spot in the market, where there was a stock offered, I would buy it and attempt to sell it at a higher price.

Mr. GRAY. You mean you would buy it to stop the stock from dropping below a price that would affect the success of your operations?

Mr. ELLSWORTH. That would be one side of it; yes.

Mr. GRAY. In this particular transaction, I want to direct your attention to the fact that while your pool was operating, on October 28, 1928, M. J. Meehan & Co. gave to the firm of Heller & Levinson an order to sell 10,000 shares of Fox Theaters stock at 28½, and to clear the trade; and at the same time, on the same day, William Fox gave Normberg & Dixon, now Loeb, Wallsberg & Co., an order to buy 10,000 shares at 28½. Do you remember that transaction?

Mr. ELLSWORTH. I do not recall the transaction.

Mr. GRAY. I direct your attention to the fact that, though on the tape, in reporting stock exchange transactions, there seems to be no significance as to those two transactions, one being a buy, and one being a sale, that, as a matter of fact, the tracing of the particular transaction through five different brokerage houses establishes the fact that the sale was a sale to Fox, and the purchase of Fox was a purchase from the syndicate itself; in other words, that it was a pure wash sale. Do you recall it?

Mr. ELLSWORTH. I do not recall it; but if I may be allowed to speak for just a moment—

Mr. GRAY. It has been directed to your attention. I would like to have any explanation you can give us.

Mr. ELLSWORTH. Very frequently during the operation of the Fox syndicates—this one that you spoke of yesterday—Mr. Fox bought stock in the market from a syndicate. His associates bought stock in both syndicates.

Mr. GRAY. Yes.

Mr. ELLSWORTH. It might very easily happen that Mr. Fox would call me up and ask me how I was getting on, and I would say "Bad." He said, "All right. I will buy 10,000 shares, and you can sell them to me from the syndicate." Whether it happened or not, I do not know. It was not a wash sale. It was an actual sale, and change of ownership from the syndicate to Mr. Fox. What Mr. Fox did with the stock, I do not know. He may have given it to some friends, or kept it himself.

Mr. GRAY. Whether he again, on some other day, sold, and the syndicate bought back?

Mr. ELLSWORTH. He might have.

Mr. GRAY. In other words, Mr. Fox would call you up and say, "How are you getting along?" and you indicated to him you were not getting along so well, and he would say to you, "Well, I will go out and buy 10,000 shares from the syndicate." So, as a matter of fact, he would put in an order to buy, and you would put in an order to sell?

Mr. ELLSWORTH. Yes.

Mr. GRAY. So that whether you would call it a wash sale or not, that is what happened, and very likely afterwards, even though the transaction went through as a real transaction, some time the next day, or the day after, or whether it became proper to do the thing, in accordance with your lights, Mr. Fox would sell it, and you would buy it?

Mr. ELLSWORTH. I have no knowledge of him selling it.

Mr. GRAY. You mean you don't remember that this particular stock was sold back?

Mr. ELLSWORTH. I say he might have sold it back, Mr. Gray. I do not know that he did. He might have bought that stock, and given it to some friends of his, or some associates of his, which often happens. Members of syndicates frequently buy stock.

Senator FLETCHER. What would you call a wash sale?

Mr. ELLSWORTH. A particular wash sale, Senator, has no real significance, unless it is done to deceive the public. That is, unnatural activity or no natural activity has taken place in the stock, and any traders who are watching the tape action of stock, seeing large amounts go out at a rising price, would think the stock was going up, and therefore follow the tape, and buy the stock. One wash sale, however large a proportion, would have no significance whatever. A continued washing—that is, if the stock was selling at \$20 a share, and is moved up to \$25 a share, with no real change of ownership, is a fraud on the public. A sale of this kind is not a fraud on the public. It is a direct change of ownership, and not made to deceive the public in an unnatural rise of the stock.

Senator FLETCHER. How could this rise in the stock take place that way on the stock exchange without there being some change of ownership?

Mr. ELLSWORTH. I can explain by instances—the only instance I know of in my experience in the Street of wash selling. There was a young man opened an account in M. J. Meehan's uptown office. I have forgotten the name of the stock. It was an inactive stock, where the fluctuation could be made wide. Mr. Meehan received an order from his branch manager, who took this account, to buy or sell 500 shares of this stock at a price. He went into the crowd, and he met another broker with an order in the same stock at the same price. Mr. Meehan spoke to this broker and asked him, "Who are you working for?" It was the same man Mr. Meehan had a sell order for. Both of them refused to execute the order, and threw the account out of their office. That was an attempt to wash stock up, which Mr. Meehan and the other broker—

Senator BROOKHART. What difference was there between that, and this one Fox pulled off?

Mr. ELLSWORTH. The difference in that, Senator, is this. That was an attempt to deceive the public.

Senator BROOKHART. What was this other?

Mr. ELLSWORTH. By washing that stock up, to different levels, and make activity in the stock.

Senator BROOKHART. Was not this other an attempt to deceive the public?

Mr. ELLSWORTH. It was not. It was a direct change in the ownership from the syndicate to Mr. Fox.

Senator BROOKHART. And then from Fox back to the syndicate.

Mr. ELLSWORTH. No, Senator. I do not know that. I don't think so.

Senator BROOKHART. You know Fox did not keep it. He got rid of it in some way or other.

Mr. ELLSWORTH. He may have given it to friends or associates.

Senator BROOKHART. And they sold it to the syndicate, or somebody else?

Mr. ELLSWORTH. They may have.

Senator BROOKHART. What is the difference? That is a more covered-up fraud, but it seems to me just as bad a fraud as the other.

Mr. ELLSWORTH. I do not know that he did sell it back.

Senator TOWNSEND. The syndicate received all its stock from Mr. Fox originally, did it not?

Mr. ELLSWORTH. Originally.

Mr. GRAY. Now, Mr. Ellsworth, another thing that we discovered, which is, in a sense, connected with wash sales, is that from August 29 down to the time your pool closed, there was an aggregate of 76,200 shares of stock that were bought by the syndicate and sold by the syndicate on successive days at exactly the same price. I will give you an illustration of what I mean, and then I want to ask you for your explanation. The very first day, August 29, the syndicate sold 100 shares at  $27\frac{1}{4}$  and bought 100 shares at  $27\frac{1}{8}$ ; sold 300 at  $27\frac{1}{4}$  and bought 300 at  $27\frac{1}{4}$ ; sold 300 at  $27\frac{1}{2}$  and bought 300 at  $27\frac{1}{2}$ ; sold 100 at 28 and bought 100 at 28, no; that item comes in on the 30th. Those other three are on the same day. Then, we find five illustrations on the 30th, four on the 31st, and so on. On one day, September 10, we find one item of a sale of 11,100 at 32, and a purchase by the syndicate of 11,100 at 32—not sales to somebody else of the same amount at the same price, at the same time, but during the day, when the day concluded, there was a sum total of 11,100 shares the syndicate had sold at 32, and a sum total of 11,100 shares the syndicate had bought at 32. Can you explain those transactions? If you would like to see the sheet, I would be glad to show it to you.

Mr. ELLSWORTH. It is not necessary for me to see the sheet. In no case were they wash sales.

Mr. GRAY. You mean by that that in no case was there a meeting of two people acting for the syndicate, one buying and the other selling?

Mr. ELLSWORTH. No.

Mr. GRAY. What were they?

Mr. ELLSWORTH. Most of the trading, outside of what the syndicate did, was done by traders on the floor. By a close analysis of all the sales that took place in Fox Theaters—in those days; not

any more—you will find that the traders on the floor create the activity.

Mr. GRAY. Have they discretionary orders to act for your pool?

Mr. ELLSWORTH. Oh, no. They act for themselves. They are independent traders.

Mr. GRAY. How did their trades get into the syndicate account?

Mr. ELLSWORTH. We buy from them, and sell to them, at different prices and at different times.

Mr. GRAY. Then, you will concede that it happens that when the syndicate is trading, it may buy 10,000 shares at a price during the day, and it may sell 10,000 shares at the same price during the day.

Mr. ELLSWORTH. It may.

Mr. GRAY. What is the purpose in that? There is nothing but a loss of commissions, is there?

Mr. ELLSWORTH. The original purpose is to sell the stock. We do not want to take it back.

Mr. GRAY. Is not the purpose in that just to keep the activity in the stock boiling?

Mr. ELLSWORTH. No.

Mr. GRAY. Then, why would any sane man sell 11,100 shares of stock at 32 during the day, and buy 11,100 shares of stock at 32 during the day, losing his broker's commissions on his sales and buys?

Mr. ELLSWORTH. There were other sales besides that on that day, were there not?

Mr. GRAY. None so far as your syndicate was concerned—now, wait a minute. I will not say there were none as far as your syndicate was concerned, but out of the sales on that day, those sales, in the quantities I have indicated, on the days named, are purchases and sales by your syndicate, and for the syndicate at exactly the same price.

Mr. ELLSWORTH. How large a volume was there in the stock on that day that you say the syndicate bought?

Mr. GRAY. I can not answer that question.

Mr. ELLSWORTH. Probably 50,000 to 60,000 shares.

Mr. GRAY. Suppose there were a hundred thousand shares. What difference does it make with reference to your syndicate buying and selling stock at the same price during the day?

Mr. ELLSWORTH. It makes quite a difference, because it is a coincidence, and not a trade occurring at the same moment.

Senator COUZENS. As a matter of fact, to be perfectly frank, the purpose is to create an activity in the market, is it not?

Mr. ELLSWORTH. It is a following you create, Senator, by the traders on the floor. Without the traders on the floor following an operation of the stock, the stock would have gotten nowhere. An analysis of the stock that was sold by the syndicate would show that the traders were buyers in the stock, and not, to a large extent, the public. The traders create the activity. They are always glad to follow, especially on the curb—more so on the curb than on the stock exchange—any activity in the stock.

Senator COUZENS. You must encourage that by buying and selling at the same price. It is just a phoney transaction, because there is no profit, but rather an expense in commissions.

Mr. ELLSWORTH. There is an expense in commissions, but it is not a phoney trade, Senator.

Senator COUZENS. What is the object of a man buying and selling on the same day, at the same price, unless it is to create a fictitious market?

Mr. ELLSWORTH. We tried to sell it. We do not want to buy it back. Sometimes we have to buy it back.

Senator COUZENS. Why do you buy it back?

Mr. ELLSWORTH. To keep it from going down.

Senator COUZENS. So that, in effect, these are really phoney transactions, because there is no other object in mind except to get a fictitious market?

Mr. ELLSWORTH. In the net result—how much stock, in all, did we sell?

Mr. GRAY. I am going to show you your entire transactions. You bought, in the entire pool, during the entire life of the pool, 215,500 shares. In addition to that, you took from Mr. Fox, on the option, 125,000. You received, in all, 146,100 from outside sources. You bought in the market 215,500, and you actually sold 321,800. As a matter of fact, the sales of the character such as I have indicated to you, amount to 76,200 shares, which is a matter of 35 per cent of the shares which you bought in the market. In other words, 35 per cent of the transactions in the buys were transactions which I have indicated to you, so you can take that as an average percentage during the time the pool was operated.

Senator COUZENS. I see no necessity for so much verbiage when anybody with any intelligence understands—

Mr. GRAY. I think so, Senator, except that I want to get it on the record as clearly as I can.

I direct your attention to an account that was operated after this operation concluded, and in the same stock, Fox stock, and in M. J. Meehan & Co.'s brokerage house, the account being known as account 433. Do you recall that?

Mr. ELLSWORTH. Yes, sir.

Mr. GRAY. That operation started as one that was to be conducted against an option also, did it not?

Mr. ELLSWORTH. Yes, sir.

Mr. GRAY. You know, as a matter of fact, in that case, that Mr. William Fox secured from the Fox Theaters Co. an option to buy 500,000 shares of stock at \$26 a share, for the first 200,000 and \$27 for the next 150,000, and \$28 a share for the following 150,000, do you not?

Mr. ELLSWORTH. I do not.

Mr. GRAY. The reason I ask you, Mr. Ellsworth, as to whether you know it or not, is this. Is it not a fact that right thereafter, Mr. Fox granted to you, doing it in writing, and in a communication addressed to M. J. Meehan & Co., as your agents, an exactly similar option?

Mr. ELLSWORTH. Mr. Fox gave me an option?

Mr. GRAY. Yes. We will offer for the committee, and ask that it be placed in the record, a certified copy of the minutes of the meeting of the board of directors of the Fox Theaters Corporation held on the 6th day of December, 1928. I shall not bother read-

ing it. It grants to him the option such as I have indicated by my questions.

(The statement referred to is as follows:)

At a meeting of the board of directors of Fox Theaters Corporation held at the office of the company on December 6, 1928, duly convened, the following resolution was duly passed:

"Resolved, That the company grant unto William Fox an option to purchase 500,000 shares of the class A common stock of Fox Theaters Corporation, the said option to be operative for six months from the date hereof at the following prices and in the following manner:

"For the first 200,000 shares at \$26 per share; for the next 150,000 shares at \$27 per share; for the next 150,000 shares at \$28 per share, the said stock when delivered to be listed on the New York Curb Exchange, the said option to expire at the end of said six months' period unless extended by mutual consent."

I, the undersigned, secretary of Fox Theaters Corporation, a New York corporation, do hereby certify that the foregoing is a true and correct excerpt of a resolution duly passed at a meeting of the board of directors of said company held on the 6th day of December, 1928.

New York, December 7, 1928.

C. S. LERNER, *Secretary*.

Mr. GRAY. Then I show you a photostatic copy, under the same date, December 6, 1928, of a letter addressed to M. J. Meehan & Co. by William Fox, and ask you whether or not that is the option that was given to Meehan as your agents for that 500,000 shares of stock?

Mr. ELLSWORTH. Yes; it is.

Mr. GRAY. I will offer that and ask that it be placed in the record.

(The statement referred to is as follows:)

Fox Studio,  
New York City, December 6, 1928.

Messrs, M. J. MEEHAN & Co.,  
New York

GENTLEMEN: I hereby grant you an option to purchase from me 500,000 shares of class A common stock of Fox Theaters Corporation on the following terms: Two hundred thousand shares at \$26 per share; 150,000 shares at \$27 per share; 150,000 shares at \$28 per share.

This option shall be effective for a period of six months from the date hereof, at which time this option shall expire unless extended by mutual agreement.

If at any time during said period your operation shall require a loan to you of shares of Fox Theaters Corporation class A stock, I agree to loan to you 200,000 shares in the aggregate.

If at any time during said period you are short an amount beyond the 200,000 shares, you will take up for cash such excess at the above stipulated prices. You are to request delivery of such excess shares each day.

Yours truly,

WILLIAM FOX.

Mr. GRAY. I direct the committee's attention to the fact that the prices are exactly the same, for the very same quantities; that the option is effective for a period of six months from the date. It is provided that—

If at any time during said period your operations shall require a loan to you of shares of Fox Theaters Corporation class A stock, I agree to loan to you 200,000 shares in the aggregate.

If at any time during said period you are short an amount beyond the 200,000 shares, you will take up for cash such excess at the above stipulated prices. You are to request delivery of such excess shares each day.

I will establish, for the benefit of the committee, that when Mr. Fox agreed to loan 200,000 shares of Fox Theaters, he owned only 4,300.

Senator COUZENS. Is that the transaction that was transformed into a pool?

Mr. GRAY. Yes, sir. I am going to show you all the details.

Senator COUZENS. Is that the same pool whose members you mentioned yesterday?

Mr. GRAY. Yes, sir.

Now, then, what was the reason, if you were going to operate for the purpose of selling the stock with respect to which Mr. Fox gave you an option, for there being any understanding or agreement as to the loaning of stock? Why did you need stock to be loaned?

Mr. ELLSWORTH. To maintain a position.

Mr. GRAY. What do you mean by that?

Mr. ELLSWORTH. To make the operation successful. In case of any emergency, or anything happening in the market, it is necessary to keep a short position in order to be able to buy stock.

Mr. GRAY. If you had a short position, and you wanted to cover it, you could exercise your option, could you not?

Mr. ELLSWORTH. I could.

Mr. GRAY. But, instead of that, you wanted to be sure that you were in a situation where, if you did not care to exercise your option, you could be assured that sufficient stock would be borrowed, so that you could maintain your short position. That is it, isn't it?

Mr. ELLSWORTH. Correct.

Mr. GRAY. Now, when an operator has an option, he protects his position in the very first instance by selling a proportion of that stock upon which he has an option, short, does he not?

Mr. ELLSWORTH. Against the option.

Mr. GRAY. Against the option. But usually that is not over what—10 per cent?

Mr. ELLSWORTH. Oh, no. It might be any amount. He might sell the whole option.

Mr. GRAY. If you sell your whole option short, then you are not maintaining a position simply for the purpose of waiting for the market to go one way or the other, are you?

Mr. ELLSWORTH. It is customary, Mr. Gray, in an operation of this kind—it is customary in every large bond syndicate or stock syndicate, to get a short position, even if it is a commitment. No bond issue by the largest bankers in New York has ever been issued without overselling the bond issue, so that they can maintain a market.

Senator BROOKHART. As you sell this stock to the public, do you inform the public that you are going to take a short position on it?

Mr. ELLSWORTH. We do not take a short position, except against an option, Senator?

Senator BROOKHART. Do you inform the public? I never heard of it until it was brought out in this committee.

Mr. ELLSWORTH. No; the public are not informed that there is an option out on stock.

Senator BROOKHART. So it is a fraud on the public every time.

Mr. ELLSWORTH. I would not say that; no, sir. In this particular instance, if I may be allowed to say so, this stock, 500,000 shares, was issued by the Fox Theaters Corporation to buy several chains of independent theaters in New York and Brooklyn, and in other small cities.

Senator COUZENS. Do you call New York and Brooklyn small cities?

Mr. ELLSWORTH. And other cities, I should say, Senator. To that extent, it was a similar operation to that which was described here yesterday by Mr. Hoyt in taking over the Westco, except that there was no obligation to buy that stock of Mr. Fox, except a moral obligation that we assumed, to sell as much stock as we possibly could to pay for those theaters. We went into this operation after discussing it with Halsey, Stuart & Co., the bankers—

Senator COUZENS. Do you call Halsey, Stuart & Co. bankers?

Mr. ELLSWORTH. They are not members of the stock exchange.

Senator COUZENS. Do you call them bankers?

Mr. ELLSWORTH. I believe that is what they call themselves.

Senator COUZENS. They call themselves that.

Mr. GRAY. I want to reply to a question of Senator Couzens', which he put yesterday. You asked whether Halsey, Stuart & Co. was a corporation or a partnership. They are a corporation.

Senator COUZENS. I did not think they would hazard their operations other than through the corporate form.

Mr. GRAY. Being protected through the corporate form.

Finish, if you want to, Mr. Ellsworth.

Mr. ELLSWORTH. To that extent, it was very much like an underwriting, without an obligation to buy the stock.

Mr. GRAY. In other words, in the case of an underwriting, the underwriters absolutely agree to buy the stock, and, we will say, run some risk if the price is not a price at which they can be assured that somebody else is going to take it over.

Senator COUZENS. In that connection, the witness said they had no agreement, only a moral obligation to take the stock.

Mr. GRAY. You mean by that, Mr. Ellsworth, that it is an option, and you may or may not exercise it?

Mr. ELLSWORTH. It is an option, and we may or may not exercise it.

Mr. GRAY. Legally, Mr. Fox can not compel you to take the stock, and when you speak of your moral obligation, you mean you assume a moral responsibility to relieve Mr. Fox of that stock?

Mr. ELLSWORTH. As much as possible.

Mr. GRAY. As much as possible of it. I will show you that they did not take it, but took only a portion of it.

Senator COUZENS. That is not important, is it?

Mr. GRAY. You will find that it is rather important, because we will show you where that stock came from.

Senator FLETCHER. What price was fixed?

Mr. ELLSWORTH. The option prices?

Senator FLETCHER. Yes.

Mr. ELLSWORTH. 26, 27, and 28.

Mr. GRAY. 26 for the first 200,000; 27 for the next 150,000; and 28 for the next 150,000. That is in the agreement.

Your operations took place between December 4, 1928, and some time in April of 1929. That is correct, isn't it?

Mr. ELLSWORTH. I am familiar with the operations as far as the first part of February, 1929, was concerned.

Mr. GRAY. You mean you were not in town then?

Mr. ELLSWORTH. I was abroad.

Mr. GRAY. So that when this option was given to Meehan, as your agents, you were in Europe and did not even know anything about it, is that correct?

Mr. ELLSWORTH. No; not when it was given.

Mr. GRAY. I beg your pardon.

Mr. ELLSWORTH. The option was given in December. I was in New York up until February.

Mr. GRAY. You mean you left in February?

Mr. ELLSWORTH. Yes.

Mr. GRAY. I misunderstood you. I thought you meant you came back in February.

Mr. ELLSWORTH. No. I left in February.

Mr. GRAY. So that you were familiar with the operations up until February?

Mr. ELLSWORTH. Yes.

Mr. GRAY. Are you now familiar with the figures in connection with the transactions?

Mr. ELLSWORTH. No; I am not. I have not seen the account since then.

Mr. GRAY. In other words, you would not be able to tell the number of shares that you dealt in, those that you bought, and those that you sold?

Mr. ELLSWORTH. No.

Mr. GRAY. Nor the profit that was made?

Mr. ELLSWORTH. Yes; I know the approximate profit.

Senator COUZENS. What was it?

Mr. ELLSWORTH. About \$2,000,000.

Mr. GRAY. \$1,937,762.46.

Senator COUZENS. Was that all made before you went to Europe, or afterwards?

Mr. ELLSWORTH. I think when I left we had our maximum position in the stock.

Senator COUZENS. You made no money after you went to Europe?

Mr. ELLSWORTH. After I left, they bought stock supporting the market on the way down, above the option price—I think in almost all cases above the option price, and finally called the stock. The fact that the stock was bought back above the option price, indicates very clearly that it was not a short operation. The press has said this morning that it was a short operation. It was not, and had no semblance of being a short operation.

Mr. GRAY. I will discuss that with you after I present that part of the picture.

Mr. ELLSWORTH. It is only fair to the gentlemen who were in that operation—Mr. Brady, who was a very dear friend of mine, and who is now dead, never engaged in a short operation in his life. Mr. Ras-kob has testified, I believe, that he never engaged in a short operation in his career in Wall Street. Mr. Chrysler, whom I was responsible for getting in that operation, would not have come into such operations if he thought it was a bear operation. It was not. It was an

attempt to sell stock which we thought to be good, and that would sell very much higher, to pay for a chain of theaters which Mr. Fox was adding to the Fox Theaters Corporation.

Mr. GRAY. I will present the facts with respect to the stock tradings a little later, and the committee can draw its own conclusion as to whether or not it was a short transaction.

Senator COUZENS. When you referred to Messrs. Brady, Raskob, Kenny, Chrysler, and so forth, these men did not buy the stock for investment, but just for operation, to make money?

Mr. ELLSWORTH. Mr. Brady bought stock during the life of the syndicate for investment.

Senator COUZENS. He kept it for investment?

Mr. ELLSWORTH. He kept it for investment. Some of the associates in his office bought stock.

Senator COUZENS. But the other gentlemen, Mr. Raskob, Mr. Kenny, and Mr. Chrysler, did not buy it for investment?

Mr. ELLSWORTH. I believe Mr. Chrysler bought some.

Senator COUZENS. For investment?

Mr. ELLSWORTH. About Mr. Kenny, I do not know.

Senator COUZENS. Did they keep their stock for investment, or did they trade it?

Mr. ELLSWORTH. I do not think they traded it, beyond buying the stock. I do know about Mr. Brady and some of his associates.

Mr. GRAY. He could have bought some stock anywhere else—from the syndicate, or otherwise—but in this matter, all they did was to put up their required margin, permit you to operate in the stock, and when the syndicate or pool was closed, they got a check for their profits. That is all they did in this, is it not?

Mr. ELLSWORTH. In this operation?

Mr. GRAY. Yes.

Mr. ELLSWORTH. Besides that, they bought. I only mention that fact to show that we all believed in the stock.

Mr. GRAY. We are talking about this operation.

Senator COUZENS. That is what I mean. I am afraid the witness did not get my question correctly, or did not answer it correctly. When they went into this operation to which counsel refers, they went into it for speculative purposes, rather than investment purposes?

Mr. ELLSWORTH. In this particular operation.

Senator COUZENS. Yes. That is what I wanted to get at.

Mr. GRAY. As a matter of fact, in this operation Mr. Raskob actually put up \$750,000. Mr. Chrysler put up \$750,000. Mr. Brady put up \$750,000, but none of the rest of you ever put up a cent, did you?

Mr. ELLSWORTH. We did not have to, because our money was in those offices.

Mr. GRAY. In other words, you mean that so far as Mrs. Elizabeth Meehan, Joseph Higgins, and yourself were concerned, there was money of yours in other accounts in the office, and you did not have to put up any cash?

Mr. ELLSWORTH. Yes.

Mr. GRAY. Was that true with respect to Mr. Fox, also?

Mr. ELLSWORTH. I think Mr. Fox had a large account with Meehan at that time.

Mr. GRAY. In addition to the profit that was made, that we have talked about, Mr. Meehan got \$215,306.92 for operating the pool, did he not? Would you say that is about the correct figure?

Mr. ELLSWORTH. Yes.

Mr. GRAY. Ten per cent?

Mr. ELLSWORTH. The firm got a managing fee, not Mr. Meehan.

Mr. GRAY. In addition to that, in all these three hundred thousand-odd shares that were traded in, Meehan & Co. got their brokerage commission; that is correct, isn't it?

Mr. ELLSWORTH. Yes, sir.

Mr. GRAY. In addition to that, there is an item that is not clear to us, Mr. Ellsworth, that we would like to ask you about. There is a payment to you, not indicating what it is for at all, of \$24,915. Can you explain it?

Mr. ELLSWORTH. I do not recall the payment to me. There was no payment to me except for some expenses that should have been charged against the syndicate. It may have been incurred before the syndicate started—which I paid myself, and the syndicate paid me when it was closed.

Mr. GRAY. What kind of expenses could they have been?

Mr. ELLSWORTH. It might have been for publicity.

Mr. GRAY. What kind of publicity?

Mr. ELLSWORTH. I am hesitating, because I can not give you the name of the man that I think I paid the money to. It was a newspaper syndicate.

Senator COUZENS. Do you know the name of the syndicate?

Mr. ELLSWORTH. I can not recall that, so I hesitated.

Senator COUZENS. Do you know the name of the man?

Mr. ELLSWORTH. I think his name was Brown.

Senator COUZENS. Was he a resident of New York?

Mr. ELLSWORTH. That, I do not know.

Senator COUZENS. Did you come in contact with him?

Mr. ELLSWORTH. Yes; I saw him.

Senator COUZENS. Do you know how much you paid him?

Mr. ELLSWORTH. \$24,000, evidently, by the figure, if that is what it was. I don't recall what it was for, but that is what it must have been. It was not paid to me for any services.

Mr. GRAY. In the operation of this pool, in which you concede these gentlemen, of course, went in for the purpose of making a speculative profit, and which you state was to aid Mr. Fox to raise money and distribute his stock in connection with his desire to obtain other theaters, why should you spend \$24,000 with any newspaper man for publicity?

Mr. ELLSWORTH. To put the stock properly before the public, and its earnings.

Mr. GRAY. What stock did you want to put before the public?

Mr. ELLSWORTH. Fox Theaters.

Mr. GRAY. What Fox Theaters stock? You did not own any Fox Theaters stock.

Senator COUZENS. No; but he had an option.

Mr. GRAY. I am going to show what he did with that option, Senator Couzens, if you will permit me.

Mr. ELLSWORTH. It does not make any difference whether I owned it or not.

Mr. GRAY. In other words, it became necessary to get the public interested in Fox Theater stock, so that you, in your manipulation by your trades in the market, could do what you wanted to do with it; is that right?

Mr. ELLSWORTH. That is hardly fair.

Mr. GRAY. You express it in your language.

Mr. ELLSWORTH. We were offering stock which we firmly believed in, and we believed that the public would make money out of it. It was a speculative investment. We thought the stock should sell somewhere around \$60 a share, on the earnings that were given to us by the Fox Theaters Corporation, and if you can call the attention of the public to the fact that a stock is selling at \$30 a share which you think should sell at \$60, and will sell at \$60, you are doing the public a favor.

The CHAIRMAN. What is the stock worth now?

Mr. GRAY. \$1.50, yesterday.

Mr. ELLSWORTH. Probably about a dollar and a half.

Senator COUZENS. Why would you want to be such philanthropists to the public if you had stock at 30 or less, that was worth 60?

Mr. ELLSWORTH. At no time did I want to be a philanthropist; I wanted to make money, just the same as we all did, out of the stock, but we did not want to sell the public a bum stock. We thought we were selling them a good stock.

Senator COUZENS. That stock you were getting at less than 30 was worth 60. Why did you want to sell it at such a low price?

Mr. ELLSWORTH. I did not say it was worth 60 at that time, but it would be worth 60.

Senator COUZENS. In how long?

Mr. ELLSWORTH. In the career of the company.

Senator COUZENS. That might be 20 or 30 years hence.

Mr. ELLSWORTH. We thought it would come within another year. It should have come.

Senator COUZENS. If it should have gone up 100 per cent within a year, why did you want to dispose of it? Why didn't you wait for the year, and get the 100 per cent on your investment?

Mr. ELLSWORTH. My business is not waiting on stock. My business is to take stock under option and sell stock.

Senator COUZENS. Does not that belie your confidence in the stock?

Mr. ELLSWORTH. No, sir; not if I can turn my money over fast enough.

Mr. GRAY. Mr. Ellsworth, having indicated that picture, I ask you whether or not it is a fact that what you did was to start in and sell that stock short on December 4, 1928, and keep on selling, and selling, and selling short, taking such a position that, on January 17, 1929, this pool was 466,310 shares of stock short, and did not own a dollar's worth?

Mr. ELLSWORTH. Short against the option.

Mr. GRAY. No matter what you were short against, what you did was to keep on selling and increasing your short position day by day, until on that date you were short 466,310 shares. Is that right?

Mr. ELLSWORTH. Against the option.

Mr. GRAY. You had not a dollar's worth of stock, except what you had a right to get through the option, is that right?

Mr. ELLSWORTH. We could get it at any moment.

Mr. GRAY. You could get it at any moment, but what you were doing was selling the stock short, were you not?

Mr. ELLSWORTH. Against the option.

Mr. GRAY. You were selling it short, were you not?

Mr. ELLSWORTH. Against the option. They are two different things.

Mr. GRAY. All right. Let us see whether there is any difference.

Mr. ELLSWORTH. One is a bear operation, to depress the stock, and there was no attempt to depress this stock, certainly.

Senator FLETCHER. Was the effect of this selling to depress the stock?

Mr. ELLSWORTH. No, sir.

Senator FLETCHER. Did it depress the stock?

Mr. ELLSWORTH. The stock went up.

Mr. GRAY. If you say you were selling against the option, I want to ask you why it was that on December 17, 1928, while you were accumulating your short position, and while on that date you were short 170,370 shares, and you wanted stock, why you did not exercise your option, instead of getting Mr. William Fox to furnish you on that date 25,000 shares, loaning it to you from the Fox Film Co., and why, on the date of January 9, 1929, which is all part of the same transaction, when your account showed that you were short 428,205 shares, you got Mr. Fox to get you an additional 100,000 shares of Fox Theater stock owned by the Fox Film Co., and loan it to you, to let you carry it in your account, as against your short position?

Mr. ELLSWORTH. The question is rather long for me to answer.

Mr. GRAY. In a nutshell, it is this. Why didn't you get your stocks from your option stock, if that is what you were selling against, instead of borrowing stock and keeping your short position?

Mr. ELLSWORTH. Unless I am mistaken, this option had six months to run.

Mr. GRAY. Yes.

Mr. ELLSWORTH. It was when the option was about two months old, was it not?

Mr. GRAY. Yes.

Mr. ELLSWORTH. Anything could happen in the next four months.

Mr. GRAY. If the stock went down, you wouldn't have covered it in the open market, and not used your option?

Mr. ELLSWORTH. I would have had to, to protect those who had bought the stock.

Mr. GRAY. So that if this stock had dropped, what you would have done would have been to cover your short position in the open market, divide the profits, and never exercised your option. Isn't that right?

Mr. ELLSWORTH. If I had been forced to, I would have.

Mr. GRAY. Then, you were not trying to help Fox get rid of his 500,000 shares of stock, were you?

Mr. ELLSWORTH. That is an unfair interpretation.

Mr. GRAY. Everybody can put his own interpretation on it.

Mr. ELLSWORTH. I have already said we were trying to sell Mr. Fox's stock, for the purpose of buying a chain of theaters, and that is true.

Senator COUZENS. Why didn't you take up that portion of the option, instead of borrowing stock?

Mr. ELLSWORTH. Because, as Mr. Gray will probably bring out, we did have to buy back some of that stock above the option price. If some upheaval had occurred, we would have had to stay there and buy that stock to protect those who had bought the stock from the syndicate, which we did. The operation was a fairly large success for Mr. Fox, and for the syndicate. We only had to take back about a third of the stock.

Senator COUZENS. I still am at a loss as to why you should borrow stock, instead of exercising the option.

Mr. ELLSWORTH. We borrowed the stock to maintain a short position, so that we could buy stock in the open market, and then we could return that stock if we bought the stock in the open market.

Senator COUZENS. That did not help Mr. Fox in disposing of his option stock.

Mr. ELLSWORTH. That is the chance Mr. Fox had to take. We can not sell stock without some obligation to those who buy the stock.

Mr. GRAY. Nevertheless, you having an option up, you borrowed fifty thousand from Block Maloney & Co.?

Mr. ELLSWORTH. I don't know; the borrowing is done in the back office.

Mr. GRAY. The records in the back office show this, that you borrowed from Block Maloney 54,000 shares; from Naumberg & Dixon, another brokerage house, another 1,200; from Josephthal & Co. a thousand shares; from Loucheim, Mitten & Co. 7,500 shares; from J. S. Bache & Co. 22,500 shares, and from Clark, Childs & Co.—my recollection is that is a banking house; whether they are members of the exchange or not I do not know. I represented them at one time—

Mr. ELLSWORTH. They are brokers on the stock exchange.

Mr. GRAY. Ten thousand shares. I will ask you the same question with respect to all of them: Why did you not get those shares out of your option?

Mr. ELLSWORTH. For the same reason I spoke of before.

Senator COUZENS. Did you have to pay anything for those several borrowings?

Mr. ELLSWORTH. The value of the stock.

Senator COUZENS. Did you have to pay anything for the privilege of borrowing it?

Mr. ELLSWORTH. No premium; no, sir. It amounts to somebody else carrying stock for you.

Mr. GRAY. In other words, you borrowed it at what they call a flat rate?

Mr. ELLSWORTH. Probably at that time it was an excess rate; not at a premium rate.

Mr. GRAY. In other words, you paid no premium, but you received interest on the money that you deposited?

Mr. ELLSWORTH. Yes.

Mr. GRAY. And you gave to the Fox Film Co. \$4,300,000, did you not, for those 125,000 shares?

Mr. ELLSWORTH. I do not recall that.

Mr. GRAY. I mean, Meehan Co.

**Mr. ELLSWORTH.** Meehan & Co. never was a partner in that. I don't know where they borrowed stock. That is their business.

**Mr. GRAY.** The stock was borrowed from one house with which Mr. Fox had accounts?

**Mr. ELLSWORTH.** I don't know; I have not the slightest idea.

**Mr. GRAY.** Do you know anything about the repayment of that loan and what happened to that 125,000 shares of stock that belonged to Fox Film, Fox Theater stock?

**Mr. ELLSWORTH.** No; I do not.

**Mr. GRAY.** I will establish that a little later. I told the committee what happened to it, yesterday.

How much of that stock that you had an option to buy, did you buy?

**Mr. ELLSWORTH.** Something under 300,000 shares, I believe.

**Mr. GRAY.** It was exactly 300,000, was it not?

**Mr. ELLSWORTH.** I don't know. I think it was around 300,000. You have the figures.

**Senator BROOKHART.** Are all of these transactions that you have described regular under the rules of the stock exchange? Are they approved by the Stock Exchange?

**Mr. ELLSWORTH.** Yes.

**Senator BROOKHART.** That is regarded by the stock exchange as honest and legitimate business?

**Mr. ELLSWORTH.** None of these transactions occurred on the New York Stock Exchange.

**Mr. GRAY.** So that there will not be any confusion about that: all of this buying and selling that we are talking about occurred on the New York Stock Exchange?

**Mr. ELLSWORTH.** None of it.

**Mr. GRAY.** The New York Curb Exchange—I am sorry; the curb exchange being a different exchange in New York and handling stocks that are listed on that exchange and not listed on what they call the big board, or the New York Stock Exchange.

**Senator BROOKHART.** Are the curb rules any different?

**Mr. ELLSWORTH.** With a very few exceptions they follow the New York Stock Exchange.

**Senator BROOKHART.** This would all be approved, then, as regular business?

**Mr. ELLSWORTH.** If they had been listed there; yes, sir.

**Senator FLETCHER.** This stock was not listed on the New York Stock Exchange?

**Mr. ELLSWORTH.** No, sir. It is not now.

**Mr. GRAY.** I think that is all that I want to ask Mr. Ellsworth. There are one or two small matters that I am going to put special witnesses on to ask about.

**Mr. ELLSWORTH.** May I correct one thing?

**Mr. GRAY.** Anything you want to state, Mr. Ellsworth.

**Mr. ELLSWORTH.** Yesterday in talking with one of the witnesses here you inferred that I received a put from Mr. Taylor, which is correct, on 5,000 shares of Fox Film.

**Mr. GRAY.** At 90?

**Mr. ELLSWORTH.** When the stock was selling at 84.

**Mr. GRAY.** So that the committee may understand you, that was the Fox Film syndicate that was operated by Taylor-Thorne & Co.

and has nothing to do with these Fox Theater transactions, and it was at a period of time which antedates the time we have been talking about by several years. In other words, it was when the Fox Film was first being handled.

Now, go ahead, Mr. Ellsworth.

Mr. ELLSWORTH. What happened was this: Mr. Taylor came to me to interest me in Fox Film stock—I had not been a member of the syndicate—and induced me, or tried to induce me, to buy Fox Film stock, which I was glad to do. The stock was not selling at 84 or 85, as stated here yesterday; it was selling at 90 when I bought the stock. I told Mr. Taylor I would buy the stock, would pay 5,000 or 10,000 shares of stock, if he would give me a put on 5,000 of it at the price I paid for it, which he did. I lost, I think, about \$12,000 on the transaction, and did not make a profit of \$30,000, as I could have if it had happened as described here yesterday.

Mr. GRAY. You mean by that, in addition to having a put which we produced testimony with respect to yesterday, you had also another transaction with him at the same time of which the put was a part?

Mr. ELLSWORTH. No; not with him.

Mr. GRAY. Did you not say you bought more from him?

Mr. ELLSWORTH. Not from him; I bought it on the market. I think I bought 10,000 shares on which he gave me a put on half of it. I lost money on the whole deal; I think, \$12,000.

Mr. GRAY. But if you had not the put you would have had a great deal heavier loss?

Mr. ELLSWORTH. Yes.

Mr. GRAY. So on the put itself that we were talking about yesterday—we did not know anything about the other part of the transaction—did you make or lose money?

Mr. ELLSWORTH. I lost commissions and taxes.

Mr. GRAY. Everybody pays that when they sell. Did you make or lose money on your coverings in the market?

Mr. ELLSWORTH. I lost money.

Mr. GRAY. I am talking about that put, alone. I want you to separate the transactions.

Mr. ELLSWORTH. As already stated, I put it back to him at the same price at which I bought it.

Mr. GRAY. And did not exercise your right to buy on the market.

Mr. ELLSWORTH. I did buy on the market. I had no right to buy on the market. I told him that I would buy on the market, which I did.

Mr. GRAY. You simply broke even on the transaction?

Mr. ELLSWORTH. On that particular 5,000.

Mr. GRAY. I want to be fair to the witness, as well as to the testimony presented. The only testimony we presented in respect to it was this, that on the day that Mr. Ellsworth had his put at 90, stock was selling in the low 80's. The range of prices during that month was 80½ to 89½. His put was at 90, and therefore if he had gone out and bought the stock at any price down within that range he would have made the difference between the price of 90—

Mr. ELLSWORTH. Pardon me, Mr. Gray. The range of the stock for the week of June 1 was 85¼ low, 91½ high.

Mr. GRAY. The week of June 1?

Mr. ELLSWORTH. From the 1st to the 8th,  $84\frac{3}{8}$  to  $92\frac{1}{4}$

Mr. GRAY. You are now telling us that instead of buying it as we surmised you did yesterday, what you did was to cancel the put and did give it back to him at the price at which he gave it to you?

Mr. ELLSWORTH. No; I bought stock at 90.

Mr. GRAY. At the same price?

Mr. ELLSWORTH. And put it back to him without profit to myself, but a loss of commissions and taxes at 90.

Mr. GRAY. In other words, you bought it at the same price at which he gave you the put.

Mr. ELLSWORTH. I bought at 90 and put it to him at 90.

Mr. GRAY. There was no profit?

Mr. ELLSWORTH. No; a loss.

Senator CAREY. You broke even on the put but lost \$12,000 on your other purchase?

Mr. ELLSWORTH. Correct.

The CHAIRMAN. He did say that if it had not been for that put he would have had a larger loss.

Mr. GRAY. The chairman directs my attention to the fact that you said that if it had not been for the put you would have had a larger loss.

Mr. ELLSWORTH. Yes.

Mr. GRAY. Why do you make that statement, if you only lost your tax and commission? Where is the differentiation?

Mr. ELLSWORTH. You have confused the entire transaction. I bought 5,000 shares in the market and put it back to Mr. Taylor at the price at which I bought it, which was 90.

Mr. GRAY. What did you buy it for—at 90?

Mr. ELLSWORTH. At 90, and put it back to him at 90. Besides that, I bought other stock which I told him I would buy and on which I took a loss of \$12,000.

Mr. GRAY. That does not explain your statement, that if you had not had the put your loss would have been much greater.

Mr. ELLSWORTH. Certainly it would have been greater. If I had sold the stock, how much it would have been I can not tell you. Probably I sold the other stock I bought at 88.

The CHAIRMAN. In other words, the witness admits that the put was to his benefit. That is the whole point in it, anyway, is it not?

Mr. GRAY. That is all.

Mr. ELLSWORTH. I made no money on it.

Mr. GRAY. That is all, Mr. Ellsworth.

(Witness excused.)

#### TESTIMONY OF P. J. HIGGINS, SCARSDALE, N. Y.

(The witness was duly sworn by the chairman.)

Mr. GRAY. You reside where?

Mr. HIGGINS. Scarsdale, N. Y.

Mr. GRAY. Your name is P. J. Higgins?

Mr. HIGGINS. Yes, sir.

Mr. GRAY. Do you have an association with M. J. Meehan Co.?

Mr. HIGGINS. I am a partner in the firm.

Mr. GRAY. I want to establish but one thing by this witness.

You recall this account No. 433 dealing in the Fox Theater stocks?

Mr. HIGGINS. In a general way; yes.

Mr. GRAY. We have here a photostatic copy of a check under date of April 12, 1929, check No. 5316, on the Guaranty Trust Co. of New York, signed "M. J. Meehan & Co." to the order of P. J. Higgins for \$322,960.41, indorsed "pay to the order of William Fox, P. J. Higgins," and also indorsed "for deposit only, William Fox."

I ask you whether that photostatic copy is not the photostatic copy of a check which represents the interest of William Fox in account No. 433 and represents in its amount the amount of his profit from the transaction?

Mr. HIGGINS. That is right.

Mr. GRAY. Why was it drawn to you?

Mr. HIGGINS. For the purpose of concealing from the clerical force the participants in this account.

Mr. GRAY. I want the committee to get that clearly—"For the purpose of concealing from the clerical force the participants in this account."

Mr. HIGGINS. Yes, sir.

Mr. GRAY. In other words, you did not want either the clerical force or the public to know that Mr. William Fox was dealing in this deal when you were selling Fox Theater stocks short; is that correct?

Mr. HIGGINS. The public would not have access to that. There were other checks drawn in the same manner, drawn to my order on this account that of Mr. Brady and Mr. Kenney. The other participants received credit in their accounts for their participation.

Mr. GRAY. In other words, there was no necessity for drawing a check, because he had another account on the books, and you simply transferred the credit over to that other account?

Mr. HIGGINS. That is right.

Mr. GRAY. Why the concealment?

Mr. HIGGINS. Well, we had a clerical force of probably three or four hundred people and we did not feel that we wanted them to go around and divulge who were the participants. They were all men of prominence and we thought it was only just to them to keep their names from being bandied around the street.

Mr. GRAY. According to Mr. Ellsworth, you gentlemen—not entirely altruistically, of course—were aiding Mr. Fox to sell some of his stock in order that he might buy certain theaters. Why not broadcast the fact that Mr. Kenney and Mr. Ellsworth and the others were helping him in this proposition?

Mr. HIGGINS. The syndicate was managed by Mr. Ellsworth.

Senator GOLDSBOROUGH. You would not have regarded that as good publicity?

Mr. HIGGINS. We were not interested in publicity of any kind. We are only brokers, agents, in this transaction.

Mr. GRAY. Mrs. Meehan was not a member of it?

Mr. HIGGINS. She is not a member of the firm.

Mr. GRAY. She is the wife of M. J. Meehan.

Mr. HIGGINS. Also a customer of M. J. Meehan & Co.

Mr. GRAY. And, of course, she would go to her husband; she would not go down to some other brokerage house.

Mr. HIGGINS. Surely.

Mr. GRAY. Of course, that is very natural, if she was spending her husband's money.

Mr. HIGGINS. Her own money, either.

Mr. GRAY. Where does she get it?

Mr. HIGGINS. Mrs. Meehan has had money for a long time.

Mr. GRAY. Since "Mike" made it. We all call him Mike. We all understand that.

I want to have this check placed upon the record.

(The check referred to, dated April 12, 1929, to the order of P. J. Higgins, and signed by M. J. Meehan & Co., is here printed in the record as follows:)

M. J. Meehan & Co., 61 Broadway.

**GURANTY TRUST Co. OF NEW YORK**

No. 5316

NEW YORK, April 12, 1929.

Pay to the order of P. J. Higgins the sum of \$322,960 and 41 cents.  
\$322,960 41/100.

M. J. MEEHAN & Co.

(On the back thereof appears the following:)

Pay to the order of William Fox, P. J. Higgins.

For deposit only, William Fox.

(Paid).

Received payment through the New York Clearing House.

Prior indorsements guaranteed, April 24, 1929.

THE NATIONAL CITY BANK OF NEW YORK,  
N. C. LENEESTEY, Cashier.

Mr. GRAY. Many other questions might be asked about this account, but it would be a repetition of what I asked Mr. Ellsworth, except as to one thing. Are you able to tell me of the borrowing of that 125,000 shares of Fox Theater?

Mr. HIGGINS. Just in a general way; that is all.

Mr. GRAY. Do you know where he got the stock?

Mr. HIGGINS. Where Mr. Fox got it?

Mr. GRAY. Yes.

Mr. HIGGINS. No, sir; I do not.

Mr. GRAY. We will prove that in another way.

That is all, unless the committee members wish to ask you anything.

(Witness excused.)

**TESTIMONY OF WALTER BEST, BELLAIRE, LONG ISLAND**

(The witness was duly sworn by the chairman.)

Mr. GRAY. What is your full name?

Mr. BEST. Walter Best.

Mr. GRAY. Are you connected with M. J. Meehan & Co.?

Mr. BEST. Just as an employee.

Mr. GRAY. Do you recall a loan of 25,000 shares made by the Fox Film, 25,000 shares of Fox Theater stock, to this 433 account on December 18, 1928?

Mr. BEST. Not a loan by Fox Film.

Mr. GRAY. You say, not a loan by Fox Film?

Mr. BEST. No, sir.

Mr. GRAY. Is it not a fact that as against the loan of those shares money was given to the Fox Film Co.?

Mr. BEST. No, sir.

Mr. GRAY. Who was it given to?

Mr. BEST. To a man named Jack G. Leo.

Mr. GRAY. In other words, you did not know the Fox Film Co. in that transaction?

Mr. BEST. No, sir.

Mr. GRAY. But a man named Jack G. Leo loaned this account 25,000 shares of Fox Theater stock on December 18, 1928, and the same Mr. Jack G. Leo loaned this account on January 9, 1929, 100,000 shares of stock?

Mr. BEST. Yes.

Mr. GRAY. You did not know, then, that the Fox Film Co. carried on its books a cash transaction with you as against that loan of stock of \$4,300,000?

Mr. BEST. No, sir.

Mr. GRAY. You knew nothing about that?

Mr. BEST. Absolutely nothing.

Mr. GRAY. Have you got the certificate numbers of the stock that was loaned to you?

Mr. BEST. I have not them with me. I believe you people have them.

Senator GOLDSBOROUGH. The Mr. Leo of whom you speak is a member of the Fox concern?

Mr. GRAY. A brother-in-law of Fox, member of the board of directors of the Fox Film Corporation, and vice president of Fox Theaters.

Senator GOLDSBOROUGH. What relationship?

Mr. GRAY. Brother-in-law, I think. We will tie them all up in a very little while. I want to get these odds and ends out of the way while I have these men here. He is the man who, when Fox sold on April 7, 1930, got a bonus—nobody knows why—of \$500,000—just a bonus, that is all.

I want to ask you whether or not you have checked up with the accountants of George K. Watson on your books the figures of the return payments and the thing that happened to the stock when it was ready to be returned, whatever that thing was, and the certificate numbers. You have done that, have you not?

Mr. BEST. Mr. Benton pointed out to me that the numbers of the 50,000 shares which were received into our office as part of this call or this option were identical with and included in the 75,000 shares which we had previously delivered to Mr. Leo in return for the stock borrowed.

Mr. GRAY. Let us get that straight. These figures are from your books, of course?

Mr. BEST. Yes.

Mr. GRAY. On April 9, 1929—and I will use the name of Leo because he is one you know—Mr. Leo paid to you \$550,000 and got back none of the 125,000 shares of stock. Do you know that to be correct?

Mr. BEST. \$550,000?

Mr. GRAY. Yes. Suppose I give you the second transaction, and maybe it will bring it back to your mind. On April 11 repaid \$2,400,000, making a total of \$2,950,000 that was paid, and 75,000 shares of stock out of the 125,000 that was loaned to you was given back to Mr. Leo?

Mr. BEST. Yes; that is correct.

Mr. GRAY. When you paid back the remainder of the loan, \$1,350,000, there was and should have been due to Mr. Leo 50,000 shares of stock?

Mr. BEST. That is true.

Mr. GRAY. I am addressing my question, now, to that 50,000. What actually happened was that there was a bookkeeping entry made in Meehan's firm that the 50,000 never went back to Leo, but that it was transferred immediately into this 433 account, was it not?

Mr. BEST. That is correct.

Mr. GRAY. And that 50,000 accepted as part of the stock delivered under an option that Mr. Fox had given to Michael J. Meehan & Co. as agents for Bradford Ellsworth—that is right, is it not?

Mr. BEST. Yes.

Mr. GRAY. I will say to the committee that I am going to prove that stock belonged to the Fox Film Co., which Leo handled in this way.

The 75,000 shares of stock that you delivered to him had certain certificate numbers, of course?

Mr. BEST. Yes; I have just stated.

Mr. GRAY. You called on Fox to deliver 50,000 more shares under the option, did you not?

Mr. BEST. Yes.

Mr. GRAY. And, as a matter of fact, that 50,000 shares that were delivered to the 433 account under an option that Mr. Fox had given to M. J. Meehan & Co. as agents for Bradford Ellsworth were 50,000 of the shares coming out of the 75,000 that you had just returned to Leo. That is true, is it not?

Mr. BEST. Yes.

Mr. GRAY. You checked up the certificate numbers?

Mr. BEST. The certificate numbers are correct.

Mr. GRAY. So that the 100,000 of the 125,000 shares of stock which I will show belonged to the Fox Film Co., and they paid for it in cash, stock of the Fox Theaters Co., went back into the operations of this 433 account under the option that Mr. William Fox got from the Fox Theaters, not Fox Film, and gave to M. J. Meehan Co. as agents for Bradford Ellsworth?

Mr. BEST. Fifty thousand went into that account.

Mr. GRAY. That is all.

Senator WALCOTT. Was that a loan account, or was it taken without security?

Mr. BEST. You mean, the 125,000 shares?

Senator WALCOTT. Yes.

Mr. BEST. We borrowed 125,000 shares of stock for which we paid the then market value—full value. That was in accordance with the terms of the agreement.

Senator WALCOTT. Did you get from that other account the 50,000 shares which you are speaking of?

Mr. BEST. No. We transferred a balance of 50,000 which was due on the loan.

Senator WALCOTT. That was due, was it?

Mr. BEST. That was due; yes. That is, instead of returning it to Mr. Leo we transferred it to the 433 account to take care of the shares which were called on their option. That was probably done on instructions of, or some arrangement with, Mr. Fox or Mr. Leo. At the same time we paid Mr. Leo a check for the entire amount, \$1,350,000, I believe, we received from Mr. Fox \$1,350,000 for that transaction.

Mr. GRAY. Not in cash. Oh, you mean that you paid it to him for the 50,000 shares of stock on option?

Mr. BEST. Yes.

Mr. GRAY. In other words, the \$50,000 was valued at the same figure, so that when you repaid to Mr. Leo \$1,350,000, you got back from Mr. Fox 50,000 shares of the stock under the option to purchase 500,000?

Mr. BEST. That is true.

Mr. GRAY. And it just so happened that the option price was also \$1,350,000?

Mr. BEST. Yes, sir.

Mr. GRAY. But there were checks paid?

Mr. BEST. A check was paid to Mr. Leo.

Mr. GRAY. And a check was received from Mr. Fox.

Senator WALCOTT. What I am trying to get at is this. Leo borrowed some stock and paid for it a certain price. When the company got it back did the company get it back at the same price?

Mr. BEST. Originally that stock was borrowed, I think, at a price of 32. As the price varies there is either a mark up or a mark down in the loan value to keep that loan at the actual market price. It just happened that the stock had been marked down to 27, which happened to be the price at which these 50,000 shares were called from Mr. Fox.

Mr. GRAY. I want, while you are here, to show you a photostatic copy of another account entirely which is in the name of William Fox. I just got word about it this morning, and I want to get the significance of it. On Fox's personal account of October 26, 1928, there is an item of 10,000 shares of Fox Theaters A and a credit on that of \$300,000. There is nothing to show us whether that is delivery or whether it is sale. Can you tell me which it is?

Mr. BEST. It looks to me as if it is a straight delivery for \$300,000.

Mr. GRAY. In other words, it looks to you as if, out of that account—this being a purely William Fox personal account—you delivered to him 10,000 shares of Fox Theater stock?

Mr. BEST. Yes.

Mr. GRAY. Do you know where it went?

Mr. BEST. No, sir; I do not. This is the first I have seen of that item.

Mr. GRAY. I think that is all that Mr. Best can tell us.  
(Witness excused.)

**TESTIMONY OF GEORGE K. WATSON, CERTIFIED PUBLIC  
ACCOUNTANT, PHILADELPHIA, PA.**

(The witness was duly sworn by the chairman.)

Mr. GRAY. Mr. Watson, you are a certified public accountant?

Mr. WATSON. Yes, sir.

Mr. GRAY. With your principal office in the city of Philadelphia?

Mr. WATSON. Yes, sir.

Mr. GRAY. You have been in business how long?

Mr. WATSON. Twenty years.

Mr. GRAY. Will you try to keep your voice up? You were engaged as the committee's accountant in this case for the purpose of making certain audits and investigations of books in New York city?

Mr. WATSON. Yes, sir.

Mr. GRAY. And you have been cooperating with me in the doing of that work since the second day of May of this year?

Mr. WATSON. Yes.

Mr. GRAY. I am going to direct your attention, first, because this is a matter that was just before us, to this 433 account in the brokerage house of M. J. Meehan & Company. You did have your accountants working under you make an investigation of that account, did you not?

Mr. WATSON. Yes, sir.

Mr. GRAY. It was done under your supervision?

Mr. WATSON. Yes, sir.

Mr. GRAY. And under such check-ups as you thought proper to make after the work was actually finished?

Mr. WATSON. That is correct.

Mr. GRAY. I want you to tell us—and I say to the committee that I have got the actual accountants on that work here, if anyone wants to question them with reference to it, and all of the work sheets—I want you to tell us about this transaction of the loaning of 125,000 shares of stock into that account, and I want you not to confine yourself to the transaction as it appears on the books of M. J. Meehan & Company, but also the information you got from the examination of other books. You did examine the Fox Theater books?

Mr. WATSON. Yes, sir.

Mr. GRAY. And the Fox Film books?

Mr. WATSON. Yes.

Mr. GRAY. Just in a narrative form, give us that transaction, will you please?

Mr. WATSON. Under date of December 18, 1928, 25,000 shares of stock, and under date of January 9, 1929, 100,000 shares of stock, was apparently borrowed by—

Mr. GRAY. Mr. Watson, the great trouble with lawyers and accountants and others of that ilk is that when they get on the witness stand they are apt to keep their voices down, when they can talk just as loudly as I do in doing the questioning. So will you not keep your voice up so that every one interested may hear?

Mr. WATSON. This account was created by the borrowing under date of December 18, 1928, 25,000 shares of stock, and on January

9, 1929, of 100,000 shares of stock by Meehan from Jack Leo for an aggregate payment of \$4,300,000.

Mr. GRAY. By the borrowing, you mean the simple lending of stock as against a certain amount of money, the stock to be returned and the loan repaid?

Mr. WATSON. The stock was placed in a stock borrowed account by Meehan.

Mr. GRAY. It appeared that way in his books?

Mr. WATSON. Yes.

Senator BROOKHART. What was this stock borrowed for?

Mr. WATSON. To cover a short. They created a short and they borrowed the stock rather than picking it up on the option.

Senator FLETCHER. Was cash actually paid for it, or just a book entry?

Mr. WATSON. Yes; actually delivered cash.

Senator BROOKHART. Do they do that in all the borrowings?

Mr. WATSON. Yes, sir. They delivered \$4,300,000 cash. At the same time the Fox Film Corporation purchased from the Fox Theaters 125,000 shares of stock the Theaters Corporation originally issued as of December 17, 25,000 shares at 25, and as of January 9, 1929, 100,000 shares at 25. Both of these blocks of stock were issued in the name of Jack Leo, paid for by the Film Company through the Theaters Company.

Mr. GRAY. Let us get that clear. On December 17, 1928, Fox Theaters issued 25,000 new shares of their own stock and sold that stock to the Fox Film Co. for a cash consideration and took the certificates in the name of Jack Leo. That is right, is it not?

Mr. WATSON. That is right.

Mr. GRAY. And on January 9, 1929, Fox Theaters issued 100,000 shares of new stock again and sold it to Fox Film for a cash consideration, and the certificates were issued in the name of Jack Leo.

Mr. WATSON. Yes.

Mr. GRAY. On the same date, that is to say, on December 17, 1928, that 25,000 shares that was bought by Fox Film and put in the name of Leo was loaned to Meehan & Co.?

Mr. WATSON. Yes, sir.

Mr. GRAY. And on the same date, January 9, 1929, the Fox Film Co. bought 100,000 shares of Fox Theaters and put it in the name of Leo, and that was loaned to Meehan?

Mr. WATSON. Yes.

Mr. GRAY. So that we have got a transaction where the Fox Film owned 125,000 shares of stock, the Fox Theaters and Fox Film put it in the name of Leo, or somebody did, and it passed through to Meehan & Co.?

Mr. WATSON. Yes.

Mr. GRAY. What do the Fox Film books show with respect to the amount of cash paid by Meehan?

Senator BROOKHART. Let me get the date of that last transaction, please.

Mr. GRAY. January 9, 1929.

Mr. WATSON. It shows up as a balance due.

Mr. GRAY. Does it show directly on the Fox Film books, or on any security account?

Mr. WATSON. On the books.

Mr. GRAY. That stock remained with M. J. Meehan Co. until what date? I want you to trace the loan and the course that the stock took thereafter.

Mr. WATSON. On April 11 Fox Film repaid, or Jack G. Leo repaid, to Meehan \$2,400,000, but there was delivered to Jack G. Leo 75,000 shares of stock.

Mr. GRAY. Prior to that time was there not another payment of \$550,000 also?

Mr. WATSON. Under date of April 9, \$550,000 was repaid, at which time there was no stock returned.

Mr. GRAY. They still have 50,000 shares of stock. What was done with that?

Mr. WATSON. Under date of April 18 there was a repayment of \$1,350,000 and 50,000 shares were transferred on the books of Meehan to the 433 short account.

Mr. GRAY. In other words, your examination of the books of Meehan show that though the loan was repaid that stock was neither handed back to Leo nor given to the Fox Film Corporation who were the actual owners thereof?

Mr. WATSON. That is right.

Mr. GRAY. It passed into the 433 account. Did it go into the 433 account as part of the option?

Mr. WATSON. Yes.

Mr. GRAY. Let me stop to ask about that option for a minute, though I think it is on the record. We have an option that Fox Theaters, not Fox Film, gave to William Fox to buy this stock, 500,000—is that right?

Mr. WATSON. Yes.

Mr. GRAY. And we have got an option that Fox gave to M. J. Meehan as agent for Bradford Ellsworth for that same 500,000. So that what Mr. Fox did, because he had entire control of the situation, was to take 50,000 shares of Fox Theater stock that belonged to Fox Film, who had actually paid cash to Fox Theaters for it, and used it as part of his own stock, just as if he owned it, and delivered under the option that he gave Meehan. That is right, is it not?

Mr. WATSON. Yes.

Senator WALCOTT. What do the books of the company show as to the authority for that exchange?

Mr. WATSON. I have seen no record authorizing Fox to loan the company's stock.

Senator WALCOTT. That could have been authorized by the Fox Film Corporation. Was it?

Mr. WATSON. It could have been, but it was not.

Senator WALCOTT. You know that?

Mr. WATSON. Yes, sir.

Senator WALCOTT. That is my point.

Mr. GRAY. You examined all the books, and the report was made to you that there was absolutely nothing in the Fox Film's books to show any authority given to do that thing?

Mr. WATSON. That is right. We examined the minute books.

Mr. GRAY. But it is a fact, however, that the Fox Film Co.'s books do show that the money was received by them on the loan?

Mr. WATSON. Yes.

Mr. GRAY. So of course there was a tacit approval there, and Fox could have done that or even had a minute adopted if he desired?

Mr. WATSON. The loaning of the stock was at a price higher than the option price. The loaning was at 32 to 35, otherwise there would not have been \$4,300,000.

Senator WALCOTT. We have gotten it up to April, 1929. What was the price variance from January, the time of the previous transaction, to April, 1921; that is, the market price?

Mr. WATSON. Fox Theaters?

Senator WALCOTT. Yes. It would show an enormous differential there.

Mr. GRAY. I have the complete record here, but I will let the witness answer it. Of course, Senator Walcott, the prices may mean something; but I have been treating it from the angle of the transaction irrespective of the price.

Senator WALCOTT. Somebody had to be responsible for that difference also. There is a big difference in there.

Mr. GRAY. We will show you that the stock was higher and the stock stayed around where William Fox could use it.

Senator WALCOTT. Yes; that seems to me a very important point.

Mr. WATSON. The range of price—I have here a schedule of the high and the low and the dates of the high and low by months. I do not have it every day. In the month of January, 1929, the high was, on the 5th of January,  $37\frac{7}{8}$ , and the low, on the 31st, was  $32\frac{1}{2}$ .

Mr. GRAY. Now, February?

Mr. WATSON. On the 6th the high was  $33\frac{7}{8}$ . The low was, on the 16th, 28.

Mr. GRAY. And March?

Mr. WATSON. March, the high on the 4th was  $32\frac{7}{8}$ . The low was  $28\frac{7}{8}$ .

Mr. GRAY. And April?

Mr. WATSON. The high at  $30\frac{3}{4}$  and the low at  $27\frac{1}{8}$ .

Mr. GRAY. I intended to put this in evidence for another purpose, because I wanted to direct the committee's attention to the fact that while that short pool was operating, the price was being driven down from a high of 37 to a low of 30 in those few months.

Senator WALCOTT. That is what I wanted to tie in there, because you have got a variation there of from high in January to low in April of only 10 points, whereas if you watch Steel and A. T. & T., you will find a different story.

Mr. GRAY. The entire picture, when it is finished, will show you a different story, Senator.

Now, having given back that 75,000 shares to Jack Leo have you been able to trace at all that 75,000 shares as ever going to the Fox Film Co?

Mr. WATSON. No.

Mr. GRAY. Did you trace 50,000 of it anywhere?

Mr. WATSON. Yes.

Mr. GRAY. Where?

Mr. WATSON. Back into the 433 account.

Mr. GRAY. You did that by the certificate numbers, did you not?

Mr. WATSON. Yes.

Mr. GRAY. In other words, 50,000 shares of the 75,000 was returned when a part of the loan was paid off and handed back under Mr. Fox's option; is that correct?

Mr. WATSON. That is right.

Mr. GRAY. Then the next 50,000 shares, when was the final payment made of \$1,350,000?

Mr. WATSON. On April 18, 50,000 shares were by general entry transferred from the stock loan account to the 433 account.

Mr. GRAY. In other words, instead of giving out the certificates of stock and getting them back again, we simply have a bookkeeping entry transferring that 50,000?

Mr. WATSON. Yes.

Senator CAREY. How did they enter that on the books of the company that owned this stock? Did they show any transfer or anything?

Mr. WATSON. The Fox Film Co.?

Senator CAREY. Yes.

Mr. WATSON. They owned stock and they just loaned it at a book credit for a cash advance, and when they paid back the cash, they charged the account with the cash and got the stock back.

Senator CAREY. Did it finally get back to the Fox Film Co.? Did they ever get the stock back?

Mr. WATSON. They got stock back, Senator. They did not get the stock back which they loaned; they did not get the identical certificates.

Senator CAREY. But they had their stock returned to them?

Mr. WATSON. That is a peculiar thing which we have been unable definitely to tie up by an examination of the portfolio.

Mr. GRAY. This leads us to another manipulation. The books do not show anything at all with reference to the loaning of the stock and do not show anything else with respect to the receipt of the stock back, but only show the cash ends. Is that right?

Mr. WATSON. That is all I have seen.

Mr. GRAY. In other words, the books of the Fox Film show nothing but the money transaction and contain no information at all with respect to the stock itself, either the passing of it out or the receiving of it back?

Mr. WATSON. Or the authority.

Senator GOLDSBOROUGH. Nothing on the minute books?

Mr. GRAY. Nothing on the minute books at all.

Now, go ahead and explain the next transaction that ensued in answer to the question of the Senator whether they got that stock back.

Mr. WATSON. We are unable to determine from the Film Corporation books just when the 125,000 shares loaned to Meehan was returned, but since the great majority of the numbers of the certificates now in the portfolio were issued by the Theater Corporation on May 8, 1929, or subsequent thereto, it is evident that the Fox Film Corporation stock was not returned to the Film Corporation on the dates they paid the loan.

Mr. GRAY. In other words, as far as the accounts of the Film Co. are concerned, where you do find any accounts with respect to stock matters, the stocks are accounted for, that is, the stocks of the Fox Theaters?

Mr. WATSON. Yes.

Mr. GRAY. But you did not find any entry with respect to those 125,000 except its receipt from the Fox Theaters when they purchased it?

Mr. WATSON. Yes.

Mr. GRAY. But the portfolio had sufficient stock in to cover that as well as other entries?

Mr. WATSON. Yes.

Mr. GRAY. So that in some way—the exact way not being possible of determination—that 125,000 shares got back into the portfolio?

Mr. WATSON. It got back, but when I do not know.

Mr. GRAY. And who used it and what they did with it in the meanwhile, you have no way of telling?

Mr. WATSON. No. Some of the two certificates are missing, and there are two which are involved in this situation.

Mr. GRAY. What do you mean?

Mr. WATSON. There are two certificates, I believe for 100,000 shares each—200,000 shares—that I have not identified.

Mr. GRAY. What do you mean by “missing”?

Mr. WATSON. Three hundred thousand shares of stock which Fox has on option—

Mr. GRAY. That had nothing to do with this other option?

Mr. WATSON. No.

Mr. GRAY. In other words, he simply gets an option to buy 300,000 shares of Fox Theaters?

Mr. WATSON. Yes.

Mr. GRAY. Tell us that story. That is the next complication.

Mr. WATSON. The stock was delivered to—I have forgotten what bank. After a period of time the bank was instructed to return 200,000 for cancellation. We have a record of a communication from the bank to the effect that it was returned; and it was returned and canceled, so far as the records are concerned. The certificates have never been found, and where the stock lay for the two months odd in between I do not know.

Mr. GRAY. Let us get that clear. Mr. Fox got an option for 300,000 shares of stock and got stock?

Mr. WATSON. Yes.

Mr. GRAY. But he did not actually pay for it?

Mr. WATSON. No.

Mr. GRAY. And what actually happened was that he held the 300,000 shares for how long?

Mr. WATSON. About two months.

Mr. GRAY. And then he handed 200,000 of it back and had it canceled; is that right?

Mr. WATSON. That is right.

Mr. GRAY. And what he or anybody else did with that stock in the way of getting money on it in loans from banks or making any other use of it by loaning it to any broker or anything of that kind we have been unable to find out?

Mr. WATSON. Yes.

Mr. GRAY. That is one of the things I want to ask Mr. Fox about, of course.

Senator WALCOTT. Could that have been treasury stock?

Mr. WATSON. No; it was option stock.

Senator WALCOTT. Well, did it come out of the treasury?

Mr. WATSON. Out of the unissued stock. Treasury stock is something else.

Mr. GRAY. You mean, you do not know whether it was stock they owned that they may have gotten into their own portfolio, bought in the market, or whether it was unissued stock?

Mr. WATSON. Out of the unissued.

Mr. GRAY. As a matter of fact, in the 433 account. Mr. Watson, you did actually find a transaction on October 18, 1928, as indicated in my question to Mr. Ellsworth, involving 10,000 shares, did you not?

Mr. WATSON. Yes, sir.

Mr. GRAY. Just exactly what was that transaction? In other words, I just want a summary of it as it appears to you after your investigation was made.

Mr. WATSON. A summary of it may be said to be that on the same date the pool sold 10,000 shares of stock, Fox bought 10,000 shares of stock.

Mr. GRAY. At the same price?

Mr. WATSON. At the same price.

Mr. GRAY. And by the tracing of those transactions and an actual accountant's check-up through five different brokerage houses in New York, you find that one bought and the other sold; is that correct?

Mr. WATSON. That is right.

Mr. GRAY. In other words, there is no question about the transaction being a direct one between the syndicate and Fox?

Mr. WATSON. Oh, no; that is right.

Mr. GRAY. Can you find any reason other than the covering up of the transaction why it should have gone through five different brokerage houses before it was concluded?

Mr. WATSON. No; I would not try to find an answer for it; I don't know.

Mr. GRAY. Ordinarily, if one house sold and another bought it would be cleared between those two houses themselves that night in the stock clearing house, would it not?

Mr. WATSON. Ordinarily; yes.

Mr. GRAY. But this passed through five different brokers. It is a fact, is it not, that your examination of the record and the 433 account shows the maximum position of some 466,000 shares short?

Mr. WATSON. A maximum short position of 466,310 shares which occurred on January 17, 1929.

Mr. GRAY. Was the account at any time in a long position?

Mr. WATSON. No; it was short.

Mr. GRAY. And having sold it, they received under the option how many shares of stock?

Mr. WATSON. Three hundred thousand shares.

Mr. GRAY. And 50,000 of that came, as you have indicated, from the 75,000 that was loaned? Fifty thousand came also from that 125,000 through a bookkeeping transaction?

Mr. WATSON. That is right.

Mr. GRAY. And the other 200,000 were delivered by Mr. Fox personally?

Mr. WATSON. As of January 18.

Mr. GRAY. And in order to take care of this position in the account with respect to the rest of the stock that they needed, where did they get it?

Mr. WATSON. Bought it on the market.

Mr. GRAY. In other words, having a short position of 466,000 shares and having used 300,000 shares under the option to cover, they bought whatever other shares they needed in the market at such price as they could buy it for, for the purpose of clearing up and closing out the account?

Mr. WATSON. Largely above the option.

Mr. GRAY. That was because of the fact—

Mr. WATSON. All above the option.

Mr. GRAY. That was because of what fact?

Mr. WATSON. To keep the market up.

Mr. GRAY. As a matter of fact, when they covered their short position, Mr. Watson, in the market transactions, after their trades were finished, and they got ready to close, they bought below the price, did they not—

Mr. WATSON. They bought and sold as they went along, and they needed 300,000 to close the account, and they took up on the option.

Mr. GRAY. But the rest of the stock, outside of the option, they bought at prices less than the prices at which they had sold it?

Mr. WATSON. Not all of it.

Mr. GRAY. Show me any instance—

Mr. WATSON. You can not trace particular items, but periods from 1927 to 1928—and the last options they had were in 1928—you can not tell whether they applied against any particular acceptance of the option stock?

Mr. GRAY. What you mean to say is that they bought and sold stock at all prices?

Mr. WATSON. Right.

Mr. GRAY. And they gathered the rest of the stock in the market, and as a matter of fact the pool, even after the deduction of manager's fees and commissions and what was paid Mr. Ellsworth, made \$1,900,000 odd?

Mr. WATSON. That is right?

Mr. GRAY. So they must have bought it for a less price than they sold it—

Mr. WATSON. Yes. The pool made \$2,177,934.88.

Mr. GRAY. Is there anything else that has not been developed with regard to that?

Mr. WATSON. No, sir.

Senator BROOKHART. Were those deals on the stock exchange?

Mr. GRAY. All of them, Senator, except the taking over of the option stock which is under the agreement made with Mr. Fox—

Mr. WATSON. The curb exchange.

Mr. GRAY. This is all curb exchange, Senator, yes; because Fox Theaters are listed on the curb exchange alone.

Mr. WATSON. There is one point in the 394 account which I believe you forgot to develop.

Mr. GRAY. Tell us about that.

Mr. WATSON. Fox, of course, claims that the purpose of this account was twofold, in his testimony to you: First, that it was to promote the sale of the stock of the company, and later his plan

was to accumulate stock for the company looking forward to a day when there were 210,000 shares of the stock, and in this 394 account I direct your attention to schedule 2, showing 104,200 shares bought. He bought at an average price of \$29.44 per share, while at the same time he delivered into the pool 144,300, because the pool had bought 19,000 on the market at an average price of \$26.29. He received the money personally for the stock delivered. At least some of the items purchased have been identified in the aggregate of 210,000 shares—

Mr. GRAY. We will come to that in a moment, but I want to get that connection. In other words, through the accounts, in the handling of the Fox Theater stock, both its individual accounts and the 394 account, you will be able and you have traced some of that stock to an item of 210,000 shares which he afterwards turned over to the Fox Theater Co.? That is what you mean, is it?

Mr. WATSON. I will make it a little clearer if I can. The purpose of the 394 account was to sell 125,000 shares of his stock.

Mr. GRAY. According to his statement.

Mr. WATSON. According to the facts. That is what they did. At the same time he bought 104,204 shares through his various other brokerage houses—

Mr. GRAY. How many brokerage houses had he?

Mr. WATSON. Twenty-two, that I know of.

Mr. GRAY. Twenty-two different houses?

Mr. WATSON. Twenty-two different houses.

Mr. GRAY. How many accounts did he have in some houses?

Mr. WATSON. Anywhere from one to seven.

Senator BROOKHART. Does that mean that he wanted to sell these 125,000 at a high price and they buy in 104,000 at a low price?

Mr. WATSON. I can not tell, Senator, what he was thinking. I only know what he did.

Senator BROOKHART. That is the way it worked out?

Mr. WATSON. Yes.

Mr. GRAY. In other words, though he says he was doing it for the purpose of disposing of them, selling 125,000 shares of stock, still he was buying it back some place?

Mr. WATSON. He accumulated 104,000 in other accounts, and at least part of it is stock which went over to the company in the transaction of November 19, 1929.

Mr. GRAY. We will come to that. Going back to his accounts, in how many names did he have these accounts, if you recall?

Mr. WATSON. No; I can get a list of them from my assistants. I do not remember them all.

Mr. GRAY. And he had an account in the name of Jack Leo?

Mr. WATSON. Yes.

Mr. GRAY. Had an account in the name of Ben Leo?

Mr. WATSON. Yes.

Mr. GRAY. Had accounts in the name of Taussig?

Mr. WATSON. Yes.

Mr. GRAY. Mona Fox Taussig?

Mr. WATSON. Yes.

Mr. GRAY. Had accounts in the name of his daughters and brothers-in-law?

Mr. WATSON. Yes.

Mr. GRAY. Had an account in the name of a man named Al Herbert?

Mr. WATSON. Yes. Benjamin Leo, I believe.

Mr. GRAY. How many different names did he have his accounts in, do you recall?

Mr. WATSON. No. Seven or eight.

Mr. GRAY. Seven or eight different names. He had an account in the name of Hattie Carnegie?

Mr. WATSON. Yes, sir.

Mr. GRAY. Do you recall that?

Mr. WATSON. Yes.

Mr. GRAY. One in the name of John Zampt?

Mr. WATSON. Yes.

Mr. GRAY. He had accounts in different employees' names?

Mr. WATSON. Yes.

Mr. GRAY. They were all his?

Mr. WATSON. Yes.

Mr. GRAY. And an account in the name of Bessie Livingston?

Mr. WATSON. Yes.

Mr. GRAY. That was his sister, wasn't it?

Mr. WATSON. I believe so.

Mr. GRAY. My recollection is that it was. I want to see if we can trace that 210,000-share transaction as briefly as possible. You made an investigation of it, and is this not what you found: In the first place, that during the entire time while Fox Theaters stock was being sold on the New York Curb Exchange, Mr. Fox was buying and selling Fox Theaters stock in these various brokerage houses from 1925 down to 1929; is that correct?

Mr. WATSON. That is right.

Mr. GRAY. Was there anything in the accounts that in anywise distinguished those accounts so that you could say that this account was for Fox personally and that this account was for the Fox Theaters?

Mr. WATSON. There was not. There would be no way that you could even assume that his company had anything to do with any of the accounts.

Mr. GRAY. Were you present when I talked to Fox about it Wednesday afternoon?

Mr. WATSON. Yes.

Mr. GRAY. And when in response to my question he said that he did not know he could make any distinction between them?

Mr. WATSON. That is right.

The CHAIRMAN. One account was the account of his stockholders and the other one was his own personal account, is that right?

Mr. GRAY. They were all switched in everybody's name, including his own.

The CHAIRMAN. I know, but the profits, if it was the Fox Corporation, would go to the stockholders; if it was Fox personally it would go to him; is that it? Still the accounts were Fox's?

Mr. GRAY. I will show you, Senator, that he kept the profitable accounts and dumped the unprofitable ones, if you will permit me?

The CHAIRMAN. In other words, he found a way to distinguish?

Mr. GRAY. He distinguished, but he can not tell us how he did it. Now, what he did after trading in all those accounts from 1925 to 1929 was to turn a certain number of shares, or rather the accounts representing a certain number of shares, over to Fox Theaters, didn't he?

Mr. WATSON. That is right.

Mr. GRAY. Prior to November 19, 1929, was there anything whatever on the books of the Fox Theaters to show that they ever authorized him to deal in Fox Theaters stock?

Mr. WATSON. I have found nothing.

Mr. GRAY. Is there anything on the books of Fox Theaters, I mean the cash books, ledgers, journals, to show that any of the Fox Theaters money was ever used for the Fox purchases in these various accounts of Fox Theaters stock?

Mr. WATSON. No, sir.

Mr. GRAY. Nothing. In other words, down to November 19, 1929, the Fox Theaters records are entirely clear of any reference to this stock?

Mr. WATSON. That is right.

Mr. GRAY. On November 19, 1929, what happened? Well, what happened was this, was it not—

Mr. WATSON. Subsequent to the break in the market the various accounts in which these stocks had been accumulated were very much undermargined, and brokers wanted money. So the Fox Theaters Corporation negotiated loans of \$9,300,000, which funds were used to pay \$2,000,000 overdue loan in connection with the Gaumont British Pictures Corporation, and the balance was used to pay the amount due on Fox's accounts to the various brokers and lift the debit balance.

Mr. GRAY. What I asked you, however, was with respect to 1929 on November 19. The books of Fox Theaters show that they adopted a resolution taking over certain transactions and dealings which Fox had in Fox Theaters stock, do they not?

Mr. WATSON. That is right.

Mr. GRAY. And as a matter of fact, that involved 210,000 shares, did it not?

Mr. WATSON. Two hundred and ten thousand three hundred.

Mr. GRAY. Some of those transactions involved in those 210,000 shares had been closed, had they not, on the books?

Mr. WATSON. Yes, sir.

Mr. GRAY. I mean by that—and let us see if you mean the same thing—that the transaction had taken place, the books of the brokers show that the stock had been bought, and the books of the brokers show that the stock had been sold and that there was a loss in the transaction?

Mr. WATSON. That is true.

Mr. GRAY. And in making the calculation and in taking over those transactions that loss of so many dollars and cents was figured in?

Mr. WATSON. I believe that is right.

Mr. GRAY. And in other instances the balance, the debit balance due the brokers was paid and the stock itself taken by Fox Theaters; is that right?

Mr. WATSON. That is right.

Mr. GRAY. Did they get some stock?

Mr. WATSON. Yes.

Mr. GRAY. Do you know the figure which was paid by Fox Theaters for those 210,300 shares of stock?

Mr. WATSON. \$6,153,774.33.

Mr. GRAY. And do you know what the number of shares of Fox Theaters that Fox Theaters took over that day was worth at the market on that day?

Mr. WATSON. At an average price of that day they were worth three million three hundred—well, it would be the difference between these two figures I have. They would take a loss on it of \$3,314,724.33, which was the difference between the value at which the company took it and the average of between  $13\frac{3}{8}$  and  $13\frac{7}{8}$ , the value that day.

Mr. GRAY. In other words, if Mr. Fox had carried on those transactions as his own, it would have meant a loss of three million three hundred and some odd thousand dollars to him, which loss he dumped on the company by getting the company to take over these transactions and take them as theirs?

Mr. WATSON. That is what happened.

Mr. GRAY. Let me suggest also to the committee that if these transactions of Mr. Fox and he was dealing in Fox Theaters stock and dumped the loss on the company, and if these were transactions of Fox Theaters, then this company was out that much during his trades in its own stock on the market for a period of four years.

Were you able to trace into the New York income-tax return of Mr. William Fox any of these transactions?

Mr. WATSON. Yes.

Mr. GRAY. I wish you would detail them and explain what connection they have with this matter.

Mr. WATSON. There is an item of Richards & Co. of October 30, 1929, a thousand shares, with a loss of \$22,375.

Mr. GRAY. Yes.

Mr. WATSON. Ungerleider, October 30, 1929, 4,800 shares, a loss of \$73,812.50.

Mr. GRAY. Yes.

Mr. WATSON. Hanan, August to December.

Mr. GRAY. What is that?

Mr. WATSON. Hanan.

Mr. GRAY. That is the brokerage house?

Mr. WATSON. August till December, 1929, 4,500 shares, \$47,001.34.

Mr. GRAY. Loss?

Mr. WATSON. Loss, yes. Howard Hansee shows an account 1929, 4,600.

Mr. GRAY. Four thousand six hundred shares?

Mr. WATSON. Yes.

Mr. GRAY. Loss how much?

Mr. WATSON. Loss to the account on August 1, \$4,040. Sultzberger, December, 1928, 6,000 shares, loss \$31,237.50.

Those items are apparently deducted in his 1929 State tax returns of New York State.

Mr. GRAY. What do they amount to? Have you got the aggregate?

Mr. WATSON. I didn't add them up. About a hundred thousand dollars.

Mr. GRAY. Oh, no; much more than that.

Mr. WATSON. Two hundred and some odd thousand dollars.

Mr. GRAY. Let us get that clear: You have traced into the 210,300 shares that were turned over to Fox Theaters who assumed the responsibility therefor on November 19, 1929, these transactions?

Mr. WATSON. Yes, sir.

Mr. GRAY. In other words Fox Theaters took them away from him?

Mr. WATSON. Lost them.

Mr. GRAY. I mean Fox Theaters assumed the loss?

Mr. WATSON. That is right.

Mr. GRAY. And you have at the same time, by the seeing of the copies of his income-tax reports in his own office in New York, that is, his State income-tax reports, shown that notwithstanding that fact he claimed credit for these losses in his own personal account; is that right?

Mr. WATSON. That would appear to be so.

Mr. GRAY. You did not have time, did you, to follow through the entire number of transactions that he claimed credit for in the New York income-tax return?

Mr. WATSON. We did not.

The CHAIRMAN. Let me ask, does there appear to be others?

Mr. WATSON. I could not tell that, Senator.

Mr. GRAY. I direct your attention to Fox's dealings in Loew's stock, incorporated, and ask you whether or not he ever purchased on behalf of Fox Theaters any Loew's stock?

Mr. WATSON. Yes.

Mr. GRAY. Now that transaction, at least the first one that we are going to talk about, did actually appear on the books of Fox Theaters, didn't it?

Mr. WATSON. Yes, sir.

Mr. GRAY. And he was actually acting for Fox Theaters, was he not?

Mr. WATSON. He was.

Mr. GRAY. What was the first transaction and of what date would it appear?

Mr. WATSON. I believe the date was March 24.

Mr. GRAY. Have you the sheets there?

Mr. WATSON. No; I have not.

Mr. GRAY. Let us have them, please.

Mr. WATSON. It was March 24, 1928, purchased through the Loew family 400,000 shares of Loew stock at an aggregate of \$50,000,000.

Mr. GRAY. Let us get that clear. He bought from the family of Loews, who owned the stock in Loew's (Inc.)?

Mr. WATSON. That is right.

Mr. GRAY. And what was the price?

Mr. WATSON. \$50,000,000, \$125 a share.

Mr. GRAY. For 400,000 shares?

Mr. WATSON. That is right.

Mr. GRAY. Have you investigated and can you tell the committee what the market price of Loew's (Inc.) was the day he bought that stock?

Mr. WATSON. The high was  $81\frac{1}{2}$  and the low was  $75\frac{7}{8}$ .

Mr. GRAY. The low was  $75\frac{7}{8}$  and the high was 81?

Mr. WATSON. And a half.

Mr. GRAY. And on that day Mr. Fox spent \$50,000,000 that belonged to Fox Theaters (Inc.) to buy 400,000 shares of Loew's and paid \$125 a share for it?

Mr. WATSON. That is right.

Mr. GRAY. Or a matter of 44 and a fraction points per share, or 44 and a fraction dollars per share above the highest price at which it sold on the market that day—that is right?

Mr. WATSON. That is right.

Mr. GRAY. Now, thereafter Mr. Fox dealt in Loew's stock, did he not?

Mr. WATSON. He did.

Mr. GRAY. In these various accounts?

Mr. WATSON. Right.

Mr. GRAY. And it is a fact that on the books of Fox Theaters some of those accounts are shown as having been on behalf of Fox Theaters?

Mr. WATSON. Yes, sir.

Mr. GRAY. Do they all show?

Mr. WATSON. No.

Mr. GRAY. They do not? And how much stock did he acquire in Loew's for Fox Theaters?

Mr. WATSON. In aggregate?

Mr. GRAY. In aggregate.

Mr. WATSON. Six hundred and sixty thousand nine hundred shares.

Mr. GRAY. Did he or did he not turn over on November 19, 1929, by the resolution passed by the Fox Theaters all of that Loew's stock to Fox Theaters?

Mr. WATSON. Passed over all which was in his brokerage accounts?

Mr. GRAY. Yes.

Mr. WATSON. One hundred and eighty-eight thousand three hundred shares.

Mr. GRAY. In other words, in addition to that which he had purchased from Loew's—

Mr. WATSON. Yes.

Mr. GRAY. And some of the transactions made in the name of Fox Theaters, he turned over 188,000 shares?

Mr. WATSON. That is right.

Mr. GRAY. What was that Loew's stock—I don't care to have the price that he paid for it and the price at which the Fox Theaters could have gotten it that day, but I want the difference. In other words, how much more did Fox Theaters pay for that Loew's stock than they could have bought it for on the market on November 19, 1929?

Mr. WATSON. If they could have bought that much without putting the price up, they would have paid \$5,026,782.50 more than the market.

Mr. GRAY. In other words, it is perfectly clear that they could not walk out and buy that much stock and attempt to acquire it or attempt to buy it, without influencing the market first?

Mr. WATSON. Absolutely not.

Mr. GRAY. But if they had bought that stock that day and could have bought it at the prices at which it sold, there would have been a difference of five million and some odd hundred thousand dollars?

Mr. WATSON. Yes, sir.

Mr. GRAY. I will say, Mr. Chairman, that this morning we received a wire from New York from one of my accountants that is still working with respect to this transaction of 10,000 shares that I asked Mr. Best about that appears as a delivery. Mr. Best has testified that it was a delivery and we have information showing that in his United States Government income-tax return as of that year, which I think was 1928, there was a credit taken for that as a sale and a loss. But I do not want to, not having had the opportunity to examine into the records and satisfy myself that I can definitely and positively prove it, present it here now. But I will ask that if I can establish it definitely and beyond any question I be permitted hereafter to place it in the record so that it may show in connection with these other matters, but I hesitate on the information that I have now to definitely endeavor to prove it.

The CHAIRMAN. Without objection it is so ordered.

Mr. GRAY. If there is anything else in connection with Fox's manipulation of the Fox Theaters or the Loew's stock in his various market transactions I wish you would tell it to us, not in too great detail, before I go to another stage of this matter.

Mr. WATSON. There is the account with Manowich Bros.

Mr. GRAY. A brokerage house?

Mr. WATSON. Yes. It contained a long balance of nine thousand shares.

Mr. GRAY. When?

Mr. WATSON. November 19, 1929.

Mr. GRAY. That is at the date this resolution was adopted, is it not?

Mr. WATSON. Yes, sir.

Mr. GRAY. Go ahead.

Mr. WATSON. With a balance against it of \$292,500, which amount was accepted by the corporation as cost. This item, however, had not been purchased from Manowich Bros.; it had been delivered in to them by Block Maloney from Jack G. Leo account, in which account the purchase had been made under date of May 16, 1928, at 30, a value of \$274,500. This would apparently produce an overcharge to the corporation in taking the stock at the price at which it lay in Manowich's account rather than the cost at which it lies in Block Maloney's account of \$18,000.

Mr. GRAY. Now, let us get that clear. Mr. Fox, instead of charging Fox Theaters exactly what the stock cost him, did this: He bought it in one brokerage house at 30½ and then he arbitrarily shifted it from that brokerage house to another brokerage house and had the other broker pay his first broker 32 and some odd for it. So when he turns it over to Fox Theaters he turns it over at the rate of 32, which he had his second broker pay his first broker for it.

Mr. WATSON. That need not necessarily have been intentional, however.

Mr. GRAY. Well, it was done, whether it was intentional or not. Do you find more than one instance of that?

Mr. WATSON. Yes.

Mr. GRAY. How many?

Mr. WATSON. Well, we only tried to find a couple of examples. There is one more that I can get here.

Mr. GRAY. Tell us about the other one.

Mr. WATSON. Included in the cost accepted by the corporation was an item from Richards & Co., 9,000 Theaters Corporation stock, at a value of \$292,500. This stock had also been purchased through the account of Jack G. Leo at Block Maloney of May 17 at a cost of thirty-two, \$288,000, and have been overcharged in the takeover of \$4,500. We have not attempted to examine the cost of the securities in all instances.

Mr. GRAY. Do you find in many instances transfers of stocks from one account to another and back again and all around through these various accounts?

Mr. WATSON. In plenty instances.

Mr. GRAY. Would you find any object or reason for it, legitimate object or reason?

Mr. WATSON. Well, you could realize that when the account needed it, he transferred securities from one to the other. No definite, stated reason why it was done.

Mr. GRAY. In other words, it might have been that one account was undermargined and another was overmargined and that he would instruct one broker to shift it from the account that was overmargined to the other one, so that the other account would be in better shape?

Mr. WATSON. That would be a logical reason.

Mr. GRAY. But in some instances you find it at higher prices than the stock actually cost him.

Mr. WATSON. Yes; he would do that.

Mr. GRAY. Now, then, after the break in 1929, without giving us all of the details of what happened, there was a great deal of litigation in New York involving Fox Theaters and Fox Films; is that so?

Mr. WATSON. Yes, sir.

Mr. GRAY. There were applications for the appointment of receivers?

Mr. WATSON. Fifteen, I believe.

Mr. GRAY. The matter was ultimately settled on April 7, 1930, was it not?

Mr. WATSON. Right.

Mr. GRAY. And in what way?

Mr. WATSON. Plan was entered into whereby Fox Film sold \$55,000,000 worth of debentures.

Mr. GRAY. Now let us get the first step, however. The first step was that a group that was known as the Harley-Clark group, that owned and controlled another corporation known as General Theaters Equipment (Inc.), bought Mr. Fox's B stock; isn't that so?

Mr. WATSON. That is right.

Mr. GRAY. I think we have it already in the evidence. If we have not, I want to get the facts. Mr. Fox owned 100 per cent of the B stock in one of these corporations?

Mr. WATSON. Yes.

Mr. GRAY. Which corporation was that?

Mr. WATSON. That was the film stock.

Mr. GRAY. That was the film stock?

Mr. WATSON. I believe it was the film stock.

Mr. GRAY. And in the other corporation he owned over 51 per cent of the class B stock. That B stock had the voting power?

Mr. WATSON. All of it.

Mr. GRAY. How much did Mr. Fox sell his B stock for?

Mr. WATSON. I was told it was \$18,000,000.

Mr. GRAY. Let us see if your investigation disclosed—and I also ask you whether or not you did not hear Mr. Fox tell me on Wednesday afternoon of this week some of these figures—he sold his B stock and got for it first \$15,000,000 in cash; is that correct?

Mr. WATSON. That is right.

Mr. GRAY. And he also got—these all from the General Theaters Equipment (Inc.)—a note for \$3,000,000 which has since been paid, making the consideration of eighteen million?

Mr. WATSON. Yes, sir.

Mr. GRAY. His attorney in addition to that got one million dollars, did he not?

Mr. WATSON. So we were told.

Mr. GRAY. In addition do you recall Mr. Fox stating that Jack Leo, his brother-in-law, got a bonus of five hundred thousand or a half a million?

Mr. WATSON. I verified that.

Mr. GRAY. And also a man by the name of Sol Wertzel got a bonus of a half million, didn't he?

Mr. WATSON. Yes, sir.

Mr. GRAY. You verified that?

Mr. WATSON. I saw that.

Mr. GRAY. Who is Wertzel?

Mr. WATSON. Counsel, I believe.

Mr. GRAY. He was one of the officers of the Fox Film, was he not?

Mr. WATSON. Yes, sir.

Mr. GRAY. And in addition to that, was there any agreement entered by Fox with respect to the payment of any additional moneys to him? Do you recall the annuity which he was to get?

Mr. WATSON. An agreement was made at the time of the settlement whereby the Theaters Equipment agreed to cause a contract to be made between Fox and Fox Film for a period of five years at a salary of \$500,000 per annum.

Mr. GRAY. And were you present when I asked Mr. Fox on Wednesday afternoon as to whether or not in the two years that have passed since then he received his half million for it?

Mr. WATSON. He said he had.

Mr. GRAY. And he is still to get another million and a half?

Mr. WATSON. That is right.

Mr. GRAY. Do you know either from what Mr. Fox said or from any investigation whether he has ever done any work, served on the board or helped in any way Fox Films or General Theaters Equipment since that time?

Mr. WATSON. I gathered from his conversation that he had not.

Mr. GRAY. In other words, he has not had to do anything for the half million a year?

Mr. WATSON. Not that I know of.

Mr. GRAY. Now, then, going back to Fox Film, a long while prior to April the 7th, 1930, do you know whether or not Mr. Fox had engaged in certain transactions with respect to buying theaters and theater property that had involved that company in an indebtedness?

Mr. WATSON. Yes.

Mr. GRAY. To what extent?

Mr. WATSON. By the end of the year prior to April they were involved for over a hundred million dollars' worth of debt, without any very definite plans for refinancing, facing them.

Mr. GRAY. In other words, Mr. Fox had bought properties and incurred obligations for Fox Film Co. to the extent of \$103,000,000; is that correct?

Mr. WATSON. That is right.

Mr. GRAY. And about \$20,000,000 of that was incurred in the buying of theaters in England; is that right?

Mr. WATSON. Twenty million.

Mr. GRAY. And as a matter of fact, what he had done was on the stocks of these various organizations secured loans?

Mr. WATSON. Yes.

Mr. GRAY. But there had been no definite system or plan of financing agreed upon?

Mr. WATSON. That is right.

Mr. GRAY. Now, then, when General Theaters Equipment took over this class B stock, what was the financing plan that was adopted?

Mr. WATSON. The Film Co. sold to the Theaters Co. 1,600,000 shares of stock.

Mr. GRAY. Of whose stock?

Mr. WATSON. The Film Co.

Mr. GRAY. That is, the Film Co. had issued 1,600,000 shares of its own stock and sold it to Fox Theaters?

Mr. WATSON. Yes.

Mr. GRAY. For what?

Mr. WATSON. In conjunction with \$27,000,000 of cash and accounts, to take over Loew's stock at \$75,000,000.

Mr. GRAY. That is about what the stock cost the Fox Theaters, wasn't it?

Mr. WATSON. Just about.

Mr. GRAY. And Fox Theaters sold to Fox Film the stock which it owned of Loew's 660,900 shares, for \$27,000,000 in cash and the adjustment of accounts, plus 1,600,000 shares of Fox Film Co. stock?

Mr. WATSON. At 30.

Mr. GRAY. At \$30 a share. What was the market on Fox Film stock on the day that that transaction occurred?

Mr. WATSON. About 47, I believe.

Mr. GRAY. It ranged from about 45 or 46 to 48, didn't it?

Mr. WATSON. Around there.

Mr. GRAY. When Fox Theaters got that stock at \$30 a share, what did it immediately on the same day do with it?

Mr. WATSON. Sold it to the General Theaters Equipment Co. at the same price.

Mr. GRAY. So that General Theaters Equipment Co., who had purchased Mr. Fox's B stock, became the owner of 1,600,000 shares of Fox Film stock?

Mr. WATSON. That is right.

Mr. GRAY. Now, then, the financing plan—Halsey-Stuart & Co. agreed to take over \$55,000,000 of 1-year 6 per cent notes, did they not?

Mr. WATSON. Of the Film Co.

Mr. GRAY. Of the Fox Film Co.?

Mr. WATSON. Yes; secured by the Loew's stock.

Mr. GRAY. Secured by the Loew's stock. In other words, the Fox Film, having acquired this Loew's stock by this transaction that we have just described, Halsey-Stuart loaned them \$55,000,000 of the security of the Loew's stock on 1-year notes at 6 per cent?

Mr. WATSON. That is right.

Mr. GRAY. They did that at a discount, did they not?

Mr. WATSON. Yes.

Mr. GRAY. Having bought them at a discount, what, if anything, was given by the General Theaters Equipment Co. to Halsey-Stuart Co. out of the 1,600,000 shares of Film stock?

Mr. WATSON. Sold them 200,000 shares of stock which they owned at \$30 a share.

Mr. GRAY. In other words, out of the 1,600,000 shares out of the Film stock that the General Theaters Equipment received at \$30 a share they sold 200,000 to Halsey-Stuart Co. at a price?

Mr. WATSON. Yes, sir.

Mr. GRAY. And that was all on the same day that the stock was worth about from \$47 to \$48 a share?

Mr. WATSON. Oh yes.

Mr. GRAY. So that if it was worth \$47 on that day and they took 200,000 shares they got something that was worth three million—if my mental calculation is correct—\$3,400,000 more than they paid for it?

Mr. WATSON. On that day.

Mr. GRAY. How was the other \$48,000,000 of indebtedness of the Fox Film taken care of?

Mr. WATSON. There was created a corporation called the Film—

Mr. GRAY (interposing). Not at that time, not Film Securities. Let me see. At that time was it not so that a combination consisting of the Chse Securities, Pyncheon & Co., West & Co., Hanan & Co., and Erick & Dreevers financed that other \$48,000,000?

Mr. WATSON. General Theaters provided money as follows:

Sold \$30,000,000 unsecured 10-year convertible gold debentures at a price of \$27,000,000.

Sold 350,000 shares of common stock to a group managed by Pyncheon & Co. comprising substantially those houses which you mentioned.

Mr. GRAY. Yes.

Mr. WATSON. Sold 133,000 shares of common stock to Halsey-Stuart at the net price of \$5,606,000.

Sold 133,500 shares to H. L. Clark for a net price of the same amount, \$5,606,250.

Sold to a house which you mentioned previously 200,000 shares of Fox Film Corporation A to a syndicate of—no, sold it to Halsey-Stuart—200,000 shares at \$6,000,000.

Sale of 240,000 shares of Fox Film class A to a group managed by Pyncheon comprising the same group that you mentioned before.

Mr. GRAY. And these transactions they managed to get together \$48,000,000 to take care of the balance of the debts of the Fox Film; is that right?

Mr. WATSON. Yes. That aggregates sixty-three million and that paid the forty-eight million out.

Mr. GRAY. Out of that sixty-three million they paid forty-eight. Now, then, having given Halsey-Stuart 200,000 shares, or 1,600,000 at \$30 a share, what, if anything, did they give to this group that I have mentioned who aided them in financing?

Mr. WATSON. They allowed the group to purchase 240,000 shares of Fox Film at 30.

Mr. GRAY. At \$30 a share. And that was all at the same time, within a few days—

Mr. WATSON. That is all part of the general plan.

Mr. GRAY. When that stock was worth the amount of money we have indicated. As a matter of fact, your investigation—I want to shorten this a little bit—your investigation carried you to the point where you found that a syndicate or pool was organized and traded in the stock of Fox Films and on that day disposed of that 240,000 shares; isn't that correct?

Mr. WATSON. They tried to.

Mr. GRAY. Did they succeed in doing so?

Mr. WATSON. They did not.

Mr. GRAY. They had to ultimately distribute it among its members; is that right?

Mr. WATSON. The syndicate or the members still have some of it.

Mr. GRAY. As a matter of fact, your investigation showed you that Halsey-Stuart probably still has its 200,000 shares?

Mr. WATSON. They do have.

Mr. GRAY. What happened in 1931 when the fifty-five million of short-term notes held by Halsey-Stuart came due?

Mr. WATSON. Well, Halsey Stuart was unable or unwilling, I would say, to refinance the \$55,000,000, and another group had to be gathered together to take them up.

Mr. GRAY. Was that pretty much the same group that had financed this other forty-eight million?

Mr. WATSON. Very much.

Mr. GRAY. Very much.

Mr. WATSON. Except Halsey Stuart.

Mr. GRAY. Except Halsey Stuart was not interested in it. Now, then, this is what happened with respect to that, is it not, that the United States Government stepped in under the Clayton Act and instituted a proceeding in the courts for the purpose of setting aside that transaction by which the Fox Film obtained 660,900 shares of Loew's stock from the Fox Theaters. That is correct?

Mr. WATSON. That is right.

Mr. GRAY. And ultimately what they call a consent decree was entered under the terms of which a corporation was formed known as the Film Securities Corporation, to which this 660,900 shares of Loew's stock was transferred? That is right?

Mr. WATSON. That is right.

Mr. GRAY. They issued twenty million of debentures, did they not?

Mr. WATSON. Yes, sir.

Mr. GRAY. They issued \$10,000,000 of first preferred stock, did they not?

Mr. WATSON. They did.

Mr. GRAY. They also issued some class B stock or voting stock; is that right?

Mr. WATSON. And some common.

Mr. GRAY. And also some common class A stock having no voting power. And it is a fact, is it not, that using those debentures and those stocks and such other securities as may have been within the control of this group, they borrowed enough money for the purpose of financing that \$55,000,000 that was due to Halsey Stuart; that is right, isn't it?

Mr. WATSON. Yes, sir.

Mr. GRAY. And the company is now owned—that is, the Fox Theaters and Fox Films stock is now owned by the General Theaters Equipment; is that right?

Mr. WATSON. Yes, sir.

Mr. GRAY. Fox Film is still in existence as a corporation?

Mr. WATSON. Yes, sir.

Mr. GRAY. Fox Theaters is still in existence as a corporation?

Mr. WATSON. Yes, sir.

Mr. GRAY. General Theaters Equipment that still owns all of this stock is in the hands of a receiver?

Mr. WATSON. Yes, sir.

Mr. GRAY. Well, that is the story bringing it down to date. Of course, Mr. Chairman, I have cut the matter quite short. I have shown you, however, the picture, and I could present to you a very large number of other details. I could present Mr. Fox's admissions to me to the effect that these manipulations took place, and I can still show to you that he conducted a private account of the All Continent Corporation after he stepped out of Fox Theaters and Fox Films; that it was a continuous short account from them down to date, dealing in all sorts and all kinds of stocks. But you have had illustrations of that before and I know the demands that are made upon you to-day, and I suggest that I quit at that point, giving Mr. Fox the opportunity to make any explanation or answer any questions he wants at any time he wants.

I do not want to be misunderstood at all, and it creates another thought in my mind: I believe, Mr. Chairman, that Mr. Fox should be afforded the opportunity at any time he wants to come before this committee and under oath not only answer any questions that may be put to him but given the privilege of making any statement he wants with respect to any parts of these matters, to offer any proof to the committee that he wants, either in confirmation or disaffirmation of these things; but I do not think that there should be received into this record any statement that he makes *ex parte*, either through his attorney that was here yesterday or any other attorney, or by himself, without an opportunity of being asked any questions, because it has been my experience before committees that when they adjourn a session and are not expected to meet again for a while, the particular individual who may be the subject of inquiry and who stays away and avoids—I don't doubt that Mr. Fox is sick—he has not had a doctor for two years for this illness until he got down

here—I suppose that Washington doctors are better—but I have found from my experience that they will avoid coming here and answer questions, but when the committee has adjourned and they can not get him to come before them to testify and be subject to examination, they sit down and write a long statement that nobody can ask anything about and send it in, asking that it be carried as his statement. I do not think that any such statement should be placed upon the record at any time.

The CHAIRMAN. The committee will adjourn subject to the call of the chairman, but we expect to have a meeting Monday morning at 10.30.

(Whereupon, at 12.35 o'clock p. m., the committee adjourned, to meet again at the call of the chairman.)

## STOCK EXCHANGE PRACTICES

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THURSDAY, JUNE 23, 1932

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D. C.*

The committee met, pursuant to call of the chairman, on Thursday, June 23, 1932, in the hearing room of the Committee on Banking and Currency, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Carey, Couzens, Fletcher, and Costigan.

The CHAIRMAN. The committee will come to order. Mr. Stock wanted to put some papers in the record that Mr. Gray had left with him. You may make your statement, Mr. Stock, and present the papers.

### STATEMENT OF DAVID STOCK, ASSISTANT COUNSEL TO THE COMMITTEE, WASHINGTON, D. C.

Mr. STOCK. Mr. Chairman, Mr. Gray in his absence asked me to present to the committee various matters pertaining to publicity in the Fox matter which he was unable to present due to limitations of time.

During the week commencing Saturday, October 12, 1929, William Fox made a personal appeal over the Fox Movietone of some 500 Fox controlled theaters throughout the United States urging theatergoers to invest in the stock of the Fox Theaters Corporation. This use of the movie screen for the stock promotion was preceded by an advertising and publicity build-up generally throughout the country. The collapse of the stock market following within 10 days drove the price of Fox Theaters stock from 29 $\frac{3}{8}$ , its high of October 14, to 10 on October 29. The financial condition of Fox Theaters Corporation at the time of this screen stock promotion was such that it appears likely that the stock would have collapsed even had there been no serious break in the stock market.

On October 11, 1929, Fox Theaters ran a full page ad in the newspapers, in all principal cities in which Fox Theaters were located announcing the silver jubilee of the William Fox Theaters on October 12. I would like to introduce this full page ad in the record. It is a full page advertisement and in some newspapers it was run as a 2-page advertisement.

The CHAIRMAN. There being no objection, it will be made part of the record.

(The full page ad is as follows:)

THE NEW YORK TIMES, FRIDAY, OCTOBER 11, 1929



The story of William Fox is the history of the Motion Picture—a pioneer, who, by his courage, integrity, independence and foresight has transformed an obscure enterprise into a magnificent art. It is significant that the Fox enterprise is the only Motion Picture endeavor to attain a quarter century of worldwide growth and success.

**You Are Invited To Celebrate**

## THE SILVER JUBILEE of the WILLIAM FOX THEATRES

Tomorrow, OCTOBER 12th and continuing for the entire week, every Fox theatre throughout the United States will observe this event with a splendid entertainment befitting the attainment of a quarter century of remarkable growth. ▼ ▼ ▼

## FAR MORE IMPORTANT

Than even the entertainment, will be a message from William Fox of vital concern to the future welfare of every patron of Fox Theatres. In 25 years the Fox Organization has grown from a nickleodeon to the most gigantic enterprise in the world. This unparalleled success could not have been possible without the whole-hearted response and liberal support extended to William Fox by the American people. On this occasion William Fox will disclose through the Movietone screen of each Fox Theatre his plan to repay you in material profit for this quarter century of generous patronage.

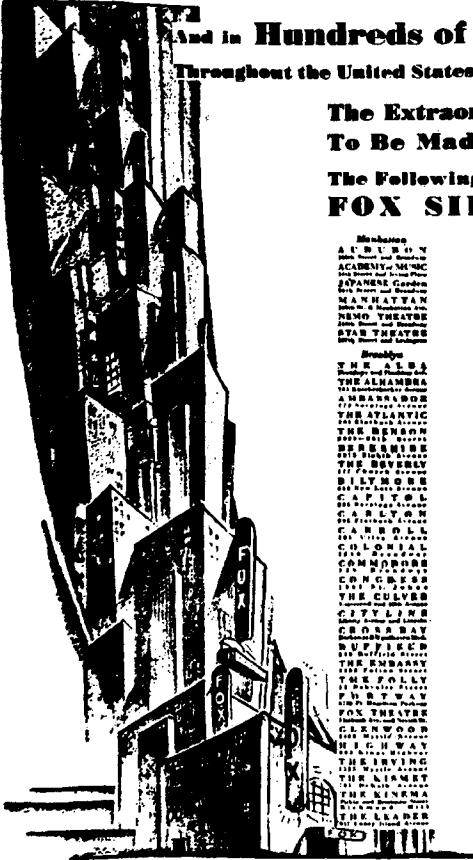
Share the Future of This Empire of Amusement with William Fox

Mr. Stock, I will also introduce the accompanying page. Those are photostatic copies of the advertisement running at that time.



**Throughout Metropolitan New York Listed Below**

**The Extraordinary Announcement  
To Be Made by WILLIAM FOX  
The Following Local Theatres Celebrate  
FOX SILVER JUBILEE**



**Manhattan**  
A L'W'N  
30th Street and Broadway  
**ACADEMY OF MUSIC**  
34th Street and Irving Place  
**JAPANESE Garden**  
50th Street and Broadway  
**MANHATTAN**  
30th St. & Manhattan Ave.  
**NEDS THEATRE**  
34th Street and Broadway  
**STAR THEATRE**  
50th Street and Irving

[illegible]

**THE OFFERS**  
 100 Washington Avenue  
**NARBONNE**  
 With Stars and Ray Perkins  
 100 Washington Avenue  
**MEEROLF**  
 100 Washington Avenue  
**NATIONAL**  
 100 Washington Avenue  
**THE FIVE FINGERS**  
 100 Washington Avenue  
**PARTHENOON**  
 100 Washington Avenue  
**REPUBLIC**  
 100 Washington Avenue  
**THE RIVER**  
 100 Washington Avenue  
**RITZ THEATRE**  
 100 Washington Avenue  
**ROCKING**  
 100 Washington Avenue  
**SHEDDEN COR**  
 100 Washington Avenue  
**SINOY THEATRE**  
 100 Washington Avenue  
**STARS**  
 100 Washington Avenue  
**STATE THEATRE**  
 100 Washington Avenue  
**STAYFOR**  
 100 Washington Avenue  
**THE SUPREMACY**  
 100 Washington Avenue  
**THE TERMINATION**  
 100 Washington Avenue  
**THE WALKER**  
 100 Washington Avenue  
**WILSONS**  
 100 Washington Avenue

**Bronx**  
**THE BELMONT**  
 410 Tuxedo Avenue  
**THE BLENKIN**  
 410 East 150th Street  
**THE CROYON**  
 Tremont and Park  
**KINGSHIDGE**  
 11 East 150th Street  
**MORNGL**  
 South Street & Perry Avenue  
**THE OGDEN**  
 OGDEN AVE.  
**PARK PLAZA**  
 120th Street and Tremont Ave.  
**PARKWAY**  
 1st Avenue and 110th Street  
**THE TUXEDO**  
 1001 Jerome Avenue  
**U. S. THEATRE**  
 100th Street & Webster Ave.  
**VALENTINE**  
 657 East 150th Street

*Long Island*

ASTORIA GRAND  
Astor  
BEGAD WAY  
BEGAD  
THE CORONA  
Crown  
COVE THEATRE  
Cove  
THE CRESCENT  
Crescent  
FOREST HILLS  
Forest  
THE GRANADA  
Granada  
FLY HOUSE  
Fly  
Hempstead  
Hempstead  
THE JACKSON  
Jackson  
NEW GARDENS  
New  
THE LYNBROOK  
Lynbrook  
THE MASPETH  
Maspeth  
REVERE THE  
Revere  
ROOSEVELT  
Roosevelt  
SUNNYSIDE  
Sunnyside  
VALLEY STREAM  
Valley Stream

*New Jersey*  
**THE APOLLO**  
*Jersey City*  
**THE BROOK**  
*Bound Brook*  
**THE CAMEO**  
*Jersey City*  
**THE CAPITOL**  
*Jersey City*  
**THE DUMONT**  
*Dumont*  
**THE EMPIRE**  
*Hoboken*  
**THE FULTON**  
*Hoboken*  
**THE LIBERTY**  
*Elizabeth*  
**MONTICELLO**  
*Elizabeth*  
**THE PALACE**  
*Granville*  
**THE PASCACK**  
*Woodbridge*  
**THE PLEA**  
*Neptune*  
**QUEEN ANNE**  
*Neptune*  
**THE SAVOY**  
*Jersey City*  
**THE STANFORD**  
*Jersey City*  
**THE SUNDIAL**  
*Hoboken*  
**THE TOWNS**  
*Jersey City*

On the following day, on October 12, 1929, there were various publicity items appearing in the newspapers all over the country announcing the commencement of the Fox twenty-fifth anniversary and that William Fox was to deliver a personal message through Fox

Movietone News urging the purchase of shares in Fox Theaters Corporation.

Senator COUZENS. May that not go into the record without reading, Mr. Chairman?

Mr. STOCK. I am not going to read them, Senator. I just want to identify them in the record.

The CHAIRMAN. He is just describing them.

Mr. STOCK. I would like to have this photostatic copy of the article appearing in the New York Times of October 12, 1929, also in the record.

(The newspaper clipping presented by Mr. Stock is here copied in the record in full as follows:)

[The New York Times, Saturday, October 12, 1929]

**FOX WILL BROADCAST ON HIS ANNIVERSARY—TO TELL OF FOX THEATERS CORPORATION FROM SCREENS IN 500 OF HIS HOUSES**

William Fox, head of several moving-picture enterprises, will celebrate his twenty-fifth anniversary in the motion-picture field to-day with a message spoken through Fox Movietone from the screens of more than 500 of his theaters throughout the country. He will urge the purchase of shares of the Fox Theaters Corporation. In anticipation of his message, the shares of all the Fox enterprises were strong yesterday.

Class A shares of the Fox Theaters Corporation are quoted on the curb exchange. They pay no dividend. Early this year a Wall Street pool, composed of leading brokers, was organized to distribute the stock, but, after getting it up to 37½, the pool encountered liquidation and the stock broke to 21½. Its gain yesterday on the news that it would be recommended in all Fox theaters throughout the country was 1½ points, the closing price being 28½.

The corporation has two classes of stock, A and B. There are 7,400,000 A shares authorized. The B stock, which carries the voting rights, is not listed and is all held by Fox interests. Both classes share equally in any earnings. The A shares were increased from 3,900,000 shares to 7,400,000 shares on September 24.

The shares should not be confused with Fox Film A, which controls the manufacturing and distribution of the corporation's pictures. This stock is listed on the New York Stock Exchange and pays a dividend of \$4 annually. Yesterday it closed at 100½, up 3½ points on the day. Its high point this year was 105½ and its low, 30¼.

Mr. STOCK. At the same time this publicity was appearing distinguished citizens appeared on the stages of many Fox theaters throughout the country and testified to the integrity and business ability of William Fox. Important of these was the appearance in New York City of Mayor Walker on the stage of the Fox Academy of Music and before the microphone of Radio Station WMCA. The report of the mayor's tribute to Mr. Fox appears in a photostat which I am now asking to be identified as an article appearing in the New York Times of Sunday, October 13, 1929.

(The article presented by Mr. Stock is as follows:)

**WALKER PRAISES FOX—ATTENDS CELEBRATION OF PRODUCER'S 25 YEARS IN MOVIE FIELD**

Mayor Walker appeared on the stage of the Fox Academy of Music, Irving Place and Fourteenth Street, last night during the vaudeville and picture program to pay a brief tribute to William Fox on the occasion of the twenty-fifth anniversary of the latter's entry into the moving-picture industry. The mayor, whose speech was broadcast over Station WMCA, praised Mr. Fox

for his charitable work in connection with the city hospitals as well as for his achievements in the amusement world and referred to him as "the kind of man who makes New York the great city that it is."

"I have known William Fox personally for years," Mr. Walker said, "and I admire him for many things. His is a real benevolent and charitable heart. When I became mayor of this great city it was William Fox who interested me in the condition of our hospitals and it was through his instigation that we started a program which, when completed, will give this city the finest system of hospitals in the world. I admire him because he is a born New Yorker and because he loves New York with a devotion that is surpassed by no man."

**Mr. Stock.** On Saturday, October 12, 1929, the same day William Fox, from his estate at Woodmere, Long Island, had issued a statement for publication generally in the press on Monday, October 14, 1929, in which he announced his intention to spend \$9,000,000 over a period of 25 years to reform American education by movies. He further stated his belief that:

On the theory that every man, woman, and child will be a finer citizen if a God-fearing one, we shall make talking pictures of the great religious leaders of the world to be shown on screens in every church.

I now ask that a photostatic copy of the article appearing in the New York Times October 14, 1929, in which that statement appeared be marked for identification.

(The newspaper clipping presented by Mr. Stock is here copied in the record in full as follows:)

**FOX AIMS TO REFORM EDUCATION BY MOVIES—PRODUCER TO SPEND \$9,000,000 OVER 25 YEARS TO SUBSTITUTE VISUAL-ORAL SCHOOLING—SIMILAR AID FOR CHURCH—PLANS TALKIES OF SURGEONS TO AID MEDICAL STUDY—FILM LIBRARIES FOR HOME USE**

On the twenty-fifth anniversary of his entrance into motion-picture business William Fox announced on Saturday at Fox Hall, Woodmere, Long Island, for publication this morning his program for the next quarter of a century. During that time he plans, by means of talking pictures, to institute a system of visual-oral education in every school in the country, whereby he hopes to cut school time by half and standardize teaching; to fill every vacant seat of the 75,000,000 church and parish house seats in the United States, and to assist in the dissemination of medical knowledge by having hospitals equipped with apparatus to photograph every major operation which will be accompanied with talk by a specialist and the film of which will later be distributed throughout the world for the use of medical students, physicians, and surgeons.

To further this project, Mr. Fox said that he was willing to contribute one-quarter of his personal fortune, an amount estimated to be approximately \$9,000,000. Although allowing 25 years, he hopes to complete the program within 5.

#### PLANS NEWSREEL THEATER

In addition Mr. Fox announced that a newsreel theater, a hitherto unknown institution, will be established within two weeks at the Embassy Theater, where only newsreels will be shown. He said also that the Fox organization soon would enter the home projection field so that at a nominal cost the layman would be able to project in his home 16-millimeter talking pictures, selected and rented from the film libraries that the Fox corporation will establish throughout the country.

Mr. Fox prefaced his remarks with a comment on his own health. Suntanned and apparently hardy, he said that since an automobile accident last July he had regained his normal health, contrary to rumors of a sustained illness.

"There are 15,000,000 to 20,000,000 school children who are held in schools during the hours from 9 to 3," Mr. Fox asserted. "During this time it has always seemed a pity that that number should be indoors while the sun is at its height. How then can we conceive of something that will cut the 6-hour

period in half and release the student to play in the sun? We now offer a plan whereby 1,000,000 classrooms in America will have an abundance of empty space rather than insufficient seats. Talking pictures will make such a thing possible.

"We shall try to install a talking-picture projection machine in every classroom in the country. We shall get the best available persons to record a series of lectures on celluloid and distribute them widespread. On the theory that one picture is the equivalent of eight words and that each word uttered by a proved educator is greater in effect than that, it is easily understandable how valuable a lesson in geography or arithmetic shall be to the student. This is easily appreciated when such men, for example, as President Butler of Columbia, or Lowell, Hibben, or any other great educator, lectures on a subject in which he is well versed. It would release teachers from drudgery. It would establish a higher standard of learning and a swifter means of disseminating it. And in addition these lectures would be recorded in every language for international distribution.

"When a lesson in geography, for instance, is shown, there will be flashes of the exact location which the speaker describes on the screen at the same time so that the student not only will hear of the place but actually see it."

#### WOULD AID CHURCH ATTENDANCE

In regard to the second phase of this plan Mr. Fox said that a survey of church attendance had been taken recently which showed that of the 150,000 churches and parish houses in America, 15 per cent of the 75,000,000 seats were unoccupied on Sundays.

"On the theory that every man, woman, and child will be a finer citizen if a God-fearing one," Mr. Fox explained, "we shall make talking pictures of the great religious leaders of the world to be shown on screens in every church. Imagine Dr. S. Parkes Cadman delivering a sermon in every Protestant church in the Nation, or Doctor Fosdick or Bishop Manning. The same in the other churches. Cardinal Hayes or even the Pope for the Catholics, Rabbi Stephen S. Wise or Dr. Nathan Krass for the synagogues, and hundreds of others. I believe sincerely that if this program is carried out the attendance in churches will surpass anything ever before noted."

The third phase of the program involved the installation of apparatus in every noteworthy hospital in the world for taking talking pictures upon which will be recorded the most skilled operations. These films will be used in the medical colleges of the world where they may be studied repeatedly.

"Imagine the many famous surgeons performing operations and describing them at the same time for talking pictures," Mr. Fox said, "so that the future surgeon may see the operation 100 or 1,000 times until it is as clearly in his mind as in the mind of the expert who performed it.

"We have made the first of this series already. A film was recorded and photographed in Chicago of an operation by Dr. Nelson H. Lowry, who performed with a radium knife on a cancerous patient. Doctor Lowry will give a private showing to-day and then present the picture at the annual meeting of the American College of Physicians and Surgeons which is now convening in Chicago. This is the first time in history that a talking picture was made of an operation. The job will not be completed, however, until every surgeon will permit his work to be photographed."

#### TALKING PICTURES IN HOME

The motion-picture producer then announced the entrance of the Fox Film Corporation in the home talking picture business. He said that in the immediate future the Fox Co. would be ready to sell talking motion-picture projection apparatus to every home in America. This machine will project 16-millimeter talking films the sound track of which is on the celluloid.

The films for use in this apparatus are to be rented at film library depots to be established at strategic points over the country and the projection machinery will be sold on a partial-payment plan. The pictures will either be reduced from the regulation 35-millimeter Fox full-length photoplays or will be especially produced in the 16-millimeter size.

Mr. Fox then ventured the opinion that such a move would in no way hamper attendance in motion-picture theaters, but said it would improve it instead.

"This will come about," he said, "because on the first of next year we shall install at the Roxy Theater and probably in most of our houses throughout the country, of which there are more than 1,100, our new grandeur screen. This screen takes up almost the entire proscenium of the theater and presents a scope of vision that can not be duplicated on the present small one. This, on the other hand, can not be applied in the home."

The establishment of a newsreel theater, in which only sound pictures pertaining to the news of the day will be shown, possibly for 24 hours at a time and at a low rate of admission, was announced by Mr. Fox for the Embassy Theater beginning October 28. No sound entertainment short films will be exhibited, only sound newsreels, of which the Fox Movietone News takes about 4,000 feet each week. This theater will be the first of a chain of similar ventures to be established across the country. The admission is to be 25 cents in the afternoon and 35 cents in the evening.

It was admitted that in such a house the full pictorial and sound record of a complete baseball, football, or other athletic contest might be shown.

Mr. Fox foresaw the possibility of the newsreel theater as a competitor of the newspaper, and said that sound news films could be got out as fast as newspapers. He facetiously suggested the time when reporters might come to the moving-picture theater to cover the news.

The announcement was also made by Mr. Fox that H. G. Wells will next week begin the recording of a series of three lectures on The History of Civilization, to be used as the first of a program of adult educational films, and the fact that Martin Johnson and Commander George M. Dyott, the explorers, will soon depart for Africa and other points to make sound films of animals and peoples for the Fox organization.

Referring to television and the large screen, Mr. Fox said that the big screen would revolutionize the picture business just as the talking pictures did recently. He added that television would in no way affect the motion-picture attendance, because the largest possible projected television image in the home could only be as large as the wall of the room in which it is shown, whereas the new screen would be from fifty to one hundred times as large.

Mr. Stock. While all this publicity was going on and during the ensuing week Mr. Fox through his representatives made his personal appeal over the Movietone News on the screens of some 500 theaters throughout the country, urging theater patrons to share in his prosperity and invest in the shares of Fox Theaters Corporation.

I would like to introduce into the record a report of one of the committee investigators of earning statements appearing during this period and the ensuing period of Fox Film. This shows that there were issued by the Fox Film Corporation during this period three different statements of earnings for 1929. In addition to those three statements the Wall Street Journal on its own initiative issued a fourth estimate of Fox Film earnings for the year 1929, the year in question, pointing out certain unfair accounting practices and calculating the earnings at a lower figure than any of those issued by the company.

I might say that in this case the Wall Street Journal appears to have used diligence in presenting a true picture of the earnings of the Fox Film Corporation, which was handicapped by the confusing character of information furnished by the officials of the company.

(The investigators' report presented by Mr. Stock is here copied in the record in full as follows:)

[Wall Street Journal]

#### FOX EARNINGS STATEMENT IN 1929

Careful examination of files of the Wall Street Journal reveals that Fox Film Corporation officially reported a net profit for the year ended December 29, 1928, of \$5,957,218, equivalent to \$6.47 a share on combined 920,660 shares class A and class B stock.

On August 14, 1929, Fox Film officially reported for the six months ended June 30, 1929, net profit of \$6,134,337, equal to \$6.11 a share on 920,660 shares.

On September 21, 1929, the Wall Street Journal stated: "Based on showing made in first six months, Fox Film should earn this year between \$12,000,000 and \$13,000,000, or approximately \$12 a share on 920,660 shares outstanding."

This article was apparently originated by the Wall Street Journal, based on conversations with officials of the Fox Film Co.

November 1, 1929, Fox Film officially reported net profit of \$8,845,000 for the nine months ended September 30, 1929, or \$9.61 a share.

November 4, 1929, there was published a statement by Jack Leo, vice president of Fox Film, stating that earnings for the fourth quarter would exceed \$4,000,000, bringing net for the full year 1929 to over \$12,000,000.

On December 3, 1929, the Wall Street Journal, in an article headed "Fox Film Funds Used to Expand—Cash and Call Loans Lower," stated that the balance sheet as of June 30, 1929, issued for the first time in connection with the listing of 72,760 shares new Fox Film stock on November 28, 1929, revealed a number of important changes. The article said:

"No announcement regarding means of financing the acquisition of Loew's stock by Fox Theaters has been made. Part of the funds may have come from the sale of 12,000,000 6 per cent notes by Fox Film last April, which in turn apparently lent the money to Fox Theaters. It is difficult to gage at present the effects of the recently filed Government suits against Fox Film (objecting to purchase of Loew stock).

"If the Government is able to win its case against Fox the value of controlling interest in Loew's, for which a price of over \$100 a share was paid, will be reduced to the market valuation of the Loew stock, at present around 45.

"Balance sheet of Fox Film as of June 30, 1929, shows item of \$12,075,000 notes receivable not current, indicating that Fox Film made this loan to Fox Theaters."

On December 9, 1929, official announcement was made that William Fox, H. L. Stuart, and John E. Otterson would act as trustees to work out permanent financial arrangements for Fox Theaters Corporation, which to date has made only temporary arrangements for financing purchases of Loew stock.

December 10, 1929: Article, apparently originating in the Wall Street Journal, headed "Fox Prospects Seem Doubtful—Necessity for Reducing Obligations May Ultimately Effect Dividend Payments," said, "Picture of the present financial position of Fox Film is difficult to form in the absence of a recent balance sheet of Fox Theaters Corporation since the expansion plans of the latter company, backed by the credit of Fox Film, are the fundamental cause of Fox's difficulties.

"Since total current assets of Fox Theaters Corporation on October 31, 1928, were \$1,828,000, against \$2,181,000 current liabilities, it is obvious most of the purchases since that date have been made on borrowed money or by issuance of stock.

"Total cost of Loew stock was roughly \$54,000,000. It is apparent at the time that Fox must have received powerful backing, since neither resources of Fox Film or Fox Theaters were large enough to handle the transaction. It now appears that Western Electric Co. loaned Fox Theaters about \$15,000,000 to finance the purchase, plus an additional \$12,000,000 provided by Halsey Stuart & Co.

"Total floating debt of Fox Film and Fox Theaters is said to be between \$80,000,000 and \$90,000,000. Present financial position of the company raises the question of continued dividend payments. It seems probable, unless some means of permanent financing can be arranged, all earnings might have to be diverted to reducing indebtedness and the dividend might later be discontinued."

On January 31, 1930, the Wall Street Journal stated: "Affidavit submitted by William Fox, president of Fox Film, to Federal Judge Coleman in answer to petition for receivers gives estimated earnings of Fox Film Corporation for 1929 of \$14,700,000."

After adjustment and taxes, net income available for dividends, on this official basis, was \$13,573,000.

On March 8, 1930, the Wall Street Journal stated: "Report of Fox Film and Fox Theaters Corporation for year ended December 28, 1929, issued with reorganization plan prepared by Bankamerica group, shows \$90,739,000 current liabilities against combined quick assets of \$29,000,000. Together with bonds, obligations of the two Fox concerns aggregate \$161,000,000. This is the first

time the exact current position of the two Fox companies has been revealed since their difficulties began to attract public attention.

"According to the audit made for the Bankamerica group, net profit of Fox Film was \$11,848,276 equal to \$12.87 a share for the year ended December 28, 1929."

On March 18, 1930, the Wall Street Journal published an article headed "Analysis of Fox Earnings." This article said: "Net profit of Fox Film Corporation for year ended December 28, 1929, was apparently about \$5,600,000 equal to approximately \$6.08 a share on 920,000 shares if deductions from surplus account, which according to general accounting practices might have been made from income, are subtracted from net profit reported for the year.

"Fox reported net after taxes for 1929 of \$11,848,000 equal to \$12.87 a share. From surplus account was deducted \$4,764,000 for 'obsolescence of silent film, scenarios, and advertising accessories.' It is customary for other film companies to charge off at least 85 per cent of the cost of films in the first year of release and it has been stated in the past that a similar policy was followed by Fox. Therefore, at least 85 per cent, or more than \$4,000,000 of this amount, might be deducted from the year's net. In addition, the following charges have been made against surplus account, all of which are fairly chargeable to 1929 income: Expenditures for contracts in acquisition of theaters \$192,000; settlement of claims, \$50,000; reserve for contingencies, \$2,128,000. Since, according to memorandum attached to the balance sheet, this reserve was apparently consumed, it is consequently a charge against income. In addition to this, approximately \$400,000 estimated interest on investment in British holdings which was capitalized should be deducted from profits.

"Total of these deductions is approximately \$6,770,000. Subtracting this amount from net before taxes of \$13,114,000 and subtracting estimated income tax of \$697,000 leaves net profit for the year \$5,647,000."

On April 26, 1930, the Fox Film Corporation submitted a revised annual report which was published in the Wall Street Journal of that date, showing consolidated net profit of \$9,469,050 which included a special provision of \$2,379,225 for obsolescence of silent films, etc. This profit was equal, for the year 1929, to \$10.28 a share on the combined class A and class B common stock.

The difference between these various estimates for 1929, of which the above shows there were at least three official estimates in addition to the estimate made by the Wall Street Journal resolves into a question of what write-offs can fairly be made to surplus and what to income. The situation appears to be that the Wall Street Journal published all of the official reports made by various interests in the company and in addition made its own analysis of Fox earnings, in which analysis it placed the earnings at a lower figure than reported by any official source.

At the time, however, that it made this analysis, it was shown that the \$6.08 a share estimated earnings which resulted, came about after deducting from income items which had previously been charged to surplus. That there was justification for this position is shown by the revised official report above referred to which was later made by the company. It is probable that various accountants would disagree as to which charges should be made to income and which should be made to surplus; but the revised official report would indicate later consideration on the part of the company or its bankers which resulted in further charges being made to income.

The controversial character of the various accounting theories was discussed by the Wall Street Journal on March 21, 1930, as follows: "There may be some differences of opinion as to whether or not the entire wiping out of the inventory of silent films should be deducted from 1929 income \* \* \*. The company's auditors take the position that a substantial part of this charge is not applicable to 1929 profits."

It may also be of significance in this connection that when the 1930 report was made, which was discussed on May 20, 1931, in the Wall Street Journal, it was revealed that official reports would be presented in two forms, the auditors for the banking group—that is, the Chase Securities and Bankamerica group—making more severe amortization charges than the company deemed necessary. On this date the auditors for the banking group reported earnings for the 52 weeks ended September 27, 1930, of \$6,592,000 before taxes indicating earnings of about \$2.30 a share for the 2,525,000 shares of class A and class B stock outstanding for the period after the deduction of taxes. At the same time the management, stating that it regarded the charges made by the auditors as excessive, officially reported a net profit of \$10,104,000 for the 39 weeks ended September 27, 1930.

Mr. Stock. I would like also to enter into the record and have copied for the committee four booklets which were distributed to patrons of the motion-picture houses at the time this publicity was going on and at the time that these movietone talks were given urging patrons of Fox Theaters to purchase stock in those companies.

The CHAIRMAN. If there be no objection, it will be printed in the record.

(The four booklets, presented by Mr. Stock are here printed in the record in full as follows:)

THE STORY OF MOTION PICTURES AND THE FOX THEATERS CORPORATION

BOOKLET NO. 1

(Copyright by Fox Theaters Corporation, 850 Tenth Avenue, New York City.  
Printed in U. S. A.)

The following is an address delivered in behalf of Mr. William Fox, on the screens of some of the theaters owned or controlled by the Fox interests:

"Ladies and Gentlemen, this is a Fox Theater that you and I are now in. This is a Fox program. But here is an interesting addition to your program for to-day. It is a brief message from Mr. William Fox himself, who, as you know, is the active head of this, one of the largest amusement enterprises in the world. I have just come from Mr. Fox's office and tried there to get him to talk to you personally. He disclaimed being a speaker but permits me to repeat his words as accurately as I can from memory just as he delivered them to me. I suggest that you follow them closely, for this is the first time in the history of the screen that any such message has been delivered. It certainly will make history.

"MR. FOX'S MESSAGE

"My friends (remember Mr. Fox is speaking). I have something important to say to each one of you sitting there in your chair. It will mean more to you if you will consider that I am talking to you alone; that you alone weigh the sincerity of my purpose and the value of the invitation you are about to receive, and you alone make the decision as to whether you will accept it.

"However a great many individual "you's" are hearing these words, for to-day every chair in the Fox Theaters will be occupied on the average twice. To-day more than 1,000,000 people will listen to these words. This week more than 7,000,000 people—a number equal to 1 person in every 18 in the United States.

"Twenty-five years ago I started in the amusement business with a capital of a few hundred dollars. Shortly afterwards a few men gathered around me as associates who believed in the enterprise and in what we were doing—men who had the vision to see something of the future of this undertaking. They have received their reward.

"In the meantime the motion-picture industry has grown tremendously. It is refining its art and improving its machinery of sight and sound reproduction. It is estimated that sound reproduction alone will increase our patronage by 30 per cent. The industry has won the good will of the whole people. There will be over 350,000,000 paid admissions this year to the American theaters in which we are interested. On the average every man, woman, and child in the United States will see our performance this year at least three times.

"MOTION PICTURES AS 'BIG BUSINESS'

"Since we are not a "big business" we must apply the methods of big business as far as they are right methods, in order that our growth may keep pace with the increasing demand for our products, which are amusement, recreation, and education. By standardized and quantity production we are supplying the luxury of amusement at the price of a necessity. But is amusement a luxury? Even during the Great War all governments found amusement a necessity for their troops. Is the automobile any longer a luxury? Is the telephone?

**"THE SUPPORT OF CUSTOMER OWNERSHIP"**

"Speaking of the telephone, we are in the same situation that the telephone companies and the electric light companies were a few years ago. The electric light companies were giving light and power to the great cities and to towns and to many of the farms all over the country. But they were owned by small groups of capitalists and institutions, often located far distant from the States where the service was being given. From this fact arose the customer ownership campaigns which won for these companies not only additional capital necessary for them to grow and to increase the amount and quality of their service but also the friendly understanding and moral support of the communities they served, for then their customers to a great extent had become stockholders.

"For the same reasons our management, which serves amusement as a necessity, prefers to look now and in the future to our customers, our patrons, for a substantial part of the capital with which to enlarge and improve our service, and for that support in all our undertakings which spells artistic and financial success. Our need of your good will as stockholders is even greater than the need of a light and power or a telephone company, a railroad or a gas or water company because you may seek your amusement in whatever way and wherever you will.

**"MR. FOX'S SENSE OF OBLIGATION TO HIS PATRONS"**

"There is a more personal reason, however, why I want every one of you who hear these words to-day to join us in the ownership of Fox Theaters Corporation. Just as originally the progress of our business was made possible by the faith and cooperative support of my associates, so now the management realizes its obligations to each of you, our patrons, for our present success. How can I repay that real debt to so many? Only by inviting you to become copartners with us. My ideal is a fellowship of 5,000,000 patrons of Fox Theaters Corporation, each owning at least one share of common stock.

"But the debt is not paid by your mere association with us as stockholders. Only as the executives of our company increase the value of your investment in the common stock will this debt be paid and will there be lifted from me the responsibility that I now willingly assume in advising you to buy the common stock of Fox Theaters Corporation. In a short talk like this it is impossible to explain to you the growing financial strength of this company or to make you see with our eyes the sources of earning power that can not yet find expression in the records of income. It may be stated, however, that developments are under way which can hardly fail of accomplishment, that in themselves should very materially and permanently increase the value of your investment in this company.

**"INVITATION TO PURCHASE FOX THEATERS STOCK"**

"Since the company has no preferred stock, the net profits all go to the common-stock holders, who represent the entire ownership. Our common stock is bought and sold daily on the New York curb market and on the Boston Stock Exchange. Your own bank, banker, or broker can buy our stock for you. We recommend that you instruct him to buy to-morrow that number of shares and only that number of shares—whether 100, or 75, or 50, or 25, or 5, or even 1 share—which you can afford to pay for in full and put away as a permanent investment.

"Will you have that same faith which of old my associates had in this industry, in this company, and in me? If so, I pledge you that you too shall receive your reward."

"Here ends the message of Mr. Fox. And may I ask you to remember—as you go out after this performance you will be handed at the door a booklet of some interesting facts about the motion-picture industry and this company that there was not time to tell you, and that should be the basis of your judgment of the wisdom of joining us in the ownership of Fox Theaters Corporation."

**ONLY A FEW OF FOX PATRONS ARE STOCKHOLDERS**

The managers of the various Fox theaters enterprises realize that the daily attendance at their houses, as Mr. Fox has intimated in his address reprinted above, runs from one to two million people, depending on the attractions

booked, holidays, and weather. The executives have carefully examined the stock books of the Fox Theaters Corporation. These show that the number of stockholders is less than 6,000. From the list of names and places of residence of these stockholders, as well as from the disparity between the number of stockholders and of daily patrons, it is very clear that only a small proportion of Fox patrons are stockholders. From the address it is evident that what Mr. Fox would like is to change the character of that ownership so that every person who attends his theaters and who has made their success and his success possible by that attendance should in the spirit of reciprocity share in the financial rewards of it.

#### PATRON OWNERSHIP IS SOUND BUSINESS

It is not merely a fine sentiment; it is sound business. It would be to the dollars-and-cents interest of each owner-patron to make it his business to offer suggestions regarding the spirit of employees, the character of the programs, the quality of the performances and even of the proper conduct of the business generally, so that the company would be keyed up to a pitch of satisfactory service that has never been known to the industry.

That is why Mr. Fox has invited you now to participate in the ownership of the common stock of Fox Theaters Corporation, and why, in the spirit of purpose of the invitation, he urges you to purchase through whatever agency you choose such an amount of stock as you can conveniently pay for, "to have and to hold," being absolutely certain in his own mind that if you will do this you will profit by it.

#### HISTORICAL SKETCH OF THE MOTION PICTURE

It is now nearly 40 years since Thomas Edison, seeking eyes for his phonograph, invented the electric camera, and George Eastman at practically the same time perfected the flexible film, so that pictures could be taken of moving things and could be sent in facsimile to any part of the world in which there was equipment to show them.

That was the beginning of the motion picture. But these two sister inventions did not make a business out of pictures until about the opening of this century.

Twenty years ago the majority of mankind were content, broadly speaking, to eat, sleep, and work. But since then labor-saving machinery has accumulated for most of us surplus time and savings, so that our lives are now divided into four parts—we eat, sleep, work, and play. Amusement has become the fourth necessity of living. The business of providing amusement and recreation, not only to the hundred-odd millions in this country but to the rest of the civilized and to some of the uncivilized world, has grown to be one of the major activities of this generation, and it is still growing.

In the field of commercial amusement the motion-picture industry far exceeds all others, not only in the number of persons employed but in the amount of capital invested. The 325,000 persons in the United States who get their wages from motion pictures exceed the number employed by Henry Ford and General Motors, which together make more than 80 per cent of all motor cars produced in this country. The present money value of this vast picture business may be in excess of \$2,500,000,000. Probably between one-fourth and one-third of our population depend largely on it for their principal amusement.

This, then, is "big business." Expressed in other terms, it has been computed that there are 20,500 theaters exhibiting motion pictures in the United States, providing more than 18,000,000 seats, and attended by over 100,000,000 persons each week.

Much of this magnitude is very recent. In 1925 there were 50,000,000 people a week as against 100,000,000 people a week now attending these theaters. The increase is due largely to the addition of sound to sight, and to the introduction of colorful music and motion.

The commercial perfection of sound reproduction is barely two years old, and even yet only 20 per cent of the theaters of this country are equipped with the necessary facilities. In view of the fact that the attendance of the average house is estimated to increase at once 30 per cent by their introduction a continued increase of attendance is assured.

## FOX THEATERS CORPORATION

Fox Theaters Corporation, formed in 1925, was quick to realize the new conditions forced on the exhibitors by the preference of the public for sound films. It met and is meeting this surge of patronage by the construction of houses of great seating capacity located primarily with reference to transit facilities. The largest of these new Fox Theaters—in fact, the largest in the world, with its 6,205 seats—is Roxy's. Similar 5,000-seat theaters have been built and opened in Detroit, Brooklyn, St. Louis, and San Francisco. The present construction program calls for theaters of like capacity to be erected in Philadelphia, Newark, Atlanta, and Boston.

## STATEMENT OF EARNINGS

The cumulative effect of these policies is clearly reflected in the expanding net profits, all of which belong to the holders of the common stock and which were, in

1926	\$758,000
1927	751,000
1928	1,745,000
First 6 months of 1929	1,500,000

and it is fair to assume that for the full business year ending October 31, 1929, they will be upwards of \$3,000,000. For the year beginning November 1, 1929, and ending October 31, 1930, the officials of the corporation estimate that the earnings will be between \$4,500,000 and \$5,000,000.

The Fox interests originated the idea of talking motion-picture news, and Fox Theaters Corporation owns a 25 per cent interest in the corporation that publishes the Fox Movietone News.

Fox Theaters Corporation recently has acquired a large block of the family stock of Loew's (Inc.), which has a very substantial chain of theaters that runs from one end of the country to the other, and which owns, through subsidiaries, all the capital stock of the Metro-Goldwyn-Mayer Pictures Corporation.

Fox Theaters Corporation, through a wholly owned subsidiary, Fox Metropolitan Theaters Corporation, has recently acquired approximately 120 theaters in and around New York City.

In the statement given above no earnings of the three enterprises just described has been included.

Fox Theaters Corporation has additional corporate programs mapped out for its continued growth.

We hope, therefore, that you will take advantage of Mr. Fox's suggestion and that you will promptly instruct your bank, banker, or broker to purchase in the open market the number of shares of common stock of Fox Theaters Corporation which you can conveniently afford to pay for and hold as an investment.

(Cut of specimen of Fox Theaters Corporation stock certificate)

19\_\_

(Name of bank, banker, or broker)

(Address)

Buy at market for my account \_\_\_\_\_ shares Fox Theaters Corporation class A common stock.

(Signed)

(Address)

## BOOKLET NO. 2

The following is an address by Lawrence Chamberlain, nationally known investment banker and economist, delivered in behalf of William Fox, on the screen, in theaters owned, controlled, and operated by Fox interests.

"Ladies and gentlemen; again I bring you the greetings of William Fox. He wishes to express his appreciation of your response to his message of last week represented by the great number of shares of common stock of Fox Theaters Corporation that were purchased by some of those who listened to that message.

"I was astonished to find, on asking him, our experience teaches us that 8 or 9 out of every 10 people who are here to-day were present last week, if

this theater is typical. Therefore, only a brief repetition is necessary of what was said then.

"Repeat orders are the highest compliment to any product, and certainly an average of 80 to 90 per cent of repeated visits to the theater spells a satisfied clientele. But for the benefit of the other 10 to 20 per cent who were not present it may be stated that through me Mr. Fox spoke to the 7 to 10 million people who attended the Fox Theaters last week, inviting them to become stockholders in Fox Theaters Corporation.

"He gave as his reason for the invitation the fact that in the early days of his career his business had been built up with the cooperation of a few associates to whom he feels indebted for his early successes, and that in later years his greater success has been made possible only by the kind of faithful patronage represented by your large and periodic attendance.

#### "CUSTOM OWNERSHIP WISE FOR LARGE CORPORATIONS

"Any company that caters to the public as this company does can make greater progress through a hearty public response created by the present tried and proven method of customer ownership which will result in the cultivation among its patrons of legitimately selfish interest in its welfare, and it is certain that this company can win your greatest interest and support only when it belongs to you.

"If it is wise for telephone companies, gas companies, electric-light companies, water companies, and many other institutions of like character, to develop customer-ownership plans, then it must be proper and wise for us to ask our patrons to become stockholders.

"It does not seem fair to Mr. Fox that Mr. and Mrs. Jones or Mr. and Mrs. Smith patronize his theaters one or more times each week, or 52 or more times each year, and have the profits of their patronage paid to some Mr. and Mrs. John Doe who do not even like the movies.

"It is Mr. Fox's opinion that if the Fox Theaters Corporation ever grew to such a size as to have 5,000,000 shares of common stock outstanding, and if these shares were distributed in such way as to permit 5,000,000 patrons each to own a share of the stock, it would insure and guarantee a most successful enterprise. He feels he has a reason to expect this large number of shareholders in view of the fact that from seven to ten million people each week attend his theaters.

#### "HOW OTHERS HAVE PROFITED

"In last week's message it was stated that those who, in the early days of Mr. Fox's career, had the faith and vision to join him in his motion-picture enterprises had received their reward. This is true not only of men who became executives of the several companies but also of those who were associated merely as stockholders. For example:

"In 1905 a man invested \$1,000 in one of Mr. Fox's companies and during the last 24 years this man has received upwards of \$1,000,000 in dividends. Although he has not put back any of his dividends into the company, his investment is now worth over \$1,000,000 in addition to the dividends he has received.

"In 1910 another man invested \$5,000 in one of the Fox companies and he has received in the last 19 years more than one-half million dollars in dividends. He has not reinvested a single dollar of his dividends but the present value of the same holdings for which he originally paid \$5,000 is more than \$1,000,000 in addition to the dividends he has received.

"In 1915 the president of a large public-utility company invested \$25,000 in the common stock of one of Mr. Fox's amusement companies and 12 years afterward sold his holdings for more than \$2,000,000.

"None of these gentlemen were patrons of motion pictures. If a like total sum at those various times had been invested in various amounts by numerous patrons of the Fox theaters and if these patrons had held their stocks as investments, they would have earned similar profits. With records like these, Mr. Fox feels justified in recommending his patrons to become stockholders in Fox Theaters Corporation.

#### "MR. FOX OBLIGATED TO INVITE SHAREHOLDERS

"This customer-ownership idea is not the impulse of a moment nor the thought of a day but rather the outgrowth of three years of mature deliberation. For more than three years Mr. Fox has argued with himself the pro-

prity of this plan, and only recently has he definitely reached the conclusion that not only is it proper but that he is absolutely obligated to invite you to become stockholders in the enterprise for the success of which you are responsible. Nothing would be more gratifying to William Fox than for you to join him in the ownership of Fox Theaters Corporation, and he strongly urges you to instruct your bank, banker, or broker to buy for you 1, 5, or 10, or as many more shares as you care to purchase, with the understanding, however, that you buy them for cash and put them away as a permanent investment.

To give you the opportunity for further thought in the matter you will receive at the door as you go out to-day booklet No. 2, which contains this message of Mr. Fox and interesting matter concerning the motion-picture industry and the Fox Theaters Corporation.

"A final word. Did ever an industrial leader commit himself more irrevocably to his stockholders than Mr. Fox when last week he said:

"Will you have that same faith as my associates of old in this industry, in this company, and in me?

If so, I pledge you that you, too, will receive your reward."

#### ONLY A FEW OF FOX PATRONS ARE STOCKHOLDERS

The managers of the various Fox Theaters enterprises realize that the daily attendance at their houses, as Mr. Fox has intimated in his address reprinted above, runs from one to two million people, depending on the attractions booked, holidays, and the weather. The executives have carefully examined the stock books of the Fox Theaters Corporation. These show that the number of stockholders is less than 6,000. From the list of names and the places of residence of these stockholders, as well as from the disparity between the number of stockholders and of daily patrons, it is clear that a very small part of our patrons are stockholders. From the address it is evident that what Mr. Fox would like is to change the character of that ownership, so that every person who attends his theaters and who has made their success and his success possible by that attendance should in the spirit of reciprocity share in the financial rewards of it.

#### PATRON OWNERSHIP IS SOUND BUSINESS

It is not merely a fine sentiment; it is sound business. It would be to the dollars-and-cents interest of each patron to make it his business to offer suggestions regarding the spirit of employees, the character of the programs, the quality of the performances, and even of the proper conduct of the business generally, so that the company would be keyed up to a pitch of satisfactory service that has never been known to the profession.

That is why Mr. Fox has invited you now to participate in the ownership of the common stock of the Fox Theaters Corporation, and why in the spirit and purpose of the invitation he urges you to purchase through whatever agency you choose such an amount of stock as you can conveniently pay for "to have and to hold," being absolutely certain in his own mind that if you will do this you will profit by it.

#### HISTORICAL SKETCH OF THE MOVING PICTURE

It is now 40 years since Thomas Edison, seeking eyes for his phonograph, invented the electric camera, and George Eastman, at practically the same time, perfected the flexible film, so that pictures could be taken of moving things and could be sent in facsimile to any part of the world in which there was equipment to show them.

That was the beginning of the motion picture. But these two sister inventions did not make a business out of pictures until about the opening of the century.

Twenty years ago the majority of mankind were content, broadly speaking, to eat, sleep, and work. But since then labor-saving machinery has accumulated for most of us surplus time and savings, so that our lives are now divided into four parts: We eat, sleep, work, and play. Amusement has become the fourth necessity of living. The business of providing amusement and recreation, not only to the hundred and odd millions in this country but to the rest of the civilized and to some of the uncivilized world, has grown to one of the major activities of this generation and is still growing.

In the field of commercial amusement the motion-picture industry far exceeds all others, not only in the number of persons employed but in the amount of capital invested. The 325,000 persons in the United States who get their wages from motion pictures exceeds the number employed by Henry Ford and General Motors which, together, make more than 80 per cent of all motor cars produced in this country. The present money value of this vast business may be in excess of \$2,500,000,000. Probably between one-fourth and one-third of our population depend largely on it for their principal amusement.

This then is "big business." Expressed in other terms it has been computed that there are 20,500 theaters exhibiting motion pictures in the United States, providing more than 18,000,000 seats and attended by over 100,000,000 persons each week.

Much of this magnitude is very recent. In 1925 there were 50,000,000 people a week as against the 100,000,000 people a week now attending these theaters. The increase is due largely to the addition of sound to sight, and to the introduction of colorful music and motion.

The commercial perfection of sound reproduction is barely 2 years old, and even yet only 20 per cent of the theaters of this country are equipped with the necessary facilities. In view of the fact that the attendance of the average house is estimated to increase at once 30 per cent by their introduction, a continued increase of attendance is assured.

#### FOX THEATERS CORPORATION

Fox Theaters Corporation, formed in 1925, was quick to realize the new conditions forced on the exhibitors by the preference of the public for sound films. It met and is meeting this surge of patronage by the construction of houses of great seating capacity located primarily with reference to transit facilities. The largest of these new Fox theaters—in fact, the largest in the world, with its 6,205 seats—is Roxy's. Similar 5,000-seat theaters have been built and opened in Detroit, Brooklyn, St. Louis, and San Francisco. The present construction program calls for theaters of like capacity to be erected in Philadelphia, Newark, Atlanta, and Boston.

#### STATEMENT OF EARNINGS

The cumulative effect of these policies is clearly reflected in the expanding net profits, all of which belong to the holders of the common stock and which were as follows:

1926-----	\$758, 000
1927-----	754, 000
1928-----	\$1, 745, 000
1929 <sup>1</sup> -----	1, 500, 000

It is fair to assume that for the full business year ending October 31, 1929, earnings will be upwards of \$3,000,000. For the year from November 1, 1929, through October 31, 1930, the officials of the corporation estimate that the earnings will be between \$4,500,000 and \$5,000,000.

The Fox interests originated talking motion-picture news, and Fox Theaters Corporation owns a one-quarter interest in the company publishing Fox Movie-tone News.

Fox Theaters Corporation recently acquired a large block of the family stock of Loew's (Inc.), which has a very substantial chain of theaters from coast to coast and which owns, through subsidiaries, all the capital stock of the Metro-Goldwyn-Mayer Corporation.

Fox Theaters Corporation, through a wholly owned subsidiary, Fox Metropolitan Theaters Corporation, has recently acquired approximately 120 theaters in and around New York City.

In the statement given above none of the earnings of the three enterprises just described has been included.

Fox Theaters Corporation has additional corporate programs mapped out for its continued growth.

We hope, therefore, that you will take advantage of Mr. Fox's suggestion and that you will promptly instruct your bank, banker, or broker to purchase in the open market the number of shares of common stock of Fox Theaters

<sup>1</sup> First 6 months only.

Corporation which you can conveniently afford to pay for and hold as an investment.

(Cut of specimen of Fox Theaters Corporation stock certificate.)

-----, 1929.

-----  
(Name of bank, banker, or broker)

-----  
(Address)

Buy at market for my account ----- shares Fox Theaters Corporation class A common stock.

-----  
(Signed)

-----  
(Address)

The following is an address by Lawrence Chamberlain, nationally known investment banker and economist, delivered in behalf of William Fox on the screens in theaters owned, controlled, and operated by the Fox interests:

"Ladies and gentlemen, this is the third week of my appearance at this theater, and, therefore, the third in this series of talks that have as their sole object the conversion of Fox patrons into Fox stockholders. This conversion is accomplished when you have purchased one or more shares of the common stock of Fox Theaters Corporation.

"I know that it is the fondest hope of William Fox that you are pleased by my visits here. The great number of new stockholders in Fox Theaters Corporation recorded during the past two weeks assures me of an even more cordial welcome, for now we are together not only as 'fellow movie fans' or 'fellow patrons,' but also as 'fellow stockholders,' and I come among you as the ambassador of the founder to welcome you into the fellowship of the owners of the corporation.

"Mr. Fox feels that you should know of the great number of letters he has received from many patrons indicating their interest in this customer-ownership campaign, which may well be called a patron-ownership campaign, and he wishes you to know that he values the help that you have given by your suggestions regarding the conduct of the business, many of which are being adopted.

#### "THE IMMENSE AUDIENCES REACHED BY THESE TALKS

"He is especially proud of the part his organization has played in the development of talking motion pictures on celluloid for many reasons, and particularly because of the fact that it makes it possible for me to deliver this message each week to from seven to ten million people. We Americans are so fond of making and breaking records and of thinking and doing superlative things—here is more Fox pioneering: here is a means that makes it possible for a message to be delivered to you in the hope that through it a very great many of you become partners.

#### "RECENT DEVELOPMENTS IN THE FOX ENTERPRISES

"Now that we are partners you should know something of the progress of the Fox enterprises. Recently in New York the Fox interests publicly presented the first pictures taken with "grandeur" cameras and projected by grandeur projection machines. This new type of picture is destined to revolutionize motion-picture exhibition. Some time in the near future it will be shown here. This new method of photography and projection makes possible a picture three or four times as wide as the screen at which you are now looking, with corresponding depth, perspective, and increase in the sense of reality; and, equally important, it perfects the sound.

"I am sure that you will want to know that recently the Fox people have acquired a substantial interest in the British Gaumont Co., the foremost company in England. It controls more than 300 theaters in Great Britain and Ireland. Also it owns extensive studios abroad in which are made British talking motion pictures, the pick of which you may soon see in this theater.

#### "OTHER INVESTORS WHO HAVE PROFITED

"In my talk last week I brought to your attention the dividends and profits that had come to those who in years gone by had had sufficient confidence to

make investments in the Fox enterprises. Mr. Fox believes it would be a good thing for me to give you a few additional illustrations.

"In 1915 a man invested \$20,000 in one of the Fox amusement companies. Since then he has received over \$250,000 in dividends, and although he has not reinvested his dividends the present value of his investment is \$800,000, or forty times the original value apart from the dividends which have been twelve and one-half times his original investment.

"There has been not only rich reward to living investors but generous protection to the beneficiaries of investors who have passed on. Mr. Fox gets deep satisfaction in the recompense that has come to the families of two of his partners who shared his fortunes in the earlier days.

"One of these invested \$5,000 in 1910. He died in 1921, and the entire estate left to his wife and children was this original investment of \$5,000, which at the time of his death had grown to a value of \$1,000,000, in spite of the fact that he had not reinvested any of the dividends he had received.

"Another investor bought \$200,000 of stock in 1915, from which he has received about \$2,000,000 in dividends. The value of the original investment at the time of his death was over \$8,000,000. In all the investment has yielded fifty times what was put in.

"Let us make a personal application to ourselves of this man's experience. If 2,000 of us had each invested \$100 in 1915 our total investment would have been the same as his. Since then our \$100 would have paid us \$1,000 in dividends, and if in the meantime any of us had passed on, our loved ones would still have the original investment, which would now be worth \$4,000.

"If in 1915 each of us had invested only \$50 our dividends would have amounted to \$500, or an average of over 70 per cent a year from that day to this, and in addition our holdings would be worth \$2,000.

#### YOUR OPPORTUNITY TO PROFIT

"There is every reason to suppose that the next 14 years will have an equally favorable story to tell. The motion-picture industry is still in its infancy. Plans are afoot that should mean greater progress in the Fox enterprises during the next 12 months than during the past 3 years.

"I know I am still a young man and William Fox is younger than I am. Most successful men do not get started until they are 50. Henry Ford was 45 when he produced his first model T car. His great success came after he was 50. William Fox is surrounded by even younger men who are just 'rarin' to go.' So you stockholders are on a real band wagon.

"Therefore again let me urge that you instruct your bank, banker, or broker to buy for you 1, 2, 5, 10, 50, 100, or more shares of the common stock of Fox Theaters Corporation, using for that purpose, if you like, the order blank on the last page of the booklet entitled 'The Story of Motion Pictures and the Fox Theaters Corporation,' which will be given you at the door as you go out. But as an investment banker (and not a speculator) I urge you, only on the understanding that you pay for the stock in full and put it away as a permanent investment. As a result of this investment you will have the same opportunity as those men referred to earlier in my talk, and I feel sure you will realize similar substantial profits."

#### ONLY A FEW OF FOX PATRONS ARE STOCKHOLDERS

The managers of the various Fox Theaters enterprises realize that the daily attendance at their houses, as Mr. Fox intimated in his address reprinted above, runs from one to two million people, depending on the attractions booked, holidays, and the weather. The executives have carefully examined the stock books of the Fox Theaters Corporation. These show that the number of stockholders is less than 6,000. From the list of names and the places of residence of these stockholders, as well as from the disparity between the number of stockholders and of daily patrons, it is very clear that only a small proportion of Fox patrons are stockholders. From the address it is evident that what Mr. Fox would like is to change the character of that ownership so that every person who attends his theaters and who had made their success and his success possible by that attendance should in the spirit of reciprocity share in the financial rewards of it.

## PATRON OWNERSHIP IS SOUND BUSINESS

It is not merely a fine sentiment: it is sound business. It would be to the dollars-and-cents interest of each partner-owner-patron to make it his business to offer suggestions regarding the spirit of employees, the character of the programs, the quality of the performances, and even of the proper conduct of the business generally, so that the company would be keyed up to a pitch of satisfactory service that has never been known to the industry.

That is why Mr. Fox has invited you now to participate in the ownership of the common stock of Fox Theaters Corporation, and why, in the spirit of purpose of the invitation, he urges you to purchase through whatever agency you choose such an amount of stock as you can conveniently pay for, "to have and to hold," being absolutely certain in his own mind that if you will do this you will profit by it.

## HISTORICAL SKETCH OF THE MOTION PICTURE

It is now nearly 40 years since Thomas Edison, seeking eyes for his phonograph, invented the electric camera, and George Eastman at practically the same time perfected the flexible film, so that pictures could be taken of moving things and could be sent in facsimile to any part of the world in which there was equipment to show them.

That was the beginning of motion picture. But these two sister inventions did not make a business out of pictures until about the opening of this century.

Twenty years ago the majority of mankind were content, broadly speaking, to eat, sleep, and work. But since then labor-saving machinery has accumulated for most of us surplus time and savings, so that our lives are now divided into four parts: We eat, sleep, work, and play. Amusement has become the fourth necessity of living. The business of providing amusement and recreation, not only to the hundred and odd millions in this country but to the rest of the civilized and some of the uncivilized world, has grown to be one of the major activities of this generation, and it is still growing.

In the field of commercial amusement the motion-picture industry far exceeds all others, not only in the number of persons employed but in the amount of capital invested. The 325,000 persons in the United States who get their wages from motion pictures exceed the number employed by Henry Ford and General Motors, which together make more than 80 per cent of all motor cars produced in this country. The present money value of this vast picture business may be in excess of \$2,500,000,000. Probably between one-fourth and one-third of our population depend largely on it for their principal amusement.

This, then, is "big business." Expressed in other terms, it has been computed that there are 20,500 theaters exhibiting motion pictures in the United States, providing more than 18,000,000 seats, and attended by over 100,000,000 persons each week.

Much of this magnitude is very recent. In 1925 there were 50,000,000 people a week as against 100,000,000 people a week now attending these theaters. The increase is due largely to the addition of sound to sight, and to the introduction of colorful music and motion.

The commercial perfection of sound reproduction is barely 2 years old, and even yet only 20 per cent of the theaters of this country are equipped with the necessary facilities. In view of the fact that the attendance of the average house is estimated to increase at once 30 per cent by their introduction a continued increase of attendance is assured.

## FOX THEATERS CORPORATION

Fox Theaters Corporation, formed in 1925, was quick to realize the new conditions forced on the exhibitors by the preference of the public for sound films. It met and is meeting this surge of patronage by the construction of houses of great seating capacity located primarily with reference to transit facilities. The largest of these new Fox Theaters—in fact, the largest in the world, with its 6,205 seats—is Roxy's. Similar 5,000-seat theaters have been built and opened in Detroit, Brooklyn, St. Louis, and San Francisco. The present construction program calls for theaters of like capacity to be erected in Philadelphia, Newark, Atlanta, and Boston.

## STATEMENT OF EARNINGS

The cumulative effect of these policies is clearly reflected in the expanding net profits, all of which belong to the holders of the common stock and which were as follows:

1926-----	\$758, 000
1927-----	754, 000
1928-----	1, 745, 000
First 6 months of 1929-----	1, 500, 000

It is fair to assume that for the full business year ending October 31, 1929, they will be upward of \$3,000,000. For the year beginning November 1, 1929, and ending October 31, 1930, the officials of the corporation estimate that the earnings will be between \$4,500,000 and \$5,000,000.

The Fox interests originated the idea of talking motion-picture news, and Fox Theaters Corporation owns a 25 per cent interest in the corporation that publishes the Fox Movitone News.

Fox Theaters Corporation recently has acquired a large block of the family stock of Loew's (Inc.), which has a very substantial chain of theaters that runs from one end of the country to the other and which owns, through subsidiaries, all the capital stock of the Metro-Goldwyn-Mayer Pictures Corporation.

Fox Theaters Corporation, through a wholly owned subsidiary, Fox Metropolitan Theaters Corporation, has recently acquired approximately 120 theaters in and around New York City.

In the statement given above no earnings of the three enterprises just described has been included.

Fox Theaters Corporation has additional corporate programs mapped out for its continued growth.

We hope, therefore, that you will take advantage of Mr. Fox's suggestion and that you will promptly instruct your bank, banker, or broker to purchase in the open market the number of shares of common stock of Fox Theaters Corporation which you can conveniently afford to pay for and hold as an investment.

(Cut of specimen of Fox Theaters Corporation stock certificate:)

-----, 19\_\_

-----  
(Name of bank, banker, or broker)

-----  
(Address)

Buy at market for my account ----- shares Fox Theaters Corporation class A common stock.

-----  
(Signed)

-----  
(Address)

## BOOKLET No. 4

The following is an address by Lawrence Chamberlain, nationally known investment banker and economist, delivered in behalf of William Fox on the screen in theaters owned, controlled, and operated by the Fox interests.

"Ladies and gentlemen, for this week let me get into the Fox Movietone News, so to speak, giving you snapshots of what is going on.

"I said last week that plans are afoot that should mean greater progress in the Fox enterprises (and therefore greater assurance to stockholders in the Fox Theaters Corporation) during the next few months than during the past three years. One can not afford to trifle with words in talking to from 7 to 10 million people each week, particularly when those words are perpetuated in print and distributed in the form of at least 5,000,000 booklets a week.

## "NEW FEATURES IN STORE FOR YOU

"You all know Victor McLaglen, who scored a triumph in What Price Glory, which is a silent film. He has surpassed that success in The Cock-Eyed World (a sound film) which is breaking all records anywhere for theatrical attendance, and he is now busily engaged on his new production, Hot for Paris.

"Mr. Fox says that Sunnyside Up, with Janet Gaynor and Charles Farrell, a new drama of the sidewalks of New York, is considered by many to be the greatest motion picture ever produced.

"These new films were made possible by, and were produced in, the great Fox Movietone City in California—a \$10,000,000 art center and industrial community admittedly the greatest and most nearly perfect plant of its kind in the world. This walled city rising out of the cactus-dotted desert and covering an area equal to 40 city blocks is devoted entirely to the production of sound motion pictures.

#### "SEARCHING FOR REALISM

"In contrast, an entire Fox company has gone to the coast of Ireland in order that the world's most beloved singer, the great John McCormack, may have authentic backgrounds for the outdoor scenes of a new picture and the proper inspiration, in the land of his birth and amid the scenes of his childhood, to sing from the screen to American audiences in Fox theaters as he never has sung before.

"Down on the underside of the world are the South Sea Islands. Recently a Fox company was camped there, making a sound picture. As each boat left for the United States it carried the films taken since the preceding boat. The films were developed and printed at the Fox studios in Los Angeles, and the reproduced sound was wirelessly back to the South Sea Islands. Therefore, each night, with the day's labor done, the director of the company on location and the leading members of the cast listened to the reproduction of their labors—listened to their own voices of a previous day, for approval or correction, that later you and I from Broadway to Frisco might get the benefit of an outstanding, finished performance. You are going to see and hear these pictures in Fox theaters.

#### "RECENT ACQUISITIONS

"In order to give an opportunity to a larger part of the American people to enjoy pictures like these, the Fox interests within the last six months have acquired more than 300 additional theaters throughout the length and breadth of the country. Look about you now in your own theater, form an opinion of its cost in dollars, of its present value in service to your community, of its future value as real estate, and of its contribution as an outlet for Fox pictures to the general prosperity of the Fox group of theatrical enterprises. Then multiply your impressions by 300 and you may have some realization of the progress of the last half year.

#### "WHAT WILLIAM FOX WANTS OF YOU

"Although this is the fourth consecutive week and there have now been four different talks, there is only one object in view as you know, and that is to get so many of you to buy one or more shares of the common stock of Fox Theaters Corporation that hereafter if you desired you might also turn any performance into a shareholders' meeting. That is the customer-ownership idea.

"Surely by this time I have been able to make plain what William Fox is trying to do and why he wants to do it. If the Fox organization is destined to supply to the larger part of the American people that means of relaxation and pleasure which adds to the richness of their lives they must be one with him and he one with them. What hitherto has been an aggressive business must evolve into a national institution. To have you sustaining members of the institution you must become partners in the business, to your pecuniary profit. That is why I bring you daily the invitation from William Fox to purchase the stock of Fox Theaters Corporation, which is bought and sold daily on the New York Curb Market and the Boston Stock Exchange and which you can buy through your bank, banker, or broker."

#### ONLY A FEW OF FOX PATRONS ARE STOCKHOLDERS

The managers of the various Fox Theater enterprises realize that the daily attendance at their houses, as Mr. Fox has intimated in his address reprinted above, runs from one to two million people, depending on the attractions booked, holidays, and the weather. The executives have carefully examined the stock books of the Fox Theaters Corporation. These show that the number of stockholders is less than 6,000. From the list of names and the places of residence of these stockholders, as well as from the disparity between the number of

stockholders and of daily patrons, it is clear that a very small part of our patrons are stockholders. From the address it is evident that what Mr. Fox would like is to change the character of that ownership, so that every person who attends his theaters and who made their success and his success possible by that attendance should be in the spirit of reciprocity share in the financial regards of it.

#### PATRON OWNERSHIP IS SOUND BUSINESS

It is not merely a fine sentiment; it is sound business. It would be to the dollars-and-cents interest of each patron to make it his business to offer suggestions regarding the spirit of employees, the character of the programs, the quality of the performances and even of the proper conduct of the business generally, so that the company would be keyed up to a pitch of satisfactory service that has never been known to the profession.

That is why Mr. Fox has invited you now to participate in the ownership of the common stock of the Fox Theaters Corporation, and why in the spirit and purpose of the invitation he urges you to purchase through whatever agency you choose such an amount of stock as you can conveniently pay for "to have and to hold," being absolutely certain in his own mind that if you will do this you will profit by it.

#### HISTORICAL SKETCH OF THE MOVING PICTURE

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That was the beginning of the motion picture. But these two sister inventions did not make a business out of pictures until about the opening of this century.

Twenty years ago the majority of mankind were content, broadly speaking, to eat, sleep, and work. But since then labor-saving machinery has accumulated for most of us surplus time and savings, so that our lives are now divided into four parts: We eat, sleep, work, and play. Amusement has become the fourth necessity of living. The business of providing amusement and recreation, not only to the hundred and odd millions in this country but to the rest of the civilized and to some of the uncivilized world, has grown to one of the major activities of this generation, and is still growing.

In the field of commercial amusement the motion-picture industry far exceeds all others, not only in the number of persons employed but in the amount of capital invested. The 325,000 persons in the United States who get their wages from motion pictures exceeds the number employed by Henry Ford and General Motors, which together make more than 80 per cent of all motor cars produced in their country. The present money value of this vast business may be in excess of \$2,500,000,000. Probably between one-fourth and one-third of our population depend largely on it for their principal amusement.

This then is "big business." Expressed in other terms it has been computed that there are 20,500 theaters exhibiting motion pictures in the United States, providing more than 18,000,000 seats and attended by over 100,000,000 persons each week.

Most of this magnitude is very recent. In 1925 there were 50,000,000 people a week, as against the 100,000,000 people a week now attending these theaters. The increase is due largely to the addition of sound to sight and to the introduction of colorful music and motion.

The commercial perfection of sound reproduction is barely 2 years old, and even yet only 20 per cent of the theaters of this country are equipped with the necessary facilities. In view of the fact that the attendance of the average house is estimated to increase at once 30 per cent by their introduction, a continued increase of attendance is assured.

#### FOX THEATERS CORPORATION

Fox Theaters Corporation, formed in 1925, was quick to realize the new conditions forced on the exhibitors by the preference of the public for sound films. It met and is meeting this surge of patronage by the construction of houses of great seating capacity located primarily with reference to transit facilities.

The largest of these new Fox Theaters—in fact, the largest in the world, with its 6,205 seats—is Roxy's. Similar 5,000-seat theaters have been built and opened in Detroit, Brooklyn, St. Louis, and San Francisco. The present construction program calls for theaters of like capacity to be erected in Philadelphia, Newark, Atlanta, and Boston.

## STATEMENT OF EARNINGS

The cumulative effect of these policies is clearly reflected in the expanding net profits, all of which belong to the holders of the common stock and which were as follows:

1926	-----	\$758,000
1927	-----	754,000
1928	-----	1,745,000
1929 <sup>1</sup>	-----	1,500,000

It is fair to assume that for the full business year ending October 31, 1929, earnings will be upward of \$3,000,000. For the year from November 1, 1929, through October 31, 1930, the officials of the corporation estimate that the earnings will be between \$4,500,000 and \$5,000,000.

The Fox interests originated talking motion-picture news, and Fox Theaters Corporation owns a one-quarter interest in the company publishing Fox Movietone News.

Fox Theaters Corporation recently acquired a large block of the family stock of Loew's Incorporated, which has a very substantial chain of theaters from coast to coast and which owns, through subsidiaries, all the capital stock of the Metro-Goldwyn-Mayer Pictures Corporation.

Fox Theaters Corporation, through a wholly owned subsidiary, Fox Metropolitan Theaters Corporation, has recently acquired approximately 120 theaters in and around New York City.

In the statement given above none of the earnings of the three enterprises just described has been included.

Fox Theaters Corporation has additional corporate programs mapped out for its continued growth.

We hope, therefore, that you will take advantage of Mr. Fox's suggestion and that you will promptly instruct your bank, banker, or broker to purchase in the open market the number of shares of common stock of Fox Theaters Corporation which you can conveniently afford to pay for and hold as an investment.

(Cut of specimen of Fox Theaters Corporation class A common stock certificate.)

-----, 1929.

-----  
(Name of bank, banker, or broker)

-----  
(Address)

Buy at market for my account ----- shares Fox Theaters Corporation class A common stock.

-----  
(Signed)

-----  
(Address)

Senator FLETCHER. Do you know what the result was? Did the public buy that stock?

Mr. STOCK. Senator, we did not have time to make any investigation of how much of the stock was purchased through that means. It would be very interesting to do that.

The CHAIRMAN. On June 20, the physician of William Fox forwarded another letter as to his condition, which I submit for the record at this point:

MAYFLOWER HOTEL,  
Washington, D. C., June 20, 1932.

To whom it may concern:

This is to certify that I have this morning examined Mr. William Fox and find his temperature and pulse normal, but a mild head cold has developed.

<sup>1</sup> First 6 months only.

His diabetic condition is practically the same as reported on the morning of the 18th and it will be necessary for his diabetes to be gotten under control before the question of permitting him to be subjected to any severe nervous or mental strain could be considered. It would take not less than a week under the most careful diabetic regimen to materially control the diabetic condition. As a matter of fact it would probably take considerably longer than that, under the most favorable conditions, to get him in physical condition to be able to safely stand any unusual mental or nervous stress.

In my judgment the subjection of Mr. Fox to any severe nervous or mental strain would endanger his health or life or both, wherever the severe strain might be undergone.

F. A. HORNADAY,  
*Attending Physician.*

### STATEMENT OF SENATOR S. W. BROOKHART

The CHAIRMAN. Senator Brookhart has a statement he desires to make.

Senator BROOKHART. Mr. Chairman, I have some information in reference to the connection of the so-called Better Business Bureau of New York City (Inc.), with the New York Stock Exchange.

I want to present first for the record a letter dated June 26, 1923, signed by James C. Auchincloss, of the committee on library of the New York Stock Exchange. This is approving of the Better Business Bureau of New York City (Inc.), as to certain statements in reference to its efficiency, and so forth:

NEW YORK STOCK EXCHANGE,  
*New York, June 26, 1923.*

E. H. H. SIMMONS,  
*Chairman Committee on Library, New York, N. Y.*

DEAR SIR: The Better Business Bureau of New York has in the few short months of its existence established a splendid record of accomplishment by exposing and driving out of the city a number of fraudulent promotions. Won't you read over the inclosed literature and judge for yourself the value of this service to reputable Wall Street establishments?

The character of the organization is indicated by the personnel of the advisory council, which includes the following names: D. F. Houston, president of the Bell Telephone Securities Co. and formerly Secretary of the Treasury; Gates McGarrah, chairman of the board, Mechanics and Metals Bank; Lewis E. Pierson, chairman of the board, Irving Bank-Columbia Trust Co.; and R. T. H. Halsey of Tefft, Halsey & Co.

If, in the face of widespread stock swindling, we remain indifferent to the reputation of our community, Wall Street is bound to be misjudged. By supporting the work of the Better Business Bureau of New York, we shall earn and deserve the good will of the public by enabling them to distinguish between reputable financial establishments and fakirs who masquerade as legitimate business men.

A special committee of stock exchange members and partners have been active during the past several weeks in enlisting the support of various stock exchange members and firms, a majority of whom this committee have succeeded in enrolling as members in the bureau. In addition to firm memberships, we should like to bring to the active support of the work of the bureau those individual members of the exchange who are unattached. We would be very glad, therefore, if you would give serious consideration to the work and aims of the bureau, as described in the accompanying literature. If it commends itself to you, will you please fill out the inclosed application for membership and return, accompanied by your check for \$25, being the annual subscription rate for individual membership.

Faithfully yours,

JAMES C. AUCHINCLOSS,  
*Committee on Library.*

I have a second letter, dated June 12, 1924, signed by the same James C. Auchincloss, but this time as treasurer of special com-

mittee for the Better Business Bureau of New York City, (Inc.). And, as before, I will furnish for the record a photostat copy of the letter.

SPECIAL COMMITTEE FOR THE  
BETTER BUSINESS BUREAU OF NEW YORK CITY (INC.)  
280 Broadway, New York.

Joint chairmen Bayard Dominick, New York Stock Exchange; Gates W. McGarrah, banks and trust companies; Henry R. Hayes, Investment Bankers Association; John J. Pulleyn, savings banks. James C. Auchincloss, Howard F. Beebe, Winthrop Burr, H. B. Clark, Seymour L. Cromwell, Moreau Delano, Walter E. Frew, Casimer I. Stralem, Erastus Tefft, Donald Geddes, Jerome D. Greene, R. T. H. Halsey, Charles Hayden, George W. Hodges, John W. Horner, Thomas W. Lamont, Everett B. Sweezy, Albert A. Tilney, Arthur Myles, James H. Perkins, Clarkson Potter, Charles S. Sargent, Mortimer L. Schiff, E. H. H. Simmons, Harold Stanley, Walter H. Sykes, jr., William J. Wollman.

JUNE 12, 1924.

Mr. \_\_\_\_\_,  
\_\_\_\_\_ Street, New York, N. Y.

DEAR MR. \_\_\_\_\_: Under date of May 12th. a letter was addressed to you by the special committee for the Better Business Bureau of New York City, signed by Messrs. Bayard Dominick, Gates W. McGarrah, Henry R. Hayes, and John J. Pulleyn as joint chairmen, requesting a subscription from you of \$25 toward the work of the bureau.

Not having heard from you, and thinking that through inadvertence this letter failed to reach you, I am sending herewith a copy thereof with the inclosures therein referred to.

On behalf of the committee I would request that you give this matter your attention, and trust that we may receive an early and favorable response to the committee's appeal.

Faithfully yours,

JAMES C. AUCHINCLOSS, *Treasurer.*

Then I have a third letter under date of November 18, 1931, signed by the same James C. Auchincloss, but this time as president of the Better Business Bureau of New York City (Inc.). And again I furnish a photostatic copy for the record.

THE BETTER BUSINESS BUREAU OF NEW YORK CITY  
280 Broadway, New York, N. Y.

H. J. Kenner, general manager; Breed, Abbott & Morgan, counsel; C. Van Rensselaer Halsey, vice president; Sherman B. Joost, treasurer; James C. Auchincloss, president.

Directors: James C. Auchincloss, governor New York Stock Exchange; Raymond Ives, Stagg, Mather & Hough; Clarkson Potter, Hayden, Stone & Co.; Sherman B. Joost, Joost, Patrick & Co.; Lawrence M. Lloyd, vice president Lennen & Mitchell (Inc.); C. Van Rensselaer Halsey, C. D. Halsey & Co.; Robert E. Miller, vice president Bank of New York & Trust Co.; Lester W. Perrin, Lazard Freres; Emlen M. Drayton, Eastman Dillon & Co.; Edwin S. Friendly, business manager The Sun; Philip A. Benson, treasurer the Dime Savings Bank of Brooklyn; Andrew Mills, jr., president Dry Dock Savings Institution; Ralph H. Stever, president the Seamen's Bank for Savings in the City of New York; Oliver J. Troster, Hoyt, Rose & Troster; Sheldon R. Coons, Lord, Thomas & Logan.

Advisory council of the investors' section: E. H. H. Simmons, chairman E. H. H. Simmons & Co.; Lewis E. Pierson, chairman of the board, Irving Trust Co.; Albert A. Tilney, vice chairman Bankers Trust Co.; John J. Pulleyn, chairman of the board, Emigrant Industrial Savings Bank; Henry R. Hayes, vice president Stone, Webster & Blodget (Inc.); Richard Whitney, president New York Stock Exchange; James Gilbert White, chairman of the board, J. G. White & Co. (Inc.); A. C. Pearson, chairman of the board, United Business Publishers (Inc.); William S. Irish, executive vice president Bank of Manhattan Trust Co., Brooklyn division; Henry J. Davenport, president Home Title Insurance Co.; Lewis Gawtry, president the Bank for

Savings in the City of New York; Victor A. Lersner, chairman of the board, the Bowery Savings Bank; D. Irving Mead, president the South Brooklyn Savings Bank.

Advisory council of the merchandise section: John S. Burke, president B. Altman & Co.; Franklin Simon, president Franklin Simon & Co. (Inc.); Bernard F. Gimbel, president Gimbel Bros. (Inc.); Samuel Mundheim, president Stern Bros.; Louis Wiley, business manager the New York Times; Howard Davis, business manager New York Herald-Tribune; Walter Hammitt, vice president Frederick Loeser & Co. (Inc.); Roy C. Holliss, general manager Daily News; Fremont C. Peck, publisher Brooklyn Daily Times; Noel S. Macneish, assistant publisher New York World-Telegram; Michael Schaap, president Bloomingdale Bros. (Inc.); Joseph E. Priddy, president Lord & Taylor; C. Ludwig Baumann, president C. Ludwig Baumann & Co., Brooklyn; C. C. Lane, business manager New York Evening Post.

NOVEMBER 18, 1931.

*New York City.*

DEAR MR. —: I know this is a poor time to ask for money, but we are confronted by a serious situation, and must turn to our friends for aid. We face a deficit this year in spite of many retrenchments.

It will hearten us a whole lot if our friends back us up so we may overcome this deficit. If your firm will send us \$25 as a special contribution, you will have done your share and we shall be eternally grateful.

Faithfully yours,

JAMES C. AUCHINCLOSS, *President.*

P. S.—Please make check payable to James C. Auchincloss, president, and forward to me at 1 Wall Street.

Mr. Chairman, this information was furnished to me by Mr. Clark G. Hardeman of St. Louis, Mo., who sued the Better Business Bureau for \$20,000 for trying to put him out of business, and they settled and paid him the \$20,000 without coming into court. In other words, they settled out of court. He showed me a few days ago a copy of the first \$10,000 check given in payment, and, as I understand, the second \$10,000 was paid to him in cash.

So I want to request that the steering committee of this Committee on Banking and Currency order an investigation to be made of the association of this so-called Better Business Bureau's connection with the New York Stock Exchange.

The CHAIRMAN. Senator Brookhart, your request will be brought before the steering committee.

Senator BROOKHART. Very well.

The CHAIRMAN. The first witness this morning will be Miss A. M. Gushee. Miss Gushee, if you will please stand, hold up your right hand and be sworn:

You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matter now under investigation by the committee, so help you God.

Miss GUSHEE. I do.

### TESTIMONY OF MISS A. J. GUSHEE, OF DENVER, COLO.

The CHAIRMAN. Senator Carey, you are familiar with this matter. Would you mind asking the questions and develop whatever you may desire?

Senator CAREY. Miss Gushee, you formerly lived in Cheyenne, Wyo., did you not?

Miss GUSHEE. Yes, sir.

Senator CAREY. And afterwards you moved to Denver, Colo.

Miss GUSHEE. Yes, sir.

Senator CAREY. And you were living in Denver during the spring and summer of 1929, I believe.

Miss GUSHEE. Yes, sir.

Senator CAREY. During that time you invested in Continental Shares (Inc.), I believe.

Miss GUSHEE. I did.

Senator CAREY. You bought them from whom?

Miss GUSHEE. From Otis & Co.

Senator CAREY. Can you tell the committee about the two purchases you made of those shares?

Miss GUSHEE. My first purchase was made on April 29, 1929, when I purchased 12 shares of the common new stock at 70 or about that figure. My second purchase—no; I beg pardon. Let me see—yes, was made on June 1, 1929, of 23 shares of the common stock at about 83 or I think the figure was 83 and a fraction.

Senator CAREY. Do you know if this price of 83 or 83 and a fraction for this stock was higher than the stock was ever listed?

Miss GUSHEE. I do not know, Senator Carey, that it was, but I have been informed that it was. I think it was true that it was never as high as 83 as listed.

Senator CAREY. I believe it was 78, that that was the highest price the stock was ever listed.

Miss GUSHEE. Yes, sir; I believe so; 76 or 78.

Senator CAREY. In the selling of this stock to you by Otis & Co., did they advise you as to what stocks and securities Continental Shares (Inc.) owned?

Miss GUSHEE. They did not. I asked to see the portfolio at the time, but was advised it was not available. However, they did tell me that the stocks they owned were very high-grade securities.

Senator CAREY. After the portfolio of Continental Shares (Inc.) was made public, were those stocks in fact high-grade securities?

Miss GUSHEE. They were not, in my judgment. And, had I seen the portfolio at the time, I would not have purchased their stock.

Senator CAREY. You purchased the stock with the belief that the portfolio contained only the highest grade stocks, did you?

Miss GUSHEE. Yes, sir.

Senator FLETCHER. Whom did you deal with?

Miss GUSHEE. I dealt with Otis & Co., of Denver, Colo.

Senator FLETCHER. Do I understand from you that they had a place of business in Denver?

Miss GUSHEE. Yes, sir.

Senator FLETCHER. But their principal office is in New York City, isn't it?

Miss GUSHEE. They were operating through a branch office in Denver. They had been in Denver for a number of years.

Senator CAREY. At that time Otis & Co. had salesmen covering Colorado, Wyoming, and that part of the country, selling the stock quite generally, didn't they?

Miss GUSHEE. Yes, sir.

Senator BROOKHART. Who was the particular person in charge of the company's business at Denver?

Miss GUSHEE. I can not answer that question definitely.

Senator BROOKHART. Did you talk to him personally?

Miss GUSHEE. No. I talked to the salesman. I bought the stock through their salesman.

Senator BROOKHART. In Denver, or where?

Miss GUSHEE. In Denver.

The CHAIRMAN. Did you sell any of that stock?

Miss GUSHEE. No, sir.

The CHAIRMAN. What is it worth now?

Miss GUSHEE. I think it has had a very small value if any. I do not know that it is quoted at all now.

The CHAIRMAN. Is it a dollar or less per share?

Miss GUSHEE. Probably less than a dollar a share.

The CHAIRMAN. And what was the price at which you purchased those shares?

Miss GUSHEE. It was \$83 for 23 shares and \$70 for 12 shares, or approximately those figures.

Senator CAREY. As I understand, this stock of Continental Shares (Inc.), you bought was purchased before the stock was ever listed on the stock exchange?

Miss GUSHEE. Yes, sir.

Senator FLETCHER. Let me see if I understood you aright in an answer you made a moment ago. Did you mean \$83 per share and not \$83 for the 23 shares?

Miss GUSHEE. Yes; I meant \$83 per share.

Senator FLETCHER. And did you mean \$70 per share for 12 shares?

Miss GUSHEE. Yes, sir.

The CHAIRMAN. The chair will state that Mr. Stock tells him recently sales have been made of Continental Shares (Inc.), stock at 25 cents a share.

Senator CAREY. Miss Gushee, you contracted for or purchased the stock before it was listed on the stock exchange, as I understand from you?

Miss GUSHEE. Yes, sir.

Senator CAREY. Do you remember the price at which this stock was listed when it was placed on the stock exchange?

Miss GUSHEE. I think it was around 70, but I can not be sure of that figure. At least I know that it opened very much lower than the price at which I had purchased it. And the stock dropped after the contents of their portfolio were made known, or rather, had been published.

Senator CAREY. Wasn't the stock quoted at  $43\frac{1}{2}$  or 45 when it was listed on the stock exchange? I think you told me that you had been urged to purchase the stock the night before it was listed at  $47\frac{1}{2}$ , and that it was listed the next morning at 45, that you were told by Miss Gavin.

Miss GUSHEE. I have a wire from Miss Gavin. Would you like me to read it?

Senator CAREY. Yes; please read it.

Miss GUSHEE. It says:

April 25, 1929, paid Otis \$1,600 for 20 Continental Shares stop and \$475 for 10 shares day prior to listing on big board upon solicitation after closing hours. Stock opened following morning at 45.

This is signed "Margaret E. Gavin" and is a telegram from Denver. I would like to explain that Miss Gavin's second purchase

of the 10 shares at 47½ per share was not made on April 25, 1929, but some time later, after market listings.

Senator CAREY. Do you know if there was some trouble in Colorado due to the fact that Otis & Co. had not complied with the blue sky law in making public their portfolio of these shares?

Miss GUSHEE. I understand, or at least there was a report current in Denver, that some stockholders threatened to bring suit against Continental Shares (Inc.), for violation of the blue sky laws on account of not having made known the contents of their portfolio. And that a refund was made rather than have it go to suit. I asked if that were true but have not been informed. I asked about it at a meeting of Continental Shares (Inc.), in Baltimore, at their annual meeting on March 17, 1931, if that report was true, but they have not answered my question.

Senator CAREY. Miss Gushee, you have had to work for a living, have not?

Miss GUSHEE. Yes, sir.

Senator CAREY. And where have you been employed?

Miss GUSHEE. At the Stock Growers National Bank, at Cheyenne, Wyo.

Senator CAREY. And this money you invested in these shares as I understand represented money that you had saved?

Miss GUSHEE. Yes, sir. That is where I was employed at the time.

Senator CAREY. That is all.

Senator FLETCHER. Was there ever a time that the stock you purchased could have been sold at an advance in price, or did it begin to go down?

Miss GUSHEE. It began to go down. I don't think I could ever have sold it at a profit, not at any time.

The CHAIRMAN. That is all. We thank you.

(The witness was excused.)

The CHAIRMAN. The next witness will be Miss Roberts. Will you please stand, hold up your right hand, and be sworn. You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matter now under investigation by the committee, so help you God.

Miss ROBERTS. I do.

#### **TESTIMONY OF MISS GRACE VAN BRAAM ROBERTS, HIGHLAND, N. Y.**

The CHAIRMAN. Miss Roberts, will you please give your full name and address to the committee reporter for the benefit of the record?

Miss ROBERTS. Miss Grace van Braam Roberts, or Miss G. van B. Roberts, will do just as well.

The CHAIRMAN. Gentlemen of the committee, Miss Roberts tells me that she has a written statement prepared which will take about 20 minutes to read, and if there is no objection she may proceed by reading it. She would rather conclude the reading of her statement and then will answer questions afterwards, if that is agreeable. Is that right, Miss Roberts?

Miss ROBERTS. Yes; if I may do so.

The CHAIRMAN. You may proceed.

MISS ROBERTS. I am glad to present the facts of my controversy with the New York Stock Exchange to your honorable committee because these facts show that the New York Stock Exchange condones a fraud when committed by influential brokers, and I hope that this evidence will help Congress to pass a law governing the stock exchange so that such condoning of fraud may be prevented hereafter. The facts that I give you are authenticated either by evidence taken before the Supreme Court or by the stock exchange itself. The chronology of events is as follows:

1920-1924. Fraud continued.

1925. Trial held before the Supreme Court in Kingstown.

1926. Court's opinion.

1927. Referee's award.

1928. My first letter to the stock exchange.

1929. My second letter to the stock exchange, followed by correspondence and discussion to February, 1931.

The case, in brief, is as follows: I had done business with Hayden, Stone & Co. for years through Mr. Harold Keays, an honest customer's man. On or about November 14, 1920, Mr. Keays urgently asked me to buy Atlantic, Gulf & West Indies stock. I knew nothing about it. He insisted:

We do know. It is one of our house stocks. It has oil wells in Mexico, a large fleet of steamers leased at attractive rates, and a pipe line in France just completed. Our Mr. Stone is chairman of the board, and other members of our firm are also members of the board. It has just fallen from 160 to 115, but is going up again; it is a splendid investment earning 20 per cent and paying 10. I have just come from a meeting with a member of our firm who is on that board. The only trouble with the stock is that the bears are raiding it. You must let me buy you some. We know.

I suppose you gentlemen understand what a "house stock" is?

THE CHAIRMAN. I think it might be well for you to amplify that a little.

MISS ROBERTS. It is a stock that is controlled by that special brokerage house, that is in their hands, and they know the stock and urge it as one of their house stocks.

THE CHAIRMAN. All right.

MISS ROBERTS. He bought me 100 shares the next day. He had bought some for himself at a higher figure. A few weeks later he lost all that he had put in.

On or about November 29, when he called again, I told him that Atlantic, Gulf & West Indies had been falling steadily; that my brother, O. F. Roberts, who was a member of the exchange, said that the talk on the exchange was that the company was in a bad way, and that I could get the stock for less later if I then wanted it. Mr. Keays replied that his firm knew that the stock was sound; that, although I must not mention it, a pool had been formed to support the stock at its then price of about 102. He said that he wanted to buy me another 100 shares. Since I knew that he believed what he said, and also knew that Hayden, Stone & Co. had a wonderful accounting and investigation department, which I had myself used, I let him buy 50 shares for my account that day and 50 shares on December 1.

Records show that the stock continued to fall almost without variation and never recovered. Early in January, 1921, I sent Mr. Keays

a clipping from the Evening Post pointing out the weakness in the stock, since the oil wells had gone to salt water, the steamers were tied up, and the pipe line in France had been abandoned. After consulting with Mr. Hoyt, Mr. Keays still advised me to hold the stock. The court gave the opinion that this clipping should have put me upon further inquiry, and therefore limited my recovery on this stock to the amount lost by February 1, 1921. The firm continued to advise me to hold the stock until January, 1922, and sold sound stocks from my account to protect this worthless stock.

In January, 1922, in answer to a question, Mr. Keays asked me to see Mr. Hoyt who was the member both of Hayden, Stone & Co. and of the board of the Atlantic, Gulf & West Indies Co. whom he had been quoting about the value of the stock from the beginning. Mr. Hoyt was manager of Hayden, Stone & Co.; he was at that time and still is. When I saw Mr. Hoyt, he advised me to sell at the current price, 30 $\frac{1}{8}$ . Mr. Hoyt was full of regrets that he had not gotten me out when he got his friends out; he said that his own loss had been enormous and had nearly wiped him out; also that Mr. Harry Payne Whitney had bought heavily on his advice. Mr. Hoyt was not convincing. At a later conversation, which took place in February, 1924, Mr. Hoyt said that he had averaged a little over par for his Atlantic, Gulf & West Indies stock. I found that he must, therefore, have sold his stock in December, 1920, since the stock never afterward rose to that point. Then I withdrew my account and brought suit, not in New York City, but in Ulster County. Judge Alton B. Parker, an old friend, was my attorney. He was convinced that I would be defeated, and continually urged me to withdraw my suit.

Chadbourne, Stanchfield & Levy, a well-known stock exchange legal firm, conducted the defense. Since my lawyers were convinced that Hayden, Stone & Co. were honest, the suit was brought for an accounting. The supreme court justice before whom it was tried, in the course of his opinion, said that the pleadings at the election of the plaintiff might be amended to conform them to the proof on the subject of fraud. Hayden, Stone & Co. were thus adjudged cheats.

There is more to the controversy than I am giving you here, for the limited time allotted me forbids further details. I select the cheating in connection with Atlantic, Gulf & West Indies because Mr. Whitney has especially defended this transaction; and my attack here is directed against the utter dishonesty of the New York Stock Exchange as dominated by Mr. Whitney.

I felt in 1927 that such detestable robbery should be made impossible in the case of any other victim, because in all I had lost a good deal of money through the dishonesty of Hayden, Stone & Co.

I wanted my lawyer to appeal. He, however, felt that we had won a great victory. At my request he asked Justice Charles E. Hughes, who was then practicing in New York, to review the case. He also held that I had trusted these cheats too long to obtain any substantial recovery, using the word "cheat" several times in his opinion. Hayden, Stone & Co. paid the judgment, and the case was closed.

**Senator BROOKHART.** How much was the judgment?

**Miss ROBERTS.** Approximately \$16,000.

Senator CAREY. What does the word "cheat" mean in New York? Does that mean fraud?

Miss ROBERTS. Yes, sir; it does. At least, Judge Hughes in reviewing this matter, called them "cheats," and the trial judge had given us leave to amend it to "fraud." And Judge Hughes in reviewing the decision used the word "cheats" several times.

Senator CAREY. It is another name for fraud, isn't it?

Miss ROBERTS. Well, I don't know. I am not an authority on that. If I might inject here, Mr. Chairman, when I took the matter to the business conduct committee, Mr. Harrison said it was too bad that we had not taken this matter up with the district attorney; he said it was the judge's duty to give this matter to the district attorney and that in that case they would have been convicted for criminal fraud; that the evidence for the criminal case would have been the same and could have been used. It was never taken to the district attorney, because we did not know our rights in the matter. But that is as far as punishment through the courts could have gone, and the penalty would have been a good deal worse if it had gone there.

I have always felt that the \$16,000 that they were obliged to pay was nothing to the sum out of which they had cheated each of probably nearly a hundred persons, to say nothing of the very large loss that they had caused me; therefore I asked the stock exchange to punish them. Mr. Richard Whitney was at that time chairman of the business conduct committee. I might quote the routine replies from his committee. Among these papers is my letter of August 15, 1928, inclosing a 5-page memorandum of fact written by my lawyer. On October 4, 1928, the secretary of the business conduct committee replied:

The committee has investigated in detail the complaint against the firm of Messrs. Hayden, Stone & Co. \* \* \* The committee's investigation failed to indicate any conduct on the part of Messrs. Hayden, Stone & Co. which would warrant disciplinary action by the exchange against them.

Although I offered to submit evidence, none was asked for. To my letter of September 3, 1929, the secretary of the business conduct committee replied on September 12:

The facts stated in it are substantially the same as those contained in your communication of August 15, 1928, which was exhaustively investigated by the committee at that time.

To this letter he added the postscript, "The papers submitted by you are returned herewith"; and with it he sent a mass of past correspondence between Hayden, Stone & Co., and myself, carefully bound, year by year, from 1916 to 1924, inclusive, which Hayden, Stone & Co. had given them. I never returned it. It is here, ridiculous for purposes of investigation but interesting as an exhibit of the dishonest way in which the stock exchange investigates charges of fraud when the conduct of powerful and very wealthy brokerage-house members is in question.

I offer it, Mr. Chairman.

The CHAIRMAN. It will be received by the committee.

Senator FLETCHER. What is it?

The CHAIRMAN. Senator Fletcher did not hear you, Miss Roberts. Will you explain it further to him?

Miss ROBERTS. This [holding aloft a bundle of papers] was used by the stock exchange to investigate a complaint of dishonesty made

by me against a powerful stock-exchange firm. When the exchange did not come to me for any evidence, I asked it for permission to submit evidence of their fraud, but it went to the lawyers, or it probably went to Hayden, Stone & Co., the cheats, and they or their lawyers sent it some miscellaneous business correspondence which began in 1916 and continued through 1924. In other words, there were no minutes of the trial or anything that pertained to the fraud.

Senator FLETCHER. Is that supposed to be the evidence that was furnished to the business conduct committee of the stock exchange?

Miss ROBERTS. That was the evidence. And they sent it back to me thinking I had furnished it. The wires got crossed in some way, you understand, and they returned it to me instead of to the cheats. But they had asked me for no evidence.

Senator FLETCHER. I wondered how you got it.

Miss ROBERTS. I got it in that way. Sometimes I might be dishonest to that extent, and this time I was, for I have kept it. [Laughter.]

Senator FLETCHER. Hayden, Stone & Co. were members of the stock exchange?

Miss ROBERTS. Yes; very important members of the stock exchange. That is the whole point.

Senator FLETCHER. And this stock that you bought was listed on the stock exchange?

Miss ROBERTS. Yes. It was their house stock. They said they knew it well. They were the managers of it.

The CHAIRMAN. And they recommended the purchase of it?

Miss ROBERTS. Yes; they urged it.

Senator FLETCHER. As I understand, you brought suit and recovered a judgment for \$16,000.

Miss ROBERTS. I recovered a small judgment against them.

Senator FLETCHER. Well, \$16,000 is not so very small. Was that the amount of your claim or of your loss?

Miss ROBERTS. I did not recover, sir, on my claim entirely. I had trusted them too long. But there were certain other frauds that made up the amount. I only recovered something like six or seven thousand dollars on the Atlantic, Gulf & West Indies stock.

The CHAIRMAN. Your suit in that case was for what amount?

Miss ROBERTS. I sued them for an accounting, you see.

The CHAIRMAN. Oh, yes.

Miss ROBERTS. We treated them very gently.

The CHAIRMAN. And you did not consider that you recovered any substantial part of your loss; is that a fact?

Miss ROBERTS. No; that would be the fact.

To my letter of January 17, 1930—and you see I kept on writing—the secretary of the business-conduct committee replied on January 20, quoting the passage that I have given above from the letter of October 4, 1928, and adding, “In reaching this conclusion, the committee gave consideration to all of the facts presented by you.”

If you have time, it might be interesting to read you my memoranda of my first, second, and third talks with the secretary and the assistant secretary of the business-conduct committee, after I had finally obtained a hearing by having some one else get it for me. These memoranda expose a travesty of justice.

At the second interview I left with the secretary of the business-conduct committee material which he said he had never seen, in the expectation that it would furnish facts with which Mr. Whitney was not familiar, the additional facts which he had requested, and which would, I believed, lead him to expel Hayden, Stone & Co. from the exchange. This was the first time the stock exchange had seen any of the testimony given at the trial. As a result of the interviews, on July 15, 1930, the secretary of the business-conduct committee wrote that these documents, including the testimony, had been "carefully examined, after due consideration, I am directed by the committee to inform you that, in its opinion, the facts disclosed do not warrant it in taking disciplinary action against Hayden, Stone & Co."

On August 14, 1930, Mr. Whitney wrote: I have taken this case under my personal scrutiny and have gone carefully into all the points that you make. I find that all members of the business-conduct committee are thoroughly conversant with your case, as was I when on that committee. We have received the benefit of legal advice from our counsel in this matter on all the points raised, and I regret to state that after the most careful consideration I find that there is nothing one can add to the letter sent you by Mr. Harrison, secretary to the committee on business conduct, under date of July 15.

On November 28 Mr. Whitney wrote:

This complaint of yours \* \* \* has received the most complete consideration by our counsel, by the business-conduct committee, and by myself.

Senator Wheeler took this matter up last winter, and he wrote to Mr. Whitney about my case. On February 16, 1932, in response to a second letter from Senator Wheeler, Mr. Whitney wrote:

I had hoped to acknowledge your letter of February 1, 1932, many days ago, but have found that the work of reviewing this entire case, in which the file amounts to 300 or 400 pages, is taking so much time that my answer has been delayed and a final answer will be still further delayed, so that a proper and full consideration of the matter can again be given. I deeply regret if we have appeared negligent in the matter, but sincerely assure you that we have been giving your inquiry our closest attention and application.

On February 18 Mr. Whitney wrote:

The complete examination of this case has now been effected in accordance with the statement in my recent letter to you. Again I crave your forgiveness for the delay, but this review, as the remainder of this letter will perhaps point out to you, has been exceedingly lengthy and indeed arduous.

After enumerating the occasions on which the exchange had given attention to the case, he continued:

I can assure you, therefore, that few complaints submitted to the exchange have had such careful and thorough consideration.

In response to a further comment by Senator Wheeler in a letter dated February 29, Mr. Whitney wrote on March 14, 1932:

I felt it necessary to review the entire case in every detail with counsel, which has been done.

I think, Mr. Chairman, at this point I will offer for your examination, which will take only one minute, the record of the transactions in Mr. and Mrs. Hoyt's joint account in 1920, and the single item in Mr. Hoyt's personal account in 1921 while he was urging me to hold my stock. This item showed short selling.

Senator CAREY. He was selling you the same stock that he was urging you to buy.

**Miss ROBERTS.** I think I shall show you he was. But the stock exchange can not see it, could not see it four years ago, and yet I hope this committee will see it in one minute.

**Senator CAREY.** Was Mr. Hoyt a director in that company?

**Miss ROBERTS.** He was a member of the board of directors.

**Senator CAREY.** Of the very company in which you were purchasing stock?

**Miss ROBERTS.** Yes, sir.

**Senator CAREY.** He was selling it short and selling it to you.

**Miss ROBERTS.** He did sell it short the year following. He was selling it at the time I was buying. I bought the stock in November and December of 1920. Mr. and Mrs. Hoyt—I have the record here before me—by June 1 of that same year, some months before my purchases, had sold 800 shares out of what they had owned on March 8, and they only owned 1,700 shares on March 8; they had sold a net amount of 700 shares by June 1.

**Senator CAREY.** Perhaps he sold you some of his stock.

**Miss ROBERTS.** I don't know.

This item indicating short selling is the only item from his personal account that he saw fit to introduce in his defense, and this item goes to prove my point. Mr. Hayden's and Mr. Stone's personal accounts were not brought into court because of the extreme courtesy of my counsel. Judge Parker was lovely and he thought there was something queer about the conduct of Hayden, Stone & Co., and yet he seemed to have doubts as to what could be accomplished by haling them into court.

This record shows that on March 8 the joint account held 1,700 shares; by June 1 they had sold 800 out of these 1,700 and had bought only 100. They made only one further purchase in 1920—namely, 100 shares on November 5. By December 29 he had sold the entire holdings of the joint account. Does one sell a splendid investment earning 20 per cent and paying 10 per cent?

In his letter of July 15, 1930, the secretary of the business conduct committee wrote:

The investigations of the committee, and, in fact, the record of the case indicates that at the time Mr. Keays, a customer's man, called your attention to the Atlantic, Gulf & West Indies Steamship Lines stock and you purchased the same, certain members of the firm of Messrs. Hayden, Stone & Co. were, themselves, buying large quantities of this same stock.

Also, in his letter of March 14, 1932, to Senator Wheeler, Mr. Whitney says:

Members of the firm were buying this stock for their own account after the date of the last purchase by Miss Roberts.

There was absolutely no evidence introduced to support the above assertions. Here was a trial and yet the defendants did not introduce a scrap of such evidence or anything of that kind.

As you will see, there is in this record that you hold in your hands absolutely no proof of either of the above assertions. There was also introduced into the testimony the record of transactions by a pool, which was begun on November 17 and dissolved on December 31, 1920. In other words, the pool liquidated that same year. December was the date of my last purchase and the pool was out in December of the same year. Only 17½ per cent of the pool stock was owned by members of the firm. Stone never owned more than 1,000

shares; Hayden never owned more than 500 shares; Mr. and Mrs. Hoyt's joint account owned 210 shares. These were indeed small amounts for officers of large means if they had faith in the stock. There is no evidence that Mr. Hayden and Mr. Stone bought even this amount at the time when the pool was formed; the testimony says that the pool "bought or received" stock, and Mr. Hayden's and Mr. Stone's stock may have been merely transferred from their previous personal holdings. You will notice that it says "bought or received." It does not say "bought." It appears that the pool was used to keep customers from selling until the members of the firm, with their inside knowledge, got out.

Mr. Whitney said recently to the House committee for investigating short selling that the Supreme Court of the State of New York was wrong in its decision; this was the decision from which Hayden Stone & Co. took no appeal. In his letter to Senator Wheeler under date of February 18, 1932, Mr. Whitney said further:

The committee was also advised by counsel for the exchange that the record in the case of *Roberts v. Hayden, Stone & Co.*, in the supreme court, Ulster County, did not contain facts which clearly supported the decision reached by the court.

Senator CAREY. In other words, the stock exchange was ahead of the court right along.

Miss ROBERTS. To read the record of the joint account takes only one minute; yet in four years neither the stock exchange nor its members have mastered it. We find Mr. Whitney daringly asserting to a committee of the House that the Supreme Court of the State of New York was wrong in its decision.

Nearly 20 years ago, before the Pujo committee, Mr. Undermyer tried unsuccessfully to limit the power of the New York Stock Exchange. I hope that the time has now come when your honorable committee will bring about a reform.

There is much detail here that the time allotted to me will not allow me to introduce, detail which shows the assured impudence of Mr. Whitney's dishonesty. Recently he was asserting to the Junior League at a large meeting that the stock exchange demands that its members be righteous.

A distinguished lawyer, who had made an effort to curb the New York Stock Exchange, said to me, "I can't do anything for you. I am a friend of Charles Hayden."

I replied, "He may be a friend of yours, but he is a very dishonest man."

He answered, "I did not mean he is a friend, but I know him." He went on: "Do you realize that this is going to be enormously expensive? Do you realize that bringing this to Congress will cost you an immense amount of money?" Later he added, "Any lawyer who helped you would lose all his friends and all his clients." He urged me to stop, saying, "You can't do anything. I am not defending the stock exchange. I know what it is."

I said that it should have some kind of Federal regulation. He replied that it should be placed under the Treasury Department.

Senator COSTIGAN. Did he give you advice before you instituted your suit?

Miss ROBERTS. This was just recently, in arguing this matter after my suit was closed, and I had failed to get the stock exchange to

discipline these cheats. I then contemplated coming on to Congress.

The CHAIRMAN. You may proceed.

Miss ROBERTS. I said that it should have some kind of Federal regulation. He replied that it should be placed under the Treasury Department. I then came before you myself. I am not anxious that any New York man should have to go through all this and lose all his friends, all his clients. I bring this in because it shows the ramifications, the whole of the ramifications of the stock exchange, and it is true. This, Mr. Chairman, is why I am not being advised by any counsel to-day.

A lawyer with a wide practice among stock-exchange firms said: "I fear that you can do nothing. The stock exchange is the greatest Monte Carlo in the world."

Another fine man, the head of a large brokerage house, said:

What has happened to you is nothing to what happens all the time. You will never get Hayden, Stone & Co. expelled, but don't give up. If our firm should help you, it would be impossible for us to continue doing business on the stock exchange.

I add these talks with well-known people who are intimately acquainted with the exchange, in order to disclose to you the hideous monster with far-reaching tentacles that the New York Stock Exchange is acknowledged to be by some of its finest members and by those who are retained by them.

I beg you not to lay down this work until at least one pillar is removed from the beautiful building that might better be called the New York stockyards. Mr. Chairman, you may never again have so perfect a case as this against the exchange. Its president clearly did stupid things in this matter; it will hereafter cover up some of the worst practices, as it did after the Pujo committee's investigation, but the dishonesty will go on until the United States Government takes the New York Stock Exchange under its own control.

The CHAIRMAN. Do any members of the committee care to ask any questions? [A pause, without response.] If not, I will let Mr. Stock, who is Mr. Gray's assistant, ask one or two questions.

Mr. STOCK. Mrs. Roberts, your case is very important because it is indicative, I think, of the attitude of the New York Stock Exchange on these matters. Did they ever ask you to submit voluntarily to arbitration either before or after you started your suit?

Miss ROBERTS. I did not bring the matter to them until after I had obtained judgment, you see.

Mr. STOCK. In the judgment you obtained was there any compromise or settlement?

Miss ROBERTS. No; absolutely none.

Mr. STOCK. And there was no appeal?

Miss ROBERTS. There was no appeal on their part. I wanted to take the case to the upper court but was dissuaded.

Mr. STOCK. Your case was the one that Congressman LaGuardia referred to when he testified here; was it not?

Miss ROBERTS. That is correct.

Mr. STOCK. Mrs. Roberts—

Miss ROBERTS. Not Mrs. but Miss Roberts.

Mr. STOCK. Pardon me. Miss Roberts, Mr. Whitney testified before this committee that the stock exchange had 20 of the best and

most accurate stock exchange accountants in the world, and that they had made about 5,000 investigations during the past two years and had found nothing wrong. Our own investigators, and I, might say fewer than 20 and who are not the greatest stock exchange accountants in the world, found all these things we were looking for the very first day. Did they ever submit to you any account or analysis of the trading in this stock, or did you have to look for it yourself?

Miss ROBERTS. I might say that I did have some hearing before Mr. Lindley, the new chairman of the business conduct committee. It was a very courteous hearing and he said he would investigate it further; and he was a little surprised at certain things, I think. But Mr. Whitney interfered and said it had been settled. In other words, Mr. Lindley was not allowed to investigate it.

Mr. STOCK. As to this pool that you referred to in the Atlantic, Gulf & West Indies stock, did the business conduct committee render any opinion or make any decision as to the activities of that pool?

Miss ROBERTS. Mr. Lindley said that he would investigate further—you see, I was interested—well, that pool is a very interesting thing really if it could be properly investigated. Something I said made Mr. Lindley say that, “Probably the members of the firm were not selling under their own names and you would be unable to get any information.”

Mr. STOCK. You say Mr. Lindley told you that?

Miss ROBERTS. Yes. This is the chairman of the business conduct committee I refer to.

Mr. STOCK. I see. I believe that is all.

The CHAIRMAN. Does any member of the committee wish to ask any further questions of Miss Roberts?

Senator FLETCHER. Miss Roberts, have you had any experience with the stock exchange since that time?

Miss ROBERTS. Only in trying to get them to expel the member, I never did have before or since. My business with the stock exchange was entirely in regard to this cheat, whom they kept. He is very wealthy and powerful, and that is the reason he is left there.

Mr. STOCK. Is this the same Mr. Hoyt who testified here the other day in connection with some of the activities of Fox Film and Fox Theaters?

Miss ROBERTS. Mr. Richard Hoyt?

Mr. STOCK. Yes.

Miss ROBERTS. Then he is the same man.

The CHAIRMAN. Miss Roberts, you have had other transactions with the stock exchange, I suppose? I mean other than the ones you referred to here this morning?

Miss ROBERTS. I do not know what you mean. Do you mean for the purchase of stock?

The CHAIRMAN. Yes.

Miss ROBERTS. Oh, yes.

The CHAIRMAN. You spoke of making a partial recovery on one transaction of \$16,000, but said you did not feel that that was a substantial recovery. Would you care to tell the committee about what losses you have suffered?

Miss ROBERTS. Well, you see in this connection, owing to this and some other frauds, I lost from 1920 to 1924, inclusive, several

hundred thousand dollars. My losses would amount to several hundred thousand dollars through those transactions.

Senator CAREY. Had you been an old customer of the firm of Hayden, Stone & Co.?

Miss ROBERTS. Yes, sir.

Senator CAREY. And had you been doing business with them for some years?

Miss ROBERTS. For some years, going back, I think, to 1916, or probably back to 1914.

Senator CAREY. And you had confidence in anything they might tell you?

Miss ROBERTS. I thought, of course, they were a reliable firm. Mr. Hoyt, their customers' man, was absolutely honest.

Senator CAREY. Do you remember what you paid for Atlantic Oil?

Miss ROBERTS. It was Atlantic, Gulf & West Indies.

Senator CAREY. Well, tell us about that.

Miss ROBERTS. I think my first purchase was made at about 115, and my second purchase at about 102. I was advised by Mr. Hoyt to sell out at about 30. You see I held on after they advised me to buy it, for I thought they ought to know about their own stock. I took that attitude.

Senator CAREY. What was Mr. Hoyt's explanation of the cause of its reduction in value when he advised you to sell out at 30?

Miss ROBERTS. Well, his explanation covers a good many pages in the testimony. But it is not impressive. It is simply that they did not know at that time that it would have to borrow money, did not know any of those things were going on. But the whole Street knew.

Senator CAREY. And he was a director in that company?

Miss ROBERTS. Yes, sir; that is the point.

Senator CAREY. That he did not know those things were going to happen to the company?

Miss ROBERTS. Mr. Stone was the chairman of the board. Mr. Hoyt was a director, and Mr. Hayden was a director. It was right in their house, you see.

The CHAIRMAN. I think you told me something about this case not being tried in New York City but up State. Will you explain that to the committee?

Miss ROBERTS. Yes. Mr. Harrison, of the business conduct committee, the secretary—and you see we had three hearings there before the business conduct committee through Mr. Harrison, the secretary, and Mr. Telfer was also there; and all that is authenticated by the minutes. I had taken a memorandum, and Mr. Telfer vouched for its accuracy. Mr. Harrison said: "You would never have won this case if it had been tried before a supreme court judge." And I might say to you, gentlemen of the committee, that this was after years of investigation. The stock exchange had not yet got down to the fact that it was tried before a supreme court judge and not before a jury. And then he said: "You could not have won it here in New York City. No broker ever wins in New York City."

The CHAIRMAN. I take it you meant to say no broker ever loses in New York City.

Miss ROBERTS. Yes; I do mean that—that no broker ever loses in New York City.

Senator FLETCHER. I should like to ask—

Miss ROBERTS (interposing). I want to make another correction. My attention is called to the fact that I said Mr. Hoyt was honest. I did not mean to say that. I never dreamed of saying that Mr. Hoyt was honest. I ask that a correction be made there so that it will show that I said Mr. Keays, the customers' man, was entirely honest.

Senator FLETCHER. What became of your stock? Did you sell it or do you still hold it?

Miss ROBERTS. I sold it. Mr. Hoyt advised me to sell it at 30, I think it was, in 1922.

Senator FLETCHER. I did not get that answer.

Miss ROBERTS. I then sold.

Senator FLETCHER. He advised you to do that?

Miss ROBERTS. Yes, sir.

Senator FLETCHER. When he advised you to do that, did you do it?

Miss ROBERTS. Yes, sir.

Senator FLETCHER. And you bought it at 102.

Miss ROBERTS. I bought it at 102 and at 115 and sold it at 30.

The CHAIRMAN. What year did you sell it?

Miss ROBERTS. I think it was in 1922. You see I had held it for some time.

Senator FLETCHER. You say since then you have bought and sold stock on the New York Stock Exchange?

Miss ROBERTS. Oh, yes.

Senator FLETCHER. With what brokers have you dealt?

Miss ROBERTS. Since that time?

Senator FLETCHER. Yes.

Miss ROBERTS. Well, I have dealt with several different brokers. I am not attacking brokers generally. There are honest brokers. There are perfectly good brokers. They suffer but they do not dare say a word, for if they did, they could not do business through the exchange. But in saying this I am not quoting any firm of brokers by name. I am not quoting any broker on that.

Senator FLETCHER. You having dealt with brokers of the New York Stock Exchange to begin with, I thought perhaps you wouldn't want to have anything more to do with brokers. I mean after the brokers you had dealt with to start with had robbed you.

Miss ROBERTS. Yes, sir; but don't you think there is a difference? If I wanted to buy some Norfolk & Western stock and I put in an order through a broker and purchased it, that is one thing. I was brought up—my father was a railroad president. I have always been interested in railroads, industrials, public utilities. I am interested in them. Now, it is one thing to put in an order and buy stock and it is another thing to have a broker urge you to buy something on the ground it was one of their stocks, on the ground that they are members of the board.

Senator FLETCHER. I quite understand that, but that seems to be inconsistent with the statement that you have just made that all of these brokers were perfectly honest and good men. You had nothing to say about the brokers.

Miss ROBERTS. I did not intend to say that. I intended to say this, that there is a large and powerful group of dishonest men who dominate the management of the New York Stock Exchange.

Senator FLETCHER. They are brokers?

Miss ROBERTS. They are brokers or they may be bankers.

Senator FLETCHER. Yes.

Miss ROBERTS. But they are there and they cover up a fraud when it is committed by a powerful, wealthy man. Mr. Hayden is a very wealthy man.

The CHAIRMAN. If that is all, thank you very much.

Miss ROBERTS. Do you wish any of these left [referring to data]?

The CHAIRMAN. The committee would like to have them and determine later how much of it should be placed in the record.

Miss ROBERTS. I do not know, sir, how much of this you want. There is a great deal here.

The CHAIRMAN. If you will leave it here we will return it to you.

Now, I want to say there were several other witnesses, but they are not here. after agreeing to be here. One was a lady who had lost very substantial sums, a lady who knew her story very well, but she is not here.

Senator COUZENS. How long ago, Mr. Chairman?

The CHAIRMAN. Rather recently. It had reference to Warner stocks.

Another one was a woman in this city, who looked like a very poor woman, who came in here complaining of losing \$1,500 in what seemed to be a fraudulent way. But when we asked her to come here she said, "No; I am not going to be written up in the newspapers and I would rather take my loss quietly."

There are only a few that have the courage to come and tell us their experience.

Miss ROBERTS. Might I say, I hope, Mr. Chairman, that the courage that those of us who have come have displayed will result in action by your very able committee.

The CHAIRMAN. I am sure that you have both been helpful to the committee this morning. We are striving to get a solution to better conditions and see if the market can not be such as to justify the confidence of the investor.

(The witness submitted the following exchange of correspondence between Senator Burton K. Wheeler, of Montana, and Richard Whitney, president of the New York Stock Exchange, involving certain court records and brokerage accounts, etc., which was ordered to be printed, as follows:)

#### CORRESPONDENCE BETWEEN SENATOR WHEELER AND MR. WHITNEY

UNITED STATES SENATE,  
Washington, D. C., February 1, 1932.

MY DEAR MR. WHITNEY: Miss Grace van B. Roberts, of Highland, N. Y., has called my attention to a decision by Judge Hasbrouck, of the Supreme Court of Ulster County, N. Y., in which the judge found that members of the firm of Hayden, Stone & Co. had by their actions perpetrated a fraud upon her by advising her to buy a stock known as Agwi when at the same time they were selling their stock. She informs me that she took this matter up with the business committee of the New York Stock Exchange, and that they were giving the matter consideration. Likewise, she informed me that you had written her telling her that you had the matter under your personal scrutiny but that you

could not see wherein this brokerage firm or its officers had done anything wrong.

I have had occasion to read the decision of the supreme court and am taking the liberty to write to you to ascertain if the New York Stock Exchange permits its members to advise their clients to buy a stock when they at the same time are selling it, and I should like to know whether or not you as president of the New York Stock Exchange believe that members who are found guilty of that practice should be permitted to be members of your exchange. I am frank to say to you that I had always felt that this was one practice that was not permitted by members of the New York Stock Exchange, and that if you or the business committee found that any member did that sort of thing he would be expelled.

Kindly advise me with reference to the above matters at your earliest convenience and greatly oblige.

Very truly yours,

BURTON K. WHEELER.

NEW YORK CITY, February 16, 1932.

MY DEAR SENATOR: I had hoped to acknowledge your letter of February —, 1932, many days ago, but have found that the work of reviewing this entire case, in which the file amounts to 300 or 400 pages, is taking so much time that my answer has been delayed and a final answer will be still further delayed, so that a proper and full consideration of the matter can again be given. I deeply regret if we have appeared negligent in the matter, but sincerely assure you that we have been giving your inquiry our closest attention and application. You may rest assured that you will have definite word from me at the very first opportunity.

Again with sincere regret at the unfortunate delay, believe me,

Faithfully yours,

RICHARD WHITNEY, *President.*

NEW YORK STOCK EXCHANGE.

OFFICE OF THE PRESIDENT.

New York, February 18, 1932.

Hon. BURTON K. WHEELER.

*United States Senate, Washington, D. C.*

MY DEAR SENATOR WHEELER: In further reference to your letter of February 1 with regard to the complaint of Miss Grace Van B. Roberts against the firm of Messrs. Hayden, Stone & Co., I beg to advise that the complete examination of this case has now been effected in accordance with the statement in my recent letter to you. Again I crave your forgiveness for the delay, but this review, as the remainder of this letter will perhaps point out to you, has been exceedingly lengthy and indeed arduous.

The complaint was brought to the attention of the committee on business conduct of the exchange in August, 1928. The committee made a careful investigation. It did not find that any member or members of the firm of Messrs. Hayden, Stone & Co. had misrepresented the condition of any company, nor did it find that any member of the firm had misrepresented his opinion as to the value of any securities which were being recommended to customers. Finally, the committee did not find that any member of the firm had sold securities at a time when he was recommending their purchase to customers of the firm. The committee was also advised by counsel for the exchange that the record in the case of *Roberts v. Hayden, Stone & Co.* in the Supreme Court, Ulster County, did not contain facts which clearly supported the decision reached by the court. The committee, therefore, came to the conclusion that there was no action that it could take.

On subsequent occasions Miss Roberts requested that the committee on business conduct, or that I, as president of the exchange, should reopen the matter. In accordance with her request, further investigations were made. Miss Roberts appeared before the secretary of the committee on business conduct and before meetings of the committee. Her elaborate statements were duly considered. Finally I myself investigated the whole matter and concluded that the action of the committee in dismissing the complaint was justified. In the course of these proceedings the entire record of the case in the supreme court was examined by the committee and on two occasions this record was submitted to counsel for the exchange for their opinion in regard to the

legal points involved. I can assure you, therefore, that few complaints submitted to the exchange have had such careful and thorough consideration.

In regard to the merits of the decision made by the committee, the facts disclosed that the transactions in Atlantic Gulf & West Indies stock, which formed the basis of Miss Roberts's action, took place in November and December, 1920. Upon the trial of the case of *Roberts v. Hayden, Stone & Co.* it appeared that in the fall of 1920 Mr. Richard Hoyt, one of the partners of the firm, was interested directly or indirectly in two joint accounts which were long of Atlantic, Gulf & West Indies stock, that one of these joint accounts sold stock in the latter part of December, 1920, and the other at some subsequent period in 1921. Miss Roberts purchased 100 shares of Atlantic, Gulf & West Indies stock on November 15, 1920; 50 shares on November 20, 1920, and 50 shares on December 1, 1920. According to her testimony these purchases were induced by Mr. Keyes, an employee of Messrs. Hayden, Stone & Co. Mr. Keyes testified that Mr. Hoyt had advised him to recommend the stock to customers. The testimony does not show precisely when this conversation between Mr. Hoyt and Mr. Keyes took place. Apparently it occurred in November, 1920, and presumably before November 15, the date of the first purchase by Miss Roberts.

Upon these facts the court decided to disregard completely the testimony of Mr. Hoyt to the effect that he was not aware of the unsatisfactory condition of the Atlantic, Gulf & West Indies Co. until the latter part of December, 1920. The court found that a fraud had been committed on the ground that Mr. Hoyt had misrepresented the condition of the company. The committee on business conduct is advised by counsel that the record does not support this conclusion.

The decision of the committee that there was no action it could take upon Miss Roberts's complaint was predicated not only on the foregoing facts but also on the long delay between the date of the transactions which formed the basis of the complaint and the presentation of the matter to the exchange. Miss Roberts's purchases of Atlantic, Gulf & West Indies stock took place in November and December, 1920. The judgment in her favor in the supreme court was given on November 20, 1920. It was not until August, 1923, that the matter was brought to the attention of the exchange. After a lapse of nearly eight years it was difficult, if not impossible, to ascertain what had actually happened. As you probably know from your own experience, the recital of the bare facts of a case without due consideration of the surrounding circumstances is often misleading. In the fall of 1920 many of our business enterprises still felt the stimulus of war conditions. They had shown surprising profits in 1919. But with the return to more normal conditions most of these companies found themselves, overnight, in a critical situation. This was undoubtedly true in the case of the Atlantic, Gulf & West Indies Co. A person could easily have recommended the purchase of this stock with entire good faith in November, 1920, and within two months have discovered that the company's prospects were not encouraging. The events of recent years have shown that disinterested and highly trained experts make recommendations and statements which in the light of subsequent events appear ridiculous. The optimistic statements of August, 1920, are hard to explain in the light of what took place in October; but the fact that such radical changes occurred within a few weeks does not establish that the optimists were making intentional misstatements.

In your letter you specifically ask the question whether or not the exchange permits its members to advise their clients to buy stock when they are, at the same time, selling it. The facts disclose that this did not occur in the Roberts case. The joint account in which Mr. Hoyt was directly interested did not sell any stock until December 21, 1920, and actually purchased stock as late as November 5, 1920. The account in which Mr. Hoyt was indirectly interested accumulated several thousand shares of stock during December, 1920. Miss Roberts's purchases were made between November 15 and December 1. These facts are contained in the record of the supreme court action, but the court either misinterpreted or overlooked this part of the testimony.

I feel that I should apologize for the length of this letter, but I have set out the facts of the complaint in detail in order to present clearly the basis and the justification for the exchange's refusal to take disciplinary action against the firm of Messrs. Hayden, Stone & Co.

Faithfully yours,

RICHARD WHITNEY, President.

NEW YORK STOCK EXCHANGE,  
OFFICE OF THE PRESIDENT,  
New York, February 25, 1932.

Hon. BURTON K. WHEELER,  
United States Senate, Washington, D. C.

MY DEAR SENATOR WHEELER: Yesterday in Washington I appeared before a subcommittee of the House Committee on the Judiciary. In the course of interrogations put me a question was raised in regard to the complaint of Miss Grace van B. Roberts against the firm of Messrs. Hayden, Stone & Co. I informed the committee of certain facts regarding this controversy, and also told them that I had written you in full very recently about this case and would be pleased to submit copies of my letter to you to the committee for their information, provided I had your permission to do so.

This I now ask, and sincerely hope that you will feel inclined to grant my request to give them copies of my letter written you under date of February 18.

Faithfully yours,

RICHARD WHITNEY, *President.*

UNITED STATES SENATE,  
February 29, 1932.

RICHARD WHITNEY,  
*President New York Stock Exchange, New York City.*

MY DEAR MR. WHITNEY: I have your letters of February 18 and 25, which I have noted.

With reference to your request for permission to submit copies of your letters to me to the House Committee on the Judiciary, I wish to state that it will be perfectly agreeable to me provided I can submit copies of my letters to you on this matter.

In your letter of the 18th you point out that the counsel for the exchange, in reviewing the decision rendered by the Supreme Court of the State of New York, advised you that the testimony given in that case did not support the decision of the court, a decision from which the defendants who were charged with fraud did not appeal. Since my interest is in the normal procedure of the stock exchange, would you be so good as to tell me whether the business conduct committee customarily accepts the advice of its counsel rather than the final judgment of a court? I am informed that the secretary of the business conduct committee told Miss Roberts that no member of the stock exchange ever lost a case tried before a judge without a jury in New York County, but your letter throws the first light upon the attitude of the stock exchange toward decisions adverse to its members that are rendered outside of New York County.

The court that heard the case would seem to me to be a much better tribunal than the business conduct committee of the stock exchange, and it is difficult for me to understand how you could ignore the final decision of the court which found the defendants guilty of fraud.

Passages in your letter lead me to believe that your counsel had not fully informed you as to the testimony given at the trial. You write, "The joint account in which Mr. Hoyt was directly interested did not sell any stock until December 21, 1920." Mr. Hoyt testified that his and Mrs. Hoyt's joint account had sold 1,000 shares of stock by June 1, 1920, while after April 1, 1920, it purchased no Atlantic, Gulf & West Indies stock except the 100 shares on November 5, that you mention.

It would be a simple matter to indicate other points in the testimony which I believe your advisers can not as yet have called to your attention, which would lead you to modify your strictures upon the supreme court. For example, Mr. Hoyt said that he averaged about par in the sale of his Atlantic, Gulf & West Indies stock, which would fix the date at approximately the time when Miss Roberts was urged to buy her stock. Instead of multiplying illustrations now, I think you may find it more to your purpose to turn to the testimony yourself without waiting for me to analyze it further.

In the meantime I look forward with deepest interest to your enlightening me as to your policy in regard to the questions I ask in my letter.

Respectfully yours,

BURTON K. WHEELER.

NEW YORK STOCK EXCHANGE,  
OFFICE OF THE PRESIDENT,  
New York, March 14, 1932.

HON. BURTON K. WHEELER,  
*United States Senate, Washington, D. C.*

DEAR SENATOR WHEELER: I beg to acknowledge receipt of your letter of February 29 in regard to the complaint of Miss Grace van B. Roberts against the firm of Messrs. Hayden, Stone & Co., and I regret that my answer has been delayed by my absence from New York in the South, and also by the fact that I felt it necessary to review the entire case in every detail with counsel, which has been done.

Your question as to the reliance which the exchange places on the advice of its counsel can best be answered by setting forth the facts of the situation which called for an opinion of counsel in the Roberts case. Miss Roberts brought a civil suit for damages against Hayden, Stone & Co. in the Supreme Court of New York State. The court concluded that there was evidence of an actionable fraud and awarded money damages as compensation for the injury which the plaintiff had suffered. The complaint which Miss Roberts subsequently presented to the business conduct committee requested disciplinary action by the exchange against Hayden, Stone & Co. The committee submitted the decision and record in the civil suit to its counsel for an opinion as to the legal effect of the decision.

The committee was advised that the record did not contain facts which clearly showed that any member or members of the firm of Hayden, Stone & Co. had consciously or recklessly misstated the condition of the Atlantic Gulf & West Indies Co. with the intention of deceiving Miss Roberts or any other customer of the firm. Counsel pointed out that there was no evidence that any member of the firm had done more than express an opinion in regard to the Atlantic Gulf & West Indies Co. and advise the purchase of its stock. There was no evidence that this advice was given with a fraudulent intent. In the opinion of counsel the inference that Hayden, Stone & Co., because some of the members of the firm were directors of Atlantic Gulf & West Indies Co., had actual knowledge that the company was in poor financial condition at the time when Miss Roberts was advised to purchase its stock, was completely rebutted by the fact that members of the firm were buying its stock for their own account after the date of the last purchase by Miss Roberts.

In view of this opinion of counsel the committee felt itself free to reach an independent judgment on the merits of the question submitted to the committee. After a thorough examination of the case, including the record before the supreme court, the committee reached the conclusion that there was insufficient evidence to show that any member of the firm of Hayden, Stone & Co. had intentionally or recklessly misstated the condition of the Atlantic Gulf & West Indies Co. with the intention of deceiving or defrauding Miss Roberts. Upon reconsideration of the case on subsequent occasions the committee reached the same conclusion. At my request counsel have also reexamined the entire record of the case and I am now advised that they adhere to the original opinion given to the committee.

In your letter you refer to the fact that I did not mention the sale of 1,000 shares of stock in Mr. and Mrs. Hoyt's joint account in June, 1920, and suggest that this may have been due to the fact that counsel did not call it to my attention. I was aware of this sale, but as I was discussing whether there was evidence to show that Mr. Hoyt had sold stock at the time Miss Roberts was advised to purchase it, I felt that a sale by Mr. Hoyt four and a half months before Miss Roberts made her first purchase was too remote to have any bearing on the case.

Finally, your letter suggests that inasmuch as Mr. Hoyt averaged about par for the stock which he sold it must have been sold at the time when Miss Roberts was buying. On page 55 of the stenographic transcript of the record in the supreme court you will find a list of the exact sales of Atlantic Gulf & West Indies stock made by Mr. Hoyt. This record shows that Mr. Hoyt did not sell any stock during the period when Miss Roberts was purchasing.

I thank you for your permission to submit copies of my letter to you of February 18, 1932, to the House Committee on the Judiciary. I have availed myself of this permission and naturally I am entirely willing that your

letters to me be likewise submitted. May I also ask whether you agree to my sending copies of this present letter to the committee?

With appreciation for your interest and trusting that I have made myself clear as to the facts in this case, believe me,

Faithfully yours,

RICHARD WHITNEY, *President.*

WASHINGTON, D. C., March 22, 1932.

HON. RICHARD WHITNEY,  
*President New York Stock Exchange, New York, N. Y.*

MY DEAR MR. WHITNEY: I am in receipt of your letter of March 14 and note what you say.

In reply would say that I am perfectly willing that you should submit copies of any letters to me to the committee.

Yours very truly,

BURTON K. WHEELER.

THE UNITED STATES SENATE,  
April 21, 1932.

MR. RICHARD WHITNEY,  
*President the New York Stock Exchange, New York, N. Y.*

MY DEAR MR. WHITNEY: Owing to the fact that I have been out of the city I have neglected taking up the points made by you in your letter of March 14.

It is evident that you and I disagree, not only as to the facts in the case but likewise upon the attitude that should be taken by the stock exchange when a member has been found guilty of fraud. If the stock exchange can justify their actions in this case, then surely it would be extremely difficult to find a case where any member could be ousted from the New York Stock Exchange for defrauding the public.

Very truly yours,

B. K. WHEELER.

Senator COUZENS. There is a matter, Mr. Chairman, that I would like to take up in executive session if you are through now.

The CHAIRMAN. Yes. We will now go into executive session.

(Whereupon, at 11.30 o'clock a. m. the committee concluded the hearing of witnesses and proceeded to executive session.)