and hence beyond the scope of judicial interference. If it is not satisfactory in the long run, the only proper recourse is to amend the act or to change the composition of the board.

Administrative Law—Licenses—Right of Securities and Exchange Commission to Make Public Investigatory Findings in Advance of Hearing—[Federal].—A corporation, attempting to register shares of its capital stock under Sections 12(b) and 13(a) of the Securities Exchange Act of 1934,[1] filed a registration statement with the Securities and Exchange Commission, including with its application balance sheets, profit and loss statements and financial information pertaining to its principal subsidiary, a national bank. To facilitate the usual examination of the application, the commission requested and received from the Secretary of the Treasury authorization to study and make "public official use" of reports of the national bank examiners to the Comptroller of the Currency. Upon examination of all available information, including bank examiners' reports, the commission concluded that it had reasonable grounds to believe that the registration statement contained numerous false and misleading statements of fact and issued an order directing that a hearing be held to determine whether a stop order should issue suspending or withdrawing the effectiveness of the registration. The order enumerated specific "false and misleading statements" in the application, and, more particularly, in the balance sheets and profit and loss statements of the corporation and its subsidiaries. Although the corporation's principal subsidiary was not named in the order for a hearing, subpoenas duces tecum were issued to two of its officers. On the morning of the day set for the commission's hearing the corporation's principal subsidiary applied to the federal district court for a declaratory judgment and an injunction restraining the commission from securing information from national bank examiners' reports and from enforcing the subpoenas. The trial court dismissed the complaint. On appeal, *held*, that the commission had power to investigate a national bank; the Secretary of the Treasury had authority to deliver bank examiners' reports to the commission; such reports should be treated as confidential by the commission; the subpoenas were unreasonable in the form drawn because of the amount of material demanded to be brought to Washington. The judgment of the district court was affirmed in part, reversed in part, and the cause was remanded. *Bank of America National Trust & Savings Association v. Douglas et al.*[2]

Section 21(a) of the Securities Exchange Act of 1934 provides that, in order to detect violation of the act, the Securities and Exchange Commission may exercise extensive powers of investigation.[3] In the present case, the court held that by virtue of Sec-

[1] 48 Stat. 881 (1934), 15 U.S.C.A. § 78a (1934).

[2] 105 F. (2d) 100 (App. D.C. 1939).

[3] "The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates." During the year ending June 30,

tion 21(a) the commission had authority to investigate appellant bank as a subsidiary of the registrant;[4] and that the commission had a right to make use of the bank examiners' reports "to obtain the necessary facts and information . . . . to carry out [its] investigatory functions."[5] In seeking to prevent the use of such reports, the bank contended that they were confidential and could not be made public.[6] The Securities and Exchange Commission's position was that the reports were only used for investigatory purposes and would not be made public, or even used as evidence at the hearing.[7] No argument, however, was presented by either party with respect to the legality of pre-hearing disclosure of material other than bank examiners' reports.[8] The court nevertheless held not only that the Treasury department information involved should not be made public, but also that the commission should be prohibited from distributing its orders to show cause in advance of hearing. ". . . . Lacking specific congressional authorization, we think . . . . pre-trial publication of evidence—labeled as believed to be true—ought . . . . to be avoided. . . . ."[9]

The plausibility of this dictum arises principally from the fact that the Securities Exchange Act does not expressly sanction pre-hearing disclosure of evidentiary facts procured by investigation. On the other hand, no section of the act expressly forbids

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1938, 10,200 members of the public sought information in person at the main offices of the commission in Washington; another 10,600 in New York and 3,100 in Chicago. SEC Ann. Rep. 93 (1938). The majority of the investing public, of course, derives financial information from newspapers, magazines, financial services, brokers and prospectuses of corporations in which they are interested. Information concerning activities of the commission is made available to such agencies in mimeographed releases. Since the commission was organized, 2,082 releases have been issued pertaining to the Securities Act of 1933; 2,294 pertaining to the Securities Exchange Act of 1934; and 1,769 pertaining to the Public Utilities Act of 1935 (figures as of November 1, 1939).

[4] Section 13(b) does not exclude banks from the scope of the act. During discussion of the bill in the Senate, an amendment to except banks from provisions of the act was rejected, 78 Cong. Rec. 8589 (1934).

[5] Despite the apparent conflict in congressional purposes as evidenced by the Securities Exchange Act and the laws (Rev. Stat. § 5211 (1875), 12 U.S.C.A. § 161 (1934)) giving plenary authority to the Comptroller of the Currency to supervise operations of banks, the court decided in the principal case that examination of the affairs of a national bank by the commission was not an exercise of visitorial powers. Visitorial powers refer only to the authority to regulate and supervise banking practices, First Nat'l Bank of Youngstown v. Hughes, 6 Fed. 737 (C.C. Ohio 1881), app. dism. 106 U.S. 523 (1882); Territory of Alaska v. First Nat'l Bank of Fairbanks, 22 F. (2d) 377 (C.C.A. 9th 1927). For a discussion of the commission's use of the bank examiners' reports, see Inquisitorial Powers of Federal Administrative Agencies, 48 Yale L. J. 1427, 1430 (1939).

[6] Brief for Appellant at 16, 43–7, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939).

[7] The court notes this, but did not have to determine the admissibility of the reports as evidence. Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100, 105 (App. D.C. 1939).

[8] The opinion would seem to be inconclusive because of the irregular procedure by which this issue was raised. An appellate court will generally not consider questions not properly presented below (Duignan v. United States, 274 U.S. 195, 200 (1927)), particularly when governmental agencies are involved, Blair v. Oesterlein Machine Co., 275 U.S. 220, 225 (1927)

[9] Bank of America Nat'l Trust & Savings Ass'n, 105 F. (2d) 100, 105 (App. D.C. 1939).

pre-hearing disclosure. The only relevant section, Section 21(a),[10] authorizes the commission "in its discretion, to publish information concerning any . . . . violations [under investigation]." It may fairly be implied from Section 21(a) that the legislative intent was to give the commission broad privileges to release publicity, and one circuit court of appeals has regarded it as settled that the agency has discretion to publicize information disclosed by investigation.[11] At the time that Section 21(a) was considered and enacted, other administrative agencies, including the Federal Trade Commission, regarded pre-trial publicity as a well-settled practice.[12] Since the Securities and Exchange Commission procedure was modelled on that of the Federal Trade Commission, the presumption arises that Congress intended to give to the Securities and Exchange Commission the power to release charges in advance of hearing.[13]

Such a view is particularly persuasive inasmuch as Congress, by enacting the Federal Register Act,[14] sanctioned publication of orders of federal agencies. Moreover,

[10] Quoted in full in note 3 supra.

[11] "Provision is made that the Commission may in its discretion publish the information obtained. While this latter authority gives an advantage which might be abused, this is not a sufficient reason to forbid or restrain this preparatory investigation. . . . . The investigation makes no determination or decision between parties. . . . ." The court is apparently relying on Section 21(a) of the Securities Exchange Act, although Section 21(a) is not cited. In re SEC, 84 F. (2d) 316, 317 (C.C.A. 2d 1936), rev'd sub nom. Bracken v. SEC, 299 U.S. 504 (1936), on the ground that the cause was moot.

[12] In drafting the Securities Act of 1933 (48 Stat. 74 (1933), 15 U.S.C.A § 77a (1934)) and the Securities Exchange Act of 1934 (48 Stat. 881 (1934), 15 U.S.C.A. § 78a (Supp. 1938)), Congress drew heavily on the language of, and practices incorporated in, the Federal Trade Commission Act (38 Stat. 717 (1914), 15 U.S.C.A. § 41 (1934)). Indeed, the Federal Trade Commission was originally given the task of administering the Securities Act of 1933. Section 6(f) of the Federal Trade Commission Act gives the agency power "To make public from time to time such portions of the information obtained . . . . except trade secrets and names of customers, as it shall deem expedient in the public interest, ..." Section 24(a) of the Securities Exchange Act likewise protects the revelation of trade secrets.

The practice of issuing explanatory statements with its complaints, stating the charges against a respondent, was abolished by the Federal Trade Commission on April 30, 1925, by a vote of 3–2, FTC Ann Rep. 111 (1925). The practice was resumed on February 7, 1934, and has been continued since, FTC Ann. Rep. 6 (1934). Between 1925 and 1934 publications of the commission continued to describe the procedure of the agency as follows: "A complaint . . . , charges a violation of law, with a statement of the charges." See, e.g., FTC Ann. Rep. 41 (1928). This description is repeated in the 1937 report, with the addition; "The complaint and the answer of respondent thereto and subsequent proceedings are a public record." FTC Ann. Rep. 38 (1937).

The Federal Power Commission follows a similar practice. See, e.g., Fed. Power Com'n Rel. 803 (9–99) (Mar. 1, 1939), summarizing charges that gas rates "are excessive, unreasonable and unlawful within the meaning of the Natural Gas Act." The National Labor Relations Board makes its complaints a matter of public record.

The Interstate Commerce Commission follows a different procedure, allowing a carrier, named in a petition from a complaining party, to satisfy the complaint or answer it privately without publicity before any formal action is undertaken, 4 Sharfman, The Interstate Commerce Commission 152 (1937).

[13] Cf. Copper Queen Mining Co. v. Arizona Board, 206 U.S. 474 (1907); United States v. Farrar, 281 U.S. 624, 634 (1930).

[14] 49 Stat. 500 (1935), 44 U.S.C.A. § 301 (Supp. 1938).

rules promulgated by the administrative committee of the Federal Register specifically require publication of the complete text of orders for hearing issued by the Securities and Exchange Commission.[15] If such orders are to be sufficiently informative to give defendants the notice required by the second *Morgan* case,[16] they must recount the details of alleged illegal conduct. Orders for hearing must be particularly lucid since the commission has ruled that it may deny any defendant a bill of particulars.[17] Furthermore, a careful consideration of the order in the principal case[18] fails to support the view that the commission was guilty of pleading "evidence" rather than "ultimate facts."[19] There also seems to be no reason why the substance of an order for hearing should not have been released directly to the public through the press and financial services when such groups could inform themselves of the charges against a respondent by consulting the Federal Register.

Whether or not Congress had any intent with respect to the instant question, it clearly made a constitutional delegation of power[20] to the Securities and Exchange Commission "to fill in the details" of the statutory procedure. The commission's efforts to canalize its actions within the legislative standard should accordingly not be nullified by a court unless ultra vires, inconsistent, or generally challenged as unfair. Barring

[15] 3 Fed. Reg. 1013, 1025 (1938). These rules should be read together with Section 19(a)(2) of the Securities Exchange Act. In the principal case the court recognizes this argument, but said that "the rule does not require the publication .... of evidentiary facts," Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100, 105 (App. D.C. 1939).

[16] Morgan et al. v. United States et al., 304 U.S. 1, 18 (1937).

[17] In the Matter of M. J. Meehan, 1 SEC 238 (1935); In the Matter of Charles C. Wright, 1 SEC 482 (1935) (certain particulars furnished); Redmond, The Securities Exchange Act: An Experiment in Administrative Law, 47 Yale L. J. 622, 637 (1938); cf. In the Matter of Walston & Co. et al., Sec. Ex. Act Rel. 2149 (1939) (denying a bill of particulars). The Securities and Exchange Commission has followed the precedent of the Federal Trade Commission, FTC Ann. Rep. 54 (1918).

[18] In the Matter of Transamerica Corporation, Sec. Ex. Act Rel. 1950 (1938).

[19] See the discussion in Clark, Code Pleading 150 passim (1928). The court in the principal case uses the phrases "notice of the evidentiary facts" and "pre-trial publication of evidence," Bank of America, Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100, 105 (App. D.C. 1939).

[20] Cf. McMann v. SEC, 87 F. (2d) 377, 379 (C.C.A. 2d 1937), cert. den. sub nom. McMann v. Engel et al., 301 U.S. 684 (1937); Jones v. SEC, 79 F. (2d) 617, 621 (C.C.A. 2d 1935). The system of delegated legislation, in England as well as in America, is both legitimate and constitutional. Cf. Hampton & Co. v. United States, 276 U.S. 394, 406 (1928); Cuthbert Pound, Constitutional Aspects of Administrative Law, in Growth of American Administrative Law 118 passim (1923); Frankfurter, A Discussion of Current Developments in Administrative Law: Forward, 47 Yale L. J. 515, 518a (1938). The classic reasons for delegation are: pressure on Congress' time, technicality of subject matter, unforeseen contingencies, flexibility, opportunities for experiment, and emergencies. Cf. Report of Committee on Minister's Powers 51 (Cmd 4060, 1936). In Panama Refining Co. v. Ryan, 293 U.S. 388, 431 (1935), the Supreme Court of the United States expressed the view that the legislature must establish a basic standard in its delegation of authority to an administrative agency, and that the agency in turn must make an express finding to indicate that it is acting within the limits set by the legislature. Such a limitation is of doubtful utility as a practical safeguard because the agency can meet the requirements with vague language concerning the standard, Cooper, Administrative Justice and the Role of Discretion, 47 Yale L. J. 577, 587 (1938).

some such cogent reason for voiding administrative action, a court should adopt the attitude that judicial supervision over administrative action does not concern itself with the quality or propriety of administrative activity.[21] As one circuit court of appeals has described the Securities and Exchange Commission: "As a fact-finding body, [it] performs a function similar to that of a grand jury, 'the scope of whose inquiries is not to be limited narrowly by questions of *propriety* or *forecasts of the probable result* of the investigation.' "[22] While it is true that government administrative officials in policy-making positions are not civilly liable for damages as a result of their activities,[23] they are responsible to the executive, and, in a larger sense, to the people. It may be argued, also, that the judiciary will probably not do a better job of management (by means of judicial review) than will the executive operating through administrators who are in daily contact with their subject matter. Furthermore, since the quality of administration, like the quality of judicial decision, depends ultimately upon the kind of men who can be attracted to positions of responsibility within the political framework,[24] extensive supervision of administrators by courts may well be deemed of dubious value.

The optimum quantum of pre-hearing publicity must be determined in each particular case, whether the determination be by the Securities and Exchange Commission, the administrative committee of the Federal Register, or by the court. In the present case the Bank of America sought an adjudication of the wisdom of the commission's activities by contending that such activities, and more particularly, publication of information obtained from bank examiners' reports, would cause irreparable injury.[25] Numerous Supreme Court decisions make it doubtful that a court should entertain a suit to enjoin a federal commission on a mere allegation of irreparable injury.[26] On the authority of *Utah Fuel Co. v. National Bituminous Coal Commission*,[27] however, the

[21] Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 315 (1933); Fawcus Machine Co. v. United States, 282 U.S. 375 (1931); United States v. Moore, 95 U.S. 760, 763 (1877); Cooper, op. cit. supra note 20, at 601.

[22] (Italics added.) Woolley v. United States, 97 F. (2d) 258 (C.C.A. 9th 1938), citing Blair v. United States, 250 U.S. 273 (1919).

[23] The suit of J. Edward Jones against members of the Securities and Exchange Commission, charging a malicious conspiracy against him, and specifying acts of "persecution and tyranny," was dismissed by a federal district court on October 6, 1939 (Chicago Tribune, § 2, col. 1, p. 20, October 7, 1939). Cf. Standard Nut Margarine Co. of Florida v. Mellon et al., 72 F. (2d) 557 (App. D.C. 1934), cert. den. 293 U.S. 605 (1934) (head of executive department of federal government cannot be held in damages for acts done by him in relation to matters committed by law to his control or supervision); Yaselli v. Goff, 12 F. (2d) 396 (C.C.A. 2d 1926), aff'd 275 U.S. 503 (1927) (special assistant to attorney general is not civilly liable if in discharge of his official duties he acted maliciously).

[24] Cooper, op. cit. supra note 20, at 600.

[25] Brief for appellant, at 13, 67–70, and reply brief for appellant, at 44–7, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939).

[26] Note 27 infra.

[27] 306 U.S. 56 (1939). Prior to the Utah Fuel case numerous decisions held that attempts to enjoin administrative acts because of a supposed or threatened injury would lead to constant delays, rendering orderly administrative procedure impossible. Fed. Power Com'n v. Metropolitan Edison Co., 304 U.S. 375 (1938); Myers v. Bethlehem Shipbuilding Co., 303 U.S. 41 (1938); United States v. Los Angeles & S.L.R., 273 U.S. 299 (1927); Bradley Lumber

Court of Appeals for the District of Columbia accepted the cause as one of which a court of equity might properly assume jurisdiction. Any other result, it was concluded, would prevent the plaintiff bank from securing a hearing on the merits.[28] This conclusion is justified since the plaintiff bank was not a registrant under the Securities Exchange Act, and therefore could not avail itself of the procedures and remedies prescribed by the act.[29] Although the district court had expressly found the contention of irreparable injury to be without merit,[30] the Court of Appeals stated: "The specifications of alleged misconduct are so serious in their implications as to warrant the Commission in characterizing them as having, potentially, criminal aspects 'which may yet lead to criminal prosecutions,' and are set out in such meticulous detail, as, backed by the great power of the Commission, to cause serious prejudice to the Bank and bring it, in advance of hearing, into public disrepute."[31] To sustain the allegation of irreparable injury, the bank argued that continuance of the commission's activities would cause expense and inconvenience to the bank, and publicity resulting in loss of confidence on the part of borrowers, depositors, and stockholders.[32] It should be noted in passing that expense and inconvenience alone have seldom been regarded as injuries justifying the intervention of equity.[33] It must be admitted, nevertheless, that the risk that publication of serious charges against a bank may precipitate depositors'

Co. v. NLRB, 84 F. (2d) 97 (C.C.A. 5th 1936), cert. den. 299 U.S. 559 (1936); SEC v. Andrews, 88 F. (2d) 441 (C.C.A. 2d 1937). The Court of Appeals for the District of Columbia, in the Utah Fuel case (101 F. (2d) 426 (App. D.C. 1938)), cited this line of authority in ruling that it had no jurisdiction over the controversy, a suit by a coal producer to enjoin disclosure of information filed with the National Bituminous Coal Commission. The Supreme Court, however, rejected the view of the court below, but affirmed the dismissal of the suit on the grounds given by the district court, namely, that the complaint had not stated a cause of action inasmuch as Congress had authorized the commission to collect and publish the data in question. Compare the Utah and Bank of America cases with Hearst v. Black, 87 F. (2d) 69 (App. D.C. 1936). In this case the court held that a "dragnet seizure" of private telegrams is a trespass which may be enjoined, but that the court was without jurisdiction to restrain a Senate committee from keeping the messages once obtained, or from making use of them, or from disclosing their contents. In the Bank of America case the use of the bank examiners' reports by the Securities and Exchange Commission was sanctioned (note 5 supra), although publicity was not.

[28] Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100, 102 (App. D.C. 1939); Inquisitorial Powers of Federal Administrative Agencies, 48 Yale L. J. 1427, 1433 (1939).

[29] § 24(b) (providing for application for non-disclosure of information filed with commission); § 25(a) (providing for court review of the commission's orders). Cf. Newfield v. Ryan, 91 F. (2d) 700 (C.C.A. 5th 1937).

[30] Record on Appeal, at 25, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939).

[31] Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100, 105 (App. D.C. 1939).

[32] Note 25 supra.

[33] Petroleum Exploration Co. v. Public Service Com'n, 304 U.S. 209, 222 (1938); Condenser Co. of America v. Delaney et al., 18 F. Supp. 611 (D.C. N.J. 1937) and cases cited. In the Bank of America case the bank won, in effect, a transfer of the site of the hearing from Washington to San Francisco, where its headquarters are located.

"runs" is one which may not be lightly disregarded. The banking business in its very nature depends upon public confidence;[34] a bank run may be particularly grave if it threatens the existence of one of the nation's largest banks.[35]

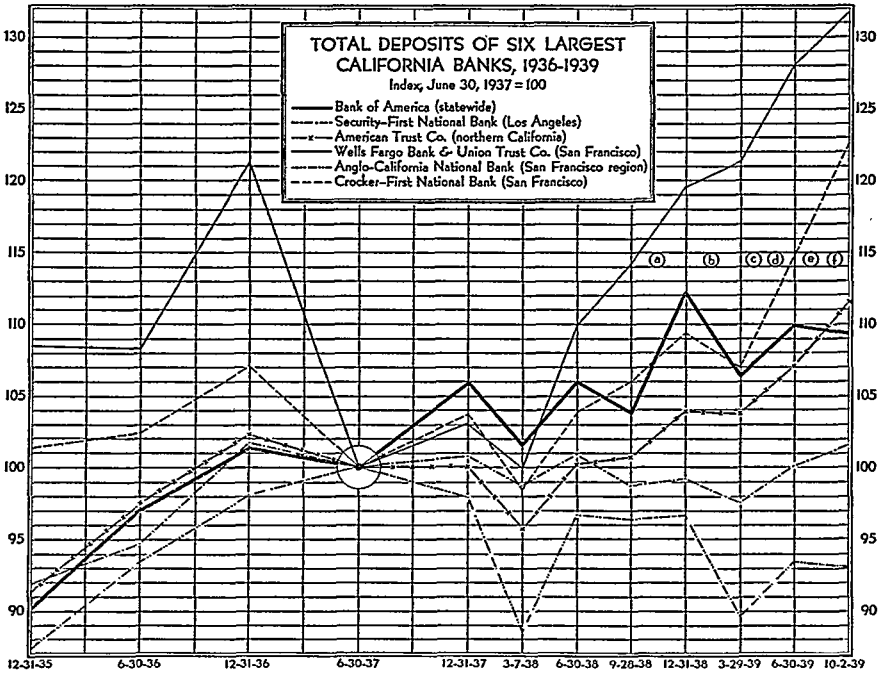
The record in the present case does not lend credit to the notion that pre-trial publicity is by itself sufficient to provoke serious depositor and stockholder reaction. Total deposits in the Bank of America increased during the three-month period in which the charges against Transamerica Corporation were released,[36] and fell in the succeeding three months. Since the decline was then checked,[37] the reaction appears to have been

[34] Cf. reply brief for appellant, at 44–7, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939). Cf., also, 212 Saturday Evening Post, No. 5, at 55 (July 29, 1939) in which Professor Moley makes public for the first time the critical position of the Bank of America in the 1933 bank crisis.

[35] The Bank of America, with 495 branches, does business in 308 communities in California. It has more than 2,200,000 depositors, and its borrowers number more than 600,000. Reply brief for appellant, at 47, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939).

[36] In the Matter of Transamerica Corporation, Sec. Ex. Act Rel. 1950 (1938).

[37] The following chart, compiled from published statements of conditions, shows total deposits of leading California banks (deposits as of June 30, 1937 = 100):



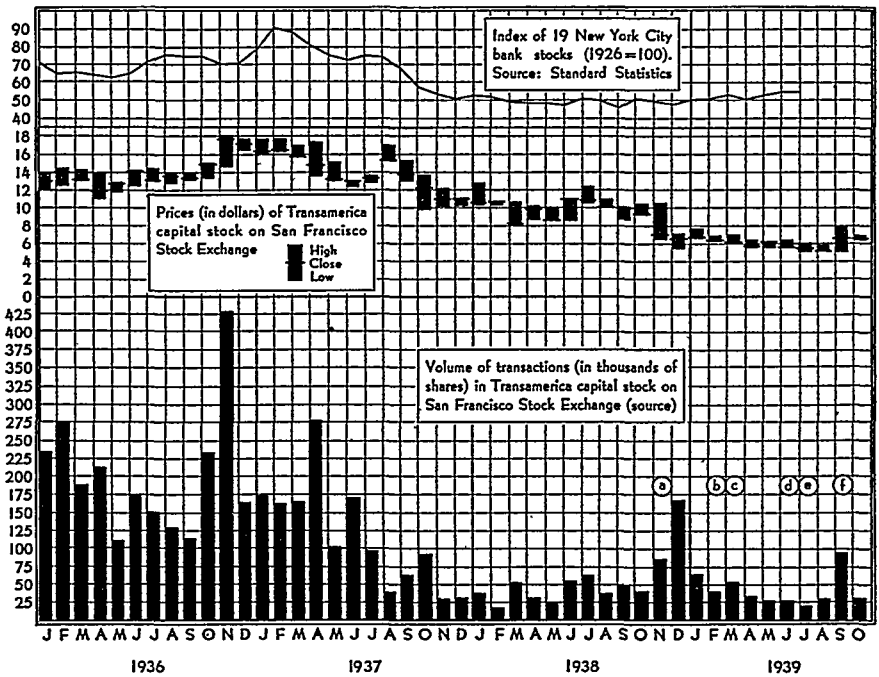
Symbols: (a) Order for hearing issued in the matter of Transamerica Corporation (note 36 supra); (b) Bank of America's suit dismissed in district court (note 30 supra); (c) Civil suit filed by SEC against Bank of America and affiliates (note 42 infra); (d) Unfavorable publicity to Bank in Walston hearings (notes 42 and 49 infra); (e) Hearings in Transamerica case resumed in San Francisco; (f) War in Europe; increased business activity.

no greater than reactions precipitated at other times by other factors. An official of the appellant bank in effect admitted the significance of the deposit record when he testified, upon cross-examination, that the Bank of America was immune to a loss of confidence on the part of depositors.[38] The publication of the commission's order did result in a sharp decline in the prices of Bank of America and Transamerica stocks and in accelerated market activity in Transamerica,[39] although it should be noted that the price of the $2 par Transamerica stock had been falling since it was issued in August, 1937, and that the total number of transactions had been irregular for several years.

[38] Record on Appeal, at 49, Bank of America Nat'l Trust & Savings Ass'n v. Douglas et al., 105 F. (2d) 100 (App. D.C. 1939).

[39] Bank of America stock, 99.65 per cent of which was owned by Transamerica Corporation until July 15, 1937, when forty-two per cent was distributed to Transamerica stockholders, is not listed on any stock exchange. Over-the-counter quotations, compiled in 11 and 12 Bank and Quotation Record (1938 and 1939), show 46 bid, 48½ asked during November, 1938 (date of first SEC order); 33⅛ bid, 35⅝ asked during December; 31¾ bid, 34¾ asked during April, 1939; and 36½ bid, 39 asked during September (war in Europe). Par is $12.50.

Transamerica Corporation shares ($2 par) are listed on the New York, San Francisco, and Los Angeles stock exchanges. The following chart shows the monthly volume of transactions on the San Francisco Stock Exchange for 1936, 1937, 1938, and the first ten months of 1939, as well as the high, low, and closing prices of each month:



For explanation of symbols (a)–(f) see note 37 supra. During period 1936–7 Transamerica subsidiaries allegedly engaged in manipulative market activities (notes 42 and 43 infra).

There is little basis for assuming that the public response would have assumed a less serious pattern if the commission had made pre-trial disclosure only of the fact that it was instituting action against the Transamerica Corporation.[40] Complete suppression of pre-hearing disclosure would at most delay unfavorable depositor and market reaction until the time of trial. It would, moreover, permit "insiders" to obtain an advantage in transactions in the security affected prior to a public hearing.[41] It must be remembered, finally, that the informed reaction resulting from publicizing details of market manipulation[42] may be no greater than the uninformed or misinformed reaction consequent upon public unawareness of the existence of manipulative transactions.[43]

In opposition to the bank's claim of public interest in pre-trial non-disclosure must be posed the view, underlying the Securities Exchange Act, that public knowledge of the influences preventing the stock exchanges from operating as perfect markets is essential to the proper working of stock exchanges.[44] In such a view there is prima facie no sufficient reason for delaying the protection of investors and other beneficial results which are supposed to result from disclosure.[45] Another rationale of disclosure is that publicity makes for a more enlightened public opinion.[46] While it is true that

[40] The most serious danger in instituting proceedings with a mere general allegation would seem to be the possibility that such cases might become mere fishing expeditions launched in the hope that evidence might be found, Redmond, The Securities Exchange Act of 1934: An Experiment in Administrative Law, 47 Yale L. J., 622, 639 (1938).

[41] Consider the remedy against "insiders" offered by Section 16(b) of the Securities Exchange Act, the purpose of which is to "prevent . . . . the unfair use of information."

[42] The Securities and Exchange Commission's charges that subsidiaries of Transamerica Corporation and other named parties had engaged in stimulating market activity in Transamerica and Bank of America stock were not only contained in the first order for hearing (Sec. Ex. Act Rel. 1950 (1938)), but were embraced in a civil suit against Transamerica subsidiaries (SEC v. Timetrust, Bank of America et al., File No. 21180-L (D.C. Cal. 1939)), and in an order for hearing on the question of revoking the registration of a San Francisco brokerage house. In the Matter of Walston & Co. et al., Sec. Ex. Act Rel. 2093 (1939).

[43] Cf. the assertions made during the Pecora investigation to the effect that it was "usual and customary" for stock pool operators to pay newspaper writers for publicity and propaganda disguised as financial news, S. Rep. 1455, 73d Cong. 2d Sess., at 44 (1934). Congressman F. H. LaGuardia submitted documentary proof that one publicity man had expended $286,279 for the publication of articles favorable to certain stocks. See, also, 148 Nation 582 (May 20, 1939) (comment on court testimony of the financial editor of the New York World-Telegram that he had received $1,542 from J. Edward Jones, promoter under investigation by the Securities and Exchange Commission). See also notes 39 and 42 supra.

[44] Cf. Ripley, Wall Street and Main Street 152 passim (1927).

[45] For a discussion of the classes of investors protected, see 6 Univ. Chi. L. Rev. 492, 493 (1939).

[46] Bentham, The Theory of Legislation 432 (Ogden's ed. 1931). Note, also, the public interest in activities of the federal government. In a survey of space devoted to publicity of federal agencies for a seven-week period in the New York Times (February 3–April 18, 1937, and July 21–27, 1937), it was found that attention given to the Securities and Exchange Commission was second only to that accorded the President. The study was of Washington news which could be attributed to one of the thirty-nine agencies mentioned in the newspaper during the period. The scores of three other administrative agencies are given below for com-

abuse of an administrative agency's discretion to disclose may be dangerous,[47] it is equally true that "There are dangers in spreading a belief that untruths and half-truths . . . . are to be ranked as peccadillos, or even perhaps as part of the amenities of business. When wrongs have been committed or attempted, they must be dragged to light and pilloried."[48] If a rule of secrecy should be imposed on the administrative agency in matters involving the interest of the investing public, what rules should restrict disclosure by business interests? How is the investor to react when he reads that a corporation official or banker has attacked the Securities and Exchange Commission?[49] Such statements would appear if the order for a hearing was only a paragraph long and contained no specification of charges.[50]

Bankruptcy—Reorganization—Jurisdiction under Section 77B to Set Aside Sale of Bonds—[Federal].—Two years after the court approved a voluntary petition for reorganization under Section 77B of the Bankruptcy Act, the bondholders' committee, without court authorization or ratification, sold to the sole stockholder of the debtor $264,000 worth of bonds out of a total of $446,000 outstanding, at 62 per cent of their

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parison. The qualitative analysis was made by assigning arbitrary weights to headlines (size and width) and length of items. E.g., a one column story received a weighting of four.

Type of Story	President	SEC	ICC	FTC	NLRB
Effort to Influence Legislation	146		7.5	9	6
Effort to Influence Policy	119	18			
Progress, Policy, Procedure	212.5	66	19.5		6.5
Facts from Records and Research		100.5	12.5		
What Agency Does and How	28		6		13.5
Personnel News	276.5	11			
Feature Stories	30.5		4.5		
Decisions and Rulings	11	49.5	82.5	13.5	27
Applications, Answers, Complaints		139	52.5	101	6.5
Hearings, Schedule, Testimony		243	42.5	16	39
Score	823.5	627	227.5	139.5	98.5
Total Number of Items	177	137	66	39	18

(Adapted from McCamy, Government Publicity 62–4 (1939).)

[47] Jones v. SEC, 298 U.S. 1, 32 (1936) (dissenting opinion of Mr. Justice Cardozo).

[48] Ibid.

[49] Cf. 30 Time, No. 7, at 51 (August 16, 1937) (response in press of president of Transamerica Corporation to private warning by San Francisco Stock Exchange); The Coast 39 (September, 1939) (remarks of A. P. Giannini, "Dirty, drunken skunk," as he passed SEC counsel table during the hearings of the Walston case in May, 1939).

[50] This is true for one of two reasons: either because newspapers are active in producing news or because by and large publishers support only social theories and governmental policies favored by the business elite of their communities, McCamy, op. cit. supra note 46, at 248, and works cited. Cf. 30 Time, No. 10, at 87 (September 6, 1937) (suit against bank president, subsequently found guilty of violating "his trust to the Anglo Bank and its stockholders," not reported by San Francisco newspapers).